

Senate File 473 - Introduced

SENATE FILE _____
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1217)

Passed Senate, Date _____ Passed House, 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 1082SV 82

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1 1 Section 1. Section 142.1, Code 2007, is amended to read as
1 2 follows:

1 3 142.1 DELIVERY OF BODIES.

1 4 The body of every person dying in a public asylum,
1 5 hospital, county care facility, penitentiary, or reformatory
1 6 in this state, or found dead within the state, or which is to
1 7 be buried at public expense in this state, except those buried
1 8 under the provisions of chapter 144C or 249, and which is
1 9 suitable for scientific purposes, shall be delivered to the
1 10 medical college of the state university, or some osteopathic
1 11 or chiropractic college or school located in this state, which
1 12 has been approved under the law regulating the practice of
1 13 osteopathy or chiropractic; but no such body shall be
1 14 delivered to any such college or school if the deceased person
1 15 expressed a desire during the person's last illness that the
1 16 person's body should be buried or cremated, nor if such is the
1 17 desire of the person's relatives. Such bodies shall be
1 18 equitably distributed among said colleges and schools
1 19 according to their needs for teaching anatomy in accordance
1 20 with such rules as may be adopted by the Iowa department of
1 21 public health. The expense of transporting said bodies to
1 22 such college or school shall be paid by the college or school
1 23 receiving the same. ~~In the event if the deceased person has~~
1 24 ~~not expressed a desire during the person's last illness that~~
1 25 ~~the person's body should be buried or cremated and should have~~
1 26 ~~no relatives that request person authorized to control the~~
1 27 ~~deceased person's remains under section 144C.5 requests the~~

1 28 person's body for burial or cremation, and if a friend objects
1 29 to the use of the deceased person's body for scientific
1 30 purposes, said deceased person's body shall be forthwith
1 31 delivered to such friend for burial or cremation at no expense
1 32 to the state or county. Unless such friend provides for
1 33 burial and burial expenses within five days, the body shall be
1 34 used for scientific purposes under this chapter.

1 35 Sec. 2. Section 142C.4, subsection 1, Code 2007, is
2 1 amended to read as follows:

2 2 1. Any available member of the following classes of
2 3 persons, in the order of priority listed, may make an
2 4 anatomical gift of a decedent's body or parts for an
2 5 authorized purpose, unless the decedent, at the time of death,
2 6 has made an unrevoked refusal to make an anatomical gift:

2 7 ~~a. A designee acting pursuant to a decedent's declaration~~
2 8 ~~made under chapter 144C.~~

2 9 ~~a-~~ b. The attorney in fact pursuant to a durable power of
2 10 attorney for health care.

2 11 ~~b. The spouse of the decedent.~~

2 12 ~~c. An adult child of the decedent.~~ A person authorized to
2 13 control the decedent's remains under section 144C.5.

2 14 ~~d. A parent of the decedent.~~

2 15 ~~e. An adult sibling of the decedent.~~

2 16 ~~f. A grandparent of the decedent.~~

2 17 g. d. A guardian of the decedent at the time of the
2 18 decedent's death.
2 19 Sec. 3. Section 144.34, Code 2007, is amended to read as
2 20 follows:

2 21 144.34 DISINTERMENT == PERMIT.
2 22 Disinterment of a dead body or fetus shall be allowed for
2 23 the purpose of autopsy or reburial only, and then only if
2 24 accomplished by a funeral director. A permit for such
2 25 disinterment and, thereafter, reinterment shall be issued by
2 26 the state registrar according to rules adopted pursuant to
2 27 chapter 17A or when ordered by the district court of the
2 28 county in which such body is buried. The state registrar,
2 29 without a court order, shall not issue a permit without the
2 30 consent of the ~~surviving spouse or in case of such spouse's~~
~~2 31 absence, death, or incapacity, the next of kin person~~
2 32 authorized to control the decedent's remains under section

2 33 144C.5. Disinterment for the purpose of reburial may be
2 34 allowed by court order only upon a showing of substantial
2 35 benefit to the public. Disinterment for the purpose of
3 1 autopsy or reburial by court order shall be allowed only when
3 2 reasonable cause is shown that someone is criminally or
3 3 civilly responsible for such death, after hearing, upon
3 4 reasonable notice prescribed by the court to the ~~surviving~~
~~3 5 spouse or in the spouse's absence, death, or incapacity, the~~
~~3 6 next of kin person authorized to control the decedent's~~
3 7 remains under section 144C.5. Due consideration shall be
3 8 given to the public health, the dead, and the feelings of
3 9 relatives.

3 10 Sec. 4. Section 144.56, Code 2007, is amended to read as
3 11 follows:

3 12 144.56 AUTOPSY.
3 13 An autopsy or post-mortem examination may be performed upon
3 14 the body of a deceased person by a physician whenever the
3 15 written consent to the examination or autopsy has been
3 16 obtained by ~~any of the following persons, in order of priority~~
~~3 17 stated when persons in prior classes are not available at the~~
~~3 18 time of death, and in the absence of actual notice of contrary~~
~~3 19 indications by the decedent or actual notice of opposition by~~
~~3 20 a member of the same or prior class:~~
3 21 1. ~~The spouse.~~
3 22 2. ~~An adult son or daughter.~~
3 23 3. ~~Either parent.~~
3 24 4. ~~An adult brother or sister.~~
3 25 5. ~~A guardian of the person of the decedent at the time of~~
~~3 26 the decedent's death.~~
3 27 6. ~~Any other person authorized or under obligation to~~
~~3 28 dispose of the body from the person authorized to control the~~
3 29 deceased person's remains under section 144C.5.

