

1 **SENATE FLOOR VERSION**

2 April 5, 2011

3 As Amended

4 ENGROSSED HOUSE

5 BILL NO. 1355

6 By: McAffrey of the House

7 and

8 Anderson of the Senate

9 An Act relating to crimes and punishments; amending  
10 21 O.S. 2001, Section 1158, which relates to burials;  
11 modifying duties for burying bodies; providing that  
12 right to dispose of decedent's body is forfeited  
13 under certain circumstances; providing for court to  
14 award right of disposition; providing for certain  
15 authorization to be relied on by funeral  
16 establishment; authorizing funeral director to have  
17 certain authority; providing exemption from liability  
18 for certain entities; creating the Deceased Veterans  
19 Dignity Act; providing short title; amending 21 O.S.  
20 2001, Section 1151, which relates to the disposal of  
21 one's own body; providing additional method of  
22 disposition under certain circumstances; creating  
23 certain revolving fund; providing for deposits to the  
24 fund; authorizing expenditures from the fund for  
certain purposes; providing method of expenditures;  
providing for noncodification; providing for  
codification; and providing an effective date.

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

1 disposition of the remains of a deceased person, the location,  
2 manner and conditions of disposition, and arrangements for funeral  
3 goods and services vests in the following order, provided the person  
4 is eighteen (18) years of age or older and of sound mind:

5 1. ~~The person or persons designated in subsection B of Section~~  
6 ~~1151 of this title.~~ decedent, provided the decedent has entered into  
7 a pre-need funeral services contract or executed a written document  
8 that meets the requirements of the State of Oklahoma;

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

14 3. ~~If the deceased was not married, but left any kindred, the~~  
15 ~~duty of burial devolves upon any person or persons in the same~~  
16 ~~degree nearest of kin to the deceased, being of adult age, and~~  
17 ~~possessed of sufficient means to defray the necessary expenses. The~~  
18 surviving spouse;

19 4. ~~If the deceased left no spouse, nor kindred, answering to~~  
20 ~~the foregoing description, the duty of burial devolves upon the~~  
21 ~~officer conducting an inquest upon the body of the deceased, if any~~  
22 ~~such inquest is held; if none, then upon the persons charged with~~  
23 ~~the support of the poor in the locality in which the death occurs.~~  
24 The sole surviving adult child of the decedent whose whereabouts is

1 reasonably ascertained or if there is more than one adult child of  
2 the decedent, the majority of the surviving adult children whose  
3 whereabouts are reasonably ascertained;

4 ~~5. In case the person upon whom the duty of burial is cast by~~  
5 ~~the foregoing provisions omits to make such burial within a~~  
6 ~~reasonable time, the duty devolves upon the person next specified,~~  
7 ~~and if all omit to act, it devolves upon the tenant, or, if there be~~  
8 ~~no tenant, upon the owner of the premises where the death occurs or~~  
9 ~~the body is found~~ The surviving parent or parents of the decedent,  
10 whose whereabouts are reasonably ascertained;

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

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

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

22 9. If the decedent was an indigent person or other person the  
23 final disposition of whose body is the financial responsibility of  
24 the state or a political subdivision of the state, the public

1 officer or employee responsible for arranging the final disposition  
2 of the remains of the decedent; and

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

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

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

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

24

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

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

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

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

22           1. If the persons holding the right of disposition are two or  
23 more persons with the same relationship to the decedent and cannot,  
24 by majority vote, make a decision regarding the disposition of the

1 remains of the decedent, any of the persons or a funeral director  
2 with custody of the remains may file a petition asking the district  
3 court to make a determination in the matter;

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

6 a. the reasonableness and practicality of the proposed  
7 funeral arrangements and disposition,

8 b. the degree of the personal relationship between the  
9 decedent and each person claiming the right of  
10 disposition,

11 c. the desires of the person or persons who are ready,  
12 willing and able to pay the cost of the funeral  
13 arrangements and disposition,

14 d. the convenience and needs of other families and  
15 friends wishing to pay respects,

16 e. the desires of the decedent, and

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

20 3. In the event of a dispute regarding the right of  
21 disposition, a funeral director shall not be liable for refusing to  
22 accept the remains or to inter or otherwise dispose of the remains  
23 of the decedent or complete the arrangements for the final  
24 disposition of the remains until the funeral director receives a

