HOUSE BILL NO. 672



#### BY REPRESENTATIVES DAVIS, BAGNERIS, JEFFERSON, AND NORTON

1	AN ACT
2	To amend and reenact R.S. 8:655(A), (B)(1), (C), and (D) and R.S. 37:848(B), 876(A), (B),
3	(D), (E), and (F), 877(B)(1)(a)(v) and (b)(ii), and 879(K) and to enact R.S. 8:655(E)
4	and R.S. 37:855 and 876(G), relative to the disposing of human remains; to provide
5	with respect to a decedent's notarial testament; to provide for a change in priority of
6	persons with respect to the right to control interment and the authorized arrangement
7	of cremation; to distinguish adult grandchildren as a priority group of persons; to
8	allow the disposal of certain human remains by certain assistants of certified
9	embalmers; to provide for the right to arrange funeral goods and services; to limit
10	liability of certain persons with respect to the arrangement of funeral goods and
11	services; to require a majority relative to certain surviving family members and the
12	right to authorize cremation; to expressly make certain military provisions applicable
13	to cremation authorizations; to require the attachment of declarations to cremation
14	authorization forms; to exempt the remains of certain fetuses with respect to
15	provisions requiring identification of human remains; to authorize a representative
16	of a funeral establishment to deliver cremated human remains to authorized persons;
17	to authorize a legal entity to receive cremated human remains; to require funeral
18	establishments and cemetery authorities to retain certain receipts; to provide for other
19	clarifying changes; and to provide for related matters.
20	Be it enacted by the Legislature of Louisiana:
21	Section 1. R.S. 8:655(A), (B)(1), (C), and (D) are hereby amended and reenacted and
22	R.S. 8:655(E) is hereby enacted to read as follows:

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1	§655. Right of disposing of remains; military personnel; limitation of liability
2	A. The right to control interment, as defined in R.S. 8:1(26), of the remains
3	of a deceased person, unless Unless other specific directions have been given or the
4	designation of a specific person to control disposition has been made by the decedent
5	in the form of <u>a notarial testament or</u> a written and notarized declaration, <del>vests in and</del>
6	devolves upon the following in the order named the following persons, in the priority
7	listed, have the right to control and authorize the interment of a deceased person, as
8	<u>defined in R.S. 8:1(26)</u> :
9	(1) The person designated to control disposition by the decedent in the form
10	of a notarial testament or a written and notarized declaration.
11	(1)(2) The surviving spouse, if <u>there is</u> no <u>pending</u> petition for divorce has
12	been filed by either spouse prior to the death of the decedent spouse.
13	(2)(3) A majority of the surviving adult children of the decedent, not
14	including grandchildren or other more remote descendants.
15	(4) A majority of the surviving adult grandchildren of the decedent.
16	(3)(5) The surviving parents of the decedent.
17	(4)(6) A majority of the surviving adult brothers and sisters siblings of the
18	decedent.
19	(5)(7) A majority of the <u>surviving</u> adult persons respectively in the next
20	degrees of kindred as established in Civil Code Article 880 et seq.
21	B.(1) Notwithstanding the provisions of Subsection A of this Section, if H
22	the decedent died in a manner described by 10 U.S.C. §1481 (a)(1) through (8) while
23	serving in any branch of the United States Armed Forces, the United States Reserve
24	Forces, or National Guard, and the decedent executed a United States Department
25	of Defense Record of Emergency Data, known as DD Form 93, or its successor form,
26	the right to control interment for the decedent shall devolve upon the Person
27	Authorized to Direct Disposition, also referred to as the PADD, as indicated on the
28	DD Form 93 or its successor form.
29	* * *

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#### **ENROLLED**

1	C.(1) In the event that the decedent has made multiple <u>notarial testaments</u>
2	or notarized declarations of interment pursuant to Subsection A of this Section, the
3	testament or declaration, whichever is dated last, shall control.
4	(2) In the event that the decedent has made one or more <u>notarial testaments</u>
5	or notarized declarations of interment pursuant to Subsection A of this Section, and
6	the decedent executed a DD Form 93 and died in a manner described in Subsection
7	B of this Section, the testament, declaration, or the DD Form 93, whichever is dated
8	last, shall control interment of the decedent's remains.
9	D. Notwithstanding the provisions of Subsection A of this Section, in In the
10	event that the coroner releases the remains of the decedent to an interested person
11	pursuant to R.S. 9:1551(A)(1), such person shall have has the right to control the
12	disposition of the remains of the decedent.
13	E. In the absence of specific directions given by the decedent, if the
14	authorization of the person or persons with the right to control disposition cannot be
15	obtained, a final judgment of a district court shall be required.
16	Section 2. R.S. 37:848(B), 876(A), (B), (D), (E), and (F), 877(B)(1)(a)(v) and (b)(ii),
17	and 879(K) are hereby amended and reenacted and R.S. 37:855 and 876(G) are hereby
18	enacted to read as follows:
19	§848. Unlawful practice
20	* * *
21	B. Every member of a firm or corporation engaged in the practice of the
22	science of embalming or the business of funeral directing, or both, and the manager
23	of each place of business conducted by such firm or corporation, whose duties
24	engage him directly in the care and preparation, or the supervision of the disposal,
25	burial or disinterment of dead human bodies, shall possess a certificate issued under
26	the provisions of this Chapter. No such firm or corporation shall permit an assistant
27	who is not a certified embalmer under the provisions of this Chapter to care for or
28	prepare for burial or transportation, the body of any person who has died of a
29	communicable disease.
30	* * *

