

ACT 17

S.B. NO. 341

A Bill for an Act Relating to Disposition of Remains.

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

SECTION 1. The legislature finds that forty-eight states have enacted right of disposition laws to specify the priority of persons who may control the disposition of a decedent's remains or the arrangements for funeral goods and services.

The legislature further finds that specifying the priority of persons able to control disposition of a decedent's remains permits funeral establishments, cemeteries, mortuaries, and crematories to take direction from these persons and promptly provide needed services.

The purpose of this Act is to:

- (1) Determine the priority of the persons who may direct the disposition of a decedent's remains and the arrangements for funeral goods and services;
- (2) Permit funeral establishments, cemeteries, mortuaries, and crematories to rely and act upon written directions from the decedent or persons who have the right of disposition without liability in certain circumstances; and
- (3) Permit funeral establishments, cemeteries, mortuaries, and crematories to control the disposition and dispose of a decedent's remains in certain circumstances.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
DISPOSITION OF REMAINS**

§ -1 **Short title.** This chapter shall be known and may be cited as the Disposition of Remains Act.

§ -2 **Definitions.** As used in this chapter:

“Cemetery” means any property, or part interest therein, dedicated to and used or intended to be used for the permanent interment of human remains. It may be a burial park with one or more plots, for earth interment; a mausoleum with one or more vaults or crypt interments; a structure or place with one or more niches, recesses, or other receptacles for the interment of cremated remains, or any combination of one or more thereof.

“Crematory” means a structure containing a furnace used or intended to be used for the cremation of human remains.

“Estranged” means a physical and emotional separation from the decedent at the time of death which has existed for a period of time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

“Funeral establishment” means a place of business used in the care and preparation for interment or transportation of human remains, embalming, placing the same on display, or otherwise providing for final disposition of human remains.

“Mortuary” means a place of business devoted exclusively to furnishing funeral services and related commodities.

“Person” means an individual eighteen years of age or older.

§ -3 Direction for disposition. A person may provide written directions for the location, manner, and conditions of disposition of the person's remains in a testamentary disposition, in a pre-need contract pursuant to chapter 441, or by any written document signed by the person and notarized. The written directions may also include arrangements for funeral goods and services to be provided upon that person's death and shall take precedence over wishes or other direction by any other person.

§ -4 Right to control disposition; priority. (a) Unless a decedent has left directions in writing for the disposition of remains pursuant to section -3 or -5 or a person has forfeited the right of disposition pursuant to section -6, the following persons, in the priority listed, have the right to control the disposition of the decedent's remains and the location, manner, and conditions of disposition of the decedent's remains:

- (1) A person designated by the decedent in a testamentary disposition or a written instrument executed in accordance with section -5;
- (2) The surviving spouse, if the decedent was legally married at the time of death; the surviving partner, as defined in section 572B-1, if the decedent had legally entered into a civil union at the time of death; or the surviving reciprocal beneficiary, as defined in section 572C-3, if the decedent was in a reciprocal beneficiary relationship at the time of death;
- (3) The sole surviving child of the decedent, or if there is more than one surviving child, the majority of the surviving children. Less than the majority of the surviving children shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving children and the other surviving children cannot be located or have not responded within five days of the notification of the decedent's death;
- (4) The surviving parent or parents of the decedent. Only one surviving parent shall be vested with the rights and duties of this section if that surviving parent used reasonable efforts to notify the other surviving parent and the other surviving parent cannot be located or has not responded within five days of the notification of the decedent's death;
- (5) The surviving sibling of the decedent, or if there is more than one surviving sibling, the majority of the surviving siblings. Less than the majority of the surviving siblings shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving siblings and the other surviving siblings cannot be located or have not responded within five days of the notification of the decedent's death;
- (6) The surviving grandparent of the decedent, or if there is more than one surviving grandparent, the majority of the surviving grandparents. Less than the majority of the surviving grandparents shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving grandparents and the other surviving grandparents cannot be located or have not responded within five days of the notification of the decedent's death;
- (7) The surviving grandchild of the decedent, or if there is more than one surviving grandchild, the majority of the surviving grandchildren. Less than the majority of the surviving grandchildren shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving grandchildren and

the other surviving grandchildren cannot be located or have not responded within five days of the notification of the decedent's death;

