

Senate Bill 31

Sponsored by Senator MONROE (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that person in possession of cremated remains has right to direct manner of disposition of remains in person's possession.

Provides that cemetery authority is not liable for disposition of cremated remains made with consent of person who physically possesses remains or for disposition of cremated remains scattered at cemetery without knowledge of cemetery authority.

Provides that person who had possession and authorized interment of cremated remains may authorize disinterment.

A BILL FOR AN ACT

1
2 Relating to the disposition of cremated remains; amending ORS 97.130, 97.150, 97.220 and 114.305.

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

4 **SECTION 1.** ORS 97.130 is amended to read:

5 97.130. (1) Any individual of sound mind who is 18 years of age or older, by completion of a
6 written signed instrument or by preparing or prearranging with any funeral service practitioner li-
7 censed under ORS chapter 692, may direct any lawful manner of disposition of the individual's re-
8 mains. Except as provided under subsection (6) of this section, disposition directions or disposition
9 prearrangements that are prepaid or that are filed with a funeral service practitioner licensed under
10 ORS chapter 692 shall not be subject to cancellation or substantial revision.

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

17 (a) The spouse of the decedent.

18 (b) A son or daughter of the decedent 18 years of age or older.

19 (c) Either parent of the decedent.

20 (d) A brother or sister of the decedent 18 years of age or older.

21 (e) A guardian of the decedent at the time of death.

22 (f) A person in the next degree of kindred to the decedent.

23 (g) The personal representative of the estate of the decedent.

24 (h) The person nominated as the personal representative of the decedent in the decedent's last
25 will.

26 (i) A public health officer.

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 or older. Such delegation shall be made by completion of the written instrument described in sub-
2 section (7) of this section. The person to whom the authority is delegated shall have the same au-
3 thority under subsection (2) of this section as the person delegating the authority.

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

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

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

16 (7) The signature of the individual shall be required for the completion of the written instrument
17 required in subsection (3) of this section. The following form or a form substantially similar shall
18 be used by all individuals:

19 _____

20
21 APPOINTMENT OF PERSON
22 TO MAKE DECISIONS
23 CONCERNING DISPOSITION
24 OF REMAINS

25 I, _____, appoint _____, whose address is
26 _____ and whose telephone number is (____) _____, as the person
27 to make all decisions regarding the disposition of my remains upon my death for my burial or
28 cremation. In the event _____ is unable to act, I appoint _____,
29 whose address is _____ and whose telephone number is (____)
30 _____, as my alternate person to make all decisions regarding the disposition of my re-
31 mains upon my death for my burial or cremation.

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

36 DATED this ____ day of _____, _____.

37 _____
38 (Signature)
39

40 DECLARATION OF WITNESSES

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

45

1 Witnessed By:
2 _____ Date: _____

3 Witnessed By:
4 _____ Date: _____

5 _____
6

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

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

14 **(10) Notwithstanding subsections (2) and (3) of this section, if the person who has the**
15 **authority to direct the manner of disposition of cremated remains pursuant to subsection (1)**
16 **or (2) of this section transfers any portion of the cremated remains to another person, the**
17 **recipient of the cremated remains has the authority to direct the manner of disposition of**
18 **the cremated remains in the recipient's possession.**

19 **SECTION 2.** ORS 97.150 is amended to read:

20 97.150. (1)(a) If the cemetery authority, crematory operator or licensed funeral service practi-
21 tioner has been authorized to cremate remains of a decedent pursuant to ORS 97.130, the authori-
22 zation [shall] **must** also contain further instructions to the cemetery authority, crematory operator
23 or licensed funeral service practitioner as to the final disposition of the cremated remains.

24 (b) If the cremated remains are left in the possession of the cemetery authority, crematory op-
25 erator or licensed funeral service practitioner and no [such] instructions **for final disposition** are
26 given to the cemetery authority, crematory operator or licensed funeral service practitioner within
27 180 days after the date of cremation, the cemetery authority, crematory operator or licensed funeral
28 service practitioner shall make a reasonable effort to notify the person[, pursuant to ORS 97.130,]
29 who has the [right to control the] **authority to direct** disposition of the cremated remains **under**
30 **ORS 97.130 (2)**. The notice [shall] **must** state that the cemetery authority, crematory operator or
31 licensed funeral service practitioner intends to dispose of the cremated remains unless [such] **the**
32 **person who has the authority to direct disposition of the cremated remains** gives instructions
33 to the contrary to the cemetery authority, crematory operator or licensed funeral service practi-
34 tioner within 30 days [of] **after** the date of [such] **the** notice [from the cemetery authority, crematory
35 operator or licensed funeral service practitioner].

