

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 282

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

Read 1st time January 22, 2019, and ordered printed.

Read 2nd time February 7, 2019, and referred to the Committee on General Laws.

Reported from the Committee March 7, 2019, with recommendation that the bill do pass.

Taken up for Perfection April 10, 2019. Bill declared Perfected and Ordered Printed, as amended.

ADRIANE D. CROUSE, Secretary.

1541S.01P

AN ACT

To repeal sections 193.145, 193.265, 194.119, 194.265, and 333.011, RSMo, and to enact in lieu thereof six new sections relating to the disposition of human remains.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 193.145, 193.265, 194.119, 194.265, and 333.011, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 193.145, 193.265, 194.119, 194.265, 333.011, and 333.072, to read as follows:

193.145. 1. A certificate of death for each death which occurs in this state shall be filed with the local registrar, or as otherwise directed by the state registrar, within five days after death and shall be registered if such certificate has been completed and filed pursuant to this section. All data providers in the death registration process, including, but not limited to, the state registrar, local registrars, the state medical examiner, county medical examiners, coroners, funeral directors or persons acting as such, embalmers, sheriffs, attending physicians and resident physicians, physician assistants, assistant physicians, advanced practice registered nurses, and the chief medical officers of licensed health care facilities, and other public or private institutions providing medical care, treatment, or confinement to persons, shall be required to use and utilize any electronic death registration system required and adopted under subsection 1 of section 193.265 within six months of the system being certified by the

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

14 director of the department of health and senior services, or the director's
15 designee, to be operational and available to all data providers in the death
16 registration process. However, should the person or entity that certifies the cause
17 of death not be part of, or does not use, the electronic death registration system,
18 the funeral director or person acting as such may enter the required personal
19 data into the electronic death registration system and then complete the filing by
20 presenting the signed cause of death certification to the local registrar, in which
21 case the local registrar shall issue death certificates as set out in subsection 2 of
22 section 193.265. [Nothing in this section shall prevent the state registrar from
23 adopting pilot programs or voluntary electronic death registration programs until
24 such time as the system can be certified; however, no such pilot or voluntary
25 electronic death registration program shall prevent the filing of a death certificate
26 with the local registrar or the ability to obtain certified copies of death
27 certificates under subsection 2 of section 193.265 until six months after such
28 certification that the system is operational.]

29 2. If the place of death is unknown but the dead body is found in this
30 state, the certificate of death shall be completed and filed pursuant to the
31 provisions of this section. The place where the body is found shall be shown as
32 the place of death. The date of death shall be the date on which the remains
33 were found.

34 3. When death occurs in a moving conveyance in the United States and
35 the body is first removed from the conveyance in this state, the death shall be
36 registered in this state and the place where the body is first removed shall be
37 considered the place of death. When a death occurs on a moving conveyance
38 while in international waters or air space or in a foreign country or its air space
39 and the body is first removed from the conveyance in this state, the death shall
40 be registered in this state but the certificate shall show the actual place of death
41 if such place may be determined.

42 4. The funeral director or person in charge of final disposition of the dead
43 body shall file the certificate of death. The funeral director or person in charge
44 of the final disposition of the dead body shall obtain or verify and enter into the
45 electronic death registration system:

46 (1) The personal data from the next of kin or the best qualified person or
47 source available;

48 (2) The medical certification **and attestation** from the person responsible
49 for such certification **and attestation** if designated to do so under subsection 5

50 of this section; and

51 (3) Any other information or data that may be required to be placed on a
52 death certificate or entered into the electronic death certificate system including,
53 but not limited to, the name and license number of the embalmer.

54 5. The medical certification shall be completed, attested to its accuracy
55 either by signature or an electronic process approved by the department, and
56 returned to the funeral director or person in charge of final disposition within
57 seventy-two hours after death by the physician, physician assistant, assistant
58 physician, advanced practice registered nurse in charge of the patient's care for
59 the illness or condition which resulted in death. In the absence of the physician,
60 physician assistant, assistant physician, advanced practice registered nurse or
61 with the physician's, physician assistant's, assistant physician's, or advanced
62 practice registered nurse's approval the certificate may be completed and attested
63 to its accuracy either by signature or an approved electronic process by the
64 physician's associate physician, the chief medical officer of the institution in
65 which death occurred, or the physician who performed an autopsy upon the
66 decedent, provided such individual has access to the medical history of the case,
67 views the deceased at or after death and death is due to natural causes. The
68 person authorized to complete the medical certification may, in writing, designate
69 any other person to enter the medical certification information **and attestation**
70 into the electronic death registration system if the person authorized to complete
71 the medical certificate has physically or by electronic process signed a statement
72 stating the cause of death. Any persons completing the medical certification or
73 entering data **and attestation** into the electronic death registration system shall
74 be immune from civil liability for such certification **and attestation** completion,
75 data entry, or determination of the cause of death, absent gross negligence or
76 willful misconduct. The state registrar may approve alternate methods of
77 obtaining and processing the medical certification and filing the death
78 certificate. The Social Security number of any individual who has died shall be
79 placed in the records relating to the death and recorded on the death certificate.

