

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

HOUSE BILL 1298

5 By: Representative House
6 By: Senator J. Key
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8

For An Act To Be Entitled

9
10 AN ACT TO PROVIDE FOR THE MANNER IN WHICH AND
11 CONDITIONS UNDER WHICH THE UNCLAIMED REMAINS OF A
12 VETERAN MAY BE INTERRED; TO ESTABLISH THE MISSING IN
13 AMERICA PROJECT ACT; AND FOR OTHER PURPOSES.
14
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Subtitle

16
17 TO PROVIDE FOR THE MANNER IN WHICH AND
18 CONDITIONS UNDER WHICH THE UNCLAIMED
19 CREMATED REMAINS OF A VETERAN MAY BE
20 INTERRED.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code Title 20, Chapter 17, is amended to add an
26 additional subchapter to read as follows:

27 Subchapter 14 – Missing in America Project Act
28

29 DO NOT CODIFY. Findings and purpose.

30 It is found and determined by the General Assembly that:

- 31 (1) Veterans have proudly served our country;
32 (2) Veterans should be respected and honored; and
33 (3) Veterans' unclaimed remains should be properly interred.
34

35 20-17-1401. Title.

36 This subchapter shall be known and may be cited as the "Missing in



1 America Project Act".

2
3 20-17-1402. Definitions.

4 As used in this subchapter:

5 (1) "Authorizing agent" means the person who assumes original
6 and lawful possession of a body under §§ 20-17-102 or 20-17-701 et seq.;

7 (2) "DD form 93" means a United States Department of Defense
8 Record of Emergency Data or its successor form;

9 (3)(A) "Funeral establishment" means an entity or person:

10 (i) Devoted to sheltering, caring, cremating,
11 preparing, storing, or disposing of a human body; and

12 (ii) That is licensed by the State of Arkansas to
13 embalm, cremate, care or dispose of a dead human body.

14 (B) "Funeral establishment" includes the office of a
15 coroner or medical examiner of:

16 (i) A municipality of the State of Arkansas;

17 (ii) A county of the state; or

18 (iii) The state.

19 (4) "Internment" means the disposition of human remains by
20 entombment, burial, or placement in an urn that is deposited above or below
21 ground;

22 (5) "Next of kin" means the following in the order named if the
23 person is eighteen (18) years of age or older and is of sound mind:

24 (A) First, if the decedent died while serving in any
25 branch of the armed forces of the United States, the National Guard, or a
26 reserve component of the armed forces, the next of kin is the person
27 authorized to direct disposition on the DD Form 93;

28 (B) Second, a person appointed by the decedent in the
29 decedent's declaration of final disposition;

30 (C) Third, a surviving spouse;

31 (D) Fourth, a surviving child, or if there is more than
32 one (1) child of the decedent, the majority of the surviving children;

33 (E) Fifth, a surviving parent;

34 (F) Sixth, a surviving sibling;

35 (G) Seventh, a surviving grandparent;

36 (H) Eighth, the guardian of the decedent at the time of

1 the decedent's death; and

2 (I) Ninth, the person in the classes of the next degree of
 3 kinship, in descending order, under the laws of descent and distribution to
 4 inherit the estate of the decedent;

5 (6) "Person" means an individual, firm, partnership,
 6 copartnership, association, corporation, or other entity;

7 (7) "Unclaimed remains" means the remains of a decedent when
 8 the next of kin entitled to the right to control the disposition of the
 9 remains:

10 (A) Cannot be located; or

11 (B) Does not exercise his or her right of disposition
 12 within two (2) days of notification of the death of the decedent or within
 13 five (5) days of the decedent's death, whichever is earlier;

14 (8) "Veteran" means a person who served in the United States
 15 active military, naval, or air service, and who was discharged or released
 16 therefrom under conditions other than dishonorable;

17 (9) "Veterans cemetery" means a cemetery under the control of:

18 (A) The United States Department of Veterans Affairs
 19 National Cemetery Administration; or

20 (B) The Arkansas Department of Veterans' Affairs; and

21 (10) "Veterans service organization" means an entity that is:

22 (A) A charitable organization that is tax exempt under the
 23 United States Internal Revenue Code; and

24 (B) Organized for the benefit of veterans and has been
 25 recognized by the United States Congress, including without limitation the
 26 Disabled American Veterans, Veterans of Foreign Wars of the United States,
 27 the American Legion, the Legion of Honor, and the Vietnam Veterans of
 28 America, and the Missing in America Project.

29
 30 20-17-1403. Verification that the decedent was a veteran.

