

I MINA' TRENTAI UNU NA LIHESLATURAN GUAHAN
2011 (FIRST) Regular Session

Bill No. 97-31 (COR)

Introduced by:

T. R. Muña-Barnes
V. A. Ada

An Act to repeal and re-enact §4502 of 10GCA Chapter 4A; to add a new §4510 to 10GCA Chapter 4A; and to amend § 3231 of 10GCA Chapter 3; relative to the control and disposition of a dead human body, and the duty of burial.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. §4502 of Chapter 4A of 10GCA is *repealed and re-enacted* to read:

“§4502. Right of sepulcher, the right to choose and control final disposition of a dead human body.

(a) As used in this section, the term “right of sepulcher” means the right to choose and control the burial, cremation, or other final disposition of a dead human body.

(b) The next-of-kin, as defined in §4510 of this Chapter, of the deceased shall be entitled to control the final disposition of the remains of any dead human being consistent with all applicable laws, including all applicable health codes.

(c) A mortician or mortuary is entitled to rely on and act according to the lawful instructions of any person claiming to be the next-of-kin of the deceased; provided however, in any civil cause of action against a funeral director or establishment licensed pursuant to this Chapter for actions taken regarding the funeral arrangements for a deceased person in the director's or establishment's care, the relative fault, if any, of such mortician or mortuary

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1 may be reduced if such actions are taken in reliance upon a person's claim to be
2 the deceased person's next-of-kin.

3 (d) Any person who desires to exercise the right of sepulcher and who
4 has knowledge of an individual or individuals with a superior right to control
5 disposition shall notify such individual or individuals prior to making final
6 arrangements.

7 (e) If an individual with a superior claim is personally served with
8 written notice from a person with an inferior claim that such person desires to
9 exercise the right of sepulcher and the individual so served does not object
10 within forty-eight (48) hours of receipt, such individual shall be deemed to
11 have waived such right. An individual with a superior right may also waive
12 such right at any time if such waiver is in writing and dated.

13 (f) If there is more than one person in a class who are equal in priority
14 and the mortician has no knowledge of any objection by other members of such
15 class, the mortician or mortuary shall be entitled to rely on and act according to
16 the instructions of the first such person in the class to make arrangements;
17 provided that such person assumes responsibility for the costs of disposition
18 and no other person in such class provides written notice of his or her
19 objection.

20 (g) Any person may designate an individual to be his or her closest next-
21 of-kin, regardless of blood or marital relationship, by means of a written
22 instrument that is signed, dated, and verified. Such designation of right of
23 sepulcher shall be witnessed by two persons, and shall contain the names and
24 last known address of each person entitled to be next-of-kin but for the
25 execution of the designation of right of sepulcher and who are higher in
26 priority than the person so designated.”

1 **Section 2.** A new §4510 is *added* to Chapter 4A of 10GCA to read:

2 **“§4510 Next-of-kin defined.**

3 For purposes of this Chapter and in all cases relating to the custody,
4 control, and disposition of deceased human remains, where not otherwise
5 defined, the term “next-of-kin” means the following persons in the priority
6 listed if such person is eighteen (18) years of age or older, is mentally
7 competent, and is willing to assume responsibility for the costs of disposition:

8 (a) The surviving spouse;

9 (b) A surviving child of the deceased. If a surviving child is
10 less than eighteen (18) years of age and has a legal or natural guardian,
11 such child shall not be disqualified on the basis of the child's age and
12 such child's legal or natural guardian, if any, shall be entitled to serve in
13 the place of the child unless such child's legal or natural guardian was
14 subject to an action in dissolution from the deceased. In such event the
15 person or persons who may serve as next-of-kin shall serve in the order
16 provided in Subsections (c) to (g) of this Section;

17 (c) A surviving parent of the deceased; or if the deceased is a
18 minor, a surviving parent who has custody of the minor; or if the
19 deceased is a minor and the deceased's parents have joint custody, the
20 parent whose residence is the minor child's residence for purposes of
21 mailing and education;

22 (d) A surviving sibling of the deceased;

23 (e) Any person designated by the deceased to act as next-of-kin
24 pursuant to a valid designation of right of sepulcher as provided in §
25 4502(g) of this Chapter;

26 (f) The next nearest surviving relative of the deceased by
27 consanguinity or affinity;

1 (g) Any person or friend who assumes financial responsibility
2 for the disposition of the deceased's remains if no next-of-kin assumes
3 such responsibility.”

4
5 **Section 3.** §3231 of Chapter 3 of 10GCA is *amended* to read:

6 **“§ 3231. Disposition.**

7 (a) The right to control the disposition of a dead human body and the duty of
8 burial or other disposition and the liability for the reasonable cost thereof devolves
9 upon the following in the order named:

10 (1) ~~Surviving spouse of the decedent;~~

11 (2) ~~Surviving child or children of the decedent;~~

12 (3) ~~Surviving parent or parents of the decedent; and~~

13 (4) ~~Person or persons, respectively, in the next degrees of kindred, in the~~
14 ~~order named by the laws of Guam as entitled to succeed the estate of the~~
15 ~~decedent; provided, that liability for the cost of burial or other disposition shall~~
16 ~~be primarily upon the estate of the decedent.~~

17 (b) ~~Where the duty of burial or other disposition of the dead human body does~~
18 ~~not devolve upon any other person in Guam, or if such person cannot after reasonable~~
19 ~~diligence be found within Guam, the Director shall arrange for the burial or other~~
20 ~~disposition of such body. shall be pursuant to the provisions of §4502 and §4503 of~~
21 Chapter 4A of 10GCA.”

22
23 **Section 4.** §4503 of Chapter 4A of 10 GCA *amended* to read

24 **“§4503. Indigents: Duty of Director.**

25 Where the duty of burial or other disposition of a dead human body does not
26 devolve upon any other person in Guam, or if such person cannot after reasonable

1 diligence be found within Guam, the Director shall arrange for the burial, cremation
2 or other appropriate disposition of such body.”

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4 **Section 5. Effective Date.** This Act shall be effective upon enactment.