

HOUSE BILL No. 6149

September 22, 1998, Introduced by Rep. Law and referred to the Committee on Regulatory Affairs.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 2851 (MCL 333.2851), as added by 1996 PA
284.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2851. (1) AS USED IN THIS SECTION:

2 (A) "ARRANGEMENTS" MEANS ALL FUNERAL ARRANGEMENTS FOR, OR
3 THE FINAL DISPOSITION, DISINTERMENT, OR THE RIGHT TO POSSESS AND
4 MAKE DECISIONS REGARDING THE HANDLING OR DISPOSITION OF, A DEAD
5 HUMAN BODY, INCLUDING, BUT NOT LIMITED TO, CREMATION AND THE DIS-
6 POSAL OF CREMATED REMAINS.

7 (B) "PROVIDER" MEANS A FUNERAL ESTABLISHMENT OR CEMETERY AND
8 THE OWNERS, EMPLOYEES, AND AGENTS OF A FUNERAL ESTABLISHMENT OR
9 CEMETERY.

1 (2) EXCEPT IN THE CASE WHERE THE PERSONS SEEKING TO MAKE
2 ARRANGEMENTS HAVE ACTUAL KNOWLEDGE THAT THE DECEASED HAS MADE
3 ARRANGEMENTS ON A PRENEED BASIS THROUGH A PROVIDER OF FUNERAL OR
4 CEMETERY GOODS OR SERVICES, THE FOLLOWING PERSONS, IF THEY ARE AT
5 LEAST 18 YEARS OF AGE, HAVE THE RIGHT TO MAKE ALL DECISIONS
6 REGARDING ARRANGEMENTS FOR A DEAD HUMAN BODY IN THE FOLLOWING
7 ORDER OF PRIORITY:

8 (A) A SURVIVING SPOUSE.

9 (B) A SURVIVING SON OR DAUGHTER.

10 (C) A SURVIVING PARENT.

11 (D) A SURVIVING BROTHER OR SISTER.

12 (E) A SURVIVING GRANDCHILD.

13 (F) A SURVIVING CHILD OF A DECEASED BROTHER OR SISTER.

14 (G) A SURVIVING GRANDPARENT.

15 (H) A SURVIVING AUNT OR UNCLE.

16 (I) A SURVIVING FIRST COUSIN.

17 (3) IF 1 OR MORE OF THE PERSONS LISTED IN SUBSECTION (2) DO
18 NOT EXERCISE THEIR RIGHT TO MAKE ARRANGEMENTS WITHIN 48 HOURS OF
19 BEING CONTACTED, OR CANNOT BE LOCATED AFTER A GOOD FAITH EFFORT
20 TO CONTACT THEM AT THEIR LAST KNOWN ADDRESS, THEN THAT PERSON
21 FORFEITS HIS OR HER RIGHTS UNDER SUBSECTION (2) AND THE AUTHORITY
22 TO MAKE ARRANGEMENTS FALLS TO THE NEXT PERSON IN THE ORDER OF
23 PRIORITY.

24 (4) IF 2 OR MORE PERSONS HAVE THE SAME PRIORITY UNDER SUB-
25 SECTION (2), THEN THE MAJORITY HAVE AUTHORITY TO MAKE THE
26 ARRANGEMENTS. IF A MAJORITY CANNOT AGREE ON THE ARRANGEMENTS,
27 ANY PERSON SPECIFIED IN SUBSECTION (2) OR THE PROVIDER WHO HAS

1 CUSTODY OF THE DEAD HUMAN BODY, OR BOTH, MAY FILE A PETITION WITH
2 THE PROBATE COURT FOR THE COUNTY OF THE DOMICILE OF THE DECEASED
3 AT THE TIME OF DEATH OR THE COUNTY IN WHICH THE DEAD HUMAN BODY
4 IS LOCATED REQUESTING THE PROBATE COURT TO DECIDE BETWEEN OR
5 AMONG THE CONFLICTING REQUESTS OR TO REACH A SOLUTION BASED UPON
6 A COMPROMISE OF 1 OR MORE REQUESTS. A PROVIDER IS NOT REQUIRED
7 TO BRING AN ACTION DESCRIBED IN THIS SUBSECTION AND IS NOT CIV-
8 ILLY OR CRIMINALLY LIABLE FOR NOT DOING SO. IN THE EVENT OF A
9 DISPUTE, A PROVIDER IS NOT REQUIRED TO ACCEPT A DECEASED'S
10 REMAINS OR TO INTER OR OTHERWISE DISPOSE OF THE DECEASED'S
11 REMAINS OR COMPLETE THE ARRANGEMENTS UNTIL THE PROVIDER RECEIVES
12 A COURT ORDER OR WRITTEN AGREEMENT SIGNED BY THE PARTIES IN
13 DISPUTE.

