

ACT No. 143

2016 Regular Session

HOUSE BILL NO. 672

BY REPRESENTATIVES DAVIS, BAGNERIS, JEFFERSON, AND NORTON

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.

20 Be it enacted by the Legislature of Louisiana:

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

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

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

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

11 ~~(1)(2)~~ (2) The surviving spouse, if there is no pending petition for divorce ~~has~~
12 ~~been~~ filed by either spouse prior to the death of the decedent spouse.

13 ~~(2)(3)~~ (3) A majority of the surviving adult children of the decedent, ~~not~~
14 ~~including grandchildren or other more remote descendants.~~

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

16 ~~(3)(5)~~ (5) The surviving parents of the decedent.

17 ~~(4)(6)~~ (6) A majority of the surviving adult ~~brothers and sisters~~ siblings of the
18 decedent.

19 ~~(5)(7)~~ (7) A majority of the surviving adult persons respectively in the next
20 degrees of kindred as established in Civil Code Article 880 et seq.

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

29 * * *

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

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

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

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

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

19 §848. Unlawful practice

20 * * *

21 B. Every member of a firm or corporation engaged in the practice of the
 22 science of embalming or the business of funeral directing, or both, and the manager
 23 of each place of business conducted by such firm or corporation, whose duties
 24 engage him directly in the care and preparation, or the supervision of the disposal,
 25 burial or disinterment of dead human bodies, shall possess a certificate issued under
 26 the provisions of this Chapter. ~~No such firm or corporation shall permit an assistant~~
 27 ~~who is not a certified embalmer under the provisions of this Chapter to care for or~~
 28 ~~prepare for burial or transportation, the body of any person who has died of a~~
 29 ~~communicable disease.~~

30 * * *

1 §855. Right to arrange funeral goods and services

2 A. The persons in the priority listed in R.S. 8:655 have the right to arrange
 3 with a funeral director or funeral establishment for funeral goods and services, as
 4 defined in R.S. 37:831(45), in preparation for the disposition of the remains of a
 5 decedent.

6 B. There is no liability for a funeral director, funeral establishment, or any
 7 respective employees for following the directions or relying on the representation of
 8 a person representing himself to be the person who has the prior right to arrange the
 9 funeral goods and services for the remains of a decedent in accordance with
 10 Subsection A of this Section.

11 * * *

12 §876. Authorizing agent; notarial testaments and notarized declarations

13 A. The following persons, in the priority listed, ~~shall~~ have the right to serve
 14 as an authorizing agent for cremation ~~unless other specific directions have been~~
 15 ~~given by the decedent in the form of a written and notarized declaration:~~

16 (1) Any person arranging the cremation, if the decedent has given specific
 17 directions in the form of a notarial testament or a written and notarized declaration
 18 providing for disposition of his remains by cremation.

19 (2) The person designated to control disposition by the decedent in the form
 20 of a notarial testament or a written and notarized declaration.

21 ~~(1)~~(3) The surviving spouse, if there is no pending petition for divorce has
 22 ~~been~~ filed by either spouse prior to the death of the decedent spouse.

23 ~~(2) Att (4)~~ A majority of the surviving adult children of the decedent, not
 24 ~~including grandchildren or other more remote descendants.~~

25 (5) A majority of the surviving adult grandchildren of the decedent.

26 ~~(3)~~(6) The surviving parents of the decedent.

27 ~~(4) Att (7)~~ A majority of the surviving adult siblings of the decedent.

28 ~~(5) Att (8)~~ A majority of the surviving adult persons respectively in the next
 29 degree of kindred as provided in Civil Code Articles 880 et seq.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 B. Notwithstanding the provisions of Subsection A of this Section, if ~~if~~ the
 2 coroner releases the remains of a decedent to an interested person pursuant to R.S.
 3 9:1551(A)(1), such person may serve as the authorizing agent for cremation.

4 * * *

5 D. Notwithstanding the provisions of Subsection A of this Section, in ~~in~~ the
 6 case of those individuals whose disposition is the responsibility of the state or any
 7 of its instrumentalities, a public administrator, medical examiner, coroner,
 8 state-appointed guardian, or any other public official charged with arranging the
 9 disposition of the decedent may serve as the authorizing agent.

10 E. No person ~~shall be~~ is allowed to serve as an authorizing agent when a
 11 decedent has left written instructions in a notarial testament or notarized declaration
 12 that he does not wish to be cremated.

