

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 1095 - L.D. 1490

An Act To Amend the Laws Regarding Custody of the Remains of Deceased Persons

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §2843-A, sub-§2, as amended by PL 2009, c. 601, §29, is further amended to read:

2. Custody and control generally. The custody and control of the remains of deceased residents of this State, dead bodies or dead human bodies are governed by the following provisions- in the following order of priority:

A. If the subject has designated a another person to have custody and control in a written and signed document, custody and control belong to that designated person-;

B. If the subject has not left a written and signed document designating a person to have custody and control, or if the person designated by the subject refuses custody and control, custody and control belong to the next of kin-; and

C. If the next of kin is 2 or more persons with the same relationship to the subject, the majority of the next of kin have custody and control. If the next of kin can not, by majority vote, make a decision regarding the subject's remains, the court shall make the decision upon petition under subsection 4, paragraph D.

If a person who has the right of custody and control under this subsection does not exercise the rights and responsibilities of custody and control within 4 days after the death of the subject, custody and control belong to a person from the next lower level of priority as established in paragraphs A to C.

A person who has been charged with murder, as described in Title 17-A, section 201, or manslaughter, as described in Title 17-A, section 203, subsection 1, paragraph B, forfeits the right of custody and control provided under this subsection; and a funeral director or practitioner of funeral service who is aware of the charges may not release the remains or a dead body to that person who has been charged with murder or manslaughter. If the charges against the person are dismissed or the person is acquitted of the charges before the final disposition takes place, the person regains the right of custody and control in the same position of priority established in this subsection.

The remains or a dead body is considered abandoned if no one takes custody and control of the remains or dead body for a period of 15 days. A funeral director or practitioner of funeral service who has physical possession of abandoned remains or an abandoned dead body may bury the remains or dead body. The funeral director or practitioner of funeral service may embalm or refrigerate abandoned remains or an abandoned dead body without authorization. A certificate of abandonment that indicates the means of disposition must be filed in the municipality where the death occurred.

Sec. 2. 22 MRSA §2843-A, sub-§8, as enacted by PL 1993, c. 609, §1, is amended to read:

8. Immunity. A party who, in good faith, acts upon the instructions of the party having custody and control is not liable for having carried out those instructions, may not be held civilly or criminally liable and is not subject to disciplinary action for acting in accordance with those instructions.

Sec. 3. 22 MRSA §2843-A, sub-§10 is enacted to read:

10. Funeral director or practitioner of funeral service. The following provisions apply to the actions and liability of a funeral director or practitioner of funeral service, cemeteries and crematories and their employees.

A. If there is a dispute regarding custody and control, a funeral director or practitioner of funeral service may refuse to accept the remains or dead body, inter or otherwise dispose of the remains or dead body or complete funeral arrangements until the funeral director or practitioner of funeral service is provided with a court order under subsection 4 or a written agreement of the person who has custody and control.

B. If there is a dispute regarding custody and control, pending a court determination under subsection 4 a funeral director or practitioner of funeral service who has physical possession of the remains or a dead body may embalm or refrigerate and shelter the remains or a dead body and may bill the estate of the subject for those costs, plus attorney's fees and court costs.

C. A person who signs a statement of funeral goods and services, cremation authorization form or other authorization for disposition of the remains or a dead body is deemed to warrant the truthfulness of the facts set forth in the document, including but not limited to the existence of custody and control and the identity of the subject.

D. A funeral director or practitioner of funeral service, cemetery or crematory may rely on a statement of funeral goods and services, cremation authorization form or other authorization signed by a person who has custody and control of the remains or a dead body and may carry out the instructions provided for in the statement of funeral goods and services or on the form or authorization unless the funeral director or practitioner of funeral service, cemetery or crematory knows of objections from another person.

E. A funeral director or practitioner of funeral service, cemetery or crematory is not required to independently investigate custody and control of the remains or a dead body or who is next of kin.

In House of Representatives, 2011

Read twice and passed to be enacted.

..... Speaker

In Senate, 2011

Read twice and passed to be enacted.

..... President

Approved 2011

..... Governor