

ATTACHMENT 1

LAW OFFICES OF
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November 4, 2015

Members of Probate Council

RE: Senate Bill No. 551, Funeral Representative Legislation

Dear Council,

Senator Schuitmaker's office has put Senate Bill 551 into committee for review and comments. The Michigan Cemetery Association ("MCA") is motivated to see this legislation be enacted, but its focus differs from ours. We are motivated, I believe, to enable an individual to better direct the control of his or her own body after death. The MCA is more focused on appointing an individual from whom the funeral directors can reliably take direction and accept payment. Our goal is the same, but the MCA, as you will see, is less concerned than attorneys might be with the form of documentation.

We have enclosed our meeting minutes; the draft Bill; the comments of the MCA; and the comments of Ryan Bourjaily of our committee, who also acted as our committee secretary. Please review these before our meeting on Saturday. We apologize for the last minute information- we came to know last Thursday that the Bill was to be presented this week.

Very truly yours,



Michele C. Marquardt

State Bar of Michigan: Probate and Estate Planning Section Legislative Monitoring Committee

Meeting Minutes

November 3, 2015 5:00 – 5:35 p.m.

Present:

Michele Marquardt

Ryan Bourjaily

Mark Kellogg

1. Introduction of Members

2. Open discussion regarding Comments of Michigan Cemetery Association (“MCA”) on Draft 2 of the Substitute for SB 551.

- Page 2, Line 15: The committee believes that “Funeral Representative” should be included in EPIC’s definition of “Fiduciary”.

- Page 5, Lines 5-10: The committee agrees with Draft 2 of the Bill as written.

- Page 11-12, Lines 27 and 1-7: The committee believes the order of priority should be revised to reflect the following:

- (i) The decedent’s children;
- (ii) The decedent’s parents;
- (iii) The decedent’s grandparents;
- (iv) The decedent’s siblings;
- (v) The decedent’s grandchildren;
- (vi) The descendants of the decedent’s grandparents other than the decedent’s children, grandchild, parents, or siblings.

- Page 13, Line 2: The committee believes that, although it’s recommended that there should be a definitive time period for a funeral representative to exercise his or her rights after receiving notice, 48 hours may not afford the necessary time. The Committee tabled this point for discussion at the Section’s monthly meeting.

- The committee is in agreement with the remainder of the MCA’s comments.

3. Adjourn.

EXHIBIT A

DRAFT 2
SUBSTITUTE FOR
SENATE BILL NO. 551

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1104. As used in this act:



1 (a) "Environmental law" means a federal, state, or local law,
2 rule, regulation, or ordinance that relates to the protection of
3 the environment or human health.

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

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

12 (d) "Family allowance" means the allowance prescribed in
13 section 2403.

14 (e) "Fiduciary" includes, but is not limited to, a personal
15 representative, **FUNERAL REPRESENTATIVE**, guardian, conservator,
16 trustee, plenary guardian, partial guardian, and successor
17 fiduciary.

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

25 (g) "Foreign personal representative" means a personal
26 representative appointed by another jurisdiction.

27 (h) "Formal proceedings" means proceedings conducted before a



1 judge with notice to interested persons.

2 (i) "Funeral establishment" means that term as defined in
3 section 1801 of the occupational code, 1980 PA 299, MCL 339.1801,
4 and the owners, employees, and agents of the funeral establishment.

5 (J) "FUNERAL REPRESENTATIVE" MEANS AN INDIVIDUAL DESIGNATED TO
6 HAVE THE RIGHT AND POWER TO MAKE DECISIONS ABOUT FUNERAL
7 ARRANGEMENTS AND THE HANDLING, DISPOSITION, OR DISINTERMENT OF A
8 DECEDENT'S BODY, INCLUDING, BUT NOT LIMITED TO, DECISIONS ABOUT
9 CREMATION, AND THE RIGHT TO POSSESS CREMATED REMAINS OF THE
10 DECEDENT AS PROVIDED IN SECTION 3206.

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

14 (I) ~~(j)~~—"General personal representative" means a personal
15 representative other than a special personal representative.

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

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



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

3 (P) ~~(n)~~—"Heir" means, except as controlled by section 2720, a
4 person, including the surviving spouse or the state, that is
5 entitled under the statutes of intestate succession to a decedent's
6 property.

7 (Q) ~~(o)~~—"Homestead allowance" means the allowance prescribed
8 in section 2402.

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

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

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

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

27 (c) An individual who was a party to a valid proceeding



1 concluded by an order purporting to terminate all marital property
2 rights.

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

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

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

8 (ii) Deserted the decedent spouse.

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

11 (3) FOR PURPOSES OF SECTION 3206, A SURVIVING SPOUSE DOES NOT
12 INCLUDE EITHER OF THE FOLLOWING:

13 (A) AN INDIVIDUAL DESCRIBED IN SUBSECTION (2).

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

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

25 (2) The felonious and intentional killing or the conviction of
26 the felon for the abuse, neglect, or exploitation of the decedent
27 does all of the following:



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

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

4 (ii) Provision in a governing instrument conferring a general
5 or nongeneral power of appointment on the killer or felon.

6 (iii) Nomination of the killer or felon in a governing
7 instrument, nominating or appointing the killer or felon to serve
8 in a fiduciary or representative capacity, including a personal
9 representative, executor, **FUNERAL REPRESENTATIVE**, trustee, or
10 agent.

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

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

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

26 (4) A provision of a governing instrument is given effect as
27 if the killer or felon disclaimed all provisions revoked by this



1 section or, ~~in the case of~~ ~~FOR~~ a revoked nomination in a fiduciary
2 or representative capacity, as if the killer or felon predeceased
3 the decedent.

4 (5) A killer's or felon's wrongful acquisition of property or
5 interest not covered by this section ~~shall~~ **MUST** be treated in
6 accordance with the principle that a killer or felon cannot profit
7 from his or her wrong.

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

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



1 decedent.

2 Sec. 2807. (1) Except as provided by the express terms of a
3 governing instrument, court order, or contract relating to the
4 division of the marital estate made between the divorced
5 individuals before or after the marriage, divorce, or annulment,
6 the divorce or annulment of a marriage does all of the following:

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

8 (i) A disposition or appointment of property made by a
9 divorced individual to his or her former spouse in a governing
10 instrument and a disposition or appointment created by law or in a
11 governing instrument to a relative of the divorced individual's
12 former spouse.

13 (ii) A provision in a governing instrument conferring a
14 general or nongeneral power of appointment on the divorced
15 individual's former spouse or on a relative of the divorced
16 individual's former spouse.

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

23 (b) Severs the interests of the former spouses in property
24 held by them at the time of the divorce or annulment as joint
25 tenants with the right of survivorship, transforming the interests
26 of the former spouses into tenancies in common.

27 (C) **BARS THE FORMER SPOUSE FROM EXERCISING A POWER UNDER**



1 SECTION 3206(1) .

2 (2) A severance under subsection (1)(b) does not affect a
3 third-party interest in property acquired for value and in good
4 faith reliance on an apparent title by survivorship in the survivor
5 of the former spouses unless a writing declaring the severance has
6 been noted, registered, filed, or recorded in records appropriate
7 to the kind and location of the property that are relied upon, ON,
8 in the ordinary course of transactions involving that type of
9 property, as evidence of ownership.

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

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

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

22 Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216,
23 part 28 and article 10 of the public health code, 1978 PA 368, MCL
24 333.2801 to 333.2899 and 333.10101 to 333.11101, and subsection
25 ~~(11)~~, (12), A FUNERAL REPRESENTATIVE DESIGNATED UNDER SUBSECTION
26 (2), a person with priority under subsections ~~(2) to (4)~~ (3) TO (5)
27 or A PERSON acting under subsection ~~(5)~~, (6), (7), or (8), OR (9)



1 is presumed to have the right and power to make decisions about
2 funeral arrangements and the handling, disposition, or disinterment
3 of a decedent's body, including, but not limited to, decisions
4 about cremation, and the right to **RETRIEVE FROM THE FUNERAL**
5 **ESTABLISHMENT AND** possess cremated remains of the decedent
6 **IMMEDIATELY AFTER CREMATION**. The handling, disposition, or
7 disinterment of a body ~~shall~~**MUST** be under the supervision of a
8 person licensed to practice mortuary science in this state.

