

# SENATE BILL No. 1289

(As amended, June 10, 2004)

June 8, 2004, Introduced by Senator GEORGE and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 2855a (MCL 333.2855a), as added by 2003 PA 322.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

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

10       (i) A person nominated by will or other writing signed by the  
11       decedent.

12       (ii) If an individual described in subparagraph (i) cannot be

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1 identified or located following a diligent and good faith effort,  
2 the decedent's spouse.

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

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

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

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

17 (b) The public ~~display~~ dissemination of the autopsy photograph  
is 1 of the  
18 following:

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

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

24 (iii) Required for a health department to carry out its  
25 lawful duties.

26 (iv) Necessary for legitimate research or teaching of only  
27 medical, public health, or public safety personnel or students

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1 enrolled at a postsecondary educational institution.

2       <<(v) Pursuant to a request of a law enforcement agency as part of  
3 and directly related to a criminal investigation. An autopsy photograph  
4 received under this subparagraph is confidential, is not subject to  
5 disclosure under the freedom of information act, 1976 PA 442, MCL 15.231  
6 to 15.246, and shall not be disclosed to any person except for law  
7 enforcement purposes.>>

8       (2) A decedent's parent, surviving spouse, and children who  
9 are injured as a result of a violation of this section may bring  
10 an action in a court of competent jurisdiction to recover  
11 \$1,000.00 or actual damages, whichever is greater, plus costs and  
12 reasonable attorney fees.

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

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

24       (5) As used in this section:

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

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

(c) "Public <<display dissemination>>" means to knowingly  
communicate, exhibit, <<disseminate,>>  
or display in open view or to distribute to members of the public  
or in a public manner, whether or not for commercial purposes,

1 through any medium of communication including, but not limited  
2 to, the internet or a computer, computer network, computer  
3 program, or computer system, as those terms are defined in  
4 section 2 of 1979 PA 53, MCL 752.792.