Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

CHAPTER 138

HOUSE BILL 2272

AN ACT

AMENDING SECTIONS 32-1394, 32-1399 AND 36-831, ARIZONA REVISED STATUTES; RELATING TO BURIAL AND CREMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 32-1394, Arizona Revised Statutes, is amended to read:

32-1394. Crematory requirements; responsible cremationist

A crematory licensed pursuant to this article shall:

1. Maintain a retort that is operated at all times in a sanitary and professional manner, that conforms to local building and environmental codes and that provides protection for the health and safety of persons in attendance at a cremation and employees of the crematory.

2. Maintain a holding facility that is secure from access by anyone other than employees of the crematory and public officials in the performance of their official duties, that complies with applicable public health laws, that protects the health and safety of employees of the crematory and that preserves the dignity of human remains in the facility.

3. Possess all equipment and supplies that are necessary to conduct cremations in a manner that provides protection for the health and safety of persons in attendance at a cremation and employees of the crematory.

4. Employ and designate a responsible cremationist who is licensed pursuant to this article~~,~~ AND who is trained in crematory operations to manage the daily operation of the crematory. The responsible cremationist is responsible for the crematory complying with the laws of this state and the rules of the board or the rules of the department of real estate, as applicable. THE CREMATORY OR THE RESPONSIBLE CREMATIONIST SHALL DESIGNATE A LICENSED CREMATIONIST TO ACT AS AN INTERIM RESPONSIBLE CREMATIONIST.

Sec. 2. Section 32-1399, Arizona Revised Statutes, is amended to read:

32-1399. Crematories; standards of practice

The board shall adopt rules that establish standards equivalent to section 32-1307, subsection A, paragraph 5 for the regulation of crematories and cremation and that include the following:

1. A crematory shall develop, implement and maintain a written procedure for the identification of human remains that ensures that remains can be identified from the time that a crematory accepts the delivery of the remains until the cremated remains are released to the authorizing agent. The identification procedures shall require the crematory to comply with the requirements of this section. The crematory shall not open a container containing human remains, except under the personal supervision of a licensed funeral director, or embalmer, OR A RESPONSIBLE CREMATIONIST LICENSED PURSUANT TO THIS ARTICLE AND TRAINED IN CREMATORY OPERATIONS TO MANAGE THE DAILY OPERATION OF THE CREMATORY. After taking custody of human remains, a crematory shall immediately verify the identification attached to the casket or cremation container and assign an identification number. The crematory shall not accept unidentified caskets or cremation containers. The identification shall include the name and address of the deceased, the name and relationship of the authorizing agent, the name of the person or entity engaging the crematory services, a valid cremation permit issued by a

government agency and a metal cremation disk containing the identification number. The disk shall be placed with the deceased during cremation.

2. If a crematory is unable to cremate the human remains immediately after taking custody, the crematory shall store the remains in a holding facility that is secure from access by anyone other than employees of the crematory and public officials in the performance of their duty and that complies with applicable public health laws, preserves the dignity of the human remains and protects the health of employees of the crematory.

3. A crematory shall not accept a casket or cremation container from which there is evidence of leakage of body fluids from the human remains and shall not hold human remains for cremation unless they are contained in an individual, closed casket or rigid cremation container of combustible material that preserves the dignity of the human remains and that protects the health of employees of the crematory. Human remains that are not embalmed shall be held by the crematory in a refrigerated holding facility or in compliance with applicable public health laws.

4. All body prostheses, bridgework or similar items removed from the cremated remains shall be disposed of by the crematory unless an alternative disposition is agreed to in the authorization to cremate.

5. After cremation, the crematory as far as practicable shall remove visible parts of the residual of the cremation process from the retort, shall not combine the cremated or processed remains with other cremated or processed remains and shall attach the identification of the cremated or processed remains to the temporary container or urn into which the remains are placed.

6. The crematory shall place cremated or processed remains in a temporary container or urn. Extra space may be filled with clean packing material that will not combine with the cremated or processed remains. The lid or top shall be securely closed. Any cremated or processed remains that do not fit in the temporary container or urn shall be returned in a separate container or, with permission of the authorizing agent, disposed of by the crematory.

