

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 2124

By: Hickman

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6 AS INTRODUCED

7 An Act relating to crimes and punishments; amending  
8 21 O.S. 2001, Section 1158, which relates to burials;  
9 modifying duty of burial; providing that right to  
10 dispose of decedent's body is forfeited under certain  
11 circumstances; providing for court to award right of  
12 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 for codification; providing an effective  
date; and declaring an emergency.

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

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

18 Section 1158. ~~The duty of burying the body of a deceased person~~  
19 ~~devolves upon the persons hereinafter specified~~ right to control the  
20 disposition of the remains of a deceased person, the location,  
21 manner and conditions of disposition, and arrangements for funeral  
22 goods and services vests in the following order, provided the person  
23 is eighteen (18) years or older and of sound mind:

1       1. ~~The person or persons designated in subsection B of Section~~  
2 ~~1151 of this title. decedent, provided the decedent has entered in~~  
3 ~~to a pre-need funeral services contract or executed a written~~  
4 ~~document that meets the requirements of the State of Oklahoma;~~

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

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

15       4. ~~If the deceased left no spouse, nor kindred, answering to~~  
16 ~~the foregoing description, the duty of burial devolves upon the~~  
17 ~~officer conducting an inquest upon the body of the deceased, if any~~  
18 ~~such inquest is held; if none, then upon the persons charged with~~  
19 ~~the support of the poor in the locality in which the death occurs.~~  
20 ~~The sole surviving adult child of the decedent whose whereabouts is~~  
21 ~~reasonably ascertained or if there is more than one adult child of~~  
22 ~~the decedent, the majority of the surviving adult children whose~~  
23 ~~whereabouts are reasonably ascertained;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 e. the desires of the decedent, and

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

19 3. In the event of a dispute regarding the right of  
20 disposition, a funeral director shall not be liable for refusing to  
21 accept the remains or to inter or otherwise dispose of the remains  
22 of the decedent or complete the arrangements for the final  
23 disposition of the remains until the funeral director receives a  
24 court order or other written agreement signed by the parties in the

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

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

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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 person's  
9 authority 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  
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1 subject to disciplinary action for carrying out the disposition of  
2 the remains in accordance with the instructions.

3 SECTION 7. This act shall become effective July 1, 2011.

4 SECTION 8. It being immediately necessary for the preservation  
5 of the public peace, health and safety, an emergency is hereby  
6 declared to exist, by reason whereof this act shall take effect and  
7 be in full force from and after its passage and approval.

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