

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 551

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 1104, 2801, 2803, 2807, 3206, 3207, 3209,
3614, and 3701 (MCL 700.1104, 700.2801, 700.2803, 700.2807,
700.3206, 700.3207, 700.3209, 700.3614, and 700.3701), section 1104
as amended by 2009 PA 46, section 2803 as amended by 2012 PA 173,
section 2807 as amended by 2000 PA 54, sections 3206 and 3209 as
amended by 2012 PA 63, section 3207 as amended by 2010 PA 325, and
sections 3614 and 3701 as amended by 2006 PA 299, and by adding
sections 3206a and 3206b; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1104. As used in this act:
- 2 (a) "Environmental law" means a federal, state, or local law,
- 3 rule, regulation, or ordinance that relates to the protection of

1 the environment or human health.

2 (b) "Estate" includes the property of the decedent, trust, or
3 other person whose affairs are subject to this act as the property
4 is originally constituted and as it exists throughout
5 administration. Estate also includes the rights described in
6 sections 3805, 3922, and 7606 to collect from others amounts
7 necessary to pay claims, allowances, and taxes.

8 (c) "Exempt property" means property of a decedent's estate
9 that is described in section 2404.

10 (d) "Family allowance" means the allowance prescribed in
11 section 2403.

12 (e) "Fiduciary" includes, but is not limited to, a personal
13 representative, **FUNERAL REPRESENTATIVE**, guardian, conservator,
14 trustee, plenary guardian, partial guardian, and successor
15 fiduciary.

16 (f) "Financial institution" means an organization authorized
17 to do business under state or federal laws relating to a financial
18 institution and includes, but is not limited to, a bank, trust
19 company, savings bank, building and loan association, savings and
20 loan company or association, credit union, insurance company, and
21 entity that offers mutual fund, securities brokerage, money market,
22 or retail investment accounts.

23 (g) "Foreign personal representative" means a personal
24 representative appointed by another jurisdiction.

25 (h) "Formal proceedings" means proceedings conducted before a
26 judge with notice to interested persons.

27 (i) "Funeral establishment" means that term as defined in

1 section 1801 of the occupational code, 1980 PA 299, MCL 339.1801,
2 and the owners, employees, and agents of the funeral establishment.

3 (J) "FUNERAL REPRESENTATIVE" MEANS AN INDIVIDUAL DESIGNATED TO
4 HAVE THE RIGHT AND POWER TO MAKE DECISIONS ABOUT FUNERAL
5 ARRANGEMENTS AND THE HANDLING, DISPOSITION, OR DISINTERMENT OF A
6 DECEDENT'S BODY, INCLUDING, BUT NOT LIMITED TO, DECISIONS ABOUT
7 CREMATION, AND THE RIGHT TO POSSESS CREMATED REMAINS OF THE
8 DECEDENT AS PROVIDED IN SECTION 3206.

9 (K) "FUNERAL REPRESENTATIVE DESIGNATION" MEANS A WRITTEN
10 DOCUMENT EXECUTED AND WITH THE EFFECT AS DESCRIBED IN SECTIONS 3206
11 TO 3206B.

12 (I) ~~(j)~~—"General personal representative" means a personal
13 representative other than a special personal representative.

14 (M) ~~(k)~~—"Governing instrument" means a deed; will; trust;
15 **FUNERAL REPRESENTATIVE DESIGNATION**; insurance or annuity policy;
16 account with POD designation; security registered in beneficiary
17 form (TOD); pension, profit-sharing, retirement, or similar benefit
18 plan; instrument creating or exercising a power of appointment or a
19 power of attorney; or dispositive, appointive, or nominative
20 instrument of any similar type.

21 (N) ~~(l)~~—"Guardian" means a person who has qualified as a
22 guardian of a minor or a legally incapacitated individual under a
23 parental or spousal nomination or a court appointment and includes
24 a limited guardian as described in sections 5205, 5206, and 5306.
25 Guardian does not include a guardian ad litem.

26 (O) ~~(m)~~—"Hazardous substance" means a substance defined as
27 hazardous or toxic or otherwise regulated by an environmental law.

1 (P) ~~(n)~~—"Heir" means, except as controlled by section 2720, a
2 person, including the surviving spouse or the state, that is
3 entitled under the statutes of intestate succession to a decedent's
4 property.

5 (Q) ~~(e)~~—"Homestead allowance" means the allowance prescribed
6 in section 2402.

7 Sec. 2801. (1) An individual who is divorced from the decedent
8 or whose marriage to the decedent has been annulled is not a
9 surviving spouse unless, by virtue of a subsequent marriage, he or
10 she is married to the decedent at the time of death. A decree of
11 separation that does not terminate the status of husband and wife
12 is not a divorce for purposes of this section.

13 (2) For purposes of parts 1 to 4 of this article and of
14 section 3203, a surviving spouse does not include any of the
15 following:

16 (a) An individual who obtains or consents to a final decree or
17 judgment of divorce from the decedent or an annulment of their
18 marriage, which decree or judgment is not recognized as valid in
19 this state, unless they subsequently participate in a marriage
20 ceremony purporting to marry each to the other or live together as
21 husband and wife.

