

**MINUTES FOR THE  
COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION**

April 18, 2009  
10:00 a.m.

University Club  
Lansing, Michigan

- I. Call to Order  
The meeting was called to order by Harold G. Schuitmaker, Acting Chair.
- II. Excused Absences - Josh Ard, George Gregory, Nancy Little, Amy Morrissey, Rebecca Schnelz
- III. Introduction of Guests
- IV. Minutes of the Council Meeting of March 14, 2009  
A motion was made by Robin D. Ferriby to approve the minutes with support from Marilyn A. Lankfer, passed.
- V. Treasurer's Report B Mark K. Harder  
Mark K. Harder gave the Treasurer's Report (**See Attachment 1**)
- VI. Chairperson's Report B Nancy L. Little – Harold Schuitmaker gave the Chairperson's Report. Mr. Schuitmaker reported on efforts by the Attorney General's office to educate people about trust kits. The Attorney General's office is working with the Probate Council's Unauthorized Practice of Law Committee on this issue.

Also a part of Mr. Schuitmaker's Report was an inquiry from the State Bar as to whether the Section will be looking for a dues increase. Mr. Harder, the Treasurer, indicated that he is doing an analysis and will report at the June meeting on this issue.

Also a part of the Chairperson's Report is that Mr. Schuitmaker notified the Council that the Institute of Continuing Education had requested that the Section fund scholarships for attendees at the Solo and Small Firm Institute. There was no motion to support this request and, therefore, no funds were authorized.

- VII. Report of Committee on Special Projects B Richard J. Siriani  
Rick Siriani, Chairperson of the Committee on Special Projects then gave his report. Mr. Siriani reported that the Committee on Special Projects was recommending that Council approve amendments to the Uniform Principle and Income Act. A motion by Mr. Siriani supported by Mark Harder passed with all eighteen Council persons present supporting the motion to support anticipated legislation which would amend the Uniform Principle and Income Act in Michigan.

Mr. Siriani reported that the Committee on Special Projects was recommending that the Council endorse one or all of the House Bills that had been introduced which would allow for an individual to nominate a representative who could make funeral decisions for them. These bills would modify MCL 700.3206. **(See Attachment #2)** The motion was made to support two of the bills and not the third. The motion was supported by Shaheen I. Imami. That motion was then amended by motion of Mark Harder for the Council to support all three pieces of legislation, those being House Bill 4180, House Bill 4505 and House Bill 4578. **(See Attachment #3)** That motion passed with 17 of the 18 Council members present supporting the motion and one Council member present abstaining.

This concluded the report from the Committee on Special Projects.

## VII. Standing Committee Reports

### A. Internal Governance

1. Budget B George W. Gregory – no report
2. Bylaws B Marilyn A. Lankfer
3. Michael Irish Award B Brian V. Howe
4. Long-Range Planning B Douglas G. Chalgian /  
Lauren M. Underwood
5. Nominations B Michael McClory
6. Relations with the State Bar B Thomas F. Sweeney  
Tom Sweeney, as Chair of the Relations with State Bar Committee reported that there were several newspapers in the metro Detroit area which have agreed to consider carrying articles written by Section members.
7. Annual Meeting B Harold Schuitmaker

### B. Education & Advocacy Services for Section Members

1. Amicus Curiae B Ellen Sugrue Hyman
2. Continuing Education & Annual Probate Institute B Douglas Chalgian

3. Section Journal B Nancy L. Little
4. State Bar Journal B Amy M. Morrissey – No report.
5. Pamphlets B Ellen Sugrue Hyman
6. Electronic Communication B Josh Ard

C. Legislation and Lobbying

1. Legislation B Harold G. Schuitmaker/John R. Dresser/George W. Gregory
2. Power of Attorney Act – Daniel P. Marsh  
Mr. Daniel P. Marsh reported on activities of the Power of Attorney Committee. Ms. Susan Allen with the Michigan Bankers Association also discussed the involvement of the MBA and steps that the MBA was considering taking in relation to this issue.
3. Michigan Trust Code B Mark K. Harder  
Mr. Mark K. Harder reported that the Michigan Trust Code had passed the Senate unanimously and was awaiting action in the State House.

D. Ethics, Professionalism and Standards

1. Ethics B J. David Kerr
2. Unauthorized Practice & Multidisciplinary Practice B Bob Taylor  
Mr. Bob Taylor reported on Unauthorized Practice of Law and again referenced the Attorney General's interest in the issue of trust kits and reported that members of his Committee would be participating in conversations with the Attorney General regarding this issue.
3. Specialization and Certification B James B. Steward
4. Practice Management B Patricia Ouellette

