

SENATE BILL No. 715

September 4, 2007, Introduced by Senators JACOBS, THOMAS, GLEASON, CLARKE, OLSHOVE, PRUSI, SCHAUER, CHERRY, KAHN, BIRKHOZ, PAPPAGEORGE, RICHARDVILLE, BARCIA, CLARK-COLEMAN, BASHAM, HUNTER, SWITALSKI and SCOTT and referred to the Committee on Health Policy.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 3206, 5506, 5507, 5508, and 5510 (MCL 700.3206, 700.5506, 700.5507, 700.5508, and 700.5510), section 3206 as added by 2006 PA 299 and sections 5506, 5507, 5508, and 5510 as amended by 2004 PA 532.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

8 (2) The surviving spouse or, if there is no surviving spouse,
9 the individual or individuals 18 years of age or older, in the
10 highest order of priority under section 2103, and related to the
11 decedent in the closest degree of consanguinity, have the rights
12 and powers under subsection (1).

13 (3) If the surviving spouse or the individual or individuals
14 with the highest priority as determined under subsection (2) do not
15 exercise their rights or powers under subsection (1) or cannot be
16 located after a good-faith effort to contact them, the rights and
17 powers under subsection (1) may be exercised by the individual or
18 individuals in the same order of priority under section 2103 who
19 are related to the decedent in the next closest degree of
20 consanguinity. If the individual or each of the individuals in an
21 order of priority as determined under this subsection similarly
22 does not exercise his or her rights or powers or cannot be located,
23 the rights or powers under subsection (1) pass to the next order of
24 priority, with the order of priority being determined by first
25 taking the individuals in the highest order of priority under
26 section 2103 and then taking the individuals related to the
27 decedent in the closest or, as applicable, next closest degree of

1 consanguinity in that order of priority.

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

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

14 (6) If no individual described in subsections (2) and (3)
15 exists, exercises the rights or powers under subsection (1), or can
16 be located after a sufficient attempt as described in subsection
17 (9), and if the decedent was under a guardianship at the time of
18 death, the guardian may exercise the rights and powers under
19 subsection (1) and may make a claim for the reimbursement of burial
20 expenses as provided in section 5216 or 5315, as applicable.

21 (7) If no individual described in subsections (2) and (3)
22 exists, exercises the rights or powers under subsection (1), or can
23 be located after a sufficient attempt as described in subsection
24 (9), if the decedent died intestate, and if subsection (6) does not
25 apply, a special personal representative appointed under section
26 3614(c) may exercise the rights and powers under subsection (1).

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

1 exercise the rights and powers under subsection (1), 1 of the
2 following, as applicable, shall exercise the rights and powers
3 under subsection (1):

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

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

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

15 (10) This section does not void or otherwise affect a ~~an~~
16 **ANATOMICAL** gift made under part 101 of the public health code, 1978
17 PA 368, MCL 333.10101 to ~~333.10109~~ **333.10123**.

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

22 Sec. 5506. (1) An individual 18 years of age or older who is
23 of sound mind at the time a patient advocate designation is made
24 may designate in writing another individual who is 18 years of age
25 or older to exercise powers concerning care, custody, and medical
26 or mental health treatment decisions for the individual making the
27 patient advocate designation. An individual making a patient

1 advocate designation under this subsection may include in the
2 patient advocate designation the authority for the designated
3 individual to make an anatomical gift of all or part of the
4 individual's body in accordance with this act and ~~section 10102~~
5 **PART 101** of the public health code, 1978 PA 368, MCL ~~333.10102~~
6 **333.10101 TO 333.10123**.

7 (2) For purposes of this section and sections 5507 to 5515, an
8 individual who is named in a patient advocate designation to
9 exercise powers concerning care, custody, and medical or mental
10 health treatment decisions is known as a patient advocate and an
11 individual who makes a patient advocate designation is known as a
12 patient.

13 (3) A patient advocate designation under this section must be
14 in writing, signed, witnessed as provided in subsection (4), dated,
15 executed voluntarily, and, before its implementation, made part of
16 the patient's medical record with, as applicable, the patient's
17 attending physician, the mental health professional providing
18 treatment to the patient, the facility where the patient is
19 located, or the community mental health services program or
20 hospital that is providing mental health services to the patient.
21 The patient advocate designation must include a statement that the
22 authority conferred under this section is exercisable only when the
23 patient is unable to participate in medical or mental health
24 treatment decisions, as applicable, and, in the case of the
25 authority to make an anatomical gift as described in subsection
26 (1), a statement that the authority remains exercisable after the
27 patient's death.

