

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 **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.