E. Administration of Justice

1. Contested and Uncontested Probate Proceedings B Shaheen I. Imami / Douglas G. Chalgian

2. Uniformity of Practice B Derek A. Walters

F. Practice Issues, Related Areas & Liaisons

1. Charitable Giving/Exempt Organizations B Robin D. Ferriby  
Robin D. Ferriby asked for the Council to endorse Senate Bills 411 and 412 which bills were comparable and nearly identical to prior bills endorsed by the Council. The motion was made by Robin D. Ferriby to support these bills with support by Marilyn A. Lankfer. All 18 of the 18 Council members present supported that motion. (**See Attachment #4**)
2. Transfer Tax B Thomas F. Sweeney  
Mr. Thomas F. Sweeney reported for the Transfer Tax Committee on the Status of the Federal, Estate and Gift Tax.
3. Guardianships and Conservatorships B Constance Brigman  
Ms. Constance Brigman reported on the Guardianship Committee as to the progress of the Uniform Guardianship and Protective Proceeding Jurisdiction Act. She indicated that the Committee had been working on revisions to the proposed act and that she hoped to have a final proposed bill for endorsement at the next Council meeting.
4. Business Law/Liaison to Business Section B John R. Dresser
5. Elder Law/Liaison to Elder Law Section B Amy R. Tripp
6. Family Law/Family Law Section Liaison B Patricia M. Ouellette
7. Real Property Law/Real Property Section Liaison – Daniel P. Marsh
8. State Bar Section to Section Action Team Liaison – Robert Tiplady
9. Tax and Tax Section Liaison – Lorraine F. New
10. State Bar Liaison B Richard J. Siriani
11. Court Rules and Forms Committee Liaison B Marlaine C. Teahan
12. Trust Institutions and Liaison with Michigan Bankers Association B Susan Allen, Chair

13. Michigan Probate Judges Association Liaison B Hon. Phillip Harter / Hon. Kathryn A. George / Hon Darlene A. O'Brien  
Judge Kathryn George of Macomb County Probate Court reported on work that was being done with respect to the Mental Health Code and specifically changes that were being proposed by the Michigan Probate Judges Association.
14. Law School Liaison – Josh Ard

X. Other Business

Statute of Repose Committee - Discussion occurred relating to a Statute of Repose currently before the legislature and asking that the legislation be modified to include protection for attorneys. Motion by Robin D. Ferriby and supported by Shaheen I. Imami was passed with all 18 Council members present supporting the motion.

XI. Hot Topics

XII. Adjournment – The Council meeting was concluded at approximately 11:40 a.m.

Respectfully submitted,

Douglas G. Chalgian

**Probate and Estate Planning Section  
Treasurer's Report as of March 31, 2009**

	<u>March 2009 Actual</u>	<u>Year to Date Actual</u>	<u>2009 Budget</u>	<u>Variance</u>
<b>Revenue</b>				
Membership Dues	\$ 140	\$ 123,725	\$ 120,000	\$ 3,725
Publishing Agreements		\$ 912		\$ 912
Other		\$ 35		\$ 35
Total Receipts	<u>\$ 140</u>	<u>\$ 124,672</u>	<u>\$ 120,000</u>	<u>\$ 4,672</u>
<b>Disbursements</b>				
Journal	\$ 75	\$ 6,643	\$ 45,000	\$ (38,357)
Chairperson's Dinner		\$ -	\$ 6,000	\$ (6,000)
Speakers Dinner		\$ -	\$ -	\$ -
Travel	\$ 1,600	\$ 4,434	\$ 13,500	\$ (9,066)
Lobbying		\$ 12,000	\$ 24,000	\$ (12,000)
Meetings	\$ 995	\$ 6,089	\$ 9,000	\$ (2,911)
Printing		\$ -	\$ 2,400	\$ (2,400)
Strategic Planning		\$ -	\$ -	\$ -
Publishing Agreements		\$ 820	\$ -	\$ 820
Support for Annual Institute		\$ -	\$ 5,000	\$ (5,000)
Amicus Briefs		\$ -	\$ 5,000	\$ (5,000)
Listserv	\$ 70	\$ 420	\$ 850	\$ (430)
Postage		\$ 1	\$ 900	\$ (899)
Telephone		\$ -	\$ 500	\$ (500)
Copying	\$ -	\$ 50	\$ -	\$ 50
Other	\$ -	\$ 357	\$ 1,000	\$ (643)
Total Disbursements	<u>\$ 2,740</u>	<u>\$ 30,814</u>	<u>\$ 113,150</u>	<u>\$ (82,336)</u>
Increase	\$ (2,600)	\$ 93,858		\$ 87,008
<b>Additional Information</b>				
Fund Balance		\$ 156,159		

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Funeral Bill Summary  
D. Chalgian

Three bills. All very similar. All modify 700.3206 to create a highest priority for person with decision making authority, which person is nominated by the decedent.

House Bill 4180	House Bill 4505	House Bill 4578
No Name given to nominated individual	Called a "Funeral Representative"	Called a "Funeral Representative"
Formalities same as PAD + may be made in PAD	Formalities same as PAD + may be made in PAD	Formalities same as PAD + may be made in PAD
Liability protection for funeral home that acts in reliance.	In addition, creates MCL 700.3210 that allows for decedent to direct type of funeral arrangements which are binding on whomever has authority to act under MCL 700.3206. This expression may be in will or not (provided execution formalities consistent with PAD).	

# HOUSE BILL No. 4180

February 5, 2009, Introduced by Reps. Moss and Walsh 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:**

Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216, and to part 28 and article 10 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899 and 333.10101 to 333.11101, **A FUNERAL REPRESENTATIVE APPOINTED UNDER SUBSECTION (2)**, a person with priority under subsections ~~(2) to (4)~~ **(3) TO (5)**, or **A PERSON** acting under subsection ~~(5), (6), (7), or (8)~~, **OR (9)** is presumed to have the right and power to make decisions about funeral

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

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

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

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

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

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

(6) ~~(5)~~—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 subsection ~~(6)~~ **(7)** does not apply, then the personal representative or nominated personal representative may exercise the rights and powers under subsection (1), either before or after his or her appointment.

