

Approved: Feb. 16, 2011
Date

MINUTES OF THE HOUSE COMMITTEE ON VETERANS, MILITARY AND HOMELAND
SECURITY

The meeting was called to order by Representative Mario Goico, Chairman, at 9:00 a.m. on February 8, 2011 in Room 546-S of the Capitol.

All members were present except:
Representative Holmes - excused

Committee staff present:
Julian Efird, Legislative Research
Dennis Hodgins, Legislative Research
Doug Taylor, Revisor
Ann Deitcher, Committee Assistant

Conferees appearing before the Committee:
Ken Stodgell, State Adjutant/quartermaster, VFW
Pam Scott, Executive Director, Kansas Funeral Directors Association
Martin Dempsey, State Liaison, Western Region
Dept. of Defense State Liaison Office

HB 2060 – Kansas' right to control disposition of a decedent's remains statute.

Chairman Goico called on Ken Stodgell who briefly explained his role with the Veterans of Foreign Wars, (VFW). No written testimony was provided.

Next on the agenda was Pam Scott who explained **HB 2060**, saying that this statute has provided clear and orderly direction on who can make the decision as to who has the right to control disposition of a decedent's remains. (Attachment 1).

Ms Scott said that the amendments proposed in **HB 2060** would change the order of priority which has worked well, by placing at the top of the priority list, the person authorized to direct disposition pursuant to DD Form 93 if the decedent died while in military service.

Saying that the statute has provided clear and orderly direction on who can make those decisions, Ms Scott explained that this was important when you were dealing with a wide array of family dynamics. The amendments proposed in **HB 2060** change that order of priority which has worked well. It would change the order of priority by placing, at the top of the priority list, the person authorized to direct disposition pursuant to DD Form 93 if the decedent died while in military service.

Ms Scott said that the Kansas Funeral Directors Association (KFDA) believes that person should continue to hold the utmost authority to make such decisions since they have taken steps to appoint an agent to make such decisions.

Questions and answers followed.

The Chair then introduced Martin Dempsey who told the Committee that one of his organization's top priority issues was Disposition of Remains. (Attachment 2).

Mr. Dempsey said that their request was simply to recognize in state statute the approach that service members are directed to follow in designating a person to direct the disposition of their remains (what they call a PADD).

Saying that the DD Form 93 was an essential part of their military record, it also designates their beneficiaries for service members' Goup Life Insurance, and service members are required to update it annually and before any deployment.

Mr. Dempsey said that their request would ensure that the DD Form 93 was consulted and viewed as the legally sufficient document for designating a PADD.

Questions and answers followed.

Written only testimony was submitted by John Armbrust, Executive Director of the Governor's Military Council. (Attachment 3).

Speaking in suport of **HB 2060**, Mr. Armbrust said that in June 2010, the Council held meetings with the Department of Defense officials in Washington, D.C. to discuss possible ways the State of Kansas could further its efforts to become a more military friendly state. One of the suggestions given during our meeting was to comport state laws with Department of Defense rules on disposal of remains to recognizing DD Form 93 in K.S.A. 65-1734.

He said they believed **HB 2060** met the intent of Department of Defense's suggested actions and thereby urged the Committee's support of the bill.

The meeting on **HB 2060** was closed.

The meeting was adjourned at 9:35. The next meeting is scheduled for Thursday, February 10, 2011 at 9:00 a.m.

**KANSAS FUNERAL DIRECTORS ASSOCIATION**

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PAM SCOTT
Topeka

February 8, 2011

To: Veterans, Military and Homeland Security Committee

From: Pam Scott, Executive Director

Re: House Bill No. 2060

Chairman Goico and members of the Committee, I thank you for the opportunity to appear before you today on behalf of the Kansas Funeral Association (KFDA) concerning House Bill No. 2060. The KFDA represents over 300 funeral homes across the state of Kansas.

K.S.A. 65-1734 is Kansas' right to control disposition statute. That statute prioritizes who has the right to control disposition of a decedent's remains. Much time and effort was put into the drafting of this statute in 2000. Kansas funeral directors meet with families that plan the funerals of their loved ones on a daily basis and believe they are in a unique position to know the priority order that will best meet a family's needs.

