

SENATE BILL NO. 1139

94TH GENERAL ASSEMBLY

<http://www.senate.mo.gov/08info/pdf-bill/tat/SB1139.pdf>

Effective August 28, 2008

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(excerpt from the bill relating to Right of Sepulcher)

Department of Health and Senior Services

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

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

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

13 (2) The surviving spouse;

14 [(2)] (3) Any surviving child of the deceased. If a surviving child is less
15 than eighteen years of age and has a legal or natural guardian, such child shall
16 not be disqualified on the basis of the child's age and such child's legal or natural
17 guardian, if any, shall be entitled to serve in the place of the child unless such
18 child's legal or natural guardian was subject to an action in dissolution from the
19 deceased. In such event the person or persons who may serve as next-of-kin shall
20 serve in the order provided in subdivisions [(3)] (4) to (8) of this subsection;

21 [(3)] (4) (a) Any surviving parent of the deceased; or

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

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

27 [(4)] (5) Any surviving sibling of the deceased;

28 [(5) Any person designated by the deceased to act as next-of-kin pursuant
29 to a valid designation of right of sepulcher as provided in subsection 8 of this
30 section;]

31 (6) The next nearest surviving relative of the deceased by consanguinity
32 or affinity;

33 (7) Any person or friend who assumes financial responsibility for the

34 disposition of the deceased's remains if no next-of-kin assumes such
35 responsibility;

36 (8) The county coroner or medical examiner; provided however that such
37 assumption of responsibility shall not make the coroner, medical examiner, the
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38 county, or the state financially responsible for the cost of disposition.

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

42 4. A funeral director or establishment is entitled to rely on and act
43 according to the lawful instructions of any person claiming to be the next-of-kin
44 of the deceased; provided however, in any civil cause of action against a funeral
45 director or establishment licensed pursuant to this chapter for actions taken
46 regarding the funeral arrangements for a deceased person in the director's or
47 establishment's care, the relative fault, if any, of such funeral director or
48 establishment may be reduced if such actions are taken in reliance upon a
49 person's claim to be the deceased person's next-of-kin.

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

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

60 7. If there is more than one person in a class who are equal in priority
61 and the funeral director has no knowledge of any objection by other members of
62 such class, the funeral director or establishment shall be entitled to rely on and
63 act according to the instructions of the first such person in the class to make
64 arrangements; provided that such person assumes responsibility for the costs of
65 disposition and no other person in such class provides written notice of his or her
66 objection.

67 [8. Any person may designate an individual to be his or her closest
68 next-of-kin, regardless of blood or marital relationship, by means of a written
69 instrument that is signed, dated, and verified. Such designation of right of
70 sepulcher shall be witnessed by two persons, and shall contain the names and
71 last known address of each person entitled to be next-of-kin but for the execution
72 of the designation of right of sepulcher and who are higher in priority than the
73 person so designated.]