



General Assembly

February Session, 2018

Raised Bill No. 467

LCO No. 2184



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

***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 Section 45a-318 of the general statutes is repealed and the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 home or embalmer reasonably believes holds the right of final
162 disposition of remains. A funeral director or embalmer shall have no
163 responsibility to contact or to independently investigate the existence
164 of any next-of-kin or relative of the decedent. If there is more than one
165 person in a class with final disposition of remains rights who are equal
166 in priority, the funeral director or embalmer may rely on and act
167 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 or civil liability or disciplinary
176 action for carrying out the final disposition of the remains in
177 accordance with the 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	<i>July 1, 2018</i>	45a-318
Sec. 2	<i>July 1, 2018</i>	New section

Statement of Purpose:

To clarify the responsibilities of funeral homes in situations involving a dispute concerning the custody and control of a decedent's body.

[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.]