

SENATE BILL 566

J3, J1

8lr2586
CF HB 733

By: **Senator Garagiola**

Introduced and read first time: February 1, 2008

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Facility Visitation and Medical Decisions – Domestic Partners**

3 FOR the purpose of requiring certain health care facilities to allow domestic partners
4 and certain relatives of domestic partners to visit a domestic partner except
5 under certain circumstances; requiring two adults to be treated as domestic
6 partners under certain circumstances related to medical emergencies; providing
7 that a health care agent retains certain authority to make certain decisions
8 notwithstanding certain provisions of law; providing that an individual who
9 asserts a domestic partnership may be required to provide certain proof;
10 prohibiting the Department of Health and Mental Hygiene from denying a
11 domestic partner the right to inspect a record to permit a disinterment or
12 reinterment of a body; authorizing a domestic partner to give consent to conduct
13 a postmortem examination of a certain body; authorizing a domestic partner to
14 arrange for the final disposition of the body of a decedent under certain
15 circumstances; authorizing a domestic partner to make the health care decisions
16 for a certain person; authorizing a domestic partner of a certain patient to
17 petition a court to enjoin the actions of a certain health care provider;
18 authorizing a domestic partner to accompany an individual being transported
19 from one health care facility to another health care facility under certain
20 circumstances; establishing that a domestic partner may be a representative of
21 a deceased from whom a hospital is asking for authorization for a human organ
22 donation; prohibiting a hospital from billing a domestic partner for the costs
23 associated with the deceased domestic partner's organ donation; requiring that
24 domestic partners be given the opportunity to share a room in a certain facility
25 under certain circumstances; requiring certain related institutions to allow a
26 resident who is a party to a domestic partnership to have privacy during a visit
27 by the other domestic partner; authorizing a domestic partner of a resident of a
28 facility to file a certain complaint; authorizing a domestic partner to arrange the
29 final disposition of the body of a decedent with a mortician under certain
30 circumstances; establishing that for purposes of an interest in the property of a
31 burial site, a domestic partner is a person in interest; establishing that a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 domestic partner is a next of kin for purposes of making anatomical gifts of a
2 decedent; defining certain terms; making the provisions of this Act severable;
3 and generally relating to health care facility visitation and medical decisions by
4 a domestic partner.

5 BY repealing and reenacting, with amendments,
6 Article – Health – General
7 Section 1–101, 4–215(e), 5–501(b), 5–509(c), 5–605(a)(2), 5–612(b), 10–807(e),
8 19–310(a)(4) and (7), and 19–344(h), (k), and (q)(1)
9 Annotated Code of Maryland
10 (2005 Replacement Volume and 2007 Supplement)

11 BY repealing and reenacting, without amendments,
12 Article – Health – General
13 Section 4–215(a), 5–501(a), 5–509(a), 5–605(a)(1), 5–612(a), 10–807(a), and
14 19–344(a)
15 Annotated Code of Maryland
16 (2005 Replacement Volume and 2007 Supplement)

17 BY adding to
18 Article – Health – General
19 Section 6–101 through 6–203 to be under the new title “Title 6. Health Care
20 Facility Visitation and Medical Emergencies”
21 Annotated Code of Maryland
22 (2005 Replacement Volume and 2007 Supplement)

23 BY repealing and reenacting, without amendments,
24 Article – Health Occupations
25 Section 7–410(a)
26 Annotated Code of Maryland
27 (2005 Replacement Volume and 2007 Supplement)

28 BY repealing and reenacting, with amendments,
29 Article – Health Occupations
30 Section 7–410(c)
31 Annotated Code of Maryland
32 (2005 Replacement Volume and 2007 Supplement)

33 BY repealing and reenacting, with amendments,
34 Article – Real Property
35 Section 14–121(a)
36 Annotated Code of Maryland
37 (2003 Replacement Volume and 2007 Supplement)

38 BY repealing and reenacting, with amendments,
39 Article – Estates and Trusts
40 Section 4–501
41 Annotated Code of Maryland

1 (2001 Replacement Volume and 2007 Supplement)

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

4 **Article – Health – General**

5 1–101.

