



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU


RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 02/15/2007 (Per: DAK)




Appendix A ... Part 02 of 05




 The 2005 drafting file for LRB-3104

has been transferred to the drafting file for

2007 LRB-1482

 This cover sheet, the final request sheet, and the final version of the 2005 draft were copied on yellow paper, and returned to the original 2005 drafting file.

 The attached 2005 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



D-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Today if possible.

penalties

Gen

1 AN ACT ...; relating to: declarations of final disposition and providing a penalty.

2

Analysis by the Legislative Reference Bureau

This bill is drafted in preliminary form. An analysis will be included in a subsequent version.

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

3 SECTION 1. Chapter 154 (title) of the statutes is repealed and recreated to read:

4

CHAPTER 154

5

ADVANCE DIRECTIVES

6

SECTION 2. Subchapter IV of chapter 154 [precedes 154.30] of the statutes is

7

created to read:



CHAPTER 154
SUBCHAPTER IV CAPS + Centered

8

DECLARATION OF FINAL DISPOSITION

9

154.30 Definitions. In this section:
Subchapter

1 (1) "Declarant" means an individual who executes a declaration of final
2 disposition.

3 (2) "Declaration of final disposition" means a written, witnessed document
4 voluntarily executed by a declarant under ^{s.} 154.32, but is not limited in form or
5 substance to that provided in s. 154.34.

6 (3) "Final disposition agent" means one of the following:

7 (a) An individual specifically designated in a declaration of final disposition or,
8 if that individual is unable or unwilling to carry out the declarant's decisions and
9 preferences, an alternate individual designated by the declarant to do so.

10 (b) An individual specified in s. 154.32 (4) (a) to (e).

11 (4) "Incapacitated" means unable to receive and evaluate information
12 effectively or to communicate decisions.

13 SECTION 3. 154.32 of the statutes is created to read:

14 **154.32 Declaration of final disposition.** (1) WHO MAY EXECUTE. An
15 individual who is of sound mind and has attained age 18 may voluntarily execute a
16 declaration of final disposition, which shall take effect on the date of execution. An
17 individual for whom an adjudication of incompetence and appointment of a guardian
18 of the person is in effect under ch. 880 is presumed not to be of sound mind for
19 purposes of this subsection.

20 (2) EFFECT. A declaration of final disposition does all of the following:

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

- 23 1. Arrangements for a viewing.
- 24 2. Funeral ceremony, memorial service, graveside service, or other last rite.

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

3 (b) Authorizes a final disposition agent, an alternate final disposition agent,
4 or another individual to carry out the decisions and preferences of the declarant, as
5 expressed in the declarant's declaration of final disposition.

6 (3) SIGNATURE; WITNESSES. A declaration of final disposition shall, in the
7 presence of 2 witnesses or in the presence of a notary public, be signed voluntarily
8 by the declarant and, if a final disposition agent or an alternate final disposition
9 agent is specifically named, by the final disposition agent or alternate. If the
10 declarant is physically unable to sign a declaration of final disposition, the
11 declaration shall be signed in the declarant's name by an individual at the declarant's
12 express direction and in his or her presence; such a proxy signing shall take place or
13 be acknowledged by the declarant in the presence of 2 witnesses or a notary public.

14 (4) FINAL DISPOSITION AGENT. A declarant may, in the declaration of final
15 disposition, designate an individual to act as final disposition agent in the declarant's
16 behalf with respect to the declarant's decisions and preferences concerning the
17 matters specified in sub. (2), and may designate an alternate individual to serve as
18 his or her final disposition agent in the event that the final disposition agent first
19 designated is unable or unwilling to act as intended. If the declarant does not, in a
20 declaration of final disposition, specify an individual ^{to} act as final disposition agent,
21 the following, in the priority listed, may ³ unless incapacitated, act as a final
22 disposition agent:

23 (a) The declarant's surviving spouse.

24 (b) A surviving adult child of the declarant.

25 (c) A surviving parent of the declarant.

1 (d) A surviving individual, other than an individual specified in par. (a), (b), or
 2 (c), who is related in the closest degree of kinship to the declarant, as determined
 3 under s. 990.001 (16).

4 (e) Any other person, if the individuals specified in pars. (a) to (d) decline to act,
 5 are dead, or are incapacitated.

6 **154.34 Declaration of final disposition; form.** The department shall
 7 prepare and provide copies of the declaration and accompanying information for
 8 distribution in quantities to funeral directors, crematory authorities, hospitals,
 9 nursing homes, county clerks, and local bar associations and individually to private
 10 persons. The department shall include, in information accompanying the
 11 declaration, at least the statutory definitions of terms used in the declaration, a
 12 statement explaining that valid witnesses acting in good faith are statutorily
 13 immune from civil or criminal liability, and an instruction to potential declarants to
 14 read and understand the information before completing the declaration. The
 15 department may charge a reasonable fee for the cost of preparation and distribution.
 16 The declaration distributed by the department shall be easy to read, ⁱⁿ the type size
 17 ~~may be~~ no smaller than 10 ⁰/_A point, and ~~the declaration shall be~~ in the following form:

DECLARATION OF FINAL DISPOSITION

18 I, (print name, address, and date of birth), being of sound mind, intend by
 19 this document to specify the disposition that is to be made of my body after death and
 20 that my decisions and preferences in this regard be honored. My executing this
 21 document is voluntary.

DESIGNATION OF FINAL DISPOSITION AGENT

22 1. Unless I prefer not to designate a specific final disposition agent, I hereby
 23 designate (print name, address, and telephone number) to be my final disposition

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

8 2. If I prefer not to designate a specific final disposition agent under 1. above,
9 I understand that an individual specified in s. 154.32 (4) (a) 1. to 5. ^{9 (e) Wis. Stats.} may act as my
10 final disposition agent for the purpose of complying with or otherwise carrying out,
11 on my behalf, the decisions or preferences concerning the disposition that is to be
12 made of my body after death that are expressed in this document.

