

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HOUSE BILL 2272

AN ACT

AMENDING SECTIONS 32-1394, 32-1399 AND 36-831, ARIZONA REVISED STATUTES;
RELATING TO BURIAL AND CREMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1394, Arizona Revised Statutes, is amended to
3 read:

4 32-1394. Crematory requirements; responsible cremationist

5 A crematory licensed pursuant to this article shall:

6 1. Maintain a retort that is operated at all times in a sanitary and
7 professional manner, that conforms to local building and environmental codes
8 and that provides protection for the health and safety of persons in
9 attendance at a cremation and employees of the crematory.

10 2. Maintain a holding facility that is secure from access by anyone
11 other than employees of the crematory and public officials in the performance
12 of their official duties, that complies with applicable public health laws,
13 that protects the health and safety of employees of the crematory and that
14 preserves the dignity of human remains in the facility.

15 3. Possess all equipment and supplies that are necessary to conduct
16 cremations in a manner that provides protection for the health and safety of
17 persons in attendance at a cremation and employees of the crematory.

18 4. Employ and designate a responsible cremationist who is licensed
19 pursuant to this article, ~~AND~~ who is trained in crematory operations to
20 manage the daily operation of the crematory. The responsible cremationist is
21 responsible for the crematory complying with the laws of this state and the
22 rules of the board or the rules of the department of real estate, as
23 applicable. THE CREMATORY OR THE RESPONSIBLE CREMATIONIST SHALL DESIGNATE A
24 LICENSED CREMATIONIST TO ACT AS AN INTERIM RESPONSIBLE CREMATIONIST.

25 Sec. 2. Section 32-1399, Arizona Revised Statutes, is amended to read:

26 32-1399. Crematories; standards of practice

27 The board shall adopt rules that establish standards equivalent to
28 section 32-1307, subsection A, paragraph 5 for the regulation of crematories
29 and cremation and that include the following:

30 1. A crematory shall develop, implement and maintain a written
31 procedure for the identification of human remains that ensures that remains
32 can be identified from the time that a crematory accepts the delivery of the
33 remains until the cremated remains are released to the authorizing agent.
34 The identification procedures shall require the crematory to comply with the
35 requirements of this section. The crematory shall not open a container
36 containing human remains, except under the personal supervision of a licensed
37 funeral director, or embalmer, OR A RESPONSIBLE CREMATIONIST LICENSED
38 PURSUANT TO THIS ARTICLE AND TRAINED IN CREMATORY OPERATIONS TO MANAGE THE
39 DAILY OPERATION OF THE CREMATORY. After taking custody of human remains, a
40 crematory shall immediately verify the identification attached to the casket
41 or cremation container and assign an identification number. The crematory
42 shall not accept unidentified caskets or cremation containers. The
43 identification shall include the name and address of the deceased, the name
44 and relationship of the authorizing agent, the name of the person or entity
45 engaging the crematory services, a valid cremation permit issued by a

1 government agency and a metal cremation disk containing the identification
2 number. The disk shall be placed with the deceased during cremation.

3 2. If a crematory is unable to cremate the human remains immediately
4 after taking custody, the crematory shall store the remains in a holding
5 facility that is secure from access by anyone other than employees of the
6 crematory and public officials in the performance of their duty and that
7 complies with applicable public health laws, preserves the dignity of the
8 human remains and protects the health of employees of the crematory.

9 3. A crematory shall not accept a casket or cremation container from
10 which there is evidence of leakage of body fluids from the human remains and
11 shall not hold human remains for cremation unless they are contained in an
12 individual, closed casket or rigid cremation container of combustible
13 material that preserves the dignity of the human remains and that protects
14 the health of employees of the crematory. Human remains that are not
15 embalmed shall be held by the crematory in a refrigerated holding facility or
16 in compliance with applicable public health laws.

17 4. All body prostheses, bridgework or similar items removed from the
18 cremated remains shall be disposed of by the crematory unless an alternative
19 disposition is agreed to in the authorization to cremate.

20 5. After cremation, the crematory as far as practicable shall remove
21 visible parts of the residual of the cremation process from the retort, shall
22 not combine the cremated or processed remains with other cremated or
23 processed remains and shall attach the identification of the cremated or
24 processed remains to the temporary container or urn into which the remains
25 are placed.

26 6. The crematory shall place cremated or processed remains in a
27 temporary container or urn. Extra space may be filled with clean packing
28 material that will not combine with the cremated or processed remains. The
29 lid or top shall be securely closed. Any cremated or processed remains that
30 do not fit in the temporary container or urn shall be returned in a separate
31 container or, with permission of the authorizing agent, disposed of by the
32 crematory.

