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BILL



ANALYSIS

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House Bill 5850 (Substitute H-1 as reported without amendment)
Sponsor: Representative Fred Miller
House Committee: Military and Veterans Affairs and Homeland Security
Senate Committee: Senior Citizens and Veterans Affairs

Date Completed: 10-28-10

RATIONALE

According to U.S. Department of Defense Instruction 1300.18, all service members are required to complete a Record of Emergency Data, also called DD Form 93. This document is used to designate beneficiaries and identify people to be notified in case of an emergency, sickness, or death. In addition, DD Form 93 contains a space for service members to designate a person authorized to direct disposition (PADD) of their remains, in the event of death. Under Federal law, only the following people may be named a PADD: surviving spouse, blood relatives, or adoptive relatives of the decedent, or a person standing in loco parentis if none of the three can be found (10 USC 1482(c)). If a service member fails to identify a PADD, Instruction 1300.18 lists and prioritizes individuals who will be recognized. Within the Department of Defense, efforts are being made to ensure that states recognize DD Form 93, and the PADD in particular. Since state laws typically prescribe the order of individuals who may direct the disposition of a decedent's remains, there is a concern about potential conflicts between those laws and Form 93.

In Michigan, the Estates and Protected Individuals Code lists individuals who are presumed to have the authority to make decisions about funeral arrangements and the disposition of a decedent's body. It has been suggested that a person designated in a PADD should be recognized as having the same authority.

CONTENT

The bill would amend the Estates and Protected Individuals Code (EPIC) to authorize a person to make decisions about the remains of a deceased service member, if the person met certain criteria and the decedent had designated him or her to make decisions about the service member's remains according to a Federal law, notwithstanding provisions in the Code giving certain individuals priority in such decision-making. The bill also would allow a funeral establishment to rely on that designation.

Subject to various exceptions, EPIC lists the priority of individuals who are presumed to have the right and power 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 make an additional exception to this provision.

Under the bill, if the decedent were a service member who had designated a person to direct disposition of his or her remains according to a statute of the United States or a regulation, policy, directive, or instruction of the U.S. Department of Defense, and if the designated person were the surviving spouse, an adult blood relative, or an adoptive relative of the decedent, or a person standing in loco parentis if the surviving spouse, adult blood relative, or adoptive relative could not be found, and the designated person were

willing and able to exercise the rights and powers to make the decisions described above, he or she would have those rights and powers and the Code's list of individuals with priority would not apply.

The bill would define "service member" as an individual described in 10 USC 1481(a)(1)-(8). (That section provides that the Secretary concerned may provide for the recovery, care, and disposition of the remains of the following:

- Any regular of an armed force under the jurisdiction of the Secretary concerned who dies while on active duty.
- A member of a reserve component of an armed force who dies while on active duty, performing inactive-duty training, or hospitalized or undergoing treatment for an injury, illness, or disease incurred or aggravated while on active duty or performing inactive-duty training, or under other specified circumstances.
- A member of a reserve officers' training camp who dies under specified circumstances.
- A accepted applicant for enlistment in an armed force under the Secretary's jurisdiction.
- A person who has been discharged from an enlistment in an armed force while a patient in a United States hospital, and who continues to be a patient until his or her death.
- A person who dies as a retired member of an armed force under the Secretary's jurisdiction during a continuous hospitalization, under circumstances described in the law.
- Any military prisoner who dies while in his or her custody.)

MCL 700.3206 & 700.3209

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 bill would eliminate a potential conflict between EPIC and Federal law regarding the person authorized to make decisions about the disposition of a deceased service member's body. All members of the military, including the National Guard and the reserves, are required to complete DD

Form 93 and to update it annually, before deployment, and at other times. By recognizing the form as a legally sufficient document for designating a PADD, the bill could reduce the possibility of confusion and disputes within a family at a time of bereavement, and would allow funeral directors to rely on a single document.

According to the Department of Defense, the laws in 21 states—including Illinois, Indiana, Ohio, and Wisconsin—already comport with the disposition instructions in Federal law. Including Michigan, three other states are pursuing such a policy.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

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

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.