

House Bill 2043

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Military Department)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Clarifies that Record of Emergency Data form completed by member of Armed Forces of United States serves as written signed instrument to direct disposition of remains upon death of member.

A BILL FOR AN ACT

1
2 Relating to disposition of human remains; creating new provisions; and amending ORS 97.130 and
3 114.305.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 97.130 is amended to read:

6 97.130. (1) Any individual of sound mind who is 18 years of age or older, by completion of a
7 written signed instrument or by preparing or prearranging with any funeral service practitioner li-
8 censed under ORS chapter 692, may direct any lawful manner of disposition of the individual's re-
9 mains. Except as provided under subsection [(6)] (7) of this section, disposition directions or
10 disposition prearrangements that are prepaid or that are filed with a funeral service practitioner
11 licensed under ORS chapter 692 are not subject to cancellation or substantial revision.

12 (2) A person within the first applicable listed class among the following listed classes that is
13 available at the time of death, in the absence of actual notice of a contrary direction by the
14 decedent as described under subsection (1) of this section or actual notice of opposition by com-
15 pletion of a written instrument by a member of the same class or a member of a prior class, may
16 direct any lawful manner of disposition of a decedent's remains by completion of a written instru-
17 ment:

18 (a) The spouse of the decedent.

19 (b) A son or daughter of the decedent 18 years of age or older.

20 (c) Either parent of the decedent.

21 (d) A brother or sister of the decedent 18 years of age or older.

22 (e) A guardian of the decedent at the time of death.

23 (f) A person in the next degree of kindred to the decedent.

24 (g) The personal representative of the estate of the decedent.

25 (h) The person nominated as the personal representative of the decedent in the decedent's last
26 will.

27 (i) A public health officer.

28 (3)(a) The decedent or any person authorized in subsection (2) of this section to direct the
29 manner of disposition of the decedent's remains may delegate such authority to any person 18 years
30 of age or older.

31 (b) Delegation of the authority to direct the manner of disposition of remains must be made by

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 completion of:

2 (A) The written instrument described in subsection [(7)] (8) of this section; or

3 (B) [A written instrument recognized by the Armed Forces of the United States, as that term is
4 defined in ORS 348.282, if the decedent died while serving in the Armed Forces of the United States]

5 **The form described in subsection (4) of this section.**

6 (c) The person to whom the authority is delegated has the same authority under subsection (2)
7 of this section as the person delegating the authority.

8 **(4)(a) A Record of Emergency Data, DD Form 93, or a successor form recognized by the**
9 **Armed Forces of the United States, as that term is defined in ORS 348.282, completed by a**
10 **member of the Armed Forces of the United States serves as a valid written instrument for**
11 **purposes of subsection (3) of this section.**

12 **(b) In accordance with United States Department of Defense Instruction 1300.18, a**
13 **member of the Armed Forces of the United States shall complete the form described in this**
14 **subsection and shall verify the accuracy of the form at least annually.**

15 **(c) The form described in this subsection, regardless of the date on which the form was**
16 **signed, supersedes any other written instrument that directs the disposition of the**
17 **decedent's remains.**

18 [(4)] (5) **Except as provided in subsection (4)(c) of this section,** if a decedent or the
19 decedent's designee issues more than one authorization or direction for the disposal of the
20 decedent's remains, only the most recent authorization or direction is binding.

21 [(5)] (6) A donation of anatomical gifts under ORS 97.951 to 97.982 takes priority over directions
22 for the disposition of a decedent's remains under this section only if the person making the donation
23 is of a priority under subsection (1) or (2) of this section the same as or higher than the priority
24 of the person directing the disposition of the remains.

25 [(6)] (7) If the decedent directs a disposition under subsection (1) of this section and those fi-
26 nancially responsible for the disposition are without sufficient funds to pay for such disposition or
27 the estate of the decedent has insufficient funds to pay for the disposition, or if the direction is
28 unlawful, the direction is void and disposition shall be in accordance with the direction provided
29 by the person given priority in subsection (2) of this section and who agrees to be financially re-
30 sponsible.

31 [(7)] (8) The signature of the individual delegating the authority to direct the manner of dispo-
32 sition is required for the completion of the written instrument required in subsection (3)(b)(A) of this
33 section. The following form or a form substantially similar shall be used by all individuals:

34 _____

35 _____

36 APPOINTMENT OF PERSON

37 TO MAKE DECISIONS

38 CONCERNING DISPOSITION

39 OF REMAINS

40 _____

41 I, _____, appoint _____, whose address is

42 _____ and whose telephone number is (____) _____, as the person

43 to make all decisions regarding the disposition of my remains upon my death for my burial or

44 cremation. In the event _____ is unable to act, I appoint _____,

45 whose address is _____ and whose telephone number is (____)

1 _____, as my alternate person to make all decisions regarding the disposition of my re-
2 mains upon my death for my burial or cremation.

3 It is my intent that this Appointment of Person to Make Decisions Concerning Disposition of
4 Remains act as and be accepted as the written authorization presently required by ORS 97.130 (or
5 its corresponding future provisions) or any other provision of Oregon Law, authorizing me to name
6 a person to have authority to dispose of my remains.

7
8 DATED this ____ day of _____, _____.

9 _____
10 (Signature)

11
12 DECLARATION OF WITNESSES

13
14 We declare that _____ is personally known to us, that he/she signed this Ap-
15 pointment of Person to Make Decisions Concerning Disposition of Remains in our presence, that
16 he/she appeared to be of sound mind and not acting under duress, fraud or undue influence, and that
17 neither of us is the person so appointed by this document.