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

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

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

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



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

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

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

7 (C) A FUNERAL REPRESENTATIVE DESIGNATION UNDER THIS SUBSECTION
8 MUST BE EXECUTED IN THE PRESENCE OF AND SIGNED BY 2 WITNESSES. A
9 FUNERAL REPRESENTATIVE DESIGNATION MAY BE INCLUDED IN A PATIENT
10 ADVOCATE DESIGNATION. IF A FUNERAL REPRESENTATIVE DESIGNATION IS
11 CONTAINED IN AN INDIVIDUAL'S WILL, THE WILL IS NOT REQUIRED TO BE
12 ADMITTED TO PROBATE FOR THE FUNERAL REPRESENTATIVE DESIGNATION TO
13 BE VALID.

14 (3) ~~(2)~~—The FOLLOWING HAVE THE RIGHTS AND POWERS UNDER
15 SUBSECTION (1) IN THE FOLLOWING ORDER OF PRIORITY:

16 (A) IF THE DECEDENT WAS A SERVICE MEMBER, A PERSON DESIGNATED
17 TO DIRECT THE DISPOSITION OF THE SERVICE MEMBER'S REMAINS ACCORDING
18 TO A STATUTE OF THE UNITED STATES OR REGULATION, POLICY, DIRECTIVE,
19 OR INSTRUCTION OF THE DEPARTMENT OF DEFENSE.

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

21 (C) THE surviving spouse. ~~or, if there is no surviving spouse,~~
22 the

23 (D) SUBJECT TO SUBDIVISION (E), THE individual or individuals
24 18 years of age or older, ~~in the highest order of priority under~~
25 ~~section 2103, and related to the decedent in the closest degree of~~
26 ~~consanguinity, have the rights and powers under subsection (1).~~ IN
27 THE FOLLOWING ORDER OF PRIORITY:



1 (i) THE DECEDENT'S CHILDREN.

2 (ii) THE DECEDENT'S GRANDCHILDREN.

3 (iii) THE DECEDENT'S PARENTS.

4 (iv) THE DECEDENT'S GRANDPARENTS.

5 (v) THE DECEDENT'S SIBLINGS.

6 (vi) THE DESCENDANTS OF THE DECEDENT'S GRANDPARENTS OTHER THAN
7 THE DECEDENT'S CHILDREN, GRANDCHILDREN, PARENTS, OR SIBLINGS.

8 (E) IF AN INDIVIDUAL DESCRIBED IN SUBDIVISION (D) HAS
9 EXERCISED THE RIGHT TO DISPOSE OF THE DECEDENT'S BODY UNDER
10 SUBSECTION (1), ANOTHER INDIVIDUAL DESCRIBED IN SUBDIVISION (D)
11 WITH A HIGHER PRIORITY THAN THE INDIVIDUAL WHO EXERCISED THAT RIGHT
12 DOES NOT HAVE THE RIGHT TO MAKE A DECISION ABOUT THE DISINTERMENT
13 OF THE DECEDENT'S BODY OR POSSESSION OF THE DECEDENT'S CREMATED
14 REMAINS.

15 (4) ~~(3) If the surviving spouse or~~ IF the individual or
16 individuals with the highest priority as determined under
17 subsection ~~(2) do not exercise their rights or powers under~~
18 ~~subsection (1) or (3)~~ cannot be located after a good-faith effort
19 to contact AND INFORM them OF THE DECEDENT'S DEATH, AFFIRMATIVELY
20 DECLINE TO EXERCISE THEIR RIGHTS OR POWERS UNDER SUBSECTION (1), OR
21 FAIL TO EXERCISE THEIR RIGHTS OR POWERS UNDER SUBSECTION (1) WITHIN
22 48 HOURS AFTER RECEIVING NOTIFICATION OF THE DECEDENT'S DEATH, the
23 rights and powers under subsection (1) may be exercised by the
24 individual or individuals in the same order of priority under
25 section 2103 who are related to the decedent in the next closest
26 degree of consanguinity. If the individual or each of the
27 individuals in an order of priority as determined under this



1 subsection ~~similarly~~ **AFFIRMATIVELY DECLINES OR** does not exercise
 2 his or her rights or powers **WITHIN 48 HOURS AFTER RECEIVING**
 3 **NOTIFICATION THAT HE OR SHE MAY ACT UNDER THIS SUBSECTION** or cannot
 4 be located, the rights or powers under subsection (1) pass to the
 5 next order of priority, with the order of priority being determined
 6 by first taking the individuals in the highest order of priority
 7 under section 2103 and then taking the individuals related to the
 8 decedent in the closest or, as applicable, next closest degree of
 9 consanguinity in that order of priority. **FOR PURPOSES OF THIS**
 10 **SUBSECTION ONLY, "EXERCISE THEIR RIGHTS OR POWERS UNDER SUBSECTION**
 11 **(1)" MEANS NOTIFYING THE FUNERAL ESTABLISHMENT IN POSSESSION OF THE**
 12 **DECEDENT'S BODY OF AN INDIVIDUAL'S DECISION OR INSTRUCTIONS AS TO**
 13 **THE FINAL DISPOSITION OF THE DECEDENT'S BODY.**

14 (5) ~~(4)~~ If 2 or more individuals share the rights and powers
 15 described in subsection (1) as determined under subsection ~~(2)~~ ~~or~~
 16 (3) **OR (4)**, the rights and powers shall be exercised as decided by
 17 a majority of the individuals **WHO CAN BE LOCATED AFTER REASONABLE**
 18 **EFFORTS**. If a majority cannot agree, any of the individuals may
 19 file a petition under section 3207.

20 (6) ~~(5)~~ If no individual described in subsections ~~(2)~~ ~~and~~ (3)
 21 **AND (4)** exists, exercises the rights or powers under subsection
 22 (1), or can be located after a sufficient attempt as described in
 23 subsection ~~(9)~~ ~~,~~ (10), and if subsection ~~(6)~~ ~~(7)~~ does not apply,
 24 then the personal representative or nominated personal
 25 representative may exercise the rights and powers under subsection
 26 (1), either before or after his or her appointment.

27 (7) ~~(6)~~ If no individual described in subsections ~~(2)~~ ~~and~~ (3)



1 AND (4) exists, exercises the rights or powers under subsection
 2 (1), or can be located after a sufficient attempt as described in
 3 subsection ~~(9)~~, ~~(10)~~, and if the decedent was under a guardianship
 4 at the time of death, the guardian may exercise the rights and
 5 powers under subsection (1) and may make a claim for the
 6 reimbursement of burial expenses as provided in section 5216 or
 7 5315, as applicable.

8 (8) ~~(7)~~ If no individual described in subsections ~~(2)~~ and ~~(3)~~
 9 AND (4) exists, exercises the rights or powers under subsection
 10 (1), or can be located after a sufficient attempt as described in
 11 subsection ~~(9)~~, ~~(10)~~, if the decedent died intestate, and if
 12 subsection ~~(6)~~ ~~(7)~~ does not apply, **A SPECIAL FIDUCIARY APPOINTED**
 13 **UNDER SECTION 1309 OR** a special personal representative appointed
 14 under section 3614(c) may exercise the rights and powers under
 15 subsection (1).

16 (9) ~~(8)~~ If there is no person under subsections ~~(2)~~ ~~(3)~~ to ~~(7)~~
 17 (8) to exercise the rights and powers under subsection (1), 1 of
 18 the following, as applicable, shall exercise the rights and powers
 19 under subsection (1):

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

26 (b) If the decedent was incarcerated in a state correctional
 27 facility at the time of his or her death, the director of the



1 department of corrections or the designee of the director.

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

8 (11) ~~(10)~~—This section does not void or otherwise affect an
9 anatomical gift made under part 101 of the public health code, 1978
10 PA 368, MCL 333.10101 to 333.10123.

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

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

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

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

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



1 (13) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A PERSON
 2 WHO HAS THE RIGHTS AND POWERS UNDER SUBSECTION (1) AND WHO
 3 EXERCISES THE RIGHT OVER THE DISPOSITION OF THE DECEDENT'S BODY
 4 MUST ENSURE PAYMENT FOR THE COSTS OF THE DISPOSITION THROUGH A
 5 TRUST, INSURANCE, A COMMITMENT BY ANOTHER PERSON, A PREPAID
 6 CONTRACT UNDER THE PREPAID FUNERAL AND CEMETERY SALES ACT, 1986 PA
 7 255, MCL 328.211 TO 328.235, OR OTHER EFFECTIVE AND BINDING MEANS.
 8 TO THE EXTENT PAYMENT IS NOT ENSURED UNDER THIS SUBSECTION, THE
 9 PERSON DESCRIBED IN THIS SUBSECTION IS LIABLE FOR THE COSTS OF THE
 10 DISPOSITION. THIS SUBSECTION DOES NOT APPLY TO A PERSON WHO
 11 EXERCISES THE RIGHTS AND POWERS UNDER SUBSECTION (1) AS PROVIDED IN
 12 SUBSECTION (8) OR (9).

