

# HOUSE . . . . . No. 1545

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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>2/18/2021</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>2/26/2021</i>

# HOUSE . . . . . No. 1545

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By Mr. Donahue of Worcester, a petition (accompanied by bill, House, No. 1545) of Daniel M. Donahue and Harriette L. Chandler 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-Second General Court  
(2021-2022)  
\_\_\_\_\_

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 order  
18 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 Data 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 of  
34 the decedent, the majority of the surviving siblings. However, less than the majority of surviving  
35 siblings shall be vested with the rights and duties of this section if they have used reasonable  
36 efforts to notify all other surviving siblings of their instructions and are not aware of any  
37 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 one  
45 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 the  
48 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 a  
51 political subdivision of the state, the public officer, administrator or employee responsible for  
52 arranging the final disposition of decedent's remains.

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

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

"State of :----- }

County of ----- }

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

Subscribed and sworn to before me this \_\_\_\_\_.day of the month of \_\_\_\_\_.of the year \_\_\_\_\_.

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

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