

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Introduced**

## **House Bill 4777**

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STEELE

[Introduced February 10, 2020; Referred to the  
Committee on the Judiciary.]



1 A BILL to amend and reenact §30-6-22A of the Code of West Virginia, 1931, as amended, relating  
2 to the right of disposition of remains.

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

**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 22 of this article, a person who is 18 years of age or older and  
2 of sound mind, by entering into a preneed funeral contract, as defined in §47-14-2 of this code,  
3 may direct the location, manner and conditions of the disposition of the person's remains and the  
4 arrangements for funeral goods and services to be provided upon the person's death. The  
5 disposition directions and funeral prearrangements that are contained in a preneed funeral  
6 contract are not subject to cancellation ~~to~~ or revision unless any resources set aside to fund the  
7 preneed funeral contract are insufficient under the terms of the preneed funeral contract to carry  
8 out the disposition directions and funeral prearrangements contained in the contract.

9 (b) As to any matter not addressed in a preneed funeral contract as described in  
10 subsection (a) of this section and except as provided in subsection (c) of this section, the right to  
11 control the disposition of the remains of a deceased person, the location, manner and conditions  
12 of disposition, and arrangements for funeral goods and services to be provided vests in the  
13 following, in the order named, provided that the person is 18 years or older and is of sound mind:

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

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

19 "I, \_\_\_\_\_, do hereby designate \_\_\_\_\_ with the right to  
20 control the disposition of my remains upon my death. I \_\_\_ have/ \_\_\_ have not attached specific  
21 directions concerning the disposition of my remains with which the designee shall substantially  
22 comply, provided that these directions are lawful and there are sufficient resources in my estate  
23 to carry out the directions.

24 \_\_\_\_\_

25 Signed

26 State of \_\_\_\_\_

27 County of \_\_\_\_\_

28 I, \_\_\_\_\_, a Notary Public of said County, do certify that  
29 \_\_\_\_\_, as principal whose name is signed to the writing  
30 above bearing date on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has this day acknowledged the  
31 same before me.

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

33 My commission expires: \_\_\_\_\_

34 \_\_\_\_\_

35 Notary Public";

36 (2) The surviving spouse of the decedent;

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

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

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

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

56           (7) Adult grandchildren.

57           ~~(7)~~(8) The guardian of the person of the decedent at the time of the decedent's death if  
58 one had been appointed;

59           ~~(8)~~(9) The personal representative of the estate of the decedent;

60           ~~(9)~~(10) The person in the classes of the next degree of kinship, in descending order, under  
61 the laws of descent and distribution to inherit the estate of the decedent. If there is more than one  
62 person of the same degree, any person of that degree may exercise the right of disposition;

63           ~~(10)~~(11) If the disposition of the remains of the decedent is the responsibility of the state  
64 or a political subdivision of the state, the public officer, administrator or employee responsible for  
65 arranging the final disposition of decedent's remains; or

66           ~~(11)~~(12) In the absence of any person under subdivisions (1) through ~~(11)~~(12) of this  
67 subsection, any other person willing to assume the responsibilities to act and arrange the final  
68 disposition of the decedent's remains, including the funeral director with custody of the body, after  
69 attesting in writing that a good-faith effort has been made to no avail to contact the individuals  
70 under subdivisions (1) through ~~(11)~~(12) of this subsection.

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

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

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

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

82 (d) Any person signing a funeral service agreement, cremation authorization form or any  
83 other authorization for disposition shall be deemed to warrant the truthfulness of any facts set  
84 forth therein, including the identity of the decedent whose remains are to be buried, cremated or  
85 otherwise disposed of, and the party's authority to order the disposition. A funeral home has the  
86 right to rely on that funeral service agreement or authorization and shall have the authority to carry  
87 out the instructions of the person or persons the funeral home reasonably believes holds the right  
88 of disposition. The funeral home has no responsibility to independently investigate the existence  
89 of any next of kin or relative of the decedent where a means of disposition is fully set forth in a  
90 preneed funeral contract or other written directive of the deceased in accordance with this section.  
91 If there is more than one person in a class who are equal in priority and the funeral home has no  
92 knowledge of any objection by other members of that class, the funeral home may rely on and act  
93 according to the instructions of the first person in the class to make funeral and disposition  
94 arrangements, if no other person in that class provides written objections to the funeral home.

95 (e) No funeral establishment or funeral director who relies in good faith upon the  
96 instructions of a preneed funeral contract, written directive of the deceased, or an individual

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- 97 claiming the right of disposition in accordance with this section shall be subject to criminal or civil  
98 liability or subject to disciplinary action under this section for carrying out the disposition of the  
99 remains in accordance with those instructions.

NOTE: The purpose of this bill is to include adult grandchildren among people who have the right to control disposition of the remains of a deceased person.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.