

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 87

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO PREARRANGED FUNERAL PLANS; AMENDING SECTION 54-1142, IDAHO
2 CODE, TO REVISE PROVISIONS REGARDING AUTHORITY IN ABSENCE OF OR UN-
3 COVERED PROVISIONS IN A PREARRANGED FUNERAL PLAN; AMENDING SECTION
4 15-5-306, IDAHO CODE, TO REVISE PROVISIONS REGARDING TERMINATION OF
5 GUARDIANSHIP FOR INCAPACITATED PERSON; AMENDING SECTION 15-5-425,
6 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND DECLARING AN EMER-
7 GENCY AND PROVIDING AN EFFECTIVE DATE.
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Section 54-1142, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 54-1142. AUTHORITY IN ABSENCE OF OR UNCOVERED PROVISIONS IN A PREAR-
13 RANGED FUNERAL PLAN. (1) If the decedent has not made a prearranged funeral
14 plan as set forth in section 54-1139, Idaho Code, or to the extent any pro-
15 visions relating to the disposition of the person's remains are not clearly
16 covered in a prearranged funeral plan, the right to control the disposition
17 of the remains of a deceased person or to determine provisions not clearly
18 covered in a prearranged funeral plan vests in, and devolves upon, the fol-
19 lowing in the order named:

20 (a) The person designated in a written document executed by the dece-
21 dent and acknowledged in the same manner as required for instruments
22 conveying real property, and subject to such limitations, restric-
23 tions, or directions, as may be set forth in such document, or the
24 person designated by the decedent as authorized to direct disposition
25 as listed on the decedent's United States department of defense record
26 of emergency data, DD form 93 or its successor form, if the decedent died
27 while serving in military service as described in 10 U.S.C. 1481(a) (1)
28 through (8) in any branch of the United States armed forces, United
29 States reserve forces or national guard;

30 (b) The person designated as agent under a durable power of attorney for
31 health care executed by the decedent, unless such durable power of at-
32 torney for health care contains express and clear language denying such
33 right;

34 (c) The person designated in a durable power of attorney executed by the
35 decedent, if such power of attorney contains express and clear language
36 granting such right to the agent named in such power of attorney;

37 (d) The person acting as guardian of the decedent at the time of the
38 decedent's death, or if no guardian was then acting, the person acting
39 as conservator of the decedent at the time of the decedent's death;

40 ~~(d)~~ (e) The competent surviving spouse of the decedent;

41 ~~(e)~~ (f) A majority of the competent surviving adult children of the
42 decedent, provided that less than one-half (1/2) of the competent sur-

1 viving adult children shall be vested with the right to control the
 2 disposition of the remains of the decedent if they have used reasonable
 3 efforts to notify all other competent surviving adult children of their
 4 instructions to dispose of the decedent's remains and are not aware of
 5 any opposition to those instructions on the part of more than one-half
 6 (1/2) of all competent surviving adult children;

7 ~~(f)~~ (g) The competent surviving parents or parent of the decedent, pro-
 8 vided that if one (1) of the competent surviving parents is absent, the
 9 remaining competent surviving parent shall be vested with the right to
 10 control the disposition of the remains of the decedent after reasonable
 11 efforts have been made and are unsuccessful in locating the absent com-
 12 petent surviving parent;

13 ~~(g)~~ (h) The person appointed by a court of competent jurisdiction as the
 14 personal representative or administrator of the estate of the decedent;

15 ~~(h)~~ (i) The person nominated as the personal representative of the es-
 16 tate of the decedent in the will of the decedent;

17 ~~(i)~~ (j) The competent adult person or persons entitled to inherit from
 18 the decedent under the intestate succession laws of the state of Idaho,
 19 respectively in the next degree of kinship, provided that if there is
 20 more than one (1) competent surviving adult person of the same degree of
 21 kinship, the majority of those persons, and provided further that less
 22 than the majority of competent surviving adult persons of the same de-
 23 gree of kinship shall be vested with the right to control the disposi-
 24 tion of the remains of the decedent if those persons have used reason-
 25 able efforts to notify all other competent surviving adult persons of
 26 the same degree of kinship of their instructions to dispose of the dece-
 27 dent's remains and are not aware of any opposition to those instructions
 28 on the part of one-half (1/2) or more of all competent surviving adult
 29 persons of the same degree of kinship.

30 ~~(j) If the persons listed above fail to exercise their right to dispose
 31 of the remains of the deceased person within forty (40) days of the death
 32 of the deceased person, the person acting as guardian of the ward at the
 33 time of the ward's death, or if no guardian was then acting, the person
 34 acting as conservator of the protected person at the time of the pro-
 35 tected person's death, has the authority to dispose of the deceased per-
 36 son's remains, including cremation of the remains.~~

37 (2) If any person to whom the right of control has vested pursuant to
 38 the foregoing has been charged with first or second degree murder or volun-
 39 tary manslaughter in connection with the decedent's death, and those charges
 40 are known to the funeral director or cemetery authority, the right of con-
 41 trol is relinquished and passed on to the next qualifying person as listed
 42 above as if the charged person did not exist; provided however, that if the
 43 charges against such person are dropped, or if such person is acquitted of
 44 the charges, the right of control is returned to the person.