13 (14) ~~(12)~~—As used in this section:

14 (a) "Armed forces" means that term as defined in section 2 of
 15 the veteran right to employment services act, 1994 PA 39, MCL
 16 35.1092.

17 (b) "HEALTH FACILITY" MEANS THAT TERM AS DEFINED IN SECTION
 18 5653 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5653.

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

21 (d) "MEDICAL TREATMENT" MEANS THAT TERM AS DEFINED IN SECTION
 22 5653 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5653.

23 (e) ~~(b)~~—"Michigan national guard"—NATIONAL GUARD" means that
 24 term as defined in section 105 of the Michigan military act, 1967
 25 PA 150, MCL 32.505.

26 (f) ~~(c)~~—"Nominated personal representative" means a person
 27 nominated to act as personal representative in a will that the



1 nominated person reasonably believes to be the valid will of the
2 decedent.

3 (G) ~~(d)~~ "Service member" means a member of the armed forces, a
4 reserve branch of the armed forces, or the Michigan national
5 guard. NATIONAL GUARD.

6 SEC. 3206A. (1) A DECLARANT MAY DESIGNATE IN THE FUNERAL
7 REPRESENTATIVE DESIGNATION A SUCCESSOR INDIVIDUAL AS A FUNERAL
8 REPRESENTATIVE WHO MAY EXERCISE THE RIGHTS AND POWERS DESCRIBED IN
9 SECTION 3206(1) IF THE FIRST INDIVIDUAL NAMED AS FUNERAL
10 REPRESENTATIVE DOES NOT ACCEPT, IS INCAPACITATED, RESIGNS, OR IS
11 REMOVED.

12 (2) BEFORE ACTING AS A FUNERAL REPRESENTATIVE, THE PROPOSED
13 FUNERAL REPRESENTATIVE MUST SIGN AN ACCEPTANCE OF THE FUNERAL
14 REPRESENTATIVE DESIGNATION.

15 (3) THE AUTHORITY UNDER A FUNERAL REPRESENTATIVE DESIGNATION
16 IS EXERCISABLE BY A FUNERAL REPRESENTATIVE ONLY AFTER THE DEATH OF
17 THE DECLARANT.

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

21 (5) ON REQUEST OF THE FUNERAL ESTABLISHMENT, THE FUNERAL
22 REPRESENTATIVE SHALL PROVIDE A COPY OF THE FUNERAL REPRESENTATIVE
23 DESIGNATION TO THE FUNERAL ESTABLISHMENT.

24 SEC. 3206B. A FUNERAL REPRESENTATIVE DESIGNATION IS REVOKED BY
25 1 OR MORE OF THE FOLLOWING:

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



1 (i) THE FUNERAL REPRESENTATIVE'S RESIGNATION.

2 (ii) THE FUNERAL REPRESENTATIVE CANNOT BE LOCATED AFTER
3 REASONABLE EFFORTS BY THE DECEDENT'S FAMILY OR FUNERAL
4 ESTABLISHMENT.

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

7 (B) THE DECLARANT'S REVOCATION OF THE FUNERAL REPRESENTATIVE
8 DESIGNATION. A DECLARANT MAY REVOKE A FUNERAL REPRESENTATIVE
9 DESIGNATION AT ANY TIME AND IN ANY MANNER BY WHICH HE OR SHE IS
10 ABLE TO COMMUNICATE AN INTENT TO REVOKE THE FUNERAL REPRESENTATIVE
11 DESIGNATION.

12 (C) A SUBSEQUENT FUNERAL REPRESENTATIVE DESIGNATION THAT
13 REVOKES THE PRIOR FUNERAL REPRESENTATIVE DESIGNATION EITHER
14 EXPRESSLY OR BY INCONSISTENCY.

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

22 (a) An individual with the rights and powers under section
23 3206(1).

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

26 (C) AN INDIVIDUAL OTHER THAN A PERSON WITH PRIORITY UNDER
27 SECTION 3206(3) TO (5) OR ACTING UNDER SECTION 3206(6), (7), (8),



1 OR (9).

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

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

24 (4) If a funeral establishment is the petitioner under this
25 section, the funeral establishment's actual costs and reasonable
26 attorney fees in bringing the proceeding ~~shall~~ **MUST** be included in
27 the reasonable funeral and burial expenses under section 3805(1) (b)



1 or the court may assess such costs and fees against 1 or more
2 parties or intervenors.

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

6 (a) The reasonableness and practicality of the funeral
7 arrangements or the handling or disposition of the body proposed by
8 the person bringing the action in comparison with the funeral
9 arrangements or the handling or disposition of the body proposed by
10 1 or more individuals with the rights and powers under section
11 3206(1).

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

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

18 (D) WHETHER THE DECEDENT EXECUTED A FUNERAL REPRESENTATIVE
19 DESIGNATION UNDER SECTION 3206(2) OR A DESIGNATION DESCRIBED IN
20 SECTION 3206(3) (A).

21 (E) IF THE DECEDENT WAS MARRIED AT THE TIME OF HIS OR HER
22 DEATH, WHETHER THE DECEDENT'S SPOUSE WAS PHYSICALLY AND EMOTIONALLY
23 SEPARATED FROM THE DECEDENT AT THE TIME OF HIS OR HER DEATH AND HAD
24 BEEN SEPARATED FOR A PERIOD OF TIME THAT CLEARLY DEMONSTRATES AN
25 ABSENCE OF DUE AFFECTION, TRUST, AND REGARD BETWEEN THE SPOUSE AND
26 THE DECEDENT.

27 (6) BEFORE THE COURT MAKES A DECISION UNDER SUBSECTION (5),



1 AND IF REFRIGERATION IS NOT REASONABLY AVAILABLE, THE FUNERAL
 2 ESTABLISHMENT THAT HAS CUSTODY OF THE DECEDENT'S BODY MAY EMBALM
 3 THE DECEDENT'S BODY.

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

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



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

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

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

20 (b) By the court on its own motion or in a formal proceeding
21 by court order on the petition of an interested person if in either
22 case, after notice and hearing, the court finds that the
23 appointment is necessary to preserve the estate or to secure its
24 proper administration, including its administration in
25 circumstances in which a general personal representative cannot or
26 should not act. If it appears to the court that an emergency
27 exists, the court may order the appointment without notice.



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

16 Sec. 3701. A personal representative's duties and powers
17 commence ~~upon~~ ~~ON~~ appointment. A personal representative's powers
18 relate back in time to give acts by the person appointed that are
19 beneficial to the estate occurring before appointment the same
20 effect as those occurring after appointment. Subject to sections
21 3206 to ~~3208~~, 3207, before or after appointment, a person named as
22 personal representative in a will may carry out the decedent's
23 written instructions relating to the decedent's body, funeral, and
24 burial arrangements. A personal representative may ratify and
25 accept an act on behalf of the estate done by another if the act
26 would have been proper for a personal representative.

27 Enacting section 1. Section 3208 of the estates and protected



1 individuals code, 1998 PA 386, MCL 700.3208, is repealed.



EXHIBIT B

Comments of the
Michigan Cemetery Association on
Draft 2 of the Substitute for SB 551

It is our opinion that the legislation must be premised on the thought that an individual has the right to control the final disposition of her or his body. Convenience to, and the desires of, funeral homes and cemeteries should only be given attention in the event a body is left to languish.

SB 551 should address two purposes:

- 1) Create an unequivocal ability to determine the final disposition of one's own body; and
- 2) Establish a clear path for a respectful, but undelayed, final disposition when the deceased did not choose to determine her or his final disposition.

The first purpose is to serve an individual's ability to control their body after death, an ability already recognized in Michigan in the Michigan Anatomical Gift Law, MCL 333.10101 - 333.10123.

The second purpose is to ensure a timely and respectful disposition, so as not to leave a body lingering in funeral homes due to internecine battles or a lack of kin.

To these ends, a person should have:

- 1) The ability to dictate what he or she wants his or her final disposition to be; and
- 2) The ability to dictate who he or she wants to either implement his or her decision of final disposition, or to make and implement the decision.

If, and only if, an individual does not:

- 1) Choose the final disposition and a person to implement the choice; or
 - 2) Choose a person to make a decision on final disposition and implement it;
- then do decisions fall to an ordered line of next-of-kin.

If there are no next of kin, or next-of-kin do not act within a set time, then a funeral establishment in possession of the deceased's body may arrange for and have conducted an earth interment or an entombment within x(7?) days, or a cremation within y(30?) days.

