

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.