



Substitute Senate Bill No. 467

Public Act No. 18-153

AN ACT CONCERNING THE CUSTODY AND CONTROL OF A DECEDENT'S BODY.

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

Section 1. Section 45a-318 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):

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

(2) Any conservator of the person authorized pursuant to

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subdivision (5) of subsection (a) of section 45a-656 to act on behalf of a conserved person, or any agent authorized to act on behalf of a principal, including any agent authorized to act on behalf of a principal pursuant to subdivision (10) of section 1-351l, may execute in advance of such conserved person's or principal's death a written document, subscribed by such conservator or agent and attested by two witnesses, either: (A) Directing the disposition of such conserved person's or principal's body upon the death of such conserved person or principal, which document may also designate an individual to have custody and control of such conserved person's or principal's body and to act as agent to carry out such directions; or (B) if there are no directions for disposition, designating an individual to have custody and control of the disposition of such conserved person's or principal's body upon the death of such conserved person or principal. Such disposition shall include, but not be limited to, cremation, incineration, disposition of cremains, burial, method of interment, alkaline hydrolysis and cryogenic preservation. Any such document may designate an alternate to an individual designated under subparagraph (A) or (B) of this subdivision. A document executed by a conservator pursuant to this subdivision shall include provisions indicating that such document (i) is valid if the person is under conservatorship at the time of his or her death, and (ii) terminates upon the termination of the conservatorship when such termination occurs prior to the death of the conserved person.

(b) No person having the custody and control of the disposition of a deceased person's body shall knowingly provide for a disposition of the body in a manner that is inconsistent with a document executed by a person pursuant to the provisions of subsection (a) of this section or section 19a-575a, unless such disposition is approved by the Probate Court.

(c) No person may challenge a funeral director's or embalmer's

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decision to carry out the directions for disposition contained in a document executed for the purposes of subsection (a) or (h) of this section if the funeral director's or embalmer's decision and conduct in carrying out such directions for disposition in reliance on such document was reasonable and warranted under the circumstances.

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

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

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

(3) The deceased person's surviving parents;

(4) The deceased person's surviving siblings;

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

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

(e) In the event that the applicable class of persons set forth in subdivisions (2) to (5), inclusive, of subsection (d) of this section contains more than one person, the custody and control of the body

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shall be in a majority of the members of the class who can be located and indicate willingness to participate in making arrangements for the disposition within a reasonable time, not to exceed ten days after the date on which the deceased person is identified. Such class members shall indicate their decision in writing.

(f) A document executed by a person for the purposes of subsection (a) or (h) of this section shall revoke any document previously executed by such person for the purposes of said [subsection] subsections or any prior cremation authorization or other authorization for the disposition of remains executed by such person.

(g) A document executed by a person for the purposes of subsection (a) of this section may be in substantially the following form, but the use of such form shall not preclude the use of any other form:

DISPOSITION OF REMAINS AND

APPOINTMENT OF AGENT

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

(Insert desired disposition directions)

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

Executed at (insert location of execution), Connecticut on (insert

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date of execution).

....

(Signature)

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

.... of

....

(Signature of witness)

.... of

....

(Signature of witness)

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

(i) The [court of probate] Probate Court for the district of the domicile or residence of a deceased person shall have jurisdiction to hear and decide any issue regarding the custody, control or disposition of the deceased person's body, upon the petition of any individual designated by the deceased person pursuant to subsection (a) or (h) of this section, the individual entitled to custody and control under subsection (d) of this section if no designation is made pursuant to subsection (a) of this section, the first selectman, chief executive officer or director of health of the town in which the deceased person's body

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is being held, or the funeral director, embalmer or any other person or institution holding the deceased person's body, and upon such notice to interested parties as the court shall determine.

(j) In the event of a dispute regarding final disposition of remains, a funeral director or embalmer is not liable for refusing to (1) accept the remains of the decedent, (2) inter or otherwise dispose of the remains of the decedent, or (3) complete the arrangements for the final disposition of the remains until such time as the funeral director or embalmer receives an order from the Probate Court or other written agreement signed by the parties in the dispute that decides the final disposition of the remains. If the funeral director or embalmer retains the remains for final disposition while the parties are in disagreement, the funeral director or embalmer may embalm or refrigerate and shelter the body, or both, in order to preserve the body while awaiting the final decision of the Probate Court and may add the cost of embalming and refrigeration and sheltering to the final disposition costs. If a funeral director or embalmer initiates a petition under this section, the funeral director or embalmer may add the legal fees and the court costs associated with the petition to the cost of final disposition. The provisions of this section shall not be construed to require or to impose a duty upon a funeral director or embalmer to bring a petition under this section. Neither a funeral director nor an embalmer shall be held criminally or civilly liable for choosing not to bring a petition under this section.

(k) Any person signing a funeral service agreement, cremation authorization form, or any other authorization for final disposition of remains shall be deemed to warrant the truthfulness of any facts set forth in such documents, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of, and the authority of such person to order such disposition. A funeral director or embalmer may rely on such funeral service agreement, cremation

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authorization form or any other authorization for final disposition and may carry out the instructions of the person or persons whom the funeral director or embalmer reasonably believes holds the right of final disposition of remains. A funeral director or embalmer shall have no responsibility to contact or to independently investigate the existence of any next-of-kin or relative of the decedent. If there is more than one person in a class with final disposition of remains rights who are equal in priority, the funeral director or embalmer may rely on and act according to the instructions of the first such person in the class to make funeral and final disposition of remains arrangements, provided no person in such class has submitted written notice of his or her objections to the funeral director or embalmer and such director or embalmer does not otherwise have knowledge of any objection by the other members of such class.

(l) No funeral director or embalmer who relies in good faith upon the instructions of a person claiming the final right of disposition of remains shall be subject to criminal liability or disciplinary action for carrying out the final disposition of the remains in accordance with the person's instructions and in any civil action brought against such funeral director or embalmer for negligence relating to such disposition, such funeral director or embalmer shall be presumed to have acted reasonably.

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

Sec. 2. (NEW) (*Effective July 1, 2018*) The disposition directions and funeral prearrangements that are contained in a funeral service contract, as defined in section 42-200 of the general statutes, shall not

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be subject to cancellation or substantial revision by the person or persons with the right of disposition following the death of the decedent unless (1) any financial resources set aside to fund the funeral service contract are insufficient under the terms of the funeral service contract to carry out the disposition directions and funeral prearrangements contained in such contract, and (2) the cancellation or substantial revision of the disposition directions or funeral prearrangements contained in a funeral service contract has been approved by a Probate Court.

Approved June 14, 2018