

Senate File 473 - Reprinted

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
7 av/es/88

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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 144.34, Code 2007, is amended to read as
2 1 follows:
2 2 144.34 DISINTERMENT == PERMIT.
2 3 Disinterment of a dead body or fetus shall be allowed for
2 4 the purpose of autopsy or reburial only, and then only if
2 5 accomplished by a funeral director. A permit for such
2 6 disinterment and, thereafter, reinterment shall be issued by
2 7 the state registrar according to rules adopted pursuant to
2 8 chapter 17A or when ordered by the district court of the
2 9 county in which such body is buried. The state registrar,
2 10 without a court order, shall not issue a permit without the
2 11 consent of the ~~surviving spouse or in case of such spouse's~~
2 12 ~~absence, death, or incapacity, the next of kin person~~
2 13 ~~authorized to control the decedent's remains under section~~
2 14 ~~144C.5~~. Disinterment for the purpose of reburial may be
2 15 allowed by court order only upon a showing of substantial
2 16 benefit to the public. Disinterment for the purpose of

2 17 autopsy or reburial by court order shall be allowed only when
2 18 reasonable cause is shown that someone is criminally or
2 19 civilly responsible for such death, after hearing, upon
2 20 reasonable notice prescribed by the court to the surviving
~~2 21 spouse or in the spouse's absence, death, or incapacity, the~~
~~2 22 next of kin person authorized to control the decedent's~~
2 23 remains under section 144C.5. Due consideration shall be
2 24 given to the public health, the dead, and the feelings of
2 25 relatives.

2 26 Sec. 3. Section 144.56, Code 2007, is amended to read as
2 27 follows:

2 28 144.56 AUTOPSY.

2 29 An autopsy or post-mortem examination may be performed upon
2 30 the body of a deceased person by a physician whenever the
2 31 written consent to the examination or autopsy has been
2 32 obtained by any of the following persons, in order of priority
~~2 33 stated when persons in prior classes are not available at the~~
~~2 34 time of death, and in the absence of actual notice of contrary~~
~~2 35 indications by the decedent or actual notice of opposition by~~
~~3 1 a member of the same or prior class:~~

3 2 1. ~~The spouse.~~

3 3 2. ~~An adult son or daughter.~~

3 4 3. ~~Either parent.~~

3 5 4. ~~An adult brother or sister.~~

3 6 5. ~~A guardian of the person of the decedent at the time of~~
~~3 7 the decedent's death.~~

3 8 6. ~~Any other person authorized or under obligation to~~

~~3 9 dispose of the body from the person authorized to control the~~
~~3 10 deceased person's remains under section 144C.5.~~

3 11 This section does not apply to any death investigated under
3 12 the authority of sections 331.802 to 331.804.

3 13 Sec. 4. NEW SECTION. 144C.1 SHORT TITLE.

3 14 This chapter may be cited as the "Final Disposition
3 15 Directives Act".

3 16 Sec. 5. NEW SECTION. 144C.2 DEFINITIONS.

3 17 As used in this chapter, unless the context otherwise
3 18 requires:

3 19 1. "Adult" means a person who is married or who is
3 20 eighteen years of age or older.

3 21 2. "Adult day services program" means adult day services
3 22 program as defined in section 231D.1.

3 23 3. "Assisted living program facility" means assisted
3 24 living program facility as defined in section 231C.2.

3 25 4. "Ceremony" means a formal act or set of formal acts
3 26 established by custom or authority to commemorate a decedent.

3 27 5. "Child" means a son or daughter of a person, whether by
3 28 birth or adoption.

3 29 6. "Decedent" means a deceased adult.

3 30 7. "Declarant" means a competent adult who executes a
3 31 declaration pursuant to this chapter.

3 32 8. "Declaration" means a written instrument, executed by a
3 33 declarant in accordance with the requirements of this chapter,
3 34 that names a designee and may direct the final disposition of
3 35 the declarant's remains and the ceremonies planned after the
4 1 declarant's death.

4 2 9. "Designee" means a competent adult designated under a
4 3 declaration to implement the declarant's wishes contained in
4 4 the declaration.

4 5 10. "Elder group home" means elder group home as defined
4 6 in section 231B.1.

4 7 11. "Final disposition" means the burial, interment,
4 8 cremation, removal from the state, or other disposition of
4 9 remains.

