

2007 ASSEMBLY BILL 305

May 2, 2007 – Introduced by Representatives KERKMAN, SHERMAN, ALBERS, BERCEAU, BIES, BOYLE, GRONEMUS, HAHN, HEBL, JESKEWITZ, KLEEFISCH, KREUSER, MONTGOMERY, NYGREN, PARISI, SHERIDAN, TRAVIS, TURNER, VAN ROY and M. WILLIAMS, cosponsored by Senators MILLER, HANSEN, LEHMAN, OLSEN, RISSER, ROESSLER and SCHULTZ. Referred to Committee on State Affairs.

1 **AN ACT** *to renumber* 69.18 (4) (a) 1.; *to amend* 69.20 (2) (a) 2.; *to repeal and*
2 *recreate* chapter 154 (title); and *to create* 69.18 (4) (a) 1g. and subchapter IV
3 of chapter 154 [precedes 154.30] of the statutes; **relating to:** control of final
4 disposition of certain human remains and providing a penalty.

Analysis by the Legislative Reference Bureau

Currently, if the applicable assets of the estate of a decedent are insufficient to pay all claims and allowances in full, the personal representative for the decedent's estate must pay certain items under an order of priority that begins with the costs and expenses of administering the estate, followed by the reasonable funeral and burial expenses, and then other items.

This bill authorizes an individual who is of sound mind and at least 18 years of age to execute a written, witnessed document, termed an "authorization for final disposition" (authorization). This document may express the special directions, instructions concerning religious observances, and suggestions concerning the source of funds of the individual (declarant) for disposition of the declarant's body after death (final disposition), including arrangements for a viewing; a funeral ceremony, memorial service, graveside service, or other last rite; and burial, cremation and burial or other disposition, or donation of the declarant's body. The authorization must be signed voluntarily by the declarant in the presence of two witnesses or a notary public. An authorization requires a representative and one or more named successor representatives to carry out the directions, instructions, and suggestions of the declarant unless the directions, instructions, or suggestions

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exceed available resources from the decedent's estate or are unlawful or unless there is no realistic possibility of compliance. The bill specifies an authorization form, although a written document that meets certain requirements for an authorization need not follow this form. The Department of Health and Family Services must prepare and provide copies of the statutory form and certain other information for distribution to funeral directors, crematory authorities, cemetery authorities, hospitals, nursing homes, county clerks, and local bar associations, and individually to private persons, and may charge a reasonable fee for the preparation and distribution.

The bill specifies a list of individuals, in order of priority, who may control the disposition of the decedent's remains. The list includes, in order, the authorized representative of the decedent acting under the decedent's authorization or a successor representative, the decedent's surviving spouse, child, parent, and sibling, an individual in the next degree of kinship, the decedent's guardian of the person, and another individual who meets specified criteria. If individuals qualified on the same level of priority disagree concerning the final disposition, the bill specifies a process and criteria for determination by a probate court of the individual with control of final disposition. The bill provides civil and criminal immunities for a funeral director, crematory authority, or cemetery authority who refuses to accept the decedent's remains or inter or otherwise dispose of the remains or complete arrangements for final disposition, if individuals qualified on the same level of priority disagree, unless ordered by a probate court or unless presented with a written agreement of the individuals. A funeral director, crematory authority, or cemetery authority that retains the decedent's remains during such a dispute may add the costs of the retention to final disposition costs. The bill also provides a funeral director, crematory authority, or cemetery authority with civil or criminal immunity for certain actions in good faith reliance on instructions from an individual who claims priority.

The bill prohibits control of final disposition by any of the individuals specified in the prioritized list if the individual has been charged with any of several crimes in connection with the decedent's death, except that, if the charges have been dismissed or the individual has been found not guilty, the individual is restored to his or her level of priority in the list for control of final disposition. The bill also prohibits control of final disposition by an authorized individual who fails to exercise authorization within two days after notification of the decedent's death or who cannot be located; by the decedent's spouse, if an order to terminate the marriage was pending at the time of the decedent's death; and by an individual whom the probate court determines was estranged from the decedent at the time of the decedent's death. The bill prohibits a funeral director, crematory authority, cemetery authority, employee of these, a member of the clergy, a health care provider, a hospice worker, or a social worker from acting as a declarant's representative unless related to the declarant by blood, marriage, or adoption.

Under the bill, an unrevoked anatomical gift made by the decedent or by an individual other than the decedent and any power or duty of a coroner, medical examiner, or other physician with respect to reporting certain deaths or performance

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2 DEFINITIONS. (a) “Authorization for final disposition” means a written, signed
3 document that is acknowledged before a notary public or is witnessed and that is
4 voluntarily executed by a declarant under sub. (8), but is not limited in form or
5 substance to that provided in sub. (8).

