

HOUSE BILL No. 4578

March 12, 2009, Introduced by Reps. Warren, Gregory, Scripps, Smith, Bauer and Polidori
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), section 3206
as amended by 2008 PA 41 and sections 3207, 3208, and 3209 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 and to part 28 and article 10 of the public health code, 1978 PA
3 368, MCL 333.2801 to 333.2899 and 333.10101 to 333.11101, **A FUNERAL**
4 **REPRESENTATIVE APPOINTED UNDER SUBSECTION (2)**, a person with
5 priority under subsections ~~(2) to (4)~~ **(3) TO (5)**, or **A PERSON**

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

9 **(2) AN INDIVIDUAL MAY DESIGNATE A PERSON TO ACT AS THE**
10 **INDIVIDUAL'S FUNERAL REPRESENTATIVE. THE DESIGNATION SHALL BE IN**
11 **WRITING, SIGNED, WITNESSED IN THE SAME MANNER AS PROVIDED FOR A**
12 **PATIENT ADVOCATE DESIGNATION IN SECTION 5506(4), DATED, AND**
13 **EXECUTED VOLUNTARILY. A DESIGNATION UNDER THIS SUBSECTION MAY BE**
14 **INCLUDED IN A PATIENT ADVOCATE DESIGNATION. A PERSON DESIGNATED AS**
15 **A FUNERAL REPRESENTATIVE HAS THE RIGHTS AND POWERS UNDER SUBSECTION**
16 **(1).**

17 **(3) ~~(2)~~ The IF A FUNERAL REPRESENTATIVE IS NOT DESIGNATED**
18 **UNDER SUBSECTION (2), THE** surviving spouse or, if there is no
19 surviving spouse, the individual or individuals 18 years of age or
20 older, in the highest order of priority under section 2103, and
21 related to the decedent in the closest degree of consanguinity,
22 have the rights and powers under subsection (1).

23 **(4) ~~(3)~~ If A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER**
24 **SUBSECTION (2) AND IF** the surviving spouse or the individual or
25 individuals with the highest priority as determined under
26 subsection ~~(2)~~ **(3)** do not exercise their rights or powers under
27 subsection (1) or cannot be located after a good-faith effort to

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

14 (5) ~~(4)~~—If 2 or more individuals share the rights and powers
15 described in subsection (1) as determined under subsection ~~(2)~~ or
16 (3) OR (4), the rights and powers shall be exercised as decided by
17 a majority of the individuals. If a majority cannot agree, any of
18 the individuals may file a petition under section 3207.

19 (6) ~~(5)~~—If **A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER**
20 **SUBSECTION (2) AND IF** no individual described in subsections ~~(2)~~
21 ~~and~~ (3) **AND (4)** exists, exercises the rights or powers under
22 subsection (1), or can be located after a sufficient attempt as
23 described in subsection ~~(9)~~—(10), and if subsection ~~(6)~~—(7) does
24 not apply, then the personal representative or nominated personal
25 representative may exercise the rights and powers under subsection
26 (1), either before or after his or her appointment.

27 (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.

(10) ~~(9)~~—An attempt to locate a person described in subsection

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

(11) ~~(10)~~ 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) ~~(11)~~ As used in this section, "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.

Sec. 3207. (1) If there is a disagreement as described in section ~~3206(4)~~ **3206(5)** or if **A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER SECTION 3206(2) AND** 1 or more of the individuals described in section ~~3206(2) or (3)~~ **3206(3) OR (4)** cannot be located, 1 or more of the following may petition the court to determine who has the authority to exercise the rights and powers under section 3206(1):

(a) An individual with the rights and powers under section 3206(1).

(b) A funeral establishment that has custody of the decedent's body.

(2) Venue for a petition filed under subsection (1) is in the county in which the decedent was domiciled at the time of death.

(3) On receipt of a petition under this section, the court shall set a date for a hearing on the petition. The hearing date

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

19 (4) If a funeral establishment is the petitioner under this
20 section, the funeral establishment's actual costs and reasonable
21 attorney fees in bringing the proceeding shall be included in the
22 reasonable funeral and burial expenses under section ~~3805(b)~~
23 **3805(1) (B)** or the court may assess such costs and fees against 1 or
24 more parties or intervenors.

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

(a) The reasonableness and practicality of the funeral arrangements or the handling or disposition of the body proposed by the person bringing the action in comparison with the funeral arrangements or the handling or disposition of the body proposed by 1 or more individuals with the rights and powers under section 3206(1).

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

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

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

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

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

(2) The order of priority determined under section ~~3206(2) and (3)~~ **3206(3) AND (4)** may be relied upon by a funeral establishment.

1 A funeral establishment is not a guarantor that a person exercising
2 the rights and powers under section 3206(1) has the legal authority
3 to do so. A funeral establishment does not have the responsibility
4 to contact or independently investigate the existence of relatives
5 of 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
12 section and the instructions of a person described in section
13 3206(2) to ~~(8)~~ (9), or of an individual determined in an action
14 under section 3208 to be the party to exercise the rights and
15 powers under section 3206(1), regarding funeral arrangements and
16 the handling, disposition, or disinterment of a body and is not
17 civilly liable to any person for the reliance if the reliance was
18 in good faith.

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

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

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

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

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