This should not be a process which leaves a person languishing in a funeral home while battles over the amount to be spent on a funeral, and hence what dollars are left over, are fought amongst the kin, heirs, devisees, and beneficiaries.

Accordingly, it is suggested that the following changes be made to Draft 2 of the Substitute for SB 551.

Page 2, Line 15: "Funeral Representative" should be removed from the definition of "Fiduciary". Under Section 1212 of EPIC, MCL 700.1212, a fiduciary owes his or her duty to the heir, devisee, beneficiary, protected individual, or ward for whom he or she is a fiduciary. While it might be desirable to state that a Funeral Representative's sole duty is a duty to the "Declarant", sliding "Funeral Representative" into 1104(e) does not achieve this, and indeed creates a conflict.

Page 3, Lines 5-10: The definition of "Funeral Representative" should be stricken as it is mostly, though actually more limited, redundant of the definition found in Section 3206(2).

Page 5, Lines 11-15: Nothing about the designation of a Funeral Representative or the appropriate next of kin to make funeral decisions, necessitates this further carve-out of who is a "surviving spouse". That a divorce proceeding or annulment proceeding is under way at time of death should not be a *per se* bar, the couple may still, for example, remain best of friends.

Page 10, Lines 4-6: The words "from the funeral establishment and" and "immediately after cremation" should be deleted. A person with the rights and powers to make decisions and arrangements currently has the unencumbered right to possess the cremated remains. The new language would needlessly insert the funeral establishment into a process where the ashes are often provided by the crematory directly to the person with the rights and powers. Further, that person currently has the power to take possession of the ashes at any time. The new language would apparently limit this power to "immediately after cremation", suggesting that if possession is not immediate that something nameless may happen.

Page 10, Lines 9-10: The words "and the priority in subsection (3) should be deleted. They add no meaning to 3206, and confuse the issue by suggesting that something in subsection (3) limits the designation. There is no such limitation.

Pages 10-11, Lines 24-6: The vocational exclusions to being a Funeral Representative should include, where there are less than 25 shareholders, partners, or members, the owners of the health or veterans' facility, the funeral establishment, the cemetery, or the crematory. It should also exclude members of municipal boards, commissions, councils, or committees charged with oversight or operation of a crematory or cemetery.

Page 11, Lines 8: Insert after "2 witnesses", "A witness under this section shall not be the patient's spouse, parent, child, grandchild, sibling, presumptive heir, or known devisee at the time of the witnessing." This restriction coordinates the witnessing with that of the patient advocate designation, and hampers undue influence.

Page 12, Lines 6-7: "(vi)" which adds the catch-all "descendants" to the list of priority only adds unnecessary time delays and confusion to the process. If the desire is to add nephews and nieces, two categories that are readily discernible, then "(vi)" should simply say "nephews and nieces", and not a hodgepodge of nephews, nieces, and all degrees of cousins, great aunts and uncles, etc.

Page 12, Lines 8-14: "(E)" provides that if the right has been exercised under "D", then another person under "D" with a higher priority cannot come forward to make a later decision about disinterment or possession of the ashes. This begs the question of whether another with the same priority can make the later decision. Further, what if the original decision maker has died.

Page 12, Lines 21-22, and Page 13, Lines 2-3, Lines 9-13: Either this 48 hour period is too short, failing to take into account that there are as a matter of course rather mundane circumstances causing the exercise of the rights and powers to fall outside of 48 hours, or the language in Page 13, Lines 9-13 needs to be revised to state that the only power that needs to be exercised within 48 hours of notification is a statement to a funeral establishment, or if appropriate the county medical examiner, of intent by that person to fully exercise her or his powers.

Page 13, Lines 17-18: "What constitutes and who decides what are "reasonable efforts". This does not appear to be helpful in resolving disputes.

Page 17, Lines 15-17: This subsection provides that the authority under a Funeral Representative Designation only becomes exercisable after death. This is a needless encumbrance limiting prearrangement. At the very least, the declarant should be able to specify in the Designation a time, or event upon which the Designation becomes exercisable before death.

Page 17, Line 21: This should be expanded to include provision of the Designation to a cemetery or crematory.

Page 18, Lines 5-6: This section provides for an automatic and immediate revocation of a Funeral Representative Designation if there is a failure to act within 48 hours of notice of death. As with the provisions on Pages 12 and 13 (see above), this automatic revocation fails to take into account that there are, as a matter of course, rather mundane circumstances causing action to be delayed beyond 48 hours, and it is triggered by a vague and ambiguous term "refuses to act".

Page 18, Lines 7-11: This section addresses a declarant's revocation, but leaves it subject to undue influence and other mischief. A better way would be to follow the path laid out in the Michigan Anatomical Gift Law, MCL 333.10106, and require either a writing expressly revoking the Designation and witnessed by two persons, at least one of whom is a disinterested person, or if not made in a will or patient advocate designation, by any form of communication during a terminal illness or injury addressed to at least 2 adults, at least 1 of whom is a disinterested witness.

Pages 18 and 19, Lines 15-21 and 26-1: These lines would specifically authorize petitions by anyone in the world to the Probate Court to rebut the operating presumption of Section 3206, i.e., that the relevant person designated as a Funeral Representative, or a person with priority, or a person acting as personal representative, guardian, special fiduciary, county public administrator, medical examiner, or director of the department of corrections, is presumed to have the right and power to make decisions. This is simply put, ludicrous. Section 3207(1) should be left as it is.

Page 21, between Lines 3 and 4: To allow the expeditious disposition of the deceased in circumstances where there is no individual to act, or there is deadlock, yet there is a ready solution to which the deceased had privity, insert the following:

(7) IF THERE IS A DISAGREEMENT AS DESCRIBED IN SECTION 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(3) OR (4) CANNOT BE LOCATED, OR IS UNABLE OR UNWILLING TO EXERCISE THE POWERS UNDER SECTION 3206(1), A FUNERAL ESTABLISHMENT, CEMETERY, OR CREMATORY THAT HAS CUSTODY OF THE DECEDENT'S BODY OR CREMATED REMAINS OR THAT IS PRESENTED THE DECEDENT'S BODY OR CREMATED REMAINS MAY, WITHOUT FILING A PETITION UNDER SUBSECTION (1), DO ANY OF THE FOLLOWING, AS APPLICABLE:

(A) PERFORM ITS OBLIGATIONS AS MADE TO THE DECEDENT UNDER A CONTRACT MADE IN ACCORDANCE WITH THE PREPAID FUNERAL AND CEMETERY SALES ACT, 1986 PA 255, MCL 328.211 TO 328.235.

(B) INTER THE DECEDENT'S BODY OR CREMATED REMAINS IN AN INTERMENT SPACE IF ANY OF THE FOLLOWING CONDITIONS ARE MET:

(i) IMMEDIATELY BEFORE DEATH, THE DECEDENT OWNED THE INTERMENT RIGHTS TO THE INTERMENT SPACE; OR

(ii) THE DECEDENT'S SPOUSE, CHILD, OR PARENT IS INTERRED AT THE SAME CEMETERY.

Page 21, Line 4: Insert "cemetery, or crematory" after "establishment" and before "is not".

Page 21, Line 13: Insert "cemetery, or crematory" after "establishment" and before "is not".

Page 21, Line 16: Insert "cemetery, or crematory" after "establishment" and before "does not".

Page 21, Line 20: Insert "cemetery, or crematory" after "establishment" and before "reasonably".

Page 22, Line 13: Following "in good faith", insert "nor subject to criminal prosecution".

Page 22, between Lines 13 and 14: To establish that an individual has an unequivocal ability to determine the final disposition of one's own body after death, [Note, the following language mirrors insert the following:

SEC. 3210. (1) WHETHER OR NOT A FUNERAL REPRESENTATIVE HAS BEEN DESIGNATED IN ACCORDANCE WITH SECTION 3206, AN INDIVIDUAL MAY, IN A WRITING SIGNED AND DATED BY THE INDIVIDUAL, AND WITNESSED IN THE SAME MANNER AS A FUNERAL REPRESENTATIVE DESIGNATION, DIRECT THE FUNERAL ARRANGEMENTS TO BE PROVIDED AFTER HIS OR HER DEATH AND THE HANDLING AND DISPOSITION OF HIS OR HER REMAINS. THE PERSON WHO HAS THE RIGHTS AND POWERS TO MAKE DECISIONS REGARDING THE FUNERAL ARRANGEMENTS AND THE HANDLING AND DISPOSITION OF THE REMAINS UNDER SECTIONS 3206 TO 3208 SHALL MATERIALLY FOLLOW THE DIRECTIONS TO THE EXTENT ALLOWED BY LAW, IF BOTH OF THE FOLLOWING REQUIREMENTS ARE MET:

(A) THE DIRECTIONS ARE SUFFICIENTLY CLEAR, COMPLETE, AND DETAILED SO AS TO NOT PRESENT ANY MATERIAL AMBIGUITY.