13 F.(1) If the decedent died in a manner described by 10 U.S.C. §1481 (a)(1)
 14 through (8) while serving in any branch of the United States Armed Forces, the
 15 United States Reserve Forces, or National Guard, and the decedent executed a United
 16 States Department of Defense Record of Emergency Data, known as DD Form 93,
 17 or its successor form, the right to serve as an authorizing agent for cremation shall
 18 devolve upon the Person Authorized to Direct Disposition, also referred to as the
 19 PADD, as indicated on the DD Form 93 or its successor form.

20 (2) There is no liability for a cemetery authority, funeral establishment,
 21 funeral director, crematory authority, or the employees or agents of any of them to
 22 whom a copy of a DD Form 93 is presented, purportedly executed by the decedent
 23 for conduction of a cremation of the decedent's remains, pursuant to the instructions
 24 of the PADD as indicated on the DD Form 93, or for relying on the representation
 25 of the PADD that the decedent died in a manner described in Paragraph (1) of this
 26 Subsection.

27 G.(1) In the event that the decedent has made multiple notarial testaments
 28 or notarized declarations of disposition pursuant to Subsection A of this Section, the
 29 ~~last notarized declaration~~ notarial testament or notarized declaration, whichever is
 30 dated last, shall control.

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

6 §877. Authorization to arrange cremation; authorization to cremate; refusal to
7 arrange a cremation; refusal to cremate

8 * * *

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

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

14 * * *

15 (v) A representation that the authorizing agent has the right to authorize the
16 cremation of the decedent and that the authorizing agent is not aware of any living
17 person who has a superior or equal priority to that of the authorizing agent. If the
18 authorizing agent is acting pursuant to a notarial testament or a written and notarized
19 declaration made by the decedent, a copy of the testament or declaration shall be
20 attached to the cremation authorization form.

21 * * *

22 (b)

23 * * *

24 (ii) The cremation authorization form, other than preneed cremation forms,
25 shall also be signed by a funeral director of the funeral establishment arranging the
26 cremation. The funeral director shall not be responsible for any of the
27 representations made by the authorizing agent, unless the individual has actual
28 knowledge to the contrary. However, the information requested by Item (a)(i) of this
29 Paragraph shall be considered to be a representation of the funeral director or funeral
30 establishment that the human remains delivered to the crematory authority have been

1 identified as the decedent listed on the cremation authorization by the coroner
 2 pursuant to Item (b)(iii) of this Paragraph or positively identified after a viewing of
 3 the remains by a person who is the authorizing agent or a member of the class of
 4 which the authorizing agent is composed or a designated representative, ~~thereof~~
 5 unless the remains are from a spontaneous fetal death as defined in R.S. 40:32(16),
 6 in which case a viewing is not required if written identification is received when such
 7 remains are released to the funeral director. The information requested by Item
 8 (a)(iii) of this Paragraph shall be considered to be a representation of the funeral
 9 director or funeral establishment of any information received by the funeral director
 10 or funeral establishment pursuant to ~~R.S. 40:1099.1~~ R.S. 40:1271.2.

* * *

12 §879. Cremation procedures; pacemakers; cremation retorts; refusal to accept a
 13 cremation container; unauthorized persons in crematory; simultaneous
 14 cremation of the human remains of multiple persons; cremation residue;
 15 packaging and delivery of cremated human remains

* * *

17 K. Cremated human remains shall be made available by the funeral ~~director~~
 18 establishment or the crematory authority to the ~~individual~~ person or legal entity
 19 specified on the cremation authorization form. ~~The funeral director or A~~
 20 representative of the funeral establishment or crematory authority and the ~~individual~~
 21 person or representative of the legal entity receiving the cremated human remains
 22 shall sign a receipt indicating the name of the deceased, the date, time, and place of
 23 ~~the receipt~~ the person's or representative's receipt of the cremated human remains,
 24 and any other information set out in the rules and regulations governing crematories
 25 to establish a chain of custody. ~~The crematory authority shall retain a copy of the~~
 26 ~~receipt~~ A copy of the receipt shall be retained by the funeral establishment or
 27 crematory authority whose respective representative delivers the cremated human
 28 remains to the person or representative of the legal entity specified on the cremation
 29 authorization form. After this delivery, the cremated human remains may be

1 transported in any manner in this state, with a copy of the burial-transit permit, and
2 disposed of in accordance with the provisions of this Chapter.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____