4 10 12. "Health care facility" means health care facility as
4 11 defined in section 135C.1.

4 12 13. "Health care provider" means health care provider as
4 13 defined in section 144A.2.

4 14 14. "Hospital" means hospital as defined in section
4 15 135B.1.

4 16 15. "Interested person" means a decedent's spouse, parent,
4 17 grandparent, adult child, adult sibling, adult grandchild, or
4 18 a designee.

4 19 16. "Licensed hospice program" means a licensed hospice
4 20 program as defined in section 135J.1.

4 21 17. "Reasonable under the circumstances", as applied to
4 22 implementation of a declarant's directives in a declaration,
4 23 means consideration of what is appropriate in relation to the
4 24 declarant's finances, cultural or family customs, and
4 25 religious or spiritual beliefs. "Reasonable under the
4 26 circumstances" may include but is not limited to consideration
4 27 of the declarant's preneed funeral, burial, or cremation plan,

4 28 and known or reasonably ascertainable creditors of the
4 29 declarant.
4 30 18. "Remains" means the body or cremated remains of a
4 31 decedent.
4 32 19. a. "Third party" means a person who is any of the
4 33 following:
4 34 (1) Is requested in a declaration to act in good faith in
4 35 reliance upon the declaration.
5 1 (2) Is requested to dispose of remains by an adult with
5 2 the right to dispose of a decedent's remains under section
5 3 144C.6.
5 4 (3) Is delegated discretion in a declaration to direct
5 5 final disposition of a declarant's remains or to make
5 6 arrangements for the performance of ceremonies after a
5 7 declarant's death.
5 8 b. "Third party" includes but is not limited to a funeral
5 9 director, funeral establishment, cremation establishment,
5 10 cemetery, the state medical examiner, or a county medical
5 11 examiner.
5 12 Sec. 6. NEW SECTION. 144C.3 DECLARATION == FINAL
5 13 DISPOSITION OF REMAINS.
5 14 1. A declaration shall name a designee and may include one
5 15 or more of the following directives:
5 16 a. What final disposition shall be made of the declarant's
5 17 remains.
5 18 b. The declarant's preferences regarding the ceremony to
5 19 be performed after the declarant's death.
5 20 2. A designee or a third party shall act in good faith to
5 21 fulfill the directives of a declaration in a manner that is
5 22 reasonable under the circumstances.
5 23 3. A funeral director, funeral establishment, cremation
5 24 establishment, cemetery, elder group home, assisted living
5 25 program facility, adult day services program, licensed hospice
5 26 program, or attorney, or any agent, owner, or employee of such
5 27 an entity, shall not serve as a designee unless related to the
5 28 declarant within the third degree of consanguinity.
5 29 4. This section shall not be construed to permit a person
5 30 who is not licensed pursuant to chapter 156 to make funeral
5 31 arrangements.
5 32 Sec. 7. NEW SECTION. 144C.4 RELIANCE == IMMUNITIES.
5 33 1. A designee or third party who relies in good faith on a
5 34 declaration is not subject to civil liability or to criminal
5 35 prosecution or professional disciplinary action, to any
6 1 greater extent than if the designee or third party dealt
6 2 directly with the declarant as a fully competent and living
6 3 person.
6 4 2. A designee or third party who relies in good faith on a
6 5 declaration may presume, in the absence of actual knowledge to
6 6 the contrary, all of the following:
6 7 a. That the declaration was validly executed.
6 8 b. That the declarant was competent at the time the
6 9 declaration was executed.
6 10 3. A third party who relies in good faith on a declaration
6 11 is not subject to civil or criminal liability for the proper
6 12 application of property delivered or surrendered in compliance
6 13 with directives contained in the declaration including but not
6 14 limited to trust funds held pursuant to chapter 523A.
6 15 4. A third party who has reasonable cause to question the
6 16 authenticity or validity of a declaration may promptly and
6 17 reasonably seek additional information from the person
6 18 proffering the declaration or from other persons to verify the
6 19 declaration.
6 20 5. The state medical examiner or a county medical examiner
6 21 shall not be subject to civil liability or to criminal
6 22 prosecution or professional disciplinary action for releasing
6 23 a decedent's remains to a person who is not a designee or
6 24 alternate designee.
6 25 6. This section shall not be construed to impair any
6 26 contractual obligations of a designee or third party incurred
6 27 in fulfillment of a declaration.
6 28 Sec. 8. NEW SECTION. 144C.5 FINAL DISPOSITION OF REMAINS
6 29 == RIGHT TO CONTROL.
6 30 1. The right to control final disposition of a decedent's
6 31 remains or to make arrangements for the ceremony after a
6 32 decedent's death vests in and devolves upon the following
6 33 persons who are competent adults at the time of the decedent's
6 34 death, in the following order:
6 35 a. A designee, or alternate designee, acting pursuant to
7 1 the decedent's declaration.
7 2 b. The surviving spouse of the decedent, if not legally
7 3 separated from the decedent, whose whereabouts is reasonably

