

# HOUSE BILL NO. 5117

June 24, 2021, Introduced by Rep. Wakeman and referred to the Committee on Judiciary.

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

1 acting under subsection (6), (7), (8), or (9) is presumed to have  
2 the right and power to make decisions about funeral arrangements  
3 and the handling, disposition, or disinterment of a decedent's  
4 body, including, but not limited to, decisions about cremation, and  
5 the right to retrieve from the funeral establishment and possess  
6 cremated remains of the decedent immediately after cremation. The  
7 handling, disposition, or disinterment of a body must be under the  
8 supervision of a person licensed to practice mortuary science in  
9 this state.

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

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

23 (b) A funeral representative designation under this subsection  
24 must be in writing, dated, and signed voluntarily by the declarant  
25 or signed by a notary public on the declarant's behalf under  
26 section 33 of the Michigan law on notarial acts, 2003 PA 238, MCL  
27 55.293. A funeral representative designation may be included in the  
28 declarant's will, patient advocate designation, or other writing.  
29 If a funeral representative designation is contained in an

1 individual's will, the will is not required to be admitted to  
2 probate for the funeral representative designation to be valid. A  
3 funeral representative designation must be 1 or both of the  
4 following:

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

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

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

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

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

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

29 (iv) An officer, partner, member, shareholder, owner,

1 representative, or employee of a crematory that will provide the  
2 declarant's cremation services.

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

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

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

11 (c) The surviving spouse.

12 (d) Subject to subdivision (e), the individual or individuals  
13 18 years of age or older in the following order of priority:

14 (i) The decedent's children.

15 (ii) The decedent's grandchildren.

16 (iii) The decedent's parents.

17 (iv) The decedent's grandparents.

18 (v) The decedent's siblings.

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

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

27 (e) If an individual described in subdivision (d) had the  
28 right to dispose of the decedent's body under subsection (1), but  
29 affirmatively declined to exercise his or her right or failed to

1 exercise his or her right within 48 hours after receiving  
2 notification of the decedent's death, the individual does not have  
3 the right to make a decision about the disinterment of the  
4 decedent's body or possession of the decedent's cremated remains.

5 (4) If the individual or individuals with the highest priority  
6 as determined under subsection (3) cannot be located after a good-  
7 faith effort to contact and inform them of the decedent's death,  
8 affirmatively decline to exercise their rights or powers under  
9 subsection (1), or fail to exercise their rights or powers under  
10 subsection (1) within 48 hours after receiving notification of the  
11 decedent's death, the rights and powers under subsection (1) may be  
12 exercised by the individual or individuals in the same order of  
13 priority under subsection (3). If the individual or each of the  
14 individuals in an order of priority as determined under this  
15 subsection similarly affirmatively declines or fails to exercise  
16 his or her rights or powers within 48 hours after receiving  
17 notification that he or she may act under this subsection or cannot  
18 be located, the rights or powers under subsection (1) pass to the  
19 next order of priority under subsection (3). **If the individual or**  
20 **individuals with the highest priority as determined under**  
21 **subsection (3) exercise their rights or powers under subsection**  
22 **(1), but fail to authorize final disposition of the decedent's body**  
23 **within 7 days after receiving notification of the decedent's death,**  
24 **the rights and powers under subsection (1) may be exercised by the**  
25 **individual or individuals in the same order of priority under**  
26 **subsection (3). If the individual or each of the individuals in an**  
27 **order of priority as determined under the preceding sentence**  
28 **similarly exercise their rights or powers under subsection (1), but**  
29 **fail to authorize final disposition of the decedent's body within 7**

1 **days after receiving notification that he or she may act under this**  
2 **subsection, the rights and powers under subsection (1) pass to the**  
3 **next order of priority under subsection (3).** For purposes of this  
4 subsection only, "exercise their rights or powers under subsection  
5 (1)" means notifying the funeral establishment in possession of the  
6 decedent's body of an individual's decision to exercise his or her  
7 rights or powers under subsection (1).

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

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

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

28 (8) If no individual described in subsections (3) and (4)  
29 exists, exercises the rights or powers under subsection (1), or can

1 be located after a sufficient attempt as described in subsection  
2 (10), if the decedent died intestate, and if subsection (7) does  
3 not apply, a special fiduciary appointed under section 1309 or a  
4 special personal representative appointed under section 3614(c) may  
5 exercise the rights and powers under subsection (1).

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

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

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

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

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

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

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

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

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

16           (14) As used in this section:

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

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

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

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

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

28           (f) "Nominated personal representative" means a person  
29 nominated to act as personal representative in a will that the

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

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