

Senate Bill No. 417

(By Senator Fanning)

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4 [Introduced January 25, 2012; referred to the Committee on the
5 Judiciary.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §30-6-22a, relating
12 to establishing the right to control the disposition of the
13 remains of a deceased person; determining who has that right;
14 setting forth how that right may be forfeited; setting forth
15 the role of the county commission; and limiting the liability
16 of funeral homes.

17 Be it enacted by the Legislature of West Virginia:

18 That the Code of West Virginia, 1931, as amended, be amended
19 by adding thereto a new section, designated §30-6-22a, to read as
20 follows:

ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.

22 §30-6-22a. Right of disposition; preneed contract; affidavit on
23 disposition of remains; role of county commission;

liability of funeral home.

2 (a) Notwithstanding section twenty-two of this article, a
3 person who is eighteen years of age or older and of sound mind, by
4 entering into a preneed funeral contract, as defined in section
5 two, article fourteen, chapter forty-seven of this code, may direct
6 the location, manner and conditions of the disposition of the
7 person's remains and the arrangements for funeral goods and
8 services to be provided upon the person's death. The disposition
9 directions and funeral prearrangements that are contained in a
10 preneed contract is not subject to cancellation or substantial
11 revision unless the cancellation or substantial revision has been
12 ordered by a person the decedent has appointed in the preneed
13 contract as the person authorized to cancel or revise the terms of
14 the preneed contract or unless any resources set aside to fund the
15 preneed contract are insufficient under the terms of the preneed
16 contract to carry out the disposition directions and funeral
17 prearrangements contained in the contract.

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

1 (1) (A) A person designated by the decedent as the person with
2 the right to control the disposition in an affidavit executed in
3 accordance with paragraph (B) of this subdivision; and

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

8 "I, _____, do hereby designate _____
9 with the right to control the disposition of my remains upon my
10 death. I ____ have/ ____ have not attached specific directions
11 concerning the disposition of my remains with which the designee
12 shall substantially comply, provided that these directions are
13 lawful and there are sufficient resources in my estate to carry out
14 the directions.

15
16 Signed

17 State of

18 County of

19 I, _____, a Notary Public of said County,
20 do certify that _____, as principal
21 whose name is signed to the writing above bearing date on the
22 _____ day of _____, 20____, has this day acknowledged the same
23 before me.

Given under my hand this _____ day of _____, 20____.

2 My commission expires: _____

5 (2) The surviving spouse of the decedent;

6 (3) The sole surviving child of the decedent or, if there is
7 more than one child of the decedent, the majority of the surviving
8 children. However, less than one half of the surviving children
9 shall be vested with the rights under this section if they have
10 used reasonable efforts to notify all other surviving children of
11 their instructions and are not aware of any opposition to those
12 instructions on the part of more than one half of all surviving
13 children;

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

19 (5) The surviving brother or sister of the decedent or, if
20 there is more than one sibling of the decedent, the majority of the
21 surviving siblings. However, less than the majority of surviving
22 siblings shall be vested with the rights and duties under this
23 section if they have used reasonable efforts to notify all other

1 surviving siblings of their instructions and are not aware of any
2 opposition to those instructions on the part of more than one half
3 of all surviving siblings;

4 (6) The surviving grandparent of the decedent or, if there is
5 more than one surviving grandparent, the majority of the
6 grandparents. However, less than the majority of the surviving
7 grandparents shall be vested with the rights and duties under this
8 section if they have used reasonable efforts to notify all other
9 surviving grandparents of their instructions and are not aware of
10 any opposition to those instructions on the part of more than one
11 half of all surviving grandparents;

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

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

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

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

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

8 (c) A person entitled under law to the right of disposition
9 forfeits that right, and the right is passed on to the next
10 qualifying person as listed in subsection (b) of this section, in
11 the following circumstances:

12 (1) Any person charged with murder or voluntary manslaughter
13 in connection with the decedent's death and whose charges are known
14 to the funeral director. However, if the charges against that
15 person are dismissed or if the person is acquitted of the charges,
16 the right of disposition is returned to the person;

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

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

1 (4) Where the county commission pursuant to subsection (d) of
2 this section determines that the person entitled to the right of
3 disposition and the decedent were estranged at the time of death.
4 For purposes of this subdivision, the term "estranged" means a
5 physical and emotional separation from the decedent at the time of
6 death which has existed for a period of time that clearly
7 demonstrates an absence of due affection, trust, and regard for the
8 decedent.

