

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 708

INTRODUCER: Senator Baker

SUBJECT: Disposition of Human Remains

DATE: January 6, 2010 REVISED: 03/03/10

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Snider	Burgess	BI	Fav/1 amendment
2.			MS	
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill amends the statute defining the “legally authorized person” to make decisions for the disposal of human remains. Current Florida law allows for a declaration made while a person is living to designate a legally authorized person to make this decision following the decedent’s death. If this decision is not made via an *inter vivos* authorization, the law defaults to a list of family members. This bill amends the current law to recognize a Department of Defense form where service members have designated a legally authorized person to handle the disposition of their remains if they are killed during service in the military as defined by federal law.¹

This bill substantially amends the following sections of the Florida Statutes: 497.005(37).

II. Present Situation:

Prior to a funeral, the survivors of the deceased are faced with difficult decisions regarding the funeral arrangements. Florida law dictates the preferential order to select a person responsible for determining the disposition of human remains. The Florida Funeral, Cemetery, and Consumer

¹ The armed forces of the United States are the Army, the Navy, the Marine Corps, the Air Force, and the Coast Guard. 10 U.S.C. § 101(a)(4).

Services Act² provides that a “legally authorized individual” shall have the power to make this decision.³ The statute provides that the preferential order for choosing the person responsible for directing disposition is (in descending order):

- An *inter vivos* authorization⁴ made by the deceased
- The surviving spouse
- A son or daughter of majority age
- A parent
- A sibling of majority age
- A grandchild of majority age
- A grandparent
- Another person in the next degree of kinship.

During their period of military service, all service members in the Army, Navy, Air Force, and Marine Corps are required to complete Department of Defense Form 93.⁵ This form relates to emergency data as well as the death benefits of service members. The form allows service members to designate the spouse or a relative to be the person authorized to dispose of the service member’s remains if the service member dies during military service (regardless of deployment status).⁶ At present, Florida law does not explicitly recognize DD Form 93 as a method for determining the legally authorized person to direct disposition of remains. However, Florida law would likely treat the form as an *inter vivos* authorization and give effect to it as such.⁷

III. Effect of Proposed Changes:

Section 1. This bill specifically recognizes DD Form 93 or its successor form as a valid method for determining the legally authorized person to dispose of the remains. The bill places the DD Form 93 subordinate to an *inter vivos* authorization made by the service member, but superior to any statutorily specified relatives including the spouse.⁸ The Department of Defense has indicated that, in the Department’s view, this placement ensures that a military service member’s wishes are best carried out.⁹

² Ch. 497, F.S.

³ S. 497.005(37), F.S.

⁴ An *inter vivos* authorization is one made during the life of the decedent (deceased). See Black’s Law Dictionary; It is unclear whether this provision includes a will, which is considered testamentary in nature. See James W. Martin, *Is the Law of the Body a Body of Law*, Lawyers.com (discussing whether a will is valid for determining the disposition of the body under this statute). Available at: <http://wills-probate.lawyers.com/blogs/archives/789-Is-the-Law-of-the-Body-a-Body-of-Law.html>.

⁵ Military service members were authorized by Public Law 109-163, 119 Stat. 3270, to designate a person authorized to direct disposition of remains. Additionally, the execution of the DD Form 93 is required to be witnessed by a disinterested party.

⁶ However, the proposed language of the bill will only give effect to the DD Form 93 if the service member is killed while on active duty.

⁷ See *Arthur v. Milstein*, 949 So.2d 1163, 1166 (Fla. 4th DCA 1163) (noting that the statute first gives effect to the wishes of the decedent through an *inter vivos* authorization); See also *Cohen v. Guardianship of Cohen*, 896 So.2d 950, 952-53 (Fla. 4th DCA 2005) (finding that an oral *inter vivos* declaration of burial disposition can overcome the written terms of a will and resulting in a conclusion that effect should be given to the desires of the decedent).

⁸ The DD Form 93 permits only a surviving spouse, blood relative of legal age, or adoptive relatives to be selected as the person authorized to direct disposition.

