

---

---

## **OLR Bill Analysis**

**sSB 467 (File 609, as amended by Senate "A")\***

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

#### **SUMMARY**

This bill prohibits a person with disposition rights after a decedent's death from cancelling or substantially revising the funeral service contract's (see BACKGROUND) disposition directions and funeral pre-arrangements unless (1) the financial resources set aside to fund the contract are insufficient to implement these provisions and (2) the probate court approved the cancellation or revision.

Additionally, the bill establishes requirements for funeral directors and embalmers when there is a dispute regarding the final disposition of a decedent's remains. Among other things, it:

1. generally allows funeral directors or embalmers to preserve and shelter a decedent's remains while parties are disputing;
2. specifies that they are not responsible for contacting or locating the decedent's relatives or next of kin;
3. authorizes them to carry out the disposition instructions of individuals they reasonably believe hold final disposition rights (see BACKGROUND);
4. generally allows them, when more than one person has equal disposition rights, to act on the instructions of the first person to make arrangements;
5. allows them to add to the final disposition costs, legal fees for petitioning the court or preserving remains during a dispute; and
6. grants them immunity against liability under certain conditions.

The bill also makes technical and conforming changes.

\*Senate Amendment "A" (1) adds the provision on civil actions brought against funeral directors or embalmers for negligence related to the disposition of a decedent's remains and (2) makes a minor change to the provision on cancelling or substantially revising the funeral service contract's disposition directions and funeral pre-arrangements.

EFFECTIVE DATE: July 1, 2018

## **DISPUTES ON THE FINAL DISPOSITION OF A BODY**

### ***Preserving Remains During a Dispute***

The bill allows funeral directors or embalmers to embalm or refrigerate and shelter a decedent's remains if they retain the remains for final disposition while parties are disputing. They may do this only to preserve the body while waiting for a final probate court decision and may add the associated cost to the final disposition costs.

If there is a dispute, the bill grants funeral directors or embalmers immunity from liability for (1) accepting the remains, (2) interring or otherwise disposing of the remains, or (3) completing final disposition arrangements until they receive a probate court order or other written agreement signed by the parties in the dispute.

### ***Court Petitions***

Under the bill, funeral directors or embalmers who petition the probate court on the custody, control, or disposition of a decedent's body may add the associated legal fees and court costs to the final disposition costs.

The bill specifies that it does not require or impose a duty upon funeral directors or embalmers to initiate such a petition and they are not criminally or civilly liable for choosing not to do so.

### ***Documents Directing Final Disposition***

Under the bill, an individual who signs a funeral service agreement, cremation authorization form, or other authorization directing the final

disposition of a decedent's body is deemed to warrant the truthfulness of any facts in these documents, including the decedent's identity and the individual's authority to order the final disposition of the decedent's remains.

The bill authorizes funeral directors or embalmers to rely on these authorization documents and carry out the instructions of the individuals who they reasonably believe hold final disposition rights.

### ***Objections to Funeral and Final Disposition Arrangements***

Under the bill, funeral directors or embalmers are not responsible for contacting or independently investigating the existence of the decedent's relatives or next-of-kin. If more than one person has equal disposition rights, directors and embalmers may rely and act on the instructions of the first person to make funeral and final disposition arrangements. But they may do this only if (1) no other person with final disposition rights submits written notice objecting to these arrangements or (2) they do not know of any such objection.

Additionally, the bill grants immunity from criminal liability to funeral directors or embalmers who dispose of a decedent's remains, in good faith, in accordance with the instructions of a person claiming to have final disposition rights. In any civil action brought against a funeral director or embalmer for negligence relating to such disposition, he or she is presumed to have acted reasonably.

## **BACKGROUND**

### ***Documents Directing Disposition or Custody of Body Upon Death***

By law, a person can authorize an agent (e.g., family members or conservators) to execute a written document, before the person's death, directing (1) the disposition of the person's body upon death or (2) someone to have custody and control of the body upon death. The document may also designate an alternate agent to perform these functions. An agent cannot revoke this document unless authorized by the court. Dispositions may include, among other things, cremation, incineration, disposition of cremains, burial, method of internment, alkaline hydrolysis, and cryogenic preservation (CGS § 45a-318).

***Funeral Service Contracts***

By law, a funeral service contract is a contract requiring compensation in exchange for funeral, burial, or related services or providing certain items, where the use or delivery of the services or items is not immediately needed. Compensation may be in the form of a payment of money, the delivery of securities, or the assignment of a death benefit under a life insurance policy. These contracts are sometimes referred to as “prepaid” or “preneed” funeral service contracts because the person is paying for services to be provided in the future (CGS § 42-200).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0 (04/02/2018)