



2005 ASSEMBLY BILL 984

February 2, 2006 – Introduced by Representatives SHERMAN, TOWNSEND, ALBERS, BERCEAU, HEBL, LEHMAN and TRAVIS, cosponsored by Senators GROTHMAN, ERPENBACH, JAUCH, MILLER, RISSER and HANSEN. Referred to Committee on Judiciary.

- 1 **AN ACT** *to repeal and recreate* chapter 154 (title); and *to create* subchapter
2 IV of chapter 154 [precedes 154.30] of the statutes; **relating to:** declarations
3 of final disposition and providing penalties.

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 aged at least 18 years to execute a written, witnessed document, termed a "declaration of final disposition" (declaration). This document may express the decisions and preferences of the individual (declarant) concerning disposition of the declarant's body after death, including arrangements for a viewing; a funeral ceremony, memorial service, graveside service, or other least rite; and burial, cremation and burial or other disposition, or donation of the declarant's body. The declaration must be signed voluntarily by the declarant in the presence of two witnesses or a notary public. A declarant may designate an individual to act as final disposition agent and another individual to act as alternate final disposition agent with respect to the declarant's decisions and preferences. If designated, the final disposition agent and any alternate must also sign the declaration. A final disposition agent or alternate is required to carry out the declarant's decisions and preferences unless the decision

ASSEMBLY BILL 984

1 **SECTION 2.** Subchapter IV of chapter 154 [precedes 154.30] of the statutes is
2 created to read:

CHAPTER 154**SUBCHAPTER IV****DECLARATION OF FINAL DISPOSITION**

6 **154.30 Definitions.** In this subchapter:

7 **(1)** “Declarant” means an individual who executes a declaration of final
8 disposition.

9 **(2)** “Declaration of final disposition” means a written, witnessed document that
10 is voluntarily executed under s. 154.32, but is not limited in form or substance to that
11 provided in s. 154.34.

12 **(3)** “Final disposition agent” means one of the following:

13 (a) An individual specifically designated in a declaration of final disposition or,
14 if that individual is unable or unwilling to carry out the declarant’s decisions and
15 preferences, an alternate individual specifically designated by the declarant in the
16 declaration of final disposition to do so.

17 (b) An individual specified in s. 154.32 (5) (b).

18 **(4)** “Incapacitated” means unable to receive and evaluate information
19 effectively or to communicate decisions.

20 **154.32 Declaration of final disposition. (1) WHO MAY EXECUTE.** An
21 individual who is of sound mind and has attained age 18 may voluntarily execute a
22 declaration of final disposition, which shall take effect on the date of execution. An
23 individual for whom an adjudication of incompetence and appointment of a guardian
24 of the person is in effect under ch. 880 is presumed not to be of sound mind for
25 purposes of this subsection.

ASSEMBLY BILL 984

1 **(2) EFFECT.** A declaration of final disposition does any of the following:

2 (a) Expresses the declarant's decisions and preferences concerning any of the
3 following:

4 1. Arrangements for a viewing.

5 2. Funeral ceremony, memorial service, graveside service, or other last rite.

6 3. Burial, cremation and burial or other disposition, or donation of the
7 individual's body after death.

8 (b) Requires that any decisions and preferences of the declarant expressed in
9 the declarant's declaration of final disposition be carried out as expressed unless the
10 decisions or preferences exceed available resources from the declarant's estate or
11 there is no realistic possibility of compliance.

12 **(3) LIMITATIONS.** A declaration of final disposition may not supercede any
13 conflicting provisions of a burial agreement under s. 445.125 that is made before
14 execution of the declaration of final disposition.

15 **(4) SIGNATURE; WITNESSES.** A declaration of final disposition shall be signed
16 voluntarily by the declarant in the presence of 2 witnesses or in the presence of a
17 notary public and shall be acknowledged by the signature of the final disposition
18 agent or any alternate, if designated. If the declarant is physically unable to sign a
19 declaration of final disposition, the declaration shall be signed in the declarant's
20 name by an individual at the declarant's express direction and in his or her presence;
21 such a proxy signing shall take place or be acknowledged by the declarant in the
22 presence of 2 witnesses or a notary public.

