

# House Study Bill 5

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON SWAIM)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act allowing a competent adult to execute a written instrument  
2 directing the final disposition of that person's remains,  
3 including coordinating provisions, and providing applicability  
4 dates.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
6 TLSB 1082HC 82  
7 av/sh/8

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1 1 DIVISION I  
1 2 FINAL DISPOSITION DIRECTIVES ACT  
1 3 Section 1. NEW SECTION. 144C.1 SHORT TITLE.  
1 4 This chapter may be cited as the "Final Disposition  
1 5 Directives Act".  
1 6 Sec. 2. NEW SECTION. 144C.2 DEFINITIONS.  
1 7 As used in this chapter, unless the context otherwise  
1 8 requires:  
1 9 1. "Adult" means a person who is married or who is  
1 10 eighteen years of age or older.  
1 11 2. "Ceremony" means a formal act or set of formal acts  
1 12 established by custom or authority to commemorate a decedent.  
1 13 3. "Child" means a son or daughter of a person, whether by  
1 14 birth or adoption.  
1 15 4. "Decedent" means a deceased adult.  
1 16 5. "Declarant" means an adult who executes a declaration  
1 17 pursuant to this chapter.  
1 18 6. "Declaration" means a written instrument, executed by a  
1 19 declarant in accordance with the requirements of this chapter.  
1 20 7. "Designee" means an adult designated under a  
1 21 declaration to implement the declarant's wishes contained in  
1 22 the declaration.  
1 23 8. "Final disposition" means the burial, interment,  
1 24 cremation, removal from the state, or other disposition of  
1 25 remains.  
1 26 9. "Interested person" means a decedent's spouse, parent,  
1 27 grandparent, adult child, adult sibling, adult grandchild, or  
1 28 a designee.  
1 29 10. "Remains" means the body or cremated remains of a  
1 30 decedent.  
1 31 11. a. "Third party" means a person who is any of the  
1 32 following:  
1 33 (1) Is requested in a declaration to act in reliance upon  
1 34 the declaration.  
1 35 (2) Is requested to dispose of remains by a designee  
2 1 having the right to control disposition of the decedent's  
2 2 remains under section 144C.5.  
2 3 b. "Third party" includes but is not limited to a funeral  
2 4 director, funeral establishment, cremation establishment, or  
2 5 cemetery.  
2 6 Sec. 3. NEW SECTION. 144C.3 DECLARATION == FINAL  
2 7 DISPOSITION OF REMAINS.  
2 8 1. A declaration shall include one or more of the  
2 9 following directives:  
2 10 a. What final disposition shall be made of the declarant's  
2 11 remains.  
2 12 b. Who is designated to direct final disposition of the  
2 13 declarant's remains.  
2 14 c. What ceremony, if any, shall be performed after the  
2 15 declarant's death.  
2 16 d. Who is designated to direct arrangements for the

2 17 ceremony to be performed after the declarant's death.

2 18 e. Whether or not an autopsy may be performed, except for  
2 19 autopsies performed under the authority of sections 85A.19,  
2 20 144.56, 331.802, 331.803, 331.804, and 514A.3, subsection 1,  
2 21 paragraph "j".

2 22 f. Any other directives made by the declarant.

2 23 2. A designee and any third party shall act in good faith  
2 24 to fulfill the directives of a declaration.

2 25 3. A declaration made pursuant to this chapter shall take  
2 26 precedence over any other instructions or designations made in  
2 27 any other document.

2 28 Sec. 4. NEW SECTION. 144C.4 RELIANCE == IMMUNITIES.

2 29 1. A designee or third party who relies on a declaration  
2 30 is not subject to civil liability, or to criminal prosecution  
2 31 or professional disciplinary action for acting to implement a  
2 32 declaration.

2 33 2. A designee or third party who relies in good faith on a  
2 34 declaration may presume, in the absence of actual knowledge to  
2 35 the contrary, all of the following:

3 1 a. That the declaration was validly executed.

3 2 b. That the declarant was competent as provided under  
3 3 section 633A.1102, subsection 4, paragraph "a", at the time  
3 4 the declaration was executed.

3 5 3. A designee or third party who relies on a declaration  
3 6 is not subject to civil or criminal liability for the proper  
3 7 application of property delivered or surrendered in compliance  
3 8 with directives contained in the declaration.

3 9 4. A third party who has reasonable cause to question the  
3 10 authenticity or validity of a declaration may promptly and  
3 11 reasonably seek additional information from the person  
3 12 proffering the declaration or from other persons to verify the  
3 13 validity of the declaration.

3 14 Sec. 5. NEW SECTION. 144C.5 FINAL DISPOSITION OF REMAINS  
3 15 == RIGHT TO CONTROL.

3 16 1. The right to control final disposition of a decedent's  
3 17 remains or to make arrangements for the ceremony after a  
3 18 decedent's death vests in and devolves upon the following  
3 19 adults in the following order:

3 20 a. A designee acting pursuant to the decedent's  
3 21 declaration made pursuant to section 144C.3.

3 22 b. The surviving spouse of the decedent, if not legally  
3 23 separated from the decedent.

