

ENGROSSED

## Senate Bill No. 417

(By Senator Fanning)

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

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

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.**

**§30-6-22a. Right of disposition; preneed contract; affidavit on disposition of remains; role of county commission; liability of funeral home.**

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

20 deceased person, the location, manner and conditions of  
 21 disposition, and arrangements for funeral goods and services  
 22 to be provided vests in the following, in the order named,  
 23 provided that the person is eighteen years or older and is of  
 24 sound mind:

25 (1)(A) A person designated by the decedent as the person  
 26 with the right to control the disposition in an affidavit  
 27 executed in accordance with paragraph (B) of this subdivi-  
 28 sion; and

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

33 "I, \_\_\_\_\_, do hereby designate  
 34 \_\_\_\_\_ with the right to control the disposition  
 35 of my remains upon my death. I \_\_\_ have/ \_\_\_ have not  
 36 attached specific directions concerning the disposition of my  
 37 remains with which the designee shall substantially comply,  
 38 provided that these directions are lawful and there are  
 39 sufficient resources in my estate to carry out the directions.

40 \_\_\_\_\_

41 Signed

42 State of \_\_\_\_\_

43 County of \_\_\_\_\_

44 I, \_\_\_\_\_, a Notary Public of said

45 County, do certify that \_\_\_\_\_,

46 as principal whose name is signed to the writing above

47 bearing date on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has this

48 day acknowledged the same before me.

49 Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

50 My commission expires: \_\_\_\_\_

51 \_\_\_\_\_

52 Notary Public”;

53 (2) The surviving spouse of the decedent;

54 (3) The sole surviving child of the decedent or, if there is

55 more than one child of the decedent, the majority of the

56 surviving children. However, less than one half of the

57 surviving children shall be vested with the rights under this

58 section if they have used reasonable efforts to notify all other

59 surviving children of their instructions and are not aware of

60 any opposition to those instructions on the part of more than

61 one half of all surviving children;

62 (4) The surviving parent or parents of the decedent. If one

63 of the surviving parents is absent, the remaining parent shall

64 be vested with the rights and duties under this section after  
65 reasonable efforts have been unsuccessful in locating the  
66 absent surviving parent;

67 (5) The surviving brother or sister of the decedent or, if  
68 there is more than one sibling of the decedent, the majority  
69 of the surviving siblings. However, less than the majority of  
70 surviving siblings shall be vested with the rights and duties  
71 under this section if they have used reasonable efforts to  
72 notify all other surviving siblings of their instructions and  
73 are not aware of any opposition to those instructions on the  
74 part of more than one half of all surviving siblings;

75 (6) The surviving grandparent of the decedent or, if there  
76 is more than one surviving grandparent, the majority of the  
77 grandparents. However, less than the majority of the surviv-  
78 ing grandparents shall be vested with the rights and duties  
79 under this section if they have used reasonable efforts to  
80 notify all other surviving grandparents of their instructions  
81 and are not aware of any opposition to those instructions on  
82 the part of more than one half of all surviving grandparents;

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

85 (8) The personal representative of the estate of the  
86 decedent;

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

92 (10) If the disposition of the remains of the decedent is  
93 the responsibility of the state or a political subdivision of the  
94 state, the public officer, administrator or employee responsi-  
95 ble for arranging the final disposition of decedent's remains;  
96 or

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

105 (c) A person entitled under law to the right of disposition  
106 forfeits that right, and the right is passed on to the next

107 qualifying person as listed in subsection (b) of this section,  
108 in the following circumstances:

109 (1) Any person charged with murder or voluntary  
110 manslaughter in connection with the decedent's death and  
111 whose charges are known to the funeral director. However,  
112 if the charges against that person are dismissed or if the  
113 person is acquitted of the charges, the right of disposition is  
114 returned to the person;

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

119 (3) If the person and the decedent are spouses and a  
120 petition to dissolve the marriage was pending at the time of  
121 decedent's death.

122 (d) Any person signing a funeral service agreement,  
123 cremation authorization form or any other authorization for  
124 disposition shall be deemed to warrant the truthfulness of  
125 any facts set forth therein, including the identity of the  
126 decedent whose remains are to be buried, cremated or  
127 otherwise disposed of, and the party's authority to order the  
128 disposition. A funeral home has the right to rely on that

129 funeral service agreement or authorization and shall have  
130 the authority to carry out the instructions of the person or  
131 persons the funeral home reasonably believes holds the right  
132 of disposition. The funeral home has no responsibility to  
133 contact or to independently investigate the existence of any  
134 next of kin or relative of the decedent. If there is more than  
135 one person in a class who are equal in priority and the  
136 funeral home has no knowledge of any objection by other  
137 members of that class, the funeral home may rely on and act  
138 according to the instructions of the first person in the class  
139 to make funeral and disposition arrangements, if no other  
140 person in that class provides written objections to the  
141 funeral home.

142 (e) No funeral establishment or funeral director who  
143 relies in good faith upon the instructions of an individual  
144 claiming the right of disposition shall be subject to criminal  
145 or civil liability or subject to disciplinary action for carrying  
146 out the disposition of the remains in accordance with those  
147 instructions.