

**SUBSTITUTE FOR
HOUSE BILL NO. 4870**

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 1104 and 3614 (MCL 700.1104 and 700.3614),
section 1104 as amended by 2005 PA 204 and section 3614 as amended
by 2004 PA 343, and by adding sections 3206, 3207, and 3208.

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.

5 (b) "Estate" includes the property of the decedent, trust, or
6 other person whose affairs are subject to this act as the property
7 is originally constituted and as it exists throughout

1 administration. Estate also includes the rights described in
2 sections 3805, 3922, and 7502 to collect from others amounts
3 necessary to pay claims, allowances, and taxes.

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

6 (d) "Family allowance" means the allowance prescribed in
7 section 2403.

8 (e) "Fiduciary" includes, but is not limited to, a personal
9 representative, guardian, conservator, trustee, plenary or partial
10 guardian appointed as provided in chapter 6 of the mental health
11 code, 1974 PA 258, MCL 330.1600 to 330.1644, and successor
12 fiduciary.

13 (f) "Financial institution" means an organization authorized
14 to do business under state or federal laws relating to a financial
15 institution and includes, but is not limited to, a bank, trust
16 company, savings bank, building and loan association, savings and
17 loan company or association, and credit union.

18 (g) "Foreign personal representative" means a personal
19 representative appointed by another jurisdiction.

20 (h) "Formal proceedings" means proceedings conducted before a
21 judge with notice to interested persons.

22 **(I) "FUNERAL ESTABLISHMENT" MEANS THAT TERM AS DEFINED IN**
23 **SECTION 1801 OF THE OCCUPATIONAL CODE, 1980 PA 299, MCL 339.1801,**
24 **AND THE OWNERS, EMPLOYEES, AND AGENTS OF THE FUNERAL ESTABLISHMENT.**

25 **(J) ~~(i)~~** "General personal representative" means a personal
26 representative other than a special personal representative.

27 **(K) ~~(j)~~** "Governing instrument" means a deed; will; trust;

1 insurance or annuity policy; account with POD designation; security
2 registered in beneficiary form (TOD); pension, profit-sharing,
3 retirement, or similar benefit plan; instrument creating or
4 exercising a power of appointment or a power of attorney; or
5 dispositive, appointive, or nominative instrument of any similar
6 type.

7 (l) ~~(k)~~ "Guardian" means a person who has qualified as a
8 guardian of a minor or a legally incapacitated individual under a
9 parental or spousal nomination or a court appointment and includes
10 a limited guardian as described in sections 5205, 5206, and 5306.
11 Guardian does not include a guardian ad litem.

12 (m) ~~(l)~~ "Hazardous substance" means a substance defined as
13 hazardous or toxic or otherwise regulated by an environmental law.

14 (n) ~~(m)~~ "Heir" means, except as controlled by section 2720,
15 a person, including the surviving spouse or the state, that is
16 entitled under the statutes of intestate succession to a decedent's
17 property.

18 (o) ~~(n)~~ "Homestead allowance" means the allowance prescribed
19 in section 2402.

20 SEC. 3206. (1) SUBJECT TO 1953 PA 181, MCL 52.201 TO 52.216,
21 AND TO PART 28 AND ARTICLE 10 OF THE PUBLIC HEALTH CODE, 1978 PA
22 368, MCL 333.2801 TO 333.2899 AND 333.10101 TO 333.11101, A PERSON
23 WITH PRIORITY UNDER SUBSECTIONS (2) TO (4) OR ACTING UNDER
24 SUBSECTION (5), (6), OR (7) HAS THE RIGHT AND POWER TO MAKE
25 DECISIONS ABOUT FUNERAL ARRANGEMENTS AND THE HANDLING, DISPOSITION,
26 OR DISINTERMENT OF A DECEDENT'S BODY, INCLUDING, BUT NOT LIMITED
27 TO, DECISIONS ABOUT CREMATION, AND THE RIGHT TO POSSESS CREMATED

1 REMAINS OF THE DECEDENT. THE HANDLING, DISPOSITION, OR DISINTERMENT
2 OF A BODY SHALL BE UNDER THE SUPERVISION OF A PERSON LICENSED TO
3 PRACTICE MORTUARY SCIENCE IN THIS STATE.