7 4 ascertainable.
7 5 c. A surviving child of the decedent, or, if there is more
7 6 than one, a majority of the surviving children whose
7 7 whereabouts are reasonably ascertainable.
7 8 d. The surviving parents of the decedent whose whereabouts
7 9 are reasonably ascertainable.
7 10 e. A surviving grandchild of the decedent, or, if there is
7 11 more than one, a majority of the surviving grandchildren whose
7 12 whereabouts are reasonably ascertainable.
7 13 f. A surviving sibling of the decedent, or, if there is
7 14 more than one, a majority of the surviving siblings whose
7 15 whereabouts are reasonably ascertainable.
7 16 g. A surviving grandparent of the decedent, or, if there
7 17 is more than one, a majority of the surviving grandparents
7 18 whose whereabouts are reasonably ascertainable.
7 19 h. A person in the next degree of kinship to the decedent
7 20 in the order named by law to inherit the estate of the
7 21 decedent under the rules of inheritance for intestate
7 22 succession or, if there is more than one, a majority of such
7 23 surviving persons whose whereabouts are reasonably
7 24 ascertainable.

7 25 i. A person who represents that the person knows the
7 26 identity of the decedent and who signs an affidavit warranting
7 27 the identity of the decedent and assuming the right to control
7 28 final disposition of the decedent's remains and the
7 29 responsibility to pay any expense attendant to such final
7 30 disposition. A person who warrants the identity of the
7 31 decedent pursuant to this paragraph is liable for all damages
7 32 that result, directly or indirectly, from that warrant.
7 33 j. The county medical examiner, if responsible for the
7 34 decedent's remains.

7 35 2. A third party may rely upon the directives of a person
8 1 who represents that the person is a member of a class of
8 2 persons described in subsection 1, paragraph "c", "e", "f",
8 3 "g", or "h", and who signs an affidavit stating that all other
8 4 members of the class, whose whereabouts are reasonably
8 5 ascertainable, have been notified of the decedent's death and
8 6 the person has received the assent of a majority of those
8 7 members of that class of persons to control final disposition
8 8 of the decedent's remains and to make arrangements for the
8 9 performance of a ceremony for the decedent.

8 10 3. A third party may await a court order before proceeding
8 11 with final disposition of a decedent's remains or arrangements
8 12 for the performance of a ceremony for a decedent if the third
8 13 party is aware of a dispute among persons who are members of
8 14 the same class of persons described in subsection 1, or of a
8 15 dispute between persons who are authorized under subsection 1
8 16 and the executor named in a decedent's will or a personal
8 17 representative appointed by the court.

8 18 Sec. 9. NEW SECTION. 144C.6 DECLARATION OF FINAL
8 19 DISPOSITION OF REMAINS == FORM == REQUIREMENTS.

8 20 1. A declaration executed pursuant to this chapter may,
8 21 but need not, be in the following form:

8 22 I hereby designate as my designee to
8 23 implement my wishes relating to the final disposition of my
8 24 remains and the ceremonies to be performed after my death.
8 25 This declaration hereby revokes all prior declarations or
8 26 other documents directing final disposition of my remains and
8 27 the ceremonies to be performed after my death. This
8 28 designation becomes effective upon my death.

8 29 My designee shall act consistently with my directives as
8 30 stated in this declaration, in a manner that is reasonable
8 31 under the circumstances. My designee has the discretion to
8 32 determine when my directives are impossible or are not lawful,
8 33 practical, or financially feasible. My directives are:
8 34 _____
8 35 _____

9 1 _____
9 2 _____
9 3 I may revoke or amend this declaration at any time. I
9 4 agree that a third party (such as a funeral or cremation
9 5 establishment, funeral director, or cemetery) who receives a
9 6 copy of this declaration may act in reliance on it.
9 7 Revocation of this declaration is not effective as to a third
9 8 party until the third party receives notice of the revocation.
9 9 My estate shall indemnify my designee and any third party for
9 10 costs incurred by them or claims arising against them as a
9 11 result of their good faith reliance on this declaration.

