

The House Committee on Health and Human Services offers the following substitute to HB 257:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 21 of Title 31 of the Official Code of Georgia Annotated,
2 relating to general provisions concerning dead bodies, so as to provide for the ability for
3 individuals to provide through a preneed contract for the disposition of their bodies after
4 death; to provide for the persons who may direct the disposition of a person's body after the
5 person's death; to provide for the forfeiture of the right of disposition under certain
6 circumstances; to provide for resolving conflicting claims; to provide for immunity for
7 funeral homes that act in good faith on such directions for disposition; to provide for related
8 matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Article 1 of Chapter 21 of Title 31 of the Official Code of Georgia Annotated, relating to
12 general provisions concerning dead bodies, is amended by adding a new Code section to read
13 as follows:

14 "31-21-7.

15 (a) A person who is 18 years of age or older and of sound mind, by entering into a preneed
16 contract, as defined in paragraph (30) of Code Section 10-14-3, may direct the location,
17 manner, and conditions of the disposition of the person's remains and the arrangements for
18 funeral goods and services to be provided upon the person's death. The disposition
19 directions and funeral prearrangements that are contained in a preneed contract shall not
20 be subject to cancellation or substantial revision unless the cancellation or substantial
21 revision has been ordered by a person the decedent has appointed in the preneed contract
22 as the person authorized to cancel or revise the terms of the preneed contract or unless any
23 resources set aside to fund the preneed contract are insufficient under the terms of the
24 preneed contract to carry out the disposition directions and funeral prearrangements
25 contained therein.

26 (b) Except as provided in subsection (c) of this Code section, the right to control the
 27 disposition of the remains of a deceased person; the location, manner, and conditions of
 28 disposition; and arrangements for funeral goods and services to be provided vests in the
 29 following, in the order named, provided that such person is 18 years or older and is of
 30 sound mind:

31 (1)(A) A person designated by the decedent as the person with the right to control the
 32 disposition in an affidavit executed in accordance with subparagraph (B) of this
 33 paragraph.

34 (B) A person who is 18 years of age or older and of sound mind wishing to authorize
 35 another person to control the disposition of his or her remains may execute an affidavit
 36 before a notary public in substantially the following form:

37 'State of Georgia

38 County of _____

39 I, _____, do hereby designate _____ with the right to
 40 control the disposition of my remains upon my death. I _____ have _____ have not attached
 41 specific directions concerning the disposition of my remains with which the designee
 42 shall substantially comply, provided that such directions are lawful and there are
 43 sufficient resources in my estate to carry out the directions.

44 Subscribed and sworn to before me this _____ day of the month of _____ of the year
 45 _____.

46 _____ (signature of affiant)

47 _____ (signature of notary public)';

48 (2) The surviving spouse of the decedent;

49 (3) The sole surviving child of the decedent or, if there is more than one child of the
 50 decedent, the majority of the surviving children; provided, however, that less than
 51 one-half of the surviving children shall be vested with the rights under this Code section
 52 if they have used reasonable efforts to notify all other surviving children of their
 53 instructions and are not aware of any opposition to those instructions on the part of more
 54 than one-half of all surviving children;

55 (4) The surviving parent or parents of the decedent. If one of the surviving parents is
 56 absent, the remaining parent shall be vested with the rights and duties under this Code
 57 section after reasonable efforts have been unsuccessful in locating the absent surviving
 58 parent;

59 (5) The surviving brother or sister of the decedent or, if there is more than one sibling
 60 of the decedent, the majority of the surviving siblings; provided, however, that less than
 61 the majority of surviving siblings shall be vested with the rights and duties under this
 62 Code section if they have used reasonable efforts to notify all other surviving siblings of

63 their instructions and are not aware of any opposition to those instructions on the part of
64 more than one-half of all surviving siblings;

65 (6) The surviving grandparent of the decedent or, if there is more than one surviving
66 grandparent, the majority of the grandparents; provided, however, that less than the
67 majority of the surviving grandparents shall be vested with the rights and duties under
68 this Code section if they have used reasonable efforts to notify all other surviving
69 grandparents of their instructions and are not aware of any opposition to those
70 instructions on the part of more than one-half of all surviving grandparents;

71 (7) The guardian of the person of the decedent at the time of the decedent's death if one
72 had been appointed;

73 (8) The personal representative of the estate of the decedent;

74 (9) The person in the classes of the next degree of kinship, in descending order, under
75 the laws of descent and distribution to inherit the estate of the decedent. If there is more
76 than one person of the same degree, any person of that degree may exercise the right of
77 disposition;

78 (10) If the disposition of the remains of the decedent is the responsibility of the state or
79 a political subdivision of the state, the public officer, administrator, or employee
80 responsible for arranging the final disposition of decedent's remains; or

81 (11) In the absence of any person under paragraphs (1) through (10) of this subsection,
82 any other person willing to assume the responsibilities to act and arrange the final
83 disposition of the decedent's remains, including the funeral director with custody of the
84 body, after attesting in writing that a good faith effort has been made to no avail to
85 contact the individuals under paragraphs (1) through (10) of this subsection.

