

**HOUSE . . . . . No. 1395**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Daniel M. Donahue***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

**An Act designating right of disposition.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>	<i>1/17/2019</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>2/1/2019</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>	<i>1/30/2019</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>1/30/2019</i>

**HOUSE . . . . . No. 1395**

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By Mr. Donahue of Worcester, a petition (accompanied by bill, House, No. 1395) of Daniel M. Donahue and others relative to the right to control the funeral and final disposition for deceased persons. The Judiciary.

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**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
\_\_\_\_\_

An Act designating right of disposition.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Title XVI

2 Chapter 115

3 Section 1. A person, who is 18 years of age or older and of sound mind, by entering into a  
4 pre-need funeral service contract as defined in 239 CMR 4.01 or by providing instructions in a  
5 written and sworn affidavit, may direct the location, manner and conditions of disposition of the  
6 person's remains, and the arrangements for funeral goods and services to be provided upon the  
7 person's death. The disposition directions and funeral prearrangements that are contained in a  
8 pre-need funeral services contract shall not be subject to cancellation or substantial revision  
9 unless the cancellation or substantial revision has been ordered by a person who the decedent has  
10 appointed in the pre-need funeral services contract as the person authorized to cancel or revise  
11 the terms of the pre-need funeral services contract, or unless any resources set aside to fund the  
12 pre-need funeral services contract are insufficient under the terms of the pre-need funeral

13 services contract to carry out the disposition directions and funeral prearrangements contained  
14 therein.

15 Section 2. Except as set forth in Section (4), the right to control the disposition of the  
16 remains of a deceased person, the location, manner and conditions of disposition, and  
17 arrangements for funeral goods and services to be provided vests in the following in the  
18 order named, provided such person is 18 years or older and is of sound mind:

19 a) (1) A person designated by the decedent as the person with the right to control the  
20 disposition in an affidavit executed in accordance with Section 3; or (2) a person designated in  
21 the federal Record of Emergency Date Form DO 93, or its successor form, to have the right of  
22 disposition by a member of the military who dies while under active duty orders as described in  
23 10 U.S.C. 1481.

24 b) The surviving spouse.

25 c) The sole surviving child of the decedent, or if there is more than one child of the  
26 decedent, the majority of the surviving children. However, less than one-half of the surviving  
27 children shall be vested with the rights of this section if they have used reasonable efforts to  
28 notify all other surviving children of their instructions and are not aware of any opposition to  
29 those instructions on the part of more than one-half of all surviving children.

30 d) The surviving parent or parents of the decedent. If one of the surviving parents is  
31 absent, the remaining parent shall be vested with the rights and duties of this section after  
32 reasonable efforts have been unsuccessful in locating the absent surviving parent.

33 e) The surviving brother or sister of the decedent, or if there is more than one sibling  
34 of the decedent, the majority of the surviving siblings. However, less than the majority of  
35 surviving siblings shall be vested with the rights and duties of this section if they have used  
36 reasonable efforts to notify all other surviving siblings of their instructions and are not aware of  
37 any opposition to those instructions on the part of more than one-half of all surviving siblings.

38 f) The surviving grandparent of the decedent, or if there is more than one surviving  
39 grandparent, the majority of the grandparents. However, less than the majority of the surviving  
40 grandparents shall be vested with the rights and duties of this section if they have used  
41 reasonable efforts to notify all other surviving grandparents of their instructions and are not  
42 aware of any opposition to those instructions on the part of more than one-half of all surviving  
43 grandparents.

44 g) The guardian of the person of the decedent at the time of the decedent's death, if  
45 one had been appointed.

46 h) The personal representative of the estate of the decedent.

47 i) The person in the classes of the next degree of kinship, in descending order, under  
48 the laws of descent and distribution to inherit the estate of the decedent. If there is more than one  
49 person of the same degree, any person of that degree may exercise the right of disposition.

50 j) If the disposition of the remains of the decedent is the responsibility of the state or  
51 a political subdivision of the state, the public officer, administrator or employee responsible for  
52 arranging the final disposition of decedent's remains.

53 k) In the absence of any person under subsections (a) through (j) of this section, any  
54 other person willing to assume the responsibilities to act and arrange the final disposition of the  
55 decedent's remains, including the funeral director with custody of the body, after attesting in  
56 writing that a good faith effort has been made to no avail to contact the individuals under  
57 subsections (a) through (j) of this section.

58 Section 3. A person who is 18 years of age or older and of sound mind wishing to  
59 authorize another person to control the disposition of his or her remains may execute an  
60 affidavit before a notary public in substantially the following form:

61 "State of :----- }

62 County of ----- }

63 I, -----do hereby designate -----with the right to  
64 control the disposition of my remains upon my death. I \_\_\_\_\_ have/ \_\_\_\_\_ have not  
65 attached specific directions concerning the disposition of my remains which the designee  
66 shall substantially comply with, provided such directions are lawful and there are sufficient  
67 resources in my estate to carry out the directions.

