

Legislative Analysis



CLARIFY PRIORITY OF APPOINTMENT FOR PERSONAL REPRESENTATIVE

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House Bill 5103 as reported from committee
Sponsor: Rep. Rodney Wakeman
Committee: Judiciary
Complete to 12-10-19

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

(Enacted as Public Act 59 of 2020)

BRIEF SUMMARY: House Bill 5103 would amend the Estates and Protected Individuals Code (EPIC) to clarify the priority among persons seeking appointment as a general personal representative.

FISCAL IMPACT: House Bill 5103 will have no fiscal impact on the state or on local units of government.

THE APPARENT PROBLEM:

When a funeral home receives a decedent, it must dispense with the remains within a certain time frame or face fines. Usually a next of kin takes care of the arrangements and authorizes the funeral home to prepare and dispense with the remains. However, when there is no next of kin to name, or a relative refuses to participate in the formal disposition, the funeral home cannot proceed on its own; it must wait for a representative to be named by the courts before doing anything with the remains, as proper authorization must be given even to embalm the remains. Yet waiting for the courts to find a representative under current law can result in the funeral home's holding on to the remains past the allotted time frame, which then results in fines. The bill would allow funeral home directors to enter the court process of being named a representative to then dispense with the remains in a timely manner and avoid fines.

THE CONTENT OF THE BILL:

Currently under EPIC, certain qualifications, conditions, and relationships to a decedent are given priority when selecting a *personal representative*. However, they do not apply to the selection of a *special personal representative*.

The bill would clarify that the priority qualifications and conditions in sections 3203 and 3204 of the act apply for appointment of a *general personal representative* or *successor personal representative*, but not a *special personal representative*.

As defined in EPIC, *personal representative* includes an executor, administrator, successor personal representative, and special personal representative, and any other person, other than a trustee of a trust subject to article VII of the act, who performs substantially the same function under the law governing that person's status.

General personal representative means a personal representative other than a special representative.

Special personal representative means a personal representative as described in sections 3614 to 3618 of the act.

Successor personal representative means a personal representative, other than a special personal representative, who is appointed to succeed a previously appointed personal representative.

MCL 700.3203 and 700.3204

ARGUMENTS:

For:

Supporters of the bill argue that it is unfair to force fines on funeral homes that are patiently waiting for proper authorization from the courts to dispense with remains. The current process does not allow a funeral director to be named a representative to give proper authorization. Allowing funeral directors to be named a representative when there is no next of kin would greatly improve the process by which funeral homes dispense with remains in a timely manner as required by law.

Against:

Critics argue that the bill should be further amended to safeguard decedents. These changes would include adding “domestic partner” under the criteria for choosing a representative to aid in finding a representative. Additionally, some feel that allowing judges to reject a person as a representative if the court finds the person “unsuitable in formal proceedings” gives the court too much deference, especially because there are no factors or criteria listed for a court to use when determining unsuitability. Finally, some critics of the bill argued that attorney fees should be limited in cases of determining a representative so as to not be a drain on a decedent’s estate.

POSITIONS:

The Michigan Funeral Directors Association indicated support for the bill. (11-5-19)

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