86 (c) A person entitled under law to the right of disposition shall forfeit that right, and the
87 right is passed on to the next qualifying person as listed in subsection (b) of this Code
88 section, in the following circumstances:

89 (1) Any person charged with murder or voluntary manslaughter in connection with the
90 decedent's death and whose charges are known to the funeral director; provided, however,
91 that, if the charges against such person are dismissed or if such person is acquitted of the
92 charges, the right of disposition is returned to the person;

93 (2) Any person who does not exercise his or her right of disposition within two days of
94 notification of the death of decedent or within three days of decedent's death, whichever
95 is earlier;

96 (3) If the person and the decedent are spouses and a petition to dissolve the marriage was
97 pending at the time of decedent's death; or

98 (4) Where the probate court pursuant to subsection (d) of this Code section determines
99 that the person entitled to the right of disposition and the decedent were estranged at the

100 time of death. For purposes of this Code section, the term 'estranged' means a physical
101 and emotional separation from the decedent at the time of death which has existed for a
102 period of time that clearly demonstrates an absence of due affection, trust, and regard for
103 the decedent.

104 (d) Notwithstanding subsections (b) and (c) of this Code section, the probate court for the
105 county where the decedent resided may award the right of disposition to the person
106 determined by the court to be the most fit and appropriate to carry out the right of
107 disposition and may make decisions regarding the decedent's remains if those sharing the
108 right of disposition cannot agree. The following provisions shall apply to the court's
109 determination under this subsection:

110 (1) If the persons holding the right of disposition are two or more persons with the same
111 relationship to the decedent and they cannot, by majority vote, make a decision regarding
112 the disposition of the decedent's remains, any of such persons or a funeral home with
113 custody of the remains may file a petition asking the probate court to make a
114 determination in the matter;

115 (2) In making a determination under this subsection, the probate court shall consider the
116 following:

117 (A) The reasonableness and practicality of the proposed funeral arrangements and
118 disposition;

119 (B) The degree of the personal relationship between the decedent and each of the
120 persons claiming the right of disposition;

121 (C) The desires of the person or persons who are ready, able, and willing to pay the
122 cost of the funeral arrangements and disposition;

123 (D) The convenience and needs of other families and friends wishing to pay respects;

124 (E) The desires of the decedent; and

125 (F) The degree to which the funeral arrangements would allow maximum participation
126 by all wishing to pay respect;

127 (3) In the event of a dispute regarding the right of disposition, a funeral home shall not
128 be liable for refusing to accept the remains or to inter or otherwise dispose of the remains
129 of the decedent or complete the arrangements for the final disposition of the remains until
130 the funeral home receives a court order or other written agreement signed by the parties
131 in the disagreement that decides the final disposition of the remains. If the funeral home
132 retains the remains for final disposition while the parties are in disagreement, the funeral
133 home may embalm or refrigerate and shelter the body, or both, in order to preserve it
134 while awaiting the final decision of the probate court and may add the cost of embalming
135 or refrigeration and sheltering to the final disposition costs. If a funeral home brings an
136 action under this subsection, the funeral home may add the legal fees and court costs

137 associated with a petition under this subsection to the cost of final disposition. This
138 subsection may not be construed to require or to impose a duty upon a funeral home to
139 bring an action under this subsection. A funeral home and its employees shall not be held
140 criminally or civilly liable for choosing not to bring an action under this subsection; and
141 (4) Except to the degree it may be considered by the probate court under subparagraph
142 (C) of paragraph (2) of this subsection, the fact that a person has paid or agreed to pay for
143 all or part of the funeral arrangements and final disposition shall not give that person a
144 greater claim to the right of disposition than the person would otherwise have. The
145 personal representative of the estate of the decedent shall not, by virtue of being the
146 personal representative, have a greater claim to the right of disposition than the person
147 would otherwise have.

148 (e) Any person signing a funeral service agreement, cremation authorization form, or any
149 other authorization for disposition shall be deemed to warrant the truthfulness of any facts
150 set forth therein, including the identity of the decedent whose remains are to be buried,
151 cremated, or otherwise disposed of, and the party's authority to order such disposition. A
152 funeral home shall have the right to rely on such funeral service agreement or authorization
153 and shall have the authority to carry out the instructions of the person or persons the funeral
154 home reasonably believes holds the right of disposition. The funeral home shall have no
155 responsibility to contact or to independently investigate the existence of any next of kin or
156 relative of the decedent. If there is more than one person in a class who are equal in
157 priority and the funeral home has no knowledge of any objection by other members of such
158 class, the funeral home shall be entitled to rely on and act according to the instructions of
159 the first such person in the class to make funeral and disposition arrangements, provided
160 that no other person in such class provides written notice of his or her objections to the
161 funeral home.

162 (f) No funeral home or funeral director who relies in good faith upon the instructions of
163 an individual claiming the right of disposition shall be subject to criminal or civil liability
164 or subject to disciplinary action for carrying out the disposition of the remains in
165 accordance with the instructions."

166 **SECTION 2.**

167 All laws and parts of laws in conflict with this Act are repealed.