(B) ARRANGEMENTS HAVE BEEN MADE FOR PAYMENT OF THE DIRECTED FUNERAL ARRANGEMENTS AND HANDLING AND DISPOSITION OF THE REMAINS THROUGH A TRUST, INSURANCE, A COMMITMENT BY ANOTHER PERSON, A PREPAID

CONTRACT UNDER THE PREPAID FUNERAL AND CEMETERY SALES ACT, 1986 PA 255, MCL 328.211 TO 328.235, OR OTHER EFFECTIVE AND BINDING MEANS.

(2) IF AN INDIVIDUAL WHO MAKES A WRITING DESCRIBED IN SUBSECTION (1) LATER MAKES ANOTHER WRITING THAT MEETS THE REQUIREMENTS OF SUBSECTION (1) AND THAT CONTAINS DIRECTIONS CONTRARY TO THE DIRECTIONS IN THE EARLIER WRITING, THE LATER WRITING PREVAILS.

(3) IF THE ARRANGEMENTS TO PAY DESCRIBED IN SUBSECTION (1)(B) WILL NOT COMPLETELY PAY FOR THE DIRECTED FUNERAL ARRANGEMENTS AND HANDLING AND DISPOSITION OF THE REMAINS, THE DIRECTIONS FOR WHICH ARRANGEMENTS TO PAY HAVE NOT BEEN MADE SHALL BE CARRIED OUT ONLY TO THE EXTENT THAT THE DECEDENT'S ESTATE HAS SUFFICIENT ASSETS TO PAY OR THE PERSON THAT OTHERWISE HAS THE RIGHTS AND POWERS TO MAKE DECISIONS REGARDING THE FUNERAL ARRANGEMENTS AND THE HANDLING AND DISPOSITION OF THE REMAINS UNDER SECTIONS 3206 TO 3208 AGREES TO PAY.

(4) IF DIRECTIONS DESCRIBED IN SUBSECTION (1) ARE CONTAINED IN THE INDIVIDUAL'S WILL, THE DIRECTIONS SHALL BE FOLLOWED IMMEDIATELY ON THE INDIVIDUAL'S DEATH, REGARDLESS OF WHETHER THE WILL IS VALID IN OTHER RESPECTS OR HAS BEEN OFFERED FOR OR ADMITTED TO PROBATE.

(5) A FUNERAL ESTABLISHMENT, CEMETERY, OR CREMATORY HAS NO RESPONSIBILITY TO INQUIRE WHETHER ANY WRITING OR WILL EXISTS UNDER SECTION 3210 (1) OR (4) BUT MAY RELY UPON PERSON WHO HAS THE RIGHTS AND POWERS TO MAKE DECISIONS REGARDING THE FUNERAL ARRANGEMENTS AND THE HANDLING AND DISPOSITION OF THE REMAINS UNDER SECTIONS 3206 TO 3208.

(6) (a) A PERSON WHO ACTS IN GOOD FAITH RELIANCE ON A DIRECTION MADE IN ACCORDANCE WITH THIS SECTION 3210 IS IMMUNE FROM LIABILITY TO THE SAME EXTENT AS IF THE PERSON HAD DEALT DIRECTLY WITH THE DECLARANT AND THE DECLARANT HAD BEEN A COMPETENT AND LIVING PERSON.

(b) A PERSON WHO DEALS WITH A DIRECTION MAY PRESUME, IN THE ABSENCE OF ACTUAL KNOWLEDGE TO THE CONTRARY, THAT:

(1) THE DIRECTION WAS VALIDLY EXECUTED; AND

(2) THE DECLARANT WAS COMPETENT AT THE TIME THE DIRECTION WAS EXECUTED.

(c) THE DIRECTIONS OF A DECLARANT EXPRESSED IN A DIRECTION MADE IN ACCORDANCE WITH THIS SECTION 3210 ARE BINDING AS IF THE DECLARANT WERE ALIVE AND COMPETENT.

(7) THE PROBATE COURT SHALL HAVE JURISDICTION OVER AN ACTION TO ENFORCE A DIRECTION GIVEN UNDER THIS SECTION 3210. ANY PERSON MAY BRING SUCH AN ACTION. VENUE SHALL BE IN THE COUNTY IN WHICH THE DECLARANT WAS DOMICILED WHEN DEATH OCCURRED OR IN WHICH THE BODY OF DECLARANT REPOSES.

EXHIBIT C

Ryan P. Bourjaily

From: Michele Marquardt <Michele@dementandmarquardt.com>
Sent: Tuesday, October 27, 2015 8:39 AM
To: Pam Strong; 'Becky Bechler'
Cc: Ryan P. Bourjaily; CBallard@honigman.com; mkellogg@fraserlawfirm.com; g david.law@gmail.com; sharri.phillips@rollandlawfirm.com; Shaheen Imami
Subject: RE: Comments to the Proposed Funeral Representative Bill

Thank you, Harold- we appreciate your review and input. It really helps.

Michele

From: Pam Strong [mailto:pamstrong@scsck.com]
Sent: Tuesday, October 27, 2015 8:26 AM
To: Michele Marquardt <Michele@dementandmarquardt.com>; 'Becky Bechler' <bechler@paaonline.com>
Cc: rpb@probateprince.com; CBallard@honigman.com; mkellogg@fraserlawfirm.com; g david.law@gmail.com; sharri.phillips@rollandlawfirm.com; 'Shaheen Imami' <SII@probateprince.com>
Subject: RE: Comments to the Proposed Funeral Representative Bill

Michelle,

I'm sorry I can't make the 5pm conference call on Tuesday as I will be traveling to a 6pm township meeting.

I have had a chance to look at Ryan Bourjaily's 10/21/15 email. His five points are excellent. I concur.

Also, the 10/21/15 email with the handwritten notes in the margin are well taken. I concur.

Harold Schuitmaker

From: Michele Marquardt [mailto:Michele@dementandmarquardt.com]
Sent: Monday, October 26, 2015 12:37 PM
To: Becky Bechler
Cc: rpb@probateprince.com; CBallard@honigman.com; mkellogg@fraserlawfirm.com; pamstrong@scsck.com; g david.law@gmail.com; sharri.phillips@rollandlawfirm.com; Shaheen Imami
Subject: Re: Comments to the Proposed Funeral Representative Bill

Ladies and Gentlemen:

We're under the gun. I am out of town for a family wedding Thursday through Monday. I have time Wednesday at 5 for a conference call, or next Tuesday at 5.

Preferences?

Michele

On Oct 26, 2015, at 11:27 AM, Becky Bechler <bechler@paaonline.com> wrote:

Michele,

This legislation is scheduled for committee next week so the more timely we can be with our comments on the newest draft the better. It would be nice to have our changes incorporated in the draft bill that is under consideration. Please let me know if I can be of assistance.

Becky

From: Michele Marquardt [<mailto:Michele@dementandmarquardt.com>]

Sent: Wednesday, October 21, 2015 11:47 AM

To: rpb@probateprince.com; CBallard@honigman.com; mkellogg@fraserlawfirm.com; pamstrong@scsck.com; g david.law@gmail.com; sharri.phillips@rollandlawfirm.com

Cc: Becky Bechler; Shaheen Imami

Subject: FW: Comments to the Proposed Funeral Representative Bill

Dear Committee:

Below you will see Ryan's input on the proposed bill. ALSO, Harold called me this morning to say he will have comments by Monday, but he understood that the "heat is off" for now because Senator Schuitmaker pulled the bill so we can all get the review work done (Council and the funeral folks). Becky, is that true?

Thank you!

