

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4777

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[Introduced February 10, 2020; Referred to the
Committee on the Judiciary.]

1 A BILL to amend and reenact §30-6-22A of the Code of West Virginia, 1931, as amended, relating
2 to the right of disposition of remains.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.

**§30-6-22A. Right of disposition; preneed contract; affidavit on disposition of remains; role
of county commission; liability of funeral home.**

1 (a) Notwithstanding section 22 of this article, a person who is 18 years of age or older and
2 of sound mind, by entering into a preneed funeral contract, as defined in §47-14-2 of this code,
3 may direct the location, manner and conditions of the disposition of the person's remains and the
4 arrangements for funeral goods and services to be provided upon the person's death. The
5 disposition directions and funeral prearrangements that are contained in a preneed funeral
6 contract are not subject to cancellation ~~to~~ or revision unless any resources set aside to fund the
7 preneed funeral contract are insufficient under the terms of the preneed funeral contract to carry
8 out the disposition directions and funeral prearrangements contained in the contract.

9 (b) As to any matter not addressed in a preneed funeral contract as described in
10 subsection (a) of this section and except as provided in subsection (c) of this section, the right to
11 control the disposition of the remains of a deceased person, the location, manner and conditions
12 of disposition, and arrangements for funeral goods and services to be provided vests in the
13 following, in the order named, provided that the person is 18 years or older and is of sound mind:

14 (1)(A) A person designated by the decedent as the person with the right to control the
15 disposition in an affidavit executed in accordance with paragraph (B) of this subdivision; and

16 (B) A person who is 18 years of age or older and of sound mind wishing to authorize
17 another person to control the disposition of his or her remains may execute an affidavit before a
18 notary public in substantially the following form:

19 "I, _____, do hereby designate _____ with the right to
20 control the disposition of my remains upon my death. I ___ have/ ___ have not attached specific
21 directions concerning the disposition of my remains with which the designee shall substantially
22 comply, provided that these directions are lawful and there are sufficient resources in my estate
23 to carry out the directions.

24 _____

25 Signed

26 State of _____

27 County of _____

28 I, _____, a Notary Public of said County, do certify that
29 _____, as principal whose name is signed to the writing
30 above bearing date on the _____ day of _____, 20____, has this day acknowledged the
31 same before me.

32 Given under my hand this _____ day of _____, 20__.

33 My commission expires: _____

34 _____

35 Notary Public";

36 (2) The surviving spouse of the decedent;

37 (3) The sole surviving child of the decedent or, if there is more than one child of the
38 decedent, the majority of the surviving children. However, less than one half of the surviving
39 children shall be vested with the rights under this section if they have used reasonable efforts to
40 notify all other surviving children of their instructions and are not aware of any opposition to those
41 instructions on the part of more than one half of all surviving children;

42 (4) The surviving parent or parents of the decedent. If one of the surviving parents is
43 absent, the remaining parent shall be vested with the rights and duties under this section after
44 reasonable efforts have been unsuccessful in locating the absent surviving parent;

45 (5) The surviving brother or sister of the decedent or, if there is more than one sibling of
46 the decedent, the majority of the surviving siblings. However, less than the majority of surviving
47 siblings shall be vested with the rights and duties under this section if they have used reasonable
48 efforts to notify all other surviving siblings of their instructions and are not aware of any opposition
49 to those instructions on the part of more than one half of all surviving siblings;

50 (6) The surviving grandparent of the decedent or, if there is more than one surviving
51 grandparent, the majority of the grandparents. However, less than the majority of the surviving
52 grandparents shall be vested with the rights and duties under this section if they have used
53 reasonable efforts to notify all other surviving grandparents of their instructions and are not aware
54 of any opposition to those instructions on the part of more than one half of all surviving
55 grandparents;

56 (7) Adult grandchildren.

57 ~~(7)~~(8) The guardian of the person of the decedent at the time of the decedent's death if
58 one had been appointed;

59 ~~(8)~~(9) The personal representative of the estate of the decedent;

60 ~~(9)~~(10) The person in the classes of the next degree of kinship, in descending order, under
61 the laws of descent and distribution to inherit the estate of the decedent. If there is more than one
62 person of the same degree, any person of that degree may exercise the right of disposition;

63 ~~(10)~~(11) If the disposition of the remains of the decedent is the responsibility of the state
64 or a political subdivision of the state, the public officer, administrator or employee responsible for
65 arranging the final disposition of decedent's remains; or

66 ~~(11)~~(12) In the absence of any person under subdivisions (1) through ~~(11)~~(12) of this
67 subsection, any other person willing to assume the responsibilities to act and arrange the final
68 disposition of the decedent's remains, including the funeral director with custody of the body, after
69 attesting in writing that a good-faith effort has been made to no avail to contact the individuals
70 under subdivisions (1) through ~~(11)~~(12) of this subsection.

71 (c) A person entitled under law to the right of disposition forfeits that right, and the right is
72 passed on to the next qualifying person as listed in subsection (b) of this section, in the following
73 circumstances:

74 (1) Any person charged with murder or voluntary manslaughter in connection with the
75 decedent's death and whose charges are known to the funeral director. However, if the charges
76 against that person are dismissed or if the person is acquitted of the charges, the right of
77 disposition is returned to the person;

78 (2) Any person who does not exercise his or her right of disposition within two days of
79 notification of the death of decedent or within three days of decedent's death, whichever is earlier;

80 (3) If the person and the decedent are spouses and a petition to dissolve the marriage
81 was pending at the time of decedent's death.

82 (d) Any person signing a funeral service agreement, cremation authorization form or any
83 other authorization for disposition shall be deemed to warrant the truthfulness of any facts set
84 forth therein, including the identity of the decedent whose remains are to be buried, cremated or
85 otherwise disposed of, and the party's authority to order the disposition. A funeral home has the
86 right to rely on that funeral service agreement or authorization and shall have the authority to carry
87 out the instructions of the person or persons the funeral home reasonably believes holds the right
88 of disposition. The funeral home has no responsibility to independently investigate the existence
89 of any next of kin or relative of the decedent where a means of disposition is fully set forth in a
90 preneed funeral contract or other written directive of the deceased in accordance with this section.
91 If there is more than one person in a class who are equal in priority and the funeral home has no
92 knowledge of any objection by other members of that class, the funeral home may rely on and act
93 according to the instructions of the first person in the class to make funeral and disposition
94 arrangements, if no other person in that class provides written objections to the funeral home.

95 (e) No funeral establishment or funeral director who relies in good faith upon the
96 instructions of a preneed funeral contract, written directive of the deceased, or an individual

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- 97 claiming the right of disposition in accordance with this section shall be subject to criminal or civil
98 liability or subject to disciplinary action under this section for carrying out the disposition of the
99 remains in accordance with those instructions.

NOTE: The purpose of this bill is to include adult grandchildren among people who have the right to control disposition of the remains of a deceased person.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.