



# Senate

General Assembly

**File No. 684**

January Session, 2013

Substitute Senate Bill No. 1140

*Senate, May 2, 2013*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE DUTIES OF A CONSERVATOR AND OTHER PERSONS AUTHORIZED TO MAKE DECISIONS RELATING TO THE CARE AND DISPOSITION OF A DECEASED PERSON'S BODY.***

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

1 Section 1. Section 1-52 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 In a statutory short form power of attorney, the language conferring  
4 general authority with respect to personal relationships and affairs  
5 shall be construed to mean that the principal authorizes the agent: (1)  
6 To do all acts necessary for maintaining the customary standard of  
7 living of the spouse and children and other dependents of the  
8 principal, including, but not limited to, power to provide living  
9 quarters by purchase, lease or by other contract, or by payment of the  
10 operating costs, including interest, amortization payments, repairs and  
11 taxes, of premises owned by the principal and occupied by his family  
12 or dependents, to provide normal domestic help for the operation of

13 the household; to provide usual vacations and usual travel expenses;  
14 to provide usual educational facilities, and to provide funds for all the  
15 current living costs of such spouse, children and other dependents,  
16 including, among other things, shelter, clothing, food and incidentals;  
17 (2) to provide, whenever necessary, medical, dental and surgical care,  
18 hospitalization and custodial care for the spouse, children and other  
19 dependents of the principal; (3) to continue whatever provision has  
20 been made by the principal, prior to the creation of the agency or  
21 thereafter, for his spouse, children and other dependents, with respect  
22 to automobiles, or other means of transportation, including, but not  
23 limited to, power to license, insure and replace any automobiles  
24 owned by the principal and customarily used by the spouse, children  
25 or other dependents of the principal; (4) to continue whatever charge  
26 accounts have been operated by the principal, prior to the creation of  
27 the agency or thereafter, for the convenience of his spouse, children or  
28 other dependents; to open such new accounts as the agent deems  
29 desirable for the accomplishment of any of the purposes enumerated  
30 in this section, and to pay the items charged on such accounts by any  
31 person authorized or permitted by the principal to make such charges  
32 prior to the creation of the agency; (5) to continue the discharge of any  
33 services or duties assumed by the principal, prior to the creation of the  
34 agency or thereafter, to any parent, relative or friend of the principal;  
35 (6) to supervise and enforce, defend or settle any claim by or against  
36 the principal arising out of property damages or personal injuries  
37 suffered by or caused by the principal, or under such circumstances  
38 that the loss resulting therefrom will, or may, fall on the principal; (7)  
39 to continue payments incidental to the membership or affiliation of the  
40 principal in any church, club, society, order or other organization or to  
41 continue contributions thereto; (8) to demand, receive or obtain by  
42 action, proceeding or otherwise any money or other thing of value to  
43 which the principal is, or may become, or may claim to be, entitled as  
44 salary, wages, commission or other remuneration for services  
45 performed, or as a dividend or distribution upon any stock, or as  
46 interest or principal upon any indebtedness, or any periodic  
47 distribution of profits from any partnership or business in which the

48 principal has or claims an interest, and to endorse, collect or otherwise  
49 realize upon any instrument for the payment so received; (9) to  
50 prepare, execute and file all tax, Social Security, unemployment  
51 insurance and information returns required by the laws of the United  
52 States or of any state or subdivision thereof, or of any foreign  
53 government; to prepare, execute and file all other papers and  
54 instruments which the agent deems desirable or necessary for the  
55 safeguarding of the principal against excess or illegal taxation or  
56 against penalties imposed for claimed violation of any law or other  
57 governmental regulation, and to pay, to compromise, to contest or to  
58 apply for refunds in connection with any taxes or assessments for  
59 which the principal is or may be liable; (10) to utilize any asset of the  
60 principal for the performance of the powers enumerated in this  
61 section, including, but not limited to, power to draw money by check  
62 or otherwise from any bank deposit of the principal; sell any land,  
63 chattel, bond, share, commodity interest, chose in action or other asset  
64 of the principal; borrow money and pledge as security for such loan,  
65 any asset, including insurance, which belongs to the principal; (11) to  
66 execute, acknowledge, verify, seal, file and deliver any application,  
67 consent, petition, notice, release, waiver, agreement or other  
68 instrument which the agent deems useful for the accomplishment of  
69 any of the purposes enumerated in this section; (12) to prosecute,  
70 defend, submit to arbitration, settle, and propose or accept a  
71 compromise with respect to, any claim existing in favor of, or against,  
72 the principal based on or involving any transaction enumerated in this  
73 section or to intervene in any action or proceeding relating thereto; (13)  
74 to hire, discharge and compensate any attorney, accountant, expert  
75 witness or other assistant or assistants when the agent deems such  
76 action to be desirable for the proper execution by him of any of the  
77 powers described in this section, and for the keeping of needed records  
78 thereof; [and] (14) to execute a written document in advance of the  
79 principal's death, in accordance with section 45a-318, as amended by  
80 this act, directing the disposition of the principal's body upon the  
81 death of the principal or designating an individual to have custody  
82 and control of the disposition of the principal's body upon the death of

