

Introduced by Senator HernandezFebruary 19, 2016

An act to amend Section 7105 of the Health and Safety Code, relating to human remains.

LEGISLATIVE COUNSEL'S DIGEST

SB 1284, as introduced, Hernandez. Human remains: conservator of the person or estate.

Under existing law, if a decedent has not otherwise given directions, the right to control the disposition of the remains of the deceased person, the location and conditions of internment, and arrangements for funeral goods and services vests in, and the specified corresponding duty devolves upon, certain persons in a specified order of succession. Existing law lists these persons, in order, as an agent under a power of attorney for health care who has the right and duty of disposition, the surviving spouse, other specified relatives, and, when the decedent has sufficient assets, a conservator of the person, a conservator of the estate, and the public administrator.

Existing law requires, if the agent under a power of attorney, the surviving spouse, or any of the other specified relatives who have the right to control the disposition and arrange for funeral goods and services fails to act or cannot be found within a specified period, that the person's right to control the disposition and arrange for funeral goods and services be relinquished and passed on to the person or persons of the next degree of kinship in accordance with the above list. This provision does not apply to a conservator of the person or a conservator of the estate that fails to act or cannot be found within the specified timeframe period.

This bill would add a conservator of the person and a conservator of the estate to the above provision for purposes of relinquishment, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7105 of the Health and Safety Code is
2 amended to read:

3 7105. (a) If the person or persons listed in paragraphs (1), (3),
4 (4), (5), ~~and (6)~~ (6), (7), *and* (8) of subdivision (a) of Section 7100
5 that would otherwise have the right to control the disposition and
6 arrange for funeral goods and services fails to act, or fails to
7 delegate his or her authority to act to some other person within
8 seven days of the date when the right and duty devolves upon the
9 person or persons, or in the case of a person listed in paragraph
10 (2) of subdivision (a) of Section 7100, within 10 days of the date
11 when the right and duty devolves upon the person, the right to
12 control the disposition and arrange for funeral goods and services
13 shall be relinquished and passed on to the person or persons of the
14 next degree of kinship in accordance with subdivision (a) of Section
15 7100.

16 (b) If the person or persons listed in paragraphs (1), (3), (4), (5),
17 ~~and (6)~~ (6), (7), *and* (8) of subdivision (a) of Section 7100 that
18 would otherwise have the right to control the disposition and
19 arrange for funeral goods and services cannot be found within
20 seven days of the date when the right and duty devolves upon the
21 person or persons, or in the case of a person listed in paragraph
22 (2) of subdivision (a) of Section 7100, within 10 days of the date
23 when the right and duty devolves upon the person, after reasonable
24 inquiry, the right to control the disposition and arrange for funeral
25 goods and services shall be relinquished and passed on to the
26 person or persons of the next degree of kinship in accordance with
27 subdivision (a) of Section 7100.

28 (c) If any persons listed in paragraphs (1), (3), (4), (5), and (6),
29 of subdivision (a) of Section 7100 that would otherwise have equal
30 rights to control the disposition and arrange for funeral goods and
31 services fail to agree on disposition and funeral goods and services
32 to be provided within seven days of the date on which the right

1 and duty of disposition devolved upon the persons, a funeral
2 establishment or a cemetery authority having possession of the
3 remains, or any person who has equal right to control the
4 disposition of the remains may file a petition in the superior court
5 in the county in which the decedent resided at the time of his or
6 her death, or in which the remains are located, naming as a party
7 to the action those persons who would otherwise have equal rights
8 to control the disposition and seeking an order of the court
9 determining, as appropriate, who among those parties will have
10 the control of disposition and to direct that person to make
11 interment of the remains. The court, at the time of determining the
12 person to whom the right of disposition will vest, shall, from the
13 remaining parties to the action, establish an alternate order to whom
14 the right to control disposition will pass if the person vested with
15 the right to control disposition fails to act within seven days.

16 (d) If the person vested with the duty of interment has criminal
17 charges pending against him or her for the unlawful killing of the
18 decedent, in violation of Section 187 of, or subdivision (a) or (b)
19 of Section 192 of, the Penal Code, the person or persons with the
20 next highest priority prescribed by Section 7100 may petition a
21 court of competent jurisdiction for an order for control of the
22 disposition of the decedent's remains. For this purpose, it shall be
23 conclusively presumed that the petitioner is the person entitled to
24 control the disposition of the remains if the petitioner is next in
25 the order of priority specified in Section 7100.

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