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BILL



ANALYSIS

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Senate Bill 551 (as introduced 10-7-15)
Sponsor: Senator Tonya Schuitmaker
Committee: Judiciary

Date Completed: 12-8-15

CONTENT

The bill would amend the Estates and Protected Individuals Code (EPIC) to do the following:

- **Revise the order of priority for the individuals who have the rights and power to make decisions about funeral arrangements and the disposition of a decedent's body.**
- **Authorize an adult of sound mind to designate another adult as his or her funeral representative, granting that person the rights and power to make decisions about funeral arrangements and the disposition of the decedent's body.**
- **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 circumstances under which a funeral representative designation would be revoked.**
- **Revise provisions for petitioning the court when there is a disagreement as to who has the rights and power to make decisions about funeral arrangements and the disposition of a decedent's body.**

Order of Priority

Under EPIC, subject to Public Act 181 of 1953 (which requires a county medical examiner to investigate the cause and manner of an individual's death under certain circumstances) and Part 28 (Vital Records) and Article 10 (Anatomical Gifts and Disposition of Human Body Parts) of the Public Health Code, a person with priority under Section 3206 or acting under other provisions of that section has the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body. This includes decisions about cremation and the right to possess cremated remains.

Under Section 3206, the surviving spouse or, if there is no surviving spouse, the individual or individuals at least 18 years of age in the highest priority under Section 2103 of EPIC, and related to the decedent in the closest degree of consanguinity (by blood), have the rights and powers described above.

(Section 2103 specifies the order of priority of inheritance when a person dies intestate (without a valid will). Under that section, any part of the intestate estate that does not pass to the surviving spouse, or the entire intestate estate if there is no surviving spouse, passes in the following order to the following individuals who survive the decedent:

- The decedent's descendants.

- If there is no surviving descendant, the decedent's parents equally, if both survive, or the surviving parent.
- If there is no surviving descendant or parent, the descendants of the decedent's parents or of either of them by representation.

If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or the surviving paternal grandparent, or the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent's maternal relatives in the same manner. If there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.)

The bill refers to the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including decisions about cremation and the right to retrieve from the funeral establishment and possess cremated remains immediately after cremation. The following would have those rights, in the order of priority shown below:

- If the decedent were a service member, a person designated to direct the disposition of that person's remains according to a U.S. statute or regulation, policy directive, or instruction of the Department of Defense.
- A funeral representative designated under the bill.
- The surviving spouse.
- The individual or individuals 18 years of age or older in the following priority: the decedent's children; the decedent's grandchildren; the decedent's parents; or the decedent's siblings.

If an individual described in the last item exercised the right to dispose of the decedent's body, another individual in that category with a higher priority would not have the right to make a decision about the disinterment of the decedent's body or possession of the decedent's cremated remains.

Under EPIC, if the surviving spouse or an individual with priority does not exercise the rights and powers under Section 3206 or cannot be located after a good-faith effort to contact him or her, the rights and powers may be exercised by the individual or individuals in the same order of priority under Section 2103 who are related to the decedent in the next-closest degree of consanguinity. Under the bill, this provision would apply if individuals with priority could not be located after a good-faith effort to contact and inform them of the decedent's death, affirmatively declined to exercise their rights or powers under Section 3206, or failed to exercise those rights and powers within 48 hours after receiving notification of the decedent's death. (For this provision, exercising rights and powers would refer to informing the funeral establishment in possession of the decedent's body of an individual's decision or instructions as to the final disposition of the body.)

If no individual in the order of priority exists, exercises the rights or powers to make decisions about a decedent's body, or cannot be located after a sufficient attempt, the personal representative or nominated personal representative may exercise those rights and powers, either before or after his or her appointment. If the decedent was under a guardianship at the time of death, the guardian may exercise those rights and powers and make a claim for the reimbursement of burial expenses. If the decedent died intestate and was not under a guardianship, a special personal representative appointed under EPIC may exercise those rights and powers. Under the bill, if the decedent died intestate and were not under a

guardianship, a special fiduciary or special personal representative appointed under EPIC could exercise the rights and powers.

If there were no person described in any of the provisions above to exercise the rights and powers to make decisions about the decedent's body or cremated remains, one of the following, as applicable, must exercise those rights and powers:

- The county public administrator, if willing, or the medical examiner for the county where the decedent lived at the time of death.
- If the decedent was incarcerated in a State correctional facility at the time of death, the Director of the Department of Corrections (DOC) or the Director's designee.

In the first item above, the bill specifies that if the county public administrator declined or failed to act, the medical examiner would have to exercise those rights and powers.

Under the bill, a person who had been criminally charged with the intentional killing of the decedent could not exercise a right or power regarding the disposition of the decedent's body or cremated remains while the charges were pending.

The bill specifies that a person who had the rights and powers regarding the disposition of a decedent's body or cremated remains and who exercised those rights would have to ensure payment for the costs of the disposition through a trust, insurance, commitment by another person, prepaid contract under the Prepaid Funeral and Cemetery Sales Act, or other effective and binding means. To the extent that payment was not ensured, the person would be liable for the costs of the disposition. These provisions would not apply to a special fiduciary or special personal representative appointed under EPIC; a county public administrator or medical examiner; or the DOC Director or his or her designee.

Funeral Representative Designation

The bill would allow an individual who was at least 18 years of age and of sound mind at the time of designation, to designate in writing another individual who was at least 18 to have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including decisions about cremation and the right to retrieve and possess the decedent's cremated remains immediately after cremation. An individual who was named in a funeral representative designation to have those rights and powers would be known as a "funeral representative" and a person who made a funeral representative designation would be known as a "declarant".

