

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5117**

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 3206 (MCL 700.3206), as amended by 2020 PA 246.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216,
2 part 28 and article 10 of the public health code, 1978 PA 368, MCL
3 333.2801 to 333.2899 and 333.10101 to 333.11101, and subsection
4 (12), a funeral representative designated under subsection (2), a
5 person with priority under subsections (3) to (5) or a person
6 acting under subsection (6), (7), (8), or (9) is presumed to have
7 the right and power to make decisions about funeral arrangements
8 and the handling, disposition, or disinterment of a decedent's
9 body, including, but not limited to, decisions about cremation, and

1 the right to retrieve from the funeral establishment and possess
2 cremated remains of the decedent immediately after cremation. The
3 handling, disposition, or disinterment of a body must be under the
4 supervision of a person licensed to practice mortuary science in
5 this state.

6 (2) Subject to section 1202, and except as otherwise provided
7 in this subsection and subject to the priority in subsection (3),
8 an individual 18 years of age or older who is of sound mind at the
9 time a funeral representative designation is made may designate in
10 writing another individual who is 18 years of age or older and who
11 is of sound mind to have the rights and powers under subsection
12 (1). All of the following apply to a funeral representative
13 designation under this subsection:

14 (a) For purposes of this section and sections 3206a and 3206b,
15 an individual who is named in a funeral representative designation
16 to have the rights and powers described in subsection (1) is known
17 as a funeral representative and an individual who makes a funeral
18 representative designation is known as a declarant.

19 (b) A funeral representative designation under this subsection
20 must be in writing, dated, and signed voluntarily by the declarant
21 or signed by a notary public on the declarant's behalf under
22 section 33 of the Michigan law on notarial acts, 2003 PA 238, MCL
23 55.293. A funeral representative designation may be included in the
24 declarant's will, patient advocate designation, or other writing.
25 If a funeral representative designation is contained in an
26 individual's will, the will is not required to be admitted to
27 probate for the funeral representative designation to be valid. A
28 funeral representative designation must be 1 or both of the
29 following:

1 (i) Signed in the presence of and signed by 2 witnesses. A
2 witness under this section may not be the funeral representative or
3 an individual described in subdivision (c) (ii) to (iv). A witness
4 shall not sign the funeral representative designation unless the
5 declarant appears to be of sound mind and under no duress, fraud,
6 or undue influence.

7 (ii) Acknowledged by the declarant before a notary public, who
8 endorses on the funeral representative designation a certificate of
9 the acknowledgment and the true date of taking the acknowledgment.

10 (c) The following individuals may not act as a funeral
11 representative for the declarant unless the individual is the
12 surviving spouse or is a relative of the declarant:

13 (i) An officer, partner, member, shareholder, owner,
14 representative, or employee of a funeral establishment that will
15 provide services to the declarant.

16 (ii) A health professional, or an employee of or volunteer at a
17 health facility or veterans facility, who provided medical
18 treatment or nursing care to the declarant during the final illness
19 or immediately before the declarant's death, or a partner, member,
20 shareholder, owner, or representative of the health facility where
21 medical treatment or nursing care was provided.

22 (iii) An officer, partner, member, shareholder, owner,
23 representative, or employee of a cemetery at which the declarant's
24 body will be interred, entombed, or inurned.

25 (iv) An officer, partner, member, shareholder, owner,
26 representative, or employee of a crematory that will provide the
27 declarant's cremation services.

28 (3) The following have the rights and powers under subsection
29 (1) in the following order of priority:

1 (a) If the decedent was a service member at the time of the
2 decedent's death, a person designated to direct the disposition of
3 the service member's remains according to a statute of the United
4 States or regulation, policy, directive, or instruction of the
5 Department of Defense.

6 (b) A funeral representative designated under subsection (2).

7 (c) The surviving spouse.

8 (d) ~~Subject to subdivision (e), the~~ **The** individual or
9 individuals 18 years of age or older in the following order of
10 priority:

11 (i) The decedent's children.

