

PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

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SB 0551

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The Probate & Estate Planning Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Probate & Estate Planning Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Probate & Estate Planning Section is 3,592.

The position was adopted after an electronic discussion and vote. The number of members in the decision-making body is 23. The number who voted in favor to this position was 22. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Probate & Estate Planning Section

Contact person:

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Bill Number:

[SB 0551](#) (Schuitmaker) Probate; wills and estates; designation of a funeral representative to make disposition arrangements for decedent; provide for. Amends secs. 1104, 2801, 2803, 2807, 3206, 3207, 3209, 3614 & 3701 of [1998 PA 386](#) (MCL [700.1104](#) et seq.), adds secs. 3206a & 3206b & repeal sec. 3208 of 1998 PA 386 (MCL [700.3208](#)).

Date position was adopted:

November 17, 2015

Process used to take the ideological position:

Position adopted after an electronic discussion and vote

Number of members in the decision-making body:

23

Number who voted in favor and opposed to the position:

22 Voted for position

0 Voted against position

0 Abstained from vote

1 Did not vote (absent)

Position:

Support with Recommended Amendments

Explanation of the position, including any recommended amendments.

The Section supports SB 551, but recommends amendments to the bill as provided in the Section's comments.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2015-SB-0551>

**COMMENTS OF PROBATE COUNCIL TO
DRAFT 2 OF SUBSTITUTE SENATE BILL 551**

Probate Council to the State Bar of Michigan has reviewed the second draft of substitute Senate Bill 551 (the "Bill"), as well as the comments of the Michigan Cemetery Association ("MCA") dated November 2, 2015.

We recognize the special concerns that these issues pose to the funeral directors in the State of Michigan and all members of the MCA. We are in agreement with the concept of a funeral representative designation and with most of the suggestions in the November 2nd comments of the MCA. However, we have the following recommendations to revise the Bill and the comments of the MCA:

1. In the comments of the MCA and in its proposed addition of section 3210 of the Bill, the MCA suggests that one of the goals of the Bill should be to "Create an unequivocal ability to determine the disposition of one's own body". We believe that this goal, however noble, exceeds the parameters of this Bill. This Bill is intended to create a way for an individual to designate a representative. It is an agency Bill, and in order to make its intent clear and singular, the rights and writings of the individual to determine his or her own body's disposition do not belong in this Bill.
2. We believe that a funeral representative is a fiduciary and the term should remain under Section 1104(e). Like a personal representative, the funeral representative has a duty to fulfill after the death of the declarant.
3. We believe that the prohibition for certain spouses under Section 2801(3) should remain. The behaviors and/or proceedings contemplated by the Section indicate a significant change in the marital relationship and merit a firm and final elimination of that person as a decision maker.
4. Under Section 3206(2), we recommend the insertion of the phrase "of sound mind" in line 12 on page 10, after the phrase "18 years of age or older". We believe that it is important that the funeral representative be competent to carry out the duties which he or she is asked to perform.
5. Under Section 3206 (2) (B-D), we recommend the following language:

(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 pursuant to section 33 of the Michigan notary public act, 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. The funeral representative designation shall be 1 or both of the following:

(1) Signed in the presence of and signed by two witnesses as provided in Subsection (C), neither of whom is the funeral representative.

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

(C) When a funeral representative designation under this subsection is executed in the presence of and signed by 2 witnesses, neither witness under this section shall be the patient's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, or any of the persons specified in paragraph (D) of this subsection.

(D) The following individuals may not act as a funeral representative for the Declarant unless the individual is described under Subsection (3)(C) or is a relative of the Declarant:

) A health professional, partner, member, shareholder, owner, representative, or an employee of or volunteer at a health facility or Veterans' association, who provided medical treatment or nursing care to the Declarant.

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

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

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

A member of municipal board, commission, council, committee or other body charged with the oversight or operation of a cemetery or crematory.

You will note that we recommend the deletion of the old Section 3206(C), as it is redundant with the new subsection (B).

6. We recommend a change in the list of family members with priority if there is no designated funeral representative under subsection 3206(3)((D) as follows:

- (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 parents;
 - (iii) The decedent's grandparents;
 - (iv) The decedent's siblings;
 - (v) The decedent's nieces and nephews.

7. We recommend the deletion of Subsection 3206(3)(E). We cannot endorse the first come, first honored nature of the subsection. The priority of individuals should be paramount.

8. In Subsection 3206(4), we acknowledge the short period which 48 hours provides. We recommend a 96 hour limit instead. Additionally, we recommend the change to the last sentence of that subsection, lines 12 and 13 on draft page 13, to read as follows:

"For purposes of this subsection only, ' exercise their rights or powers under subsection (1)' means notifying the funeral establishment in possession of the decedent's body of an individual's decision to act as the funeral representative."

9. We recommend the following changes to Section 3206A on page 17 of the Bill : First, Subsection (2) be re-written in total to read, "A person designated as a funeral representative accepts the designation as funeral

representative by signing an acceptance of the funeral representative designation, or by acting as the funeral representative.” Second, we believe that Subsection (3) should remain in its current form, and this authority be exercisable only after the Declarant’s death.