3 24 c. A surviving child of the decedent, or if there are more  
3 25 than one, a majority of the surviving children whose  
3 26 whereabouts are reasonably ascertainable.

3 27 d. The surviving parents of the decedent whose whereabouts  
3 28 are reasonably ascertainable.

3 29 e. A surviving grandchild of the decedent, or if there are  
3 30 more than one, a majority of the surviving grandchildren whose  
3 31 whereabouts are reasonably ascertainable.

3 32 f. A surviving sibling of the decedent, or if there are  
3 33 more than one, a majority of the surviving siblings whose  
3 34 whereabouts are reasonably ascertainable.

3 35 g. A surviving grandparent of the decedent, or if there  
4 1 are more than one, a majority of the surviving grandparents  
4 2 whose whereabouts are reasonably ascertainable.

4 3 h. A person in the next degree of kinship to the decedent  
4 4 under the rules of inheritance for intestate succession, or if  
4 5 there are more than one, a majority of such surviving persons  
4 6 whose whereabouts are reasonably ascertainable.

4 7 i. The county medical examiner responsible for the  
4 8 decedent's remains, or if there is no county medical examiner,  
4 9 the state medical examiner responsible for the decedent's  
4 10 remains.

4 11 2. A third party may rely upon the directives of a person  
4 12 who represents that the person is a member of a class of  
4 13 persons described in subsection 1, paragraph "c", "e", "f",  
4 14 "g", or "h", and who confirms in writing that the person has  
4 15 received the assent of all members of that class of persons to  
4 16 control final disposition of the decedent's remains and to  
4 17 make arrangements for the performance of a ceremony for the  
4 18 decedent and that no other person exists who is a member of a  
4 19 class that has priority as authorized under subsection 1.

4 20 3. A third party may await a court order before proceeding  
4 21 with final disposition of a decedent's remains or arrangements  
4 22 for the performance of a ceremony for a decedent if the third  
4 23 party is aware of a dispute among persons who are members of a  
4 24 class of persons described in subsection 1, or a dispute  
4 25 between persons who are authorized under subsection 1 and the  
4 26 executor named in a decedent's will or a personal  
4 27 representative appointed by the court.

4 28 Sec. 6. NEW SECTION. 144C.6 DECLARATION OF FINAL  
4 29 DISPOSITION OF REMAINS == FORM == REQUIREMENTS.

4 30 1. A declaration executed pursuant to this chapter shall  
4 31 be in substantially the following form:

4 32 I hereby designate ..... as my designee to  
4 33 implement my wishes relating to the final disposition of my  
4 34 remains and the ceremonies to be performed after my death.  
4 35 This declaration hereby revokes all prior declarations or  
5 1 other documents directing final disposition of my remains and  
5 2 the ceremonies to be performed after my death. This  
5 3 designation becomes effective upon my death.

5 4 My designee shall act consistently with my directives as  
5 5 stated in this declaration, if any. My designee has the  
5 6 discretion to determine when my directives are impossible or  
5 7 are not lawful or practical. My directives are:

5 8 \_\_\_\_\_  
5 9 \_\_\_\_\_  
5 10 \_\_\_\_\_  
5 11 \_\_\_\_\_

5 12 I may revoke or amend this declaration at any time. I  
5 13 agree that a third party (such as a funeral or cremation  
5 14 establishment, funeral director, or cemetery) who receives a  
5 15 copy of this declaration may act in reliance on it.  
5 16 Revocation of this declaration is not effective as to a third  
5 17 party until the third party receives notice of the revocation.  
5 18 My estate shall indemnify my designee and any third party for  
5 19 costs incurred by them or claims arising against them as a  
5 20 result of their good faith reliance on this declaration.

5 21 I execute this declaration as my free and voluntary act.

5 22 Dated this \_\_\_\_\_ day of \_\_\_\_\_.

5 23 \_\_\_\_\_  
5 24 Declarant

5 25 The undersigned, on behalf of \_\_\_\_\_, hereby  
5 26 acknowledges receipt of a copy of the declaration under  
5 27 section 144C.3, Code of Iowa, executed by  
5 28 \_\_\_\_\_, dated \_\_\_\_\_.

5 29 2. A declaration executed pursuant to this chapter shall  
5 30 be in a written form that substantially complies with the form  
5 31 contained in subsection 1, is properly completed, and is dated  
5 32 and signed by the declarant or another person acting on the  
5 33 declarant's behalf at the direction of the declarant. In  
5 34 addition, a declaration shall be either of the following:

5 35 a. Signed by at least two individuals who are not named  
6 1 therein and who, in the presence of each other and the  
6 2 declarant, witnessed the signing of the declaration by the  
6 3 declarant or another person acting on the declarant's behalf  
6 4 at the direction of the declarant, and witnessed the signing  
6 5 of the declaration by each other.

6 6 b. Acknowledged before a notarial officer.

6 7 3. A declaration may include specific directives,  
6 8 including but not limited to:

6 9 a. Special instructions conveying the declarant's wishes  
6 10 for the type of final disposition of the declarant's remains,  
6 11 location of the final disposition, type of ceremony, location  
6 12 of ceremony, and organ donation consistent with chapter 142C.

