

2016 Regular Session

HOUSE BILL NO. 672

BY REPRESENTATIVES DAVIS, BAGNERIS, JEFFERSON, AND NORTON

HUMAN REMAINS: Provides relative to rights and requirements of certain persons authorized to arrange the disposition of human remains

1 AN ACT
2 To amend and reenact R.S. 8:655(A), (B)(1), (C), and (D) and R.S. 37:848(B), 876(A), (B),
3 (D), (E), and (F), 877(B)(1)(a)(v) and (b)(ii), and 879(K) and to enact R.S. 8:655(E)
4 and R.S. 37:855 and 876(G), relative to the disposing of human remains; to provide
5 with respect to a decedent's notarial testament; to provide for a change in priority of
6 persons with respect to the right to control interment and the authorized arrangement
7 of cremation; to distinguish adult grandchildren as a priority group of persons; to
8 allow the disposal of certain human remains by certain assistants of certified
9 embalmers; to provide for the right to arrange funeral goods and services; to limit
10 liability of certain persons with respect to the arrangement of funeral goods and
11 services; to require a majority relative to certain surviving family members and the
12 right to authorize cremation; to expressly make certain military provisions applicable
13 to cremation authorizations; to require the attachment of declarations to cremation
14 authorization forms; to exempt the remains of certain fetuses with respect to
15 provisions requiring identification of human remains; to authorize a representative
16 of a funeral establishment to deliver cremated human remains to authorized persons;
17 to authorize a legal entity to receive cremated human remains; to require funeral
18 establishments and cemetery authorities to retain certain receipts; to provide for other
19 clarifying changes; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 8:655(A), (B)(1), (C), and (D) are hereby amended and reenacted and
3 R.S. 8:655(E) is hereby enacted to read as follows:

4 §655. Right of disposing of remains; military personnel; limitation of liability

5 A. ~~The right to control interment, as defined in R.S. 8:1(26), of the remains~~
6 ~~of a deceased person, unless~~ Unless other specific directions have been given or the
7 designation of a specific person to control disposition has been made by the decedent
8 in the form of a notarial testament or a written and notarized declaration, vests in and
9 ~~devolves upon the following in the order named~~ the following persons, in the priority
10 listed, have the right to control and authorize the interment of a deceased person, as
11 defined in R.S. 8:1(26):

12 (1) The person designated to control disposition by the decedent in the form
13 of a notarial testament or a written and notarized declaration.

14 ~~(1)(2)~~ (2) The surviving spouse, if there is no pending petition for divorce ~~has~~
15 ~~been~~ filed by either spouse prior to the death of the decedent spouse.

16 ~~(2)(3)~~ (3) A majority of the surviving adult children of the decedent, ~~not~~
17 ~~including grandchildren or other more remote descendants.~~

18 (4) A majority of the surviving adult grandchildren of the decedent.

19 ~~(3)(5)~~ (5) The surviving parents of the decedent.

20 ~~(4)(6)~~ (6) A majority of the surviving adult ~~brothers and sisters~~ siblings of the
21 decedent.

22 ~~(5)(7)~~ (7) A majority of the surviving adult persons respectively in the next
23 degrees of kindred as established in Civil Code Article 880 et seq.

24 B.(1) Notwithstanding the provisions of Subsection A of this Section, if If
25 the decedent died in a manner described by 10 U.S.C. §1481 (a)(1) through (8) while
26 serving in any branch of the United States Armed Forces, the United States Reserve
27 Forces, or National Guard, and the decedent executed a United States Department
28 of Defense Record of Emergency Data, known as DD Form 93, or its successor form,
29 the right to control interment for the decedent shall devolve upon the Person

1 Authorized to Direct Disposition, also referred to as the PADD, as indicated on the
2 DD Form 93 or its successor form.

3 * * *

4 C.(1) In the event that the decedent has made multiple notarial testaments
5 or notarized declarations ~~of interment~~ pursuant to Subsection A of this Section, the
6 testament or declaration, whichever is dated last, shall control.

7 (2) In the event that the decedent has made one or more notarial testaments
8 or notarized declarations ~~of interment~~ pursuant to Subsection A of this Section, and
9 the decedent executed a DD Form 93 and died in a manner described in Subsection
10 B of this Section, the testament, declaration, or the DD Form 93, whichever is dated
11 last, shall control interment of the decedent's remains.

12 D. Notwithstanding the provisions of Subsection A of this Section, in ~~in~~ the
13 event that the coroner releases the remains of the decedent to an interested person
14 pursuant to R.S. 9:1551(A)(1), such person ~~shall have~~ has the right to control the
15 disposition of the remains of the decedent.

16 E. In the absence of specific directions given by the decedent, if the
17 authorization of the person or persons with the right to control disposition cannot be
18 obtained, a final judgment of a district court shall be required.

