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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)

READ FIRST TIME 02/02/18.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (5) If a cemetery authority as defined in RCW 68.04.190 or a  
36 funeral establishment licensed under chapter 18.39 RCW has made a  
37 good faith effort to locate the person cited in subsection (3)(a)  
38 through (g) of this section or the legal representative of the  
39 decedent's estate, the cemetery authority or funeral establishment  
40 shall have the right to rely on an authority to bury or cremate the

1 human remains, executed by the most responsible party available, and  
2 the cemetery authority or funeral establishment may not be held  
3 criminally or civilly liable for burying or cremating the human  
4 remains. In the event any government agency or charitable  
5 organization provides the funds for the disposition of any human  
6 remains, the cemetery authority or funeral establishment may not be  
7 held criminally or civilly liable for cremating the human remains.

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

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 68.50  
13 RCW to read as follows:

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

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

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

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

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

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

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 68.50  
16 RCW to read as follows:

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

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