33 7. A crematory may dispose of cremated or processed remains in any
34 legal manner directed by a document prepared pursuant to section 32-1365.01
35 or agreed to by the authorizing agent. If the authorizing agent agrees to
36 take possession and does not take possession of the remains within thirty
37 days after cremation or on an agreed date, the crematory shall send written
38 notice to the last known address of the authorizing agent to take
39 possession. Ninety days after the notification is sent or delivered, the
40 crematory may dispose of the cremated or processed remains in any legal
41 manner.

42 8. Unless the deceased has prepared a document pursuant to section
43 32-1365.01, the crematory shall obtain an authorization to cremate from the
44 authorizing agent that shall contain a provision holding the crematory
45 harmless for the disposition of unclaimed cremated or processed remains.

1 9. All employees of the crematory who handle dead human bodies shall
2 use universal precautions and shall otherwise exercise reasonable care to
3 minimize the risk of transmitting any communicable disease from a dead human
4 body.

5 10. Unless the deceased has prepared a document pursuant to section
6 32-1365.01, employees of the crematory shall not remove a dead human body
7 from the container in which it is delivered to the crematory without the
8 express written consent of the authorizing agent. If, after accepting a dead
9 human body for cremation, employees of a crematory discover that a mechanical
10 or radioactive device is implanted in the body, an embalmer licensed pursuant
11 to article 2 of this chapter shall remove the device from the body before
12 cremation takes place.

13 11. A crematory shall keep an accurate record of all cremations
14 performed, including dispositions of cremated and processed remains, for not
15 fewer than five years after the cremation.

16 Sec. 3. Section 36-831, Arizona Revised Statutes, is amended to read:

17 36-831. Burial duties; notification requirements; failure to
18 perform duty; definitions

19 A. Except as provided pursuant to subsection I or J of this section,
20 the duty of burying the body of or providing other funeral and disposition
21 arrangements for a dead person devolves in the following order:

22 1. If the dead person was married, on the surviving spouse unless:

23 (a) The dead person was legally separated from the person's spouse.

24 (b) A petition for divorce or for legal separation from the dead
25 person's spouse was filed before the person's death and remains pending at
26 the time of death.

27 2. ON the person who is designated as having power of attorney for the
28 decedent in the decedent's most recent ~~durable~~ HEALTH CARE power of attorney
29 PURSUANT TO CHAPTER 32, ARTICLE 2 OF THIS TITLE IF THAT POWER OF ATTORNEY
30 SPECIFICALLY GIVES THAT PERSON THE AUTHORITY TO MAKE DECISIONS REGARDING THE
31 DISPOSITION OF THE DECEDENT'S REMAINS OR A DURABLE POWER OF ATTORNEY IF THAT
32 POWER OF ATTORNEY SPECIFICALLY GIVES THAT PERSON THE AUTHORITY TO MAKE
33 DECISIONS REGARDING THE DISPOSITION OF THE DECEDENT'S REMAINS.

34 3. If the dead person was a minor, on the parents.

35 4. On the adult children of the dead person.

36 5. On the dead person's parent.

37 6. On the dead person's adult sibling.

38 7. On the dead person's adult grandchild.

39 8. On the dead person's grandparent.

40 9. On an adult who exhibited special care and concern for the dead
41 person.

42 10. On the person who was acting as the guardian of the person of the
43 dead person at the time of death.

44 11. On any other person who has the authority to dispose of the dead
45 person's body.

1 12. If none of the persons named in paragraphs 1 through 11 of this
2 subsection is financially capable of providing for the burial or other
3 funeral and disposition arrangements, or cannot be located on reasonable
4 inquiry, on any person or fraternal, charitable or religious organization
5 willing to assume responsibility.

6 13. If the dead person was a prisoner in the custody of the state
7 department of corrections at the time of death and none of the persons named
8 in paragraphs 1 through 11 of this subsection is willing to provide for the
9 burial or other funeral and disposition arrangements, or cannot be located on
10 reasonable inquiry, on the state department of corrections.

11 B. During a person's life, the person's family members that are listed
12 in subsection A of this section may sign a waiver of decision making that
13 waives their rights under this section relating to the disposition of the
14 person's body when the person dies.