31 (a)(1) The authorizing agent shall conduct a diligent search with the
 32 state and federal departments of veterans affairs to determine whether the
 33 decedent was a veteran if:

34 (A) The decedent is eighteen (18) years of age or older;

35 and

36 (B) The remains are determined to be unclaimed remains.

1 (2) The search must be completed within seven (7) days after the
 2 decedent's death.

3 (b) The authorizing agent may share identifying information of the
 4 decedent with a veterans service organization or the state and federal
 5 departments of veterans affairs to:

6 (1) Determine whether the decedent was a veteran; and

7 (2) Verify that the decedent is entitled to veteran interment
 8 benefits.

9
 10 20-17-1404. Authority to cremate unclaimed remains – Retention of the
 11 remains.

12 (a) An authorizing agent may authorize the cremation of an unclaimed
 13 deceased veteran's body.

14 (b) A funeral establishment that accepts the unclaimed remains of a
 15 veteran:

16 (1) Shall place the cremated remains in a container marked with
 17 the proper identification of the decedent;

18 (2)(A) Shall retain or arrange for the retention of the cremated
 19 remains until they are relinquished to:

20 (i) A veterans service organization;

21 (ii) The state or federal department of veterans
 22 affairs; or

23 (iii) The authorizing agent.

24 (B) The veterans service organization or state or federal
 25 department of veterans affairs must certify that the deceased veteran:

26 (i) Is entitled to interment benefits from the state
 27 or federal department of veterans affairs; and

28 (ii) Will be provided a dignified and honorable
 29 funeral at a veterans cemetery;

30 (3)(A) May dispose of the cremated remains in a manner permitted
 31 by law after ninety (90) days from the date of cremation if the cremated
 32 remains are not relinquished to a person as provided in subdivision (b)(2) of
 33 this section.

34 (B) The disposal of the remains must comply with the
 35 public health and welfare laws of the State of Arkansas.

36

1 20-17-1405. Verification that unclaimed remains are a veteran's -
 2 Veteran status unknown at the time of final disposition of the body.

3 A funeral establishment that is also the authorizing agent that
 4 determines the final disposition of the remains of a decedent and directs
 5 that the body of the decedent be cremated:

6 (1) Shall place the cremated remains in a container marked with
 7 the proper identification of the decedent;

8 (2) Shall store the cremated remains for ninety (90) days from
 9 the date of cremation;

10 (3) May share identifying information of the decedent with a
 11 veterans service organization or the state or federal departments of veterans
 12 affairs to:

13 (A) Determine whether the decedent was a veteran; and

14 (B) Verify that the decedent is entitled to veteran
 15 interment benefits; and

16 (4)(A) May dispose of the cremated remains after ninety (90)
 17 days from the date of cremation if the cremated remains are not relinquished
 18 to:

19 (i) A veterans service organization;

20 (ii) The state or federal department of veterans
 21 affairs; or

22 (iii) The next of kin of the decedent.

23 (B) The disposal of the remains of the decedent must comply with
 24 the public health and welfare laws of the State of Arkansas.

25
 26 20-17-1406. Transfer of a veteran's remains.

27 (a)(1) If the authorizing agent or funeral establishment determines
 28 that the unclaimed remains are those of a veteran, the remains may be
 29 relinquished to the control of:

30 (A) A veterans service organization; or

31 (B) The state or federal department of veterans affairs.

32 (2) The veterans service organization or state and federal
 33 department of veterans affairs shall certify that the deceased veteran:

34 (A) Is entitled to interment benefits from the state or
 35 federal department of veterans affairs; and

36 (B) Will be provided a dignified and honorable funeral at

1 a veterans cemetery.

2 (b) The funeral establishment shall:

3 (1) Establish and maintain a record identifying the veterans
 4 service organization or state or federal department of veterans affairs
 5 receiving the deceased veteran's remains; and

6 (2) Retain the records required under subdivision (b)(1) of this
 7 section for five (5) years from the date of transfer of the remains to the
 8 veterans service organization or the state or federal department of veterans
 9 affairs.

10
 11 20-17-1407. Nonliability.

12 A person, funeral establishment, veterans service organization, or
 13 state or federal department of veterans affairs shall not be civilly liable
 14 for possessing, delivering, cremating, storing, disposing, or handling in any
 15 lawful manner the remains of a decedent under this subchapter.

16
 17 20-17-1408. Reimbursement.

18 (a) If a deceased veteran has an estate, the estate shall be
 19 responsible for reimbursing a funeral establishment or authorized agent for
 20 all reasonable expenses incurred in relation to the disposition of the
 21 remains of the deceased veteran.

22 (b) If a veterans service organization or state or federal department
 23 of veterans affairs takes possession of a veteran's remains, the organization
 24 or department shall be responsible for reimbursing a funeral establishment or
 25 authorized agent for all reasonable expenses incurred in relation to the
 26 disposition of the remains of the decedent.

