

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 147

(Senator Klausmeier, *et al.*)

Finance and Education, Health, and
Environmental Affairs

Health and Government Operations

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

This bill (1) establishes conditions under which an authorizing agent, for purposes of arranging for the final disposition of a decedent's body, forfeits or waives the right to arrange the final disposition of the decedent's body; (2) establishes conditions under which the right to arrange final disposition must be restored; and (3) adds an adult grandchild of the decedent to the list of individuals who have a right to determine the final disposition of a decedent's body. The bill cannot be construed to require a licensed mortician, funeral director, or funeral establishment to make any notification regarding the right of disposition. Further, a practitioner or funeral establishment may not be held civilly liable for acting in reliance on the bill's provisions.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: A person forfeits the right of final disposition of the body of a decedent and that right passes to the next qualifying person if the person (1) fails to exercise the right of disposition within 7 days after notice of the decedent's death from a funeral establishment or within 10 days of the decedent's death, whichever is earlier; (2) is charged

with first- or second-degree murder or voluntary manslaughter in connection with the decedent's death and the funeral director is aware of the charges; or (3) is the subject of an active interim, temporary, or final protective order; the decedent was a person eligible for relief under the order; and a copy of the order is presented to the funeral director. However, the right of final disposition is restored to a person whose right of disposition was forfeited because of pending murder or voluntary manslaughter charges if the criminal charges are dismissed or the person is acquitted of the criminal charges.

A person may waive the right of final disposition of the body of a decedent if the person waives the right of disposition in writing and submits the writing to the practitioner or funeral establishment. If a person waives the right of final disposition, the right passes to the next qualifying person.

Current Law: In general, an individual age 18 or older may execute a document or enter into a pre-need contract expressing their wishes for disposition of their own body prior to death. However, if an individual does not execute such a document prior to death, the following persons (in the order of priority) have the *right* to arrange for the final disposition of the body and are liable for the reasonable costs of preparation, care, and disposition of the decedent:

- the surviving spouse or domestic partner;
- an adult child;
- a parent;
- an adult brother or sister;
- a person acting as a representative of the decedent under a signed authorization of the decedent;
- the guardian of the decedent at the time of death, if a guardian has been appointed;
- or
- in the absence of any person listed above, any other person willing to assume the responsibility to act as the authorizing agent – after attesting in writing that a good faith effort has been made to no avail to contact the other individuals who have higher priority.

If a decedent has multiple survivors, any adult child, parent, or adult brother or sister who confirms in writing to a practitioner that all other members of the same class have been notified may serve as the authorizing agent (unless the practitioner receives a written objection to the cremation from another member of that class within 24 hours). Otherwise, the majority of a class may serve as the authorizing agent.

A funeral home practitioner or the operator of a crematory may rely on the representations made by an authorizing agent and is not a guarantor of the reliability of those

representations. If the majority of the authorizing agents cannot agree on the arrangements, either an authorizing agent or the practitioner with control of the body may petition the court for the court to decide the final disposition of the body.

If the State is responsible for the final disposition of an individual, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the body may serve as the authorizing agent.

After 72 hours after death, the body is under the exclusive control of the State Anatomy Board and may be embalmed. Any relative or friend may *claim* the body after embalming and, after paying the board for the costs of moving and embalming the body, may receive it. The board may waive its costs upon a showing of hardship by the relative or friend.

Although any relative or friend may claim a body from the board, current law only establishes that such an individual may be deemed an authorizing agent (thereby having the right of final disposition of the deceased) if no other specified relative or representative with higher priority has been able to be found. Otherwise, the relative or friend must petition the court to obtain authority to be an authorizing agent and can only do so under specified circumstances.

Additional Information

Prior Introductions: None.

Cross File: HB 218 (Delegate Krebs, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Department of Health; Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2019
mm/jc Third Reader - March 16, 2019
Revised - Amendment(s) - March 16, 2019
Enrolled - April 9, 2019
Revised - Amendment(s) - April 9, 2019

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