

Enrolled
House Bill 3163

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to delegation of authority to direct the manner of disposition of remains; amending ORS 97.130; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 97.130 is amended to read:

97.130. (1) Any individual of sound mind who is 18 years of age or older, by completion of a written signed instrument or by preparing or prearranging with any funeral service practitioner licensed under ORS chapter 692, may direct any lawful manner of disposition of the individual's remains. Except as provided under subsection (6) of this section, disposition directions or disposition prearrangements that are prepaid or that are filed with a funeral service practitioner licensed under ORS chapter 692 *[shall not be]* **are not** subject to cancellation or substantial revision.

(2) A person within the first applicable listed class among the following listed classes that is available at the time of death *[or]*, in the absence of actual notice of a contrary direction by the decedent as described under subsection (1) of this section or actual notice of opposition by completion of a written instrument by a member of the same class or a member of a prior class, may direct any lawful manner of disposition of a decedent's remains by completion of a written instrument:

- (a) The spouse of the decedent.
- (b) A son or daughter of the decedent 18 years of age or older.
- (c) Either parent of the decedent.
- (d) A brother or sister of the decedent 18 years of age or older.
- (e) A guardian of the decedent at the time of death.
- (f) A person in the next degree of kindred to the decedent.
- (g) The personal representative of the estate of the decedent.
- (h) The person nominated as the personal representative of the decedent in the decedent's last will.
- (i) A public health officer.

(3)(a) The decedent or any person authorized in subsection (2) of this section to direct the manner of disposition of the decedent's remains may delegate such authority to any person 18 years of age or older.

(b) *[Such]* Delegation *[shall]* **of the authority to direct the manner of disposition of remains must** be made by completion of:

- (A) The written instrument described in subsection (7) of this section*[,]*; **or**

(B) A written instrument recognized by the Armed Forces of the United States, as that term is defined in ORS 348.282, if the decedent died while serving in the Armed Forces of the United States.

(c) The person to whom the authority is delegated [*shall have*] **has** the same authority under subsection (2) of this section as the person delegating the authority.

(4) If a decedent or the decedent's designee issues more than one authorization or direction for the disposal of the decedent's remains, only the most recent authorization or direction [*shall be*] **is** binding.

(5) A donation of anatomical gifts under ORS 97.951 to 97.982 [*shall take*] **takes** priority over directions for the disposition of a decedent's remains under this section only if the person making the donation is of a priority under subsection (1) or (2) of this section the same as or higher than the priority of the person directing the disposition of the remains.

(6) If the decedent directs a disposition under subsection (1) of this section and those financially responsible for the disposition are without sufficient funds to pay for such disposition or the estate of the decedent has insufficient funds to pay for the disposition, or if the direction is unlawful, the direction [*shall be*] **is** void and disposition shall be in accordance with the direction provided by [*those persons*] **the person** given priority in subsection (2) of this section and who [*agree*] **agrees** to be financially responsible.

(7) The signature of the individual [*shall be*] **delegating the authority to direct the manner of disposition is** required for the completion of the written instrument required in subsection (3)(b)(A) of this section. The following form or a form substantially similar shall be used by all individuals:

APPOINTMENT OF PERSON
TO MAKE DECISIONS
CONCERNING DISPOSITION
OF REMAINS

I, _____, appoint _____, whose address is _____ and whose telephone number is (____) _____, as the person to make all decisions regarding the disposition of my remains upon my death for my burial or cremation. In the event _____ is unable to act, I appoint _____, whose address is _____ and whose telephone number is (____) _____, as my alternate person to make all decisions regarding the disposition of my remains upon my death for my burial or cremation.

It is my intent that this Appointment of Person to Make Decisions Concerning Disposition of Remains act as and be accepted as the written authorization presently required by ORS 97.130 (or its corresponding future provisions) or any other provision of Oregon Law, authorizing me to name a person to have authority to dispose of my remains.

DATED this ____ day of _____, _____.

(Signature)

DECLARATION OF WITNESSES

We declare that _____ is personally known to us, that he/she signed this Appointment of Person to Make Decisions Concerning Disposition of Remains in our presence, that he/she appeared to be of sound mind and not acting under duress, fraud or undue influence, and that neither of us is the person so appointed by this document.

Witnessed By:

_____ Date: _____

Witnessed By:

_____ Date: _____

(8) Subject to the provisions of ORS 97.951 to 97.982, if disposition of the remains of a decedent has not been directed and authorized under this section within 10 days after the date of the death of the decedent, a public health officer may direct and authorize disposition of the remains.

(9) Notwithstanding subsection (2) of this section, a person arrested for or charged with criminal homicide by reason of the death of the decedent may not direct the disposition of the decedent's remains. The disposition of the decedent's remains shall be made in accordance with the directions of an eligible person within the first applicable class established under subsection (2) of this section.

SECTION 2. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House March 30, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 16, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State