



General Assembly

January Session, 2011

Raised Bill No. 1055

LCO No. 3795

03795_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

**AN ACT CONCERNING THE STANDARDS FOR DETERMINING
CUSTODY, CONTROL AND DISPOSITION OF THE BODY OF A
DECEASED PERSON.**

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

1 Section 1. Section 45a-318 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 (a) Any person eighteen years of age or older, and of sound mind,
4 may execute in advance of such person's death a written document,
5 subscribed by such person and attested by two witnesses, either: (1)
6 Directing the disposition of such person's body upon the death of such
7 person, which document may also designate an individual to have
8 custody and control of such person's body and to act as agent to carry
9 out such directions; or (2) if there are no directions for disposition,
10 designating an individual to have custody and control of the
11 disposition of such person's body upon the death of such person. Such
12 disposition shall include, but not be limited to, cremation, incineration,
13 disposition of cremains, burial, method of interment and cryogenic
14 preservation. Any such document may designate an alternate to an
15 individual designated under subdivision (1) or (2) of this subsection.

16 (b) (1) No person may challenge a funeral director's decision to
17 carry out the directions for disposition contained in a document
18 executed for the purposes of subsection (a) of this section if the funeral
19 director's decision and conduct in carrying out such directions for
20 disposition in reliance on such document was reasonable and
21 warranted under the circumstances.

22 (2) No person having custody and control of the body of a deceased
23 person who has executed a document pursuant to subsection (a) of this
24 section shall knowingly dispose of the body in a manner inconsistent
25 with instructions in the document, unless (A) such instructions are not
26 reasonable under the circumstances or impose economic hardship on
27 the individual designated in the document, or (B) the court of probate
28 having jurisdiction pursuant to subsection (f) of this section orders
29 otherwise, upon such notice as the court of probate may direct.

30 (c) In the absence of a written designation of an individual pursuant
31 to subsection (a) of this section, or in the event that an individual and
32 any alternate designated pursuant to subsection (a) of this section
33 decline to act or cannot be located within forty-eight hours after the
34 time of death or the discovery of the body, the following individuals,
35 in the priority listed, shall have the right to custody and control of the
36 disposition of a person's body upon the death of such person, subject
37 to any directions for disposition made by such person pursuant to
38 subdivision (1) of subsection (a) of this section:

39 (1) The deceased person's spouse, unless such spouse abandoned
40 the deceased person prior to the deceased person's death or has been
41 adjudged incapable by a court of competent jurisdiction;

42 (2) [The deceased person's surviving adult children] The sole
43 surviving adult child of the deceased person, or if there is more than
44 one surviving adult child of the deceased person, the majority of the
45 surviving adult children of the deceased person who are willing to
46 have the right to custody and control of the disposition of the deceased
47 person's body, except that (A) less than the majority of the surviving

48 adult children shall have such right if reasonable efforts are
49 unsuccessful in locating the other surviving adult children, (B) when
50 there is more than one surviving adult child of the deceased person
51 willing to have such right, the instructions for the disposition of the
52 deceased person's body shall be in writing, and (C) if a majority of the
53 surviving adult children cannot agree on the disposition of the
54 deceased person's body, one or more of the surviving adult children
55 may petition the court of probate having jurisdiction under subsection
56 (f) of this section for a determination of the disposition of the deceased
57 person's body, after notice to the other surviving adult children who
58 can be located after reasonable efforts;

59 (3) [The deceased person's surviving parents] The surviving parent
60 or parents of the deceased person, except that if reasonable efforts are
61 unsuccessful in locating one of the surviving parents, the other
62 surviving parent shall have the right to custody and control of the
63 disposition of the deceased person's body;

64 (4) [The deceased person's surviving siblings] The sole surviving
65 adult sibling of the deceased person, or if there is more than one
66 surviving adult sibling of the deceased person, the majority of the
67 surviving adult siblings who are willing to have the right to custody
68 and control of the disposition of the deceased person's body, except
69 that (A) less than the majority of the surviving adult siblings shall have
70 such right if reasonable efforts are unsuccessful in locating the other
71 surviving adult siblings, (B) when there is more than one surviving
72 adult sibling of the deceased person willing to have such right, the
73 instructions for the disposition of the deceased person's body shall be
74 in writing, and (C) if a majority of the surviving adult siblings cannot
75 agree on the disposition of the deceased person's body, one or more of
76 the surviving adult siblings may petition the court of probate having
77 jurisdiction under subsection (f) of this section for a determination of
78 the disposition of the deceased person's body, after notice to the other
79 surviving adult siblings who can be located after reasonable efforts;