1 (4) A patient advocate designation under this section must be
2 executed in the presence of and signed by 2 witnesses. A witness
3 under this section shall not be the patient's spouse, parent,
4 child, grandchild, sibling, presumptive heir, known devisee at the
5 time of the witnessing, physician, or patient advocate or an
6 employee of a life or health insurance provider for the patient, of
7 a health facility that is treating the patient, or of a home for
8 the aged as defined in section 20106 of the public health code,
9 1978 PA 368, MCL 333.20106, where the patient resides, or of a
10 community mental health services program or hospital that is
11 providing mental health services to the patient. A witness shall
12 not sign the patient advocate designation unless the patient
13 appears to be of sound mind and under no duress, fraud, or undue
14 influence.

15 (5) As used in this section, "community mental health services
16 program or hospital" means a community mental health services
17 program as that term is defined in section 100a of the mental
18 health code, 1974 PA 258, MCL 330.1100a, or a hospital as that term
19 is defined in section 100b of the mental health code, 1974 PA 258,
20 MCL 330.1100b.

21 Sec. 5507. (1) A patient advocate designation may include a
22 statement of the patient's desires on care, custody, and medical
23 treatment or mental health treatment, or both. A patient advocate
24 designation may also include a statement of the patient's desires
25 on the making of an anatomical gift of all or part of the patient's
26 body under part 101 of the public health code, 1978 PA 368, MCL
27 333.10101 to ~~333.10109~~ **333.10123**. The patient may authorize the

1 patient advocate to exercise 1 or more powers concerning the
2 patient's care, custody, medical treatment, mental health
3 treatment, or the making of an anatomical gift that the patient
4 could have exercised on his or her own behalf.

5 (2) A patient may designate in the patient advocate
6 designation a successor individual as a patient advocate who may
7 exercise powers concerning care, custody, and medical or mental
8 health treatment decisions or concerning the making of an
9 anatomical gift for the patient if the first individual named as
10 patient advocate does not accept, is incapacitated, resigns, or is
11 removed.

12 (3) Before a patient advocate designation is implemented, a
13 copy of the patient advocate designation must be given to the
14 proposed patient advocate and must be given to a successor patient
15 advocate before the successor acts as patient advocate. Before
16 acting as a patient advocate, the proposed patient advocate must
17 sign an acceptance of the patient advocate designation.

18 (4) The acceptance of a designation as a patient advocate must
19 include substantially all of the following statements:

20 1. This patient advocate designation is not effective unless
21 the patient is unable to participate in decisions regarding the
22 patient's medical or mental health, as applicable. If this patient
23 advocate designation includes the authority to make an anatomical
24 gift as described in section 5506, the authority remains
25 exercisable after the patient's death.

26 2. A patient advocate shall not exercise powers concerning the
27 patient's care, custody, and medical or mental health treatment

1 that the patient, if the patient were able to participate in the
2 decision, could not have exercised on his or her own behalf.

3 3. This patient advocate designation cannot be used to make a
4 medical treatment decision to withhold or withdraw treatment from a
5 patient who is pregnant that would result in the pregnant patient's
6 death.

7 4. A patient advocate may make a decision to withhold or
8 withdraw treatment that would allow a patient to die only if the
9 patient has expressed in a clear and convincing manner that the
10 patient advocate is authorized to make such a decision, and that
11 the patient acknowledges that such a decision could or would allow
12 the patient's death.

13 5. A patient advocate shall not receive compensation for the
14 performance of his or her authority, rights, and responsibilities,
15 but a patient advocate may be reimbursed for actual and necessary
16 expenses incurred in the performance of his or her authority,
17 rights, and responsibilities.

18 6. A patient advocate shall act in accordance with the
19 standards of care applicable to fiduciaries when acting for the
20 patient and shall act consistent with the patient's best interests.
21 The known desires of the patient expressed or evidenced while the
22 patient is able to participate in medical or mental health
23 treatment decisions are presumed to be in the patient's best
24 interests.

25 7. A patient may revoke his or her patient advocate
26 designation at any time and in any manner sufficient to communicate
27 an intent to revoke.

1 8. A patient may waive his or her right to revoke the patient
2 advocate designation as to the power to make mental health
3 treatment decisions, and if such a waiver is made, his or her
4 ability to revoke as to certain treatment will be delayed for 30
5 days after the patient communicates his or her intent to revoke.

6 9. A patient advocate may revoke his or her acceptance of the
7 patient advocate designation at any time and in any manner
8 sufficient to communicate an intent to revoke.

9 10. A patient admitted to a health facility or agency has the
10 rights enumerated in section 20201 of the public health code, 1978
11 PA 368, MCL 333.20201.

12 Sec. 5508. (1) Except as provided under subsection (3), the
13 authority under a patient advocate designation is exercisable by a
14 patient advocate only when the patient is unable to participate in
15 medical treatment or, as applicable, mental health treatment
16 decisions. The patient's attending physician and another physician
17 or licensed psychologist shall determine upon examination of the
18 patient whether the patient is unable to participate in medical
19 treatment decisions, shall put the determination in writing, shall
20 make the determination part of the patient's medical record, and
21 shall review the determination not less than annually. If the
22 patient's religious beliefs prohibit an examination and this is
23 stated in the designation, the patient must indicate in the
24 designation how the determination under this subsection shall be
25 made. The determination of the patient's ability to make mental
26 health treatment decisions shall be made under section 5515.

