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**SUBSTITUTE HOUSE BILL 2253**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Graves, Dye, Kilduff, Jinkins, and Young)

AN ACT Relating to the right to control disposition of the remains of a deceased minor child; amending RCW 68.50.160; and adding new sections to chapter 68.50 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 68.50.160 and 2012 c 5 s 1 are each amended to read as follows:

(1) A person has the right to control the disposition of his or her own remains without the predeath or postdeath consent of another person. A valid written document expressing the decedent's wishes regarding the place or method of disposition of his or her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.

(2) Prearrangements that are prepaid, or filed with a licensed funeral establishment or cemetery authority, under RCW 18.39.280 through 18.39.345 and chapter 68.46 RCW are not subject to cancellation or substantial revision by survivors. Absent actual knowledge of contrary legal authorization under this section, a licensed funeral establishment or cemetery authority shall not be held criminally nor civilly liable for acting upon such prearrangements.

(3) If the decedent has not made a prearrangement as set forth in subsection (2) of this section or the costs of executing the decedent's wishes regarding the disposition of the decedent's remains exceeds a reasonable amount or directions have not been given by the decedent, the right to control the disposition of the remains of a deceased person vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:

(a) The person designated by the decedent as authorized to direct disposition as listed on the decedent's United States department of defense record of emergency data, DD form 93, or its successor form, if the decedent died while serving in military service as described in 10 U.S.C. Sec. 1481(a) (1)-(8) in any branch of the United States armed forces, United States reserve forces, or national guard;

(b) The designated agent of the decedent as directed through a written document signed and dated by the decedent in the presence of a witness. The direction of the designated agent is sufficient to direct the type, place, and method of disposition;

(c) The surviving spouse or state registered domestic partner;

(d) The majority of the surviving adult children of the decedent;

(e) The surviving parents of the decedent. If the decedent is a minor and the surviving parents do not agree about the disposition of the decedent's remains, the right to control disposition of the decedent's remains is governed by section 2 of this act;

(f) The majority of the surviving siblings of the decedent;

(g) A court-appointed guardian for the person at the time of the person's death.

(4) If any person to whom the right of control has vested pursuant to subsection (3) of this section has been arrested or charged with first or second degree murder or first degree manslaughter in connection with the decedent's death, the right of control is relinquished and passed on in accordance with subsection (3) of this section.

(5) If a cemetery authority as defined in RCW 68.04.190 or a funeral establishment licensed under chapter 18.39 RCW has made a good faith effort to locate the person cited in subsection (3)(a) through (g) of this section or the legal representative of the decedent's estate, the cemetery authority or funeral establishment shall have the right to rely on an authority to bury or cremate the human remains, executed by the most responsible party available, and the cemetery authority or funeral establishment may not be held criminally or civilly liable for burying or cremating the human remains. In the event any government agency or charitable organization provides the funds for the disposition of any human remains, the cemetery authority or funeral establishment may not be held criminally or civilly liable for cremating the human remains.

(6) The liability for the reasonable cost of preparation, care, and disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred, in the order listed in subsection (3) of this section, and upon the estate of the decedent.

NEW SECTION. **Sec.**  A new section is added to chapter 68.50 RCW to read as follows:

(1)(a) In any case in which the right to control the disposition of the remains of a deceased minor child vests in the surviving parents of the child and the surviving parents do not agree about the disposition of the decedent's remains, the surviving parents shall attempt to resolve disagreements about disposition of the decedent's remains promptly and in good faith through mediation.

(b) If the parents cannot reach agreement through mediation, any parent may file a petition in superior court to decide the matter. The petition must be filed in the superior court of a county where a parent maintained a residence with the decedent at the time of death. The petition must identify with specificity the areas of disagreement and must be accompanied by an affidavit by the petitioner setting forth the factual basis for the petition and the petitioner's proposed resolution of the dispute. The petition must be served in accordance with the civil rules on the other surviving parent or parents, who may file and serve a response to the petition no later than four days prior to the hearing on the matter. A response must be accompanied by an affidavit by the respondent setting forth the factual basis for the response and the respondent's proposed resolution of the dispute. The court shall hear the petition without a jury within ten days after proof of service of the petition is filed with the court. No discovery shall be authorized except as specifically ordered by the court. The court shall issue a written decision within three judicial days of the hearing and shall consider the following factors:

(i) The reasonableness, practicality, and resources available for payment of the proposed arrangements and final disposition;

(ii) The expressed wishes of the decedent, if the court finds the decedent was sufficiently mature to express reasoned and independent preferences as to disposition of his or her remains; and

(iii) The degree to which the arrangements and final disposition will accommodate the reasonable wishes of all surviving parents and will allow for participation by all who wish to pay respect to the decedent.

(2) If the court finds that a party frustrated the mediation process without good reason, the court may order that party to pay the reasonable attorneys' fees and costs of the other party or parties, including reasonable attorneys' fees and costs incurred in connection with mediation.

NEW SECTION. **Sec.**  A new section is added to chapter 68.50 RCW to read as follows:

The cemetery authority as defined in RCW 68.04.190 or a funeral establishment licensed under chapter 18.39 RCW may not be held criminally or civilly liable for burying or cremating remains pursuant to a representation from a parent about an agreement concerning disposition of the remains, or a court order relating to disposition of the remains, under the provisions of section 2 of this act.

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