(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 shall be as soon as possible, but not later than 7 business days after the date the petition is filed. Notice of the petition and

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

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

(5) In deciding a petition brought under this section, the court shall consider all of the following, in addition to other 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) A FUNERAL ESTABLISHMENT THAT PROVIDES SERVICES AT THE DIRECTION OF A PERSON WHOM THE FUNERAL ESTABLISHMENT REASONABLY BELIEVES TO BE A FUNERAL REPRESENTATIVE DESIGNATED UNDER SECTION 3206(2) IS NOT LIABLE FOR FOLLOWING THE DIRECTIONS.**

~~(3) (2)~~—The order of priority determined under section ~~3206(2)~~ and ~~(3)~~ **3206(3) AND (4)** may be relied upon by a funeral establishment. 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. A funeral establishment does not have the responsibility to contact or independently investigate the existence of relatives of the deceased, but may rely on information provided by family members of the deceased.

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

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

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

(b) By the court on its own motion or in a formal proceeding

by court order on the petition of an interested person if in either case, after notice and hearing, the court finds that the appointment is necessary to preserve the estate or to secure its proper administration, including its administration in circumstances in which a general personal representative cannot or should not act. If it appears to the court that an emergency exists, the court may order the appointment without notice.

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

# HOUSE BILL No. 4505

March 4, 2009, Introduced by Rep. Byrnes 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, and by adding section 3210.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216, and to part 28 and article 10 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899 and 333.10101 to 333.11101, **A PERSON APPOINTED UNDER SUBSECTION (2)**, a person with priority under subsections ~~(2) to (4)~~ **(3) TO (5)**, or **A PERSON** acting under subsection ~~(5)~~, (6), (7), ~~or~~ (8), **OR (9)** is presumed to have the

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

**(2) AN INDIVIDUAL MAY DESIGNATE A PERSON TO EXERCISE THE RIGHTS AND POWERS UNDER SUBSECTION (1). THE DESIGNATION SHALL BE IN WRITING, SIGNED, WITNESSED IN THE SAME MANNER AS PROVIDED FOR A PATIENT ADVOCATE DESIGNATION IN SECTION 5506(4), DATED, AND EXECUTED VOLUNTARILY. A DESIGNATION UNDER THIS SUBSECTION MAY BE INCLUDED IN A PATIENT ADVOCATE DESIGNATION.**

**(3) ~~(2)~~ The IF THERE IS NO PERSON DESIGNATED UNDER SUBSECTION (2), THE** surviving spouse or, if there is no surviving spouse, the individual or individuals 18 years of age or older, in the highest order of priority under section 2103, and related to the decedent in the closest degree of consanguinity, have the rights and powers under subsection (1).

**(4) ~~(3)~~ If THERE IS NO PERSON DESIGNATED UNDER SUBSECTION (2) AND IF** the surviving spouse or the individual or individuals with the highest priority as determined under subsection ~~(2)~~ **(3)** do not exercise their rights or powers under subsection (1) or cannot be located after a good-faith effort to contact them, the rights and powers under subsection (1) may be exercised by the individual or individuals in the same order of priority under section 2103 who are related to the decedent in the next closest degree of

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

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

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(7) ~~(6)~~ If **THERE IS NO PERSON 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 **THERE IS NO PERSON 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 **THERE IS NO PERSON 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 shall be as soon as possible, but not later than 7 business days after the date the petition is filed. Notice of the petition and the hearing shall be served not less than 2 days before the date of the hearing on every individual who has highest priority as determined under section ~~3206(2) and (3)~~ **3206(3) AND (4)**, unless the court orders that service on every such individual is not

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

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

(5) In deciding a petition brought under this section, the court shall consider all of the following, in addition to other 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 THERE IS NO PERSON 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. 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. A funeral establishment does not have the responsibility to contact or independently investigate the existence of relatives of the deceased, but may rely on information provided by family members of the deceased.

(3) A funeral establishment, holder of a license to practice

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

**SEC. 3210. IF AN INDIVIDUAL INCLUDES INSTRUCTIONS IN HIS OR HER WILL OR IN A WRITING SIGNED AND WITNESSED IN THE SAME MANNER AS PROVIDED FOR A PATIENT ADVOCATE DESIGNATION IN SECTION 5506(4) FOR FUNERAL SERVICES OR THE HANDLING OR DISPOSITION OF HIS OR HER BODY AFTER DEATH, THE PERSON WHO HAS THE RIGHT AND POWER TO MAKE DECISIONS ABOUT FUNERAL ARRANGEMENTS AND THE HANDLING AND DISPOSITION OF THE BODY UNDER SECTIONS 3206 TO 3208 SHALL FOLLOW THE INSTRUCTIONS TO THE EXTENT POSSIBLE.**

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

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

(b) By the court on its own motion or in a formal proceeding by court order on the petition of an interested person if in either

case, after notice and hearing, the court finds that the appointment is necessary to preserve the estate or to secure its proper administration, including its administration in circumstances in which a general personal representative cannot or should not act. If it appears to the court that an emergency exists, the court may order the appointment without notice.

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

# 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:**

Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216,  
and to part 28 and article 10 of the public health code, 1978 PA  
368, MCL 333.2801 to 333.2899 and 333.10101 to 333.11101, **A FUNERAL  
REPRESENTATIVE APPOINTED UNDER SUBSECTION (2)**, a person with  
priority under subsections ~~(2) to (4)~~ **(3) TO (5)**, or **A PERSON**

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

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

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

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

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

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

(6) ~~(5)~~—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 subsection ~~(6)~~ **(7)** does not apply, then the personal representative or nominated personal representative may exercise the rights and powers under subsection (1), either before or after his or her appointment.

