

BILL ANALYSIS

Senate Research Center
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H.B. 3070
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As part of its ongoing review of Texas probate, guardianship, and trust law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas has proposed several updates to the law regarding disposition of a person's remains. H.B. 3070 seeks to adopt these proposed updates.

H.B. 3070 amends current law relating to the disposition of 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 Section 711.002, Health and Safety Code, by amending Subsections (a), (b), (c), and (g) and adding Subsection (a-3), as follows:

(a) Requires the following persons, except as provided by Subsection (1) (prohibiting a certain person from controlling the disposition of the decedent's remains if, in connection with the decedent's death, an indictment has been filed charging the person with a crime under Chapter 19 (Criminal Homicide), Penal Code, that involves family violence against the decedent), unless a decedent has left directions in writing for the disposition of the decedent's remains as provided in Subsection (g), in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains, to inter the remains, and in accordance with Subsection (a-1) (relating to the failure of a person with the right to control the disposition of a decedent's remains to make final arrangements or to appoint another person to make final arrangements for the disposition before a certain date, and being presumed to be unable or unwilling to control the disposition with certain consequences) are liable for the reasonable cost of interment:

(1)-(4) Makes no change to these subdivision;

(5) Makes a nonsubstantive change;

(6) any one or more of the duly qualified executors or administrators of the decedent's estate; or

(7) Creates this subdivision from existing text and makes no further change.

(a-3) Provides that a person exercising the right to control the disposition of remains under Subsection (a), other than a duly qualified executor or administrator of the decedent's estate, is liable for the reasonable cost of interment and may seek reimbursement for that cost from the decedent's estate. Provides that, when an executor or administrator exercises the right to control the disposition of remains under Subsection (a)(6), the decedent's estate is liable for the reasonable cost of interment, and the executor or administrator is not individually liable for that cost.

(b) Sets forth the language required to be included in the written instrument referred to in Subsection (a)(1) (relating to the person designated in a written instrument signed by the decedent).

(c) Provides that a written instrument is legally sufficient under Subsection (a)(1) if the instrument designates a person to control the disposition of the decedent's remains, the instrument is signed by the decedent, the signature of the decedent is acknowledged, and the agent or successor agent signs the instrument before acting as the decedent's agent. 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 on the divorce of the decedent and the spouse appointed as an agent or successor agent.

Deletes existing text providing that a written instrument is legally sufficient under Subsection (a)(1) if the wording of the instrument complies substantially with Subsection (b), the instrument is properly completed, the instrument is signed by the decedent, the agent, and each successor agent, and the signature of the decedent is acknowledged.

(g) Provides that a party to the prepaid funeral contract or a written contract providing for all or some of a decedent's funeral arrangements who fails to honor the contract is liable for the additional expenses incurred in the disposition of the decedent's remains as a result of the breach of contract. Makes no further change to this subsection.

SECTION 2. Provides that Section 711.002, Health and Safety Code, as amended by this Act, applies only to the validity of a document executed on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 3. (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, as amended by this Act, created before, on, or after the effective date of this Act; and

(2) a judicial proceeding concerning an instrument described by Section 711.002(a)(1), Health and Safety Code, as amended by this Act, that:

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

(B) is pending on 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 Section 711.002(a)(1), Health and Safety Code, as amended by this Act, 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 4. Effective date: September 1, 2015.