68 Subscribed and sworn to before me this \_\_\_\_\_day of the month of \_\_\_\_\_of the  
69 year \_\_\_\_\_.

70 \_\_\_\_\_ (signature of notary public)"

71 Section 4. A person entitled under law to the right of disposition shall forfeit that right,

72 and the right is passed on to the next qualifying person as listed in Section (2), in the  
73 following circumstances:

74 a) Any person charged with first or second degree murder or voluntary manslaughter  
75 in connection with the decedent's death, and whose charges are known to the funeral director;  
76 provided, however that if the charges against such person are dismissed, or if such person is  
77 acquitted of the charges, the right of disposition is returned to the person.

78 b) Any person who does not exercise his or her right of disposition within two days  
79 of notification of the death of decedent or within three days of decedent's death, whichever is  
80 earlier.

81 c) If the person and the decedent are spouses and a petition to dissolve the marriage  
82 was pending at the time of decedent's death.

83 d) Where the probate court pursuant to Section (5) below determines that the person  
84 entitled to the right of disposition and the decedent were estranged at the time of death. For  
85 purposes of this subdivision, "estranged" means a physical and emotional separation from the  
86 decedent at the time of death which has existed for a period of time that clearly demonstrates an  
87 absence of due affection, trust and regard for the decedent.

88 Section 5. Notwithstanding the foregoing, the probate court for the county where the  
89 decedent resided may award the right of disposition to the person determined by the court to be  
90 the most fit and appropriate to carry out the right of disposition, and may make decisions  
91 regarding the decedent's remains if those sharing the right of disposition cannot agree. The  
92 following provisions shall apply to the court's determination under this section:

93           a)     If the persons holding the right of disposition are two or more persons with the  
94 same relationship to the decedent, and they cannot, by majority vote, make a decision regarding  
95 the disposition of the decedent's remains, any of such persons or a funeral home with custody of  
96 the remains may file a petition asking the probate court to make a determination in the matter.

97           b)     In making a determination under this Section, the probate court shall consider the  
98 following:

99           (1)     The reasonableness and practicality of the proposed funeral arrangements and  
100 disposition.

101           (2)     The degree of the personal relationship between the decedent and each of the  
102 persons claiming the right of disposition.

103           (3)     The desires of the person or persons who are ready, able and willing to pay the  
104 cost of the funeral arrangements and disposition.

105           (4)     The convenience and needs of other families and friends wishing to pay respects.

106           (5)     The desires of the decedent.

107           (6)     The degree to which the funeral arrangements would allow maximum  
108 participation by all wishing to pay respect.

109           c)     In the event of a dispute regarding the right of disposition, a funeral home is not  
110 liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the  
111 decedent or complete the arrangements for the final disposition of the remains until the funeral  
112 home receives a court order or other written agreement signed by the parties in the disagreement  
113 that decides the final disposition of the remains. If the funeral home retains the remains for final

114 disposition while the parties are in disagreement, the funeral home may embalm or refrigerate  
115 and shelter the body, or both, in order to preserve it while awaiting the final decision of the  
116 probate court and may add the cost of embalming and refrigeration and sheltering to the final  
117 disposition costs. If a funeral home brings an action under this section, the funeral home may add  
118 the legal fees and court costs associated with a petition under this section to the cost of final  
119 disposition. This section may not be construed to require or to impose a duty upon a funeral  
120 home to bring an action under this section. A funeral home and its employees may not be held  
121 criminally or civilly liable for choosing not to bring an action under this section.

122           d)       Except to the degree it may be considered by the probate court under clause (b)(3)  
123 of Section 4 above, the fact that a person has paid or agreed to pay for all or part of the funeral  
124 arrangements and final disposition does not give that person a greater right to the right of  
125 disposition than the person would otherwise have. The personal representative of the estate of the  
126 decedent does not, by virtue of being the personal representative, have a greater claim to the right  
127 of disposition than the person would otherwise have.

128           Section 6. Any person signing a funeral service agreement, cremation authorization form,  
129 or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts  
130 set forth therein, including the identity of the decedent whose remains are to be buried, cremated,  
131 or otherwise disposed of, and the party's authority to order such disposition. A funeral home shall  
132 have the right to rely on such funeral service contract or authorization and shall have the  
133 authority to carry out the instructions of the person or persons whom the funeral home  
134 reasonably believes holds the right of disposition. The funeral home shall have no responsibility  
135 to contact or to independently investigate the existence of any next-of-kin or relative of the  
136 decedent. If there is more than one person in a class who are equal in priority and the funeral

137 home has no knowledge of any objection by other members of such class, the funeral home shall  
138 be entitled to rely on and act according to the instructions of the first such person in the class to  
139 make funeral and disposition arrangements; provided that no other person in such class provides  
140 written notice of his or her objections to the funeral home.

141           Section 7. No funeral home or funeral director who relies in good faith upon the  
142 instructions of an individual claiming the right of disposition shall be subject to criminal or civil  
143 liability or subject to disciplinary action for carrying out the disposition of the remains in  
144 accordance with the instructions.