The following could not act as a funeral representative for a declarant unless he or she were the declarant's surviving spouse or relative:

- A health professional, or an employee of or volunteer at a health facility or veterans' facility, who provided medical treatment or nursing care to the declarant during the final illness or immediately before the declarant's death.
- An officer or employee of a funeral establishment that would provide services.
- An officer or employee of a cemetery at which the declarant's body would be interred, entombed, or inurned.
- An officer or employee of a crematory that would provide cremation services.

A funeral representative designation would have to be executed in the presence of, and be signed by, two witnesses. If a funeral representative designation were contained in an individual's will, the will would be required to be admitted to probate for the funeral representative designation to be valid.

Successor Funeral Representative

In a funeral representative designation, a declarant could designate a successor individual as funeral representative who could exercise the rights and powers under Section 3206 if the first individual named as funeral representative did not accept, were incapacitated, resigned, or were removed.

Before acting as a funeral representative, the proposed representative would have to sign an acceptance of the funeral representative designation. The authority under a designation would be exercisable by a funeral representative only after the declarant's death. Except as provided in the designation, a funeral representative could not delegate his or her powers to another person.

On the request of a funeral establishment, the funeral representative would have to provide a copy of the funeral representative designation to the funeral establishment.

Revocation of Designation

A funeral representative designation would be revoked as described below.

Unless a successor funeral representative had been designated, a designation would be revoked if any of the following occurred:

- The funeral representative resigned.
- The funeral representative could not be located after reasonable efforts by the decedent's family or funeral establishment.
- The funeral representative refused to act within 48 hours after receiving notice of the decedent's death.

A funeral representative designation also would be revoked by either of the following:

- A declarant's revocation of the designation.
- A subsequent funeral representative designation that revoked the prior designation either expressly or by inconsistency.

A declarant could revoke a funeral representative designation at any time and in any manner by which he or she was able to communicate an intent to revoke the designation.

Under EPIC, a divorce or annulment of a marriage revokes certain instruments that are revocable, including a nomination of a divorced individual's former spouse or a relative of the former spouse to serve in a fiduciary or representative capacity. The bill would include a nomination as a funeral representative in that provision. The bill also specifies 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.

Under EPIC, the felonious and intentional killing or the conviction of the felon for the abuse, neglect, or exploitation of the decedent revokes certain instruments that are revocable, including a nomination of the killer or felon to serve in a fiduciary or representative capacity. The bill would include a nomination as a funeral representative in that provision. The bill also specifies that the felonious and intentional killing or the conviction of the felon for the abuse, neglect, or exploitation of the decedent would bar the killer or felon from exercising a power to make decisions about funeral arrangements and the handling, disposition, and disinterment of the decedent's body.

Surviving Spouse

Currently, for certain purposes under EPIC, a surviving spouse does not include any of the following:

- An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in Michigan, unless they subsequently participate in a marriage ceremony purporting to marry each other or live together as husband and wife.
- An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual.
- An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.
- An individual who, at the time of the decedent's death, is living in a bigamous relationship with another individual.
- An individual who did any of the following for one year or more before the decedent's death: was willfully absent from the decedent spouse; deserted the decedent spouse; or willfully neglected or refused to provide support for the decedent spouse if required to do so by law.

Under the bill, for purposes of Section 3206, a surviving spouse would not include any of the individuals listed above or an individual who was a party to a divorce or annulment proceeding with the decedent at the time of the decedent's death.

Court Petition

Under EPIC, if there is a disagreement between individuals who share rights and powers under Section 3206, or if one or more people with those rights and powers cannot be located, either or both of the following may petition the court to determine who has the authority to exercise rights and powers under Section 3206:

- An individual with rights and powers under that section.
- A funeral establishment that has custody of the decedent's body.

Under the bill, instead, one or more of the following could petition the court to resolve a disagreement or rebut a presumption under Section 3206:

- An individual with rights and powers under that section.
- A funeral establishment that had custody of the decedent's body.
- An individual other than a person with priority under Section 3206 or acting under that section.

In deciding a petition brought to resolve a disagreement, the court must consider certain specified in EPIC. Under the bill, the court also would have to consider the following factors:

- Whether the decedent executed a funeral representative designation or a designation of a person to direct the disposition of a service member's remains under U.S. law.
- If the decedent were married at the time of death, whether the decedent's spouse was physically and emotionally separated from the decedent at the time of death and had been separated for a period that clearly demonstrated an absence of due affection, trust, and regard between the spouse and decedent.

If refrigeration were not reasonably available, the funeral establishment that had custody of a decedent's body could embalm the body before the court made a decision on a petition.

Currently, a funeral establishment does not have to contact or independently investigate the existence of relatives of the deceased, but may rely on information provided by the deceased's family members. Under the bill, a funeral establishment also could rely on information provided by a person other than a family member whom the funeral establishment reasonably believed knew the existence or location of the relatives of the deceased or the funeral representative. As used in that provision, "information" would include an affirmation that reasonable efforts to contact the individual or individuals with the rights and powers under Section 3206 and to inform the individual or individuals of the death have been made without success.

Repeal

The bill would delete Section 3208 of the Act, which authorizes an individual other than a person with priority or acting under Section 3206 to file an action in the circuit court to challenge the presumption to be determined as the individual who has the authority to exercise the rights and powers under Section 3206.

MCL 700.1104 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Ryan Bergan