80 (5) Any adult [person] individual in the next degree of kinship in
81 the order named by law to inherit the deceased person's estate,
82 provided such adult [person] individual shall be of the third degree of
83 kinship or higher, or if there is more than one surviving adult
84 individual of the same degree of kinship, the majority of such
85 surviving adult individuals who are willing to have the right to
86 custody and control of the disposition of the deceased person's body,
87 except that (A) less than the majority of such surviving adult
88 individuals of the same degree of kinship shall have such right if
89 reasonable efforts are unsuccessful in locating the other surviving
90 adult individuals of the same degree of kinship, (B) when there is more
91 than one such surviving adult individual of the same degree of kinship
92 willing to have such right, the instructions for the disposition of the
93 deceased person's body shall be in writing, and (C) if a majority of the
94 surviving adult individuals of the same degree of kinship cannot agree
95 on the disposition of the deceased person's body, one or more of the
96 surviving adult individuals may petition the court of probate having
97 jurisdiction under subsection (f) of this section for a determination of
98 the disposition of the deceased person's body, after notice to the other
99 surviving adult individuals of the same degree of kinship who can be
100 located after reasonable efforts;

101 (6) Such adult [person] individual as the [Probate Court] Court of
102 Probate shall determine.

103 (d) (1) If any individual who has the right to custody and control of
104 the disposition of the deceased person's body pursuant to subsection
105 (c) of this section has been charged with manslaughter in the first
106 degree or murder in connection with the deceased person's death, such
107 individual shall be disqualified from exercising such right to custody
108 and control and such individual's right to custody and control shall
109 pass in accordance with subsection (c) of this section, except that if
110 such action against the individual is dismissed or nolle, the
111 individual shall regain such right to custody and control provided the
112 disposition of the deceased person's body has not occurred.

113 (2) No funeral director or other person or institution holding the
114 deceased person's body shall be liable for carrying out directions for
115 disposition of the deceased person's body that are contrary to the
116 determination of a person who has regained the right to custody and
117 control pursuant to subdivision (1) of this subsection if the funeral
118 director, person or institution did not have knowledge that the
119 individual had regained such right prior to carrying out such
120 directions for disposition.

121 [(d)] (e) A document executed by a person for the purposes of
122 subsection (a) of this section shall revoke any document previously
123 executed by such person for the purposes of said subsection or any
124 prior cremation authorization or other authorization for the
125 disposition of remains executed by such person and may be in
126 substantially the following form, but the use of such form shall not
127 preclude the use of any other form:

128 DISPOSITION OF REMAINS AND

129 APPOINTMENT OF AGENT

130 I, ..., of ..., being of sound mind, make known that upon my death
131 my body shall be disposed of in the following manner:

132 (Insert desired disposition directions)

133 I appoint ..., having an address and telephone number of ..., to
134 have custody and control of my body to act as my agent to carry out
135 the disposition directions expressed in this document, and in the
136 absence of disposition directions, to have custody and control of my
137 body and to determine the disposition of my body. If ... shall decline
138 to act or cannot be located within forty-eight hours of my death or the
139 discovery of my body, then ..., having an address and telephone
140 number of ..., shall act in that person's place and stead.

141 Executed at (insert location of execution), Connecticut on (insert
142 date of execution).

143

144 (Signature)

145 Signed in our presence by who, at the time of the execution of
146 this document, appeared to be of sound mind and over eighteen years
147 old.

148 of

149

150 (Signature of witness)

151 of

152

153 (Signature of witness)

154 [(e)] (f) The court of probate for the district of the domicile or
155 residence of a deceased person shall have jurisdiction to hear and
156 decide any issue regarding the custody, control or disposition of the
157 deceased person's body, upon the petition of any individual
158 designated by the deceased person pursuant to subsection (a) of this
159 section, the individual entitled to custody and control under
160 [subsection] subsections (c) and (d) of this section if no designation is
161 made pursuant to subsection (a) of this section, the first selectman,
162 chief executive officer or director of health of the town in which the
163 deceased person's body is being held, or the funeral director or any
164 other person or institution holding the deceased person's body, and
165 upon such notice to interested parties as the court shall determine.

