



SPONSOR: Rep. Bennett & Rep. Lynn & Sen. Sokola  
Reps. Baumbach, Lambert, Morrison; Sen. Sturgeon

HOUSE OF REPRESENTATIVES  
151st GENERAL ASSEMBLY

HOUSE BILL NO. 165

AN ACT TO AMEND THE DELAWARE CODE RELATING TO HUMAN REMAINS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 2704, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2704. Disposition of remains.

~~Any~~ An approved institution ~~which shall have~~ that has received a dead body ~~pursuant to~~ under this subchapter shall, ~~upon~~ on completion of the study ~~thereof~~, of the body, deliver the body as then constituted to the coroner of the county in which ~~such~~ the approved institution ~~shall be~~ is situate for ~~burial or cremation~~, natural organic reduction, as defined under § 3101 of this title, burial, or cremation, and ~~such~~ The approved institution shall pay the expenses of ~~such burial or cremation~~ the natural organic reduction, as defined under § 3101 of this title, burial, or cremation and of the preparation of ~~such~~ the body therefor, at the rates provided by law or which are usual and customary in such ~~eases~~, provided that cases. ~~However~~, with the approval of the Inspector of Anatomy ~~mentioned in~~ under § 2706 of this title, ~~such an~~ the approved institution may retain certain portions of ~~said~~ the body for special research or teaching purposes.

Section 2. Amend § 3101, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3101. Definitions.

As used in this chapter:

(7) "Natural organic reduction" means the contained, accelerated conversion of human remains to soil.

(8) "Natural organic reduction facility" means a structure, room, or other space in a building or real property where natural organic reduction of a human body occurs.

(11) "Remains means the body of a deceased individual, including what results following cremation or natural organic reduction.

Section 3. Amend § 3151, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3151. Permit for removal, burial or other disposition; foreign permits; prerequisites for permit.

When a death or a fetal death occurs or a dead body is found, the body ~~shall~~ may not be disposed of until the ~~burial/transit~~, burial or transit permit is completed. ~~Said The burial or transit permit is required to~~ must accompany the body and ~~is to be:~~ must be:

(1) Given to the sexton of the cemetery when the body is interred.

(2) Retained by the funeral director when the cemetery has no sexton.

(3) Retained as follows:

a. ~~with the ashes~~ With the remains in cases of ~~eremation~~, cremation or natural organic reduction.

b. ~~or by~~ By the funeral director if so desired.

Section 4. Amend § 3157, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3157. ~~Cremation; prohibited except in licensed crematory.~~ Cremation or natural organic reduction; prohibited except in licensed crematory or natural organic reduction facility.

~~No~~ A person ~~shall~~ may not destroy or dispose of by burning ~~in this State~~ or natural organic reduction the body of an individual dead from any cause, except in a crematorium or crematory or natural organic reduction facility licensed for this express purpose and under the conditions provided in ~~§ 3158-3164~~ §§ 3158 through 3164 of this title.

Section 5. Amend § 3158, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3158. ~~Crematory;~~ Crematory or natural organic reduction facility; approval for construction; requirements; inspection.

(a) A person, firm, ~~organization~~ organization, or association desiring to acquire, erect, or construct a crematory or natural organic reduction facility shall first obtain approval from the Department of Natural Resources and Environmental Control.

(b) The crematory ~~shall~~ or natural organic reduction facility must be constructed in accordance with regulations adopted under Chapters 60 and 79 of Title 7 and ~~shall~~ may not be located, managed, or conducted at any time in such a way to be a public nuisance.

(c) The crematory ~~shall be~~ or natural organic reduction facility is subject at all times to inspection by the Department of Natural Resources and Environmental Control, the Department of Health and Social Services, and by ~~such~~ officers of the state law-enforcement departments may desire to inspect it.

Section 6. Amend § 3159, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3159 Permit for ~~cremation~~; cremation or natural organic reduction; issuance, ~~retention~~ retention, and inspection.

(a) A body maybe cremated or subjected to natural organic reduction only after the preparation of a special cremation or natural organic reduction permit signed by the chief medical examiner or an assistant or deputy medical examiner. In the presentation of the cremation or natural organic reduction permit to the chief medical examiner or the chief medical examiner's representative for signature, the permit must be accompanied by a death certificate signed by the attending physician and by a cremation or natural organic reduction authorization signed by the next-of-kin or legal representative of the deceased. The signature of the chief medical examiner or the chief medical examiner's representative to the cremation or natural organic reduction permit ~~shall constitute~~ constitutes an affirmation that there is no medical reason why the cremation or natural organic reduction should not take place. The chief medical examiner or an assistant or deputy medical examiner shall have the authority to hold the remains of the deceased pending any investigation into the cause and manner of death.

