

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

A Bill

HOUSE BILL 1409

4
5 By: Representative McLean
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For An Act To Be Entitled

8
9 AN ACT CONCERNING THE RIGHTS TO CONTROL THE FINAL
10 DISPOSITION OF A DECEASED PERSON; AND FOR OTHER
11 PURPOSES.
12

Subtitle

13
14 AN ACT CONCERNING THE RIGHTS TO CONTROL
15 THE FINAL DISPOSITION OF A DECEASED
16 PERSON.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code § 20-17-102 is amended to read as follows:

22 20-17-102. Arkansas Final Disposition Rights Act of 2009.

23 (a)(1) This section may be cited as the "Arkansas Final Disposition
24 Rights Act of 2009".

25 (2) For purposes of this section, "final disposition" means the
26 burial, interment, cremation, removal from Arkansas, or other authorized
27 disposition of a dead body or fetus.

28 (b)(1) An individual of sound mind and eighteen (18) or more years of
29 age may execute at any time a declaration governing the final disposition of
30 his or her bodily remains at his or her death, provided the disposition is in
31 accordance with existing laws, rules, and practices for disposing of human
32 remains.

33 (2) The declaration of final disposition executed under this
34 section shall be signed by the declarant or another at the declarant's
35 direction and shall be witnessed by two (2) individuals.

36 (3) No additional consent of any other person is required if the



1 declaration of final disposition contains a disposition authorized under this
2 section and is otherwise valid under this section.

3 (c) No person having possession, charge, or control of the declarant's
4 human remains following the death of a person who has executed a declaration
5 of final disposition shall knowingly dispose of the body in a manner
6 inconsistent with the declaration.

7 ~~(d)(1) Crematory operators shall not be liable for civil damages for~~
8 ~~cremating human remains if a declaration of final disposition indicating that~~
9 ~~the declarant wished to be cremated has been executed under this section.~~

10 ~~(2) Crematory operators shall not be liable for civil damages~~
11 ~~for failing to cremate human remains if:~~

12 ~~(A) The declarant executed a declaration of final~~
13 ~~disposition indicating that he or she did not wish to be cremated; or~~

14 ~~(B) The crematory operator knows that there is a dispute~~
15 ~~as to the validity of the declaration of final disposition.~~

16 ~~(e) If a decedent did not execute a declaration of final disposition,~~
17 ~~the person having lawful possession, charge, or control of the decedent's~~
18 ~~human remains has the right to dispose of the remains in any manner that is~~
19 ~~consistent with existing laws, rules, and practices for disposing of human~~
20 ~~remains, including the right to have the remains cremated.~~

21 ~~(f) A funeral home shall not be liable for any damages for carrying~~
22 ~~out the disposition of a decedent's human remains in any lawful manner that~~
23 ~~is consistent with a decedent's declaration of final disposition.~~

24 (d)(1) The right to control the disposition of the remains of a
25 deceased person; the location, manner, and conditions of disposition; and
26 arrangements for funeral goods and services to be provided vests in the
27 following in the order named, provided such person is eighteen (18) years of
28 age or older and is of sound mind:

29 (A) First, the person appointed by the decedent in the
30 decedent's written declaration drafted prior to his or her death, in
31 accordance with this section;

32 (B) Second, the surviving spouse;

33 (C) Third, the sole surviving child of the decedent or if
34 there is more than one (1) child of the decedent, the majority of the
35 surviving children;

36 (D)(i) Fourth, the surviving parent or parents of the

1 decendent;

2 (ii) If one (1) of the surviving parents is absent,
 3 the remaining parent shall be vested with the rights and duties of this
 4 section after reasonable efforts have been unsuccessful in locating the
 5 absent surviving parent;

6 (E) Fifth, the surviving brother or sister of the
 7 decendent, or if there is more than one (1) sibling of the decendent, the
 8 majority of the surviving siblings;

9 (F) Sixth, the surviving grandparent of the decendent, or
 10 if there is more than one (1) surviving grandparent, the majority of the
 11 grandparents;

12 (G) Seventh, the surviving grandchild of the decendent, or
 13 if there is more than one (1) surviving grandchild, the majority of the
 14 grandchildren;

15 (H) Eighth, the guardian of the person of the decendent at
 16 the time of the decendent's death, if one had been appointed;

17 (I)(i) Ninth, the person in the classes of the next degree
 18 of kinship, in descending order, under the laws of descent and distribution
 19 to inherit the estate of the decendent;

20 (ii) If there is more than one (1) person of the
 21 same degree, any person of that degree may exercise the right of disposition;

22 (J) Tenth, any representative of state government or a
 23 political subdivision thereof that has the statutory obligation to provide
 24 for the disposition of the remains of the decendent, including but not limited
 25 to any entity authorized to take possession of the remains under § 20-17-701
 26 et seq.; and

27 (K) In the absence of any person under this subsection,
 28 any other person willing to assume the responsibilities to act and arrange
 29 the final disposition of the decendent's remains, including the personal
 30 representative of the decendent's estate or the funeral director with custody
 31 of the body, after attesting in writing that a good faith effort has been
 32 made to no avail to contact the individuals under this subsection.