19 Section 2. R.S. 37:848(B), 876(A), (B), (D), (E), and (F), 877(B)(1)(a)(v) and (b)(ii),
20 and 879(K) are hereby amended and reenacted and R.S. 37:855 and 876(G) are hereby
21 enacted to read as follows:

22 §848. Unlawful practice

23 * * *

24 B. Every member of a firm or corporation engaged in the practice of the
25 science of embalming or the business of funeral directing, or both, and the manager
26 of each place of business conducted by such firm or corporation, whose duties
27 engage him directly in the care and preparation, or the supervision of the disposal,
28 burial or disinterment of dead human bodies, shall possess a certificate issued under
29 the provisions of this Chapter. ~~No such firm or corporation shall permit an assistant~~

1 of the PADD that the decedent died in a manner described in Paragraph (1) of this
2 Subsection.

3 G.(1) In the event that the decedent has made multiple notarial testaments
4 or notarized declarations of disposition pursuant to Subsection A of this Section, the
5 last notarized declaration notarial testament or notarized declaration, whichever is
6 dated last, shall control.

7 (2) In the event that the decedent has made one or more notarial testaments
8 or notarized declarations pursuant to Subsection A of this Section, and the decedent
9 executed a DD Form 93 and died in a manner described in Subsection F of this
10 Section, the notarial testament, declaration, or the DD Form 93, whichever is dated
11 last, shall control the right to serve as an authorizing agent for cremation.

12 §877. Authorization to arrange cremation; authorization to cremate; refusal to
13 arrange a cremation; refusal to cremate

14 * * *

15 B. A crematory authority shall have authority to cremate human remains
16 when they are delivered by the funeral establishment and upon receipt of all of the
17 following:

18 (1)(a) A cremation authorization form signed by an authorizing agent. Such
19 form shall contain, at a minimum, the following information:

20 * * *

21 (v) A representation that the authorizing agent has the right to authorize the
22 cremation of the decedent and that the authorizing agent is not aware of any living
23 person who has a superior or equal priority to that of the authorizing agent. If the
24 authorizing agent is acting pursuant to a notarial testament or a written and notarized
25 declaration made by the decedent, a copy of the testament or declaration shall be
26 attached to the cremation authorization form.

27 * * *

28 (b)

29 * * *

1 (ii) The cremation authorization form, other than preneed cremation forms,
2 shall also be signed by a funeral director of the funeral establishment arranging the
3 cremation. The funeral director shall not be responsible for any of the
4 representations made by the authorizing agent, unless the individual has actual
5 knowledge to the contrary. However, the information requested by Item (a)(i) of this
6 Paragraph shall be considered to be a representation of the funeral director or funeral
7 establishment that the human remains delivered to the crematory authority have been
8 identified as the decedent listed on the cremation authorization by the coroner
9 pursuant to Item (b)(iii) of this Paragraph or positively identified after a viewing of
10 the remains by a person who is the authorizing agent or a member of the class of
11 which the authorizing agent is composed or a designated representative, ~~thereof~~
12 unless the remains are from a spontaneous fetal death as defined in R.S. 40:32(16),
13 in which case a viewing is not required if written identification is received when such
14 remains are released to the funeral director. The information requested by Item
15 (a)(iii) of this Paragraph shall be considered to be a representation of the funeral
16 director or funeral establishment of any information received by the funeral director
17 or funeral establishment pursuant to R.S. 40:1099.1.

* * *

19 §879. Cremation procedures; pacemakers; cremation retorts; refusal to accept a
20 cremation container; unauthorized persons in crematory; simultaneous
21 cremation of the human remains of multiple persons; cremation residue;
22 packaging and delivery of cremated human remains

* * *

24 K. Cremated human remains shall be made available by the funeral ~~director~~
25 establishment or the crematory authority to the ~~individual~~ person or legal entity
26 specified on the cremation authorization form. ~~The funeral director or A~~
27 representative of the funeral establishment or crematory authority and the ~~individual~~
28 person or representative of the legal entity receiving the cremated human remains
29 shall sign a receipt indicating the name of the deceased, the date, time, and place of

1 ~~the receipt~~ the person's or representative's receipt of the cremated human remains,
2 and any other information set out in the rules and regulations governing crematories
3 to establish a chain of custody. ~~The crematory authority shall retain a copy of the~~
4 ~~receipt~~ A copy of the receipt shall be retained by the funeral establishment or
5 crematory authority whose respective representative delivers the cremated human
6 remains to the person or representative of the legal entity specified on the cremation
7 authorization form. After this delivery, the cremated human remains may be
8 transported in any manner in this state, with a copy of the burial-transit permit, and
9 disposed of in accordance with the provisions of this Chapter.

10 Section 3. This Act shall become effective upon signature by the governor or, if not
11 signed by the governor, upon expiration of the time for bills to become law without signature
12 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
13 vetoed by the governor and subsequently approved by the legislature, this Act shall become
14 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 672 Reengrossed

2016 Regular Session

Davis

Abstract: Makes changes to law applicable to the disposition of human remains.

Present law provides for the priority of certain persons in determining the disposition of human remains. The priority listed in present law is as follows:

- (1) The surviving spouse, if no petition for divorce has been filed by either spouse prior to the death of the decedent spouse.
- (2) A majority of the surviving adult children of the decedent, not including grandchildren or other more remote descendants.
- (3) The surviving parents of the decedent.
- (4) A majority of the surviving adult brothers and sisters of the decedent.
- (5) A majority of the adult persons respectively in the next degrees of kin as established in present law (C.C. Art. 880 et seq).