4 (2) THE SURVIVING SPOUSE OR, IF THERE IS NO SURVIVING SPOUSE,
5 THE INDIVIDUAL OR INDIVIDUALS 18 YEARS OF AGE OR OLDER, IN THE
6 HIGHEST ORDER OF PRIORITY UNDER SECTION 2103, AND RELATED TO THE
7 DECEDENT IN THE CLOSEST DEGREE OF CONSANGUINITY, HAVE THE RIGHTS
8 AND POWERS UNDER SUBSECTION (1).

9 (3) IF THE SURVIVING SPOUSE OR THE INDIVIDUAL OR INDIVIDUALS
10 WITH THE HIGHEST PRIORITY AS DETERMINED UNDER SUBSECTION (2) DO NOT
11 EXERCISE THEIR RIGHTS OR POWERS UNDER SUBSECTION (1) OR CANNOT BE
12 LOCATED AFTER A GOOD-FAITH EFFORT TO CONTACT THEM, THE RIGHTS AND
13 POWERS UNDER SUBSECTION (1) MAY BE EXERCISED BY THE INDIVIDUAL OR
14 INDIVIDUALS IN THE SAME ORDER OF PRIORITY UNDER SECTION 2103 WHO
15 ARE RELATED TO THE DECEDENT IN THE NEXT CLOSEST DEGREE OF
16 CONSANGUINITY. IF THE INDIVIDUAL OR EACH OF THE INDIVIDUALS IN AN
17 ORDER OF PRIORITY AS DETERMINED UNDER THIS SUBSECTION SIMILARLY
18 DOES NOT EXERCISE HIS OR HER RIGHTS OR POWERS OR CANNOT BE LOCATED,
19 THE RIGHTS OR POWERS UNDER SUBSECTION (1) PASS TO THE NEXT ORDER OF
20 PRIORITY, WITH THE ORDER OF PRIORITY BEING DETERMINED BY FIRST
21 TAKING THE INDIVIDUALS IN THE HIGHEST ORDER OF PRIORITY UNDER
22 SECTION 2103 AND THEN TAKING THE INDIVIDUALS RELATED TO THE
23 DECEDENT IN THE CLOSEST OR, AS APPLICABLE, NEXT CLOSEST DEGREE OF
24 CONSANGUINITY IN THAT ORDER OF PRIORITY.

25 (4) IF 2 OR MORE INDIVIDUALS SHARE THE RIGHTS AND POWERS
26 DESCRIBED IN SUBSECTION (1) AS DETERMINED UNDER SUBSECTION (2) OR
27 (3), THE RIGHTS AND POWERS SHALL BE EXERCISED AS DECIDED BY A

1 MAJORITY OF THE INDIVIDUALS. IF A MAJORITY CANNOT AGREE, ANY OF THE
2 INDIVIDUALS MAY FILE A PETITION UNDER SECTION 3207.

3 (5) IF NO INDIVIDUAL DESCRIBED IN SUBSECTIONS (2) AND (3)
4 EXISTS, EXERCISES THE RIGHTS OR POWERS UNDER SUBSECTION (1), OR CAN
5 BE LOCATED AFTER A SUFFICIENT ATTEMPT AS DESCRIBED IN SUBSECTION
6 (8), THEN THE PERSONAL REPRESENTATIVE OR NOMINATED PERSONAL
7 REPRESENTATIVE MAY EXERCISE THE RIGHTS AND POWERS UNDER SUBSECTION
8 (1), EITHER BEFORE OR AFTER HIS OR HER APPOINTMENT.

9 (6) IF NO INDIVIDUAL DESCRIBED IN SUBSECTIONS (2) AND (3)
10 EXISTS, EXERCISES THE RIGHTS OR POWERS UNDER SUBSECTION (1), OR CAN
11 BE LOCATED AFTER A SUFFICIENT ATTEMPT AS DESCRIBED IN SUBSECTION
12 (8), AND IF THE DECEDENT DIED INTESTATE, A SPECIAL PERSONAL
13 REPRESENTATIVE APPOINTED UNDER SECTION 3614(C) MAY EXERCISE THE
14 RIGHTS AND POWERS UNDER SUBSECTION (1).

