

SENATE BILL 528

J1

0lr1645
CF 0lr2233

By: **Senator West**

Introduced and read first time: January 30, 2020

Assigned to: Finance

A BILL ENTITLED

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
23 Section 7–101(a) and (v)
24 Annotated Code of Maryland
25 (2014 Replacement Volume and 2019 Supplement)

26 BY adding to
27 Article – Health Occupations

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

4 BY repealing and reenacting, with amendments,
5 Article – Health Occupations
6 Section 7–410
7 Annotated Code of Maryland
8 (2014 Replacement Volume and 2019 Supplement)

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

11 **Article – Health – General**

12 5–408.1.

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

17 5–508.

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

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

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

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

27 5–509.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (i) The criminal charges are dismissed; or

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

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

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

25 (ii) The writing is submitted to the practitioner or funeral
26 establishment.

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

29 Article – Health Occupations

30 7-101.

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

32 (C-1) “AUTHORIZING AGENT” MEANS THE INDIVIDUAL WHO HAS LEGAL

1 **AUTHORITY TO ARRANGE FOR AND MAKE DECISIONS REGARDING THE FINAL**
2 **DISPOSITION OF A DEAD HUMAN BODY, INCLUDING BY CREMATION.**

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

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

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

10 7-410.

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

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

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

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

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

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

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

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

32 (c) **THE FOLLOWING PERSONS, IN THE ORDER OF PRIORITY STATED, HAVE**

1 **THE RIGHT TO SERVE AS THE AUTHORIZING AGENT FOR A DECEDENT:**

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

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

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

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

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

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

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

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

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

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

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

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

31 (d) (1) Subject to paragraph (2) of this subsection, if a decedent has more than

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

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

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

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

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

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

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

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

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

35 (3) A person whose right of disposition was forfeited under paragraph (2)(ii)
36 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 body of a
4 decedent under subsection (c) of this section and the right shall pass to the next qualifying
5 person, if:

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

7 (ii) The writing is submitted to the practitioner or funeral
8 establishment.

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

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