- (8) The guardian of the decedent at the time of the decedent's death, if one had been appointed;
- (9) The personal representative of the estate of the decedent;
- (10) The person in the next degree of kinship to the decedent, in descending order, subject to descent and distribution under the laws of succession of the State. If there is more than one person of the same degree of kinship to the decedent, any person of that degree may exercise the right of disposition;
- (11) If the disposition of the remains of the decedent is the responsibility of the State or a political subdivision of the State, the public officer, administrator, or employee responsible for arranging the final disposition of decedent's remains; and
- (12) In the absence of any person under paragraphs (1) through (10) of this section, any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, after attesting in writing that a good faith effort has been made to notify the individuals under paragraphs (1) through (10) of the decedent's death, and no persons have agreed to assume the responsibilities or have responded within five days of the notification.

(b) If a United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, was in effect at the time of death for a decedent who died in a manner described by title 10 United States Code sections 1481(a)(1) through (8), the DD Form 93 controls any other written instrument described in section -3 or -5 with respect to designating a person to control the disposition of the decedent's remains. Notwithstanding section -3 or -5, the form is legally sufficient if it is properly completed, signed by the decedent, and witnessed in the manner required by the form.

§ -5 Written instrument to control disposition of remains. A person who wishes to authorize another person to control the disposition of remains and the arrangements for funeral goods and services may execute a written instrument before a notary public. The written instrument shall be in substantially the following form:

"State of _____
 County of _____

I, _____ do hereby designate _____ as the sole person who will have the right to determine and decide the disposition of my remains upon my death and the arrangements for funeral goods and services. I ___ have/ ___ have not attached specific directions concerning the disposition of my remains. If I have attached specific directions, the designee shall substantially comply with the specific directions, provided the directions are lawful and there are sufficient resources in my estate to carry out the directions.

SIGNATURE: Sign and date the form here:

 (sign your name) (date)

 (print your name)

DECLARATION OF NOTARY:

Subscribed and sworn before me, _____ (insert name of notary public), on this _____ day of _____, in the year _____.
Notary Seal

(Signature of Notary Public)"

§ -6 Forfeiture of right to direct disposition. A person entitled under law to the right of disposition shall forfeit that right, and the right is passed on to the next person in the order of priority as listed in section -4, under the following circumstances:

- (1) The person is charged with murder or manslaughter in connection with the decedent's death, and the charges are known to the funeral director or manager of the funeral establishment, cemetery, mortuary, or crematory; provided that if the charges against the person are dismissed, or if the person is acquitted of the charges, the right of disposition is returned to that person, unless the dismissal or acquittal occurs after the final disposition has been completed;
- (2) The person does not exercise the person's right of disposition within five days of notification of the decedent's death or within seven days of the decedent's death, whichever is earlier;
- (3) The person and the decedent are spouses, civil union partners, or reciprocal beneficiaries, and at the time of the decedent's death, proceedings for annulment, divorce, or separation had been initiated or a declaration for termination of the reciprocal beneficiary relationship had been filed; or
- (4) The probate court pursuant to section -7 determines that the person entitled to the right of disposition and the decedent were estranged at the time of death.

§ -7 Disputes. (a) Any dispute among any of the persons listed in section -4 concerning the right of disposition or priority shall be resolved by the probate court for the county where the decedent resided. The probate court may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition, and may make decisions regarding the decedent's remains.

(b) The following provisions shall apply to the court's determination under this section:

- (1) If two or more persons with the same priority class hold the right of disposition and cannot agree by majority vote regarding the disposition of the decedent's remains, or there are any persons who claim to have priority over any other person, any of these persons or a funeral establishment, cemetery, mortuary, or crematory with custody of the remains may file a petition asking the probate court to make a determination in the matter; and
- (2) In making a determination in a case where there are two or more persons with the same priority class who cannot agree by majority vote, the probate court may consider the following:
 - (A) The reasonableness and practicality of the proposed funeral arrangements and disposition;
 - (B) The degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;

- (C) The desires of the person or persons who are ready, able, and willing to pay the cost of the funeral arrangements and disposition;
- (D) The convenience and needs of other families and friends wishing to pay respects;
- (E) The desires of the decedent; and
- (F) The degree to which the funeral arrangements would allow maximum participation by all wishing to pay respect.