83 the principal; and (15) in general, and in addition to all the specific acts  
84 in this section enumerated, to do any other act or acts, which the  
85 principal can do through an agent, for the welfare of the spouse,  
86 children or dependents of the principal or for the preservation and  
87 maintenance of the other personal relationships of the principal to  
88 parents, relatives, friends and organizations. All powers described in  
89 this section shall be exercisable equally whether the acts required for  
90 their execution relate to real or personal property owned by the  
91 principal at the giving of the power of attorney or thereafter acquired  
92 and whether such acts are performable in the state of Connecticut or  
93 elsewhere.

94 Sec. 2. Section 45a-318 of the general statutes is repealed and the  
95 following is substituted in lieu thereof (*Effective October 1, 2013*):

96 (a) (1) Any person eighteen years of age or older, and of sound  
97 mind, may execute in advance of such person's death a written  
98 document, subscribed by such person and attested by two witnesses,  
99 either: [(1)] (A) Directing the disposition of such person's body upon  
100 the death of such person, which document may also designate an  
101 individual to have custody and control of such person's body and to  
102 act as agent to carry out such directions; or [(2)] (B) if there are no  
103 directions for disposition, designating an individual to have custody  
104 and control of the disposition of such person's body upon the death of  
105 such person. Such disposition shall include, but not be limited to,  
106 cremation, incineration, disposition of cremains, burial, method of  
107 interment and cryogenic preservation. Any such document may  
108 designate an alternate to an individual designated under [subdivision  
109 (1) or (2)] subparagraph (A) or (B) of this [subsection] subdivision.

110 (2) Any conservator of the person authorized pursuant to  
111 subdivision (5) of subsection (a) of section 45a-656, as amended by this  
112 act, to act on behalf of a conserved person, or any agent authorized  
113 pursuant to subdivision (14) of section 1-52, as amended by this act, to  
114 act on behalf of a principal may execute in advance of such conserved  
115 person's or principal's death a written document, subscribed by such

116 conservator or agent and attested by two witnesses, either: (A)  
117 Directing the disposition of such conserved person's or principal's  
118 body upon the death of such conserved person or principal, which  
119 document may also designate an individual to have custody and  
120 control of such conserved person's or principal's body and to act as  
121 agent to carry out such directions; or (B) if there are no directions for  
122 disposition, designating an individual to have custody and control of  
123 the disposition of such conserved person's or principal's body upon the  
124 death of such conserved person or principal. Such disposition shall  
125 include, but not be limited to, cremation, incineration, disposition of  
126 remains, burial, method of interment and cryogenic preservation.  
127 Any such document may designate an alternate to an individual  
128 designated under subparagraph (A) or (B) of this subdivision.

129 (b) No person having the custody and control of the disposition of a  
130 deceased person's body shall knowingly provide for a disposition of  
131 the body in a manner that is inconsistent with a document executed by  
132 a person pursuant to the provisions of subsection (a) of this section,  
133 unless such disposition is approved by the Probate Court.

134 [(b)] (c) No person may challenge a funeral director's decision to  
135 carry out the directions for disposition contained in a document  
136 executed for the purposes of subsection (a) or [(f)] (i) of this section if  
137 the funeral director's decision and conduct in carrying out such  
138 directions for disposition in reliance on such document was reasonable  
139 and warranted under the circumstances.

140 [(c)] (d) In the absence of a written designation of an individual  
141 pursuant to subsection (a) of this section, or in the event that an  
142 individual and any alternate designated pursuant to subsection (a) of  
143 this section decline to act or cannot be located within forty-eight hours  
144 after the time of death or the discovery of the body, the following  
145 individuals, in the priority listed, shall have the right to custody and  
146 control of the disposition of a person's body upon the death of such  
147 person, subject to any directions for disposition made by such person,  
148 conservator or agent pursuant to subdivision (1) or (2) of subsection (a)

149 of this section:

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

153 (2) The deceased person's surviving adult children;

154 (3) The deceased person's surviving parents;

155 (4) The deceased person's surviving siblings;

156 (5) Any adult person in the next degree of kinship in the order  
157 named by law to inherit the deceased person's estate, provided such  
158 adult person shall be of the third degree of kinship or higher;

159 (6) Such adult person as the Probate Court shall determine.

