

HOUSE BILL No. 5162

November 14, 2013, Introduced by Reps. Segal, Slavens, Hovey-Wright, Haugh, Kelly, LaVoy, Durhal, Cavanagh, Foster, Schmidt, Graves, Smiley, Haines and Price and referred to the Committee on Families, Children, and Seniors.

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), sections 3206 and 3209 as amended by 2012 PA 63, section 3207 as amended by 2010 PA 325, and section 3208 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 part 28 and article 10 of the public health code, 1978 PA 368, MCL
3 333.2801 to 333.2899 and 333.10101 to 333.11101, and subsection
4 ~~(11)~~, **(12), A FUNERAL REPRESENTATIVE APPOINTED UNDER SUBSECTION**
5 **(2),** a person with priority under subsections ~~(2) to (4)~~ **(3) TO**
6 **(5), or A PERSON** acting under subsection ~~(5)~~, **(6), (7), or (8), OR**

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

8 (2) AN INDIVIDUAL MAY DESIGNATE A PERSON TO ACT AS THE
9 INDIVIDUAL'S FUNERAL REPRESENTATIVE. 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, EXECUTED
12 VOLUNTARILY, AND ACKNOWLEDGED BY THE INDIVIDUAL BEFORE A NOTARY
13 PUBLIC. THE NOTARY PUBLIC MAY ACT AS A WITNESS. SUBJECT TO THE
14 ACKNOWLEDGMENT REQUIREMENT OF THIS SUBSECTION, A DESIGNATION UNDER
15 THIS SUBSECTION MAY BE INCLUDED IN A PATIENT ADVOCATE DESIGNATION.
16 A PERSON DESIGNATED AS A FUNERAL REPRESENTATIVE HAS THE RIGHTS AND
17 POWERS UNDER SUBSECTION (1).

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

24 (4) ~~(3) If~~ A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER
25 SUBSECTION (2) AND IF the surviving spouse or the individual or
26 individuals with the highest priority as determined under
27 subsection ~~(2)~~ (3) do not exercise their rights or powers under

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

15 (5) ~~(4)~~—If 2 or more individuals share the rights and powers
 16 described in subsection (1) as determined under subsection ~~(2)~~ or
 17 (3) OR (4), the rights and powers shall be exercised as decided by
 18 a majority of the individuals. If a majority cannot agree, any of
 19 the individuals may file a petition under section 3207.

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

(7) ~~(6)~~—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)~~, 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.

1 (10) ~~(9)~~ An attempt to locate a person described in subsection
 2 ~~(2) or (3)~~ **OR (4)** is sufficient if a reasonable attempt is made in
 3 good faith by a family member, personal representative, or
 4 nominated personal representative of the decedent to contact the
 5 person at his or her last known address, telephone number, or
 6 electronic mail address.

7 (11) ~~(10)~~ This section does not void or otherwise affect an
 8 anatomical gift made under part 101 of the public health code, 1978
 9 PA 368, MCL 333.10101 to 333.10123.

10 (12) ~~(11)~~ If **A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER**
 11 **SUBSECTION (2) AND IF** all of the following apply, subsections ~~(2)~~
 12 ~~to (8)~~ **(3) TO (9)** do not apply and the designated person has the
 13 rights and the powers under subsection (1):

14 (a) The decedent was a service member who designated a person
 15 to direct disposition of the service member's remains according to
 16 a statute of the United States or a regulation, policy, directive,
 17 or instruction of the department of defense.

18 (b) The designated person is the surviving spouse, an adult
 19 blood relative, or an adoptive relative of the decedent or, if the
 20 surviving spouse, an adult blood relative, or an adoptive relative
 21 of the decedent cannot be found, a person standing in loco
 22 parentis.

23 (c) The designated person is able and willing to exercise the
 24 rights and powers enumerated in subsection (1).

25 (13) ~~(12)~~ As used in this section:

26 (a) "Armed forces" means that term as defined in section 2 of
 27 the veteran right to employment services act, 1994 PA 39, MCL

1 35.1092.

2 (b) "Michigan national guard" means that term as defined in
3 section 105 of the Michigan military act, 1967 PA 150, MCL 32.505.

4 (c) "Nominated personal representative" means a person
5 nominated to act as personal representative in a will that the
6 nominated person reasonably believes to be the valid will of the
7 decedent.

8 (d) "Service member" means a member of the armed forces, a
9 reserve branch of the armed forces, or the Michigan national guard.

10 Sec. 3207. (1) If there is a disagreement as described in
11 section ~~3206(4)~~**3206(5)** or if **A FUNERAL REPRESENTATIVE IS NOT**
12 **DESIGNATED UNDER SECTION 3206(2) AND** 1 or more of the individuals
13 described in section ~~3206(2) or (3)~~**3206(3) OR (4)** cannot be
14 located, 1 or more of the following may petition the court to
15 determine who has the authority to exercise the rights and powers
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 (2) Venue for a petition filed under subsection (1) is in the
22 county in which the decedent was domiciled at the time of death.

