

LEGISLATURE OF THE STATE OF IDAHO

Sixtieth Legislature

First Regular Session - 2009

IN THE SENATE

SENATE BILL NO. 1049

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO DISPOSITION OF HUMAN REMAINS; AMENDING SECTION 54-1139, IDAHO CODE, TO APPLY A CITED IDAHO CODE PROVISION IN THE ABSENCE OF PROVISION REGARDING DISPOSITION OF REMAINS IN A PREARRANGED FUNERAL PLAN AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1141, IDAHO CODE, TO PROVIDE A CODE CROSS-REFERENCE, TO REMOVE PROVISIONS REGARDING FUNERAL SERVICES THAT DO NOT CONFLICT WITH THE DECEASED'S INSTRUCTIONS AND TO PROVIDE FOR ALTERNATE ARRANGEMENTS THAT DO NOT INVOLVE THE PERSON'S REMAINS; AMENDING SECTION 54-1142, IDAHO CODE, TO PROVIDE FOR DISPOSITION OF A PERSON'S REMAINS THAT ARE NOT CLEARLY COVERED IN A PREARRANGED FUNERAL PLAN.

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

SECTION 1. That Section 54-1139, Idaho Code, be, and the same is hereby amended to read as follows:

54-1139. INSTRUCTIONS FOR DISPOSITION OF PERSON'S REMAINS. A.(1) A person may provide written instructions as part of a prearranged funeral plan for disposition of the person's remains by any lawful means. The person shall execute the prearranged funeral plan, containing the instructions, as provided in section 54-1133, Idaho Code.

B.(2) As used in this section, "prearranged funeral plan" means a plan:

(4a) For the final disposition of a person's remains; and

(2b) That has been funded in advance of the death of the person leaving instructions for the disposition of that person's remains.

C.(3) A person, as part of a prearranged funeral plan, shall have the authority to sign all necessary or required forms, authorizations or agreements pertaining to the disposition of his remains including, but not limited to, a cremation authorization form.

D.(4) A person, as part of a prearranged funeral plan, may designate a person to make decisions regarding any substitutions under section 54-1137, Idaho Code.

(5) To the extent any provision relating to the disposition of a person's remains are not clearly covered in a prearranged funeral plan, then the provisions of section 54-1142, Idaho Code, shall apply. The mere ownership of a burial plot, with or without a headstone or marker, does not constitute a prearranged funeral plan.

SECTION 2. That Section 54-1141, Idaho Code, be, and the same is hereby amended to read as follows:

54-1141. SURVIVOR'S SERVICES. The provisions of sections 54-1140 and 54-1142, Idaho Code, shall not prevent the deceased person's survivors from, at their own expense,

1 pursuing alternate meaningful services and making arrangements for funeral services that do
2 not conflict with the deceased's instructions for disposition involve the person's remains.

3 SECTION 3. That Section 54-1142, Idaho Code, be, and the same is hereby amended to
4 read as follows:

5 54-1142. AUTHORITY IN ABSENCE OF OR UNCOVERED PROVISIONS IN A
6 PREARRANGED FUNERAL PLAN. (1) If the decedent has not made a prearranged funeral
7 plan as set forth in section 54-1139, Idaho Code, or to the extent any provisions relating to the
8 disposition of the person's remains are not clearly covered in a prearranged funeral plan, the
9 right to control the disposition of the remains of a deceased person or to determine provisions
10 not clearly covered in a prearranged funeral plan vests in, and devolves upon the following in
11 the order named:

- 12 (a) The person designated in a written document executed by the decedent and
13 acknowledged in the same manner as required for instruments conveying real property,
14 and subject to such limitations, restrictions, or directions, as may be set forth in such
15 document;
- 16 (b) The person designated as agent under a durable power of attorney for health care
17 executed by the decedent, unless such durable power of attorney for health care contains
18 express and clear language denying such right;
- 19 (c) The person designated in a durable power of attorney executed by the decedent, if
20 such power of attorney contains express and clear language granting such right to the
21 agent named in such power of attorney;
- 22 (d) The competent surviving spouse of the decedent;
- 23 (e) A majority of the competent surviving adult children of the decedent, provided
24 that less than one-half (1/2) of the competent surviving adult children shall be vested
25 with the right to control the disposition of the remains of the decedent if they have
26 used reasonable efforts to notify all other competent surviving adult children of their
27 instructions to dispose of the decedent's remains and are not aware of any opposition
28 to those instructions on the part of more than one-half (1/2) of all competent surviving
29 adult children;
- 30 (f) The competent surviving parents or parent of the decedent, provided that if one (1) of
31 the competent surviving parents is absent, the remaining competent surviving parent shall
32 be vested with the right to control the disposition of the remains of the decedent after
33 reasonable efforts have been made and are unsuccessful in locating the absent competent
34 surviving parent;
- 35 (g) The person appointed by a court of competent jurisdiction as the personal
36 representative or administrator of the estate of the decedent;
- 37 (h) The person nominated as the personal representative of the estate of the decedent in
38 the will of the decedent;
- 39 (i) The competent adult person or persons entitled to inherit from the decedent under the
40 intestate succession laws of the state of Idaho, respectively in the next degree of kinship,
41 provided that if there is more than one (1) competent surviving adult person of the same
42 degree of kinship, the majority of those persons, and provided further that less than the
43 majority of competent surviving adult persons of the same degree of kinship shall be
44 vested with the right to control the disposition of the remains of the decedent if those
45 persons have used reasonable efforts to notify all other competent surviving adult persons

1 of the same degree of kinship of their instructions to dispose of the decedent's remains
2 and are not aware of any opposition to those instructions on the part of one-half (1/2) or
3 more of all competent surviving adult persons of the same degree of kinship;

4 (j) If the persons listed above fail to exercise their right to dispose of the remains of the
5 deceased person within forty (40) days of the death of the deceased person, the person
6 acting as guardian of the ward at the time of the ward's death, or if no guardian was
7 then acting, the person acting as conservator of the protected person at the time of the
8 protected person's death, has the authority to dispose of the deceased person's remains,
9 including cremation of the remains.

10 (2) If any person to whom the right of control has vested pursuant to the foregoing has
11 been charged with first or second degree murder or voluntary manslaughter in connection with
12 the decedent's death, and those charges are known to the funeral director or cemetery authority,
13 the right of control is relinquished and passed on to the next qualifying person as listed above
14 as if the charged person did not exist; provided however, that if the charges against such person
15 are dropped, or if such person is acquitted of the charges, the right of control is returned to the
16 person.

17 (3) For purposes of this section:

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

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

20 (c) "Competent" means the individual has not been declared incompetent by a court of
21 law, or who has been declared competent by a court of law after a prior declaration of
22 incompetence;

23 (d) "Durable power of attorney" means a power of attorney described in section
24 15-12-102, Idaho Code, or any similar document properly executed under the laws of
25 another jurisdiction; and

26 (e) "Durable power of attorney for health care" means the document described in chapter
27 45, title 39, Idaho Code, or any similar document properly executed under the laws of
28 another jurisdiction;

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

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

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

38 (ii) Upon the receipt of a written authorization signed by, telegrammed from, or
39 received by facsimile transmission from, a person representing himself to be the
40 person who is entitled under this section to control the disposition of the remains
41 of the decedent, or to be a coroner or any other duly authorized public officer; or

42 (iii) Upon the receipt of an oral authorization obtained by telephone, and recorded
43 on tape or other recording device, from a person representing himself to be the
44 person who is entitled under this section to control the disposition of the remains
45 of the decedent, or to be a coroner or any other duly authorized public officer.

1 (b) A cemetery authority or a licensed funeral director of a licensed hospital or its
2 authorized personnel is not liable for permitting or assisting, and a physician is not liable
3 for performing, an autopsy pursuant to the authorization provided in paragraph (a) of this
4 subsection unless he has actual notice that such representation is untrue at the time the
5 autopsy is performed. If such authorization is contained in a will, the autopsy may be
6 performed regardless of the validity of the will in other respects and regardless of whether
7 the will may not be offered for, or admitted to, probate until a later date.

8 (c) This subsection shall not authorize the obtaining of an oral authorization by
9 telephone, recorded on tape or other recording device, for the autopsy of a deceased
10 person if it is made known to the physician who is to perform the autopsy that the
11 deceased person was, at the time of his death, a member of a religion or group which
12 opposes autopsies.