10. In Section 3206B, subsections (A) and (B) on page 18 of the Bill, we recommend the change to 96 hours in line 5 (to be consistent through-out), and we recommend Subsection (B) be re-written as follows:

“ (B) The Declarant’s revocation of the funeral representative designation shall be in writing and signed in the manner specified under Section 3206(2). ”

11. Under Section 3207(5)(D), line 19, please change the word “under” to “pursuant to”.

12. As mentioned earlier, our only other issue is that we object to the inclusion of Section 3210 submitted by the MCA.

Thank you for the opportunity to submit these comment, which have been duly approved by a majority vote of the members of the Probate Council.

SENATE BILL No. 551

October 7, 2015, Introduced by Senators SCHUITMAKER, BRANDENBURG, JONES, HILDENBRAND and BIEDA and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 1104, 2801, 2803, 2807, 3206, 3207, 3209, 3614, and 3701 (MCL 700.1104, 700.2801, 700.2803, 700.2807, 700.3206, 700.3207, 700.3209, 700.3614, and 700.3701), section 1104 as amended by 2009 PA 46, section 2803 as amended by 2012 PA 173, section 2807 as amended by 2000 PA 54, sections 3206 and 3209 as amended by 2012 PA 63, section 3207 as amended by 2010 PA 325, and sections 3614 and 3701 as amended by 2006 PA 299, and by adding sections 3206a and 3206b; and to repeal acts and parts of acts.

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.

1 (b) "Estate" includes the property of the decedent, trust, or
2 other person whose affairs are subject to this act as the property
3 is originally constituted and as it exists throughout
4 administration. Estate also includes the rights described in
5 sections 3805, 3922, and 7606 to collect from others amounts
6 necessary to pay claims, allowances, and taxes.

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

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

11 (e) "Fiduciary" includes, but is not limited to, a personal
12 representative, guardian, conservator, trustee, plenary guardian,
13 partial guardian, and successor fiduciary.

14 (f) "Financial institution" means an organization authorized
15 to do business under state or federal laws relating to a financial
16 institution and includes, but is not limited to, a bank, trust
17 company, savings bank, building and loan association, savings and
18 loan company or association, credit union, insurance company, and
19 entity that offers mutual fund, securities brokerage, money market,
20 or retail investment accounts.

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) "FUNERAL REPRESENTATIVE" MEANS AN INDIVIDUAL DESIGNATED TO
2 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 AS PROVIDED IN SECTION 3206.

7 (K) "FUNERAL REPRESENTATIVE DESIGNATION" MEANS A WRITTEN
8 DOCUMENT EXECUTED AND WITH THE EFFECT AS DESCRIBED IN SECTIONS 3206
9 TO 3206B.

10 (L) ~~(j)~~—"General personal representative" means a personal
11 representative other than a special personal representative.

12 (M) ~~(k)~~—"Governing instrument" means a deed; will; trust;
13 **FUNERAL REPRESENTATIVE DESIGNATION**; insurance or annuity policy;
14 account with POD designation; security registered in beneficiary
15 form (TOD); pension, profit-sharing, retirement, or similar benefit
16 plan; instrument creating or exercising a power of appointment or a
17 power of attorney; or dispositive, appointive, or nominative
18 instrument of any similar type.

19 (N) ~~(l)~~—"Guardian" means a person who has qualified as a
20 guardian of a minor or a legally incapacitated individual under a
21 parental or spousal nomination or a court appointment and includes
22 a limited guardian as described in sections 5205, 5206, and 5306.
23 Guardian does not include a guardian ad litem.

24 (O) ~~(m)~~—"Hazardous substance" means a substance defined as
25 hazardous or toxic or otherwise regulated by an environmental law.

26 (P) ~~(n)~~—"Heir" means, except as controlled by section 2720, a
27 person, including the surviving spouse or the state, that is

1 entitled under the statutes of intestate succession to a decedent's
2 property.

3 (Q) ~~(e)~~—"Homestead allowance" means the allowance prescribed
4 in section 2402.

5 Sec. 2801. (1) An individual who is divorced from the decedent
6 or whose marriage to the decedent has been annulled is not a
7 surviving spouse unless, by virtue of a subsequent marriage, he or
8 she is married to the decedent at the time of death. A decree of
9 separation that does not terminate the status of husband and wife
10 is not a divorce for purposes of this section.

11 (2) For purposes of parts 1 to 4 of this article and of
12 section 3203, a surviving spouse does not include any of the
13 following:

14 (a) An individual who obtains or consents to a final decree or
15 judgment of divorce from the decedent or an annulment of their
16 marriage, which decree or judgment is not recognized as valid in
17 this state, unless they subsequently participate in a marriage
18 ceremony purporting to marry each to the other or live together as
19 husband and wife.

20 (b) An individual who, following an invalid decree or judgment
21 of divorce or annulment obtained by the decedent, participates in a
22 marriage ceremony with a third individual.

23 (c) An individual who was a party to a valid proceeding
24 concluded by an order purporting to terminate all marital property
25 rights.

26 (d) An individual who, at the time of the decedent's death, is
27 living in a bigamous relationship with another individual.

1 (e) An individual who did any of the following for 1 year or
2 more before the death of the deceased person:

3 (i) Was willfully absent from the decedent spouse.

4 (ii) Deserted the decedent spouse.

5 (iii) Willfully neglected or refused to provide support for
6 the decedent spouse if required to do so by law.

