

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

700.3206 Right and power to make decisions about funeral arrangements and handling, disposition, or disinterment of decedent's body; presumption; funeral representative designation; priority; "exercise their rights or powers under subsection (1)" defined; shared rights and powers; family member, personal representative, or nominated personal representative; guardian; special fiduciary or special personal representative; additional persons; reasonable attempt to locate person; effect of section on anatomical gift; person criminally charged with intentionally killing decedent; payment for costs; definitions.

Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216, part 28 and article 10 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899 and 333.10101 to 333.11101, and subsection (12), a funeral representative designated under subsection (2), a person with priority under subsections (3) to (5) or a person acting under subsection (6), (7), (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 retrieve from the funeral establishment and possess cremated remains of the decedent immediately after cremation. The handling, disposition, or disinterment of a body must be under the supervision of a person licensed to practice mortuary science in this state.

(2) Subject to section 1202, and except as otherwise provided in this subsection and subject to the priority in subsection (3), an individual 18 years of age or older who is of sound mind at the time a funeral representative designation is made may designate in writing another individual who is 18 years of age or older and who is of sound mind to have the rights and powers under subsection (1). All of the following apply to a funeral representative designation under this subsection:

(a) For purposes of this section and sections 3206a and 3206b, an individual who is named in a funeral representative designation to have the rights and powers described in subsection (1) is known as a funeral representative and an individual who makes a funeral representative designation is known as a declarant.

(b) A funeral representative designation under this subsection must be in writing, dated, and signed voluntarily by the declarant or signed by a notary public on the declarant's behalf under section 33 of the Michigan law on notarial acts, 2003 PA 238, MCL 55.293. A funeral representative designation may be included in the declarant's will, patient advocate designation, or other writing. If a funeral representative designation is contained in an individual's will, the will is not required to be admitted to probate for the funeral representative designation to be valid. A funeral representative designation must be 1 or both of the following:

(i) Signed in the presence of and signed by 2 witnesses. A witness under this section may not be the funeral representative or an individual described in subdivision (c)(ii) to (iv). A witness shall not sign the funeral representative designation unless the declarant appears to be of sound mind and under no duress, fraud, or undue influence.

(ii) Acknowledged by the declarant before a notary public, who endorses on the funeral representative designation a certificate of the acknowledgment and the true date of taking the acknowledgment.

(c) The following individuals may not act as a funeral representative for the declarant unless the individual is the surviving spouse or is a relative of the declarant:

(i) An officer, partner, member, shareholder, owner, representative, or employee of a funeral establishment that will provide services to the declarant.

(ii) A health professional, or an employee of or volunteer at a health facility or veterans facility, who provided medical treatment or nursing care to the declarant during the final illness or immediately before the declarant's death, or a partner, member, shareholder, owner, or representative of the health facility where medical treatment or nursing care was provided.

(iii) An officer, partner, member, shareholder, owner, representative, or employee of a cemetery at which the declarant's body will be interred, entombed, or inurned.

(iv) An officer, partner, member, shareholder, owner, representative, or employee of a crematory that will provide the declarant's cremation services.

(3) The following have the rights and powers under subsection (1) in the following order of priority:

(a) If the decedent was a service member at the time of the decedent's death, a person designated to direct the disposition of the service member's remains according to a statute of the United States or regulation, policy, directive, or instruction of the Department of Defense.

(b) A funeral representative designated under subsection (2).

(c) The surviving spouse.