6 13 b. Designation of one or more alternate designees.

6 14 c. Contact information of designees and alternate  
6 15 designees such as names, addresses, and telephone numbers.

6 16 d. Instructions for distribution of copies of the  
6 17 declaration.

6 18 Sec. 7. NEW SECTION. 144C.7 REVOCATION OF DECLARATION.

6 19 1. A declaration or any directive contained in a  
6 20 declaration is revocable by a declarant in writing in  
6 21 compliance with the provisions of section 144C.6, subsection  
6 22 2.

6 23 2. Unless otherwise expressly provided in a declaration:

6 24 a. A dissolution of marriage, annulment of marriage, or  
6 25 legal separation between the declarant and the declarant's  
6 26 spouse that occurs subsequent to the execution of the  
6 27 declaration constitutes an automatic revocation of the spouse  
6 28 as a designee.

6 29 b. A designation of a person as a designee pursuant to a  
6 30 declaration is ineffective if the designation is revoked by  
6 31 the declarant in writing subsequent to the execution of the  
6 32 declaration or if the designee is unable or unwilling to serve  
6 33 as the designee.

6 34 Sec. 8. NEW SECTION. 144C.8 FORFEITURE OF DESIGNEE'S  
6 35 AUTHORITY.

7 1 A designee shall forfeit all rights and authority under a  
7 2 declaration and all rights and authority under the declaration  
7 3 shall vest in and devolve upon an alternate designee, or if

7 4 there is none, pursuant to section 144C.5, under either of the  
7 5 following circumstances:

7 6 1. The designee is charged with murder in the first or  
7 7 second degree or voluntary manslaughter in connection with the  
7 8 declarant's death and those charges are known to a third  
7 9 party, provided that if the charges against the designee are  
7 10 dismissed or the designee is acquitted of the crime charged,  
7 11 the authority of the designee under the declaration shall be  
7 12 reinstated.

7 13 2. The designee does not exercise the designee's authority  
7 14 under the declaration within two days of receiving  
7 15 notification of the death of the declarant or within five days  
7 16 of the declarant's death, whichever is earlier.

7 17 Sec. 9. NEW SECTION. 144C.9 INTERSTATE EFFECT OF  
7 18 DECLARATION.

7 19 Unless otherwise expressly provided in a declaration:

7 20 1. It is presumed that the declarant intended that a  
7 21 declaration executed pursuant to this chapter have the full  
7 22 force and effect of law regardless of the location of the  
7 23 declarant's death.

7 24 2. A declaration or similar instrument executed in another  
7 25 state that complies with the requirements of this chapter may  
7 26 be relied upon by a third party in this state so long as a  
7 27 directive of the declarant is not illegal or unconstitutional  
7 28 in this state.

7 29 Sec. 10. NEW SECTION. 144C.10 EFFECT OF DECLARATION.

7 30 1. The designee designated in a declaration shall have the  
7 31 sole discretion pursuant to the declaration to determine the  
7 32 final disposition of the declarant's remains and ceremonies to  
7 33 be performed after the declarant's death.

7 34 2. The provisions of the most recent declaration executed  
7 35 by a declarant shall control over any other document  
8 1 concerning final disposition of the declarant's remains and  
8 2 the ceremony to be performed after the declarant's death.

8 3 3. The costs incurred in implementing a declaration shall  
8 4 be a liability of the declarant's estate.

8 5 4. This chapter applies to a declaration executed or  
8 6 exercised in Iowa and to a declaration executed or exercised  
8 7 by a person who is a resident of Iowa when the instrument is  
8 8 executed or exercised.

8 9 5. This chapter does not prohibit an interested person  
8 10 from conducting a separate ceremony not specified in the  
8 11 declaration, at the interested person's expense.

8 12 6. The rights of a donee created by an anatomical gift  
8 13 pursuant to section 142C.11 are superior to the authority of a  
8 14 designee under a declaration executed pursuant to this  
8 15 chapter.

8 16 DIVISION II  
8 17 COORDINATING PROVISIONS

8 18 Sec. 11. Section 142.1, Code 2007, is amended to read as  
8 19 follows:

8 20 142.1 DELIVERY OF BODIES.

8 21 The body of every person dying in a public asylum,  
8 22 hospital, county care facility, penitentiary, or reformatory  
8 23 in this state, or found dead within the state, or which is to  
8 24 be buried at public expense in this state, except those buried  
8 25 under the provisions of chapter 144C or 249, and which is  
8 26 suitable for scientific purposes, shall be delivered to the  
8 27 medical college of the state university, or some osteopathic  
8 28 or chiropractic college or school located in this state, which  
8 29 has been approved under the law regulating the practice of  
8 30 osteopathy or chiropractic; but no such body shall be  
8 31 delivered to any such college or school if the deceased person  
8 32 expressed a desire during the person's last illness that the  
8 33 person's body should be buried or cremated, nor if such is the  
8 34 desire of the person's relatives. Such bodies shall be  
8 35 equitably distributed among said colleges and schools

