

**RÉSUMÉ DIGEST****ACT 143 (HB 672)****2016 Regular Session****Davis**

Prior law provided the following prioritized order of certain persons to determine the disposition of human remains:

- (1) The surviving spouse, if no petition for divorce has been filed by either spouse prior to the death of the decedent spouse.
- (2) A majority of the surviving adult children of the decedent, not including grandchildren or other more remote descendants.
- (3) The surviving parents of the decedent.
- (4) A majority of the surviving adult brothers and sisters of the decedent.
- (5) A majority of the adult persons respectively in the next degrees of kin as established in existing law (C.C. Art. 880 et seq).

New law modifies prior law to provide as a preference, ahead of the surviving spouse, the person designated to control disposition by the decedent in the form of a notarial testament or a written and notarized declaration.

Prior law authorized a surviving spouse as a priority group of persons if the surviving spouse did not file a petition for divorce prior to the decedent's death. New law clarifies that a filed petition is a pending petition.

New law adds adult grandchildren to the list of priority groups of persons. Clarifies that a majority of the adult persons in the next degrees of kin are survivors of the decedent.

New law provides that in the absence of specific directions given by the decedent, if the authorization of the person or persons with the right to control disposition cannot be obtained, a final judgment of a district court is required.

Prior law prohibited assistants not certified as embalmers from preparing the bodies of persons deceased from a communicable disease. New law repeals prior law.

New law provides that persons, in the priority listed in new law, have the right to arrange with a funeral director or funeral establishment, the funeral goods and services regarding the remains of a decedent. Exempts a funeral director, funeral establishment, or respective employees from liability for following the directions or relying on the representation of a person who purports to have the preferential right to arrange for funeral goods and services.

Prior law provided the following prioritized order of certain persons to serve as authorizing agents for cremation of a decedent's remains:

- (1) The surviving spouse, if no petition for divorce has been filed by either spouse prior to the death of the decedent spouse.
- (2) The surviving adult children of the decedent, not including grandchildren or other more remote descendants.
- (3) The surviving parents of the decedent.
- (4) The surviving adult brothers and sisters of the decedent.
- (5) The surviving adult persons respectively in the next degrees of kin as established in existing law (C.C. Art. 880 et seq).

New law modifies prior law to provide as a preference, ahead of the surviving spouse, the following persons:

(1) Any person arranging the cremation, if the decedent gave specific directions in the form of a notarial testament or a written and notarized declaration that provided for disposition of his remains by cremation.

(2) The person designated to control disposition by the decedent in the form of a notarial testament or a written and notarized declaration.

New law further modifies prior law to include, with respect to the right to serve as an authorizing agent for cremation, a majority of the surviving adult children, a majority of the surviving adult siblings, and a majority of the surviving adult persons in the next degrees of kin to the decedent.

Existing law requires funeral directors and crematory authorities to receive a written cremation authorization form from an authorizing agent. Further requires the authorization form to include information of the authorizing agent's representation that the agent has the right to authorize cremation, and that the agent is without knowledge that any living person has a superior or equal priority to that of the authorizing agent.

New law retains existing law and requires a copy of the decedent's notarial testament or written and notarized declaration to be attached to the cremation authorization form if the agent is acting pursuant to the testament or declaration.

Existing law provides certain provisions for military persons who died in a certain manner while having a written and notarized declaration of interment and a DD Form 93. New law makes existing law expressly applicable to interment by cremation.

Existing law requires representation or positive identification made by certain persons that respective human remains are those of the decedent. New law excludes the human remains of fetuses deceased as the result of spontaneous fetal death, if written identification is received when such remains are released to the funeral director.

Prior law required a funeral director or representative of a crematory authority to deliver cremated human remains to authorized persons. Required a receipt to be signed by the respective funeral director or representative of a crematory authority and the authorized person receiving the cremated human remains.

New law makes modifications. New law authorizes a representative of a funeral establishment to exchange in the delivery of cremated human remains. Authorizes a legal entity to receive cremated human remains. Requires retention of the signed delivery receipt by the funeral establishment or crematory authority whose respective representative delivers the cremated human remains to the person or representative of the legal entity specified on the cremation authorization form.

Effective upon signature of governor (May 19, 2016).

(Amends R.S. 8:655(A), (B)(1), (C), and (D) and R.S. 37:848(B), 876(A), (B), (D), (E), and (F), 877(B)(1)(a)(v) and (b)(ii), and 879(K); Adds R.S. 8:655(E) and R.S. 37:855 and 876(G))