



AN ACT PROVIDING FOR RECOGNITION IN MONTANA LAW OF THE RIGHT OF A MEMBER OF THE ARMED FORCES TO CONTROL THE DISPOSITION OF THE MEMBER'S REMAINS BY EXECUTION OF A DEPARTMENT OF DEFENSE FORM 93; AMENDING SECTION 37-19-904, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-19-904, MCA, is amended to read:

"37-19-904. Priority of rights of disposition. (1) A person who is 18 years of age or older and of sound mind wishing to authorize another person to control the disposition of the person's remains may execute an affidavit or a written instrument before a notary public in substantially the following form:

"State of Montana] ss

County of]

I, [person designating another person to control the disposition of the person's remains] do hereby designate [person who is provided with the right to control the disposition] with the right to control the disposition of my remains upon my death. I have or have not attached specific directions concerning the disposition of my remains with which the designee shall substantially comply, provided the directions are lawful and there are sufficient resources in my estate to carry out the directions. Subscribed and sworn to before me this day of the month of of the year
....."

(2) Except as provided in 37-19-903, 37-19-907, ~~and~~ and subsection (1) of this section, the right to control the disposition of the remains of a deceased person, including the location, manner, and conditions of the disposition and arrangements for funeral goods and services, vests in the following persons in the order named if the named person is 18 years of age or older and is of sound mind:

(a) for a decedent who was on active duty in the armed forces of the United States, a member of the Montana national guard, or a member of the federal reserves of the armed forces of the United States at the time

of the decedent's death, any person named by the decedent as the person with the right to control the decedent's disposition in a department of defense form 93;

~~(a)~~(b) a person designated by the decedent as the person with the right to control the decedent's disposition in an affidavit or written instrument executed in accordance with subsection (1);

~~(b)~~(c) the surviving spouse;

~~(c)~~(d) 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 may be vested with the rights and duties provided in this section if those surviving children have used reasonable efforts to notify all other surviving children of their instructions and they are not aware of opposition to their instructions on the part of more than one-half of all surviving children.

~~(d)~~(e) the surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent may be vested with the rights and duties provided in this section if that parent's reasonable efforts have been unsuccessful in locating the absent surviving parent.

~~(e)~~(f) the surviving sibling of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings. However, less than one-half of the surviving siblings may be vested with the rights and duties provided in this section if those siblings have used reasonable efforts to notify all other surviving siblings of their instructions and they are not aware of any opposition to their instructions on the part of more than one-half of all surviving siblings.

~~(f)~~(g) the surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents. However, less than one-half of the surviving grandparents may be vested with the rights and duties provided in this section if those grandparents have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any opposition to their instructions on the part of more than one-half of all surviving grandparents.

~~(g)~~(h) the guardian of the decedent at the time of the decedent's death, if a guardian had been appointed;

~~(h)~~(i) the personal representative of the estate of the decedent;

~~(i)~~(j) the person in classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition.

~~(j)~~(k) if the disposition of the remains of the decedent is the responsibility of the state or a local

government, the public officer, administrator, or employee responsible for arranging the disposition of the decedent's remains; and

~~(k)(l)~~ in the absence of any person provided for in subsections (2)(a) through ~~(2)(j)~~ (2)(k), any other person, including the mortician with custody of the remains, who is willing to assume the responsibility to act and arrange the disposition of the decedent's remains after attesting in writing that a good faith effort has been made to contact the individuals provided for in subsections (2)(a) through ~~(2)(j)~~ (2)(k)."

Section 2. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to individuals who executed a department of defense form 93 before October 1, 2011.

- END -

I hereby certify that the within bill,
HB 0256, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2011.

President of the Senate

Signed this _____ day
of _____, 2011.

HOUSE BILL NO. 256
INTRODUCED BY F. WILMER

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