

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL  
No. 1304 Session of  
1997

INTRODUCED BY ROBERTS AND MANDERINO, APRIL 14, 1997

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED,  
NOVEMBER 18, 1997

AN ACT

1 Amending Title ~~23 (Domestic Relations)~~ 20 (DECEDENTS, ESTATES <—  
2 AND FIDUCIARIES) of the Pennsylvania Consolidated Statutes,  
3 providing for disposition of remains of a deceased party to <—  
4 divorce action.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Title ~~23~~ 20 OF THE PENNSYLVANIA CONSOLIDATED <—  
8 STATUTES is amended by adding a section to read:

9 ~~§ 3310. Disposition of remains of deceased party to divorce~~ <—  
10 ~~action.~~

11 ~~If a party to an action for divorce should become deceased~~  
12 ~~prior to the final entry of an order for divorce, the parents or~~  
13 ~~children or other persons related by consanguinity, unless~~  
14 ~~otherwise directed by a will entered into probate, shall have~~  
15 ~~standing to institute a single action relating to the~~  
16 ~~disposition and interment of the body of the deceased party.~~

17 § 305. RIGHT TO DISPOSE OF A DECEDENT'S REMAINS. <—

1     (A) GENERAL RULE.--THE DETERMINATION OF THE FINAL  
2     DISPOSITION OF A DECEDENT'S REMAINS SHALL BE AS SET FORTH IN  
3     THIS SECTION UNLESS OTHERWISE SPECIFICALLY PROVIDED BY WAIVER  
4     AND AGREEMENT OF THE PERSON ENTITLED TO MAKE SUCH DETERMINATION  
5     UNDER THIS SECTION, SUBJECT TO THE PROVISIONS OF A VALID WILL  
6     EXECUTED BY THE DECEDENT.

7     (B) DISPOSITION OF THE REMAINS OF A DECEASED SPOUSE.--ABSENT  
8     AN ALLEGATION OF ENDURING ESTRANGEMENT, INCOMPETENCE, CONTRARY  
9     INTENT, OR WAIVER AND AGREEMENT, WHICH IS PROVEN BY CLEAR AND  
10    CONVINCING EVIDENCE, A SURVIVING SPOUSE SHALL HAVE THE SOLE  
11    AUTHORITY IN ALL MATTERS PERTAINING TO THE DISPOSITION OF THE  
12    REMAINS OF THE DECEDENT.

13    (C) DISPOSITION OF THE REMAINS OF OTHERS.--IF THERE IS NOT A  
14    SURVIVING SPOUSE, ABSENT AN ALLEGATION OF ENDURING ESTRANGEMENT,  
15    INCOMPETENCE, CONTRARY INTENT, OR WAIVER AND AGREEMENT, WHICH IS  
16    PROVEN BY CLEAR AND CONVINCING EVIDENCE, THE NEXT OF KIN SHALL  
17    HAVE SOLE AUTHORITY IN ALL MATTERS PERTAINING TO THE DISPOSITION  
18    OF THE REMAINS OF THE DECEDENT.

19    (D) PROCEDURE.--WHERE A PETITION ALLEGING ENDURING  
20    ESTRANGEMENT, INCOMPETENCE, CONTRARY INTENT, OR WAIVER AND  
21    AGREEMENT, IS MADE WITHIN 48 HOURS OF THE DEATH OR DISCOVERY OF  
22    THE BODY OF THE DECEDENT, WHICHEVER IS LATER, A COURT MAY ORDER  
23    THAT NO FINAL DISPOSITION OF THE DECEDENT'S REMAINS TAKE PLACE  
24    UNTIL A FINAL DETERMINATION IS MADE ON THE PETITION. NOTICE TO  
25    EACH PERSON WITH EQUAL OR HIGHER PRECEDENCE THAN THE PETITIONER  
26    TO THE RIGHT TO DISPOSE OF THE DECEDENT'S REMAINS, AND TO HIS  
27    ATTORNEY IF KNOWN, AND TO THE FUNERAL HOME OR OTHER INSTITUTION  
28    WHERE THE BODY IS BEING HELD, MUST BE PROVIDED CONCURRENTLY WITH  
29    THE FILING OF THE PETITION. A SUITABLE BOND MAY BE REQUIRED BY  
30    THE COURT.

1           (1) IF THE COURT DETERMINES THAT CLEAR AND CONVINCING  
2           EVIDENCE ESTABLISHES ENDURING ESTRANGEMENT, INCOMPETENCE,  
3           CONTRARY INTENT, OR WAIVER AND AGREEMENT, THE COURT SHALL  
4           ENTER AN APPROPRIATE ORDER REGARDING THE FINAL DISPOSITION,  
5           WHICH MAY INCLUDE APPOINTING AN ATTORNEY IN FACT TO ARRANGE  
6           THE FINAL DISPOSITION, WITH REASONABLE COSTS CHARGEABLE TO  
7           THE ESTATE.

8           (2) IF TWO OR MORE PERSONS WITH EQUAL STANDING AS NEXT  
9           OF KIN DISAGREE ON DISPOSITION OF THE DECEDENT'S REMAINS, THE  
10          AUTHORITY TO DISPOSE SHALL BE DETERMINED BY THE COURT, WITH  
11          PREFERENCE GIVEN TO THE PERSON WHO HAD THE CLOSEST  
12          RELATIONSHIP WITH THE DECEASED.

13          (3) IF THE COURT DETERMINES THAT THE PETITION IS NOT  
14          SUPPORTED BY A CLEAR AND CONVINCING EVIDENCE, THE COURT MAY  
15          AWARD ATTORNEY FEES. AN AWARD OF ATTORNEY FEES SHALL  
16          CONSTITUTE A SET-OFF AGAINST ANY CLAIM BY THE PETITIONER  
17          AGAINST THE ESTATE.

18          (E) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
19          WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
20          SUBSECTION:

21          "CONTRARY INTENT." AN EXPLICIT AND SINCERE EXPRESSION,  
22          EITHER VERBAL OR WRITTEN, OF A DECEDENT ADULT OR EMANCIPATED  
23          MINOR PRIOR TO DEATH, AND NOT SUBSEQUENTLY REVOKED, THAT A  
24          PERSON OTHER THAN THE ONE AUTHORIZED BY THIS SECTION DETERMINE  
25          THE FINAL DISPOSITION OF HIS REMAINS.

26          "ENDURING ESTRANGEMENT." A PHYSICAL AND EMOTIONAL SEPARATION  
27          FROM THE DECEASED AT THE TIME OF DEATH OF THE PERSON AUTHORIZED  
28          BY THIS SECTION TO DETERMINE THE FINAL DISPOSITION OF THE  
29          DECEDENT'S REMAINS, WHICH HAS EXISTED FOR A PERIOD OF TIME THAT  
30          CLEARLY DEMONSTRATES AN ABSENCE OF DUE AFFECTION, TRUST AND

1 REGARD FOR THE DECEASED.

2 "NEXT OF KIN." THE SPOUSE AND RELATIVES BY BLOOD OF THE  
3 DECEASED IN ORDER THAT THEY BE AUTHORIZED TO SUCCEED TO THE  
4 DECEASED'S ESTATE UNDER CHAPTER 21 (RELATING TO INTESTATE  
5 SUCCESSION) AS LONG AS THE PERSON IS AN ADULT OR AN EMANCIPATED  
6 MINOR.

7 Section 2. This act shall take effect in 60 days.