

SHORT TITLE: Burials; granting specific written burial instructions of decedent precedent over rights of certain parties; providing procedures for adjudication of disputes related thereto; effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 946

By: Haney

AS INTRODUCED

An Act relating to burials; amending 21 O.S. 1991, Sections 1151 and 1158, which relate to disposal of body and duty of burial; granting specific written burial instructions of decedent precedent over rights of certain parties; stating requirements for instructions; authorizing objection to proposed disposal of body on certain grounds; providing procedures for adjudication of disputes related thereto; requiring court order instructions be followed except under certain conditions; qualifying certain contract as specific written instructions; specifying that certain duty does not authorize disposition of body in manner contrary to certain instructions; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 1991, Section 1151, is amended to read as follows:

Section 1151. A. Every person has the right to direct the manner in which his body shall be disposed of after his death, and to direct the manner in which any part of his body which becomes separated therefrom during his life time shall be disposed of. The provisions of this ~~article~~ section do not apply where such person

has given directions for the disposal of his body or any part thereof inconsistent with these provisions.

B. 1. If a decedent shall have made specific written burial instructions, then those instructions shall have precedent over the rights of the next of kin or other such person having the duty for burial pursuant to Section 1158 of this title or who assumes such duty. Such instructions do not have to meet the requirements of testamentary dispositions or wills and do not have to be witnessed.

2. In the event a person objects to the manner in which the next of kin or other such person having the duty for burial or who assumes the duty for burial proposes to carry out the disposal of the body on the grounds that the proposed disposition is contrary to specific written burial instructions of the decedent, the person so objecting may petition the district court of the county in which the decedent resided for adjudication of the matter. The petitioner shall include, as an attachment to the petition, a copy of the specific written burial instructions which form the basis for the petitioner's objection.

3. The court shall order that the specific written burial instructions relied on by the petitioner be followed unless the next of kin or other person who has or assumes the duty for burial is able to prove that:

- a. the instructions cannot be followed without creating a financial burden which the estate is unable to discharge,
- b. the decedent was incompetent at the time of making the burial instructions, or
- c. the instructions relied on by the petitioner are not valid or are not the latest in time.

C. A contract entered into by the decedent pursuant to Section 6125 of Title 36 of the Oklahoma Statutes shall qualify as specific written burial instructions under subsection B of this section.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 1158, is amended to read as follows:

Section 1158. A. The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:

1st. If the deceased were a married woman, the duty of burial devolves upon her husband.

2nd. If the deceased were not a married woman, but left any kindred, the duty of burial devolves upon any person or persons in the same degree nearest of kin to the deceased, being of adult age, and possessed of sufficient means to defray the necessary expenses.

3rd. If the deceased left no husband, nor kindred, answering to the foregoing description, the duty of burial devolves upon the officer conducting an inquest upon the body of the deceased, if any such inquest is held; if none, then upon the persons charged with the support of the poor in the locality in which the death occurs.

4th. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified; and if all omit to act, it devolves upon the tenant, or, if there be no tenant, upon the owner of the premises where the death occurs or the body is found.

B. The duty of burying the body of a deceased person as set forth in this section shall not authorize the disposition of a body in a manner contrary to specific written burial instructions made by the decedent.

SECTION 3. This act shall become effective September 1, 1994.

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