

JAN 18 2013

A BILL FOR AN ACT

RELATING TO DISPOSITION OF REMAINS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

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

10 The purpose of this Act is to:

- 11 (1) Determine the priority of the persons who may direct
12 the disposition of a decedent's remains and the
13 arrangements for funeral goods and services;
- 14 (2) Permit funeral establishments, cemeteries, mortuaries,
15 and crematories to rely and act upon written
16 directions from the decedent or persons who have the
17 right of disposition without liability; and



1 (3) Permit funeral establishments, cemeteries, mortuaries,
2 and crematories to control the disposition and dispose
3 of a decedent's remains in certain circumstances.

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

7 "CHAPTER

8 DISPOSITION OF REMAINS

9 § -1 **Short title.** This chapter shall be known and may
10 be cited as the Disposition of Remains Act.

11 § -2 **Definitions.** As used in this chapter:

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

19 "Crematory" means a structure containing a furnace used or
20 intended to be used for the cremation of human remains.

21 "Estranged" means a physical and emotional separation from
22 the decedent at the time of death which has existed for a period



1 of time that clearly demonstrates an absence of due affection,
2 trust, and regard for the decedent.

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

7 "Mortuary" means a place of business devoted exclusively to
8 furnishing funeral services and related commodities.

9 "Person" means an individual eighteen years of age or
10 older.

11 § -3 **Direction for disposition.** A person may provide
12 written directions for the location, manner, and conditions of
13 disposition of the person's remains in a testamentary
14 disposition, in a pre-need contract pursuant to chapter 441, or
15 by any written document signed by the person and notarized. The
16 written directions may also include arrangements for funeral
17 goods and services to be provided upon that person's death and
18 shall take precedence over wishes or other direction by any
19 other person.

20 § -4 **Right to control disposition; priority.** (a)
21 Unless a decedent has left directions in writing for the
22 disposition of remains pursuant to section -3 or -5 or a



1 person has forfeited the right of disposition pursuant to
2 section -6, the following persons, in the priority listed,
3 have the right to control the disposition of the decedent's
4 remains and the location, manner, and conditions of disposition
5 of the decedent's remains:

- 6 (1) A person designated by the decedent in a testamentary
7 disposition or a written instrument executed in
8 accordance with section -5;
- 9 (2) The surviving spouse, if the decedent was legally
10 married at the time of death; the surviving partner,
11 as defined in section 572B-1, if the decedent had
12 legally entered into a civil union at the time of
13 death; or the surviving reciprocal beneficiary, as
14 defined in section 572C-3, if the decedent was in a
15 reciprocal beneficiary relationship at the time of
16 death;
- 17 (3) The sole surviving child of the decedent, or if there
18 is more than one surviving child, the majority of the
19 surviving children. Less than the majority of the
20 surviving children shall be vested with the rights and
21 duties of this section if they have used reasonable
22 efforts to notify all other surviving children and the



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

4 (4) The surviving parent or parents of the decedent. Only
5 one surviving parent shall be vested with the rights
6 and duties of this section if that surviving parent
7 used reasonable efforts to notify the other surviving
8 parent and the other surviving parent cannot be
9 located or has not responded within five days of the
10 notification of the decedent's death;

11 (5) The surviving sibling of the decedent, or if there is
12 more than one surviving sibling, the majority of the
13 surviving siblings. Less than the majority of the
14 surviving siblings shall be vested with the rights and
15 duties of this section if they have used reasonable
16 efforts to notify all other surviving siblings and the
17 other surviving siblings cannot be located or have not
18 responded within five days of the notification of the
19 decedent's death;

20 (6) The surviving grandparent of the decedent, or if there
21 is more than one surviving grandparent, the majority
22 of the surviving grandparents. Less than the majority



1 of the surviving grandparents shall be vested with the
2 rights and duties of this section if they have used
3 reasonable efforts to notify all other surviving
4 grandparents and the other surviving grandparents
5 cannot be located or have not responded within five
6 days of the notification of the decedent's death;

7 (7) The surviving grandchild of the decedent, or if there
8 is more than one surviving grandchild, the majority of
9 the surviving grandchildren. Less than the majority
10 of the surviving grandchildren shall be vested with
11 the rights and duties of this section if they have
12 used reasonable efforts to notify all other surviving
13 grandchildren and the other surviving grandchildren
14 cannot be located or have not responded within five
15 days of the notification of the decedent's death;

16 (8) The guardian of the decedent at the time of the
17 decedent's death, if one had been appointed;

18 (9) The personal representative of the estate of the
19 decedent;