Proposed law changes present law to provide as a preference, prior to the surviving spouse, the person designated to control disposition by the decedent in the form of a notarial testament or a written and notarized declaration.

Present law authorizes a surviving spouse as a priority group of persons if the surviving spouse did not file a petition for divorce prior to the decedent's death. Proposed law clarifies present law to provide that a filed petition is a pending petition.

Proposed law adds adult grandchildren as a priority group of persons. Clarifies that a majority of the adult persons in the next degrees of kin are survivors of the decedent.

Proposed law provides that in the absence of specific directions given by the decedent, if the authorization of the person or persons with the right to control disposition cannot be obtained, a final judgment of a district court is required.

Proposed law deletes a present law provision prohibiting assistants not certified as embalmers from preparing the bodies of persons deceased from a communicable disease.

Proposed law provides that persons, in the priority listed in present law and proposed law, have the right to arrange with a funeral director or funeral establishment, the funeral goods and services regarding the remains of a decedent. Exempts a funeral director, funeral establishment, or respective employees from liability for following the directions or relying on the representation of a person who purports to have the preferential right to arrange for funeral goods and services.

Present law provides for the priority of certain persons to serve as an authorizing agent for cremation of a decedent's remains. The priority listed in present law is as follows:

- (1) The surviving spouse, if no petition for divorce has been filed by either spouse prior to the death of the decedent spouse.
- (2) The surviving adult children of the decedent, not including grandchildren or other more remote descendants.
- (3) The surviving parents of the decedent.
- (4) The surviving adult brothers and sisters of the decedent.
- (5) The surviving adult persons respectively in the next degrees of kin as established in present law (C.C. Art. 880 et seq).

Proposed law changes present law to provide as a preference, prior to the surviving spouse, the following persons:

- (1) Any person arranging the cremation, if the decedent gave specific directions in the form of a notarial testament or a written and notarized declaration providing for disposition of his remains by cremation.
- (2) The person designated to control disposition by the decedent in the form of a notarial testament or a written and notarized declaration.

Proposed law further changes present law to require, with respect to the prioritized right to serve as an authorizing agent for cremation, a majority of the surviving adult children, a majority of the surviving adult siblings, and a majority of the surviving adult persons in the next degrees of kin to the decedent.

Present law requires funeral directors and crematory authorities to receive a written cremation authorization form from an authorizing agent. Further requires the authorization form to include information of the authorizing agent's representation that the agent has the right to authorize cremation, and that the agent is without knowledge of any living person who has a superior or equal priority to that of the authorizing agent.

Proposed law retains present law and further requires a copy of the decedent's notarial testament or written and notarized declaration to be attached to the cremation authorization form if the agent is acting pursuant to the testament or declaration.

Present law provides certain provisions for military persons who died in a certain manner while having a written and notarized declaration of interment and a DD Form 93. Proposed law makes present law expressly applicable to interment by cremation.

Present law requires representation or positive identification made by certain persons that respective human remains are those of the decedent. Proposed law excludes from present law the human remains of fetuses deceased as the result of spontaneous fetal death, if written identification is received when such remains are released to the funeral director.

Present law provides for a funeral director or representative of a crematory authority to deliver cremated human remains to authorized persons. Further requires a receipt to be signed by the respective funeral director or representative of a crematory authority and the authorized person receiving the cremated human remains.

Proposed law changes present law to authorize a representative of a funeral establishment to exchange in the delivery of cremated human remains. Authorizes a legal entity to receive cremated human remains. Requires retention of the signed delivery receipt by the funeral establishment or crematory authority whose respective representative delivers the cremated human remains to the person or representative of the legal entity specified on the cremation authorization form.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 8:655(A), (B)(1), (C), and (D) and R.S. 37:848(B), 876(A), (B), (D), (E), and (F), 877(B)(1)(a)(v) and (b)(ii), and 879(K); Adds R.S. 8:655(E) and R.S. 37:855 and 876(G))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Provide for a person to authorize the interment of a decedent.
2. Provide if a decedent gives, in a valid will, directions or designates a person to dispose of the decedent's remains, whether by burial or cremation, the direction or designation provided in the will has highest priority for disposal of the decedent's remains.
3. Require the final judgment of a district court if a decedent did not provide specific instructions for disposition and the authorization of the person or persons with the right to control disposition cannot be obtained.
4. Provide that a viewing is not required if human remains are from a spontaneous fetal death and written identification is given when such remains are released to the funeral director.
5. Require the written receipt of persons' exchange of cremated human remains to identify the place of the physical exchange of such remains.
6. Provide that such receipts are to establish a chain of custody.

7. Require a copy of the receipt to be retained by the funeral establishment or crematory authority whose respective representative delivers cremated human remains to a person or certain representative.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Modify proposed law to change all references of a valid will to a notarial testament.
3. Remove from proposed law certain provisions that excluded any person charged with certain crimes against the decedent from the right of interment of the decedent's remains.