(b) One copy of the cremation or natural organic reduction permit ~~shall~~ must be retained by the person, firm, ~~corporation~~ corporation, or association conducting the ~~crematory~~ cremation or natural organic reduction, and ~~shall~~ must be produced for inspection or other purposes when asked for by the inspecting authority. A second copy of the cremation or natural organic reduction permit ~~shall~~ must accompany the death certificate when it is filed in the Office of Vital Statistics.

Section 7. Amend § 3160, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3160. Report of ~~cremation~~; cremation or natural organic reduction.

Within 24 hours after the cremation or natural organic reduction is completed a report indicating the name of the individual, the individual's address while alive, the date and cause of death, the names of the individuals signing the permit, the date of the completion of the cremation or natural organic reduction, and the disposal of the ~~ashes~~ remains ~~shall~~ must be forwarded by the person in charge of the crematory or natural organic reduction facility to the central Office of Vital Statistics.

Section 8. Amend § 3161, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3161. Delivery, ~~transportation~~ transportation, and disposal of ~~ashes~~ remains.

The ~~ashes~~ remains resulting from the cremation or natural organic reduction of a body may be delivered by the attendants of the crematory or natural organic reduction facility to any member of the family of the deceased designated to

82 receive them or to the person arranging for the ~~cremation~~ cremation or natural organic reduction. After this delivery, ~~they~~  
83 the remains may be transported in any way in the State and disposed of in such a way as is desired by the person receiving  
84 ~~them~~ the remains.

85 Section 9. Amend § 3162, Title 16 of the Delaware Code by making deletions as shown by strike through and  
86 insertions as shown by underline as follows:

87 § 3162. Witnesses at ~~cremation~~ cremation or natural organic reduction.

88 A representative of the family or some individual accredited to act as representative of the family of the individual  
89 being cremated or subjected to natural organic reduction may be present at the time the cremation or natural organic  
90 reduction is being carried out.

91 Section 10. Amend § 3163, Title 16 of the Delaware Code by making deletions as shown by strike through and  
92 insertions as shown by underline as follows:

93 § 3163. Permit where death occurs in this State and cremation or natural organic reduction takes place elsewhere.

94 The provisions of § 3159 of this title, ~~respecting the signatures~~ requiring the signature of the chief medical  
95 examiner or an assistant or deputy medical ~~examiner by the Attorney General or deputy attorney general, are required in~~  
96 ~~respect of examiner, apply with respect to~~ the cremation or natural organic reduction of the body of an individual dying in  
97 the State but removed to ~~any other~~ another state for the purpose of ~~cremation~~ cremation or natural organic reduction.

98 Section 11. Amend § 3164, Title 16 of the Delaware Code by making deletions as shown by strike through and  
99 insertions as shown by underline as follows:

100 § 3164. Cremation or natural organic reduction in this State when death occurred elsewhere.

101 The cremation or natural organic reduction in this State of the ~~bodies of persons dying in other states~~ body of an  
102 individual who has died in another state is permissible if all legal requirements of the state in which the death occurred have  
103 first been complied with.

104 Section 12. Amend § 3101, Title 24 of the Delaware Code by making deletions as shown by strike through and  
105 insertions as shown by underline as follows and redesignating accordingly:

106 § 3101. Definitions.

107 The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them under  
108 this section, except where the context clearly indicates a different meaning:

109 (7) "Funeral director" ~~shall mean~~ means a person engaged in the care of human remains or in the disinfecting  
110 and preparing by embalming of human remains for the funeral service, transportation, burial, ~~entombment or~~

entombment, cremation, or natural organic reduction, and who shall file files all death certificates or permits as required by Chapter 31 of Title 16.