9 1 according to their needs for teaching anatomy in accordance  
9 2 with such rules as may be adopted by the ~~Iowa~~ department of  
9 3 public health. The expense of transporting said bodies to  
9 4 such college or school shall be paid by the college or school  
9 5 receiving the same. ~~In the event~~ If the deceased person has  
9 6 not expressed a desire during the person's last illness that  
9 7 the person's body should be buried or cremated, ~~and should~~  
~~have if no relatives person authorized to control the deceased~~  
9 8 ~~person's remains under section 144C.5 that request requests~~

9 9 the person's body for burial or cremation, ~~and~~ if a friend  
9 10 objects to the use of the deceased person's body for  
9 11 scientific purposes, said deceased person's body shall be  
9 12 forthwith delivered to such friend for burial or cremation at  
9 13 no expense to the state or county. Unless such friend

9 15 provides for burial and burial expenses within five days, the  
9 16 body shall be used for scientific purposes under this chapter.  
9 17 Sec. 12. Section 142C.4, subsection 1, Code 2007, is  
9 18 amended to read as follows:

9 19 1. Any available member of the following classes of  
9 20 persons, in the order of priority listed, may make an  
9 21 anatomical gift of a decedent's body or parts for an  
9 22 authorized purpose, unless the decedent, at the time of death,  
9 23 has made an unrevoked refusal to make an anatomical gift:

9 24 a. A designee acting pursuant to a decedent's declaration  
9 25 made under chapter 144C.

9 26 b. The attorney in fact pursuant to a durable power of  
9 27 attorney for health care.

9 28 ~~b. The spouse of the decedent.~~

9 29 c. ~~An adult child of the decedent.~~ A person authorized to  
9 30 control the decedent's remains under section 144C.5.

9 31 ~~d. A parent of the decedent.~~

9 32 ~~e. An adult sibling of the decedent.~~

9 33 ~~f. A grandparent of the decedent.~~

9 34 ~~g. d.~~ d. A guardian of the decedent at the time of the  
9 35 decedent's death.

10 1 Sec. 13. Section 144.34, Code 2007, is amended to read as  
10 2 follows:

10 3 144.34 DISINTERMENT == PERMIT.

10 4 Disinterment of a dead body or fetus shall be allowed for  
10 5 the purpose of autopsy or reburial only, and then only if  
10 6 accomplished by a funeral director. A permit for such

10 7 disinterment and, thereafter, reinterment shall be issued by  
10 8 the state registrar according to rules adopted pursuant to  
10 9 chapter 17A or when ordered by the district court of the

10 10 county in which such body is buried. The state registrar,  
10 11 without a court order, shall not issue a permit without the  
10 12 consent of the ~~surviving spouse or in case of such spouse's~~

10 13 ~~absence, death, or incapacity, the next of kin person~~

10 14 authorized to control a decedent's remains under section

10 15 144C.5. Disinterment for the purpose of reburial may be

10 16 allowed by court order only upon a showing of substantial

10 17 benefit to the public. Disinterment for the purpose of

10 18 autopsy or reburial by court order shall be allowed only when

10 19 reasonable cause is shown that someone is criminally or

10 20 civilly responsible for such death, after hearing, upon

10 21 reasonable notice prescribed by the court to the ~~surviving~~

10 22 ~~spouse or in the spouse's absence, death, or incapacity, the~~

10 23 ~~next of kin person authorized to control a decedent's remains~~

10 24 under section 144C.5. Due consideration shall be given to the

10 25 public health, the dead, and the feelings of relatives.

10 26 Sec. 14. Section 144.56, Code 2007, is amended by striking

10 27 the section and inserting in lieu thereof the following:

10 28 144.56. AUTOPSY.

10 29 An autopsy or postmortem examination may be performed upon

10 30 the body of a deceased person by a physician whenever the

10 31 written consent to the examination or autopsy has been

10 32 obtained from the person authorized to control the deceased

10 33 person's remains under section 144C.5. This section does not

10 34 apply to any death investigated under the authority of

10 35 sections 331.802, 331.803, and 331.804.

11 1 Sec. 15. Section 331.802, subsection 3, paragraph h, Code

11 2 2007, is amended to read as follows:

11 3 h. Death of a person if the body is not claimed by a

11 4 ~~relative person authorized to control the deceased person's~~

11 5 remains under section 144C.5 or a friend.

11 6 Sec. 16. Section 331.802, subsection 8, Code 2007, is

11 7 amended to read as follows:

11 8 8. Where donation of the remains of the deceased to a

11 9 medical school or similar institution equipped with facilities

11 10 to perform autopsies is provided by will or directed by ~~the~~

11 11 ~~spouse, parents or children of full age, of the deceased a~~

11 12 person authorized to control the deceased person's remains

11 13 under section 144C.5, any autopsy under this section shall be

11 14 performed at the direction of the school or institution, and

11 15 in such a manner as to further the purpose of the donation,

11 16 while serving the public interest.

11 17 Sec. 17. Section 331.804, subsection 1, Code 2007, is

11 18 amended to read as follows:

11 19 1. After an investigation has been completed, including an

11 20 autopsy if one is performed, the body shall be prepared for

11 21 transportation. The body shall be transported by a funeral

11 22 director, ~~if chosen by a relative or friend~~ a person

11 23 authorized to control the remains of the deceased person under

11 24 section 144C.5, for burial or other appropriate disposition.

