

By Senator Bullard

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1 A bill to be entitled
2 An act relating to funeral and burial arrangements;
3 amending s. 382.011, F.S.; authorizing a medical
4 examiner to record the identity of certain persons who
5 may have unlawfully participated in the death of a
6 decedent; providing immunity for such findings;
7 directing a medical examiner to provide to the funeral
8 director findings of the identity of certain persons
9 who may have unlawfully participated in a decedent's
10 death; requiring a medical examiner to report the
11 arrest of certain individuals to the funeral director;
12 amending s. 406.135, F.S.; narrowing a public-records
13 exemption to authorize the parent or adult child of a
14 decedent to obtain autopsy records; prohibiting
15 disclosure of autopsy records; providing penalties;
16 amending s. 497.005, F.S.; redefining the term
17 "legally authorized person" for purposes of the
18 Florida Funeral, Cemetery, and Consumer Services Act;
19 amending s. 732.804, F.S.; prohibiting a person who
20 may have unlawfully participated in the death of a
21 decedent from making decisions relating to the
22 decedent's body and funeral and burial arrangements;
23 prohibiting persons who have been arrested for
24 unlawfully participating in the death of a decedent
25 from making decisions relating to the decedent's body
26 and funeral and burial arrangements; providing an
27 effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Section 382.011, Florida Statutes, is amended to read:

382.011 Medical examiner determination of cause of death.—

(1) In the case of any death or fetal death due to causes or conditions listed in s. 406.11, or where the death occurred more than 30 days after the decedent was last treated by a physician unless the death was medically expected as certified by an attending physician, or where there is reason to believe that the death may have been due to unlawful act or neglect, the funeral director or other person to whose attention the death may come shall refer the case to the medical examiner of the district in which the death occurred for investigation and determination of the cause of death.

(2) The medical examiner shall complete and sign the medical certification of cause of death of the death or fetal death certificate within 72 hours after notification, whether or not final determination of the cause of death has been established, unless an extension has been granted as provided under s. 382.008. Any amendment fees prescribed in s. 382.0255 shall be waived when a later determination of cause of death is made.

(3) A medical examiner, in consultation with a law enforcement agency, may make a finding that a spouse, child, parent, sibling, grandchild, grandparent, or person in the next degree of kinship to the decedent may have unlawfully participated in the decedent's death. If such a finding is made, the medical examiner shall provide it to the funeral director who first assumed custody of the decedent's body. Afterwards the

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59 finding must accompany the burial-in-transit permit. A medical
60 examiner or law enforcement agency is not liable for findings
61 made in good faith pursuant to this subsection.

62 (4) A medical examiner must report to the funeral director
63 who first assumed custody of a decedent's body, the arrest of a
64 spouse, child, parent, sibling, grandchild, grandparent, or
65 person in the next degree of kinship to the decedent for
66 unlawfully participating in the decedent's death. A report of an
67 arrest shall accompany the burial-in-transit permit. A medical
68 examiner does not have a duty to report an arrest that occurs
69 after the decedent's body has been released.

70 (5)~~(3)~~ The funeral director shall retain the responsibility
71 for preparation of the death or fetal death certificate,
72 obtaining the necessary signatures, filing with the local
73 registrar in a timely manner, and disposing of the remains when
74 the remains are released by the medical examiner.

75 Section 2. Section 406.135, Florida Statutes, is amended to
76 read:

77 406.135 Autopsies; confidentiality of photographs and video
78 and audio recordings; exemption.—

79 (1) For the purpose of this section, the term "medical
80 examiner" means any district medical examiner, associate medical
81 examiner, or substitute medical examiner acting pursuant to this
82 chapter, as well as any employee, deputy, or agent of a medical
83 examiner or any other person who may obtain possession of a
84 photograph or audio or video recording of an autopsy in the
85 course of assisting a medical examiner in the performance of his
86 or her official duties.

87 (2) A photograph or video or audio recording of an autopsy

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88 held by a medical examiner is confidential and exempt from s.
89 119.07(1) and s. 24(a), Art. I of the State Constitution, except
90 that a surviving spouse, parent, or adult child of the decedent
91 may view and copy a photograph or video recording or listen to
92 or copy an audio recording of the ~~deceased spouse's~~ autopsy of
93 the decedent. ~~If there is no surviving spouse, then the~~
94 ~~surviving parents shall have access to such records. If there is~~
95 ~~no surviving spouse or parent, then an adult child shall have~~
96 ~~access to such records.~~

97 (3) (a) A ~~The~~ deceased's surviving relative, with whom
98 authority rests to obtain such records, may designate in writing
99 an agent to obtain such records.

100 (b) A local governmental entity, or a state or federal
101 agency, in furtherance of its official duties, pursuant to a
102 written request, may view or copy a photograph or video
103 recording or may listen to or copy an audio recording of an
104 autopsy, and unless otherwise required in the performance of
105 their duties, the identity of the deceased shall remain
106 confidential and exempt.

107 (c) The custodian of the record, or his or her designee,
108 may not permit any other person, except an agent designated in
109 writing by a ~~the~~ deceased's surviving relative with whom
110 authority rests to obtain such records, to view or copy such
111 photograph or video recording or listen to or copy an audio
112 recording without a court order.

