

S.B. 551: Right of Disposition Upgrade

Sponsored by: Senator Tonya Schuitmaker (R-Lawton)

Background

Currently, when an individual dies in Michigan, decisions regarding funeral arrangements and final disposition of remains are made by the next-of-kin (i.e.- the surviving spouse), or when more than one individual comprises the next of kin class (i.e.- several children), by a majority within that class. Rising cremation rates combined with more geographically dispersed and estranged families has resulted in increasing difficulty in obtaining the proper authorization(s) to proceed in a timely manner.

Thirty-nine states currently provide a means for an individual to appoint someone to make those decisions when the individual dies. Oftentimes referred to as the appointment of a designated funeral agent or funeral representative. MFDA believes this concept—with conditions—would facilitate making arrangements for a proper and respectful final disposition. In addition, there are a number of other upgrades to Michigan's current right of disposition law that can provide funeral directors with greater clarity to serve cremation families.

Historically, the law has recognized that a deceased's family has a right to possess the body for purposes of making funeral and final disposition arrangements. This is because of a very simple, but sometimes overlooked principle that forms the foundation of the right: meaningful funeral and memorial services are for the family and friends of a deceased as they continue their life in the wake of a loss. **In other words, funeral rites exist for the benefit of the living.**

Recent years, however, have seen final dispositions by cremation exceed the number of burials in Michigan. Due to the permanence of cremation and its associated liability exposure to funeral providers, cremation demands that funeral providers be scrupulous and accurate in obtaining proper authorization.

Bill Summary

Amends Michigan's right of disposition law to provide the following:

1. Creates a Funeral Representative designation to allow one to designate—ahead of time—a funeral representative to handle their disposition upon death. Whether a funeral representative has been appointed or the next-of-kin is controlling disposition, a requirement to guaranty payment for costs associated with and a result of, decisions made concerning disposition.
2. The funeral representative designation must be properly executed, witnessed by two people, and notarized. A designation may be included in a will, patient advocate designation or other writing. This designation is a serious matter and should be handled as seriously as any other planning document.
3. The following are prohibited from being a Funeral Representative:
 - a. An officer, partner, member, shareholder, owner, representative or employee of a funeral establishment that will provide services to the deceased.
 - b. A health professional, or an employee of or volunteer at a health facility or veterans facility, who provided medical treatment or nursing care to the declarant during the final illness or immediately before the deceased's death, or a partner, member, shareholder, owner, or representative of the health facility where medical treatment or nursing care was provided.
 - c. An officer, partner, member, shareholder, owner, representative, or employee of a cemetery at which the deceased's body will be interred, entombed, or inurned.

- d. An officer partner, member, shareholder, owner, representative, or employee of a crematory that will provide the declarant's cremation services.
4. The following situations forfeit disposition rights of the Funeral Representative or next-of-kin:
 - a. For a spouse; divorce, annulment, or pending divorce.
 - b. Next of kin or Funeral Representative has been charged with murder or voluntary manslaughter of the decedent.
 - c. Failure to act within 48 hours upon being notified of the death.
 - d. Failure to assign assets, proceeds, or commit to pay for the decisions made.
5. If a funeral representative has not been appointed, the priority of next of kin with the right of disposition is listed below; if more than one person exists, a majority of class is required.
 - a. If the deceased was a service member, a person designated to direct the disposition of the service member's remains according to a statute of the United States or regulation, policy, directive, or instruction of the Department of Defense.
 - b. Surviving spouse
 - c. Children.
 - d. Grandchildren.
 - e. Parents.
 - f. Grandparents.
 - g. Siblings.
6. If no next-of-kin in the above categories exist, any individual listed below may contact the funeral director to assert their rights:
 - a. Nieces and Nephews.
 - b. Aunts, Uncles, or Cousins.
7. The following disqualifies the Funeral Representative or next-of-kin:
 - a. Death.
 - b. Court finds lack of capacity (incompetence).
 - c. Resigns, declines, or waives right.
 - d. Refuses to act within 48 hours of notification.
 - e. Cannot be located after reasonable efforts by funeral director or family.
 - f. Agent is spouse, but is estranged or is subsequently divorced.
8. In the situation of there being no family or friends to step forward to take care of a deceased, the county public administrator can exercise rights as a special fiduciary or personal representative. If not, then the county medical examiner.
9. A Funeral Representative accepts the Funeral Representative designation by signing an acceptance of the designation or by acting as the Funeral Representative.
10. A Funeral Representative designation may be revoked.
11. Expands an existing probate court dispute resolution proceeding to someone seeking to obtain right-of-disposition rights over the rights of another to petition probate court for resolution.
12. Adds "cemetery or crematory" to the entities—currently only funeral establishments—that may rely upon information provided by next-of-kin or funeral representative. Further adds a provision stating that cemeteries or crematories may rely upon information provided by the funeral establishment regarding who holds the right of disposition authority.

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