

# HOUSE BILL 1229

J1

0lr2233  
CF SB 528

---

By: **Delegates Bhandari, Krebs, Conaway, Hettleman, and McComas**

Introduced and read first time: February 7, 2020

Assigned to: Health and Government Operations

---

Committee Report: Favorable

House action: Adopted

Read second time: March 8, 2020

---

## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Public Health – Disposition of Remains – Authorizing Agent**

3 FOR the purpose of clarifying that a certain document through the execution of which a  
4 certain individual may decide the disposition of the individual's own body without  
5 certain consent includes a document designating a person to act as an authorizing  
6 agent; providing that an authorizing agent is bound by certain documents in making  
7 certain decisions; clarifying the order of priority of persons that have the right to  
8 serve as the authorizing agent for a decedent; making conforming changes; defining  
9 a certain term; and generally relating to the final disposition of the body of a  
10 decedent.

11 BY repealing and reenacting, with amendments,  
12 Article – Health – General  
13 Section 5–408.1 and 5–509  
14 Annotated Code of Maryland  
15 (2019 Replacement Volume)

16 BY repealing and reenacting, without amendments,  
17 Article – Health – General  
18 Section 5–508(a), (b), (f), and (g)  
19 Annotated Code of Maryland  
20 (2019 Replacement Volume)

21 BY repealing and reenacting, without amendments,  
22 Article – Health Occupations

---

### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 7–101(a) and (v)  
2 Annotated Code of Maryland  
3 (2014 Replacement Volume and 2019 Supplement)

4 BY adding to  
5 Article – Health Occupations  
6 Section 7–101(c–1)  
7 Annotated Code of Maryland  
8 (2014 Replacement Volume and 2019 Supplement)

9 BY repealing and reenacting, with amendments,  
10 Article – Health Occupations  
11 Section 7–410  
12 Annotated Code of Maryland  
13 (2014 Replacement Volume and 2019 Supplement)

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

16 **Article – Health – General**

17 5–408.1.

18 Except as provided in § 5–408(a)(2) of this subtitle, this subtitle does not deny the  
19 right of a donor to provide by [last will and testament or by contract] **A DOCUMENT**  
20 **DESCRIBED IN § 5–509 OF THIS TITLE** for the ultimate disposition and repose of the  
21 donor’s last remains.

22 5–508.

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

24 (b) “Authorizing agent” means the individual who has legal authority to arrange  
25 for and make decisions regarding the final disposition of a dead human body, including by  
26 cremation.

27 (f) “Practitioner” means a person who is licensed by the State as a funeral  
28 director, mortician, or surviving spouse licensee to practice mortuary science.

29 (g) “Pre–need contract” means an agreement prior to the time of death between a  
30 consumer and a practitioner to provide any goods and services regarding the final  
31 disposition of a dead human body.

32 5–509.

33 (a) (1) Any individual who is 18 years of age or older may decide the disposition  
34 of the individual’s own body after that individual’s death without the predeath or

1 post-death consent of another person by [executing]:

2 (I) EXECUTING a document that expresses the individual's wishes  
3 regarding disposition of the body, INCLUDING A DOCUMENT DESIGNATING A PERSON  
4 TO ACT AS AUTHORIZING AGENT; or [by entering]

5 (II) ENTERING into a pre-need contract.

6 (2) The person designated on a United States Department of Defense  
7 Record of Emergency Data (DD Form 93), or its successor form, as the person authorized  
8 to direct disposition may [arrange for the final disposition of the body of a decedent,  
9 including by cremation under § 5-502 of this subtitle] SERVE AS THE AUTHORIZING  
10 AGENT FOR A DECEDENT, if the decedent:

11 (i) Died while serving in the United States armed forces; and

12 (ii) Executed the United States Department of Defense Record of  
13 Emergency Data (DD Form 93), or its successor form.

14 (3) AN AUTHORIZING AGENT IS BOUND BY ANY VALID DOCUMENT  
15 EXECUTED UNDER THIS SUBSECTION IN MAKING DECISIONS REGARDING THE FINAL  
16 DISPOSITION OF THE DECEDENT'S BODY.