⁹ Telephone conversation with Eric Sherman, Regional Liaison for the Undersecretary of Defense, Jan. 6, 2010.

The DD Form 93 is most likely an *inter vivos* authorization from a legal standpoint, and thus is duplicative of current law. However, the Department of Defense reports that there has been litigation over this subject between relatives of deceased service members. Thus, the goal of this legislation is to ensure that the DD Form 93 is explicitly accepted by all parties involved in the disposition process.¹⁰ The Department believes this will save considerable grief and money for the families of deceased service members, because it has received expressions of concern from military families about whether the DD Form 93 will be honored by the courts.¹¹ However, the Department has been unable to cite a specific case where the DD Form 93 has not been honored,¹² and the Professional Staff of the Committee on Banking and Insurance has been unable to locate such a case.¹³

Section 2. This bill shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There does not appear to be a financial impact on the private sector. The present statute is being amended to include the DD Form 93 in the order of prioritization. However, the statute does not impose a due diligence requirement on funeral homes, and the courts have declined to read such a requirement into the statute. As a result, it is possible that an

¹⁰ Telephone conversation with Eric Sherman.

¹¹ Email from Eric Sherman, Feb. 25, 2010.

¹² *Id.*

¹³ Research has uncovered a number of national cases involving Form DD 93 however. None of these cases concern the disposition of remains but instead generally concern insurance benefits. There is no clear rule of law that may be drawn from these cases, as each case seems to turn on the unique factual situations. However, most courts have found the DD Form 93 persuasive regardless of the statutory authority. *See e.g., Lanier v. Traub*, 734 F.Supp. 463 (S.D. Fla. 1990); *Ward v. U.S.*, 371 F.2d 108 (7th Cir. 1966); *Bew v. U.S.*, 286 F.2d 570, 572 (4th Cir. 1961) (holding that the DD Form 93 is persuasive to effectuating the intent of the decedent); *Contra Lanier v. Traub*, 934 F.2d 287 (11th Cir. 1991) (finding that the DD Form 93 cannot overcome statutory definitions as to the meaning of “parent”).

inter vivos authorization, the DD Form 93, or even a relative of higher priority under the statute could fail to direct the disposition of remains.¹⁴

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The amendment adopted by the Banking and Insurance Committee on March 3, 2010 conforms the bill to federal law. As a result, the provisions of the bill now cover members serving in the United States Coast Guard, as well as in the National Guard, Reserves, and other members of various statuses as determined by federal law. However, the bill continues to reference only DD Form 93, while the Coast Guard, a part of the Department of Homeland Security,¹⁵ maintains a different form.¹⁶

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 123612 by Banking and Insurance on March 3, 2010.

The amendment conforms the bill to federal law by recognizing the use of the DD Form 93 for military members on active duty as well as for members conducting certain duties while not on active-duty. This revision ensures that the bill covers National Guard members, Reserve members, and the US Coast Guard.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁴ *Matsumoto v. American Burial and Cremation Svcs., Inc.*, 949 So.2d 1054, 1057-58. (Fla. 2nd DCA 2006) (finding that a funeral home did not have a duty to conduct due diligence to contact a relative higher in the statutory hierarchy despite knowing of the relative's existence and when cremation was authorized by another relative lower in the hierarchy). *But cf. Andrews v. McGowan*, 739 So.2d 132 (Fla. 5th DCA 1999) (construing strictly the order of priority).

¹⁵ 14 U.S.C. §1. Additionally, there are two uniformed services that are not armed services: the commissioned corps of the National Oceanic and Atmospheric Administration and the commissioned corps of the Public Health Service. 10 U.S.C. §101(a)(5)(b). These services are within the Department of Commerce and the Department of Health & Human Services respectively and are also not covered by this legislation.

¹⁶ The Coast Guard equivalent to the DD Form 93 is the Dept. of Homeland Security Form CG PPC-2020D "Designation of Beneficiaries & Record of Emergency Data."