

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2840 Session of
2004

INTRODUCED BY FRANKEL, BEBKO-JONES, JAMES, LAUGHLIN, LEACH,
LEDERER, LEVDANSKY, MUNDY, NICKOL, PISTELLA, ROONEY, STURLA,
THOMAS, WEBER, WHEATLEY AND JOSEPHS, SEPTEMBER 8, 2004

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 8, 2004

AN ACT

1 Amending Titles 20 (Decedents, Estates and Fiduciaries) and 23
2 (Domestic Relations) of the Pennsylvania Consolidated
3 Statutes, further providing for right to dispose of
4 decedent's remains; providing for persons authorized to make
5 medical decisions; further providing for persons who may
6 execute anatomical gift, for rights and duties at death, for
7 The Governor Robert P. Casey Memorial Organ and Tissue
8 Donation Awareness Trust Fund and for confidentiality of
9 organ donor information; and providing for life partnerships,
10 for life partnership forms and records for fees, for
11 termination of life partnerships, for medical facility
12 visitation and for rights during medical emergencies.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

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

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

18 (a) General rule.--The determination of the final
19 disposition of a decedent's remains shall be as set forth in
20 this section unless otherwise specifically provided by waiver
21 and agreement of the person entitled to make such determination
22 under this section, subject to the provisions of a valid will

1 executed by the decedent and section 8611(a) (relating to
2 persons who may execute anatomical gift).

3 (b) Disposition of the remains of a deceased spouse or life
4 partner.--Absent an allegation of enduring estrangement,
5 incompetence, contrary intent or waiver and agreement which is
6 proven by clear and convincing evidence, a surviving spouse or
7 life partner shall have the sole authority in all matters
8 pertaining to the disposition of the remains of the decedent.

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

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

27 (1) If the court determines that clear and convincing
28 evidence establishes enduring estrangement, incompetence,
29 contrary intent or waiver and agreement, the court shall
30 enter an appropriate order regarding the final disposition

1 which may include appointing an attorney in fact to arrange
2 the final disposition, with reasonable costs chargeable to
3 the estate.

4 (2) If two or more persons with equal standing as next
5 of kin disagree on disposition of the decedent's remains, the
6 authority to dispose shall be determined by the court, with
7 preference given to the person who had the closest
8 relationship with the deceased.

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

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

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

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. Title 20 is amended by adding a section to read:
4 § 5417. Persons authorized to make medical decisions.

5 If a person has not named a surrogate in accordance with
6 section 5404 (relating to declaration) or an agent to make
7 medical decisions in accordance with Chapter 56 (relating to
8 powers of attorney), the following individuals or groups, in the
9 specified order of priority, may make decisions about health
10 care for a person who has been determined by the attending
11 physician to be incompetent:

12 (1) A guardian of the person, if one has been appointed.

13 (2) The person's spouse or life partner.

14 (3) Adult children of the person.

15 (4) The parents of the person.

16 (5) Adult siblings of the person.

17 Section 3. Sections 8611, 8616, 8622(b) and 8623 of Title 20
18 are amended to read:

19 § 8611. Persons who may execute anatomical gift.

20 (a) General rule.--Any individual of sound mind and 18 years
21 of age or more may give all or any part of his body for any
22 purpose specified in section 8612 (relating to persons who may
23 become donees; purposes for which anatomical gifts may be made),
24 the gift to take effect upon death. Any agent acting under a
25 power of attorney which authorizes the agent to make anatomical
26 gifts may effectuate a gift for any purpose specified in section
27 8612. Any individual who is a minor and 16 years of age or older
28 may effectuate a gift for any purpose specified in section 8612,
29 provided parental or guardian consent is deemed given. Parental
30 or guardian consent shall be noted on the minor's donor card,

1 application for the donor's learner's permit or driver's license
2 or other document of gift. A gift of the whole body shall be
3 invalid unless made in writing at least 15 days prior to the
4 date of death or consent is obtained from the life partner, if
5 any, and legal next of kin. Where there are adult children of
6 the deceased who are not children of the surviving spouse or
7 life partner, their consent shall also be required for a gift of
8 the whole body for anatomical study.