160 (e) In the event that the applicable class of persons set forth in  
161 subdivisions (2) to (5), inclusive, of subsection (d) of this section,  
162 contains more than one person, the custody and control of the body  
163 shall be in a majority of the members of the class who can be located  
164 and indicate willingness to participate in making arrangements for the  
165 disposition within a reasonable time. Such class members shall  
166 indicate their decision in writing.

167 (f) A person charged with a crime under section 53a-54a, 53a-54b,  
168 53a-54c, 53a-54d, 53a-55 or 53a-55a in connection with the death of the  
169 deceased person shall be excluded from participating in making  
170 disposition arrangements pursuant to subsection (d) of this section if:  
171 (1) The existence of the criminal charges is known to the funeral  
172 director, and (2) the criminal charges are pending or the person has  
173 been found guilty of one of the specified crimes.

174 [(d)] (g) A document executed by a person for the purposes of  
175 subsection (a) or [(f)] (i) of this section shall revoke any document  
176 previously executed by such person for the purposes of said subsection  
177 or any prior cremation authorization or other authorization for the

178 disposition of remains executed by such person.

179 [(e)] (h) A document executed by a person for the purposes of  
180 subsection (a) of this section may be in substantially the following  
181 form, but the use of such form shall not preclude the use of any other  
182 form:

183 DISPOSITION OF REMAINS AND  
184 APPOINTMENT OF AGENT

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

187 (Insert desired disposition directions)

188 I appoint ..., having an address and telephone number of ..., to  
189 have custody and control of my body to act as my agent to carry out  
190 the disposition directions expressed in this document, and in the  
191 absence of disposition directions, to have custody and control of my  
192 body and to determine the disposition of my body. If ... shall decline  
193 to act or cannot be located within forty-eight hours of my death or the  
194 discovery of my body, then ..., having an address and telephone  
195 number of ..., shall act in that person's place and stead.

196 Executed at (insert location of execution), Connecticut on (insert  
197 date of execution).

198 .....

199 (Signature)

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

203 ... of ...

204 ....

205 (Signature of witness)

206 .... of ....

207 ....

208 (Signature of witness)

209 [(f)] (i) A DD Form 93, "Record of Emergency Data", executed by a  
210 member of the armed forces of the state or the United States shall be  
211 given the same legal effect as a document executed for the purposes of  
212 subsection (a) of this section.

213 [(g)] (j) The court of probate for the district of the domicile or  
214 residence of a deceased person shall have jurisdiction to hear and  
215 decide any issue regarding the custody, control or disposition of the  
216 deceased person's body, upon the petition of any individual  
217 designated by the deceased person pursuant to subsection (a) or [(f)] (i)  
218 of this section, the individual entitled to custody and control under  
219 subsection [(c)] (d) of this section if no designation is made pursuant to  
220 subsection (a) of this section, the first selectman, chief executive officer  
221 or director of health of the town in which the deceased person's body  
222 is being held, or the funeral director or any other person or institution  
223 holding the deceased person's body, and upon such notice to  
224 interested parties as the court shall determine.

225 [(h)] (k) This section shall not (1) apply to the disposition of the  
226 body of a deceased person under the provisions of sections 19a-270  
227 and 54-102, (2) affect the powers and duties of the Chief Medical  
228 Examiner under the provisions of sections 19a-406 to 19a-408,  
229 inclusive, or (3) affect the making of anatomical gifts under the  
230 provisions of sections 14-42 and 19a-289 to 19a-289v, inclusive.

231 Sec. 3. Subsection (a) of section 45a-656 of the general statutes is  
232 repealed and the following is substituted in lieu thereof (*Effective*  
233 *October 1, 2013*):

234 (a) The conservator of the person shall have the duties and authority

235 expressly assigned by the court pursuant to section 45a-650, which  
 236 duties and authority may include: (1) The duty and responsibility for  
 237 the general custody of the conserved person; (2) the authority to  
 238 establish the conserved person's residence within the state, subject to  
 239 the provisions of section 45a-656b; (3) the authority to give consent for  
 240 the conserved person's medical or other professional care, counsel,  
 241 treatment or service; (4) the duty to provide for the care, comfort and  
 242 maintenance of the conserved person; [and] (5) the authority to execute  
 243 a written document in advance of the conserved person's death, in  
 244 accordance with section 45a-318, as amended by this act, directing the  
 245 disposition of the conserved person's body upon the death of such  
 246 person or designating an individual to have custody and control of the  
 247 disposition of such person's body upon the death of such person; and  
 248 (6) the duty to take reasonable care of the conserved person's personal  
 249 effects.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	1-52
Sec. 2	October 1, 2013	45a-318
Sec. 3	October 1, 2013	45a-656(a)

**Statement of Legislative Commissioners:**

Section 2(a) was redrafted for clarity to create a new subdivision 2(a)(2) concerning the authority of conservators and agents and conforming technical changes were made to section 2(a)(1) and section 2(d). In section 2(f), "53-54a" was changed to "53a-54a" for accuracy and in section 3(a)(5) the phrase "or designating an individual to have custody and control of the disposition of such person's body upon the death of such person" was added for consistency with sections 1 and 2 of the bill.