7 **(3) FOR PURPOSES OF SECTION 3206, A SURVIVING SPOUSE DOES NOT**
8 **INCLUDE EITHER OF THE FOLLOWING:**

9 **(A) AN INDIVIDUAL DESCRIBED IN SUBSECTION (2).**

10 **(B) AN INDIVIDUAL WHO IS A PARTY TO A DIVORCE OR ANNULMENT**
11 **PROCEEDING WITH THE DECEDENT AT THE TIME OF THE DECEDENT'S DEATH.**

12 Sec. 2803. (1) An individual who feloniously and intentionally
13 kills or who is convicted of committing abuse, neglect, or
14 exploitation with respect to the decedent forfeits all benefits
15 under this article with respect to the decedent's estate, including
16 an intestate share, an elective share, an omitted spouse's or
17 child's share, a homestead allowance, a family allowance, and
18 exempt property. If the decedent died intestate, the decedent's
19 intestate estate passes as if the killer or felon disclaimed his or
20 her intestate share.

21 (2) The felonious and intentional killing or the conviction of
22 the felon for the abuse, neglect, or exploitation of the decedent
23 does all of the following:

24 (a) Revokes all of the following that are revocable:

25 (i) Disposition or appointment of property made by the
26 decedent to the killer or felon in a governing instrument.

27 (ii) Provision in a governing instrument conferring a general

1 or nongeneral power of appointment on the killer or felon.

2 (iii) Nomination of the killer or felon in a governing
3 instrument, nominating or appointing the killer or felon to serve
4 in a fiduciary or representative capacity, including a personal
5 representative, executor, **FUNERAL REPRESENTATIVE**, trustee, or
6 agent.

7 (b) Severs the interests of the decedent and killer or felon
8 in property held by them at the time of the killing, abuse,
9 neglect, or exploitation as joint tenants with the right of
10 survivorship, transforming the interests of the decedent and killer
11 or felon into tenancies in common.

12 (C) **BARS THE KILLER OR FELON FROM EXERCISING A POWER UNDER**
13 **SECTION 3206(1).**

14 (3) A severance under subsection (2)(b) does not affect a
15 third party interest in property acquired for value and in good
16 faith reliance on an apparent title by survivorship in the killer
17 or felon unless a writing declaring the severance has been noted,
18 registered, filed, or recorded in records appropriate to the kind
19 and location of the property that are relied upon, ~~upon,~~ **ON**, in the
20 ordinary course of transactions involving that type of property, as
21 evidence of ownership.

22 (4) A provision of a governing instrument is given effect as
23 if the killer or felon disclaimed all provisions revoked by this
24 section or, ~~in the case of~~ **FOR** a revoked nomination in a fiduciary
25 or representative capacity, as if the killer or felon predeceased
26 the decedent.

27 (5) A killer's or felon's wrongful acquisition of property or

1 interest not covered by this section ~~shall~~**MUST** be treated in
2 accordance with the principle that a killer or felon cannot profit
3 from his or her wrong.

4 (6) After all right to appeal has been exhausted, a judgment
5 of conviction establishing criminal accountability for the
6 felonious and intentional killing or the abuse, neglect, or
7 exploitation of the decedent conclusively establishes the convicted
8 individual as the decedent's killer or as a felon, as applicable,
9 for purposes of this section. With respect to a claim of felonious
10 and intentional killing, in the absence of a conviction, the court,
11 ~~upon~~**ON** the petition of an interested person, shall determine
12 whether, under the preponderance of evidence standard, the
13 individual would be found criminally accountable for the felonious
14 and intentional killing of the decedent. If the court determines
15 that, under that standard, the individual would be found criminally
16 accountable for the felonious and intentional killing of the
17 decedent, the determination conclusively establishes ~~that~~**THE**
18 individual as the decedent's killer for purposes of this section.

19 (7) This section does not apply if the forfeiture, revocation,
20 or severance would occur because of abuse, neglect, or exploitation
21 and the decedent executed a governing instrument after the date of
22 the conviction expressing a specific intent to allow the felon to
23 inherit or otherwise receive the estate or property of the
24 decedent.

25 Sec. 2807. (1) Except as provided by the express terms of a
26 governing instrument, court order, or contract relating to the
27 division of the marital estate made between the divorced

1 individuals before or after the marriage, divorce, or annulment,
2 the divorce or annulment of a marriage does all of the following:

3 (a) Revokes all of the following that are revocable:

4 (i) A disposition or appointment of property made by a
5 divorced individual to his or her former spouse in a governing
6 instrument and a disposition or appointment created by law or in a
7 governing instrument to a relative of the divorced individual's
8 former spouse.

9 (ii) A provision in a governing instrument conferring a
10 general or nongeneral power of appointment on the divorced
11 individual's former spouse or on a relative of the divorced
12 individual's former spouse.

13 (iii) A nomination in a governing instrument, nominating a
14 divorced individual's former spouse or a relative of the divorced
15 individual's former spouse to serve in a fiduciary or
16 representative capacity, including, but not limited to, a personal
17 representative, executor, **FUNERAL REPRESENTATIVE**, trustee,
18 conservator, agent, or guardian.

19 (b) Severs the interests of the former spouses in property
20 held by them at the time of the divorce or annulment as joint
21 tenants with the right of survivorship, transforming the interests
22 of the former spouses into tenancies in common.

