

HOUSE BILL No. 4505

March 4, 2009, Introduced by Rep. Byrnes and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 3206, 3207, 3208, 3209, and 3614 (MCL 700.3206, 700.3207, 700.3208, 700.3209, and 700.3614), section 3206 as amended by 2008 PA 41 and sections 3207, 3208, and 3209 as added and section 3614 as amended by 2006 PA 299, and by adding section 3210.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216,
2 and to part 28 and article 10 of the public health code, 1978 PA
3 368, MCL 333.2801 to 333.2899 and 333.10101 to 333.11101, **A PERSON**
4 **APPOINTED UNDER SUBSECTION (2)**, a person with priority under
5 subsections ~~(2) to (4)~~ **(3) TO (5)**, or **A PERSON** acting under
6 subsection ~~(5)~~, **(6)**, **(7)**, ~~or (8)~~, **OR (9)** is presumed to have the

1 right and power to make decisions about funeral arrangements and
2 the handling, disposition, or disinterment of a decedent's body,
3 including, but not limited to, decisions about cremation, and the
4 right to possess cremated remains of the decedent. The handling,
5 disposition, or disinterment of a body shall be under the
6 supervision of a person licensed to practice mortuary science in
7 this state.

8 **(2) AN INDIVIDUAL MAY DESIGNATE A PERSON TO EXERCISE THE**
9 **RIGHTS AND POWERS UNDER SUBSECTION (1). THE DESIGNATION SHALL BE IN**
10 **WRITING, SIGNED, WITNESSED IN THE SAME MANNER AS PROVIDED FOR A**
11 **PATIENT ADVOCATE DESIGNATION IN SECTION 5506(4), DATED, AND**
12 **EXECUTED VOLUNTARILY. A DESIGNATION UNDER THIS SUBSECTION MAY BE**
13 **INCLUDED IN A PATIENT ADVOCATE DESIGNATION.**

14 **(3) ~~(2)~~ The IF THERE IS NO PERSON DESIGNATED UNDER SUBSECTION**
15 **(2), THE** surviving spouse or, if there is no surviving spouse, the
16 individual or individuals 18 years of age or older, in the highest
17 order of priority under section 2103, and related to the decedent
18 in the closest degree of consanguinity, have the rights and powers
19 under subsection (1).

20 **(4) ~~(3)~~ If THERE IS NO PERSON DESIGNATED UNDER SUBSECTION (2)**
21 **AND IF** the surviving spouse or the individual or individuals with
22 the highest priority as determined under subsection ~~(2)~~ **(3)** do not
23 exercise their rights or powers under subsection (1) or cannot be
24 located after a good-faith effort to contact them, the rights and
25 powers under subsection (1) may be exercised by the individual or
26 individuals in the same order of priority under section 2103 who
27 are related to the decedent in the next closest degree of

1 consanguinity. If the individual or each of the individuals in an
2 order of priority as determined under this subsection similarly
3 does not exercise his or her rights or powers or cannot be located,
4 the rights or powers under subsection (1) pass to the next order of
5 priority, with the order of priority being determined by first
6 taking the individuals in the highest order of priority under
7 section 2103 and then taking the individuals related to the
8 decedent in the closest or, as applicable, next closest degree of
9 consanguinity in that order of priority.

10 (5) ~~(4)~~—If 2 or more individuals share the rights and powers
11 described in subsection (1) as determined under subsection ~~(2)~~ ~~or~~
12 (3) **OR (4)**, the rights and powers shall be exercised as decided by
13 a majority of the individuals. If a majority cannot agree, any of
14 the individuals may file a petition under section 3207.

15 (6) ~~(5)~~—If **THERE IS NO PERSON DESIGNATED UNDER SUBSECTION (2)**
16 **AND IF** no individual described in subsections ~~(2)~~ ~~and~~ ~~(3)~~ **AND (4)**
17 exists, exercises the rights or powers under subsection (1), or can
18 be located after a sufficient attempt as described in subsection
19 ~~(9)~~ **(10)**, and if subsection ~~(6)~~ **(7)** does not apply, then the
20 personal representative or nominated personal representative may
21 exercise the rights and powers under subsection (1), either before
22 or after his or her appointment.

23 (7) ~~(6)~~—If **THERE IS NO PERSON DESIGNATED UNDER SUBSECTION (2)**
24 **AND IF** no individual described in subsections ~~(2)~~ ~~and~~ ~~(3)~~ **AND (4)**
25 exists, exercises the rights or powers under subsection (1), or can
26 be located after a sufficient attempt as described in subsection
27 ~~(9)~~ **(10)**, and if the decedent was under a guardianship at the time

1 of death, the guardian may exercise the rights and powers under
2 subsection (1) and may make a claim for the reimbursement of burial
3 expenses as provided in section 5216 or 5315, as applicable.

