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SFA**BILL ANALYSIS**

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House Bill 5484 (Substitute H-1 as passed by the House)
Sponsor: Representative Andrew Richner
House Committee: Family and Civil Law
Senate Committee: Families, Mental Health and Human Services

Date Completed: 5-16-00

CONTENT

The bill would amend the Estates and Protected Individuals Code (EPIC) to revise the order of priority for certain claims against an individual's estate or against a trust. The bill also would revise the rules regarding the opening of a safe deposit box of a decedent who died after September 30, 1993.

Payment Priority

Currently, EPIC gives priority to the homestead allowance (\$15,000 to the decedent's surviving spouse or children), the family allowance (reasonable maintenance payments for the surviving spouse and minor children), and the spouse's or children's right to exempt personal property from the estate (up to \$10,000) over funeral and burial expenses, and costs and expenses of administration. The bill would require that payments from an estate be made in the following order:

- Costs and expenses of administration.
- Funeral and burial expenses.
- Homestead allowance.
- Family allowance.
- Exempt property.

The listing of claims and allowances against an estate would be rearranged to reflect that order in various sections of the Code.

Currently, rights to exempt property and assets needed to make up a deficiency of exempt property have priority against all claims against an estate, except that the right to assets to make up a deficiency of exempt property abates as necessary to permit the payment of homestead and family allowances. Under the bill, rights to assets needed to make up a deficiency of exempt property would abate as necessary to permit payment of administration costs and expenses, reasonable funeral and burial expenses, the homestead allowance, and the family allowance, in that order.

Currently, if the applicable estate property is insufficient to pay the claims against the estate in full, payment must be made in the following order of priority:

- Costs and expenses of administration.
- Reasonable funeral and burial expenses.
- Debts and taxes with priority under Federal law.
- Reasonable and necessary medical expenses.
- Debts and taxes with priority under State law.
- All other claims.

Under the bill, if the applicable estate property were insufficient to pay all claims and allowances in full,

payment would have to be made in the same order of priority, although the bill would insert homestead allowance, family allowance, and exempt property (in that order) after reasonable funeral and burial expenses.

The bill also would provide the same order of priority for trust property, after the payment of the costs and expenses of trust administration, if the trust were insufficient to pay all of the charges for which it was liable.

Currently, four months after the publication of notice to creditors, a personal representative must pay the allowed claims against an estate after providing for certain payments (dower, homestead and family allowances, and exempt property, among others). The bill would include and give priority to costs and expenses of administration and funeral and burial expenses in the list of items that must be paid before other claims are paid. In the case of trusts, after four months from the date of publication of notice to creditors, the trustee would be required to pay the claims allowed against the trust in the same order of priority.

Further, the current definition of the term "claim" includes funeral expenses and administrative expenses but does not include burial and expenses and costs of administration. The bill would add those items to the definition.

Safe Deposit Boxes

Under EPIC, in the estate of a person who dies after September 30, 1993, whenever it appears to the court by petition of an interested person that a safe deposit box had been leased to a decedent and that the box may contain a will or a deed to a burial plot, the court may order the institution that leased the box to permit a person named in the order to examine the box in the presence of an officer or other authorized employee of the institution, and if a paper purporting to be a will of the decedent or a deed to a burial plot is found in the box, to deliver the will or deed to the probate register. The probate register or his or her deputy must furnish a receipt to the institution.

Under the bill, if a will or burial plot deed were found in a safe deposit box, the person named in the court order would be required to deliver it to the probate register, and the register would have to furnish a receipt to that person (rather than to the institution).

MCL 700.1103 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

Fiscal Analyst: B. 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.