

A bill to be entitled  
An act relating to probate, amending s. 732.804, F.S., relating to the disposition of decedent's remains, providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 732.804, Florida Statutes is amended, to read:

732.804. Provisions relating to disposition of decedent's remains.—

(1) Subject to certain interests of society, the Legislature finds that every competent adult has the right to control the decisions relating to her or his own funeral arrangements. Therefore, any person, who is either 18 years of age or older or a minor whose disabilities of non-age have been removed may specify in a written declaration any one or more of the following:

(a) The disposition to be made of his or her remains, including, but not limited to, cremation;

(b) The ceremonial arrangements, if any, to be performed after death;

(c) The person designated to make these arrangements after the death of the person.

(2) For purposes of this Section:

(a) A "written declaration" shall mean a written expression of a person's intent regarding one or more of the matters described in subsection (1).

(b) A written declaration must be signed and dated by the person making the written declaration, or, if the person making the written declaration cannot sign, the written declaration may be signed for him or her by some other person in his or her presence and at his or her direction. If the person making the written declaration cannot sign, the direction by the person making the written declaration and the signature by the other person on his or her behalf must be in the presence of at least two attesting witnesses who must sign the written declaration in the presence of both the person making the declaration and the person signing on his or her behalf and in the presence of each other.

(c) A will executed as provided in s. 732.502 shall be deemed to be a written declaration so long as the will includes an expression of the decedent's intent regarding one or more of the matters described in subsection (1).

(3) The provisions of the most recent written declaration shall control over any other document, including an earlier dated will that is deemed to be a written declaration, regarding any matter described in subsection (1).

(4) To the extent that a written declaration is in conflict with an anatomical gift made by one of the methods listed in s. 765.514(1), the anatomical gift shall take precedence over inconsistent directions or instructions in a written declaration.

(5) Any person may carry out the disposition of a decedent's remains and may make ceremonial arrangements, if any, pursuant to the terms of a written declaration either before or after issuance of letters of administration subject to the following limitations:

(a) If a written declaration designates a person to control the disposition of a decedent's remains or make ceremonial arrangements, that person shall be given preference over any other person. The person designated in a written declaration to control the disposition of a decedent's remains or to make ceremonial arrangements shall be presumed to be unable or unwilling to do

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so if that person fails to make final arrangements for the disposition of the decedent's remains within the earlier of 5 days after receiving notice of the decedent's death or 10 days after the decedent's death.

(b) If a written declaration does not designate a person to carry out the disposition of a decedent's remains or to make ceremonial arrangements and more than one person has requested to do so, the person or persons with the highest preference under subsection (11) shall have the right to do so.

(6) No person shall exercise the authority granted in a written declaration if that person has actual knowledge that:

(a) A proceeding is pending to challenge the written declaration; or

(b) A later written declaration was executed by the decedent, to the extent of any conflict with the earlier written declaration.

(7) A person who has actual knowledge that a legal action has been brought to challenge a written declaration shall not be liable for refusing to accept, inter, cremate, or otherwise dispose of a decedent's remains until such person receives a court order or other reasonable confirmation that the legal action has been resolved or settled.

(8) Any person who directs or provides for the lawful disposition of a decedent's remains, including cremation, in reliance on a written declaration created in accordance with the provisions of this section that appears to be legally executed shall not be subject to civil liability or administrative discipline for such actions absent bad faith.

(9) No person designated in a written declaration to carry out the disposition of a decedent's remains or to make ceremonial arrangements, if any, shall be liable for failing or refusing to do so.

(10) In any legal proceeding brought under this section, admission into evidence of a written declaration creates a rebuttable presumption that the written declaration represents the decedent's intent with respect to any matter addressed in subsection (1).

(11) In the absence of a written declaration, the right to control disposition of a decedent's remains and to make ceremonial arrangements, if any, vests in and devolves upon the following persons, at the time of the decedent's death, in the following order of preference:

(a) The decedent, if the decedent's intent can be proven by a preponderance of the evidence in an appropriate legal proceeding;

(b) The surviving spouse;

(c) A majority of the children of the decedent who are 18 years of age or older;

(d) The parents, or surviving parent if one parent is deceased, of the decedent. Both divorced parents of a minor child who have shared parental responsibility in accordance with s. 61.13 must agree on the disposition or ceremonial arrangements; provided, however, in the case of divorced parents of a minor child, where a court has awarded one parent sole parental responsibility in accordance with s. 61.13, the parent who has been awarded sole parental responsibility shall have preference over the parent who has not been awarded sole parental responsibility.