(c) In the event of a dispute regarding the right of disposition, a funeral establishment, cemetery, mortuary, or crematory shall not be liable for refusing to accept the remains, to inter or otherwise dispose of the remains of the decedent, or complete the arrangements for the final disposition of the remains until it receives a court order or other written agreement signed by the parties in the disagreement that the dispute has been resolved or settled.

If the funeral establishment, cemetery, mortuary, or crematory retains the remains for final disposition while the parties are in disagreement, it may embalm or refrigerate and shelter the body, or both, while awaiting the final decision of the probate court and may add the cost of embalming or refrigeration and sheltering to the cost of final disposition.

If a funeral establishment, cemetery, mortuary, or crematory brings an action under this section, it may add the legal fees and court costs associated with a petition under this section to the cost of final disposition.

This section shall not be construed to require or impose a duty upon a funeral establishment, cemetery, mortuary, or crematory to bring an action under this section.

A funeral establishment, cemetery, mortuary, or crematory and its officers, directors, managers, members, partners, or employees may not be held criminally or civilly liable for choosing not to bring an action under this section.

§ -8 Right to rely on representations. (a) Any person signing a funeral service agreement, cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of, and the party's authority to order the disposition.

(b) A funeral establishment, cemetery, mortuary, or crematory shall have the right to rely on the funeral service agreement, cremation authorization form, or any other authorization form, including the identification of the decedent, and shall have the authority to carry out the instructions of the person or persons whom the funeral establishment, cemetery, mortuary, or crematory reasonably believes to hold the right of disposition.

(c) The funeral establishment, cemetery, mortuary, or crematory shall have no responsibility to verify the identity of the decedent or contact or independently investigate the existence of any person who may have a right of disposition. If there is more than one person in the same priority class pursuant to section -4 and the funeral establishment, cemetery, mortuary, or crematory has no knowledge of any objection by other members of the priority class, it may rely on and act according to the instructions of the first person in the priority class to make funeral and disposition arrangements; provided that no other person in the priority class provides written notice to the funeral establishment, cemetery, mortuary, or crematory of that person's objections.

§ -9 Authority to direct and control disposition; recovery of reasonable expenses. (a) A funeral director or manager of a funeral establishment, cemetery,

mortuary, or crematory shall have complete authority to direct and control the final disposition and disposal of a decedent's remains and to proceed under this chapter to recover reasonable charges for the final disposition and disposal if:

- (1) The funeral director or manager:
 - (A) Has no knowledge that any of the persons described in section -4(a)(1) through -(10) exist;
 - (B) Has knowledge that the person or persons who may or do have the right of disposition cannot be found after reasonable inquiry or reasonable attempts to contact; or
 - (C) Has knowledge that the person or persons who may or do have the right of disposition have lost this right pursuant to section -6; and
 - (2) The appropriate public authority fails to assume responsibility for disposition of the remains within thirty-six hours after having been given written notice of the decedent's death. Written notice may be given by hand delivery, certified mail, facsimile transmission, or electronic mail transmission.
- (b) Disposal of the decedent's remains pursuant to this section shall be by any means that are not prohibited by law.

§ -10 Disposition of unclaimed cremated remains. Whenever any cremated remains have been in the lawful possession of any funeral establishment, cemetery, mortuary, or crematory for sixty or more days, and the person entitled under law to the right of disposition fails, neglects, or refuses to take custody of the cremated remains or direct the disposition, the funeral establishment, cemetery, mortuary, or crematory with lawful possession of the cremated remains may dispose of the remains by any manner that is not inconsistent with any law of the State.

§ -11 Immunity. No funeral establishment, cemetery, mortuary, or crematory or any of its officers, directors, members, partners, funeral directors, managers, or employees who reasonably rely in good faith upon the instructions of an individual claiming the right of disposition shall be subject to criminal or civil liability or administrative or disciplinary action for carrying out the disposition of the remains in accordance with the instructions."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. This Act shall take effect upon its approval.
(Approved April 16, 2013.)