I. Call to Order
The meeting was called to order by Harold G. Schuitmaker, Acting Chair.

II. Excused Absences - Josh Ard, George Gregory, Nancy Little, Amy Morrissey, Rebecca Schnelz

III. Introduction of Guests

IV. Minutes of the Council Meeting of March 14, 2009
A motion was made by Robin D. Ferriby to approve the minutes with support from Marilyn A. Lankfer, passed.

V. Treasurer’s Report
Mark K. Harder gave the Treasurer’s Report (See Attachment 1)

VI. Chairperson’s Report
– Harold Schuitmaker gave the Chairperson’s Report. Mr. Schuitmaker reported on efforts by the Attorney General’s office to educate people about trust kits. The Attorney General’s office is working with the Probate Council’s Unauthorized Practice of Law Committee on this issue.

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

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

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

This concluded the report from the Committee on Special Projects.

VII. Standing Committee Reports

A. Internal Governance

1. Budget  ▶  George W. Gregory – no report

2. Bylaws ▶  Marilyn A. Lankfer

3. Michael Irish Award ▶  Brian V. Howe

4. Long-Range Planning ▶  Douglas G. Chalgian / Lauren M. Underwood

5. Nominations ▶  Michael McClory

6. Relations with the State Bar ▶  Thomas F. Sweeney
   Tom Sweeney, as Chair of the Relations with State Bar Committee reported that there were several newspapers in the metro Detroit area which have agreed to consider carrying articles written by Section members.

7. Annual Meeting ▶  Harold Schuitmaker

B. Education & Advocacy Services for Section Members

1. Amicus Curiae ▶  Ellen Sugrue Hyman

2. Continuing Education & Annual Probate Institute ▶  Douglas Chalgian
3. Section Journal  B  Nancy L. Little
5. Pamphlets  B  Ellen Sugrue Hyman
6. Electronic Communication  B  Josh Ard

C. Legislation and Lobbying

1. Legislation  B  Harold G. Schuitmaker/John R. Dresser/George W. Gregory

   Mr. Daniel P. Marsh reported on activities of the Power of Attorney Committee. Ms. Susan Allen with the Michigan Bankers Association also discussed the involvement of the MBA and steps that the MBA was considering taking in relation to this issue.

3. Michigan Trust Code  B  Mark K. Harder
   Mr. Mark K. Harder reported that the Michigan Trust Code had passed the Senate unanimously and was awaiting action in the State House.

D. Ethics, Professionalism and Standards

1. Ethics  B  J. David Kerr

2. Unauthorized Practice & Multidisciplinary Practice  B  Bob Taylor
   Mr. Bob Taylor reported on Unauthorized Practice of Law and again referenced the Attorney General's interest in the issue of trust kits and reported that members of his Committee would be participating in conversations with the Attorney General regarding this issue.

3. Specialization and Certification  B  James B. Steward

4. Practice Management  B  Patricia Ouellette

E. Administration of Justice

F. Practice Issues, Related Areas & Liaisons

1. Charitable Giving/Exempt Organizations  
Robin D. Ferriby  
Robin D. Ferriby asked for the Council to endorse Senate Bills 411 and 412 which bills were comparable and nearly identical to prior bills endorsed by the Council. The motion was made by Robin D. Ferriby to support these bills with support by Marilyn A. Lankfer. All 18 of the 18 Council members present supported that motion. (See Attachment #4)

2. Transfer Tax  
Thomas F. Sweeney  
Mr. Thomas F. Sweeney reported for the Transfer Tax Committee on the Status of the Federal, Estate and Gift Tax.

3. Guardianships and Conservatorships  
Constance Brigman  
Ms. Constance Brigman reported on the Guardianship Committee as to the progress of the Uniform Guardianship and Protective Proceeding Jurisdiction Act. She indicated that the Committee had been working on revisions to the proposed act and that she hoped to have a final proposed bill for endorsement at the next Council meeting.