6 (b) “Cemetery authority” has the meaning given in s. 157.061 (2).

7 (c) “Credential” has the meaning given in s. 440.01 (2) (a).

8 (d) “Crematory authority” has the meaning given in s. 440.70 (9).

9 (e) “Declarant” means an individual who executes an authorization for final
10 disposition.

11 (f) “Estranged” means being physically and emotionally alienated for a period
12 of time, at the time of the decedent’s death, and clearly demonstrating an absence of
13 due affection, trust, and regard.

14 (g) “Final disposition” means disposition of a decedent’s remains, including any
15 of the following:

16 1. Arrangements for a viewing.

17 2. A funeral ceremony, memorial service, graveside service, or other last rite.

18 3. A burial, cremation and burial, or other disposition, or donation of the
19 decedent’s body.

20 (h) “Funeral director” has the meaning given in s. 445.01 (5).

21 (i) “Health care provider” means any person who has a credential to provide
22 health care.

23 (j) “Hospice worker” means a person who provides care in or through a hospice,
24 as defined in s. 50.90 (1).

25 (k) “Member of the clergy” has the meaning given in s. 765.002 (1).

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1 (L) “Representative” means an individual specifically designated in an
2 authorization for final disposition or, if that individual is unable or unwilling to carry
3 out the declarant’s decisions and preferences, a successor representative designated
4 in the authorization for final disposition to do so.

5 (m) “Social worker” has the meaning given in s. 252.15 (1) (er).

6 **(2)** INDIVIDUALS WITH CONTROL OF FINAL DISPOSITION; ORDER. (a) Except as
7 provided in par. (b) and sub. (3), any of the following, as prioritized in the following
8 order, who is at least 18 years old and has not been adjudicated incompetent under
9 ch. 880, may control final disposition, including the location, manner, and conditions
10 of final disposition:

11 1. Subject to sub. (8) (e), a representative of the decedent acting under the
12 decedent’s authorization for final disposition that conveys to the representative the
13 control of final disposition, or a successor representative.

14 2. The surviving spouse of the decedent.

15 3. The surviving child of the decedent, unless more than one child of the
16 decedent survives. In such an instance, the majority of the surviving children has
17 control of the final disposition, except that fewer than the majority of the surviving
18 children may control the final disposition if that minority has used reasonable efforts
19 to notify all other surviving children and is not aware of opposition by the majority
20 to the minority’s intended final disposition.

21 4. The surviving parent or parents of the decedent or a surviving parent who
22 is available if the other surviving parent is unavailable after the available surviving
23 parent has made reasonable efforts to locate him or her.

24 5. The surviving sibling of the decedent, unless more than one sibling of the
25 decedent survives. In such an instance, the majority of the surviving siblings has

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1 control of the final disposition, except that fewer than the majority of the surviving
2 siblings may control the final disposition if that minority has used reasonable efforts
3 to notify all other surviving siblings and is not aware of opposition by the majority
4 to the minority's intended final disposition.

5 6. In descending order, an individual in the class of the next degree of kinship
6 specified in s. 990.001 (16).

7 7. The guardian of the person, if any, of the decedent.

8 8. Any individual other than an individual specified under subds. 1. to 7. who
9 is willing to control the final disposition and who attests in writing that he or she has
10 made a good-faith effort, to no avail, to contact the individuals under subds. 1. to 7.

11 (b) Control of final disposition under par. (a), in the order of priority specified
12 in par. (a), is restored to an individual specified in sub. (3) (b) 1. for whom charges
13 under sub. (3) (b) 1. a. to d. are dismissed or who is found not guilty of the offense.
14 Subject to s. 69.18 (4), the control of final disposition under this paragraph, with
15 respect to a decedent for whom disposition has already been made of his or her
16 remains, is limited, as appropriate, to any of the following:

17 1. A funeral ceremony, memorial service, graveside service, or other last rite.

18 2. Disinterment.

19 3. Reinterment, cremation and reinterment, or other disposition of the
20 decedent's body.

21 **(3) EXCEPTIONS.** (a) All of the following are exceptions to any control conferred
22 under sub. (2):

23 1. The disposition of any unrevoked anatomical gift made by the decedent
24 under s. 157.06 (2) or made by an individual other than the decedent under s. 157.06
25 (3) or (4).

