

BILL ANALYSIS

Senate Research Center
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H.B. 2248
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State Affairs
5/16/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As part of its ongoing review of Texas law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas (REPTL Section) has proposed H.B. 2248, which provides updates to the law regarding the disposition and removal of remains.

The bill clarifies that if the agent designated to dispose of remains of a person is a spouse, the designation is automatically revoked by law if the marriage is annulled or declared void in addition to if it is dissolved unless the document provides otherwise.

The bill clarifies that a court with jurisdiction over proceedings for a decedent's will, whether or not an actual proceeding has been initiated, is the proper court with jurisdiction over a dispute relating to the right to control disposition of remains.

The bill also provides that the county court (not the district court) in the county in which a cemetery is located is the proper venue for permission to remove remains of a decedent.

H.B. 2248 amends current law relating to the disposition and removal of a decedent's remains.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 711.002(b), (c), and (k), Health and Safety Code, as follows:

(b) Authorizes the written instrument referred to in Subsection (a)(1) (relating to requiring that certain persons have the right to control the disposition, including cremation, unless a decedent has certain written directions, are required to inter the remains, and are liable for the reasonable cost of interment including the person designated in a written instrument signed by the decedent) to be in substantially a certain form. Sets forth the required language of the form.

(c) Provides that, unless the instrument provides otherwise, the designation of the decedent's spouse as an agent or successor agent in the instrument is revoked when the marriage of the decedent and the spouse appointed as an agent or successor agent is dissolved by divorce, annulled, or declared void before the decedent's death, rather than is revoked on the divorce of the decedent and the spouse appointed as an agent or successor agent.

(k) Requires any dispute among any of the persons listed in Subsection (a) concerning their right to control the disposition, including cremation, of a decedent's remains to be resolved by a court with jurisdiction over probate proceedings for the decedent, regardless of whether a probate proceeding has been initiated, rather than a court of competent jurisdiction.

SECTION 2. Amends Section 711.004(c), Health and Safety Code, to authorize the remains, if the consent required by Subsection (a) cannot be obtained, to be removed by permission of a county court, rather than a district court, of the county in which the cemetery is located.

SECTION 3. Makes application of Section 711.002, Health and Safety Code, as amended by this Act, prospective.

SECTION 4. (a) Provides that, except as otherwise provided in this section, the changes in law made by this Act apply to:

(1) an instrument described by Section 711.002(a)(1), Health and Safety Code, created before, on, or after the effective date of this Act;

(2) a judicial proceeding concerning an instrument described by Subdivision (1) of this subsection that:

(A) commences on or after the effective date of this Act; or

(B) is pending on the effective date of this Act; and

(3) an application to a court to remove remains under Section 711.004(c), Health and Safety Code, as amended by this Act, submitted on or after the effective date of this Act.

(b) Provides that, if the court finds that application of a provision of this Act would substantially interfere with the effective conduct of a judicial proceeding concerning an instrument described by Subsection (a)(1) of this section that is pending on the effective date of this Act or prejudice the rights of a party to the proceeding, the provision of this Act does not apply, and the law in effect immediately before the effective date of this Act applies in those circumstances.

SECTION 5. Effective date: September 1, 2019.