

FUNERAL AND DISPOSITION DECISIONS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5117 (H-1) as reported from committee

Sponsor: Rep. Rodney Wakeman

Committee: Judiciary

Complete to 1-25-22

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 5117 would amend the Estates and Protected Individuals Code (EPIC) to do all of the following with regard to provisions concerning the authority to make funeral arrangements and final disposition decisions for a deceased person:

- Establish a window of 72 hours (three days) after an individual dies for a person to be located or to exercise the right of authority for disposition before that right passes to the next person in the order of priority.
- Provide that the exercise of the right of authority for disposition means actually authorizing the burial or cremation of the decedent.
- Allow the dispositional authority to pass to the county medical examiner (or the Department of Corrections (DOC) if the deceased had been incarcerated in a state correctional facility) if a person with dispositional authority fails to exercise those rights within seven days after the death.
- Allow a funeral director to rely on information provided by certain health care facilities regarding the existence of, and contact information for, a family member or personal representative.

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

THE APPARENT PROBLEM:

According to funeral directors, some situations (such as those involving multiple marriages, offspring from multiple relationships, or family dysfunction or estrangement) present challenges in receiving authorization to proceed with a decedent's final disposition in a timely manner. Most of the time, these challenges can be worked through. However, there are situations in which the person or persons who are next in line in the order of priority are unwilling to interact with a funeral director, which causes delays in obtaining the necessary authorization to move forward with a burial or cremation. It has been suggested that adding timelines under which failure to exercise the rights and powers to determine a decedent's final disposition would move the right of authority to the next order of priority, and setting a timeline for when the dispositional authority can pass to a medical examiner, could help expedite a decedent's final disposition.

THE CONTENT OF THE BILL:

House Bill 5117 would provide that the rights and powers of a person with priority to make funeral arrangements and decide a decedent's final disposition would pass to another, in the order of priority established in statute, if he or she cannot be contacted, or fails to exercise his or her rights or powers, within 72 hours after pronouncement of the decedent's death. A county medical examiner or the director of DOC could make final disposition decisions under certain conditions. The bill also would add that a good-faith attempt to locate a person with priority to

make those decisions that is made by a health facility or veteran's facility that provided medical treatment to the decedent immediately before his or her death is a sufficient attempt for purposes of these provisions.

Succession of rights and powers under the act

EPIC establishes an order of priority for individuals who have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body. (The bill would not amend these individuals or their order of priority. See **Background**, below.)

Under the act, if the individual or individuals with the highest priority cannot be located after a good-faith effort to contact and inform them of the decedent's death, if they decline to exercise their rights and powers, or if they fail to exercise their rights and powers within *48 hours after receiving notification* of the decedent's death, those rights and powers pass to the individual or individuals in the same order of priority (e.g., a different sibling or grandparent). If those individuals cannot be located or decline or fail to exercise their rights and powers within *48 hours after receiving notification* that they can exercise them, those rights and powers pass to the next order of priority.

Under the act, for purposes of the above provisions, an individual exercises his or her rights or powers by notifying the funeral establishment in possession of the decedent's body of the individual's decision to exercise those rights or powers.

Succession of rights and powers under the bill

Under the bill, if the individuals with highest priority decline to exercise those rights and powers or if, within *72 hours after the decedent's death* is pronounced under the Determination of Death Act,¹ they fail to exercise their rights or powers or cannot be located after a good-faith effort to contact and inform them of the death, the rights and powers to make the arrangements for the decedent would pass to the individual or individuals in the same order of priority (e.g., a different sibling or grandparent). If those individuals decline or cannot be located, those rights and powers would pass to the next order of priority. [Note that the bill would remove authorization for the rights or powers to pass to the next order of priority if an individual in the higher order of priority *fails* to exercise the rights or powers.]

Under the bill, for purposes of the above provisions, an individual would exercise his or her rights or powers by providing the person that holds a license under Article 18 of the Occupational Code (which regulates funeral establishments and practitioners of mortuary science) and is in possession of the decedent's body with authorization to bury or cremate the decedent's body.

Failure to exercise rights and powers for seven days

Currently, if there is no person to exercise the rights and powers to make final disposition for a decedent, the act authorizes the medical director in the county in which the decedent resided at the time of his or her death, or the director of DOC if the decedent was incarcerated in a state correctional facility at the time of death, to exercise those rights and powers.

¹ This act establishes the medical standards for declaring a person to be dead and who may make that determination.

The bill would add that the rights and powers also would pass to the county medical director or director of the Department of Corrections if there was a person with authority under the act to exercise the rights and powers, but he or she failed to do so within seven days after the decedent's death.

Reasonable attempts to locate a person

Finally, an attempt to locate a person with the highest priority is sufficient under EPIC if a reasonable attempt is made in good faith by a family member, personal representative, or nominated personal representative of the decedent at the person's last known address, telephone number, or email address.

The bill would add that a reasonable attempt made in good faith by a health facility or veteran's facility that provided medical treatment to the decedent during the final illness or immediately before his or her death also is sufficient.