23 **(C) BARS THE FORMER SPOUSE FROM EXERCISING A POWER UNDER**
24 **SECTION 3206(1).**

25 (2) A severance under subsection (1)(b) does not affect a
26 third-party interest in property acquired for value and in good
27 faith reliance on an apparent title by survivorship in the survivor

1 of the former spouses unless a writing declaring the severance has
 2 been noted, registered, filed, or recorded in records appropriate
 3 to the kind and location of the property that are relied upon, ~~ON,~~
 4 in the ordinary course of transactions involving that type of
 5 property, as evidence of ownership.

6 (3) Each provision of a governing instrument is given effect
 7 as if the former spouse and relatives of the former spouse
 8 disclaimed all provisions revoked by this section or, ~~in the case~~
 9 ~~of~~ **FOR** a revoked nomination in a fiduciary or representative
 10 capacity, as if the former spouse and relatives of the former
 11 spouse died immediately before the divorce or annulment.

12 (4) Each provision revoked solely by this section is revived
 13 by the divorced individual's remarriage to the former spouse or by
 14 a nullification of the divorce or annulment.

15 (5) No change of circumstances other than as described in this
 16 section and in sections 2803 to 2805, 2808, and 2809 causes a
 17 revocation.

18 Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216,
 19 part 28 and article 10 of the public health code, 1978 PA 368, MCL
 20 333.2801 to 333.2899 and 333.10101 to 333.11101, and subsection
 21 ~~(11)~~, **(12), A FUNERAL REPRESENTATIVE DESIGNATED UNDER SUBSECTION**
 22 **(2)**, a person with priority under subsections ~~(2) to (4)~~ **(3) TO (5)**
 23 or **A PERSON** acting under subsection ~~(5)~~, **(6), (7), or (8), OR (9)**
 24 is presumed to have the right and power to make decisions about
 25 funeral arrangements and the handling, disposition, or disinterment
 26 of a decedent's body, including, but not limited to, decisions
 27 about cremation, and the right to **RETRIEVE FROM THE FUNERAL**

1 ESTABLISHMENT AND possess cremated remains of the decedent
2 IMMEDIATELY AFTER CREMATION. The handling, disposition, or
3 disinterment of a body shall—**MUST** be under the supervision of a
4 person licensed to practice mortuary science in this state.

5 (2) SUBJECT TO THIS SUBSECTION AND THE PRIORITY IN SUBSECTION
6 (3), AN INDIVIDUAL 18 YEARS OF AGE OR OLDER WHO IS OF SOUND MIND AT
7 THE TIME A FUNERAL REPRESENTATIVE DESIGNATION IS MADE MAY DESIGNATE
8 IN WRITING ANOTHER INDIVIDUAL WHO IS 18 YEARS OF AGE OR OLDER TO
9 HAVE THE RIGHTS AND POWERS UNDER SUBSECTION (1). ALL OF THE
10 FOLLOWING APPLY TO A FUNERAL REPRESENTATIVE DESIGNATION UNDER THIS
11 SUBSECTION:

12 (A) FOR PURPOSES OF THIS SECTION AND SECTIONS 3206A AND 3206B,
13 AN INDIVIDUAL WHO IS NAMED IN A FUNERAL REPRESENTATIVE DESIGNATION
14 TO HAVE THE RIGHTS AND POWERS DESCRIBED IN SUBSECTION (1) IS KNOWN
15 AS A FUNERAL REPRESENTATIVE AND AN INDIVIDUAL WHO MAKES A FUNERAL
16 REPRESENTATIVE DESIGNATION IS KNOWN AS A DECLARANT.

17 (B) THE FOLLOWING INDIVIDUALS MAY NOT ACT AS A FUNERAL
18 REPRESENTATIVE FOR THE DECLARANT UNLESS THE INDIVIDUAL IS DESCRIBED
19 UNDER SUBSECTION (3) (C) OR IS A RELATIVE OF THE DECLARANT:

20 (i) A HEALTH PROFESSIONAL, OR AN EMPLOYEE OF OR VOLUNTEER AT A
21 HEALTH FACILITY OR VETERANS FACILITY, WHO PROVIDED MEDICAL
22 TREATMENT OR NURSING CARE TO THE DECLARANT DURING THE FINAL ILLNESS
23 OR IMMEDIATELY BEFORE THE DECLARANT'S DEATH.

24 (ii) AN OFFICER OR EMPLOYEE OF A FUNERAL ESTABLISHMENT THAT
25 WILL PROVIDE SERVICES.

26 (iii) AN OFFICER OR EMPLOYEE OF A CEMETERY AT WHICH THE
27 DECLARANT'S BODY WILL BE INTERRED, ENTOMBED, OR INURNED.

1 (iv) AN OFFICER OR EMPLOYEE OF A CREMATORY THAT WILL PROVIDE
2 CREMATION SERVICES.

3 (C) A FUNERAL REPRESENTATIVE DESIGNATION UNDER THIS SUBSECTION
4 MUST BE EXECUTED IN THE PRESENCE OF AND SIGNED BY 2 WITNESSES. IF A
5 FUNERAL REPRESENTATIVE DESIGNATION IS CONTAINED IN AN INDIVIDUAL'S
6 WILL, THE WILL IS NOT REQUIRED TO BE ADMITTED TO PROBATE FOR THE
7 FUNERAL REPRESENTATIVE DESIGNATION TO BE VALID.

