

Chapter 451

(Senate Bill 528)

AN ACT concerning

Public Health – Disposition of Remains – Authorizing Agent

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

BY repealing and reenacting, with amendments,

Article – Health – General
Section 5–408.1 and 5–509
Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, without amendments,

Article – Health – General
Section 5–508(a), (b), (f), and (g)
Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, without amendments,

Article – Health Occupations
Section 7–101(a) and (v)
Annotated Code of Maryland
(2014 Replacement Volume and 2019 Supplement)

BY adding to

Article – Health Occupations
Section 7–101(c–1)
Annotated Code of Maryland
(2014 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,

Article – Health Occupations
Section 7–410
Annotated Code of Maryland
(2014 Replacement Volume and 2019 Supplement)

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

Article – Health – General

5–408.1.

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

5–508.

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

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

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

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

5–509.

(a) (1) Any individual who is 18 years of age or older may decide the disposition of the individual’s own body after that individual’s death without the predeath or post–death consent of another person by **[executing]**:

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

(II) ENTERING into a pre–need contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(6)] (VI) A person acting as a representative of the decedent under a

signed authorization of the decedent **THAT DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION;**

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

[(8)] (VIII) In the absence of any person under items **[(1) through (7)] (I) THROUGH (VII)** of this **[subsection] ITEM**, 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 (7)] (I) THROUGH (VII)** of this **[subsection] ITEM**.

(d) (1) Subject to paragraph (2) of this subsection, if a decedent has more than one survivor under subsection **[(c)(1) through (5)] (C)(2)(I) THROUGH (V)** of this section, any adult child, parent, 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 (5)] (C)(2)(I) THROUGH (V)** of this section, the majority of a class may serve as the authorizing agent.

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

(f) In the case of an individual who has donated the individual's body to medical science or whose death occurred in a nursing home or other private institution, a representative of the institution to which the body was donated or in which the decedent died shall authorize cremation for purposes of § 5–502 of this subtitle if the decedent executed cremating authorization forms and the institution is charged with making arrangements for the final disposition of the body.

(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 7 days after notification by a funeral establishment of the death of the decedent, or within 10 days after the decedent's death, whichever is earlier;

(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) A person whose right of disposition was forfeited under paragraph (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

7-101.

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

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

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

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

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

7-410.

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

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

(II) ENTERING into a pre-need contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(8)] **(VIII)** In the absence of any person under items [(1) through (7)] **(I) THROUGH (VII)** of this [subsection] **ITEM**, 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 (7)] **(I) THROUGH (VII)** of this [subsection] **ITEM**.

(d) (1) Subject to paragraph (2) of this subsection, if a decedent has more than one survivor under subsection [(c)(1) through (5)] **(C)(2)(I) THROUGH (V)** of this section, any adult child, parent, 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 **WITHIN 24 HOURS**.

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

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

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

(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 7 days after notification by a funeral establishment of the death of the decedent, or within 10 days after the decedent's death, whichever is earlier;

(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) A person whose right of disposition was forfeited under paragraph (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, 2020.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 8, 2020.