



House
Legislative
Analysis
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PROBATE COURT: OUT-OF-STATE DISAPPEARANCES

House Bill 4563 as introduced
First Analysis (3-30-95)

Sponsor: Rep. Roland Jersevic
Committee: Judiciary and Civil Rights

THE APPARENT PROBLEM:

Public Act 452 of 1982 (enrolled Senate Bill 533) amended the Revised Probate Code (Public Act 642 of 1978) to allow the probate court to determine the time, place, and cause of death of someone who is missing and presumed dead due to an accident or disaster which occurs in Michigan or upon the Great Lakes. The court's determination, which is based on evidence presented at a hearing, is necessary to obtain a death certificate and to probate the estate of the dead person. Petitions for such determinations must be filed at least 60 days after, but not more than three years after, the accident or disaster.

However, because the code's provisions apply only to Michigan (and the Great Lakes), probate courts in Michigan reportedly have questioned whether they have the authority to make determinations on the date and time of death in cases where Michigan citizens have died in accidents abroad, but their bodies have not been recovered. Because the foreign governments have declined to issue death certificates (in one case until five years elapsed, in another because it only issues such certificates for its own citizens), the survivors have encountered problems settling their deceased relatives' estates.

Legislation has been introduced that would address this problem.

THE CONTENT OF THE BILL:

The bill would amend the Revised Probate Code (MCL 700.492a) to specify that, if a person was missing and presumed dead because of an accident or disaster that occurred outside of Michigan, the probate court of the (presumed dead) individual's county of residence would have jurisdiction. The bill also would extend to seven years, from the current three years, the deadline for filing a petition for a determination of the cause and date of death in such cases.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal implications. (3-28-95)

ARGUMENTS:

For:

Within the past three years, there have been at least two cases in which Michigan residents have died abroad, but because their bodies were not recovered and because the foreign governments involved would not issue death certificates, the surviving relatives have had problems settling their dead relatives' estates.

In November, 1994, a Michigan couple died in a helicopter accident (that killed 15 people) while on a cruise in the Caribbean. The husband's body was recovered, but the wife's was not, and the Mexican government will not issue a death certificate in the case of someone whose body is lost in a disaster until five years has passed. A second case occurred in British Columbia, Canada, in 1992, when a Michigan resident died in a mountain climbing accident, but his body was unable to be recovered because he had fallen into a deep crevasse and been buried by subsequent snow avalanches. Apparently, the court in British Columbia may issue a certificate of death in cases where a body cannot be recovered when death results from a natural disaster or accident, but the dead person must either be a citizen of Canada or own property in British Columbia -- neither of which applied to the Michigan citizen in this particular case.

In both of these tragic cases, the surviving relatives have been unable to settle their dead relative's estate because they have been unable to obtain death certificates from the foreign governments and the Michigan probate courts have questioned whether they have the authority to make determinations in the case of citizens who die abroad. What is more, in the case of the helicopter

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accident, a cause of action on behalf of the wife against the cruise line must be filed within one year following the death, and failure to do so will constitute a waiver of any claim, but a death certificate is necessary in order for the action to proceed.

Although such cases are, fortunately, relatively rare, nevertheless when they do occur they can cause considerable problems for the surviving family members, and at a time when the surviving family members are experiencing great sorrow and confusion. By resolving this problem of the lack of explicit jurisdiction given to probate courts in such cases, the bill would prevent future such problems.

POSITIONS:

There are no positions at present. (3-29-95)