3 30 This section does not apply to any death investigated under
3 31 the authority of sections 331.802 to 331.804.

3 32 Sec. 5. NEW SECTION. 144C.1 SHORT TITLE.
3 33 This chapter may be cited as the "Final Disposition
3 34 Directives Act".

3 35 Sec. 6. NEW SECTION. 144C.2 DEFINITIONS.
4 1 As used in this chapter, unless the context otherwise
4 2 requires:

- 4 3 1. "Adult" means a person who is married or who is
4 4 eighteen years of age or older.
- 4 5 2. "Adult day services program" means adult day services
4 6 program as defined in section 231D.1.
- 4 7 3. "Assisted living program facility" means assisted
4 8 living program facility as defined in section 231C.2.
- 4 9 4. "Ceremony" means a formal act or set of formal acts
4 10 established by custom or authority to commemorate a decedent.
- 4 11 5. "Child" means a son or daughter of a person, whether by
4 12 birth or adoption.
- 4 13 6. "Decedent" means a deceased adult.
- 4 14 7. "Declarant" means a competent adult who executes a
4 15 declaration pursuant to this chapter.
- 4 16 8. "Declaration" means a written instrument, executed by a
4 17 declarant in accordance with the requirements of this chapter,
4 18 that names a designee and may direct the final disposition of
4 19 the declarant's remains and the ceremonies planned after the
4 20 declarant's death.
- 4 21 9. "Designee" means a competent adult designated under a
4 22 declaration to implement the declarant's wishes contained in
4 23 the declaration.
- 4 24 10. "Elder group home" means elder group home as defined
4 25 in section 231B.1.
- 4 26 11. "Final disposition" means the burial, interment,
4 27 cremation, removal from the state, or other disposition of

4 28 remains.
4 29 12. "Health care facility" means health care facility as
4 30 defined in section 135C.1.
4 31 13. "Health care provider" means health care provider as
4 32 defined in section 144A.2.
4 33 14. "Hospital" means hospital as defined in section
4 34 135B.1.
4 35 15. "Interested person" means a decedent's spouse, parent,
5 1 grandparent, adult child, adult sibling, adult grandchild, or
5 2 a designee.
5 3 16. "Licensed hospice program" means a licensed hospice
5 4 program as defined in section 135J.1.
5 5 17. "Reasonable under the circumstances", as applied to
5 6 implementation of a declarant's directives in a declaration,
5 7 means consideration of what is appropriate in relation to the
5 8 declarant's finances, cultural or family customs, and
5 9 religious or spiritual beliefs. "Reasonable under the
5 10 circumstances" may include but is not limited to consideration
5 11 of the declarant's preneed funeral, burial, or cremation plan,
5 12 and known or reasonably ascertainable creditors of the
5 13 declarant.
5 14 18. "Remains" means the body or cremated remains of a
5 15 decedent.
5 16 19. a. "Third party" means a person who is any of the
5 17 following:
5 18 (1) Is requested in a declaration to act in good faith in
5 19 reliance upon the declaration.
5 20 (2) Is requested to dispose of remains by an adult with
5 21 the right to dispose of a decedent's remains under section
5 22 144C.6.
5 23 (3) Is delegated discretion in a declaration to direct
5 24 final disposition of a declarant's remains or to make
5 25 arrangements for the performance of ceremonies after a
5 26 declarant's death.
5 27 b. "Third party" includes but is not limited to a funeral
5 28 director, funeral establishment, cremation establishment, or
5 29 cemetery.
5 30 Sec. 7. NEW SECTION. 144C.3 DECLARATION == FINAL
5 31 DISPOSITION OF REMAINS.
5 32 1. A declaration shall name a designee and may include one
5 33 or more of the following directives:
5 34 a. What final disposition shall be made of the declarant's
5 35 remains.
6 1 b. What ceremony shall be performed after the declarant's
6 2 death.
6 3 2. A designee or a third party shall act in good faith to
6 4 fulfill the directives of a declaration in a manner that is
6 5 reasonable under the circumstances.
6 6 3. A funeral director, funeral establishment, cremation
6 7 establishment, cemetery, elder group home, assisted living
6 8 program facility, adult day services program, licensed hospice
6 9 program, or attorney, or any agent, owner, or employee of such
6 10 an entity, shall not serve as a designee unless related to the
6 11 declarant within the third degree of consanguinity.
6 12 Sec. 8. NEW SECTION. 144C.4 RELIANCE == IMMUNITIES.
6 13 1. A designee or third party who relies in good faith on a
6 14 declaration is not subject to civil liability or to criminal
6 15 prosecution or professional disciplinary action, to any
6 16 greater extent than if the designee or third party dealt
6 17 directly with the declarant as a fully competent and living
6 18 person.
6 19 2. A designee or third party who relies in good faith on a
6 20 declaration may presume, in the absence of actual knowledge to
6 21 the contrary, all of the following:
6 22 a. That the declaration was validly executed.
6 23 b. That the declarant was competent at the time the
6 24 declaration was executed.
6 25 3. A third party who relies in good faith on a declaration
6 26 is not subject to civil or criminal liability for the proper
6 27 application of property delivered or surrendered in compliance
6 28 with directives contained in the declaration including but not
6 29 limited to trust funds held pursuant to chapter 523A.
6 30 4. A third party who has reasonable cause to question the
6 31 authenticity or validity of a declaration may promptly and
6 32 reasonably seek additional information from the person
6 33 proffering the declaration or from other persons to verify the
6 34 declaration.
6 35 5. This section shall not be construed to impair any
7 1 contractual obligations of a designee or third party incurred
7 2 in fulfillment of a declaration.
7 3 Sec. 9. NEW SECTION. 144C.5 FINAL DISPOSITION OF REMAINS