GENERAL STATEMENT OF AUTHORITY GRANTED

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

- 19 1. Arrangements for a viewing.....
- 20 2. Funeral ceremony, memorial service, graveside service, or other last
21 rite.....
- 22 3. Burial, cremation and burial or other disposition, or donation of my body
23 after death.....

1 4. Any additional desires, special provisions, or
2 limitations.....

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

SIGNATURE OF DECLARANT

(PERSON CREATING THE DECLARATION OF FINAL DISPOSITION)

4 Signature.....Date.....

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

STATEMENT OF WITNESSES

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

10 Witness No. 1:

11 (print) Name.....Date.....

12 Address.....

13 Signature.....

14 Witness No. 2:

15 (print) Name.....Date.....

16 Address.....

17 Signature.....

STATEMENT OF FINAL DISPOSITION AGENT AND ALTERNATE FINAL DISPOSITION AGENT

18 (TO BE COMPLETED ONLY IF THE DECLARANT DESIRES TO SPECIFY A FINAL DISPOSITION

19 AGENT AND ALTERNATE FINAL DISPOSITION AGENT)

20 I understand that (name of declarant) has
21 designated me to be his or her final disposition agent or alternate final disposition

1 **154.42 Immunities.** (1) No funeral director, cemetery, crematory authority,
2 final disposition agent, or alternate final disposition agent may be held ^{civilly or} criminally
3 ~~or civilly~~ liable, or charged with unprofessional conduct, for any of the following:

4 (a) Complying with or otherwise carrying out, in good faith, the decisions or
5 preferences expressed in a declaration of final disposition.

6 (b) Failing to act upon a revocation of a declaration of final disposition unless
7 the person or facility has actual knowledge of the revocation.

8 (c) Knowingly failing to comply with a declaration of final disposition, unless
9 the decisions or preferences expressed by the declarant exceed available resources
10 from the declarant's estate or if there is no realistic possibility of compliance with the
11 decisions or preferences.

12 (2) No individual who acts in good faith as a witness to a declaration of final
13 disposition under this subchapter may be held civilly or criminally liable for
14 complying with or otherwise carrying out the decisions or preferences expressed in
15 the declaration.

16 **154.44 Penalties.** (1) Any person who intentionally conceals, cancels,
17 defaces, obliterates, or damages the declaration of final disposition of another
18 without the declarant's consent may be fined not more than \$500 or imprisoned not
19 more than 30 days or both.

20 (2) Any person who illegally falsifies or forges the declaration of final
21 disposition of another or conceals the revocation of a declaration of final disposition
22 is guilty of a Class F felony.

23 (3) Any person who knowingly disposes of a body in a manner that is
24 inconsistent with a declaration, unless the decisions or preferences expressed by the
25 declarant exceed available resources from the declarant's estate or if there is no

① realistic possibility of compliance with the decisions or preferences may be fined not
2 more than \$500 or imprisoned not more than 30 days or both.

3

4

(END)

D-NOTE ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3104/7dn

DAK:.....

WJ

PI

To Representative Kerkman:

I have modeled this bill, in part, on existing statutes under subch. II of ch. 154, stats. (living wills) and ch. 155, stats. (health care powers of attorney), because aspects of this bill are very similar to those provisions. I am providing this bill to you in preliminary form, because the following numerous issues have arisen in the course of drafting:

1. *Witnesses.* Currently, under the living will and health care power of attorney statutes, there are restrictions on witnesses. For living wills, the witness restrictions relate to whether the witness is related, is an inheritor, or is directly financially responsible for the declarant's health care. For health care powers of attorney, the witness restrictions are identical, except that they also include health care providers, certain employees of health care facilities, and the health care agent. Do you want to have restrictions on witnesses for this bill, e.g., funeral directors, crematory authorities, etc.? Note that I have under s. 154.42 (2) immunized witnesses acting in good faith from liability.

2. *Final disposition agent.* Because this bill permits a declarant to specify his or her decisions and preferences without designating a specific individual to carry out those decisions and preferences, the bill does not *require* that an individual carry out a declarant's wishes with respect to burial, etc., but, instead, *authorizes* a specifically designated individual or another to do so. (Requiring that an unnamed, and possibly unavailable, individual carry out a declaration, with consequences for not acting, would not appear to meet constitutional standards for specificity; an alternative way to draft the bill would be to both require that a final disposition agent be specified and that that individual act.) Your instructions for me were to follow the sequence originally in 2005 Assembly Bill 75 in specifying authorized individuals in the absence of a designated final disposition agent. My questions about the listing in s. 154.32 (4) (a) to (e) are these:

- a. If the declarant has several surviving adult children, each of whom is willing to act, how is their priority determined? By age? Other?
- b. If the declarant has two surviving parents, each of whom is willing to act, how is the priority determined between them?
- c. If the declarant has several surviving relatives in one of the degrees of kinship specified in s. 990.001 (16), stats, each of whom is willing to act, how is the priority determined?

d. Because 2005 AB 75 specified it, I have included s. 154.32 (4) (e), "any other person, if the individuals specified in pars. (a) to (d) decline to act, are dead, or are incapacitated. However, I don't see how this would be able to be carried out; in effect, it authorizes any unspecified person to act. Perhaps, rather than an unnamed individual, a funeral director or crematory authority could be authorized to act under this provision.

e. Who decides if an individual in the sequence is incapacitated?

f. Many elderly individuals who outlive close relatives have guardians or, prior to a finding of incompetence, have designated persons as agents for durable financial powers of attorney or health care powers of attorney or, under wills, as personal representatives for disposition of their estates. Should any of these persons be explicitly included in the sequence of persons authorized to act if a final disposition agent is not named?

3. *Form.* Do you want to require that a statement such as that specified in s. 155.30 (1), stats., be required to be provided along with a form? Would you want any other matters for decision (tombstone specifications, grave care, etc.) to be explicitly mentioned in the form?

