

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 408

(Senator Peters, *et al.*)

Finance

Health and Government Operations

Public Health - Disposition of Remains - Armed Forces Members

This emergency bill authorizes the person designated on a U.S. Department of Defense Record of Emergency Data Form (DD Form 93) to arrange for the final disposition of a body of a member of the U.S. armed forces if the decedent died while serving in the U.S. armed forces and executed DD Form 93, or its successor form.

Fiscal Summary

State Effect: None. The bill does not directly affect governmental operations or finances.

Local Effect: None. The bill does not directly affect governmental operations or finances.

Small Business Effect: None.

Analysis

Current Law: Any individual age 18 or older may decide the disposition of his or her own body after death without the predeath or post-death consent of another person by executing a document that expresses the individual's wishes regarding the disposition of his or her body or by entering into a preneed contract. A document of disposition authority must be in writing.

Unless a person has knowledge that contrary directions have been given by the decedent, if a decedent has not executed a document of disposition authority in writing, the following survivors have the right to determine the final disposition of a body:

- the surviving spouse or domestic partner of the decedent;
- an adult child of the decedent;
- a parent of the decedent;
- an adult sibling of the decedent;
- a person acting as a representative of the decedent under authorization of the decedent;
- the guardian of the decedent at the time of the decedent's death; or
- any other individual willing to assume the responsibility of the final disposition of the decedent's body if any of the above individuals are absent.

If the decedent has more than one survivor authorized to determine the final disposition of a body, any adult child, parent, or adult brother or sister of the decedent who confirms in writing to a practitioner that all of the other survivors have been notified may serve as the authorizing agent for purposes of cremating the decedent's body, unless the practitioner receives a written objection to the cremation from another authorized survivor within 24 hours. The majority of survivors may also serve as the authorizing agent.

Federal law requires members of the U.S. armed forces to execute DD Form 93, in which they designate a person authorized to direct disposition of their remains in the event of death. This form is updated prior to every deployment and every year on the service member's birthday. Therefore, it is normally the most up-to-date record of a request.

Background: Because DD Form 93 is not mentioned in Maryland law, multiple civil actions have resulted between family members in disputes over the ultimate disposition of service members' remains. For example, if a service member is in the process of a divorce and the DD Form 93 authorizes the mother to determine the final disposition of the body, the mother and the spouse, who the State recognizes as the next of kin, must go to court to determine who has the authority to decide the final disposition of the body. Other cases involve divorced parents, where the elder parent is given the first right by the State although the service member may have listed the younger parent on DD Form 93.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Defense; Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Secretary of State; Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2010
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