- (d) The individual or individuals 18 years of age or older in the following order of priority:
 - (i) The decedent's children.
 - (ii) The decedent's grandchildren.
 - (iii) The decedent's parents.
 - (iv) The decedent's grandparents.
 - (v) The decedent's siblings.
 - (vi) A descendant of the decedent's parents who first notifies the funeral establishment in possession of the decedent's body of the descendant's decision to exercise his or her rights under subsection (1).
 - (vii) A descendant of the decedent's grandparents who first notifies the funeral establishment in possession of the decedent's body of the descendant's decision to exercise his or her rights under subsection (1).
- (4) If the individual or individuals with the highest priority as determined under subsection (3) cannot be located after a reasonable effort to contact and inform them of the decedent's death within 72 hours after the pronouncement of the decedent's death under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034, affirmatively decline to exercise their rights or powers under subsection (1), or fail to exercise their rights or powers under subsection (1) within 72 hours after the pronouncement of the decedent's death under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034, the rights and powers under subsection (1) may be exercised by the individual or individuals in the same order of priority under subsection (3). If the individual or each of the individuals in an order of priority as determined under this subsection similarly affirmatively declines or fails to exercise his or her rights or powers within 72 hours after the pronouncement of the decedent's death under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034, or cannot be located within 72 hours after the pronouncement of the decedent's death under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034, the rights or powers under subsection (1) pass to an individual or individuals in the next order of priority under subsection (3) who notify the funeral establishment in possession of the decedent's body of their decision to exercise their rights or powers under subsection (1). For purposes of this subsection only, "exercise their rights or powers under subsection (1)" means providing the person that holds a license under article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, in possession of the decedent's body with authorization to bury or cremate the decedent's body.
- (5) If 2 or more individuals share the rights and powers described in subsection (1) as determined under subsection (3) or (4), the rights and powers must be exercised as decided by a majority of the individuals who can be located after reasonable efforts. If a majority cannot agree, any of the individuals may file a petition under section 3207.
- (6) If no individual described in subsections (3) and (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (10), and if subsection (7) does not apply, then the personal representative or nominated personal representative may exercise the rights and powers under subsection (1), either before or after his or her appointment.
- (7) If no individual described in subsections (3) and (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (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) If no individual described in subsections (3) and (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (10), if the decedent died intestate, and if subsection (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) If there is no person under subsections (3) to (8) to exercise the rights and powers under subsection (1), or if there is a person under subsections (3) to (8) to exercise the rights and powers under subsection (1) and the person fails to exercise the rights and powers under subsection (1) within 14 days after the decedent's death, 1 of the following, as applicable, shall exercise the rights and powers under subsection (1):
 - (a) Unless subdivision (b) applies, 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) An attempt to locate a person described in subsection (3) or (4) is sufficient if a reasonable attempt is made in good faith by any of the following to contact the person at his or her last known address, telephone number, or email address:
 - (a) A family member, personal representative, or nominated personal representative of the decedent.

(b) A health facility or veteran's facility that provided medical treatment to the decedent during the final illness or immediately before the decedent's death.

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

(12) An individual who has been criminally charged with the intentional killing of the decedent shall not exercise a right under subsection (1) while the charges are pending.

(13) Except as otherwise provided in this subsection, a person who has the rights and powers under subsection (1) and who exercises the right over the disposition of the decedent's body must ensure payment for the costs of the disposition through a trust, insurance, a commitment by another person, a prepaid contract under the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235, or other effective and binding means. To the extent payment is not ensured under this subsection, the person described in this subsection is liable for the costs of the disposition. This subsection does not apply to a person who exercises the rights and powers under subsection (1) as provided in subsection (8) or (9).

(14) As used in this section:

(a) "Armed forces" means the Army, Air Force, Navy, Marine Corps, Coast Guard, or other military force designated by Congress as part of the Armed Forces of the United States.

(b) "Health facility" means that term as defined in section 5653 of the public health code, 1978 PA 368, MCL 333.5653.

(c) "Health professional" means that term as defined in section 5883 of the public health code, 1978 PA 368, MCL 333.5883.

(d) "Medical treatment" means that term as defined in section 5653 of the public health code, 1978 PA 368, MCL 333.5653.

(e) "Michigan National Guard" means that term as defined in section 105 of the Michigan military act, 1967 PA 150, MCL 32.505.

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

(g) "Service member" means a member of the armed forces, a reserve branch of the armed forces, or the Michigan National Guard.

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