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1 2. Any power or duty of a coroner, medical examiner, or other physician licensed
2 to perform autopsies with respect to the reporting of certain deaths, performance of
3 autopsies, and inquests under ch. 979.

4 (b) None of the following is authorized under sub. (2) to control the final
5 disposition:

6 1. Unless sub. (2) (b) applies, an individual who is otherwise authorized to
7 control final disposition under the order of priority of individuals specified in sub. (2)
8 (a) but who has been charged with any of the following in connection with the
9 decedent's death and the charges are known to the funeral director, crematory
10 authority, or cemetery authority:

11 a. First-degree intentional homicide under s. 940.01 (1).

12 b. First-degree reckless homicide under s. 940.02.

13 c. Second-degree intentional homicide under s. 940.05.

14 d. Second-degree reckless homicide under s. 940.06.

15 2. An individual who is otherwise authorized to control final disposition under
16 the order of priority of individuals specified in sub. (2) (a) but who fails to exercise
17 this authorization within 2 days after he or she is notified of the decedent's death or
18 who cannot be located after reasonable efforts to do so has been made.

19 3. The decedent's spouse, if an action under ch. 767 to terminate the marriage
20 of the spouse and the decedent was pending at the time of the decedent's death.

21 4. An individual for whom a determination is made under by the probate court
22 under par. (c) 2. b. that the individual and the decedent were estranged at the time
23 of death.

24 (c) If the individuals on the same level of priority specified in sub. (2) (a) are
25 unable to agree on the final disposition, the probate court that has jurisdiction for

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1 the county in which the decedent resided at the time of his or her death may
2 designate an individual as most fit and appropriate to control the final disposition.

3 All of the following apply to a designation made under this paragraph:

4 1. After the decedent's death, a petition regarding control of the final
5 disposition shall be filed with the probate court by any of the following:

6 a. A relative of the decedent.

7 b. An individual seeking control of the final disposition who claims a closer
8 personal relationship to the decedent than the decedent's next of kin, who has lived
9 with the decedent, and who was not in the employ of the decedent or the decedent's
10 family.

11 c. If 2 or more individuals on the same level of priority in sub. (2) (a) cannot,
12 by majority vote, decide concerning the final disposition, any of those individuals or
13 the funeral director, crematory authority, or cemetery authority that possesses the
14 decedent's remains.

15 2. The probate court may consider all of the following:

16 a. The reasonableness and practicality of the proposed final disposition.

17 b. The degree of the personal relationship between the decedent and each of the
18 individuals claiming the right of final disposition, including whether the decedent
19 was estranged from any of the individuals.

20 c. Except as provided in subd. 3., the desires of the individual or individuals
21 who are ready, able, and willing to pay the cost of the final disposition.

22 d. The express written desires of the decedent.

23 e. The degree to which any proposed final disposition would permit maximum
24 participation by family members, friends, and others who wish to pay final respects
25 to the decedent.

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1 3. An individual's payment or agreement to pay for all or part of the costs of final
2 disposition, or the fact that an individual is the personal representative of the
3 decedent, does not, by itself, provide the individual any greater opportunity to
4 control the final disposition than the individual otherwise has under this section.

5 **(4) DECLINING TO EXERCISE CONTROL OR RESIGNING CONTROL.** An individual who
6 is otherwise authorized to control final disposition under the order of priority of
7 individuals specified in sub. (2) (a) or who is designated under sub. (3) (c) may accept
8 the control, may decline to exercise the control, or may, after accepting the control,
9 resign it.

10 **(5) LIABILITY OF FUNERAL DIRECTOR, CREMATORY AUTHORITY, OR CEMETERY**
11 **AUTHORITY.** (a) If inability to agree exists among any individuals, as specified in sub.
12 (3) (c) (intro.), no funeral director, crematory authority, or cemetery authority is
13 civilly or criminally liable for his or her refusal to accept the decedent's remains, to
14 inter or otherwise dispose of the decedent's remains, or to complete the arrangements
15 for the final disposition unless specifically directed to do so under an order of the
16 probate court or unless the individuals in disagreement present the funeral director,
17 crematory authority, or cemetery authority with a written agreement, signed by the
18 individuals, that specifies the final disposition.

19 (b) A funeral director, crematory authority, or cemetery authority that retains
20 the remains of a decedent for final disposition before individuals specified in sub. (3)
21 (c) (intro.) reach agreement or before the probate court makes a final decision under
22 sub. (3) (c) may embalm the remains, unless the authorization for final disposition
23 forbids embalming, or may refrigerate and shelter the remains while awaiting the
24 agreement or the probate court's decision and may add the cost of embalming or
25 refrigeration and shelter, as appropriate, to the final disposition costs.