(8) "Funeral establishment" ~~shall mean~~ means any place used in the care and preparation of human remains for funeral service, burial, ~~entombment or cremation~~, entombment, cremation, or natural organic reduction, said place shall also include areas for embalming, the convenience of the bereaved for ~~viewing~~ viewing, and other services associated with human remains. A funeral establishment shall also include a place or office in which the business matters associated with funeral services are conducted. Satellite funeral establishments existing as of May 12, 1988, ~~shall not be~~ and funeral establishments only providing natural organic reduction are not required to include an area for embalming.

(9) "Funeral services" ~~shall mean~~ means those services rendered for disinfecting, embalming burial, ~~entombment or cremation~~ entombment, cremation, or natural organic reduction of human remains including the sale of those goods and services usual to arranging and directing funeral services.

(11) "Natural organic reduction" means as defined in § 3101 of Title 16.

(12) "Natural organic reduction facility" means as defined in § 3101 of Title 16.

Section 13. Amend § 3105, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3105. Powers and duties.

(a) The Board of Funeral Services ~~shall have the authority to~~ may do all of the following:

(17) Regulate natural organic reduction and natural organic reduction facilities.

Section 14. Amend § 3119, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3119. Interference with free choice of funeral establishment; operating mortuary in cemetery; accepting fees from cemeteries.

~~No~~ A person licensed for the practice of funeral services, ~~nor~~ or any person acting on behalf of the licensee ~~shall licensee, may not~~ do any of the following:

(3) Receive or accept any commission, fee, ~~remuneration~~ remuneration, or benefit of any kind from any cemetery, ~~mausoleum or~~ mausoleum, crematory, or natural organic reduction facility, or from any proprietor or agent thereof, in connection with the sale or transfer of any cemetery lot, entombment vault, burial ~~privilege or~~ privilege, cremation, or natural organic reduction, nor act, directly or indirectly, as a broker or jobber of any cemetery property or interest therein.

Section 15. Amend § 3121, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3121. ~~Cremation~~ Cremation or natural organic reduction.

(a) ~~Where~~ If not previously identified, human remains may not be cremated or subjected to natural organic reduction until they have been identified by either the next-of-kin, the person authorized to make funeral arrangements, or the medical examiner. This subsection ~~shall~~ does not apply to disposition of human remains by any school of anatomy, medicine, or dentistry.

(b) Human remains ~~shall~~ must be transported to a crematory or natural organic reduction facility using a rigid, leak-resistant container which meets all of the following criteria:

(1) Is made of readily combustible material.

(2) Is of sufficient strength and rigidity for ease of handling.

(3) Complies with all local, state, and federal governmental emissions regulations.

(4) Is not composed of metal or polyethylene.

(5) Maintains a secure closure for the respectful conveyance of the decedent.

(c) A person who knowingly engages a Delaware-licensed funeral establishment to arrange for the cremation or natural organic reduction of the deceased human remains shall also be responsible, following ~~cremation~~, cremation or natural organic reduction, for the identification and arrangement of the final disposition of ~~said the~~ human remains. Failure to do so within 60 days of the date of death ~~shall be~~ is grounds for the funeral establishment of record to submit notification to the Attorney General that the cremated remains or remains following natural organic reduction have been abandoned.

(d) Cremated remains or remains following natural organic reduction which have been unclaimed or abandoned for a period of more than 12 months from the date of death may be disposed of in a cemetery of the funeral establishments choice, in a manner so as to permit the return of ~~said the~~ cremated remains or remains following natural organic reduction to the appropriate authorized individual at a future date. All expenses surrounding the disposition and subsequent retrieval of the cremated remains ~~shall be~~ or remains following natural organic reduction are at the sole expense of the authorizing party. A record of the disposition of ~~said the~~ cremated remains or remains following natural organic reduction must be maintained by the funeral establishment of record.

Section 16. Amend § 1002, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1002. Definitions.

As used in this chapter:

(1) "Cemetery" means land or structure used or intended to be used for the ~~interment/entombment~~ interment or entombment of human remains, including facilities used for the final disposition of cremated ~~remains~~ remains or remains subjected to natural organic reduction, as defined under § 3101 of Title 16.

Section 17. Amend § 260, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 260. Definitions.

As used in this subchapter, unless the context otherwise requires:

(3) "Declaration instrument" means a written instrument, signed by a declarant, governing the disposition of the declarant's last remains and the ceremonies planned after a declarant's death, including a document governing the disposition of last remains under this title or a United States Department of Defense Record of Emergency Data Form (DD Form 93) or any successor form executed by the declarant. Such a declaration may be made within a prepaid funeral, burial, ~~or cremation~~ cremation, or natural organic reduction contract with a ~~mortuary or crematory~~ mortuary, crematorium, or natural organic reduction facility.