22 (b) An individual who, following an invalid decree or judgment
23 of divorce or annulment obtained by the decedent, participates in a
24 marriage ceremony with a third individual.

25 (c) An individual who was a party to a valid proceeding
26 concluded by an order purporting to terminate all marital property
27 rights.

1 (d) An individual who, at the time of the decedent's death, is
2 living in a bigamous relationship with another individual.

3 (e) An individual who did any of the following for 1 year or
4 more before the death of the deceased person:

5 (i) Was willfully absent from the decedent spouse.

6 (ii) Deserted the decedent spouse.

7 (iii) Willfully neglected or refused to provide support for
8 the decedent spouse if required to do so by law.

9 (3) FOR PURPOSES OF SECTION 3206, A SURVIVING SPOUSE DOES NOT
10 INCLUDE EITHER OF THE FOLLOWING:

11 (A) AN INDIVIDUAL DESCRIBED IN SUBSECTION (2).

12 (B) AN INDIVIDUAL WHO IS A PARTY TO A DIVORCE OR ANNULMENT
13 PROCEEDING WITH THE DECEDENT AT THE TIME OF THE DECEDENT'S DEATH.

14 Sec. 2803. (1) An individual who feloniously and intentionally
15 kills or who is convicted of committing abuse, neglect, or
16 exploitation with respect to the decedent forfeits all benefits
17 under this article with respect to the decedent's estate, including
18 an intestate share, an elective share, an omitted spouse's or
19 child's share, a homestead allowance, a family allowance, and
20 exempt property. If the decedent died intestate, the decedent's
21 intestate estate passes as if the killer or felon disclaimed his or
22 her intestate share.

23 (2) The felonious and intentional killing or the conviction of
24 the felon for the abuse, neglect, or exploitation of the decedent
25 does all of the following:

26 (a) Revokes all of the following that are revocable:

27 (i) Disposition or appointment of property made by the

1 decedent to the killer or felon in a governing instrument.

2 (ii) Provision in a governing instrument conferring a general
3 or nongeneral power of appointment on the killer or felon.

4 (iii) Nomination of the killer or felon in a governing
5 instrument, nominating or appointing the killer or felon to serve
6 in a fiduciary or representative capacity, including a personal
7 representative, executor, **FUNERAL REPRESENTATIVE**, trustee, or
8 agent.

9 (b) Severs the interests of the decedent and killer or felon
10 in property held by them at the time of the killing, abuse,
11 neglect, or exploitation as joint tenants with the right of
12 survivorship, transforming the interests of the decedent and killer
13 or felon into tenancies in common.

14 (C) **BARS THE KILLER OR FELON FROM EXERCISING A POWER UNDER**
15 **SECTION 3206(1).**

16 (3) A severance under subsection (2)(b) does not affect a
17 third party interest in property acquired for value and in good
18 faith reliance on an apparent title by survivorship in the killer
19 or felon unless a writing declaring the severance has been noted,
20 registered, filed, or recorded in records appropriate to the kind
21 and location of the property that are relied ~~upon,~~ **ON**, in the
22 ordinary course of transactions involving that type of property, as
23 evidence of ownership.

24 (4) A provision of a governing instrument is given effect as
25 if the killer or felon disclaimed all provisions revoked by this
26 section or, ~~in the case of~~ **FOR** a revoked nomination in a fiduciary
27 or representative capacity, as if the killer or felon predeceased

1 the decedent.

2 (5) A killer's or felon's wrongful acquisition of property or
3 interest not covered by this section ~~shall~~**MUST** be treated in
4 accordance with the principle that a killer or felon cannot profit
5 from his or her wrong.

6 (6) After all right to appeal has been exhausted, a judgment
7 of conviction establishing criminal accountability for the
8 felonious and intentional killing or the abuse, neglect, or
9 exploitation of the decedent conclusively establishes the convicted
10 individual as the decedent's killer or as a felon, as applicable,
11 for purposes of this section. With respect to a claim of felonious
12 and intentional killing, in the absence of a conviction, the court,
13 ~~upon~~**ON** the petition of an interested person, shall determine
14 whether, under the preponderance of evidence standard, the
15 individual would be found criminally accountable for the felonious
16 and intentional killing of the decedent. If the court determines
17 that, under that standard, the individual would be found criminally
18 accountable for the felonious and intentional killing of the
19 decedent, the determination conclusively establishes ~~that~~**THE**
20 individual as the decedent's killer for purposes of this section.

21 (7) This section does not apply if the forfeiture, revocation,
22 or severance would occur because of abuse, neglect, or exploitation
23 and the decedent executed a governing instrument after the date of
24 the conviction expressing a specific intent to allow the felon to
25 inherit or otherwise receive the estate or property of the
26 decedent.

