

SENATE SUBSTITUTE FOR

HOUSE BILL NO. 4249

(As amended, December 16, 2003)

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
(MCL 333.1101 to 333.25211) by adding section 2855a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2855a. (1) A person shall not publicly display an  
2 autopsy photograph of a decedent that identifies the decedent by  
3 name, face, or other identifying physical feature unless 1 of the  
4 following conditions is met:

5       (a) One of the following individuals specifically provides  
6 written authorization for the public display of the autopsy  
7 photograph:

8       <<(i) A person nominated by will or other writing signed by the  
9 decedent.

10       (ii) If an individual described in subparagraph (i) cannot be  
11 identified or located following a diligent and good faith effort, the

1 decedent's spouse.

2 (iii) If an individual described in subparagraph (i) or (ii) cannot  
3 be identified or located following a diligent and good faith effort, an  
adult child of the decedent.

(iv) If an individual described in subparagraph (i), (ii), or (iii)  
cannot be identified or located following a diligent and good faith  
effort, a parent of the decedent.

(v) If an individual described in subparagraph (i), (ii), (iii), or  
(iv) cannot be identified or located following a diligent and good faith  
effort, the next of kin of the decedent.

(vi) If an individual described in subparagraph (i), (ii), (iii), (iv),  
or (v) cannot be identified or located following a diligent and good  
faith effort, an individual charged by law with the responsibility for  
burial or cremation of the decedent's body.>>

4 (b) The public display of the autopsy photograph is 1 of the  
5 following:

6 (i) Upon written authorization by the prosecuting attorney  
7 having jurisdiction for a purpose directly related to the  
8 investigation or prosecution of a criminal case.

9 (ii) Authorized by a court of competent jurisdiction for a  
10 purpose directly related to the proceedings in a civil case.

11 (iii) Required for a health department to carry out its  
12 lawful duties.

13 (iv) Necessary for legitimate research or teaching of only  
14 medical, public health, or public safety personnel or students  
15 enrolled at a postsecondary educational institution.

16 (2) A decedent's parent, surviving spouse, and children who  
17 are injured as a result of a violation of this section may bring  
18 an action in a court of competent jurisdiction to recover  
19 \$1,000.00 or actual damages, whichever is greater, plus costs and  
20 reasonable attorney fees.

<<(3) This section does not apply to an internet service provider or  
computer network service provider who in good faith, and without  
knowledge of the content of the photograph, provides the medium for  
public display of the photograph. As used in this subsection, "internet  
service provider" means a person who provides a service that enables  
users to access content, information, electronic mail, or other services  
offered over the internet.

(4) This section does not prohibit constitutionally protected speech or activity.>>

21 <<(5)>> As used in this section:

22 (a) "Autopsy photograph" means an image of a decedent  
23 obtained during an autopsy of that decedent in this state, and  
24 includes an image on videotape, motion picture or other film, or  
25 an image captured by digital means.

26 (b) "Decedent" means a deceased human being.

<<(c) "Public display" means to knowingly communicate, exhibit, or display in open view or to distribute to members of the public or in a public manner, whether or not for commercial purposes, through any medium of communication including, but not limited to, the internet or a computer, computer network, computer program, or computer system, as those terms are defined in section 2 of 1979 PA 53, MCL 752.792.>>

27 Enacting section 1. This amendatory act takes effect March

1 31, 2004.