14 (5) IF NO PERSON LISTED IN SUBSECTION (2) EXISTS, OR IF HE
15 OR SHE DOES NOT EXERCISE HIS OR HER RIGHT TO MAKE ARRANGEMENTS
16 WITHIN 48 HOURS OF BEING CONTACTED OR CANNOT BE LOCATED AFTER A
17 GOOD FAITH EFFORT BY THE PERSONAL REPRESENTATIVE OF THE ESTATE TO
18 CONTACT HIM OR HER AT HIS OR HER LAST KNOWN ADDRESS, THEN THE
19 PERSONAL REPRESENTATIVE OF THE DECEASED'S ESTATE MAY AUTHORIZE
20 ARRANGEMENTS BEFORE HIS OR HER APPOINTMENT.

21 (6) IF THERE IS NO PERSONAL REPRESENTATIVE, THEN A PROVIDER
22 THAT IS WILLING TO ASSUME THE RESPONSIBILITY FOR PROVIDING THE
23 ARRANGEMENTS MAY ACCEPT INSTRUCTIONS FROM ANY PERSON WILLING TO
24 ASSUME THE RESPONSIBILITY OF MAKING THE ARRANGEMENTS. THE PRIOR-
25 ITY SET FORTH IN SUBSECTION (2) IS A REBUTTABLE PRESUMPTION THAT
26 MAY BE RELIED UPON BY A PROVIDER. A PROVIDER IS NOT A GUARANTOR
27 THAT THE PERSON MAKING THE ARRANGEMENTS HAS THE LEGAL AUTHORITY

1 TO DO SO. A PROVIDER DOES NOT HAVE THE RESPONSIBILITY TO CONTACT
2 OR INDEPENDENTLY INVESTIGATE THE EXISTENCE OF NEXT-OF-KIN BUT MAY
3 RELY ON INFORMATION PROVIDED BY FAMILY MEMBERS. IF NO PERSON IS
4 WILLING TO ASSUME THE RESPONSIBILITY OF MAKING ARRANGEMENTS, THEN
5 THE PROVIDER SHALL NOTIFY THE DEPARTMENT OF COMMUNITY HEALTH. A
6 PROVIDER WHO IN GOOD FAITH AND AFTER REASONABLE DILIGENCE
7 ATTEMPTS TO COMPLY WITH THIS SECTION IS NOT CIVILLY OR CRIMINALLY
8 LIABLE FOR THE ARRANGEMENTS PROVIDED.

9 (7) A PERSON WHO ALLEGES THAT PERMITTING 1 OR MORE OF THE
10 PERSONS WITH PRIORITY UNDER SUBSECTION (2) TO AUTHORIZE ARRANGE-
11 MENTS MAY WORK A GRAVE INJUSTICE OR WHO ALLEGES THAT A PERSON
12 OTHER THAN A PERSON WITH PRIORITY UNDER SUBSECTION (2), UNDER ALL
13 THE CIRCUMSTANCES OF THE CASE, HAD A CLOSER PERSONAL AFFINITY TO
14 THE DECEASED AND SHOULD BE ALLOWED TO MAKE THE ARRANGEMENTS MAY
15 FILE A PETITION WITH THE PROBATE COURT FOR THE COUNTY OF THE DOM-
16 ICILE OF THE DECEASED AT THE TIME OF DEATH OR THE COUNTY IN WHICH
17 THE DEAD HUMAN BODY IS LOCATED REQUESTING AN ORDER GIVING HIM OR
18 HER THE AUTHORITY TO MAKE THE ARRANGEMENTS. A PROVIDER IS
19 REQUIRED TO FOLLOW THE INSTRUCTIONS OF THE PROBATE COURT WHEN
20 ISSUED AS A COURT ORDER AND SERVED ON THE PROVIDER. IF A PETI-
21 TION IS FILED, THE PROVIDER SHALL SUSPEND THE ARRANGEMENTS AUTHO-
22 RIZED BY THE PERSON WITH PRIORITY UNDER SUBSECTION (2) UNTIL THE
23 PROBATE COURT ISSUES A COURT ORDER.