7 4 == RIGHT TO CONTROL.

7 5 1. The right to control final disposition of a decedent's
7 6 remains or to make arrangements for the ceremony after a
7 7 decedent's death vests in and devolves upon the following
7 8 persons who are competent adults at the time of the decedent's
7 9 death, in the following order:

7 10 a. A designee, or alternate designee, acting pursuant to
7 11 the decedent's declaration.

7 12 b. The surviving spouse of the decedent, if not legally
7 13 separated from the decedent, whose whereabouts is reasonably
7 14 ascertainable.

7 15 c. A surviving child of the decedent, or, if there is more
7 16 than one, a majority of the surviving children whose
7 17 whereabouts are reasonably ascertainable.

7 18 d. The surviving parents of the decedent whose whereabouts
7 19 are reasonably ascertainable.

7 20 e. A surviving grandchild of the decedent, or, if there is
7 21 more than one, a majority of the surviving grandchildren whose
7 22 whereabouts are reasonably ascertainable.

7 23 f. A surviving sibling of the decedent, or, if there is
7 24 more than one, a majority of the surviving siblings whose
7 25 whereabouts are reasonably ascertainable.

7 26 g. A surviving grandparent of the decedent, or, if there
7 27 is more than one, a majority of the surviving grandparents
7 28 whose whereabouts are reasonably ascertainable.

7 29 h. A person in the next degree of kinship to the decedent
7 30 in the order named by law to inherit the estate of the
7 31 decedent under the rules of inheritance for intestate
7 32 succession or, if there is more than one, a majority of such
7 33 surviving persons whose whereabouts are reasonably
7 34 ascertainable.

7 35 i. A person who represents that the person knows the
8 1 identity of the decedent and who signs an affidavit warranting
8 2 the identity of the decedent and assuming the right to control
8 3 final disposition of the decedent's remains and the
8 4 responsibility to pay any expense attendant to such final
8 5 disposition. A person who warrants the identity of the
8 6 decedent pursuant to this paragraph is liable for all damages
8 7 that result, directly or indirectly, from that warrant.

8 8 j. The county medical examiner, if responsible for the
8 9 decedent's remains, or, if there is no county medical
8 10 examiner, the state medical examiner, if responsible for the
8 11 decedent's remains.

8 12 2. A third party may rely upon the directives of a person
8 13 who represents that the person is a member of a class of
8 14 persons described in subsection 1, paragraph "c", "e", "f",
8 15 "g", or "h", and who signs an affidavit stating that all other
8 16 members of the class, whose whereabouts are reasonably
8 17 ascertainable, have been notified of the decedent's death and
8 18 the person has received the assent of a majority of those
8 19 members of that class of persons to control final disposition
8 20 of the decedent's remains and to make arrangements for the
8 21 performance of a ceremony for the decedent.

8 22 3. A third party may await a court order before proceeding
8 23 with final disposition of a decedent's remains or arrangements
8 24 for the performance of a ceremony for a decedent if the third
8 25 party is aware of a dispute among persons who are members of
8 26 the same class of persons described in subsection 1, or of a
8 27 dispute between persons who are authorized under subsection 1
8 28 and the executor named in a decedent's will or a personal
8 29 representative appointed by the court.

8 30 Sec. 10. NEW SECTION. 144C.6 DECLARATION OF FINAL
8 31 DISPOSITION OF REMAINS == FORM == REQUIREMENTS.

8 32 1. A declaration executed pursuant to this chapter may,
8 33 but need not, be in the following form:

8 34 I hereby designate as my designee to
8 35 implement my wishes relating to the final disposition of my
9 1 remains and the ceremonies to be performed after my death.
9 2 This declaration hereby revokes all prior declarations or
9 3 other documents directing final disposition of my remains and
9 4 the ceremonies to be performed after my death. This
9 5 designation becomes effective upon my death.

9 6 My designee shall act consistently with my directives as
9 7 stated in this declaration, in a manner that is reasonable
9 8 under the circumstances. My designee has the discretion to
9 9 determine when my directives are impossible or are not lawful,
9 10 practical, or financially feasible. My directives are:

9 11 _____
9 12 _____
9 13 _____
9 14 _____

9 15 I may revoke or amend this declaration at any time. I
9 16 agree that a third party (such as a funeral or cremation
9 17 establishment, funeral director, or cemetery) who receives a
9 18 copy of this declaration may act in reliance on it.
9 19 Revocation of this declaration is not effective as to a third
9 20 party until the third party receives notice of the revocation.
9 21 My estate shall indemnify my designee and any third party for
9 22 costs incurred by them or claims arising against them as a
9 23 result of their good faith reliance on this declaration.

