

SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 4870

(As amended, June 29, 2006)

<<A bill to amend 1998 PA 386, entitled  
"Estates and protected individuals code,"  
by amending sections 1104, 3614, and 3701 (MCL 700.1104, 700.3614,  
and 700.3701), section 1104 as amended by 2005 PA 204 and section 3614  
as amended by 2004 PA 343, and by adding sections 3206, 3207, 3208,  
and 3209.>>

**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  
4 the environment or human health.

5           (b) "Estate" includes the property of the decedent, trust, or  
6 other person whose affairs are subject to this act as the property  
7 is originally constituted and as it exists throughout

1 administration. Estate also includes the rights described in  
2 sections 3805, 3922, and 7502 to collect from others amounts  
3 necessary to pay claims, allowances, and taxes.

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

6 (d) "Family allowance" means the allowance prescribed in  
7 section 2403.

8 (e) "Fiduciary" includes, but is not limited to, a personal  
9 representative, guardian, conservator, trustee, plenary or partial  
10 guardian appointed as provided in chapter 6 of the mental health  
11 code, 1974 PA 258, MCL 330.1600 to 330.1644, and successor  
12 fiduciary.

13 (f) "Financial institution" means an organization authorized  
14 to do business under state or federal laws relating to a financial  
15 institution and includes, but is not limited to, a bank, trust  
16 company, savings bank, building and loan association, savings and  
17 loan company or association, and credit union.

18 (g) "Foreign personal representative" means a personal  
19 representative appointed by another jurisdiction.

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

22 **(I) "FUNERAL ESTABLISHMENT" MEANS THAT TERM AS DEFINED IN**  
23 **SECTION 1801 OF THE OCCUPATIONAL CODE, 1980 PA 299, MCL 339.1801,**  
24 **AND THE OWNERS, EMPLOYEES, AND AGENTS OF THE FUNERAL ESTABLISHMENT.**

25 ~~(J) —(i)—~~ "General personal representative" means a personal  
26 representative other than a special personal representative.

27 ~~(K) —(j)—~~ "Governing instrument" means a deed; will; trust;

1 insurance or annuity policy; account with POD designation; security  
2 registered in beneficiary form (TOD); pension, profit-sharing,  
3 retirement, or similar benefit plan; instrument creating or  
4 exercising a power of appointment or a power of attorney; or  
5 dispositive, appointive, or nominative instrument of any similar  
6 type.

7 (I) ~~(k)~~ "Guardian" means a person who has qualified as a  
8 guardian of a minor or a legally incapacitated individual under a  
9 parental or spousal nomination or a court appointment and includes  
10 a limited guardian as described in sections 5205, 5206, and 5306.  
11 Guardian does not include a guardian ad litem.

12 (M) ~~(l)~~ "Hazardous substance" means a substance defined as  
13 hazardous or toxic or otherwise regulated by an environmental law.

14 (N) ~~(m)~~ "Heir" means, except as controlled by section 2720,  
15 a person, including the surviving spouse or the state, that is  
16 entitled under the statutes of intestate succession to a decedent's  
17 property.

18 (O) ~~(n)~~ "Homestead allowance" means the allowance prescribed  
19 in section 2402.

20 SEC. 3206. (1) SUBJECT TO 1953 PA 181, MCL 52.201 TO 52.216,  
21 AND TO PART 28 AND ARTICLE 10 OF THE PUBLIC HEALTH CODE, 1978 PA  
22 368, MCL 333.2801 TO 333.2899 AND 333.10101 TO 333.11101, A PERSON  
23 WITH PRIORITY UNDER SUBSECTIONS (2) TO (4) OR ACTING UNDER  
24 SUBSECTION (5), (6), (7), OR (8) IS PRESUMED TO HAVE THE RIGHT AND  
25 POWER TO MAKE DECISIONS ABOUT FUNERAL ARRANGEMENTS AND THE  
26 HANDLING, DISPOSITION, OR DISINTERMENT OF A DECEDENT'S BODY,  
27 INCLUDING, BUT NOT LIMITED TO, DECISIONS ABOUT CREMATION, AND THE

1 RIGHT TO POSSESS CREMATED REMAINS OF THE DECEDENT. THE HANDLING,  
2 DISPOSITION, OR DISINTERMENT OF A BODY SHALL BE UNDER THE  
3 SUPERVISION OF A PERSON LICENSED TO PRACTICE MORTUARY SCIENCE IN  
4 THIS STATE.