4. *Anatomical gifts.* In s. 154.36, I have made the subchapter about final disposition inapplicable to any anatomical gift that the declarant may make or that may be made of the declarant's body parts by a person so authorized under s. 157.06, stats. Is that how you want me to handle this issue? If it is, a statement should be included in the form that explicitly excepts any other action that the declarant may have made concerning donation of body parts (anatomical gifts). Another way to deal with this issue would be to have the form state "In addition to any anatomical gift that I have consented to make or that has been made of any part of my body by a person so authorized under s. 157.06, stats. ..." Still another way to handle this might be to incorporate an anatomical gift into the form; currently, this bill approaches that idea by having, as an option to burial or cremation, the donation of the declarant's body. Please review and let me know your decision here.

5. *Notice and revocation.* In the living will statutes, it is the responsibility of the declarant to notify his or her attending physician of the existence of a living will. A living will declarant or a person acting on his or her behalf may, for a fee, file the declaration with the register in probate of the declarant's county (although, in practice, I do not know how often this is done). Further, if the declarant wants to revoke a living will verbally, the revocation is effective only if the declarant or another person notifies the attending physician. In this bill, because a final disposition agent or an alternate is required to sign the declaration, such a person has clear notice of the existence of the declaration; but if a final disposition agent is not specified, there appears to be no particular way in which to ensure that a person who, in the sequence specified in 154.32 (4) (a), knows if he or she is authorized to act. Is this a problem? (The converse of this is also true for a revocation; the provisions concerning revocation are in s. 154.40 in the bill.)

6. *Expenditures from the estate.* I will need to consult with an expert in formal and informal probate to find out the extent of issues in managing the interaction that may

be necessary between the explicit provisions of a will and the explicit provisions of a declaration of final disposition that requires expenditure of moneys already allocated under the will. One factor that may be instructive is that, in all likelihood, a declaration of final disposition would require action before a will is submitted to probate; that seems to argue for the declaration to take precedence over a will. You may decide on another way to approach the issue. Note that other problems are also possible, e.g., if the explicit will provisions and explicit declaration provisions conflict.

7. *Other burial-related contracts.* Certain funeral directors (and possibly crematory authorities) offer pre-need contracts, under which an individual prepays for the expenses of his or her funeral, cremation, etc. In addition, for recipients of Medical Assistance and Supplemental Security Income, federal and state statutes permit possession of irrevocable burial trusts as assets; these burial trusts operate in much the same way as a pre-need contract. For a person who has such a contract or trust, I would suggest that the contract or trust provisions, if identical to or in conflict with a declaration of final disposition, take precedence over the declaration, particularly because of the constitutional prohibition on the impairment of contracts. Is that your intent?

8. *Coroners and medical examiners.* There are certain deaths (homicides, suicides, and others) that must, under ch. 979, stats., be reported to and analyzed by a coroner or medical examiner, including by autopsy, and that may be subject to inquests. I have, in s. 154.38, made the final disposition subchapter subject to the provisions in ch. 979, stats. ✓

9. *Penalties.* Your instructions were to include in this bill the penalties under current law for violations of the living will statutes. Note that s. 154.44 (1) and (2), as created in this bill, involve a fine or imprisonment and a Class F felony, respectively, as in the living will statutes; however, s. 154.15, stats., on which these provisions were modeled, concerns the possible unwanted lengthening of the life of a declarant or enforcement of a living will despite a revocation (which could involve hastening the death of the living will declarant), rather than merely failing to carry out the preferences of a decedent. In other words, for the violations in this bill, you may not want penalties that are that strong.

10. *Other issues.* There are numerous other issues that may arise with respect to the concept of a declaration of final disposition. It may be helpful for you to look at ss. 155.50 to 155.70, stats., to see if you would be interested in adding any of the provisions in those statutes to this bill.

I would be happy to meet with you to discuss the bill or otherwise assist you in finalizing it.

Debra A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3104/P1dn
DAK:wlj:rs

August 30, 2005

To Representative Kerkman:

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I would be happy to meet with you to discuss the bill or otherwise assist you in finalizing it.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

TELEPHONE DRAFTING INSTRUCTIONS

Drafting instructions received by Debora Kennedy.

DATE:

10/18/05

CONVERSATION
WITH:

Rep Kirkman

OF:

TELEPHONE NO:

REGARDING LRB #
OR DRAFT TOPIC:

05-3104/1

INSTRUCTIONS:

Redraft:

- ① Use Ohio legislation
- ② Designated agent for health care
prior to atty comes before spouse.

Kennedy, Debora

From: Popp, Sarah
Sent: Tuesday, October 18, 2005 3:45 PM
To: Kennedy, Debora
Subject: RE: DOCS-#12991-v1-157_06_RIGHT_OF_DISPOSITION.DOC

Debora

That sounds fine....two weeks or so is very reasonable. Thanks for your help with this!
Sarah

-----Original Message-----

From: Kennedy, Debora
Sent: Tuesday, October 18, 2005 3:44 PM
To: Popp, Sarah
Subject: RE: DOCS-#12991-v1-157_06_RIGHT_OF_DISPOSITION.DOC

From a quick look at the Ohio legislation attachment, it appears to be, essentially, a new draft. It will take me several days to do. I will try to have it to you within two weeks, but may be unable to meet that timeframe if the floor period coming up is especially busy for me--we are required to draft amendments and substitute amendments before we do bills and redrafts of bills.

-----Original Message-----

From: Popp, Sarah
Sent: Tuesday, October 18, 2005 3:36 PM
To: Kennedy, Debora
Subject: FW: DOCS-#12991-v1-157_06_RIGHT_OF_DISPOSITION.DOC

Debora

Per your conversation with Rep. Kerkman

Here is the legislation that we would like drafted for Wisconsin (making any changes as needed to fit our statutes).

The only change that we would like altered from the Ohio model would be to change on page 1 the priority listing, making (b) the first priority (acting representative), and (a) the second (surviving spouse), and then continue down the list. Thus, the order names would be the representative, surviving spouse, sole surviving child etc.