9 24 I execute this declaration as my free and voluntary act.

9 25 2. A declaration executed pursuant to this chapter shall
9 26 be in a written form that substantially complies with the form
9 27 contained in subsection 1, is properly completed, and is dated
9 28 and signed by the declarant or another person acting on the
9 29 declarant's behalf at the direction of and in the presence of
9 30 the declarant. In addition, a declaration shall be either of
9 31 the following:

9 32 a. Signed by at least two individuals who are not named
9 33 therein and who, in the presence of each other and the
9 34 declarant, witnessed the signing of the declaration by the
9 35 declarant, or another person acting on the declarant's behalf
10 1 at the direction of and in the presence of the declarant, and
10 2 witnessed the signing of the declaration by each other.

10 3 b. Acknowledged before a notarial officer.

10 4 3. A declaration may include specific directives,
10 5 including but not limited to:

10 6 a. Special instructions conveying the declarant's wishes
10 7 for the type of final disposition of the declarant's remains,
10 8 location of the final disposition, type of ceremony, location
10 9 of ceremony, and organ donation consistent with chapter 142C.

10 10 b. Designation of one or more alternate designees.

10 11 c. Contact information of designees and alternate
10 12 designees such as names, addresses, and telephone numbers.

10 13 d. Instructions for distribution of copies of the
10 14 declaration.

10 15 Sec. 11. NEW SECTION. 144C.7 REVOCATION OF DECLARATION.

10 16 1. A declaration or any directive contained in a
10 17 declaration is revocable by a declarant in a writing signed
10 18 and dated by the declarant.

10 19 2. Unless otherwise expressly provided in a declaration:

10 20 a. A dissolution of marriage, annulment of marriage, or
10 21 legal separation between the declarant and the declarant's
10 22 spouse that occurs subsequent to the execution of the
10 23 declaration constitutes an automatic revocation of the spouse
10 24 as a designee.

10 25 b. A designation of a person as a designee pursuant to a
10 26 declaration is ineffective if the designation is revoked by
10 27 the declarant in writing subsequent to the execution of the
10 28 declaration or if the designee is unable or unwilling to serve
10 29 as the designee.

10 30 Sec. 12. NEW SECTION. 144C.8 FORFEITURE OF DESIGNEE'S
10 31 AUTHORITY.

10 32 A designee shall forfeit all rights and authority under a
10 33 declaration and all rights and authority under the declaration
10 34 shall vest in and devolve upon an alternate designee, or if
10 35 there is none vest in and devolve pursuant to section 144C.5,
11 1 under either of the following circumstances:

11 2 1. The designee is charged with murder in the first or
11 3 second degree or voluntary manslaughter in connection with the
11 4 declarant's death and those charges are known to a third
11 5 party.

11 6 2. The designee does not exercise the designee's authority
11 7 under the declaration within twenty-four hours of receiving
11 8 notification of the death of the declarant or within
11 9 forty-eight hours of the declarant's death, whichever is
11 10 earlier.

11 11 Sec. 13. NEW SECTION. 144C.9 INTERSTATE EFFECT OF
11 12 DECLARATION.

11 13 Unless otherwise expressly provided in a declaration:

11 14 1. It is presumed that the declarant intended to have a
11 15 declaration executed pursuant to this chapter have the full
11 16 force and effect of law in any state of the United States, the
11 17 District of Columbia, and any other territorial possessions of
11 18 the United States.

11 19 2. A declaration or similar instrument executed in another
11 20 state that complies with the requirements of this chapter may
11 21 be relied upon, in good faith, by a third party in this state
11 22 so long as a directive of the declarant is not invalid,
11 23 illegal, or unconstitutional in this state.

11 24 Sec. 14. NEW SECTION. 144C.10 EFFECT OF DECLARATION.

11 25 1. The designee designated in a declaration shall have the

11 26 sole discretion pursuant to the declaration to determine what
11 27 final disposition of the declarant's remains and ceremonies to
11 28 be performed after the declarant's death are reasonable under
11 29 the circumstances.

11 30 2. The provisions of the most recent declaration executed
11 31 by a declarant shall control over any other document
11 32 concerning final disposition of the declarant's remains and
11 33 the ceremony to be performed after the declarant's death.

11 34 3. This chapter applies to a declaration executed or
11 35 exercised in Iowa and to a declaration executed or exercised
12 1 by a person who is a resident of Iowa when the instrument is
12 2 executed or exercised.

12 3 4. This chapter does not prohibit an interested person
12 4 from viewing a declarant in private, at the interested
12 5 person's expense, to assist in the bereavement process.

12 6 5. This chapter does not prohibit a person from conducting
12 7 a separate ceremony to commemorate a declarant, at the
12 8 person's expense, to assist in the bereavement process.

12 9 6. The rights of a donee created by an anatomical gift
12 10 pursuant to section 142C.11 are superior to the authority of a
12 11 designee under a declaration executed pursuant to this
12 12 chapter.

12 13 Sec. 15. NEW SECTION. 144C.11 PRACTICE OF MORTUARY
12 14 SCIENCE.

12 15 This chapter shall not be construed to authorize the
12 16 unlicensed practice of mortuary science as provided in chapter
12 17 156.

