

Legislative Analysis



FUNERAL REPRESENTATIVE

Phone: (517) 373-8080

<http://www.house.mi.gov/hfa>

Senate Bill 551 (Substitute H-1 with floor amendment)

Sponsor: Sen. Tonya Schuitmaker

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 3-16-16

Analysis available at

<http://www.legislature.mi.gov>

(Enacted as Public Act 57 of 2016)

REVISED SUMMARY:

The bill would enable a person (declarant) to designate a funeral representative who would have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of the declarant's body after death. This would include, but not be limited to, decisions about cremation, and the right to possess cremated remains of the decedent. The bill would take effect 90 days after enactment.

Briefly, the bill would amend the Estates and Protected Individuals Code to do the following:

- ❖ Revise the order of priority for the individuals who have the right and power to make decisions about funeral arrangements and the disposition of a decedent's body, and include a designated funeral representative among those individuals.
- ❖ Authorize an adult of sound mind to designate another adult of sound mind as a funeral representative, granting that person the right and power to make decisions about funeral arrangements and the disposition of the declarant's body.
- ❖ Include a funeral representative in the definition of "fiduciary", thus specifying that a funeral representative has a duty to fulfill after the declarant's death.
- ❖ Allow a declarant to designate a successor funeral representative in the event the first person named did not accept, was incapacitated, resigned, or was removed.
- ❖ Specify individuals who could not serve as a funeral representative for a declarant, including people associated with a funeral establishment, cemetery, or crematory who would provide services for the declarant.
- ❖ Specify circumstances under which a funeral representative designation would be revoked, including the representative's resignation, failure to locate the funeral representative after reasonable efforts, or the funeral representative's refusal to exercise their rights or powers under the bill or failure to act within 48 hours after receiving notice of the decedent's death.
- ❖ Specify that a divorce or annulment of a marriage would revoke a nomination of a divorced individual's former spouse or a relative of the former spouse to serve as a funeral representative for the decedent.
- ❖ Specify that a divorce or annulment would bar the former spouse from exercising a power to make decisions about funeral arrangements and the handling, disposition, and disinterment of the decedent's body or cremated remains.
- ❖ Specify that the felonious and intentional killing or the conviction for the abuse, neglect, or exploitation of a decedent would revoke a nomination of the killer or

felon to serve as a funeral representative for the decedent and would bar that person from exercising a power to make decisions about funeral arrangements and the handling, disposition, and disinterment of the decedent's body or cremated remains.

- ❖ Revise provisions for petitioning the court when there is a disagreement as to who has the right and power to make decisions about funeral arrangements and the disposition of a decedent's body.
- ❖ Repeal Section 3208 of EPIC which provides that in the case of a disagreement or if no one can be located, certain individuals could petition the court to determine who has the authority to exercise the rights and powers over a decedent's body and funeral arrangements.

MCL 700.1104 et al.

BRIEF DISCUSSION OF THE ISSUES:

According to proponents of SB 551, the bill updates and simplifies the process for making and carrying out funeral arrangements. Similarly to the ability to appoint a personal representative or a patient advocate, a person would be able to designate a specific individual tasked with making decisions regarding the person's funeral arrangements and final disposition. By including a funeral representative in the definition of "fiduciary", the funeral representative would have to act in the person's best interest. Currently, even if a person leaves clear instructions as to their wishes concerning funeral arrangements or burial, the next of kin are not lawfully required to abide by those instructions.

Currently, if a marriage had been annulled or ended in divorce, the ex-spouse is not considered to be a surviving spouse for purposes of EPIC. The bill would specify that a party to a divorce or annulment proceeding would also not be considered to be a surviving spouse. Taken together, the proposed changes are expected to create more efficiency for funeral establishments, cemeteries, and crematories in knowing who is the appropriate individual regarding funeral and final disposition decisions for a deceased person. In addition, designation of a specific individual trusted to carry out one's final wishes can give peace of mind to a person and avoid the possibility of disagreements between the next of kin regarding the arrangements or refusal by the next of kin to follow the stated wishes. Reportedly, at least 35 states have enacted some form of funeral representative legislation.

Some expressed a concern that revoking a funeral representative's designation if the person did not exercise their rights and powers within 48 hours of notification of the person's death is too short of a time period and should be increased to 72 or 96 hours as there could be multiple reasons why the designated person could not act within the 48-hour time period.

FISCAL IMPACT:

The bill would have no fiscal impact on the state or on local units of government.

POSITIONS:

The following testified in, or indicated support for, the bill:

Michigan Funeral Directors Association
Michigan Probate Judges Association
Gift of Life Michigan
Michigan Academy of Family Physicians
National Association of Social Workers-MI
Michigan Cemetery Association (supports the H-1 substitute)

The Probate & Estate Planning Section of the State Bar of Michigan adopted a position of Support with recommended amendments on 11-17-15 (some of the suggested amendments have been incorporated into the committee substitute).

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.