(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

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

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

(5) In deciding a petition brought under this section, the court shall consider all of the following, in addition to other 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.

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

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

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

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

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

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

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

# SENATE BILL No. 411

March 31, 2009, Introduced by Senator SWITALSKI and referred to the Committee on Judiciary.

A bill to establish duties and obligations of nonprofit, charitable institutions in the management and use of funds held for charitable purposes; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "uniform prudent management of institutional funds act".

3           Sec. 2. As used in this act:

4           (a) "Charitable purpose" means the relief of poverty, the  
5 advancement of education or religion, the promotion of health, the  
6 promotion of a governmental purpose, or any other purpose the  
7 achievement of which is beneficial to the community.

8           (b) "Endowment fund" means an institutional fund or part of an  
9 institutional fund that, under the terms of a gift instrument, is

1 not wholly expendable by the institution on a current basis.  
2 Endowment fund does not include assets that an institution  
3 designates as an endowment fund for its own use.

4 (c) "Gift instrument" means a record or records, including an  
5 institutional solicitation, under which property is granted to,  
6 transferred to, or held by an institution as an institutional fund.

7 (d) "Institution" means any of the following:

8 (i) A person, other than an individual, organized and operated  
9 exclusively for charitable purposes.

10 (ii) A government or governmental subdivision, agency, or  
11 instrumentality, to the extent that it holds funds exclusively for  
12 a charitable purpose.

13 (iii) A trust that had both charitable and noncharitable  
14 interests, after all noncharitable interests have terminated.

15 (e) "Institutional fund" means a fund held by an institution  
16 exclusively for charitable purposes. Institutional fund does not  
17 include any of the following:

18 (i) Program-related assets.

19 (ii) A fund held for an institution by a trustee that is not an  
20 institution, unless the fund is held by the trustee as a component  
21 trust or fund of a community trust or foundation.

22 (iii) A fund in which a beneficiary that is not an institution  
23 has an interest, other than an interest that could arise on  
24 violation or failure of the purposes of the fund.

25 (f) "Person" means an individual, corporation, business trust,  
26 estate, trust, partnership, limited liability company, association,  
27 joint venture, public corporation, government or governmental

1 subdivision, agency, or instrumentality, or any other legal or  
2 commercial entity.

3 (g) "Program-related asset" means an asset held by an  
4 institution primarily to accomplish a charitable purpose of the  
5 institution and not primarily for investment.

6 (h) "Record" means information that is inscribed on a tangible  
7 medium or that is stored in an electronic or other medium and is  
8 retrievable in perceivable form.

9 Sec. 3. (1) Subject to the intent of a donor expressed in a  
10 gift instrument, an institution, in managing and investing an  
11 institutional fund, shall consider the charitable purposes of the  
12 institution and the purposes of the institutional fund.

13 (2) In addition to complying with the duty of loyalty imposed  
14 by law other than this act, each person responsible for managing  
15 and investing an institutional fund shall manage and invest the  
16 fund in good faith and with the care an ordinarily prudent person  
17 in a like position would exercise under similar circumstances.

18 (3) In managing and investing an institutional fund, both of  
19 the following apply:

20 (a) An institution may incur only costs that are appropriate  
21 and reasonable in relation to the assets, the purposes of the  
22 institution, and the skills available to the institution.

23 (b) An institution shall make a reasonable effort to verify  
24 facts relevant to the management and investment of the fund.

25 (4) An institution may pool 2 or more institutional funds for  
26 purposes of management and investment.

27 (5) Except as otherwise provided by a gift instrument, all of

1 the following rules apply:

2 (a) In managing and investing an institutional fund, the  
3 following factors, if relevant, shall be considered:

4 (i) General economic conditions.

5 (ii) The possible effect of inflation or deflation.

6 (iii) The expected tax consequences, if any, of investment  
7 decisions or strategies.

8 (iv) The role that each investment or course of action plays  
9 within the overall investment portfolio of the fund.

10 (v) The expected total return from income and the appreciation  
11 of investments.

12 (vi) Other resources of the institution.

13 (vii) The needs of the institution and the fund to make  
14 distributions and to preserve capital.

15 (viii) An asset's special relationship or special value, if any,  
16 to the charitable purposes of the institution.

17 (b) Management and investment decisions about an individual  
18 asset shall not be made in isolation but rather in the context of  
19 the institutional fund's portfolio of investments as a whole and as  
20 a part of an overall investment strategy having risk and return  
21 objectives reasonably suited to the fund and to the institution.

22 (c) Except as otherwise provided by law other than this act,  
23 an institution may invest in any kind of property or type of  
24 investment consistent with this section.

25 (d) An institution shall diversify the investments of an  
26 institutional fund unless the institution reasonably determines  
27 that, because of special circumstances, the purposes of the fund

1 are better served without diversification.

2 (e) Within a reasonable time after receiving property, an  
3 institution shall make and carry out decisions concerning the  
4 retention or disposition of the property or to rebalance a  
5 portfolio, in order to bring the institutional fund into compliance  
6 with the purposes, terms, and distribution requirements of the  
7 institution as necessary to meet other circumstances of the  
8 institution and the requirements of this act.

9 (f) A person that has special skills or expertise, or is  
10 selected in reliance upon the person's representation that the  
11 person has special skills or expertise, has a duty to use those  
12 skills or that expertise in managing and investing institutional  
13 funds.