(e) A majority of the surviving siblings of the decedent who are 18 years of age or older;

(f) A majority of the surviving grandchildren of the decedent who are 18 years of age or older;

(g) A majority of the surviving grandparents of the decedent;

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(h) The guardian of the person or property of the decedent at the time of death and if there is more than one of them, a majority of them;

(i) The personal representative of the decedent and if there is more than one of them, a majority of them;

(j) The health care surrogate of the decedent at the time of death designated pursuant to chapter 765 of the Florida Statutes and if there is more than one of them, a majority of them;

(k) The attorney in fact of the decedent at the time of death designated pursuant to chapter 709 of the Florida Statutes and if there is more than one of them, a majority of them;

(l) A public health officer;

(m) The medical examiner, county commission, or administrator acting under part II of chapter 406 of the Florida Statutes or other public administrator;

(n) A representative of a nursing home in which the decedent resided at the time of death;  
or

(o) Any person 18 years of age or older not listed in this subsection who is willing to assume the legal and financial responsibility for the final disposition of the decedent's remains.

(12)(a) If the person with the right to control disposition of the decedent's remains and to make ceremonial arrangements, if any, pursuant to subsection (11) is unable or unwilling to make such disposition, or if the person's whereabouts cannot be reasonably ascertained, that person's rights shall terminate and pass to the following persons, in the following order of preference:

1. The rest of the persons in the class with the same degree of relationship granting the same priority of control over the disposition pursuant to subsection (11);

2. The next class of persons in the order listed in subsection (11).

(b) The person with the right to control disposition of the decedent's remains and to make ceremonial arrangements, if any, shall be presumed to be unable or unwilling to provide for such disposition, or the person's whereabouts shall be presumed unknown, if the person has failed to make final arrangements for the disposition of the decedent's remains within the earlier of 5 days after receiving notice of the decedent's death or 10 days after the decedent's death.

(c) If a person is unable or unwilling to make a disposition, such person shall not be counted as a member of the class when determining the number that makes a majority of such class.

(d) In the event that a majority of the persons in the class with the same degree of relationship granting the same priority of control over the disposition of a decedent's remains and making ceremonial arrangements, if any, pursuant to subsection (11) are unable to reach a consensus, priority shall pass to the next class of persons in the order listed in subsection (11). For purposes of this paragraph (d), a majority of the members in the class with the same degree of relationship shall be deemed unable to reach a consensus if the majority cannot agree upon a disposition of the decedent's remains within the earlier of 5 days after receiving notice of the decedent's death or 10 days after the decedent's death.

(13) Venue for an action pursuant to this section may be laid in any county:

(a) Where the venue is proper under chapter 47; or

(b) In which the decedent was physically present at the time of his or her death, or

(c) In which the remains of the decedent are located; or

(d) In the county in this state where the decedent was domiciled; or

(e) In which a probate proceeding for the decedent is pending.

(14) Any person who provides for the final disposition of a decedent's remains upon authorization from a person who claims to have the right to control the final disposition pursuant to subsection (11) shall be immune from civil liability and administrative discipline absent bad faith.

(15) If any person unlawfully and intentionally kills or participates in procuring the death of the decedent, that person shall not be entitled to control the disposition of the remains or the ceremonial arrangements of a decedent. The court may determine by the greater weight of the evidence whether the person unlawfully and intentionally killed or participated in procuring the death of the decedent for purposes of this section.

~~Before issuance of letters, any person may carry out written instructions of the decedent relating to the decedent's body and funeral and burial arrangements. The fact that cremation occurred pursuant to a written direction signed by the decedent that the body be cremated is a complete defense to a cause of action against any person acting or relying on that direction.~~

Section 2. This act shall take effect on July 1, 2010.