11 25 A medical examiner shall not use influence in favor of a

11 26 particular funeral director. However, if a person other than  
11 27 a funeral director assumes custody of a dead body, the person  
11 28 shall secure a burial transit permit pursuant to section  
11 29 144.32. If no one claims a body, it shall be disposed of as  
11 30 provided in chapter 142.

11 31 Sec. 18. Section 523I.309, Code 2007, is amended to read  
11 32 as follows:

11 33 523I.309 INTERMENT, RELOCATION, OR DISINTERMENT OF  
11 34 REMAINS.

11 35 1. Any available member of the following classes of  
~~12 1 persons, in the priority listed, shall have the right to~~  
~~12 2 control the interment, relocation, or disinterment of a~~  
~~12 3 decedent's remains within or from a cemetery:~~

12 4 a. The surviving spouse of the decedent, if not legally  
~~12 5 separated from the decedent.~~

12 6 b. The decedent's surviving adult children. If there is  
~~12 7 more than one surviving adult child, any adult child who can~~  
~~12 8 confirm, in writing, that all other adult children have been~~  
~~12 9 notified of the proposed interment, relocation, or~~  
~~12 10 disinterment may authorize the interment, relocation, or~~  
~~12 11 disinterment, unless the cemetery receives an objection to~~  
~~12 12 such action from another adult child of the decedent.~~

~~12 13 Alternatively, a majority of the surviving adult children of~~  
~~12 14 the decedent whose whereabouts are reasonably ascertainable~~  
~~12 15 shall have such right to control.~~

12 16 c. The surviving parents of the decedent whose whereabouts  
~~12 17 are reasonably ascertainable.~~

12 18 d. A surviving adult grandchild of the decedent. If there  
~~12 19 is more than one surviving adult grandchild, any adult~~  
~~12 20 grandchild who can confirm, in writing, that all other adult~~  
~~12 21 grandchildren have been notified of the proposed interment,~~  
~~12 22 relocation, or disinterment may authorize the interment,~~  
~~12 23 relocation, or disinterment, unless the cemetery receives an~~  
~~12 24 objection to such action from another adult grandchild of the~~  
~~12 25 decedent. Alternatively, a majority of the surviving adult~~  
~~12 26 grandchildren of the decedent whose whereabouts are reasonably~~  
~~12 27 ascertainable shall have such right to control.~~

12 28 e. A surviving adult sibling of the decedent. If there is  
~~12 29 more than one surviving adult sibling, any adult sibling who~~  
~~12 30 can confirm, in writing, that all other adult siblings have~~  
~~12 31 been notified of the proposed interment, relocation, or~~  
~~12 32 disinterment may authorize the interment, relocation, or~~  
~~12 33 disinterment, unless the cemetery receives an objection to~~  
~~12 34 such action from another adult sibling of the decedent.~~  
~~12 35 Alternatively, a majority of the surviving adult siblings of~~  
~~13 1 the decedent whose whereabouts are reasonably ascertainable~~  
~~13 2 shall have such right to control.~~

13 3 f. A surviving grandparent of the decedent. If there is  
~~13 4 more than one surviving grandparent, any grandparent who can~~  
~~13 5 confirm, in writing, that all other grandparents have been~~  
~~13 6 notified of the proposed interment, relocation, or~~  
~~13 7 disinterment may authorize the interment, relocation, or~~  
~~13 8 disinterment, unless the cemetery receives an objection to~~  
~~13 9 such action from another grandparent of the decedent.~~  
~~13 10 Alternatively, a majority of the surviving grandparents of the~~  
~~13 11 decedent whose whereabouts are reasonably ascertainable shall~~  
~~13 12 have such right to control.~~

13 13 g. An adult person in the next degree of kinship to the  
~~13 14 decedent in the order named by law to inherit the estate of~~  
~~13 15 the decedent under the rules of inheritance for intestate~~  
~~13 16 succession.~~

13 17 h. The county medical examiner, if responsible for the  
~~13 18 decedent's remains.~~

13 19 A cemetery may await a court order before proceeding with  
~~13 20 the interment, relocation, or disinterment of a decedent's~~  
~~13 21 remains within or from a cemetery if the cemetery is aware of~~  
~~13 22 a dispute between an authorized person under this section and~~  
~~13 23 the executor named in the decedent's will or a personal~~  
~~13 24 representative appointed by a court, or is aware of a dispute~~  
~~13 25 among authorized persons with the same priority under this~~  
~~13 26 subsection.~~

13 27 2. 1. A person who represents that the person knows the  
13 28 identity of a decedent and, in order to procure the interment,  
13 29 relocation, or disinterment of the decedent's remains, signs  
13 30 an order or statement, other than a death certificate, that  
13 31 warrants the identity of the decedent is liable for all  
13 32 damages that result, directly or indirectly, from that  
13 33 representation.

