

HOUSE BILL No. 4870

June 7, 2005, Introduced by Reps. Caswell, Taub, Stahl, Condino and Plakas and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 1104 and 3614 (MCL 700.1104 and 700.3614), section 1104 as amended by 2000 PA 54 and section 3614 as amended by 2004 PA 343, and by adding sections 3206, 3207, and 3208.

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

1 is originally constituted and as it exists throughout
2 administration. Except when used in the term "probate estate",
3 estate includes the right of an estate described in section 7502 to
4 proceed against a recipient of a nonprobate transfer on death and
5 against a trust subject to a power of revocation as necessary to
6 enable the estate to discharge claims and family allowances.

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

9 (d) "Family allowance" is the allowance prescribed in section
10 2403.

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

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

21 (g) "Foreign personal representative" means a personal
22 representative appointed by another jurisdiction.

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

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

1 (J) ~~(i)~~ "General personal representative" means a personal
2 representative other than a special personal representative.

3 (K) ~~(j)~~ "Governing instrument" means a deed; will; trust;
4 insurance or annuity policy; account with POD designation; security
5 registered in beneficiary form (TOD); pension, profit-sharing,
6 retirement, or similar benefit plan; instrument creating or
7 exercising a power of appointment or a power of attorney; or
8 dispositive, appointive, or nominative instrument of any similar
9 type.

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

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

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

21 (O) ~~(n)~~ "Homestead allowance" means the allowance prescribed
22 in section 2402.

23 **SEC. 3206. (1) SUBJECT TO 1953 PA 181, MCL 52.201 TO 52.216,**
24 **AND TO PART 28 AND ARTICLE 10 OF THE PUBLIC HEALTH CODE, 1978 PA**
25 **368, MCL 333.2801 TO 333.2899 AND 333.10101 TO 333.11101, A PERSON**
26 **WITH PRIORITY UNDER SUBSECTIONS (2) TO (4) OR ACTING UNDER**
27 **SUBSECTION (5), (6), OR (7) HAS THE RIGHT TO POSSESS A DECEDENT'S**

1 BODY AND THE POWER TO MAKE DECISIONS ABOUT FUNERAL ARRANGEMENTS FOR
2 OR THE HANDLING, DISPOSITION, OR DISINTERMENT OF THE BODY,
3 INCLUDING, BUT NOT LIMITED TO, DECISIONS ABOUT CREMATION AND THE
4 DISPOSAL OF CREMATED REMAINS.

5 (2) THE INDIVIDUALS WITH THE FOLLOWING RELATIONSHIPS TO A
6 DECEDENT, IF THEY SURVIVE THE DECEDENT AND ARE 18 YEARS OF AGE OR
7 OLDER, HAVE THE RIGHTS AND POWERS UNDER SUBSECTION (1) IN THE
8 FOLLOWING ORDER OF PRIORITY:

9 (A) THE SPOUSE.

10 (B) A CHILD.

11 (C) A PARENT.

12 (D) A GRANDCHILD.

13 (E) A SIBLING.

14 (F) A GRANDPARENT.

15 (G) A CHILD OF A DECEASED SIBLING.

16 (H) AN AUNT OR UNCLE.

17 (I) A FIRST COUSIN.

18 (3) IF THE INDIVIDUAL OR INDIVIDUALS WITH THE HIGHEST PRIORITY
19 AS DETERMINED UNDER SUBSECTION (2) AND THIS SUBSECTION DO NOT
20 EXERCISE THEIR RIGHTS OR POWERS UNDER SUBSECTION (1) OR CANNOT BE
21 LOCATED AFTER A GOOD-FAITH EFFORT TO CONTACT THEM AT THEIR LAST
22 KNOWN ADDRESSES, THE RIGHTS AND POWERS UNDER SUBSECTION (1) MAY BE
23 EXERCISED BY THE INDIVIDUAL OR INDIVIDUALS IN THE NEXT ORDER OF
24 PRIORITY.

25 (4) IF THERE ARE 2 OR MORE INDIVIDUALS IN A LEVEL OF PRIORITY
26 UNDER SUBSECTION (2), THE RIGHTS AND POWERS UNDER SUBSECTION (1)
27 SHALL BE EXERCISED AS DECIDED BY A MAJORITY OF INDIVIDUALS IN THAT

1 LEVEL OF PRIORITY. IF A MAJORITY CANNOT AGREE, ANY INDIVIDUAL
2 SPECIFIED IN SUBSECTION (2) MAY FILE A PETITION UNDER SECTION 3207.