12 (ii) The decedent's grandchildren.

13 (iii) The decedent's parents.

14 (iv) The decedent's grandparents.

15 (v) The decedent's siblings.

16 (vi) A descendant of the decedent's parents who first notifies
17 the funeral establishment in possession of the decedent's body of
18 the descendant's decision to exercise his or her rights under
19 subsection (1).

20 (vii) A descendant of the decedent's grandparents who first
21 notifies the funeral establishment in possession of the decedent's
22 body of the descendant's decision to exercise his or her rights
23 under subsection (1).

24 ~~(e) If an individual described in subdivision (d) had the~~
25 ~~right to dispose of the decedent's body under subsection (1), but~~
26 ~~affirmatively declined to exercise his or her right or failed to~~
27 ~~exercise his or her right within 48 hours after receiving~~
28 ~~notification of the decedent's death, the individual does not have~~
29 ~~the right to make a decision about the disinterment of the~~

1 ~~decedent's body or possession of the decedent's cremated remains.~~
2 (4) If the individual or individuals with the highest priority
3 as determined under subsection (3) cannot be located after a ~~good-~~
4 ~~faith-~~**reasonable** effort to contact and inform them of the
5 decedent's death **within 72 hours after the pronouncement of the**
6 **decedent's death under the determination of death act, 1992 PA 90,**
7 **MCL 333.1031 to 333.1034,** affirmatively decline to exercise their
8 rights or powers under subsection (1), or fail to exercise their
9 rights or powers under subsection (1) within ~~48-~~**72** hours after
10 ~~receiving notification-~~**the pronouncement** of the decedent's death
11 **under the determination of death act, 1992 PA 90, MCL 333.1031 to**
12 **333.1034,** the rights and powers under subsection (1) may be
13 exercised by the individual or individuals in the same order of
14 priority under subsection (3). If the individual or each of the
15 individuals in an order of priority as determined under this
16 subsection similarly affirmatively declines or fails to exercise
17 his or her rights or powers within ~~48-~~**72** hours after ~~receiving~~
18 ~~notification that he or she may act under this subsection-~~**the**
19 **pronouncement of the decedent's death under the determination of**
20 **death act, 1992 PA 90, MCL 333.1031 to 333.1034,** or cannot be
21 located **within 72 hours after the pronouncement of the decedent's**
22 **death under the determination of death act, 1992 PA 90, MCL**
23 **333.1031 to 333.1034,** the rights or powers under subsection (1)
24 pass to **an individual or individuals in** the next order of priority
25 under subsection (3) **who notify the funeral establishment in**
26 **possession of the decedent's body of their decision to exercise**
27 **their rights or powers under subsection (1).** For purposes of this
28 subsection only, "exercise their rights or powers under subsection
29 (1)" means ~~notifying the funeral establishment in possession of the~~

1 ~~decedent's body of an individual's decision to exercise his or her~~
2 ~~rights or powers under subsection (1).~~ **providing the person that**
3 **holds a license under article 18 of the occupational code, 1980 PA**
4 **299, MCL 339.1801 to 339.1812, in possession of the decedent's body**
5 **with authorization to bury or cremate the decedent's body.**

6 (5) If 2 or more individuals share the rights and powers
7 described in subsection (1) as determined under subsection (3) or
8 (4), the rights and powers must be exercised as decided by a
9 majority of the individuals who can be located after reasonable
10 efforts. If a majority cannot agree, any of the individuals may
11 file a petition under section 3207.

12 (6) If no individual described in subsections (3) and (4)
13 exists, exercises the rights or powers under subsection (1), or can
14 be located after a sufficient attempt as described in subsection
15 (10), and if subsection (7) does not apply, then the personal
16 representative or nominated personal representative may exercise
17 the rights and powers under subsection (1), either before or after
18 his or her appointment.