(5) "Last remains" means the deceased's body ~~or remains after death~~ after death, including what results following cremation or natural organic reduction.

(6) "Natural organic reduction" means as defined under § 3101 of Title 16.

(7) "Natural organic reduction facility" means as defined under § 3101 of Title 16.

Section 18. Amend § 265, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 265. Declaration of Disposition of Last Remains; form.

The following declaration of disposition of last remains must be substantially in the following form:

#### DECLARATION OF DISPOSITION OF LAST REMAINS

I, \_\_\_\_\_ (Name of Declarant), being of sound mind and lawful age, hereby revoke all prior declarations, wills, codicils, trusts, powers of appointment, and powers of attorney regarding the disposition of my last remains, and I declare and direct that after my death the following provisions be taken:

1. If permitted by law, my body shall be (Initial ONE choice):

\_\_\_\_ Buried. I direct that my body be buried at \_\_\_\_\_.

\_\_\_\_ Cremated. I direct that my cremated remains be disposed of as follows:

\_\_\_\_\_.





230 (Declarant) \_\_\_\_\_.

231 The following section regarding organ and tissue donation is optional. To make a donation, initial the option you

232 select and sign below.

233 In the hope that I might help others, I hereby make an anatomical gift, to be effective upon my death, of:

234 A. \_\_\_\_ Any needed organs/tissues.

235 B. \_\_\_\_ The following organs/tissues: \_\_\_\_\_

236 \_\_\_\_\_.

237 Donor signature: \_\_\_\_\_.

238 Notarization Optional:

239 State of Delaware

240 County of \_\_\_\_\_ :

241 Acknowledged before me by \_\_\_\_\_, Declarant, on \_\_\_\_\_, \_\_\_\_\_. My

242 commission expires:

243 \*(Seal) \_\_\_\_\_ Notary Public \_\_\_\_\_.

244 Section 19. Amend § 4701A, Title 29 of the Delaware Code by making deletions as shown by strike through and

245 insertions as shown by underline as follows:

246 § 4701A. Definitions.

247 For purposes of this ~~chapter~~, chapter:

248 (1) “Natural organic reduction” means as defined in § 3101 of Title 16.

249 (2) ~~“next~~ “Next of kin” means 1 of the following:

250 (1) a. A spouse.

251 (2) b. If no spouse, the decedent’s adult children.

252 (3) c. If no spouse or adult children, the decedent’s parents.

253 (4) d. If no spouse, adult children, or parents of the decedent, the person who is legally entitled to claim

254 the decedent’s remains for final disposition.

255 Section 20. Amend § 4706, Title 29 of the Delaware Code by making deletions as shown by strike through and

256 insertions as shown by underline as follows:

257 § 4706. Investigation of deaths.

258 (a) When ~~any person shall die~~ an individual dies in this State, as a result of violence, by suicide or by casualty if

259 such occurred not longer than 1 year and 1 day prior to death, while under anesthesia, by abortion or suspected abortion, by

poison or suspicion of poison, by overdose death as defined at § 4799A of Title 16 or suddenly when in apparent health or when unattended by a physician or in any prison or penal institution or when in police custody or from a disease resulting from employment including disease related to injury or from an undiagnosed cause which may be related to a disease constituting a threat to public health or in any suspicious or unusual manner or if there is any unclaimed body or if ~~anybody~~ is to be cremated, it shall be a body is to be cremated or subjected to natural organic reduction, it is the duty of the person having knowledge of ~~such the~~ the death or of the person issuing a permit for cremation or natural organic reduction under § ~~3462~~ § 3159 of Title 16 immediately to notify the Chief Medical Examiner, an Assistant Medical ~~Examiner~~ Examiner, or a Deputy Medical Examiner, as the case may be, who in turn shall notify the Attorney General of the known facts concerning the time, place, ~~manner~~ manner, and circumstances of ~~such the~~ the death. ~~Any A~~ A person who shall wilfully ~~neglect or refuse~~ neglects or refuses to report ~~such the~~ the death or who ~~shall refuse~~ refuses to make available prior medical or other information pertinent to the death investigation or who, without an order from the Division of Forensic Science, ~~shall wilfully touch,~~ remove or disturb touches, removes, or disturbs the clothing or any article ~~upon on~~ on or near the body shall ~~upon on~~ on conviction be subject to imprisonment for not more than 1 year or pay a fine of not more than \$1,000, or both.