80 6. When death occurs from natural causes more than thirty-six hours after
81 the decedent was last treated by a physician, physician assistant, assistant
82 physician, advanced practice registered nurse, the case shall be referred to the
83 county medical examiner or coroner or physician or local registrar for
84 investigation to determine and certify the cause of death. If the death is
85 determined to be of a natural cause, the medical examiner or coroner or local

86 registrar shall refer the certificate of death to the attending physician, physician
87 assistant, assistant physician, advanced practice registered nurse for such
88 certification. If the attending physician, physician assistant, assistant physician,
89 advanced practice registered nurse refuses or is otherwise unavailable, the
90 medical examiner or coroner or local registrar shall attest to the accuracy of the
91 certificate of death either by signature or an approved electronic process within
92 thirty-six hours.

93 7. If the circumstances suggest that the death was caused by other than
94 natural causes, the medical examiner or coroner shall determine the cause of
95 death and shall complete and attest to the accuracy either by signature or an
96 approved electronic process the medical certification within seventy-two hours
97 after taking charge of the case.

98 8. If the cause of death cannot be determined within seventy-two hours
99 after death, the attending medical examiner, coroner, attending physician,
100 physician assistant, assistant physician, advanced practice registered nurse, or
101 local registrar shall give the funeral director, or person in charge of final
102 disposition of the dead body, notice of the reason for the delay, and final
103 disposition of the body shall not be made until authorized by the medical
104 examiner, coroner, attending physician, physician assistant, assistant physician,
105 advanced practice registered nurse, or local registrar.

106 9. When a death is presumed to have occurred within this state but the
107 body cannot be located, a death certificate may be prepared by the state registrar
108 upon receipt of an order of a court of competent jurisdiction which shall include
109 the finding of facts required to complete the death certificate. Such a death
110 certificate shall be marked "Presumptive", show on its face the date of
111 registration, and identify the court and the date of decree.

112 10. ~~[(1)]~~ The department of health and senior services shall notify all
113 physicians, physician assistants, assistant physicians, and advanced practice
114 registered nurses licensed under chapters 334 and 335 of the requirements
115 regarding the use of the electronic vital records system provided for in this
116 section.

117 ~~[(2)]~~ On or before August 30, 2015, the department of health and senior
118 services, division of community and public health shall create a working group
119 comprised of representation from the Missouri electronic vital records system
120 users and recipients of death certificates used for professional purposes to
121 evaluate the Missouri electronic vital records system, develop recommendations

122 to improve the efficiency and usability of the system, and to report such findings
123 and recommendations to the general assembly no later than January 1, 2016.]

193.265. 1. For the issuance of a certification or copy of a death record,
2 the applicant shall pay a fee of thirteen dollars for the first certification or copy
3 and a fee of ten dollars for each additional copy ordered at that time. For the
4 issuance of a certification or copy of a birth, marriage, divorce, or fetal death
5 record, the applicant shall pay a fee of fifteen dollars. No fee shall be required
6 or collected for a certification of birth, death, or marriage if the request for
7 certification is made by the children's division, the division of youth services, a
8 guardian ad litem, or a juvenile officer on behalf of a child or person under
9 twenty-one years of age who has come under the jurisdiction of the juvenile court
10 under section 211.031. All fees shall be deposited to the state department of
11 revenue. Beginning August 28, 2004, for each vital records fee collected, the
12 director of revenue shall credit four dollars to the general revenue fund, five
13 dollars to the children's trust fund, one dollar shall be credited to the endowed
14 care cemetery audit fund, and three dollars for the first copy of death records and
15 five dollars for birth, marriage, divorce, and fetal death records shall be credited
16 to the Missouri public services health fund established in section 192.900. Money
17 in the endowed care cemetery audit fund shall be available by appropriation to
18 the division of professional registration to pay its expenses in administering
19 sections 214.270 to 214.410. All interest earned on money deposited in the
20 endowed care cemetery audit fund shall be credited to the endowed care cemetery
21 fund. Notwithstanding the provisions of section 33.080 to the contrary, money
22 placed in the endowed care cemetery audit fund shall not be transferred and
23 placed to the credit of general revenue until the amount in the fund at the end
24 of the biennium exceeds three times the amount of the appropriation from the
25 endowed care cemetery audit fund for the preceding fiscal year. The money
26 deposited in the public health services fund under this section shall be deposited
27 in a separate account in the fund, and moneys in such account, upon
28 appropriation, shall be used to automate and improve the state vital records
29 system, and develop and maintain an electronic birth and death registration
30 system. For any search of the files and records, when no record is found, the
31 state shall be entitled to a fee equal to the amount for a certification of a vital
32 record for a five-year search to be paid by the applicant. For the processing of
33 each legitimation, adoption, court order or recording after the registrant's twelfth
34 birthday, the state shall be entitled to a fee equal to the amount for a certification