4. Business Law/Liaison to Business Section  
John R. Dresser

5. Elder Law/Liaison to Elder Law Section  
Amy R. Tripp

6. Family Law/Family Law Section Liaison  
Patricia M. Ouellette

7. Real Property Law/Real Property Section Liaison – Daniel P. Marsh

8. State Bar Section to Section Action Team Liaison – Robert Tipladly

9. Tax and Tax Section Liaison – Lorraine F. New

10. State Bar Liaison  
Richard J. Siriani

11. Court Rules and Forms Committee Liaison  
Marlaine C. Teahan

12. Trust Institutions and Liaison with Michigan Bankers Association  
Susan Allen, Chair
13. Michigan Probate Judges Association Liaison
   Hon. Phillip Harter / Hon. Kathryn A. George / Hon. Darlene A. O’Brien
   Judge Kathryn George of Macomb County Probate Court reported on work that was being done with respect to the Mental Health Code and specifically changes that were being proposed by the Michigan Probate Judges Association.

14. Law School Liaison – Josh Ard

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

XI. Hot Topics

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

   Respectfully submitted,

   Douglas G. Chalgian
### Probate and Estate Planning Section
### Treasurer's Report as of March 31, 2009

<table>
<thead>
<tr>
<th></th>
<th>March 2009 Actual</th>
<th>Year to Date Actual</th>
<th>2009 Budget</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Membership Dues</td>
<td>$ 140</td>
<td>$ 123,725</td>
<td>$ 120,000</td>
<td>$ 3,725</td>
</tr>
<tr>
<td>Publishing Agreements</td>
<td>$ 912</td>
<td>$ 8,000</td>
<td>$ 912</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>$ 35</td>
<td>$ 35</td>
<td>$ 35</td>
<td></td>
</tr>
<tr>
<td><strong>Total Receipts</strong></td>
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<td>$ 124,672</td>
<td>$ 120,000</td>
<td>$ 4,672</td>
</tr>
<tr>
<td><strong>Disbursements</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Journal</td>
<td>$ 75</td>
<td>$ 6,643</td>
<td>$ 45,000</td>
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<tr>
<td>Chairperson's Dinner</td>
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<td>$ 8,000</td>
<td>$ 6,000</td>
<td>$(2,000)</td>
</tr>
<tr>
<td>Speakers Dinner</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td></td>
</tr>
<tr>
<td>Travel</td>
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<td>$ 4,434</td>
<td>$ 13,500</td>
<td>$(9,066)</td>
</tr>
<tr>
<td>Lobbying</td>
<td>$ 12,000</td>
<td>$ 24,000</td>
<td>$ 12,000</td>
<td>$(1,000)</td>
</tr>
<tr>
<td>Meetings</td>
<td>$ 995</td>
<td>$ 6,089</td>
<td>$ 9,000</td>
<td>$(2,911)</td>
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<tr>
<td>Printing</td>
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<td>$ 2,400</td>
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<tr>
<td>Strategic Planning</td>
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<td>$ -</td>
<td>$ -</td>
<td></td>
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<tr>
<td>Publishing Agreements</td>
<td>$ 820</td>
<td>$ -</td>
<td>$ 820</td>
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<tr>
<td>Support for Annual Institute</td>
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<td>$ 5,000</td>
<td>$ 5,000</td>
<td></td>
</tr>
<tr>
<td>Amicus Briefs</td>
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<td>$ 5,000</td>
<td>$ 5,000</td>
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<tr>
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<td>$ 900</td>
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<td>Telephone</td>
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<td>$ 500</td>
<td>$ 500</td>
<td></td>
</tr>
<tr>
<td>Copying</td>
<td>$ -</td>
<td>$ 50</td>
<td>$ -</td>
<td>$ 50</td>
</tr>
<tr>
<td>Other</td>
<td>$ -</td>
<td>$ 357</td>
<td>$ 1,000</td>
<td>$(643)</td>
</tr>
<tr>
<td>**Total Disbursements</td>
<td>$ 2,740</td>
<td>$ 30,814</td>
<td>$ 113,150</td>
<td>$(82,336)</td>
</tr>
<tr>
<td>Increase</td>
<td>$ (2,600)</td>
<td>$ 93,858</td>
<td>$ 87,008</td>
<td></td>
</tr>
</tbody>
</table>

### Additional Information

Fund Balance

$ 156,159
## Probate and Estate Planning Section
### Treasurer’s Report as of March 31, 2009

