

SENATE BILL No. 1526

September 29, 2010, Introduced by Senator CHERRY and referred to the Committee on Judiciary.

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, and by adding section 3206a.

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

1 handling, disposition, or disinterment of a decedent's body,
2 including, but not limited to, decisions about cremation, and the
3 right to possess cremated remains of the decedent. The handling,
4 disposition, or disinterment of a body shall be under the
5 supervision of a person licensed to practice mortuary science in
6 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. **THE DECISION OF THE MAJORITY MAY BE**
5 **DETERMINED AS PROVIDED IN SECTION 3206A.** If a majority cannot
6 agree, any of the individuals may file a petition under section
7 3207.

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

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

22 (7) If no individual described in subsections (2) and (3)
23 exists, exercises the rights or powers under subsection (1), or can
24 be located after a sufficient attempt as described in subsection
25 (9), if the decedent died intestate, and if subsection (6) does not
26 apply, a special personal representative appointed under section
27 3614(c) may exercise the rights and powers under subsection (1).

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

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

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

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

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

19 (11) As used in this section, "nominated personal
20 representative" means a person nominated to act as personal
21 representative in a will that the nominated person reasonably
22 believes to be the valid will of the decedent.

23 **SEC. 3206A. (1) IF A DECEDENT HAS LEFT WRITTEN INSTRUCTIONS**
24 **ABOUT FUNERAL ARRANGEMENTS AND THE HANDLING, DISPOSITION, OR**
25 **DISINTERMENT OF THE DECEDENT'S BODY AND 2 OR MORE INDIVIDUALS SHARE**
26 **THE RIGHTS AND POWERS DESCRIBED IN SECTION 3206(1) AS DETERMINED**
27 **UNDER SECTION 3206(2) OR (3), 1 OF THE INDIVIDUALS OR A FUNERAL**

1 ESTABLISHMENT THAT HAS CUSTODY OF THE DECEDENT'S BODY MAY GIVE THE
2 INDIVIDUALS WHO SHARE THE RIGHTS AND POWERS WRITTEN NOTICE OF THE
3 DECEDENT'S INSTRUCTIONS, THE RIGHT TO OBJECT TO THE INSTRUCTIONS
4 UNDER SUBSECTION (2), AND THE CONSEQUENCES OF FAILING TO OBJECT.

5 (2) IF AN INDIVIDUAL WHO SHARES THE RIGHTS AND POWERS AS
6 DESCRIBED IN SUBSECTION (1) DOES NOT OBJECT TO THE INSTRUCTIONS OF
7 THE DECEDENT WITHIN 48 HOURS AFTER RECEIVING THE NOTICE UNDER
8 SUBSECTION (1), IN DETERMINING THE DECISION OF A MAJORITY OF THE
9 INDIVIDUALS UNDER SECTION 3206(4), THE OTHER INDIVIDUALS MAY
10 PROCEED AS IF THE NONOBJECTING INDIVIDUAL EXPRESSED A DESIRE TO
11 FOLLOW THE INSTRUCTIONS OF THE DECEDENT.

12 Sec. 3209. (1) A funeral establishment is not required to **SEND**
13 **A NOTICE UNDER SECTION 3206A OR** file a petition under section 3207,
14 and is not civilly liable for not doing so.

15 (2) The order of priority determined under section 3206(2) and
16 (3) may be relied upon by a funeral establishment. A funeral
17 establishment is not a guarantor that a person exercising the
18 rights and powers under section 3206(1) has the legal authority to
19 do so. A funeral establishment does not have the responsibility to
20 contact or independently investigate the existence of relatives of
21 the deceased, but may rely on information provided by family
22 members of the deceased.

23 (3) A funeral establishment, holder of a license to practice
24 mortuary science issued by this state, cemetery, crematory, or an
25 officer or employee of a funeral establishment, holder of a license
26 to practice mortuary science issued by this state, cemetery, or
27 crematory may rely on the terms of sections 3206, **3206A**, and 3207

1 and this section and the instructions of a person described in
2 section 3206(2) to (8), or of an individual determined in an action
3 under section 3208 to be the party to exercise the rights and
4 powers under section 3206(1), regarding funeral arrangements and
5 the handling, disposition, or disinterment of a body and is not
6 civilly liable to any person for the reliance if the reliance was
7 in good faith.