

# HOUSE BILL No. 4599

May 14, 2015, Introduced by Reps. Schor, Sarah Roberts, Farrington, Hovey-Wright, Singh and Greig 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**  
5 **(2)**, a person with priority under subsections ~~(2) to (4)~~ **(3) TO**  
6 **(5)**, or **A PERSON** acting under subsection ~~(5)~~, (6), (7), ~~or (8)~~, **OR**  
7 **(9)** is presumed to have the right and power to make decisions about

1 funeral arrangements and the handling, disposition, or disinterment  
2 of a decedent's body, including, but not limited to, decisions  
3 about cremation, and the right to possess cremated remains of the  
4 decedent. The handling, disposition, or disinterment of a body  
5 shall be under the supervision of a person licensed to practice  
6 mortuary science in this state.

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

15       (3) ~~(2)~~ ~~The~~ IF A FUNERAL REPRESENTATIVE IS NOT DESIGNATED  
16 UNDER SUBSECTION (2), THE surviving spouse or, if there is no  
17 surviving spouse, the individual or individuals 18 years of age or  
18 older, in the highest order of priority under section 2103, and  
19 related to the decedent in the closest degree of consanguinity,  
20 have the rights and powers under subsection (1).

21       (4) ~~(3)~~ If A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER  
22 SUBSECTION (2) AND IF the surviving spouse or the individual or  
23 individuals with the highest priority as determined under  
24 subsection ~~(2)~~ (3) do not exercise their rights or powers under  
25 subsection (1) or cannot be located after a good-faith effort to  
26 contact them, the rights and powers under subsection (1) may be  
27 exercised by the individual or individuals in the same order of

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

12 (5) ~~(4)~~—If 2 or more individuals share the rights and powers  
 13 described in subsection (1) as determined under subsection ~~(2)~~ ~~or~~  
 14 (3) **OR (4)**, the rights and powers shall be exercised as decided by  
 15 a majority of the individuals. If a majority cannot agree, any of  
 16 the individuals may file a petition under section 3207.

17 (6) ~~(5)~~—If **A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER**  
 18 **SUBSECTION (2) AND IF** no individual described in subsections ~~(2)~~  
 19 ~~and~~ ~~(3)~~ **AND (4)** exists, exercises the rights or powers under  
 20 subsection (1), or can be located after a sufficient attempt as  
 21 described in subsection ~~(9)~~ ~~—(10)~~, and if subsection ~~(6)~~ ~~—(7)~~ does  
 22 not apply, then the personal representative or nominated personal  
 23 representative may exercise the rights and powers under subsection  
 24 (1), either before or after his or her appointment.

25 (7) ~~(6)~~—If **A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER**  
 26 **SUBSECTION (2) AND IF** no individual described in subsections ~~(2)~~  
 27 ~~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

1 nominated personal representative of the decedent to contact the  
2 person at his or her last known address, telephone number, or  
3 electronic mail address.

4 (11) ~~(10)~~ This section does not void or otherwise affect an  
5 anatomical gift made under part 101 of the public health code, 1978  
6 PA 368, MCL 333.10101 to 333.10123.

7 (12) ~~(11)~~ If **A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER**  
8 **SUBSECTION (2) AND IF** all of the following apply, subsections ~~(2)~~  
9 ~~to (8)~~ **(3) TO (9)** do not apply and the designated person has the  
10 rights and the powers under subsection (1):

11 (a) The decedent was a service member who designated a person  
12 to direct disposition of the service member's remains according to  
13 a statute of the United States or a regulation, policy, directive,  
14 or instruction of the department of defense.

15 (b) The designated person is the surviving spouse, an adult  
16 blood relative, or an adoptive relative of the decedent or, if the  
17 surviving spouse, an adult blood relative, or an adoptive relative  
18 of the decedent cannot be found, a person standing in loco  
19 parentis.

20 (c) The designated person is able and willing to exercise the  
21 rights and powers enumerated in subsection (1).

22 (13) ~~(12)~~ As used in this section:

23 (a) "Armed forces" means that term as defined in section 2 of  
24 the veteran right to employment services act, 1994 PA 39, MCL  
25 35.1092.