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<td>$ 912</td>
<td>$ 0</td>
</tr>
<tr>
<td>Other</td>
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<td>$ 124,672</td>
<td>$ 120,000</td>
<td>$ 4,672</td>
</tr>
</tbody>
</table>

| **Disbursements**       |                   |                     |             |          |
| Journal                 | $ 75              | $ 6,643             | $ 45,000    | (38,357) |
| Chairperson’s Dinner    | $ -               | $ -                 | $ 8,000     | (6,000)  |
| Speakers Dinner         | $ -               | $ -                 | $ -         | -        |
| Travel                  | $ 1,600           | $ 4,434             | $ 13,500    | (9,066)  |
| Lobbying                | $ 12,000          | $ 24,000            | (12,000)    | -        |
| Meetings                | $ 995             | $ 6,089             | $ 9,000     | (2,911)  |
| Printing                | $ -               | $ 2,400             | (2,400)     | -        |
| Strategic Planning      | $ -               | $ -                 | $ -         | -        |
| Publishing Agreements   | $ 820             | $ -                 | $ 820       | -        |
| Support for Annual Institute | $ -        | $ -                 | $ 5,000     | (5,000)  |
| Amicus Briefs           | $ -               | $ -                 | $ 5,000     | (5,000)  |
| Listserv                | $ 70              | $ 420               | $ 850       | (430)    |
| Postage                 | $ 1               | $ 1                 | $ 900       | (899)    |
| Telephone               | $ -               | $ -                 | $ 500       | (500)    |
| Copying                 | $ -               | $ 50                | $ -         | 50       |
| Other                   | $ -               | $ 357               | $ 1,000     | (643)    |
| **Total Disbursements** | $ 2,740           | $ 30,814            | $ 113,150   | (82,336) |

**Increase**             | $ (2,600)         | $ 93,858            | $ 87,008    |          |

### Additional Information

**Fund Balance**         | $ 156,159
Funeral Bill Summary
D. Chalgian

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

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

February 5, 2009, Introduced by Reps. Moss and Walsh and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 3206, 3207, 3208, 3209, and 3614 (MCL 700.3206, 700.3207, 700.3208, 700.3209, and 700.3614), section 3206 as amended by 2008 PA 41 and sections 3207, 3208, and 3209 as added and section 3614 as amended by 2006 PA 299.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216, and to part 28 and article 10 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899 and 333.10101 to 333.11101, A FUNERAL REPRESENTATIVE APPOINTED UNDER SUBSECTION (2), a person with priority under subsections (2) through (4) TO (5), or A PERSON acting under subsection (5), (6), (7), or (8), OR (9) is presumed to have the right and power to make decisions about funeral
arrangements and the handling, disposition, or disinterment of a
decedent's body, including, but not limited to, decisions about
cremation, and the right to possess cremated remains of the
decedent. The handling, disposition, or disinterment of a body
shall be under the supervision of a person licensed to practice
mortuary science in this state.

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

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

(4) If A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER
SUBSECTION (2) AND IF the surviving spouse or the individual or
individuals with the highest priority as determined under
subsection (2) do not exercise their rights or powers under
subsection (1) or cannot be located after a good-faith effort to
contact them, the rights and powers under subsection (1) may be
exercised by the individual or individuals in the same order of
priority under section 2103 who are related to the decedent in the next closest degree of consanguinity. If the individual or each of the individuals in an order of priority as determined under this subsection similarly does not exercise his or her rights or powers or cannot be located, the rights or powers under subsection (1) pass to the next order of priority, with the order of priority being determined by first taking the individuals in the highest order of priority under section 2103 and then taking the individuals related to the decedent in the closest or, as applicable, next closest degree of consanguinity in that order of priority.

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

(6) If A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER SUBSECTION (2) AND IF no individual described in subsections (2) AND (3) AND (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9)-(10), and if subsection (6)-(7) does not apply, then the personal representative or nominated personal representative may exercise the rights and powers under subsection (1), either before or after his or her appointment.

(7) If A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER SUBSECTION (2) AND IF no individual described in subsections (2) AND (3) AND (4) exists, exercises the rights or powers under
subsection (1), or can be located after a sufficient attempt as described in subsection (9) (10), and if the decedent was under a guardianship at the time of death, the guardian may exercise the rights and powers under subsection (1) and may make a claim for the reimbursement of burial expenses as provided in section 5216 or 5315, as applicable.

(8) (7) If a funeral representative is not designated under subsection (2) and if no individual described in subsections (2) and (3) and (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9) (10), if the decedent died intestate, and if subsection (6) (7) does not apply, a special personal representative appointed under section 3614(c) may exercise the rights and powers under subsection (1).

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

(a) Unless subdivision (b) applies, the county public administrator, if willing, or the medical examiner for the county where the decedent was domiciled at the time of his or her death.