27 Sec. 2807. (1) Except as provided by the express terms of a

governing instrument, court order, or contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage does all of the following:

(a) Revokes all of the following that are revocable:

(i) A disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument and a disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse.

(ii) A provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse.

(iii) A nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in a fiduciary or representative capacity, including, but not limited to, a personal representative, executor, **FUNERAL REPRESENTATIVE**, trustee, conservator, agent, or guardian.

(b) Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into tenancies in common.

(C) BARS THE FORMER SPOUSE FROM EXERCISING A POWER UNDER SECTION 3206(1).

(2) A severance under subsection (1)(b) does not affect a

1 third-party interest in property acquired for value and in good
 2 faith reliance on an apparent title by survivorship in the survivor
 3 of the former spouses unless a writing declaring the severance has
 4 been noted, registered, filed, or recorded in records appropriate
 5 to the kind and location of the property that are relied ~~upon,~~ **ON,**
 6 in the ordinary course of transactions involving that type of
 7 property, as evidence of ownership.

8 (3) Each provision of a governing instrument is given effect
 9 as if the former spouse and relatives of the former spouse
 10 disclaimed all provisions revoked by this section or, ~~in the case~~
 11 ~~of~~ **FOR** a revoked nomination in a fiduciary or representative
 12 capacity, as if the former spouse and relatives of the former
 13 spouse died immediately before the divorce or annulment.

14 (4) Each provision revoked solely by this section is revived
 15 by the divorced individual's remarriage to the former spouse or by
 16 a nullification of the divorce or annulment.

17 (5) No change of circumstances other than as described in this
 18 section and in sections 2803 to 2805, 2808, and 2809 causes a
 19 revocation.

20 Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216,
 21 part 28 and article 10 of the public health code, 1978 PA 368, MCL
 22 333.2801 to 333.2899 and 333.10101 to 333.11101, and subsection
 23 ~~(11),~~ **(12), A FUNERAL REPRESENTATIVE DESIGNATED UNDER SUBSECTION**
 24 **(2),** a person with priority under subsections ~~(2) to (4)~~ **(3) TO (5)**
 25 or **A PERSON** acting under subsection ~~(5),~~ **(6), (7), or (8), OR (9)**
 26 is presumed to have the right and power to make decisions about
 27 funeral arrangements and the handling, disposition, or disinterment

1 of a decedent's body, including, but not limited to, decisions
2 about cremation, and the right to **RETRIEVE FROM THE FUNERAL**
3 **ESTABLISHMENT AND** possess cremated remains of the decedent
4 **IMMEDIATELY AFTER CREMATION.** The handling, disposition, or
5 disinterment of a body ~~shall~~**MUST** be under the supervision of a
6 person licensed to practice mortuary science in this state.

7 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND
8 SUBJECT TO THE PRIORITY IN SUBSECTION (3), AN INDIVIDUAL 18 YEARS
9 OF AGE OR OLDER WHO IS OF SOUND MIND AT THE TIME A FUNERAL
10 REPRESENTATIVE DESIGNATION IS MADE MAY DESIGNATE IN WRITING ANOTHER
11 INDIVIDUAL WHO IS 18 YEARS OF AGE OR OLDER AND WHO IS OF SOUND MIND
12 TO HAVE THE RIGHTS AND POWERS UNDER SUBSECTION (1). ALL OF THE
13 FOLLOWING APPLY TO A FUNERAL REPRESENTATIVE DESIGNATION UNDER THIS
14 SUBSECTION:

15 (A) FOR PURPOSES OF THIS SECTION AND SECTIONS 3206A AND 3206B,
16 AN INDIVIDUAL WHO IS NAMED IN A FUNERAL REPRESENTATIVE DESIGNATION
17 TO HAVE THE RIGHTS AND POWERS DESCRIBED IN SUBSECTION (1) IS KNOWN
18 AS A FUNERAL REPRESENTATIVE AND AN INDIVIDUAL WHO MAKES A FUNERAL
19 REPRESENTATIVE DESIGNATION IS KNOWN AS A DECLARANT.

20 (B) A FUNERAL REPRESENTATIVE DESIGNATION UNDER THIS SUBSECTION
21 MUST BE IN WRITING, DATED, AND SIGNED VOLUNTARILY BY THE DECLARANT
22 OR SIGNED BY A NOTARY PUBLIC ON THE DECLARANT'S BEHALF UNDER
23 SECTION 33 OF THE MICHIGAN NOTARY PUBLIC ACT, 2003 PA 238, MCL
24 55.293. A FUNERAL REPRESENTATIVE DESIGNATION MAY BE INCLUDED IN THE
25 DECLARANT'S WILL, PATIENT ADVOCATE DESIGNATION, OR OTHER WRITING.
26 IF A FUNERAL REPRESENTATIVE DESIGNATION IS CONTAINED IN AN
27 INDIVIDUAL'S WILL, THE WILL IS NOT REQUIRED TO BE ADMITTED TO

1 PROBATE FOR THE FUNERAL REPRESENTATIVE DESIGNATION TO BE VALID. A
2 FUNERAL REPRESENTATIVE DESIGNATION MUST BE 1 OR BOTH OF THE
3 FOLLOWING:

