

## House Bill 68 (AS PASSED HOUSE AND SENATE)

By: Representative Sims of the 169<sup>th</sup>

**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 restrict the location of certain crematories; to provide for a  
9 procedure for the disposition of cremains after a certain time period; to provide for certain  
10 costs and fees to be paid by the authorizing agent; to provide for related matters; to repeal  
11 conflicting laws; and for other purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **SECTION 1.**

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

16 "31-21-7.

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

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

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

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

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

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

40 'State of Georgia

41 County of \_\_\_\_\_

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

47 Subscribed and sworn to before me this \_\_\_\_\_ day of the month of \_\_\_\_\_ of the year  
48 \_\_\_\_\_.

49 \_\_\_\_\_  
(signature of affiant)

50 \_\_\_\_\_  
(signature of notary public)';

51 (3) The surviving spouse of the decedent;

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

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

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

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

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

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

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

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

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

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

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

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

99       (3) If the person and the decedent are spouses and a petition to dissolve the marriage was  
100      pending at the time of decedent's death; or  
101      (4) Where the probate court pursuant to subsection (d) of this Code section determines  
102      that the person entitled to the right of disposition and the decedent were estranged at the  
103      time of death. For purposes of this Code section, the term 'estranged' means a physical  
104      and emotional separation from the decedent at the time of death which has existed for a  
105      period of time that clearly demonstrates an absence of due affection, trust, and regard for  
106      the decedent.

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

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

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

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

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

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

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

127          (E) The desires of the decedent; and

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

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

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

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

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

171

**SECTION 2.**

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

176 "43-18-72.

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

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

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

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

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

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

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

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

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

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

202

**SECTION 3.**

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

204 "43-18-80.

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

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

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

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

230

#### SECTION 4.

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