5 (2) THE SURVIVING SPOUSE OR, IF THERE IS NO SURVIVING SPOUSE,  
6 THE INDIVIDUAL OR INDIVIDUALS 18 YEARS OF AGE OR OLDER, IN THE  
7 HIGHEST ORDER OF PRIORITY UNDER SECTION 2103, AND RELATED TO THE  
8 DECEDENT IN THE CLOSEST DEGREE OF CONSANGUINITY, HAVE THE RIGHTS  
9 AND POWERS UNDER SUBSECTION (1).

10 (3) IF THE SURVIVING SPOUSE OR THE INDIVIDUAL OR INDIVIDUALS  
11 WITH THE HIGHEST PRIORITY AS DETERMINED UNDER SUBSECTION (2) DO NOT  
12 EXERCISE THEIR RIGHTS OR POWERS UNDER SUBSECTION (1) OR CANNOT BE  
13 LOCATED AFTER A GOOD-FAITH EFFORT TO CONTACT THEM, THE RIGHTS AND  
14 POWERS UNDER SUBSECTION (1) MAY BE EXERCISED BY THE INDIVIDUAL OR  
15 INDIVIDUALS IN THE SAME ORDER OF PRIORITY UNDER SECTION 2103 WHO  
16 ARE RELATED TO THE DECEDENT IN THE NEXT CLOSEST DEGREE OF  
17 CONSANGUINITY. IF THE INDIVIDUAL OR EACH OF THE INDIVIDUALS IN AN  
18 ORDER OF PRIORITY AS DETERMINED UNDER THIS SUBSECTION SIMILARLY  
19 DOES NOT EXERCISE HIS OR HER RIGHTS OR POWERS OR CANNOT BE LOCATED,  
20 THE RIGHTS OR POWERS UNDER SUBSECTION (1) PASS TO THE NEXT ORDER OF  
21 PRIORITY, WITH THE ORDER OF PRIORITY BEING DETERMINED BY FIRST  
22 TAKING THE INDIVIDUALS IN THE HIGHEST ORDER OF PRIORITY UNDER  
23 SECTION 2103 AND THEN TAKING THE INDIVIDUALS RELATED TO THE  
24 DECEDENT IN THE CLOSEST OR, AS APPLICABLE, NEXT CLOSEST DEGREE OF  
25 CONSANGUINITY IN THAT ORDER OF PRIORITY.

26 (4) IF 2 OR MORE INDIVIDUALS SHARE THE RIGHTS AND POWERS  
27 DESCRIBED IN SUBSECTION (1) AS DETERMINED UNDER SUBSECTION (2) OR

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1 (3), THE RIGHTS AND POWERS SHALL BE EXERCISED AS DECIDED BY A  
2 MAJORITY OF THE INDIVIDUALS. IF A MAJORITY CANNOT AGREE, ANY OF THE  
3 INDIVIDUALS MAY FILE A PETITION UNDER SECTION 3207.

4 (5) IF NO INDIVIDUAL DESCRIBED IN SUBSECTIONS (2) AND (3)  
5 EXISTS, EXERCISES THE RIGHTS OR POWERS UNDER SUBSECTION (1), OR CAN  
6 BE LOCATED AFTER A SUFFICIENT ATTEMPT AS DESCRIBED IN SUBSECTION  
7 (9), <<AND IF SUBSECTION (6) DOES NOT APPLY,>> THEN THE PERSONAL  
8 REPRESENTATIVE OR NOMINATED PERSONAL  
9 REPRESENTATIVE MAY EXERCISE THE RIGHTS AND POWERS UNDER SUBSECTION  
10 (1), EITHER BEFORE OR AFTER HIS OR HER APPOINTMENT.

11 (6) IF NO INDIVIDUAL DESCRIBED IN SUBSECTIONS (2) AND (3)  
12 EXISTS, EXERCISES THE RIGHTS OR POWERS UNDER SUBSECTION (1), OR CAN  
13 BE LOCATED AFTER A SUFFICIENT ATTEMPT AS DESCRIBED IN SUBSECTION  
14 (9), << >> AND IF THE DECEDENT WAS UNDER  
15 A GUARDIANSHIP AT THE TIME OF DEATH, THE GUARDIAN MAY EXERCISE THE  
16 RIGHTS AND POWERS UNDER SUBSECTION (1) AND MAY MAKE A CLAIM FOR THE  
17 REIMBURSEMENT OF BURIAL EXPENSES AS PROVIDED IN SECTION 5216 OR  
18 5315, AS APPLICABLE.

