

CHAPTER 59

(SB 103)

AN ACT relating to funeral planning.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 11 of this Act, unless the context requires otherwise:

- (1) *"Cemetery merchandise" has the same meaning as in KRS 367.932;*
- (2) *"Declarant" means an individual who signs a funeral planning declaration executed under Sections 1 to 11 of this Act;*
- (3) *"Declaration" means a funeral planning declaration setting forth the declarant's preferences regarding the manner of disposition of the declarant's remains that is executed under Sections 1 to 11 of this Act and in a form prescribed by administrative regulation promulgated by the Office of the Attorney General;*
- (4) *"Designee" means an individual designated and directed by the terms of the declaration to:*
 - (a) *Carry out the funeral plan of the declarant; or*
 - (b) *Make any arrangements concerning the disposition of the declarant's remains, funeral services, cemetery merchandise, funeral merchandise, or ceremonies;*
- (5) *"Funeral" has the same meaning as in KRS 316.010; and*
- (6) *"Funeral merchandise" means caskets, outer burial containers, urns, clothing, register books, acknowledgement cards, other memorial products, and any other similar products that are commonly sold by or used in funeral homes.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *A person who is of sound mind and is at least eighteen (18) years of age may execute a declaration.*
- (2) *A declaration shall not be included in:*
 - (a) *A will;*
 - (b) *A power of attorney; or*
 - (c) *A similar document.*
- (3) *A declaration shall designate an individual to serve as the designee, or if no designee is designated shall provide instruction concerning funeral services, ceremonies, and the disposition of remains after death.*
- (4) *A declaration, at a minimum, shall be:*
 - (a) *Voluntary;*
 - (b) *In writing;*
 - (c) *Signed by the declarant or by another person in the declarant's presence and at the direction of the declarant;*
 - (d) *Dated;*
 - (e) *Signed in the presence of at least two (2) competent witnesses who are at least eighteen (18) years of age at the time they sign the declaration; and*
 - (f) *Acknowledged before a notary public or other person authorized to administer oaths.*
- (5) *A declaration is not binding upon a funeral home, a cemetery, or any person engaged in the business of providing funeral services, selling merchandise or grave markers, or providing a service or other property subject to the declaration until the funeral home, cemetery, or person receives full payment for the service, merchandise, or other property.*
- (6) *A person is not considered to be entitled to any part of the declarant's estate solely by virtue of being designated by the declarant to serve as his or her designee.*

- (7) *Unless an individual is related to the declarant by birth, marriage, or adoption, a declarant shall not designate an individual to be his or her designee or alternate designee who is:*
- (a) *A provider of funeral or cemetery services;*
 - (b) *Responsible for any aspect of the disposition of the declarant's remains; or*
 - (c) *Associated with any entity that is responsible for providing funeral or cemetery services or disposing of the declarant's remains.*
- (8) *The following shall not be a witness to a declaration:*
- (a) *The person who signed the declaration on behalf of and at the direction of the declarant;*
 - (b) *A parent, spouse, or child of the declarant;*
 - (c) *The person identified as the designee; or*
 - (d) *An individual who is entitled to any part of the declarant's estate whether the declarant dies testate or intestate, including an individual who could take from the declarant's estate if the declarant's will is declared invalid.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

A declaration may specify the declarant's preferences concerning any of the following:

- (1) *The disposition of the declarant's remains after the declarant's death;*
- (2) *Who may direct the disposition of the declarant's remains;*
- (3) *Who may provide funeral services after the declarant's death;*
- (4) *Specific directions about the type and form of funeral services desired;*
- (5) *The ceremonial arrangements to be performed after the declarant's death;*
- (6) *The funeral merchandise and cemetery merchandise for the disposition of the declarant's remains;*
- (7) *Who may direct the ceremonial arrangements to be performed after the declarant's death; and*
- (8) *Disinterment.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *The provisions of the declarant's most recent declaration shall prevail over any other document executed by the declarant concerning any preferences described in Section 3 of this Act.*
- (2) *The invalidity of any specific preference or direction shall not affect the validity of the declaration.*
- (3) *This section shall not be construed to enable a legal representative to revoke a properly executed declaration or to invalidate a properly executed power of attorney with respect to any power or duty belonging to the legal representative that is not related to the declaration.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *A person who acts in good-faith reliance on a declaration is immune from liability to the same extent as if the person had dealt directly with the declarant and the declarant had been a competent and living person.*
- (2) *A person who deals with a declaration may presume, in the absence of actual knowledge to the contrary, that:*
 - (a) *The declaration was validly executed and has not been revoked; and*
 - (b) *The declarant was competent at the time the declaration was executed.*
- (3) *The directions of a declarant expressed in a declaration are binding as if the declarant were alive and competent.*
- (4) *A crematory authority, licensed funeral director, or cemetery acting pursuant to the terms of a declaration shall not be held liable for good-faith reliance on representations made in the declaration.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *A declaration shall remain in effect until revoked by the declarant in writing.*

