

By: Thompson of Harris

H.B. No. 3070

A BILL TO BE ENTITLED

AN ACT

relating to the disposition of remains.

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

SECTION 1. Section 711.002, Health and Safety Code, is amended by amending Subsections (a), (b), (c), and (g) and adding Subsection (a-3) to read as follows:

(a) Except as provided by Subsection (1), unless a decedent has left directions in writing for the disposition of the decedent's remains as provided in Subsection (g), the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains, shall inter the remains, and in accordance with Subsection (a-1) are liable for the reasonable cost of interment:

(1) the person designated in a written instrument signed by the decedent;

(2) the decedent's surviving spouse;

(3) any one of the decedent's surviving adult children;

(4) either one of the decedent's surviving parents;

(5) any one of the decedent's surviving adult siblings; ~~or~~

(6) any one or more of the duly qualified executors or administrators of the decedent's estate; or

(7) any adult person in the next degree of kinship in

1 the order named by law to inherit the estate of the decedent.

2 (a-3) A person exercising the right to control the  
3 disposition of remains under Subsection (a), other than a duly  
4 qualified executor or administrator of the decedent's estate, is  
5 liable for the reasonable cost of interment and may seek  
6 reimbursement for that cost from the decedent's estate. When an  
7 executor or administrator exercises the right to control the  
8 disposition of remains under Subsection (a)(6), the decedent's  
9 estate is liable for the reasonable cost of interment, and the  
10 executor or administrator is not individually liable for that cost.

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

13 APPOINTMENT FOR ~~[OF AGENT TO CONTROL]~~ DISPOSITION OF REMAINS

14 I, \_\_\_\_\_,  
15 (your name and address)

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

19 (name of agent)

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

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

25 SPECIAL DIRECTIONS:

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

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_  
4 \_\_\_\_\_  
5 \_\_\_\_\_

6 AGENT:

7 Name: \_\_\_\_\_

8 Address: \_\_\_\_\_

9 Telephone Number: \_\_\_\_\_

10 [~~Acceptance of Appointment: \_\_\_\_\_~~]

11 [~~(signature of agent)~~]

12 [~~Date of Signature: \_\_\_\_\_~~]

13 SUCCESSORS:

14 If my agent or a successor agent dies, becomes legally  
15 disabled, resigns, or refuses to act, or if I divorce my agent or  
16 successor agent and this instrument does not state that the  
17 divorced agent or successor agent continues to serve after my  
18 divorce from that agent or successor agent, I hereby appoint the  
19 following persons (each to act alone and successively, in the order  
20 named) to serve as my agent (attorney-in-fact) to control the  
21 disposition of my remains as authorized by this document:

22 1. First Successor

23 Name: \_\_\_\_\_

24 Address: \_\_\_\_\_

25 Telephone Number: \_\_\_\_\_

26 [~~Acceptance of Appointment: \_\_\_\_\_~~]

27 [~~(signature of first successor)~~]

1 ~~[Date of Signature: \_\_\_\_\_]~~

2 2. Second Successor

3 Name: \_\_\_\_\_

4 Address: \_\_\_\_\_

5 Telephone Number: \_\_\_\_\_

6 ~~[Acceptance of Appointment: \_\_\_\_\_]~~

7 ~~[-(signature of second successor)-]~~

8 ~~[Date of Signature: \_\_\_\_\_]~~

9 DURATION:

10 This appointment becomes effective upon my death.

11 PRIOR APPOINTMENTS REVOKED:

12 I hereby revoke any prior appointment of any person to  
13 control the disposition of my remains.

14 RELIANCE:

15 I hereby agree that any cemetery organization, business  
16 operating a crematory or columbarium or both, funeral director or  
17 embalmer, or funeral establishment who receives a copy of this  
18 document may act under it. Any modification or revocation of this  
19 document is not effective as to any such party until that party  
20 receives actual notice of the modification or revocation. No such  
21 party shall be liable because of reliance on a copy of this  
22 document.

23 ASSUMPTION:

24 THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS  
25 APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY  
26 THE PROVISIONS OF, SECTION 711.002 OF THE HEALTH AND SAFETY CODE.

27 SIGNATURES:

1 This written instrument and my appointments of an agent and  
2 any successor agent in this instrument are valid without the  
3 signature of my agent and any successor agents below. Each agent,  
4 or a successor agent, acting pursuant to this appointment must  
5 indicate acceptance of the appointment by signing below before  
6 acting as my agent.