8 (3) ~~(2)~~—The FOLLOWING HAVE THE RIGHTS AND POWERS UNDER
9 SUBSECTION (1) IN THE FOLLOWING ORDER OF PRIORITY:

10 (A) IF THE DECEDENT WAS A SERVICE MEMBER, A PERSON DESIGNATED
11 TO DIRECT THE DISPOSITION OF THE SERVICE MEMBER'S REMAINS ACCORDING
12 TO A STATUTE OF THE UNITED STATES OR REGULATION, POLICY, DIRECTIVE,
13 OR INSTRUCTION OF THE DEPARTMENT OF DEFENSE.

14 (B) A FUNERAL REPRESENTATIVE DESIGNATED UNDER SUBSECTION (2).

15 (C) THE surviving spouse. ~~or, if there is no surviving spouse,~~
16 the

17 (D) SUBJECT TO SUBDIVISION (E), THE individual or individuals
18 18 years of age or older, ~~in the highest order of priority under~~
19 ~~section 2103, and related to the decedent in the closest degree of~~
20 ~~consanguinity, have the rights and powers under subsection (1).~~ IN
21 THE FOLLOWING ORDER OF PRIORITY:

22 (i) THE DECEDENT'S CHILDREN.

23 (ii) THE DECEDENT'S GRANDCHILDREN.

24 (iii) THE DECEDENT'S PARENTS.

25 (iv) THE DECEDENT'S SIBLINGS.

26 (E) IF AN INDIVIDUAL DESCRIBED IN SUBDIVISION (D) HAS
27 EXERCISED THE RIGHT TO DISPOSE OF THE DECEDENT'S BODY UNDER

1 SUBSECTION (1), ANOTHER INDIVIDUAL DESCRIBED IN SUBDIVISION (D)
2 WITH A HIGHER PRIORITY THAN THE INDIVIDUAL WHO EXERCISED THAT RIGHT
3 DOES NOT HAVE THE RIGHT TO MAKE A DECISION ABOUT THE DISINTERMENT
4 OF THE DECEDENT'S BODY OR POSSESSION OF THE DECEDENT'S CREMATED
5 REMAINS.

6 (4) ~~(3) If the surviving spouse or~~ IF the individual or
7 individuals with the highest priority as determined under
8 subsection ~~(2) do not exercise their rights or powers under~~
9 ~~subsection (1) or (3)~~ cannot be located after a good-faith effort
10 to contact AND INFORM them OF THE DECEDENT'S DEATH, AFFIRMATIVELY
11 DECLINE TO EXERCISE THEIR RIGHTS OR POWERS UNDER SUBSECTION (1), OR
12 FAIL TO EXERCISE THEIR RIGHTS OR POWERS UNDER SUBSECTION (1) WITHIN
13 48 HOURS AFTER RECEIVING NOTIFICATION OF THE DECEDENT'S DEATH, the
14 rights and powers under subsection (1) may be exercised by the
15 individual or individuals in the same order of priority under
16 section 2103 who are related to the decedent in the next closest
17 degree of consanguinity. If the individual or each of the
18 individuals in an order of priority as determined under this
19 subsection similarly does not exercise his or her rights or powers
20 or cannot be located, the rights or powers under subsection (1)
21 pass to the next order of priority, with the order of priority
22 being determined by first taking the individuals in the highest
23 order of priority under section 2103 and then taking the
24 individuals related to the decedent in the closest or, as
25 applicable, next closest degree of consanguinity in that order of
26 priority. FOR PURPOSES OF THIS SUBSECTION ONLY, "EXERCISE THEIR
27 RIGHTS OR POWERS UNDER SUBSECTION (1)" MEANS NOTIFYING THE FUNERAL

1 **ESTABLISHMENT IN POSSESSION OF THE DECEDENT'S BODY OF AN**
2 **INDIVIDUAL'S DECISION OR INSTRUCTIONS AS TO THE FINAL DISPOSITION**
3 **OF THE DECEDENT'S BODY.**

4 (5) ~~(4)~~—If 2 or more individuals share the rights and powers
5 described in subsection (1) as determined under subsection ~~(2)~~~~or~~
6 (3) **OR (4)**, the rights and powers shall be exercised as decided by
7 a majority of the individuals **WHO CAN BE LOCATED AFTER REASONABLE**
8 **EFFORTS**. If a majority cannot agree, any of the individuals may
9 file a petition under section 3207.

10 (6) ~~(5)~~—If no individual described in subsections ~~(2)~~~~and~~(3)
11 **AND (4)** exists, exercises the rights or powers under subsection
12 (1), or can be located after a sufficient attempt as described in
13 subsection ~~(9)~~~~,~~(10), and if subsection ~~(6)~~~~(7)~~ does not apply,
14 then the personal representative or nominated personal
15 representative may exercise the rights and powers under subsection
16 (1), either before or after his or her appointment.

17 (7) ~~(6)~~—If no individual described in subsections ~~(2)~~~~and~~(3)
18 **AND (4)** exists, exercises the rights or powers under subsection
19 (1), or can be located after a sufficient attempt as described in
20 subsection ~~(9)~~~~,~~(10), and if the decedent was under a guardianship
21 at the time of death, the guardian may exercise the rights and
22 powers under subsection (1) and may make a claim for the
23 reimbursement of burial expenses as provided in section 5216 or
24 5315, as applicable.