7. A crematory may dispose of cremated or processed remains in any legal manner directed by a document prepared pursuant to section 32-1365.01 or agreed to by the authorizing agent. If the authorizing agent agrees to take possession and does not take possession of the remains within thirty days after cremation or on an agreed date, the crematory shall send written notice to the last known address of the authorizing agent to take possession. Ninety days after the notification is sent or delivered, the crematory may dispose of the cremated or processed remains in any legal manner.

8. Unless the deceased has prepared a document pursuant to section 32-1365.01, the crematory shall obtain an authorization to cremate from the authorizing agent that shall contain a provision holding the crematory harmless for the disposition of unclaimed cremated or processed remains.

9. All employees of the crematory who handle dead human bodies shall use universal precautions and shall otherwise exercise reasonable care to minimize the risk of transmitting any communicable disease from a dead human body.

10. Unless the deceased has prepared a document pursuant to section 32-1365.01, employees of the crematory shall not remove a dead human body from the container in which it is delivered to the crematory without the express written consent of the authorizing agent. If, after accepting a dead human body for cremation, employees of a crematory discover that a mechanical or radioactive device is implanted in the body, an embalmer licensed pursuant to article 2 of this chapter shall remove the device from the body before cremation takes place.

11. A crematory shall keep an accurate record of all cremations performed, including dispositions of cremated and processed remains, for not fewer than five years after the cremation.

Sec. 3. 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 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. ON the person who is designated as having power of attorney for the decedent in the decedent's most recent ~~durable~~ HEALTH CARE power of attorney PURSUANT TO CHAPTER 32, ARTICLE 2 OF THIS TITLE IF THAT POWER OF ATTORNEY SPECIFICALLY GIVES THAT PERSON THE AUTHORITY TO MAKE DECISIONS REGARDING THE DISPOSITION OF THE DECEDENT'S REMAINS OR A DURABLE POWER OF ATTORNEY IF THAT POWER OF ATTORNEY SPECIFICALLY GIVES THAT PERSON THE AUTHORITY TO MAKE DECISIONS REGARDING THE DISPOSITION OF THE DECEDENT'S REMAINS.

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 11 of this subsection 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.

13. If the dead person was a prisoner in the custody of the state department of corrections at the time of death and none of the persons named in paragraphs 1 through 11 of this subsection is willing to provide for the burial or other funeral and disposition arrangements, or cannot be located on reasonable inquiry, on the state department of corrections.

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. The county officer who is responsible for determining financial eligibility or abandonment may conduct an investigation for that purpose. 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 United States department of veterans affairs or a local veteran's organization, or both, of the death and give the department or that organization the opportunity to provide for the person's burial or for other funeral and disposition arrangements. If the department or 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 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 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 who has a higher priority in subsection A or 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 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 AND THE FUNERAL DIRECTOR IS AWARE OF THE CHARGE. The person who performs this duty may recover costs as prescribed in subsection 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,

1 DD form 93, or its successor form, the duty to bury the decedent or to
2 provide other funeral and disposition arrangements for the decedent devolves
3 on the person authorized by the decedent pursuant to that form.
4 K. For the purposes of this section, "person" includes a natural
5 person, a corporation, a company, a partnership, a firm, an association, a
6 society, the United States, this state, any territory, state or country, an
7 Arizona federally recognized Native American tribe, any political subdivision
8 of this state or a public or private corporation or partnership or
9 association.
10 L. For the purposes of this article, "burial" includes cremation.

APPROVED BY THE GOVERNOR APRIL 29, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2013.

Passed the House February 28, 2013

by the following vote: 49 Ayes,

7 Nays, 4 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate April 18, 2013

by the following vote: 27 Ayes,

1 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

Secretary of State

H.B. 2272

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

April 23, 2013,

by the following vote: 56 Ayes,

1 Nays, 3 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

25 day of April, 2013,

at 3:30 o'clock P M.

Mikhaila Howard

Secretary to the Governor

Approved this 29th day of

April, 2013,

at 4:57 o'clock P. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 30th day of April, 2013,

at 9:35 o'clock a M.

Ken Bennett

Secretary of State

H.B. 2272