

IN THE SENATE

SENATE BILL NO. 1308

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO DISPOSITION OF REMAINS; AMENDING SECTION 54-1142, IDAHO CODE,
2 TO PROVIDE THAT IN THE ABSENCE OF A PREARRANGED FUNERAL PLAN OR CERTAIN
3 PROVISIONS IN SUCH PLAN, THAT DISPOSITION OF THE REMAINS OF A DECEDENT
4 MAY VEST IN THE PERSON DESIGNATED BY THE DECEDENT IN A DD FORM 93, IF THE
5 DECEDENT DIED WHILE SERVING IN MILITARY SERVICE IN ANY BRANCH OF THE
6 UNITED STATES ARMED FORCES, UNITED STATES RESERVE FORCES OR NATIONAL
7 GUARD.
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
13 PREARRANGED FUNERAL PLAN. (1) If the decedent has not made a prearranged
14 funeral plan as set forth in section 54-1139, Idaho Code, or to the extent
15 any provisions relating to the disposition of the person's remains are not
16 clearly covered in a prearranged funeral plan, the right to control the
17 disposition of the remains of a deceased person or to determine provisions
18 not clearly covered in a prearranged funeral plan vests in, and devolves upon
19 the following in the order named:

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

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

38 (e) A majority of the competent surviving adult children of the
39 decedent, provided that less than one-half (1/2) of the competent
40 surviving adult children shall be vested with the right to control the
41 disposition of the remains of the decedent if they have used reasonable
42 efforts to notify all other competent surviving adult children of their

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

4 (f) The competent surviving parents or parent of the decedent, provided
5 that if one (1) of the competent surviving parents is absent, the
6 remaining competent surviving parent shall be vested with the right to
7 control the disposition of the remains of the decedent after reasonable
8 efforts have been made and are unsuccessful in locating the absent
9 competent surviving parent;

10 (g) The person appointed by a court of competent jurisdiction as the
11 personal representative or administrator of the estate of the decedent;

12 (h) The person nominated as the personal representative of the estate
13 of the decedent in the will of the decedent;

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

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

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

42 (3) For purposes of this section:

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

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

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

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

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

7 (f) "Will" means any testamentary device which is valid under the
8 Idaho probate code, including, but not limited to, sections 15-2-503,
9 15-2-504 and 15-2-506, Idaho Code, whether or not originally executed
10 in, or under the laws of, the state of Idaho.

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

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

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

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

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

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