4 (i) SIGNED IN THE PRESENCE OF AND SIGNED BY 2 WITNESSES. A
5 WITNESS UNDER THIS SECTION MAY NOT BE THE FUNERAL REPRESENTATIVE OR
6 AN INDIVIDUAL DESCRIBED IN SUBDIVISION (C) (ii) TO (iv). A WITNESS
7 SHALL NOT SIGN THE FUNERAL REPRESENTATIVE DESIGNATION UNLESS THE
8 DECLARANT APPEARS TO BE OF SOUND MIND AND UNDER NO DURESS, FRAUD,
9 OR UNDUE INFLUENCE.

10 (ii) ACKNOWLEDGED BY THE DECLARANT BEFORE A NOTARY PUBLIC, WHO
11 ENDORSES ON THE FUNERAL REPRESENTATIVE DESIGNATION A CERTIFICATE OF
12 THE ACKNOWLEDGMENT AND THE TRUE DATE OF TAKING THE ACKNOWLEDGMENT.

13 (C) THE FOLLOWING INDIVIDUALS MAY NOT ACT AS A FUNERAL
14 REPRESENTATIVE FOR THE DECLARANT UNLESS THE INDIVIDUAL IS THE
15 SURVIVING SPOUSE OR IS A RELATIVE OF THE DECLARANT:

16 (i) AN OFFICER, PARTNER, MEMBER, SHAREHOLDER, OWNER,
17 REPRESENTATIVE, OR EMPLOYEE OF A FUNERAL ESTABLISHMENT THAT WILL
18 PROVIDE SERVICES TO THE DECLARANT.

19 (ii) A HEALTH PROFESSIONAL, OR AN EMPLOYEE OF OR VOLUNTEER AT
20 A HEALTH FACILITY OR VETERANS FACILITY, WHO PROVIDED MEDICAL
21 TREATMENT OR NURSING CARE TO THE DECLARANT DURING THE FINAL ILLNESS
22 OR IMMEDIATELY BEFORE THE DECLARANT'S DEATH, OR A PARTNER, MEMBER,
23 SHAREHOLDER, OWNER, OR REPRESENTATIVE OF THE HEALTH FACILITY WHERE
24 MEDICAL TREATMENT OR NURSING CARE WAS PROVIDED.

25 (iii) AN OFFICER, PARTNER, MEMBER, SHAREHOLDER, OWNER,
26 REPRESENTATIVE, OR EMPLOYEE OF A CEMETERY AT WHICH THE DECLARANT'S
27 BODY WILL BE INTERRED, ENTOMBED, OR INURNED.

1 (iv) AN OFFICER, PARTNER, MEMBER, SHAREHOLDER, OWNER,
2 REPRESENTATIVE, OR EMPLOYEE OF A CREMATORY THAT WILL PROVIDE THE
3 DECLARANT'S CREMATION SERVICES.

4 (3) ~~(2)~~—The FOLLOWING HAVE THE RIGHTS AND POWERS UNDER
5 SUBSECTION (1) IN THE FOLLOWING ORDER OF PRIORITY:

6 (A) IF THE DECEDENT WAS A SERVICE MEMBER AT THE TIME OF THE
7 DECEDENT'S DEATH, A PERSON DESIGNATED TO DIRECT THE DISPOSITION OF
8 THE SERVICE MEMBER'S REMAINS ACCORDING TO A STATUTE OF THE UNITED
9 STATES OR REGULATION, POLICY, DIRECTIVE, OR INSTRUCTION OF THE
10 DEPARTMENT OF DEFENSE.

11 (B) A FUNERAL REPRESENTATIVE DESIGNATED UNDER SUBSECTION (2).

12 (C) THE surviving spouse. ~~or, if there is no surviving spouse,~~
13 ~~the~~

14 (D) SUBJECT TO SUBDIVISION (E), THE individual or individuals
15 18 years of age or older ~~, in the highest order of priority under~~
16 ~~section 2103, and related to the decedent in the closest degree of~~
17 ~~consanguinity, have the rights and powers under subsection (1).~~ IN
18 THE FOLLOWING ORDER OF PRIORITY:

19 (i) THE DECEDENT'S CHILDREN.

20 (ii) THE DECEDENT'S GRANDCHILDREN.

21 (iii) THE DECEDENT'S PARENTS.

22 (iv) THE DECEDENT'S GRANDPARENTS.

23 (v) THE DECEDENT'S SIBLINGS.

24 (vi) A DESCENDANT OF THE DECEDENT'S PARENTS WHO FIRST NOTIFIES
25 THE FUNERAL ESTABLISHMENT IN POSSESSION OF THE DECEDENT'S BODY OF
26 THE DESCENDANT'S DECISION TO EXERCISE HIS OR HER RIGHTS UNDER
27 SUBSECTION (1).