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

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

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

(12) (11) As used in this section, "nominated personal representative" means a person nominated to act as personal representative in a will that the nominated person reasonably believes to be the valid will of the decedent.

Sec. 3207. (1) If there is a disagreement as described in section 3206(4)–3206(5) or if A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER SECTION 3206(2) AND 1 or more of the individuals described in section 3206(2) or (3)–3206(3) OR (4) cannot be located, 1 or more of the following may petition the court to determine who has the authority to exercise the rights and powers under section 3206(1):

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

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

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

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

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

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

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

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

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

Sec. 3208. (1) If a funeral representative is not designated under section 3206(2), an individual other than a person with priority under subsections (2) to (4) of section 3206(3) to (5) or acting under subsection (5), (6), (7), or (9), section 3206(6), (7), (8), or (9) may file an action in the circuit court to challenge the presumption to be determined as the individual who has the authority to exercise the rights and powers under section 3206(1).

(2) Venue for an action filed under this section is in the county in which the decedent was domiciled at the time of death.

Sec. 3209. (1) A funeral establishment is not required to file a petition under section 3207 and is not civilly liable for not doing so.

(2) A funeral establishment that provides services at the direction of a person whom the funeral establishment reasonably believes to be a funeral representative designated under section 3206(2) is not liable for following the directions.
The order of priority determined under section 3206(2) and (3) 3206(3) AND (4) may be relied upon by a funeral establishment. A funeral establishment is not a guarantor that a person exercising the rights and powers under section 3206(1) has the legal authority to do so. A funeral establishment does not have the responsibility to contact or independently investigate the existence of relatives of the deceased, but may rely on information provided by family members of the deceased.

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

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

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

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

(c) By the court on its own motion or on petition by an interested person to supervise the disposition of the body of a decedent if section 3206(7)–3206(8) applies. The duties of a special personal representative appointed under this subdivision shall be specified in the order of appointment and may include making arrangements with a funeral home, securing a burial plot if needed, obtaining veteran's or pauper's funding where appropriate, and determining the disposition of the body by burial or cremation. The court may waive the bond requirement under section 3603(1)(a). The court may appoint the county public administrator if the county public administrator is willing to serve. If the court determines that it will not be necessary to open an estate, the court may appoint a special fiduciary under section 1309 instead of a special personal representative to perform duties under this section.
HOUSE BILL No. 4505


A bill to amend 1998 PA 386, entitled
"Estate and protected individuals code,"
by amending sections 3206, 3207, 3208, 3209, and 3614 (MCL 700.3206, 700.3207, 700.3208, 700.3209, and 700.3614), section 3206 as amended by 2008 PA 41 and sections 3207, 3208, and 3209 as added and section 3614 as amended by 2006 PA 299, and by adding section 3210.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216, and to part 28 and article 10 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899 and 333.10101 to 333.11101, A PERSON APPOINTED UNDER SUBSECTION (2), a person with priority under subsections (2) to (4), (3) TO (5), or A PERSON acting under subsection (5) to (6), (7), OR (8), OR (9) is presumed to have the
right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including, but not limited to, decisions about cremation, and the right to possess cremated remains of the decedent. The handling, disposition, or disinterment of a body shall be under the supervision of a person licensed to practice mortuary science in this state.

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

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

(4) IF THERE IS NO PERSON DESIGNATED UNDER SUBSECTION (2) AND IF the surviving spouse or the individual or individuals with the highest priority as determined under subsection (2)–(3) do not exercise their rights or powers under subsection (1) or cannot be located after a good-faith effort to contact them, the rights and powers under subsection (1) may be exercised by the individual or individuals in the same order of priority under section 2103 who are related to the decedent in the next closest degree of
consanguinity. If the individual or each of the individuals in an order of priority as determined under this subsection similarly does not exercise his or her rights or powers or cannot be located, the rights or powers under subsection (1) pass to the next order of priority, with the order of priority being determined by first taking the individuals in the highest order of priority under section 2103 and then taking the individuals related to the decedent in the closest or, as applicable, next closest degree of consanguinity in that order of priority.

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

(6) If there is no person designated under subsection (2) AND IF no individual described in subsections (2) and (3) AND (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9)(10), and if subsection (6)(7) does not apply, then the personal representative or nominated personal representative may exercise the rights and powers under subsection (1), either before or after his or her appointment.

