

EPIC: PRIORITY OF CLAIMS AGAINST ESTATES

House Bill 5484 (Substitute H-1) First Analysis (4-25-00)

**Sponsor: Rep. Andrew Richner
Committee: Family and Civil Law**

THE APPARENT PROBLEM:

The Estates and Protected Individuals Code (EPIC) was enacted in 1998 to replace the Revised Probate Code, and took effect on April 1, 2000. Although the Revised Probate Code (RPC) was viewed as a major overhaul when it was enacted in 1978, many people came to believe that a complete reorganization was necessary, and the Council of the Probate and Estate Planning Section of the State Bar of Michigan spent approximately 10 years reviewing the entire RPC. The revisions made by EPIC reflect changes in rules, case law, and society that occurred since the RPC was adopted, and address internal inconsistencies that were present in that statute. The delayed effective date of EPIC allowed a two-year transition period during which practitioners and judges could familiarize themselves with the new law. During that time, the Council of the Probate and Estate Planning Section scrutinized EPIC and discovered various ambiguities and inconsistencies, many of which have been corrected. However, it has been noted that under the now-repealed RPC, funeral and burial expenses were given higher priority for payment than they are currently provided under the EPIC. Further, it has been suggested that language is needed to clarify who is responsible for delivery of a will or deed found in a decedent's safety deposit box.

THE CONTENT OF THE BILL:

House Bill 5484 would amend the Estates and Protected Individuals code to clarify the order of priority for certain claims against an individual's estate or against a trust. The bill would provide that funeral and burial expenses, and costs and expenses of administration, have priority for payment over the homestead (\$15,000 to the decedent's surviving spouse or children) and family (reasonable maintenance payments for the surviving spouse and minor children) allowances and the spouse's or children's right to exempt personal property (up to \$10,000 worth) from the estate. Currently, the EPIC provides that the homestead, family, and exempt property allowances

have priority over funeral and burial expenses, and costs and expenses of administration. The bill would require that payments from an estate be made in the following order: administration costs and expenses, funeral and burial expenses, homestead allowance, family allowance, and exempt property allowance. For the sake of consistency, the listing of these claims and allowances against an estate would be rearranged to reflect this order where necessary. Further, the current law's definition of the term "claim" includes funeral expenses and administrative expenses but does not include *burial* expenses and *costs* of administration; the bill would add these items to the definition.

Under the bill, where necessary due to insufficiencies in an estate, the use of other assets (not personal property) to fulfill the exempt property amount would be abated in order to permit full payment of administration costs and expenses, reasonable funeral and burial expenses, the homestead allowance, and the family allowance, in that order.

Where the applicable estate property was insufficient to pay the claims against the estate in full, the bill would require payment to be made in the following order of priority: administration costs and expenses, reasonable funeral and burial expenses, the homestead allowance, the family allowance, the exempt property allowance, debts and taxes with priority under federal law, reasonable and necessary medical expenses, debts and taxes with priority under state law, and all other claims. The bill would also provide the same order of priority where trust property, after the payment of the costs and expenses of trust administration, would be insufficient to pay all of the charges for which the trust was liable.

Currently, four months after the publication of notice to creditors, a personal representative must pay the allowed claims against an estate after providing for certain payments (for dower, the homestead, family, and exempt property allowances, among others). The bill would include and prioritize costs and expenses of

administration and funeral and burial expenses in the list of payments that must be made before paying other claims. In the case of trusts, after four months from the date of publication of notice to creditors, the trustee would be required to pay the claims allowed against the trust in the same order of priority.

Finally, the bill would clarify the rules regarding the opening of a safety deposit box of a decedent who has died after September 30, 1993. The bill would deal with situations where a court issued an order to allow an individual to inspect a decedent's safety deposit box. If a will or deed to a burial plot was found in the safety deposit box, the bill would clarify that the person who carried out the inspection would be the one required to deliver the document to the probate register or his or her deputy, rather than the financial institution.

MCL 700.1103 et al.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill would merely re-establish prior practice and make certain that these costs and expenses are paid first, thus guaranteeing that these services will be provided. While the RPC itself was not consistent in the way it prioritized claims, proponents of the bill claim that practice under the RPC followed the order of priority that would be established by the bill. The bill will avoid putting funeral directors and cemeteries in the awkward position of being required to protect their own interests by demanding up front payment before providing funeral or burial services. Without having a priority for payment, it is possible that funeral directors and cemeteries would be forced to turn away those who couldn't pay up front or to provide services for which they would not be paid.

The bill also clarifies who is responsible for delivering a will or deed discovered in a decedent's safety deposit box. It is unreasonable to place this responsibility on the bank or other financial institution. Clearly, the delivery should be left to the person named in the court order to perform the inspection of the safety deposit box.

Against:

There is some concern about allowing attorneys to take their administration fees and funeral directors and cemeteries to take their fees out of an estate before the decedent's spouse and dependents. The homestead, family, and exempt property allowances provide that at least a minimum amount of a decedent's estate will be used to provide for the immediate needs of the person's surviving spouse and/or minor children. It is not unreasonable to place these allowances ahead of attorneys fees and funeral and burial expenses, and the EPIC provisions that do this should remain as they are.

POSITIONS:

The Michigan Bankers Association supports the bill. (4-20-00)

The Michigan Cemetery Association supports the bill. (4-20-00)

The Michigan Funeral Directors Association supports the bill. (4-20-00)

Analyst: W. Flory

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