

SECOND REGULAR SESSION

# SENATE BILL NO. 1012

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHEELER.

Read 1st time February 6, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4063S.03I

## AN ACT

To repeal section 194.119, RSMo, and to enact in lieu thereof one new section relating to designation of next-of-kin for deceased persons.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 194.119, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 194.119, to read as follows:

194.119. 1. As used in this section, the [term] **following terms shall**  
2 **mean:**

3 (1) "Adult", a person who has reached the age of eighteen years;

4 (2) "Decedent", a deceased individual;

5 (3) "Decedent's body", the body of a decedent or such parts of  
6 that body as remain, including such parts as remain after gifts, if any,  
7 under sections 194.210 to 194.230;

8 (4) "Final disposition", the burial, interment, cremation, removal  
9 from the state, or other authorized disposition of a decedent's body  
10 consistent with all applicable laws and health codes;

11 (5) "Next-of-kin", the person authorized to exercise the right of  
12 sepulcher, including the common law right of sepulcher;

13 (6) "Right of sepulcher" [means], the right to [choose and] control the  
14 [burial, cremation, or other] final disposition of a [dead human] **decedent's**  
15 body.

16 2. For purposes of this chapter [and], chapters 193[, 333,] and 436, RSMo,  
17 **and section 333.121, RSMo**, and in all cases relating to the [custody, control,  
18 and disposition of deceased human remains, including the common law right of  
19 sepulcher, where not otherwise defined, the term "next-of-kin" means] **final**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

20 **disposition of a decedent's body** the following persons in the **order of**  
21 **priority** [listed if such person is eighteen years of age or older, is mentally  
22 **competent, and is willing to assume responsibility for the costs of disposition]**  
23 **stated, but subject to compliance with the provisions of subsection 3 of**  
24 **this section, shall be the next-of-kin:**

25 (1) **Any person designated by the decedent during his or her**  
26 **lifetime to act as next-of-kin. The designation must be made in a**  
27 **written instrument that is dated, executed by the decedent and**  
28 **acknowledged before a notary public or other person authorized to**  
29 **administer oaths;**

30 (a) **If more than one person is designated in the document, the**  
31 **persons shall be entitled to act in the order stated;**

32 (b) **If more than one document has been executed, the document**  
33 **bearing the latest date shall control; and**

34 (c) **It shall not be necessary that the term "next-of-kin" be utilized**  
35 **in the document to identify the person entitled to act as next-of-kin;**

36 (2) **The surviving spouse of the decedent;**

37 [(2) Any surviving child of the deceased. If a surviving child is less than  
38 eighteen years of age and has a legal or natural guardian, such child shall not be  
39 disqualified on the basis of the child's age and such child's legal or natural  
40 guardian, if any, shall be entitled to serve in the place of the child unless such  
41 child's legal or natural guardian was subject to an action in dissolution from the  
42 deceased. In such event the person or persons who may serve as next-of-kin shall  
43 serve in the order provided in subdivisions (3) to (8) of this subsection;

44 (3) (a) Any]

45 (3) **A son or daughter of the decedent;**

46 (4) **Either surviving parent of the [deceased; or**

47 (b) **If the deceased is a minor, a] decedent, unless the decedent is a**  
48 **minor and both parents survive but are either legally separated or**  
49 **their marriage has been dissolved, in which case:**

50 (a) **The surviving parent who [has] had custody of the [minor] decedent**  
51 **at the time of the decedent's death; or**

52 [(c)] (b) **If the [deceased is a minor and the deceased's] decedent's**  
53 **parents have joint legal custody, the parent whose residence [is] was the [minor**  
54 **child's] decedent's residence for purposes of mailing and education at the time**  
55 **of the decedent's death;**

56            [(4)] **(5)** Any surviving [sibling] **brother or sister** of the [deceased]  
57 **decedent;**

58            [(5) Any person designated by the deceased to act as next-of-kin pursuant  
59 to a valid designation of right of sepulcher as provided in subsection 8 of this  
60 section;]

61            (6) The next nearest surviving relative of the [deceased] **decedent** by  
62 consanguinity or affinity;

63            (7) [Any person or friend who assumes financial responsibility for the  
64 disposition of the deceased's remains if no next-of-kin assumes such  
65 responsibility] **A guardian of the person or conservator of the estate of**  
66 **the decedent at the time of the decedent's death;**

67            (8) The county coroner or medical examiner[; provided however that such  
68 assumption of responsibility shall not make the coroner, medical examiner, the  
69 county, or the state financially responsible for the cost of disposition].

