

---

By: **Senator Astle**

Introduced and read first time: February 28, 2005

Assigned to: Rules

---

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.