45 (3) For purposes of this section:

46 (a) "Adult" means an individual who is eighteen (18) years of age or
 47 older;

48 (b) "Child" means a natural or adopted child of the decedent;

1 (c) "Competent" means the individual has not been declared incompetent
2 by a court of law or has been declared competent by a court of law after a
3 prior declaration of incompetence;

4 (d) "Durable power of attorney" means a power of attorney described in
5 section 15-12-102, Idaho Code, or any similar document properly exe-
6 cuted under the laws of another jurisdiction;

7 (e) "Durable power of attorney for health care" means the document de-
8 scribed in chapter 45, title 39, Idaho Code, or any similar document
9 properly executed under the laws of another jurisdiction;

10 (f) "Will" means any testamentary device that is valid under the Idaho
11 probate code, including, but not limited to, sections 15-2-503, 15-2-
12 504 and 15-2-506, Idaho Code, whether or not originally executed in, or
13 under the laws of, the state of Idaho.

14 (4) (a) A cemetery authority or licensed funeral director or a licensed
15 hospital or its authorized personnel may permit or assist in, and a
16 physician may perform, an autopsy of any remains of a decedent in its
17 custody:

18 (i) If the decedent, prior to his death, authorizes an autopsy
19 in his will or in another written instrument, including, but not
20 limited to, a durable power of attorney for health care; or

21 (ii) Upon the receipt of a written authorization signed by, tele-
22 grammed from, or received by facsimile transmission from a person
23 representing himself to be the person who is entitled under this
24 section to control the disposition of the remains of the decedent,
25 or to be a coroner or any other duly authorized public officer; or

26 (iii) Upon the receipt of an oral authorization obtained by tele-
27 phone and recorded on tape or other recording device from a person
28 representing himself to be the person who is entitled under this
29 section to control the disposition of the remains of the decedent,
30 or to be a coroner or any other duly authorized public officer.

31 (b) A cemetery authority or a licensed funeral director of a licensed
32 hospital or its authorized personnel is not liable for permitting or as-
33 sisting, and a physician is not liable for performing, an autopsy pur-
34 suant to the authorization provided in paragraph (a) of this subsection
35 unless he has actual notice that such representation is untrue at the
36 time the autopsy is performed. If such authorization is contained in
37 a will, the autopsy may be performed regardless of the validity of the
38 will in other respects and regardless of whether the will may not be of-
39 fered for, or admitted to, probate until a later date.

40 (c) This subsection shall not authorize the obtaining of an oral autho-
41 rization by telephone, recorded on tape or other recording device, for
42 the autopsy of a deceased person if it is made known to the physician who
43 is to perform the autopsy that the deceased person was, at the time of
44 his death, a member of a religion or group that opposes autopsies.

45 (5) Persons designated in subsection (1) of this section have a direct
46 and tangible interest in the death certificate of a decedent pursuant to sec-
47 tion 39-270(b), Idaho Code.

48 (6) Notwithstanding any other provision of law to the contrary, if the
49 decedent is cremated and the person or persons vested with the right to con-
50 trol the disposition of his remains pursuant to this section does not claim

1 the remains within one (1) year following his death or fails to exercise con-
 2 trol over the remains for a period of at least one (1) year, a funeral direc-
 3 tor or mortician may lawfully provide for the disposition of the remains in
 4 a manner consistent with respectful funeral home end-of-life processes when
 5 the deceased was indigent or has no next of kin or legal representative to
 6 make final disposition decisions. A funeral director or crematory authority
 7 shall maintain records of the location and date of such disposition for at
 8 least ten (10) years. This subsection shall not apply to unclaimed remains
 9 of veterans as provided for in section 54-1144, Idaho Code.

10 SECTION 2. That Section 15-5-306, Idaho Code, be, and the same is hereby
 11 amended to read as follows:

12 15-5-306. TERMINATION OF GUARDIANSHIP FOR INCAPACITATED PERSON. (1)
 13 Subject to subsection (2) of this section, the authority and responsibility
 14 of a guardian for an incapacitated person terminates upon the death of the
 15 guardian or ward, the determination of incapacity of the guardian, or upon
 16 removal or resignation as provided in section 15-5-307 of this part. Testa-
 17 mentary appointment under an informally probated will terminates if the will
 18 is later denied probate in a formal proceeding. Termination does not affect
 19 his liability for prior acts nor his obligation to account for funds and as-
 20 sets of his ward.

21 (2) If the conditions set forth in a guardian has the right to control
 22 the disposition of the remains of a deceased person or to determine provi-
 23 sions not clearly covered in a prearranged funeral plan pursuant to section
 24 54-1142 (1) (j) exist, Idaho Code, then the guardianship shall continue as set
 25 forth in that section.