20 (10) The person in the next degree of kinship to the
21 decedent, in descending order, subject to descent and
22 distribution under the laws of succession of the



1 State. If there is more than one person of the same
2 degree of kinship to the decedent, any person of that
3 degree may exercise the right of disposition;

4 (11) If the disposition of the remains of the decedent is
5 the responsibility of the State or a political
6 subdivision of the State, the public officer,
7 administrator, or employee responsible for arranging
8 the final disposition of decedent's remains; and

9 (12) In the absence of any person under paragraphs (1)
10 through (10) of this section, any other person willing
11 to assume the responsibilities to act and arrange the
12 final disposition of the decedent's remains, after
13 attesting in writing that a good faith effort has been
14 made to notify the individuals under paragraphs (1)
15 through (10) of the decedent's death, and no persons
16 have agreed to assume the responsibilities or have
17 responded within five days of the notification.

18 (b) If a United States Department of Defense Record of
19 Emergency Data, DD Form 93, or its successor form, was in effect
20 at the time of death for a decedent who died in a manner
21 described by title 10 United States Code sections 1481(a) (1)
22 through (8), the DD Form 93 controls any other written



1 instrument described in section -3 or -5 with respect to
2 designating a person to control the disposition of the
3 decedent's remains. Notwithstanding section -3 or -5, the
4 form is legally sufficient if it is properly completed, signed
5 by the decedent, and witnessed in the manner required by the
6 form.

7 § -5 **Written instrument to control disposition of**
8 **remains.** A person who wishes to authorize another person to
9 control the disposition of remains and the arrangements for
10 funeral goods and services may execute a written instrument
11 before a notary public. The written instrument shall be in
12 substantially the following form:

13
14 "State of _____
15 County of _____
16

17 I, _____ do hereby designate _____ as the
18 sole person who will have the right to determine and decide the
19 disposition of my remains upon my death and the arrangements for
20 funeral goods and services. I ___ have/ ___ have not attached
21 specific directions concerning the disposition of my remains.

22 If I have attached specific directions, the designee shall



1 substantially comply with the specific directions, provided the
2 directions are lawful and there are sufficient resources in my
3 estate to carry out the directions.

4

5 SIGNATURE: Sign and date the form here:

6

7

(sign your name)

(date)

8

9

10

(print your name)

11

12 DECLARATION OF NOTARY:

13

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

17

18 Notary Seal

19

20

21

(Signature of Notary Public)"



1 § -6 Forfeiture of right to direct disposition. A
2 person entitled under law to the right of disposition shall
3 forfeit that right, and the right is passed on to the next
4 person in the order of priority as listed in section -4,
5 under the following circumstances:

6 (1) The person is charged with murder or manslaughter in
7 connection with the decedent's death, and the charges
8 are known to the funeral director or manager of the
9 funeral establishment, cemetery, mortuary, or
10 crematory; provided that if the charges against the
11 person are dismissed, or if the person is acquitted of
12 the charges, the right of disposition is returned to
13 that person, unless the dismissal or acquittal occurs
14 after the final disposition has been completed;

15 (2) The person does not exercise the person's right of
16 disposition within five days of notification of the
17 decedent's death or within seven days of the
18 decedent's death, whichever is earlier;

19 (3) The person and the decedent are spouses, civil union
20 partners, or reciprocal beneficiaries, and at the time
21 of the decedent's death, proceedings for annulment,
22 divorce, or separation had been initiated or a



1 declaration for termination of the reciprocal
2 beneficiary relationship had been filed; or

3 (4) The probate court pursuant to section -7 determines
4 that the person entitled to the right of disposition
5 and the decedent were estranged at the time of death.

6 § -7 **Disputes.** (a) Any dispute among any of the
7 persons listed in section -4 concerning the right of
8 disposition or priority shall be resolved by the probate court
9 for the county where the decedent resided. The probate court
10 may award the right of disposition to the person determined by
11 the court to be the most fit and appropriate to carry out the
12 right of disposition, and may make decisions regarding the
13 decedent's remains.

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

16 (1) If two or more persons with the same priority class
17 hold the right of disposition and cannot agree by
18 majority vote regarding the disposition of the
19 decedent's remains, or there are any persons who claim
20 to have priority over any other person, any of these
21 persons or a funeral establishment, cemetery,
22 mortuary, or crematory with custody of the remains may



1 file a petition asking the probate court to make a
2 determination in the matter; and

3 (2) In making a determination in a case where there are
4 two or more persons with the same priority class who
5 cannot agree by majority vote, the probate court may
6 consider the following:

7 (A) The reasonableness and practicality of the
8 proposed funeral arrangements and disposition;

9 (B) The degree of the personal relationship between
10 the decedent and each of the persons claiming the
11 right of disposition;

12 (C) The desires of the person or persons who are
13 ready, able, and willing to pay the cost of the
14 funeral arrangements and disposition;

15 (D) The convenience and needs of other families and
16 friends wishing to pay respects;

17 (E) The desires of the decedent; and

18 (F) The degree to which the funeral arrangements
19 would allow maximum participation by all wishing
20 to pay respect.