Let me know if you have any questions. Please confirm your receipt of this email. And, after reviewing the draft, please let me know what you think your timeline would be.

Thanks for your help.

Sarah Popp
Office of State Representative Samantha Kerkman
109 West State Capitol
Madison, WI 53708
(608) 266-2530

157.07 RIGHT OF DISPOSITION

(1) **PRIORITY.** EXCEPT FOR HUMAN REMAINS THAT ARE SUBJECT TO SECTION 157.06 CONCERNING ANATOMICAL GIFTS, THE RIGHT TO CONTROL THE DISPOSITION OF THE REMAINS OF A DECEASED PERSON, THE LOCATION, MANNER AND CONDITIONS OF DISPOSITION, AND ARRANGEMENTS FOR FUNERAL GOODS AND SERVICES TO BE PROVIDED VESTS IN THE FOLLOWING IN THE ORDER NAMED, PROVIDED SUCH PERSON IS EIGHTEEN YEARS OR OLDER AND IS MENTALLY COMPETENT:

(a) THE SURVIVING SPOUSE.

(b) ONE OR MORE PERSONS ACTING AS REPRESENTATIVE OF THE DECEDENT UNDER A DATED, WRITTEN AND SIGNED AUTHORIZATION OF THE DECEDENT CONVEYING UPON THE PERSON OR PERSONS THE RIGHT OF DISPOSITION. SUCH AUTHORIZATION SHALL LIST THE NAME AND LAST KNOWN ADDRESS OF EACH REPRESENTATIVE, EXPRESSLY PROVIDE EACH REPRESENTATIVE WITH THE RIGHT OF DISPOSITION, BE SIGNED BY THE DECEDENT, EITHER BE WITNESSED BY TWO WITNESSES WHO ARE EIGHTEEN YEARS OR OLDER AND NOT RELATED BY BLOOD, MARRIAGE OR ADOPTION TO THE DECEDENT, OR BE ACKNOWLEDGED BY THE DECEDENT BEFORE A NOTARY PUBLIC, AND BE SIGNED BY THE REPRESENTATIVE INDICATING ACCEPTANCE OF THE APPOINTMENT. THE REPRESENTATIVE SHALL BE LIABLE FOR THE COSTS OF THE FUNERAL AND THE DISPOSITION WHERE THE REPRESENTATIVE MAKES DECISIONS CONCERNING THE FUNERAL OR DISPOSITION THAT INCUR COSTS AND WHERE THE DECEDENT'S ESTATE OR ANY FUNDS SET ASIDE IN A PRE-FUNDED BURIAL AGREEMENT PURSUANT TO S. 445.125 ARE INSUFFICIENT TO PAY FOR THE COST OF THE FUNERAL AND DISPOSITION. IF THERE IS MORE THAN ONE REPRESENTATIVE SO DESIGNATED, THEN DECISIONS SHALL BE BY THE MAJORITY OF THE PERSONS SO DESIGNATED. HOWEVER, LESS THAN ONE-HALF OF THE REPRESENTATIVES SO DESIGNATED SHALL BE VESTED WITH THE RIGHTS OF THIS SECTION IF THEY HAVE USED REASONABLE EFFORTS TO NOTIFY ALL OTHER SURVIVING REPRESENTATIVES OF THEIR INSTRUCTIONS AND ARE NOT AWARE OF ANY OPPOSITION TO THOSE INSTRUCTIONS ON THE PART OF MORE THAN ONE-HALF OF ALL SUCH REPRESENTATIVES. NEITHER THE TREATING HEALTH CARE PROVIDER, NOR AN EMPLOYEE OF THE TREATING HEALTH CARE PROVIDER, NOR AN EMPLOYEE OF A FUNERAL HOME, CREMATORY OR CEMETERY PROVIDING SERVICES TO THE DECEDENT, NOR A MEMBER OF THE CLERGY MAY SERVE AS A REPRESENTATIVE UNDER THIS SECTION UNLESS RELATED TO THE DECEDENT BY BLOOD, MARRIAGE OR ADOPTION. FOR PURPOSES OF THIS SECTION, "HEALTH CARE PROVIDER" MEANS THE ATTENDING

PHYSICIAN AND ANY PERSON WHO ADMINISTERED HEALTH CARE TO THE DECEDENT WHO IS LICENSED, CERTIFIED OR OTHERWISE AUTHORIZED OR PERMITTED BY LAW TO ADMINISTER HEALTH CARE IN THE ORDINARY COURSE OF BUSINESS.