25 (8) ~~(7)~~—If no individual described in subsections ~~(2)~~~~and~~(3)
26 **AND (4)** exists, exercises the rights or powers under subsection
27 (1), or can be located after a sufficient attempt as described in

1 subsection ~~(9)~~, ~~(10)~~, if the decedent died intestate, and if
2 subsection ~~(6)~~ ~~(7)~~ does not apply, **A SPECIAL FIDUCIARY APPOINTED**
3 **UNDER SECTION 1309 OR** a special personal representative appointed
4 under section 3614(c) may exercise the rights and powers under
5 subsection (1).

6 (9) ~~(8)~~—If there is no person under subsections ~~(2)~~ ~~(3)~~ to ~~(7)~~
7 (8) to exercise the rights and powers under subsection (1), 1 of
8 the following, as applicable, shall exercise the rights and powers
9 under subsection (1):

10 (a) Unless subdivision (b) applies, the county public
11 administrator ~~, if willing,~~ or the medical examiner for the county
12 where the decedent was domiciled at the time of his or her death.
13 **IF THE COUNTY PUBLIC ADMINISTRATOR DECLINES OR FAILS TO ACT, THE**
14 **MEDICAL EXAMINER SHALL EXERCISE THE RIGHTS AND POWERS UNDER**
15 **SUBSECTION (1).**

16 (b) If the decedent was incarcerated in a state correctional
17 facility at the time of his or her death, the director of the
18 department of corrections or the designee of the director.

19 (10) ~~(9)~~—An attempt to locate a person described in subsection
20 ~~(2)~~ ~~or~~ (3) **OR (4)** is sufficient if a reasonable attempt is made in
21 good faith by a family member, personal representative, or
22 nominated personal representative of the decedent to contact the
23 person at his or her last known address, telephone number, or
24 electronic mail address.

25 (11) ~~(10)~~—This section does not void or otherwise affect an
26 anatomical gift made under part 101 of the public health code, 1978
27 PA 368, MCL 333.10101 to 333.10123.

1 ~~—— (11) If all of the following apply, subsections (2) to (8) do~~
2 ~~not apply and the designated person has the rights and the powers~~
3 ~~under subsection (1):~~

4 ~~—— (a) The decedent was a service member who designated a person~~
5 ~~to direct disposition of the service member's remains according to~~
6 ~~a statute of the United States or a regulation, policy, directive,~~
7 ~~or instruction of the department of defense.~~

8 ~~—— (b) The designated person is the surviving spouse, an adult~~
9 ~~blood relative, or an adoptive relative of the decedent or, if the~~
10 ~~surviving spouse, an adult blood relative, or an adoptive relative~~
11 ~~of the decedent cannot be found, a person standing in loco~~
12 ~~parentis.~~

13 ~~—— (c) The designated person is able and willing to exercise the~~
14 ~~rights and powers enumerated in subsection (1).~~

15 (12) AN INDIVIDUAL WHO HAS BEEN CRIMINALLY CHARGED WITH THE
16 INTENTIONAL KILLING OF THE DECEDENT SHALL NOT EXERCISE A RIGHT
17 UNDER SUBSECTION (1) WHILE THE CHARGES ARE PENDING.

18 (13) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A PERSON
19 WHO HAS THE RIGHTS AND POWERS UNDER SUBSECTION (1) AND WHO
20 EXERCISES THE RIGHT OVER THE DISPOSITION OF THE DECEDENT'S BODY
21 MUST ENSURE PAYMENT FOR THE COSTS OF THE DISPOSITION THROUGH A
22 TRUST, INSURANCE, A COMMITMENT BY ANOTHER PERSON, A PREPAID
23 CONTRACT UNDER THE PREPAID FUNERAL AND CEMETERY SALES ACT, 1986 PA
24 255, MCL 328.211 TO 328.235, OR OTHER EFFECTIVE AND BINDING MEANS.
25 TO THE EXTENT PAYMENT IS NOT ENSURED UNDER THIS SUBSECTION, THE
26 PERSON DESCRIBED IN THIS SUBSECTION IS LIABLE FOR THE COSTS OF THE
27 DISPOSITION. THIS SUBSECTION DOES NOT APPLY TO A PERSON WHO

1 EXERCISES THE RIGHTS AND POWERS UNDER SUBSECTION (1) AS PROVIDED IN
2 SUBSECTION (8) OR (9).

3 (14) ~~(12)~~—As used in this section:

4 (a) "Armed forces" means that term as defined in section 2 of
5 the veteran right to employment services act, 1994 PA 39, MCL
6 35.1092.

7 (B) "HEALTH FACILITY" MEANS THAT TERM AS DEFINED IN SECTION
8 5653 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5653.

9 (C) "HEALTH PROFESSIONAL" MEANS THAT TERM AS DEFINED IN
10 SECTION 5883 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5883.

11 (D) "MEDICAL TREATMENT" MEANS THAT TERM AS DEFINED IN SECTION
12 5653 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5653.

13 (E) ~~(b)~~—"Michigan national guard"—**NATIONAL GUARD**" means that
14 term as defined in section 105 of the Michigan military act, 1967
15 PA 150, MCL 32.505.