21 (c) In the event of a dispute regarding the right of
22 disposition, a funeral establishment, cemetery, mortuary, or



1 crematory shall not be liable for refusing to accept the
2 remains, to inter or otherwise dispose of the remains of the
3 decedent, or complete the arrangements for the final disposition
4 of the remains until it receives a court order or other written
5 agreement signed by the parties in the disagreement that the
6 dispute has been resolved or settled.

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

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

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

20 A funeral establishment, cemetery, mortuary, or crematory
21 and its officers, directors, managers, members, partners, or



1 employees may not be held criminally or civilly liable for
2 choosing not to bring an action under this section.

3 § -8 **Right to rely on representations.** (a) Any person
4 signing a funeral service agreement, cremation authorization
5 form, or any other authorization for disposition shall be deemed
6 to warrant the truthfulness of any facts set forth therein,
7 including the identity of the decedent whose remains are to be
8 buried, cremated, or otherwise disposed of, and the party's
9 authority to order the disposition.

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

18 (c) The funeral establishment, cemetery, mortuary, or
19 crematory shall have no responsibility to verify the identity of
20 the decedent or contact or independently investigate the
21 existence of any person who may have a right of disposition. If
22 there is more than one person in the same priority class



1 pursuant to section -4 and the funeral establishment,
2 cemetery, mortuary, or crematory has no knowledge of any
3 objection by other members of the priority class, it shall rely
4 on and act according to the instructions of the first person in
5 the priority class to make funeral and disposition arrangements;
6 provided that no other person in the priority class provides
7 written notice to the funeral establishment, cemetery, mortuary,
8 or crematory of that person's objections.

9 § -9 Authority to direct and control disposition;
10 recovery of reasonable expenses. (a) A funeral director or
11 manager of a funeral establishment, cemetery, mortuary, or
12 crematory shall have complete authority to direct and control
13 the final disposition and disposal of a decedent's remains and
14 to proceed under this chapter to recover reasonable charges for
15 the final disposition and disposal if:

- 16 (1) The funeral director or manager:
- 17 (A) Has no knowledge that any of the persons
18 described in section -4(a)(1) through -(10)
19 exist;
- 20 (B) Has knowledge that the person or persons who may
21 or do have the right of disposition cannot be



1 found after reasonable inquiry or reasonable
2 attempts to contact; or

3 (C) Has knowledge that the person or persons who may
4 or do have the right of disposition have lost
5 this right pursuant to section -6; and

6 (2) The appropriate public authority fails to assume
7 responsibility for disposition of the remains within
8 thirty-six hours after having been given written
9 notice of the decedent's death. Written notice may be
10 given by hand delivery, certified mail, facsimile
11 transmission, or electronic mail transmission.

12 (b) Disposal of the decedent's remains pursuant to this
13 section shall be by any means that are not prohibited by law.

14 § -10 **Disposition of unclaimed cremated remains.**

15 Whenever any cremated remains have been in the lawful possession
16 of any funeral establishment, cemetery, mortuary, or crematory
17 for sixty or more days, and the person entitled under law to the
18 right of disposition fails, neglects, or refuses to take custody
19 of the cremated remains or direct the disposition, the funeral
20 establishment, cemetery, mortuary, or crematory with lawful
21 possession of the cremated remains may dispose of the remains by
22 any manner that is not inconsistent with any law of the State.



1 § -11 Immunity. No funeral establishment, cemetery,
 2 mortuary, or crematory or any of its officers, directors,
 3 members, partners, funeral directors, managers, or employees who
 4 rely in good faith upon the instructions of an individual
 5 claiming the right of disposition shall be subject to criminal
 6 or civil liability or administrative or disciplinary action for
 7 carrying out the disposition of the remains in accordance with
 8 the instructions."

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

12 SECTION 4. This Act shall take effect upon its approval.
 13

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S.B. NO. 341

Report Title:

Dispositions of Remains; Right of Disposition

Description:

Establishes the disposition of remains act. Determines the priority of the persons who may direct the disposition of a decedent's remains and the arrangements for funeral goods and services; permits 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 and control the disposition and dispose of a decedent's remains in certain circumstances.

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