

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 618

98TH GENERAL ASSEMBLY

1456H.03P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 194.119 and 214.208, RSMo, and to enact in lieu thereof two new sections relating to human remains.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 194.119 and 214.208, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 194.119 and 214.208, to read as follows:

194.119. 1. As used in this section, the term "right of sepulcher" means the right to choose and control the burial, cremation, or other final disposition of a dead human body.

2. For purposes of this chapter and chapters 193, 333, and 436, and in all cases relating to the custody, control, and disposition of deceased human remains, including the common law right of sepulcher, where not otherwise defined, the term "next-of-kin" means the following persons in the priority listed if such person is eighteen years of age or older, is mentally competent, and is willing to assume responsibility for the costs of disposition:

(1) An attorney in fact designated in a durable power of attorney wherein the deceased specifically granted the right of sepulcher over his or her body to such attorney in fact;

(2) For a decedent who was on active duty in the United States military at the time of death, the person designated by such decedent in the written instrument known as the United States Department of Defense Form 93, Record of Emergency Data, in accordance with P.L. 109-163, Section 564, 10 U.S.C. Section 1482;

(3) The surviving spouse;

(4) Any surviving child of the deceased. If a surviving child is less than eighteen years of age and has a legal or natural guardian, such child shall not be disqualified on the basis of the child's age and such child's legal or natural guardian, if any, shall be entitled to serve in the place

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 of the child unless such child's legal or natural guardian was subject to an action in dissolution
19 from the deceased. In such event the person or persons who may serve as next-of-kin shall serve
20 in the order provided in subdivisions (5) to (9) of this subsection;

21 (5) (a) Any surviving parent of the deceased; or

22 (b) If the deceased is a minor, a surviving parent who has custody of the minor; or

23 (c) If the deceased is a minor and the deceased's parents have joint custody, the parent
24 whose residence is the minor child's residence for purposes of mailing and education;

25 (6) Any surviving sibling of the deceased;

26 (7) The next nearest surviving relative of the deceased by consanguinity or affinity;

27 (8) Any person or friend who assumes financial responsibility for the disposition of the
28 deceased's remains if no next-of-kin assumes such responsibility;

29 (9) The county coroner or medical examiner; provided however that such assumption
30 of responsibility shall not make the coroner, medical examiner, the county, or the state
31 financially responsible for the cost of disposition.

32 3. The next-of-kin of the deceased shall be entitled to control the final disposition of the
33 remains of any dead human being consistent with all applicable laws, including all applicable
34 health codes.

35 4. A funeral director or establishment is entitled to rely on and act according to the
36 lawful instructions of any person claiming to be the next-of-kin of the deceased; provided
37 however, in any civil cause of action against a funeral director or establishment licensed pursuant
38 to this chapter for actions taken regarding the funeral arrangements for a deceased person in the
39 director's or establishment's care, the relative fault, if any, of such funeral director or
40 establishment may be reduced if such actions are taken in reliance upon a person's claim to be
41 the deceased person's next-of-kin.

42 5. Any person who desires to exercise the right of sepulcher and who has knowledge of
43 an individual or individuals with a superior right to control disposition shall notify such
44 individual or individuals prior to making final arrangements.

45 6. If an individual with a superior claim is personally served with written notice from a
46 person with an inferior claim that such person desires to exercise the right of sepulcher and the
47 individual so served does not object within forty-eight hours of receipt, such individual shall be
48 deemed to have waived such right. An individual with a superior right may also waive such right
49 at any time if such waiver is in writing and dated.

50 7. If there is more than one person in a class who are equal in priority and the funeral
51 director has no knowledge of any objection by other members of such class, the funeral director
52 or establishment shall be entitled to rely on and act according to the instructions of the first such
53 person in the class to make arrangements; provided that such person assumes responsibility for

54 the costs of disposition and no other person in such class provides written notice of his or her
55 objection. **If the funeral director has knowledge that there is more than one person in a**
56 **class who are equal in priority and who do not agree on the disposition, the decision of the**
57 **majority of the members of such class shall control the disposition.**

58 **8. For purposes of conducting a majority vote under subsection 7 of this section,**
59 **the funeral director shall allow voting by proxy using a written authorization or**
60 **instrument.**

214.208. 1. Every person or association which owns any cemetery in which dead human
2 remains are buried or otherwise interred is authorized, at the cemetery owner's expense, to
3 disinter individual remains and reinter or rebury the remains at another location within the
4 cemetery in order to correct an error made in the original burial or interment of the remains.

5 2. Every person or association which owns any cemetery in which dead human remains
6 are buried or otherwise interred is authorized to disinter individual remains and either to reinter
7 or rebury the remains at another location within the cemetery or to deliver the remains to a carrier
8 for transportation out of the cemetery, all pursuant to written instructions signed and
9 acknowledged by **the next-of-kin at the time of death of the deceased person as set out in**
10 **section 194.119. If the next-of-kin at the time of death as set out in section 194.119 is no**
11 **longer living**, a majority of the following adult members of the deceased person's family who
12 are then known and living: surviving spouse, children, and parents **may authorize the**
13 **disinterment**. If none of the above family members survive the deceased, then the majority of
14 the grandchildren, brothers and sisters of whole and half blood may authorize the disinterment,
15 relocation or delivery of the remains of the deceased. The costs of such disinterment, relocation
16 or delivery shall be paid by the deceased person's family.

17 3. Every person or association which owns any cemetery in which dead human remains
18 are buried or otherwise interred is authorized to disinter individual remains and either to reinter
19 or rebury the remains at another location within the cemetery or to deliver the remains to a carrier
20 for transportation out of the cemetery, all pursuant to a final order issued by the circuit court for
21 the county in which the cemetery is located. The court may issue the order, in the court's
22 discretion and upon such notice and hearing as the court shall deem appropriate, for good cause
23 shown, including without limitation, the best interests of public health or safety, the best interests
24 of the deceased person's family, or the reasonable requirements of the cemetery to facilitate the
25 operation, maintenance, improvement or enlargement of the cemetery. The costs of such
26 disinterment, relocation and delivery, and the related court proceedings, shall be paid by the
27 persons so ordered by the court.

28 4. The cemetery owner, **cemetery operator, funeral director, funeral establishment,**
29 **or any other person or entity involved in the process** shall not be liable to the deceased

30 person's family or to any third party for a disinterment, relocation or delivery of deceased human

31 remains made pursuant to this section.

✓