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

20 (c) THE FOLLOWING PERSONS, IN THE ORDER OF PRIORITY STATED, HAVE  
21 THE RIGHT TO SERVE AS THE AUTHORIZING AGENT FOR A DECEDENT:

22 (1) IF THE DECEDENT EXECUTED A VALID DOCUMENT UNDER  
23 SUBSECTION (A) OF THIS SECTION:

24 (I) THE PERSON DESIGNATED ON THE UNITED STATES  
25 DEPARTMENT OF DEFENSE RECORD OF EMERGENCY DATA (DD FORM 93), OR ITS  
26 SUCCESSOR FORM, AS THE PERSON AUTHORIZED TO DIRECT DISPOSITION; OR

27 (II) THE PERSON DESIGNATED AS AN AUTHORIZING AGENT BY A  
28 DECEDENT IN THE VALID DOCUMENT EXECUTED UNDER SUBSECTION (A)(1) OF THIS  
29 SECTION; OR

30 (2) Unless a person has knowledge that contrary directions have been  
31 given by the decedent, if a decedent has not executed a document under subsection (a) of  
32 this section[, the following persons, in the order of priority stated, have the right to arrange  
33 for the final disposition of the body of the decedent, including by cremation under § 5-502

1 of this subtitle]:

2           [(1)] (I) The surviving spouse or domestic partner of the decedent;

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

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

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

6           [(5)] (V) An adult grandchild of the decedent;

7           [(6)] (VI) A person acting as a representative of the decedent under a  
8 signed authorization of the decedent **THAT DOES NOT MEET THE REQUIREMENTS OF**  
9 **SUBSECTION (B) OF THIS SECTION;**

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

12           [(8)] (VIII) In the absence of any person under items [(1) through (7)] (I)  
13 **THROUGH (VII)** of this [subsection] **ITEM**, any other person willing to assume the  
14 responsibility to act as the authorizing agent [for purposes of arranging the final disposition  
15 of the decedent's body], including the personal representative of the decedent's estate, after  
16 attesting in writing that a good faith effort has been made to no avail to contact the  
17 individuals under items [(1) through (7)] (I) **THROUGH (VII)** of this [subsection] **ITEM**.

18           (d) (1) Subject to paragraph (2) of this subsection, if a decedent has more than  
19 one survivor under subsection [(c)(1) through (5)] (C)(2)(I) **THROUGH (V)** of this section,  
20 any adult child, parent, adult brother or sister, or adult grandchild of the decedent who  
21 confirms in writing to a practitioner that all of the other members of the same class have  
22 been notified may serve as the authorizing agent for purposes of § 5–502 of this subtitle  
23 unless the practitioner receives a written objection to the cremation from another member  
24 of that class within 24 hours.

25           (2) If a decedent has more than one survivor under subsection [(c)(1)  
26 through (5)] (C)(2)(I) **THROUGH (V)** of this section, the majority of a class may serve as  
27 the authorizing agent.

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

33           (f) In the case of an individual who has donated the individual's body to medical

1 science or whose death occurred in a nursing home or other private institution, a  
2 representative of the institution to which the body was donated or in which the decedent  
3 died shall authorize cremation for purposes of § 5–502 of this subtitle if the decedent  
4 executed cremating authorization forms and the institution is charged with making  
5 arrangements for the final disposition of the body.

6 (g) (1) This subsection may not be construed to require a licensed mortician,  
7 licensed funeral director, or licensed funeral establishment to make any notification  
8 regarding the right of disposition.

9 (2) A person shall forfeit the right of final disposition of the body of a  
10 decedent under subsection (c) of this section and the right shall pass to the next qualifying  
11 person, if the person:

12 (i) Does not exercise the right of disposition within 7 days after  
13 notification by a funeral establishment of the death of the decedent, or within 10 days after  
14 the decedent's death, whichever is earlier;

15 (ii) Subject to paragraph (3) of this subsection, is charged with  
16 first- or second-degree murder or voluntary manslaughter in connection with the  
17 decedent's death and the charges are known to the funeral director; or

18 (iii) Is the subject of an active interim, temporary, or final protective  
19 order and the decedent was a person eligible for relief, as defined under § 4–501 of the  
20 Family Law Article, under the order and a copy of the order is presented to the funeral  
21 director.

22 (3) A person whose right of disposition was forfeited under paragraph (2)(ii)  
23 of this subsection shall have the right restored, if:

24 (i) The criminal charges are dismissed; or

25 (ii) The person is acquitted of the criminal charges.

