



General Assembly

January Session, 2019

***Raised Bill No. 7272***

LCO No. 5065



Referred to Committee on JUDICIARY

Introduced by:  
(JUD)

***AN ACT CONCERNING THE DISPOSITION OF A DECEDENT'S BODY.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 45a-318 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2019*):

3 (a) (1) Any person eighteen years of age or older, and of sound  
4 mind, may execute in advance of such person's death a written  
5 document, subscribed by such person and attested by two witnesses,  
6 either: (A) Directing the disposition of such person's body upon the  
7 death of such person, which document may also designate an  
8 individual to have custody and control of such person's body and to  
9 act as agent to carry out such directions; or (B) if there are no directions  
10 for disposition, designating an individual to have custody and control  
11 of the disposition of such person's body upon the death of such person.  
12 Such disposition shall include, but not be limited to, cremation,  
13 incineration, disposition of cremains, burial, method of interment,  
14 alkaline hydrolysis and cryogenic preservation. Any such document  
15 may designate an alternate to an individual designated under  
16 subparagraph (A) or (B) of this subdivision.

17 (2) Any conservator of the person authorized pursuant to  
18 subdivision (5) of subsection (a) of section 45a-656 to act on behalf of a  
19 conserved person, or any agent authorized to act on behalf of a  
20 principal, including any agent authorized to act on behalf of a  
21 principal pursuant to subdivision (10) of section 1-351l, may execute in  
22 advance of such conserved person's or principal's death a written  
23 document, subscribed by such conservator or agent and attested by  
24 two witnesses, either: (A) Directing the disposition of such conserved  
25 person's or principal's body upon the death of such conserved person  
26 or principal, which document may also designate an individual to  
27 have custody and control of such conserved person's or principal's  
28 body and to act as agent to carry out such directions; or (B) if there are  
29 no directions for disposition, designating an individual to have  
30 custody and control of the disposition of such conserved person's or  
31 principal's body upon the death of such conserved person or principal.  
32 Such disposition shall include, but not be limited to, cremation,  
33 incineration, disposition of cremains, burial, method of interment,  
34 alkaline hydrolysis and cryogenic preservation. Any such document  
35 may designate an alternate to an individual designated under  
36 subparagraph (A) or (B) of this subdivision. A document executed by a  
37 conservator pursuant to this subdivision shall include provisions  
38 indicating that such document (i) is valid if the person is under  
39 conservatorship at the time of his or her death, and (ii) terminates  
40 upon the termination of the conservatorship when such termination  
41 occurs prior to the death of the conserved person.

42 (b) Disposition of a person's body upon the death of such person  
43 shall not include the retrieval of a deceased person's sperm or eggs, as  
44 the case may be.

45 ~~[(b)]~~ (c) No person having the custody and control of the disposition  
46 of a deceased person's body shall knowingly provide for a disposition  
47 of the body in a manner that is inconsistent with a document executed  
48 by a person pursuant to the provisions of subsection (a) of this section  
49 or section 19a-575a, unless such disposition is approved by the Probate  
50 Court.

51        ~~[(c)]~~ (d) No person may challenge a funeral director's or embalmer's  
52 decision to carry out the directions for disposition contained in a  
53 document executed for the purposes of subsection (a) or ~~[(h)]~~ (i) of this  
54 section if the funeral director's or embalmer's decision and conduct in  
55 carrying out such directions for disposition in reliance on such  
56 document was reasonable and warranted under the circumstances.

57        ~~[(d)]~~ (e) In the absence of a written designation of an individual  
58 pursuant to subsection (a) of this section, or in the event that an  
59 individual and any alternate designated pursuant to subsection (a) of  
60 this section decline to act or cannot be located within forty-eight hours  
61 after the time of death or the discovery of the body, the following  
62 individuals, in the priority listed, shall have the right to custody and  
63 control of the disposition of a person's body upon the death of such  
64 person, subject to any directions for disposition made by such person,  
65 conservator or agent pursuant to subdivision (1) or (2) of subsection (a)  
66 of this section:

67        (1) The deceased person's spouse, unless such spouse abandoned  
68 the deceased person prior to the deceased person's death or has been  
69 adjudged incapable by a court of competent jurisdiction;

70        (2) The deceased person's surviving adult children;

71        (3) The deceased person's surviving parents;

72        (4) The deceased person's surviving siblings;

73        (5) Any adult person in the next degree of kinship in the order  
74 named by law to inherit the deceased person's estate, provided such  
75 adult person shall be of the third degree of kinship or higher; and

76        (6) Such adult person as the Probate Court shall determine.

77        ~~[(e)]~~ (f) In the event that the applicable class of persons set forth in  
78 subdivisions (2) to (5), inclusive, of subsection ~~[(d)]~~ (e) of this section  
79 contains more than one person, the custody and control of the body  
80 shall be in a majority of the members of the class who can be located

81 and indicate willingness to participate in making arrangements for the  
82 disposition within a reasonable time, not to exceed ten days after the  
83 date on which the deceased person is identified. Such class members  
84 shall indicate their decision in writing.

85 ~~[(f)]~~ (g) A document executed by a person for the purposes of  
86 subsection (a) or ~~[(h)]~~ (i) of this section shall revoke any document  
87 previously executed by such person for the purposes of said  
88 subsections or any prior cremation authorization or other  
89 authorization for the disposition of remains executed by such person.