4 (8) ~~(7)~~—If **THERE IS NO PERSON DESIGNATED UNDER SUBSECTION (2)**
5 **AND IF** no individual described in subsections ~~(2) and (3)~~ **AND (4)**
6 exists, exercises the rights or powers under subsection (1), or can
7 be located after a sufficient attempt as described in subsection
8 ~~(9) (10)~~, if the decedent died intestate, and if subsection ~~(6) (7)~~
9 does not apply, a special personal representative appointed under
10 section 3614(c) may exercise the rights and powers under subsection
11 (1).

12 (9) ~~(8)~~—If there is no person under subsections (2) to ~~(7) (8)~~
13 to exercise the rights and powers under subsection (1), 1 of the
14 following, as applicable, shall exercise the rights and powers
15 under subsection (1):

16 (a) Unless subdivision (b) applies, the county public
17 administrator, if willing, or the medical examiner for the county
18 where the decedent was domiciled at the time of his or her death.

19 (b) If the decedent was incarcerated in a state correctional
20 facility at the time of his or her death, the director of the
21 department of corrections or the designee of the director.

22 (10) ~~(9)~~—An attempt to locate a person described in subsection
23 ~~(2) or (3)~~ **OR (4)** is sufficient if a reasonable attempt is made in
24 good faith by a family member, personal representative, or
25 nominated personal representative of the decedent to contact the
26 person at his or her last known address, telephone number, or
27 electronic mail address.

1 (11) ~~(10)~~ This section does not void or otherwise affect an
2 anatomical gift made under part 101 of the public health code, 1978
3 PA 368, MCL 333.10101 to 333.10123.

4 (12) ~~(11)~~ As used in this section, "nominated personal
5 representative" means a person nominated to act as personal
6 representative in a will that the nominated person reasonably
7 believes to be the valid will of the decedent.

8 Sec. 3207. (1) If there is a disagreement as described in
9 section ~~3206(4)~~ **3206(5)** or if **THERE IS NO PERSON DESIGNATED UNDER**
10 **SECTION 3206(2) AND** 1 or more of the individuals described in
11 section ~~3206(2) or (3)~~ **3206(3) OR (4)** cannot be located, 1 or more
12 of the following may petition the court to determine who has the
13 authority to exercise the rights and powers under section 3206(1):

14 (a) An individual with the rights and powers under section
15 3206(1).

16 (b) A funeral establishment that has custody of the decedent's
17 body.

18 (2) Venue for a petition filed under subsection (1) is in the
19 county in which the decedent was domiciled at the time of death.

20 (3) On receipt of a petition under this section, the court
21 shall set a date for a hearing on the petition. The hearing date
22 shall be as soon as possible, but not later than 7 business days
23 after the date the petition is filed. Notice of the petition and
24 the hearing shall be served not less than 2 days before the date of
25 the hearing on every individual who has highest priority as
26 determined under section ~~3206(2) and (3)~~ **3206(3) AND (4)**, unless
27 the court orders that service on every such individual is not

1 required. Unless an individual cannot be located after a reasonable
2 good-faith effort has been made to contact the individual, service
3 shall be made on the individual personally or in a manner
4 reasonably designed to give the individual notice. Notice of the
5 hearing shall include notice of the individual's right to appear at
6 the hearing. An individual served with notice of the hearing may
7 waive his or her rights. If written waivers from all persons
8 entitled to notice are filed, the court may immediately hear the
9 petition. The court may waive or modify the notice and hearing
10 requirements of this subsection if the decedent's body must be
11 disposed of promptly to accommodate the religious beliefs of the
12 decedent or his or her next of kin.

13 (4) If a funeral establishment is the petitioner under this
14 section, the funeral establishment's actual costs and reasonable
15 attorney fees in bringing the proceeding shall be included in the
16 reasonable funeral and burial expenses under section ~~3805(b)~~
17 **3805(1)(B)** or the court may assess such costs and fees against 1 or
18 more parties or intervenors.

19 (5) In deciding a petition brought under this section, the
20 court shall consider all of the following, in addition to other
21 relevant factors:

22 (a) The reasonableness and practicality of the funeral
23 arrangements or the handling or disposition of the body proposed by
24 the person bringing the action in comparison with the funeral
25 arrangements or the handling or disposition of the body proposed by
26 1 or more individuals with the rights and powers under section
27 3206(1).