36 (c) Reasonable effort to notify [shall include] **includes**, but [not be] **is not** limited to, notice,
37 **delivered** personally or by certified mail, return receipt requested, to the person who has the [right
38 to control the] **authority to direct** disposition of the cremated remains at the address of [such] **the**
39 person in the records of the cemetery authority, crematory operator or licensed funeral service
40 practitioner.

41 (d) **If the person who has the authority to direct the disposition of the cremated remains**
42 **has not given instructions for the** disposition of the cremated remains [has not been directed and
43 authorized by such person within said 30-day period] **within 30 days after the date of the notice**,
44 the cemetery authority, crematory operator or licensed funeral service practitioner may dispose of
45 the cremated remains as is legally practicable.

1 (2) [No] A cemetery authority, crematory operator or licensed funeral service practitioner [shall
 2 be] **is not** liable[, and no action shall lie against any cemetery authority, crematory operator or licensed
 3 funeral service practitioner] **in any civil or criminal proceeding** relating to [any] cremated remains
 4 that have been left in [its] **the possession of the cemetery authority, crematory operator or li-**
 5 **icensed funeral service practitioner** for a period of 180 days **or more** unless:

6 (a) The cemetery authority, crematory operator or licensed funeral service practitioner has
 7 failed to make [such] **a** reasonable effort to notify the person **who has the authority to direct**
 8 **disposition of the cremated remains** as described in subsection (1) of this section [or unless];

9 (b) A written contract has been entered into with the cemetery authority, crematory operator
 10 or licensed funeral service practitioner for [their] **care of the cremated remains**; or [unless]

11 (c) Permanent interment has been made.

12 (3) **A cemetery authority is not liable in any civil or criminal proceeding relating to**
 13 **cremated remains that have been interred, scattered, placed in an ossuary or disposed of in**
 14 **any other manner within the cemetery if the person who physically possesses the cremated**
 15 **remains consents to the disposition.**

16 (4) **A cemetery authority is not liable in any civil or criminal proceeding relating to**
 17 **cremated remains that have been scattered within the cemetery without the knowledge of**
 18 **the cemetery authority. The cemetery authority may dispose of cremated remains that have**
 19 **been scattered within the cemetery without the knowledge of the cemetery authority as is**
 20 **legally practicable.**

21 (5) If the cemetery authority, crematory operator or licensed funeral service practitioner has
 22 complied with this section, then the cemetery authority, crematory operator or licensed funeral
 23 service practitioner may dispose of the remains as is legally practicable.

24 **SECTION 3.** ORS 97.220 is amended to read:

25 97.220. (1) The remains of a deceased person interred in a plot in a cemetery may be removed
 26 from the plot with the consent of the cemetery authority and written consent of:

27 (a) The person under ORS 97.130 (2)(a), (b) or (c) who has the [right to control the] **authority**
 28 **to direct** disposition of the remains of the deceased person; **or**

29 (b) **If the remains are cremated remains, the person who had possession of the cremated**
 30 **remains and authorized the interment of the cremated remains.**

31 (2) If the consent of [any such] **a person described in subsection (1) of this section** or of the
 32 cemetery authority cannot be obtained, permission by the county court **of the county** where the
 33 cemetery is situated is sufficient. Notice of application to the court for such permission must be
 34 given at least 60 days prior thereto, personally or by mail, to the cemetery authority, to the person
 35 not consenting and to every other person or authority on whom service of notice is required by the
 36 county court.

37 [(2)] (3) If the payment for the purchase of an interment space [becomes] **is** past due [and so re-
 38 mains] for a period of 90 days **or more**, this section does not apply to or prohibit the removal of
 39 any remains from one plot to another in the same cemetery or the removal of remains by the cem-
 40 etery authority from a plot to some other suitable place.

41 [(3)] (4) This section does not apply to the disinterment of remains upon order of court or if
 42 ordered under the provisions of ORS 146.045 (3)(e).