19 (7) If no individual described in subsections (3) and (4)
20 exists, exercises the rights or powers under subsection (1), or can
21 be located after a sufficient attempt as described in subsection
22 (10), and if the decedent was under a guardianship at the time of
23 death, the guardian may exercise the rights and powers under
24 subsection (1) and may make a claim for the reimbursement of burial
25 expenses as provided in section 5216 or 5315, as applicable.

26 (8) If no individual described in subsections (3) and (4)
27 exists, exercises the rights or powers under subsection (1), or can
28 be located after a sufficient attempt as described in subsection
29 (10), if the decedent died intestate, and if subsection (7) does

1 not apply, a special fiduciary appointed under section 1309 or a
2 special personal representative appointed under section 3614(c) may
3 exercise the rights and powers under subsection (1).

4 (9) If there is no person under subsections (3) to (8) to
5 exercise the rights and powers under subsection (1), **or if there is**
6 **a person under subsections (3) to (8) to exercise the rights and**
7 **powers under subsection (1) and the person fails to exercise the**
8 **rights and powers under subsection (1) within 14 days after the**
9 **decedent's death**, 1 of the following, as applicable, shall exercise
10 the rights and powers under subsection (1):

11 (a) Unless subdivision (b) applies, the medical examiner for
12 the county where the decedent was domiciled at the time of his or
13 her death.

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

17 (10) An attempt to locate a person described in subsection (3)
18 or (4) is sufficient if a reasonable attempt is made in good faith
19 ~~by a family member, personal representative, or nominated personal~~
20 ~~representative of the decedent~~ **any of the following** to contact the
21 person at his or her last known address, telephone number, or
22 ~~electronic mail~~ **email** address: -

23 (a) **A family member, personal representative, or nominated**
24 **personal representative of the decedent.**

25 (b) **A health facility or veteran's facility that provided**
26 **medical treatment to the decedent during the final illness or**
27 **immediately before the decedent's death.**

28 (11) This section does not void or otherwise affect an
29 anatomical gift made under part 101 of the public health code, 1978

1 PA 368, MCL 333.10101 to 333.10123.

2 (12) An individual who has been criminally charged with the
3 intentional killing of the decedent shall not exercise a right
4 under subsection (1) while the charges are pending.

5 (13) Except as otherwise provided in this subsection, a person
6 who has the rights and powers under subsection (1) and who
7 exercises the right over the disposition of the decedent's body
8 must ensure payment for the costs of the disposition through a
9 trust, insurance, a commitment by another person, a prepaid
10 contract under the prepaid funeral and cemetery sales act, 1986 PA
11 255, MCL 328.211 to 328.235, or other effective and binding means.
12 To the extent payment is not ensured under this subsection, the
13 person described in this subsection is liable for the costs of the
14 disposition. This subsection does not apply to a person who
15 exercises the rights and powers under subsection (1) as provided in
16 subsection (8) or (9).

17 (14) As used in this section:

18 (a) "Armed forces" means the Army, Air Force, Navy, Marine
19 Corps, Coast Guard, or other military force designated by Congress
20 as part of the Armed Forces of the United States.

21 (b) "Health facility" means that term as defined in section
22 5653 of the public health code, 1978 PA 368, MCL 333.5653.

23 (c) "Health professional" means that term as defined in
24 section 5883 of the public health code, 1978 PA 368, MCL 333.5883.

25 (d) "Medical treatment" means that term as defined in section
26 5653 of the public health code, 1978 PA 368, MCL 333.5653.

27 (e) "Michigan National Guard" means that term as defined in
28 section 105 of the Michigan military act, 1967 PA 150, MCL 32.505.

29 (f) "Nominated personal representative" means a person

1 nominated to act as personal representative in a will that the
2 nominated person reasonably believes to be the valid will of the
3 decedent.

4 (g) "Service member" means a member of the armed forces, a
5 reserve branch of the armed forces, or the Michigan National Guard.