

2007 Assembly Bill 305

Date of enactment: **March 5, 2008**
Date of publication*: **March 18, 2008**

2007 WISCONSIN ACT 58

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

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 69.18 (4) (a) 1. of the statutes is renumbered 69.18 (4) (a) 1m.

SECTION 2. 69.18 (4) (a) 1g. of the statutes is created to read:

69.18 (4) (a) 1g. An individual specified under s. 154.30 (2) (b).

SECTION 3. 69.20 (2) (a) 2. of the statutes is amended to read:

69.20 (2) (a) 2. For a certificate of death, any of the persons specified under s. 69.18 (4) (a) ~~1~~ 1g. to 6. or an individual who is authorized in writing by one of the persons.

SECTION 4. Chapter 154 (title) of the statutes is repealed and recreated to read:

CHAPTER 154

ADVANCE DIRECTIVES

SECTION 5. Subchapter IV of chapter 154 [precedes 154.30] of the statutes is created to read:

CHAPTER 154

SUBCHAPTER IV

AUTHORIZATION FOR FINAL DISPOSITION

154.30 Control of final disposition of certain human remains. (1) DEFINITIONS. (a) "Authorization

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

(b) "Cemetery authority" has the meaning given in s. 157.061 (2).

(c) "Credential" has the meaning given in s. 440.01 (2) (a).

(d) "Crematory authority" has the meaning given in s. 440.70 (9).

(e) "Declarant" means an individual who executes an authorization for final disposition.

(f) "Estranged" means being physically and emotionally alienated for a period of time, at the time of the decedent's death, and clearly demonstrating an absence of due affection, trust, and regard.

(g) "Final disposition" means disposition of a decedent's remains, including any of the following:

1. Arrangements for a viewing.
2. A funeral ceremony, memorial service, graveside service, or other last rite.
3. A burial, cremation and burial, or other disposition, or donation of the decedent's body.

(h) "Funeral director" has the meaning given in s. 445.01 (5).

* Section 991.11, WISCONSIN STATUTES 2005-06 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(i) "Health care provider" means any individual who has a credential to provide health care.

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

(m) "Social worker" has the meaning given in s. 252.15 (1) (er).

(2) INDIVIDUALS WITH CONTROL OF FINAL DISPOSITION; ORDER. (a) Notwithstanding s. 445.14 and except as provided in par. (b) and sub. (3), any of the following, as prioritized in the following order, who is at least 18 years old and has not been adjudicated incompetent under ch. 54 or ch. 880, 2003 stats., may control final disposition, including the location, manner, and conditions of final disposition:

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

2. The surviving spouse of the decedent.

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

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

5. The surviving sibling of the decedent, unless more than one sibling of the decedent survives. In such an instance, the majority of the surviving siblings has control of the final disposition, except that fewer than the majority of the surviving siblings may control the final disposition if that minority has used reasonable efforts to notify all other surviving siblings and is not aware of opposition by the majority to the minority's intended final disposition.

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

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

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

(b) Control of final disposition under par. (a), in the order of priority specified in par. (a), is restored to an individual specified in sub. (3) (b) 1. for whom charges under

sub. (3) (b) 1. a. to d. are dismissed or who is found not guilty of the offense. Subject to s. 69.18 (4), the control of final disposition under this paragraph, with respect to a decedent for whom disposition has already been made of his or her remains, is limited, as appropriate, to any of the following:

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

2. Disinterment.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If the individuals on the same level of priority specified in sub. (2) (a) are unable to agree on the final disposition, the probate court that has jurisdiction for the county in which the decedent resided at the time of his or her death may designate an individual as most fit and appropriate to control the final disposition. All of the following apply to a designation made under this paragraph:

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

a. A relative of the decedent.

b. An individual seeking control of the final disposition who claims a closer personal relationship to the decedent than the decedent's next of kin and who was not in the employ of the decedent or the decedent's family.

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

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

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

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

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

d. The express written desires of the decedent.

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

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

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

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

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

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

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

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

(6) LIABILITY FOR COSTS OF FINAL DISPOSITION. Notwithstanding s. 445.14, liability for the reasonable costs of the final disposition is from the declarant decedent's estate, as specified under s. 859.25 (1).

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

(8) AUTHORIZATION FOR FINAL DISPOSITION. (a) An individual who is of sound mind and has attained age 18 may voluntarily execute an authorization for final disposition, which shall take effect on the date of execution. An individual for whom an adjudication of incompetence and appointment of a guardian of the person is in effect under ch. 54 or ch. 880, 2003 stats., is presumed not to be of sound mind for purposes of this subsection.

(b) An authorization for final disposition may express the declarant's special directions, instructions

concerning religious observances, and suggestions concerning any of the following:

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

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

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

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

2. Be signed and dated by the declarant, with the signature witnessed by 2 witnesses who each have attained age 18 and who are not related by blood, marriage, or adoption to the declarant, or acknowledged before a notary public. If the declarant is physically unable to sign an authorization for final disposition, the authorization shall be signed in the declarant's name by an individual at the declarant's express direction and in his or her presence; such a proxy signing shall take place or be acknowledged by the declarant in the presence of 2 witnesses or a notary public.

(e) If any of the following has a direct professional relationship with or provides professional services directly to the declarant and is not related to the declarant by blood, marriage, or adoption, that person may not serve as a representative under the requirements of this subsection:

- 1. A funeral director.
- 2. A crematory authority.
- 3. A cemetery authority.
- 4. An employee of a funeral director, crematory authority, or cemetery authority.
- 6. A health care provider.
- 8. A social worker.

(f) The department shall prepare and provide copies of the authorization for final disposition form and accompanying information for distribution in quantities to funeral directors, crematory authorities, cemetery authorities, hospitals, nursing homes, county clerks, and local bar associations and individually to private persons. The department shall include, in information accompanying the authorization for final disposition form, at least the statutory definitions of terms used in the form, and an instruction to potential declarants to read and understand

the information before completing the form. The department may charge a reasonable fee for the cost of preparation and distribution. The authorization for final disposition form distributed by the department shall be easy to read, in not less than 10-point type, and in the following form:

AUTHORIZATION FOR FINAL DISPOSITION

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

Name of representative.....
Address.....
Telephone number.....

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

- 1. Name of first successor representative.....
Address.....
Telephone number.....
- 2. Name of second successor representative.....
Address.....
Telephone number.....

SUGGESTED SPECIAL DIRECTIONS.....
SUGGESTED INSTRUCTIONS CONCERNING RELIGIOUS OBSERVANCES.....
SUGGESTED SOURCE OF FUNDS FOR IMPLEMENTING FINAL DISPOSITION DIRECTIONS AND INSTRUCTIONS.....

This authorization becomes effective upon my death.

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

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

The representative and any successor representative, by accepting appointment under this document, assume

the powers and duties specified for a representative under section 154.30, Wisconsin statutes.

Signed thisday of

Signature of declarant.....

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

Signed thisday of

Signature of representative.....

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

Signed thisday of

Signature of first successor representative.....

Signed thisday of

Signature of second successor representative.....

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

Witness (print name).....

Signature.....

Address.....

Date.....

Witness (print name).....

Signature.....

Address.....

Date.....

State of Wisconsin

County of

On (date)....., before me personally appeared (name of declarant)....., known to me or satisfactorily proven to be the individual whose name is specified in this document as the declarant and who has acknowledged that he or she executed the document for the purposes expressed in it. I attest that the declarant appears to be of sound mind and not subject to duress, fraud, or undue influence.

Notary public.....

My commission expires.....

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

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

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

(c) Executing a subsequent authorization for final disposition.

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