**JUD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

---

***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill makes various changes concerning the disposition of a body after a person's death and does not result in a fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****sSB 1140*****AN ACT CONCERNING THE DUTIES OF A CONSERVATOR AND OTHER PERSONS AUTHORIZED TO MAKE DECISIONS RELATING TO THE CARE AND DISPOSITION OF A DECEASED PERSON'S BODY.*****SUMMARY:**

This bill makes various changes concerning the disposition of a body after a person's death. It allows an agent with power of attorney to execute a written document in advance of the principal's death, (1) directing the body's disposition upon death or (2) designating someone to have custody and control of the disposition upon death. It gives the same authority to a conservator to execute such a document in regard to the conserved person's body after death, but only if the probate court expressly authorizes it. Under the bill, such documents are subject to the same conditions as advance directives that people execute to direct the disposition of their own bodies after death.

The bill generally prohibits someone with custody and control of the disposition of a deceased person's body from knowingly providing for disposition in a manner inconsistent with (1) the person's own advance directive or (2) a conservator's or agent's document as described above. A contrary disposition is allowed if approved by the probate court.

The bill generally sets out that when multiple people have equal disposition rights over a deceased relative's body, a majority make the decision.

In certain circumstances, the bill also disqualifies anyone charged with murder or 1<sup>st</sup> degree manslaughter in connection with a deceased relative from participating in disposition arrangements for the body.

The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2013

## **DISPOSITION OF BODY AFTER DEATH**

### ***Conservators and Agents***

The bill extends to the documents that agents and conservators can execute to direct a disposition after death the same conditions as advance directives that people execute for disposing of their own bodies. Thus, such a document must be subscribed by the agent or conservator and attested by two witnesses. The document can:

1. direct the body's disposition after death (e.g., cremation, burial);
2. designate an individual to (a) have custody and control of the body after death and (b) if applicable, carry out the directions for disposition; or
3. do both of the above.

If the document designates an individual, it can also designate an alternate.

Under the bill, other provisions in existing law regarding advance directives for disposition apply to disposition documents executed by agents or conservators. This includes a general prohibition on challenging a funeral director's decision to carry out disposition directions contained in such a document. Also, a later properly executed document by a conservator or agent would revoke any previous document executed by the conservator or agent.

Existing law sets out a model form for an individual's advance directive for disposition of his or her body. The bill does not set out a similar model form for use by agents or conservators.

### ***Disposition By Next of Kin in Absence of Designation***

Under existing law, the right to custody and control of a deceased person's body belongs to the person's next of kin if (1) the person did

not designate an individual in an advance directive or (2) any designated individual or alternate decline to act or cannot be located within 48 hours after the death or discovery of the body. The first priority for having custody and control generally rests with the surviving spouse, if any, and subsequent priority rests with other relatives (see BACKGROUND). Such custody and control are subject to any disposition directions in the deceased person's advance directive. The same rules apply under the bill concerning agents' or conservators' written documents.

Also, if (1) there is no surviving spouse or the spouse does not have priority and (2) multiple other relatives have equal priority, the bill provides that custody and control of the body rest in a majority of such relatives who can be located and who indicate, in writing, their willingness to participate in making disposition arrangements within a reasonable time.

### ***Disqualification Due to Murder or 1<sup>st</sup> Degree Manslaughter***

The bill disqualifies a spouse or other person otherwise entitled to participate in making disposition arrangements for a decedent from doing so if:

1. the person was charged with murder, murder with special circumstances, felony murder, arson murder, or 1<sup>st</sup> degree manslaughter with or without a firearm, in connection with the decedent's death;
2. the funeral director is aware of the charges; and
3. the charges are pending or the person has been found guilty.

## **BACKGROUND**

### ***Order of Priority for Making Disposition Arrangements***

By law, the remains of a deceased person belong to the person's next of kin, unless he or she legally appointed someone else before death. In this context, the next of kin, in order of priority, are the decedent's:

1. surviving spouse, unless the spouse abandoned the decedent or a court has adjudged the spouse to be incapable;
2. surviving adult children;
3. surviving parents;
4. surviving siblings;
5. any other adult in the next degree of kinship in the order named by law to inherit the decedent's estate, provided that person is within the third degree of kinship or higher (e.g., aunts, uncles, grandparents); and
6. another adult chosen by the probate court.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 44 Nay 0 (04/16/2013)