(7) If there is no person designated under subsection (2) AND IF no individual described in subsections (2) and (3) AND (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9)(10), and if the decedent was under a guardianship at the time
of death, the guardian may exercise the rights and powers under subsection (1) and may make a claim for the reimbursement of burial expenses as provided in section 5216 or 5315, as applicable.

(8) If there is no person designated under subsection (2) AND IF no individual described in subsections (2) and (3) AND (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9) (10), if the decedent died intestate, and if subsection (6) (7) does not apply, a special personal representative appointed under section 3614(c) may exercise the rights and powers under subsection (1).

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

(a) Unless subdivision (b) applies, the county public administrator, if willing, or the medical examiner for the county where the decedent was domiciled at the time of his or her death.

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

(10) An attempt to locate a person described in subsection (2) or (3) OR (4) is sufficient if a reasonable attempt is made in good faith by a family member, personal representative, or nominated personal representative of the decedent to contact the person at his or her last known address, telephone number, or electronic mail address.
(11) This section does not void or otherwise affect an anatomical gift made under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123.

(12) As used in this section, "nominated personal representative" means a person nominated to act as personal representative in a will that the nominated person reasonably believes to be the valid will of the decedent.

Sec. 3207. (1) If there is a disagreement as described in section 3206(4)–3206(5) or if THERE IS NO PERSON DESIGNATED UNDER SECTION 3206(2) AND 1 or more of the individuals described in section 3206(2) or (3)–3206(3) OR (4) cannot be located, 1 or more of the following may petition the court to determine who has the authority to exercise the rights and powers under section 3206(1):

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

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

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

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

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

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

(a) The reasonableness and practicality of the funeral
arrangements or the handling or disposition of the body proposed by
the person bringing the action in comparison with the funeral
arrangements or the handling or disposition of the body proposed by
1 or more individuals with the rights and powers under section
3206(1).
(b) The nature of the personal relationship to the deceased of the person bringing the action compared to other individuals with the rights and powers under section 3206(1).

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

Sec. 3208. (1) IF THERE IS NO PERSON DESIGNATED UNDER SECTION 3206(2), AN individual other than a person with priority under subsections (2) to (4) SECTION 3206(3) TO (5) or acting under subsection (5), (6), (7), or (8), SECTION 3206(6), (7), (8), OR (9) may file an action in the circuit court to challenge the presumption to be determined as the individual who has the authority to exercise the rights and powers under section 3206(1).

(2) Venue for an action filed under this section is in the county in which the decedent was domiciled at the time of death.

Sec. 3209. (1) A funeral establishment is not required to file a petition under section 3207 and is not civilly liable for not doing so.

(2) The order of priority determined under section 3206(2) and 3206(3) AND (4) may be relied upon by a funeral establishment. A funeral establishment is not a guarantor that a person exercising the rights and powers under section 3206(1) has the legal authority to do so. A funeral establishment does not have the responsibility to contact or independently investigate the existence of relatives of the deceased, but may rely on information provided by family members of the deceased.

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

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

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

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

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

(c) By the court on its own motion or on petition by an
interested person to supervise the disposition of the body of a
decedent if section 3206(7)-3206(8) applies. The duties of a
special personal representative appointed under this subdivision
shall be specified in the order of appointment and may include
making arrangements with a funeral home, securing a burial plot if
needed, obtaining veteran's or pauper's funding where appropriate,
and determining the disposition of the body by burial or cremation.
The court may waive the bond requirement under section 3603(1)(a).
The court may appoint the county public administrator if the county
public administrator is willing to serve. If the court determines
that it will not be necessary to open an estate, the court may
appoint a special fiduciary under section 1309 instead of a special
personal representative to perform duties under this section.
HOUSE BILL No. 4578


A bill to amend 1998 PA 386, entitled "Estates and protected individuals code,"
by amending sections 3206, 3207, 3208, 3209, and 3614 (MCL 700.3206, 700.3207, 700.3208, 700.3209, and 700.3614), section 3206 as amended by 2008 PA 41 and sections 3207, 3208, and 3209 as added and section 3614 as amended by 2006 PA 299.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216, and to part 20 and article 10 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899 and 333.10101 to 333.11101, A FUNERAL REPRESENTATIVE APPOINTED UNDER SUBSECTION (2), a person with priority under subsections (2) to (3) TO (5), or A PERSON
acting under subsection (5), (6), (7), or (8), OR (9) is presumed to have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including, but not limited to, decisions about cremation, and the right to possess cremated remains of the decedent. The handling, disposition, or disinterment of a body shall be under the supervision of a person licensed to practice mortuary science in this state.