26 (b) "Michigan national guard" means that term as defined in  
27 section 105 of the Michigan military act, 1967 PA 150, MCL 32.505.

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

5 (d) "Service member" means a member of the armed forces, a  
6 reserve branch of the armed forces, or the Michigan national guard.

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

14 (a) An individual with the rights and powers under section  
15 3206(1).

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

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

20 (3) On receipt of a petition under this section, the court  
21 shall set a date for a hearing on the petition. The hearing date  
22 shall be as soon as possible, but not later than 7 business days  
23 after the date the petition is filed. Notice of the petition and  
24 the hearing shall be served not less than 2 days before the date of  
25 the hearing on every individual who has highest priority as  
26 determined under section ~~3206(2) and (3)~~, **3206(3) AND (4)**, unless  
27 the court orders that service on every such individual is not

1 required. Unless an individual cannot be located after a reasonable  
2 good-faith effort has been made to contact the individual, service  
3 shall be made on the individual personally or in a manner  
4 reasonably designed to give the individual notice. Notice of the  
5 hearing shall include notice of the individual's right to appear at  
6 the hearing. An individual served with notice of the hearing may  
7 waive his or her rights. If written waivers from all persons  
8 entitled to notice are filed, the court may immediately hear the  
9 petition. The court may waive or modify the notice and hearing  
10 requirements of this subsection if the decedent's body must be  
11 disposed of promptly to accommodate the religious beliefs of the  
12 decedent or his or her next of kin.

13 (4) If a funeral establishment is the petitioner under this  
14 section, the funeral establishment's actual costs and reasonable  
15 attorney fees in bringing the proceeding ~~shall be~~ **ARE** included in  
16 the reasonable funeral and burial expenses under section 3805(1)(b)  
17 or the court may assess ~~such~~ **THE** costs and fees against 1 or more  
18 parties or intervenors.

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

22 (a) The reasonableness and practicality of the funeral  
23 arrangements or the handling or disposition of the body proposed by  
24 the person bringing the action in comparison with the funeral  
25 arrangements or the handling or disposition of the body proposed by  
26 1 or more individuals with the rights and powers under section  
27 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.~~ **FILING A PETITION UNDER SECTION 3207.**

(2) ~~The~~ **A FUNERAL ESTABLISHMENT MAY RELY ON THE** designation of a **FUNERAL REPRESENTATIVE UNDER SECTION 3206(2), THE DESIGNATION OF** A person as described in section ~~3206(11)~~ **3206(12)**, or the order of priority determined under section ~~3206(2) and (3)~~ **may be relied upon by a funeral establishment. 3206(3) AND (4).** A funeral establishment is not a guarantor that a person exercising the rights and powers under section 3206(1) has the legal authority to ~~do so.~~ **EXERCISE THOSE RIGHTS AND POWERS.** A funeral establishment



1 does not have the responsibility to contact or independently  
2 investigate the existence of relatives of the deceased, but may  
3 rely on information provided by family members of the deceased.

4 (3) A funeral establishment, holder of a license to practice  
5 mortuary science issued by this state, cemetery, crematory, or an  
6 officer or employee of a funeral establishment, holder of a license  
7 to practice mortuary science issued by this state, cemetery, or  
8 crematory may rely on ~~the terms of~~ sections 3206 and 3207 and this  
9 section and the instructions of a person described in section  
10 3206(2) to ~~(8) (9) or (11), (12)~~, or of an individual determined in  
11 an action under section 3208 to be the party to exercise the rights  
12 and powers under section 3206(1), regarding funeral arrangements  
13 and the handling, disposition, or disinterment of a body and is not  
14 civilly liable to any person for the reliance if the reliance was  
15 in good faith.

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

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

22 (b) By the court on its own motion or in a formal proceeding  
23 by court order on the petition of an interested person if in either  
24 case, after notice and hearing, the court finds that the  
25 appointment is necessary to preserve the estate or to secure its  
26 proper administration, including its administration in  
27 circumstances in which a general personal representative cannot or

1 should not act. If it appears to the court that an emergency  
2 exists, the court may order the appointment without notice.

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

17 Enacting section 1. This amendatory act takes effect 90 days  
18 after the date it is enacted into law.