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## DIGEST

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HB 672 Reengrossed

2016 Regular Session

Davis

**Abstract:** Makes changes to law applicable to the disposition of human remains.

Present law provides for the priority of certain persons in determining the disposition of human remains. The priority listed in present law is as follows:

- (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 present law (C.C. Art. 880 et seq).

Proposed law changes present law to provide as a preference, prior to 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.

Present law authorizes 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. Proposed law clarifies present law to provide that a filed petition is a pending petition.

Proposed law adds adult grandchildren as a priority group of persons. Clarifies that a majority of the adult persons in the next degrees of kin are survivors of the decedent.

Proposed 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.

Proposed law deletes a present law provision prohibiting assistants not certified as embalmers from preparing the bodies of persons deceased from a communicable disease.

Proposed law provides that persons, in the priority listed in present law and proposed 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.

Present law provides for the priority of certain persons to serve as an authorizing agent for cremation of a decedent's remains. The priority listed in present law is as follows:

- (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 present law (C.C. Art. 880 et seq).

Proposed law changes present law to provide as a preference, prior to 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 providing 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.

Proposed law further changes present law to require, with respect to the prioritized 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.

Present 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 of any living person who has a superior or equal priority to that of the authorizing agent.

Proposed law retains present law and further 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.

Present 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. Proposed law makes present law expressly applicable to interment by cremation.

Present law requires representation or positive identification made by certain persons that respective human remains are those of the decedent. Proposed law excludes from present law 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.

Present law provides for a funeral director or representative of a crematory authority to deliver cremated human remains to authorized persons. Further requires 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.

Proposed law changes present law to authorize 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 or lapse of time for gubernatorial action.

(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))

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Provide for a person to authorize the interment of a decedent.
2. Provide if a decedent gives, in a valid will, directions or designates a person to dispose of the decedent's remains, whether by burial or cremation, the direction or designation provided in the will has highest priority for disposal of the decedent's remains.
3. Require the final judgment of a district court if a decedent did not provide specific instructions for disposition and the authorization of the person or persons with the right to control disposition cannot be obtained.
4. Provide that a viewing is not required if human remains are from a spontaneous fetal death and written identification is given when such remains are released to the funeral director.

5. Require the written receipt of persons' exchange of cremated human remains to identify the place of the physical exchange of such remains.
6. Provide that such receipts are to establish a chain of custody.
7. Require a copy of the receipt to be retained by the funeral establishment or crematory authority whose respective representative delivers cremated human remains to a person or certain representative.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Modify proposed law to change all references of a valid will to a notarial testament.
3. Remove from proposed law certain provisions that excluded any person charged with certain crimes against the decedent from the right of interment of the decedent's remains.