24 (8) UPON RECEIPT OF A PETITION FILED UNDER SUBSECTION (4) OR
25 (7), THE PROBATE COURT SHALL SET A DATE FOR A HEARING THAT SHALL
26 BE AS SOON AS POSSIBLE, BUT NOT LATER THAN 7 BUSINESS DAYS AFTER
27 THE DATE THE PETITION IS FILED. NOTICE OF THE HEARING AND THE

1 PETITION SHALL BE SERVED PERSONALLY OR IN SUCH A MANNER TO ENSURE
2 RECEIPT BY MAIL ON ANY PERSON SPECIFIED IN THIS SUBSECTION NOT
3 LESS THAN 5 DAYS BEFORE THE DATE OF THE HEARING. NOTICE OF THE
4 HEARING SHALL INCLUDE NOTICE OF THE PERSON'S RIGHT TO APPEAR AT
5 THE HEARING. UNLESS THE PERSON CANNOT BE LOCATED AFTER A GOOD
6 FAITH EFFORT HAS BEEN MADE TO LOCATE THE PERSON AT HIS OR HER
7 LAST KNOWN ADDRESS, THE NOTICE AND PETITION SHALL BE SERVED ON
8 ANY PERSON HAVING THE HIGHEST PRIORITY AS DESCRIBED IN
9 SUBSECTION (2). EXCEPT FOR ATTORNEY FEES, IF THE PETITIONER IS
10 THE PROVIDER, THE ESTATE SHALL REIMBURSE THE PROVIDER FOR ALL
11 COSTS INCURRED IN BRINGING THE ACTION. ANY PERSON SERVED NOTICE
12 OF THE HEARING MAY WAIVE HIS OR HER RIGHTS, AND UPON FILING OF
13 THE WAIVER IN WRITING, THE PROBATE COURT MAY IMMEDIATELY HEAR THE
14 PETITION.

15 (9) IN DECIDING AN ACTION BROUGHT PURSUANT TO SUBSECTION
16 (4), THE PROBATE COURT SHALL CONSIDER AT LEAST ALL OF THE FOLLOW-
17 ING FACTORS:

18 (A) THE EXPRESSED DESIRES OF THE DECEASED.

19 (B) THE REASONABLENESS AND PRACTICALITY OF THE
20 ARRANGEMENTS.

21 (C) THE RELATIVE PERSONAL AFFINITY OF THE PERSON TO THE
22 DECEASED.

23 (D) THE DESIRES OF THE PERSON OR PERSONS READY, WILLING, AND
24 ABLE TO PAY THE COSTS OF THE ARRANGEMENTS.

25 (E) A PRESUMPTION IN FAVOR OF ALLOWING MAXIMUM PARTICIPATION
26 BY ALL WISHING TO PAY RESPECTS TO THE DECEASED.

1 (F) THE CONVENIENCE AND NEEDS OF OTHER FAMILY AND FRIENDS OF
2 THE DECEASED WISHING TO PAY RESPECTS.

3 (10) IN DECIDING AN ACTION BROUGHT PURSUANT TO SUBSECTION
4 (7), THE PROBATE COURT SHALL CONSIDER AT LEAST BOTH OF THE FOL-
5 LOWING FACTORS:

6 (A) THE EXPRESSED DESIRES OF THE DECEASED.

7 (B) THE DESIRES OF THE PERSON OR PERSONS READY, WILLING, AND
8 ABLE TO PAY THE COSTS OF THE ARRANGEMENTS.

9 (11) THE FACT THAT ANY PERSON HAS PAID OR AGREED TO PAY ALL
10 OR PART OF THE COST OF THE ARRANGEMENTS DOES NOT GIVE A PERSON
11 ANY GREATER RIGHTS TO MAKE ALL DECISIONS REGARDING THE ARRANGE-
12 MENTS THAN HE OR SHE OTHERWISE WOULD HAVE HAD UNDER THIS SECTION.

13 (12) ~~-(1)-~~ Subject to any other provision of this part, a
14 person who has authority to make arrangements for a dead human
15 body under this part also has authority to request a permit for
16 the disinterment of a dead human body under section 2853 notwith-
17 standing the lack of consent of, or 1 or more objections of, a
18 person who owns or possesses ownership rights over the place of
19 repose. A person who owns or possesses ownership rights over the
20 place of repose shall not bear any cost associated with the dis-
21 interment unless that person initiates the disinterment or is
22 otherwise legally obligated for the costs of the disinterment.

23 (13) ~~-(2)-~~ This section does not void or otherwise affect a
24 gift made pursuant to part 101.

25 (14) NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS
26 SECTION, A PERSON WHO HAS AUTHORITY TO MAKE ARRANGEMENTS UNDER
27 THIS PART FOR OR ON BEHALF OF A VICTIM OF A MURDER OR

1 MANSLAUGHTER MAY REFUSE TO ALLOW THE BURIAL OF A DECEASED
2 INDIVIDUAL FOUND OR DETERMINED TO HAVE VIOLATED SECTION 316, 317,
3 OR 321 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.316,
4 750.317, AND 750.321, ADJACENT TO THE VICTIM OF THAT MURDER OR
5 MANSLAUGHTER, EVEN THOUGH THAT DECEASED INDIVIDUAL WAS NOT CON-
6 VICTED OF THAT OFFENSE.