26 (4) A person may waive the right of final disposition of the body of a  
27 decedent under subsection (c) of this section and the right shall pass to the next qualifying  
28 person, if:

29 (i) The person waives the right of disposition in writing; and

30 (ii) The writing is submitted to the practitioner or funeral  
31 establishment.

32 (5) A practitioner or funeral establishment may not be held civilly liable  
33 for acting in reliance on this subsection.

34 **Article – Health Occupations**

1 7-101.

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

3 **(C-1) "AUTHORIZING AGENT" MEANS THE INDIVIDUAL WHO HAS LEGAL**  
4 **AUTHORITY TO ARRANGE FOR AND MAKE DECISIONS REGARDING THE FINAL**  
5 **DISPOSITION OF A DEAD HUMAN BODY, INCLUDING BY CREMATION.**

6 (v) "Pre-need contract" means an agreement between a consumer and a licensed  
7 funeral director, licensed mortician, or surviving spouse to provide any goods and services  
8 purchased prior to the time of death. Goods and services shall include:

9 (1) A service, including any form of preservation and disposition or  
10 cremation, that a mortician normally provides in the ordinary course of business; or

11 (2) Merchandise, including a casket, vault, or clothing, that a mortician  
12 normally provides in the ordinary course of business.

13 7-410.

14 (a) **(1)** Any individual who is 18 years of age or older may decide the disposition  
15 of the individual's own body after the individual's death without the pre-death or  
16 post-death consent of another person by [executing]:

17 **(I) EXECUTING** a document that expresses the individual's wishes,  
18 **INCLUDING A DOCUMENT DESIGNATING A PERSON TO ACT AS AUTHORIZING AGENT;**  
19 or [by entering]

20 **(II) ENTERING** into a pre-need contract.

21 **(2) THE PERSON DESIGNATED ON A UNITED STATES DEPARTMENT**  
22 **OF DEFENSE RECORD OF EMERGENCY DATA (DD FORM 93), OR ITS SUCCESSOR**  
23 **FORM, AS THE PERSON AUTHORIZED TO DIRECT DISPOSITION MAY SERVE AS THE**  
24 **AUTHORIZING AGENT FOR A DECEDENT, IF THE DECEDENT:**

25 **(I) DIED WHILE SERVING IN THE UNITED STATES ARMED**  
26 **FORCES; AND**

27 **(II) EXECUTED THE UNITED STATES DEPARTMENT OF**  
28 **DEFENSE RECORD OF EMERGENCY DATA (DD FORM 93), OR ITS SUCCESSOR FORM.**

29 **(3) AN AUTHORIZING AGENT IS BOUND BY ANY VALID DOCUMENT**  
30 **EXECUTED UNDER THIS SUBSECTION IN MAKING DECISIONS REGARDING THE FINAL**  
31 **DISPOSITION OF THE DECEDENT'S BODY.**

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

4 (c) **THE FOLLOWING PERSONS, IN THE ORDER OF PRIORITY STATED, HAVE**  
5 **THE RIGHT TO SERVE AS THE AUTHORIZING AGENT FOR A DECEDENT:**

6 **(1) IF THE DECEDENT EXECUTED A VALID DOCUMENT UNDER**  
7 **SUBSECTION (A) OF THIS SECTION:**

8 **(I) THE PERSON DESIGNATED ON THE UNITED STATES**  
9 **DEPARTMENT OF DEFENSE RECORD OF EMERGENCY DATA (DD FORM 93), OR ITS**  
10 **SUCCESSOR FORM, AS THE PERSON AUTHORIZED TO DIRECT DISPOSITION; OR**

11 **(II) THE PERSON DESIGNATED BY A DECEDENT IN THE VALID**  
12 **DOCUMENT EXECUTED UNDER SUBSECTION (A)(1) OF THIS SECTION; OR**

13 **(2) Unless a person has knowledge that contrary directions have been**  
14 **given by the decedent, if a decedent has not executed a document under subsection (a) of**  
15 **this section[, the following persons, in the order of priority stated, have the right to arrange**  
16 **for the final disposition of the body of the decedent under this section and are liable for the**  
17 **reasonable costs of preparation, care, and disposition of the decedent]:**

