

By Senator Bullard

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1                                   A bill to be entitled  
2       An act relating to funeral and burial arrangements;  
3       amending s. 382.011, F.S.; authorizing a medical  
4       examiner to record the identity of certain persons who  
5       may have unlawfully participated in the death of a  
6       decedent; providing immunity for such findings;  
7       directing a medical examiner to provide to the funeral  
8       director findings of the identity of certain persons  
9       who may have unlawfully participated in a decedent's  
10      death; requiring a medical examiner to report the  
11      arrest of certain individuals to the funeral director;  
12      amending s. 406.135, F.S.; narrowing a public-records  
13      exemption to authorize the parent or adult child of a  
14      decedent to obtain autopsy records; prohibiting  
15      disclosure of autopsy records; providing penalties;  
16      amending s. 497.005, F.S.; redefining the term  
17      "legally authorized person" for purposes of the  
18      Florida Funeral, Cemetery, and Consumer Services Act;  
19      amending s. 732.804, F.S.; prohibiting a person who  
20      may have unlawfully participated in the death of a  
21      decedent, or who has been arrested for unlawfully  
22      participating in the death of a decedent, from making  
23      decisions relating to the decedent's body and funeral  
24      and burial arrangements; providing an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

27  
28       Section 1. Section 382.011, Florida Statutes, is amended to  
29      read:

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30 382.011 Medical examiner determination of cause of death.-

31 (1) In the case of any death or fetal death due to causes  
32 or conditions listed in s. 406.11, or where the death occurred  
33 more than 30 days after the decedent was last treated by a  
34 physician unless the death was medically expected as certified  
35 by an attending physician, or where there is reason to believe  
36 that the death may have been due to unlawful act or neglect, the  
37 funeral director or other person to whose attention the death  
38 may come shall refer the case to the medical examiner of the  
39 district in which the death occurred for investigation and  
40 determination of the cause of death.

41 (2) The medical examiner shall complete and sign the  
42 medical certification of cause of death of the death or fetal  
43 death certificate within 72 hours after notification, whether or  
44 not final determination of the cause of death has been  
45 established, unless an extension has been granted as provided  
46 under s. 382.008. Any amendment fees prescribed in s. 382.0255  
47 shall be waived when a later determination of cause of death is  
48 made.

49 (3) A medical examiner, in consultation with a law  
50 enforcement agency, may make a finding that a spouse, child,  
51 parent, sibling, grandchild, grandparent, or person in the next  
52 degree of kinship to the decedent may have unlawfully  
53 participated in the decedent's death. If such a finding is made,  
54 the medical examiner shall provide it to the funeral director  
55 who first assumed custody of the decedent's body. Afterwards the  
56 finding must accompany the burial-in-transit permit. A medical  
57 examiner or law enforcement agency is not liable for findings  
58 made in good faith pursuant to this subsection.

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59       (4) A medical examiner must report to the funeral director  
60 who first assumed custody of a decedent's body, the arrest of a  
61 spouse, child, parent, sibling, grandchild, grandparent, or  
62 person in the next degree of kinship to the decedent for  
63 unlawfully participating in the decedent's death. A report of an  
64 arrest shall accompany the burial-in-transit permit. A medical  
65 examiner does not have a duty to report an arrest that occurs  
66 after the decedent's body has been released.

67       (5)~~(3)~~ The funeral director shall retain the responsibility  
68 for preparation of the death or fetal death certificate,  
69 obtaining the necessary signatures, filing with the local  
70 registrar in a timely manner, and disposing of the remains when  
71 the remains are released by the medical examiner.

72       Section 2. Section 406.135, Florida Statutes, is amended to  
73 read:

74       406.135 Autopsies; confidentiality of photographs and video  
75 and audio recordings; exemption.—

76       (1) For the purpose of this section, the term "medical  
77 examiner" means any district medical examiner, associate medical  
78 examiner, or substitute medical examiner acting pursuant to this  
79 chapter, as well as any employee, deputy, or agent of a medical  
80 examiner or any other person who may obtain possession of a  
81 photograph or audio or video recording of an autopsy in the  
82 course of assisting a medical examiner in the performance of his  
83 or her official duties.

84       (2) A photograph or video or audio recording of an autopsy  
85 held by a medical examiner is confidential and exempt from s.  
86 119.07(1) and s. 24(a), Art. I of the State Constitution, except  
87 that a surviving spouse, parent, or adult child of the decedent

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88 may view and copy a photograph or video recording or listen to  
89 or copy an audio recording of the ~~deceased spouse's~~ autopsy of  
90 the decedent. ~~If there is no surviving spouse, then the~~  
91 ~~surviving parents shall have access to such records. If there is~~  
92 ~~no surviving spouse or parent, then an adult child shall have~~  
93 ~~access to such records.~~

94 (3) (a) A ~~The~~ deceased's surviving relative, with whom  
95 authority rests to obtain such records, may designate in writing  
96 an agent to obtain such records.

97 (b) A local governmental entity, or a state or federal  
98 agency, in furtherance of its official duties, pursuant to a  
99 written request, may view or copy a photograph or video  
100 recording or may listen to or copy an audio recording of an  
101 autopsy, and unless otherwise required in the performance of  
102 their duties, the identity of the deceased shall remain  
103 confidential and exempt.