14 Sec. 4. (1) Subject to the intent of a donor expressed in the  
15 gift instrument, an institution may appropriate for expenditure or  
16 accumulate so much of an endowment fund as the institution  
17 determines is prudent for the uses, benefits, purposes, and  
18 duration for which the endowment fund is established. Unless stated  
19 otherwise in the gift instrument, the assets in an endowment fund  
20 are donor-restricted assets until appropriated for expenditure by  
21 the institution. In making a determination to appropriate or  
22 accumulate, the institution shall act in good faith, with the care  
23 that an ordinarily prudent person in a like position would exercise  
24 under similar circumstances, and shall consider, if relevant, all  
25 of the following factors:

26 (a) The duration and preservation of the endowment fund.

27 (b) The purposes of the institution and the endowment fund.

1 (c) General economic conditions.

2 (d) The possible effect of inflation or deflation.

3 (e) The expected total return from income and the appreciation  
4 of investments.

5 (f) Other resources of the institution.

6 (g) The investment policy of the institution.

7 (2) To limit the authority to appropriate for expenditure or  
8 accumulate under subsection (1), a gift instrument must  
9 specifically state the limitation.

10 (3) Terms in a gift instrument designating a gift as an  
11 endowment, or a direction or authorization in the gift instrument  
12 to use only "income", "interest", "dividends", "rents, issues, or  
13 profits", or "to preserve the principal intact", or words of  
14 similar import, do both of the following:

15 (a) Create an endowment fund of permanent duration unless  
16 other language in the gift instrument limits the duration or  
17 purpose of the fund.

18 (b) Do not otherwise limit the authority to appropriate for  
19 expenditure or accumulate under subsection (1).

20 Sec. 5. (1) Subject to any specific limitation set forth in a  
21 gift instrument or in law other than this act, an institution may  
22 delegate to an external agent the management and investment of an  
23 institutional fund to the extent that an institution could  
24 prudently delegate under the circumstances. An institution shall  
25 act in good faith, with the care that an ordinarily prudent person  
26 in a like position would exercise under similar circumstances, in  
27 doing any of the following:

1 (a) Selecting an agent.

2 (b) Establishing the scope and terms of the delegation,  
3 consistent with the purposes of the institution and the  
4 institutional fund.

5 (c) Periodically reviewing the agent's actions in order to  
6 monitor the agent's performance and compliance with the scope and  
7 terms of the delegation.

8 (2) In performing a delegated function, an agent owes a duty  
9 to the institution to exercise reasonable care to comply with the  
10 scope and terms of the delegation.

11 (3) An institution that complies with subsection (1) is not  
12 liable for the decisions or actions of an agent to which the  
13 function was delegated.

14 (4) By accepting delegation of a management or investment  
15 function from an institution that is subject to the laws of this  
16 state, an agent submits to the jurisdiction of the courts of this  
17 state in all proceedings arising from or related to the delegation  
18 or the performance of the delegated function.

19 (5) An institution may delegate management and investment  
20 functions to its committees, officers, or employees as authorized  
21 by law of this state other than this act.

22 Sec. 6. (1) If the donor consents in a record, an institution  
23 may release or modify, in whole or in part, a restriction contained  
24 in a gift instrument on the management, investment, or purpose of  
25 an institutional fund. A donor may give prior consent to an  
26 institution for release or modification of a restriction or  
27 charitable purpose in a gift instrument that also includes a

1 restriction or stated charitable purpose subject to this section. A  
2 release or modification shall not allow a fund to be used for a  
3 purpose other than a charitable purpose of the institution.

4 (2) A court, on application of an institution, may modify a  
5 restriction contained in a gift instrument regarding the management  
6 or investment of an institutional fund if the restriction has  
7 become impracticable or wasteful, if it impairs the management or  
8 investment of the fund, or if, because of circumstances not  
9 anticipated by the donor, a modification of a restriction will  
10 further the purposes of the fund. The institution shall notify the  
11 attorney general of the application, and the attorney general shall  
12 be given an opportunity to be heard. To the extent practicable, any  
13 modification shall be made in accordance with the donor's probable  
14 intention.

15 (3) If a particular charitable purpose or a restriction  
16 contained in a gift instrument on the use of an institutional fund  
17 becomes unlawful, impracticable, impossible to achieve, or  
18 wasteful, a court, upon application of an institution, may modify  
19 the purpose of the fund or the restriction on the use of the fund  
20 in a manner consistent with the charitable purposes expressed in  
21 the gift instrument. The institution shall notify the attorney  
22 general of the application, and the attorney general shall be given  
23 an opportunity to be heard.

24 (4) If an institution determines that a restriction contained  
25 in a gift instrument on the management, investment, or purpose of  
26 an institutional fund is unlawful, impracticable, impossible to  
27 achieve, or wasteful, the institution, 60 days after notification

1 to the attorney general, may release or modify the restriction, in  
2 whole or in part, if all of the following apply:

3 (a) The institutional fund subject to the restriction has a  
4 total value of less than \$25,000.00.

5 (b) More than 20 years have elapsed since the fund was  
6 established.

7 (c) The institution uses the property in a manner consistent  
8 with the charitable purposes expressed in the gift instrument.

9 (5) This section does not affect the right of a governing body  
10 of an institution to exercise the power to modify restrictions  
11 contained in a gift instrument as conferred by the institution's  
12 governing instruments or by a gift instrument.

