

An Act

ENROLLED HOUSE
BILL NO. 1355

By: McAffrey of the House

and

Anderson of the Senate

An Act relating to crimes and punishments; amending 21 O.S. 2001, Section 1158, which relates to burials; modifying duties for burying bodies; providing that right to dispose of decedent's body is forfeited under certain circumstances; providing for court to award right of disposition; providing for certain authorization to be relied on by funeral establishment; authorizing funeral director to have certain authority; providing exemption from liability for certain entities; providing short title; amending 21 O.S. 2001, Section 1151, which relates to the disposal of one's own body; providing additional method of disposition under certain circumstances; creating certain revolving fund; providing for deposits to the fund; authorizing expenditures from the fund for certain purposes; providing method of expenditures; providing for noncodification; providing for codification; and providing an effective date.

SUBJECT: Burial and funeral arrangements

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1158, is amended to read as follows:

Section 1158. ~~The duty of burying the body of a deceased person devolves upon the persons hereinafter specified~~ right to control the disposition of the remains of a deceased person, the location,

manner and conditions of disposition, and arrangements for funeral goods and services vests in the following order, provided the person is eighteen (18) years of age or older and of sound mind:

1. ~~The person or persons designated in subsection B of Section 1151 of this title.~~ decendent, provided the decendent has entered into a pre-need funeral services contract or executed a written document that meets the requirements of the State of Oklahoma;

2. ~~If the deceased was married at the time of his or her death, the duty of burial devolves upon the spouse of the deceased. A representative appointed by the decendent by means of an executed and witnessed written document meeting the requirements of the State of Oklahoma;~~

3. ~~If the deceased was not married, 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. The surviving spouse;~~

4. ~~If the deceased left no spouse, 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. The sole surviving adult child of the decendent whose whereabouts is reasonably ascertained or if there is more than one adult child of the decendent, the majority of the surviving adult children whose whereabouts are reasonably ascertained;~~

5. ~~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~~ The surviving parent or parents of the decendent, whose whereabouts are reasonably ascertained;

6. The surviving adult brother or sister of the decendent whose whereabouts is reasonably ascertained, or if there is more than one adult sibling of the decendent, the majority of the adult surviving siblings, whose whereabouts are reasonably ascertained;

7. The guardian of the person of the decedent at the time of the death of the decedent, if one had been appointed;

8. The person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition;

9. If the decedent was an indigent person or other person the final disposition of whose body is the financial responsibility of the state or a political subdivision of the state, the public officer or employee responsible for arranging the final disposition of the remains of the decedent; and

10. In the absence of any person under paragraphs 1 through 9 of this section, any other person willing to assume the responsibilities to act and arrange the final disposition of the remains of the decedent, including the personal representative of the estate of the decedent or the funeral director with custody of the body, after attesting in writing that a good-faith effort has been made to no avail to contact the individuals under paragraphs 1 through 9 of this section.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1151a of Title 21, unless there is created a duplication in numbering, reads as follows:

Any person entitled by law to the right to dispose of the body of the decedent shall forfeit that right, and the right shall be passed on to the next qualifying person as listed in Section 1158 of Title 21 of the Oklahoma Statutes, in the following circumstances:

1. Any person charged with first or second degree murder or voluntary manslaughter in connection with the death of the decedent, and whose charges are known to the funeral director; provided, however that if the charges against such person are dropped, or if such person is acquitted of the charges, the right of disposition shall be returned to the person;

2. Any person who does not exercise the right of disposition within three (3) days of notification of the death of the decedent or within five (5) days of the death of the decedent, whichever is earlier; or

3. If the district court, pursuant to Title 58 of the Oklahoma Statutes, determines that the person entitled to the right of disposition and the decedent were estranged at the time of death. For purposes of this paragraph, "estranged" means a physical and emotional separation from the decedent at the time of death that clearly demonstrates an absence of due affection, trust and regard for the decedent.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1158a of Title 21, unless there is created a duplication in numbering, reads as follows:

The district court for the county where the decedent resided may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition, and may make decisions regarding the remains of the decedent if those sharing the right of disposition cannot agree. The following provisions shall apply to the determination of the court under this section:

1. If the persons holding the right of disposition are two or more persons with the same relationship to the decedent and cannot, by majority vote, make a decision regarding the disposition of the remains of the decedent, any of the persons or a funeral director with custody of the remains may file a petition asking the district court to make a determination in the matter;