1 (vii) A DESCENDANT OF THE DECEDENT'S GRANDPARENTS WHO FIRST
2 NOTIFIES THE FUNERAL ESTABLISHMENT IN POSSESSION OF THE DECEDENT'S
3 BODY OF THE DESCENDANT'S DECISION TO EXERCISE HIS OR HER RIGHTS
4 UNDER SUBSECTION (1) .

5 (E) IF AN INDIVIDUAL DESCRIBED IN SUBDIVISION (D) HAD THE
6 RIGHT TO DISPOSE OF THE DECEDENT'S BODY UNDER SUBSECTION (1), BUT
7 AFFIRMATIVELY DECLINED TO EXERCISE HIS OR HER RIGHT OR FAILED TO
8 EXERCISE HIS OR HER RIGHT WITHIN 48 HOURS AFTER RECEIVING
9 NOTIFICATION OF THE DECEDENT'S DEATH, THE INDIVIDUAL DOES NOT HAVE
10 THE RIGHT TO MAKE A DECISION ABOUT THE DISINTERMENT OF THE
11 DECEDENT'S BODY OR POSSESSION OF THE DECEDENT'S CREMATED REMAINS.

12 (4) ~~(3) If the surviving spouse or~~ IF the individual or
13 individuals with the highest priority as determined under
14 ~~subsection (2) do not exercise their rights or powers under~~
15 ~~subsection (1) or (3)~~ cannot be located after a good-faith effort
16 to contact AND INFORM them OF THE DECEDENT'S DEATH, AFFIRMATIVELY
17 DECLINE TO EXERCISE THEIR RIGHTS OR POWERS UNDER SUBSECTION (1), OR
18 FAIL TO EXERCISE THEIR RIGHTS OR POWERS UNDER SUBSECTION (1) WITHIN
19 48 HOURS AFTER RECEIVING NOTIFICATION OF THE DECEDENT'S DEATH, the
20 rights and powers under subsection (1) may be exercised by the
21 individual or individuals in the same order of priority under
22 ~~section 2103 who are related to the decedent in the next closest~~
23 ~~degree of consanguinity.~~ SUBSECTION (3) . If the individual or each
24 of the individuals in an order of priority as determined under this
25 subsection similarly ~~does not~~ AFFIRMATIVELY DECLINES OR FAILS TO
26 exercise his or her rights or powers WITHIN 48 HOURS AFTER
27 RECEIVING NOTIFICATION THAT HE OR SHE MAY ACT UNDER THIS SUBSECTION

1 or cannot be located, the rights or powers under subsection (1)
 2 pass to the next order of priority ~~, with the order of priority~~
 3 ~~being determined by first taking the individuals in the highest~~
 4 ~~order of priority under section 2103 and then taking the~~
 5 ~~individuals related to the decedent in the closest or, as~~
 6 ~~applicable, next closest degree of consanguinity in that order of~~
 7 ~~priority.~~ **UNDER SUBSECTION (3). FOR PURPOSES OF THIS SUBSECTION**
 8 **ONLY, "EXERCISE THEIR RIGHTS OR POWERS UNDER SUBSECTION (1)" MEANS**
 9 **NOTIFYING THE FUNERAL ESTABLISHMENT IN POSSESSION OF THE DECEDENT'S**
 10 **BODY OF AN INDIVIDUAL'S DECISION TO EXERCISE HIS OR HER RIGHTS OR**
 11 **POWERS UNDER SUBSECTION (1).**

12 (5) ~~(4)~~—If 2 or more individuals share the rights and powers
 13 described in subsection (1) as determined under subsection ~~(2)~~ ~~or~~
 14 (3) **OR (4)**, the rights and powers shall be exercised as decided by
 15 a majority of the individuals **WHO CAN BE LOCATED AFTER REASONABLE**
 16 **EFFORTS**. If a majority cannot agree, any of the individuals may
 17 file a petition under section 3207.

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

25 (7) ~~(6)~~—If no individual described in subsections ~~(2)~~ ~~and~~ (3)
 26 **AND (4)** exists, exercises the rights or powers under subsection
 27 (1), or can be located after a sufficient attempt as described in

subsection ~~(9)~~, **(10)**, and if the decedent was under a guardianship at the time of death, the guardian may exercise the rights and powers under subsection (1) and may make a claim for the reimbursement of burial expenses as provided in section 5216 or 5315, as applicable.

(8) ~~(7)~~—If no individual described in subsections ~~(2)~~ and ~~(3)~~ **AND (4)** exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection ~~(9)~~, **(10)**, if the decedent died intestate, and if subsection ~~(6)~~ **(7)** does not apply, **A SPECIAL FIDUCIARY APPOINTED UNDER SECTION 1309 OR** a special personal representative appointed under section 3614(c) may exercise the rights and powers under subsection (1).

