
SENATE BILL 6613

State of Washington 54th Legislature 1996 Regular Session

By Senators Smith, Pelz, Johnson and Winsley

Read first time 01/19/96. Referred to Committee on Law & Justice.

1 AN ACT Relating to durable powers of attorney to make funeral
2 decisions; and amending RCW 11.94.010, 11.94.020, 68.50.160, and
3 68.50.180.

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

5 **Sec. 1.** RCW 11.94.010 and 1995 c 297 s 9 are each amended to read
6 as follows:

7 (1) Whenever a principal designates another as his or her attorney
8 in fact or agent, by a power of attorney in writing, and the writing
9 contains the words "This power of attorney shall not be affected by
10 disability of the principal," or "This power of attorney shall become
11 effective upon the disability of the principal," or similar words
12 showing the intent of the principal that the authority conferred shall
13 be exercisable notwithstanding the principal's disability, the
14 authority of the attorney in fact or agent is exercisable on behalf of
15 the principal as provided notwithstanding later disability or
16 incapacity of the principal at law or later uncertainty as to whether
17 the principal is dead or alive. All acts done by the attorney in fact
18 or agent pursuant to the power during any period of disability or
19 incompetence or uncertainty as to whether the principal is dead or

1 alive have the same effect and inure to the benefit of and bind the
2 principal or the principal's guardian or heirs, devisees, and personal
3 representative as if the principal were alive, competent, and not
4 disabled. A principal may nominate, by a durable power of attorney,
5 the guardian or limited guardian of his or her estate or person for
6 consideration by the court if protective proceedings for the
7 principal's person or estate are thereafter commenced. The court shall
8 make its appointment in accordance with the principal's most recent
9 nomination in a durable power of attorney except for good cause or
10 disqualification. If a guardian thereafter is appointed for the
11 principal, the attorney in fact or agent, during the continuance of the
12 appointment, shall account to the guardian rather than the principal.
13 The guardian has the same power the principal would have had if the
14 principal were not disabled or incompetent, to revoke, suspend or
15 terminate all or any part of the power of attorney or agency.

16 (2) Persons shall place reasonable reliance on any determination of
17 disability or incompetence as provided in the instrument that specifies
18 the time and the circumstances under which the power of attorney
19 document becomes effective.

20 (3) A principal may authorize his or her (~~attorney in fact~~)
21 attorney in fact to provide informed consent for health care, funeral
22 decisions including the decision to have no funeral, and decisions
23 regarding burial or cremation on the principal's behalf. Unless he or
24 she is the spouse, or adult child or brother or sister of the
25 principal, none of the following persons may act as the (~~attorney in~~
26 ~~fact~~) attorney in fact for the principal: Any of the principal's
27 physicians, the physicians' employees, or the owners, administrators,
28 or employees of the health care facility where the principal resides or
29 receives care. This authorization is subject to the same limitations
30 as those that apply to a guardian under RCW 11.92.043(5) (a) through
31 (c).

32 **Sec. 2.** RCW 11.94.020 and 1985 c 30 s 26 are each amended to read
33 as follows:

34 (1) The death, disability, or incompetence of any principal who has
35 executed a power of attorney in writing other than a power as described
36 by RCW 11.94.010, does not revoke or terminate the agency as to the
37 attorney in fact, agent, or other person who, without actual knowledge
38 of the death, disability, or incompetence of the principal, acts in

1 good faith under the power of attorney or agency. Any action so taken,
2 unless otherwise invalid or unenforceable, binds the principal and the
3 principal's heirs, devisees, and personal representatives. However,
4 the death of any principal who has authorized an attorney in fact to
5 make funeral decisions does not revoke or terminate that authority.

6 (2) An affidavit, executed by the attorney in fact, or agent,
7 stating that the attorney did not have, at the time of doing an act
8 pursuant to the power of attorney, actual knowledge of the revocation
9 or termination of the power of attorney by death, disability, or
10 incompetence, is, in the absence of a showing of fraud or bad faith,
11 conclusive proof of the nonrevocation or nontermination of the power at
12 that time. If the exercise of the power requires execution and
13 delivery of any instrument which is recordable, the affidavit when
14 authenticated for record is likewise recordable.

15 (3) This section shall not be construed to alter or affect any
16 provision for revocation or termination contained in the power of
17 attorney.

18 **Sec. 3.** RCW 68.50.160 and 1993 c 297 s 1 are each amended to read
19 as follows:

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

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

33 (3) If the decedent has not executed a written document expressing
34 his or her wishes regarding the place or method of disposition of his
35 or her remains in accordance with subsection (1) of this section, or
36 the decedent has not made a prearrangement as set forth in subsection
37 (2) of this section, or the costs of executing the decedent's wishes
38 regarding any funeral and the disposition of the decedent's remains

1 exceeds a reasonable amount, or directions have not been given by the
2 decedent, the right to control the disposition of the remains of a
3 deceased person vests in, and the duty of disposition and the liability
4 for the reasonable cost of preparation, care, and disposition of such
5 remains devolves upon the following in the order named:

6 (a) Any person appointed as the decedent's attorney in fact who has
7 been granted such authority under RCW 11.94.010(3).

8 (b) The surviving spouse.

9 ~~((b))~~ (c) The surviving adult children of the decedent.

10 ~~((e))~~ (d) The surviving parents of the decedent.

11 ~~((d))~~ (e) The surviving siblings of the decedent.

12 ~~((e-A))~~ (f) Any other person acting as a representative of the
13 decedent under the signed authorization of the decedent.

14 (4) The liability for the reasonable cost of preparation, care, and
15 disposition ~~((devolves))~~ shall be borne by the estate of the decedent.
16 If such estate is inadequate to satisfy such costs, such obligations
17 shall devolve jointly and severally upon all kin of the decedent in the
18 same degree of kindred, in the order listed in subsection (3) of this
19 section(, and upon the estate of the decedent)).

20 **Sec. 4.** RCW 68.50.180 and 1993 c 43 s 5 are each amended to read
21 as follows:

22 The cemetery authority may inter or cremate any remains upon the
23 receipt of a written authorization of a person representing himself or
24 herself to be a person who has acquired the right to control the
25 disposition of the remains, including a person designated as an
26 attorney in fact under RCW 11.94.010(3) to make funeral decisions. A
27 cemetery authority or a person licensed by the board of funeral
28 directors or embalmers under chapter 18.39 RCW is not liable for
29 interring or cremating pursuant to such authorization, unless it has
30 actual notice that such representation is untrue.

31 In the event the state of Washington or any of its agencies provide
32 the funds for the disposition of any remains and the state or its
33 agency elects to provide the funds for cremation only, the cemetery
34 authority or licensed funeral establishment shall not be criminally or
35 civilly liable for cremating the remains.

36 If a cemetery authority with a permit issued under RCW 68.05.175 or
37 a funeral establishment licensed under chapter 18.39 RCW has made a
38 good faith effort to locate the persons cited in RCW 68.50.160 or the

1 legal representative of the decedent's estate, the cemetery authority
2 or funeral establishment shall have the right to rely on an authority
3 to cremate executed by the most responsible party available, and the
4 cemetery authority or funeral establishment shall not be criminally or
5 civilly liable for cremating the remains.

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