- (2) *A revocation of a declaration shall be delivered to the person to whom the declaration was given or to the designee.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *The following events that occur subsequent to a declaration shall act as a revocation of a designation of authority in a declaration to the declarant's spouse to direct the disposition of the declarant's body or to make all arrangements concerning funeral services and other ceremonies after the declarant's death, unless otherwise expressly provided in a declaration:*

- (a) *Dissolution of marriage;*
- (b) *Annulment of marriage;*
- (c) *Legal separation; or*
- (d) *Court determination that the declarant and spouse were physically and emotionally separated at the time of death and the separation was for an extended time that clearly demonstrated an absence of affection, trust, and regard for the declarant.*

- (2) *In the event a spouse's designation is disqualified pursuant to subsection (1) of this section, the alternate designee, if any, shall assume the responsibility for the declaration.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

If any designee, alternate designee, or person described in Section 9 of this Act fails to assume an obligation set forth in the declaration, within five (5) days of notification of the declarant's death, the authority to make arrangements shall devolve pursuant to the terms of the declaration or Section 9 of this Act.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

The right to control the disposition of a decedent's body, make arrangements for funeral services, make arrangements for burial, and to make other ceremonial arrangements after an individual's death devolves on the following in the priority listed:

- (1) *A person:*
 - (a) *Named as the designee or alternate designee in a declaration executed by the decedent under Sections 1 to 11 of this Act; or*
 - (b) *Named in a United States Department of Defense form "Record of Emergency Data" (DD Form 93) or a successor form adopted by the United States Department of Defense if the decedent died while serving in any branch of the United States Armed Forces, pursuant to KRS 36.440;*
- (2) *The decedent's surviving spouse;*
- (3) *A surviving adult child of the decedent or, if more than one (1) adult child is surviving, the majority of the adult children. Less than half of the surviving adult children have the right to control disposition under this section if the child or children have used reasonable efforts to notify the other surviving adult children of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children and this has been attested to in writing;*
- (4) *The surviving parent or parents of the decedent. If one (1) of the parents is absent, the parent who is present has the right to control disposition under this section if the parent who is present has used reasonable efforts to notify the absent parent and attests to that in writing;*
- (5) *The surviving adult grandchild of the decedent or, if more than one (1) adult grandchild is surviving, the majority of the adult grandchildren. Less than half of the surviving adult grandchildren have the right to control disposition under this section if the grandchild or grandchildren have used reasonable efforts to notify the other surviving adult grandchildren of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult grandchildren and this has been attested to in writing;*
- (6) *The decedent's surviving adult sibling or, if more than one (1) adult sibling is surviving, the majority of the adult siblings. Less than half of the surviving adult siblings have the right to control disposition under this section if the sibling or siblings have used reasonable efforts to notify the other surviving adult siblings of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult siblings and this has been attested to in writing;*

- (7) *An individual in the next degree of kinship under KRS 391.010 to inherit the estate of the decedent or, if more than one (1) individual of the same degree is surviving, the majority of those who are of the same degree of kinship. Less than half of the individuals who are of the same degree of kinship have the right to control disposition under this section if they used reasonable efforts to notify the other individuals who are of the same degree of kinship of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the individuals who are of the same degree of kinship and this has been attested to in writing; or*
- (8) *If none of the persons described in subsections (1) to (7) of this section are available, any other person willing to act and arrange for the final disposition of the decedent's remains, including a funeral home, that:*
- (a) *Has a valid prepaid funeral plan that makes arrangements for the disposition of the decedent's remains; and*
- (b) *Attests in writing that a good-faith effort has been made to contact any living individuals described in subsections (1) to (7) of this section.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

A person in Kentucky is not required to honor a declaration or similar instrument executed in another state, but may rely on a declaration or similar instrument executed in another state that complies with the requirements of Sections 1 to 11 of this Act.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

An action to contest or determine the validity of any declaration made under Sections 1 to 11 of this Act shall be:

- (1) *Brought in the same manner as an action to contest the validity of a will;*
- (2) *Expedited on the docket of the court as a matter requiring priority; and*
- (3) *Accompanied by a bond, cash deposit, or other surety sufficient to guarantee that the entity holding the declarant's remains is compensated for the safe-keeping charges incurred while the action is pending.*

➔Section 12. KRS 367.97501 is amended to read as follows:

As used in KRS 367.97501 to 367.97537, unless the context requires otherwise:

- (1) "Authorizing agent" means the person legally entitled to order the cremation of the human remains. ~~[-The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in, and the duty of disposition devolves upon the following in the order named:-~~
- (a) ~~—The decedent through a preneed cremation authorization;~~
- (b) ~~—The surviving spouse of the decedent;~~
- (c) ~~—The surviving adult children of the decedent;~~
- (d) ~~—The surviving parents of the decedent;~~
- (e) ~~—The surviving adult grandchildren of the decedent;~~
- (f) ~~—The surviving adult siblings of the decedent;~~
- (g) ~~—A next closest adult relative of the decedent; or~~
- (h) ~~—In the absence of any of the above, by order of District Court.]~~
- (2) "Casket" means a rigid container which is designed for the encasement of human remains constructed of wood, metal, or other material.
- (3) "Closed container" means a sealed container or urn in which cremated remains are placed and enclosed in a manner that prevents leakage or spillage of cremated remains or the entrance of foreign material.
- (4) "Cremated remains" means the fragments remaining after the cremation process has been completed.
- (5) "Cremation" means the heating process that reduces human remains to bone fragments through combustion and evaporation.
- (6) "Cremation authorization form" means a form promulgated by administrative regulation of the Attorney General *that* ~~[-by which the next class of authorizing agent from the decedent in the order set forth in~~

~~subsection (1) of this section~~ expresses consent to the decedent's cremation. The form shall include information concerning the parties' rights and responsibilities.

- (7) "Cremation chamber" means an enclosed space designed and manufactured for the purpose of cremating human remains.
- (8) "Cremation container" means a container in which human remains may be delivered to a crematory for cremation that is:
 - (a) Rigid enough to support the weight of the corpse, closed, and leakproof;
 - (b) Composed of a combustible material or other material approved by the crematory authority; and
 - (c) A proper and dignified covering for the human remains.
- (9) "Crematory authority" means the legal entity which is licensed by the Attorney General to operate a crematory and conduct cremations. Crematory authority does not include state university health science centers.
- (10) "Crematory" means a fixed building or structure that contains one (1) or more cremation chambers for the reduction of bodies of deceased persons to cremated remains. "Crematory" includes crematorium.
- (11) "Crematory operator" means the person in charge of a licensed crematory authority.
- (12) **"Declaration" has the same meaning as in Section 1 of this Act.**
- ~~(13)(12)~~ "Holding facility" means an area designated for the retention of human remains prior to cremation.
- ~~(14)(13)~~ "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, in any state of decomposition, prior to cremation.
- ~~(15)(14)~~ "Pathological waste" means human tissues, organs, and blood or body fluids, in liquid or semiliquid form that are removed from a person for medical purposes. "Pathological waste" does not include amputations.
- ~~(15) "Preneed cremation authorization form" means a properly witnessed form promulgated by administrative regulation of the Attorney General by which a decedent, prior to his death, has authorized his cremation. The form shall include information concerning the parties' rights and responsibilities.~~
- (16) "Processed remains" means the end result of pulverization, by which the residual from the cremation process is reduced and cleaned leaving only fragments reduced to unidentified dimensions.
- (17) "Retort operator" means a person operating a cremation chamber.
- (18) "Scattering area or garden" means an area which may be designated by a cemetery and located on a dedicated cemetery property where cremated remains which have been removed from their container can be mixed with or placed on top of the soil or ground cover.
- (19) "Temporary container" means a receptacle for cremated remains, usually made of plastic, cardboard, ceramics, plastic film, wood, or metal, designed to prevent the leakage of processed remains or the entrance of foreign materials which will hold the cremated remains until an urn or other permanent container is acquired.

➔Section 13. KRS 367.97514 is amended to read as follows:

- (1) The simultaneous cremation of the remains of more than one (1) individual within the same cremation chamber is specifically declared unlawful. The fact that incidental and unavoidable residue remains in the cremation chamber or other equipment or any container used in a prior cremation is not a violation of this section.
- (2) No human remains delivered to a crematory shall be removed from the cremation container, and the cremation container shall be cremated with the human remains. The identification from the outside of the cremation container shall be removed and placed near the cremation chamber control panel where it shall remain in place until the cremation process is complete.
- (3) A body shall not be cremated with a pacemaker or other potentially hazardous implant, including any toxic or explosive-type sealed implants, in place. If the authorizing agent is the decedent, ***the declarant shall disclose the existence of any pacemaker or other hazardous implants to the crematory authority, or in the event there is no declaration,*** then the next class of authorizing agent in the order set forth in KRS 367.97501(1) shall be responsible for disclosing the existence of any pacemaker or other hazardous implants to the crematory authority.