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

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

(4) **IF A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER SUBSECTION (2) AND IF the surviving spouse or the individual or individuals with the highest priority as determined under subsection (2) do not exercise their rights or powers under subsection (1) or cannot be located after a good-faith effort to**
contact them, the rights and powers under subsection (1) may be exercised by the individual or individuals in the same order of priority under section 2103 who are related to the decedent in the next closest degree of consanguinity. If the individual or each of the individuals in an order of priority as determined under this subsection similarly does not exercise his or her rights or powers or cannot be located, the rights or powers under subsection (1) pass to the next order of priority, with the order of priority being determined by first taking the individuals in the highest order of priority under section 2103 and then taking the individuals related to the decedent in the closest or, as applicable, next closest degree of consanguinity in that order of priority.

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

(6) If a funeral representative is not designated under subsection (2) and if no individual described in subsections (2) and (3) and (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9) and (10), and if subsection (6) does not apply, then the personal representative or nominated personal representative may exercise the rights and powers under subsection (1), either before or after his or her appointment.

(7) If a funeral representative is not designated under
SUBSECTION (2) AND IF no individual described in subsections (2) and (3) AND (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9) to (10), and if the decedent was under a guardianship at the time of death, the guardian may exercise the rights and powers under subsection (1) and may make a claim for the reimbursement of burial expenses as provided in section 5216 or 5315, as applicable.

(8) (4) If a funeral representative is not designated under SUBSECTION (2) AND IF no individual described in subsections (2) and (3) AND (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9) to (10), if the decedent died intestate, and if subsection (6) to (7) does not apply, a special personal representative appointed under section 3614(c) may exercise the rights and powers under subsection (1).

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

(a) Unless subdivision (b) applies, the county public administrator, if willing, or the medical examiner for the county where the decedent was domiciled at the time of his or her death.

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

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

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

(12) As used in this section, "nominated personal representative" means a person nominated to act as personal representative in a will that the nominated person reasonably believes to be the valid will of the decedent.

Sec. 3207. (1) If there is a disagreement as described in section 3206(4)–3206(5) or if a funeral representative is not designated under section 3206(2) and 1 or more of the individuals described in section 3206(2) or (3)–3206(3) or (4) cannot be located, 1 or more of the following may petition the court to determine who has the authority to exercise the rights and powers under section 3206(1):

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

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

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

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

(4) If a funeral establishment is the petitioner under this section, the funeral establishment's actual costs and reasonable attorney fees in bringing the proceeding shall be included in the reasonable funeral and burial expenses under section \(3805(6)\) \(3805(1)(B)\) or the court may assess such costs and fees against 1 or more parties or intervenors.

(5) In deciding a petition brought under this section, the court shall consider all of the following, in addition to other relevant factors:
(a) The reasonableness and practicality of the funeral arrangements or the handling or disposition of the body proposed by the person bringing the action in comparison with the funeral arrangements or the handling or disposition of the body proposed by 1 or more individuals with the rights and powers under section 3206(1).

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

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

Sec. 3208. (1) **IF A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER SECTION 3206(2), AN individual other than a person with priority under subsections (2) to (4) SECTION 3206(3) TO (5) or acting under subsection (5), (6), (7), or (8), SECTION 3206(6), (7), (8), OR (9) may file an action in the circuit court to challenge the presumption to be determined as the individual who has the authority to exercise the rights and powers under section 3206(1).

(2) Venue for an action filed under this section is in the county in which the decedent was domiciled at the time of death.

Sec. 3209. (1) A funeral establishment is not required to file a petition under section 3207 and is not civilly liable for not doing so.

(2) The order of priority determined under section 3206(2) and (3) 3206(3) AND (4) may be relied upon by a funeral establishment.
A funeral establishment is not a guarantor that a person exercising the rights and powers under section 3206(1) has the legal authority to do so. A funeral establishment does not have the responsibility to contact or independently investigate the existence of relatives of the deceased, but may rely on information provided by family members of the deceased.

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

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

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

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

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

The court may appoint the county public administrator if the county public administrator is willing to serve. If the court determines that it will not be necessary to open an estate, the court may appoint a special fiduciary under section 1309 instead of a special personal representative to perform duties under this section.
SENATE BILL No. 411

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

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

Sec. 2. As used in this act:

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

(b) "Endowment fund" means an institutional fund or part of an institutional fund that, under the terms of a gift instrument, is
not wholly expendable by the institution on a current basis.
Endowment fund does not include assets that an institution
designates as an endowment fund for its own use.