6 (a) In this article the following words have the meanings indicated.

7 (b) “County” means a county of this State and, unless expressly provided
8 otherwise, Baltimore City.

9 (c) “Department” means the Department of Health and Mental Hygiene.

10 **(D) “DOMESTIC PARTNER” MEANS AN INDIVIDUAL WHO MEETS THE**
11 **REQUIREMENTS OF § 6–101 OF THIS ARTICLE.**

12 [(d)] **(E)** “Health officer” means, unless expressly provided otherwise, the
13 Baltimore City Commissioner of Health or the health officer of a county.

14 [(e)] **(F)** “Includes” or “including” means includes or including by way of
15 illustration and not by way of limitation.

16 [(f)] **(G)** “Local health planning agency” means the health department of a
17 jurisdiction or a body designated by the local health department to perform health
18 planning functions.

19 [(g)] **(H)** “Medical examiner” means:

20 (1) The Chief Medical Examiner;

21 (2) The Deputy Chief Medical Examiner;

22 (3) Any assistant medical examiner; or

23 (4) Any deputy medical examiner.

24 [(h)] **(I)** “Person” means an individual, receiver, trustee, guardian, personal
25 representative, fiduciary, or representative of any kind and any partnership, firm,
26 association, corporation, or other entity.

27 [(i)] **(J)** “Physician” means an individual who is authorized under the
28 Maryland Medical Practice Act to practice medicine in this State.

29 [(j)] **(K)** “Secretary” means the Secretary of Health and Mental Hygiene.

1 [(k)] (L) “State” means:

2 (1) A state, possession, or territory of the United States;

3 (2) The District of Columbia; or

4 (3) The Commonwealth of Puerto Rico.

5 4–215.

6 (a) In this section, “cemetery” includes a crematory or other place for final
7 disposition.

8 (e) (1) A permit for disinterment and reinterment is required before the
9 disinterment of human remains if reinterment is not to be made in the same cemetery.
10 The Secretary or a health officer shall issue the permit after receipt of an application
11 on the form that the Secretary requires.

12 (2) If all human remains in a cemetery are to be disinterred for
13 purposes of relocation or abandonment of the cemetery, one application is sufficient for
14 that purpose.

15 (3) The Department shall keep a record of each permit issued for the
16 disinterment and reinterment of human remains.

17 (4) Except as provided in paragraph (5) of this subsection, the
18 Department may not disclose or allow public inspection of information in a permit
19 record about the location of the site of a disinterment or reinterment if a local burial
20 sites advisory board or the Director of the Maryland Historical Trust determines that:

21 (i) The site is historic property, as defined in § 5A–301 of the
22 State Finance and Procurement Article; and

23 (ii) Disclosure would create a substantial risk of harm, theft, or
24 destruction to the site.

25 (5) The Department may not deny inspection of a permit record to:

26 (i) The owner of the site of the disinterment or reinterment;

27 (ii) A governmental entity that has the power of eminent
28 domain; or

29 (iii) The spouse, **DOMESTIC PARTNER**, next of kin, or appointed
30 personal representative of the deceased whose human remains have been disinterred
31 or reinterred.

1 5-501.

2 (a) Consent for a postmortem examination of a body by a physician is
3 sufficient if the consent is given as provided in this section.

4 (b) (1) The consent may be given by any one of the following persons if
5 that person, whether alone or with another, has assumed control of the body for its
6 final disposition:

7 (i) A parent;

8 (ii) A spouse;

9 **(III) A DOMESTIC PARTNER;**

10 [(iii)] **(IV)** A child;

11 [(iv)] **(V)** A guardian;

12 [(v)] **(VI)** A next of kin; or

13 [(vi)] **(VII)** In the absence of these persons, any other person.

14 (2) If a person does not assume control of a body under paragraph (1)
15 of this subsection, the consent may be given by the State Anatomy Board.

