

HOUSE BILL No. 5850

February 23, 2010, Introduced by Reps. Miller, Neumann, Haugh and Durhal and referred to the Committee on Military and Veterans Affairs and Homeland Security.

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

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, **AND**
4 **SUBSECTION (11)**, a person with priority under subsections (2) to
5 (4) or acting under subsection (5), (6), (7), or (8) is presumed to
6 have the right and power to make decisions about funeral

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

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

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

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

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

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

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

26 (8) If there is no person under subsections (2) to (7) to
27 exercise the rights and powers under subsection (1), 1 of the

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

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

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

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

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

17 **(11) IF THE DECEDENT WAS A SERVICE MEMBER WHO HAD DESIGNATED A**
18 **PERSON TO DIRECT DISPOSITION OF THE SERVICE MEMBER'S REMAINS**
19 **ACCORDING TO A STATUTE OF THE UNITED STATES OR A REGULATION,**
20 **POLICY, DIRECTIVE, OR INSTRUCTION OF THE DEPARTMENT OF DEFENSE AND**
21 **IF THE DESIGNATED PERSON IS ABLE AND WILLING TO EXERCISE THE RIGHTS**
22 **AND POWERS ENUMERATED IN SUBSECTION (1), SUBSECTIONS (2) TO (8) DO**
23 **NOT APPLY AND THE DESIGNATED PERSON HAS THE RIGHTS AND THE POWERS**
24 **UNDER SUBSECTION (1).**

25 (12) ~~(11)~~As used in this section: ~~"nominated"~~

26 **(A) "NOMINATED** personal representative" means a person
27 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 **(B) "SERVICE MEMBER" MEANS AN INDIVIDUAL DESCRIBED IN 10 USC**
4 **1481(A)(1) TO (8).**

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

8 (2) The **DESIGNATION OF A PERSON AS DESCRIBED IN SECTION**
9 **3206(11) OR THE** order of priority determined under section 3206(2)
10 and (3) may be relied upon by a funeral establishment. A funeral
11 establishment is not a guarantor that a person exercising the
12 rights and powers under section 3206(1) has the legal authority to
13 do so. A funeral establishment does not have the responsibility to
14 contact or independently investigate the existence of relatives of
15 the deceased, but may rely on information provided by family
16 members of the deceased.

17 (3) A funeral establishment, holder of a license to practice
18 mortuary science issued by this state, cemetery, crematory, or an
19 officer or employee of a funeral establishment, holder of a license
20 to practice mortuary science issued by this state, cemetery, or
21 crematory may rely on the terms of sections 3206 and 3207 and this
22 section and the instructions of a person described in section
23 3206(2) to (8) **OR (11)**, or of an individual determined in an action
24 under section 3208 to be the party to exercise the rights and
25 powers under section 3206(1), regarding funeral arrangements and
26 the handling, disposition, or disinterment of a body and is not
27 civilly liable to any person for the reliance if the reliance was

1 in good faith.