90 ~~[(g)]~~ (h) A document executed by a person for the purposes of  
91 subsection (a) of this section may be in substantially the following  
92 form, but the use of such form shall not preclude the use of any other  
93 form:

94 DISPOSITION OF REMAINS AND

95 APPOINTMENT OF AGENT

96 I, ..., of ..., being of sound mind, make known that upon my death  
97 my body shall be disposed of in the following manner:

98 (Insert desired disposition directions)

99 I appoint ..., having an address and telephone number of ..., to  
100 have custody and control of my body to act as my agent to carry out  
101 the disposition directions expressed in this document, and in the  
102 absence of disposition directions, to have custody and control of my  
103 body and to determine the disposition of my body. If ... shall decline  
104 to act or cannot be located within forty-eight hours of my death or the  
105 discovery of my body, then ..., having an address and telephone  
106 number of ..., shall act in that person's place and stead.

107 Executed at (insert location of execution), Connecticut on (insert  
108 date of execution).

109

....

110 (Signature)

111 Signed in our presence by .... who, at the time of the execution of  
112 this document, appeared to be of sound mind and over eighteen years  
113 old.

114 .... of ....

115 ....

116 (Signature of witness)

117 .... of ....

118 ....

119 (Signature of witness)

120 [(h)] (i) A DD Form 93, "Record of Emergency Data", executed by a  
121 member of the armed forces of the state or the United States shall be  
122 given the same legal effect as a document executed for the purposes of  
123 subsection (a) of this section.

124 [(i)] (j) The Probate Court for the district of the domicile or residence  
125 of a deceased person shall have jurisdiction to hear and decide any  
126 issue regarding the custody, control or disposition of the deceased  
127 person's body, upon the petition of any individual designated by the  
128 deceased person pursuant to subsection (a) or [(h)] (i) of this section,  
129 the individual entitled to custody and control under subsection [(d)]  
130 (e) of this section if no designation is made pursuant to subsection (a)  
131 of this section, the first selectman, chief executive officer or director of  
132 health of the town in which the deceased person's body is being held,  
133 or the funeral director, embalmer or any other person or institution  
134 holding the deceased person's body, and upon such notice to  
135 interested parties as the court shall determine.

136 [(j)] (k) In the event of a dispute regarding final disposition of  
137 remains, a funeral director or embalmer is not liable for refusing to (1)  
138 accept the remains of the decedent, (2) inter or otherwise dispose of the

139 remains of the decedent, or (3) complete the arrangements for the final  
140 disposition of the remains until such time as the funeral director or  
141 embalmer receives an order from the Probate Court or other written  
142 agreement signed by the parties in the dispute that decides the final  
143 disposition of the remains. If the funeral director or embalmer retains  
144 the remains for final disposition while the parties are in disagreement,  
145 the funeral director or embalmer may embalm or refrigerate and  
146 shelter the body, or both, in order to preserve the body while awaiting  
147 the final decision of the Probate Court and may add the cost of  
148 embalming and refrigeration and sheltering to the final disposition  
149 costs. If a funeral director or embalmer initiates a petition under this  
150 section, the funeral director or embalmer may add the legal fees and  
151 the court costs associated with the petition to the cost of final  
152 disposition. The provisions of this section shall not be construed to  
153 require or to impose a duty upon a funeral director or embalmer to  
154 bring a petition under this section. Neither a funeral director nor an  
155 embalmer shall be held criminally or civilly liable for choosing not to  
156 bring a petition under this section.

157 [(k)] (l) Any person signing a funeral service agreement, cremation  
158 authorization form, or any other authorization for final disposition of  
159 remains shall be deemed to warrant the truthfulness of any facts set  
160 forth in such documents, including the identity of the decedent whose  
161 remains are to be buried, cremated, or otherwise disposed of, and the  
162 authority of such person to order such disposition. A funeral director  
163 or embalmer may rely on such funeral service agreement, cremation  
164 authorization form or any other authorization for final disposition and  
165 may carry out the instructions of the person or persons whom the  
166 funeral director or embalmer reasonably believes holds the right of  
167 final disposition of remains. A funeral director or embalmer shall have  
168 no responsibility to contact or to independently investigate the  
169 existence of any next-of-kin or relative of the decedent. If there is more  
170 than one person in a class with final disposition of remains rights who  
171 are equal in priority, the funeral director or embalmer may rely on and  
172 act according to the instructions of the first such person in the class to  
173 make funeral and final disposition of remains arrangements, provided

174 no person in such class has submitted written notice of his or her  
175 objections to the funeral director or embalmer and such director or  
176 embalmer does not otherwise have knowledge of any objection by the  
177 other members of such class.

178 [(l)] (m) No funeral director or embalmer who relies in good faith  
179 upon the instructions of a person claiming the final right of disposition  
180 of remains shall be subject to criminal liability or disciplinary action for  
181 carrying out the final disposition of the remains in accordance with the  
182 person's instructions and in any civil action brought against such  
183 funeral director or embalmer for negligence relating to such  
184 disposition, such funeral director or embalmer shall be presumed to  
185 have acted reasonably.

186 [(m)] (n) This section shall not (1) apply to the disposition of the  
187 body of a deceased person under the provisions of sections 19a-270  
188 and 54-102, (2) affect the powers and duties of the Chief Medical  
189 Examiner under the provisions of sections 19a-406 to 19a-408,  
190 inclusive, or (3) affect the making of anatomical gifts under the  
191 provisions of sections 14-42 and 19a-289 to 19a-289v, inclusive.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2019</i>	45a-318

**Statement of Purpose:**

To affirmatively set forth that a person's authority to make decisions concerning the disposition of a decedent's body under section 45a-318 of the general statutes does not permit one to authorize the posthumous retrieval of sperm or eggs from the decedent.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*