

HOUSE BILL No. 4639

May 12, 2011, Introduced by Reps. Damrow, Franz, Nathan, Zorn, Agema, Tyler and Callton
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
7 arrangements and the handling, disposition, or disinterment of a
8 decedent's body, including, but not limited to, decisions about
9 cremation, and the right to possess cremated remains of the

1 decedent. The handling, disposition, or disinterment of a body
2 shall be under the supervision of a person licensed to practice
3 mortuary science in this state.

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

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

25 (4) If 2 or more individuals share the rights and powers
26 described in subsection (1) as determined under subsection (2) or
27 (3), the rights and powers shall be exercised as decided by a

1 majority of the individuals. If a majority cannot agree, any of the
2 individuals may file a petition under section 3207.

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

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

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

23 (8) If there is no person under subsections (2) to (7) to
24 exercise the rights and powers under subsection (1), 1 of the
25 following, as applicable, shall exercise the rights and powers
26 under subsection (1):

27 (a) Unless subdivision (b) applies, the county public

1 administrator, if willing, or the medical examiner for the county
2 where the decedent was domiciled at the time of his or her death.

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

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

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

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

22 (12) ~~(11)~~As used in this section: ~~7~~"nominated

23 (A) "ARMED FORCES" MEANS THAT TERM AS DEFINED IN SECTION 2 OF
24 THE VETERAN RIGHT TO EMPLOYMENT SERVICES ACT, 1994 PA 39, MCL
25 35.1092.

26 (B) "MICHIGAN NATIONAL GUARD" MEANS THAT TERM AS DEFINED IN
27 SECTION 105 OF THE MICHIGAN MILITARY ACT, 1967 PA 150, MCL 32.505.

1 (C) "**NOMINATED** personal representative" means a person
2 nominated to act as personal representative in a will that the
3 nominated person reasonably believes to be the valid will of the
4 decedent.

5 (D) "**SERVICE MEMBER**" MEANS A MEMBER OF THE ARMED FORCES, A
6 RESERVE BRANCH OF THE ARMED FORCES, OR THE MICHIGAN NATIONAL GUARD.

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

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

19 (3) A funeral establishment, holder of a license to practice
20 mortuary science issued by this state, cemetery, crematory, or an
21 officer or employee of a funeral establishment, holder of a license
22 to practice mortuary science issued by this state, cemetery, or
23 crematory may rely on the terms of sections 3206 and 3207 and this
24 section and the instructions of a person described in section
25 3206(2) to (8) **OR (11)**, or of an individual determined in an action
26 under section 3208 to be the party to exercise the rights and
27 powers under section 3206(1), regarding funeral arrangements and

1 the handling, disposition, or disinterment of a body and is not
2 civilly liable to any person for the reliance if the reliance was
3 in good faith.