12 18 Sec. 16. Section 331.802, subsection 3, paragraph h, Code
12 19 2007, is amended to read as follows:

12 20 h. Death of a person if the body is not claimed by a
12 21 relative person authorized to control the deceased person's
12 22 remains under section 144C.5, or a friend.

12 23 Sec. 17. Section 331.802, subsection 8, Code 2007, is
12 24 amended to read as follows:

12 25 8. Where donation of the remains of the deceased to a
12 26 medical school or similar institution equipped with facilities
12 27 to perform autopsies is provided by will or directed by the
12 28 spouse, parents or children of full age, of the deceased
12 29 person authorized to control the deceased person's remains
12 30 under section 144C.5, any autopsy under this section shall be
12 31 performed at the direction of the school or institution, and
12 32 in such a manner as to further the purpose of the donation,
12 33 while serving the public interest.

12 34 Sec. 18. Section 331.804, subsection 1, Code 2007, is
12 35 amended to read as follows:

13 1 1. After an investigation has been completed, including an
13 2 autopsy if one is performed, the body shall be prepared for
13 3 transportation. The body shall be transported by a funeral
13 4 director, ~~if chosen by a relative or friend~~ person authorized
13 5 to control the remains of the deceased person under section
13 6 144C.5, for burial or other appropriate disposition. A

13 7 medical examiner shall not use influence in favor of a
13 8 particular funeral director. However, if a person other than
13 9 a funeral director assumes custody of a dead body, the person
13 10 shall secure a burial transit permit pursuant to section
13 11 144.32. If no one claims a body, it shall be disposed of as
13 12 provided in chapter 142.

13 13 Sec. 19. Section 523I.309, Code 2007, is amended to read
13 14 as follows:

13 15 523I.309 INTERMENT, RELOCATION, OR DISINTERMENT OF
13 16 REMAINS.

13 17 1. ~~Any available member of the following classes of~~
~~persons, in the priority listed, shall have the right to~~
13 19 ~~control the interment, relocation, or disinterment of a~~
13 20 ~~decedent's remains within or from a cemetery:~~

13 21 a. ~~The surviving spouse of the decedent, if not legally~~
13 22 ~~separated from the decedent.~~

13 23 b. ~~The decedent's surviving adult children. If there is~~
13 24 ~~more than one surviving adult child, any adult child who can~~
13 25 ~~confirm, in writing, that all other adult children have been~~
13 26 ~~notified of the proposed interment, relocation, or~~
13 27 ~~disinterment may authorize the interment, relocation, or~~
13 28 ~~disinterment, unless the cemetery receives an objection to~~
13 29 ~~such action from another adult child of the decedent.~~

13 30 ~~Alternatively, a majority of the surviving adult children of~~
13 31 ~~the decedent whose whereabouts are reasonably ascertainable~~
13 32 ~~shall have such right to control.~~

13 33 c. ~~The surviving parents of the decedent whose whereabouts~~
13 34 ~~are reasonably ascertainable.~~

13 35 d. ~~A surviving adult grandchild of the decedent. If there~~
14 1 ~~is more than one surviving adult grandchild, any adult~~

~~14 2 grandchild who can confirm, in writing, that all other adult
14 3 grandchildren have been notified of the proposed interment,
14 4 relocation, or disinterment may authorize the interment,
14 5 relocation, or disinterment, unless the cemetery receives an
14 6 objection to such action from another adult grandchild of the
14 7 decedent. Alternatively, a majority of the surviving adult
14 8 grandchildren of the decedent whose whereabouts are reasonably
14 9 ascertainable shall have such right to control.~~

~~14 10 e. A surviving adult sibling of the decedent. If there is
14 11 more than one surviving adult sibling, any adult sibling who
14 12 can confirm, in writing, that all other adult siblings have
14 13 been notified of the proposed interment, relocation, or
14 14 disinterment may authorize the interment, relocation, or
14 15 disinterment, unless the cemetery receives an objection to
14 16 such action from another adult sibling of the decedent.
14 17 Alternatively, a majority of the surviving adult siblings of
14 18 the decedent whose whereabouts are reasonably ascertainable
14 19 shall have such right to control.~~

~~14 20 f. A surviving grandparent of the decedent. If there is
14 21 more than one surviving grandparent, any grandparent who can
14 22 confirm, in writing, that all other grandparents have been
14 23 notified of the proposed interment, relocation, or
14 24 disinterment may authorize the interment, relocation, or
14 25 disinterment, unless the cemetery receives an objection to
14 26 such action from another grandparent of the decedent.
14 27 Alternatively, a majority of the surviving grandparents of the
14 28 decedent whose whereabouts are reasonably ascertainable shall
14 29 have such right to control.~~

~~14 30 g. An adult person in the next degree of kinship to the
14 31 decedent in the order named by law to inherit the estate of
14 32 the decedent under the rules of inheritance for intestate
14 33 succession.~~

~~14 34 h. The county medical examiner, if responsible for the
14 35 decedent's remains.~~

~~15 1 A cemetery may await a court order before proceeding with
15 2 the interment, relocation, or disinterment of a decedent's
15 3 remains within or from a cemetery if the cemetery is aware of
15 4 a dispute between an authorized person under this section and
15 5 the executor named in the decedent's will or a personal
15 6 representative appointed by a court, or is aware of a dispute
15 7 among authorized persons with the same priority under this
15 8 subsection.~~

