



Sub. H.B. 459

127th General Assembly

(As Reported by H. Local and Municipal Government and Urban Revitalization)

Reps. Hottinger, J. McGregor, Fessler, Gardner, Evans, Combs, Flowers

BILL SUMMARY

- Allows an interested party to file a petition to modify a death certificate or coroner's verdict within three years after the decedent's death.
- Requires the court of common pleas of the county in which the death occurred to hold a hearing under specified procedures to direct the coroner to change the cause and manner and mode of death.
- Establishes procedures for the dismissal of a petition and the appeal of the final decision of the court relating to the petition.
- Specifies when a change in a death certificate or coroner's verdict may be the basis of a new trial for, or the withdrawal of any plea to, any offense related to the death of the decedent.

CONTENT AND OPERATION

Manner of death on death certificate or coroner's verdict

(R.C. 313.19(B))

Under current law, the cause of death and the manner and mode in which the death occurred as shown in the death certificate and in the coroner's verdict is the legally accepted manner and mode in which the death occurred, and the legally accepted cause of death, unless the court of common pleas of the county in which the death occurred, after a hearing, directs the coroner to change the coroner's decision as to the cause and manner and mode of death. Current law does not specify any procedures with regard to the hearing. The bill prohibits, in any action or proceeding in which the cause of death and the manner and mode in which the death occurred is a genuinely contested issue, a trier of fact from presuming the correctness of a death certificate or coroner's verdict.

Modification of death certificate or coroner's verdict

(R.C. 313.19(B) and (C))

To modify the death certificate or coroner's verdict, the bill requires the court of common pleas of the county in which the death occurred to hold a hearing under specified procedures to direct the coroner to change the cause and manner and mode of death. The bill allows a coroner to modify a death certificate or coroner's verdict as allowed by law, but prohibits a court from ordering such a modification except pursuant to the bill.

Interested party

(R.C. 313.19(A)(2), (3), (4), and (5) and (E)(3))

Generally, the bill allows an interested party to file a petition to modify a death certificate or coroner's verdict. An "interested party" is a person¹ that has a substantial interest² in the correctness of a death certificate or coroner's verdict and includes, but is not limited to:

- The decedent's spouse at the time of the decedent's death;
- A natural or adoptive parent of the decedent;
- A natural or adopted child of the decedent, or a parent of such a child;
- An executor or other court-appointed fiduciary caring for the decedent's estate; or
- The prosecuting attorney of the county in which the death certificate for the decedent was filed.

"Interested party" excludes the following:

¹ "Person" means an individual, political subdivision of Ohio, governmental entity of Ohio, corporation, business trust, estate, partnership, or association.

² "Substantial interest" means a contractual or other financial interest of the person asserting the substantial interest or of that person's heirs in the correctness of the death certificate or coroner's verdict. "Substantial interest" also means an emotional interest based upon a close familial relationship to the decedent and an interest based upon the death certificate or coroner's verdict exposing the person to a substantial possibility of civil liability for wrongful death, a products liability claim, or other similar civil liability.

- A person who has been convicted of or pleaded guilty to any offense related to the death of the decedent,³ unless and until the conviction is overturned, vacated, or otherwise set aside and that action is not subject to further appeal or trial;
- A person, other than a prosecuting attorney, who in the court's opinion is acting solely on behalf of another person who is not an interested party in order to advance the claims of the other person.

The court, in its discretion and on any terms that it considers appropriate, can permit a person, except a person who has been convicted of or pleaded guilty to any offense related to the death of the decedent unless and until that conviction is overturned, vacated, or otherwise set aside and the action is not subject to further appeal or trial, that would not otherwise qualify as an interested party to be joined as a permissible party if the court determines the joinder is necessary to protect the interests of the person. A court's decision to grant or deny such a joinder request is final and not appealable.

Filing of petition

(R.C. 313.19(A)(1), (D), (E)(1), (F), and (K))

An interested party must file a petition to modify a death certificate or coroner's verdict within three years after the decedent's⁴ death. A court cannot hear a petition that is not timely filed or extend the three-year period. The running of the three-year period is not stopped by a pending criminal prosecution, proceeding for post-conviction relief, or appeal that relates to the decedent's death.

However, if a petition is timely filed during the pendency of a criminal prosecution, proceeding for post-conviction relief, or appeal relating to the death of the decedent, upon motion of the prosecuting attorney, if the petitioner is a

³ "Offense related to the death of the decedent" means any of the following: (1) aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, reckless homicide, negligent homicide, aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter, (2) an attempt to commit, complicity in committing, or conspiracy to commit any of the offenses listed in (1), (3) perjury, obstructing justice, or tampering with evidence in relation to any offense listed in (1) or (2), (4) violating any Ohio law or municipal ordinance that is substantially similar to any offense described in (1), (2), or (3), or (5) violating any Ohio law or municipal ordinance that is a criminal offense in which the death of another is an element.

⁴ "Decedent" means the person whose death is recorded on a death certificate.

person charged with an offense related to the death of the decedent, the court must stay the proceedings until the defendant, petitioner, or appellant has exhausted the defendant's, petitioner's, or appellant's state and federal rights of direct appeal and collateral review. The bill prohibits a court from staying or continuing the proceedings if the stay or continuance would unduly prejudice the rights of any other interested party joined in the action at the time of the petition. However, upon motion of the prosecuting attorney, the court can stay the proceedings on any petition in which the petitioner is not a person charged with an offense related to the death of the decedent, if the court finds that further proceedings could compromise a criminal prosecution, proceeding for post-conviction relief, or appeal related to the death of the decedent, unless such a stay or a continuance would unduly prejudice the rights of any other interested party.

