



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5091

Introduced 1/27/2022, by Rep. Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

410 ILCS 535/21	from Ch. 111 1/2, par. 73-21
755 ILCS 65/5	
755 ILCS 65/50	
765 ILCS 835/2	from Ch. 21, par. 16

Amends the Vital Records Act. Provides that an injunction enjoining the issuance of a permit to disinter human remains shall issue only when the person seeking the injunction has rights superior to the person seeking the permit to disinter. Provides that if a person seeking an injunction does not have rights superior to the person seeking the permit to disinter, a court of competent may award costs to the person seeking the permit to disinter, if the court makes a finding that the action seeking the injunction was brought in bad faith. Amends the Disposition of Remains Act. Provides that if a court finds that a person has filed or opposed an action relating to the person's right to control disposition, the court may award costs against the person it finds has acted in bad faith. Amends the Cemetery Protection Act. Provides that any bylaws, rules, and regulations made by the cemetery authority for the government thereof are effective if made publicly available through continuous publication on the cemetery authority's website or on the cemetery authority's social media page. Requires a cemetery authority that does not maintain a website or social media page to provide a copy of the bylaws, rules, and regulations to each person prior to or contemporaneous with the cemetery authority's presentment of any contract or legal agreement for services in relation to the cemetery. Provides that the amendatory Act may be referred to as the Michael Bauer Memorial Act.

LRB102 26002 LNS 35411 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. References to Act. This Act may be referred to
5 as the Michael Bauer Memorial Act.

6 Section 5. The Vital Records Act is amended by changing
7 Section 21 as follows:

8 (410 ILCS 535/21) (from Ch. 111 1/2, par. 73-21)

9 Sec. 21. (1) The funeral director or person acting as such
10 who first assumes custody of a dead body or fetus shall make a
11 written report to the registrar of the district in which death
12 occurred or in which the body or fetus was found within 24
13 hours after taking custody of the body or fetus on a form
14 prescribed and furnished by the State Registrar and in
15 accordance with the rules promulgated by the State Registrar.
16 Except as specified in paragraph (2) of this Section, the
17 written report shall serve as a permit to transport, bury, or
18 entomb the body or fetus within this State, provided that the
19 funeral director or person acting as such shall certify that
20 the certifying health care professional who, within 12 months
21 prior to the date of the patient's death, was treating or
22 managing treatment of the patient's illness or condition which

1 resulted in death has been contacted and has affirmatively
2 stated that he or she will sign the medical certificate of
3 death or the fetal death certificate. If a funeral director
4 fails to file written reports under this Section in a timely
5 manner, the local registrar may suspend the funeral director's
6 privilege of filing written reports by mail. In a county with a
7 population greater than 3,000,000, if a funeral director or
8 person acting as such interrs or entombs a dead body without
9 having previously certified that the certifying health care
10 professional who, within 12 months prior to the date of the
11 patient's death, was treating or managing treatment of the
12 patient's illness or condition that resulted in death has been
13 contacted and has affirmatively stated that he or she will
14 sign the medical certificate of death, then that funeral
15 director or person acting as such is responsible for payment
16 of the specific costs incurred by the county medical examiner
17 in disinterring and reintering or reentombing the dead body.

18 (2) The written report as specified in paragraph (1) of
19 this Section shall not serve as a permit to:

20 (a) Remove body or fetus from this State;

21 (b) Cremate the body or fetus; or

22 (c) Make disposal of any body or fetus in any manner
23 when death is subject to the coroner's or medical
24 examiner's investigation.

25 (3) In accordance with the provisions of paragraph (2) of
26 this Section the funeral director or person acting as such who

1 first assumes custody of a dead body or fetus shall obtain a
2 permit for disposition of such dead human body prior to final
3 disposition or removal from the State of the body or fetus.
4 Such permit shall be issued by the registrar of the district
5 where death occurred or the body or fetus was found. No such
6 permit shall be issued until a properly completed certificate
7 of death has been filed with the registrar. The registrar
8 shall insure the issuance of a permit for disposition within
9 an expedited period of time to accommodate Sunday or holiday
10 burials of decedents whose time of death and religious tenets
11 or beliefs necessitate Sunday or holiday burials.

12 (4) A permit which accompanies a dead body or fetus
13 brought into this State shall be authority for final
14 disposition of the body or fetus in this State, except in
15 municipalities where local ordinance requires the issuance of
16 a local permit prior to disposition.