33 (2)(A) Within each class, less than the majority of the class
 34 shall be vested with the rights of this section if they have used reasonable
 35 efforts to notify all other members of the class of their instructions and
 36 are not aware of any opposition to those instructions on the part of more

1 than one-half (1/2) of all surviving children;

2 (B) In this subdivision, "class" means surviving siblings,
3 grandparents, or grandchildren, where applicable.

4 (e)(1) A person entitled under this section to the right of
5 disposition shall forfeit that right, with the right passing to the next
6 qualifying person as listed in this section, in the following circumstances:

7 (A)(i) Any person charged with murder under § 5-10-101, §
8 5-10-102, or § 5-10-103, or manslaughter under § 5-10-104, in connection with
9 the decedent's death, and whose charges are known to the funeral director.

10 (ii) If the charges against such person are
11 terminated by an acquittal, dismissal, or nolle prosequi, the right of
12 disposition is returned to the person;

13 (B) Any person who does not exercise his or her right of
14 disposition within two (2) days of notification of the death of decedent, or
15 within five (5) days of decedent's death, whichever is earlier;

16 (C) Any person who possesses the right of disposition, but
17 who is unwilling to assume the liability for the costs of such arrangements
18 and disposition if sufficient resources are not available in the decedent's
19 estate to pay such costs; and

20 (D)(i) Where the circuit court determines that the person
21 entitled to the right of disposition and the decedent were estranged at the
22 time of death.

23 (ii) For purposes of this section, "estranged" means
24 a physical and emotional separation from the decedent at the time of death
25 which has existed for a period of time that clearly demonstrates an absence
26 of due affection, trust, and regard for the decedent.

27 (2) If there is a dispute between those sharing the right of
28 disposition as to the decisions regarding the decedent's remains, the circuit
29 court for the county where the decedent resided may award the right of
30 disposition to the person it determines to be the most fit and appropriate to
31 carry out the right of disposition. The following provisions shall apply to
32 the court's determination under this section:

33 (A) If the persons holding the right of disposition are
34 two (2) or more persons with the same relationship to the decedent, and they
35 cannot, by majority vote, make a decision regarding the disposition of the
36 decedent's remains, any of the persons or a funeral director with custody of

1 the remains may file a petition asking the circuit court to make a
 2 determination in the matter.

3 (B) In making a determination under this subdivision
 4 (e)(2), the circuit court shall consider the following:

5 (i) The reasonableness and practicality of the
 6 proposed funeral arrangements and disposition;

7 (ii) The degree of the personal relationship between
 8 the decedent and each of the persons claiming the right of disposition;

9 (iii) The desires of the person or persons who are
 10 ready, able, and willing to pay the cost of the funeral arrangements and
 11 disposition;

12 (iv) The convenience and needs of other families and
 13 friends wishing to pay respects;

14 (v) The desires of the decedent; and

15 (vi) The degree to which the funeral arrangements
 16 would allow maximum participation by all wishing to pay respect.

17 (C)(i) In the event of a dispute regarding the right of
 18 disposition, a funeral director is not liable for refusing to accept the
 19 remains or to inter or otherwise dispose of the remains of the decedent or
 20 complete the arrangements for the final disposition of the remains until the
 21 funeral director receives a court order or other written agreement signed by
 22 the parties in the disagreement that decides the final disposition of the
 23 remains.

24 (ii) If the funeral director retains the remains for
 25 final disposition while the parties are in disagreement, the funeral director
 26 may embalm or refrigerate and shelter the body, or both, in order to preserve
 27 it while awaiting the final decision of the circuit court and may add the
 28 cost of embalming and refrigeration and sheltering to the final disposition
 29 costs.

30 (iii) If a funeral director brings an action under
 31 this section, the funeral director may add the legal fees and court costs
 32 associated with a petition under this section to the cost of final
 33 disposition.

34 (iv) This section may not be construed to require or
 35 to impose a duty upon a funeral director or bring an action under this
 36 section.