Michele

Michele C. Marquardt
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Phone : 269.343.2106
Facsimile: 269.343.2107

From: Ryan P. Bourjaily [<mailto:rpb@probateprince.com>]

Sent: Wednesday, October 21, 2015 9:27 AM

To: Michele Marquardt <Michele@dementandmarquardt.com>

Subject: Comments to the Proposed Funeral Representative Bill

Good Morning, Michele:

After review of the proposed funeral representative's bill, I have attached some hand-written remarks that include some of James Steward's comments (which I thought were useful) as well as my own. The following are additional comments/questions I have regarding the proposed bill:

1. Shouldn't a Funeral Representative (FR) be mentioned within the definition of a "fiduciary"? Most sections in the proposed bill that include various nominations within a governing instrument include other keynote fiduciaries, as well as the FR, so wouldn't it make sense to add FR to EPIC's definition of fiduciary?
2. On page 12 of the proposed bill, I am confused as to why an individual with higher priority does not have the right to decide who should have possession of the decedent's remains. If they have

- higher priority, wouldn't it lead to less disputes in court (which the funeral directors wish to avoid) if they could overrule an individual with lower priority absent an express designation?
3. What are the requirements, format, content, etc. of an Acceptance of Funeral Representative? Shouldn't this be statutory given the individual would/could be considered a fiduciary?
 4. Again on page 17, subsection (4) states, "except as provided in the funeral representative designation, a funeral representative shall not delegate his or her powers to another individual." – Should this subsection mention successor FRs rather than simply "except as provided in the FR designation." There should be a more concrete way as earlier in section 3206A.
 5. In section 2206(B), subsection (B) allows for the declarant's ability to revoke the designation. However, if there is an enforceable agreement with a designated funeral establishment, wouldn't the declarant's revocation constitute breach of such agreement?

Again, these are just a few of my comments after review of the proposed bill. Some might be better than others. I know you have been occupied with meetings this week, so please provide any feedback once you've had time to review. I hope this helps. Thanks.

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<image001.jpg>

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ATTACHMENT 2

DRAFT 1
SUBSTITUTE FOR
HOUSE BILL NO. 5034

A bill to provide for fiduciary access to digital assets; and to provide for the powers and procedures of the court that has jurisdiction over these matters.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "fiduciary access to digital assets act".

3 Sec. 2. As used in this act:

4 (a) "Account" means an arrangement under a terms-of-service
5 agreement in which the digital custodian carries, maintains,
6 processes, receives, or stores a digital asset of the user or
7 provides goods or services to the user.

8 (b) "Agent" means an attorney-in-fact granted authority under
9 a durable or nondurable power of attorney.



1 (c) "Carries" means engaging in the transmission of an
2 electronic communication.

3 (d) "Catalogue of electronic communications" means information
4 that identifies each person with which a user has had an electronic
5 communication, the time and date of the communication, and the
6 electronic address of the person.

7 (e) "Conservator" means a person that is appointed by a court
8 to manage all or part of the estate of a protected person.
9 Conservator includes, but is not limited to, any of the following:

10 (i) A conservator as that term is defined in section 1103 of
11 the estates and protected individuals code, 1998 PA 386, MCL
12 700.1103.

13 (ii) A plenary guardian as that term is defined in section 600
14 of the mental health code, 1974 PA 258, MCL 330.1600.

15 (iii) A partial guardian as that term is defined in section
16 600 of the mental health code, 1974 PA 258, MCL 330.1600.

17 (iv) A special fiduciary appointed to take possession of and
18 administer a protected person's property.

19 (v) A special conservator appointed under section 5408 of the
20 estates and protected individuals code, 1998 PA 386, MCL 700.5408.

21 (vi) A guardian if no conservator has been appointed.

22 (f) "Content of an electronic communication" means information
23 concerning the substance or meaning of an electronic communication
24 to which all of the following apply:

25 (i) The information has been sent or received by a user.

26 (ii) The information is in electronic storage by a digital
27 custodian providing an electronic communication service to the



1 public or is carried or maintained by a digital custodian providing
2 a remote-computing service to the public.

3 (iii) The information is not readily accessible to the public.

4 (g) "Court" means the probate court or, when applicable, the
5 circuit court.

6 (h) "Designated recipient" means a person chosen by a user
7 using an online tool to administer digital assets of the user.

8 (i) "Developmental disability" means that term as defined in
9 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.

10 (j) "Digital asset" means an electronic record in which a user
11 has a right or interest. Digital asset does not include an
12 underlying asset or liability unless the asset or liability is
13 itself an electronic record.

14 (k) "Digital custodian" means a person that carries,
15 maintains, processes, receives, or stores a digital asset of a
16 user.

17 (l) "Electronic" means relating to technology having
18 electrical, digital, magnetic, wireless, optical, electromagnetic,
19 or similar capabilities.

20 (m) "Electronic communication" means that term as defined in
21 18 USC 2510.

22 (n) "Electronic communication service" means a digital
23 custodian that provides to a user the ability to send or receive an
24 electronic communication.

25 (o) "Electronic communication system" means that term as
26 defined in 18 USC 2510.

27 (p) "Fiduciary" means a person who is an original, additional,



1 or successor personal representative, conservator, agent, or
2 trustee.

3 (q) "Guardian" means that term as defined in section 1104 of
4 the estates and protected individuals code, 1998 PA 386, MCL
5 700.1104.

6 (r) "Governing instrument" means a will, a trust, an
7 instrument creating a power of attorney, or other dispositive or
8 nominative instrument.

9 (s) "Information" means data, text, images, videos, sounds,
10 codes, computer programs, software, databases, or the like.

11 (t) "Interested person" or "person interested in an estate"
12 means those terms as defined in section 1105 of the estates and
13 protected individuals code, 1998 PA 386, MCL 700.1105.

14 (u) "Legally incapacitated individual" means that term as
15 defined in section 1105 of the estates and protected individuals
16 code, 1998 PA 386, MCL 700.1105.

17 (v) "Letters" means that term as described in section 1105 of
18 the estates and protected individuals code, 1998 PA 386, MCL
19 700.1105.

20 (w) "Minor" means that term as defined in section 1106 of the
21 estates and protected individuals code, 1998 PA 386, MCL 700.1106.

22 (x) "Online tool" means an electronic service provided by a
23 digital custodian that allows the user, in an agreement distinct
24 from the terms-of-service agreement between the digital custodian
25 and user, to provide directions for disclosure or nondisclosure of
26 digital assets to a third person.

27 (y) "Person" means that term as defined in section 1106 of the



1 estates and protected individuals code, 1998 PA 386, MCL 700.1106.

2 (z) "Personal representative" means that term as defined in
3 section 1106 of the estates and protected individuals code, 1998 PA
4 386, MCL 700.1106. Personal representative also includes a special
5 fiduciary appointed to take possession of and administer the
6 property of a decedent's estate.

7 (aa) "Power of attorney" means a record that grants an agent
8 authority to act in the place of a principal.

9 (bb) "Principal" means a person that grants authority to an
10 agent in a power of attorney.

11 (cc) "Proceeding" means that term as defined in section 1106
12 of the estates and protected individuals code, 1998 PA 386, MCL
13 700.1106.

14 (dd) "Protected individual" means that term as defined in
15 section 1106 of the estates and protected individuals code, 1998 PA
16 386, MCL 700.1106.

17 (ee) "Protected person" includes any of the following:

18 (i) A protected individual.

19 (ii) A legally incapacitated individual.

20 (iii) A minor for whom a guardian has been appointed but no
21 conservator has been appointed.

22 (iv) An individual who has a developmental disability.

23 (ff) "Record" means information that is inscribed on a
24 tangible medium or that is stored in an electronic or other medium
25 and is retrievable in perceivable form.

26 (gg) "Remote-computing service" means a digital custodian that
27 provides to a user computer processing services or the storage of



1 digital assets by means of an electronic communications system.

2 (hh) "Settlor" means that term as defined in section 7103 of
3 the estates and protected individuals code, 1998 PA 386, MCL
4 700.7103.

5 (ii) "Special fiduciary" means a special fiduciary appointed
6 by the court under sections 1308, 1309, 7704, 7815, and 7901 of the
7 estates and protected individuals code, 1998 PA 386, MCL 700.1308,
8 700.1309, 700.7704, 700.7815, and 700.7901.

9 (jj) "Terms-of-service agreement" means an agreement that
10 controls the relationship between a user and a digital custodian.

11 (kk) "Trust" means that term as defined in section 1107 of the
12 estates and protected individuals code, 1998 PA 386, MCL 700.1107.

13 (ll) "Trustee" means that term as defined in section 1107 of
14 the estates and protected individuals code, 1998 PA 386, MCL
15 700.1107. Trustee also includes a special fiduciary that controls
16 all or part of a trust.

17 (mm) "User" means a person that has an account with a digital
18 custodian.

19 (nn) "Will" means that term as defined in section 1108 of the
20 estates and protected individuals code, 1998 PA 386, MCL 700.1108.

21 Sec. 3. (1) Subject to subsections (2), (3), and (4), this act
22 applies to all of the following:

23 (a) A fiduciary acting under a will or power of attorney
24 executed before, on, or after the effective date of this act.

25 (b) A personal representative acting for a decedent who died
26 before, on, or after the effective date of this act.

27 (c) A proceeding involving a conservator commenced before, on,



1 or after the effective date of this act.

2 (d) A trustee acting under a trust created before, on, or
3 after the effective date of this act.

