

Chapter 232

(House Bill 218)

AN ACT concerning

Public Health – Disposition of Remains – Forfeiture or Waiver of Right of Disposition

FOR the purpose of adding an adult grandchild of a certain decedent to the list of persons who have the right to arrange for the final disposition of the body of the decedent; requiring a person to forfeit the right of final disposition of the body of a decedent and that the right pass to the next qualifying person under certain circumstances; providing that a certain person's right of disposition may be restored under certain circumstances; authorizing a person to waive the right of final disposition and requiring the right to pass to the next qualifying person under certain circumstances; prohibiting funeral directors, morticians, and funeral establishments from being held civilly liable for acting in reliance on this Act; providing for the construction of this Act; making conforming changes; and generally relating to the right of final disposition of the body of a decedent.

BY repealing and reenacting, ~~without~~ with amendments,
 Article – Health – General
 Section 5–509(c) and (d)
 Annotated Code of Maryland
 (2015 Replacement Volume and 2018 Supplement)

BY adding to
 Article – Health – General
 Section 5–509(g)
 Annotated Code of Maryland
 (2015 Replacement Volume and 2018 Supplement)

BY repealing and reenacting, ~~without~~ with amendments,
 Article – Health Occupations
 Section 7–410(c) and (d)
 Annotated Code of Maryland
 (2014 Replacement Volume and 2018 Supplement)

BY adding to
 Article – Health Occupations
 Section 7–410(g)
 Annotated Code of Maryland
 (2014 Replacement Volume and 2018 Supplement)

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

Article – Health – General

5–509.

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

- (1) The surviving spouse or domestic partner of the decedent;
- (2) An adult child of the decedent;
- (3) A parent of the decedent;
- (4) An adult brother or sister of the decedent;

(5) AN ADULT GRANDCHILD OF THE DECEDENT;

~~(5)~~ **(6)** A person acting as a representative of the decedent under a signed authorization of the decedent;

~~(6)~~ **(7)** The guardian of the person of the decedent at the time of the decedent's death, if one has been appointed; or

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

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

(2) If a decedent has more than one survivor under subsection (c)(1) through [(4)] (5) of this section, the majority of a class may serve as the authorizing agent.

(G) (1) THIS SUBSECTION MAY NOT BE CONSTRUED TO REQUIRE A LICENSED MORTICIAN, LICENSED FUNERAL DIRECTOR, OR LICENSED FUNERAL ESTABLISHMENT TO MAKE ANY NOTIFICATION REGARDING THE RIGHT OF DISPOSITION.

(2) A PERSON SHALL FORFEIT THE RIGHT OF FINAL DISPOSITION OF THE BODY OF A DECEDENT UNDER SUBSECTION (C) OF THIS SECTION AND THE RIGHT SHALL PASS TO THE NEXT QUALIFYING PERSON, IF THE PERSON:

(I) DOES NOT EXERCISE THE RIGHT OF DISPOSITION WITHIN ~~3~~ 7 DAYS AFTER NOTIFICATION BY A FUNERAL ESTABLISHMENT OF THE DEATH OF THE DECEDENT, OR WITHIN ~~4~~ 10 DAYS AFTER THE DECEDENT'S DEATH, WHICHEVER IS EARLIER;

~~(II) IS THE SPOUSE OF THE DECEDENT AND A PETITION TO DISSOLVE THE MARRIAGE IS PENDING IN A COURT AT THE TIME OF THE DECEDENT'S DEATH; OR~~

~~(III)~~ (II) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IS CHARGED WITH FIRST- OR SECOND-DEGREE MURDER OR VOLUNTARY MANSLAUGHTER IN CONNECTION WITH THE DECEDENT'S DEATH AND THE CHARGES ARE KNOWN TO THE FUNERAL DIRECTOR; OR

(III) IS THE SUBJECT OF AN ACTIVE INTERIM, TEMPORARY, OR FINAL PROTECTIVE ORDER AND THE DECEDENT WAS A PERSON ELIGIBLE FOR RELIEF, AS DEFINED UNDER § 4-501 OF THE FAMILY LAW ARTICLE, UNDER THE ORDER AND A COPY OF THE ORDER IS PRESENTED TO THE FUNERAL DIRECTOR.

(3) ~~UNLESS FINAL DISPOSITION HAS ALREADY OCCURRED, A~~ A PERSON WHOSE RIGHT OF DISPOSITION WAS FORFEITED UNDER PARAGRAPH ~~(2)(III)~~ (2)(II) OF THIS SUBSECTION SHALL HAVE THE RIGHT RESTORED, IF:

(I) THE CRIMINAL CHARGES ARE DISMISSED; OR

(II) THE PERSON IS ACQUITTED OF THE CRIMINAL CHARGES.

