
By: **Delegate Benson**

Introduced and read first time: February 16, 2005

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Death - Final Disposition of Body**

3 FOR the purpose of authorizing a certain individual to have priority in the right to
4 arrange for the final disposition of the body of the decedent under certain
5 circumstances; providing for the right to act as an authorizing agent under
6 certain circumstances; prohibiting a person who has been charged with a certain
7 crime from having the right to arrange for the final disposition of the body of the
8 decedent under certain circumstances; providing that certain persons are not
9 liable for executing a written directive of a decedent or the directive of a person
10 representing that the person has the right to arrange for the final disposition of
11 the body of the decedent under certain circumstances; requiring that a certain
12 court shall resolve a dispute among certain persons concerning the right to
13 arrange for the final disposition of the body of the decedent under certain
14 circumstances; providing that certain persons are not liable for refusing to
15 accept the body or to inter or otherwise dispose of the body of the decedent under
16 certain circumstances; and generally relating to the right to arrange for the
17 final disposition of the body of a decedent.

18 BY repealing and reenacting, with amendments,
19 Article - Health - General
20 Section 5-509
21 Annotated Code of Maryland
22 (2000 Replacement Volume and 2004 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article - Health - General**

26 5-509.

27 (a) Any individual who is 18 years of age or older may decide the disposition of
28 the individual's own body after that individual's death without the predeath or
29 post-death consent of another person by executing a document that expresses the

1 individual's wishes regarding disposition of the body or by entering into a pre-need
2 contract.

3 (b) In order to be valid, any document executed under subsection (a) of this
4 section must be written and signed by the individual in the presence of a witness,
5 who, in turn, shall sign the document in the presence of the individual.

6 (c) Unless a person has knowledge that contrary directions have been given by
7 the decedent, if a decedent has not executed a document under subsection (a) of this
8 section, the following persons, in the order of priority stated, have the right to arrange
9 for the final disposition of the body of the decedent, including by cremation under §
10 5-502 of this subtitle:

11 (1) A PERSON NAMED IN A DOCUMENT THAT MEETS THE
12 REQUIREMENTS OF SUBSECTIONS (A) AND (B) OF THIS SECTION;

13 [(1)] (2) The surviving spouse of the decedent;

14 [(2)] (3) An adult child of the decedent;

15 [(3)] (4) A parent of the decedent;

16 [(4)] (5) An adult brother or sister of the decedent;

17 [(5)] (6) A person acting as a representative of the decedent under a
18 signed authorization of the decedent;

19 [(6)] (7) The guardian of the person of the decedent at the time of the
20 decedent's death, if one has been appointed; or

21 [(7)] (8) In the absence of any person under paragraphs (1) through
22 [(6)] (7) of this subsection, any other person willing to assume the responsibility to act
23 as the authorizing agent for purposes of arranging the final disposition of the
24 decedent's body, including the personal representative of the decedent's estate, after
25 attesting in writing that a good faith effort has been made to no avail to contact the
26 individuals under paragraphs (1) through [(6)] (7) of this subsection.

27 (d) (1) Subject to paragraph (2) of this subsection, if a decedent has more
28 than one survivor under subsection (c) [(1)] (2) through [(4)] (6) of this subsection,
29 any adult child, parent, [or] adult brother or sister, OR REPRESENTATIVE of the
30 decedent who confirms in writing to a practitioner that all of the other members of the
31 same class have been notified may serve as the authorizing agent for purposes of §
32 5-502 of this subtitle unless the practitioner receives a written objection to the
33 cremation from another member of that class within 24 hours.

34 (2) If a decedent has more than one survivor under subsection (c)[(1)] (2)
35 through [(4)] (6) of this section, the majority of a class may serve as the authorizing
36 agent.

1 (e) In the case of an individual whose final disposition is the responsibility of
2 the State or any of its instrumentalities, a public administrator, medical examiner,
3 coroner, State-appointed guardian, or any other public official charged with
4 arranging the final disposition of the decedent may serve as the authorizing agent for
5 purposes of § 5-502 of this subtitle.