16 5-509.

17 (a) Any individual who is 18 years of age or older may decide the disposition
18 of the individual's own body after that individual's death without the predeath or
19 post-death consent of another person by executing a document that expresses the
20 individual's wishes regarding disposition of the body or by entering into a pre-need
21 contract.

22 (c) Unless a person has knowledge that contrary directions have been given
23 by the decedent, if a decedent has not executed a document under subsection (a) of this
24 section, the following persons, in the order of priority stated, have the right to arrange
25 for the final disposition of the body of the decedent, including by cremation under §
26 5-502 of this subtitle:

27 (1) The surviving spouse **OR DOMESTIC PARTNER** of the decedent;

28 (2) An adult child of the decedent;

29 (3) A parent of the decedent;

1 (4) An adult brother or sister of the decedent;

2 (5) A person acting as a representative of the decedent under a signed
3 authorization of the decedent;

4 (6) The guardian of the person of the decedent at the time of the
5 decedent's death, if one has been appointed; or

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

12 5-605.

13 (a) (1) In this subsection, "unavailable" means:

14 (i) After reasonable inquiry, a health care provider is unaware
15 of the existence of a health care agent or surrogate decision maker;

16 (ii) After reasonable inquiry, a health care provider cannot
17 ascertain the whereabouts of a health care agent or surrogate decision maker;

18 (iii) A health care agent or surrogate decision maker has not
19 responded in a timely manner, taking into account the health care needs of the
20 individual, to a written or oral message from a health care provider;

21 (iv) A health care agent or surrogate decision maker is
22 incapacitated; or

23 (v) A health care agent or surrogate decision maker is unwilling
24 to make decisions concerning health care for the individual.

25 (2) The following individuals or groups, in the specified order of
26 priority, may make decisions about health care for a person who has been certified to
27 be incapable of making an informed decision and who has not appointed a health care
28 agent in accordance with this subtitle or whose health care agent is unavailable.
29 Individuals in a particular class may be consulted to make a decision only if all
30 individuals in the next higher class are unavailable:

31 (i) A guardian for the patient, if one has been appointed;

32 (ii) The patient's spouse **OR DOMESTIC PARTNER**;

33 (iii) An adult child of the patient;

- 1 (iv) A parent of the patient;
- 2 (v) An adult brother or sister of the patient; or
- 3 (vi) A friend or other relative of the patient who meets the
- 4 requirements of paragraph (3) of this subsection.

5 5-612.

6 (a) (1) A health care provider for an individual incapable of making an
 7 informed decision who believes that an instruction to withhold or withdraw a
 8 life-sustaining procedure from the patient is inconsistent with generally accepted
 9 standards of patient care shall:

10 (i) Petition a patient care advisory committee for advice
 11 concerning the withholding or withdrawal of the life-sustaining procedure from the
 12 patient if the patient is in a hospital or related institution; or

13 (ii) File a petition in a court of competent jurisdiction seeking
 14 injunctive or other relief relating to the withholding or withdrawal of the
 15 life-sustaining procedure from the patient.

16 (2) In reviewing a petition filed under paragraph (1) of this subsection,
 17 the court shall follow the standards set forth in §§ 13-711 through 13-713 of the
 18 Estates and Trusts Article.

19 (b) On petition of the patient's spouse, **DOMESTIC PARTNER**, a parent, adult
 20 child, grandchild, brother, or sister of the patient, or a friend or other relative who has
 21 qualified as a surrogate under § 5-605 of this subtitle to a circuit court of the county or
 22 city in which the patient for whom treatment will be or is currently being provided,
 23 withheld, or withdrawn under this subtitle resides or is located, the court may enjoin
 24 that action upon finding by a preponderance of the evidence that the action is not
 25 lawfully authorized by this subtitle or by other State or federal law.