1 (v) A funeral director may not be held criminally or
 2 civilly liable for choosing not to bring an action under this section.

3 (D)(i) Except to the degree it may be considered by the
 4 circuit court under this subdivision (e)(2), the fact that a person has paid
 5 or agreed to pay for all or part of the funeral arrangements and final
 6 disposition does not give that person a greater right to the right of
 7 disposition than the person would otherwise have.

8 (ii) The personal representative of the estate of
 9 the decedent does not, by virtue of being the personal representative, have a
 10 greater claim to the right of disposition than the person would otherwise
 11 have.

12 (f)(1) Any person signing a funeral service agreement, cremation
 13 authorization form, or any other authorization for disposition shall be
 14 deemed to warrant the truthfulness of any facts set forth therein, including
 15 the identity of the decedent whose remains are to be buried, cremated, or
 16 otherwise disposed of, and the party's authority to order such disposition;

17 (2) A funeral establishment, cemetery, or crematory shall have
 18 the right to rely on such funeral service contract or authorization and shall
 19 have the authority to carry out the instructions of the person or persons
 20 whom the funeral home, cemetery, or crematory reasonably believes holds the
 21 right of disposition;

22 (3) Employees of funeral homes, cemeteries, or crematories shall
 23 have no responsibility to contact or to independently investigate the
 24 existence of any next-of-kin or relative of the decedent; and

25 (4) If there is more than one (1) person in a class who are
 26 equal in priority and the funeral home, cemetery, or crematory employee has
 27 no knowledge of any objection by other members of such class, that employee
 28 shall be entitled to rely on and act according to the instructions of the
 29 first such person in the class to make funeral and disposition arrangements,
 30 provided that no other person in such class provides written notice of his or
 31 her objections to that employee.

32 (g) A funeral director shall have complete authority to control the
 33 final disposition and to proceed under this section to recover reasonable
 34 charges for the final disposition when the following applies:

35 (A)(1) The funeral director has actual knowledge that none of
 36 the persons described in subsection (d)(1) of this section exist or that none

1 of the persons so described can be found after reasonable inquiry or
2 contacted by reasonable means; and

3 (2) No person or entity has assumed responsibility for
4 disposition of the remains within five (5) days of the decedent's death, or
5 within thirty-six (36) hours after receiving written notice of the facts,
6 whichever is longer.

7 (B) Written notice may be delivered by hand, United States
8 Postal Service, facsimile transmission, or other reliable means of electronic
9 transmission.

10 (h)(1) Crematory operators shall not be liable for civil damages for
11 cremating human remains if a declaration of final disposition indicating that
12 the declarant wished to be cremated has been executed under this section.

13 (2) Crematory operators shall not be liable for civil damages
14 for failing to cremate human remains if:

15 (A) The declarant executed a declaration of final
16 disposition indicating that he or she did not wish to be cremated; or

17 (B) The crematory operator knows that there is a dispute
18 as to the validity of the declaration of final disposition.

19 (i) If a decedent did not execute a declaration of final disposition,
20 the person having lawful possession, charge, or control of the decedent's
21 human remains has the right to dispose of the remains in any manner that is
22 consistent with existing laws, rules, and practices for disposing of human
23 remains, including the right to have the remains cremated.

24 (j) A funeral home shall not be liable for any damages for carrying
25 out the disposition of a decedent's human remains in any lawful manner that
26 is consistent with a decedent's declaration of final disposition.

27 (k)(1) In the event that a person claiming the right of disposition
28 directs the cremation of the remains of a decedent or in the event that a
29 funeral director assumes responsibility for the disposition of the remains of
30 a decedent under this section and proceeds to cremate the remains of the
31 decedent, and thereafter no person or entity identified in (d)(1) of this
32 section claims custody of the cremated remains for a period of ninety (90)
33 days following the cremation, the funeral director may dispose of the
34 cremated remains of decedent.

35 (2) A funeral home, cemetery, crematory, or an employee who
36 disposes of the remains of a decedent under the terms of this section shall

1 not be subject to criminal or civil liability or subject to disciplinary
2 action for such actions.

3 (1) A funeral home, cemetery, crematory, or an employee who relies in
4 good faith upon the instruction of an individual claiming the right of
5 disposition shall not be subject to criminal or civil liability or subject to
6 disciplinary action for carrying out the disposition of the remains in
7 accordance with the instruction.

8 ~~(g)~~(m) Nothing in this section shall be construed to affect, repeal,
9 or replace the provisions and procedures set forth in the Revised Arkansas
10 Anatomical Gift Act, § 20-17-1201 et seq.

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