

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2191 Session of 2010

INTRODUCED BY COHEN, BOBACK, BELFANTI, GEORGE, JOSEPHS,
CALTAGIRONE, BEAR, CASORIO, CREIGHTON, EVERETT, GEIST,
GOODMAN, HARHAI, HARKINS, HENNESSEY, HORNAMAN, MAHONEY,
MIRABITO, MURT, SIPTROTH, K. SMITH, SOLOBAY, VULAKOVICH,
WATERS, YOUNGBLOOD AND KILLION, JANUARY 5, 2010

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 5, 2010

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 right to dispose of a decedent's remains.

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

6 Section 1. Section 305 of Title 20 of the Pennsylvania
7 Consolidated Statutes is amended to read:

8 § 305. Right to dispose of a decedent's remains.

9 (a) General rule.--The determination of the final
10 disposition of a decedent's remains shall be as set forth in
11 this section unless otherwise specifically provided by DD Form
12 93 or waiver and agreement of the person entitled to make such
13 determination under this section, subject to the provisions of a
14 valid will executed by the decedent and section 8611(a)
15 (relating to persons who may execute anatomical gift).

16 (b) Disposition of the remains of a deceased spouse.--Absent
17 an allegation of enduring estrangement, incompetence, contrary

1 intent or waiver and agreement which is proven by clear and
2 convincing evidence, a surviving spouse shall have the sole
3 authority in all matters pertaining to the disposition of the
4 remains of the decedent.

5 (c) Disposition of the remains of others.--If there is not a
6 surviving spouse, absent an allegation of enduring estrangement,
7 incompetence, contrary intent or waiver and agreement which is
8 proven by clear and convincing evidence, the next of kin shall
9 have sole authority in all matters pertaining to the disposition
10 of the remains of the decedent.

11 (d) Procedure.--Where a petition alleging enduring
12 estrangement, incompetence, contrary intent or waiver and
13 agreement is made within 48 hours of the death or discovery of
14 the body of the decedent, whichever is later, a court may order
15 that no final disposition of the decedent's remains take place
16 until a final determination is made on the petition. Notice to
17 each person with equal or higher precedence than the petitioner
18 to the right to dispose of the decedent's remains and to his
19 attorney if known and to the funeral home or other institution
20 where the body is being held must be provided concurrently with
21 the filing of the petition. A suitable bond may be required by
22 the court.

23 (1) If the court determines that clear and convincing
24 evidence establishes enduring estrangement, incompetence,
25 contrary intent or waiver and agreement, the court shall
26 enter an appropriate order regarding the final disposition
27 which may include appointing an attorney in fact to arrange
28 the final disposition, with reasonable costs chargeable to
29 the estate.

30 (2) If two or more persons with equal standing as next

1 of kin disagree on disposition of the decedent's remains, the
2 authority to dispose shall be determined by the court, with
3 preference given to the person who had the closest
4 relationship with the deceased.

5 (3) If the court determines that the petition is not
6 supported by a clear and convincing evidence, the court may
7 award attorney fees. An award of attorney fees shall
8 constitute a setoff against any claim by the petitioner
9 against the estate.

10 (e) Definitions.--As used in this section, the following
11 words and phrases shall have the meanings given to them in this
12 subsection:

13 "Contrary intent." An explicit and sincere expression,
14 either verbal or written, of a decedent adult or emancipated
15 minor prior to death and not subsequently revoked that a person
16 other than the one authorized by this section determine the
17 final disposition of his remains.

18 "DD Form 93." A valid document or a successor form provided
19 by the Department of Defense that is signed by a member of the
20 armed services and designates a person to direct the disposition
21 of the remains of the person who signed the form.

22 "Enduring estrangement." A physical and emotional separation
23 from the deceased at the time of death of the person authorized
24 by this section to determine the final disposition of the
25 decedent's remains, which has existed for a period of time that
26 clearly demonstrates an absence of due affection, trust and
27 regard for the deceased.

28 "Next of kin." The spouse and relatives by blood of the
29 deceased in order that they be authorized to succeed to the
30 deceased's estate under Chapter 21 (relating to intestate

1 succession) as long as the person is an adult or an emancipated
2 minor.

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