

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 3253

By: Staggs

AS INTRODUCED

An Act relating to dead bodies; amending 21 O.S.

1991, Sections 1151, as amended by Section 1, Chapter 197, O.S.L. 1997, and 1158, as amended by Section 2, Chapter 197, O.S.L. 1997 (21 O.S. Supp. 1997, Sections 1151 and 1158), which relate to disposal of body and duty of burial or cremation; amending 63 O.S. 1991, Sections 2203 and 2208, which relate to anatomical gifts; granting specific written burial or cremation 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-ordered 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; modifying rights of donee of an anatomical gift; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 1151, as amended by Section 1, Chapter 197, O.S.L. 1997 (21 O.S. Supp. 1997, Section 1151), is amended to read as follows:

Section 1151. A. Any person has the right to direct the manner in which ~~his or her~~ such person's body shall be disposed of after death, and to direct the manner in which any part of ~~his or her~~ the person's body which becomes separated therefrom during ~~his or her~~ the person's lifetime shall be disposed of. The provisions of this ~~article~~ section do not apply where such person has given directions for the disposal of ~~his or her~~ the person's body or any part thereof inconsistent with these provisions.

B. 1. If a decedent shall have made specific written burial or cremation instructions, then those instructions shall have precedent over the rights of the next of kin or other such person having the duty for burial or cremation 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.

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 cremation or who assumes the duty for burial or cremation 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 or cremation instructions which form the basis for the petitioner's objection.

3. The court shall order that the specific written burial or cremation instructions relied on by the petitioner be followed

unless the next of kin or other person who has or assumes the duty for burial or cremation 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 or cremation 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 or cremation instructions under subsection D of this section.

D. A person may assign the right to direct the manner in which ~~his or her~~ the person's body shall be disposed of after death by executing a sworn affidavit stating the assignment of the right and the name of the person or persons to whom the right has been assigned.

~~C.~~ E. Any person who knowingly fails to follow the directions as to the manner in which the body of a person shall be disposed of pursuant to subsection A or ~~B~~ D of this section, upon conviction thereof, shall be guilty of a misdemeanor punishable by a fine of not more than Five Thousand Dollars (\$5,000.00).

SECTION 2. AMENDATORY 21 O.S. 1991, Section 1158, as amended by Section 2, Chapter 197, O.S.L. 1997 (21 O.S. Supp. 1997, Section 1158), is amended to read as follows:

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

- 1. The person or persons designated in subsection ~~B~~ D of Section 1151 of this title.

2. If the deceased was married at the time of ~~his or her~~ the decedent's death, the duty of burial or cremating devolves upon the spouse of the deceased.

3. If the deceased was not married, but left any kindred, the duty of burial or cremation 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.

4. If the deceased left no spouse, nor kindred, answering to the foregoing description, the duty of burial or cremation 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.

5. In case the person upon whom the duty of burial or cremation 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 or cremating 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. AMENDATORY 63 O.S. 1991, Section 2203, is amended to read as follows:

Section 2203. ~~1.~~ A. Any adult of sound mind may give all or any part of ~~his~~ the adult's body for any purpose specified in Section 2204 of this title, the gift to take effect upon death.

~~2.~~ B. Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a

member of the same or a prior class pursuant to Section 1 of this act, may give all or any part of the decedent's body for any purpose specified in Section 2204 of this title:

~~a. the~~ 1. The spouse,

~~b. an~~ 2. An adult son or daughter,

~~c. either~~ 3. Either parent,

~~d. an~~ 4. An adult brother or sister,

~~e. a~~ 5. A guardian of the person of the decedent at the time of ~~his~~ the decedent's death, or

~~f. any~~ 6. Any other person authorized or under obligation to dispose of the body.

~~3. C.~~ If the donee has actual notice of contrary indications by the decedent ~~or that a gift by a member of a class is opposed by a member of the same or a prior class~~, the donee shall not accept the gift of all or part of a body. ~~The persons authorized by subsection 2 may make the gift after or immediately before the decedent's death.~~

~~4. D.~~ A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

~~5. E.~~ The rights of the donee created by the gift are paramount to the rights of others except as provided by subsection D of Section 2208 (d) 2208 of this title.

F. 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 4. AMENDATORY 63 O.S. 1991, Section 2208 is amended to read as follows:

Section 2208. ~~(a)~~ A. The donee may accept or reject the gift. If the donee accepts a gift of the entire body, ~~he~~ the donee may, subject to the terms of the gift and subject to Sections 1 through 3

of this act, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the decedent and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

~~(b)~~ B. The time of death shall be determined by a physician who attends the donor at ~~his~~ the donor's death, or, if none, the physician who certifies the death. The physician shall not participate in the procedures for removing or transplanting a part.

~~(c)~~ C. A person who acts in good faith in accord with the terms of this act or the anatomical gift laws of another state or of a foreign country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for ~~his~~ the person's act.

~~(d)~~ D. The provisions of this act are subject to the laws of this state prescribing powers and duties with respect to autopsies.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-8442

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