The statute has provided clear and orderly direction on who can make those decisions. This is important when you are dealing with a wide array of family dynamics. The amendments proposed in House Bill No. 2060 change that order of priority which has worked well. House Bill No. 2060 would change the order of priority by placing, at the top of the priority list, the person authorized to direct disposition pursuant to DD Form 93 if the decedent died while in military service.

K.S.A. 65-1734(a)(1) now provides that an agent appointed by the deceased pursuant to a durable power of attorney for health care decisions to make decisions concerning disposition of the body pursuant to K.S.A. 58-635 et seq. is on top of the priority list. Such a durable power of attorney for health care decisions allows a person to appoint an agent and direct the agent to set forth specific instructions concerning disposition. The KFDA believes that person should continue to hold the upmost authority to make such decisions since they have taken steps to appoint an agent to make such decisions.

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Attachment #: 1-1

The KFDA believes the DD Form 93 is a helpful tool but our position is that the person designated under a DD Form 93 should be listed second in the ranking of persons authorized to direct disposition. The DD Form 93 provides that only a surviving spouse, adult blood relative or adoptive relative of the deceased can be named as the person authorized to direct disposition. We believe a decedent could have another individual they would prefer to direct disposition, especially in situations where family members may be estranged or the blood relative is a distant relative and not a person they would choose to make such decisions. This allows them to list someone who may be closer and more trusted by them such as a significant other or close friend. The DD Form 93 is too restrictive to be first on the priority list. It should be listed second.

The bill should also be amended to specify in statutory language that only the surviving spouse, adult blood relative or adoptive relative can be designated to direct disposition under DD Form 93 to add clarity to those not familiar with the military form.

Finally, we believe that the DD Form 93 should apply only to decedent's that die during active duty. This change has been made in several similar bills that have been passed in other states. Military service is too broad of a term and would make the provision applicable to National Guard members who are in the military service but are not on active duty. Their death may occur while they are not on active duty. We don't believe the provision was meant to apply to a National Guard member who dies in an automobile accident or due to some other event not linked to military service.

We have attached a copy of our proposed amendments.

In conclusion, we believe the DD Form 93 has a place in Kansas' right to control disposition statute but should be placed as the second priority group with the changes we have suggested.

Thank you for the opportunity to testify and I would be happy to respond to any questions.

HOUSE BILL No. 2060

By Representative Sloan

1-24

1 AN ACT concerning disposal of decedents' remains; amending K.S.A.
2 65-1734 and repealing the existing section.
3

4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 65-1734 is hereby amended to read as follows: 65-
6 1734. (a) The following persons, in order of priority stated, may order
7 any lawful manner of final disposition of a decedent's remains including
8 burial, cremation, entombment or anatomical donation:

9 ~~(2)(4) The person authorized by the decedent to direct disposition~~
10 ~~pursuant to Public Law No. 109-163, § 564, as listed on the decedent's~~
11 ~~United States department of defense record of emergency data, DD Form~~
12 ~~93, or its successor form, if the decedent died during military service, as~~
13 ~~provided in 10 U.S.C. § 1481(a)(1) through (8), in any branch of the~~
14 ~~United States armed forces, United States reserve forces, or national~~
15 ~~guard.~~

active duty

16 (1)(1)-(2) The agent for health care decisions established by a durable
17 power of attorney for health care decisions pursuant to K.S.A. 58-625, *et*
18 *seq.*, and amendments thereto, if such power of attorney conveys to the
19 agent the authority to make decisions concerning disposition of the
20 decedent's remains;

if the designated
person is the
surviving spouse,
an adult blood
relative, or an adult
adoptive relative of
the decedent and

21 (2) (3) the spouse of the decedent;

22 (3) (4) the decedent's surviving adult children. If there is more than
23 one adult child, any adult child who confirms in writing the notification
24 of all other adult children, may direct the manner of disposition unless the
25 funeral establishment or crematory authority receives written objection to
26 the manner of disposition from another adult child;

27 (4) (5) the decedent's surviving parents;