19 (7) IF NO INDIVIDUAL DESCRIBED IN SUBSECTIONS (2) AND (3)  
20 EXISTS, EXERCISES THE RIGHTS OR POWERS UNDER SUBSECTION (1), OR CAN  
21 BE LOCATED AFTER A SUFFICIENT ATTEMPT AS DESCRIBED IN SUBSECTION  
22 (9), IF THE DECEDENT DIED INTESTATE, AND IF SUBSECTION (6) DOES NOT  
23 APPLY, A SPECIAL PERSONAL REPRESENTATIVE APPOINTED UNDER SECTION  
24 3614(C) MAY EXERCISE THE RIGHTS AND POWERS UNDER SUBSECTION (1).

25 (8) IF THERE IS NO PERSON UNDER SUBSECTIONS (2) TO (7) TO  
26 EXERCISE THE RIGHTS AND POWERS UNDER SUBSECTION (1), 1 OF THE  
27 FOLLOWING, AS APPLICABLE, SHALL EXERCISE THE RIGHTS AND POWERS  
UNDER SUBSECTION (1):

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1 (A) UNLESS SUBDIVISION (B) APPLIES, THE COUNTY PUBLIC  
2 ADMINISTRATOR, IF WILLING, OR THE MEDICAL EXAMINER FOR THE COUNTY  
3 WHERE THE DECEDENT WAS DOMICILED AT THE TIME OF HIS OR HER DEATH.

4 (B) IF THE DECEDENT WAS INCARCERATED IN A STATE CORRECTIONAL  
5 FACILITY AT THE TIME OF HIS OR HER DEATH, THE DIRECTOR OF THE  
6 DEPARTMENT OF CORRECTIONS <<OR THE DESIGNEE OF THE DIRECTOR>>.

7 (9) AN ATTEMPT TO LOCATE A PERSON DESCRIBED IN SUBSECTION (2)  
8 OR (3) IS SUFFICIENT IF A REASONABLE ATTEMPT IS MADE IN GOOD FAITH  
9 BY A FAMILY MEMBER, PERSONAL REPRESENTATIVE, OR NOMINATED PERSONAL  
10 REPRESENTATIVE OF THE DECEDENT TO CONTACT THE PERSON AT HIS OR HER  
11 LAST KNOWN ADDRESS, TELEPHONE NUMBER, OR ELECTRONIC MAIL ADDRESS.

12 (10) THIS SECTION DOES NOT VOID OR OTHERWISE AFFECT A GIFT  
13 MADE UNDER PART 101 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL  
14 333.10101 TO 333.10109.

15 (11) AS USED IN THIS SECTION, "NOMINATED PERSONAL  
16 REPRESENTATIVE" MEANS A PERSON NOMINATED TO ACT AS PERSONAL  
17 REPRESENTATIVE IN A WILL THAT THE NOMINATED PERSON REASONABLY  
18 BELIEVES TO BE THE VALID WILL OF THE DECEDENT.

19 SEC. 3207. (1) IF THERE IS A DISAGREEMENT AS DESCRIBED IN  
20 SECTION 3206(4) OR IF 1 OR MORE OF THE INDIVIDUALS DESCRIBED IN  
21 SECTION 3206(2) OR (3) CANNOT BE LOCATED, 1 OR MORE OF THE  
22 FOLLOWING MAY PETITION THE COURT TO DETERMINE WHO HAS THE AUTHORITY  
23 TO EXERCISE THE RIGHTS AND POWERS UNDER SECTION 3206(1):

24 (A) AN INDIVIDUAL WITH THE RIGHTS AND POWERS UNDER SECTION  
25 3206(1).

26 (B) A FUNERAL ESTABLISHMENT THAT HAS CUSTODY OF THE DECEDENT'S  
27 BODY.

1           (2) VENUE FOR A PETITION FILED UNDER SUBSECTION (1) IS IN THE  
2 COUNTY IN WHICH THE DECEDENT WAS DOMICILED AT THE TIME OF DEATH.