18 **[(1)] (I) The surviving spouse or domestic partner, as defined in § 1-101**  
19 **of the Health – General Article, of the decedent;**

20 **[(2)] (II) An adult child of the decedent;**

21 **[(3)] (III) A parent of the decedent;**

22 **[(4)] (IV) An adult brother or sister of the decedent;**

23 **[(5)] (V) An adult grandchild of the decedent;**

24 **[(6)] (VI) A person acting as a representative of the decedent under a**  
25 **signed authorization of the decedent **THAT DOES NOT MEET THE REQUIREMENTS OF****  
26 **SUBSECTION (B) OF THIS SECTION;**

27 **[(7)] (VII) The guardian of the person of the decedent at the time of the**  
28 **decedent's death, if a guardian has been appointed; or**

29 **[(8)] (VIII) In the absence of any person under items [(1) through (7)] (I)**  
30 **THROUGH (VII) of this [subsection] ITEM, any other person willing to assume the**  
31 **responsibility to act as the authorizing agent [for purposes of arranging the final disposition**

1 of the decedent's body], including the personal representative of the decedent's estate, after  
2 attesting in writing that a good faith effort has been made to no avail to contact the persons  
3 described in items [(1) through (7)] **(I) THROUGH (VII)** of this [subsection] **ITEM**.

4 (d) (1) Subject to paragraph (2) of this subsection, if a decedent has more than  
5 one survivor under subsection [(c)(1) through (5)] **(C)(2)(I) THROUGH (V)** of this section,  
6 any adult child, parent, adult brother or sister, or adult grandchild of the decedent who  
7 confirms in writing to a licensee that all of the other members of the same class have been  
8 notified may serve as the authorizing agent unless the licensee receives a written objection  
9 from another member of that class **WITHIN 24 HOURS**.

10 (2) If a decedent has more than one survivor under subsection [(c)(1)  
11 through (5)] **(C)(2)(I) THROUGH (V)** of this section, the majority of a class may serve as  
12 the authorizing agent.

13 (e) For an individual whose final disposition is the responsibility of the State or  
14 any of its instrumentalities, a public administrator, medical examiner, coroner,  
15 State-appointed guardian, or any other public official charged with arranging the final  
16 disposition of the body of the individual may serve as the authorizing agent [for purposes  
17 of this section].

18 (f) For an individual who has donated the individual's body to medical science or  
19 whose death occurred in a nursing home or other private institution, a representative of  
20 the institution to which the body was donated or in which the decedent died may serve as  
21 the authorizing agent of the decedent and the institution is charged with making  
22 arrangements for the final disposition of the body.

23 (g) (1) This subsection may not be construed to require a licensed mortician,  
24 licensed funeral director, or licensed funeral establishment to make any notification  
25 regarding the right of final disposition of the body of a decedent.

26 (2) A person shall forfeit the right of final disposition of the body of a  
27 decedent under subsection (c) of this section and the right shall pass to the next qualifying  
28 person, if the person:

29 (i) Does not exercise the right of disposition within 7 days after  
30 notification by a funeral establishment of the death of the decedent, or within 10 days after  
31 the decedent's death, whichever is earlier;

32 (ii) Subject to paragraph (3) of this subsection, is charged with  
33 first- or second-degree murder or voluntary manslaughter in connection with the  
34 decedent's death and the charges are known to the funeral director; or

35 (iii) Is the subject of an active interim, temporary, or final protective  
36 order and the decedent was a person eligible for relief, as defined under § 4-501 of the  
37 Family Law Article, under the order and a copy of the order is presented to the funeral



1 director.

2 (3) A person whose right of disposition was forfeited under paragraph (2)(ii)  
3 of this subsection shall have the right restored, if:

4 (i) The criminal charges are dismissed; or

5 (ii) The person is acquitted of the criminal charges.

6 (4) A person may waive the right of final disposition of the body of a  
7 decedent under subsection (c) of this section and the right shall pass to the next qualifying  
8 person, if:

9 (i) The person waives the right of disposition in writing; and

10 (ii) The writing is submitted to the practitioner or funeral  
11 establishment.

12 (5) A licensed mortician, licensed funeral director, or licensed funeral  
13 establishment may not be held civilly liable for acting in reliance on this subsection.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 October 1, 2020.

Approved:

---

Governor.

---

Speaker of the House of Delegates.

---

President of the Senate.