

SECOND REGULAR SESSION

HOUSE BILL NO. 1410

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HILGEMANN (Sponsor) AND DONNELLY (Co-sponsor).

Read 1st time February 5, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4336L.011

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Section A. Section 194.119, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 194.119, to read as follows: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) "Right of sepulcher" [means], the right to choose and control the burial, cremation, or other final disposition of a dead human body;

(2) "**Custody**", "**control**", "**disposition**", "**final disposition**", and "**right of sepulcher**", as applied to deceased human remains or to a dead human body shall mean only custody, control, or disposition of deceased human remains or a dead human body after gifts, if any, of all or any part of the deceased's body are made pursuant to sections 194.210 to 194.230.

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 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, and complied with the provisions of subsection 3 of this section:

(1) **Any person designated by the deceased to act as next-of-kin. The designation shall be made in any of the following manners, and if there is more than one person**

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

17 **designated in a document, then the order in which the persons are listed in said document**
18 **shall establish the priority of the persons so designated:**

19 (a) **Any person designated pursuant to a prepaid funeral plan; or**

20 (b) **Any person designated in a written instrument that is signed and dated, and**
21 **witnessed or notarized by a person who is not designated in the instrument.**

22 **Where the deceased has executed more than one document containing a designation of**
23 **next-of-kin, the document that the deceased last executed shall be the document that**
24 **controls the designation of next-of-kin;**

25 (2) The surviving spouse;

26 [(2)] (3) Any surviving child of the deceased. If a surviving child is less than eighteen
27 years of age and has a legal or natural guardian, such child shall not be disqualified on the basis
28 of the child's age and such child's legal or natural guardian, if any, shall be entitled to serve in
29 the place of the child unless such child's legal or natural guardian was subject to an action in
30 dissolution from the deceased. In such event the person or persons who may serve as next-of-kin
31 shall serve in the order provided in subdivisions [(3)] (4) to (8) of this subsection;

32 [(3)] (4) (a) Any surviving parent of the deceased; or

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

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

36 [(4)] (5) Any surviving sibling of the deceased;

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

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

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

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

45 3. The next-of-kin of the deceased shall be entitled to control the final disposition of the
46 remains of any dead human being consistent with all applicable laws, including all applicable
47 health codes; **provided, however, that prior to being allowed the right of sepulcher with**
48 **regard to a deceased's body:**

49 (1) **If the deceased has a prepaid plan as to final disposition, said person shall agree**
50 **to carry out said prepaid plan as to final disposition; or**

51 (2) **If the deceased does not have a prepaid plan, said person shall agree to carry**
52 **out any instructions of the deceased as to the final disposition of said deceased's body that**

53 **are contained in a written instrument that is signed and dated and witnessed, to the extent**
54 **that sufficient assets exist in the probate or trust estate of the deceased to carry out the**
55 **deceased's instructions as to final disposition and to the extent that such instructions are**
56 **consistent with all applicable laws, including all applicable health codes. Such instructions**
57 **may be contained in an instrument that appears to be a duly executed will or trust.**

58 4. A funeral director or establishment is entitled to rely on and act according to the
59 lawful instructions of any person claiming to be the next-of-kin of the deceased[; provided
60 however,] **and the written statement made by said person pursuant to subsection 5 of this**
61 **section, and** in any civil cause of action against a funeral director or establishment licensed
62 pursuant to this chapter for actions taken regarding the funeral arrangements for a deceased
63 person in the director's or establishment's care, the [relative fault, if any, of such funeral director
64 or establishment may be reduced if such actions are taken in reliance upon a person's claim to
65 be the deceased person's next-of-kin] **funeral director or establishment shall not be liable**
66 **unless said director or establishment had actual knowledge that a person's claim to be the**
67 **deceased's person's next-of-kin was false or had information that would cause a reasonable**
68 **person to believe that said claim was false.**

69 5. Any person who desires to exercise the right of sepulcher [and who has knowledge
70 of an individual or individuals with a superior right to control disposition shall notify such
71 individual or individuals prior to making final arrangements] **shall state in writing, under**
72 **penalties of perjury, to the best knowledge, information and belief of said person, whether**
73 **or not the deceased had executed a designation of next-of-kin pursuant to the subdivision**
74 **(1) of subsection (2) of this section; and, further, if no designation of next-of-kin was**
75 **executed by the deceased, the name and relationship to the deceased of each individual**
76 **with a superior or equal right to control disposition and that he or she has notified or made**
77 **reasonable attempts to notify each such individual prior to making funeral arrangements.**

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

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

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