- (c) THE SOLE SURVIVING CHILD OF THE DECEDENT, OR IF THERE IS MORE THAN ONE CHILD OF THE DECEDENT, THE MAJORITY OF THE SURVIVING CHILDREN. HOWEVER, LESS THAN ONE-HALF OF THE SURVIVING CHILDREN SHALL BE VESTED WITH THE RIGHTS OF THIS SECTION IF THEY HAVE USED REASONABLE EFFORTS TO NOTIFY ALL OTHER SURVIVING CHILDREN OF THEIR INSTRUCTIONS AND ARE NOT AWARE OF ANY OPPOSITION TO THOSE INSTRUCTIONS ON THE PART OF MORE THAN ONE-HALF OF ALL SURVIVING CHILDREN.
- (d) THE SURVIVING PARENT OR PARENTS OF THE DECEDENT. IF ONE OF THE SURVIVING PARENTS IS ABSENT, THE REMAINING PARENT SHALL BE VESTED WITH THE RIGHTS AND DUTIES OF THIS SECTION AFTER REASONABLE EFFORTS HAVE BEEN UNSUCCESSFUL IN LOCATING THE ABSENT SURVIVING PARENT.
- (e) THE SURVIVING BROTHER OR SISTER OF THE DECEDENT, OR IF THERE IS MORE THAN ONE SIBLING OF THE DECEDENT, THE MAJORITY OF THE SURVIVING SIBLINGS. HOWEVER, LESS THAN THE MAJORITY OF SURVIVING SIBLINGS SHALL BE VESTED WITH THE RIGHTS AND DUTIES OF THIS SECTION IF THEY HAVE USED REASONABLE EFFORTS TO NOTIFY ALL OTHER SURVIVING SIBLINGS OF THEIR INSTRUCTIONS AND ARE NOT AWARE OF ANY OPPOSITION TO THOSE INSTRUCTIONS ON THE PART OF MORE THAN ONE-HALF OF ALL SURVIVING SIBLINGS.
- (f) THE PERSON IN THE CLASSES OF THE NEXT DEGREE OF KINSHIP, IN DESCENDING ORDER, UNDER THE LAWS OF INTESTATE SUCCESSION SET FORTH AT S. 852.01(1). IF THERE IS MORE THAN ONE PERSON OF THE SAME DEGREE, ANY PERSON OF THAT DEGREE MAY EXERCISE THE RIGHT OF DISPOSITION.
- (g) THE GUARDIAN OF THE PERSON OF THE DECEDENT AT THE TIME OF THE DECEDENT'S DEATH, IF ONE HAD BEEN APPOINTED.
- (h) IN THE ABSENCE OF ANY PERSON UNDER SUB. (1)(a) THROUGH (1)(g) ABOVE, ANY OTHER PERSON WILLING TO ASSUME THE RESPONSIBILITIES TO ACT AND ARRANGE THE FINAL DISPOSITION OF THE DECEDENT'S REMAINS, INCLUDING THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE OR THE LICENSED FUNERAL DIRECTOR WITH CUSTODY OF THE BODY, AFTER ATTESTING IN WRITING THAT A GOOD FAITH EFFORT HAS BEEN

MADE TO NO AVAIL TO CONTACT THE INDIVIDUALS UNDER SUBS. (1)(a) THROUGH (1)(g) ABOVE.

(2) **LOSS OF RIGHT OF DISPOSITION.** A PERSON ENTITLED UNDER THIS SECTION TO THE RIGHT OF DISPOSITION SHALL FORFEIT THAT RIGHT, AND THE RIGHT IS PASSED ON TO THE NEXT QUALIFYING PERSON AS LISTED IN S. 157.07(1), IN THE FOLLOWING CIRCUMSTANCES:

- (a) ANY PERSON CHARGED WITH FIRST OR SECOND DEGREE MURDER OR VOLUNTARY MANSLAUGHTER IN CONNECTION WITH THE DECEDENT'S DEATH, AND WHOSE CHARGES ARE KNOWN TO THE FUNERAL DIRECTOR; PROVIDED, HOWEVER THAT IF THE CHARGES AGAINST SUCH PERSON ARE DISMISSED, OR IF SUCH PERSON IS ACQUITTED OF THE CHARGES, THE RIGHT OF DISPOSITION IS RETURNED TO THE PERSON.
- (b) ANY PERSON WHO DOES NOT EXERCISE HIS OR HER RIGHT OF DISPOSITION WITHIN TWO DAYS OF NOTIFICATION OF THE DEATH OF DECEDENT OR WITHIN FIVE DAYS OF DECEDENT'S DEATH, WHICHEVER IS LATER.
- (c) THE PERSON WAS THE SPOUSE OF THE DECEDENT AND AN ACTION PURSUANT TO CHAPTER 767 TO TERMINATE THE MARRIAGE OF THE SPOUSE AND THE DECEDENT WAS PENDING AT THE TIME OF THE DECEDENT'S DEATH.
- (d) WHERE THE PROBATE COURT PURSUANT TO S. 157.07(3) BELOW DETERMINES THAT THE PERSON ENTITLED TO THE RIGHT OF DISPOSITION AND THE DECEDENT WERE ESTRANGED AT THE TIME OF DEATH. FOR PURPOSES OF THIS SUBDIVISION, "ESTRANGED" MEANS A PHYSICAL AND EMOTIONAL SEPARATION FROM THE DECEDENT AT THE TIME OF DEATH WHICH HAS EXISTED FOR A PERIOD OF TIME THAT CLEARLY DEMONSTRATES AN ABSENCE OF DUE AFFECTION, TRUST AND REGARD FOR THE DECEDENT.

(3) **DISPUTES.** NOTWITHSTANDING THE FOREGOING, THE PROBATE COURT FOR THE COUNTY WHERE THE DECEDENT RESIDED MAY AWARD THE RIGHT OF DISPOSITION TO THE PERSON DETERMINED BY THE COURT TO BE THE MOST FIT AND APPROPRIATE TO CARRY OUT THE RIGHT OF DISPOSITION, AND MAY MAKE DECISIONS REGARDING THE DECEDENT'S REMAINS IF THOSE PERSONS ENUMERATED IN SUBS. (a) THROUGH (g) OF S. 157.07(1) OF THIS SECTION CANNOT AGREE. THE FOLLOWING PROVISIONS SHALL APPLY TO THE COURT'S DETERMINATION UNDER THIS SECTION.

- (a) BEFORE AN INDIVIDUAL'S DEATH, THE INDIVIDUAL OR THE INDIVIDUAL'S LEGAL REPRESENTATIVE, MAY FILE A PETITION

REGARDING THE RIGHT OF DISPOSITION OF THE PERSON'S REMAINS. FOLLOWING A PERSON'S DEATH, A RELATIVE OF THE DECEDENT MAY FILE SUCH A PETITION. IN ADDITION, A PERSON WHO CLAIMS, OR ESTABLISHES THROUGH EVIDENCE, THAT THE PERSON HAS OR HAD A CLOSER PERSONAL RELATIONSHIP TO THE DECEDENT THAN THE NEXT OF KIN MAY FILE A PETITION, PROVIDED THAT PERSON LIVED WITH THE DECEDENT AND WAS NOT IN THE EMPLOY OF THE DECEDENT OR THE DECEDENT'S FAMILY. IF THE PERSONS HOLDING THE RIGHT OF DISPOSITION ARE TWO OR MORE PERSONS WITH THE SAME RELATIONSHIP TO THE DECEDENT, AND THEY CANNOT, BY MAJORITY VOTE, MAKE A DECISION REGARDING THE DISPOSITION OF THE DECEDENT'S REMAINS, ANY OF SUCH PERSONS OR A LICENSED FUNERAL DIRECTOR WITH CUSTODY OF THE REMAINS MAY FILE A PETITION ASKING THE PROBATE COURT TO MAKE A DETERMINATION IN THE MATTER.

