

SENATE No. 951

The Commonwealth of Massachusetts

PRESENTED BY:

Adam G. Hinds

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing the right of disposition.

PETITION OF:

NAME:

Adam G. Hinds

DISTRICT/ADDRESS:

Berkshire, Hampshire, Franklin and Hampden

SENATE No. 951

By Mr. Hinds, a petition (accompanied by bill, Senate, No. 951) of Adam G. Hinds for legislation to establish the right of disposition. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act establishing the right of disposition.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Title XVI of the General Laws is hereby amended by inserting after section
2 114 the following Chapter:-

3 Chapter 114A: Right of Disposition

4 Section 1. For purposes of this chapter the following words shall, unless the context
5 clearly indicates otherwise, have the following meanings:-

6 “Buyer”, the person entering into a Pre-Need Funeral Contract with a Licensed Funeral
7 Establishment.

8 “Estranged”, a physical or emotional separation from the decedent at the time of death
9 which has existed for a period of time that clearly demonstrates an absence of due affection, trust
10 and regard for the decedent.

11 “Funeral Goods and/or Services”, those goods and services which are customarily
12 provided in the business of embalming and funeral directing, as commonly practiced, as
13 determined by the Department of Public Health.

14 “Licensed Funeral Establishment”, a fixed place or establishment privately owned or
15 maintained by a person, partnership, corporation, association, or other organization which has
16 been duly registered by the Board pursuant to Section 83 of Chapter 112 and which is located,
17 constructed, equipped and operated for the purpose of providing sanitary handling, preparation,
18 disposition and care of dead human bodies.

19 “Pre-need funeral contract”, any written agreement between a Buyer and a Licensed
20 Funeral Establishment in which the Licensed Funeral Establishment agrees, prior to the death of
21 an unnamed Beneficiary to furnish Funeral Goods and/or Services for that named Beneficiary
22 upon their death and the Buyer, pursuant to that agreement, tenders funds made payable to a
23 banking institution or insurance company to the Licensed Funeral Establishment for the purpose
24 of paying all or part of the cost of those Funeral Goods and/or Services at the time they are
25 actually provided.

26 Section 2. A person by entering into a Pre-Need Funeral Service Contract or by providing
27 instructions in a written and sworn affidavit as defined in Section 4, may direct the location,
28 manner and conditions of disposition of the person’s remains, and the arrangements for funeral
29 goods and/or services to be provided upon the person’s death. The instructions that are contained
30 in a Pre-Need Funeral Services Contract shall not be subject to cancellation or substantial
31 revision unless the cancellation or substantial revision has been ordered by a person who the
32 decedent has appointed in the Pre-Need Funeral Services Contract as the person authorized to

33 cancel or revise the terms of the Pre-Need Funeral Services Contract, or unless any resources set
34 aside to fund the Pre-Need Funeral Services Contract are insufficient under the terms of the Pre-
35 Need Funeral Services Contract to carry out the instructions contained therein.

36 Section 3. Except as set forth in Section 5, the right to control the disposition of the
37 remains of a deceased person, the location, manner and conditions of disposition, and
38 arrangements for funeral goods and services to be provided vests in the following in the order
39 named, provided such person is 18 years or older:

40 (a)(1) A Person designated by the decedent as the person with the right to control the
41 disposition in an affidavit executed in accordance with Section 4; or (2) a person designated in
42 the Federal Record of Emergency Data Form DD3, or its successor form, to have the right of
43 disposition by a member of the military who dies while under active duty orders as described in
44 10 U.S.C § 1481

45 (b) The surviving spouse

46 (c)(1) The sole surviving child of the decedent; or (2) the majority of the surviving
47 children; or (3) less than one-half of the surviving children if they have used reasonable efforts to
48 notify all other surviving children of their instructions and are not aware of any opposition to
49 those instructions on the part of more than one-half of all surviving children

50 (d)(1) The surviving parents of the decedent; or (2) one of the surviving parents if all
51 other reasonable efforts have been unsuccessful in locating the absent surviving parent

52 (e)(1) The surviving sibling of the decedent; or (2) the majority of the surviving siblings;
53 or (3) less than one-half of the surviving siblings if they have used reasonable efforts to notify all

54 other surviving siblings of their instructions and are not aware of any opposition to those
55 instructions on the part of more than one-half of all surviving siblings

56 (f)(1) The surviving grandparent of the decedent; or (2) the majority of the surviving
57 grandparents; or (3) less than one-half of the surviving grandparents if they have used reasonable
58 efforts to notify all other surviving grandparents of their instructions and are not aware of any
59 opposition to those instructions on the part of more than one-half of all surviving grandparents

60 (g) The guardian of the decedent at the time of the decedent's death, if one had been
61 appointed

62 (h) The personal representative of the estate of the decedent

63 (i) The decedent's next of kin in equal degree; but if there are 2 or more descendants of
64 deceased ancestors in equal degree claiming through different ancestors, those claiming through
65 the nearest ancestor shall be preferred to those claiming through an ancestor more remote.

