House Engrossed

FILED

KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 137

HOUSE BILL 2400

AN ACT

AMENDING SECTION 36-831, ARIZONA REVISED STATUTES; RELATING TO BURIAL DUTIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 36-831, Arizona Revised Statutes, is amended to read:

36-831. Burial duties; notification requirements; failure to perform duty; definitions

A. Except as provided pursuant to subsection ~~H~~ I OR J of this section, the duty of burying the body of or providing other funeral and disposition arrangements for a dead person devolves in the following order:

1. If the dead person was married, on the surviving spouse unless:

(a) The dead person was legally separated from the person's spouse.

(b) A petition for divorce or for legal separation from the dead person's spouse was filed before the person's death and remains pending at the time of death.

2. The person who is designated as having power of attorney for the decedent in the decedent's most recent durable power of attorney.

3. If the dead person was a minor, on the parents.

4. On the adult children of the dead person.

5. On the dead person's parent.

6. On the dead person's adult sibling.

7. On the dead person's adult grandchild.

8. On the dead person's grandparent.

9. On an adult who exhibited special care and concern for the dead person.

10. On the person who was acting as the guardian of the person of the dead person at the time of death.

11. On any other person who has the authority to dispose of the dead person's body.

12. If none of the persons named in paragraphs 1 through ~~10~~ 11 of this subsection ~~are~~ IS financially capable of providing for the burial or other funeral and disposition arrangements, or cannot be located on reasonable inquiry, on any person or fraternal, charitable or religious organization willing to assume responsibility.

B. During a person's life, the person's family members that are listed in subsection A of this section may sign a waiver of decision making that waives their rights under this section relating to the disposition of the person's body when the person dies.

C. If none of the persons named in subsection A of this section is willing or financially able to bury or provide other funeral and disposition arrangements for a dead person, or if the person cannot be located after reasonable efforts have been made to do so, the county in which death occurs shall bury or place in a permanent care crypt the dead body or cremated remains of a dead body. If the decedent is known to be an honorably discharged veteran or the surviving spouse of an honorably discharged veteran, the county shall notify the veterans' administration or a local veteran's organization, or both, of the death and give that organization the

opportunity to provide for the person's burial or for other funeral and disposition arrangements. If the organization is unable to provide for the burial of the veteran or the surviving spouse, the county shall ensure that the decedent is properly interred and that burial is made in a veterans' cemetery or a portion of a cemetery that is designated for the burial of veterans and spouses of veterans.

D. If there is more than one member of a category listed in subsection A, paragraph 3, 4, 5, 6, 7, 8 or 9 of this section entitled to serve as the authorizing agent, final arrangements may be made by any member of that category unless that member knows of any objection by another member of the category. If an objection is known, final arrangements shall be made by a majority of the members of the category who are reasonably available.

E. If the county medical examiner or person performing the duties of the county medical examiner knows that the dead person is a member of a federally recognized Native American tribe located in this state, the county medical examiner or person performing the duties of the county medical examiner must notify the tribe and give the tribe the opportunity to provide for the person's burial or other funeral and disposition arrangements. If an autopsy is required by section 11-597, the county medical examiner or person performing the duties of the county medical examiner, if possible, shall complete the autopsy and return the remains to the federally recognized Native American tribe located in this state within four calendar days after the determined date of death.

F. A person on whom the duty prescribed in subsection A of this section is imposed who omits or is unwilling to perform that duty within a reasonable time or is prohibited from performing that duty under subsection ~~G~~ I of this section is liable to the person performing the duty in an amount of two times the expenses the person incurred in providing for the burial or other funeral and disposition arrangements. The person who performs this duty may recover this amount in a civil action.

G. Notwithstanding the probate requirements of title 14, if a county is required to bury a person pursuant to subsection ~~B~~ C of this section, the county may recover the burial costs from the decedent's estate. A financial institution in possession of monies in an account in the decedent's name must reimburse the county for the burial costs on presentation by the county of an affidavit that certifies:

1. The date of the decedent's death.

2. That, pursuant to this section, the county performed the decedent's burial.

3. The total burial costs incurred by the county.

H. A person, a corporation or an agency of government that provides for the burial or other funeral and disposition arrangements on the instructions of a person described in subsection A of this section is immune from civil liability:

1. For failing to honor the wishes of the decedent or the wishes of a person ~~having~~ WHO HAS a higher priority in subsection A or ~~B~~ C of this section if the person, corporation or agency of government was not aware, after reasonable inquiry, of the contrary wishes.

2. For refusing to follow conflicting directions of persons ~~having~~ WHO HAVE the same priority in subsection A of this section.

3. For following directions of a personal representative that are consistent with the written testamentary instructions of the decedent.

I. The duty to bury or to provide other funeral and disposition arrangements devolves to the next person in the order prescribed pursuant to subsection A of this section if the person who is otherwise responsible for performing this duty is charged with the criminal death of the person to whom the duty is owed. The person who performs this duty may recover costs as prescribed in subsection ~~E~~ F of this section. If the charges against the person on whom this duty originally fell are subsequently dismissed or are resolved in that person's favor on the merits, the person is responsible for only the actual costs.

J. IF THE DECEDENT DIED WHILE SERVING IN ANY BRANCH OF THE UNITED STATES ARMED FORCES, THE UNITED STATES RESERVE FORCES OR THE NATIONAL GUARD, AND COMPLETED A UNITED STATES DEPARTMENT OF DEFENSE RECORD OF EMERGENCY DATA, DD FORM 93, OR ITS SUCCESSOR FORM, THE DUTY TO BURY THE DECEDENT OR TO PROVIDE OTHER FUNERAL AND DISPOSITION ARRANGEMENTS FOR THE DECEDENT DEVOLVES ON THE PERSON AUTHORIZED BY THE DECEDENT PURSUANT TO THAT FORM.

~~J.~~ K. For the purposes of this section, "person" includes a natural person, a corporation, a company, a partnership, a firm, an association, a society, the United States, this state, any territory, state or country, an Arizona federally recognized Native American tribe, any political subdivision of this state or a public or private corporation or partnership or association.

~~K.~~ L. For the purposes of this article, "burial" includes cremation.

APPROVED BY THE GOVERNOR APRIL 23, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2010.