166 (g) In any civil, criminal or administrative proceeding related to the
167 disposition of the remains of a deceased person against a funeral
168 director or any person or institution holding the deceased person's
169 body, it shall be an affirmative defense that the funeral director, person
170 or institution relied in good faith on the instructions of any individual

171 who claims to have the right to custody and control of the remains of
172 the deceased person.

173 [(f)] (h) This section shall not (1) apply to the disposition of the body
174 of a deceased person under the provisions of sections 19a-270 and 54-
175 102, (2) affect the powers and duties of the Chief Medical Examiner
176 under the provisions of sections 19a-406 to 19a-408, inclusive, or (3)
177 affect the making of anatomical gifts under the provisions of sections
178 14-42 and 19a-289 to 19a-289v, inclusive.

179 Sec. 2. Section 20-230c of the general statutes is repealed and the
180 following is substituted in lieu thereof (*Effective October 1, 2011*):

181 (a) Any person who signs a cremation authorization form pursuant
182 to subsection (d) of this section, or who signs any other authorization
183 form for the disposal of the remains of a deceased person, shall be
184 deemed to warrant the truthfulness of any facts set forth in such
185 authorization form, including, but not limited to, the identity of the
186 deceased person who is the subject of the authorization form, and the
187 person's right to custody and control of the deceased person's body.

188 (b) A funeral director may rely on such authorization form and may
189 carry out the instructions of the person who the funeral director
190 reasonably believes has the right to custody and control of the
191 deceased person's body.

192 (c) If a deceased person did not designate an individual to have the
193 right to custody and control of the deceased person's body pursuant to
194 section 45a-318, as amended by this act, the funeral director shall
195 require the individual making arrangements for the disposition of the
196 remains of a deceased person to execute a form attesting the
197 individual's relationship with the deceased person, and, to the extent
198 known to the individual, the deceased person's next of kin.

199 (d) If the person who has custody and control of the remains of a
200 deceased person pursuant to section 45a-318, as amended by this act,

201 requests the disposal of the deceased person's body by cremation or if
202 the deceased person had executed a cremation authorization document
203 in accordance with the provisions of section 45a-318, as amended by
204 this act, the funeral director shall complete a written form containing
205 the following information: (1) The name and address of the funeral
206 service business that is responsible for the disposal of the deceased
207 person's body; (2) the name of the deceased person; (3) the place and
208 time of the cremation; (4) the name of the licensed funeral director or
209 embalmer; (5) the name and address of the person who has custody
210 and control of the remains of the deceased person; (6) a summary of
211 the disposition, in accordance with section 20-230d, of the cremated
212 remains, if unclaimed; and (7) (A) a statement indicating the
213 disposition of the cremated remains requested by the person who has
214 custody and control of the remains of the deceased person, or (B) a
215 statement indicating that the deceased person had executed a
216 cremation authorization document in accordance with the provisions
217 of section 45a-318, as amended by this act, and that the person signing
218 the written form has custody and control of the remains of the
219 deceased person pursuant to section 45a-318, as amended by this act.
220 The written form shall be signed and dated by the person who has
221 custody and control of the remains of the deceased person and by the
222 funeral director. A copy of the signed form shall be provided to the
223 person who has custody and control of the remains of the deceased
224 person. The original signed form shall be retained at the funeral
225 service business for not less than twenty years from the date on which
226 such form is signed by the person who has custody and control of the
227 remains of the deceased person.

228 (e) A funeral director may assert the affirmative defense set forth in
229 subsection (g) of section 45a-318, as amended by this act, in any civil,
230 criminal or administrative proceeding related to the disposition of the
231 remains of a deceased person.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	45a-318
Sec. 2	<i>October 1, 2011</i>	20-230c

Statement of Purpose:

To clarify the standards for determining the individual who will have custody and control of a deceased person's body, and clarify the duties of funeral directors and other persons with respect to the disposition of the body of a deceased person.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]