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

(d) "Institution" means any of the following:
(i) A person, other than an individual, organized and operated
exclusively for charitable purposes.
(ii) A government or governmental subdivision, agency, or
instrumentality, to the extent that it holds funds exclusively for
a charitable purpose.
(iii) A trust that had both charitable and noncharitable
interests, after all noncharitable interests have terminated.

(e) "Institutional fund" means a fund held by an institution
exclusively for charitable purposes. Institutional fund does not
include any of the following:
(i) Program-related assets.
(ii) A fund held for an institution by a trustee that is not an
institution, unless the fund is held by the trustee as a component
trust or fund of a community trust or foundation.
(iii) A fund in which a beneficiary that is not an institution
has an interest, other than an interest that could arise on
violation or failure of the purposes of the fund.

(f) "Person" means an individual, corporation, business trust,
estate, trust, partnership, limited liability company, association,
joint venture, public corporation, government or governmental
subdivision, agency, or instrumentality, or any other legal or
commercial entity.

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

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

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

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

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

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

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

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

(5) Except as otherwise provided by a gift instrument, all of
the following rules apply:

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

(i) General economic conditions.

(ii) The possible effect of inflation or deflation.

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

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

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

(vi) Other resources of the institution.

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

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

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

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

(d) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund
are better served without diversification.

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

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

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

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

(b) The purposes of the institution and the endowment fund.
(c) General economic conditions.
(d) The possible effect of inflation or deflation.
(e) The expected total return from income and the appreciation of investments.
(f) Other resources of the institution.
(g) The investment policy of the institution.

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

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

(a) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund.
(b) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (1).

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

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

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

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

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

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

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

Sec. 6. (1) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A donor may give prior consent to an institution for release or modification of a restriction or charitable purpose in a gift instrument that also includes a
restriction or stated charitable purpose subject to this section. A
release or modification shall not allow a fund to be used for a
purpose other than a charitable purpose of the institution.

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

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

(4) If an institution determines that a restriction contained
in a gift instrument on the management, investment, or purpose of
an institutional fund is unlawful, impracticable, impossible to
achieve, or wasteful, the institution, 60 days after notification
to the attorney general, may release or modify the restriction, in
whole or in part, if all of the following apply:

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

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

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

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

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

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

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

Sec. 10. In applying and construing this uniform act,
consideration shall be given to the need to promote uniformity of
the law with respect to its subject matter among states that enact it.

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

SENATE BILL No. 412

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

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 124. (1) This act does not modify the requirements of the following:
(a) The supervision of trustees for charitable purposes act, 1961 PA 101, MCL 14.251 to 14.266.
(b) 1965 PA 169, MCL 450.251 to 450.253.
(c) The charitable organizations and solicitations act, 1975 PA 169, MCL 400.271 to 400.294.
(d) The uniform PRUDENT management of institutional funds act.
  1976 PA 157, MCL 450.1201 to 450.1210.
(e) The career development and distance learning act, 2002 PA 36, MCL 390.1571 to 390.1579.

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

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

(a) Have perpetual duration.

(b) Sue and be sued in all courts and participate in actions and proceedings judicial, administrative, arbitrate, or otherwise, in like cases as THE SAME MANNER AS A natural person.

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

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

(e) Elect or appoint officers, employees, and other agents of the corporation, prescribe their duties, fix their compensation and
the compensation of directors, and indemnify corporate directors, officers, employees, and agents.

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

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

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

(i) Make contracts, give guarantees, and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property or an interest therein—IN THE PROPERTY, wherever situated.
(j) Lend money, invest and reinvest its funds, and take and
hold real and personal property as security for the payment of
funds loaned or invested.

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

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

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

(n) Participate with others in any corporation, business
corporation, partnership, limited partnership, joint venture, or
other association of any kind, or participate with others in any
transaction, undertaking, or agreement which—that the participating
corporation would have power to conduct by itself, whether or not
the participation involves sharing or delegation of control with or
to others.

(o) Cease its corporate activities and dissolve.