113 (4) (a) The court, upon a showing of good cause, may issue
114 an order authorizing any person to view or copy a photograph or
115 video recording of an autopsy or to listen to or copy an audio
116 recording of an autopsy and may prescribe any restrictions or

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117 stipulations that the court deems appropriate.

118 (b) In determining good cause, the court shall consider
119 whether such disclosure is necessary for the public evaluation
120 of governmental performance; the seriousness of the intrusion
121 into the family's right to privacy and whether such disclosure
122 is the least intrusive means available; and the availability of
123 similar information in other public records, regardless of form.

124 (c) In all cases, the viewing, copying, listening to or
125 other handling of a photograph or video or audio recording of an
126 autopsy must be under the direct supervision of the custodian of
127 the record or his or her designee.

128 (5) A surviving spouse, parent, and adult child of a
129 decedent shall be given reasonable notice of a petition filed
130 with the court to view or copy a photograph or video recording
131 of an autopsy or a petition to listen to or copy an audio
132 recording, a copy of such petition, and reasonable notice of the
133 opportunity to be present and heard at any hearing on the
134 matter. ~~If there is no surviving spouse, then such notice must~~
135 ~~be given to the parents of the deceased, and if the deceased has~~
136 ~~no living parent, then to the adult children of the deceased.~~

137 (6) A relative authorized to receive a copy of an autopsy
138 report under this section may not disclose the contents of the
139 report.

140 (7)~~(6)~~(a) Any custodian of a photograph or video or audio
141 recording of an autopsy who willfully and knowingly violates
142 this section commits a felony of the third degree, punishable as
143 provided in s. 775.082, s. 775.083, or s. 775.084.

144 (b) Any person who willfully and knowingly violates a court
145 order issued pursuant to this section commits a felony of the

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146 third degree, punishable as provided in s. 775.082, s. 775.083,
 147 or s. 775.084.

148 (8)~~(7)~~ A criminal or administrative proceeding is exempt
 149 from this section, but unless otherwise exempted, is subject to
 150 all other provisions of chapter 119, provided however that this
 151 section does not prohibit a court in a criminal or
 152 administrative proceeding upon good cause shown from restricting
 153 or otherwise controlling the disclosure of an autopsy, crime
 154 scene, or similar photograph or video or audio recordings in the
 155 manner prescribed herein.

156 (9)~~(8)~~ This exemption shall be given retroactive
 157 application.

158 Section 3. Subsection (37) of section 497.005, Florida
 159 Statutes, is amended to read:

160 497.005 Definitions.—As used in this chapter:

161 (37) "Legally authorized person" means~~, in the priority~~
 162 ~~listed,~~ the decedent~~,~~ when written inter vivos authorizations
 163 and directions are provided by the decedent. The term may
 164 include the following relatives in the priority listed who have
 165 not been disqualified under s. 732.804:~~†~~ the surviving spouse~~,~~
 166 ~~unless the spouse has been arrested for committing against the~~
 167 ~~deceased an act of domestic violence as defined in s. 741.28~~
 168 ~~that resulted in or contributed to the death of the deceased;~~ a
 169 son or daughter who is 18 years of age or older; a parent; a
 170 brother or sister who is 18 years of age or older; a grandchild
 171 who is 18 years of age or older; a grandparent; or any person in
 172 the next degree of kinship. In addition, the term may include,
 173 if no family member exists or is available, the guardian of the
 174 dead person at the time of death; the personal representative of

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175 the deceased; the attorney in fact of the dead person at the
176 time of death; the health surrogate of the dead person at the
177 time of death; a public health officer; the medical examiner,
178 county commission, or administrator acting under part II of
179 chapter 406 or other public administrator; a representative of a
180 nursing home or other health care institution in charge of final
181 disposition; or a friend or other person not listed in this
182 subsection who is willing to assume the responsibility as the
183 legally authorized person. Where there is a person in any
184 priority class listed in this subsection, the funeral
185 establishment shall rely upon the authorization of any one
186 legally authorized person of that class if that person
187 represents that she or he is not aware of any objection to the
188 cremation of the deceased's human remains by others in the same
189 class of the person making the representation or of any person
190 in a higher priority class.

191 Section 4. Section 732.804, Florida Statutes, is amended to
192 read:

193 732.804 Provisions relating to disposition of the body.—

194 (1) Before issuance of letters, any person may carry out
195 written instructions of the decedent relating to the decedent's
196 body and funeral and burial arrangements. The fact that
197 cremation occurred pursuant to a written direction signed by the
198 decedent that the body be cremated is a complete defense to a
199 cause of action against any person acting or relying on that
200 direction.

201 (2) A person may not make decisions relating to a
202 decedent's body and funeral and burial arrangements if:

203 (a) A medical examiner in consultation with a law

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204 enforcement agency pursuant to s. 382.011 has found that the
205 person may have unlawfully participated in the decedent's death;
206 or

207 (b) The person has been arrested for unlawfully
208 participating in the decedent's death.

209 Section 5. This act shall take effect July 1, 2009.