1 (b) The nature of the personal relationship to the deceased of
2 the person bringing the action compared to other individuals with
3 the rights and powers under section 3206(1).

4 (c) Whether the person bringing the action is ready, willing,
5 and able to pay the costs of the funeral arrangements or the
6 handling or disposition of the body.

7 Sec. 3208. (1) ~~An~~ **IF THERE IS NO PERSON DESIGNATED UNDER**
8 **SECTION 3206(2), AN** individual other than a person with priority
9 under ~~subsections (2) to (4)~~ **SECTION 3206(3) TO (5)** or acting under
10 ~~subsection (5), (6), (7), or (8)~~, **SECTION 3206(6), (7), (8), OR (9)**
11 may file an action in the circuit court to challenge the
12 presumption to be determined as the individual who has the
13 authority to exercise the rights and powers under section 3206(1).

14 (2) Venue for an action filed under this section is in the
15 county in which the decedent was domiciled at the time of death.

16 Sec. 3209. (1) A funeral establishment is not required to file
17 a petition under section 3207 and is not civilly liable for not
18 doing so.

19 (2) The order of priority determined under section ~~3206(2) and~~
20 ~~(3)~~ **3206(3) AND (4)** may be relied upon by a funeral establishment.
21 A funeral establishment is not a guarantor that a person exercising
22 the rights and powers under section 3206(1) has the legal authority
23 to do so. A funeral establishment does not have the responsibility
24 to contact or independently investigate the existence of relatives
25 of the deceased, but may rely on information provided by family
26 members of the deceased.

27 (3) A funeral establishment, holder of a license to practice

1 mortuary science issued by this state, cemetery, crematory, or an
2 officer or employee of a funeral establishment, holder of a license
3 to practice mortuary science issued by this state, cemetery, or
4 crematory may rely on the terms of sections 3206 and 3207 and this
5 section and the instructions of a person described in section
6 3206(2) to ~~(8)~~—(9), or of an individual determined in an action
7 under section 3208 to be the party to exercise the rights and
8 powers under section 3206(1), regarding funeral arrangements and
9 the handling, disposition, or disinterment of a body and is not
10 civilly liable to any person for the reliance if the reliance was
11 in good faith.

12 **SEC. 3210. IF AN INDIVIDUAL INCLUDES INSTRUCTIONS IN HIS OR**
13 **HER WILL OR IN A WRITING SIGNED AND WITNESSED IN THE SAME MANNER AS**
14 **PROVIDED FOR A PATIENT ADVOCATE DESIGNATION IN SECTION 5506(4) FOR**
15 **FUNERAL SERVICES OR THE HANDLING OR DISPOSITION OF HIS OR HER BODY**
16 **AFTER DEATH, THE PERSON WHO HAS THE RIGHT AND POWER TO MAKE**
17 **DECISIONS ABOUT FUNERAL ARRANGEMENTS AND THE HANDLING AND**
18 **DISPOSITION OF THE BODY UNDER SECTIONS 3206 TO 3208 SHALL FOLLOW**
19 **THE INSTRUCTIONS TO THE EXTENT POSSIBLE.**

20 Sec. 3614. A special personal representative may be appointed
21 in any of the following circumstances:

22 (a) Informally by the register on the application of an
23 interested person if necessary to protect the estate of a decedent
24 before the appointment of a general personal representative or if a
25 prior appointment is terminated as provided in section 3609.

26 (b) By the court on its own motion or in a formal proceeding
27 by court order on the petition of an interested person if in either

1 case, after notice and hearing, the court finds that the
2 appointment is necessary to preserve the estate or to secure its
3 proper administration, including its administration in
4 circumstances in which a general personal representative cannot or
5 should not act. If it appears to the court that an emergency
6 exists, the court may order the appointment without notice.

7 (c) By the court on its own motion or on petition by an
8 interested person to supervise the disposition of the body of a
9 decedent if section ~~3206(7)~~**3206(8)** applies. The duties of a
10 special personal representative appointed under this subdivision
11 shall be specified in the order of appointment and may include
12 making arrangements with a funeral home, securing a burial plot if
13 needed, obtaining veteran's or pauper's funding where appropriate,
14 and determining the disposition of the body by burial or cremation.
15 The court may waive the bond requirement under section 3603(1)(a).
16 The court may appoint the county public administrator if the county
17 public administrator is willing to serve. If the court determines
18 that it will not be necessary to open an estate, the court may
19 appoint a special fiduciary under section 1309 instead of a special
20 personal representative to perform duties under this section.