13 Sec. 7. Compliance with this act shall be determined in light  
14 of the facts and circumstances existing at the time a decision is  
15 made or action is taken and not by hindsight.

16 Sec. 8. This act applies to institutional funds existing on or  
17 established after the effective date of this act. As applied to  
18 institutional funds existing on the effective date of this act,  
19 this act governs only decisions made or actions taken on or after  
20 that date.

21 Sec. 9. This act modifies, limits, and supersedes the  
22 electronic signatures in the global and national commerce act, 15  
23 USC 7001 to 7031, but does not modify, limit, or supersede 15 USC  
24 7001(a) or authorize electronic delivery of any of the notices  
25 described in 15 USC 7003(b).

26 Sec. 10. In applying and construing this uniform act,  
27 consideration shall be given to the need to promote uniformity of

1 the law with respect to its subject matter among states that enact  
2 it.

3       Sec. 11. This act applies only to matters included within the  
4 meaning of the terms "institution", "institutional fund", and  
5 "person" as defined in this act. This act does not apply to or  
6 affect the validity, construction, interpretation, effect,  
7 administration, or management of any other trust, estate, or  
8 applicable governing instrument.

8       Enacting section 1. The uniform management of institutional  
9 funds act, 1976 PA 157, MCL 451.1201 to 451.1210, is repealed.

# SENATE BILL No. 412

March 31, 2009, Introduced by Senator KUIPERS and referred to the Committee on Judiciary.

A bill to amend 1982 PA 162, entitled  
"Nonprofit corporation act,"  
by amending sections 124, 261, 501, and 541 (MCL 450.2124,  
450.2261, 450.2501, and 450.2541), section 124 as amended by 2002  
PA 33 and section 541 as amended by 1987 PA 170.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 124. (1) This act does not modify the requirements of the  
2 following:

3       (a) The supervision of trustees for charitable purposes act,  
4 1961 PA 101, MCL 14.251 to 14.266.

5       (b) 1965 PA 169, MCL 450.251 to 450.253.

6       (c) The charitable organizations and solicitations act, 1975  
7 PA 169, MCL 400.271 to 400.294.

1 (d) The uniform **PRUDENT** management of institutional funds act.  
2 ~~, 1976 PA 157, MCL 450.1201 to 450.1210.~~

3 (e) The career development and distance learning act, **2002 PA**  
4 **36, MCL 390.1571 TO 390.1579.**

5 (2) A corporation subject to ~~any~~ 1 or more of the acts listed  
6 in subsection (1) shall comply with those acts and shall comply  
7 with this act. If there is any inconsistency between those acts and  
8 this act, those acts shall control.

9 Sec. 261. (1) A corporation, subject to any limitation  
10 provided in this act, in any other statute of this state, in its  
11 articles of incorporation, or otherwise by law, ~~shall have power~~  
12 **MAY** in furtherance of its corporate purposes ~~to~~ **DO ANY OF THE**  
13 **FOLLOWING:**

14 (a) Have perpetual duration.

15 (b) Sue and be sued in all courts and participate in actions  
16 and proceedings judicial, administrative, arbitratve, or  
17 otherwise, in ~~like cases as~~ **THE SAME MANNER AS A** natural ~~persons~~  
18 **PERSON.**

19 (c) Have a corporate seal, and alter the seal, and use it by  
20 causing it or a facsimile to be affixed, impressed, or reproduced  
21 in any other manner.

22 (d) Adopt, amend, or repeal bylaws, including emergency  
23 bylaws, relating to the purposes of the corporation, the conduct of  
24 its affairs, its rights and powers, and the rights and powers of  
25 its shareholders, members, directors, or officers.

26 (e) Elect or appoint officers, employees, and other agents of  
27 the corporation, prescribe their duties, fix their compensation and

1 the compensation of directors, and indemnify corporate directors,  
2 officers, employees, and agents.

3 (f) Purchase, receive, take by grant, gift, devise, bequest,  
4 or otherwise, lease, or otherwise acquire, own, hold, improve,  
5 employ, use, and otherwise deal in and with, real or personal  
6 property, or an interest ~~therein~~ **IN REAL OR PERSONAL PROPERTY**,  
7 wherever situated, either absolutely or in trust and without  
8 limitation as to amount or value.

9 (g) Sell, convey, lease, exchange, transfer, or otherwise  
10 dispose of, or mortgage or pledge, or create a security interest  
11 in, any of its property, or an interest ~~therein~~ **IN THE PROPERTY**,  
12 wherever situated.

13 (h) Purchase, take, receive, subscribe for, or otherwise  
14 acquire, own, hold, vote, employ, sell, lend, lease, exchange,  
15 transfer, or otherwise dispose of, mortgage, pledge, use, and  
16 otherwise deal in and with, bonds and other obligations, shares or  
17 other securities or interests or memberships issued by others,  
18 whether engaged in similar or different business, governmental, or  
19 other activities, including banking corporations or trust  
20 companies. A corporation organized or conducting affairs in this  
21 state under this act ~~may~~ **SHALL** not guarantee or become surety upon  
22 a bond or other undertaking securing the deposit of public money.

23 (i) Make contracts, give guarantees, and incur liabilities,  
24 borrow money at such rates of interest as the corporation may  
25 determine, issue its notes, bonds, and other obligations, and  
26 secure any of its obligations by mortgage or pledge of any of its  
27 property or an interest ~~therein~~ **IN THE PROPERTY**, wherever situated.

