

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 528

(Senator West)

Finance

Health and Government Operations

Public Health - Disposition of Remains - Authorizing Agent

This bill clarifies several provisions related to identifying an authorizing agent to make decisions regarding the disposition of a person's body after death.

Fiscal Summary

State Effect: The bill is clarifying in nature and does not materially affect State finances or operations.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: In general, under current law, 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. The bill expressly authorizes a person to identify an authorizing agent by (1) executing a document that expresses this wish *or* (2) entering into a pre-need contract. Under the bill, if a person is identified by such a document, the authorizing agent is bound by any valid document executed under this provision of law in making decisions regarding the final disposition of the decedent's body. Additionally, under current law, a person designated on a U.S. 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, if the person (1) died while serving in the U.S. Armed Forces and (2) executed the DD Form 93.

The bill clarifies that the following individuals have the right to serve as the authorizing agent for a decedent if the decedent executed a valid document: (1) the person designated to direct disposition on the DD Form 93; or (2) the person designated as an authorizing agent.

Under current law, unless a person has knowledge that contrary directions have been given by the decedent, 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;
- an adult grandchild;
- a person acting as a representative of the decedent under a signed authorization of the decedent (the bill clarifies that this is a person acting as a representative of the decedent under a signed authorization of the decedent that does not meet specified requirements);
- 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.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1229 (Delegate Bhandari, *et al.*) - Health and Government Operations.

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

Fiscal Note History: First Reader - February 27, 2020
an/jc Third Reader - March 10, 2020

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