(b) IN MAKING A DETERMINATION UNDER THIS SUB. (a), THE PROBATE COURT SHALL CONSIDER THE FOLLOWING:

1. THE REASONABLENESS AND PRACTICALITY OF THE PROPOSED FUNERAL ARRANGEMENTS AND DISPOSITION.
2. THE DEGREE OF THE PERSONAL RELATIONSHIP BETWEEN THE DECEDENT AND EACH OF THE PERSONS CLAIMING THE RIGHT OF DISPOSITION.
3. THE DESIRES OF THE PERSON OR PERSONS WHO ARE READY, ABLE AND WILLING TO PAY THE COST OF THE FUNERAL ARRANGEMENTS AND DISPOSITION.
4. THE CONVENIENCE AND NEEDS OF OTHER FAMILIES AND FRIENDS WISHING TO PAY RESPECTS.
5. THE EXPRESS WRITTEN DESIRES OF THE DECEDENT.
6. THE DEGREE TO WHICH THE FUNERAL ARRANGEMENTS WOULD ALLOW MAXIMUM PARTICIPATION BY ALL WISHING TO PAY RESPECT.

(c) IN THE EVENT OF A DISPUTE REGARDING THE RIGHT OF DISPOSITION, A FUNERAL HOME IS NOT LIABLE FOR REFUSING TO ACCEPT THE REMAINS, OR TO INTER OR OTHERWISE DISPOSE OF THE REMAINS OF THE DECEDENT, OR COMPLETE THE ARRANGEMENTS FOR THE FINAL DISPOSITION OF THE REMAINS UNTIL THE FUNERAL HOME RECEIVES A COURT ORDER OR OTHER

WRITTEN AGREEMENT SIGNED BY THE PARTIES IN THE DISAGREEMENT THAT DECIDES THE FINAL DISPOSITION OF THE REMAINS. IF THE FUNERAL HOME RETAINS THE REMAINS FOR FINAL DISPOSITION WHILE THE PARTIES ARE IN DISAGREEMENT, THE FUNERAL HOME MAY EMBALM OR REFRIGERATE AND SHELTER THE BODY, OR BOTH, IN ORDER TO PRESERVE IT WHILE AWAITING THE FINAL DECISION OF THE PROBATE COURT AND MAY ADD THE COST OF EMBALMING AND REFRIGERATION AND SHELTERING TO THE FINAL DISPOSITION COSTS. IF A FUNERAL HOME BRINGS AN ACTION UNDER THIS SECTION, THE FUNERAL HOME MAY ADD THE REASONABLE LEGAL FEES AND COURT COSTS ASSOCIATED WITH A PETITION UNDER THIS SECTION TO THE COST OF FINAL DISPOSITION. THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE OR TO IMPOSE A DUTY UPON A FUNERAL HOME TO BRING AN ACTION UNDER THIS SECTION. A FUNERAL HOME OR FUNERAL DIRECTOR MAY NOT BE HELD CRIMINALLY OR CIVILLY LIABLE FOR CHOOSING NOT TO BRING AN ACTION UNDER THIS SECTION.

- (d) EXCEPT TO THE DEGREE IT MAY BE CONSIDERED BY THE PROBATE COURT UNDER S. 157.05(3)(b)3 ABOVE, THE FACT THAT A PERSON HAS PAID OR AGREED TO PAY FOR ALL OR PART OF THE FUNERAL ARRANGEMENTS AND FINAL DISPOSITION DOES NOT GIVE THAT PERSON A GREATER RIGHT TO THE RIGHT OF DISPOSITION THAN THE PERSON WOULD OTHERWISE HAVE. THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE DECEDENT DOES NOT, BY VIRTUE OF BEING THE PERSONAL REPRESENTATIVE, HAVE A GREATER CLAIM TO THE RIGHT OF DISPOSITION THAN THE PERSON WOULD OTHERWISE HAVE.

(4) **RIGHT TO RELY.** ANY PERSON SIGNING A PRENEED FUNERAL CONTRACT, FUNERAL SERVICE AGREEMENT, CREMATION AUTHORIZATION FORM, OR ANY OTHER AUTHORIZATION FOR DISPOSITION SHALL BE DEEMED TO WARRANT THE TRUTHFULNESS OF ANY FACTS SET FORTH THEREIN, INCLUDING THE IDENTITY OF THE DECEDENT WHOSE REMAINS ARE TO BE BURIED, CREMATED, OR OTHERWISE DISPOSED OF, AND THE PARTY'S AUTHORITY TO ORDER SUCH DISPOSITION. FUNERAL HOMES AND CREMATORIES SHALL HAVE THE RIGHT TO RELY ON SUCH CONTRACT OR AUTHORIZATION AND SHALL HAVE THE AUTHORITY TO CARRY OUT THE INSTRUCTIONS OF THE PERSON OR PERSONS WHOM THE FUNERAL DIRECTOR OR CREMATORY OPERATOR REASONABLY BELIEVES HOLDS THE RIGHT OF DISPOSITION. FUNERAL HOMES AND CREMATORIES SHALL HAVE NO RESPONSIBILITY TO CONTACT OR TO INDEPENDENTLY INVESTIGATE THE EXISTENCE OF ANY NEXT-OF-KIN OR RELATIVE OF THE DECEDENT. IF THERE IS MORE THAN ONE PERSON IN A CLASS WHO ARE EQUAL IN PRIORITY AND THE FUNERAL DIRECTOR OR CREMATORY OPERATOR HAS NO KNOWLEDGE OF ANY OBJECTION BY OTHER MEMBERS OF SUCH CLASS, THE FUNERAL DIRECTOR AND CREMATORY OPERATOR SHALL BE