15 C. If none of the persons named in subsection A of this section is
16 willing or financially able to bury or provide other funeral and disposition
17 arrangements for a dead person, or if the person cannot be located after
18 reasonable efforts have been made to do so, the county in which death occurs
19 shall bury or place in a permanent care crypt the dead body or cremated
20 remains of a dead body. The county officer who is responsible for
21 determining financial eligibility or abandonment may conduct an investigation
22 for that purpose. If the decedent is known to be an honorably discharged
23 veteran or the surviving spouse of an honorably discharged veteran, the
24 county shall notify the United States department of veterans affairs or a
25 local veteran's organization, or both, of the death and give the department
26 or that organization the opportunity to provide for the person's burial or
27 for other funeral and disposition arrangements. If the department or
28 organization is unable to provide for the burial of the veteran or the
29 surviving spouse, the county shall ensure that the decedent is properly
30 interred and that burial is made in a veterans' cemetery or a portion of a
31 cemetery that is designated for the burial of veterans and spouses of
32 veterans.

33 D. If there is more than one member of a category listed in subsection
34 A, paragraph 3, 4, 5, 6, 7, 8 or 9 of this section entitled to serve as the
35 authorizing agent, final arrangements may be made by any member of that
36 category unless that member knows of any objection by another member of the
37 category. If an objection is known, final arrangements shall be made by a
38 majority of the members of the category who are reasonably available.

39 E. If the county medical examiner or person performing the duties of
40 the county medical examiner knows that the dead person is a member of a
41 federally recognized Native American tribe located in this state, the county
42 medical examiner or person performing the duties of the county medical
43 examiner must notify the tribe and give the tribe the opportunity to provide
44 for the person's burial or other funeral and disposition arrangements. If an
45 autopsy is required by section 11-597, the county medical examiner or person

1 performing the duties of the county medical examiner, if possible, shall
2 complete the autopsy and return the remains to the federally recognized
3 Native American tribe located in this state within four calendar days after
4 the determined date of death.

5 F. A person on whom the duty prescribed in subsection A of this
6 section is imposed who omits or is unwilling to perform that duty within a
7 reasonable time or is prohibited from performing that duty under subsection I
8 of this section is liable to the person performing the duty in an amount of
9 two times the expenses the person incurred in providing for the burial or
10 other funeral and disposition arrangements. The person who performs this
11 duty may recover this amount in a civil action.

12 G. Notwithstanding the probate requirements of title 14, if a county
13 is required to bury a person pursuant to subsection C of this section, the
14 county may recover the burial costs from the decedent's estate. A financial
15 institution in possession of monies in an account in the decedent's name must
16 reimburse the county for the burial costs on presentation by the county of an
17 affidavit that certifies:

18 1. The date of the decedent's death.

19 2. That, pursuant to this section, the county performed the decedent's
20 burial.

21 3. The total burial costs incurred by the county.

22 H. A person, a corporation or an agency of government that provides
23 for the burial or other funeral and disposition arrangements on the
24 instructions of a person described in subsection A of this section is immune
25 from civil liability:

26 1. For failing to honor the wishes of the decedent or the wishes of a
27 person who has a higher priority in subsection A or C of this section if the
28 person, corporation or agency of government was not aware, after reasonable
29 inquiry, of the contrary wishes.

30 2. For refusing to follow conflicting directions of persons who have
31 the same priority in subsection A of this section.

32 3. For following directions of a personal representative that are
33 consistent with the written testamentary instructions of the decedent.

34 I. The duty to bury or to provide other funeral and disposition
35 arrangements devolves to the next person in the order prescribed pursuant to
36 subsection A of this section if the person who is otherwise responsible for
37 performing this duty is charged with the criminal death of the person to whom
38 the duty is owed **AND THE FUNERAL DIRECTOR IS AWARE OF THE CHARGE**. The person
39 who performs this duty may recover costs as prescribed in subsection F of
40 this section. If the charges against the person on whom this duty originally
41 fell are subsequently dismissed or are resolved in that person's favor on the
42 merits, the person is responsible for only the actual costs.

43 J. If the decedent died while serving in any branch of the United
44 States armed forces, the United States reserve forces or the national guard,
45 and completed a United States department of defense record of emergency data,

1 DD form 93, or its successor form, the duty to bury the decedent or to
2 provide other funeral and disposition arrangements for the decedent devolves
3 on the person authorized by the decedent pursuant to that form.

4 K. For the purposes of this section, "person" includes a natural
5 person, a corporation, a company, a partnership, a firm, an association, a
6 society, the United States, this state, any territory, state or country, an
7 Arizona federally recognized Native American tribe, any political subdivision
8 of this state or a public or private corporation or partnership or
9 association.

10 L. For the purposes of this article, "burial" includes cremation.