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1 (c) If a funeral director, crematory authority, or cemetery authority files a
2 petition under sub. (3) (c) 1., the funeral director, crematory authority, or cemetery
3 authority may add to the cost of final disposition reasonable legal fees and costs
4 associated with the court's review of the petition.

5 (d) This subsection may not be construed to require or otherwise impose a duty
6 upon a funeral director, crematory authority, or cemetery authority to file a petition
7 under sub. (3) (c) 1., and a funeral director, crematory authority, or cemetery
8 authority may not be held criminally or civilly liable for failing or omitting to file the
9 petition.

10 (e) In the absence of written notice to the contrary from an individual who
11 claims control of the final disposition because of precedence under the order of
12 priority of individuals specified under sub. (2) (a), no funeral director, crematory
13 authority, or cemetery authority, who relies in good faith on instructions concerning
14 the final disposition from another individual who first claims control of the final
15 disposition but has less precedence under the order of priority of individuals
16 specified in sub. (2) (a), and who acts or omits to act in accordance with these
17 instructions, is civilly or criminally liable or may be found guilty of unprofessional
18 conduct for the action or omission.

19 **(6) LIABILITY FOR COSTS OF FINAL DISPOSITION.** Liability for the reasonable costs
20 of the final disposition is from the decedent's estate, as specified under s. 859.25 (1).

21 **(7) JURISDICTION.** The probate court for the county in which the decedent last
22 resided has exclusive jurisdiction over matters that arise under this section.

23 **(8) AUTHORIZATION FOR FINAL DISPOSITION.** (a) An individual who is of sound
24 mind and has attained age 18 may voluntarily execute an authorization for final
25 disposition, which shall take effect on the date of execution. An individual for whom

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1 an adjudication of incompetence and appointment of a guardian of the person is in
2 effect under ch. 880 is presumed not to be of sound mind for purposes of this
3 subsection.

4 (b) An authorization for final disposition may express the declarant's special
5 directions, instructions concerning religious observances, and suggestions
6 concerning any of the following:

- 7 1. Arrangements for a viewing.
- 8 2. Funeral ceremony, memorial service, graveside service, or other last rite.
- 9 3. Burial, cremation and burial, or other disposition, or donation of the
10 declarant's body after death.

11 (c) An authorization for final disposition requires a representative and one or
12 more named successor representatives to carry out the directions, instructions, and
13 suggestions of the declarant, as expressed in the declarant's authorization for final
14 disposition, unless the directions, instructions, and suggestions exceed available
15 resources from the decedent's estate or are unlawful or unless there is no realistic
16 possibility of compliance.

17 (d) An authorization for final disposition shall meet all of the following
18 requirements:

19 1. List the name and last-known address, as of the date of execution of the
20 authorization for final disposition, of each representative and each successor
21 representative named, and be signed by each representative and each successor
22 representative named.

23 2. Be signed and dated by the declarant, with the signature witnessed by 2
24 witnesses who each have attained age 18 and who are not related by blood, marriage,
25 or adoption to the declarant, or acknowledged before a notary public. If the declarant

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1 is physically unable to sign an authorization for final disposition, the authorization
2 shall be signed in the declarant's name by an individual at the declarant's express
3 direction and in his or her presence; such a proxy signing shall take place or be
4 acknowledged by the declarant in the presence of 2 witnesses or a notary public.

5 (e) Unless any of the following is related to the declarant by blood, marriage,
6 or adoption, that person may not serve as a representative under the requirements
7 of this subsection:

8 1. A funeral director.

9 2. A crematory authority.

10 3. A cemetery authority.

11 4. An employee of a funeral director, crematory authority, or cemetery
12 authority.

13 5. A member of the clergy.

14 6. A health care provider.

15 7. A hospice worker.

16 8. A social worker.

17 (f) The department shall prepare and provide copies of the authorization for
18 final disposition form and accompanying information for distribution in quantities
19 to funeral directors, crematory authorities, cemetery authorities, hospitals, nursing
20 homes, county clerks, and local bar associations and individually to private persons.
21 The department shall include, in information accompanying the authorization for
22 final disposition form, at least the statutory definitions of terms used in the form, and
23 an instruction to potential declarants to read and understand the information before
24 completing the form. The department may charge a reasonable fee for the cost of
25 preparation and distribution. The authorization for final disposition form

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1 distributed by the department shall be easy to read, in not less than 10–point type,
2 and in the following form:

AUTHORIZATION FOR FINAL DISPOSITION

3 I, (print name and address), being of sound mind, willfully and voluntarily
4 make known by this document my desire that, upon my death, the final disposition
5 of my remains be under the control of my representative under the requirements of
6 section 154.30, Wisconsin statutes, and, with respect to that final disposition only,
7 I hereby appoint the representative and any successor representative named in this
8 document. All decisions made by my representative or any successor representative
9 with respect to the final disposition of my remains are binding.

