

SENATE No. 1217

The Commonwealth of Massachusetts

PRESENTED BY:

Patrick M. O'Connor

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:	
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>	<i>1/21/2025</i>

SENATE No. 1217

By Mr. O'Connor, a petition (accompanied by bill, Senate, No. 1217) of Patrick M. O'Connor and Joseph D. McKenna for legislation to designate the right of disposition of human remains. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Fourth General Court
(2025-2026)**

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

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

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

22 b) The surviving spouse.

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

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

31 e) The surviving brother or sister of the decedent, or if there is more than one sibling of
32 the decedent, the majority of the surviving siblings. However, less than the majority of surviving
33 siblings shall be vested with the rights and duties of this section if they have used reasonable

34 efforts to notify all other surviving siblings of their instructions and are not aware of any
35 opposition to those instructions on the part of more than one-half of all surviving siblings.

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

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

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

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

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

51 k) In the absence of any person under subsections (a) through (j) of this section, any other
52 person willing to assume the responsibilities to act and arrange the final disposition of the
53 decedent's remains, including the funeral director with custody of the body, after attesting in

54 writing that a good faith effort has been made to no avail to contact the individuals under
55 subsections (a) through (j) of this section.

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

59 "State of :----- }

60 County of ----- }

61 I, -----do hereby designate -----with the right to
62 control the disposition of my remains upon my death. I _____ have/ _____ have not

63 attached specific directions concerning the disposition of my remains which the designee
64 shall substantially comply with, provided such directions are lawful and there are sufficient
65 resources in my estate to carry out the directions.

66 Subscribed and sworn to before me this _____.day of the month of _____.of the
67 year _____.

68 _____ (signature of notary public)"

69 SECTION 4. A person entitled under law to the right of disposition shall forfeit that right,
70 and the right is passed on to the next qualifying person as listed in Section (2), in the following
71 circumstances:

72 a) Any person charged with first or second degree murder or voluntary manslaughter in
73 connection with the decedent's death, and whose charges are known to the funeral director;

74 provided, however that if the charges against such person are dismissed, or if such person is
75 acquitted of the charges, the right of disposition is returned to the person.

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

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

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

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

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

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

97 (1) The reasonableness and practicality of the proposed funeral arrangements and
98 disposition.

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

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

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

104 (5) The desires of the decedent.

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

107 c) In the event of a dispute regarding the right of disposition, a funeral home is not liable
108 for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent
109 or complete the arrangements for the final disposition of the remains until the funeral home
110 receives a court order or other written agreement signed by the parties in the disagreement that
111 decides the final disposition of the remains. If the funeral home retains the remains for final
112 disposition while the parties are in disagreement, the funeral home may embalm or refrigerate
113 and shelter the body, or both, in order to preserve it while awaiting the final decision of the
114 probate court and may add the cost of embalming and refrigeration and sheltering to the final
115 disposition costs. If a funeral home brings an action under this section, the funeral home may add

116 the legal fees and court costs associated with a petition under this section to the cost of final
117 disposition. This section may not be construed to require or to impose a duty upon a funeral
118 home to bring an action under this section. A funeral home and its employees may not be held
119 criminally or civilly liable for choosing not to bring an action under this section.

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

126 SECTION 6. Any person signing a funeral service agreement, cremation authorization
127 form, or any other authorization for disposition shall be deemed to warrant the truthfulness of
128 any facts set forth therein, including the identity of the decedent whose remains are to be buried,
129 cremated, or otherwise disposed of, and the party's authority to order such disposition. A funeral
130 home shall have the right to rely on such funeral service contract or authorization and shall have
131 the authority to carry out the instructions of the person or persons whom the funeral home
132 reasonably believes holds the right of disposition. The funeral home shall have no responsibility
133 to contact or to independently investigate the existence of any next-of-kin or relative of the
134 decedent. If there is more than one person in a class who are equal in priority and the funeral
135 home has no knowledge of any objection by other members of such class, the funeral home shall
136 be entitled to rely on and act according to the instructions of the first such person in the class to
137 make funeral and disposition arrangements; provided that no other person in such class provides
138 written notice of his or her objections to the funeral home.

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