26 **TITLE 6. HEALTH CARE FACILITY VISITATION AND MEDICAL EMERGENCIES.**

27 **SUBTITLE 1. IN GENERAL.**

28 **6-101.**

29 (A) **IN THIS TITLE, "DOMESTIC PARTNERSHIP" MEANS A RELATIONSHIP**
 30 **BETWEEN TWO INDIVIDUALS WHO:**

31 (1) **ARE AT LEAST 18 YEARS OLD;**

32 (2) **ARE NOT RELATED TO EACH OTHER BY BLOOD OR MARRIAGE**
 33 **WITHIN FOUR DEGREES OF CONSANGUINITY UNDER CIVIL LAW RULE;**

1 **(3) ARE NOT MARRIED OR IN A CIVIL UNION OR DOMESTIC**
2 **PARTNERSHIP WITH ANOTHER INDIVIDUAL; AND**

3 **(4) AGREE TO BE IN A RELATIONSHIP OF MUTUAL**
4 **INTERDEPENDENCE IN WHICH EACH INDIVIDUAL CONTRIBUTES TO THE**
5 **MAINTENANCE AND SUPPORT OF THE OTHER INDIVIDUAL AND THE**
6 **RELATIONSHIP, EVEN IF BOTH INDIVIDUALS ARE NOT REQUIRED TO**
7 **CONTRIBUTE EQUALLY TO THE RELATIONSHIP.**

8 **(B) AN INDIVIDUAL WHO ASSERTS A DOMESTIC PARTNERSHIP UNDER**
9 **SUBSECTION (A) OF THIS SECTION MAY BE REQUIRED TO PROVIDE PROOF OF**
10 **ANY TWO OF THE FOLLOWING DOCUMENTS:**

11 **(1) JOINT LIABILITY OF THE INDIVIDUALS FOR A MORTGAGE,**
12 **LEASE, OR LOAN;**

13 **(2) THE DESIGNATION OF ONE OF THE INDIVIDUALS AS THE**
14 **PRIMARY BENEFICIARY UNDER A LIFE INSURANCE POLICY ON THE LIFE OF THE**
15 **OTHER INDIVIDUAL OR UNDER A RETIREMENT PLAN OF THE OTHER**
16 **INDIVIDUAL;**

17 **(3) THE DESIGNATION OF ONE OF THE INDIVIDUALS AS THE**
18 **PRIMARY BENEFICIARY OF THE WILL OF THE OTHER INDIVIDUAL;**

19 **(4) A DURABLE POWER OF ATTORNEY FOR HEALTH CARE OR**
20 **FINANCIAL MANAGEMENT GRANTED BY ONE OF THE INDIVIDUALS TO THE**
21 **OTHER INDIVIDUAL;**

22 **(5) JOINT OWNERSHIP OR LEASE BY THE INDIVIDUALS OF A**
23 **MOTOR VEHICLE;**

24 **(6) A JOINT CHECKING ACCOUNT, JOINT INVESTMENTS, OR A**
25 **JOINT CREDIT ACCOUNT;**

26 **(7) A JOINT RENTER'S OR HOMEOWNER'S INSURANCE POLICY;**

27 **(8) COVERAGE ON A HEALTH INSURANCE POLICY;**

28 **(9) JOINT RESPONSIBILITY FOR CHILD CARE, SUCH AS**
29 **GUARDIANSHIP OR SCHOOL DOCUMENTS;**

30 **(10) A RELATIONSHIP OR COHABITATION CONTRACT; OR**

1 (11) DOCUMENTATION OF A MARRIAGE, CIVIL UNION, OR
2 DOMESTIC PARTNERSHIP ENTERED INTO SUBJECT TO THE LAWS OF THE
3 UNITED STATES, ANY STATE, OR LOCAL OR FOREIGN JURISDICTION.

