

# SENATE BILL 147

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CF HB 218

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By: ~~Senator Klausmeier~~ **Senators Klausmeier, Augustine, Beidle, Benson, Feldman, Hayes, Hershey, Jennings, Kelley, Kramer, Reilly, and Young**

Introduced and read first time: January 21, 2019

Assigned to: Finance and Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 5, 2019

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

1 AN ACT concerning

2 **Public Health – Disposition of Remains – Forfeiture or Waiver of Right of**  
3 **Disposition**

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

15 BY repealing and reenacting, ~~without~~ with amendments,  
16 Article – Health – General  
17 Section 5–509(c) and (d)  
18 Annotated Code of Maryland  
19 (2015 Replacement Volume and 2018 Supplement)

20 BY adding to  
21 Article – Health – General  
22 Section 5–509(g)

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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 Annotated Code of Maryland  
2 (2015 Replacement Volume and 2018 Supplement)

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

8 BY adding to  
9 Article – Health Occupations  
10 Section 7–410(g)  
11 Annotated Code of Maryland  
12 (2014 Replacement Volume and 2018 Supplement)

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

15 **Article – Health – General**

16 5–509.

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

22 (1) The surviving spouse or domestic partner of the decedent;

23 (2) An adult child of the decedent;

24 (3) A parent of the decedent;

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

26 **(5) AN ADULT GRANDCHILD OF THE DECEDENT;**

27 ~~(5)~~ **(6)** A person acting as a representative of the decedent under a signed  
28 authorization of the decedent;

29 ~~(6)~~ **(7)** The guardian of the person of the decedent at the time of the  
30 decedent's death, if one has been appointed; or

31 ~~(7)~~ **(8)** In the absence of any person under items (1) through ~~(6)~~ **(7)** of this  
32 subsection, any other person willing to assume the responsibility to act as the authorizing  
33 agent for purposes of arranging the final disposition of the decedent's body, including the

1 personal representative of the decedent's estate, after attesting in writing that a good faith  
 2 effort has been made to no avail to contact the individuals under items (1) through ~~(6)~~ **(7)**  
 3 of this subsection.

4 (d) (1) Subject to paragraph (2) of this subsection, if a decedent has more than  
 5 one survivor under subsection (c)(1) through [(4)] **(5)** of this section, any adult child, parent,  
 6 or adult brother or sister of the decedent who confirms in writing to a practitioner that all  
 7 of the other members of the same class have been notified may serve as the authorizing  
 8 agent for purposes of § 5-502 of this subtitle unless the practitioner receives a written  
 9 objection to the cremation 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 [(4)] **(5)** of this section, the majority of a class may serve as the authorizing agent.

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

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

19 **(I) DOES NOT EXERCISE THE RIGHT OF DISPOSITION WITHIN ~~3~~**  
 20 **7 DAYS AFTER NOTIFICATION BY A FUNERAL ESTABLISHMENT OF THE DEATH OF THE**  
 21 **DECEDENT, OR WITHIN ~~4~~ 10 DAYS AFTER THE DECEDENT'S DEATH, WHICHEVER IS**  
 22 **EARLIER;**

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

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

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

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

1 (I) THE CRIMINAL CHARGES ARE DISMISSED; OR

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

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

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

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

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

#### 12 Article – Health Occupations

13 7–410.

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

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

21 (2) An adult child of the decedent;

22 (3) A parent of the decedent;

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

24 (5) AN ADULT GRANDCHILD OF THE DECEDENT;

25 ~~(6)~~ (6) A person acting as a representative of the decedent under a signed  
26 authorization of the decedent;

27 ~~(7)~~ (7) The guardian of the person of the decedent at the time of the  
28 decedent’s death, if a guardian has been appointed; or

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

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

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

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

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

21 **(I) DOES NOT EXERCISE THE RIGHT OF DISPOSITION WITHIN ~~2~~**  
 22 **7 DAYS AFTER NOTIFICATION BY A FUNERAL ESTABLISHMENT OF THE DEATH OF THE**  
 23 **DECEDENT, OR WITHIN 4 10 DAYS AFTER THE DECEDENT'S DEATH, WHICHEVER IS**  
 24 **EARLIER;**

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

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 31 **ARE KNOWN TO THE FUNERAL DIRECTOR; OR**

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

1           **(3) ~~UNLESS FINAL DISPOSITION HAS ALREADY OCCURRED, A~~ A**  
 2 **PERSON WHOSE RIGHT OF DISPOSITION WAS FORFEITED UNDER PARAGRAPH ~~(2)(III)~~**  
 3 **(2)(II) 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**  
 7 **BODY OF A DECEDENT UNDER SUBSECTION (C) OF THIS SECTION AND THE RIGHT**  
 8 **SHALL PASS TO THE NEXT QUALIFYING PERSON, IF:**

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

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

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.