1           (j) Lend money, invest and reinvest its funds, and take and  
2 hold real and personal property as security for the payment of  
3 funds loaned or invested.

4           (k) Make donations for public welfare or for community fund,  
5 hospital, charitable, educational, scientific, civic, or similar  
6 purposes, and in time of war or other national emergency in aid  
7 thereof ~~OF WAR OR OTHER NATIONAL EMERGENCY~~.

8           (l) Pay pensions, establish and carry out pension, savings,  
9 thrift, and other retirement, incentive, and benefit plans, trusts  
10 and provisions for any of its directors, officers, and employees.

11           (m) Purchase, receive, take, otherwise acquire, own, hold,  
12 sell, lend, exchange, transfer, otherwise dispose of, pledge, use,  
13 and otherwise deal in and with its own shares, bonds, and other  
14 securities.

15           (n) Participate with others in any corporation, business  
16 corporation, partnership, limited partnership, joint venture, or  
17 other association of any kind, or participate with others in any  
18 transaction, undertaking, or agreement ~~which~~ **THAT** the participating  
19 corporation would have power to conduct by itself, whether or not  
20 the participation involves sharing or delegation of control with or  
21 to others.

22           (o) Cease its corporate activities and dissolve.

23           (p) Conduct its affairs, carry on its operations, and have  
24 offices and exercise the powers granted by this act in any  
25 jurisdiction within or without the United States, and, in the case  
26 of a corporation the purpose or purposes of which require the  
27 transaction of business, the receipt and payment of money, the care

1 and custody of property, and other incidental business matters,  
2 transact such business, receive, collect, and disburse such money,  
3 and engage in such other incidental business matters as are  
4 naturally or properly within the scope of its articles.

5 (q) Have and exercise all powers necessary or convenient to  
6 effect any purpose for which the corporation is formed.

7 (2) A corporation subject to ~~Act No. 157 of the Public Acts of~~  
8 ~~1976, being sections 451.1201 to 451.1210 of the Michigan Compiled~~  
9 ~~Laws, shall have~~ **THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL**  
10 **FUNDS ACT HAS** all powers granted under **BOTH** this act and ~~Act No.~~  
11 ~~157 of the Public Acts of 1976~~ **THAT ACT**. However, in the event of  
12 an inconsistency between ~~this act and Act No. 157 of the Public~~  
13 ~~Acts of 1976, Act No. 157 shall control~~ **THE 2 ACTS, THE UNIFORM**  
14 **PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT CONTROLS**.

15 (3) The corporate existence of all corporations incorporated  
16 before ~~the effective date of this act~~ **JANUARY 1, 1983**, without  
17 capital stock, for religious, benevolent, social, or fraternal  
18 purposes, shall be ~~deemed~~ **CONSIDERED** to be in perpetuity. A  
19 limitation or term fixed in the articles or in the law under which  
20 the corporation originally incorporated ~~shall not be~~ **IS NOT**  
21 effective unless the corporation ~~has~~ affirmatively waived its right  
22 to perpetual existence ~~subsequent to~~ **AFTER** September 18, 1931, by  
23 fixing a definite term of existence by amendment to its articles.

24 (4) Any nonprofit power corporation ~~which~~ **THAT** is authorized  
25 to furnish electric service may construct, maintain, and operate  
26 its lines along, over, across, or under any public places, streets,  
27 and highways, and across or under the waters in this state, with

1 all necessary erections and fixtures. A nonprofit power corporation  
 2 may exercise the power of eminent domain, in the manner provided by  
 3 ~~Act No. 87 of the Public Acts of 1980, as amended, being sections~~  
 4 ~~213.51 to 213.77 of the Michigan Compiled Laws~~ **THE UNIFORM**  
 5 **CONDEMNATION PROCEDURES ACT, 1980 PA 87, MCL 213.51 TO 213.75.** As a  
 6 condition to the exercise of any of these powers, nonprofit  
 7 corporations ~~shall be~~ **ARE** subject to the jurisdiction of the  
 8 Michigan public service commission pursuant to ~~Act No. 106 of the~~  
 9 ~~Public Acts of 1909, as amended, being sections 460.551 to 460.559~~  
 10 ~~of the Michigan Compiled Laws~~ **1909 PA 106, MCL 460.551 TO 460.559,**  
 11 ~~Act No. 419 of the Public Acts of 1919, as amended, being sections~~  
 12 ~~460.51 to 460.62 of the Michigan Compiled Laws~~ **1919 PA 419, MCL**  
 13 **460.54 TO 460.62,** and ~~Act No. 3 of the Public Acts of 1939, as~~  
 14 ~~amended, being sections 460.1 to 460.8 of the Michigan Compiled~~  
 15 ~~Laws~~ **1939 PA 3, MCL 460.1 TO 460.11.**

16       Sec. 501. (1) The business and affairs of a corporation shall  
 17 be managed by its board, except as otherwise provided in this act.  
 18 A director need not be a shareholder or member of the corporation  
 19 unless the articles or bylaws so require. The articles or bylaws  
 20 may prescribe qualifications for directors.