(9) ~~(8)~~—If there is no person under subsections ~~(2)~~ **(3)** to ~~(7)~~ **(8)** to exercise the rights and powers under subsection (1), 1 of the following, as applicable, shall exercise the rights and powers under subsection (1):

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

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

(10) ~~(9)~~—An attempt to locate a person described in subsection ~~(2)~~ or ~~(3)~~ **OR (4)** is sufficient if a reasonable attempt is made in good faith by a family member, personal representative, or nominated personal representative of the decedent to contact the

1 person at his or her last known address, telephone number, or
2 electronic mail address.

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

6 ~~—— (11) If all of the following apply, subsections (2) to (8) do~~
7 ~~not apply and the designated person has the rights and the powers~~
8 ~~under subsection (1):~~

9 ~~—— (a) The decedent was a service member who designated a person~~
10 ~~to direct disposition of the service member's remains according to~~
11 ~~a statute of the United States or a regulation, policy, directive,~~
12 ~~or instruction of the department of defense.~~

13 ~~—— (b) The designated person is the surviving spouse, an adult~~
14 ~~blood relative, or an adoptive relative of the decedent or, if the~~
15 ~~surviving spouse, an adult blood relative, or an adoptive relative~~
16 ~~of the decedent cannot be found, a person standing in loco~~
17 ~~parentis.~~

18 ~~—— (c) The designated person is able and willing to exercise the~~
19 ~~rights and powers enumerated in subsection (1).~~

20 (12) AN INDIVIDUAL WHO HAS BEEN CRIMINALLY CHARGED WITH THE
21 INTENTIONAL KILLING OF THE DECEDENT SHALL NOT EXERCISE A RIGHT
22 UNDER SUBSECTION (1) WHILE THE CHARGES ARE PENDING.

23 (13) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A PERSON
24 WHO HAS THE RIGHTS AND POWERS UNDER SUBSECTION (1) AND WHO
25 EXERCISES THE RIGHT OVER THE DISPOSITION OF THE DECEDENT'S BODY
26 MUST ENSURE PAYMENT FOR THE COSTS OF THE DISPOSITION THROUGH A
27 TRUST, INSURANCE, A COMMITMENT BY ANOTHER PERSON, A PREPAID

1 CONTRACT UNDER THE PREPAID FUNERAL AND CEMETERY SALES ACT, 1986 PA
 2 255, MCL 328.211 TO 328.235, OR OTHER EFFECTIVE AND BINDING MEANS.
 3 TO THE EXTENT PAYMENT IS NOT ENSURED UNDER THIS SUBSECTION, THE
 4 PERSON DESCRIBED IN THIS SUBSECTION IS LIABLE FOR THE COSTS OF THE
 5 DISPOSITION. THIS SUBSECTION DOES NOT APPLY TO A PERSON WHO
 6 EXERCISES THE RIGHTS AND POWERS UNDER SUBSECTION (1) AS PROVIDED IN
 7 SUBSECTION (8) OR (9).

8 (14) ~~(12)~~—As used in this section:

9 (a) "Armed forces" means that term as defined in section 2 of
 10 the veteran right to employment services act, 1994 PA 39, MCL
 11 35.1092.

12 (B) "HEALTH FACILITY" MEANS THAT TERM AS DEFINED IN SECTION
 13 5653 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5653.

14 (C) "HEALTH PROFESSIONAL" MEANS THAT TERM AS DEFINED IN
 15 SECTION 5883 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5883.

16 (D) "MEDICAL TREATMENT" MEANS THAT TERM AS DEFINED IN SECTION
 17 5653 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5653.

18 (E) ~~(b)~~—"Michigan national guard"—**NATIONAL GUARD** means that
 19 term as defined in section 105 of the Michigan military act, 1967
 20 PA 150, MCL 32.505.

21 (F) ~~(e)~~—"Nominated personal representative" means a person
 22 nominated to act as personal representative in a will that the
 23 nominated person reasonably believes to be the valid will of the
 24 decedent.

25 (G) ~~(d)~~—"Service member" means a member of the armed forces, a
 26 reserve branch of the armed forces, or the Michigan ~~national~~
 27 ~~guard~~.**NATIONAL GUARD**.

1 SEC. 3206A. (1) A DECLARANT MAY DESIGNATE IN THE FUNERAL
2 REPRESENTATIVE DESIGNATION A SUCCESSOR INDIVIDUAL AS A FUNERAL
3 REPRESENTATIVE WHO MAY EXERCISE THE RIGHTS AND POWERS DESCRIBED IN
4 SECTION 3206(1) IF THE FIRST INDIVIDUAL NAMED AS FUNERAL
5 REPRESENTATIVE DOES NOT ACCEPT, IS INCAPACITATED, RESIGNS, OR IS
6 REMOVED.

7 (2) AN INDIVIDUAL DESIGNATED A FUNERAL REPRESENTATIVE ACCEPTS
8 THE DESIGNATION AS FUNERAL REPRESENTATIVE BY SIGNING AN ACCEPTANCE
9 OF FUNERAL REPRESENTATIVE, OR BY ACTING AS THE FUNERAL
10 REPRESENTATIVE.

