

Right Of Disposition Bill/ Funeral, Burial or Cremation Arrangements (H.B. 426)

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As persons live longer, complications have been arising concerning funeral arrangements. There may be children from a long-term first marriage. After the death of a spouse or a divorce, the parent remarries. Upon the death of the parent, the second spouse and the children from the first marriage may differ concerning funeral arrangements. Issues that cause concern may include religious observances at the funeral, selection of the gravesite for burial, or cremation rather than burial. Several states have addressed this problem by enacting laws designed to resolve such controversies. H.B. 426 addresses funeral, burial or cremation arrangements and has been referred to as the Right of Disposition Bill.

H.B. 426 authorizes a person to designate an agent or representative to make funeral, burial or cremation (hereinafter referred to generally as "funeral") arrangements in a written document.

If the person does not designate an agent to make funeral arrangements, then a prioritized enumeration of persons that may make the funeral arrangements is set forth. The first person permitted to make the funeral arrangements is the decedent's surviving spouse, otherwise adult children, otherwise parents, otherwise siblings, otherwise next of kin, otherwise the guardian of the person, otherwise any other person willing to assume the responsibilities who could be a clergy person.

Safeguards are provided in case the person who otherwise would have the right to make funeral arrangements is not an appropriate person. The safeguards include the person being disqualified to make funeral arrangements if the person is being charged with murder, manslaughter, or domestic violence related to the decedent. Also, the person must act in a timely manner. The right of disposition granted to a spouse is lost if a divorce action is pending at the time of the decedent's death. The Probate Court has the right to deny a person estranged from the decedent the right to make funeral arrangements.

The person that assumes the right to make the funeral arrangements is responsible for paying the expenses of the funeral. To provide a degree of protection to the person assuming the responsibility to make funeral arrangements, and who advances the funds for the funeral arrangements, the existing priority as a claim against the probate assets of the decedent's estate for such expenses is increased from an aggregate amount of \$3,000 to \$7,000. Also, H.B. 426 adds a provision requested by the funeral directors to clarify the status of purchased irrevocable preneed funeral contracts.

The preceding represents new provisions of the Ohio Revised Code. Existing provisions of the Ohio Revised Code must be modified to conform to the new funeral arrangements statutes. The proposed Bill makes conforming changes to other provisions of the Ohio Revised Code and, specifically, those

related to disinterment, jurisdiction of the Probate Court, consent to an autopsy, duties of the guardian of a person, and cremation decisions.

H.B. 426 is pending in the Ohio House Judiciary Committee as of January 25, 2006. For more information on this legislation, please contact Jeffrey L. Weiler, Esq., OH St Bar Assoc. Certified Specialist in Estate Planning, Trust and Probate Law; Fla. Bar Board Certified Tax Specialist; Benesch, Friedlander, Coplan & Aronoff LLP, 2300 BP Tower, 200 Public Square Cleveland, Ohio 44114; Phone: (216) 363-4551; Fax: (216) 363-4588; Jweiler@bfca.com