16 (F) ~~(e)~~—"Nominated personal representative" means a person
17 nominated to act as personal representative in a will that the
18 nominated person reasonably believes to be the valid will of the
19 decedent.

20 (G) ~~(d)~~—"Service member" means a member of the armed forces, a
21 reserve branch of the armed forces, or the Michigan national
22 guard.—**NATIONAL GUARD**.

23 **SEC. 3206A. (1) A DECLARANT MAY DESIGNATE IN THE FUNERAL**
24 **REPRESENTATIVE DESIGNATION A SUCCESSOR INDIVIDUAL AS A FUNERAL**
25 **REPRESENTATIVE WHO MAY EXERCISE THE RIGHTS AND POWERS DESCRIBED IN**
26 **SECTION 3206(1) IF THE FIRST INDIVIDUAL NAMED AS FUNERAL**
27 **REPRESENTATIVE DOES NOT ACCEPT, IS INCAPACITATED, RESIGNS, OR IS**

1 REMOVED.

2 (2) BEFORE ACTING AS A FUNERAL REPRESENTATIVE, THE PROPOSED
3 FUNERAL REPRESENTATIVE MUST SIGN AN ACCEPTANCE OF THE FUNERAL
4 REPRESENTATIVE DESIGNATION.

5 (3) THE AUTHORITY UNDER A FUNERAL REPRESENTATIVE DESIGNATION
6 IS EXERCISABLE BY A FUNERAL REPRESENTATIVE ONLY AFTER THE DEATH OF
7 THE DECLARANT.

8 (4) EXCEPT AS PROVIDED IN THE FUNERAL REPRESENTATIVE
9 DESIGNATION, A FUNERAL REPRESENTATIVE SHALL NOT DELEGATE HIS OR HER
10 POWERS TO ANOTHER INDIVIDUAL.

11 (5) ON REQUEST OF THE FUNERAL ESTABLISHMENT, THE FUNERAL
12 REPRESENTATIVE SHALL PROVIDE A COPY OF THE FUNERAL REPRESENTATIVE
13 DESIGNATION TO THE FUNERAL ESTABLISHMENT.

14 SEC. 3206B. A FUNERAL REPRESENTATIVE DESIGNATION IS REVOKED BY
15 1 OR MORE OF THE FOLLOWING:

16 (A) UNLESS A SUCCESSOR FUNERAL REPRESENTATIVE HAS BEEN
17 DESIGNATED, ANY OF THE FOLLOWING:

18 (i) THE FUNERAL REPRESENTATIVE'S RESIGNATION.

19 (ii) THE FUNERAL REPRESENTATIVE CANNOT BE LOCATED AFTER
20 REASONABLE EFFORTS BY THE DECEDENT'S FAMILY OR FUNERAL
21 ESTABLISHMENT.

22 (iii) THE FUNERAL REPRESENTATIVE REFUSES TO ACT WITHIN 48
23 HOURS AFTER RECEIVING NOTICE OF THE DECEDENT'S DEATH.

24 (B) THE DECLARANT'S REVOCATION OF THE FUNERAL REPRESENTATIVE
25 DESIGNATION. A DECLARANT MAY REVOKE A FUNERAL REPRESENTATIVE
26 DESIGNATION AT ANY TIME AND IN ANY MANNER BY WHICH HE OR SHE IS
27 ABLE TO COMMUNICATE AN INTENT TO REVOKE THE FUNERAL REPRESENTATIVE

1 DESIGNATION.

2 (C) A SUBSEQUENT FUNERAL REPRESENTATIVE DESIGNATION THAT
3 REVOKES THE PRIOR FUNERAL REPRESENTATIVE DESIGNATION EITHER
4 EXPRESSLY OR BY INCONSISTENCY.

5 Sec. 3207. (1) ~~If there is a disagreement as described in~~
6 ~~section 3206(4) or if 1 or more of the individuals described in~~
7 ~~section 3206(2) or (3) cannot be located, 1 ONE or more of the~~
8 ~~following may petition the court to determine who has the authority~~
9 ~~to exercise the rights and powers under section 3206(1):~~ **RESOLVE A**
10 **DISAGREEMENT DESCRIBED IN SECTION 3206(5) OR REBUT THE PRESUMPTION**
11 **UNDER SECTION 3206(1):**

12 (a) An individual with the rights and powers under section
13 3206(1).

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

16 (C) AN INDIVIDUAL OTHER THAN A PERSON WITH PRIORITY UNDER
17 SECTION 3206(3) TO (5) OR ACTING UNDER SECTION 3206(6), (7), (8),
18 OR (9).

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

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

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

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

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

23 (a) The reasonableness and practicality of the funeral
24 arrangements or the handling or disposition of the body proposed by
25 the person bringing the action in comparison with the funeral
26 arrangements or the handling or disposition of the body proposed by
27 1 or more individuals with the rights and powers under section

1 3206(1).

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

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

8 (D) WHETHER THE DECEDENT EXECUTED A FUNERAL REPRESENTATIVE
9 DESIGNATION UNDER SECTION 3206(2) OR A DESIGNATION DESCRIBED IN
10 SECTION 3206(3)(A).

