

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
4

As Engrossed: H2/18/09 S3/2/09

A Bill

HOUSE BILL 1409

5 By: Representative McLean
6 By: Senator *Bookout*
7

For An Act To Be Entitled

10 AN ACT CONCERNING THE RIGHTS TO CONTROL THE FINAL
11 DISPOSITION OF A DECEASED PERSON; AND FOR OTHER
12 PURPOSES.
13

Subtitle

14 AN ACT CONCERNING THE RIGHTS TO CONTROL
15 THE FINAL DISPOSITION OF A DECEASED
16 PERSON.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code § 20-17-102 is amended to read as follows:
23 20-17-102. Arkansas Final Disposition Rights Act of 2009.

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

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

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

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



1 (3) No additional consent of any other person is required if the
2 declaration of final disposition contains a disposition authorized under this
3 section and is otherwise valid under this section.

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

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

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

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

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

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

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

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

30 (A) First, a person appointed by the decedent in the
31 decedent's declaration of final disposition executed before his or her death,
32 in accordance with this section;

33 (B) Second, the surviving spouse;

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

1 (D)(i) Fourth, the surviving parent or parents of the
2 decedent;

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

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

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

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

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

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

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

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

28 (K) In the absence of any person under this subsection,
29 any other person willing to assume the responsibilities to act and arrange
30 the final disposition of the decedent's remains, including without limitation
31 the personal representative of the decedent's estate or the funeral director
32 with custody of the body, after attesting in writing that a good faith effort
33 has been made to no avail to contact the individuals under this subsection.

34 (2)(A) Within each class, less than the majority of the class
35 shall be vested with the rights of this section if they have used reasonable
36 efforts to notify all other members of the class of their instructions and

1 are not aware of any opposition to those instructions on the part of more
2 than one-half (1/2) of all surviving children;

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

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

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

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

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

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

22 (D)(i) Where the person entitled to the right of
23 disposition and the decedent were estranged at the time of death.

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

28 (b) This shall also include the filing of a
29 complaint for divorce by either party that remains pending at the time of the
30 decedent's death or the separation by living apart of the decedent and spouse
31 for a period of more than ninety (90) days preceding the decedent's death;
32 and

33 (E) Where the Department of Human Services has custody of
34 the decedent and a person authorized under subsection (d)(1) of this section
35 has not claimed the right to possession of the decedent's remains within
36 forty-eight (48) hours following the decedent's death.

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

7 (A) If the persons holding the right of disposition are
8 two (2) or more persons with the same relationship to the decedent, and they
9 cannot, by majority vote, make a decision regarding the disposition of the
10 decedent's remains, any of the persons or a funeral director with custody of
11 the remains may file a petition asking the circuit court to make a
12 determination in the matter.

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

15 (i) The reasonableness and practicality of the
16 proposed funeral arrangements and disposition;

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

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

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

24 (v) The desires of the decedent; and

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

27 (C)(i) In the event of a dispute regarding the right of
28 disposition, a funeral director is not liable for refusing to accept the
29 remains or to inter or otherwise dispose of the remains of the decedent or
30 complete the arrangements for the final disposition of the remains until the
31 funeral director receives a court order or other written agreement signed by
32 the parties in the disagreement that decides the final disposition of the
33 remains.

34 (ii) If the funeral director retains the remains for
35 final disposition while the parties are in disagreement, the funeral director
36 may embalm or refrigerate and shelter the body, or both, in order to preserve

1 it while awaiting the final decision of the circuit court and may add the
2 cost of embalming and refrigeration and sheltering to the final disposition
3 costs.

4 (iii) If a funeral director brings an action under
5 this section or is made a party to an action concerning the right of
6 disposition of the decedent's remains, either individually or as an agent of
7 any entity, the funeral director may add the legal fees and court costs
8 associated with a petition under this section to the cost of final
9 disposition.

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

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

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

20 (ii) The personal representative of the estate of
21 the decedent does not, by virtue of being the personal representative, have a
22 greater claim to the right of disposition than the person would otherwise
23 have.

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

29 (2) A funeral establishment, cemetery, or crematory shall have
30 the right to rely on such funeral service contract or authorization and shall
31 have the authority to carry out the instructions of the person or persons
32 whom the funeral home, cemetery, or crematory reasonably believes holds the
33 right of disposition;

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

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

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

11 (A)(1) If after a good faith effort has been made with no
12 success to contact the individuals listed under this subsection, the funeral
13 director has no knowledge that any of the persons described in subsection
14 (d)(1) of this section exist or if none of the persons so described can be
15 found after reasonable inquiry or contacted by reasonable means; and

16 (2) No person or entity has assumed responsibility for
17 disposition of the remains within five (5) days of the decedent's death, or
18 within twenty-four (24) hours after receiving written notice of the facts,
19 whichever is longer, but in no event longer than seven (7) days after the
20 date of decedent's death.

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

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

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

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

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

33 (i) If a decedent did not execute a declaration of final disposition,
34 the person having lawful possession, charge, or control of the decedent's
35 human remains has the right to dispose of the remains in any manner that is
36 consistent with existing laws, rules, and practices for disposing of human

1 remains, including the right to have the remains cremated.

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

5 (k)(1) In the event that a person claiming the right of disposition
6 directs the cremation of the remains of a decedent or in the event that a
7 funeral director assumes responsibility for the disposition of the remains of
8 a decedent under this section and proceeds to cremate the remains of the
9 decedent, and thereafter no person or entity identified in (d)(1) of this
10 section claims custody of the cremated remains for a period of ninety (90)
11 days following the cremation, the funeral director may dispose of the
12 cremated remains of decedent.

13 (2) A funeral home, cemetery, crematory, or an employee who
14 disposes of the remains of a decedent under the terms of this section shall
15 not be subject to criminal or civil liability or subject to disciplinary
16 action for such actions.

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

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

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26 */s/ McLean*
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