6 (f) In the case of an individual who has donated the individual's body to
7 medical science or whose death occurred in a nursing home or other private
8 institution, a representative of the institution to which the body was donated or in
9 which the decedent died shall authorize cremation for purposes of § 5-502 of this
10 subtitle if the decedent executed cremating authorization forms and the institution is
11 charged with making arrangements for the final disposition of the body.

12 (G) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE RIGHT TO
13 ARRANGE FOR THE FINAL DISPOSITION OF THE BODY OF THE DECEDENT IS
14 RELINQUISHED IF:

15 (I) A PERSON WHO WOULD OTHERWISE HAVE THE RIGHT TO
16 ARRANGE FOR THE FINAL DISPOSITION OF THE BODY OF THE DECEDENT HAS BEEN
17 CHARGED WITH FIRST OR SECOND DEGREE MURDER OR VOLUNTARY
18 MANSLAUGHTER IN CONNECTION WITH THE DEATH OF THE DECEDENT; AND

19 (II) THOSE CHARGES ARE KNOWN TO THE FUNERAL DIRECTOR OR
20 CEMETERY AUTHORITY.

21 (2) IF THE RIGHT TO ARRANGE FOR THE FINAL DISPOSITION OF THE
22 BODY OF THE DECEDENT IS RELINQUISHED, THE RIGHT TO ARRANGE FOR THE
23 FINAL DISPOSITION OF THE BODY OF THE DECEDENT IS DETERMINED BY THE
24 ORDER OF PRIORITY AS PROVIDED IN SUBSECTION (C) OF THIS SECTION.

25 (H) THE FOLLOWING PERSONS ARE NOT LIABLE FOR EXECUTING A WRITTEN
26 DIRECTIVE OF A DECEDENT OR A DIRECTIVE OF A PERSON REPRESENTING THAT THE
27 PERSON HAS THE RIGHT TO ARRANGE FOR THE FINAL DISPOSITION OF THE BODY OF
28 THE DECEDENT:

29 (1) A CEMETERY ORGANIZATION;

30 (2) A BUSINESS OPERATING A CREMATORY OR COLUMBARIUM OR BOTH;

31 (3) A FUNERAL DIRECTOR OR AN EMBALMER; OR

32 (4) A FUNERAL ESTABLISHMENT.

33 (I) (1) IF THE INDIVIDUALS UNDER SUBSECTION (C) OF THIS SECTION
34 CANNOT AGREE ON THE RIGHT TO ARRANGE FOR THE FINAL DISPOSITION OF THE
35 BODY OF THE DECEDENT, INCLUDING CREMATION, ANY INDIVIDUAL SPECIFIED IN
36 SUBSECTION (C) OF THIS SECTION MAY FILE A PETITION IN A COURT OF COMPETENT
37 JURISDICTION REQUESTING THE COURT TO DECIDE THE RIGHT TO ARRANGE FOR
38 THE FINAL DISPOSITION OF THE BODY OF THE DECEDENT.

1 (2) IN THE EVENT OF A DISAGREEMENT ON THE RIGHT TO ARRANGE
2 FOR THE FINAL DISPOSITION OF THE BODY OF THE DECEDENT, A CEMETERY
3 ORGANIZATION OR FUNERAL ESTABLISHMENT IS NOT LIABLE FOR REFUSING TO
4 ACCEPT THE BODY OR TO INTER OR OTHERWISE DISPOSE OF THE BODY OF THE
5 DECEDENT UNTIL THE CEMETERY ORGANIZATION OR FUNERAL ESTABLISHMENT
6 RECEIVES A COURT ORDER OR OTHER WRITTEN AGREEMENT SIGNED BY THE
7 PARTIES IN THE DISAGREEMENT THAT DECIDES THE RIGHT TO ARRANGE FOR THE
8 FINAL DISPOSITION OF THE BODY OF THE DECEDENT.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
10 effect October 1, 2005.