

FIRST REGULAR SESSION

HOUSE BILL NO. 461

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PFAUTSCH.

1269H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 193.145, 193.265, and 194.119, RSMo, and to enact in lieu thereof three new sections relating to the disposition of human remains.

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

Section A. Sections 193.145, 193.265, and 194.119, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 193.145, 193.265, and 194.119, to read as follows:

193.145. 1. A certificate of death for each death which occurs in this state shall be filed with the local registrar, or as otherwise directed by the state registrar, within five days after death and shall be registered if such certificate has been completed and filed pursuant to this section. All data providers in the death registration process, including, but not limited to, the state registrar, local registrars, the state medical examiner, county medical examiners, coroners, funeral directors or persons acting as such, embalmers, sheriffs, attending physicians and resident physicians, physician assistants, assistant physicians, advanced practice registered nurses, and the chief medical officers of licensed health care facilities, and other public or private institutions providing medical care, treatment, or confinement to persons, shall be required to use and utilize any electronic death registration system required and adopted under subsection 1 of section 193.265 within six months of the system being certified by the director of the department of health and senior services, or the director's designee, to be operational and available to all data providers in the death registration process. However, should the person or entity that certifies the cause of death not be part of, or does not use, the electronic death registration system, the funeral director or person acting as such may enter the required personal data into the electronic death registration system and then complete the filing by presenting the signed cause of death

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.

17 certification to the local registrar, in which case the local registrar shall issue death certificates
18 as set out in subsection 2 of section 193.265. ~~[Nothing in this section shall prevent the state
19 registrar from adopting pilot programs or voluntary electronic death registration programs until
20 such time as the system can be certified; however, no such pilot or voluntary electronic death
21 registration program shall prevent the filing of a death certificate with the local registrar or the
22 ability to obtain certified copies of death certificates under subsection 2 of section 193.265 until
23 six months after such certification that the system is operational.]~~

24 2. If the place of death is unknown but the dead body is found in this state, the certificate
25 of death shall be completed and filed pursuant to the provisions of this section. The place where
26 the body is found shall be shown as the place of death. The date of death shall be the date on
27 which the remains were found.

28 3. When death occurs in a moving conveyance in the United States and the body is first
29 removed from the conveyance in this state, the death shall be registered in this state and the place
30 where the body is first removed shall be considered the place of death. When a death occurs on
31 a moving conveyance while in international waters or air space or in a foreign country or its air
32 space and the body is first removed from the conveyance in this state, the death shall be
33 registered in this state but the certificate shall show the actual place of death if such place may
34 be determined.

35 4. The funeral director or person in charge of final disposition of the dead body shall file
36 the certificate of death. The funeral director or person in charge of the final disposition of the
37 dead body shall obtain or verify and enter into the electronic death registration system:

38 (1) The personal data from the next of kin or the best qualified person or source
39 available;

40 (2) The medical certification **and attestation** from the person responsible for such
41 certification **and attestation** if designated to do so under subsection 5 of this section; and

42 (3) Any other information or data that may be required to be placed on a death certificate
43 or entered into the electronic death certificate system including, but not limited to, the name and
44 license number of the embalmer.

45 5. The medical certification shall be completed, attested to its accuracy either by
46 signature or an electronic process approved by the department, and returned to the funeral
47 director or person in charge of final disposition within seventy-two hours after death by the
48 physician, physician assistant, assistant physician, advanced practice registered nurse in charge
49 of the patient's care for the illness or condition which resulted in death. In the absence of the
50 physician, physician assistant, assistant physician, advanced practice registered nurse or with the
51 physician's, physician assistant's, assistant physician's, or advanced practice registered nurse's
52 approval the certificate may be completed and attested to its accuracy either by signature or an

53 approved electronic process by the physician's associate physician, the chief medical officer of
54 the institution in which death occurred, or the physician who performed an autopsy upon the
55 decedent, provided such individual has access to the medical history of the case, views the
56 deceased at or after death and death is due to natural causes. The person authorized to complete
57 the medical certification may, in writing, designate any other person to enter the medical
58 certification information **and attestation** into the electronic death registration system if the
59 person authorized to complete the medical certificate has physically or by electronic process
60 signed a statement stating the cause of death. Any persons completing the medical certification
61 or entering data **and attestation** into the electronic death registration system shall be immune
62 from civil liability for such certification **or attestation** completion, data entry, or determination
63 of the cause of death, absent gross negligence or willful misconduct. The state registrar may
64 approve alternate methods of obtaining and processing the medical certification and filing the
65 death certificate. The Social Security number of any individual who has died shall be placed in
66 the records relating to the death and recorded on the death certificate.