17 (5) A permit for disposition of a dead human body shall be
18 required prior to disinterment of a dead body or fetus, and
19 when the disinterred body is to be shipped by a common carrier.
20 Such permit shall be issued to a licensed funeral director or
21 person acting as such, upon proper application, by the local
22 registrar of the district in which disinterment is to be made.
23 In the case of disinterment, proper application shall include
24 a statement providing the name and address of any surviving
25 spouse of the deceased, or, if none, any surviving children of
26 the deceased, or if no surviving spouse or children, a parent,

1 brother, or sister of the deceased. The application shall
2 indicate whether the applicant is one of these parties and, if
3 so, whether the applicant is a surviving spouse or a surviving
4 child. Prior to the issuance of a permit for disinterment, the
5 local registrar shall, by certified mail, notify the surviving
6 spouse, unless he or she is the applicant, or if there is no
7 surviving spouse, all surviving children except for the
8 applicant, of the application for the permit. The person or
9 persons notified shall have 30 days from the mailing of the
10 notice to object by obtaining an injunction enjoining the
11 issuance of the permit. After the 30-day period has expired,
12 the local registrar shall issue the permit unless he or she has
13 been enjoined from doing so or there are other statutory
14 grounds for refusal. The notice to the spouse or surviving
15 children shall inform the person or persons being notified of
16 the right to seek an injunction within 30 days. An injunction
17 enjoining the issuance of a permit to disinter shall issue
18 only when the person seeking the injunction has rights
19 superior, according to Section 5 of the Disposition of Remains
20 Act, to the person seeking the permit to disinter. If a person
21 seeking an injunction does not have rights superior, according
22 to Section 5 of the Disposition of Remains Act, to the person
23 seeking the permit to disinter, a court of competent
24 jurisdiction may award costs, including reasonable attorney's
25 fees, to the person seeking the permit to disinter, if the
26 court makes a finding that the action seeking the injunction

1 was brought in bad faith. Notwithstanding any other provision
2 of this subsection (5), a court may order issuance of a permit
3 for disinterment without notice or prior to the expiration of
4 the 30-day period where the petition is made by an agency of
5 any governmental unit and good cause is shown for disinterment
6 without notice or for the early order. Nothing in this
7 subsection (5) limits the authority of the City of Chicago to
8 acquire property or otherwise exercise its powers under the
9 O'Hare Modernization Act or requires that City, or any person
10 acting on behalf of that City, to obtain a permit under this
11 subsection (5) when exercising powers under the O'Hare
12 Modernization Act. The Illinois Department of Transportation,
13 and any person acting on its behalf under a public-private
14 agreement entered into in accordance with the Public-Private
15 Agreements for the South Suburban Airport Act, is exempt from
16 this subsection (5), provided that the Illinois Department of
17 Transportation, or any such person, takes reasonable steps to
18 comply with the provisions of this subsection (5) so long as
19 compliance does not interfere with the design, development,
20 operation, or maintenance of the South Suburban Airport or the
21 exercise of their powers under the Public-Private Agreements
22 for the South Suburban Airport Act.

23 (Source: P.A. 102-257, eff. 1-1-22.)

24 Section 10. The Disposition of Remains Act is amended by
25 changing Sections 5 and 50 as follows:

1 (755 ILCS 65/5)

2 Sec. 5. Right to control disposition; priority. Unless a
3 decedent has left directions in writing for the disposition or
4 designated an agent to direct the disposition of the
5 decedent's remains as provided in Section 65 of the Crematory
6 Regulation Act or in subsection (a) of Section 40 of this Act,
7 the following persons, in the priority listed, have the right
8 to control the disposition, including cremation or
9 disinterment, of the decedent's remains and are liable for the
10 reasonable costs of the disposition:

11 (1) the person designated in a written instrument that
12 satisfies the provisions of Sections 10 and 15 of this
13 Act;

14 (2) any person serving as executor or legal
15 representative of the decedent's estate and acting
16 according to the decedent's written instructions contained
17 in the decedent's will;

18 (3) the individual who was the spouse of the decedent
19 at the time of the decedent's death;

20 (4) the sole surviving competent adult child of the
21 decedent, or if there is more than one surviving competent
22 adult child of the decedent, the majority of the surviving
23 competent adult children; however, less than one-half of
24 the surviving adult children shall be vested with the
25 rights and duties of this Section if they have used

1 reasonable efforts to notify all other surviving competent
2 adult children of their instructions and are not aware of
3 any opposition to those instructions on the part of more
4 than one-half of all surviving competent adult children;

5 (5) the surviving competent parents of the decedent;
6 if one of the surviving competent parents is absent, the
7 remaining competent parent shall be vested with the rights
8 and duties of this Act after reasonable efforts have been
9 unsuccessful in locating the absent surviving competent
10 parent;