9 (b) Others entitled to donate anatomy of decedent.--Any of
10 the following persons, in order of priority stated, when persons
11 in prior classes are not available at the time of death, and in
12 the absence of actual notice of contrary indications by the
13 decedent or actual notice of opposition by a member of the same
14 or a prior class, may give all or any part of the decedent's
15 body for any purpose specified in section 8612:

16 (1) The spouse or life partner.

17 (2) An adult son or daughter.

18 (3) Either parent.

19 (4) An adult brother or sister.

20 (5) A guardian of the person of the decedent at the time
21 of his death.

22 (6) Any other person authorized or under obligation to
23 dispose of the body.

24 (c) Donee not to accept in certain cases.--If the donee has
25 actual notice of contrary indications by the decedent or that a
26 gift by a member of a class is opposed by a member of the same
27 or a prior class, the donee shall not accept the gift. The
28 persons authorized by subsection (b) may make the gift after or
29 immediately before death.

30 (d) Examinations.--A gift of all or part of a body

1 authorizes any examination necessary to assure medical
2 acceptability of the gift for the purposes intended.

3 (e) Rights of donee paramount.--The rights of the donee
4 created by the gift are paramount to the rights of others except
5 as provided by section 8616(d) (relating to rights and duties at
6 death).

7 § 8616. Rights and duties at death.

8 (a) Donees and relatives.--The donee may accept or reject
9 the gift. If the donee accepts a gift of the entire body, he
10 shall, subject to the terms of the gift, authorize embalming and
11 the use of the body in funeral services if the surviving spouse,
12 life partner or next of kin as determined in section 8611(b)
13 (relating to persons who may execute anatomical gift) requests
14 embalming and use of the body for funeral services. If the gift
15 is of a part of the body, the donee, upon the death of the donor
16 and prior to embalming, shall cause the part to be removed
17 without unnecessary mutilation. After removal of the part,
18 custody of the remainder of the body vests in the surviving
19 spouse, life partner, next of kin or other persons under
20 obligation to dispose of the body.

21 (b) Physicians.--The time of death shall be determined by a
22 physician who tends the donor at his death or, if none, the
23 physician who certifies the death. The physician or person who
24 certifies death or any of his professional partners or
25 associates shall not participate in the procedures for removing
26 or transplanting a part.

27 (c) Certain liability limited.--A person who acts in good
28 faith in accordance with the terms of this subchapter or with
29 the anatomical gift laws of another state or a foreign country
30 is not liable for damages in any civil action or subject to

1 prosecution in any criminal proceeding for his act.

2 (d) Law on autopsies applicable.--The provisions of this
3 subchapter are subject to the laws of this Commonwealth
4 prescribing powers and duties with respect to autopsies.

5 § 8622. The Governor Robert P. Casey Memorial Organ and Tissue
6 Donation Awareness Trust Fund.

7 * * *

8 (b) Appropriation.--All moneys deposited in the fund and
9 interest which accrues from those funds are appropriated on a
10 continuing basis subject to the approval of the Governor to
11 compensate the Department of Transportation, the Department of
12 Health and the Department of Revenue for actual costs related to
13 implementation of this chapter, including all costs of the Organ
14 Donation Advisory Committee created in subsection (c). Any
15 remaining funds are appropriated subject to the approval of the
16 Governor for the following purposes:

17 (1) 10% of the total fund may be expended annually by
18 the Department of Health for reasonable hospital and other
19 medical expenses, funeral expenses and incidental expenses
20 incurred by the donor or donor's family in connection with
21 making a vital organ donation. Such expenditures shall not
22 exceed \$3,000 per donor and shall only be made directly to
23 the funeral home, hospital or other service provider related
24 to the donation. No part of the fund shall be transferred
25 directly to the donor's family, life partner, next of kin or
26 estate. The advisory committee shall develop procedures,
27 including the development of a pilot program, necessary for
28 effectuating the purposes of this paragraph.

29 (2) 50% may be expended for grants to certified organ
30 procurement organizations for the development and

1 implementation of organ donation awareness programs in this
2 Commonwealth. The Department of Health shall develop and
3 administer this grant program, which is hereby established.