15 (7) IF THERE IS NO PERSON UNDER SUBSECTIONS (2) TO (6) TO
16 EXERCISE THE RIGHTS AND POWERS UNDER SUBSECTION (1), 1 OF THE
17 FOLLOWING, AS APPLICABLE, SHALL EXERCISE THE RIGHTS AND POWERS
18 UNDER SUBSECTION (1):

19 (A) UNLESS SUBDIVISION (B) APPLIES, THE COUNTY PUBLIC
20 ADMINISTRATOR, IF WILLING, OR THE MEDICAL EXAMINER FOR THE COUNTY
21 WHERE THE DECEDENT WAS DOMICILED AT THE TIME OF HIS OR HER DEATH.

22 (B) IF THE DECEDENT WAS INCARCERATED IN A STATE CORRECTIONAL
23 FACILITY AT THE TIME OF HIS OR HER DEATH, THE DIRECTOR OF THE
24 DEPARTMENT OF CORRECTIONS.

25 (8) AN ATTEMPT TO LOCATE A PERSON DESCRIBED IN SUBSECTION (2)
26 OR (3) IS SUFFICIENT IF A REASONABLE ATTEMPT IS MADE IN GOOD FAITH
27 BY A FAMILY MEMBER, PERSONAL REPRESENTATIVE, OR NOMINATED PERSONAL

1 REPRESENTATIVE OF THE DECEDENT TO CONTACT THE PERSON AT HIS OR HER
2 LAST KNOWN ADDRESS, TELEPHONE NUMBER, OR ELECTRONIC MAIL ADDRESS.

3 (9) THIS SECTION DOES NOT VOID OR OTHERWISE AFFECT A GIFT MADE
4 UNDER PART 101 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
5 333.10101 TO 333.10109.

6 (10) AS USED IN THIS SECTION, "NOMINATED PERSONAL
7 REPRESENTATIVE" MEANS A PERSON NOMINATED TO ACT AS PERSONAL
8 REPRESENTATIVE IN A WILL THAT THE NOMINATED PERSON REASONABLY
9 BELIEVES TO BE THE VALID WILL OF THE DECEDENT.

10 SEC. 3207. (1) IF THERE IS A DISAGREEMENT AS DESCRIBED IN
11 SECTION 3206(4) OR IF 1 OR MORE OF THE INDIVIDUALS DESCRIBED IN
12 SECTION 3206(2) OR (3) CANNOT BE LOCATED, 1 OR MORE OF THE
13 FOLLOWING MAY PETITION THE COURT TO DETERMINE WHO HAS THE AUTHORITY
14 TO EXERCISE THE RIGHTS AND POWERS UNDER SECTION 3206(1):

15 (A) AN INDIVIDUAL WITH THE RIGHTS AND POWERS UNDER SECTION
16 3206(1).

17 (B) A FUNERAL ESTABLISHMENT THAT HAS CUSTODY OF THE DECEDENT'S
18 BODY.

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 BE AS SOON AS POSSIBLE, BUT NOT LATER THAN 7 BUSINESS DAYS
24 AFTER THE DATE THE PETITION IS FILED. NOTICE OF THE PETITION AND
25 THE HEARING SHALL BE SERVED NOT LESS THAN 2 DAYS BEFORE THE DATE OF
26 THE HEARING ON EVERY INDIVIDUAL WHO HAS HIGHEST PRIORITY AS
27 DETERMINED UNDER SECTION 3206(2) AND (3), UNLESS THE COURT ORDERS

