

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 502

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO UNCLAIMED REMAINS OF A DECEDENT; AMENDING SECTION 54-1142, IDAHO  
2 CODE, TO PROVIDE FOR CERTAIN AUTHORITY OF FUNERAL DIRECTORS AND MORTI-  
3 CIANS TO PROVIDE FOR THE LAWFUL AND RESPECTFUL DISPOSITION OF CERTAIN  
4 UNCLAIMED REMAINS AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN  
5 EMERGENCY.  
6

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

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

10 54-1142. AUTHORITY IN ABSENCE OF OR UNCOVERED PROVISIONS IN A PREAR-  
11 RANGED FUNERAL PLAN. (1) If the decedent has not made a prearranged funeral  
12 plan as set forth in section 54-1139, Idaho Code, or to the extent any pro-  
13 visions relating to the disposition of the person's remains are not clearly  
14 covered in a prearranged funeral plan, the right to control the disposition  
15 of the remains of a deceased person or to determine provisions not clearly  
16 covered in a prearranged funeral plan vests in, and devolves upon, the fol-  
17 lowing in the order named:

18 (a) The person designated in a written document executed by the dece-  
19 dent and acknowledged in the same manner as required for instruments  
20 conveying real property, and subject to such limitations, restric-  
21 tions, or directions, as may be set forth in such document, or, the  
22 person designated by the decedent as authorized to direct disposition  
23 as listed on the decedent's United States department of defense record  
24 of emergency data, DD form 937, or its successor form, if the dece-  
25 dent died while serving in military service as described in 10 U.S.C.  
26 1481(a) (1) through (8) in any branch of the United States armed forces,  
27 United States reserve forces or national guard;

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

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

35 (d) The competent surviving spouse of the decedent;

36 (e) A majority of the competent surviving adult children of the dece-  
37 dent, provided that less than one-half (1/2) of the competent surviving  
38 adult children shall be vested with the right to control the disposition  
39 of the remains of the decedent if they have used reasonable efforts to  
40 notify all other competent surviving adult children of their instruc-  
41 tions to dispose of the decedent's remains and are not aware of any oppo-

1 sition to those instructions on the part of more than one-half (1/2) of  
2 all competent surviving adult children;

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

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

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

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

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

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

41 (3) For purposes of this section:

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

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

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

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

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

4 (f) "Will" means any testamentary device ~~which~~ that is valid under the  
5 Idaho probate code, including, but not limited to, sections 15-2-503,  
6 15-2-504 and 15-2-506, Idaho Code, whether or not originally executed  
7 in, or under the laws of, the state of Idaho.

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

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

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

20 (iii) Upon the receipt of an oral authorization obtained by tele-  
21 phone, and recorded on tape or other recording device, from a per-  
22 son representing himself to be the person who is entitled under  
23 this section to control the disposition of the remains of the de-  
24 cedent, or to be a coroner or any other duly authorized public offi-  
25 cer.

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

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

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

43 (6) Notwithstanding any other provision of law to the contrary, if the  
44 decedent is cremated and the person or persons vested with the right to con-  
45 trol the disposition of his remains pursuant to this section does not claim  
46 the remains within one (1) year following his death or fails to exercise con-  
47 trol over the remains for a period of at least one (1) year, a funeral direc-  
48 tor or mortician may lawfully provide for the disposition of the remains in  
49 a manner consistent with respectful funeral home end-of-life processes when  
50 the deceased was indigent or has no next of kin or legal representative to

1 make final disposition decisions. A funeral director or crematory authority  
2 shall maintain records of the location and date of such disposition for at  
3 least ten (10) years. This subsection shall not apply to unclaimed remains  
4 of veterans as provided for in section 54-1144, Idaho Code.

5 SECTION 2. An emergency existing therefor, which emergency is hereby  
6 declared to exist, this act shall be in full force and effect on and after its  
7 passage and approval.