

FUNERAL ARRANGEMENTS: SURVIVING SPOUSE

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Senate Bill 39 (reported from House committee as H-1)

Sponsor: Sen. Rick Jones

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 3-2-17

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

(Enacted as Public Act 20 of 2017)

BRIEF SUMMARY: The bill revises a provision that determines who has priority as a surviving spouse for the purpose of making decisions about the funeral arrangements and final disposition of a decedent. Currently, generally speaking, a spouse who fits in one the following categories is not included as a surviving spouse: 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, such an individual could be included as a surviving spouse, but only for the purpose of making decisions about funeral arrangements or final disposition.

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

THE APPARENT PROBLEM:

Public Act 57 of 2016 sought to simplify the process for making and carrying out funeral arrangements. It amended the Estates and Protected Individuals Code to, among other things, enable a person to designate a *funeral representative*—a specific person tasked with making decisions regarding the person's funeral arrangements and final disposition and to revise the order of priority for those making such arrangements. Under the legislation, a surviving spouse is no longer necessarily at the top of the list. Public Act 57 also amended a provision in the Code that lists circumstances under which an individual is not considered to be a surviving spouse for the purpose of inheritance to say that those same individuals are also not considered to be a surviving spouse as it relates to having the rights and powers to make decisions about funeral arrangements and disposition of a decedent.

Since enactment of Public Act 57, it has become apparent that one of the listed circumstances has become problematic for those in the funeral and burial industry to implement. The circumstance causing the problem specifies that an individual who did any of the following for one year or more before the death of the deceased person is not a surviving spouse: was willfully absent from or had deserted the decedent spouse or had willfully neglected or refused to provide support for the decedent spouse if required to do so by law.

Where that circumstance may be an important determinate in how a deceased person's estate will be probated in regards to inheritance, it simply is beyond the ability of staff at a funeral home or cemetery to make such legal distinctions. For example, when family members appear at a funeral home or cemetery to make arrangements for a recently deceased loved one, those in the burial industry say that it is not appropriate for them, and

quite impossible, for staff to make a determination as to who, for that relationship, is legally a surviving spouse and who isn't. After all, if the couple had been separated, the staff would have no way to substantiate who abandoned whom, how long the couple had been apart, or whether the living spouse had refused to make required spousal support payments.

At the request of members of the burial industry, legislation has been offered to remove the circumstance referenced from applying in situations involving funeral and final disposition arrangements.

THE CONTENT OF THE BILL:

Section 3206 of the Estates and Protected Individuals Code (EPIC) establishes the rights and powers of individuals to make decisions about funeral arrangements and the handling, disposition, or disinterment of a deceased person's body after death. An order of priority is specified, with the decedent's surviving spouse being third in priority. (First priority is given to a person designated under federal law to direct the disposition of a service member's remains if the decedent was a service member at the time of death; followed by a funeral representative previously designated by the decedent; and then the surviving spouse. Other relatives such as the decedent's children, grandchildren, parents, and so on are then listed in a specific order.)

Who constitutes a "surviving spouse," and thus where that person may fall in the order of priority for the purposes of making funeral and/or final disposition arrangements, is specified in Section 2801 of the Code. Generally speaking, an individual who is divorced from the decedent or whose marriage has been annulled is not a surviving spouse unless he or she is married to the decedent at the time of death by virtue of a subsequent marriage. In addition, Section 2801 lists several other situations that exclude an individual from consideration as a surviving spouse. One of the exclusions states that an individual who did any of the following for one year or more before the decedent's death is not included as a surviving spouse:

- Was willfully absent from the decedent spouse.
- Deserted the decedent spouse.
- Willfully neglected or refused to provide support for the decedent spouse if required to do so by law.

Senate Bill 39 amends EPIC (at MCL 700.2801) so that an individual described above could be considered a surviving spouse for the purpose of making decisions about funeral arrangements or the final disposition of a deceased person under Section 3206.

The bill also deletes references to a "husband and wife" contained in Section 2801 and instead refers to a "married couple."

HOUSE COMMITTEE ACTION:

The substitute reported from the House Judiciary Committee deleted a provision that would have made the bill take effect 90 days after enactment.

ARGUMENTS:

For:

The bill corrects an unintended consequence created by legislation enacted in 2016 that amended the Estates and Protected Individual Code (EPIC). As explained earlier in the analysis, while one of the "spousal forfeiture" categories (circumstances under which a surviving spouse is not considered as such), listed in Section 2801 is generally appropriate for the purpose of certain inheritance issues, it is not appropriate for determining the priority of who may make funeral and final disposition arrangements.

Under Section 3206, a surviving spouse is third in line after a military official if the deceased were a service member at the time of death and a designated funeral representative, and before children and other family members. Members of the funeral industry have requested that the category in Section 2801 identified as being problematic no longer apply to funeral and disposition matters.

As pointed out in testimony submitted by the Michigan Funeral Directors Association (MFDA), it is inappropriate for a funeral director to ask certain questions at a funeral arrangements conference, such as if a separated spouse had "willfully" left the marriage or deserted the deceased spouse, how long the couple had been separated, or if support required by law had been paid. These are complicated legal issues and need the expertise and intervention of a court to sort out. When settling a decedent's estate, whether the person died with or without a will, such questions are pertinent and often end up being litigated to decide the question whether the separated spouse indeed counts as a surviving spouse entitled to benefits under the law.

In its written and oral testimony, the MFDA points out that enacting the bill will not automatically result in a separated spouse ultimately getting that third spot in the priority list of who has authority to determine the funeral or disposition arrangements. Spousal separation remains as a factor that a court may consider in determining a separated spouse's status as a surviving spouse. Therefore, another relative could still challenge the separated spouse in probate court.

POSITIONS:

A representative of the Michigan Funeral Directors Association testified in support of the bill. (2-21-17)

The Michigan Cemetery Association indicated support for the bill. (2-21-17)

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■ 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.