ENTITLED TO RELY ON AND ACT ACCORDING TO THE INSTRUCTIONS OF THE FIRST SUCH PERSON IN THE CLASS TO MAKE FUNERAL AND DISPOSITION ARRANGEMENTS; PROVIDED THAT NO OTHER PERSON IN SUCH CLASS PROVIDES WRITTEN NOTICE OF HIS OR HER OBJECTIONS TO THE FUNERAL DIRECTOR OR CREMATORY OPERATOR.

(5) **IMMUNITY.** NO FUNERAL HOME, FUNERAL DIRECTOR, CREMATORY OR CREMATORY OPERATOR, WHO RELIES IN GOOD FAITH UPON THE INSTRUCTIONS OF AN INDIVIDUAL CLAIMING THE RIGHT OF DISPOSITION, SHALL BE SUBJECT TO CRIMINAL OR CIVIL LIABILITY OR SUBJECT TO DISCIPLINARY ACTION FOR CARRYING OUT THE DISPOSITION OF THE REMAINS IN ACCORDANCE WITH THE INSTRUCTIONS.

(6) **DECLINATION.** A PERSON WHO OTHERWISE WOULD HAVE THE RIGHT OF DISPOSITION MAY DECLINE TO SO SERVE, OR RESIGN AFTER BEGINNING TO ACT. HOWEVER, A PERSON WHO EXERCISES THE RIGHT OF DISPOSITION AND SUBSEQUENTLY RESIGNS SHALL BE SUBJECT TO S. 157.05(7) CONCERNING FUNERAL AND BURIAL EXPENSES FOR THE DECEASED PERSON ARISING FROM THE ACTIONS OF SUCH RESIGNING PERSON EXERCISING THE RIGHT OF DISPOSITION BUT SHALL NOT BE SUBJECT TO S. 157.07(7) FOR SUCH EXPENSES ARISING FROM THE ACTIONS OF A SUCCESSOR EXERCISING THE RIGHT OF DISPOSITION.

(7) **LIABILITY FOR COSTS.** THE LIABILITY FOR THE REASONABLE COSTS OF THE FUNERAL AND FINAL DISPOSITION DEVOLVES UPON THE REPRESENTATIVE ACTING UNDER THIS SECTION AND THE REPRESENTATIVE MAY COLLECT SUCH REASONABLE COSTS FROM THE ESTATE AS AUTHORIZED UNDER S. 859.25(2)(b).

(8) **OPTIONAL FORM.** A FORM THAT MAY BE USED, BUT SHALL NOT BE REQUIRED TO BE USED, TO APPOINT A REPRESENTATIVE TO MAKE FUNERAL, AND, OR, DISPOSITION ARRANGEMENTS AND, OR, TO PROVIDE SPECIAL DIRECTIONS, FOLLOWS:

APPOINTMENT OF AGENT FOR FUNERAL, AND, OR,
DISPOSITION ARRANGEMENTS

I, _____ (YOUR NAME AND ADDRESS), BEING OF SOUND MIND, WILLFULLY AND VOLUNTARILY MAKE KNOWN MY DESIRE THAT, UPON MY DEATH, THE DISPOSITION OF MY REMAINS SHALL BE CONTROLLED BY MY REPRESENTATIVE PURSUANT TO SECTION 157.07 OF THE WISCONSIN STATUTES AND, WITH RESPECT TO THAT SUBJECT ONLY, I HEREBY APPOINT SUCH PERSON AS MY REPRESENTATIVE. ALL DECISIONS MADE BY MY REPRESENTATIVE WITH RESPECT TO THE DISPOSITION OF MY REMAINS, INCLUDING FUNERAL, AND, OR, BURIAL INSTRUCTIONS, SHALL BE BINDING.

REPRESENTATIVE:

NAME: _____
ADDRESS: _____
TELEPHONE NUMBER: _____

SUCCESSORS:

IF MY REPRESENTATIVE DIES, BECOMES LEGALLY DISABLED, RESIGNS, REFUSES TO ACT, CEASES TO BE QUALIFIED, OR CANNOT BE LOCATED WITHIN THE TIME NECESSARY TO MAKE MY FUNERAL, AND, OR, DISPOSITION PLANS, THEN I HEREBY APPOINT THE FOLLOWING PERSONS (EACH TO ACT ALONE AND SUCCESSIVELY, IN THE ORDER NAMED) TO SERVE AS MY REPRESENTATIVE:

1. FIRST SUCCESSOR
NAME: _____
ADDRESS: _____
TELEPHONE NUMBER: _____

2. SECOND SUCCESSOR
NAME: _____
ADDRESS: _____
TELEPHONE NUMBER: _____

SUGGESTED SPECIAL DIRECTIONS:

SUGGESTED INSTRUCTIONS CONCERNING RELIGIOUS OBSERVANCES:

SUGGESTED SOURCE OF FUNDS FOR IMPLEMENTING FUNERAL, AND, OR DISPOSITION EXPENSES:

DURATION:

THIS APPOINTMENT BECOMES EFFECTIVE UPON MY DEATH.

PRIOR APPOINTMENTS REVOKED:

I HEREBY REVOKE ANY PRIOR APPOINTMENT OF A REPRESENTATIVE FOR FUNERAL, AND, OR, DISPOSITION ARRANGEMENTS I HAVE SIGNED PRIOR TO THE DATE I HAVE SIGNED THIS DOCUMENT.

