

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1284

Introduced by Senator Hernandez

February 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 amended, 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~~, *interment*, 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~~ *Existing law also provides that if any of those persons who would otherwise have equal rights to control the disposition and arrange for funeral*

goods and services fail to agree on disposition and funeral goods and services to be provided within 7 days of the date on which the right and duty of disposition devolved upon the persons, a funeral establishment or a cemetery authority having possession of the remains, or any person who has equal right to control the disposition of the remains, may file a petition in the superior court, as specified, seeking an order of the court determining, as appropriate, who among those parties will have the control of disposition and to direct that person to make interment of the remains. These provisions do 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~~ *provisions* for purposes of ~~relinquishment~~; *relinquishment or petition*, 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), (6), (7), and (8) of subdivision (a) of Section 7100 ~~that~~
 5 *who* 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 (6), (7), and (8) of subdivision (a) of Section 7100 ~~that~~ *who* would
 18 otherwise have the right to control the disposition and arrange for
 19 funeral goods and services cannot be found within seven days of
 20 the date when the right and duty devolves upon the person or
 21 persons, or in the case of a person listed in paragraph (2) of

1 subdivision (a) of Section 7100, within 10 days of the date when
2 the right and duty devolves upon the person, after reasonable
3 inquiry, the right to control the disposition and arrange for funeral
4 goods and services shall be relinquished and passed on to the
5 person or persons of the next degree of kinship in accordance with
6 subdivision (a) of Section 7100.

7 (c) If any persons listed in paragraphs (1), (3), (4), (5), ~~and (6)~~,
8 ~~(6), (7), and (8)~~ of subdivision (a) of Section 7100 ~~that~~ *who* would
9 otherwise have equal rights to control the disposition and arrange
10 for funeral goods and services fail to agree on disposition and
11 funeral goods and services to be provided within seven days of
12 the date on which the right and duty of disposition devolved upon
13 the persons, a funeral establishment or a cemetery authority having
14 possession of the remains, or any person who has equal right to
15 control the disposition of the remains may file a petition in the
16 superior court in the county in which the decedent resided at the
17 time of his or her death, or in which the remains are located,
18 naming as a party to the action those persons who would otherwise
19 have equal rights to control the disposition and seeking an order
20 of the court determining, as appropriate, who among those parties
21 will have the control of disposition and to direct that person to
22 make interment of the remains. The court, at the time of
23 determining the person to whom the right of disposition will vest,
24 shall, from the remaining parties to the action, establish an alternate
25 order to whom the right to control disposition will pass if the person
26 vested with the right to control disposition fails to act within seven
27 days.

28 (d) If the person vested with the duty of interment has criminal
29 charges pending against him or her for the unlawful killing of the
30 decedent, in violation of Section 187 of, or subdivision (a) or (b)
31 of Section 192 of, the Penal Code, the person or persons with the
32 next highest priority prescribed by Section 7100 may petition a
33 court of competent jurisdiction for an order for control of the
34 disposition of the decedent's remains. For this purpose, it shall be
35 conclusively presumed that the petitioner is the person entitled to
36 control the disposition of the remains if the petitioner is next in
37 the order of priority specified in Section 7100.

O