3 (5) IF NO INDIVIDUAL DESCRIBED IN SUBSECTION (2) EXISTS,
4 EXERCISES THE RIGHTS OR POWERS UNDER SUBSECTION (1), OR CAN BE
5 LOCATED AFTER A SUFFICIENT ATTEMPT AS DESCRIBED IN SUBSECTION (9),
6 THEN THE PERSONAL REPRESENTATIVE OR NOMINATED PERSONAL
7 REPRESENTATIVE MAY EXERCISE THE RIGHTS AND POWERS UNDER SUBSECTION
8 (1), EITHER BEFORE OR AFTER HIS OR HER APPOINTMENT.

9 (6) IF NO INDIVIDUAL DESCRIBED IN SUBSECTION (2) EXISTS,
10 EXERCISES THE RIGHTS OR POWERS UNDER SUBSECTION (1), OR CAN BE
11 LOCATED AS DESCRIBED IN SUBSECTION (9), AND IF THE DECEDENT DIED
12 INTESTATE, A SPECIAL PERSONAL REPRESENTATIVE APPOINTED UNDER
13 SECTION 3614(C) MAY EXERCISE THE RIGHTS AND POWERS UNDER SUBSECTION
14 (1).

15 (7) IF THERE IS NO PERSON UNDER SUBSECTIONS (2) TO (6) TO
16 EXERCISE THE RIGHTS AND POWERS UNDER SUBSECTION (1), THE MEDICAL
17 EXAMINER OR THE COUNTY PUBLIC ADMINISTRATOR FOR THE COUNTY WHERE
18 THE DECEDENT WAS DOMICILED AT THE TIME OF HIS OR HER DEATH SHALL
19 EXERCISE THE RIGHTS AND POWERS.

20 (8) THE COURT, IN A PROCEEDING BROUGHT UNDER SECTION 3207, MAY
21 ORDER THAT AN INDIVIDUAL WHO HAD A CLOSER PERSONAL RELATIONSHIP TO
22 THE DECEDENT THAN AN INDIVIDUAL WITH PRIORITY UNDER SUBSECTIONS (2)
23 AND (3) MAY EXERCISE THE RIGHTS AND POWERS UNDER SUBSECTION (1).

24 (9) AN ATTEMPT TO LOCATE A PERSON DESCRIBED IN SUBSECTION (2)
25 IS SUFFICIENT FOR THE PURPOSES OF SUBSECTIONS (5) AND (6) IF THE
26 ATTEMPT IS MADE IN GOOD FAITH TO CONTACT THE PERSON AT HIS OR HER
27 LAST KNOWN ADDRESS. IF THERE IS A PERSONAL REPRESENTATIVE OR

1 NOMINATED PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE, THE
2 ATTEMPT TO LOCATE THE PERSON SHALL BE MADE BY THE PERSONAL
3 REPRESENTATIVE OR NOMINATED PERSONAL REPRESENTATIVE.

4 (10) THIS SECTION DOES NOT VOID OR OTHERWISE AFFECT A GIFT
5 MADE UNDER PART 101 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
6 333.10101 TO 333.10109.

7 (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) ONE OR MORE OF THE FOLLOWING MAY PETITION THE
12 COURT TO DETERMINE WHO HAS THE AUTHORITY TO EXERCISE THE RIGHTS AND
13 POWERS UNDER SECTION 3206(1):

14 (A) AN INDIVIDUAL WITH PRIORITY AS DETERMINED UNDER SECTION
15 3206(2) AND (3).

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

18 (C) IF THERE IS A DISAGREEMENT AS DESCRIBED IN SECTION
19 3206(4), ANY INDIVIDUAL DESCRIBED IN SECTION 3206(2).

20 (D) AN INDIVIDUAL WHO ALLEGES THAT HE OR SHE HAD A CLOSER
21 PERSONAL RELATIONSHIP TO THE DECEASED THAN THE INDIVIDUAL OR
22 INDIVIDUALS WITH PRIORITY AS DETERMINED UNDER SECTION 3206(2) AND
23 (3).

24 (2) A PETITION UNDER SUBSECTION (1) MAY BE FILED WITH THE
25 COURT FOR THE COUNTY IN WHICH THE DECEDENT WAS DOMICILED AT THE
26 TIME OF DEATH.

27 (3) ON RECEIPT OF A PETITION UNDER THIS SECTION, THE COURT

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

20 (4) IF A FUNERAL ESTABLISHMENT IS THE PETITIONER UNDER THIS
21 SECTION, THE DECEDENT'S ESTATE, OR ANOTHER PERSON AS ORDERED BY THE
22 COURT, SHALL REIMBURSE THE FUNERAL ESTABLISHMENT FOR ALL COSTS
23 INCURRED IN BRINGING THE PROCEEDING, INCLUDING ATTORNEY FEES.

