



# Senate

General Assembly

**File No. 609**

February Session, 2018

Substitute Senate Bill No. 467

*Senate, April 19, 2018*

The Committee on Judiciary reported through SEN. DOYLE of the 9th Dist. and SEN. KISSEL of the 7th Dist., Chairpersons of the Committee on the part of the Senate, that the substitute bill ought to pass.

***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:

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 Section 45a-318 of the general statutes is repealed and the  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

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

14 alkaline hydrolysis and cryogenic preservation. Any such document  
15 may designate an alternate to an individual designated under  
16 subparagraph (A) or (B) of this subdivision.

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

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

48 (c) No person may challenge a funeral director's or embalmer's  
49 decision to carry out the directions for disposition contained in a  
50 document executed for the purposes of subsection (a) or (h) of this  
51 section if the funeral director's or embalmer's decision and conduct in  
52 carrying out such directions for disposition in reliance on such  
53 document was reasonable and warranted under the circumstances.

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

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

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

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

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

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

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

73 (e) In the event that the applicable class of persons set forth in  
74 subdivisions (2) to (5), inclusive, of subsection (d) of this section  
75 contains more than one person, the custody and control of the body  
76 shall be in a majority of the members of the class who can be located  
77 and indicate willingness to participate in making arrangements for the

78 disposition within a reasonable time, not to exceed ten days after the  
79 date on which the deceased person is identified. Such class members  
80 shall indicate their decision in writing.

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

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

89 DISPOSITION OF REMAINS AND  
90 APPOINTMENT OF AGENT

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

93 (Insert desired disposition directions)

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

102 Executed at (insert location of execution), Connecticut on (insert  
103 date of execution).

104 ....

105 (Signature)

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

109 .... of ....

110 ....

111 (Signature of witness)

112 .... of ....

113 ....

114 (Signature of witness)

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

119 (i) The [court of probate] Probate Court for the district of the  
120 domicile or residence of a deceased person shall have jurisdiction to  
121 hear and decide any issue regarding the custody, control or disposition  
122 of the deceased person's body, upon the petition of any individual  
123 designated by the deceased person pursuant to subsection (a) or (h) of  
124 this section, the individual entitled to custody and control under  
125 subsection (d) of this section if no designation is made pursuant to  
126 subsection (a) of this section, the first selectman, chief executive officer  
127 or director of health of the town in which the deceased person's body  
128 is being held, or the funeral director, embalmer or any other person or  
129 institution holding the deceased person's body, and upon such notice  
130 to interested parties as the court shall determine.

131 (j) In the event of a dispute regarding final disposition of remains, a  
132 funeral director or embalmer is not liable for refusing to (1) accept the  
133 remains of the decedent, (2) inter or otherwise dispose of the remains  
134 of the decedent, or (3) complete the arrangements for the final

135 disposition of the remains until such time as the funeral director or  
136 embalmer receives an order from the Probate Court or other written  
137 agreement signed by the parties in the dispute that decides the final  
138 disposition of the remains. If the funeral director or embalmer retains  
139 the remains for final disposition while the parties are in disagreement,  
140 the funeral director or embalmer may embalm or refrigerate and  
141 shelter the body, or both, in order to preserve the body while awaiting  
142 the final decision of the Probate Court and may add the cost of  
143 embalming and refrigeration and sheltering to the final disposition  
144 costs. If a funeral director or embalmer initiates a petition under this  
145 section, the funeral director or embalmer may add the legal fees and  
146 the court costs associated with the petition to the cost of final  
147 disposition. The provisions of this section shall not be construed to  
148 require or to impose a duty upon a funeral director or embalmer to  
149 bring a petition under this section. Neither a funeral director nor an  
150 embalmer shall be held criminally or civilly liable for choosing not to  
151 bring a petition under this section.

152 (k) Any person signing a funeral service agreement, cremation  
153 authorization form, or any other authorization for final disposition of  
154 remains shall be deemed to warrant the truthfulness of any facts set  
155 forth in such documents, including the identity of the decedent whose  
156 remains are to be buried, cremated, or otherwise disposed of, and the  
157 authority of such person to order such disposition. A funeral director  
158 or embalmer may rely on such funeral service agreement, cremation  
159 authorization form or any other authorization for final disposition and  
160 may carry out the instructions of the person or persons whom the  
161 funeral director or embalmer reasonably believes holds the right of  
162 final disposition of remains. A funeral director or embalmer shall have  
163 no responsibility to contact or to independently investigate the  
164 existence of any next-of-kin or relative of the decedent. If there is more  
165 than one person in a class with final disposition of remains rights who  
166 are equal in priority, the funeral director or embalmer may rely on and  
167 act according to the instructions of the first such person in the class to  
168 make funeral and final disposition of remains arrangements, provided  
169 no person in such class has submitted written notice of his or her

170 objections to the funeral director or embalmer and such director or  
171 embalmer does not otherwise have knowledge of any objection by the  
172 other members of such class.

173 (l) No funeral director or embalmer who relies in good faith upon  
174 the instructions of a person claiming the final right of disposition of  
175 remains shall be subject to criminal liability or disciplinary action for  
176 carrying out the final disposition of the remains in accordance with the  
177 person's instructions.

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

184 Sec. 2. (NEW) (Effective July 1, 2018) The disposition directions and  
185 funeral prearrangements that are contained in a funeral service  
186 contract, as defined in section 42-200 of the general statutes, shall not  
187 be subject to cancellation or substantial revision unless (1) any financial  
188 resources set aside to fund the funeral service contract are insufficient  
189 under the terms of the funeral service contract to carry out the  
190 disposition directions and funeral prearrangements contained in such  
191 contract, and (2) the cancellation or substantial revision of the  
192 disposition directions or funeral prearrangements contained in a  
193 funeral service contract has been approved by a Probate Court.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2018	45a-318
Sec. 2	July 1, 2018	New section

**Statement of Legislative Commissioners:**

In Section 1(k), "whom the funeral home" was changed to "whom the funeral director" for consistency.

**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.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill makes changes that affect private businesses and does not result in a fiscal impact to the state or municipalities.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****sSB 467*****AN ACT CONCERNING THE CUSTODY AND CONTROL OF A DECEDENT'S BODY.*****SUMMARY**

This bill prohibits cancelling or substantially revising a 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.

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 civil or 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.

## **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)