11 (6) the surviving competent adult person or persons
12 respectively in the next degrees of kindred or, if there
13 is more than one surviving competent adult person of the
14 same degree of kindred, the majority of those persons;
15 less than the majority of surviving competent adult
16 persons of the same degree of kindred shall be vested with
17 the rights and duties of this Act if those persons have
18 used reasonable efforts to notify all other surviving
19 competent adult persons of the same degree of kindred of
20 their instructions and are not aware of any opposition to
21 those instructions on the part of one-half or more of all
22 surviving competent adult persons of the same degree of
23 kindred;

24 (6.5) any recognized religious, civic, community, or
25 fraternal organization willing to assume legal and
26 financial responsibility;

1 (7) in the case of indigents or any other individuals
2 whose final disposition is the responsibility of the State
3 or any of its instrumentalities, a public administrator,
4 medical examiner, coroner, State appointed guardian, or
5 any other public official charged with arranging the final
6 disposition of the decedent;

7 (8) in the case of individuals who have donated their
8 bodies to science, or whose death occurred in a nursing
9 home or other private institution and the institution is
10 charged with making arrangements for the final disposition
11 of the decedent, a representative of the institution; or

12 (9) any other person or organization that is willing
13 to assume legal and financial responsibility.

14 As used in Section, "adult" means any individual who has
15 reached his or her eighteenth birthday.

16 Notwithstanding provisions to the contrary, in the case of
17 decedents who die while serving as members of the United
18 States Armed Forces, the Illinois National Guard, or the
19 United States Reserve Forces, as defined in Section 1481 of
20 Title 10 of the United States Code, and who have executed the
21 required U.S. Department of Defense Record of Emergency Data
22 Form (DD Form 93), or successor form, the person designated in
23 such form to direct disposition of the decedent's remains
24 shall have the right to control the disposition, including
25 cremation, of the decedent's remains.

26 (Source: P.A. 100-526, eff. 6-1-18.)

1 (755 ILCS 65/50)

2 Sec. 50. Disputes. Any dispute among any of the persons
3 listed in Section 5 concerning their right to control the
4 disposition, including cremation or disinterment, of a
5 decedent's remains shall be resolved by a court of competent
6 jurisdiction within 30 days of the dispute being filed with
7 the court. A cemetery organization or funeral establishment
8 shall not be liable for refusing to accept the decedent's
9 remains, or to inter, disinter, or otherwise dispose of the
10 decedent's remains, until it receives a court order or other
11 suitable confirmation that the dispute has been resolved or
12 settled. If a court of competent jurisdiction finds that a
13 person listed in Section 5 has, in bad faith, filed or opposed
14 an action relating to the person's right to control
15 disposition, including cremation or disinterment, the court
16 may award costs, including reasonable attorney's fees, against
17 the person it finds has acted in bad faith.

18 (Source: P.A. 101-381, eff. 1-1-20.)

19 Section 15. The Cemetery Protection Act is amended by
20 changing Section 2 as follows:

21 (765 ILCS 835/2) (from Ch. 21, par. 16)

22 Sec. 2. The cemetery authority is hereby authorized to
23 make bylaws ~~by laws~~ or rules and regulations for the

1 government thereof, and to make rules regarding the driving of
2 cars, motorcycles, carriages, processions, teams, and the
3 speed thereof, the use of avenues, lots, walks, ponds, water
4 courses, vaults, buildings, or other places within such
5 cemetery, the operations and good management in such cemetery,
6 the protection of visitors, the protection of employees, and
7 for the maintenance of good order and quiet in such cemetery,
8 all such rules to be subject to the rights to control the
9 disposition of a decedent's remains in accordance with the
10 Disposition of Remains Act ~~of interment, entombment, or~~
11 ~~inurnment right owners, or others, owning any interest in such~~
12 ~~cemetery~~; and all persons found guilty of a violation of such
13 rules shall be guilty of a petty offense and shall be punished
14 by a fine of not less than \$100, nor more than \$500 for each
15 offense. No judge shall be disqualified from hearing any cause
16 that may be brought before him under the provisions of this
17 Act, nor shall any person be disqualified from acting as a
18 juror in such cause, by reason of any interest or ownership
19 they or either of them may have in the interment, entombment,
20 or inurnment rights of such cemetery. Any bylaws, rules, and
21 regulations made by the cemetery authority for the government
22 thereof are effective if made publicly available through
23 continuous publication on the cemetery authority's website or
24 on the cemetery authority's social media page with a reference
25 to and notice of the bylaws, rules, and regulations set forth
26 in every contract or legal agreement with any person for

1 services in relation to the cemetery. However, if the cemetery
2 authority does not maintain a website or social media page,
3 the cemetery authority shall provide a copy of the bylaws,
4 rules, and regulations to each person prior to or
5 contemporaneous with the cemetery authority's or its
6 representative's presentment of any contract or legal
7 agreement for services in relation to the cemetery.

8 (Source: P.A. 94-44, eff. 6-17-05.)