4 **SUBTITLE 2. VISITATION AND MEDICAL EMERGENCIES.**

5 **6-201.**

6 (A) A HOSPITAL, RELATED INSTITUTION, OR RESIDENTIAL TREATMENT
7 CENTER, AS DEFINED IN § 19-301 OF THIS ARTICLE, SHALL ALLOW A PATIENT'S
8 OR RESIDENT'S DOMESTIC PARTNER, THE CHILDREN OF THE PATIENT'S OR
9 RESIDENT'S DOMESTIC PARTNER, AND THE DOMESTIC PARTNER OF THE
10 PATIENT'S OR RESIDENT'S PARENT OR CHILD TO VISIT, UNLESS:

11 (1) NO VISITORS ARE ALLOWED;

12 (2) THE FACILITY REASONABLY DETERMINES THAT THE
13 PRESENCE OF A PARTICULAR VISITOR WOULD ENDANGER THE HEALTH OR
14 SAFETY OF A PATIENT, RESIDENT, OR MEMBER OF THE FACILITY STAFF; OR

15 (3) THE PATIENT OR RESIDENT TELLS THE FACILITY STAFF THAT
16 THE PATIENT OR RESIDENT DOES NOT WANT A PARTICULAR PERSON TO VISIT.

17 (B) THIS SECTION DOES NOT PROHIBIT A HOSPITAL, RELATED
18 INSTITUTION, OR RESIDENTIAL TREATMENT CENTER FROM ESTABLISHING
19 REASONABLE RESTRICTIONS ON VISITATION, INCLUDING RESTRICTIONS ON THE
20 HOURS OF VISITATION AND NUMBER OF VISITORS.

21 **6-202.**

22 (A) IN THE CASE OF A MEDICAL EMERGENCY, TWO ADULTS SHALL BE
23 TREATED AS DOMESTIC PARTNERS IF ONE OF THE ADULTS, IN GOOD FAITH,
24 TELLS THE EMERGENCY MEDICAL PROVIDER OR HOSPITAL PERSONNEL THAT
25 THE ADULTS ARE IN A MUTUALLY INTERDEPENDENT RELATIONSHIP, FOR THE
26 FOLLOWING PURPOSES ONLY:

27 (1) ALLOWING ONE ADULT TO ACCOMPANY THE ILL OR INJURED
28 ADULT BEING TRANSPORTED TO A HOSPITAL IN AN EMERGENCY VEHICLE; AND

29 (2) VISITATION WITH THE ILL OR INJURED ADULT ADMITTED TO
30 A HOSPITAL ON AN EMERGENCY BASIS ON THE SAME BASIS AS A MEMBER OF
31 THE ILL OR INJURED ADULT'S IMMEDIATE FAMILY.

32 **6-203.**

1 **NOTWITHSTANDING ANY PROVISIONS OF THIS TITLE OR ANY OTHER**
2 **PROVISION OF LAW, IF A DOMESTIC PARTNER HAS SELECTED A HEALTH CARE**
3 **AGENT IN ACCORDANCE WITH TITLE 5, SUBTITLE 6 OF THIS ARTICLE, THAT**
4 **HEALTH CARE AGENT RETAINS THE AUTHORITY TO MAKE ANY DECISIONS FOR**
5 **THE DOMESTIC PARTNER THAT ARE PROVIDED FOR IN THE SELECTION OF THE**
6 **HEALTH CARE AGENT UNTIL THE HEALTH CARE AGENCY HAS BEEN REVOKED IN**
7 **ACCORDANCE WITH THE PROVISIONS OF TITLE 5, SUBTITLE 6 OF THIS ARTICLE.**

8 10–807.

9 (a) The Director may transfer an individual from a public facility to another
10 public facility or, if a private facility agrees, to that private facility, if the Director
11 finds that:

12 (1) The individual either can receive better care or treatment in or
13 would be more likely to benefit from care or treatment at the other facility; or

14 (2) The safety or welfare of other individuals would be furthered.

15 (e) An individual may not be transported to or from any facility unless
16 accompanied by:

17 (1) An ambulance attendant or other individual who is authorized by
18 the facility and is of the same sex. However, the chief executive officer of the facility or
19 that officer's designee may designate an ambulance attendant or other person of either
20 sex to provide transportation to an individual, if deemed appropriate; or

21 (2) The parent, spouse, **DOMESTIC PARTNER**, adult sibling, or adult
22 offspring of the individual.