13 34 3. A person may provide written directions for the  
~~13 35 interment, relocation, or disinterment of the person's own~~  
~~14 1 remains in a prepaid funeral or cemetery contract, or written~~

~~14 2 instrument signed and acknowledged by the person. The~~  
~~14 3 directions may govern the inscription to be placed on a grave~~  
~~14 4 marker attached to any interment space in which the decedent~~  
~~14 5 had the right of interment at the time of death and in which~~  
~~14 6 interment space the decedent is subsequently interred. The~~  
~~14 7 directions may be modified or revoked only by a subsequent~~  
~~14 8 writing signed and acknowledged by the person. A person other~~  
~~14 9 than a decedent who is entitled to control the interment,~~  
~~14 10 relocation, or disinterment of a decedent's remains under this~~  
~~14 11 section shall faithfully carry out the directions of the~~  
~~14 12 decedent to the extent that the decedent's estate or the~~  
~~14 13 person controlling the interment, relocation, or disinterment~~  
~~14 14 is financially able to do so.~~

14 15 4. A cemetery shall not be liable for carrying out the  
14 16 written directions of a decedent or the directions of any  
14 17 person entitled to control the interment, relocation, or  
14 18 disinterment of the decedent's remains.

14 19 5. 2. In the event of a dispute concerning the right to  
14 20 control the interment, relocation, or disinterment of a  
14 21 decedent's remains, the dispute may be resolved by a court of  
14 22 competent jurisdiction. A cemetery or entity maintaining a  
14 23 columbarium shall not be liable for refusing to accept the  
14 24 decedent's remains, relocate or disinter, inter or otherwise  
14 25 dispose of the decedent's remains, until the cemetery or  
14 26 entity maintaining a columbarium receives a court order or  
14 27 other suitable confirmation that the dispute has been resolved  
14 28 or settled.

14 29 6. 3. a. If good cause exists to relocate or disinter  
14 30 remains interred in a cemetery, the remains may be removed  
14 31 from the cemetery pursuant to a disinterment permit as  
14 32 required under section 144.34, with the written consent of the  
14 33 cemetery, the current interment rights owner, and the person  
14 34 entitled ~~by this section~~ to control the interment, relocation,  
14 35 or disinterment of the decedent's remains under section  
15 1 144C.5.

15 2 b. If the consent required ~~by this subsection~~ pursuant to  
15 3 paragraph "a" is not refused but otherwise cannot be obtained,  
15 4 the remains may be relocated or disinterred by permission of  
15 5 the district court of the county in which the cemetery is  
15 6 located upon a finding by the court that clear and convincing  
15 7 evidence of good cause exists to relocate or disinter the  
15 8 remains. Before the date of application to the court for  
15 9 permission to relocate or disinter remains under this  
15 10 subsection, notice must be given to the cemetery in which the  
15 11 remains are interred, each person whose consent is required  
15 12 for relocation or disinterment of the remains under ~~subsection~~  
15 13 paragraph "a", and any other person that the court requires  
15 14 to be served.

15 15 c. For the purposes of this subsection, personal notice  
15 16 must be given not later than the eleventh day before the date  
15 17 of hearing on an application to the court for permission to  
15 18 relocate or disinter the remains, or notice by certified mail  
15 19 or restricted certified mail must be given not later than the  
15 20 sixteenth day before the date of application hearing.

15 21 d. This subsection does not apply to the removal or  
15 22 disinterment of remains from one interment space to another  
15 23 interment space in the same cemetery to correct an error, or  
15 24 relocation of the remains by the cemetery from an interment  
15 25 space for which the purchase price is past due and unpaid, to  
15 26 another suitable interment space.

15 27 7. 4. A person who removes remains from a cemetery shall  
15 28 keep a record of the removal, and provide a copy to the  
15 29 cemetery, that includes all of the following:

15 30 a. The date the remains are removed.

15 31 b. The name of the decedent and age at death if those  
15 32 facts can be conveniently obtained.

15 33 c. The place to which the remains are removed.

15 34 d. The name of the cemetery and the location of the  
15 35 interment space from which the remains are removed.

16 1 8. 5. A cemetery may disinter and relocate remains  
16 2 interred in the cemetery for the purpose of correcting an  
16 3 error made by the cemetery after obtaining a disinterment  
16 4 permit as required by section 144.34. The cemetery shall  
16 5 provide written notice describing the error to the  
16 6 commissioner and to the person who has the right to control  
16 7 the interment, relocation, or disinterment of the remains  
16 8 erroneously interred, by restricted certified mail at the  
16 9 person's last known address and sixty days prior to the  
16 10 disinterment. The notice shall include the location where the  
16 11 disinterment will occur and the location of the new interment  
16 12 space. A cemetery is not civilly or criminally liable for an

16 13 erroneously made interment that is corrected in compliance  
16 14 with this subsection unless the error was the result of gross  
16 15 negligence or intentional misconduct.  
16 16 ~~9- 6.~~ Relocations and disinterments of human remains  
16 17 shall be done in compliance with sections 144.32 and 144.34.  
16 18 Relocations of human remains held in a columbarium shall be in  
16 19 compliance with the laws regulating the entity maintaining the  
16 20 columbarium.

16 21 DIVISION III

16 22 APPLICABILITY DATES

16 23 Sec. 19. APPLICABILITY DATES.