9 12 I execute this declaration as my free and voluntary act.

9 13 2. A declaration executed pursuant to this chapter shall
9 14 be in a written form that substantially complies with the form

9 15 contained in subsection 1, is properly completed, and is dated
9 16 and signed by the declarant or another person acting on the
9 17 declarant's behalf at the direction of and in the presence of
9 18 the declarant. In addition, a declaration shall be either of
9 19 the following:

- 9 20 a. Signed by at least two individuals who are not named
9 21 therein and who, in the presence of each other and the
9 22 declarant, witnessed the signing of the declaration by the
9 23 declarant, or another person acting on the declarant's behalf
9 24 at the direction of and in the presence of the declarant, and
9 25 witnessed the signing of the declaration by each other.
- 9 26 b. Acknowledged before a notarial officer.

9 27 3. A declaration may include specific directives,
9 28 including but not limited to:

- 9 29 a. Special instructions conveying the declarant's wishes
9 30 for the type of final disposition of the declarant's remains,
9 31 location of the final disposition, type of ceremony, location
9 32 of ceremony, and organ donation consistent with chapter 142C.
- 9 33 b. Designation of one or more alternate designees.
- 9 34 c. Contact information of designees and alternate
9 35 designees such as names, addresses, and telephone numbers.
- 10 1 d. Instructions for distribution of copies of the
10 2 declaration.
- 10 3 4. Upon execution of a declaration, the declarant shall
10 4 state upon the declaration that the declarant has notified the
10 5 declarant's next of kin of the declarant's intent to designate
10 6 a designee and the name and address of the designee. If
10 7 notification has not been made, the declarant shall state upon
10 8 the declaration the attempts made to achieve such notification
10 9 and that the attempts were made in good faith.

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

- 10 11 1. A declaration or any directive contained in a
10 12 declaration is revocable by a declarant in a writing signed
10 13 and dated by the declarant.
- 10 14 2. Unless otherwise expressly provided in a declaration:
 - 10 15 a. A dissolution of marriage, annulment of marriage, or
10 16 legal separation between the declarant and the declarant's
10 17 spouse that occurs subsequent to the execution of the
10 18 declaration constitutes an automatic revocation of the spouse
10 19 as a designee.
 - 10 20 b. A designation of a person as a designee pursuant to a
10 21 declaration is ineffective if the designation is revoked by
10 22 the declarant in writing subsequent to the execution of the
10 23 declaration or if the designee is unable or unwilling to serve
10 24 as the designee.

10 25 Sec. 11. NEW SECTION. 144C.8 FORFEITURE OF DESIGNEE'S
10 26 AUTHORITY.

10 27 A designee shall forfeit all rights and authority under a
10 28 declaration and all rights and authority under the declaration
10 29 shall vest in and devolve upon an alternate designee, or if
10 30 there is none vest in and devolve pursuant to section 144C.5,
10 31 under either of the following circumstances:

- 10 32 1. The designee is charged with murder in the first or
10 33 second degree or voluntary manslaughter in connection with the
10 34 declarant's death and those charges are known to a third
10 35 party.
- 11 1 2. The designee does not exercise the designee's authority
11 2 under the declaration within twenty-four hours of receiving
11 3 notification of the death of the declarant or within forty
11 4 hours of the declarant's death, whichever is earlier.

11 5 Sec. 12. NEW SECTION. 144C.9 INTERSTATE EFFECT OF
11 6 DECLARATION.

11 7 Unless otherwise expressly provided in a declaration:

- 11 8 1. It is presumed that the declarant intended to have a
11 9 declaration executed pursuant to this chapter have the full
11 10 force and effect of law in any state of the United States, the
11 11 District of Columbia, and any other territorial possessions of
11 12 the United States.
- 11 13 2. A declaration or similar instrument executed in another
11 14 state that complies with the requirements of this chapter may
11 15 be relied upon, in good faith, by a third party in this state
11 16 so long as a directive of the declarant is not invalid,
11 17 illegal, or unconstitutional in this state.