MCL 700.3206

BACKGROUND INFORMATION:

EPIC provides that the following, in the following order of priority, are presumed to have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, and the right to retrieve and possess the decedent's cremated remains immediately after cremation:

- If the decedent was a service member at the time of death, a person designated to direct the disposition of the service member's remains according to a federal statute or a regulation, policy, directive, or instruction of the United States Department of Defense.
- A funeral representative designated under EPIC (see below).
- The surviving spouse.
- The individual or individuals 18 years of age or older in the following order of priority:
 - The decedent's children.
 - The decedent's grandchildren.
 - The decedent's parents.
 - The decedent's grandparents.
 - The decedent's siblings.
 - A descendant of the decedent's parents who first notifies the funeral establishment in possession of the body of the descendant's decision to exercise his or her rights.

If any of these had the right to dispose of the decedent's body, but declined to exercise his or her right or failed to do so within 48 hours after receiving notification of the decedent's death, the individual does not have the right to make a decision about the disinterment of the decedent's body or possession of the decedent's cremated remains. If there is no other person listed in the order of priority that can be located or no other person who exercises his or her rights and powers as provided, the act provides authority for other individuals, such as a guardian or court-appointed fiduciary, to make such determinations for the decedent.

EPIC allows a person who is at least 18 years of age and of sound mind to designate another individual, with some exceptions, to be his or her funeral representative. The designation must

be in writing and be signed voluntarily by the declarant (the person making the designation). The declarant must either sign the declaration in the presence of two witnesses, who also must sign the document, or have the document notarized. A funeral representative designation may be included in a will, in a patient advocate designation, or in another document.

A funeral representative, and other persons who accept the rights and powers to determine the disposition of the decedent, must ensure payment for the costs of the disposition if the funeral representative or other person exercises the right over the disposition. Payment may be made through a trust, insurance, a commitment by another person, a prepaid funeral contract, or other lawful means. If payment is not ensured by one of these means, the person exercising the right over the disposition is liable for the costs of disposition.

ARGUMENTS:

For:

According to the bill's sponsor, who is a licensed funeral director, the most important component of that profession is the proper and respectful care of the deceased. A major piece in providing that care is receiving the authorization necessary to proceed with either burial or cremation. The current statutory order of priority that determines who is in line to make decisions regarding the final disposition of a deceased person works in most situations. However, funeral directors feel that revising timelines for decision making could aid in instances in which the person in line to make the decision fails to interact with a funeral director in a timely manner.

The bill would expedite the order of priority by first providing that the rights and powers of disposition are exercised by authorizing burial or cremation, rather than just informing a funeral director of the intention to do so. The bill would establish a 72-hour window after the death of the decedent for an individual with priority to be located or to exercise the authority; the rights and powers of disposition would then pass to the next in the order of priority. If no person with dispositional authority has acted on that authority within seven days of the death, the bill would require the county medical examiner to determine final disposition. To those in the industry, the needs of the deceased regarding respectful treatment are no longer being met after seven days and decisions regarding final disposition need to be made. Further, the bill would allow a funeral director to rely on information provided by a health facility (such as a hospital, nursing home, or hospice) or a veteran's facility to identify and locate a next of kin or personal representative. If a facility already had that information on file, it could save time from doing lengthier searches to locate those individuals. Reportedly, the timelines adopted by the bill represent a consensus of funeral professionals as to providing proper and respectful care to the deceased.

Against:

Currently, the time frames to accept or refuse to exercise authority of final disposition are based on when the person receives notification of the death or notification that he or she has that authority. The time frame under the bill would instead be based on when the decedent dies. This would greatly shorten the time period for notifications to be made and for a person to make a decision on whether to bury or cremate a loved one. If the death had been sudden or due to tragic circumstances, it could be difficult for the appropriate family member to make a decision within 72 hours of the death before it would automatically go to the next person in the order of priority to authorize a burial or cremation.

In addition, the authority to decide final disposition for a decedent currently only falls to a county medical examiner, or to DOC if the decedent was an inmate in a state prison, if there is no one listed in the order of priority that exists or can be found in a reasonable amount of time. Under the bill, if there are such persons or entities but no one acts within seven days after the decedent's death to inform a funeral director whether to bury or cremate, dispositional authority would automatically default to the medical examiner or DOC. Some may question whether the dispositional authority would still be required to default to the medical examiner or DOC on the eighth day even if a person was willing to exercise it but the seven-day period expired before he or she was afforded the opportunity to accept. For example, due to family dynamics, could there be a delay in how the rights and powers progress through the order of priority, causing the seven-day period to expire before the next of kin lower in the list, such as a niece or nephew, could be notified? Or would a domestic partner or close friend willing to exercise dispositional authority, but for whom a funeral representative designation had not been made prior to the decedent's death, have sufficient time to petition a court for authority before the seven-day period expired?

POSITIONS:

A representative of the Michigan Funeral Directors Association testified in support of the bill.
(11-9-21)

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.