23 **(5) FINAL DISPOSITION AGENT.** In the declaration of final disposition, a declarant
24 may, but need not, designate an individual to act as final disposition agent in the
25 declarant's behalf with respect to the declarant's decisions and preferences

ASSEMBLY BILL 984

1 concerning the matters specified in sub. (2), and designate an alternate individual
2 to serve as his or her final disposition agent in the event that the final disposition
3 agent first designated is unable or unwilling to act as intended.

4 **154.34 Declaration of final disposition; form.** (1) A printed form of a
5 declaration of final disposition shall contain the following statement in not less than
6 10-point boldface type:

7 "NOTICE TO PERSON MAKING THIS DOCUMENT

8 YOU HAVE THE RIGHT TO MAKE DECISIONS ABOUT ANY DISPOSITION
9 THAT IS TO BE MADE OF YOUR BODY AFTER DEATH. YOU MAY SIGN THIS
10 LEGAL DOCUMENT TO SPECIFY THE PERSON WHOM YOU WANT TO MAKE
11 DECISIONS ABOUT THAT DISPOSITION OR TO CARRY OUT YOUR SPECIFIC
12 DECISIONS AND PREFERENCES IN THIS REGARD. THAT PERSON IS
13 KNOWN AS YOUR FINAL DISPOSITION AGENT AND MAY BE ANYONE YOU
14 CHOOSE, INCLUDING A FAMILY MEMBER, A FRIEND, OR A FUNERAL
15 DIRECTOR OR CREMATORY AUTHORITY. YOU MAY ALSO SPECIFY AN
16 ALTERNATE FINAL DISPOSITION AGENT, TO SERVE IF THE FIRST FINAL
17 DISPOSITION AGENT IS UNABLE OR UNWILLING TO ACT. YOU SHOULD
18 TAKE SOME TIME TO DISCUSS YOUR THOUGHTS AND BELIEFS ABOUT
19 FINAL DISPOSITION WITH THE PERSON OR PERSONS WHOM YOU HAVE
20 SPECIFIED. YOU MAY STATE IN THIS DOCUMENT ANY TYPES OF VIEWING
21 ARRANGEMENTS, FUNERAL CEREMONY OR OTHER LAST RITE, BURIAL,
22 CREMATION, OR DONATION OF ALL OR PART OF YOUR BODY THAT YOU DO
23 OR DO NOT DESIRE, OR YOU MAY SPECIFY A FINAL DISPOSITION AGENT
24 AND ALLOW THAT PERSON TO MAKE THOSE DECISIONS. THE DECISIONS
25 OR PREFERENCES THAT YOU EXPRESS IN THIS DOCUMENT WILL BE

ASSEMBLY BILL 984**SECTION 2**

1 CARRIED OUT UNLESS THEY EXCEED AVAILABLE RESOURCES FROM
2 YOUR ESTATE OR THERE IS NO REALISTIC POSSIBILITY THAT THEY CAN
3 BE COMPLIED WITH.

4 SIGNING THIS DOCUMENT REVOKES ANY PRIOR DECLARATION OF
5 FINAL DISPOSITION THAT YOU MAY HAVE MADE. IF YOU WISH TO
6 CHANGE THIS DECLARATION OF FINAL DISPOSITION, YOU MAY REVOKE
7 THIS DOCUMENT AT ANY TIME BY DESTROYING IT, BY DIRECTING
8 ANOTHER PERSON TO DESTROY IT IN YOUR PRESENCE, OR BY SIGNING A
9 WRITTEN AND DATED STATEMENT. IF YOU REVOKE, YOU SHOULD NOTIFY
10 YOUR AGENT AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A
11 COPY.

12 IF YOUR AGENT IS YOUR SPOUSE AND YOUR MARRIAGE IS
13 ANNULLED OR YOU ARE DIVORCED AFTER SIGNING THIS DOCUMENT,
14 THIS DOCUMENT IS INVALID.