The prosecuting attorney can file a petition beyond the three-year time period, or can file a subsequent or successive petition, upon the discovery of new evidence that, in the prosecuting attorney's opinion, warrants such a filing in order to correct a manifest injustice. Any other interested party can file a petition beyond the three-year time period only upon the discovery of new evidence that the petitioner was unavoidably prevented from discovering within that time period.

Content of petition

(R.C. 313.19(D))

The petitioner must name as a respondent the county coroner of the county in which the death certificate was filed and all other persons whom a diligent search would reveal to be interested parties if the Rules of Civil Procedure require the joinder. A petition can include as a respondent any interested party whose joinder is permitted by the Rules of Civil Procedure. The petition must state in detail the relief sought and must be accompanied by affidavits supporting its claims. If the petition raises any issue that requires expert opinion, an expert, whose qualifications, as shown in the affidavit, appear to comply with the Rules of Evidence concerning expert testimony, must make one or more of the affidavits. The petition must be served in accordance with the Rules of Civil Procedure.

Dismissal of petition

(R.C. 313.19(E)(1), (E)(2), and (H))

Except as described in "**Filing of petition**," above, the court can dismiss any petition that fails to properly join and serve any interested party whose joinder is required if it appears to the court that the petitioner (1) through a diligent search, should have identified that party as an interested party and (2) after being alerted

to the failure to join an interested party by the court or another party, failed to make reasonable efforts to join the interested party. The court must dismiss the petition without a hearing if the petition and accompanying affidavits present only evidence that is substantially the same as evidence that was used or available for use in a prior criminal proceeding or related collateral proceeding by any interested party and if the court in the prior proceeding entered a judgment adverse to that interested party's claim. Evidence must not be deemed unavailable for use in a prior criminal proceeding or related collateral proceeding solely because it was not presented in that proceeding or was excluded from consideration by the trier of fact in that proceeding on procedural grounds.

A dismissal of a petition for failure to comply with any of the bill's provisions, or for failure of proof after a hearing, is a dismissal with prejudice to the filing of another petition related to the death certificate or coroner's verdict by all named petitioners and against all persons whose interest is in privity with any of the petitioners and all joined parties.

Hearing procedures

(R.C. 313.19(G))

If the court finds that a petition meets all of the appropriate requirements, the court must set the petition for hearing. Before the hearing, the court can, but need not, do any of the following:

- Require that the coroner or any other party file and serve an answer to the petition;
- Grant to any party the right to conduct discovery under the Rules of Civil Procedure;
- Permit the filing of, and rule upon, any motions authorized by the Rules of Civil Procedure; and
- Issue any order that the court considers necessary to a fair determination.

At the hearing, the petitioner has the burden of going forward with evidence and has the burden of proving by a preponderance of the evidence that the death certificate or coroner's verdict is in error. The hearing must be conducted without a jury and in accordance with the Rules of Evidence.

Appeal of final decision related to petition

(R.C. 313.19(I))

If a party appeals the final decision of the court, the court of appeals must do one of the following:

- If the final decision modifies the death certificate or coroner's verdict, conduct a review of the entire case without deference to the decision being appealed; or
- If the final decision affirms the correctness of the death certificate or coroner's verdict, determine whether the trial court abused its discretion with regard to an appealable matter and either affirm the decision or remand the case to the trial court for further proceedings.

New trial due to change in death certificate or coroner's verdict

(R.C. 313.19(J))

- A change in a death certificate or coroner's verdict made pursuant to the bill's provision may not be the basis of a new trial for, or the withdrawal of any plea to, any offense related to the death of the decedent unless a court determines a change in a death certificate or coroner's verdict to be a proper basis in a criminal case for post-conviction relief under Ohio law.

Right to discovery

(R.C. 313.19(L))

The bill clarifies that its provisions must not be construed or applied to allow a person charged with an offense related to the death of the decedent to utilize any of the bill's provisions to give that person any right to conduct discovery or to have access to discovery beyond that which the person is entitled under the law as applicable to a criminal prosecution.

Remedial nature of bill

(Section 3)

The bill is meant to be a remedial measure and specifies that the General Assembly intends that those provisions of the bill that prohibit a person who has been convicted of or pleaded guilty to any offense related to the death of a decedent from maintaining an action, unless and until the conviction is overturned,

vacated, or otherwise set aside and the action is not subject to further appeal or trial, as well as the provisions that require or permit a stay of proceedings on a petition during the pendency of a criminal prosecution, proceeding for post-conviction relief, or appeal related to the death of the decedent, must be applied retrospectively to all cases filed under the bill, whether or not the case is pending on the bill's effective date. All the other provisions of the bill must govern all proceedings in actions brought after the bill's effective date and also all further proceedings in actions pending on that date, except if in the court's opinion the application of those provisions in a particular action would not be feasible or would cause injustice, in which event former procedures apply.

HISTORY

ACTION	DATE
Introduced	01-30-08
Reported, H. Local & Municipal Gov't & Urban Revitalization	05-23-08

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