10 Name of representative.....

11 Address.....

12 Telephone number.....

13 If my representative dies, becomes incapacitated, resigns, refuses to act, ceases
14 to be qualified, or cannot be located within the time necessary to control the final
15 disposition of my remains, I hereby appoint the following individuals, each to act
16 alone and successively, in the order specified, to serve as my successor
17 representative:

18 1. Name of first successor representative.....

19 Address.....

20 Telephone number.....

21 2. Name of second successor representative.....

22 Address.....

23 Telephone number.....

24 SUGGESTED SPECIAL DIRECTIONS.....

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1 SUGGESTED INSTRUCTIONS CONCERNING RELIGIOUS

2 OBSERVANCES.....

3 SUGGESTED SOURCE OF FUNDS FOR IMPLEMENTING FINAL DISPOSITION DIRECTIONS AND
4 INSTRUCTIONS.....

5 This authorization becomes effective upon my death.

6 I hereby revoke any prior authorization for final disposition that I may have
7 signed before the date that this document is signed.

8 I hereby agree that any funeral director, crematory authority, or cemetery
9 authority that receives a copy of this document may act under it. Any modification
10 or revocation of this document is not effective as to a funeral director, crematory
11 authority, or cemetery authority until the funeral director, crematory authority, or
12 cemetery authority receives actual notice of the modification or revocation. No
13 funeral director, crematory authority, or cemetery authority may be liable because
14 of reliance on a copy of this document.

15 The representative and any successor representative, by accepting
16 appointment under this document, assume the powers and duties specified for a
17 representative under section 154.30, Wisconsin statutes.

18 Signed thisday of

19 Signature of declarant.....

20 I hereby accept appointment as representative for the control of final
21 disposition of the declarant’s remains.

22 Signed thisday of

23 Signature of representative.....

24 I hereby accept appointment as successor representative for the control of final
25 disposition of the declarant’s remains.

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1 Signed thisday of

2 Signature of first successor representative.....

3 Signed thisday of

4 Signature of second successor representative.....

5

6 I attest that the declarant signed or acknowledged this authorization for final
7 disposition in my presence and that the declarant appears to be of sound mind and
8 not subject to duress, fraud, or undue influence. I further attest that I am not the
9 representative or the successor representative appointed under this document, that
10 I am aged at least 18, and that I am not related to the declarant by blood, marriage,
11 or adoption.

12 Witness (print name).....

13 Signature.....

14 Address.....

15 Date.....

16

17 Witness (print name).....

18 Signature.....

19 Address.....

20 Date.....

21

22 State of Wisconsin

23 County of

24 On (date)....., before me personally appeared
25 (name of declarant)....., known to me or

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1 satisfactorily proven to be the individual whose name is specified in this document
 2 as the declarant and who has acknowledged that he or she executed the document
 3 for the purposes expressed in it. I attest that the declarant appears to be of sound
 4 mind and not subject to duress, fraud, or undue influence.

5 Notary public.....

6 My commission expires.....

7 **(9)** REVOCATION OF AUTHORIZATION FOR FINAL DISPOSITION. A declarant may
 8 revoke an authorization for final disposition at any time by any of the following
 9 methods:

10 (a) Cancelling, defacing, obliterating, burning, tearing, or otherwise destroying
 11 the authorization for final disposition or directing some other person to cancel,
 12 deface, obliterate, burn, tear, or otherwise destroy the authorization for final
 13 disposition in the presence of the declarant. In this paragraph, “cancelling” includes
 14 a declarant’s writing on a declaration of final disposition, “I hereby revoke this
 15 declaration of final disposition,” and signing and dating that statement.

16 (b) Revoking in writing the authorization for final disposition. The declarant
 17 shall sign and date any written revocation under this subsection.

18 (c) Executing a subsequent authorization for final disposition.

19 **(10)** PENALTY. Any person who intentionally conceals, cancels, defaces,
 20 obliterates, or damages the authorization for final disposition of another without the
 21 declarant’s consent may be fined not more than \$500 or imprisoned not more than
 22 30 days or both.

23 **(END)**