

SECOND REGULAR SESSION

HOUSE BILL NO. 1737

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LAMPE (Sponsor), McGHEE AND MOORE (Co-sponsors).

Read 1st time February 9, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4702L.01I

AN ACT

To repeal section 194.119, RSMo, and to enact in lieu thereof one new section relating to designation of next-of-kin for deceased persons.

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

Section A. Section 194.119, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 194.119, to read as follows:

194.119. 1. As used in this section, the [term] **following terms shall mean:**

(1) **"Adult", a person who has reached the age of eighteen years or older;**

(2) **"Decedent", a deceased individual;**

(3) **"Decedent's body", the body of a decedent or such parts of that body as remain, including such parts as remain after gifts, if any, under sections 194.210 to 194.230;**

(4) **"Final disposition", the burial, interment, cremation, removal from the state, or other authorized disposition of a decedent's body consistent with all applicable laws and health codes;**

(5) **"Next-of-kin", the person authorized to exercise the right of sepulcher, including the common law right of sepulcher;**

(6) **"Right of sepulcher" [means], the right to [choose and] control the [burial, cremation, or other] final disposition of a [dead human] decedent's body.**

2. For purposes of this chapter [and], chapters 193[, 333,] and 436, RSMo, **and section 333.121, 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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 term "next-of-kin" means] **final disposition of a decedent's body** the following persons in the
17 **order of** priority [listed if such person is eighteen years of age or older, is mentally competent,
18 and is willing to assume responsibility for the costs of disposition] **stated, but subject to**
19 **compliance with the provisions of subsection 3 of this section, shall be the next of kin:**

20 (1) **Any person designated by the decedent during his or her lifetime to act as next-**
21 **of-kin. The designation shall be made either in a prepaid funeral plan or in a written**
22 **instrument that is dated, executed by the decedent, and acknowledged before a notary**
23 **public or other person authorized to administer oaths;**

24 (a) **If more than one person is designated in the document, the persons shall be**
25 **entitled to act in the order stated;**

26 (b) **If more than one document has been executed, the document bearing the latest**
27 **date shall control; and**

28 (c) **It shall not be necessary that the term "next-of-kin" be utilized in the document**
29 **to identify the person entitled to act as next-of-kin;**

30 (2) **The surviving spouse of the decedent;**

31 [(2) Any surviving child of the deceased. If a surviving child is less than eighteen years
32 of age and has a legal or natural guardian, such child shall not be disqualified on the basis of the
33 child's age and such child's legal or natural guardian, if any, shall be entitled to serve in the place
34 of the child unless such child's legal or natural guardian was subject to an action in dissolution
35 from the deceased. In such event the person or persons who may serve as next-of-kin shall serve
36 in the order provided in subdivisions (3) to (8) of this subsection;

37 (3) (a) Any] (3) **A son or daughter of the decedent;**

38 (4) **Either** surviving parent of the [deceased; or

39 (b) If the deceased is a minor, a] **decedent, unless the decedent is a minor and both**
40 **parents survive but are either legally separated or their marriage has been dissolved, in**
41 **which case:**

42 (a) **The surviving parent who [has] had custody of the [minor] decedent at the time of**
43 **the decedent's death; or**

44 [(c)] (b) If the [deceased is a minor and the deceased's] **decedent's** parents have joint
45 **legal** custody, the parent whose residence [is] **was** the [minor child's] **decedent's** residence for
46 purposes of mailing and education **at the time of the decedent's death;**

47 [(4)] (5) Any surviving [sibling] **brother or sister** of the [deceased];

48 (5) Any person designated by the deceased to act as next-of-kin pursuant to a valid
49 designation of right of sepulcher as provided in subsection 8 of this section] **decedent;**

50 (6) The next nearest surviving relative of the [deceased] **decedent** by consanguinity or
51 affinity;

52 (7) [Any person or friend who assumes financial responsibility for the disposition of the
53 deceased's remains if no next-of-kin assumes such responsibility] **A guardian of the person or**
54 **conservator of the estate of the decedent at the time of the decedent's death;**

55 (8) The county coroner or medical examiner[; provided however that such assumption
56 of responsibility shall not make the coroner, medical examiner, the county, or the state financially
57 responsible for the cost of disposition].