23 (3) On receipt of a petition under this section, the court
24 shall set a date for a hearing on the petition. The hearing date
25 shall be as soon as possible, but not later than 7 business days
26 after the date the petition is filed. Notice of the petition and
27 the hearing shall be served not less than 2 days before the date of

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

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

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

25 (a) The reasonableness and practicality of the funeral
26 arrangements or the handling or disposition of the body proposed by
27 the person bringing the action in comparison with the funeral

1 arrangements or the handling or disposition of the body proposed by
 2 1 or more individuals with the rights and powers under section
 3 3206(1).

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

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

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

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

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

23 (2) The designation of a **FUNERAL REPRESENTATIVE UNDER SECTION**
 24 **3206(2), THE DESIGNATION OF A** person as described in section
 25 ~~3206(11)~~ **3206(12)**, or the order of priority determined under
 26 section ~~3206(2) and (3)~~ **3206(3) AND (4)** may be relied upon by a
 27 funeral establishment. A funeral establishment is not a guarantor

1 that a person exercising the rights and powers under section
2 3206(1) has the legal authority to do so. A funeral establishment
3 does not have the responsibility to contact or independently
4 investigate the existence of relatives of the deceased, but may
5 rely on information provided by family members of the deceased.

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

18 **SEC. 3210. (1) AN INDIVIDUAL MAY, IN A WRITING SIGNED AND**
19 **DATED BY THE INDIVIDUAL, DIRECT THE FUNERAL ARRANGEMENTS TO BE**
20 **PROVIDED AFTER HIS OR HER DEATH AND THE HANDLING AND DISPOSITION OF**
21 **HIS OR HER REMAINS. THE PERSON WHO HAS THE RIGHTS AND POWERS TO**
22 **MAKE DECISIONS REGARDING THE FUNERAL ARRANGEMENTS AND THE HANDLING**
23 **AND DISPOSITION OF THE REMAINS UNDER SECTIONS 3206 TO 3208 SHALL**
24 **MATERIALLY FOLLOW THE DIRECTIONS TO THE EXTENT ALLOWED BY LAW, IF**
25 **BOTH OF THE FOLLOWING REQUIREMENTS ARE MET:**

26 (A) THE DIRECTIONS ARE SUFFICIENTLY CLEAR, COMPLETE, AND
27 DETAILED SO AS TO NOT PRESENT ANY MATERIAL AMBIGUITY.

1 (B) ARRANGEMENTS HAVE BEEN MADE FOR PAYMENT OF THE DIRECTED
2 FUNERAL ARRANGEMENTS AND HANDLING AND DISPOSITION OF THE REMAINS
3 THROUGH A TRUST, INSURANCE, A COMMITMENT BY ANOTHER PERSON, A
4 PREPAID CONTRACT UNDER THE PREPAID FUNERAL AND CEMETERY SALES ACT,
5 1986 PA 255, MCL 328.211 TO 328.235, OR OTHER EFFECTIVE AND BINDING
6 MEANS.

7 (2) IF AN INDIVIDUAL WHO MAKES A WRITING DESCRIBED IN
8 SUBSECTION (1) LATER MAKES ANOTHER WRITING THAT MEETS THE
9 REQUIREMENTS OF SUBSECTION (1) AND THAT CONTAINS DIRECTIONS
10 CONTRARY TO THE DIRECTIONS IN THE EARLIER WRITING, THE LATER
11 WRITING PREVAILS.

12 (3) IF THE ARRANGEMENTS TO PAY DESCRIBED IN SUBSECTION (1) (B)
13 WILL NOT COMPLETELY PAY FOR THE DIRECTED FUNERAL ARRANGEMENTS AND
14 HANDLING AND DISPOSITION OF THE REMAINS, THE DIRECTIONS FOR WHICH
15 ARRANGEMENTS TO PAY HAVE NOT BEEN MADE SHALL BE CARRIED OUT ONLY TO
16 THE EXTENT THAT THE DECEDENT'S ESTATE HAS SUFFICIENT ASSETS TO PAY
17 OR THE PERSON THAT OTHERWISE HAS THE RIGHTS AND POWERS TO MAKE
18 DECISIONS REGARDING THE FUNERAL ARRANGEMENTS AND THE HANDLING AND
19 DISPOSITION OF THE REMAINS UNDER SECTIONS 3206 TO 3208 AGREES TO
20 PAY.

21 (4) IF DIRECTIONS DESCRIBED IN SUBSECTION (1) ARE CONTAINED IN
22 THE INDIVIDUAL'S WILL, THE DIRECTIONS SHALL BE FOLLOWED IMMEDIATELY
23 ON THE INDIVIDUAL'S DEATH, REGARDLESS OF WHETHER THE WILL IS VALID
24 IN OTHER RESPECTS OR HAS BEEN OFFERED FOR OR ADMITTED TO PROBATE.

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

27 (a) Informally by the register on the application of an

1 interested person if necessary to protect the estate of a decedent
2 before the appointment of a general personal representative or if a
3 prior appointment is terminated as provided in section 3609.

4 (b) By the court on its own motion or in a formal proceeding
5 by court order on the petition of an interested person if in either
6 case, after notice and hearing, the court finds that the
7 appointment is necessary to preserve the estate or to secure its
8 proper administration, including its administration in
9 circumstances in which a general personal representative cannot or
10 should not act. If it appears to the court that an emergency
11 exists, the court may order the appointment without notice.

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