27 (2) If a dispute arises as to whether the patient is unable to

1 participate in medical or mental health treatment decisions, a
2 petition may be filed with the court in the county in which the
3 patient resides or is located requesting the court's determination
4 as to whether the patient is unable to participate in decisions
5 regarding medical treatment or mental health treatment, as
6 applicable. If a petition is filed under this subsection, the court
7 shall appoint a guardian ad litem to represent the patient for the
8 purposes of this subsection. The court shall conduct a hearing on a
9 petition under this subsection as soon as possible and not later
10 than 7 days after the court receives the petition. As soon as
11 possible and not later than 7 days after the hearing, the court
12 shall determine whether or not the patient is able to participate
13 in decisions regarding medical treatment or mental health
14 treatment, as applicable. If the court determines that the patient
15 is unable to participate in the decisions, the patient advocate's
16 authority, rights, and responsibilities are effective. If the court
17 determines that the patient is able to participate in the
18 decisions, the patient advocate's authority, rights, and
19 responsibilities are not effective.

20 (3) In the case of a patient advocate designation that
21 authorizes a patient advocate to make an anatomical gift of all or
22 part of the patient's body, the patient advocate shall act on the
23 patient's behalf in accordance with ~~section 10102~~ **PART 101** of the
24 public health code, 1978 PA 368, MCL ~~333.10102~~ **333.10101 TO**
25 **333.10123**, and may do so only after the patient has been declared
26 unable to participate in medical treatment decisions as provided in
27 subsection (1) or declared dead by a licensed physician. The

1 patient advocate's authority to make an anatomical gift remains
2 exercisable after the patient's death.

3 Sec. 5510. (1) A patient advocate designation is revoked by 1
4 or more of the following:

5 (a) The patient's death, except that part of the patient
6 advocate designation, if any, that authorizes the patient advocate
7 to make an anatomical gift of all or part of the deceased patient's
8 body in accordance with this act and ~~section 10102~~ **PART 101** of the
9 public health code, 1978 PA 368, MCL ~~333.10102~~ **333.10101 TO**
10 **333.10123**.

11 (b) An order of removal by the probate court under section
12 5511(5).

13 (c) The patient advocate's resignation or removal by the
14 court, unless a successor patient advocate has been designated.

15 (d) The patient's revocation of the patient advocate
16 designation. Subject to section 5515, even if the patient is unable
17 to participate in medical treatment decisions, a patient may revoke
18 a patient advocate designation at any time and in any manner by
19 which he or she is able to communicate an intent to revoke the
20 patient advocate designation. If there is a dispute as to the
21 intent of the patient to revoke the patient advocate designation,
22 the court may make a determination on the patient's intent to
23 revoke the patient advocate designation. If the revocation is not
24 in writing, an individual who witnesses a revocation of a patient
25 advocate designation shall describe in writing the circumstances of
26 the revocation, must sign the writing, and shall notify, if
27 possible, the patient advocate of the revocation. If the patient's

1 physician, mental health professional, or health facility has
2 notice of the patient's revocation of a patient advocate
3 designation, the physician, mental health professional, or health
4 facility shall note the revocation in the patient's records and
5 bedside chart and shall notify the patient advocate.

6 (e) A subsequent patient advocate designation that revokes the
7 prior patient advocate designation either expressly or by
8 inconsistency.

9 (f) The occurrence of a provision for revocation contained in
10 the patient advocate designation.

11 (g) If a patient advocate designation is executed during a
12 patient's marriage naming the patient's spouse as the patient
13 advocate, the patient advocate designation is suspended during the
14 pendency of an action for separate maintenance, annulment, or
15 divorce and is revoked upon the entry of a judgment of separate
16 maintenance, annulment, or divorce, unless the patient has named a
17 successor individual to serve as a patient advocate. If a successor
18 patient advocate is named, that individual acts as the patient
19 advocate.

20 (2) The revocation of a patient advocate designation under
21 subsection (1) does not revoke or terminate the agency as to the
22 patient advocate or other person who acts in good faith under the
23 patient advocate designation and without actual knowledge of the
24 revocation. Unless the action is otherwise invalid or
25 unenforceable, an action taken without knowledge of the revocation
26 binds the patient and his or her heirs, devisees, and personal
27 representatives. A sworn statement executed by the patient advocate

1 stating that, at the time of doing an act in accordance with the
2 patient advocate designation, he or she did not have actual
3 knowledge of the revocation of the patient advocate designation is,
4 in the absence of fraud, conclusive proof that the patient advocate
5 did not have actual knowledge of the revocation at the time of the
6 act.

7 Enacting section 1. This amendatory act does not take effect
8 unless Senate Bill No. 710

9 of the 94th Legislature is enacted into law.