

By: Rodriguez

H.B. No. 353

A BILL TO BE ENTITLED

AN ACT

relating to certain health care rights of domestic partners.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 166.004(d), Health and Safety Code, is amended to read as follows:

(d) If, at the time notice is to be provided under Subsection (c), the individual is incompetent or otherwise incapacitated and unable to receive the notice required by this section, the provider shall provide the required written notice, in the following order of preference, to:

(1) the individual's legal guardian;

(2) a person responsible for the health care decisions of the individual;

(3) the individual's spouse or domestic partner as defined by Section 257.001;

(4) the individual's adult child;

(5) the individual's parent; or

(6) the person admitting the individual.

SECTION 2. Section 166.039(b), Health and Safety Code, is amended to read as follows:

(b) If the patient does not have a legal guardian or an agent under a medical power of attorney, the attending physician and one person, if available, from one of the following categories, in the following priority, may make a treatment decision that may include

1 a decision to withhold or withdraw life-sustaining treatment:

2 (1) the patient's spouse or domestic partner as defined  
3 by Section 257.001;

4 (2) the patient's reasonably available adult children;

5 (3) the patient's parents; or

6 (4) the patient's nearest living relative.

7 SECTION 3. Subtitle B, Title 4, Health and Safety Code, is  
8 amended by adding Chapter 257 to read as follows:

9 CHAPTER 257. HEALTH FACILITY VISITATION

10 Sec. 257.001. DEFINITION. In this chapter, "domestic  
11 partnership" means a relationship between two individuals who:

12 (1) agree to be in a relationship of mutual  
13 interdependence in which each individual contributes to the  
14 maintenance and support of the other individual and the  
15 relationship, even if both individuals are not required to  
16 contribute equally to the relationship;

17 (2) are at least 18 years old;

18 (3) are not related within the third degree of  
19 affinity or consanguinity;

20 (4) are not married or in a civil union recognized in  
21 any other jurisdiction; and

22 (5) are not in another relationship described by  
23 Subdivision (1).

24 Sec. 257.002. PROOF OF DOMESTIC PARTNERSHIP. An individual  
25 who asserts a domestic partnership under Section 257.001 may be  
26 required to provide:

27 (1) an affidavit signed under penalty of perjury by

1 two individuals stating that they have established a domestic  
2 partnership; and

3 (2) proof of any two of the following documents:

4 (A) joint liability of the individuals for a  
5 mortgage, lease, or loan;

6 (B) the designation of one of the individuals as  
7 the primary beneficiary under a life insurance policy on the life of  
8 the other individual or under a retirement plan of the other  
9 individual;

10 (C) the designation of one of the individuals as  
11 the primary beneficiary of the will of the other individual;

12 (D) a durable power of attorney for health care  
13 or financial management granted by one of the individuals to the  
14 other individual;

15 (E) joint ownership or lease by the individuals  
16 of a motor vehicle;

17 (F) a joint checking account, joint investments,  
18 or a joint credit account;

19 (G) a joint renter's or homeowner's insurance  
20 policy;

21 (H) coverage of both individuals on a health  
22 insurance policy written on an individual or family basis;

23 (I) joint responsibility for child care, such as  
24 guardianship or school documents; or

25 (J) a relationship or cohabitation contract.

26 Sec. 257.003. VISITATION. (a) A hospital or facility  
27 licensed under this subtitle shall allow an individual who is a

1 patient's or resident's domestic partner, the children of the  
2 patient's or resident's domestic partner, or the domestic partner of  
3 the patient's or resident's parent or child to visit, unless:

4 (1) visitors are not allowed;

5 (2) the facility reasonably determines that the  
6 presence of the individual would endanger the health or safety of a  
7 patient, resident, or member of the facility staff; or

8 (3) the patient or resident or the patient's or  
9 resident's personal representative tells the facility staff that  
10 the patient or resident does not want the individual to visit.

11 (b) This section does not prohibit a hospital or facility  
12 licensed under this subtitle from establishing reasonable  
13 restrictions on visitation, including restrictions on the hours of  
14 visitation and number of visitors.

15 Sec. 257.004. MEDICAL EMERGENCY VISITATION. If an adult in  
16 good faith, during a medical emergency informs an emergency medical  
17 provider or hospital staff person that the adult and an ill or  
18 injured adult patient are in a mutually interdependent  
19 relationship, the provider or person shall treat the adults as  
20 domestic partners by allowing the adult to:

21 (1) accompany the adult patient as the patient is  
22 transported to a hospital in an emergency vehicle; and

23 (2) visit the adult patient who is admitted to a  
24 hospital on an emergency basis as if the adult is a member of the  
25 adult patient's immediate family.

26 SECTION 4. Section 313.004(a), Health and Safety Code, is  
27 amended to read as follows:

1 (a) If an adult patient of a home and community support  
2 services agency or in a hospital or nursing home is comatose,  
3 incapacitated, or otherwise mentally or physically incapable of  
4 communication, an adult surrogate from the following list, in order  
5 of priority, who has decision-making capacity, is available after a  
6 reasonably diligent inquiry, and is willing to consent to medical  
7 treatment on behalf of the patient may consent to medical treatment  
8 on behalf of the patient:

9 (1) the patient's spouse or domestic partner as defined  
10 by Section 257.001;

11 (2) an adult child of the patient who has the waiver  
12 and consent of all other qualified adult children of the patient to  
13 act as the sole decision-maker;

14 (3) a majority of the patient's reasonably available  
15 adult children;

16 (4) the patient's parents; or

17 (5) the individual clearly identified to act for the  
18 patient by the patient before the patient became incapacitated, the  
19 patient's nearest living relative, or a member of the clergy.

