



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB2673

Introduced 1/20/2006, by Sen. Kwame Raoul

SYNOPSIS AS INTRODUCED:

755 ILCS 65/5
755 ILCS 65/10
755 ILCS 65/15
755 ILCS 65/40

Amends the Disposition of Remains Act. Provides that the person designated pursuant to Article IV of the Illinois Power of Attorney Act in a durable power of attorney for health care is added, in second place, to the prioritized list of those persons who have the right to control the disposition, including cremation, of the decedent's remains and who are liable for the costs of the disposition.

LRB094 18964 LCT 54429 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Disposition of Remains Act is amended by
5 changing Sections 5, 10, 15, and 40 as follows:

6 (755 ILCS 65/5)

7 Sec. 5. Right to control disposition; priority. Unless a
8 decedent has left directions in writing for the disposition of
9 the decedent's remains as provided in Section 65 of the
10 Crematory Regulation Act or in subsection (a) of Section 40 of
11 this Act, the following persons, in the priority listed, have
12 the right to control the disposition, including cremation, of
13 the decedent's remains and are liable for the reasonable costs
14 of the disposition:

15 (1) the person designated in a written instrument that
16 satisfies the provisions of Sections 10 and 15 of this Act;

17 (2) the person designated as agent or attorney-in-fact
18 in a written instrument that satisfies the provisions of
19 Article IV-Powers of Attorney for Health Care of the
20 Illinois Power of Attorney Act;

21 (3) ~~(2)~~ any person serving as executor or legal
22 representative of the decedent's estate and acting
23 according to the decedent's written instructions contained
24 in the decedent's will;

25 (4) ~~(3)~~ the individual who was the spouse of the
26 decedent at the time of the decedent's death;

27 (5) ~~(4)~~ the sole surviving competent adult child of the
28 decedent, or if there is more than one surviving competent
29 adult child of the decedent, the majority of the surviving
30 competent adult children; however, less than one-half of
31 the surviving adult children shall be vested with the
32 rights and duties of this Section if they have used

1 reasonable efforts to notify all other surviving competent
2 adult children of their instructions and are not aware of
3 any opposition to those instructions on the part of more
4 than one-half of all surviving competent adult children;

5 (6) ~~(5)~~ the surviving competent parents of the
6 decedent; if one of the surviving competent parents is
7 absent, the remaining competent parent shall be vested with
8 the rights and duties of this Act after reasonable efforts
9 have been unsuccessful in locating the absent surviving
10 competent parent;

11 (7) ~~(6)~~ the surviving competent adult person or persons
12 respectively in the next degrees of kindred or, if there is
13 more than one surviving competent adult person of the same
14 degree of kindred, the majority of those persons; less than
15 the majority of surviving competent adult persons of the
16 same degree of kindred shall be vested with the rights and
17 duties of this Act if those persons have used reasonable
18 efforts to notify all other surviving competent adult
19 persons of the same degree of kindred of their instructions
20 and are not aware of any opposition to those instructions
21 on the part of one-half or more of all surviving competent
22 adult persons of the same degree of kindred;

23 (8) ~~(7)~~ in the case of indigents or any other
24 individuals whose final disposition is the responsibility
25 of the State or any of its instrumentalities, a public
26 administrator, medical examiner, coroner, State appointed
27 guardian, or any other public official charged with
28 arranging the final disposition of the decedent;

29 (9) ~~(8)~~ in the case of individuals who have donated
30 their bodies to science, or whose death occurred in a
31 nursing home or other private institution, who have
32 executed cremation authorization forms under Section 65 of
33 the Crematory Regulation Act and the institution is charged
34 with making arrangements for the final disposition of the
35 decedent, a representative of the institution; or

36 (10) ~~(9)~~ any other person or organization that is

1 willing to assume legal and financial responsibility.

2 As used in Section, "adult" means any individual who has
3 reached his or her eighteenth birthday.

4 (Source: P.A. 94-561, eff. 1-1-06.)

5 (755 ILCS 65/10)

6 Sec. 10. Form. The written instrument authorizing the
7 disposition of remains under paragraph (1) of Section 5 of this
8 Act shall be in substantially the following form:

9 "APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

10 I,, being of sound
11 mind, willfully and voluntarily make known my desire that,
12 upon my death, the disposition of my remains shall be
13 controlled by (name of agent first
14 named below) and, with respect to that subject only, I
15 hereby appoint such person as my agent (attorney-in-fact).
16 All decisions made by my agent with respect to the
17 disposition of my remains, including cremation, shall be
18 binding.

