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H.B. 397
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Galonski

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SUMMARY

- Gives precedence for the right of disposition of a deceased person's remains to the parent who was the residential parent and legal custodian of the deceased person over the parent who was not the residential parent and legal custodian at the time the deceased person reached the age of majority.
- Prohibits a parent who has been disqualified from the right of disposition to have the parental precedence.
- Specifies that the parental precedence for the right of disposition is not affected by a group of people or class of persons being assigned the right of disposition.

DETAILED ANALYSIS

Parental rights of disposition for a deceased adult child

The bill gives precedence to the parent that was the residential parent and legal custodian of a deceased person over the parent who was not the residential parent and legal custodian at the time the deceased person reached the age of majority with respect to the right of disposition of the deceased person's remains.¹

Under current law, a deceased person's surviving parent or parents have the right of disposition of the deceased person's remains if:

- One of the following is the case:
 - The deceased person, as an adult, had not executed a written declaration assigning the right of disposition that remains in force at the person's time of death; or

¹ R.C. 2108.81(C)(1).

- Each person to whom the right of disposition has been assigned or reassigned under a written declaration is disqualified.
- And the deceased person has no surviving spouse or surviving children.²

Disqualification from the right of disposition

The parental precedence granted under the bill does not apply if the parent with precedence has been disqualified from the right of disposition for the deceased person.³

Under continuing law, a person is disqualified from having the right of disposition of a deceased adult if any of the following occurs:

- The person dies;
- A probate court declares or determines that the person is incompetent;
- The person resigns or declines to exercise the right;
- The person refuses to exercise the right within two days after notification of the declarant's death;
- The person cannot be located with reasonable effort;
- The person assigned as the representative in the written declaration was the spouse of the declarant at the time the declaration was executed, but is no longer the declarant's spouse at the time of the declarant's death (unless the declarant makes the ex-spouse the representative in a notarized and witnessed document executed after the marriage terminated);
- The person has been charged with murder, aggravated murder, or voluntary manslaughter (and the charges are not later dismissed or the person acquitted, in which case the right to be a representative is restored);
- The person has been charged with domestic violence and it is alleged that the act resulted in or contributed to the declarant's death (and the charge is not later dismissed or the person acquitted, in which case the right to be a representative is restored);
- The person and the declarant or the deceased adult were spouses but an action to terminate the marriage was pending at the time of the declarant's or deceased adult's death;
- The person and the declarant or deceased adult are spouses and a probate court determines the declarant's or deceased adult's spouse and the declarant or deceased adult were estranged at the time of death.⁴

² R.C. 2108.81(A) and (B).

³ R.C. 2108.81(C)(2).

⁴ R.C. 2108.75, 2108.76, and 2108.77, not in the bill.

Multiple assignees of the right of disposition

The bill also states that the parental precedence is not affected because a group of people or class of persons has been assigned the right of disposition.⁵ Under continuing law, a declarant's representative or successor representative can be a group of people or a class of persons. If the persons in the class or group disagree regarding how the right of disposition is to be exercised, the majority prevails. If after reasonable efforts, everyone in the group or class cannot be located, the decision by a majority of the group or class who has been located prevails. If a majority of the group or class cannot reach a decision, the probate court in the county that the declarant or deceased adult resided in at the time of death must make the disposition decision.⁶

HISTORY

| Action | Date |
|------------|----------|
| Introduced | 11-05-19 |

H0397-I-133/ks

⁵ R.C. 2108.81(C)(3).

⁶ R.C. 2109.79, not in the bill.