- (4) No crematory authority or any person employed by or acting on behalf of a crematory authority shall remove or possess dental gold or dental silver from any human remains. The fact that there is incidental and unavoidable dental gold or dental silver remains in the cremation chamber, in other equipment, or in any container used in a prior cremation is not a violation of this section.
- (5) The crematory or crematorium shall be secure from access by unauthorized persons.
- (6) The crematory retort operator shall have at least forty eight (48) hours of on the job training supervised by the crematory operator, with verification of this training having been filed with the Attorney General.

➔Section 14. KRS 367.97524 is amended to read as follows:

- (1) A crematory authority shall not conduct any cremations, nor accept a body for cremation, unless it has a cremation authorization form signed by the authorizing agent clearly stating the disposition to be made of the cremated remains.
- (2) Cremated remains shall be disposed of by placing them in a grave, crypt, or niche; by scattering them in a scattering area; or in any manner on the private property of a consenting owner. The crematory authority or funeral director as defined in KRS 316.010 may deliver, either in person or by a method that has an internal tracking system that provides a receipt signed by the person accepting delivery, the cremated remains to the designated individual specified on the cremation authorization form. Upon receipt of the cremated remains, the individual receiving them may keep or transport them in any manner in this Commonwealth without a permit. After delivery, the crematory authority *or funeral home* shall be discharged from any legal obligation or liability concerning the cremated remains relative to disposition.
- (3) A crematory authority or a licensed funeral director arranging a cremation shall not be held liable for good faith reliance on representations made by the authorizing agent regarding the authority to cremate.

➔Section 15. KRS 367.97527 is amended to read as follows:

- (1) A person~~[, or anyone who has legal authority to act on behalf of that person,]~~ may authorize his or her own cremation and the final disposition of his or her cremated remains, by executing *a declaration*~~[, as the authorizing agent, a preneed cremation authorization form]~~. The original *declaration directing cremation*~~[, preneed cremation authorization form]~~ shall be retained by the entity with which the arrangements are made. A copy of the *declaration*~~[, preneed cremation authorization form]~~ shall be provided to the person signing the preneed arrangements. The person prearranging his own cremation shall have the right to transfer or cancel *the declaration*~~[, this authorization]~~ at any time prior to death, by notifying the entity with which the *declaration*~~[, preneed cremation authorization form]~~ is filed by certified mail.
- (2) In the event that no different or inconsistent instructions are provided to the crematory authority at the time of death, the crematory authority shall release or dispose of the cremated remains as indicated in the *cremation authorization or declaration*~~[, preneed agreement]~~.
- (3) ~~[In the event that there is a conflict between the decedent's prearrangement and the demands of the next class of authorizing agent in the order set forth in KRS 367.97501(1) regarding cremation, the crematory shall not accept for cremation those human remains without an order deciding the issues entered by the District Court of the county of the decedent's residence or the county where the funeral home or the crematory authority is located. This order may be issued by the court after a petition for resolution has been initiated by any natural person listed in KRS 367.97501(1) or the crematory authority. Unless extraordinary circumstances exist, the court shall give due deference to the desires of the deceased as expressed in the prearrangement.]~~
- (4) ~~]~~Neither the crematory authority nor a licensed funeral director arranging a cremation shall be held liable for the crematory authority's or the funeral director's good faith reliance on representations made by the *declaration or* authorizing agent regarding the authority or decision to cremate.

➔Section 16. KRS 367.97531 is amended to read as follows:

If the authorizing agent~~[, or, in the event the authorizing agent is the decedent, the next class of authorizing agent in the order set forth in KRS 367.97501(1),]~~ is not available in person to execute the cremation authorization form, then the authorizing agent may send the crematory a notarized facsimile transmission stating that the person is legally entitled to authorize the cremation and stating the name, address, and relationship of the sender to the decedent. The crematory authority may rely upon the facsimile-transmitted cremation authorization form to perform the cremation without liability. The facsimile-transmitted cremation authorization form shall be followed by the original delivered by certified mail.

Signed by Governor April 8, 2016.

