

FIRST REGULAR SESSION

# HOUSE BILL NO. 585

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HOUX.

1393H.011

DANA RADEMAN MILLER, Chief Clerk

## AN ACT

To repeal section 194.119, RSMo, and to enact in lieu thereof one new section relating to the right of sepulcher.

*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Section A. Section 194.119, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 194.119, to read as follows: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 "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, 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) For a decedent who was on active duty in the United States military at the time of death, the person designated by such decedent in the written instrument known as the United States Department of Defense Form 93, Record of Emergency Data, in accordance with ~~[P.L. 109-163, Section 564,]~~ 10 U.S.C. Section 1482;

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

(4) 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

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.

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  
62 who are equal in priority and who do not agree on the disposition, the decision of the majority  
63 of the 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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