

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2081
94TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, May 1, 2008, with recommendation that the Senate Committee Substitute do pass.

4865S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 194.119 and 333.011, RSMo, and to enact in lieu thereof two new sections relating to the final disposition of dead human bodies.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 194.119 and 333.011, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 194.119 and 333.011, to read as follows:

194.119. 1. As used in this section, the term "right of sepulcher" means the right to choose and control the burial, cremation, or other final disposition of a dead human body.

2. For purposes of this chapter and chapters 193, 333, and 436, RSMo, and in all cases relating to the custody, control, and disposition of deceased human remains, including the common law right of sepulcher, where not otherwise defined, the term "next-of-kin" means the following persons in the priority listed if such person is eighteen years of age or older, is mentally competent, and is willing to assume responsibility for the costs of disposition:

(1) **An attorney in fact designated in a durable power of attorney wherein the deceased specifically granted the right of sepulcher over his or her body to such attorney in fact;**

(2) The surviving spouse;

[(2)] (3) Any surviving child of the deceased. If a surviving child is less than eighteen years of age and has a legal or natural guardian, such child shall not be disqualified on the basis of the child's age and such child's legal or natural guardian, if any, shall be entitled to serve in the place of the child unless such

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 child's legal or natural guardian was subject to an action in dissolution from the
19 deceased. In such event the person or persons who may serve as next-of-kin shall
20 serve in the order provided in subdivisions [(3)] (4) to (8) of this subsection;

21 [(3)] (4) (a) Any surviving parent of the deceased; or

22 (b) If the deceased is a minor, a surviving parent who has custody of the
23 minor; or

24 (c) If the deceased is a minor and the deceased's parents have joint
25 custody, the parent whose residence is the minor child's residence for purposes
26 of mailing and education;

27 [(4)] (5) Any surviving sibling of the deceased;

28 [(5)] Any person designated by the deceased to act as next-of-kin pursuant
29 to a valid designation of right of sepulcher as provided in subsection 8 of this
30 section;]

31 (6) The next nearest surviving relative of the deceased by consanguinity
32 or affinity;

33 (7) Any person or friend who assumes financial responsibility for the
34 disposition of the deceased's remains if no next-of-kin assumes such
35 responsibility;

36 (8) The county coroner or medical examiner; provided however that such
37 assumption of responsibility shall not make the coroner, medical examiner, the
38 county, or the state financially responsible for the cost of disposition.

39 3. The next-of-kin of the deceased shall be entitled to control the final
40 disposition of the remains of any dead human being consistent with all applicable
41 laws, including all applicable health codes.

42 4. A funeral director or establishment is entitled to rely on and act
43 according to the lawful instructions of any person claiming to be the next-of-kin
44 of the deceased; provided however, in any civil cause of action against a funeral
45 director or establishment licensed pursuant to this chapter for actions taken
46 regarding the funeral arrangements for a deceased person in the director's or
47 establishment's care, the relative fault, if any, of such funeral director or
48 establishment may be reduced if such actions are taken in reliance upon a
49 person's claim to be the deceased person's next-of-kin.

50 5. Any person who desires to exercise the right of sepulcher and who has
51 knowledge of an individual or individuals with a superior right to control
52 disposition shall notify such individual or individuals prior to making final
53 arrangements.

54 6. If an individual with a superior claim is personally served with written
55 notice from a person with an inferior claim that such person desires to exercise
56 the right of sepulcher and the individual so served does not object within
57 forty-eight hours of receipt, such individual shall be deemed to have waived such
58 right. An individual with a superior right may also waive such right at any time
59 if such waiver is in writing and dated.

60 7. If there is more than one person in a class who are equal in priority
61 and the funeral director has no knowledge of any objection by other members of
62 such class, the funeral director or establishment shall be entitled to rely on and
63 act according to the instructions of the first such person in the class to make
64 arrangements; provided that such person assumes responsibility for the costs of
65 disposition and no other person in such class provides written notice of his or her
66 objection.

67 [8. Any person may designate an individual to be his or her closest
68 next-of-kin, regardless of blood or marital relationship, by means of a written
69 instrument that is signed, dated, and verified. Such designation of right of
70 sepulcher shall be witnessed by two persons, and shall contain the names and
71 last known address of each person entitled to be next-of-kin but for the execution
72 of the designation of right of sepulcher and who are higher in priority than the
73 person so designated.]

 333.011. As used in this chapter, unless the context requires otherwise,
2 the following terms have the meanings indicated:

3 (1) "Board", the state board of embalmers and funeral directors created
4 by this chapter;

5 (2) "Embalmer", any individual licensed to engage in the practice of
6 embalming;

7 (3) "Funeral director", any individual licensed to engage in the practice
8 of funeral directing;

9 (4) "Funeral establishment", a building, place, crematory, or premises
10 devoted to or used in the care and preparation for burial or transportation of the
11 human dead and includes every building, place or premises maintained for that
12 purpose or held out to the public by advertising or otherwise to be used for that
13 purpose;

14 (5) "Person" includes a corporation, partnership or other type of business
15 organization;

16 (6) "Practice of embalming", the work of preserving, disinfecting and

17 preparing by arterial embalming, [or otherwise,] **including the chemical**
18 **preparation of a dead human body for disposition. Practice of**
19 **embalming includes all activities leading up to and including arterial**
20 **and cavity embalming, including but not limited to raising of vessels**
21 **and suturing of incisions** of dead human bodies for funeral services,
22 transportation, burial or cremation, or the holding of oneself out as being engaged
23 in such work;

24 (7) "Practice of funeral directing", engaging by an individual in the
25 business of preparing, otherwise than by embalming, for the burial, disposal or
26 transportation out of this state of, and the directing and supervising of the burial
27 or disposal of, dead human bodies or engaging in the general control, supervision
28 or management of the operations of a funeral establishment.

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Bill

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