

COMMITTEE OF CONFERENCE SUBSTITUTE TO HB 68

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"31-21-7.

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

preneed contract to carry out the disposition directions and funeral prearrangements contained therein.

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

(1) The health care agent, as defined in Code Section 31-32-2;

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

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

'State of Georgia

County of _____

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

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

_____ (signature of affiant)

_____ (signature of notary public)';

(3) The surviving spouse of the decedent;

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

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

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

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

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

(9) The personal representative of the estate of the decedent;

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

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

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

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

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

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

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

(4) Where the probate court pursuant to subsection (d) of this Code section determines that the person entitled to the right of disposition and the decedent were estranged at the time of death. For purposes of this Code section, the term 'estranged' means a physical and emotional separation from the decedent at the time of death which has existed for a period of time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

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

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

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

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

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

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

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

(E) The desires of the decedent; and

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

(3) In the event of a dispute regarding the right of disposition, a funeral home shall not be liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the funeral home receives a court order or other written agreement signed by the parties in the disagreement that decides the final disposition of the remains. If the funeral home retains the remains for final disposition while the parties are in disagreement, the funeral

home may embalm or refrigerate and shelter the body, or both, in order to preserve it while awaiting the final decision of the probate court and may add the cost of embalming or refrigeration and sheltering to the final disposition costs. If a funeral home brings an action under this subsection, the funeral home may add the legal fees and court costs associated with a petition under this subsection to the cost of final disposition. This subsection may not be construed to require or to impose a duty upon a funeral home to bring an action under this subsection. A funeral home and its employees shall not be held criminally or civilly liable for choosing not to bring an action under this subsection; and (4) Except to the degree it may be considered by the probate court under subparagraph (C) of paragraph (2) of this subsection, the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and final disposition shall not give that person a greater claim to the right of disposition than the person would otherwise have. The personal representative of the estate of the decedent shall not, by virtue of being the personal representative, have a greater claim to the right of disposition than the person would otherwise have.

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

(f) If a funeral establishment or funeral director relies in good faith upon the instructions of an individual claiming the right of disposition pursuant to subsection (b) or (d) of this Code section and such individual is later determined to have falsely or fraudulently represented himself or herself as having such a right, the funeral establishment or funeral director shall not be subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with such instructions."

SECTION 2.

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended by revising subsection (a) of Code Section 43-18-72, relating to crematories to be licensed, equipment, facilities, and personnel, application, reports, and limitation of single body in retort, as follows:

"43-18-72.

(a)(1) It shall be unlawful for any person, firm, corporation, or association to operate a crematory without first obtaining a separate license for such purpose from the board in accordance with this article. The crematory must be at a specific address or location and must meet the following requirements and have the following minimum equipment, facilities, and personnel:

~~(1)(A)~~ A room with seating for a minimum of 30 people in which funeral services may be conducted;

~~(2)(B)~~ A display room containing an adequate supply of urns;

~~(3)(C)~~ Rolling stock consisting of at least one operable motor hearse either owned or leased by said firm with current Georgia registration;

~~(4)(D)~~ At least one operable retort for cremation;

~~(5)(E)~~ At least one operable processing station for grinding of cremated remains; ~~and~~

~~(6)(F)~~ At least one church truck; and

(G) Not be located within 1,000 feet of a residential subdivision platted and recorded in the office of the clerk of the superior court of a county in which such residential subdivision is located.

~~(2)(A) provided, however, that the~~ The provisions of paragraphs (1), (2), and (6) subparagraphs (A), (B), and (F) of paragraph (1) of this subsection shall not apply to crematories which provide cremation services only to other funeral establishments.

~~(2)(B) The provision of paragraph (G) of paragraph (1) of this subsection shall only apply to the issuance or renewal of any license on or after the effective date of this subparagraph for any stand-alone crematory that was not in operation as of such effective date. For purposes of this subparagraph, the term 'stand-alone crematory' shall mean a crematory that is not located on or adjacent to a tract or parcel of land which contains a funeral establishment."~~

SECTION 3.

Said title is further amended by adding a new Code section to read as follows:

"43-18-80.

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

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

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

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

SECTION 4.

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