1 court order or other written agreement signed by the parties in the  
2 disagreement that decides the final disposition of the remains. If  
3 the funeral director retains the remains for final disposition while  
4 the parties are in disagreement, the funeral director may embalm,  
5 refrigerate, or shelter the body in order to preserve it while  
6 awaiting the final decision of the district court and may add the  
7 cost of embalming, refrigeration or sheltering to the final  
8 disposition costs. If a funeral director brings an action under  
9 this section, the funeral director may add the legal fees and court  
10 costs associated with a petition under this section to the cost of  
11 final disposition. This section shall not be construed to require  
12 or to impose a duty on a funeral director to bring an action under  
13 this section. A funeral director shall not be held criminally or  
14 civilly liable for choosing not to bring an action under this  
15 section; and

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

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

4           Any person signing a funeral service agreement, cremation  
5 authorization form, or any other authorization for disposition shall  
6 be deemed to warrant the truthfulness of any facts set forth  
7 therein, including the identity of the decedent whose remains are to  
8 be buried, cremated, or otherwise disposed of, and the authority of  
9 the person to order such disposition. A funeral establishment shall  
10 have the right to rely on such funeral service contract or  
11 authorization and shall have the authority to carry out the  
12 instructions of the person or persons who the funeral director  
13 reasonably believes holds the right of disposition. The funeral  
14 director shall have no responsibility to contact or to independently  
15 investigate the existence of any next of kin or relative of the  
16 decedent. If there is more than one person in a class who are equal  
17 in priority and the funeral director has no knowledge of any  
18 objection by other members of such class, the funeral director shall  
19 be entitled to rely on and act according to the instructions of the  
20 first person in the class to make funeral and disposition  
21 arrangements; provided that no other person in such class provides  
22 written notice of objections to the funeral director.

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

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

8 1. The funeral director has actual knowledge that none of the  
9 persons described in paragraphs 1 through 7 of Section 1158 of Title  
10 21 of the Oklahoma Statutes exist or that none of the persons so  
11 described whose whereabouts are reasonably ascertained, can be  
12 found; and

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

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

21 No funeral establishment or funeral director who relies in good  
22 faith upon the instructions of an individual claiming the right of  
23 disposition shall be subject to criminal or civil liability or  
24

1 subject to disciplinary action for carrying out the disposition of  
2 the remains in accordance with the instructions.

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

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

7       **SECTION 8.       AMENDATORY       21 O.S. 2001, Section 1151, is**  
8 **amended to read as follows:**

9       Section 1151. A. Any person has the right to direct the manner  
10 in which his or her body shall be disposed of after death, and to  
11 direct the manner in which any part of his or her body which becomes  
12 separated therefrom during his or her lifetime shall be disposed of.  
13 The provisions of ~~this article~~ Section 1151 et seq. of this title do  
14 not apply where such person has given directions for the disposal of  
15 his or her body or any part thereof inconsistent with these  
16 provisions.

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

21       C. If the decedent died while serving in any branch of the  
22 United States Armed Forces, the United States Reserve Forces or the  
23 National Guard, and completed a United States Department of Defense  
24 Record of Emergency Data, DD Form 93, or its successor form, the

1 person authorized by the decedent pursuant to that form shall have  
2 the right to bury the decedent or to provide other funeral and  
3 disposition arrangements, including but not limited to cremation.

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

9 **SECTION 9. NEW LAW A new section of law to be codified**  
10 **in the Oklahoma Statutes as Section 1736 of Title 69, unless there**  
11 **is created a duplication in numbering, reads as follows:**

12 There is hereby created in the State Treasury a revolving fund  
13 for the Oklahoma Turnpike Authority to be designated the "Honor the  
14 Fallen Revolving Fund". The fund shall be a continuing fund, not  
15 subject to fiscal year limitations, and shall consist of all monies  
16 deposited to the credit of the fund by law. All monies accruing to  
17 the credit of the fund are hereby appropriated and may be budgeted  
18 and expended by the Oklahoma Turnpike Authority for the purpose of  
19 repaying turnpike tolls for the funeral procession of any member of  
20 the United States Armed Forces, including the National Guard or  
21 Armed Forces Reserve, who is either killed in the line of duty in a  
22 combat zone or dies of wounds inflicted in a combat zone and who, at  
23 the time of death, was a resident of this state. Expenditures from  
24 the fund shall be made upon warrants issued by the State Treasurer

1 against claims filed as prescribed by law with the Director of State  
2 Finance for approval and payment.

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

4 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 3-31-11 - DO  
5 PASS, As Amended.

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