15 YOU MAY ALSO USE THIS DOCUMENT TO MAKE OR REFUSE TO MAKE
16 AN ANATOMICAL GIFT UPON YOUR DEATH. IF YOU USE THIS DOCUMENT
17 TO MAKE OR REFUSE TO MAKE AN ANATOMICAL GIFT, THE DOCUMENT
18 REVOKES ANY PRIOR DOCUMENT OF GIFT THAT YOU MAY HAVE MADE.
19 YOU MAY LATER REVOKE OR CHANGE ANY ANATOMICAL GIFT THAT YOU
20 MAKE BY THIS DOCUMENT BY CROSSING OUT THE ANATOMICAL GIFTS
21 PROVISION IN THIS DOCUMENT.

22 DO NOT SIGN THIS DOCUMENT UNLESS YOU CLEARLY UNDERSTAND
23 IT.

ASSEMBLY BILL 984

1 IT IS SUGGESTED THAT YOU KEEP THE ORIGINAL OF THIS
2 DOCUMENT ON FILE WITH YOUR FINAL DISPOSITION AGENT OR
3 FUNERAL DIRECTOR OR CREMATORY AUTHORITY.”.

4 **(2)** The department shall prepare and provide copies of the declaration of final
5 disposition form and accompanying information for distribution in quantities to
6 funeral directors, crematory authorities, hospitals, nursing homes, county clerks,
7 and local bar associations and individually to private persons. The department shall
8 include, in information accompanying the declaration of final disposition form, at
9 least the statutory definitions of terms used in the form, a statement explaining that
10 valid witnesses acting in good faith are statutorily immune from civil or criminal
11 liability, and an instruction to potential declarants to read and understand the
12 information before completing the form. The department may charge a reasonable
13 fee for the cost of preparation and distribution. The declaration of final disposition
14 form distributed by the department shall be easy to read, in type size no smaller than
15 10-point, and in the following form:

DECLARATION OF FINAL DISPOSITION

16 I, (print name, address, and date of birth), being of sound mind, intend by
17 this document to specify the disposition that is to be made of my body after death and
18 that my decisions and preferences in this regard be honored. My executing this
19 document is voluntary. In addition, I may, by this document, specify my wishes with
20 respect to making an anatomical gift upon my death.

DESIGNATION OF FINAL DISPOSITION AGENT (OPTIONAL)

21 I hereby designate (print name, address, and telephone number) to be my
22 final disposition agent for the purpose of complying with or otherwise carrying out,
23 in my behalf, the decisions or preferences concerning the disposition that is to be

ASSEMBLY BILL 984**SECTION 2**

1 made of my body after death that are expressed in this document. If he or she is ever
2 unable or unwilling to do so, I hereby designate (print name, address, and
3 telephone number) to be my alternate final disposition agent for the purpose of
4 complying with or otherwise carrying out, in my behalf, the decisions or preferences
5 concerning the disposition that is to be made of my body after death that are
6 expressed in this document.

GENERAL STATEMENT OF AUTHORITY GRANTED

7 Upon my death,

8 I authorize my final disposition agent to make all decisions concerning the
9 disposition that is to be made of my body after death, unless the decisions exceed
10 available resources from my estate.

11 OR

12 I authorize my final disposition agent to comply with or otherwise carry out
13 my following decisions or preferences concerning the disposition that is to be made
14 of my body after death, unless the decisions or preferences that I express exceed
15 available resources from my estate or there is no realistic possibility of compliance
16 with the decisions or desires:

17 1. Arrangements for a viewing (print decisions and preferences).

18 2. Funeral ceremony, memorial service, graveside service, or other last rite
19 (print decisions and preferences).

20 3. Burial, cremation and burial or other disposition, or donation of my body
21 after death (print decisions and preferences).

22 4. Any additional desires, special provisions, or limitations (print decisions
23 and preferences).