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

27 (A) THE REASONABLENESS AND PRACTICALITY OF THE FUNERAL

1 ARRANGEMENTS OR THE HANDLING OR DISPOSITION OF THE BODY PROPOSED BY
2 THE PERSON BRINGING THE ACTION IN COMPARISON WITH THE FUNERAL
3 ARRANGEMENTS OR THE HANDLING OR DISPOSITION OF THE BODY PROPOSED BY
4 OTHER PERSONS.

5 (B) THE NATURE OF THE PERSONAL RELATIONSHIP TO THE DECEASED OF
6 THE PERSON BRINGING THE ACTION.

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) A FUNERAL ESTABLISHMENT IS NOT REQUIRED TO FILE
11 A PETITION UNDER SECTION 3207 AND IS NOT CIVILLY LIABLE FOR NOT
12 DOING SO.

13 (2) IF THERE IS DISAGREEMENT AMONG INDIVIDUALS WITH PRIORITY
14 AS DETERMINED UNDER SECTION 3206(2) AND (3) ABOUT THE EXERCISE OF
15 POWERS UNDER SECTION 3206(1), A FUNERAL ESTABLISHMENT IS NOT
16 REQUIRED TO ACCEPT THE DECEASED'S BODY OR TO INTER OR OTHERWISE
17 DISPOSE OF THE BODY UNTIL THE FUNERAL ESTABLISHMENT RECEIVES A
18 COURT ORDER OR A WRITING SIGNED BY THE INDIVIDUALS IN DISAGREEMENT
19 THAT RESOLVES THE DISAGREEMENT. A FUNERAL ESTABLISHMENT SHALL
20 COMPLY WITH A COURT ORDER SERVED UPON THE FUNERAL ESTABLISHMENT.

21 (3) THE ORDER OF PRIORITY IN SECTION 3206(2) MAY BE RELIED
22 UPON BY A FUNERAL ESTABLISHMENT. A FUNERAL ESTABLISHMENT IS NOT A
23 GUARANTOR THAT A PERSON EXERCISING THE RIGHTS AND POWERS UNDER
24 SECTION 3206(1) HAS THE LEGAL AUTHORITY TO DO SO. A FUNERAL
25 ESTABLISHMENT DOES NOT HAVE THE RESPONSIBILITY TO CONTACT OR
26 INDEPENDENTLY INVESTIGATE THE EXISTENCE OF RELATIVES OF THE
27 DECEASED, BUT MAY RELY ON INFORMATION PROVIDED BY FAMILY MEMBERS OF

1 THE DECEASED.

2 (4) A FUNERAL ESTABLISHMENT THAT IN GOOD FAITH AND AFTER
3 REASONABLE DILIGENCE ATTEMPTS TO COMPLY WITH THIS SECTION IS NOT
4 CIVILLY LIABLE IN CONNECTION WITH THE FUNERAL ARRANGEMENTS PROVIDED
5 OR THE HANDLING OR DISPOSITION OF THE BODY.

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

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

12 (b) By the court on its own motion or in a formal proceeding
13 by court order on the petition of an interested person if in either
14 case, after notice and hearing, the court finds that the
15 appointment is necessary to preserve the estate or to secure its
16 proper administration, including its administration in
17 circumstances in which a general personal representative cannot or
18 should not act. If it appears to the court that an emergency
19 exists, the court may order the appointment without notice.

20 (c) By the court on its own motion or on petition by an
21 interested person to supervise the disposition of the body of a
22 decedent ~~who died intestate, without heirs, and with insufficient~~
23 ~~assets to pay for a funeral or burial~~ **IF SECTION 3206(6) APPLIES.**
24 The duties of a special personal representative appointed under
25 this subdivision shall be specified in the order of appointment and
26 may include making arrangements with a funeral home, securing a
27 burial plot if needed, obtaining veteran's or pauper's funding

1 where appropriate, and determining the disposition of the body by
2 burial or cremation. The court may waive the bond requirement under
3 section 3603(1)(a). The court may appoint the county public
4 administrator if the county public administrator is willing to
5 serve.

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

9 (a) Senate Bill No.____ or House Bill No. 4890(request no.
10 00385'05 a *).

11 (b) Senate Bill No.____ or House Bill No. 4891(request no.
12 00385'05 b *).