4 (3) 15% may be expended by the Department of Health, in
5 cooperation with certified organ procurement organizations,
6 for the Project-Make-A-Choice program, which shall include
7 information pamphlets designed by the Department of Health
8 relating to organ donor awareness and the laws regarding
9 organ donation, public information and public education about
10 contributing to the fund when obtaining or renewing a
11 driver's license and when completing a State individual
12 income tax return form.

13 (4) 25% may be expended by the Department of Education
14 for the implementation of organ donation awareness programs
15 in the secondary schools in this Commonwealth.

16 * * *

17 § 8623. Confidentiality requirement.

18 The identity of the donor and of the recipient may not be
19 communicated unless expressly authorized by the recipient, life
20 partner, if any, and next of kin of the decedent.

21 Section 4. Part II of Title 23 is amended by adding a
22 chapter to read:

23 CHAPTER 20

24 LIFE PARTNERSHIPS

25 Sec.

26 2001. Definitions.

27 2002. Certificate of life partnership.

28 2003. Qualifications for certificate of life partnership.

29 2004. Forms.

30 2005. Declaration of life partnership.

1 2006. Issuance of certificate of life partnership.
2 2007. Fees.
3 2008. Records.
4 2009. Termination of life partnership.
5 2010. Effect of termination.
6 2011. Medical facility visitation.
7 2012. Rights during medical emergencies.
8 2013. Other jurisdictions.
9 § 2001. Definitions.

10 The following words and phrases when used in this chapter
11 shall have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Certificate of life partnership." A certificate issued by
14 the Secretary of Health establishing a life partnership and
15 authorizing the life partners to claim the benefits of a life
16 partnership.

17 "Common residence." The shared place where both life
18 partners live. A life partner may have an additional residence.
19 A life partner's temporary departure from the common residence
20 with the intent to return shall not change the common residence.

21 "Department." The Department of Health of the Commonwealth.

22 "Life partner." A member of a life partnership that is
23 certified in accordance with this chapter.

24 "Mutual interdependence." Each life partner in a
25 relationship contributes to the maintenance and support of the
26 other life partner and the relationship. The life partners are
27 not required to contribute equally to the relationship.

28 "Secretary." The Secretary of Health of the Commonwealth.

29 § 2002. Certificate of life partnership.

30 (a) General rule.--A life partnership is not established and

1 an individual may not claim the benefits of a life partnership
2 unless the individual has been issued a certificate of life
3 partnership by the secretary.

4 (b) Penalty.--An individual who violates this section
5 commits a misdemeanor and upon conviction is subject to a fine
6 of \$100.

7 § 2003. Qualifications for certificate of life partnership.

8 To qualify for a certificate of life partnership, the
9 applicants shall meet all the following requirements:

10 (1) Each individual is at least 18 years of age or
11 older.

12 (2) The individuals are not within the prohibited
13 degrees of consanguinity under section 1304(e) (relating to
14 restrictions on issuance of license).

15 (3) Neither individual is married nor is a member of a
16 civil union nor domestic partnership with another individual.

17 (4) The individuals agree to be in a relationship of
18 mutual interdependence.

19 (5) The individuals share a common residence.

20 § 2004. Forms.

21 (a) Development of forms.--The secretary shall develop a
22 form for a declaration of life partnership, certificate of life
23 partnership and a notice of termination of life partnership. The
24 forms shall be uniform throughout this Commonwealth.

25 (b) Availability.--The declaration of life partnership,
26 certificate of life partnership and notice of termination of
27 life partnership shall be provided by each county and by the
28 department.

29 § 2005. Declaration of life partnership.

30 (a) Contents.--The declaration of life partnership shall

1 require the applicants seeking designation as a life partner to:

2 (1) provide their full names, occupations, birthplaces,
3 ages and residences; and

4 (2) verify that each individual meets the requirements
5 of section 2003 (relating to qualifications for certificate
6 of life partnership).

7 (b) Execution.--The declaration of life partnership shall be
8 signed by both applicants and acknowledged by a notary public.

9 (c) Filing.--Declarations of life partnership shall be filed
10 in the county of residence of either applicant and docketed as
11 public records.

12 (d) Waiting period.--An individual who has previously filed
13 a declaration of life partnership may not file a new declaration
14 of life partnership until 90 days after the date of filing of a
15 notice of termination of life partnership for the prior life
16 partnership.

17 § 2006. Issuance of certificate of life partnership.