(4) A PERSON MAY WAIVE THE RIGHT OF FINAL DISPOSITION OF THE BODY OF A DECEDENT UNDER SUBSECTION (C) OF THIS SECTION AND THE RIGHT SHALL PASS TO THE NEXT QUALIFYING PERSON, IF:

(I) THE PERSON WAIVES THE RIGHT OF DISPOSITION IN WRITING; AND

(II) THE WRITING IS SUBMITTED TO THE PRACTITIONER OR FUNERAL ESTABLISHMENT.

(5) A PRACTITIONER OR FUNERAL ESTABLISHMENT MAY NOT BE HELD CIVILLY LIABLE FOR ACTING IN RELIANCE ON THIS SUBSECTION.

Article – Health Occupations

7-410.

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

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

(2) An adult child of the decedent;

(3) A parent of the decedent;

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

(5) AN ADULT GRANDCHILD OF THE DECEDENT;

~~(5)~~ **(6)** A person acting as a representative of the decedent under a signed authorization of the decedent;

~~(6)~~ **(7)** The guardian of the person of the decedent at the time of the decedent's death, if a guardian has been appointed; or

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

(d) (1) Subject to paragraph (2) of this subsection, if a decedent has more than one survivor under subsection (c)(1) through [(4)] (5) of this section, any adult child, parent, [or] adult brother or sister, OR ADULT GRANDCHILD of the decedent who confirms in writing to a licensee that all of the other members of the same class have been notified may

serve as the authorizing agent unless the licensee receives a written objection from another member of that class.

(2) If a decedent has more than one survivor under subsection (c)(1) through [(4)] (5) of this section, the majority of a class may serve as the authorizing agent.

(G) (1) THIS SUBSECTION MAY NOT BE CONSTRUED TO REQUIRE A LICENSED MORTICIAN, LICENSED FUNERAL DIRECTOR, OR LICENSED FUNERAL ESTABLISHMENT TO MAKE ANY NOTIFICATION REGARDING THE RIGHT OF FINAL DISPOSITION OF THE BODY OF A DECEDENT.

(2) A PERSON SHALL FORFEIT THE RIGHT OF FINAL DISPOSITION OF THE BODY OF A DECEDENT UNDER SUBSECTION (C) OF THIS SECTION AND THE RIGHT SHALL PASS TO THE NEXT QUALIFYING PERSON, IF THE PERSON:

(I) DOES NOT EXERCISE THE RIGHT OF DISPOSITION WITHIN ~~3~~ 7 DAYS AFTER NOTIFICATION BY A FUNERAL ESTABLISHMENT OF THE DEATH OF THE DECEDENT, OR WITHIN ~~4~~ 10 DAYS AFTER THE DECEDENT’S DEATH, WHICHEVER IS EARLIER;

~~**(H) IS THE SPOUSE OF THE DECEDENT AND A PETITION TO DISSOLVE THE MARRIAGE IS PENDING IN A COURT AT THE TIME OF THE DECEDENT’S DEATH; OR**~~

~~**(H)**~~ **(II) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IS CHARGED WITH FIRST- OR SECOND-DEGREE MURDER OR VOLUNTARY MANSLAUGHTER IN CONNECTION WITH THE DECEDENT’S DEATH AND THE CHARGES ARE KNOWN TO THE FUNERAL DIRECTOR; OR**

(III) IS THE SUBJECT OF AN ACTIVE INTERIM, TEMPORARY, OR FINAL PROTECTIVE ORDER AND THE DECEDENT WAS A PERSON ELIGIBLE FOR RELIEF, AS DEFINED UNDER § 4-501 OF THE FAMILY LAW ARTICLE, UNDER THE ORDER AND A COPY OF THE ORDER IS PRESENTED TO THE FUNERAL DIRECTOR.

(3) ~~UNLESS FINAL DISPOSITION HAS ALREADY OCCURRED, A~~ A PERSON WHOSE RIGHT OF DISPOSITION WAS FORFEITED UNDER PARAGRAPH ~~(2)(H)~~ **(2)(II) OF THIS SUBSECTION SHALL HAVE THE RIGHT RESTORED, IF:**

(I) THE CRIMINAL CHARGES ARE DISMISSED; OR

(II) THE PERSON IS ACQUITTED OF THE CRIMINAL CHARGES.

(4) A PERSON MAY WAIVE THE RIGHT OF FINAL DISPOSITION OF THE BODY OF A DECEDENT UNDER SUBSECTION (C) OF THIS SECTION AND THE RIGHT SHALL PASS TO THE NEXT QUALIFYING PERSON, IF:

(I) THE PERSON WAIVES THE RIGHT OF DISPOSITION IN WRITING; AND

(II) THE WRITING IS SUBMITTED TO THE PRACTITIONER OR FUNERAL ESTABLISHMENT.

(5) A LICENSED MORTICIAN, LICENSED FUNERAL DIRECTOR, OR LICENSED FUNERAL ESTABLISHMENT MAY NOT BE HELD CIVILLY LIABLE FOR ACTING IN RELIANCE ON THIS SUBSECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019.

Approved by the Governor, April 30, 2019.