7 Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 [~~19~~]\_\_.

8 \_\_\_\_\_

9 (your signature)

10 State of \_\_\_\_\_

11 County of \_\_\_\_\_

12 This document was acknowledged before me on \_\_\_\_\_ (date) by  
13 \_\_\_\_\_ (name of principal).

14 \_\_\_\_\_

15 (signature of notarial officer)

16 (Seal, if any, of notary)

17 \_\_\_\_\_

18 (printed name)

19 My commission expires:

20 \_\_\_\_\_

21 ACCEPTANCE AND ASSUMPTION BY AGENT:

22 I have no knowledge of or any reason to believe this  
23 Appointment for Disposition of Remains has been revoked. I hereby  
24 accept the appointment made in this instrument with the  
25 understanding that I will be individually liable for the reasonable  
26 cost of the decedent's interment, for which I may seek  
27 reimbursement from the decedent's estate.

1        Acceptance of Appointment: \_\_\_\_\_

2                                (signature of agent)

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

4        Acceptance of Appointment: \_\_\_\_\_

5                                (signature of first successor)

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

7        Acceptance of Appointment: \_\_\_\_\_

8                                (signature of second successor)

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

10        (c) A written instrument is legally sufficient under  
11 Subsection (a)(1) if the instrument designates a person to control  
12 the disposition of the decedent's remains, the instrument is signed  
13 by the decedent, the signature of the decedent is acknowledged, and  
14 the agent or successor agent signs the instrument before acting as  
15 the decedent's agent. Unless the instrument provides otherwise,  
16 the designation of the decedent's spouse as an agent or successor  
17 agent in the instrument is revoked on the divorce of the decedent  
18 and the spouse appointed as an agent or successor agent ~~[wording of~~  
19 ~~the instrument complies substantially with Subsection (b), the~~  
20 ~~instrument is properly completed, the instrument is signed by the~~  
21 ~~decedent, the agent, and each successor agent, and the signature of~~  
22 ~~the decedent is acknowledged]~~. Such written instrument may be  
23 modified or revoked only by a subsequent written instrument that  
24 complies with this subsection.

25        (g) A person may provide written directions for the  
26 disposition, including cremation, of the person's remains in a  
27 will, a prepaid funeral contract, or a written instrument signed

1 and acknowledged by such person. A party to the prepaid funeral  
2 contract or a written contract providing for all or some of a  
3 decedent's funeral arrangements who fails to honor the contract is  
4 liable for the additional expenses incurred in the disposition of  
5 the decedent's remains as a result of the breach of contract. The  
6 directions may govern the inscription to be placed on a grave marker  
7 attached to any plot in which the decedent had the right of  
8 sepulture at the time of death and in which plot the decedent is  
9 subsequently interred. The directions may be modified or revoked  
10 only by a subsequent writing signed and acknowledged by such  
11 person. The person otherwise entitled to control the disposition  
12 of a decedent's remains under this section shall faithfully carry  
13 out the directions of the decedent to the extent that the decedent's  
14 estate or the person controlling the disposition are financially  
15 able to do so.

16 SECTION 2. Section 711.002, Health and Safety Code, as  
17 amended by this Act, applies only to the validity of a document  
18 executed on or after the effective date of this Act. The validity  
19 of a document executed before the effective date of this Act is  
20 governed by the law in effect on the date the document was executed,  
21 and that law continues in effect for that purpose.

22 SECTION 3. (a) Except as otherwise provided in this  
23 section, the changes in law made by this Act apply to:

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

27 (2) a judicial proceeding concerning an instrument

1 described by Section 711.002(a)(1), Health and Safety Code, as  
2 amended by this Act, that:

3 (A) commences on or after the effective date of  
4 this Act; or

5 (B) is pending on the effective date of this Act.

6 (b) If the court finds that application of a provision of  
7 this Act would substantially interfere with the effective conduct  
8 of a judicial proceeding concerning an instrument described by  
9 Section 711.002(a)(1), Health and Safety Code, as amended by this  
10 Act, that is pending on the effective date of this Act or prejudice  
11 the rights of a party to the proceeding, the provision of this Act  
12 does not apply, and the law in effect immediately before the  
13 effective date of this Act applies in those circumstances.

14 SECTION 4. This Act takes effect September 1, 2015.