

HOUSE BILL NO. 5238

July 01, 2021, Introduced by Rep. Rabhi and referred to the Committee on Government Operations.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 2114 and 2806 (MCL 700.2114 and 700.2806),
section 2114 as amended by 2012 PA 160.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2114. (1) Except as provided in subsections (2), (3), and
2 (4), for purposes of intestate succession by, through, or from an
3 individual, an individual is the child of his or her natural
4 parents, regardless of their marital status. The parent and child

relationship may be established in any of the following manners:

(a) If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for purposes of intestate succession. A child conceived by a married woman with the consent of her ~~husband~~-**spouse** following utilization of assisted reproductive technology is considered as their child for purposes of intestate succession. Consent of the ~~husband~~-**spouse** is presumed unless the contrary is shown by clear and convincing evidence. If ~~a man and a woman~~-**2 individuals** participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage may be void, the child is presumed to be their child for purposes of intestate succession.

(b) If a child is born out of wedlock or if a child is born or conceived during a marriage but is not the issue of that marriage, a man is considered to be the child's natural father for purposes of intestate succession if any of the following occur:

(i) The man joins with the child's mother and acknowledges that child as his child by completing an acknowledgment of parentage as prescribed in the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.

(ii) The man joins the mother in a written request for a correction of certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the child's birth.

(iii) The man and child have established a mutually acknowledged relationship of parent and child that begins before the child becomes age 18 and continues until terminated by the death of either.

1 (iv) The man is determined to be the child's father and an
2 order of filiation establishing that paternity is entered as
3 provided in the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

4 (v) Regardless of the child's age or whether or not the
5 alleged father has died, the court with jurisdiction over probate
6 proceedings relating to the decedent's estate determines that the
7 man is the child's father, using the standards and procedures
8 established under the paternity act, 1956 PA 205, MCL 722.711 to
9 722.730.

10 (vi) The man is determined to be the father in an action under
11 the revocation of paternity act, **2012 PA 159, MCL 722.1431 to**
12 **722.1445.**

13 (c) A child who is not conceived or born during a marriage is
14 an individual born in wedlock if the child's parents marry after
15 the conception or birth of the child.

16 (2) An adopted individual is the child of his or her adoptive
17 parent or parents and not of his or her natural parents, but
18 adoption of a child by the spouse of either natural parent has no
19 effect on either the relationship between the child and that
20 natural parent or the right of the child or a descendant of the
21 child to inherit from or through the other natural parent. An
22 individual is considered to be adopted for purposes of this
23 subsection when a court of competent jurisdiction enters an
24 interlocutory decree of adoption that is not vacated or reversed.

25 (3) The permanent termination of parental rights of a minor
26 child by an order of a court of competent jurisdiction; by a
27 release for purposes of adoption given by the parent, but not a
28 guardian, to the ~~family independence agency~~ **department of health**
29 **and human services** or a licensed child placement agency, or before

1 a probate or juvenile court; or by any other process recognized by
2 the law governing the parent-child status at the time of
3 termination, excepting termination by emancipation or death, ends
4 kinship between the parent whose rights are so terminated and the
5 child for purposes of intestate succession by that parent from or
6 through that child.

7 (4) Inheritance from or through a child by either natural
8 parent or his or her kindred is precluded unless that natural
9 parent has openly treated the child as his or hers, and has not
10 refused to support the child.

11 (5) Only the individual presumed to be the natural parent of a
12 child under subsection (1)(a) may disprove a presumption that is
13 relevant to that parent and child relationship, and this exclusive
14 right to disprove the presumption terminates on the death of the
15 presumed parent.

16 Sec. 2806. As used in this section and sections 2807 to 2809:

17 (a) "Disposition or appointment of property" includes, but is
18 not limited to, a transfer of an item of property or another
19 benefit to a beneficiary designated in a governing instrument.

20 (b) "Divorce or annulment" means a divorce or annulment, or a
21 dissolution or declaration of invalidity of a marriage, that would
22 exclude the spouse as a surviving spouse within the meaning of
23 section 2801. A decree of separation that does not terminate the
24 status of ~~husband and wife~~ **married couple** is not a divorce for
25 purposes of this section and sections 2807 to 2809.

26 (c) "Divorced individual" includes, but is not limited to, an
27 individual whose marriage has been annulled.

28 (d) "Governing instrument" means a governing instrument
29 executed by a divorced individual before the divorce from, or

1 annulment of his or her marriage to, his or her former spouse.

2 (e) "Relative of the divorced individual's former spouse"

3 means an individual who is related to the divorced individual's
4 former spouse by blood, adoption, or affinity and who, after the
5 divorce or annulment, is not related to the divorced individual by
6 blood, adoption, or affinity.

7 (f) "Revocable" means, with respect to a disposition,
8 appointment, provision, or nomination, one under which the divorced
9 individual, at the time of the divorce or annulment, was alone
10 empowered, by law or under the governing instrument, to cancel the
11 designation in favor of his or her former spouse or former spouse's
12 relative, whether or not the divorced individual was then empowered
13 to designate himself or herself in place of his or her former
14 spouse or in place of his or her former spouse's relative and
15 whether or not the divorced individual then had the capacity to
16 exercise the power.

17 Enacting section 1. This amendatory act does not take effect
18 unless Senate Joint Resolution ____ or House Joint Resolution ____
19 (request no. 02344'21) of the 101st Legislature becomes a part of
20 the state constitution of 1963 as provided in section 1 of article
21 XII of the state constitution of 1963.