70            3. [The next-of-kin of the deceased shall be entitled to control the final  
71 disposition of the remains of any dead human being consistent with all applicable  
72 laws, including all applicable health codes] **In order for a person to be**  
73 **qualified to act as next-of-kin:**

74            (1) **The person must be a mentally competent adult at the date**  
75 **of death of the decedent, and willing to assume responsibility for the**  
76 **costs of the disposition of the decedent's body only to the extent that**  
77 **assets available to the decedent's estate are insufficient to pay for such**  
78 **costs; and**

79            (2) **If the decedent provided lawful instructions as to final**  
80 **disposition of the decedent's body, then prior to exercising the right of**  
81 **sepulcher, the person must agree, in a written instrument duly**  
82 **executed and acknowledged and delivered to the funeral director or**  
83 **establishment involved, to follow the lawful instructions of the**  
84 **decedent as to final disposition of the decedent's body;**

85            (a) **In order for instructions of the decedent to constitute "lawful**  
86 **instructions", the instructions must be set forth in a written instrument**  
87 **that is dated and duly executed and must be consistent with all**  
88 **applicable laws and health codes;**

89            (b) **If more than one document contains lawful instructions of the**  
90 **decedent as to final disposition of the decedent's body, the document**  
91 **bearing the latest date shall control;**

92           **(c) If the costs of final disposition of the decedent's body in**  
93 **accordance with the decedent's lawful instructions, after application of**  
94 **any prepayment or other funds provided for such purpose, exceeds the**  
95 **assets available in the decedent's estate for payment of such costs, then**  
96 **the obligation of the person to comply with the lawful instructions of**  
97 **the decedent may be altered by the person, in his or her discretion, to**  
98 **the extent necessary to reduce the costs to the amount of available**  
99 **assets.**

100           4. A funeral director or establishment **licensed under chapter 333,**  
101 **RSMo,** is entitled to rely [on and act according to the lawful] **upon and to act**  
102 **in accordance with the** instructions of any person claiming to be the  
103 next-of-kin of [the deceased; provided however,] **a decedent if the person**  
104 **provides to the funeral director or establishment a written statement**  
105 **in accordance with the provisions of subsection 5 of this section. If**  
106 **such a written statement is provided, then** in any civil cause of action  
107 **brought** against a funeral director or establishment [licensed pursuant to this  
108 chapter]for actions taken regarding the [funeral arrangements for a deceased  
109 person in the director's or establishment's care,] **final disposition of the**  
110 **decedent's body,** the relative fault, if any, of such funeral director or  
111 establishment may be reduced if such actions are taken in reliance upon [a  
112 person's claim to be the deceased person's next-of-kin] **a written statement in**  
113 **accordance with the provisions of subsection 5 of this section unless**  
114 **the funeral director or establishment had actual knowledge that the**  
115 **person's claim to be the next-of-kin was false or had information that**  
116 **would cause a reasonable person to believe that the claim was false.**

117           5. Any person who desires to exercise the right of sepulcher [and who has  
118 knowledge of an individual or individuals with a superior right to control  
119 disposition shall notify such individual or individuals prior to making final  
120 arrangements] **shall, if requested to do so by the funeral director or**  
121 **establishment involved, provide to the funeral director or**  
122 **establishment a written statement, under penalties of perjury, stating**  
123 **to the best knowledge, information, and belief of said person, whether**  
124 **or not the decedent had during his or her lifetime executed a**  
125 **designation of next-of-kin under subdivision (1) of subsection 2 of this**  
126 **section. If no designation of next-of-kin was executed by the decedent,**  
127 **any person desiring to exercise the right of sepulcher shall provide a**

128 **written statement to the funeral director or establishment setting forth**  
129 **the name and relationship to the decedent of each individual who has**  
130 **a superior or equal right to control final disposition of the decedent's**  
131 **body and that the person has notified or made reasonable attempts to**  
132 **notify each such individual prior to exercising the right of sepulcher.**

133         6. If an individual with a superior [claim is personally served with  
134 written] **right to be next-of-kin receives** notice from a person with an inferior  
135 [claim] that such person desires to exercise the right of sepulcher and the  
136 individual [so served] **receiving notice** does not object within forty-eight hours  
137 of receipt, such individual shall be deemed to have waived such right. An  
138 individual with a superior right may also waive such right at any time if such  
139 waiver is in writing [and], dated, **and signed by the individual.**

140         7. If there [is more than one person] **are two or more persons** in a  
141 class who [are] **have** equal [in] priority **to act as next-of-kin** and the funeral  
142 director **or establishment involved** has no knowledge of any objection by other  
143 members of such class, the funeral director or establishment shall be entitled to  
144 rely [on and act according to] **upon and to act in accordance with the**  
145 instructions of the first such person in the class to make arrangements **for final**  
146 **disposition of the decedent's body**; provided that such person assumes  
147 responsibility for the costs of disposition and no other person in such class  
148 provides written notice of his or her objection.

149         [8. Any person may designate an individual to be his or her closest  
150 next-of-kin, regardless of blood or marital relationship, by means of a written  
151 instrument that is signed, dated, and verified. Such designation of right of  
152 sepulcher shall be witnessed by two persons, and shall contain the names and  
153 last known address of each person entitled to be next-of-kin but for the execution  
154 of the designation of right of sepulcher and who are higher in priority than the  
155 person so designated.]

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