~~15 9 2. 1. A person who represents that the person knows the
15 10 identity of a decedent and, in order to procure the interment,
15 11 relocation, or disinterment of the decedent's remains, signs
15 12 an order or statement, other than a death certificate, that
15 13 warrants the identity of the decedent is liable for all
15 14 damages that result, directly or indirectly, from that
15 15 representation.~~

~~15 16 3. A person may provide written directions for the
15 17 interment, relocation, or disinterment of the person's own
15 18 remains in a prepaid funeral or cemetery contract, or written
15 19 instrument signed and acknowledged by the person. The
15 20 directions may govern the inscription to be placed on a grave
15 21 marker attached to any interment space in which the decedent
15 22 had the right of interment at the time of death and in which
15 23 interment space the decedent is subsequently interred. The
15 24 directions may be modified or revoked only by a subsequent
15 25 writing signed and acknowledged by the person. A person other
15 26 than a decedent who is entitled to control the interment,
15 27 relocation, or disinterment of a decedent's remains under this
15 28 section shall faithfully carry out the directions of the
15 29 decedent to the extent that the decedent's estate or the
15 30 person controlling the interment, relocation, or disinterment
15 31 is financially able to do so.~~

~~15 32 4. A cemetery shall not be liable for carrying out the
15 33 written directions of a decedent or the directions of any
15 34 person entitled to control the interment, relocation, or
15 35 disinterment of the decedent's remains.~~

~~16 1 5. 2. In the event of a dispute concerning the right to
16 2 control the interment, relocation, or disinterment of a
16 3 decedent's remains, the dispute may be resolved by a court of
16 4 competent jurisdiction. A cemetery or entity maintaining a
16 5 columbarium shall not be liable for refusing to accept the
16 6 decedent's remains, relocate or disinter, inter or otherwise
16 7 dispose of the decedent's remains, until the cemetery or
16 8 entity maintaining a columbarium receives a court order or
16 9 other suitable confirmation that the dispute has been resolved
16 10 or settled.~~

~~16 11 6. 3. a. If good cause exists to relocate or disinter
16 12 remains interred in a cemetery, the remains may be removed~~

16 13 from the cemetery pursuant to a disinterment permit as
16 14 required under section 144.34, with the written consent of the
16 15 cemetery, the current interment rights owner and the person
16 16 entitled ~~by this section~~ to control the interment, relocation,
16 17 or disinterment of the decedent's remains under section
16 18 144C.5.

16 19 b. ~~If the consent required by this subsection pursuant to~~
16 20 ~~paragraph "a" is not refused but cannot otherwise be obtained,~~
16 21 the remains may be relocated or disinterred by permission of
16 22 the district court of the county in which the cemetery is
16 23 located upon a finding by the court that clear and convincing
16 24 evidence of good cause exists to relocate or disinter the
16 25 remains. Before the date of application to the court for
16 26 permission to relocate or disinter remains under this
16 27 subsection, notice must be given to the cemetery in which the
16 28 remains are interred, each person whose consent is required
16 29 for relocation or disinterment of the remains under ~~subsection~~
16 30 ~~1~~ paragraph "a", and any other person that the court requires
16 31 to be served.

16 32 c. For the purposes of this subsection, personal notice
16 33 must be given not later than the eleventh day before the date
16 34 of hearing on an application to the court for permission to
16 35 relocate or disinter the remains, or notice by certified mail
17 1 or restricted certified mail must be given not later than the
17 2 sixteenth day before the date of ~~application~~ hearing.

17 3 d. This subsection does not apply to the removal of
17 4 remains from one interment space to another interment space in
17 5 the same cemetery to correct an error, or relocation of the
17 6 remains by the cemetery from an interment space for which the
17 7 purchase price is past due and unpaid, to another suitable
17 8 interment space.

17 9 ~~7-~~ 4. A person who removes remains from a cemetery shall
17 10 keep a record of the removal, and provide a copy to the
17 11 cemetery, that includes all of the following:

17 12 a. The date the remains are removed.

17 13 b. The name of the decedent and age at death if those
17 14 facts can be conveniently obtained.

17 15 c. The place to which the remains are removed.

17 16 d. The name of the cemetery and the location of the
17 17 interment space from which the remains are removed.

17 18 ~~8-~~ 5. A cemetery may disinter and relocate remains
17 19 interred in the cemetery for the purpose of correcting an
17 20 error made by the cemetery after obtaining a disinterment
17 21 permit as required by section 144.34. The cemetery shall
17 22 provide written notice describing the error to the
17 23 commissioner and to the person who has the right to control
17 24 the interment, relocation, or disinterment of the remains
17 25 erroneously interred, by restricted certified mail at the
17 26 person's last known address and sixty days prior to the
17 27 disinterment. The notice shall include the location where the
17 28 disinterment will occur and the location of the new interment
17 29 space. A cemetery is not civilly or criminally liable for an
17 30 erroneously made interment that is corrected in compliance
17 31 with this subsection unless the error was the result of gross
17 32 negligence or intentional misconduct.

17 33 ~~9-~~ 6. Relocations and disinterments of human remains
17 34 shall be done in compliance with sections 144.32 and 144.34.
17 35 Relocations of human remains held in a columbarium shall be in
18 1 compliance with the laws regulating the entity maintaining the
18 2 columbarium.