11 (E) IF THE DECEDENT WAS MARRIED AT THE TIME OF HIS OR HER
12 DEATH, WHETHER THE DECEDENT'S SPOUSE WAS PHYSICALLY AND EMOTIONALLY
13 SEPARATED FROM THE DECEDENT AT THE TIME OF HIS OR HER DEATH AND HAD
14 BEEN SEPARATED FOR A PERIOD OF TIME THAT CLEARLY DEMONSTRATES AN
15 ABSENCE OF DUE AFFECTION, TRUST, AND REGARD BETWEEN THE SPOUSE AND
16 THE DECEDENT.

17 (6) BEFORE THE COURT MAKES A DECISION UNDER SUBSECTION (5),
18 AND IF REFRIGERATION IS NOT REASONABLY AVAILABLE, THE FUNERAL
19 ESTABLISHMENT THAT HAS CUSTODY OF THE DECEDENT'S BODY MAY EMBALM
20 THE DECEDENT'S BODY.

21 Sec. 3209. (1) A funeral establishment is not required to file
22 a petition under section 3207 and is not civilly liable for not
23 ~~doing so.~~ FILING A PETITION UNDER SECTION 3207.

24 (2) ~~The~~ A FUNERAL ESTABLISHMENT MAY RELY ON THE designation of
25 a FUNERAL REPRESENTATIVE UNDER SECTION 3206(2), THE DESIGNATION OF
26 A person as described in section ~~3206(11) or~~ 3206(3)(A), the order
27 of priority determined under section ~~3206(2) and (3)~~ may be relied

1 ~~upon by a funeral establishment. 3206(3) AND (4), OR A COURT ORDER~~
2 **UNDER SECTION 3207 THAT DETERMINES WHO MAY EXERCISE THE RIGHTS AND**
3 **POWERS UNDER SECTION 3206(1).** A funeral establishment is not a
4 guarantor that a person exercising the rights and powers under
5 section 3206(1) has the legal authority to ~~do so.~~ **EXERCISE THOSE**
6 **RIGHTS AND POWERS.** A funeral establishment does not have the
7 responsibility to contact or independently investigate the
8 existence of relatives of the deceased, but may rely on information
9 provided by family members of the deceased **OR BY A PERSON OTHER**
10 **THAN A FAMILY MEMBER THAT THE FUNERAL ESTABLISHMENT REASONABLY**
11 **BELIEVES KNOWS THE EXISTENCE OR LOCATION OF THE RELATIVES OF THE**
12 **DECEASED OR THE FUNERAL REPRESENTATIVE. AS USED IN THIS SUBSECTION,**
13 **"INFORMATION" INCLUDES, BUT IS NOT LIMITED TO, AN AFFIRMATION THAT**
14 **REASONABLE EFFORTS TO CONTACT THE INDIVIDUAL OR INDIVIDUALS WITH**
15 **THE RIGHTS AND POWERS UNDER SECTION 3601(1) AND TO INFORM THE**
16 **INDIVIDUAL OR INDIVIDUALS OF THE DEATH HAVE BEEN MADE WITHOUT**
17 **SUCCESS.**

18 (3) A funeral establishment, holder of a license to practice
19 mortuary science issued by this state, cemetery, **OR** crematory, or
20 an officer or employee of a funeral establishment, holder of a
21 license to practice mortuary science issued by this state,
22 cemetery, or crematory may rely on ~~the terms of sections 3206 and~~
23 ~~3207 and this section and the instructions of a person described in~~
24 ~~section 3206(2) to (8) or (11), or of an individual determined in~~
25 ~~an action under section 3208 to be the party to exercise the rights~~
26 ~~and powers under section 3206(1),~~ **(9) OR A PERSON THAT THE COURT**
27 **DETERMINES UNDER SECTION 3207 HAS RIGHTS AND POWERS UNDER SECTION**

1 3206(1) regarding funeral arrangements and the handling,
2 disposition, or disinterment of a body and is not civilly liable to
3 any person for the reliance if the reliance was in good faith.

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

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

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

18 (c) By the court on its own motion or on petition by an
19 interested person to supervise the disposition of the body of a
20 decedent if section ~~3206(7)~~ 3206(8) applies. The duties of a
21 special personal representative appointed under this subdivision
22 ~~shall~~ **MUST** be specified in the order of appointment and may include
23 making arrangements with a funeral home, securing a burial plot if
24 needed, obtaining veteran's or pauper's funding ~~where~~ **IF**
25 appropriate, and determining the disposition of the body by burial
26 or cremation. The court may waive the bond requirement under
27 section 3603(1)(a). The court may appoint the county public

1 administrator if the county public administrator is willing to
2 serve. If the court determines that it will not be necessary to
3 open an estate, the court may appoint a special fiduciary under
4 section 1309 instead of a special personal representative to
5 perform duties under this section.

6 Sec. 3701. A personal representative's duties and powers
7 commence ~~upon~~**ON** appointment. A personal representative's powers
8 relate back in time to give acts by the person appointed that are
9 beneficial to the estate occurring before appointment the same
10 effect as those occurring after appointment. Subject to sections
11 3206 to ~~3208,~~**3207**, before or after appointment, a person named as
12 personal representative in a will may carry out the decedent's
13 written instructions relating to the decedent's body, funeral, and
14 burial arrangements. A personal representative may ratify and
15 accept an act on behalf of the estate done by another if the act
16 would have been proper for a personal representative.

17 Enacting section 1. Section 3208 of the estates and protected
18 individuals code, 1998 PA 386, MCL 700.3208, is repealed.