(p) Conduct its affairs, carry on its operations, and have
offices and exercise the powers granted by this act in any
jurisdiction within or without the United States, and, in the case
of a corporation the purpose or purposes of which require the
transaction of business, the receipt and payment of money, the care
and custody of property, and other incidental business matters,
transact such business, receive, collect, and disburse such money,
and engage in such other incidental business matters as are
naturally or properly within the scope of its articles.

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

(2) A corporation subject to Act No. 157 of the Public Acts of
1976, being sections 451.1201 to 451.1210 of the Michigan Compiled
Laws, shall have THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL
FUNDS ACT HAS all powers granted under BOTH this act and Act No-
157 of the Public Acts of 1976 THAT ACT. However, in the event of
an inconsistency between this act and Act No. 157 of the Public
PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT CONTROLS.

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

(4) Any nonprofit power corporation which THAT is authorized
to furnish electric service may construct, maintain, and operate
its lines along, over, across, or under any public places, streets,
and highways, and across or under the waters in this state, with
all necessary erections and fixtures. A nonprofit power corporation
may exercise the power of eminent domain, in the manner provided by
Act No. 87 of the Public Acts of 1980, as amended, being sections
213.51 to 213.77 of the Michigan Compiled Laws THE UNIFORM
CONDEMNATION PROCEDURES ACT, 1980 PA 87, MCL 213.51 TO 213.75. As a
condition to the exercise of any of these powers, nonprofit
corporations shall be ARE subject to the jurisdiction of the
Michigan public service commission pursuant to Act No. 106 of the
Public Acts of 1909, as amended, being sections 460.551 to 460.559
of the Michigan Compiled Laws 1909 PA 106, MCL 460.551 TO 460.559,
Act No. 419 of the Public Acts of 1919, as amended, being sections
460.51 to 460.62 of the Michigan Compiled Laws 1919 PA 419, MCL
460.54 TO 460.62, and Act No. 3 of the Public Acts of 1939, as
amended, being sections 460.1 to 460.8 of the Michigan Compiled
Laws 1939 PA 3, MCL 460.1 TO 460.11.

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

(2) The board of a corporation which THAT is subject to Act
No. 157 of the Public Acts of 1976, being sections 451.1201 to
451.1210 of the Michigan Compiled Laws, SHALL have THE UNIFORM
PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT HAS the powers
granted under Act No. 157 of the Public Acts of 1976—BOTH THAT ACT
and this act. However, in the event of an inconsistency between
this act and Act No. 157 of the Public Acts of 1976, Act No. 157
shall control—THE 2 ACTS, THE UNIFORM PRUDENT MANAGEMENT OF
INSTITUTIONAL FUNDS ACT CONTROLS.

Sec. 541. (1) A director or an officer shall discharge the
duties of that position in good faith and with the degree of
diligence, care, and skill which an ordinarily prudent person
would exercise under similar circumstances in a like position. In
discharging the duties, a director or an officer, when acting in
good faith, may rely upon the opinion of counsel for the
corporation, upon the report of an independent appraiser selected
with reasonable care by the board, or upon financial statements of
the corporation represented to the director or officer as correct
by the president or the officer of the corporation having charge of its books or account, or as stated in a written report by
an independent public or certified public accountant or firm of
accountants fairly to reflect the financial condition of the
corporation.

(2) A director or officer of a corporation subject to the
uniform PRUDENT management of institutional funds act, Act No. 157
of the Public Acts of 1976, being sections 451.1201 to 451.1210 of
the Michigan Compiled Laws, shall be considered in compliance
with this section if the director or officer complies with
PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT in the administration
of the powers specified in that section—ACT.

(3) If the corporation's articles of incorporation contain a
provision authorized under section 209(c), then a volunteer
director of the corporation shall be personally liable for
monetary damages for a breach of fiduciary duty as a director to
the corporation, its shareholders, or its members to the extent set
forth in the provision.

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

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

Enacting section 1. This amendatory act does not take effect
unless Senate Bill No. 411
of the 95th Legislature is enacted into law.
Senate Bill 411 (Substitute S-1 as reported)  
Senate Bill 412 (as reported without amendment)  
Sponsor:  Senator Michael Switalski (S.B. 411)  
Senator Wayne Kuipers (S.B. 412)  
Committee:  Judiciary

CONTENT

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

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

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

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

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

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

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

MCL 450.2124 et al. (S.B. 412)  
Legislative Analyst: Patrick Affholter

**FISCAL IMPACT**

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

Date Completed: 4-1-09  
Fiscal Analyst: Elizabeth Pratt  
Maria Tyszkiewicz