

By: Rodríguez

S.B. No. 259

A BILL TO BE ENTITLED

AN ACT

relating to the disposition and removal of a decedent's remains.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 711.002(b), (c), and (k), Health and Safety Code, are amended to read as follows:

(b) The written instrument referred to in Subsection (a)(1) may be in substantially the following form:

APPOINTMENT FOR DISPOSITION OF REMAINS

I, \_\_\_\_\_,

(your name and address)

being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by \_\_\_\_\_

(name of agent)

in accordance with Section 711.002, ~~[of the]~~ Health and Safety Code, and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact).

All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent:

\_\_\_\_\_  
\_\_\_\_\_

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_

4 AGENT:

5       Name: \_\_\_\_\_  
6       Address: \_\_\_\_\_  
7       Telephone Number: \_\_\_\_\_

8 SUCCESSORS:

9       If my agent or a successor agent dies, becomes legally  
10 disabled, resigns, or refuses to act, or if my marriage to [~~I~~  
11 ~~divorce~~] my agent or successor agent is dissolved by divorce,  
12 annulled, or declared void before my death and this instrument does  
13 not state that the [~~divorced~~] agent or successor agent continues to  
14 serve after my marriage to [~~divorce from~~] that agent or successor  
15 agent is dissolved by divorce, annulled, or declared void, I hereby  
16 appoint the following persons (each to act alone and successively,  
17 in the order named) to serve as my agent (attorney-in-fact) to  
18 control the disposition of my remains as authorized by this  
19 document:

20       1.   First Successor

21       Name: \_\_\_\_\_  
22       Address: \_\_\_\_\_  
23       Telephone Number: \_\_\_\_\_

24       2.   Second Successor

25       Name: \_\_\_\_\_  
26       Address: \_\_\_\_\_  
27       Telephone Number: \_\_\_\_\_

1 DURATION:

2 This appointment becomes effective upon my death.

3 PRIOR APPOINTMENTS REVOKED:

4 I hereby revoke any prior appointment of any person to  
5 control the disposition of my remains.

6 RELIANCE:

7 I hereby agree that any cemetery organization, business  
8 operating a crematory or columbarium or both, funeral director or  
9 embalmer, or funeral establishment who receives a copy of this  
10 document may act under it. Any modification or revocation of this  
11 document is not effective as to any such party until that party  
12 receives actual notice of the modification or revocation. No such  
13 party shall be liable because of reliance on a copy of this  
14 document.

15 ASSUMPTION:

16 THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS  
17 APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY  
18 THE PROVISIONS OF, SECTION 711.002, ~~[OF THE]~~ HEALTH AND SAFETY  
19 CODE.

20 SIGNATURES:

21 This written instrument and my appointments of an agent and  
22 any successor agent in this instrument are valid without the  
23 signature of my agent and any successor agents below. Each agent,  
24 or a successor agent, acting pursuant to this appointment must  
25 indicate acceptance of the appointment by signing below before  
26 acting as my agent.

27 Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

1 \_\_\_\_\_  
2 (your signature)  
3 State of \_\_\_\_\_  
4 County of \_\_\_\_\_  
5 This document was acknowledged before me on \_\_\_\_\_ (date) by  
6 \_\_\_\_\_ (name of principal).  
7 \_\_\_\_\_  
8 (signature of notarial officer)  
9 (Seal, if any, of notary)  
10 \_\_\_\_\_  
11 (printed name)  
12 My commission expires:  
13 \_\_\_\_\_

14 ACCEPTANCE AND ASSUMPTION BY AGENT:

15 I have no knowledge of or any reason to believe this  
16 Appointment for Disposition of Remains has been revoked. I hereby  
17 accept the appointment made in this instrument with the  
18 understanding that I will be individually liable for the reasonable  
19 cost of the decedent's interment, for which I may seek  
20 reimbursement from the decedent's estate.

21 Acceptance of Appointment: \_\_\_\_\_  
22 (signature of agent)  
23 Date of Signature: \_\_\_\_\_  
24 Acceptance of Appointment: \_\_\_\_\_  
25 (signature of first successor)  
26 Date of Signature: \_\_\_\_\_  
27 Acceptance of Appointment: \_\_\_\_\_

(signature of second successor)

Date of Signature: \_\_\_\_\_

(c) A written instrument is legally sufficient under Subsection (a)(1) if the instrument designates a person to control the disposition of the decedent's remains, the instrument is signed by the decedent, the signature of the decedent is acknowledged, and the agent or successor agent signs the instrument before acting as the decedent's agent. Unless the instrument provides otherwise, the designation of the decedent's spouse as an agent or successor agent in the instrument is revoked when the marriage [on the divorce] of the decedent and the spouse appointed as an agent or successor agent is dissolved by divorce, annulled, or declared void before the decedent's death. Such written instrument may be modified or revoked only by a subsequent written instrument that complies with this subsection.

(k) Any dispute among any of the persons listed in Subsection (a) concerning their right to control the disposition, including cremation, of a decedent's remains shall be resolved by a court with [of competent] jurisdiction over probate proceedings for the decedent, regardless of whether a probate proceeding has been initiated. A cemetery organization or funeral establishment shall not be liable for refusing to accept the decedent's remains, or to inter or otherwise dispose of the decedent's remains, until it receives a court order or other suitable confirmation that the dispute has been resolved or settled.

SECTION 2. Section 711.004(c), Health and Safety Code, is amended to read as follows:

1           (c) If the consent required by Subsection (a) cannot be  
2 obtained, the remains may be removed by permission of a county  
3 ~~[district]~~ court of the county in which the cemetery is  
4 located. Before the date of application to the court for  
5 permission to remove remains under this subsection, notice must be  
6 given to:

7           (1) the cemetery organization operating the cemetery  
8 in which the remains are interred or if the cemetery organization  
9 cannot be located or does not exist, the Texas Historical  
10 Commission;

11           (2) each person whose consent is required for removal  
12 of the remains under Subsection (a); and

13           (3) any other person that the court requires to be  
14 served.

15       SECTION 3. Section 711.002, Health and Safety Code, as  
16 amended by this Act, applies only to the validity of a document  
17 executed on or after the effective date of this Act. The validity  
18 of a document executed before the effective date of this Act is  
19 governed by the law in effect on the date the document was executed,  
20 and that law continues in effect for that purpose.

21       SECTION 4. (a) Except as otherwise provided in this  
22 section, the changes in law made by this Act apply to:

23           (1) an instrument described by Section 711.002(a)(1),  
24 Health and Safety Code, created before, on, or after the effective  
25 date of this Act;

26           (2) a judicial proceeding concerning an instrument  
27 described by Subdivision (1) of this subsection that:

1 (A) commences on or after the effective date of  
2 this Act; or

3 (B) is pending on the effective date of this Act;  
4 and

5 (3) an application to a court to remove remains under  
6 Section 711.004(c), Health and Safety Code, as amended by this Act,  
7 submitted on or after the effective date of this Act.

8 (b) If the court finds that application of a provision of  
9 this Act would substantially interfere with the effective conduct  
10 of a judicial proceeding concerning an instrument described by  
11 Subsection (a)(1) of this section that is pending on the effective  
12 date of this Act or prejudice the rights of a party to the  
13 proceeding, the provision of this Act does not apply, and the law in  
14 effect immediately before the effective date of this Act applies in  
15 those circumstances.

16 SECTION 5. This Act takes effect September 1, 2019.