11 (3) THE AUTHORITY UNDER A FUNERAL REPRESENTATIVE DESIGNATION
12 IS EXERCISABLE BY A FUNERAL REPRESENTATIVE ONLY AFTER THE DEATH OF
13 THE DECLARANT.

14 (4) EXCEPT AS PROVIDED IN THE FUNERAL REPRESENTATIVE
15 DESIGNATION, A FUNERAL REPRESENTATIVE SHALL NOT DELEGATE HIS OR HER
16 POWERS TO ANOTHER INDIVIDUAL.

17 (5) ON REQUEST OF THE FUNERAL ESTABLISHMENT, THE FUNERAL
18 REPRESENTATIVE SHALL PROVIDE A COPY OF THE FUNERAL REPRESENTATIVE
19 DESIGNATION TO THE FUNERAL ESTABLISHMENT.

20 SEC. 3206B. A FUNERAL REPRESENTATIVE DESIGNATION IS REVOKED BY
21 1 OR MORE OF THE FOLLOWING:

22 (A) UNLESS A SUCCESSOR FUNERAL REPRESENTATIVE HAS BEEN
23 DESIGNATED, ANY OF THE FOLLOWING:

24 (i) THE FUNERAL REPRESENTATIVE'S RESIGNATION.

25 (ii) THE FUNERAL REPRESENTATIVE CANNOT BE LOCATED AFTER
26 REASONABLE EFFORTS BY THE DECEDENT'S FAMILY OR FUNERAL
27 ESTABLISHMENT.

1 (iii) THE FUNERAL REPRESENTATIVE REFUSES TO ACT WITHIN 48
2 HOURS AFTER RECEIVING NOTICE OF THE DECEDENT'S DEATH.

3 (B) THE DECLARANT'S REVOCATION OF THE FUNERAL REPRESENTATIVE
4 DESIGNATION. THE DECLARANT'S REVOCATION OF THE FUNERAL
5 REPRESENTATIVE DESIGNATION MUST BE IN WRITING AND SIGNED IN THE
6 MANNER AS PROVIDED IN SECTION 3206(2).

7 (C) A SUBSEQUENT FUNERAL REPRESENTATIVE DESIGNATION THAT
8 REVOKES THE PRIOR FUNERAL REPRESENTATIVE DESIGNATION EITHER
9 EXPRESSLY OR BY INCONSISTENCY.

10 Sec. 3207. (1) ~~If there is a disagreement as described in~~
11 ~~section 3206(4) or if 1 or more of the individuals described in~~
12 ~~section 3206(2) or (3) cannot be located, 1~~ **ONE** or more of the
13 following may petition the court to ~~determine who has the authority~~
14 ~~to exercise the rights and powers under section 3206(1).~~ **RESOLVE A**
15 **DISAGREEMENT DESCRIBED IN SECTION 3206(5) OR REBUT THE PRESUMPTION**
16 **UNDER SECTION 3206(1):**

17 (a) An individual with the rights and powers under section
18 3206(1).

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

21 (C) **AN INDIVIDUAL OTHER THAN A PERSON WITH PRIORITY UNDER**
22 **SECTION 3206(3) TO (5) OR ACTING UNDER SECTION 3206(6), (7), (8),**
23 **OR (9).**

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

26 (3) On receipt of a petition under this section, the court
27 shall set a date for a hearing on the petition. The hearing date

1 ~~shall~~**MUST** be as soon as possible, but not later than 7 business
2 days after the date the petition is filed. Notice of the petition
3 and the hearing ~~shall~~**MUST** be served not less than 2 days before
4 the date of the hearing on every individual who has highest
5 priority as determined under section ~~3206(2) and (3)~~, **3206(3) AND**
6 **(4)**, unless the court orders that service on every such individual
7 is not required. Unless an individual cannot be located after a
8 reasonable good-faith effort has been made to contact the
9 individual, service ~~shall~~**MUST** be made on the individual personally
10 or in a manner reasonably designed to give the individual notice.
11 Notice of the hearing ~~shall~~**MUST** include notice of the individual's
12 right to appear at the hearing. An individual served with notice of
13 the hearing may waive his or her rights. If written waivers from
14 all persons entitled to notice are filed, the court may immediately
15 hear the petition. The court may waive or modify the notice and
16 hearing requirements of this subsection if the decedent's body must
17 be disposed of promptly to accommodate the religious beliefs of the
18 decedent or his or her next of kin.

19 (4) If a funeral establishment is the petitioner under this
20 section, the funeral establishment's actual costs and reasonable
21 attorney fees in bringing the proceeding ~~shall~~**MUST** be included in
22 the reasonable funeral and burial expenses under section 3805(1)(b)
23 or the court may assess such costs and fees against 1 or more
24 parties or intervenors.

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

1 (a) The reasonableness and practicality of the funeral
2 arrangements or the handling or disposition of the body proposed by
3 the person bringing the action in comparison with the funeral
4 arrangements or the handling or disposition of the body proposed by
5 1 or more individuals with the rights and powers under section
6 3206(1).