18 The certificate of life partnership shall be issued by the
19 county in which the declaration is filed if it appears from the
20 properly completed declaration of life partnership on behalf of
21 the applicants that there is no legal objection to the life
22 partnership.

23 § 2007. Fees.

24 (a) General rule.--The fee to be charged for issuing a
25 certificate of life partnership shall be \$3 of which \$2.50 shall
26 be retained by the county wherein the certificate is issued and
27 50¢ shall be remitted to the Commonwealth.

28 (b) Transmitting Commonwealth moneys.--All moneys collected
29 under this section for the Commonwealth shall be transmitted to
30 the State Treasurer no later than the tenth day of the following

1 month.

2 § 2008. Records.

3 (a) Filing transcript of record.--The county shall furnish
4 the department, not later than the 15th day of each month, with
5 a transcript or record of each certificate of life partnership
6 issued.

7 (b) Forms.--The transcripts or records required to be
8 furnished shall be made on forms prepared and furnished by the
9 department and shall contain such information as the department
10 may require.

11 (c) Confidentiality.--The records furnished to the
12 department under this section shall not be open to public
13 inspection.

14 § 2009. Termination of life partnership.

15 (a) General rule.--A life partnership shall terminate:

16 (1) on the death of a life partner; or

17 (2) when a notice of termination of life partnership has
18 been filed.

19 (b) Continuation of rights upon death.--Notwithstanding the
20 provisions of subsection (a), the postdeath rights conferred to
21 a life partner shall not terminate upon the death of a life
22 partner.

23 (c) Filing.--Within 90 days of the dissolution of a life
24 partnership, at least one member of the life partnership shall
25 file in the county of residence of the life partners a notice of
26 termination of life partnership.

27 (d) Service.--Within five days of filing the notice of
28 termination of life partnership, the life partner shall send, by
29 certified mail, a copy of the notice to the other life partner's
30 last known address.

1 § 2010. Effect of termination.

2 (a) General rule.--Any benefit or right offered by a third
3 party that a life partner claims as a result of a life
4 partnership shall immediately terminate on filing of the
5 termination of a life partnership.

6 (b) Notice.--Upon filing a termination of life partnership,
7 a life partner shall give or send to the third party written
8 notification that the life partnership has been terminated.

9 (c) Damages.--A third party who suffers a loss as a result
10 of the failure of a life partner to notify the third party of
11 the termination of a life partnership is entitled to recover any
12 actual damages.

13 § 2011. Medical facility visitation.

14 (a) General rule.--A hospital, related institution and
15 residential treatment center shall allow a patient's life
16 partner, the children of the patient's life partner and the life
17 partner of the patient's parent or child to visit the patient
18 unless:

19 (1) no visitors are allowed;

20 (2) the facility reasonably determines that the presence
21 of a particular visitor would endanger the health or safety
22 of a patient or member of the facility staff; or

23 (3) the patient tells the facility staff that the
24 patient does not want the individual to visit.

25 (b) Restrictions on visitation.--This section does not
26 prohibit a hospital, related institution or residential
27 treatment center from establishing reasonable restrictions upon
28 visitation, including restrictions on the hours of visitation
29 and number of visitors.

30 (c) Emergency medical transport.--In accordance with

1 reasonable emergency medical transport policies, an ill or
2 injured person's life partner shall be permitted to accompany
3 the person in an emergency vehicle.

4 § 2012. Rights during medical emergencies.

5 In the case of the following medical emergencies, two adults
6 shall be treated as life partners if one of the adults in good
7 faith tells the emergency medical provider or hospital personnel
8 that the adults are in a mutually interdependent relationship:

9 (1) in accordance with emergency medical services
10 transport policies, allowing one adult to accompany the ill
11 or injured adult being transported to a hospital in an
12 emergency vehicle; and

13 (2) visitation with the ill or injured adult admitted to
14 a hospital on the same basis as a member of the ill or
15 injured adult's immediate family.

16 § 2013. Other jurisdictions.

17 The establishment of a life partnership registry in this
18 Commonwealth may not be construed to recognize, condone or
19 prohibit a domestic partnership, civil union or marriage between
20 two individuals of the same sex entered into in another state or
21 jurisdiction.

22 Section 5. This act shall take effect in 60 days.