I HEREBY AGREE THAT ANY CEMETERY ORGANIZATION, BUSINESS OPERATING A CREMATORY OR COLUMBARIUM OR BOTH, FUNERAL DIRECTOR OR EMBALMER, OR FUNERAL HOME THAT RECEIVES A COPY OF THIS DOCUMENT MAY ACT UNDER IT. ANY MODIFICATION OR REVOCATION OF THIS DOCUMENT IS NOT EFFECTIVE AS TO ANY SUCH PARTY UNTIL THAT PARTY RECEIVES ACTUAL NOTICE OF THE MODIFICATION OR REVOCATION. NO SUCH PARTY SHALL BE LIABLE BECAUSE OF RELIANCE ON A COY OF THIS DOCUMENT.

ASSUMPTION:

THE REPRESENTATIVE, AND EACH SUCCESSOR REPRESENTATIVE, BY ACCEPTING THIS APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY THE PROVISIONS OF, SECTION 157.07 OF THE WISCONSIN STATUTES INCLUDING BEING LIABLE FOR THE REASONABLE COSTS OF MY FUNERAL AND FINAL DISPOSITION.

SIGNED THIS _____ DAY OF _____

(YOUR SIGNATURE)
DECLARANT

ACCEPTANCE (OPTIONAL):

THE UNDERSIGNED HEREBY ACCEPTS THIS APPOINTMENT AS REPRESENTATIVE FOR THE RIGHT OF DISPOSITION OF DECLARANT'S REMAINS.

(REPRESENTATIVE'S SIGNATURE)

NOTARY ACKNOWLEDGMENT.
STATE OF WISCONSIN
COUNTY OF _____ SS.

ON _____, BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED _____, KNOWN TO ME OR SATISFACTORILY PROVEN TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE ABOVE APPOINTMENT OF REPRESENTATIVE FOR FUNERAL, AND, OR, DISPOSITION ARRANGEMENTS AS THE DECLARANT, AND WHO HAS ACKNOWLEDGED THAT (S)HE EXECUTED THE SAME FOR THE PURPOSES EXPRESSED THEREIN. I ATTEST THAT THE DECLARANT APPEARS TO BE OF SOUND MIND AND NOT UNDER OR SUBJECT TO DURESS, FRAUD OR UNDUE INFLUENCE.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

(9) **MULTIPLE FORMS.** IF THE DECEASED PERSON EXECUTED MORE THAN ONE DOCUMENT TO COMPLY WITH S. 157.07(1)(b) AND THE DOCUMENTS COMPLY WITH THE REQUIREMENTS OF THIS SECTION, THEN THE DOCUMENT SIGNED MOST RECENTLY BY THE DECEDENT CONTROLS AND OPERATES TO REVOKE THE EARLIER DOCUMENT TO THE EXTENT THAT ITS PROVISIONS ARE INCONSISTENT WITH THE EARLIER DOCUMENT.

(10) **GOOD FAITH EFFORT.** THE FUNERAL HOME SHALL MAKE A GOOD FAITH EFFORT TO COMPLY WITH THE FUNERAL, AND, OR, DISPOSITION INSTRUCTIONS GIVEN PURSUANT TO THIS SECTION UNLESS THE INSTRUCTIONS ARE CONTRARY TO LAW OR THERE ARE INSUFFICIENT RESOURCES TO PAY FOR THE FUNERAL GOODS AND SERVICES TO BE PROVIDED PURSUANT TO THE INSTRUCTIONS.

(11) **APPLICATION TO PROBATE COURT.** UPON APPLICATION TO A PROBATE COURT FOR THE COUNTY WHERE THE DECEDENT RESIDED, THE PROBATE COURT SHALL REVIEW AND MODIFY THE FUNERAL, AND, OR, DISPOSITION INSTRUCTIONS IF THE COURT DETERMINES THE INSTRUCTIONS TO BE UNREASONABLE UNDER THE CIRCUMSTANCES AT THE TIME OF THE DECEDENT'S DEATH.

(12) **JURISDICTION.** THE PROBATE COURT FOR THE COUNTY WHERE THE DECEDENT RESIDED SHALL HAVE EXCLUSIVE JURISDICTION OF MATTERS WHICH ARISE UNDER THIS SECTION.

Kennedy, Debora

From: Popp, Sarah
Sent: Tuesday, November 29, 2005 12:16 PM
To: Kennedy, Debora
Subject: RE: Final Rights Legislation

Debora
Sounds good. Thank you for working on this for us.
Sarah

From: Kennedy, Debora
Sent: Tuesday, November 29, 2005 12:15 PM
To: Popp, Sarah
Subject: RE: Final Rights Legislation

I am setting forth numerous questions in the draft, which is likely the most efficient way of dealing with them. As I said, I hope to be finishing this today or tomorrow; the draft should come to you within a week after that.

From: Popp, Sarah
Sent: Tuesday, November 29, 2005 12:04 PM
To: Kennedy, Debora
Subject: RE: Final Rights Legislation

Thanks for getting back to me so quickly! Are the problems something that you need stuff from us on, or just problems in putting it together? Please let me know if there is anything I can do to help.
If you think of it, please let me know when it is sent to editing just so I have an idea of how long it will be until we will receive it.
Thanks again!
Sarah

From: Kennedy, Debora
Sent: Tuesday, November 29, 2005 11:58 AM
To: Popp, Sarah
Subject: RE: Final Rights Legislation

I have been working on this draft for several days, including this weekend; it has numerous problems. I hope to have it finished today or tomorrow. I assume that it will be able to be edited within a week after I am finished.

From: Popp, Sarah
Sent: Tuesday, November 29, 2005 11:56 AM
To: Kennedy, Debora
Subject: Final Rights Legislation

Debora
Just checking in to see when we should receive the Final Rights legislation. This was the draft that you were doing based on an Ohio model.
Please let me know when you would anticipate it being done.
Thanks for your help.

Sarah Popp
Office of State Representative Samantha Kerkman
109 West State Capitol
Madison, WI 53708
(608) 266-2530