16 24 1. This Act applies to all declarations executed on or  
16 25 after the effective date of this Act.

16 26 2. The section of this Act enacting section 144C.5 applies  
16 27 to all deaths occurring on or after the effective date of this  
16 28 Act, except that section 144C.5, subsection 1, paragraph "a",  
16 29 applies only to a designee designated in a declaration that is  
16 30 executed on or after the effective date of this Act.

16 31 3. All declarations executed prior to the effective date  
16 32 of this Act which substantially comply with the requirements  
16 33 of chapter 144C shall be given full force and effect.

16 34 EXPLANATION

16 35 DIVISION I == FINAL DISPOSITION DIRECTIVES ACT. This bill  
17 1 creates a new Code chapter 144C, titled the "Final Disposition  
17 2 Directives Act". The bill allows a competent adult, that is,  
17 3 a person who is married or who is 18 years of age or older, to  
17 4 execute a written instrument called a declaration which  
17 5 expresses the wishes of the person concerning the final  
17 6 disposition of that person's remains and the ceremonies to be  
17 7 performed after that person's death and designates who should  
17 8 oversee those matters.

17 9 The bill requires a declaration to contain one or more of  
17 10 the following directives: what final disposition should be  
17 11 made of the declarant's remains; who is designated to direct  
17 12 the final disposition of the remains; what ceremony, if any,  
17 13 should be performed after the declarant's death; who is  
17 14 designated to direct arrangements for the ceremony; whether an  
17 15 autopsy may be performed; and any other directives made by a  
17 16 declarant.

17 17 The bill requires a designee or third party to act in good  
17 18 faith to fulfill the directives of a declaration. The bill  
17 19 also provides that a declaration made pursuant to the new  
17 20 chapter takes precedence over any other instructions or  
17 21 designations made in any other document.

17 22 The bill provides immunity from civil or criminal liability  
17 23 or professional disciplinary action for a designee or a third  
17 24 party, such as a funeral director, funeral establishment,  
17 25 cremation establishment, or cemetery, who relies on a  
17 26 declaration or acts to implement a declaration.

17 27 The bill sets forth an order of priority for determining  
17 28 who has the right to control final disposition of a deceased  
17 29 person's remains or to make arrangements for a ceremony after  
17 30 a person's death. A designee acting pursuant to a declaration  
17 31 has the highest priority, or if there is no designee, then the  
17 32 surviving spouse and other relatives of the deceased person or  
17 33 the county or state medical examiner.

17 34 The bill allows a third party to await a court order before  
17 35 proceeding with final disposition of the body or ceremony  
18 1 arrangements in the event of a dispute among family members or  
18 2 between family members and the executor of the decedent's will  
18 3 or a personal representative appointed by the court.

18 4 The bill contains a written form for a declaration. A  
18 5 declaration must be in writing and substantially comply with  
18 6 the form contained in the bill, be properly completed, and be  
18 7 signed by the person making the declaration or another person  
18 8 acting on that person's behalf at the direction of that  
18 9 person.

18 10 The declaration must also either be signed by at least two  
18 11 individuals who are not named in the document who, in the  
18 12 presence of each other and the declarant, witness the signing  
18 13 of the declaration by the declarant or a person acting on the  
18 14 declarant's behalf at the direction of the declarant, and  
18 15 witness the signing of the declaration by each other, or be  
18 16 acknowledged before a notarial officer.

18 17 The bill suggests specific directives that may be included  
18 18 in a declaration such as special instructions conveying the  
18 19 person's wishes concerning the type and location of the final  
18 20 disposition and ceremonies, designation of alternate designees  
18 21 and contact information for all designees, and instructions  
18 22 for distribution of copies of the declaration.

18 23 The bill provides for revocation of a declaration or any



18 24 directive in the same manner as it was executed. The bill  
18 25 provides for automatic revocation of a designation of a spouse  
18 26 in the event of dissolution or annulment of marriage or legal  
18 27 separation. A designation of a person as a designee is  
18 28 ineffective if the person is unable or unwilling to serve as  
18 29 the designee.

18 30 The bill provides for forfeiture of a designee's rights and  
18 31 authority under a declaration if the designee is charged with  
18 32 murder in the first or second degree or voluntary manslaughter  
18 33 of the deceased person or if the designee's rights and  
18 34 authority under the declaration are not exercised within two  
18 35 days of receiving notification of the death of the declarant  
19 1 or within five days of the declarant's death, whichever is  
19 2 earlier.

19 3 The bill provides a presumption that a declaration executed  
19 4 pursuant to the new Code chapter is intended to have full  
19 5 force and effect regardless of the location of the declarant's  
19 6 death, and gives effect to declarations or similar instruments  
19 7 executed in other states that comply with the requirements of  
19 8 the new Code chapter.

19 9 The bill gives a designee the sole discretion to determine  
19 10 the final disposition of the declarant's remains and  
19 11 ceremonies to be performed after the declarant's death and to  
19 12 implement the provisions of the declaration.

19 13 The bill provides that the provisions of the most recent  
19 14 declaration of a declarant control over any other document  
19 15 concerning final disposition of that person's body or the  
19 16 ceremonies to be performed after that person's death.