104 (c) The custodian of the record, or his or her designee,  
105 may not permit any other person, except an agent designated in  
106 writing by a ~~the~~ deceased's surviving relative with whom  
107 authority rests to obtain such records, to view or copy such  
108 photograph or video recording or listen to or copy an audio  
109 recording without a court order.

110 (4) (a) The court, upon a showing of good cause, may issue  
111 an order authorizing any person to view or copy a photograph or  
112 video recording of an autopsy or to listen to or copy an audio  
113 recording of an autopsy and may prescribe any restrictions or  
114 stipulations that the court deems appropriate.

115 (b) In determining good cause, the court shall consider  
116 whether such disclosure is necessary for the public evaluation

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117 of governmental performance; the seriousness of the intrusion  
118 into the family's right to privacy and whether such disclosure  
119 is the least intrusive means available; and the availability of  
120 similar information in other public records, regardless of form.

121 (c) In all cases, the viewing, copying, listening to, or  
122 other handling of a photograph or video or audio recording of an  
123 autopsy must be under the direct supervision of the custodian of  
124 the record or his or her designee.

125 (5) A surviving spouse, parent, and adult child of a  
126 decedent shall be given reasonable notice of a petition filed  
127 with the court to view or copy a photograph or video recording  
128 of an autopsy or a petition to listen to or copy an audio  
129 recording, a copy of such petition, and reasonable notice of the  
130 opportunity to be present and heard at any hearing on the  
131 matter. ~~If there is no surviving spouse, then such notice must~~  
132 ~~be given to the parents of the deceased, and if the deceased has~~  
133 ~~no living parent, then to the adult children of the deceased.~~

134 (6) A relative authorized to receive a copy of an autopsy  
135 report under this section may not disclose the contents of the  
136 report.

137 (7)~~(6)~~ (a) Any custodian of a photograph or video or audio  
138 recording of an autopsy who willfully and knowingly violates  
139 this section commits a felony of the third degree, punishable as  
140 provided in s. 775.082, s. 775.083, or s. 775.084.

141 (b) Any person who willfully and knowingly violates a court  
142 order issued pursuant to this section commits a felony of the  
143 third degree, punishable as provided in s. 775.082, s. 775.083,  
144 or s. 775.084.

145 (8)~~(7)~~ A criminal or administrative proceeding is exempt

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146 from this section, but unless otherwise exempted, is subject to  
147 all other provisions of chapter 119, provided however that this  
148 section does not prohibit a court in a criminal or  
149 administrative proceeding upon good cause shown from restricting  
150 or otherwise controlling the disclosure of an autopsy, crime  
151 scene, or similar photograph or video or audio recordings in the  
152 manner prescribed herein.

153 (9)~~(8)~~ This exemption shall be given retroactive  
154 application.

155 Section 3. Subsection (37) of section 497.005, Florida  
156 Statutes, is amended to read:

157 497.005 Definitions.—As used in this chapter:

158 (37) "Legally authorized person" means, ~~in the priority~~  
159 ~~listed,~~ the decedent, ~~when written inter vivos authorizations~~  
160 and directions are provided by the decedent. The term may  
161 include the following relatives in the priority listed who have  
162 not been disqualified under s. 732.804: ~~the surviving spouse,~~  
163 ~~unless the spouse has been arrested for committing against the~~  
164 ~~deceased an act of domestic violence as defined in s. 741.28~~  
165 ~~that resulted in or contributed to the death of the deceased;~~ a  
166 son or daughter who is 18 years of age or older; a parent; a  
167 brother or sister who is 18 years of age or older; a grandchild  
168 who is 18 years of age or older; a grandparent; or any person in  
169 the next degree of kinship. In addition, the term may include,  
170 if no family member exists or is available, the guardian of the  
171 dead person at the time of death; the personal representative of  
172 the deceased; the attorney in fact of the dead person at the  
173 time of death; the health surrogate of the dead person at the  
174 time of death; a public health officer; the medical examiner,

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175 county commission, or administrator acting under part II of  
176 chapter 406 or other public administrator; a representative of a  
177 nursing home or other health care institution in charge of final  
178 disposition; or a friend or other person not listed in this  
179 subsection who is willing to assume the responsibility as the  
180 legally authorized person. Where there is a person in any  
181 priority class listed in this subsection, the funeral  
182 establishment shall rely upon the authorization of any one  
183 legally authorized person of that class if that person  
184 represents that she or he is not aware of any objection to the  
185 cremation of the deceased's human remains by others in the same  
186 class of the person making the representation or of any person  
187 in a higher priority class.

188 Section 4. Section 732.804, Florida Statutes, is amended to  
189 read:

190 732.804 Provisions relating to disposition of the body.—

191 (1) Before issuance of letters, any person may carry out  
192 written instructions of the decedent relating to the decedent's  
193 body and funeral and burial arrangements. The fact that  
194 cremation occurred pursuant to a written direction signed by the  
195 decedent that the body be cremated is a complete defense to a  
196 cause of action against any person acting or relying on that  
197 direction.

198 (2) A person may not make decisions relating to a  
199 decedent's body and funeral and burial arrangements if:

200 (a) A medical examiner, in consultation with a law  
201 enforcement agency pursuant to s. 382.011, has found that the  
202 person may have unlawfully participated in the decedent's death;  
203 or

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204           (b) The person has been arrested for unlawfully  
205 participating in the decedent's death.

206           Section 5. This act shall take effect July 1, 2010.