~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 22, 2012

**H. 3393**

Introduced by Rep. Sandifer

S. Printed 2/22/12--S. [SEC 2/23/12 2:55 PM]

Read the first time February 16, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3393) to amend Section 32‑8‑320, as amended, Code of Laws of South Carolina, 1976, relating to persons who may serve as a decedent’s agent to authorize, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking SECTION 1 in its entirety, and inserting:

/ SECTION 1. Section 32‑8‑320 of the 1976 Code, as last amended by Act 221 of 2010, is further amended to read:

“Section 32‑8‑320. (A) In the following order of priority these persons may serve as a decedent’s agent and in the absence of a preneed cremation authorization may authorize cremation of the decedent:

(1) the person designated as agent for this purpose by the decedent in a will or other verified and attested document, or a person named in the decedent’s United States Department of Defense Record of Emergency Data Form (DD Form 93), or its successor form, if the decedent died while serving in any branch of the United States Armed Services, as defined in 10 U.S.C. Section 1481, and there is no known designation in a will or other verified and attested document of the decedent;

(2) the spouse of the decedent ~~at the time of the decedent’s death~~, unless the spouse and the decedent are separated pursuant to one of the following:

(a) entry of a pendente lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement;

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the spouse and the decedent;

(3) the decedent’s surviving adult children;

(4) the decedent’s surviving parents;

(5) ~~the persons in the next degree of kinship under the laws of descent and distribution to inherit the estate of the decedent~~ adult siblings of the decedent;

(6) a person named in the decedent’s will to serve as executor or legal representative of the decedent’s estate;

(7) the adult grandchildren of the decedent;

(8) the grandparents of the decedent;

(9) the person appointed by the probate court as the guardian; and

(10) any other person authorized or under obligation by law to dispose of the body.

(B) If there is more than one member of a class listed in subsection (A)(1), (3), (4), (5), (6), (7), (8), or (10) entitled to authorize the cremation of the decedent, the authorization to cremate may be made by a member of the class unless the member knows of an objection by another member within the class. If an objection is known, the authorization to cremate may be made only by a majority of the members of the class who are reasonably available.

(C) A person may not execute an authorization to cremate if a person in a prior class is reasonably available to make or object to the execution of the authorization to cremate the decedent.

(D) In the absence of a person serving as a decedent’s agent pursuant to subsection (A), the following may serve as an agent and may authorize a decedent’s cremation:

(1) a person serving as executor or legal representative of the decedent’s estate ~~and acting according to the decedent’s written instructions~~;

(2) a public administrator, medical examiner, coroner, state appointed guardian, or other public official charged with arranging the final disposition of the decedent if the decedent is indigent or if the final disposition is the responsibility of the State or an instrumentality of the State~~.~~; or

(3) the adult who exhibited special care and concern for the decedent.

~~(C)~~(E) If a dispute arises among persons of equal priority, as provided for in subsection (A), concerning the cremation of a decedent, the matter must be resolved by order of the probate court.

(F) If a funeral home handling funeral arrangements for a decedent transfers the decedent’s body to another funeral home solely for cremation purposes, the funeral home performing the cremation may, in good faith, rely on a cremation authorization document executed at the funeral home handling the funeral arrangements.” /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Department of Labor, Licensing and Regulation estimates this bill will have no fiscal impact on the state general fund or on federal and/or other funds.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND SECTION 32‑8‑320, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PERSONS WHO MAY SERVE AS A DECEDENT’S AGENT TO AUTHORIZE CREMATION, SO AS TO FURTHER PROVIDE FOR THOSE PERSONS WHO IN ORDER OF PRIORITY MAY AUTHORIZE CREMATION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 32‑8‑320 of the 1976 Code, as last amended by Act 221 of 2010, is further amended to read:

“Section 32‑8‑320. (A) In the following order of priority these persons may serve as a decedent’s agent and in the absence of a preneed cremation authorization may authorize cremation of the decedent:

(1) the person designated as agent for this purpose by the decedent in a will or other verified and attested document, or a person named in the decedent’s United States Department of Defense Record of Emergency Data Form (DD Form 93), or its successor form, if the decedent died while serving in any branch of the United States Armed Services, as defined in 10 U.S.C. Section 1481, and there is no known designation in a will or other verified and attested document of the decedent;

(2) the spouse of the decedent ~~at the time of the decedent’s death~~, unless the spouse and the decedent are separated pursuant to one of the following:

(a) entry of a pendent lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement;

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the spouse and the decedent;

(3) the decedent’s surviving adult children;

(4) the decedent’s surviving parents;

(5) ~~the persons in the next degree of kinship under the laws of descent and distribution to inherit the estate of the decedent~~ adult siblings of the decedent;

(6) the adult grandchildren of the decedent;

(7) the grandparents of the decedent;

(8) the adult who exhibited special care and concern for the decedent;

(9) the persons who were acting as the guardians of the person of the decedent at the time of death; and

(10) any other person authorized or under obligation by law to dispose of the body.

(B) If there is more than one member of a class listed in subsection (A)(1), (3), (4), (5), (6), (7), or (9), entitled to authorize the cremation of the decedent, the authorization to cremate may be made by a member of the class unless the member knows of an objection by another member within the class. If an objection is known, the authorization to cremate may be made only by a majority of the members of the class who are reasonably available.

(C) A person may not execute an authorization to cremate if a person in a prior class is reasonably available to make or object to the execution of the authorization to cremate the decedent.

(D) In the absence of a person serving as a decedent’s agent pursuant to subsection (A), the following may serve as an agent and may authorize a decedent’s cremation:

(1) a person serving as executor or legal representative of the decedent’s estate and acting according to the decedent’s written instructions;

(2) a public administrator, medical examiner, coroner, state appointed guardian, or other public official charged with arranging the final disposition of the decedent if the decedent is indigent or if the final disposition is the responsibility of the State or an instrumentality of the State.

~~(C)~~(E) If a dispute arises among persons of equal priority, as provided for in subsection (A), concerning the cremation of a decedent, the matter must be resolved by order of the probate court.”

SECTION 2. This act takes effect upon approval by the Governor.

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