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

17 (1) If the persons holding the right of disposition are two or
18 more persons with the same relationship to the decedent and they
19 cannot, by majority vote, make a decision regarding the disposition
20 of the decedent's remains, any of these persons or a funeral home
21 with custody of the remains may file a petition asking the county
22 commission to make a determination in the matter;

23 (2) In making a determination under this subsection, the

1 county commission shall consider the following:

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

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

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

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

11 (E) The desires of the decedent; and

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

14 (3) In the event of a dispute regarding the right of
15 disposition, a funeral home shall not be liable for refusing to
16 accept the remains or to inter or otherwise dispose of the remains
17 of the decedent or complete the arrangements for the final
18 disposition of the remains until the funeral home receives a court
19 order or other written agreement signed by the parties in the
20 disagreement that decides the final disposition of the remains. If
21 the funeral home retains the remains for final disposition while
22 the parties are in disagreement, the funeral home may embalm or
23 refrigerate and shelter the body, or both, in order to preserve it

1 while awaiting the final decision of the county commission and may
2 add the cost of embalming or refrigeration and sheltering to the
3 final disposition costs. If a funeral home brings an action under
4 this subsection, the funeral home may add the legal fees and court
5 costs associated with a petition under this subsection to the cost
6 of final disposition. This subsection may not be construed to
7 require or to impose a duty upon a funeral home to bring an action
8 under this subsection. A funeral home and its employees shall not
9 be held criminally or civilly liable for choosing not to bring an
10 action under this subsection; and

11 (4) Except to the degree it may be considered by the county
12 commission under paragraph (C), subdivision (2) of this subsection,
13 the fact that a person has paid or agreed to pay for all or part of
14 the funeral arrangements and final disposition shall not give that
15 person a greater claim to the right of disposition than the person
16 would otherwise have. The personal representative of the estate of
17 the decedent does not, by virtue of being the personal
18 representative, have a greater claim to the right of disposition
19 than the person would otherwise have.

20 (e) Any person signing a funeral service agreement, cremation
21 authorization form or any other authorization for disposition shall
22 be deemed to warrant the truthfulness of any facts set forth
23 therein, including the identity of the decedent whose remains are

1 to be buried, cremated or otherwise disposed of, and the party's
2 authority to order the disposition. A funeral home has the right
3 to rely on that funeral service agreement or authorization and
4 shall have the authority to carry out the instructions of the
5 person or persons the funeral home reasonably believes holds the
6 right of disposition. The funeral home has no responsibility to
7 contact or to independently investigate the existence of any next
8 of kin or relative of the decedent. If there is more than one
9 person in a class who are equal in priority and the funeral home
10 has no knowledge of any objection by other members of that class,
11 the funeral home may rely on and act according to the instructions
12 of the first person in the class to make funeral and disposition
13 arrangements, if no other person in that class provides written
14 objections to the funeral home.

15 (f) No funeral establishment or funeral director who relies in
16 good faith upon the instructions of an individual claiming the
17 right of disposition shall be subject to criminal or civil
18 liability or subject to disciplinary action for carrying out the
19 disposition of the remains in accordance with those instructions.

(NOTE: The purpose of this bill is to establish the right to control the disposition of the remains of a deceased person. The

bill determines who has that right and how that right may be forfeited. The bill sets forth the role of a county commission. The bill also limits the liability of funeral homes that act in good faith.

This section is new; therefore, strike-throughs and underscoring have been omitted.)