19 SPECIAL DIRECTIONS:

20 Set forth below are any special directions limiting
21 the power granted to my agent:

22
23
24

25 If the disposition of my remains is by cremation, then:

26 () I do not wish to allow any of my survivors the option of
27 canceling my cremation and selecting alternative arrangements,
28 regardless of whether my survivors deem a change to be
29 appropriate.

1 () I wish to allow only the survivors I have designated below
2 the option of canceling my cremation and selecting alternative
3 arrangements, if they deem a change to be appropriate:

4
5
6

7 AGENT:

8 Name:

9 Address:

10 Telephone Number:

11 Signature Indicating Acceptance of Appointment:

12

13 ~~Signature of Agent:~~

14 Date of Signature:

15 SUCCESSORS:

16 If my agent dies, becomes legally disabled, resigns, or
17 refuses to act, I hereby appoint the following persons
18 (each to act alone and successively, in the order named) to
19 serve as my agent (attorney-in-fact) to control the
20 disposition of my remains as authorized by this document:

21 1. First Successor

22 Name:

23 Address:

24 Telephone Number:

25 Signature Indicating Acceptance of Appointment:

26 Date of Signature:

27 2. Second Successor

28 Name:

29 Address:

1 Telephone Number:

2 Signature Indicating Acceptance of Appointment:

3 Date of Signature:

4 ASSUMPTION:

5 THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS

6 APPOINTMENT, AGREES TO AND ASSUMES THE OBLIGATIONS

7 PROVIDED HEREIN.

8 DURATION:

9 This appointment becomes effective upon my death.

10 PRIOR APPOINTMENTS REVOKED:

11 I hereby revoke any prior appointment of any person to

12 control the disposition of my remains.

13 RELIANCE:

14 I hereby agree that any cemetery organization,

15 business operating a crematory or columbarium or both,

16 funeral director or embalmer, or funeral establishment who

17 receives a copy of this document may act under it. Any

18 modification or revocation of this document is not

19 effective as to any such party until that party receives

20 actual notice of the modification or revocation. No such

21 party shall be liable because of reliance on a copy of this

22 document.

23 ~~ASSUMPTION:~~

24 ~~THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS~~

25 ~~APPOINTMENT, AGREES TO AND ASSUMES THE OBLIGATIONS~~

26 ~~PROVIDED HEREIN.~~

27 Signed this day of,

1

2 STATE OF

3 COUNTY OF

4 BEFORE ME, the undersigned, a Notary Public, on this
5 day personally appeared, proved to me
6 on the basis of satisfactory evidence to be the person
7 whose name is subscribed to the foregoing instrument and
8 acknowledged to me that he/she executed the same for the
9 purposes and consideration therein expressed.

10 GIVEN UNDER MY HAND AND SEAL OF OFFICE this day
11 of, 2.....

12

13 Printed Name:

14 Notary Public, State of

15 My Commission Expires:

16".

17 (Source: P.A. 94-561, eff. 1-1-06.)

18 (755 ILCS 65/15)

19 Sec. 15. Requirements for written instrument under
20 paragraph (1) of Section 5 of this Act. A written instrument is
21 legally sufficient under paragraph (1) of Section 5 if the
22 wording of the instrument complies substantially with Section
23 10, the instrument is properly completed, the instrument is
24 signed by the decedent, the agent, and each successor agent,
25 and the signature of the decedent is notarized. The written
26 instrument may be modified or revoked only by a subsequent
27 written instrument that complies with this Section.

28 (Source: P.A. 94-561, eff. 1-1-06.)

1 (755 ILCS 65/40)

2 Sec. 40. Directions by decedent.

3 (a) A person may provide written directions for the
4 disposition, including cremation, of the person's remains in a
5 will, a prepaid funeral or burial contract, a cremation
6 authorization form that complies with the Crematory Regulation
7 Act, or in a written instrument that satisfies the provisions
8 of Sections 10 and 15 and that is signed by the person. ~~and~~
9 ~~notarized.~~ The directions may be modified or revoked only by a
10 subsequent writing signed by the person. ~~and notarized.~~ The
11 person otherwise entitled to control the disposition of a
12 decedent's remains under this Act shall faithfully carry out
13 the directions of the decedent to the extent that the
14 decedent's estate or the person controlling the disposition are
15 financially able to do so.

16 (b) If the directions are in a will, they shall be carried
17 out immediately without the necessity of probate. If the will
18 is not probated or is declared invalid for testamentary
19 purposes, the directions are valid to the extent to which they
20 have been acted on in good faith.

21 (Source: P.A. 94-561, eff. 1-1-06.)