

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 1696

103RD GENERAL ASSEMBLY

3999H.02P

JOSEPH ENGLER, Chief Clerk

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## AN ACT

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

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Section A. Section 194.119, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 194.119, to read as follows: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

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

23 (5) (a) **If the deceased is not a minor**, any surviving parent of the deceased; or

24 (b) **If the deceased is a minor with a court-appointed guardian, the court-**  
25 **appointed guardian at the time of the minor's death unless the guardian is being**  
26 **criminally investigated for his or her role in the minor's death. If the court appointed**  
27 **coguardians, the guardian specifically granted the right of sepulcher by the court shall**  
28 **have the superior claim. If the court did not specifically grant the right of sepulcher to**  
29 **one guardian when appointing coguardians, the guardian whose residence is the minor**  
30 **child's residence for purposes of mailing and education shall have the superior claim. A**  
31 **court-appointed guardian may opt out of becoming the designated next of kin, provided**  
32 **that such opt-out shall occur during the court proceedings determining which individual**  
33 **shall become the court-appointed guardian. Any authority granted to a court-appointed**  
34 **guardian under this section shall exist only during the pendency of the guardianship and**  
35 **shall automatically terminate upon expiration, revocation, or termination of the**  
36 **guardianship by the court; or**

37 (c) If the deceased is a minor **without a court-appointed guardian**, a surviving  
38 parent who has custody of the minor; or

39 [~~e~~] (d) If the deceased is a minor **without a court-appointed guardian** and the  
40 deceased's parents have joint custody, the parent whose residence is the minor child's  
41 residence for purposes of mailing and education;

42 (6) Any surviving sibling of the deceased;

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

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

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

49 3. The next-of-kin of the deceased shall be entitled to control the final disposition of  
50 the remains of any dead human being consistent with all applicable laws, including all  
51 applicable health codes. The next-of-kin may delegate the control of the final disposition of  
52 the remains of any dead human being to an agent through either a specific or general grant of  
53 power in accordance with section 404.710 if, at the time of delegation, the next-of-kin was

54 eighteen years of age or older and mentally competent and the principal or agent is taking  
55 financial responsibility for the disposition.

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

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

66 6. If an individual with a superior claim is notified in person or by written notice with  
67 delivery confirmation to such person's last known address by a person with an inferior claim  
68 that such person desires to exercise the right of sepulcher and the individual so served does  
69 not object within forty-eight hours of such notice, such individual shall be deemed to have  
70 waived such right. An individual with a superior right may also waive such right at any time  
71 if such waiver is in writing and dated.

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

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

82 **9. Religious, cultural, family, and individual beliefs of the deceased person shall**  
83 **be considered when disposing of any human remains.**

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