26 SECTION 3. That Section 15-5-425, Idaho Code, be, and the same is hereby
 27 amended to read as follows:

28 15-5-425. DISTRIBUTIVE DUTIES AND POWERS OF CONSERVATOR. (a) A con-
 29 servator may expend or distribute income or principal of the estate without
 30 court authorization or confirmation for the support, education, care or ben-
 31 efit of the protected person and his dependents in accordance with the fol-
 32 lowing principles:

33 (1) The conservator is to consider recommendations relating to the ap-
 34 propriate standard of support, education and benefit for the protected
 35 person made by a parent or guardian, if any. He may not be surcharged for
 36 sums paid to persons or organizations actually furnishing support, ed-
 37 ucation or care to the protected person pursuant to the recommendations
 38 of a parent or guardian of the protected person, unless he knows that the
 39 parent or guardian is deriving personal financial benefit therefrom,
 40 including relief from any personal duty of support, or unless the rec-
 41 ommendations are clearly not in the best interests of the protected per-
 42 son.

43 (2) The conservator is to expend or distribute sums reasonably neces-
 44 sary for the support, education, care or benefit of the protected per-
 45 son with due regard to (A) the size of the estate, the probable duration
 46 of the conservatorship and the likelihood that the protected person, at
 47 some future time, may be fully able to manage his affairs and the estate

1 which has been conserved for him; (B) the accustomed standard of living
2 of the protected person and members of his household; (C) other funds or
3 sources used for the support of the protected person.

4 (3) The conservator may expend funds of the estate for the support of
5 persons legally dependent on the protected person and others who are
6 members of the protected person's household who are unable to support
7 themselves, and who are in need of support.

8 (4) Funds expended under this subsection may be paid by the conservator
9 to any person, including the protected person to reimburse for expendi-
10 tures which the conservator might have made, or in advance for services
11 to be rendered to the protected person when it is reasonable to expect
12 that they will be performed and where advance payments are customary or
13 reasonably necessary under the circumstances.

14 (5) A conservator, in discharging the responsibilities conferred by
15 court order and this part, shall implement the principles described in
16 section 15-5-408 (a) of this code.

17 (b) If the estate is ample to provide for the purposes implicit in the
18 distributions authorized by the preceding subsections, a conservator for a
19 protected person other than a minor has power to make gifts to charity and
20 other objects as the protected person might have been expected to make, in
21 amounts which do not exceed in total for any year twenty percent (20%) of the
22 income from the estate.

23 (c) When a minor who has not been adjudged disabled under subsection (b)
24 of section 15-5-401 of this part attains his majority, his conservator, af-
25 ter meeting all prior claims and expenses of administration, shall pay over
26 and distribute all funds and properties to the former protected person as
27 soon as possible.

28 (d) When the conservator is satisfied that a protected person's dis-
29 ability (other than minority) has ceased, the conservator, after meeting all
30 prior claims and expenses of administration, shall pay over and distribute
31 all funds and properties to the former protected person as soon as possible.

32 (e) If a protected person dies, the conservator shall deliver to the
33 court for safekeeping any will of the deceased protected person which may
34 have come into his possession, inform the executor or a beneficiary named
35 therein that he has done so, and retain the estate for delivery to a duly ap-
36 pointed personal representative of the decedent or other persons entitled
37 thereto. If after forty (40) days from the death of the protected person no
38 other person has been appointed personal representative and no application
39 or petition for appointment is before the court, the conservator may apply
40 to exercise the powers and duties of a personal representative so that he
41 may proceed to administer and distribute the decedent's estate without ad-
42 ditional or further appointment. Upon application for an order granting the
43 powers of a personal representative to a conservator, after notice to any
44 person demanding notice under section 15-3-204 of this code and to any per-
45 son nominated executor in any will of which the applicant is aware, the court
46 may order the conferral of the power upon determining that there is no objec-
47 tion, and indorse the letters of the conservator to note that the formerly
48 protected person is deceased and that the conservator has acquired all of the
49 powers and duties of a personal representative. The making and entry of an
50 order under this section shall have the effect of an order of appointment of a

1 personal representative as provided in section 15-3-308 and parts 6 through
2 10 of chapter 3 except that the estate in the name of the conservator, af-
3 ter administration, may be distributed to the decedent's successors without
4 prior re-transfer to the conservator as personal representative.

5 (f) During the period between the death of a protected person and the
6 appointment of a personal representative for the protected person's estate,
7 or the conferral of the powers of a personal representative upon the conser-
8 vator as provided in this section, the person acting as conservator at the
9 time of the deceased protected person's death shall have the duties and pow-
10 ers of a temporary conservator as set forth in section 15-5-407A, Idaho Code,
11 and the powers set forth in section 54-1142(1) ~~(j)~~, Idaho Code.

12 SECTION 4. An emergency existing therefor, which emergency is hereby
13 declared to exist, this act shall be in full force and effect on and after
14 July 1, 2025.