21       (2) The board of a corporation ~~which~~ **THAT** is subject to ~~Act~~  
 22 ~~No. 157 of the Public Acts of 1976, being sections 451.1201 to~~  
 23 ~~451.1210 of the Michigan Compiled Laws, shall have~~ **THE UNIFORM**  
 24 **PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT HAS** the powers  
 25 granted under ~~Act No. 157 of the Public Acts of 1976~~ **BOTH THAT ACT**  
 26 and this act. However, in the event of an inconsistency between  
 27 ~~this act and Act No. 157 of the Public Acts of 1976, Act No. 157~~

1 ~~shall control~~ **THE 2 ACTS, THE UNIFORM PRUDENT MANAGEMENT OF**  
2 **INSTITUTIONAL FUNDS ACT CONTROLS.**

3       Sec. 541. (1) A director or an officer shall discharge the  
4 duties of that position in good faith and with ~~that~~ **THE** degree of  
5 diligence, care, and skill ~~which~~ **THAT** an ordinarily prudent person  
6 would exercise under similar circumstances in a like position. In  
7 discharging the duties, a director or an officer, when acting in  
8 good faith, may rely upon the opinion of counsel for the  
9 corporation, upon the report of an independent appraiser selected  
10 with reasonable care by the board, or upon financial statements of  
11 the corporation represented to the director or officer as correct  
12 by the president or the officer of the corporation ~~having~~ **WHO HAS**  
13 charge of its books or account, or as stated in a written report by  
14 an independent public or certified public accountant or firm of  
15 accountants fairly to reflect the financial condition of the  
16 corporation.

17       (2) A director or officer of a corporation subject to the  
18 uniform **PRUDENT** management of institutional funds act, ~~Act No. 157~~  
19 ~~of the Public Acts of 1976, being sections 451.1201 to 451.1210 of~~  
20 ~~the Michigan Compiled Laws,~~ shall be considered **TO BE** in compliance  
21 with this section ~~when~~ **IF** the director or officer complies with  
22 ~~section 7 of Act No. 157 of the Public Acts of 1976~~ **THE UNIFORM**  
23 **PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT** in the administration  
24 of the powers specified in that ~~section~~ **ACT**.

25       (3) If the corporation's articles of incorporation contain a  
26 provision authorized under section 209(c), ~~then~~ a volunteer  
27 director of the corporation ~~shall~~ **IS** only ~~be~~ personally liable for

1 monetary damages for a breach of fiduciary duty as a director to  
2 the corporation, its shareholders, or its members to the extent set  
3 forth in the provision.

4 (4) If the corporation's articles of incorporation contain a  
5 provision authorized under section 209(d), ~~then~~ a claim for  
6 monetary damages for a breach of a volunteer director's duty to any  
7 person other than the corporation, its shareholders, or its members  
8 shall not be brought or maintained against ~~a~~**THE** volunteer  
9 director. ~~Such a~~**THE** claim shall be brought or maintained instead  
10 against the corporation, which ~~corporation~~ shall be liable for ~~the~~  
11 **ANY** breach of the volunteer director's duty.

12 (5) An action against a director or officer for failure to  
13 perform the duties imposed by this section shall be commenced  
14 within 3 years after the cause of action has accrued, or within 2  
15 years after the time when the cause of action is discovered, or  
16 should reasonably have been discovered, by the complainant,  
17 whichever occurs first.

18 Enacting section 1. This amendatory act does not take effect  
19 unless Senate Bill No. 411

20 of the 95th Legislature is enacted into law.



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

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Senate Bill 411 (Substitute S-1 as reported)  
Senate Bill 412 (as reported without amendment)  
Sponsor: Senator Michael Switalski (S.B. 411)  
Senator Wayne Kuipers (S.B. 412)  
Committee: Judiciary

### **CONTENT**

Senate Bill 411 (S-1) would enact the "Uniform Prudent Management of Institutional Funds Act" to do all of the following:

- Require an institution managing and investing an institutional fund to consider the institution's charitable purposes and the purposes of the fund.
- Establish a good faith and prudent person standard for each person responsible for managing and investing an institutional fund.
- Specify factors that would have to be considered, and rules that would apply, in the management and investment of an institutional fund.
- Allow an institution to appropriate for expenditure or accumulate amounts of an endowment fund that were prudent for its uses, benefits, purposes, and duration.
- Require an institution to consider specific factors in determining to appropriate or accumulate amounts in an endowment fund.
- Specify circumstances under which an institution could delegate the management and investment of an institution fund to an external agent.
- Specify conditions under which an institution could release or modify a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund.
- Require the Attorney General to be notified and given an opportunity to be heard on the matter of releasing or modifying a restriction in a gift instrument.
- Outline provisions regarding compliance with, and the scope of, the Act.

Under the proposed Act, "institution" would mean any of the following:

- A person, other than an individual, organized and operated exclusively for charitable purposes.
- A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose.
- A trust that had both charitable and noncharitable interest, after all noncharitable interest have terminated.

"Institutional fund" would mean a fund held by an institution exclusively for charitable purposes. "Charitable purpose" would mean the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose whose achievement is beneficial to the community.

The bill also would repeal the Uniform Management of Institutional Funds Act.

Senate Bill 412 would amend the Nonprofit Corporation Act to refer to the proposed Uniform Prudent Management of Institutions Funds Act rather than the current Uniform Management of Institutional Funds Act.

Senate Bill 412 is tie-barred to Senate Bill 411.

MCL 450.2124 et al. (S.B. 412)

Legislative Analyst: Patrick Affholter

**FISCAL IMPACT**

The bills would have no fiscal impact on State or local government.

Date Completed: 4-1-09

Fiscal Analyst: Elizabeth Pratt  
Maria Tyszkiewicz

Floor~~s~~sb411

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.