

**STATE OF MICHIGAN  
96TH LEGISLATURE  
REGULAR SESSION OF 2012**

Introduced by Reps. Damrow, Franz, Nathan, Zorn, Agema, Tyler and Callton

# **ENROLLED HOUSE BILL No. 4639**

AN ACT to amend 1998 PA 386, entitled "An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts," by amending sections 3206 and 3209 (MCL 700.3206 and 700.3209), section 3206 as amended by 2008 PA 41 and section 3209 as added 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, 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, and subsection (11), a person with priority under subsections (2) to (4) or acting under subsection (5), (6), (7), or (8) 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) 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).

(3) If the surviving spouse or the individual or individuals with the highest priority as determined under subsection (2) 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.

(4) If 2 or more individuals share the rights and powers described in subsection (1) as determined under subsection (2) or (3), 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.

(5) If no individual described in subsections (2) and (3) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9), and if subsection (6) 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.

(6) If no individual described in subsections (2) and (3) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9), 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.

(7) If no individual described in subsections (2) and (3) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9), if the decedent died intestate, and if subsection (6) does not apply, a special personal representative appointed under section 3614(c) may exercise the rights and powers under subsection (1).

(8) If there is no person under subsections (2) to (7) 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.

(9) An attempt to locate a person described in subsection (2) or (3) 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.

(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.

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

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

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

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

(12) As used in this section:

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

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

(c) "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.

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

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.

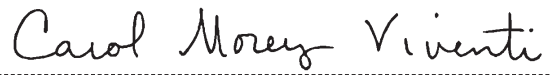
(2) The designation of a person as described in section 3206(11) or the order of priority determined under section 3206(2) and (3) may be relied upon by a funeral establishment. A funeral establishment is not a guarantor that a person exercising the rights and powers under section 3206(1) has the legal 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) or (11), 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.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor