



KANSAS FUNERAL DIRECTORS ASSOCIATION
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March 7, 2013

To: Senate Federal and State Affairs Committee

From: Larry McElwain
Warren-McElwain Mortuary

Re: Senate Bill No. 221

Chairman Ostmeyer and members of the Committee, I am Larry McElwain of Warren-McElwain Mortuary, Lawrence, Kansas. I am a Kansas licensed funeral director and embalmer. I am here today on behalf of the Kansas Funeral Directors Association (KFDA) to testify in opposition to Senate Bill No. 221. The KFDA represents Kansas funeral directors, embalmers and funeral homes.

Much time and debate was spent on this issue in 2000 when a bill, which is now K.S.A. 65-1734, was introduced and passed by the Kansas Legislature at the KFDA's request. It was thought we reached a balance between the rights of the decedent and those of the family that survives them.

We believe this bill is unnecessary. A person can now, in fact, authorize his or her own cremation by executing a durable power of attorney for health care decisions (K.S.A. 58-625 et seq.) in which they would appoint an agent to carry out their wish to be cremated. K.S.A. 58-629(a) (1) states that a principal may convey to an agent the authority to make decisions concerning disposition of his or her body. The agent would be required follow those instructions even if the family objects. Also, subsection (g) of that statute expressly states that the "death of the principal shall not prohibit or invalidate the acts of the agent in arranging for organ donation, autopsy or disposition of body". This is important because contracts entered into by a person generally end upon their death. The process may be a little more involved than the notarized authorization provision contained in this bill but it does provide more safeguards. A durable power of attorney for health care decision form is contained in the act which can be modified.

The amendment as written also raises other issues. While the wording states that the decedent's authorization of cremation is to be honored and have priority over the wishes of all other persons, does that just pertain to the act of cremation? Does it preclude a person in subsection (a) of K.S.A. 65-1734, including the family, from holding a funeral or memorial service before or after the body has been cremated? Additionally, the cremation authorization would not necessarily state what is to be done with the cremated remains after the body is cremated. Who takes control of the cremated remains? Are they buried, scattered, placed in an urn, or divided amongst family members?

An agent under a durable power of attorney for health care decisions with the right to control disposition, would have the power to make funeral or memorial arrangements, make decisions concerning the disposition of the cremated remains, and provide information for completing a death certificate. Who would have the right to make funeral or memorial arrangements under this bill?

Furthermore, the funeral director would be placed in a difficult position if a person has authorized their own cremation but none of the family members they are dealing after death want to have the body cremated. It could be a lawsuit waiting to happen. At the minimum there needs to be some sort of legal protection for the crematory or funeral home that they will not be subject to a lawsuit from the surviving family. The language in the bill only addresses the cremation and not what happens after the cremation such as what is to be done with the cremated remains, whether a funeral or memorial service can be held, and who provides information for the death certificate. These are decisions the family usually makes. Do those other responsibilities fall to the persons with the right to control disposition listed in subsection (a)?

Although we do appreciate that the bill provides that there has to be a fully funded prearrangement, there is a question as to what is fully funded. Did the deceased put enough money in the prearranged funeral agreement account to fully pay for the cremation and other services selected pursuant to a prepaid funeral agreement? What if the price of cremation changes or they use a different crematory that charges a different fee for their services? If there are not enough funds in a prearranged funeral agreement to cover the expenses of the cremation at time of need and the family disagrees with cremation as a means of disposition, what will happen?

Although we are opposed to this legislation, if it is your wish that it move forward, we would like to have the opportunity to recommend some changes to the bill.

Thank you for the opportunity to testify today. I would be happy to address any questions you may have.