

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2326

AN ACT

AMENDING SECTION 32-1365.02, ARIZONA REVISED STATUTES; RELATING TO FUNERAL DIRECTORS AND EMBALMERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 32-1365.02, Arizona Revised Statutes, is amended to
3 read:
4 32-1365.02. Authorizing agents; consent for cremation,
5 disinterment or embalming; court resolution of
6 disputes
7 A. Except as provided in section 32-1365.01 and in subsection E of
8 this section, it is unlawful to cremate or disinter a dead human body without
9 prior written consent of the authorizing agent.
10 B. Except as provided in section 32-1365.01, it is unlawful to embalm
11 a dead human body without prior oral or written consent of the authorizing
12 agent.
13 C. A funeral establishment shall create a written record of an oral
14 consent given pursuant to this ~~subsection~~ SECTION that includes all of the
15 following:
16 1. The name of the authorizing agent.
17 2. The relation of the authorizing agent to the deceased.
18 3. The date and time that consent was given.
19 4. The name of the person who obtained the consent.
20 5. Any other information required by the board.
21 D. In determining who the proper authorizing agent is, the following
22 order of preference governs:
23 1. The surviving spouse.
24 2. A surviving adult child.
25 3. A surviving parent.
26 4. A surviving adult brother or sister.
27 5. For cremation or embalming, any other person or organization that
28 is willing to assume legal and financial responsibility for the cremation or
29 embalming. Preference under this paragraph shall be given in the following
30 order:
31 (a) The executor of the decedent's estate.
32 (b) The guardian of the decedent at the time of death.
33 E. On the order of a court or a county medical examiner, or a person
34 performing the duties of a county medical examiner, a dead human body shall
35 be disinterred.
36 F. If none of the persons listed in subsection D OF THIS SECTION is
37 willing or financially capable of providing for the cremation or embalming of
38 a dead human body, the public fiduciary or other person who is designated by
39 the county in which a death occurs to handle funeral arrangements may order
40 the cremation or embalming.
41 G. A funeral establishment, an employee or agent of a funeral
42 establishment or a licensee shall exercise due diligence to obtain the
43 consent required pursuant to this section from the proper authorizing agent.
44 IT IS AN AFFIRMATIVE DEFENSE TO ANY ACTION OR CLAIM BROUGHT AGAINST A
45 CREMATORY, CEMETERY OR FUNERAL ESTABLISHMENT RELATING TO THE DISPOSITION OF A

1 DEAD HUMAN BODY THAT THE CREMATORY, CEMETERY OR FUNERAL ESTABLISHMENT RELIED
2 IN GOOD FAITH ON THE DIRECTION OF A PERSON WHO CLAIMED TO BE THE AUTHORIZING
3 AGENT IN PROVIDING FOR THE LAWFUL DISPOSITION OF A DEAD HUMAN BODY. THE
4 DECISION OF A CREMATORY, CEMETERY OR FUNERAL ESTABLISHMENT TO CREMATE OR
5 OTHERWISE PROVIDE FOR THE LAWFUL DISPOSITION OF A DEAD HUMAN BODY IN RELIANCE
6 ON THE DIRECTION OF A PERSON WHO CLAIMS TO BE THE AUTHORIZING AGENT IS
7 PRESUMED TO BE IN GOOD FAITH UNLESS THE CREMATORY, CEMETERY OR FUNERAL
8 ESTABLISHMENT HAS ACTUAL KNOWLEDGE THAT THE CLAIM IS FALSE.

9 H. IF THE AUTHORIZING AGENT IS UNWILLING, UNABLE OR UNAVAILABLE TO ACT
10 AS AUTHORIZING AGENT, THE PERSON'S RIGHT TO BE THE AUTHORIZING AGENT
11 TERMINATES AND PASSES AS FOLLOWS:

12 1. TO ANOTHER PERSON IN THE SAME DEGREE OF RELATIONSHIP TO THE
13 DECEDENT AS THE PERSON WHO HAS FAILED TO ACT.

14 2. IF THERE IS NO PERSON AS PRESCRIBED IN PARAGRAPH 1 OF THIS
15 SUBSECTION, TO THE NEXT PERSON IN THE ORDER OF PREFERENCE PRESCRIBED BY
16 SUBSECTION D OF THIS SECTION.

17 I. IT IS PRESUMED THAT THE AUTHORIZING AGENT IS UNWILLING, UNABLE OR
18 UNAVAILABLE TO ACT AS AUTHORIZING AGENT IF THAT PERSON HAS NOT MADE FINAL
19 ARRANGEMENTS FOR THE DISPOSITION OF THE DECEDENT WITHIN THIRTY DAYS OF THE
20 DECEDENT'S DEATH.

21 J. ANY DISPUTE AMONG ANY OF THE PERSONS LISTED IN SUBSECTION D OF THIS
22 SECTION CONCERNING THEIR RIGHT TO CONTROL THE DISPOSITION, INCLUDING
23 CREMATION, OF A DECEDENT'S REMAINS SHALL BE RESOLVED BY THE PARTIES TO THE
24 DISPUTE OR BY A COURT OF COMPETENT JURISDICTION. A CREMATORY, CEMETERY OR
25 FUNERAL ESTABLISHMENT SHALL NOT BE LIABLE FOR REFUSING TO ACCEPT THE
26 DECEDENT'S REMAINS OR INTER, CREMATE OR OTHERWISE DISPOSE OF A DECEDENT'S
27 REMAINS UNTIL IT RECEIVES A COURT ORDER OR OTHER SUITABLE CONFIRMATION THAT
28 THE DISPUTE HAS BEEN RESOLVED OR SETTLED. A CREMATORY, CEMETERY OR FUNERAL
29 ESTABLISHMENT MAY BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION IN
30 ORDER TO EXPEDITE THE RESOLUTION OF A DISPUTE AMONG THE PARTIES LISTED IN
31 SUBSECTION D OF THIS SECTION.