



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 39 (as passed by the Senate)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 2-14-17

RATIONALE

The Estates and Protected Individuals Code (EPIC) identifies people who are not considered a surviving spouse of a decedent for certain purposes dealing with inheritance of the decedent's assets. These people are described in Section 2801 and include an individual who was willfully absent from or had deserted the decedent spouse for one year or more, or who willfully neglected or refused to provide support for the decedent spouse in that time, if required by law to do so.

Another provision of EPIC specifies who is authorized to make decisions about a decedent's funeral arrangements and disposition. Public Act 57 of 2016 amended that provision to include a designated funeral representative among those authorized to make such arrangements. If there is not designated funeral representative, a person with priority under that provision has the rights and powers to make decisions about funeral arrangements and the disposition of the decedent's remains. Generally, a surviving spouse has the highest priority for making those decisions. Public Act 57 also added a provision excluding a person as a surviving spouse for purposes of making funeral and disposition decisions if he or she is excluded under Section 2801. Some people believe that funeral directors should not be placed in the position of having to determine whether a surviving spouse had abandoned or deserted a decedent or had neglected or refused to provide legally required support to the decedent. It has been suggested that the provision identifying who is not considered a surviving spouse for purposes of making funeral and disposition arrangements, enacted as part of Public Act 57, should be changed so that such people are not excluded.

CONTENT

The bill would amend Article II (Intestacy, Wills, Donative Transfers) of the Estates and Protected Individuals Code to do the following in provisions governing the effect of a divorce, annulment, or separation on the status of a person as a surviving spouse:

- Revise an exception regarding who constitutes a surviving spouse for purposes of decisions about a decedent's funeral arrangements and the disposition of the decedent's remains.**
- Refer to a "married couple" rather than a "husband and wife".**

Under Section 2801 of EPIC, an individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of that provision. The bill would refer to the status of married couple rather than the status of husband and wife.

Section 2801 also identifies individuals who are not included as a surviving spouse for purposes of Parts 1 through 4 of Article II. (Those sections, respectively, pertain to intestate succession (inheritance in the absence of a valid will); the elective share of a surviving spouse; a spouse or child not provided for in a will; and exempt property and allowances.) The excluded individuals are 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.

In the first item above, the bill would refer to living together as a married couple rather than as husband and wife.

In addition, for purposes of Section 3206 of EPIC, a surviving spouse does 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. Under the bill, for purposes of that section, a surviving spouse would not include any of the individuals in the first four items 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.

(Under Section 3206, described below, a designated funeral representative or a person with priority or otherwise acting under that section has the rights and powers 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 possess cremated remains.)

The bill would take effect 90 days after its enactment.

MCL 700.2801

BACKGROUND

Section 3206 of the Estates and Protected Individuals Code specifies individuals who are authorized to make decisions about a decedent's funeral arrangements and the disposition of a decedent's body. These include a person given priority under that section or, if none exists, a person acting in a certain capacity (such as a personal representative or a guardian). As a rule, a person having priority is 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). (Section 2103 specifies the order of priority of inheritance when a person dies without a valid will.)

Despite these statutory instructions, there often is confusion, disagreement, or controversy over who may make those decisions. For example, the legal authority to decide might fall to someone who was related to but estranged from the decedent or who was distantly related but was not personally close to the decedent. It was suggested that, in some cases, it might be appropriate for someone close to the decedent, but not related to him or her, to decide about funeral arrangements and the disposition of the body.

As a result, Public Act 57 of 2016 amended Section 3206, effective June 27, 2016, to include a designated funeral representative among the individual who are authorized to make decisions about a decedent's funeral arrangements and the disposition of the body. Under the provisions enacted by Public Act 57, an adult of sound mind (a "declarant") may designate another adult as his or her funeral representative. The section lists individuals who may not act as a funeral representative for a declarant unless an individual on the list is the surviving spouse or is a relative

of the declarant. The list includes, for example, a health professional who provided medical treatment or nursing care to the declarant during the final illness.

Public Act 57 also amended Section 2801 to indicate individuals who are not a surviving spouse for purposes of Section 3206.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The responsibility of determining whether a surviving spouse had abandoned or deserted a decedent spouse, or whether he or she had neglected or refused to provide required support of the decedent spouse, should not fall on the shoulders of funeral directors. Since Public Act 57 adopted a provision under which someone fitting that description is not considered a surviving spouse for purposes of making funeral and disposition decisions, however, funeral directors might find themselves in the position of having to ask a survivor if he or she had abandoned his or her spouse or failed to make required support payments. Such a line of inquiry would be awkward for both the funeral director and the decedent's surviving spouse, and could appear disrespectful. Moreover, a legally married spouse's living arrangements and financial status are irrelevant to the services provided by a funeral director. Although a person's abandonment of his or her spouse, or failure to support the spouse financially, may be relevant to inheritance issues addressed by Section 2801, that information should not factor into determining who may make funeral arrangements and decisions about the disposition of a decedent's remains under Section 3206.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

Fiscal Analyst: Ryan Bergan