4 (2) This act applies to a digital custodian if the user
5 resides in this state or resided in this state at the time of the
6 user's death.

7 (3) This act does not impair an accrued right or an action
8 taken in a proceeding before the effective date of this act.

9 (4) This act does not apply to a digital asset of an employer
10 used by an employee in the ordinary course of business.

11 Sec. 4. (1) A user may use an online tool to direct the
12 digital custodian to disclose or not to disclose some or all of the
13 user's digital assets, including the contents of electronic
14 communications. If the online tool allows the user to modify or
15 delete a direction at all times, a direction regarding disclosure
16 using an online tool overrides a contrary direction by the user in
17 a will, trust, power of attorney, or other record.

18 (2) If a user has not used an online tool to give direction
19 under subsection (1) or if the digital custodian has not provided
20 an online tool, the user may allow or prohibit in a will, trust,
21 power of attorney, or other record disclosure of some or all of the
22 user's digital assets, including the contents of electronic
23 communications sent or received by the user.

24 (3) A user's direction under subsection (1) or (2) overrides a
25 contrary provision in a terms-of-service agreement that does not
26 require the user to act affirmatively and distinctly from the
27 user's assent to the terms-of-service agreement.



1 Sec. 5. (1) This act does not change or impair a right of a
2 digital custodian or a user under a terms-of-service agreement to
3 access and use digital assets of the user.

4 (2) This act does not give a fiduciary any new or expanded
5 rights other than those held by the user for whom, or for whose
6 estate, the fiduciary acts or who the fiduciary represents.

7 (3) A fiduciary's access to digital assets may be modified or
8 eliminated by a user, by federal law, or by a terms-of-service
9 agreement if the user has not provided direction under section 4.

10 Sec. 6. (1) When disclosing the digital assets of a user under
11 this act, the digital custodian may at its sole discretion do any
12 of the following:

13 (a) Grant a fiduciary or designated recipient full access to
14 the user's account.

15 (b) Grant a fiduciary or designated recipient partial access
16 to the user's account sufficient to perform the tasks with which
17 the fiduciary or designated recipient is charged.

18 (c) Provide a fiduciary or designated recipient a copy in a
19 record of any digital asset that, on the date the digital custodian
20 received the request for disclosure, the user could have accessed
21 if the user were alive and had full capacity and access to the
22 account.

23 (2) A digital custodian may assess a reasonable administrative
24 charge for the cost of disclosing digital assets under this act.

25 (3) A digital custodian is not required to disclose under this
26 act a digital asset deleted by a user.

27 (4) If a user directs or a fiduciary requests a digital



1 custodian to disclose under this act some, but not all, of the
2 user's digital assets, the digital custodian is not required to
3 disclose the requested digital assets if segregation of the
4 requested digital assets would impose an undue burden on the
5 digital custodian. If the digital custodian believes the direction
6 or request imposes an undue burden, the digital custodian or
7 fiduciary may seek an order from the court to disclose any of the
8 following:

9 (a) A subset limited by date of the user's digital assets.

10 (b) All of the user's digital assets to the fiduciary or
11 designated recipient.

12 (c) None of the user's digital assets.

13 (d) All of the user's digital assets to the court for review
14 in camera.

15 Sec. 7. If a deceased user consented to or a court directs
16 disclosure of the contents of electronic communications of the
17 user, a digital custodian shall disclose to the personal
18 representative of the user the content of an electronic
19 communication sent or received by the user if the personal
20 representative gives the digital custodian all of the following:

21 (a) A written request for disclosure in physical or electronic
22 form.

23 (b) A copy of the death certificate of the user.

24 (c) A certified copy of the letters of authority of the
25 personal representative, a small-estate affidavit, or other court
26 order.

27 (d) Unless the user provided direction using an online tool, a



1 copy of the user's will, trust, power of attorney, or other record
2 evidencing the user's consent to disclosure of the contents of
3 electronic communications.

4 (e) If requested by the digital custodian, any of the
5 following:

6 (i) A number, username, address, or other unique subscriber or
7 account identifier assigned by the digital custodian to identify
8 the user's account.

9 (ii) Evidence linking the account to the user.

10 (iii) A finding by the court that:

11 (A) The user had a specific account with the digital
12 custodian, identifiable by the information specified in
13 subparagraph (i).

14 (B) Disclosure of the content of electronic communications of
15 the user would not violate 18 USC 2701 to 2707, 47 USC 222, or
16 other applicable law.

17 (C) Unless the user provided direction using an online tool,
18 the user consented to disclosure of the contents of electronic
19 communications.

20 (D) Disclosure of the contents of electronic communications of
21 the user is reasonably necessary for administration of the estate.

22 Sec. 8. Unless the user prohibited disclosure of digital
23 assets or the court directs otherwise, a digital custodian shall
24 disclose to the personal representative of the estate of a deceased
25 user a catalogue of electronic communications sent or received by
26 the user and digital assets, other than the content of electronic
27 communications, of the user if the personal representative gives



1 the digital custodian all of the following:

2 (a) A written request for disclosure in physical or electronic
3 form.

4 (b) A copy of the death certificate of the user.

5 (c) A certified copy of the letters of authority of the
6 personal representative, a small-estate affidavit, or a court
7 order.

8 (d) If requested by the digital custodian, any of the
9 following:

10 (i) A number, username, address, or other unique subscriber or
11 account identifier assigned by the digital custodian to identify
12 the user's account.

13 (ii) Evidence linking the account to the user.

14 (iii) An affidavit stating that disclosure of the user's
15 digital assets is reasonably necessary for administration of the
16 estate.

17 (iv) A finding of the court that:

18 (A) The user had a specific account with the digital
19 custodian, identifiable by the information specified in
20 subparagraph (i).

21 (B) Disclosure of the contents of electronic communications of
22 a user is reasonably necessary for administration of the estate.

23 Sec. 9. To the extent a power of attorney grants an agent
24 authority over the content of electronic communications sent or
25 received by the principal and unless directed otherwise by the
26 principal or the court, a digital custodian shall disclose to the
27 agent the content of electronic communication if the agent gives



1 the digital custodian all of the following:

2 (a) A written request for disclosure in physical or electronic
3 form.

4 (b) An original or copy of the power of attorney granting the
5 agent the authority over the content of electronic communications
6 of the principal.

7 (c) An affidavit from the agent under section 5505 of the
8 estates and protected individuals code, 1998 PA 386, MCL 700.5505.

9 (d) If requested by the digital custodian, any of the
10 following:

11 (i) A number, username, address, or other unique subscriber or
12 account identifier assigned by the digital custodian to identify
13 the principal's account.

14 (ii) Evidence linking the account to the principal.

15 Sec. 10. Unless otherwise ordered by the court, directed by
16 the principal, or provided by a power of attorney, a digital
17 custodian shall disclose to an agent with specific authority over
18 digital assets or general authority to act on behalf of a principal
19 a catalogue of electronic communications sent or received by the
20 principal and any digital assets, other than the content of
21 electronic communications, of the principal if the agent gives to
22 the digital custodian all of the following:

23 (a) A written request for disclosure in physical or electronic
24 form.

25 (b) An original or a copy of the power of attorney that gives
26 the agent authority over digital assets or general authority to act
27 on behalf of the principal.



1 (c) An affidavit from the agent under section 5505 of the
2 estates and protected individuals code, 1998 PA 386, MCL 700.5505.

3 (d) If requested by the digital custodian, any of the
4 following:

5 (i) A number, username, address, or other unique subscriber or
6 account identifier assigned by the digital custodian to identify
7 the principal's account.

8 (ii) Evidence linking the account to the principal.

9 Sec. 11. Unless otherwise ordered by the court or provided in
10 a trust, a digital custodian shall disclose to the trustee that is
11 an original user of an account any digital assets of the account
12 held in trust, including a catalogue of electronic communications
13 of the trustee and the content of electronic communications.

14 Sec. 12. Unless otherwise ordered by the court, directed by
15 the user, or provided in a trust, a digital custodian shall
16 disclose to a trustee that is not an original user of an account
17 the content of an electronic communication sent or received by an
18 original or successor user and carried, maintained, processed,
19 received, or stored by the digital custodian in the account of the
20 trust if the trustee gives to the digital custodian all of the
21 following:

22 (a) A written request for disclosure in physical or electronic
23 form.

24 (b) A certificate of the trust under section 7913 of the
25 estates and protected individuals code, 1998 PA 386, MCL 700.7913,
26 that includes consent to disclosure of the contents of electronic
27 communications to the trustee.



1 (c) A certification of the trustee, under penalty of perjury,
2 that the trust exists and that the trustee is a currently acting
3 trustee of the trust.

