



Senate

File No. 838

General Assembly

January Session, 2001

(Reprint of File No. 583)

Substitute Senate Bill No. 1420
As Amended by House Amendment
Schedules "A" and "B"

Approved by the Legislative Commissioner
May 31, 2001

AN ACT CONCERNING DISPOSITION OF REMAINS OF DECEASED PERSONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 45a-318 of the general statutes is repealed and the following
2 is substituted in lieu thereof:

3 (a) Any person eighteen years of age or older may execute in
4 advance of such person's death a cremation authorization on a form
5 authorized by the Department of Public Health for the incineration or
6 cremation of such person's body upon the death of such person. Any
7 such document shall be signed and dated by the maker, and attested in
8 writing by two witnesses that the maker was of sound mind and
9 capacity at the time of execution of the authorization. The maker shall
10 include on the form authorized by the Department of Public Health the
11 name, residence address and residence telephone number for the
12 spouse or if there is no surviving spouse, then the next of kin or
13 designated person, duly acknowledged in writing, who shall be
14 notified within the forty-eight-hour waiting period prior to a
15 cremation upon the death of such person. If the spouse, next of kin or

16 designated person is unavailable at the time of death of such person,
17 the funeral director shall refer this matter to the Court of Probate for
18 the district of the domicile or residence of the deceased to grant
19 custody and control to some suitable person.

20 [(a)] (b) The custody and control of the remains of deceased
21 residents of this state shall belong to the surviving spouse of the
22 deceased. If the surviving spouse had abandoned, and at the time of
23 death was living apart from, the deceased, or if there is no spouse
24 surviving, then such custody and control shall belong to the next of
25 kin, unless the decedent, in a duly acknowledged writing, designated
26 another person to have custody and control of [his] the remains of the
27 decedent. The court of probate for the district of the domicile of the
28 deceased may at any time, upon the petition of any of the kin or such
29 person, award such custody and control to that person who seems to
30 the court most fit to have the same. If a deceased resident of the state
31 leaves no spouse, next of kin or designated person surviving, or if the
32 spouse, next of kin or designated person cannot be contacted after due
33 diligence to assume custody and control of the remains of such
34 decedent as provided in this section, or if the spouse, next of kin or
35 designated person refuses to assume such custody and control, the
36 court of probate for the district of the domicile or residence of the
37 deceased may, upon the petition of a selectman or chief officer of such
38 town, a licensed funeral director or the director of health of such town,
39 grant such custody and control to some suitable person. If a person has
40 executed a cremation authorization for the incineration or cremation of
41 such person's body upon death on a form authorized by the
42 Department of Public Health, as described in subsection (a) of this
43 section, and a good faith effort has been made to notify the spouse,
44 next of kin or designated person, or an order from the Probate Court
45 has been obtained, then such instructions may be relied upon by any
46 person acting reasonably and in good faith in reliance upon such
47 written instructions and shall permit any licensed funeral director to
48 obtain a cremation certificate, a cremation permit and carry out the
49 cremation, in accordance with the provisions of section 19a-323. If the

50 funeral director's decision and conduct in the performance of a
51 cremation was reasonable and warranted under the circumstances,
52 then no person may challenge the funeral director's decision to obtain
53 a cremation certificate, a cremation permit and the carrying out of such
54 cremation.

55 [(b)] (c) This section shall not apply to the disposition of a body of a
56 deceased person under the provisions of sections 19a-270 and 54-102;
57 nor shall it affect the powers and duties of the chief medical examiner
58 under the provisions of sections 19a-406 to 19a-408, inclusive.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Affected Agencies: Department of Public Health, Probate Court

Municipal Impact: None

Explanation

State Impact:

It is anticipated that the Department of Public Health will be able to modify an existing form to allow for a cremation authorization as required by the bill within its anticipated budgetary resources. Any additional workload for the Probate Court can be accommodated within anticipated budgetary resources.

House "A" makes a technical change and has no associated fiscal impact.

House "B" requires, in cases in which a deceased person's spouse, next of kin or other designated person is not available at the time of death, a funeral director to seek an order from the Probate Court. Any resulting workload increase for the court can be accommodated within anticipated budgetary resources.

OLR Amended Bill Analysis

sSB 1420 (as amended by House "A" and "B")*

AN ACT CONCERNING DISPOSITION OF REMAINS OF DECEASED PERSONS.**SUMMARY:**

This bill permits people age 18 and older to complete a form authorized by the Public Health Department authorizing the cremation of their remains and allows funeral directors to carry out their instructions. The directors must first make a good faith effort to notify the person's spouse, next of kin, or designated representative or get a Probate Court order and must have a good faith basis to rely on the authorization.

The bill excludes dispositions of the bodies of executed criminals or people whose relatives or representatives do not claim them. And it specifies that it does not affect the powers and duties of the chief medical examiner to conduct autopsies, investigate and report the causes of death, and dispose of remains after his work is done.

There is currently no statutory procedure for advance cremation instructions.

*House Amendment "A" makes a technical change.

*House Amendment "B" adds provisions concerning next of kin notification and permitting funeral directors to carry out cremations.

EFFECTIVE DATE: October 1, 2001

REQUIRED INFORMATION

The person authorizing cremation must sign and date the form, and two witnesses must attest in writing that he was of sound mind when he signed it. He must also include the name and home address and phone number of his spouse, or if there is none, his next of kin or other

person designated to take custody of his remains. This person's status must be acknowledged in writing.

PROCEDURE AFTER DEATH

After the death of a person who has signed a cremation authorization form, the person he designated on the form must be notified, presumably by the funeral director, of the planned cremation during the 48-hour waiting period for cremations required by law. If this person is unavailable, the director must refer the matter to the probate court in the district where the dead person lived for an order giving custody and control of the remains to some suitable person.

Cremating the Remains

Under the bill, funeral directors may obtain cremation certificates and permits, and carry out cremations in good faith reliance on cremation authorization forms so long as a good faith effort has been made to notify the spouse, next of kin, or designated custodian or a probate court order has been issued. If these criteria are met, the bill prohibits challenges to their actions.

The bill also permits others to act reasonably and in good faith relying on such cremation authorizations.

BACKGROUND

Legal Custody Of Remains

By law, a dead person's remains belong to his surviving spouse or, if there is none, to his next of kin or someone else he has designated in writing as being entitled to custody and control. Under the bill and current law, these people can disregard instructions that the deceased gave before his death about how his remains should be disposed of. When a disagreement arises, relatives or designated custodians can ask probate court judges to determine which person is most fit to have custody and dispose of the remains.

Legislative History

On May 9, the Senate referred the bill to the Public Health Committee, which reported it favorably on May 16.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 37 Nay 0 Abstain 1

Public Health Committee

Joint Favorable Report

Yea 21 Nay 1