35 of a vital record. Except whenever a certified copy or copies of a vital record is
36 required to perfect any claim of any person on relief, or any dependent of any
37 person who was on relief for any claim upon the government of the state or
38 United States, the state registrar shall, upon request, furnish a certified copy or
39 so many certified copies as are necessary, without any fee or compensation
40 therefor.

41 2. For the issuance of a certification of a death record by the local
42 registrar, the applicant shall pay a fee of thirteen dollars for the first certification
43 or copy and a fee of ten dollars for each additional copy ordered at that time. For
44 the issuance of a certification or copy of a birth, marriage, divorce, or fetal death
45 record, the applicant shall pay a fee of fifteen dollars; except that, in any county
46 with a charter form of government and with more than six hundred thousand but
47 fewer than seven hundred thousand inhabitants, a donation of one dollar may be
48 collected by the local registrar over and above any fees required by law when a
49 certification or copy of any marriage license or birth certificate is provided, with
50 such donations collected to be forwarded monthly by the local registrar to the
51 county treasurer of such county and the donations so forwarded to be deposited
52 by the county treasurer into the housing resource commission fund to assist
53 homeless families and provide financial assistance to organizations addressing
54 homelessness in such county. The local registrar shall include a check-off box on
55 the application form for such copies. All fees, other than the donations collected
56 in any county with a charter form of government and with more than six hundred
57 thousand but fewer than seven hundred thousand inhabitants for marriage
58 licenses and birth certificates, shall be deposited to the official city or county
59 health agency. A certified copy of a death record by the local registrar can only
60 be issued within twenty-four hours of receipt of the record by the local
61 registrar. Computer-generated certifications of death records may be issued by
62 the local registrar after twenty-four hours of receipt of the records. **In the event**
63 **that it is determined by the state registrar that any required**
64 **information from any data provider was missing or incomplete on**
65 **records or documentation that were filed with or submitted to the local**
66 **registrar and then sent to the state registrar, the state registrar shall**
67 **return the records or documentation to the local registrar so that the**
68 **data provider, funeral director, or person in charge of the final**
69 **disposition, can provide the missing or incomplete**
70 **information. Nothing in this subsection removes any requirement in**

71 **any statute or regulation as to when an affidavit or court order is**
72 **necessary to amend a death certificate that has been issued.** The fees
73 paid to the official county health agency shall be retained by the local agency for
74 local public health purposes.

194.119. 1. As used in this section, the term "right of sepulcher" means
2 the right to choose and control the burial, cremation, or other final disposition of
3 a dead human body.

4 2. For purposes of this chapter and chapters 193, 333, and 436, and in all
5 cases relating to the custody, control, and disposition of deceased human remains,
6 including the common law right of sepulcher, where not otherwise defined, the
7 term "next-of-kin" means the following persons in the priority listed if such
8 person is eighteen years of age or older, is mentally competent, and is willing to
9 assume responsibility for the costs of disposition:

10 (1) An attorney in fact designated in a durable power of attorney wherein
11 the deceased specifically granted the right of sepulcher over his or her body to
12 such attorney in fact;

13 (2) For a decedent who was on active duty in the United States military
14 at the time of death, the person designated by such decedent in the written
15 instrument known as the United States Department of Defense Form 93, Record
16 of Emergency Data, in accordance with [P.L. 109-163, Section 564,] 10 U.S.C.
17 Section 1482;