ASSEMBLY BILL 984

OR

1 Although I do not wish to authorize a specific final disposition agent to
2 comply with or otherwise carry out my decisions and preferences concerning the
3 disposition that is to be made of my body after death, the following are my decisions
4 and preferences, unless the decisions or preferences that I express exceed available
5 resources from my estate or there is no realistic possibility of compliance with the
6 decisions or desires:

- 7 1. Arrangements for a viewing (print decisions and preferences).
- 8 2. Funeral ceremony, memorial service, graveside service, or other last rite
9 (print decisions and preferences).
- 10 3. Burial, cremation and burial or other disposition, or donation of my body
11 after death (print decisions and preferences).
- 12 4. Any additional desires, special provisions, or limitations (print decisions
13 and preferences).

14 (THE DECLARANT AND THE WITNESSES MUST SIGN THE DOCUMENT AT THE SAME TIME.)

SIGNATURE OF DECLARANT

(PERSON CREATING THE DECLARATION OF FINAL DISPOSITION)

15 Signature.....Date.....

16 (The signing of this document by the declarant revokes all previous
17 declarations of final disposition.)

STATEMENT OF WITNESSES

18 I know the declarant personally and I believe him or her to be of sound mind
19 and at least 18 years of age. I believe that his or her execution of this declaration of
20 final disposition is voluntary. I am at least 18 years of age.

21 Witness No. 1:

22 (print) Name.....Date.....

ASSEMBLY BILL 984

SECTION 2

1 Address.....

2 Signature.....

3 Witness No. 2:

4 (print) Name.....Date.....

5 Address.....

6 Signature.....

STATEMENT OF FINAL DISPOSITION AGENT AND ALTERNATE FINAL DISPOSITION AGENT

7 I understand that (name of declarant) has designated me to be his or her final
8 disposition agent or alternate final disposition agent after his or her death. (name
9 of declarant) has discussed his or her decisions and preferences regarding final
10 disposition with me.

11 Agent's signature.....

12 Alternate's signature.....

ANATOMICAL GIFTS (OPTIONAL)

13 Upon my death:

14 I wish to donate only the following organs or
15 parts:.....

16 (specify the organs or parts).

17 I wish to donate any needed organ or part.

18 I wish to donate my body for anatomical study if needed.

19 I refuse to make an anatomical gift. (If this revokes a prior commitment that
20 I have made to make an anatomical gift to a designated donee, I will attempt to notify
21 the donee to which or to whom I agreed to donate.)

22 Failing to check any of the lines immediately above creates no presumption
23 about my desire to make or refuse to make an anatomical gift.

ASSEMBLY BILL 984

1 Signature.....

2 Date.....

3 **154.36 Anatomical gift.** A declarant may, if the requirements of s. 157.06 (2)
4 are met, make, or refuse to make, an anatomical gift in a declaration of final
5 disposition. An anatomical gift that is made in a declaration of final disposition
6 supercedes a prior, conflicting, unrevoked anatomical gift or a prior, unrevoked
7 refusal to make an anatomical gift made by the declarant under s. 157.06 (2). A
8 refusal to make an anatomical gift that is made in a declaration of final disposition
9 supercedes a prior, conflicting, unrevoked anatomical gift made by the declarant
10 under s. 157.06 (2).

11 **154.38 Reports of death, autopsies, inquests.** This subchapter is subject
12 to the powers and duties of coroners, medical examiners, and other physicians
13 licensed to perform autopsies with respect to the reporting of certain deaths,
14 performance of autopsies, and inquests under ch. 979.

15 **154.40 Revocation of declaration.** A declarant may revoke a declaration of
16 final disposition at any time by any of the following methods:

17 (1) Canceling, defacing, obliterating, burning, tearing, or otherwise destroying
18 the declaration of final disposition or directing some other person to cancel, deface,
19 obliterate, burn, tear, or otherwise destroy the declaration of final disposition in the
20 presence of the declarant.

21 (2) Revoking in writing the declaration of final disposition. The declarant shall
22 sign and date any written revocation under this subsection.

23 (3) Executing a subsequent declaration of final disposition.

