

HOUSE BILL No. 4180

February 5, 2009, Introduced by Reps. Moss and Walsh 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.

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 FUNERAL**
4 **REPRESENTATIVE APPOINTED UNDER SUBSECTION (2)**, a person with
5 priority under subsections ~~(2) to (4)~~ **(3) TO (5)**, or **A PERSON**
6 acting under subsection ~~(5), (6)~~, (7), ~~or (8)~~, **OR (9)** is presumed
7 to have the right and power to make decisions about funeral

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

7 **(2) AN INDIVIDUAL MAY DESIGNATE A PERSON TO ACT AS THE**
8 **INDIVIDUAL'S FUNERAL REPRESENTATIVE. THE DESIGNATION SHALL BE IN**
9 **WRITING, SIGNED, WITNESSED IN THE SAME MANNER AS PROVIDED FOR A**
10 **PATIENT ADVOCATE DESIGNATION IN SECTION 5506(4), DATED, AND**
11 **EXECUTED VOLUNTARILY. A DESIGNATION UNDER THIS SUBSECTION MAY BE**
12 **INCLUDED IN A PATIENT ADVOCATE DESIGNATION. A PERSON DESIGNATED AS**
13 **A FUNERAL REPRESENTATIVE HAS THE RIGHTS AND POWERS UNDER SUBSECTION**
14 **(1).**

15 **(3) ~~(2)~~ The IF A FUNERAL REPRESENTATIVE IS NOT DESIGNATED**
16 **UNDER SUBSECTION (2), THE** surviving spouse or, if there is no
17 surviving spouse, the individual or individuals 18 years of age or
18 older, in the highest order of priority under section 2103, and
19 related to the decedent in the closest degree of consanguinity,
20 have the rights and powers under subsection (1).

21 **(4) ~~(3)~~ If A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER**
22 **SUBSECTION (2) AND IF** the surviving spouse or the individual or
23 individuals with the highest priority as determined under
24 subsection ~~(2)~~ **(3)** do not exercise their rights or powers under
25 subsection (1) or cannot be located after a good-faith effort to
26 contact them, the rights and powers under subsection (1) may be
27 exercised by the individual or individuals in the same order of

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

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. If a majority cannot agree, any of
16 the individuals may file a petition under section 3207.

17 (6) ~~(5)~~—If **A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER**
18 **SUBSECTION (2) AND IF** no individual described in subsections ~~(2)~~
19 ~~and~~ (3) **AND (4)** exists, exercises the rights or powers under
20 subsection (1), or can be located after a sufficient attempt as
21 described in subsection ~~(9)~~ (10), and if subsection ~~(6)~~ (7) does
22 not apply, 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 **A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER**
26 **SUBSECTION (2) AND IF** no individual described in subsections ~~(2)~~
27 ~~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), 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 **A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER SUBSECTION (2) AND 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 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) 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

1 nominated personal representative of the decedent to contact the
2 person at his or her last known address, telephone number, or
3 electronic mail address.

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

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

11 Sec. 3207. (1) If there is a disagreement as described in
12 section ~~3206(4)~~ **3206(5)** or if **A FUNERAL REPRESENTATIVE IS NOT**
13 **DESIGNATED UNDER SECTION 3206(2) AND** 1 or more of the individuals
14 described in section ~~3206(2) or (3)~~ **3206(3) OR (4)** cannot be
15 located, 1 or more of the following may petition the court to
16 determine who has the authority to exercise the rights and powers
17 under section 3206(1):

18 (a) An individual with the rights and powers under section
19 3206(1).

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

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

24 (3) On receipt of a petition under this section, the court
25 shall set a date for a hearing on the petition. The hearing date
26 shall be as soon as possible, but not later than 7 business days
27 after the date the petition is filed. Notice of the petition and

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

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

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

26 (a) The reasonableness and practicality of the funeral
27 arrangements or the handling or disposition of the body proposed by

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

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

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

11 Sec. 3208. (1) ~~AN~~ **IF A FUNERAL REPRESENTATIVE IS NOT**
12 **DESIGNATED UNDER SECTION 3206(2), AN** individual other than a person
13 with priority under ~~subsections (2) to (4)~~ **SECTION 3206(3) TO (5)**
14 or acting under ~~subsection (5), (6), (7), or (8)~~, **SECTION 3206(6),**
15 **(7), (8), OR (9)** may file an action in the circuit court to
16 challenge the presumption to be determined as the individual who
17 has the authority to exercise the rights and powers under section
18 3206(1).

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

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

24 (2) **A FUNERAL ESTABLISHMENT THAT PROVIDES SERVICES AT THE**
25 **DIRECTION OF A PERSON WHOM THE FUNERAL ESTABLISHMENT REASONABLY**
26 **BELIEVES TO BE A FUNERAL REPRESENTATIVE DESIGNATED UNDER SECTION**
27 **3206(2) IS NOT LIABLE FOR FOLLOWING THE DIRECTIONS.**

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

9 (4) ~~(3)~~—A funeral establishment, holder of a license to
10 practice mortuary science issued by this state, cemetery,
11 crematory, or an officer or employee of a funeral establishment,
12 holder of a license to practice mortuary science issued by this
13 state, cemetery, or crematory may rely on the terms of sections
14 3206 and 3207 and this section and the instructions of a person
15 described in section 3206(2) to ~~(8)~~ **(9)**, or of an individual
16 determined in an action under section 3208 to be the party to
17 exercise the rights and powers under section 3206(1), regarding
18 funeral arrangements and the handling, disposition, or disinterment
19 of a body and is not civilly liable to any person for the reliance
20 if the reliance was in good faith.

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

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

27 (b) By the court on its own motion or in a formal proceeding

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

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