43 **SECTION 4.** ORS 114.305 is amended to read:

44 114.305. Subject to the provisions of ORS 97.130 (2) **and (10)** and except as restricted or other-
 45 wise provided by the will of the decedent, a document of anatomical gift under ORS 97.965 or by

1 court order, a personal representative, acting reasonably for the benefit of interested persons, is
2 authorized to:

3 (1) Direct and authorize disposition of the remains of the decedent pursuant to ORS 97.130 and
4 incur expenses for the funeral, burial or other disposition of the remains in a manner suitable to the
5 condition in life of the decedent. Only those funeral expenses necessary for a plain and decent fu-
6 neral and disposition of the remains of the decedent may be paid from the estate if the assets are
7 insufficient to pay the claims of the Department of Human Services for the net amount of public
8 assistance, as defined in ORS 411.010, paid to or for the decedent and for care and maintenance of
9 any decedent who was at a state institution to the extent provided in ORS 179.610 to 179.770.

10 (2) Retain assets owned by the decedent pending distribution or liquidation.

11 (3) Receive assets from fiduciaries or other sources.

12 (4) Complete, compromise or refuse performance of contracts of the decedent that continue as
13 obligations of the estate, as the personal representative may determine under the circumstances. In
14 performing enforceable contracts by the decedent to convey or lease real property, the personal
15 representative, among other courses of action, may:

16 (a) Execute and deliver a deed upon satisfaction of any sum remaining unpaid or upon receipt
17 of the note of the purchaser adequately secured; or

18 (b) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with
19 the escrow agreement, be paid to the successors of the decedent, as designated in the escrow
20 agreement.

21 (5) Satisfy written pledges of the decedent for contributions, whether or not the pledges consti-
22 tuted binding obligations of the decedent or were properly presented as claims.

23 (6) Deposit funds not needed to meet currently payable debts and expenses, and not immediately
24 distributable, in bank or savings and loan association accounts, or invest the funds in bank or
25 savings and loan association certificates of deposit, or federally regulated money-market funds and
26 short-term investment funds suitable for investment by trustees under ORS 130.750 to 130.775, or
27 short-term United States Government obligations.

28 (7) Abandon burdensome property when it is valueless, or is so encumbered or is in a condition
29 that it is of no benefit to the estate.

30 (8) Vote stocks or other securities in person or by general or limited proxy.

31 (9) Pay calls, assessments and other sums chargeable or accruing against or on account of se-
32 curities.

33 (10) Sell or exercise stock subscription or conversion rights.

34 (11) Consent, directly or through a committee or other agent, to the reorganization, consol-
35 idation, merger, dissolution or liquidation of a corporation or other business enterprise.

36 (12) Hold a security in the name of a nominee or in other form without disclosure of the interest
37 of the estate, but the personal representative is liable for any act of the nominee in connection with
38 the security so held.

39 (13) Insure the assets of the estate against damage and loss, and insure the personal represen-
40 tative against liability to third persons.

41 (14) Advance or borrow money with or without security.

42 (15) Compromise, extend, renew or otherwise modify an obligation owing to the estate. A per-
43 sonal representative who holds a mortgage, pledge, lien or other security interest may accept a
44 conveyance or transfer of the encumbered asset in lieu of foreclosure in full or partial satisfaction
45 of the indebtedness.

- 1 (16) Accept other real property in part payment of the purchase price of real property sold by
2 the personal representative.
- 3 (17) Pay taxes, assessments and expenses incident to the administration of the estate.
- 4 (18) Employ qualified persons, including attorneys, accountants and investment advisers, to ad-
5 vise and assist the personal representative and to perform acts of administration, whether or not
6 discretionary, on behalf of the personal representative.
- 7 (19) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of
8 the estate and of the personal representative in the performance of duties as personal represen-
9 tative.
- 10 (20) Prosecute claims of the decedent including those for personal injury or wrongful death.
- 11 (21) Continue any business or venture in which the decedent was engaged at the time of death
12 to preserve the value of the business or venture.
- 13 (22) Incorporate or otherwise change the business form of any business or venture in which the
14 decedent was engaged at the time of death.
- 15 (23) Discontinue and wind up any business or venture in which the decedent was engaged at the
16 time of death.
- 17 (24) Provide for exoneration of the personal representative from personal liability in any con-
18 tract entered into on behalf of the estate.
- 19 (25) Satisfy and settle claims and distribute the estate as provided in ORS chapters 111, 112, 113,
20 114, 115, 116 and 117.
- 21 (26) Perform all other acts required or permitted by law or by the will of the decedent.
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