1 THAT SERVICE ON EVERY SUCH INDIVIDUAL IS NOT REQUIRED. UNLESS AN
2 INDIVIDUAL CANNOT BE LOCATED AFTER A REASONABLE GOOD-FAITH EFFORT
3 HAS BEEN MADE TO CONTACT THE INDIVIDUAL, SERVICE SHALL BE MADE ON
4 THE INDIVIDUAL PERSONALLY OR IN A MANNER REASONABLY DESIGNED TO
5 GIVE THE INDIVIDUAL NOTICE. NOTICE OF THE HEARING SHALL INCLUDE
6 NOTICE OF THE INDIVIDUAL'S RIGHT TO APPEAR AT THE HEARING. AN
7 INDIVIDUAL SERVED WITH NOTICE OF THE HEARING MAY WAIVE HIS OR HER
8 RIGHTS. IF WRITTEN WAIVERS FROM ALL PERSONS ENTITLED TO NOTICE ARE
9 FILED, THE COURT MAY IMMEDIATELY HEAR THE PETITION. THE COURT MAY
10 WAIVE OR MODIFY THE NOTICE AND HEARING REQUIREMENTS OF THIS
11 SUBSECTION IF THE DECEDENT'S BODY MUST BE DISPOSED OF PROMPTLY TO
12 ACCOMMODATE THE RELIGIOUS BELIEFS OF THE DECEDENT OR HIS OR HER
13 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 BE INCLUDED IN THE
17 REASONABLE FUNERAL AND BURIAL EXPENSES UNDER SECTION 3805(B) OR THE
18 COURT MAY ASSESS SUCH COSTS AND FEES AGAINST 1 OR MORE PARTIES OR
19 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 SEC. 3208. (1) A FUNERAL ESTABLISHMENT IS NOT REQUIRED TO FILE
9 A PETITION UNDER SECTION 3207 AND IS NOT CIVILLY LIABLE FOR NOT
10 DOING SO.

11 (2) THE ORDER OF PRIORITY DETERMINED UNDER SECTION 3206(2) AND
12 (3) MAY BE RELIED UPON BY A FUNERAL ESTABLISHMENT. A FUNERAL
13 ESTABLISHMENT IS NOT A GUARANTOR THAT A PERSON EXERCISING THE
14 RIGHTS AND POWERS UNDER SECTION 3206(1) HAS THE LEGAL AUTHORITY TO
15 DO SO. A FUNERAL ESTABLISHMENT DOES NOT HAVE THE RESPONSIBILITY TO
16 CONTACT OR INDEPENDENTLY INVESTIGATE THE EXISTENCE OF RELATIVES OF
17 THE DECEASED, BUT MAY RELY ON INFORMATION PROVIDED BY FAMILY
18 MEMBERS OF THE DECEASED.

19 (3) A FUNERAL ESTABLISHMENT, HOLDER OF A LICENSE TO PRACTICE
20 MORTUARY SCIENCE ISSUED BY THIS STATE, CEMETERY, CREMATORY, OR AN
21 OFFICER OR EMPLOYEE OF A FUNERAL ESTABLISHMENT, HOLDER OF A LICENSE
22 TO PRACTICE MORTUARY SCIENCE ISSUED BY THIS STATE, CEMETERY, OR
23 CREMATORY THAT IN GOOD FAITH COMPLIES WITH SECTIONS 3206 AND 3207
24 AND THIS SECTION AND WITH THE INSTRUCTIONS OF A PERSON DESCRIBED IN
25 SECTION 3206(2) TO (7) REGARDING FUNERAL ARRANGEMENTS AND THE
26 HANDLING, DISPOSITION, OR DISINTERMENT OF A DECEDENT'S BODY IS NOT
27 CIVILLY LIABLE FOR THE FUNERAL OR THE HANDLING, DISPOSITION, OR

1 **DISINTERMENT OF THE BODY.**

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

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

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

16 (c) By the court on its own motion or on petition by an
17 interested person to supervise the disposition of the body of a
18 decedent ~~who died intestate, without heirs, and with insufficient~~
19 ~~assets to pay for a funeral or burial~~ **IF SECTION 3206(6) APPLIES.**
20 The duties of a special personal representative appointed under
21 this subdivision shall be specified in the order of appointment and
22 may include making arrangements with a funeral home, securing a
23 burial plot if needed, obtaining veteran's or pauper's funding
24 where appropriate, and determining the disposition of the body by
25 burial or cremation. The court may waive the bond requirement under
26 section 3603(1)(a). The court may appoint the county public
27 administrator if the county public administrator is willing to

1 serve. IF THE COURT DETERMINES THAT IT WILL NOT BE NECESSARY TO
2 OPEN AN ESTATE, THE COURT MAY APPOINT A SPECIAL FIDUCIARY UNDER
3 SECTION 1309 INSTEAD OF A SPECIAL PERSONAL REPRESENTATIVE TO
4 PERFORM DUTIES UNDER THIS SECTION.

5 Enacting section 1. This amendatory act does not take effect
6 unless all of the following bills of the 93rd Legislature are
7 enacted into law:

8 (a) House Bill No. 4891.

9 (b) House Bill No. 5836.