18 3 Sec. 20. APPLICABILITY DATES.

18 4 1. This Act applies to all declarations executed on or
18 5 after the effective date of this Act.

18 6 2. The section of this Act enacting section 144C.5 applies
18 7 to all deaths occurring on or after the effective date of this
18 8 Act, except that section 144C.5, subsection 1, paragraph "a",
18 9 applies only to a designee or alternate designee designated in
18 10 a declaration that is executed on or after the effective date
18 11 of this Act.

18 12 EXPLANATION

18 13 This bill creates new Code chapter 144C, entitled the
18 14 "Final Disposition Directives Act" and provides for
18 15 coordinating amendments to other Code provisions. The new
18 16 Code chapter allows an adult, that is, a person who is married
18 17 or who is 18 years of age or older, to execute a written
18 18 instrument called a declaration that names a designee to
18 19 implement the person's wishes contained in the declaration
18 20 which may include the final disposition of that person's
18 21 remains and the ceremonies to be performed after that person's
18 22 death.

18 23 New Code section 144C.3 requires a declaration to name a

18 24 designee and allows a declaration to direct what final
18 25 disposition should be made of the declarant's remains and what
18 26 ceremony should be performed after the declarant's death. The
18 27 bill prohibits a funeral director, funeral establishment,
18 28 cremation establishment, cemetery, elder group home, assisted
18 29 living program facility, adult day services program, licensed
18 30 hospice program, or attorney, or any agent, owner, or employee
18 31 of any such entity, from serving as a designee under a
18 32 declaration unless related to the declarant within the third
18 33 degree of consanguinity. The bill requires a designee or
18 34 third party to act in good faith to fulfill the directives of
18 35 a declaration in a manner that is reasonable under the
19 1 circumstances.

19 2 New Code section 144C.4 provides some immunity from civil
19 3 or criminal liability or professional disciplinary action for
19 4 a designee or a third party, such as a funeral director,
19 5 funeral establishment, cremation establishment, or cemetery,
19 6 acting in good faith reliance on a declaration. The bill
19 7 provides that its provisions shall not be construed to impair
19 8 any contractual obligations of a designee or third party
19 9 incurred in fulfillment of a declaration.

19 10 New Code section 144C.5 sets forth an order of priority for
19 11 determining who has the right to control final disposition of
19 12 a deceased person's remains or to make arrangements for a
19 13 ceremony after a person's death. A designee or alternate
19 14 designee acting pursuant to a declaration has the highest
19 15 priority, or if there is no designee, then the surviving
19 16 spouse and other relatives of the deceased person whose
19 17 whereabouts are reasonably ascertainable, a person who knows
19 18 the declarant, or the county or state medical examiner.

19 19 The bill allows a third party to rely upon the directives
19 20 of a person who represents that the person is a member of a
19 21 class of persons set forth in the order of priority contained
19 22 in the bill if that person signs an affidavit stating that the
19 23 person has received the assent of a majority of all members of
19 24 the class, whose whereabouts are reasonably ascertainable, to
19 25 control final disposition of the decedent's remains and to
19 26 make arrangements for the performance of a ceremony for the
19 27 decedent.

19 28 The bill allows a third party to await a court order before
19 29 proceeding with final disposition of the body or ceremony
19 30 arrangements in the event of a dispute among family members or
19 31 between family members and the executor of the decedent's will
19 32 or a personal representative appointed by the court.

19 33 New Code section 144C.6 contains a suggested, but not
19 34 mandatory, written form for a declaration. A declaration must
19 35 be in writing and substantially comply with the form contained
20 1 in the bill, be properly completed, and be signed by the
20 2 person making the declaration, or another person acting on the
20 3 declarant's behalf at the direction of and in the presence of
20 4 the declarant.

20 5 The declaration must also either be signed by at least two
20 6 individuals who are not named in the document who, in the
20 7 presence of each other and the declarant, witness the signing
20 8 of the declaration by the declarant, or a person acting on the
20 9 declarant's behalf at the direction of and in the presence of
20 10 the declarant, and who witness the signing of the declaration
20 11 by each other, or be acknowledged before a notarial officer.

20 12 The bill suggests specific directives that may be included
20 13 in a declaration such as special instructions conveying the
20 14 person's wishes concerning the type and location of the final
20 15 disposition and ceremonies, designation of alternate designees
20 16 and contact information for all designees, and instructions
20 17 for distribution of copies of the declaration.

20 18 New Code section 144C.7 specifies under what circumstances
20 19 a declaration can be revoked.

20 20 New Code section 144C.8 provides for forfeiture of a
20 21 designee's rights and authority under a declaration if the
20 22 designee is charged with murder in the first or second degree
20 23 or voluntary manslaughter of the deceased person, or if the
20 24 designee's rights and authority under the declaration are not
20 25 exercised within 24 hours of receiving notification of the
20 26 death of the declarant or within 48 hours of the declarant's
20 27 death, whichever is earlier.

20 28 New Code section 144C.9 provides a presumption that a
20 29 declaration executed pursuant to the new Code chapter is
20 30 intended to have full force and effect throughout the United
20 31 States, the District of Columbia, and its territorial
20 32 possessions and gives effect to declarations or similar
20 33 instruments executed in other states that comply with the
20 34 requirements of the new Code chapter.