4 (d) If requested by the digital custodian, any of the
5 following:

6 (i) A number, username, address, or other unique subscriber or
7 account identifier assigned by the digital custodian to identify
8 the trust's account.

9 (ii) Evidence linking the account to the trust.

10 Sec. 13. Unless otherwise ordered by the court, directed by
11 the user, or provided in a trust, a digital custodian shall
12 disclose to a trustee that is not an original user of an account a
13 catalogue of electronic communications sent or received by an
14 original or successor user and stored, carried, or maintained by
15 the digital custodian in the account of the trust and any digital
16 assets, other than the content of electronic communications, in
17 which the trust has a right or interest if the trustee gives the
18 digital custodian all of the following:

19 (a) A written request for disclosure in physical or electronic
20 form.

21 (b) A certificate of the trust under section 7913 of the
22 estates and protected individuals code, 1998 PA 386, MCL 700.7913.

23 (c) A certification of the trustee, under penalty of perjury,
24 that the trust exists and that the trustee is a currently acting
25 trustee of the trust.

26 (d) If requested by the digital custodian, any of the
27 following:



1 (i) A number, username, address, or other unique subscriber or
2 account identifier assigned by the digital custodian to identify
3 the trust's account.

4 (ii) Evidence linking the account to the trust.

5 Sec. 14. (1) After an opportunity for a hearing, the court may
6 grant a conservator access to the digital assets of a protected
7 person.

8 (2) Unless otherwise ordered by the court or directed by the
9 user, a digital custodian shall disclose to a conservator the
10 catalogue of electronic communications sent or received by the
11 protected person and any digital asset, other than the content of
12 electronic communications, in which the protected person has a
13 right or interest if the conservator gives the digital custodian
14 all of the following:

15 (a) A written request for disclosure in physical or electronic
16 form.

17 (b) A certified copy of the court order that gives the
18 conservator authority over the digital assets of the protected
19 person.

20 (c) If requested by the digital custodian, any of the
21 following:

22 (i) A number, username, address, or other unique subscriber or
23 account identifier assigned by the digital custodian to identify
24 the account of the protected person.

25 (ii) Evidence linking the account to the protected person.

26 (3) A conservator may request a digital custodian of digital
27 assets of a protected person to suspend or terminate an account of



1 the protected person for good cause. A request made under this
2 subsection must be accompanied by a certified copy of the
3 conservator's letters of authority or other order appointing the
4 conservator.

5 Sec. 15. (1) The legal duties imposed on a fiduciary charged
6 with managing tangible personal property apply to the management of
7 digital assets, including all of the following:

8 (a) The duty of care.

9 (b) The duty of loyalty.

10 (c) The duty of confidentiality.

11 (2) All of the following apply to a fiduciary's authority with
12 respect to a digital asset of a user:

13 (a) Except as otherwise provided in section 4, it is subject
14 to the applicable terms-of-service agreement.

15 (b) It is subject to other applicable laws, including
16 copyright law.

17 (c) It is limited to the scope of the fiduciary's duties.

18 (d) It may not be used to impersonate the user.

19 (3) A fiduciary with authority over the property of a
20 decedent, protected person, principal, or settlor has the right to
21 access any digital asset in which the decedent, protected person,
22 principal, or settlor had a right or interest and that is not held
23 by a digital custodian or subject to a terms-of-service agreement.

24 (4) A fiduciary acting within the scope of the fiduciary's
25 duties is an authorized user of the property of the decedent,
26 protected person, principal, or settlor for the purpose of
27 applicable computer fraud and unauthorized computer access laws,



1 including, but not limited to, all of the following:

2 (a) Section 5 of 1979 PA 53, MCL 752.795.

3 (b) Section 540 of the Michigan penal code, 1931 PA 328, MCL
4 750.540.

5 (c) Section 157n of the Michigan penal code, 1931 PA 328, MCL
6 750.157n, to the extent that the property is a financial
7 transaction device as that term is defined in section 157m of the
8 Michigan penal code, 1931 PA 328, MCL 750.157m.

9 (5) All of the following apply to a fiduciary with authority
10 over tangible personal property of a decedent, protected person,
11 principal, or settlor:

12 (a) The fiduciary has the right to access the property and any
13 digital asset stored in it.

14 (b) The fiduciary is an authorized user for the purposes of
15 computer fraud and unauthorized computer access laws, including,
16 but not limited to, all of the following:

17 (i) Section 5 of 1979 PA 53, MCL 752.795.

18 (ii) Section 540 of the Michigan penal code, 1931 PA 328, MCL
19 750.540.

20 (iii) Section 157n of the Michigan penal code, 1931 PA 328,
21 MCL 750.157n, to the extent that the tangible personal property is
22 a financial transaction device as that term is defined in section
23 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

24 (6) A digital custodian may disclose information in an account
25 to a fiduciary of the user if the information is required to
26 terminate an account used to access digital assets licensed to the
27 user.



1 (7) A fiduciary of a user may request a digital custodian to
2 terminate the user's account. A request for termination must be in
3 writing, in either physical or electronic form, and accompanied by
4 all of the following:

5 (a) If the user is deceased, a copy of the death certificate
6 of the user.

7 (b) A certified copy of the letters of authority of the
8 personal representative, small-estate affidavit, or court order,
9 power of attorney, or trust giving the fiduciary authority over the
10 account.

11 (c) If requested by the digital custodian, any of the
12 following:

13 (i) A number, username, address, or other unique subscriber or
14 account identifier assigned by the digital custodian to identify
15 the user's account.

16 (ii) Evidence linking the account to the user.

17 (iii) A finding of the court that the user had a specific
18 account with the digital custodian, identifiable by the information
19 specified in subparagraph (i).

20 (8) A fiduciary is immune from liability for an action done in
21 good faith in compliance with this act.

22 Sec. 16. (1) Not later than 56 days after receipt of the
23 information required under sections 7 to 14, a digital custodian
24 shall comply with a request under this act from a fiduciary or
25 designated recipient to disclose digital assets or terminate an
26 account. If the digital custodian fails to comply, the fiduciary or
27 designated recipient may petition or otherwise apply to the court



1 for an order directing compliance.

2 (2) An order under subsection (1) directing compliance must
3 contain a finding that compliance is not in violation of 18 USC
4 2702.

5 (3) A digital custodian that receives a certificate of trust
6 under section 12 or 13 may require the trustee to provide copies of
7 excerpts from the original trust instrument and later amendments
8 that designate the trustee and, if the trustee is requesting
9 content of electronic communications, that includes consent to
10 disclosure of the contents of electronic communications to the
11 trustee.

12 (4) A digital custodian or other person that demands the trust
13 instrument in addition to a certificate of trust under section 12
14 or 13 or demands excerpts under subsection (3) is liable for
15 damages to the same extent the digital custodian or other person
16 would be liable under section 7913 of the estates and protected
17 individuals code, 1998 PA 386, MCL 700.7913.

18 (5) This act does not limit the right of a person to obtain a
19 copy of a trust instrument in a judicial proceeding concerning the
20 trust.

21 (6) A digital custodian may notify the user that a request for
22 disclosure or to terminate an account was made under this act.

23 (7) A digital custodian may deny a request under this act from
24 a fiduciary or designated recipient for disclosure or to terminate
25 an account if the digital custodian is aware of any lawful access
26 to the account following the receipt of the request.

27 (8) This act does not limit the digital custodian's ability to



1 obtain or to require a fiduciary or designated recipient requesting
2 disclosure or termination of an account under this act to obtain a
3 court order that does any of the following:

4 (a) Specifies that an account belongs to the protected person
5 or principal.

6 (b) Specifies that there is sufficient consent from the
7 protected person or principal to support the requested disclosure.

8 (c) Contains a finding required by law other than this act.

9 (9) A digital custodian and its officers, employees, and
10 agents are immune from liability for an action done in good faith
11 in compliance with this act.

12 Sec. 17. Notwithstanding section 7 or 8, an interested person
13 may file a petition in the court for an order to limit, eliminate,
14 or modify the personal representative's powers with respect to the
15 decedent's digital assets. On receipt of a petition under this
16 section, the court shall set a date for a hearing on the petition.
17 The hearing date must not be less than 14 days or more than 56 days
18 after the date the petition is filed, except for good cause.

19 Sec. 18. This act modifies, limits, or supersedes the
20 electronic signatures in the global and national commerce act, 15
21 USC 7001 to 7006, but does not modify, limit, or supersede 15 USC
22 7001(c) or authorize electronic delivery of any of the notices
23 described in 15 USC 7003(b).

