

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 529

Short Title: Limit Health Care Power of Attorney. (Public)

Sponsors: Representative Alexander.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Health, if favorable, Judiciary 1, if favorable, Rules, Calendar, and Operations of the House

March 30, 2023

A BILL TO BE ENTITLED

AN ACT PROHIBITING HEALTH CARE AGENTS FROM AMENDING FUNERAL ARRANGEMENTS SPECIFIED IN PRENEED FUNERAL CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 32A-19 is amended by adding a new subsection to read:

"(g) A health care power of attorney does not authorize a health care agent to change the funeral arrangements or performing funeral establishment specified in a preneed funeral contract purchased by or on behalf of the principal."

SECTION 2. G.S. 90-210.63A is amended by adding a new subsection to read:

"(d) Notwithstanding any provision of this section, a person appointed as the preneed contract beneficiary's health care agent, as defined in G.S. 32A-16, shall not change the arrangements or performing funeral establishment specified in the preneed funeral contract. If the performing funeral establishment designated in the preneed funeral contract is not in business at the time of the contract beneficiary's death, a competent person designated in sub-subdivision (a)(2)a. of G.S. 90-210.124, to be selected in the priority order listed in the statute, shall designate a funeral establishment to perform the funeral services."

SECTION 3. G.S. 90-210.124 reads as rewritten:

"§ 90-210.124. **Authorizing agent.**

(a) The following person, in the priority list below, shall have the right to serve as an "authorizing agent":

(1) An individual at least 18 years of age may authorize the type, place, and method of disposition of the individual's own dead body by methods provided under G.S. 130A-420(a). An individual may delegate ~~his or her~~ the right to dispose of his or her own body to any person by one of the methods provided under G.S. 130A-420(a1). When an individual has authorized his or her own cremation and disposition in accordance with this subsection, the individual or institution designated by that individual shall act as the authorizing agent for that individual.

(2) If a decedent has left no written authorization for the cremation and disposition of the decedent's body as permitted under subdivision (1) of this subsection, the following competent persons in the order listed may authorize the type, method, place, cremation, and disposition of the decedent's body:

a. The surviving spouse.



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- 1 b. A majority of the surviving children who are at least 18 years of age
2 and can be located after reasonable efforts.
- 3 c. The surviving parents.
- 4 d. A majority of the surviving siblings who are at least 18 years of age
5 and can be located after reasonable efforts.
- 6 e. A majority of the persons in the classes of the next degrees of kinship,
7 in descending order, who, under State law, would inherit the
8 decedent's estate if the decedent died intestate who are at least 18 years
9 of age and can be located after reasonable efforts.
- 10 f. A person who has exhibited special care and concern for the decedent
11 and is willing and able to make decisions about the cremation and
12 disposition.
- 13 g. In the case of indigents or any other individuals whose final disposition
14 is the responsibility of the State or any of its instrumentalities, a public
15 administrator, medical examiner, coroner, State-appointed guardian,
16 or any other public official charged with arranging the final disposition
17 of the decedent may serve as the authorizing agent.
- 18 h. In the case of individuals who have donated their bodies to science or
19 whose death occurred in a nursing home or private institution and in
20 which the institution is charged with making arrangements for the final
21 disposition of the decedent, a representative of such institution may
22 serve as the authorizing agent in the absence of any of the above.
- 23 i. In the absence of any of the above, any person willing to assume
24 responsibility as authorizing agent, as specified in this act.

25 (a1) This subsection-Subsection (a) of this section does not grant to any person the right
26 to cancel any of the following rights:

- 27 (1) The right of any person to cancel a preneed funeral contract executed pursuant
28 to Article 13D of Chapter 90 of the General Statutes or to cause Statutes.
- 29 (2) The right of any person to cause or prohibit the substitution of a preneed
30 licensee as authorized under G.S. 90-210.63 or permit G.S. 90-210.63.
- 31 (3) The right of any person to permit modification of preneed contracts under
32 G.S. 90-210.63A.
- 33 (4) The right of a health care agent, as defined in G.S. 32A-16, to change the
34 funeral arrangements or performing funeral establishment specified in a
35 preneed contract purchased by or on behalf of the principal, as defined in
36 G.S. 32A-16.

37 (a2) If a person under this-listed in subsection (a) of this section is incompetent at the time
38 of the decedent's death, the person shall be treated as if he or she predeceased the decedent. An
39 attending physician may certify the incompetence of a person and the certification shall apply to
40 the rights under this-listed in subsection (a) of this section only. Any person under this-listed in
41 subsection (a) of this section may waive his or her rights under this-subsection (a) of this section
42 by any written statement notarized by a notary public or signed by two witnesses.

43 (b) A person who does not exercise ~~his or her~~ the right to dispose of the decedent's body
44 under subdivision (a)(2) of this section within five days ~~of~~ after notification or 10 days from the
45 date of death, whichever is earlier, shall be deemed to have waived ~~his or her~~ the right to authorize
46 disposition of the decedent's body or to contest disposition in accordance with this section.
47 Pursuant to G.S. 130A-415(c) or (j), upon such a waiver, and upon the Commissioner of
48 Anatomy declining or failing to request delivery of the dead body, the director of social services
49 having the duty to dispose of the human remains shall become vested with all interests and rights
50 to the dead body and shall authorize and arrange for disposition, including cremation.

1 (c) An individual at least 18 years of age may, in a writing signed by the individual,
2 authorize the cremation and disposition of one or more of the individual's body parts that has
3 been or will be removed. If the individual does not authorize the cremation and disposition, a
4 person listed in subdivision (a)(2) of this section may authorize the cremation and disposition as
5 if the individual were deceased.

6 (d) This section does not apply to the disposition of dead human bodies as anatomical
7 gifts under Part 3A of Article 16 of Chapter 130A of the General Statutes or the right to perform
8 autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

9 **SECTION 4.** This act becomes effective October 1, 2023.