66 Degrees of kindred shall be computed according to the rules of civil law.

67 (j) If the disposition of the remains of the decedent is the responsibility of the state or a
68 political subdivision of the state, the public officer, administrator or employee responsible for
69 arranging the final disposition of the decedent's remains

70 (k) In the absence of any person under subsections (a) through (j) of this section, any
71 other person willing to assume the responsibilities to act and arrange the final disposition of the
72 decedent's remains, including the funeral director with custody of the body, after attesting in
73 writing that a good faith effort has been made to no avail to contact the individuals under
74 subsections (a) through (j) of this section

75 Section 4. A person who is 18 years of age or older wishing to authorize another person
76 to control the disposition of his or her remains may execute an affidavit before a notary public
77 containing the following information:

78 (1) The name and date of birth of the person releasing control of his or her remains

79 (2) The name, address, and telephone number of the person being authorized to assume
80 control of the remains

81 (3) An affirmation by the authorized party that they are willing to carry forth the request

82 Section 5. A person entitled under law to the right of disposition shall forfeit that right,
83 which shall be passed on to the next qualifying party pursuant to Section 3 in the following
84 circumstances:

85 (a) Should they be charged with first or second degree murder or voluntary manslaughter
86 in connection with the decedent's death, and where their charges are known to the funeral
87 director; provided, that if the charges against such person are dismissed, or if such person is
88 acquitted of the charges, the right of disposition shall be returned to the party

89 (b) Should they not execute their right of disposition within the earlier of (1) two days of
90 notification of the death of decedent; or (2) three days of the decedent's death

91 (c) Should they be a legal spouse of the decedent who had a pending petition to dissolve
92 the union at the time of the death

93 (d) Should the probate court pursuant to Section 6 determine that the person entitled to
94 the right of disposition and the decedent were estranged at the time of death

95 Section 6. Notwithstanding Sections 1 through 5 of this Chapter, the probate court for the
96 county where the decedent resided may award the right of disposition to the person determined
97 by the court to be the most fit and appropriate to carry out the right of disposition, and may make
98 decisions regarding the decedent's remains if those sharing the right of disposition cannot agree.
99 The following provisions shall apply to the court's determination under this section:

100 (a) If the party holding the right of disposition is comprised of two or more persons with
101 the same relationship to the decedent and they cannot, by majority vote, make a decision
102 regarding the disposition of the decedent's remains, any of such persons or a funeral home with
103 custody of the remains may file a petition asking the probate court to make a determination in the
104 matter.

105 (b) In making a determination under this Section, the probate court shall consider the
106 following:

107 (1) The reasonableness and practicality of the proposed funeral arrangements and
108 disposition

109 (2) The degree of the personal relationship between the decedent and the party claiming
110 the right of disposition

111 (3) The desires of the party ready, willing, and able to pay the cost of the funeral
112 arrangements and disposition

113 (4) The desires of the decedent; and

114 (5) The degree to which the funeral arrangements would allow maximum participation by
115 all wishing to pay respect

116 (c) In the event of a dispute regarding the right of disposition, a funeral home is not liable
117 for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent
118 or complete the arrangements for the final disposition of the remains until the funeral home
119 receives a court order or other written agreement signed by the parties in the disagreement that
120 decides the final disposition of the remains. If the funeral home retains the remains for the final
121 disposition while the parties are in disagreement, the funeral home may embalm or refrigerate
122 and shelter the body, or both, in order to preserve it while awaiting the final decision of the
123 probate court and may add the cost of embalming and refrigeration and sheltering to the final
124 disposition costs. If a funeral home brings an action under this section, the funeral home may add
125 the legal fees and court costs associated with a petition under this section to the cost of final
126 disposition. This section may not be construed to require or to impose a duty upon a funeral
127 home to bring an action under this section. A funeral home and its employees may not be held
128 criminally or civilly liable for choosing not to bring an action under this section.

129 (d) Except to the degree to which it may be considered by the probate court under
130 subsection (b) of Section 5 of this Chapter, the fact that a person has paid or agreed to pay for all
131 or part of the funeral arrangements and final disposition does not give that person a greater right
132 to the right of disposition than the person would otherwise have. The personal representative of
133 the estate of the decedent does not, by virtue of being the personal representative, have a greater
134 claim to the right of disposition than the person would have otherwise.

135 Section 7. Any person signing a funeral service agreement, cremation authorization form,
136 or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts
137 set forth therein, including the identity of the decedent whose remains are to be buried, cremated,
138 or otherwise disposed of, and the party's authority to order such a disposition. A funeral home

139 shall have the right to rely on such funeral service contract or authorization and shall have the
140 authority to carry out the instructions of the person or persons whom the funeral home
141 reasonable believes holds the right of disposition. The funeral home shall have no responsibility
142 to contact or to independently investigate the existence of any next-of-kin or relative of the
143 decedent. If there is more than one person in a class who are equal in priority and the funeral
144 home has no knowledge of any objection by other members of such class, the funeral home shall
145 be entitled to rely on and act according to the instructions of the first such person in the class to
146 make funeral and disposition arrangements; provided that no other person in such class provides
147 written notice of his or her objections to the funeral home.

148 Section 8. No funeral home or funeral director who relies in good faith upon the
149 instructions of an individual claiming the right of disposition shall be subject to criminal or civil
150 liability or subject to disciplinary action for carrying out the disposition of the remains in
151 accordance with the instructions.