

Amendment No. 1 to HB3300

Lundberg  
Signature of Sponsor

**AMEND Senate Bill No. 2916\***

**House Bill No. 3300**

by deleting all language after the enacting clause and by substituting instead the following:

**SECTION 1.** Tennessee Code Annotated, Section 62-5-502, is amended by deleting the section in its entirety.

**SECTION 2.** Tennessee Code Annotated, Title 62, Chapter 5, is amended by adding the following language as a new, appropriately designated part:

**62-5-701.** As used in this part, unless the context otherwise requires:

(1) "Disposition directions" means a legible written instrument signed by the decedent and acknowledged by a notary or witnessed by two (2) persons who are qualified adults; provided, that such written instrument may be, but is not limited to, a letter of instructions, a will, a trust document, or an advance directive;

(2) "Qualified adult" means a person who is eighteen (18) years of age or older and of sound mind; and

(3) "Right of disposition" means the right to determine the disposition of the remains of a decedent, including the location, manner, and conditions of disposition and arrangements for funeral goods and services.

**62-5-702.**

(a) A qualified adult, by entering into disposition directions or a pre-need funeral contract executed pursuant to part 4 of this chapter, may direct the location, manner and conditions of disposition of the adult's remains, and the arrangements for funeral goods and services to be provided upon the adult's death.

(b) No disposition directions or pre-need funeral contract shall be subject to cancellation or substantial revision unless the cancellation or substantial revision has been ordered by a person authorized to act as the lawful representative in § 62-5-703, or

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the pre-need funeral contract as the person authorized to cancel or revise the terms of the disposition directions or the pre-need funeral contract, or unless any resources set aside or available to fund the disposition directions or the pre-need funeral contract are insufficient to carry out the funeral and disposition arrangements set forth in the disposition directions or pre-need funeral contract.

**62-5-703.** Except as set forth in § 62-5-704, and in the absence of disposition directions or a pre-need funeral contract, the right to control the disposition of the decedent's remains, the location, manner and conditions of disposition, and arrangements for funeral goods and services to be provided vests in the following persons in the order named; provided, such person is a qualified adult:

(1) An attorney in fact designated in a durable power of attorney for health care who is acting pursuant to § 34-6-204; provided, the durable power of attorney for health care, in which the attorney in fact was designated, was executed by the decedent subsequent to the decedent's execution of disposition directions or a pre-need funeral contract;

(2) The surviving spouse;

(3) The sole surviving child of the decedent, or if there is more than one (1) child of the decedent, the majority of the surviving children. However, less than one-half (1/2) of the surviving children shall be vested with the rights of this section if they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of any opposition to those instructions on the part of more than one-half (1/2) of all surviving children;

(4) The surviving parent of the decedent. If one (1) of the surviving parents is absent, the remaining parent shall be vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving parent;

(5) The surviving sibling of the decedent, or if there is more than one (1) sibling of the decedent, the majority of the surviving siblings. However, less than the majority of surviving siblings shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving siblings of their instructions and are not aware of any opposition to those instructions on the part of more than one-half (1/2) of all surviving siblings;

(6) The surviving grandchild of the decedent, or if there is more than one (1) surviving grandchild, the majority of the grandchildren. However, less than the majority of the surviving grandchildren shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving grandchildren of their instructions and are not aware of any opposition to those instructions on the part of more than one-half (1/2) of all surviving grandchildren;

(7) The surviving grandparent of the decedent, or if there is more than one (1) surviving grandparent, the majority of the grandparents. However, less than the majority of the surviving grandparents shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any opposition to those instructions on the part of more than one-half (1/2) of all surviving grandparents;

(8) The guardian of the person of the decedent at the time of the decedent's death, if one (1) had been appointed;

(9) The personal representative of the estate of the decedent;

(10) The person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one (1) person of the same degree, any person of that degree may exercise the right of disposition;

(11) If the disposition of the remains of the decedent is the responsibility of the state or a political subdivision of the state, the public officer, administrator or employee responsible for arranging the final disposition of decedent's remains; or

(12) In the absence of any person listed in subdivisions (1)-(10), any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the funeral director with custody of the body, after attesting in writing that a good faith effort has been made to no avail to contact the individuals listed in subdivisions (1)-(10).

**62-5-704.** A person entitled under § 62-5-703 to the right of disposition shall forfeit that right, and the right shall pass on to the next person in accordance with § 62-5-703, in the following circumstances:

(1) Any person convicted of an offense described in § 39-13-202, § 39-13-210, or § 39-13-211, in connection with the decedent's death, and whose conviction or convictions are known to the funeral director; or

(2) Any person who does not exercise the right of disposition within seventy-two (72) hours of notification of the decedent's death or within one hundred and sixty-eight (168) hours of the decedent's death, whichever is earlier.

**62-5-705.** If two (2) or more persons hold the right of disposition pursuant to § 62-5-703, and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of such persons or a funeral establishment with custody of the remains may file a petition asking the court with probate jurisdiction to make a determination in the matter. If a funeral establishment brings an action under this section, or relies upon this section to defend itself in a related lawsuit, the court may award legal fees and court costs associated with a petition under this section to the cost of final disposition. The court with probate jurisdiction for the county where the decedent resided may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition, and may make decisions regarding the decedent's remains if those sharing the right of disposition cannot agree. The court may consider the following in making such determination:

- (1) The reasonableness and practicality of the proposed funeral arrangements and disposition;
- (2) The degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;
- (3) The desires of the person who is ready, able and willing to pay the cost of the funeral arrangements and disposition;
- (4) The convenience and needs of other families and friends wishing to pay respects;
- (5) The desires of the decedent; and
- (6) The degree to which the funeral arrangements would allow maximum participation by all wishing to pay respect.

**62-5-706.**

(a) In the event two (2) or more persons hold the right of disposition pursuant to § 62-5-703, and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, no funeral establishment is liable for refusing to accept, inter or otherwise dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the funeral establishment receives a court order or other written agreement signed by the parties to the dispute that determines the final disposition of the remains. If the funeral establishment retains the remains for final disposition while the parties are in disagreement, the funeral establishment may shelter, refrigerate or embalm the body, or all, in order to preserve the body while awaiting the final decision of the probate court. However, the funeral establishment may not charge for embalming unless expressly agreed to by the parties. Neither this section, nor § 62-5-705, shall be construed to require or to impose a duty upon a funeral establishment to bring an action under this section or § 62-5-705. No funeral establishment or its employees shall be held criminally or civilly liable for choosing not to bring an action under this section or § 62-5-705.

(b)

(1) Except to the degree it may be considered by the court under § 62-5-705(3), the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and final disposition does not give that person a greater right to the right of disposition than the person would otherwise have.

(2) The personal representative of the estate of the decedent does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the person would otherwise have.

**62-5-707.** Any person signing a funeral service agreement, cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of, and the party's authority to order such disposition. A funeral establishment shall have the right to rely on such funeral service contract or authorization and shall have the authority to carry out the instructions of the person whom the funeral establishment reasonably believes holds the right of disposition. No funeral establishment is responsible for contacting or independently investigating the existence of any next-of-kin or relative of the decedent.

**62-5-708.** No funeral establishment or funeral director who relies in good faith upon the instructions of a person claiming the right of disposition shall be subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with the instructions unless the funeral establishment or funeral director knew or had reason to know that the person did not have the right of disposition.

**SECTION 3.** This act shall take effect upon becoming a law, the public welfare requiring it.