

SSB 6277 - S AMD 83

By Senators Kline and Zarelli

OUT OF ORDER 2/16/2010

1 Strike everything after the enacting clause and insert the
2 following:

3
4 "**Sec. 1.** RCW 68.50.160 and 2007 c 156 s 24 are each amended to read
5 as follows:

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

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

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

- 1 (a) The surviving spouse or state registered domestic partner.
- 2 (b) The surviving adult children of the decedent.
- 3 (c) The surviving parents of the decedent.
- 4 (d) The surviving siblings of the decedent.
- 5 (e) A person acting as a representative of the decedent under the
- 6 signed authorization of the decedent.

7 (4)(a) There shall exist an action known as a petition for
8 relinquishment of the right to control the disposition of human
9 remains. The action may only be filed when the person to whom the
10 right of control has vested pursuant to subsection (3) of this section
11 has been arrested or charged with first or second degree murder or
12 first degree manslaughter in connection with the decedent's death.

13 (b) A petition for relinquishment of the right to control the
14 disposition of human remains may only be filed by the party to which
15 the right to control the disposition would next vest pursuant to
16 subsection (3) of this section. A party must file such petition with
17 the clerk of the superior court in the county in which the respondent
18 is in custody within seven days of the arrest or charge, whichever
19 occurs first, as described under (a) of this subsection. The court
20 may accept petitions filed electronically, via the postal service, or
21 in any other manner authorized by court rule. Upon receipt of the
22 petition, the court shall order a hearing, which shall be held not
23 later than seven court days from the date that the petition was filed,
24 and enjoin the respondent from exercising his or her rights under
25 subsection (3) of this section pending the judicial disposition of the
26 petition. Personal service shall be made upon the respondent not less
27 than five court days before the hearing.

28 (c)The petition and hearing under this section may be heard and
29 decided by any judicial officer of the superior court.

30 (d) A petition for relinquishment of the right to control the
31 disposition of human remains shall allege:

32 (i) The petitioner is the party to which the right to control the
33 disposition would next vest pursuant to subsection (3) of this
34 section;

1 (ii) Facts supporting the petitioner's relationship to the
2 deceased;

3 (iii) The legal relationship of the deceased to the respondent;
4 and

5 (iv) Good cause why the court should grant the petition. Good
6 cause may include a showing of the emotional distress to the
7 petitioner if the decision to control the disposition of human remains
8 is made by the person arrested or charged with the decedent's death.
9 Good cause may also include facts regarding the history of the
10 personal relationship between the decedent and the person arrested or
11 charged with his or her killing, including any known orders issued
12 pursuant to chapter 26.52, 26.50, 26.26, 10.14, 10.99, 9A.46, 26.10,
13 26.09, 74.34 or 7.90 RCW.

14 (e) Upon request of the petitioner the hearing may be conducted
15 before the judicial officer solely on the basis of affidavits and
16 supporting documentation or in person or any combination thereof.

17 (f) No fees for filing or service of process may be charged by a
18 public agency to petitioners seeking relief under this subsection.

19 (g) No result from a hearing on the petition for relinquishment of
20 the right to control the disposition of human remains is admissible in
21 a criminal proceeding related to the death of the decedent.

22 (5) If a cemetery authority as defined in RCW 68.04.190 or a
23 funeral establishment licensed under chapter 18.39 RCW has made a good
24 faith effort to locate the person cited in subsection (3)(a) through
25 (e) of this section or the legal representative of the decedent's
26 estate, the cemetery authority or funeral establishment shall have the
27 right to rely on an authority to bury or cremate the human remains,
28 executed by the most responsible party available, and the cemetery
29 authority or funeral establishment may not be held criminally or
30 civilly liable for burying or cremating the human remains. In the
31 event any government agency provides the funds for the disposition of
32 any human remains and the government agency elects to provide funds
33 for cremation only, the cemetery authority or funeral establishment
34

1 may not be held criminally or civilly liable for cremating the human
2 remains.

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

7

8

EFFECT: Allows the petition to be heard by either a judge or
court commissioner. Authorizes the petitioner to request that the
hearing be conducted on the basis of affidavits and supporting
documentation or in person, or both. Authorizes the court to
accept a petition filed electronically, via the mail, or any other
method as determined by court rule.

--- END ---