20 35 New Code section 144C.10 sets forth the effect of a
21 1 declaration by giving a designee the sole discretion to
21 2 determine what is "reasonable under the circumstances" which
21 3 is defined in new Code section 144C.2 to mean consideration of
21 4 what is appropriate in relation to the declarant's finances,
21 5 cultural or family customs, and religious or spiritual
21 6 beliefs, including consideration of any preneed funeral,
21 7 burial, or cremation plan, or creditors of the declarant in
21 8 implementing the provisions of a declaration.

21 9 The bill provides that the provisions of the most recent
21 10 declaration of a declarant control over any other document
21 11 concerning final disposition of that person's body or the
21 12 ceremonies to be performed after that person's death.

21 13 The bill provides that the new Code chapter applies to a
21 14 declaration executed or exercised in Iowa and to a declaration
21 15 executed or exercised by a person who is a resident of Iowa
21 16 when the instrument is executed or exercised.

21 17 The bill does not prohibit an interested person, defined as
21 18 a declarant's spouse, parent, grandparent, adult child, adult
21 19 sibling, adult grandchild, or a designee, from viewing a
21 20 declarant in private at the interested person's expense, to
21 21 assist in the bereavement process.

21 22 The bill does not prohibit a person from conducting a
21 23 separate ceremony to commemorate a declarant, at the person's
21 24 expense, to assist in the bereavement process.

21 25 The bill provides that the rights of a donee created by an
21 26 anatomical gift pursuant to Code section 142C.11 are superior
21 27 to the authority of a designee pursuant to a declaration.

21 28 New Code section 144C.11 provides that the provisions of
21 29 the bill shall not be construed to authorize the unlicensed
21 30 practice of mortuary science as provided in Code chapter 156.

21 31 COORDINATING PROVISIONS. The bill also includes
21 32 coordinating amendments.

21 33 Code section 142.1 is amended to provide that bodies of
21 34 persons that are to be disposed of pursuant to the provisions
21 35 of new Code chapter 144C shall not be delivered to a medical,
22 1 osteopathic, or chiropractic college for use for scientific
22 2 purposes pursuant to Code section 142.1. Code section 142.1
22 3 is also amended to provide that if there is not a person
22 4 authorized to control the deceased person's remains under new
22 5 Code section 144C.5, a friend may request delivery of the body
22 6 for cremation or burial, at the friend's expense.

22 7 Code section 142C.4, subsection 1, is amended to provide
22 8 that an available member of specified classes of people, in
22 9 the following order of priority, may make an anatomical gift
22 10 of a decedent's body or parts for an authorized purpose: a
22 11 designee acting pursuant to a declaration made under new Code
22 12 chapter 144C, an attorney in fact under a durable power of
22 13 attorney for health care, a person authorized to control the
22 14 deceased person's remains under new Code section 144C.5, or a
22 15 guardian of the decedent at the time of the decedent's death.

22 16 Code section 144.34 is amended to provide that a
22 17 disinterment permit for a dead body shall not be issued by the
22 18 state registrar without the consent of the person authorized
22 19 to control the decedent's remains under new Code section
22 20 144C.5, and that disinterment allowed by court order shall be
22 21 only after hearing, upon reasonable notice to that person.

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

22 29 Code section 331.802, subsection 3, paragraph "h", is
22 30 amended to provide that a death affecting the public interest
22 31 includes the death of a person whose body is not claimed by a
22 32 person authorized to control the deceased person's remains
22 33 under new Code section 144C.5 or a friend.

22 34 Code section 331.802, subsection 8, is amended to provide
22 35 that where the remains of a deceased person are donated to a
23 1 medical school or similar institution by a person authorized
23 2 to control the deceased person's remains under new Code
23 3 section 144C.5, any autopsy performed in the public interest
23 4 shall be performed at the direction of the school or
23 5 institution, in a manner furthering the purpose of the
23 6 donation.

23 7 Code section 331.804, subsection 1, is amended to provide
23 8 that after the investigation of a death, the deceased person's
23 9 remains shall be transported for burial or other appropriate
23 10 disposition by a funeral director chosen by a person

23 11 authorized to control the deceased person's remains under new
23 12 Code section 144C.5.
23 13 Code section 523I.309 is amended by removing alternative
23 14 procedures for determining final disposition of a decedent's
23 15 remains that are contained in Code chapter 523I. The section
23 16 is also amended to allow an entity maintaining a columbarium
23 17 to refuse to accept, relocate, disinter, inter, or otherwise
23 18 dispose of a decedent's remains without a court order in the
23 19 event of a dispute.
23 20 APPLICABILITY DATES. The bill applies to all declarations
23 21 executed on or after the effective date of the bill. New Code
23 22 section 144C.5, which sets forth an order of priority for
23 23 determining who has the right to control final disposition and
23 24 ceremonies for a decedent, applies to all deaths occurring on
23 25 or after the effective date of the bill, except that Code
23 26 section 144C.5, subsection 1, paragraph "a", giving highest
23 27 priority to a designee in a declaration, applies only to a
23 28 designee designated in a declaration executed on or after the
23 29 effective date of the bill.
23 30 LSB 1082SV 82
23 31 av:rj/es/88