28 (5) (6) the persons in the next degree of kinship under the laws of
29 descent and distribution to inherit the estate of the decedent. If there is
30 more than one person of the same degree, any person of that degree may
31 direct the manner of disposition;

32 (6) (7) a guardian of the person of the decedent at the time of such
33 person's death;

34 (7) (8) the personal representative of the decedent; or

35 (8) (9) in the case of indigents or any other individuals whose final
36 disposition is the responsibility of the state or county, the public official

- 1 charged with arranging the final disposition pursuant to K.S.A. 2002
- 2 Supp. 22a-215, and amendments thereto.
- 3 (b) A funeral director, funeral establishment or crematory shall not
- 4 be subject to criminal prosecution or civil liability for carrying out the
- 5 otherwise lawful instructions of the person or persons under subsection
- 6 (a) if the funeral director reasonably believes such person is entitled to
- 7 control final disposition.
- 8 Sec. 2. K.S.A. 65-1734 is hereby repealed.
- 9 Sec. 3. This act shall take effect and be in force from and after its
- 10 publication in the statute book.

Statement of
Martin L. Dempsey
State Liaison, Western Region
DoD-State Liaison Office
Office of the Deputy Under Secretary of Defense,
Military Community and Family Policy

Kansas House Bill 2060

Introduction: Good morning Mister Chair and Committee Members. I am Martin Dempsey with the Dept of Defense State Liaison Office. Personally, I've been in service to the military community since 1975. This includes 24 years of active duty; 12 of those years working military family issues. My office partners with states on certain issues to educate on quality of life concerns affecting military families. One of our top priority issues is Disposition of Remains.

Our request is simply to recognize in state statute the approach that Service members are directed to follow in designating a person to direct the disposition of their remains (what we call a PADD). Forty-eight percent of Service members are less than 25 years old. Since they are required to designate a PADD on the DD Form 93, it is highly unlikely they will research to see whether they also need to follow a different state requirement for designating an agent in the event of their untimely death. The DD Form 93 is an essential part of their military record, also designating their beneficiaries for Service members' Group Life Insurance, and Service members are required to update it annually and before any deployment. Our request will ensure that the DD Form 93 is consulted and viewed as the legally sufficient document for designating a PADD.

Let me illustrate our issue by sharing a case with you that shows what can happen when there is a lack of clarity in which rule to follow in designating a PADD:

A deceased Soldier who was married but estranged from his wife, elected his mother as the PADD on DD Form 93. The mother wanted to cremate the Soldier; however, the funeral home refused to cremate the remains without the wife's consent (based on the rules of the state). The spouse was reluctant to sign the consent for cremation and only after a military attorney intervened, did the wife eventually consent.

Eventually the wishes of the Service member to have his mother direct disposition were honored; however, this situation, and the unnecessary delay it caused, could have been avoided if the state statute in question had referred to the DD Form 93. The proposed amendment to state law on disposition removes confusion for the family and allows funeral directors to confidently refer to a single document to approach the Service member's choice for directing the disposition of his or her remains.

Thank you for your time. If I may be of any further service, please feel free to contact martin.dempsey@sbcglobal.net or phone: 785-263-1945.

Veteran/Military/Homeland Security Comm.

Date: 2-8-11

Attachment #: 2

Testimony on HB 2060

John Armbrust [john@manhattan.org]

Sent: Monday, February 07, 2011 4:30 PM

To: Mario Goico

Cc: Tom Sloan; lee.tafanelli@us.army.mil



House Standing Committee on Veterans, Military and Homeland Security
Testimony on HB 2060
(Concerning Disposal of Decedents' Remains)

February 8, 2011

Dear Chairman Goico,

The Governor's Military Council's supports passage of HB 2060.

In June 2010 the Council held meetings with DoD officials in Washington D.C. to discuss possible ways the State of Kansas could further its efforts to become a more military friendly state. One of the suggestions given during our meeting was to comport state laws with DoD rules on disposal of remains by recognizing DD Form 93 in K.S.A. 65-1734.

We believe HB 2060 meets the intent of DoD's suggested action, and thereby urge the Committee's support of the bill.

Sincerely,

John Armbrust
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Date: 2-8-11

Attachment #: 3