11 18 Sec. 13. NEW SECTION. 144C.10 EFFECT OF DECLARATION.

- 11 19 1. The designee designated in a declaration shall have the
11 20 sole discretion pursuant to the declaration to determine what
11 21 final disposition of the declarant's remains and ceremonies to
11 22 be performed after the declarant's death are reasonable under
11 23 the circumstances.
- 11 24 2. The provisions of the most recent declaration executed
11 25 by a declarant shall control over any other document

11 26 concerning final disposition of the declarant's remains and
11 27 the ceremony to be performed after the declarant's death.

11 28 3. This chapter applies to a declaration executed or
11 29 exercised in Iowa and to a declaration executed or exercised
11 30 by a person who is a resident of Iowa when the instrument is
11 31 executed or exercised.

11 32 4. This chapter does not prohibit an interested person
11 33 from viewing a declarant in private, at the interested
11 34 person's expense, to assist in the bereavement process.

11 35 5. This chapter does not prohibit a person from conducting
12 1 a separate ceremony to commemorate a declarant, at the
12 2 person's expense, to assist in the bereavement process.

12 3 6. The rights of a donee created by an anatomical gift
12 4 pursuant to section 142C.11 are superior to the authority of a
12 5 designee under a declaration executed pursuant to this
12 6 chapter.

12 7 Sec. 14. NEW SECTION. 144C.11 PRACTICE OF MORTUARY
12 8 SCIENCE.

12 9 This chapter shall not be construed to authorize the
12 10 unlicensed practice of mortuary science as provided in chapter
12 11 156.

12 12 Sec. 15. Section 331.802, subsection 3, paragraph h, Code
12 13 2007, is amended to read as follows:

12 14 h. Death of a person if the body is not claimed by a
12 15 ~~relative person authorized to control the deceased person's~~
12 16 ~~remains under section 144C.5,~~ or a friend.

12 17 Sec. 16. Section 331.802, subsection 8, Code 2007, is
12 18 amended to read as follows:

12 19 8. Where donation of the remains of the deceased to a
12 20 medical school or similar institution equipped with facilities
12 21 to perform autopsies is provided by will or directed by the
12 22 ~~spouse, parents or children of full age, of the deceased~~
12 23 ~~person authorized to control the deceased person's remains~~
12 24 ~~under section 144C.5,~~ any autopsy under this section shall be
12 25 performed at the direction of the school or institution, and
12 26 in such a manner as to further the purpose of the donation,
12 27 while serving the public interest.

12 28 Sec. 17. Section 331.804, subsection 1, Code 2007, is
12 29 amended to read as follows:

12 30 1. After an investigation has been completed, including an
12 31 autopsy if one is performed, the body shall be prepared for
12 32 transportation. The body shall be transported by a funeral
12 33 director, ~~if chosen by a relative or friend~~ person authorized
12 34 to control the remains of the deceased person under section

12 35 144C.5, for burial or other appropriate disposition. A
13 1 medical examiner shall not use influence in favor of a
13 2 particular funeral director. However, if a person other than
13 3 a funeral director assumes custody of a dead body, the person
13 4 shall secure a burial transit permit pursuant to section
13 5 144.32. If no one claims a body, it shall be disposed of as
13 6 provided in chapter 142.

13 7 Sec. 18. Section 523I.309, Code 2007, is amended to read
13 8 as follows:

13 9 523I.309 INTERMENT, RELOCATION, OR DISINTERMENT OF
13 10 REMAINS.

13 11 ~~1. Any available member of the following classes of~~
13 12 ~~persons, in the priority listed, shall have the right to~~
13 13 ~~control the interment, relocation, or disinterment of a~~
13 14 ~~decedent's remains within or from a cemetery:~~

13 15 ~~a. The surviving spouse of the decedent, if not legally~~
13 16 ~~separated from the decedent.~~

13 17 ~~b. The decedent's surviving adult children. If there is~~
13 18 ~~more than one surviving adult child, any adult child who can~~
13 19 ~~confirm, in writing, that all other adult children have been~~
13 20 ~~notified of the proposed interment, relocation, or~~
13 21 ~~disinterment may authorize the interment, relocation, or~~
13 22 ~~disinterment, unless the cemetery receives an objection to~~
13 23 ~~such action from another adult child of the decedent.~~