58 3. [The] **In order for a person to be qualified to act as** next-of-kin [of the deceased
59 shall be entitled to control the final disposition of the remains of any dead human being
60 consistent with all applicable laws, including all applicable health codes]:

61 (1) **The person must be a mentally competent adult at the date of death of the**
62 **decedent;**

63 (2) **If the decedent provided lawful instructions as to final disposition of the**
64 **decedent's body, prior to exercising the right of sepulcher, the person must agree, in a**
65 **written instrument duly executed and acknowledged and delivered to the funeral director**
66 **or establishment involved, to follow the lawful instructions of the decedent as to final**
67 **disposition of the decedent's body;**

68 (a) **In order for instructions of the decedent to constitute lawful instructions, the**
69 **instructions shall be set forth in a prepaid funeral plan, or a written instrument that is**
70 **dated and duly executed and acknowledged, and shall be consistent with all applicable laws**
71 **and health codes;**

72 (b) **If more than one document contains lawful instructions of the decedent as to**
73 **final disposition of the decedent's body, the document bearing the latest date shall control;**

74 (c) **If the costs of final disposition of the decedent's body, in accordance with the**
75 **decedent's lawful instructions, after application of any prepayment or other funds provided**
76 **for such purpose, exceeds the assets available in the decedent's estate for payment of such**
77 **costs, the obligation of the person to comply with the lawful instructions of the decedent**
78 **may be altered by such person, in his or her discretion, to the extent necessary to reduce**
79 **the costs to the amount of available assets.**

80 4. A funeral director or establishment **licensed under this chapter** is entitled to rely [on
81 and act according to the lawful] **upon and to act in accordance with the** instructions of any
82 person claiming to be the next-of-kin of [the deceased; provided however,] **a decedent if the**
83 **person provides to the funeral director or establishment a written statement in accordance**
84 **with the provisions of subsection 5 of this section. If such a written statement is provided,**
85 in any civil cause of action against a funeral director or establishment [licensed pursuant to this
86 chapter] for actions taken regarding the [funeral arrangements for a deceased person in the
87 director's or establishment's care, the relative fault, if any, of such funeral director or
88 establishment may be reduced if such actions are taken in reliance upon a person's claim to be

89 the deceased person's next-of-kin] **final disposition of the decedent's body, the funeral**
90 **director or establishment shall not be liable unless the funeral director or establishment**
91 **had actual knowledge that the person's claim to be the next-of-kin was false or had**
92 **information that would cause a reasonable person to believe that the claim was false.**

93 5. Any person who desires to exercise the right of sepulcher [and who has knowledge of
94 an individual or individuals with a superior right to control disposition shall notify such
95 individual or individuals prior to making final arrangements] **shall, if requested to do so by the**
96 **funeral director or establishment involved, provide to the funeral director or establishment**
97 **a written statement, under penalties of perjury, stating to the best knowledge, information,**
98 **and belief of such person, regardless of whether the decedent had during his or her lifetime**
99 **executed a designation of next-of-kin under subdivision (10) of subsection 2 of this section.**
100 **If no designation of next-of-kin was executed by the decedent, any person desiring to**
101 **exercise the right of sepulcher shall provide a written statement to the funeral director or**
102 **establishment setting forth the name and relationship to the decedent of each individual**
103 **who has a superior or equal right to control final disposition of the decedent's body and**
104 **that the person has notified or made reasonable attempts to notify each such individual**
105 **prior to exercising the right of sepulcher.**

106 6. If an individual with a superior [claim is personally served with written] **right to be**
107 **next-of-kin receives** notice from a person with an inferior [claim] **right** that such person desires
108 to exercise the right of sepulcher and the individual [so served] **receiving notice** does not object
109 within forty-eight hours of receipt, such individual shall be deemed to have waived such right.
110 An individual with a superior right may also waive such right at any time if such waiver is in
111 writing [and], dated, **and signed by the individual.**

112 7. If there [is more than one person] **are two or more persons** in a class who [are] **have**
113 equal [in] priority **to act as next-of-kin** and the funeral director **or establishment** has no
114 knowledge of any objection by other members of such class, the funeral director or establishment
115 shall be entitled to rely [on and act according to] **upon and to act in accordance with** the
116 instructions of the first such person in the class to make arrangements **for final disposition of**
117 **the decedent's body;** provided that such person assumes responsibility for the costs of
118 disposition and no other person in such class provides written notice of his or her objection.

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