27
 28 SECTION 2. Arkansas Code § 20-17-102(d) is amended to read as follows:

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

34 (A) First, if the decedent died while serving in any
 35 branch of the armed forces of the United States, the National Guard, or a
 36 reserve component of the armed forces, the decisions regarding the final

1 disposition for the decedent shall be made by the person authorized to direct
2 disposition on the DD Form 93 completed by the decedent prior to death;

3 (B) Second, a person appointed by the decedent in the
4 decedent's declaration of final disposition executed before his or her death,
5 in accordance with this section;

6 (C) Third, the surviving spouse;

7 (D) Fourth, the sole surviving child of the decedent or if
8 there is more than one (1) child of the decedent, the majority of the
9 surviving children;

10 (E)(i) Fifth, the surviving parent or parents of the
11 decedent.

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

16 (F) Sixth, the surviving brother or sister of the decedent
17 or if there is more than one (1) sibling of the decedent, the majority of the
18 surviving siblings;

19 (G) Seventh, the surviving grandparent of the decedent or
20 if there is more than one (1) surviving grandparent, the majority of the
21 grandparents;

22 (H) Eighth, the surviving grandchild of the decedent or if
23 there is more than one (1) surviving grandchild, the majority of the
24 grandchildren;

25 (I) Ninth, the guardian of the person of the decedent at
26 the time of the decedent's death, if one had been appointed;

27 (J)(i) Tenth, the person in the classes of the next degree
28 of kinship, in descending order, under the laws of descent and distribution
29 to inherit the estate of the decedent.

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

32 (K) Eleventh, any representative of state government or a
33 political subdivision ~~thereof~~ of state government that has the statutory
34 obligation to provide for the disposition of the remains of the decedent,
35 including, but not limited to, any entity authorized to take possession of
36 the remains under § 20-17-701 et seq.; ~~and~~

1 (L) Twelfth, if the decedent is a veteran of any branch of
 2 the armed forces of the United States, the National Guard or a reserve
 3 component of the armed forces, a representative of the Arkansas Department of
 4 Veterans' Affairs, the United States Department of Veterans Affairs, or a
 5 veterans service organization as defined in the Missing in America Project
 6 Act, § 20-17-1401 et seq., that has statutory authority to direct or provide
 7 for the disposition of the remains of the decedent or to take possession of
 8 the remains under the Missing in America Project Act, § 20-17-1404 et seq.

9 ~~(L)~~(2) In the absence of any person under this subsection,
 10 any other person willing to assume the responsibilities to act and arrange
 11 the final disposition of the decedent's remains, including without limitation
 12 the personal representative of the decedent's estate or the funeral director
 13 with custody of the body, after attesting in writing that a good faith effort
 14 has been made to no avail to contact the individuals under this subsection.

15 ~~(2)~~(3)(A) Within each class, less than the majority of the class
 16 shall be vested with the rights of this section if they have used reasonable
 17 efforts to notify all other members of the class of their instructions and
 18 are not aware of any opposition to those instructions on the part of more
 19 than one-half (1/2) of all surviving children.

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

22
 23 SECTION 3. Arkansas Code § 20-17-703(b) is amended to read as follows:

24 (b) For the purpose of notifying the University of Arkansas for
 25 Medical Sciences of its availability, ~~an "unclaimed body" is defined as~~
 26 unclaimed body means a human body in the possession, charge, or control of
 27 the persons named in subsection (a) of this section for a period not to
 28 exceed forty-eight (48) hours, during which time ~~the right of any a~~ relative,
 29 next of kin, friend, ~~any~~ representative of a fraternal society of which the
 30 deceased was a member, veterans service organization as defined in the
 31 Missing in America Project Act, § 20-17-1401 et seq., the Arkansas Department
 32 of Veterans' Affairs, the United States Department of Veterans Affairs, or a
 33 representative of ~~any~~ a charitable or religious group ~~to~~ may claim the body
 34 for burial purposes ~~is recognized~~.

35
 36 SECTION 4. Arkansas Code § 20-17-707(b) is amended to read as follows:

1 (b) During this time ~~any~~ a relative, next of kin, friend, ~~any~~ a
2 representative of a fraternal society of which the deceased was a member, a
3 veterans service organization as defined in the Missing in America Project
4 Act, § 20-17-1401 et seq., the Arkansas Department of Veterans' Affairs, the
5 United States Department of Veterans Affairs, or a representative of a
6 charitable or religious group may claim the body for burial at his or her or
7 its expense as stated in § 20-17-706(a)-(c).

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