Section 21. Amend § 4711, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4711. Disposition of unclaimed body or remains of indigent person.

(a) In any case where there is an unclaimed body or there are remains of indigent persons and it is incumbent on the State or any political subdivision thereof to bury such person found dead, the Chief Medical Examiner or a duly authorized representative shall notify the Division of Social Services of the Department of Health and Social Services to arrange for the burial unless the case falls within the category described in subsection (b) of this section.

(b) When there is a written consent of the next of kin or other legally responsible party, the remains of an indigent person may be ~~cremated~~ subjected to natural organic reduction, cremated, or donated for scientific research.

Section 22. Amend § 7902A, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7902A. Definitions.

As used in this chapter unless otherwise stated:

(1) "Abandoned cemetery" ~~shall mean~~ means a cemetery where there is no owner of record in the respective county's recorder of deeds records.

(2) "Board" means the Cemetery Board established in this chapter.

(3) "Cemetery" ~~shall mean~~ means land or structure used or intended to be used for the ~~interment/entombment~~ interment or entombment of human remains including facilities used for the final disposition of cremated ~~remains~~ remains or remains following natural organic reduction, as defined under § 3101 of Title 16.

(4) "Cemetery company" ~~shall mean any~~ means a person engaged in the business ~~of~~ of 1 or more of the following:

a. Selling or offering for sale any grave or entombment right in a cemetery and representing to the public that the entire cemetery property, a single grave, or entombment right therein will be indefinitely cared ~~for, or for~~ for.

b. Maintaining a facility used for the interment of human remains, whether a full ~~body or cremated human remains~~ body, cremated remains, or remains following natural organic reduction, as defined under § 3101 of Title 16.

(5) "Department" means Department of Health and Social Services.

(6) "Distressed cemetery" means any land or structure used or intended to be used for the ~~interment/entombment~~ interment or entombment of human remains including facilities used for the final disposition of cremated remains or remains following natural organic reduction, as defined under § 3101 of Title 16, whereby the owner lacks sufficient financial resources for the maintenance or preservation of ~~said~~ the cemetery as determined by the Board. An abandoned cemetery may qualify as a distressed cemetery if registered with the State by a responsible ~~party/volunteer~~ party or volunteer.

(7) "Distressed Cemetery Fund" or "Fund" means the money collected ~~as provided here in~~ under this chapter for maintenance or preservation of a distressed cemetery.

Section 23. This Act is effective immediately and is to be implemented the earlier of the following:

(1) One year from the date of the Act's enactment.

(2) Notice by the Secretaries of the Department of Health and Social Services and Department of Natural Resources and Environmental Control published in the Register of Regulations that final regulations to implement this Act have been adopted.

#### SYNOPSIS

This Act authorizes the process of natural organic reduction to be used in this State. Natural organic reduction is also known as human composting. This process uses large tanks or similar vessels to hold human remains together with straw, wood chips, or other natural materials for about 30 days. The human remains and organic materials, mixed together with warm air, are periodically turned and the composting process eventually results in reduction of the human remains to a soil material that can then be provided to the deceased individual's family. Natural organic reduction is considered a more eco-friendly cremation alternative, forgoing the usage of formaldehyde and the release of carbon dioxide and mercury into the atmosphere. The process also uses 1/8 the energy of cremation.

Section 10 of this Act removes "and by the Attorney General or a deputy attorney general", which was overlooked when Chapter 164 of Volume 68 of the Laws of Delaware was enacted, removing similar language in § 3159 of Title 16.

Section 20 of this Act replaces the citation to § 3162 of Title 16 with a citation to § 3159. Section 3162 was transferred to § 3159 when Chapter 31 was reenacted by Chapter 274 of Volume 68 of the Laws of Delaware, but this citation was overlooked.

This Act takes effect the earlier of 1 year from the date of the Act's enactment or notice in the Register of Regulations that final regulations to implement this Act have been adopted.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

This Act requires a greater than majority vote for passage because § 28 of Article IV of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to expand the scope of an existing crime within the jurisdiction of the Court of Common Pleas, Family Court, or Justice of the Peace Court.