18
19
20 Witnessed By:

21 _____ Date: _____

22 Witnessed By:

23 _____ Date: _____
24 _____
25

26 [(8)] (9) Subject to the provisions of ORS 97.951 to 97.982, if disposition of the remains of a
27 decedent has not been directed and authorized under this section within 10 days after the date of
28 the death of the decedent, a public health officer may direct and authorize disposition of the re-
29 mains.

30 [(9)] (10) Notwithstanding subsection (2) of this section, a person arrested for or charged with
31 criminal homicide by reason of the death of the decedent may not direct the disposition of the
32 decedent's remains. The disposition of the decedent's remains shall be made in accordance with the
33 directions of an eligible person within the first applicable class established under subsection (2) of
34 this section.

35 [(10)] (11) Notwithstanding subsections (2) and (3) of this section, if the person who has the au-
36 thority to direct the manner of disposition of cremated remains pursuant to subsection (1) or (2) of
37 this section transfers any portion of the cremated remains to another person, the recipient of the
38 cremated remains has the authority to direct the manner of disposition of the cremated remains in
39 the recipient's possession.

40 **SECTION 2.** ORS 114.305 is amended to read:

41 114.305. Subject to the provisions of ORS 97.130 (2) and [(10)] (11) and except as restricted or
42 otherwise provided by the will of the decedent, a document of anatomical gift under ORS 97.965 or
43 by court order, a personal representative, acting reasonably for the benefit of interested persons, is
44 authorized to:

45 (1) Direct and authorize disposition of the remains of the decedent pursuant to ORS 97.130 and

1 incur expenses for the funeral in a manner suitable to the condition in life of the decedent. Only
 2 those funeral expenses necessary for a plain and decent funeral may be paid from the estate if the
 3 assets are insufficient to pay the claims of the Department of Human Services and the Oregon
 4 Health Authority for the net amount of public assistance, as defined in ORS 411.010, or medical as-
 5 sistance, as defined in ORS 414.025, paid to or for the decedent and for care and maintenance of any
 6 decedent who was at a state institution to the extent provided in ORS 179.610 to 179.770.

7 (2) Retain assets owned by the decedent pending distribution or liquidation.

8 (3) Receive assets from fiduciaries or other sources.

9 (4) Complete, compromise or refuse performance of contracts of the decedent that continue as
 10 obligations of the estate, as the personal representative may determine under the circumstances. In
 11 performing enforceable contracts by the decedent to convey or lease real property, the personal
 12 representative, among other courses of action, may:

13 (a) Execute and deliver a deed upon satisfaction of any sum remaining unpaid or upon receipt
 14 of the note of the purchaser adequately secured; or

15 (b) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with
 16 the escrow agreement, be paid to the successors of the decedent, as designated in the escrow
 17 agreement.

18 (5) Satisfy written pledges of the decedent for contributions, whether or not the pledges consti-
 19 tuted binding obligations of the decedent or were properly presented as claims.

20 (6) Deposit funds not needed to meet currently payable debts and expenses, and not immediately
 21 distributable, in bank or savings and loan association accounts, or invest the funds in bank or
 22 savings and loan association certificates of deposit, or federally regulated money-market funds and
 23 short-term investment funds suitable for investment by trustees under ORS 130.750 to 130.775, or
 24 short-term United States Government obligations.

25 (7) Abandon burdensome property when it is valueless, or is so encumbered or is in a condition
 26 that it is of no benefit to the estate.

27 (8) Vote stocks or other securities in person or by general or limited proxy.

28 (9) Pay calls, assessments and other sums chargeable or accruing against or on account of se-
 29 curities.

30 (10) Sell or exercise stock subscription or conversion rights.

31 (11) Consent, directly or through a committee or other agent, to the reorganization, consol-
 32 idation, merger, dissolution or liquidation of a corporation or other business enterprise.

33 (12) Hold a security in the name of a nominee or in other form without disclosure of the interest
 34 of the estate, but the personal representative is liable for any act of the nominee in connection with
 35 the security so held.

36 (13) Insure the assets of the estate against damage and loss, and insure the personal represen-
 37 tative against liability to third persons.

38 (14) Advance or borrow money with or without security.

39 (15) Compromise, extend, renew or otherwise modify an obligation owing to the estate. A per-
 40 sonal representative who holds a mortgage, pledge, lien or other security interest may accept a
 41 conveyance or transfer of the encumbered asset in lieu of foreclosure in full or partial satisfaction
 42 of the indebtedness.

43 (16) Accept other real property in part payment of the purchase price of real property sold by
 44 the personal representative.

45 (17) Pay taxes, assessments and expenses incident to the administration of the estate.

1 (18) Employ qualified persons, including attorneys, accountants and investment advisers, to ad-
2 vise and assist the personal representative and to perform acts of administration, whether or not
3 discretionary, on behalf of the personal representative.

4 (19) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of
5 the estate and of the personal representative in the performance of duties as personal represen-
6 tative.

7 (20) Prosecute claims of the decedent including those for personal injury or wrongful death.

8 (21) Continue any business or venture in which the decedent was engaged at the time of death
9 to preserve the value of the business or venture.

10 (22) Incorporate or otherwise change the business form of any business or venture in which the
11 decedent was engaged at the time of death.

12 (23) Discontinue and wind up any business or venture in which the decedent was engaged at the
13 time of death.

14 (24) Provide for exoneration of the personal representative from personal liability in any con-
15 tract entered into on behalf of the estate.

16 (25) Satisfy and settle claims and distribute the estate as provided in ORS chapters 111, 112, 113,
17 114, 115, 116 and 117.

18 (26) Perform all other acts required or permitted by law or by the will of the decedent.

19 **SECTION 3. The amendments to ORS 97.130 by section 1 of this 2019 Act apply to persons**
20 **who are members of the Armed Forces of the United States before, on or after the effective**
21 **date of this 2019 Act.**

22