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SB-1284 Human remains: conservator of the person or estate. (2015-2016)

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Senate Bill No. 1284

CHAPTER 39

An act to amend Section 7105 of the Health and Safety Code, relating to human remains.

[Approved by Governor June 27, 2016. Filed with Secretary of State June 27, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1284, 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 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. 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 period.

This bill would add a conservator of the person and a conservator of the estate to the above provisions for purposes of relinquishment or petition, as specified.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7105 of the Health and Safety Code is amended to read:

7105. (a) If the person or persons listed in paragraphs (1), (3), (4), (5), (6), (7), and (8) of subdivision (a) of Section 7100 who would otherwise have the right to control the disposition and arrange for funeral goods and services fails to act, or fails to

delegate his or her authority to act to some other person within seven days of the date when the right and duty devolves upon the person or persons, or in the case of a person listed in paragraph (2) of subdivision (a) of Section 7100, within 10 days of the date when the right and duty devolves upon the person, the right to control the disposition and arrange for funeral goods and services shall be relinquished and passed on to the person or persons of the next degree of kinship in accordance with subdivision (a) of Section 7100.

(b) If the person or persons listed in paragraphs (1), (3), (4), (5), (6), (7), and (8) of subdivision (a) of Section 7100 who would otherwise have the right to control the disposition and arrange for funeral goods and services cannot be found within seven days of the date when the right and duty devolves upon the person or persons, or in the case of a person listed in paragraph (2) of subdivision (a) of Section 7100, within 10 days of the date when the right and duty devolves upon the person, after reasonable inquiry, the right to control the disposition and arrange for funeral goods and services shall be relinquished and passed on to the person or persons of the next degree of kinship in accordance with subdivision (a) of Section 7100.

(c) If any persons listed in paragraphs (1), (3), (4), (5), (6), (7), and (8) of subdivision (a) of Section 7100 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 seven 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 in the county in which the decedent resided at the time of his or her death, or in which the remains are located, naming as a party to the action those persons who would otherwise have equal rights to control the disposition and 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. The court, at the time of determining the person to whom the right of disposition will vest, shall, from the remaining parties to the action, establish an alternate order to whom the right to control disposition will pass if the person vested with the right to control disposition fails to act within seven days.

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