2. In making a determination under this section, the district court shall consider the following:

- a. the reasonableness and practicality of the proposed funeral arrangements and disposition,
- b. the degree of the personal relationship between the decedent and each person claiming the right of disposition,
- c. the desires of the person or persons who are ready, willing and able to pay the cost of the funeral arrangements and disposition,
- d. the convenience and needs of other families and friends wishing to pay respects,
- e. the desires of the decedent, and

- f. the degree to which the funeral arrangements would allow maximum participation by all wishing to pay respect;

3. In the event of a dispute regarding the right of disposition, a funeral director shall not be liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the funeral director receives a court order or other written agreement signed by the parties in the disagreement that decides the final disposition of the remains. If the funeral director retains the remains for final disposition while the parties are in disagreement, the funeral director may embalm, refrigerate, or shelter the body in order to preserve it while awaiting the final decision of the district court and may add the cost of embalming, refrigeration or sheltering to the final disposition costs. If a funeral director brings an action under this section, the funeral director may add the legal fees and court costs associated with a petition under this section to the cost of final disposition. This section shall not be construed to require or to impose a duty on a funeral director to bring an action under this section. A funeral director shall not be held criminally or civilly liable for choosing not to bring an action under this section; and

4. Except to the degree it may be considered by the district court under subparagraph c of paragraph 2 of this section, the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and final disposition does not give that person a greater right to the right of disposition than the person would otherwise have. The personal representative of the estate of the decedent does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the person would otherwise have.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1158b of Title 21, unless there is created a duplication in numbering, reads as follows:

Any person signing a funeral service agreement, cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of, and the authority of the person to order such disposition. A funeral establishment shall

have the right to rely on such funeral service contract or authorization and shall have the authority to carry out the instructions of the person or persons who the funeral director reasonably believes holds the right of disposition. The funeral director shall have no responsibility to contact or to independently investigate the existence of any next of kin or relative of the decedent. If there is more than one person in a class who are equal in priority and the funeral director has no knowledge of any objection by other members of such class, the funeral director shall be entitled to rely on and act according to the instructions of the first person in the class to make funeral and disposition arrangements; provided that no other person in such class provides written notice of objections to the funeral director.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1158c of Title 21, unless there is created a duplication in numbering, reads as follows:

A funeral director shall have complete authority to control the final disposition and to proceed under this act to recover reasonable charges for the final disposition when both of the following apply:

1. The funeral director has actual knowledge that none of the persons described in paragraphs 1 through 7 of Section 1158 of Title 21 of the Oklahoma Statutes exist or that none of the persons so described whose whereabouts are reasonably ascertained, can be found; and

2. The appropriate public or court authority fails to assume responsibility for disposition of the remains within thirty-six (36) hours after having been given written notice of the facts. Written notice may be delivered by hand, United States mail, facsimile transmission or electronic mail.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1158d of Title 21, unless there is created a duplication in numbering, reads as follows:

No funeral establishment or funeral director who relies in good faith upon the instructions of an individual claiming the right of disposition shall be subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with the instructions.

SECTION 7. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

Sections 7 through 9 of this act shall be known and may be cited as the "Deceased Veterans Dignity Act".

SECTION 8. AMENDATORY 21 O.S. 2001, 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 body shall be disposed of after death, and to direct the manner in which any part of his or her body which becomes separated therefrom during his or her lifetime shall be disposed of. The provisions of ~~this article~~ Section 1151 et seq. of this title do not apply where such person has given directions for the disposal of his or her body or any part thereof inconsistent with these provisions.

B. A person may assign the right to direct the manner in which his or her 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. If the decedent died while serving in any branch of the United States Armed Forces, the United States Reserve Forces or the National Guard, and completed a United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, the person authorized by the decedent pursuant to that form shall have the right to bury the decedent or to provide other funeral and disposition arrangements, including but not limited to cremation.

D. 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~~ A, B or C 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 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1736 of Title 69, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Oklahoma Turnpike Authority to be designated the "Honor the Fallen Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies

deposited to the credit of the fund by law. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Oklahoma Turnpike Authority for the purpose of repaying turnpike tolls for the funeral procession of any member of the United States Armed Forces, including the National Guard or Armed Forces Reserve, who is either killed in the line of duty in a combat zone or dies of wounds inflicted in a combat zone and who, at the time of death, was a resident of this state. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 10. This act shall become effective November 1, 2011.

Passed the House of Representatives the 4th day of May, 2011.

Presiding Officer of the House of
Representatives

Passed the Senate the 13th day of April, 2011.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this _____
day of _____, 20____,
at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma the _____ day of
_____, 20____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this _____
_____ day of _____, 20____,
at _____ o'clock _____ M.

By: _____