

**CHAPTER 144****( HB 208 )**

AN ACT relating to funeral planning.

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

➔Section 1. KRS 367.93103 is amended 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; *or*
  - (b) *Employed by* ~~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; *or*
  - (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 2. KRS 367.93115 is amended to read as follows:

- (1) If any designee, alternate designee, or person described in KRS 367.93117 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 KRS 367.93117.
- (2) ***In the absence of a declaration, if a person described in Section 3 of this Act fails to assume responsibility for a decedent's remains within five (5) days of notification of the decedent's death, the authority to make arrangements shall devolve pursuant to Section 3 of this Act.***

➔Section 3. KRS 367.93117 is amended 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 KRS 367.93101 to 367.93121; 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, ***the following may act and arrange for the final disposition of the decedent's remains***~~any other person willing to act and arrange for the final disposition of the decedent's remains, including a funeral home, that~~:
  - (a) ***Any other person willing to act and arrange for the final disposition of the decedent's remains who 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; or***~~Has a valid prepaid funeral plan that makes arrangements for the disposition of the decedent's remains; and~~

- (b) *A funeral home that has a valid prepaid funeral plan that makes arrangements for the disposition of the decedent's remains if the funeral director 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; or*
- (9) *The District Court in the county of the decedent's residence or the county in which the funeral home or the crematory is located.*

➔Section 4. KRS 367.93121 is amended to read as follows:

An action to contest or determine the validity of any declaration made under KRS 367.93101 to 367.93121 *or cremation authorization form, or to resolve a conflict between an executed cremation authorization form and the person or persons authorized in Section 3 of this Act regarding cremation*, shall be:

- (1) Brought in the *District Court of the county of the decedent's residence or the county in which the funeral home or the crematory is located*~~[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 safekeeping charges incurred while the action is pending.

**Signed by Governor March 27, 2017.**