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

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

13 (D) WHETHER THE DECEDENT EXECUTED A FUNERAL REPRESENTATIVE
14 DESIGNATION UNDER SECTION 3206(2) OR A DESIGNATION DESCRIBED IN
15 SECTION 3206(3)(A).

16 (E) IF THE DECEDENT WAS MARRIED AT THE TIME OF HIS OR HER
17 DEATH, WHETHER THE DECEDENT'S SPOUSE WAS PHYSICALLY AND EMOTIONALLY
18 SEPARATED FROM THE DECEDENT AT THE TIME OF HIS OR HER DEATH AND HAD
19 BEEN SEPARATED FOR A PERIOD OF TIME THAT CLEARLY DEMONSTRATES AN
20 ABSENCE OF DUE AFFECTION, TRUST, AND REGARD BETWEEN THE SPOUSE AND
21 THE DECEDENT.

22 (6) BEFORE THE COURT MAKES A DECISION UNDER SUBSECTION (5),
23 AND IF REFRIGERATION IS NOT REASONABLY AVAILABLE, THE FUNERAL
24 ESTABLISHMENT THAT HAS CUSTODY OF THE DECEDENT'S BODY MAY EMBALM
25 THE DECEDENT'S BODY.

26 Sec. 3209. (1) A funeral establishment is not required to file
27 a petition under section 3207 and is not civilly liable for not

1 ~~doing so.~~ FILING A PETITION UNDER SECTION 3207.

2 (2) ~~The~~ A FUNERAL ESTABLISHMENT, CEMETERY, OR CREMATORY MAY
3 RELY ON THE designation of a FUNERAL REPRESENTATIVE UNDER SECTION
4 3206(2), THE DESIGNATION OF A person as described in section
5 ~~3206(11) or 3206(3)(A)~~, the order of priority determined under
6 section ~~3206(2) and (3)~~ may be relied upon by a funeral
7 establishment. 3206(3) AND (4), OR A COURT ORDER UNDER SECTION 3207
8 THAT DETERMINES WHO MAY EXERCISE THE RIGHTS AND POWERS UNDER
9 SECTION 3206(1). A funeral establishment, CEMETERY, OR CREMATORY is
10 not a guarantor that a person exercising the rights and powers
11 under section 3206(1) has the legal authority to ~~do so.~~ EXERCISE
12 THOSE RIGHTS AND POWERS. A CEMETERY OR CREMATORY MAY RELY ON A
13 FUNERAL ESTABLISHMENT'S REPRESENTATION AS TO WHO MAY EXERCISE THE
14 RIGHTS AND POWERS UNDER SECTION 3206(1). A funeral establishment,
15 CEMETERY, OR CREMATORY does not have the responsibility to contact
16 or independently investigate the existence of relatives of the
17 deceased, but may rely on information provided by family members of
18 the deceased OR BY A PERSON OTHER THAN A FAMILY MEMBER THAT THE
19 FUNERAL ESTABLISHMENT, CEMETERY, OR CREMATORY REASONABLY BELIEVES
20 KNOWS THE EXISTENCE OR LOCATION OF THE RELATIVES OF THE DECEASED OR
21 THE FUNERAL REPRESENTATIVE. AS USED IN THIS SUBSECTION,
22 "INFORMATION" INCLUDES, BUT IS NOT LIMITED TO, AN AFFIRMATION THAT
23 REASONABLE EFFORTS TO CONTACT THE INDIVIDUAL OR INDIVIDUALS WITH
24 THE RIGHTS AND POWERS UNDER SECTION 3601(1) AND TO INFORM THE
25 INDIVIDUAL OR INDIVIDUALS OF THE DEATH HAVE BEEN MADE WITHOUT
26 SUCCESS.

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

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

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

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

19 (b) By the court on its own motion or in a formal proceeding
20 by court order on the petition of an interested person if in either
21 case, after notice and hearing, the court finds that the
22 appointment is necessary to preserve the estate or to secure its
23 proper administration, including its administration in
24 circumstances in which a general personal representative cannot or
25 should not act. If it appears to the court that an emergency
26 exists, the court may order the appointment without notice.

27 (c) By the court on its own motion or on petition by an

Senate Bill No. 551 as amended March 9, 2016

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

15 Sec. 3701. A personal representative's duties and powers
16 commence ~~upon~~ **ON** appointment. A personal representative's powers
17 relate back in time to give acts by the person appointed that are
18 beneficial to the estate occurring before appointment the same
19 effect as those occurring after appointment. Subject to sections
20 3206 to ~~3208~~, **3207**, before or after appointment, a person named as
21 personal representative in a will may carry out the decedent's
22 written instructions relating to the decedent's body, funeral, and
23 burial arrangements. A personal representative may ratify and
24 accept an act on behalf of the estate done by another if the act
25 would have been proper for a personal representative.

26 Enacting section 1. Section 3208 of the estates and protected
27 individuals code, 1998 PA 386, MCL 700.3208, is repealed.

[Enacting section 2. This amendatory act takes effect 90 days after
the date it is enacted into law.]