67 6. When death occurs from natural causes more than thirty-six hours after the decedent
68 was last treated by a physician, physician assistant, assistant physician, advanced practice
69 registered nurse, the case shall be referred to the county medical examiner or coroner or
70 physician or local registrar for investigation to determine and certify the cause of death. If the
71 death is determined to be of a natural cause, the medical examiner or coroner or local registrar
72 shall refer the certificate of death to the attending physician, physician assistant, assistant
73 physician, advanced practice registered nurse for such certification. If the attending physician,
74 physician assistant, assistant physician, advanced practice registered nurse refuses or is otherwise
75 unavailable, the medical examiner or coroner or local registrar shall attest to the accuracy of the
76 certificate of death either by signature or an approved electronic process within thirty-six hours.

77 7. If the circumstances suggest that the death was caused by other than natural causes,
78 the medical examiner or coroner shall determine the cause of death and shall complete and attest
79 to the accuracy either by signature or an approved electronic process the medical certification
80 within seventy-two hours after taking charge of the case.

81 8. If the cause of death cannot be determined within seventy-two hours after death, the
82 attending medical examiner, coroner, attending physician, physician assistant, assistant
83 physician, advanced practice registered nurse, or local registrar shall give the funeral director,
84 or person in charge of final disposition of the dead body, notice of the reason for the delay, and
85 final disposition of the body shall not be made until authorized by the medical examiner, coroner,
86 attending physician, physician assistant, assistant physician, advanced practice registered nurse,
87 or local registrar.

88 9. When a death is presumed to have occurred within this state but the body cannot be
89 located, a death certificate may be prepared by the state registrar upon receipt of an order of a
90 court of competent jurisdiction which shall include the finding of facts required to complete the
91 death certificate. Such a death certificate shall be marked "Presumptive", show on its face the
92 date of registration, and identify the court and the date of decree.

93 10. ~~[(1)]~~ The department of health and senior services shall notify all physicians,
94 physician assistants, assistant physicians, and advanced practice registered nurses licensed under
95 chapters 334 and 335 of the requirements regarding the use of the electronic vital records system
96 provided for in this section.

97 ~~[(2) On or before August 30, 2015, the department of health and senior services, division~~
98 ~~of community and public health shall create a working group comprised of representation from~~
99 ~~the Missouri electronic vital records system users and recipients of death certificates used for~~
100 ~~professional purposes to evaluate the Missouri electronic vital records system, develop~~
101 ~~recommendations to improve the efficiency and usability of the system, and to report such~~
102 ~~findings and recommendations to the general assembly no later than January 1, 2016.]~~

193.265. 1. For the issuance of a certification or copy of a death record, the applicant
2 shall pay a fee of thirteen dollars for the first certification or copy and a fee of ten dollars for each
3 additional copy ordered at that time. For the issuance of a certification or copy of a birth,
4 marriage, divorce, or fetal death record, the applicant shall pay a fee of fifteen dollars. No fee
5 shall be required or collected for a certification of birth, death, or marriage if the request for
6 certification is made by the children's division, the division of youth services, a guardian ad
7 litem, or a juvenile officer on behalf of a child or person under twenty-one years of age who has
8 come under the jurisdiction of the juvenile court under section 211.031. All fees shall be
9 deposited to the state department of revenue. Beginning August 28, 2004, for each vital records
10 fee collected, the director of revenue shall credit four dollars to the general revenue fund, five
11 dollars to the children's trust fund, one dollar shall be credited to the endowed care cemetery
12 audit fund, and three dollars for the first copy of death records and five dollars for birth,
13 marriage, divorce, and fetal death records shall be credited to the Missouri public ~~[services]~~
14 health **services** fund established in section 192.900. Money in the endowed care cemetery audit
15 fund shall be available by appropriation to the division of professional registration to pay its
16 expenses in administering sections 214.270 to 214.410. All interest earned on money deposited
17 in the endowed care cemetery audit fund shall be credited to the endowed care cemetery fund.
18 Notwithstanding the provisions of section 33.080 to the contrary, money placed in the endowed
19 care cemetery audit fund shall not be transferred and placed to the credit of general revenue until
20 the amount in the fund at the end of the biennium exceeds three times the amount of the
21 appropriation from the endowed care cemetery audit fund for the preceding fiscal year. The

22 money deposited in the public health services fund under this section shall be deposited in a
23 separate account in the fund, and moneys in such account, upon appropriation, shall be used to
24 automate and improve the state vital records system, and develop and maintain an electronic
25 birth and death registration system. For any search of the files and records, when no record is
26 found, the state shall be entitled to a fee equal to the amount for a certification of a vital record
27 for a five-year search to be paid by the applicant. For the processing of each legitimation,
28 adoption, court order or recording after the registrant's twelfth birthday, the state shall be entitled
29 to a fee equal to the amount for a certification of a vital record. Except whenever a certified copy
30 or copies of a vital record is required to perfect any claim of any person on relief, or any
31 dependent of any person who was on relief for any claim upon the government of the state or
32 United States, the state registrar shall, upon request, furnish a certified copy or so many certified
33 copies as are necessary, without any fee or compensation therefor.