13 24 ~~Alternatively, a majority of the surviving adult children of~~
13 25 ~~the decedent whose whereabouts are reasonably ascertainable~~
13 26 ~~shall have such right to control.~~

13 27 ~~c. The surviving parents of the decedent whose whereabouts~~
13 28 ~~are reasonably ascertainable.~~

13 29 ~~d. A surviving adult grandchild of the decedent. If there~~
13 30 ~~is more than one surviving adult grandchild, any adult~~
13 31 ~~grandchild who can confirm, in writing, that all other adult~~
13 32 ~~grandchildren have been notified of the proposed interment,~~
13 33 ~~relocation, or disinterment may authorize the interment,~~
13 34 ~~relocation, or disinterment, unless the cemetery receives an~~
13 35 ~~objection to such action from another adult grandchild of the~~
14 1 ~~decedent. Alternatively, a majority of the surviving adult~~

~~14 2 grandchildren of the decedent whose whereabouts are reasonably
14 3 ascertainable shall have such right to control.~~

~~14 4 e. A surviving adult sibling of the decedent. If there is
14 5 more than one surviving adult sibling, any adult sibling who
14 6 can confirm, in writing, that all other adult siblings have
14 7 been notified of the proposed interment, relocation, or
14 8 disinterment may authorize the interment, relocation, or
14 9 disinterment, unless the cemetery receives an objection to
14 10 such action from another adult sibling of the decedent.
14 11 Alternatively, a majority of the surviving adult siblings of
14 12 the decedent whose whereabouts are reasonably ascertainable
14 13 shall have such right to control.~~

~~14 14 f. A surviving grandparent of the decedent. If there is
14 15 more than one surviving grandparent, any grandparent who can
14 16 confirm, in writing, that all other grandparents have been
14 17 notified of the proposed interment, relocation, or
14 18 disinterment may authorize the interment, relocation, or
14 19 disinterment, unless the cemetery receives an objection to
14 20 such action from another grandparent of the decedent.
14 21 Alternatively, a majority of the surviving grandparents of the
14 22 decedent whose whereabouts are reasonably ascertainable shall
14 23 have such right to control.~~

~~14 24 g. An adult person in the next degree of kinship to the
14 25 decedent in the order named by law to inherit the estate of
14 26 the decedent under the rules of inheritance for intestate
14 27 succession.~~

~~14 28 h. The county medical examiner, if responsible for the
14 29 decedent's remains.~~

~~14 30 A cemetery may await a court order before proceeding with
14 31 the interment, relocation, or disinterment of a decedent's
14 32 remains within or from a cemetery if the cemetery is aware of
14 33 a dispute between an authorized person under this section and
14 34 the executor named in the decedent's will or a personal
14 35 representative appointed by a court, or is aware of a dispute
15 1 among authorized persons with the same priority under this
15 2 subsection.~~

~~15 3 2. 1. A person who represents that the person knows the
15 4 identity of a decedent and, in order to procure the interment,
15 5 relocation, or disinterment of the decedent's remains, signs
15 6 an order or statement, other than a death certificate, that
15 7 warrants the identity of the decedent is liable for all
15 8 damages that result, directly or indirectly, from that
15 9 representation.~~

~~15 10 3. A person may provide written directions for the
15 11 interment, relocation, or disinterment of the person's own
15 12 remains in a prepaid funeral or cemetery contract, or written
15 13 instrument signed and acknowledged by the person. The
15 14 directions may govern the inscription to be placed on a grave
15 15 marker attached to any interment space in which the decedent
15 16 had the right of interment at the time of death and in which
15 17 interment space the decedent is subsequently interred. The
15 18 directions may be modified or revoked only by a subsequent
15 19 writing signed and acknowledged by the person. A person other
15 20 than a decedent who is entitled to control the interment,
15 21 relocation, or disinterment of a decedent's remains under this
15 22 section shall faithfully carry out the directions of the
15 23 decedent to the extent that the decedent's estate or the
15 24 person controlling the interment, relocation, or disinterment
15 25 is financially able to do so.~~

~~15 26 4. A cemetery shall not be liable for carrying out the
15 27 written directions of a decedent or the directions of any
15 28 person entitled to control the interment, relocation, or
15 29 disinterment of the decedent's remains.~~