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1	§855. Right to arrange funeral goods and services
2	A. The persons in the priority listed in R.S. 8:655 have the right to arrange
3	with a funeral director or funeral establishment for funeral goods and services, as
4	defined in R.S. 37:831(45), in preparation for the disposition of the remains of a
5	decedent.
6	B. There is no liability for a funeral director, funeral establishment, or any
7	respective employees for following the directions or relying on the representation of
8	a person representing himself to be the person who has the prior right to arrange the
9	funeral goods and services for the remains of a decedent in accordance with
10	Subsection A of this Section.
11	* * *
12	§876. Authorizing agent; notarial testaments and notarized declarations
13	A. The following persons, in the priority listed, shall have the right to serve
14	as an authorizing agent for cremation unless other specific directions have been
15	given by the decedent in the form of a written and notarized declaration:
16	(1) Any person arranging the cremation, if the decedent has given specific
17	directions in the form of a notarial testament or a written and notarized declaration
18	providing for disposition of his remains by cremation.
19	(2) The person designated to control disposition by the decedent in the form
20	of a notarial testament or a written and notarized declaration.
21	(1)(3) The surviving spouse, if <u>there is</u> no <u>pending</u> petition for divorce has
22	been filed by either spouse prior to the death of the decedent spouse.
23	(2) All (4) A majority of the surviving adult children of the decedent, not
24	including grandchildren or other more remote descendants.
25	(5) A majority of the surviving adult grandchildren of the decedent.
26	(3)(6) The surviving parents of the decedent.
27	(4) All (7) A majority of the surviving adult siblings of the decedent.
28	(5) All (8) A majority of the surviving adult persons respectively in the next
29	degree of kindred as provided in Civil Code Articles 880 et seq.

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1	B. Notwithstanding the provisions of Subsection A of this Section, if H the
2	coroner releases the remains of a decedent to an interested person pursuant to R.S.
3	9:1551(A)(1), such person may serve as the authorizing agent for cremation.
4	* * *
5	D. Notwithstanding the provisions of Subsection A of this Section, in In the
6	case of those individuals whose disposition is the responsibility of the state or any
7	of its instrumentalities, a public administrator, medical examiner, coroner,
8	state-appointed guardian, or any other public official charged with arranging the
9	disposition of the decedent may serve as the authorizing agent.
10	E. No person shall be $is$ allowed to serve as an authorizing agent when a
11	decedent has left written instructions in a notarial testament or notarized declaration
12	that he does not wish to be cremated.
13	F.(1) If the decedent died in a manner described by 10 U.S.C. §1481 (a)(1)
14	through (8) while serving in any branch of the United States Armed Forces, the
15	United States Reserve Forces, or National Guard, and the decedent executed a United
16	States Department of Defense Record of Emergency Data, known as DD Form 93,
17	or its successor form, the right to serve as an authorizing agent for cremation shall
18	devolve upon the Person Authorized to Direct Disposition, also referred to as the
19	PADD, as indicated on the DD Form 93 or its successor form.
20	(2) There is no liability for a cemetery authority, funeral establishment,
21	funeral director, crematory authority, or the employees or agents of any of them to
22	whom a copy of a DD Form 93 is presented, purportedly executed by the decedent
23	for conduction of a cremation of the decedent's remains, pursuant to the instructions
24	of the PADD as indicated on the DD Form 93, or for relying on the representation
25	of the PADD that the decedent died in a manner described in Paragraph (1) of this
26	Subsection.
27	<u>G.(1)</u> In the event that the decedent has made multiple <u>notarial testaments</u>
28	or notarized declarations of disposition pursuant to Subsection A of this Section, the
29	last notarized declaration notarial testament or notarized declaration, whichever is
30	dated last, shall control.