34 2. For the issuance of a certification of a death record by the local registrar, the applicant
35 shall pay a fee of thirteen dollars for the first certification or copy and a fee of ten dollars for each
36 additional copy ordered at that time. For the issuance of a certification or copy of a birth,
37 marriage, divorce, or fetal death record, the applicant shall pay a fee of fifteen dollars; except
38 that, in any county with a charter form of government and with more than six hundred thousand
39 but fewer than seven hundred thousand inhabitants, a donation of one dollar may be collected
40 by the local registrar over and above any fees required by law when a certification or copy of any
41 marriage license or birth certificate is provided, with such donations collected to be forwarded
42 monthly by the local registrar to the county treasurer of such county and the donations so
43 forwarded to be deposited by the county treasurer into the housing resource commission fund to
44 assist homeless families and provide financial assistance to organizations addressing
45 homelessness in such county. The local registrar shall include a check-off box on the application
46 form for such copies. All fees, other than the donations collected in any county with a charter
47 form of government and with more than six hundred thousand but fewer than seven hundred
48 thousand inhabitants for marriage licenses and birth certificates, shall be deposited to the official
49 city or county health agency. A certified copy of a death record by the local registrar can only
50 be issued within twenty-four hours of receipt of the record by the local registrar.
51 Computer-generated certifications of death records may be issued by the local registrar after
52 twenty-four hours of receipt of the records. **In the event that it is determined by the state**
53 **registrar that any required information from any data provider was missing or incomplete**
54 **on records or documentation that were filed with or submitted to the local registrar and**
55 **then sent to the state registrar, the state registrar shall return the records or**
56 **documentation to the local registrar so that the data provider, funeral director, or person**
57 **in charge of the final disposition can provide the missing or incomplete information.**

58 **Nothing in this subsection removes any requirement in any statute or regulation as to when**
59 **an affidavit or court order is necessary to amend a death certificate that has been issued.**
60 The fees paid to the official county health agency shall be retained by the local agency for local
61 public health purposes.

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

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

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

10 (2) For a decedent who was on active duty in the United States military at the time of
11 death, the person designated by such decedent in the written instrument known as the United
12 States Department of Defense Form 93, Record of Emergency Data, in accordance with ~~[P.L.~~
13 ~~109-163, Section 564,]~~ 10 U.S.C. Section 1482;

14 (3) The surviving spouse, **unless an action for the dissolution of the marriage has**
15 **been filed and is pending in a court of competent jurisdiction;**

16 (4) Any surviving child of the deceased. If a surviving child is less than eighteen years
17 of age and has a legal or natural guardian, such child shall not be disqualified on the basis of the
18 child's age and such child's legal or natural guardian, if any, shall be entitled to serve in the place
19 of the child unless such child's legal or natural guardian was subject to an action in dissolution
20 from the deceased. In such event the person or persons who may serve as next-of-kin shall serve
21 in the order provided in subdivisions (5) to (9) of this subsection;

22 (5) (a) Any surviving parent of the deceased; or

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

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

26 (6) Any surviving sibling of the deceased;

27 (7) The next nearest surviving relative of the deceased by consanguinity or affinity;

28 (8) Any person or friend who assumes financial responsibility for the disposition of the
29 deceased's remains if no next-of-kin assumes such responsibility;

30 (9) The county coroner or medical examiner; provided however that such assumption
31 of responsibility shall not make the coroner, medical examiner, the county, or the state
32 financially responsible for the cost of disposition.

33 3. The next-of-kin of the deceased shall be entitled to control the final disposition of the
34 remains of any dead human being consistent with all applicable laws, including all applicable
35 health codes. **The next-of-kin may delegate the control of the final disposition of the**
36 **remains of any dead human being to an agent through either a specific or general grant of**
37 **power in accordance with section 404.710 if, at the time of delegation, the next-of-kin was**
38 **eighteen years of age or older and mentally competent and the principal or agent is taking**
39 **financial responsibility for the disposition.**

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

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

50 6. If an individual with a superior claim is [~~personally served with written notice from~~]
51 **notified in person or by written notice with delivery confirmation to such person's last**
52 **known address by a person with an inferior claim that such person desires to exercise the right**
53 **of sepulcher and the individual so served does not object within forty-eight hours of [receipt]**
54 **such notice**, such individual shall be deemed to have waived such right. An individual with a
55 superior right may also waive such right at any time if such waiver is in writing and dated.

56 7. If there is more than one person in a class who are equal in priority and the funeral
57 director has no knowledge of any objection by other members of such class, the funeral director
58 or establishment shall be entitled to rely on and act according to the instructions of the first such
59 person in the class to make arrangements; provided that such person assumes responsibility for
60 the costs of disposition and no other person in such class provides written notice of his or her
61 objection. If the funeral director has knowledge that there is more than one person in a class who
62 are equal in priority and who do not agree on the disposition, the decision of the majority of the
63 members of such class shall control the disposition.

64 8. For purposes of conducting a majority vote under subsection 7 of this section, the
65 funeral director shall allow voting by proxy using a written authorization or instrument.

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