

The Senate Regulated Industries and Utilities Committee offered the following substitute to HB 68:

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 31 and 43 of the Official Code of Georgia Annotated, relating to health and
2 professions and business, respectively, so as to provide for regulation of certain areas related
3 to deceased individuals; to provide for the ability for individuals to provide through a
4 preneed contract for the disposition of their bodies after death; to provide for the persons who
5 may direct the disposition of a person's body after the person's death; to provide for the
6 forfeiture of the right of disposition under certain circumstances; to provide for resolving
7 conflicting claims; to provide for immunity for funeral homes that act in good faith on such
8 directions for disposition; to provide for a procedure for the disposition of cremains after a
9 certain time period; to provide for certain costs and fees to be paid by the authorizing agent;
10 to provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

12 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by adding
13 a new Code section to read 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

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

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

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

38 'State of Georgia

39 County of _____

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

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

47 _____ (signature of affiant)

48 _____ (signature of notary public)';

49 (2) The surviving spouse of the decedent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

125 (E) The desires of the decedent; and

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

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

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

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

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

167 **SECTION 2.**

168 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
 169 is amended by adding a new Code section to read as follows:

170 "43-18-80.

171 (a) For the purposes of this Code section, 'authorizing agent' means a person legally
 172 entitled to authorize the cremation of human remains.

173 (b) The authorizing agent shall provide to the funeral establishment in which the cremation
174 arrangements are made a signed statement specifying the ultimate disposition of the
175 cremated remains, if known. A copy of this statement shall be retained by the funeral
176 establishment offering or conducting the cremation.

177 (c) Cremated remains shall be shipped only by a method that has an internal tracking
178 system available and that provides a receipt signed by the person accepting delivery.

179 (d) The authorizing agent shall be responsible for the disposition of the cremated remains.
180 If, after 60 days from the date of cremation, the authorizing agent or his or her
181 representative has not specified the ultimate disposition or claimed the cremated remains,
182 the funeral establishment or entity in possession of the cremated remains shall send a
183 notification to the authorizing agent notifying him or her that, pursuant to this subsection,
184 failure to respond to such notification and specify the final disposition of the cremains
185 within 30 days of the transmission of such notice shall authorize the funeral establishment
186 to make arrangements for the disposition of the cremains. If, after 30 days, the funeral
187 establishment or entity in possession of the cremated remains has not received instructions
188 from the authorizing agent describing a specific method of disposing of the cremains, the
189 funeral establishment or entity in possession of the cremains shall be authorized to dispose
190 of the cremated remains in a dignified and humane manner by entombing such cremains
191 in a crypt or underground in accordance with local and state law or by storage in the funeral
192 establishment. The final resting place of the cremains shall be clearly marked and recorded
193 by the funeral establishment entombing the cremains. Any costs or fees incurred to
194 entomb, inter, or disinter the cremains shall be the responsibility of the authorizing agent;
195 provided, however, that such cost shall not exceed \$100.00."

196 **SECTION 3.**

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