~~15 30 5. 2. In the event of a dispute concerning the right to
15 31 control the interment, relocation, or disinterment of a
15 32 decedent's remains, the dispute may be resolved by a court of
15 33 competent jurisdiction. A cemetery or entity maintaining a
15 34 columbarium shall not be liable for refusing to accept the
15 35 decedent's remains, relocate or disinter, inter or otherwise
16 1 dispose of the decedent's remains, until the cemetery or
16 2 entity maintaining a columbarium receives a court order or
16 3 other suitable confirmation that the dispute has been resolved
16 4 or settled.~~

~~16 5 6. 3. a. If good cause exists to relocate or disinter
16 6 remains interred in a cemetery, the remains may be removed
16 7 from the cemetery pursuant to a disinterment permit as
16 8 required under section 144.34, with the written consent of the
16 9 cemetery, the current interment rights owner and the person
16 10 entitled by this section to control the interment, relocation,
16 11 or disinterment of the decedent's remains under section
16 12 144C.5.~~

16 13 b. ~~If the consent required by this subsection pursuant to~~
16 14 ~~paragraph "a" is not refused but cannot otherwise be obtained,~~
16 15 ~~the remains may be relocated or disinterred by permission of~~
16 16 ~~the district court of the county in which the cemetery is~~
16 17 ~~located upon a finding by the court that clear and convincing~~
16 18 ~~evidence of good cause exists to relocate or disinter the~~
16 19 ~~remains.~~ Before the date of application to the court for
16 20 permission to relocate or disinter remains under this
16 21 subsection, notice must be given to the cemetery in which the
16 22 remains are interred, each person whose consent is required
16 23 for relocation or disinterment of the remains under ~~subsection~~
16 24 ~~1 paragraph "a", and any other person that the court requires~~
16 25 ~~to be served.~~

16 26 c. For the purposes of this subsection, personal notice
16 27 must be given not later than the eleventh day before the date
16 28 of hearing on an application to the court for permission to
16 29 relocate or disinter the remains, or notice by certified mail
16 30 or restricted certified mail must be given not later than the
16 31 sixteenth day before the date of ~~application~~ hearing.

16 32 d. This subsection does not apply to the removal of
16 33 remains from one interment space to another interment space in
16 34 the same cemetery to correct an error, or relocation of the
16 35 remains by the cemetery from an interment space for which the
17 1 purchase price is past due and unpaid, to another suitable
17 2 interment space.

17 3 ~~7-~~ 4. A person who removes remains from a cemetery shall
17 4 keep a record of the removal, and provide a copy to the
17 5 cemetery, that includes all of the following:

17 6 a. The date the remains are removed.

17 7 b. The name of the decedent and age at death if those
17 8 facts can be conveniently obtained.

17 9 c. The place to which the remains are removed.

17 10 d. The name of the cemetery and the location of the
17 11 interment space from which the remains are removed.

17 12 ~~8-~~ 5. A cemetery may disinter and relocate remains
17 13 interred in the cemetery for the purpose of correcting an
17 14 error made by the cemetery after obtaining a disinterment
17 15 permit as required by section 144.34. The cemetery shall
17 16 provide written notice describing the error to the
17 17 commissioner and to the person who has the right to control
17 18 the interment, relocation, or disinterment of the remains
17 19 erroneously interred, by restricted certified mail at the
17 20 person's last known address and sixty days prior to the
17 21 disinterment. The notice shall include the location where the
17 22 disinterment will occur and the location of the new interment
17 23 space. A cemetery is not civilly or criminally liable for an
17 24 erroneously made interment that is corrected in compliance
17 25 with this subsection unless the error was the result of gross
17 26 negligence or intentional misconduct.

17 27 ~~9-~~ 6. Relocations and disinterments of human remains
17 28 shall be done in compliance with sections 144.32 and 144.34.
17 29 Relocations of human remains held in a columbarium shall be in
17 30 compliance with the laws regulating the entity maintaining the
17 31 columbarium.

17 32 Sec. 19. APPLICABILITY DATES.

17 33 1. This Act applies to all declarations executed on or
17 34 after the effective date of this Act.

17 35 2. The section of this Act enacting section 144C.5 applies
18 1 to all deaths occurring on or after the effective date of this
18 2 Act, except that section 144C.5, subsection 1, paragraph "a",
18 3 applies only to a designee or alternate designee designated in
18 4 a declaration that is executed on or after the effective date
18 5 of this Act.

18 6 SF 473

18 7 av:rj/cc/26