19 17 The bill provides that the costs incurred in implementing a  
19 18 declaration are a liability of the declarant's estate.

19 19 The bill provides that the new Code chapter applies to a  
19 20 declaration executed or exercised in Iowa and to a declaration  
19 21 executed or exercised by a person who is a resident of Iowa  
19 22 when the instrument is executed or exercised.

19 23 The bill does not prohibit an "interested person" defined  
19 24 as a declarant's spouse, parent, grandparent, adult child,  
19 25 adult sibling, adult grandchild, or a designee from conducting  
19 26 a separate ceremony not specified in the declaration, at the  
19 27 interested person's expense.

19 28 The bill provides that the rights of a donee created by an  
19 29 anatomical gift pursuant to Code section 142C.11 are superior  
19 30 to the authority of a designee pursuant to a declaration.

19 31 DIVISION II == COORDINATING PROVISIONS. The bill also  
19 32 includes coordinating amendments.

19 33 Code section 142.1 is amended to provide that bodies of  
19 34 persons that are to be disposed of pursuant to the provisions  
19 35 of new Code chapter 144C shall not be delivered to a medical,  
20 1 osteopathic, or chiropractic college for use for scientific  
20 2 purposes pursuant to Code section 142.1. Code section 142.1  
20 3 is also amended to provide that if there is not a person  
20 4 authorized to control the deceased person's remains under new  
20 5 Code section 144C.5, a friend may request delivery of the body  
20 6 for cremation or burial, at the friend's expense.

20 7 Code section 142C.4, subsection 1, is amended to provide  
20 8 that an available member of specified classes of people, in  
20 9 the following order of priority, may make an anatomical gift  
20 10 of a decedent's body or parts for an authorized purpose: a  
20 11 designee acting pursuant to a declaration made under new Code  
20 12 chapter 144C, an attorney in fact under a durable power of  
20 13 attorney for health care, a person authorized to control the  
20 14 deceased person's remains under new Code section 144C.5, or a  
20 15 guardian of the decedent at the time of the decedent's death.

20 16 Code section 144.34 is amended to provide that a  
20 17 disinterment permit for a dead body shall not be issued by the  
20 18 state registrar without the consent of the person authorized  
20 19 to control the decedent's remains under new Code section  
20 20 144C.5, and that disinterment allowed by court order shall be  
20 21 only after hearing, upon reasonable notice to that person.

20 22 Code section 144.56 is amended to provide that an autopsy  
20 23 or postmortem examination may be performed upon the body of a  
20 24 deceased person whenever written consent has been obtained  
20 25 from the person authorized to control the deceased person's  
20 26 remains under new Code section 144C.5 or when a death is being  
20 27 investigated which affects the public interest under the  
20 28 authority of Code sections 331.802 through 331.804.

20 29 Code section 331.802, subsection 3, paragraph "h", is  
20 30 amended to provide that a death affecting the public interest  
20 31 includes the death of a person whose body is not claimed by a  
20 32 person authorized to control the deceased person's remains  
20 33 under new Code section 144C.5 or a friend.

20 34 Code section 331.802, subsection 8, is amended to provide

20 35 that where the remains of a deceased person are donated to a  
21 1 medical school or similar institution by a person authorized  
21 2 to control the deceased person's remains under new Code  
21 3 section 144C.5, any autopsy performed in the public interest  
21 4 shall be performed at the direction of the school or  
21 5 institution, in a manner furthering the purpose of the  
21 6 donation.  
21 7 Code section 331.804, subsection 1, is amended to provide  
21 8 that after the investigation of a death, the deceased person's  
21 9 remains shall be transported for burial or other appropriate  
21 10 disposition by a funeral director chosen by a person  
21 11 authorized to control the deceased person's remains under new  
21 12 Code section 144C.5.  
21 13 Code section 523I.309 is amended by removing alternative  
21 14 procedures for determining final disposition of a decedent's  
21 15 remains that are contained in Code chapter 523I. The section  
21 16 is also amended to allow an entity maintaining a columbarium  
21 17 to refuse to accept, relocate, disinter, inter, or otherwise  
21 18 dispose of a decedent's remains without a court order in the  
21 19 event of a dispute.  
21 20 DIVISION III == APPLICABILITY DATES. The bill applies to  
21 21 all declarations executed on or after the effective date of  
21 22 the bill. New Code section 144C.5, which sets forth an order  
21 23 of priority for determining who has the right to control final  
21 24 disposition and ceremonies for a decedent, applies to all  
21 25 deaths occurring on or after the effective date of the bill,  
21 26 except that new Code section 144C.5, subsection 1, paragraph  
21 27 "a", giving highest priority to a designee in a declaration,  
21 28 applies only to a designee designated in a declaration  
21 29 executed on or after the effective date of the bill. However,  
21 30 the bill provides that any declaration executed prior to the  
21 31 effective date of the bill which substantially complies with  
21 32 the requirements of new Code chapter 144C shall be given full  
21 33 force and effect.  
21 34 LSB 1082HC 82  
21 35 av:rj/sh/8