20 SECTION 5. Section 692.004(a), Health and Safety Code, is  
21 amended to read as follows:

22 (a) The following persons, in the following priority, may  
23 give all or any part of a decedent's body for a purpose specified by  
24 Section 692.005:

25 (1) the decedent's spouse or domestic partner as  
26 defined by Section 257.001;

27 (2) the decedent's adult child;

- 1           (3) either of the decedent's parents;
- 2           (4) the decedent's adult brother or sister;
- 3           (5) the guardian of the person of the decedent at the
- 4 time of death; or
- 5           (6) any other person authorized or under an obligation
- 6 to dispose of the body.

7           SECTION 6. Sections 692.010(c) and (d), Health and Safety

8 Code, are amended to read as follows:

9           (c) If a donee accepts a gift of an entire body, the

10 decedent's surviving spouse or domestic partner as defined by

11 Section 257.001 or any other person authorized to give all or part

12 of the body may authorize the body's embalming and have the use of

13 the body for funeral services, subject to the terms of the gift.

14           (d) If a donee accepts a gift of a part, the donee shall

15 cause the part to be removed from the body without unnecessary

16 mutilation after death occurs and before the body is embalmed.

17 After the part is removed, the surviving spouse, domestic partner,

18 next of kin, or other person under obligation to dispose of the body

19 has custody of the body.

20           SECTION 7. Section 693.004, Health and Safety Code, is

21 amended to read as follows:

22           Sec. 693.004. PERSONS WHO MAY CONSENT OR OBJECT TO REMOVAL.

23 The following persons may consent or object to the removal of tissue

24 or a body part:

25           (1) the decedent's spouse or domestic partner as

26 defined by Section 257.001;

27           (2) the decedent's adult children, if there is no

1 spouse;

2 (3) the decedent's parents, if there is no spouse,  
3 domestic partner, or adult child; or

4 (4) the decedent's brothers or sisters, if there is no  
5 spouse, domestic partner, adult child, or parent.

6 SECTION 8. Section 711.002(a), Health and Safety Code, is  
7 amended to read as follows:

8 (a) Unless a decedent has left directions in writing for the  
9 disposition of the decedent's remains as provided in Subsection (g),  
10 the following persons, in the priority listed, have the right to  
11 control the disposition, including cremation, of the decedent's  
12 remains, shall inter the remains, and are liable for the reasonable  
13 cost of interment:

14 (1) the person designated in a written instrument  
15 signed by the decedent;

16 (2) the decedent's surviving spouse or domestic  
17 partner as defined by Section 257.001;

18 (3) any one of the decedent's surviving adult children;

19 (4) either one of the decedent's surviving parents;

20 (5) any one of the decedent's surviving adult siblings;

21 or

22 (6) any adult person in the next degree of kinship in  
23 the order named by law to inherit the estate of the decedent.

24 SECTION 9. Section 711.004(a), Health and Safety Code, is  
25 amended to read as follows:

26 (a) Remains interred in a cemetery may be removed from a  
27 plot in the cemetery with the written consent of the cemetery

1 organization operating the cemetery and the written consent of the  
2 current plot owner or owners and the following persons, in the  
3 priority listed:

4 (1) the decedent's surviving spouse or domestic  
5 partner as defined by Section 257.001;

6 (2) the decedent's surviving adult children;

7 (3) the decedent's surviving parents;

8 (4) the decedent's adult siblings; or

9 (5) the adult person in the next degree of kinship in  
10 the order named by law to inherit the estate of the decedent.

11 SECTION 10. Article 49.13(a), Code of Criminal Procedure,  
12 is amended to read as follows:

13 (a) Consent for a physician to conduct an autopsy is  
14 sufficient if given by the following:

15 (1) if the deceased was married, the surviving spouse;

16 (2) a domestic partner of the deceased as defined by  
17 Section 257.001, Health and Safety Code;

18 (3) if the deceased was married or had a domestic  
19 partner but was not survived by a spouse or domestic partner, an  
20 adult child of the deceased;

21 (4) [~~3~~] if the deceased was married or had a  
22 domestic partner but was not survived by a spouse or domestic  
23 partner, and a child of the deceased is under the care of a guardian  
24 or a court, the guardian or court having care of the child; or

25 (5) [~~4~~] if the deceased person was unmarried and did  
26 not have a domestic partner or is not survived by a spouse, a  
27 domestic partner, or a child, the following persons in the order



1 stated:

2 (A) a parent;

3 (B) a guardian;

4 (C) the next of kin; or

5 (D) any person who assumes custody of and  
6 responsibility for the burial of the body.

7 SECTION 11. This Act takes effect immediately if it  
8 receives a vote of two-thirds of all the members elected to each  
9 house, as provided by Section 39, Article III, Texas Constitution.  
10 If this Act does not receive the vote necessary for immediate  
11 effect, this Act takes effect September 1, 2009.