

# Legislative Analysis



## FUNERAL AND DISPOSITION DECISIONS

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

### House Bill 5117 (proposed substitute H-1)

**Sponsor: Rep. Rodney Wakeman**

**Committee: Judiciary**

**Complete to 12-6-21**

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

## SUMMARY:

House Bill 5117 would amend the Estates and Protected Individuals Code (EPIC) to 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 the Department of Corrections 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 similarly decline or fail to exercise their rights and powers within 48 hours or cannot be located, 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 pronouncement of the decedent's death under the Determination of Death Act,<sup>1</sup> 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 similarly decline or

---

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

cannot be located, those rights and powers would pass to the next order of priority. [Note that the bill would remove any 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 the Department of Corrections if the decedent was incarcerated in a state correctional facility at the time of death, to exercise those rights and powers.

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:**

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.
- 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 decedent'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.

**FISCAL IMPACT:**

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

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.