23 19–310.

24 (a) (4) (i) Except as provided in paragraph (10) of this subsection,
25 when an individual dies in a hospital in accordance with § 5–202 of this article, a
26 representative of the appropriate organ, tissue, or eye recovery agency or a designated
27 requestor shall request, with sensitivity, in the order of stated priority, that the
28 individual's representative consent to the donation of all or any of the decedent's
29 organs or tissues as an anatomical donation if suitable.

30 (ii) For the purposes of subparagraph (i) of this paragraph, the
31 representative of the deceased individual is 1 of the following individuals listed in the
32 following order of priority:

33 1. A spouse **OR DOMESTIC PARTNER**, but, if not alive or
34 not competent, then;

1 19-344.

2 (a) To carry out the policy set forth in § 19-343 of this subtitle, the following
3 procedures are required for all services provided to a resident of a facility.

4 (h) If it is feasible to do so and not medically contraindicated, spouses **OR**
5 **DOMESTIC PARTNERS** who are both residents of the facility shall be given the
6 opportunity to share a room.

7 (k) (1) Each married resident of a facility shall have privacy during a visit
8 by the spouse.

9 (2) **EACH RESIDENT OF A FACILITY WHO HAS A DOMESTIC**
10 **PARTNER SHALL HAVE PRIVACY DURING A VISIT BY THE OTHER DOMESTIC**
11 **PARTNER.**

12 (q) (1) A resident of a facility or the next of kin **OR DOMESTIC PARTNER**
13 or guardian of the person of a resident may file a complaint about an alleged violation
14 of this section.

15 **Article - Health Occupations**

16 7-410.

17 (a) Any individual who is 18 years of age or older may decide the disposition
18 of the individual's own body after the individual's death without the pre-death or
19 post-death consent of another person by executing a document that expresses the
20 individual's wishes or by entering into a pre-need contract.

21 (c) Unless a person has knowledge that contrary directions have been given
22 by the decedent, if a decedent has not executed a document under subsection (a) of this
23 section, the following persons, in the order of priority stated, have the right to arrange
24 for the final disposition of the body of the decedent under this section and are liable for
25 the reasonable costs of preparation, care, and disposition of the decedent:

26 (1) The surviving spouse **OR DOMESTIC PARTNER, AS DEFINED IN §**
27 **1-101 OF THE HEALTH - GENERAL ARTICLE**, of the decedent;

28 (2) An adult child of the decedent;

29 (3) A parent of the decedent;

30 (4) An adult brother or sister of the decedent;

31 (5) A person acting as a representative of the decedent under a signed
32 authorization of the decedent;

1 4-501.

2 (a) In this subtitle the following words have the meanings indicated.

3 (b) "Body" or "part of body" includes organs, tissues, bones, blood, and other
4 body fluids.

5 (c) "Licensed hospital" includes any hospital licensed by the State
6 Department of Health and Mental Hygiene under the laws of the State, and any
7 hospital operated by the United States government, although not required to be
8 licensed under the laws of the State.

9 (d) "Next of kin" includes spouse **AND DOMESTIC PARTNER, AS DEFINED**
10 **IN § 1-101 OF THE HEALTH - GENERAL ARTICLE.**

11 (e) "Person" means any individual, corporation, government or governmental
12 agency or subdivision, estate, trust, partnership or association, or any other legal
13 entity.

14 (f) "Physician" or "surgeon" means any physician or surgeon licensed to
15 practice under the laws of the State.

16 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
17 Act or the application thereof to any person or circumstance is held invalid for any
18 reason in a court of competent jurisdiction, the invalidity does not affect other
19 provisions or any other application of this Act which can be given effect without the
20 invalid provision or application, and for this purpose the provisions of this Act are
21 declared severable.

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 July 1, 2008.