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1	(2) In the event that the decedent has made one or more notarial testaments
2	or notarized declarations pursuant to Subsection A of this Section, and the decedent
3	executed a DD Form 93 and died in a manner described in Subsection F of this
4	Section, the notarial testament, declaration, or the DD Form 93, whichever is dated
5	last, shall control the right to serve as an authorizing agent for cremation.
6	§877. Authorization to arrange cremation; authorization to cremate; refusal to
7	arrange a cremation; refusal to cremate
8	* * *
9	B. A crematory authority shall have authority to cremate human remains
10	when they are delivered by the funeral establishment and upon receipt of all of the
11	following:
12	(1)(a) A cremation authorization form signed by an authorizing agent. Such
13	form shall contain, at a minimum, the following information:
14	* * *
15	(v) A representation that the authorizing agent has the right to authorize the
16	cremation of the decedent and that the authorizing agent is not aware of any living
17	person who has a superior or equal priority to that of the authorizing agent. If the
18	authorizing agent is acting pursuant to a notarial testament or a written and notarized
19	declaration made by the decedent, a copy of the testament or declaration shall be
20	attached to the cremation authorization form.
21	* * *
22	(b)
23	* * *
24	(ii) The cremation authorization form, other than preneed cremation forms,
25	shall also be signed by a funeral director of the funeral establishment arranging the
26	cremation. The funeral director shall not be responsible for any of the
27	representations made by the authorizing agent, unless the individual has actual
28	knowledge to the contrary. However, the information requested by Item $(a)(i)$ of this
29	Paragraph shall be considered to be a representation of the funeral director or funeral
30	establishment that the human remains delivered to the crematory authority have been

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1	identified as the decedent listed on the cremation authorization by the coroner
2	pursuant to Item (b)(iii) of this Paragraph or positively identified after a viewing of
3	the remains by a person who is the authorizing agent or a member of the class of
4	which the authorizing agent is composed or a designated representative, thereof
5	unless the remains are from a spontaneous fetal death as defined in R.S. 40:32(16),
6	in which case a viewing is not required if written identification is received when such
7	remains are released to the funeral director. The information requested by Item
8	(a)(iii) of this Paragraph shall be considered to be a representation of the funeral
9	director or funeral establishment of any information received by the funeral director
10	or funeral establishment pursuant to R.S. 40:1099.1 R.S. 40:1271.2.
11	* * *
12	§879. Cremation procedures; pacemakers; cremation retorts; refusal to accept a
13	cremation container; unauthorized persons in crematory; simultaneous
14	cremation of the human remains of multiple persons; cremation residue;
15	packaging and delivery of cremated human remains
15 16	packaging and delivery of cremated human remains * * *
16	* * *
16 17	* * * K. Cremated human remains shall be made available by the funeral <del>director</del>
16 17 18	* * * K. Cremated human remains shall be made available by the funeral <del>director</del> <u>establishment</u> or the crematory authority to the <u>individual person or legal entity</u>
16 17 18 19	* * * K. Cremated human remains shall be made available by the funeral <del>director</del> <u>establishment</u> or the crematory authority to the <u>individual person or legal entity</u> specified on the cremation authorization form. The funeral director or <u>A</u>
16 17 18 19 20	* * * * K. Cremated human remains shall be made available by the funeral <del>director</del> <u>establishment</u> or the crematory authority to the <u>individual person or legal entity</u> specified on the cremation authorization form. The funeral director or <u>A</u> representative of the <u>funeral establishment or</u> crematory authority and the <u>individual</u>
16 17 18 19 20 21	* * * * K. Cremated human remains shall be made available by the funeral <del>director</del> <u>establishment</u> or the crematory authority to the <del>individual</del> <u>person or legal entity</u> specified on the cremation authorization form. The funeral director or <u>A</u> representative of the <u>funeral establishment or</u> crematory authority and the <del>individual</del> <u>person or representative of the legal entity</u> receiving the cremated human remains
16 17 18 19 20 21 22	* $*$ $*K. Cremated human remains shall be made available by the funeral directorestablishment or the crematory authority to the individual person or legal entityspecified on the cremation authorization form. The funeral director or Arepresentative of the funeral establishment or crematory authority and the individualperson or representative of the legal entity receiving the cremated human remainsshall sign a receipt indicating the name of the deceased, the date, time, and place of$
<ol> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	* * * * K. Cremated human remains shall be made available by the funeral director establishment or the crematory authority to the individual person or legal entity specified on the cremation authorization form. The funeral director or <u>A</u> representative of the <u>funeral establishment or</u> crematory authority and the individual person or representative of the legal entity receiving the cremated human remains shall sign a receipt indicating the name of the deceased, the date, time, and place of the receipt the person's or representative's receipt of the cremated human remains,
<ol> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	* * *
<ol> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ol>	* * * K. Cremated human remains shall be made available by the funeral director establishment or the crematory authority to the individual person or legal entity specified on the cremation authorization form. The funeral director or A representative of the funeral establishment or crematory authority and the individual person or representative of the legal entity receiving the cremated human remains shall sign a receipt indicating the name of the deceased, the date, time, and place of the receipt the person's or representative's receipt of the cremated human remains, and any other information set out in the rules and regulations governing crematories to establish a chain of custody. The crematory authority shall retain a copy of the
<ol> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol>	* * * * * *

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# transported in any manner in this state, with a copy of the burial-transit permit, and disposed of in accordance with the provisions of this Chapter. Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

## SPEAKER OF THE HOUSE OF REPRESENTATIVES

### PRESIDENT OF THE SENATE

### GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_