

# SENATE BILL No. 731

December 12, 2013, Introduced by Senator WARREN 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), 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.

## 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

(2), a person with priority under subsections ~~(2) to (4)~~ (3) TO (5), or **A PERSON** acting under subsection ~~(5), (6), (7), or (8)~~, OR (9) is presumed to have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including, but not limited to, decisions about cremation, and the right to possess cremated remains of the decedent. The handling, disposition, or disinterment of a body shall be under the supervision of a person licensed to practice mortuary science in this state.

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

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

(4) ~~(3) If~~ **A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER SUBSECTION (2) AND IF** the surviving spouse or the individual or individuals with the highest priority as determined under 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.

1           (7) ~~(6)~~—If **A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER**  
 2 **SUBSECTION (2) AND IF** no individual described in subsections ~~(2)~~  
 3 ~~and~~ ~~(3)~~ **AND (4)** exists, exercises the rights or powers under  
 4 subsection (1), or can be located after a sufficient attempt as  
 5 described in subsection ~~(9)~~, ~~(10)~~, and if the decedent was under a  
 6 guardianship at the time of death, the guardian may exercise the  
 7 rights and powers under subsection (1) and may make a claim for the  
 8 reimbursement of burial expenses as provided in section 5216 or  
 9 5315, as applicable.

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

18           (9) ~~(8)~~—If there is no person under subsections (2) to ~~(7)~~ ~~(8)~~  
 19 to exercise the rights and powers under subsection (1), 1 of the  
 20 following, as applicable, shall exercise the rights and powers  
 21 under subsection (1):

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

25           (b) If the decedent was incarcerated in a state correctional  
 26 facility at the time of his or her death, the director of the  
 27 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~~ **MUST** include notice of the individual's right to  
9 appear at the hearing. An individual served with notice of the  
10 hearing may waive his or her rights. If written waivers from all  
11 persons entitled to notice are filed, the court may immediately  
12 hear the petition. The court may waive or modify the notice and  
13 hearing requirements of this subsection if the decedent's body must  
14 be 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~~ **MUST** be included in  
19 the reasonable funeral and burial expenses under section 3805(1)(b)  
20 or the court may assess ~~such~~ **THE** costs and fees against 1 or more  
21 parties 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. 3614. A special personal representative may be appointed  
19 in any of the following circumstances:

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

24 (b) By the court on its own motion or in a formal proceeding  
25 by court order on the petition of an interested person if in either  
26 case, after notice and hearing, the court finds that the  
27 appointment is necessary to preserve the estate or to secure its

1 proper administration, including its administration in  
2 circumstances in which a general personal representative cannot or  
3 should not act. If it appears to the court that an emergency  
4 exists, the court may order the appointment without notice.

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