3           (3) ON RECEIPT OF A PETITION UNDER THIS SECTION, THE COURT  
4 SHALL SET A DATE FOR A HEARING ON THE PETITION. THE HEARING DATE  
5 SHALL BE AS SOON AS POSSIBLE, BUT NOT LATER THAN 7 BUSINESS DAYS  
6 AFTER THE DATE THE PETITION IS FILED. NOTICE OF THE PETITION AND  
7 THE HEARING SHALL BE SERVED NOT LESS THAN 2 DAYS BEFORE THE DATE OF  
8 THE HEARING ON EVERY INDIVIDUAL WHO HAS HIGHEST PRIORITY AS  
9 DETERMINED UNDER SECTION 3206(2) AND (3), UNLESS THE COURT ORDERS  
10 THAT SERVICE ON EVERY SUCH INDIVIDUAL IS NOT REQUIRED. UNLESS AN  
11 INDIVIDUAL CANNOT BE LOCATED AFTER A REASONABLE GOOD-FAITH EFFORT  
12 HAS BEEN MADE TO CONTACT THE INDIVIDUAL, SERVICE SHALL BE MADE ON  
13 THE INDIVIDUAL PERSONALLY OR IN A MANNER REASONABLY DESIGNED TO  
14 GIVE THE INDIVIDUAL NOTICE. NOTICE OF THE HEARING SHALL INCLUDE  
15 NOTICE OF THE INDIVIDUAL'S RIGHT TO APPEAR AT THE HEARING. AN  
16 INDIVIDUAL SERVED WITH NOTICE OF THE HEARING MAY WAIVE HIS OR HER  
17 RIGHTS. IF WRITTEN WAIVERS FROM ALL PERSONS ENTITLED TO NOTICE ARE  
18 FILED, THE COURT MAY IMMEDIATELY HEAR THE PETITION. THE COURT MAY  
19 WAIVE OR MODIFY THE NOTICE AND HEARING REQUIREMENTS OF THIS  
20 SUBSECTION IF THE DECEDENT'S BODY MUST BE DISPOSED OF PROMPTLY TO  
21 ACCOMMODATE THE RELIGIOUS BELIEFS OF THE DECEDENT OR HIS OR HER  
22 NEXT OF KIN.

23           (4) IF A FUNERAL ESTABLISHMENT IS THE PETITIONER UNDER THIS  
24 SECTION, THE FUNERAL ESTABLISHMENT'S ACTUAL COSTS AND REASONABLE  
25 ATTORNEY FEES IN BRINGING THE PROCEEDING SHALL BE INCLUDED IN THE  
26 REASONABLE FUNERAL AND BURIAL EXPENSES UNDER SECTION 3805(B) OR THE  
27 COURT MAY ASSESS SUCH COSTS AND FEES AGAINST 1 OR MORE PARTIES OR

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1 INTERVENORS.

2 (5) IN DECIDING A PETITION BROUGHT UNDER THIS SECTION, THE  
3 COURT SHALL CONSIDER ALL OF THE FOLLOWING, IN ADDITION TO OTHER  
4 RELEVANT FACTORS:

5 (A) THE REASONABLENESS AND PRACTICALITY OF THE FUNERAL  
6 ARRANGEMENTS OR THE HANDLING OR DISPOSITION OF THE BODY PROPOSED BY  
7 THE PERSON BRINGING THE ACTION IN COMPARISON WITH THE FUNERAL  
8 ARRANGEMENTS OR THE HANDLING OR DISPOSITION OF THE BODY PROPOSED BY  
9 1 OR MORE INDIVIDUALS WITH THE RIGHTS AND POWERS UNDER SECTION  
10 3206(1).

11 (B) THE NATURE OF THE PERSONAL RELATIONSHIP TO THE DECEASED OF  
12 THE PERSON BRINGING THE ACTION COMPARED TO OTHER INDIVIDUALS WITH  
13 THE RIGHTS AND POWERS UNDER SECTION 3206(1).

14 (C) WHETHER THE PERSON BRINGING THE ACTION IS READY, WILLING,  
15 AND ABLE TO PAY THE COSTS OF THE FUNERAL ARRANGEMENTS OR THE  
16 HANDLING OR DISPOSITION OF THE BODY.

17 <<SEC. 3208. (1) AN INDIVIDUAL OTHER THAN A PERSON WITH PRIORITY  
18 UNDER SUBSECTIONS (2) TO (4) OR ACTING UNDER SUBSECTION (5), (6), (7) OR  
19 (8), MAY FILE AN ACTION IN THE CIRCUIT COURT TO CHALLENGE THE  
20 PRESUMPTION TO BE DETERMINED AS THE INDIVIDUAL WHO HAS THE AUTHORITY TO  
EXERCISE THE RIGHTS AND POWERS UNDER SECTION 3206(1).>>

21 (2) VENUE FOR AN ACTION FILED UNDER THIS SECTION IS IN THE  
22 COUNTY IN WHICH THE DECEDENT WAS DOMICILED AT THE TIME OF DEATH.

