

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 628

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

Sponsors: Representatives Alexander and Hunter (Primary Sponsors).

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

Referred to: Judiciary I

April 10, 2017

1 A BILL TO BE ENTITLED
2 AN ACT PROHIBITING HEALTH CARE AGENTS FROM AMENDING FUNERAL
3 ARRANGEMENTS SPECIFIED IN PRENEED FUNERAL CONTRACTS.

4 The General Assembly of North Carolina enacts:

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

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

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

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

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

18 "**§ 90-210.124. Authorizing agent.**

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

21 (1) An individual at least 18 years of age may authorize the type, place, and
22 method of disposition of the individual's own dead body by methods
23 provided under G.S. 130A-420(a). An individual may delegate ~~his or her~~ the
24 right to dispose of his or her own body to any person by one of the methods
25 provided under G.S. 130A-420(a1).

26 When an individual has authorized his or her own cremation and
27 disposition in accordance with this subsection, the individual or institution
28 designated by that individual shall act as the authorizing agent for that
29 individual.

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

35 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
7 kinship, in descending order, who, under State law, would inherit the
8 decedent's estate if the decedent died intestate who are at least 18
9 years of age and can be located after reasonable efforts.
- 10 f. A person who has exhibited special care and concern for the
11 decedent and is willing and able to make decisions about the
12 cremation and disposition.
- 13 g. In the case of indigents or any other individuals whose final
14 disposition is the responsibility of the State or any of its
15 instrumentalities, a public administrator, medical examiner, coroner,
16 State-appointed guardian, or any other public official charged with
17 arranging the final disposition of the decedent may serve as the
18 authorizing agent.
- 19 h. In the case of individuals who have donated their bodies to science or
20 whose death occurred in a nursing home or private institution and in
21 which the institution is charged with making arrangements for the
22 final disposition of the decedent, a representative of such institution
23 may serve as the authorizing agent in the absence of any of the
24 above.
- 25 i. In the absence of any of the above, any person willing to assume
26 responsibility as authorizing agent, as specified in this act.

27 ~~(a1) This subsection~~ Subsection (a) of this section does not grant to any person the right
28 to cancel any of the following rights:

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

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

47 (b) A person who does not exercise ~~his or her~~ the right to dispose of the decedent's body
48 under subdivision (a)(2) of this section within five days of notification or 10 days from date of
49 death, whichever is earlier, shall be deemed to have waived ~~his or her~~ the right to authorize
50 disposition of the decedent's body or to contest disposition in accordance with this section.

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
5 as 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
8 perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

9 **SECTION 4.** This act becomes effective October 1, 2017.