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

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

28 (5) (a) Any surviving parent of the deceased; or

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

31 (c) If the deceased is a minor and the deceased's parents have joint
32 custody, the parent whose residence is the minor child's residence for purposes

33 of mailing and education;

34 (6) Any surviving sibling of the deceased;

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

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

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

43 3. The next-of-kin of the deceased shall be entitled to control the final
44 disposition of the remains of any dead human being consistent with all applicable
45 laws, including all applicable health codes. **The next-of-kin may delegate the**
46 **control of the final disposition of the remains of any dead human being**
47 **to an agent through either a specific or general grant of power in**
48 **accordance with section 404.710 if, at the time of delegation, the next-**
49 **of-kin was eighteen years of age or older and mentally competent and**
50 **the principal or agent is taking financial responsibility for the**
51 **disposition.**

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

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

64 6. If an individual with a superior claim is [personally served with written
65 notice from] **notified in person or by written notice with delivery**
66 **confirmation to such person's last known address by** a person with an
67 inferior claim that such person desires to exercise the right of sepulcher and the
68 individual so served does not object within forty-eight hours of [receipt] **such**

69 **notice**, such individual shall be deemed to have waived such right. An
70 individual with a superior right may also waive such right at any time if such
71 waiver is in writing and dated.

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

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

194.265. 1. When a hospital refers an individual at or near death to a
2 procurement organization, the organization shall make a reasonable search of any
3 donor registry and other applicable records that it knows exist for the
4 geographical area in which the individual resides to ascertain whether the
5 individual has made an anatomical gift.

6 2. A procurement organization must be allowed reasonable access to
7 information in the records of the department of health and senior services and
8 department of revenue to ascertain whether an individual at or near death is a
9 donor.

10 3. When a hospital refers an individual at or near death to a procurement
11 organization, the organization may conduct any reasonable examination necessary
12 to ensure the medical suitability of a part that is or could be the subject of an
13 anatomical gift for transplantation, therapy, research, or education from a donor
14 or a prospective donor. During the examination period, measures necessary to
15 ensure the medical suitability of the part may not be withdrawn unless the
16 hospital or procurement organization knows a contrary intent had or has been
17 expressed by the individual or an agent of the individual, or if the individual is
18 incapacitated and he or she has no agent, knows a contrary intent has been
19 expressed by any person listed in section 194.245 having priority to make an
20 anatomical gift on behalf of the individual.

21 4. Unless prohibited by law other than sections 194.210 to 194.294, at any
22 time after a donor's death, the person to which a part passes under section
23 194.255 may conduct any reasonable examination necessary to ensure the medical
24 suitability of the body or part for its intended purpose.

25 5. Unless prohibited by law other than sections 194.210 to 194.294, an
26 examination under subsection 3 or 4 of this section may include an examination
27 of all medical records of the donor or prospective donor.

28 6. Upon the death of a minor who was a donor or had signed a refusal,
29 unless a procurement organization knows the minor is emancipated, the
30 procurement organization shall conduct a reasonable search for the parents of the
31 minor and provide the parents with an opportunity to revoke or amend the
32 anatomical gift or revoke a refusal.

33 7. Upon referral by a hospital under subsection 1 of this section, a
34 procurement organization shall make a reasonable search for any person listed
35 in section 194.245 having priority to make an anatomical gift on behalf of a
36 prospective donor. If a procurement organization receives information that an
37 anatomical gift to any other person was made, amended, or revoked, it shall
38 promptly advise the other person of all relevant information.

39 8. Subject to subsection 9 of section 194.255 and section 58.785, the rights
40 of the person to which a part passes under section 194.255 are superior to rights
41 of all others with respect to the part. The person may accept or reject an
42 anatomical gift in whole or in part. Subject to the terms of the document of gift
43 and this act, a person that accepts an anatomical gift of an entire body may allow
44 embalming or cremation and use of remains in a funeral service. If the gift is of
45 a part, the person to which the part passes under section 194.255, upon the death
46 of the donor and before embalming, burial, or cremation, shall cause the part to
47 be removed without unnecessary mutilation.

48 9. Neither the physician who attends the decedent immediately prior to
49 or at death nor the physician who determines the time of the decedent's death
50 may participate in the procedures for removing or transplanting a part from the
51 decedent.

52 10. No physician who removes or transplants a part from the decedent,
53 or a procurement organization, shall have primary responsibility for the health
54 care treatment, or health care decision-making for such individual's terminal
55 condition during the hospitalization for which the individual becomes a donor.

56 11. A physician or technician may remove a donated part from the body

57 of a donor that the physician or technician is qualified to remove.