23 SEC. 3209. (1) A FUNERAL ESTABLISHMENT IS NOT REQUIRED TO FILE  
24 A PETITION UNDER SECTION 3207 AND IS NOT CIVILLY LIABLE FOR NOT  
25 DOING SO.

26 (2) THE ORDER OF PRIORITY DETERMINED UNDER SECTION 3206(2) AND  
27 (3) MAY BE RELIED UPON BY A FUNERAL ESTABLISHMENT. A FUNERAL



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1 ESTABLISHMENT IS NOT A GUARANTOR THAT A PERSON EXERCISING THE  
2 RIGHTS AND POWERS UNDER SECTION 3206(1) HAS THE LEGAL AUTHORITY TO  
3 DO SO. A FUNERAL ESTABLISHMENT DOES NOT HAVE THE RESPONSIBILITY TO  
4 CONTACT OR INDEPENDENTLY INVESTIGATE THE EXISTENCE OF RELATIVES OF  
5 THE DECEASED, BUT MAY RELY ON INFORMATION PROVIDED BY FAMILY  
6 MEMBERS OF THE DECEASED.

7 (3) A FUNERAL ESTABLISHMENT, HOLDER OF A LICENSE TO PRACTICE  
8 MORTUARY SCIENCE ISSUED BY THIS STATE, CEMETERY, CREMATORY, OR AN  
9 OFFICER OR EMPLOYEE OF A FUNERAL ESTABLISHMENT, HOLDER OF A LICENSE  
10 TO PRACTICE MORTUARY SCIENCE ISSUED BY THIS STATE, CEMETERY, OR  
11 CREMATORY MAY RELY ON THE TERMS OF <<SECTIONS 3206 AND 3207 AND THIS  
SECTION>> AND THE INSTRUCTIONS OF  
12 A PERSON DESCRIBED IN SECTION 3206(2) TO (8), OR OF AN INDIVIDUAL  
13 DETERMINED IN AN ACTION UNDER SECTION 3208 TO BE THE PARTY TO  
14 EXERCISE THE RIGHTS AND POWERS UNDER SECTION 3206(1), REGARDING  
15 FUNERAL ARRANGEMENTS AND THE HANDLING, DISPOSITION, OR DISINTERMENT  
16 OF A BODY AND IS NOT CIVILLY LIABLE TO ANY PERSON FOR THE RELIANCE  
17 IF THE RELIANCE WAS 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 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

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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 ~~who died intestate, without heirs, and with insufficient~~  
 8 ~~assets to pay for a funeral or burial~~ **IF SECTION 3206(7) APPLIES.**

9 The duties of a special personal representative appointed under  
 10 this subdivision shall be specified in the order of appointment and  
 11 may include making arrangements with a funeral home, securing a  
 12 burial plot if needed, obtaining veteran's or pauper's funding  
 13 where appropriate, and determining the disposition of the body by  
 14 burial or cremation. The court may waive the bond requirement under  
 15 section 3603(1)(a). The court may appoint the county public  
 16 administrator if the county public administrator is willing to  
 17 serve. **IF THE COURT DETERMINES THAT IT WILL NOT BE NECESSARY TO**  
 18 **OPEN AN ESTATE, THE COURT MAY APPOINT A SPECIAL FIDUCIARY UNDER**  
 19 **SECTION 1309 INSTEAD OF A SPECIAL PERSONAL REPRESENTATIVE TO**  
 20 **PERFORM DUTIES UNDER THIS SECTION.**

~~<<Sec. 3701. A personal representative's duties and powers commence upon appointment. A personal representative's powers relate back in time to give acts by the person appointed that are beneficial to the estate occurring before appointment the same effect as those occurring after appointment. Before SUBJECT TO SECTIONS 3206 TO 3208, BEFORE or after appointment, a person named as personal representative in a will may carry out the decedent's written instructions relating to the decedent's body, funeral, and burial arrangements. A personal representative may ratify and accept an act on behalf of the estate done by another if the act would have been proper for a personal representative.>>~~

21 Enacting section 1. This amendatory act does not take effect  
 22 unless all of the following bills of the 93rd Legislature are  
 23 enacted into law:

24 (a) House Bill No. 4891.

25 (b) House Bill No. 5836.