58 **12. When a hospital refers an individual at or near death to a**
59 **procurement organization, the hospital shall notify the organization of**
60 **any refusal to make an anatomical gift that has been expressed by the**
61 **individual or agent of the individual or, if the individual is**
62 **incapacitated and he or she has no agent, any refusal expressed by any**
63 **person listed in section 194.245 having priority to make an anatomical**
64 **gift on behalf of the individual that is known to the hospital or**
65 **produced during a reasonable search under section 194.260. A**
66 **procurement organization that has notice of a refusal to make an**
67 **anatomical gift shall cease any ongoing examination of the individual**
68 **for medical suitability and shall not make further contact with the**
69 **individual, agent, or person having priority under section 194.245**
70 **regarding the anatomical gift.**

333.011. 1. As used in this chapter, unless the context requires otherwise,
2 the following terms have the meanings indicated:

3 (1) "Board", the state board of embalmers and funeral directors created
4 by this chapter;

5 (2) "Crematory", **the building or portion of a building which**
6 **houses the cremation chamber and holding facility or an outdoor**
7 **human cremation facility;**

8 (3) "Embalmer", any individual licensed to engage in the practice of
9 embalming;

10 [(3)] (4) "Funeral director", any individual licensed to engage in the
11 practice of funeral directing;

12 [(4)] (5) "Funeral establishment", a building, place, crematory, or
13 premises devoted to or used in the care and preparation for burial or
14 transportation of the human dead and includes every building, place or premises
15 maintained for that purpose or held out to the public by advertising or otherwise
16 to be used for that purpose;

17 [(5)] (6) "Funeral merchandise", caskets, grave vaults, receptacles, and
18 other personal property incidental to the final disposition of a dead human body,
19 including grave markers, monuments, tombstones, and urns;

20 [(6)] (7) "**Outdoor human cremation facility**", **the facility or part**
21 **of a facility that is outdoors where the technical heating process which**
22 **reduces remains to bone fragments through heat and evaporation**

23 **occurs;**

24 (8) "Person", any individual, partnership, corporation, cooperative,
25 association, or other entity;

26 [(7)] (9) "Practice of embalming", the work of preserving, disinfecting and
27 preparing by arterial embalming, including the chemical preparation of a dead
28 human body for disposition. Practice of embalming includes all activities leading
29 up to and including arterial and cavity embalming, including but not limited to
30 raising of vessels and suturing of incisions of dead human bodies for funeral
31 services, transportation, burial or cremation, or the holding of oneself out as
32 being engaged in such work;

33 [(8)] (10) "Practice of funeral directing", engaging by an individual in the
34 business of preparing, otherwise than by embalming, for the burial, disposal or
35 transportation out of this state of, and the directing and supervising of the burial
36 or disposal of, dead human bodies or engaging in the general control, supervision
37 or management of the operations of a funeral establishment;

38 [(9)] (11) "Preneed agent", any person authorized to sell a preneed
39 contract for or on behalf of a seller;

40 [(10)] (12) "Provider", the person designated or obligated to provide the
41 final disposition, funeral, or burial services or facilities, or funeral merchandise
42 described in a preneed contract;

43 [(11)] (13) "Seller", the person who executes a preneed contract with a
44 purchaser and who is obligated under such preneed contract to remit payment to
45 the provider.

46 2. All terms defined in sections 436.400 to 436.520 shall be deemed to
47 have the same meaning when used in this chapter.

**333.072. 1. Only a licensed funeral director, or a person with a
2 limited license for cremation set forth in section 333.042, shall perform
3 a cremation at any funeral establishment, including an outdoor human
4 cremation facility as set forth in rules promulgated by the board under
5 this section.**

6 **2. The board is hereby authorized to promulgate rules and
7 regulations for establishing and regulating outdoor human cremation
8 facilities. Any rule or portion of a rule, as that term is defined in
9 section 536.010 that is created under the authority delegated in this
10 section shall become effective only if it complies with and is subject to
11 all of the provisions of chapter 536, and, if applicable, section**

12 **536.028. This section and chapter 536 are nonseverable and if any of**
13 **the powers vested with the general assembly pursuant to chapter 536,**
14 **to review, to delay the effective date, or to disapprove and annul a rule**
15 **are subsequently held unconstitutional, then the grant of rulemaking**
16 **authority and any rule proposed or adopted after August 28, 2019, shall**
17 **be invalid and void.**

✓

Unofficial

Bill

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