

CHAPTER 1051DISPOSITION OF HUMAN REMAINS —
AUTHORIZATION AND CONSENT

S.F. 473

AN ACT allowing a competent adult to execute a written instrument designating a person to have sole responsibility and discretion concerning the final disposition of that adult's remains, including coordinating provisions, and providing applicability dates.

Be It Enacted by the General Assembly of the State of Iowa:

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

142.1 DELIVERY OF BODIES.

The body of every person dying in a public asylum, hospital, county care facility, penitentiary, or reformatory in this state, or found dead within the state, or which is to be buried at public expense in this state, except those buried under the provisions of chapter 144C or 249, and which is suitable for scientific purposes, shall be delivered to the medical college of the state university, or some osteopathic or chiropractic college or school located in this state, which has been approved under the law regulating the practice of osteopathy or chiropractic; but no such body shall be delivered to any such college or school if the deceased person expressed a desire during the person's last illness that the person's body should be buried or cremated, nor if such is the desire of the person's relatives. Such bodies shall be equitably distributed among said colleges and schools according to their needs for teaching anatomy in accordance with such rules as may be adopted by the Iowa department of public health. The expense of transporting said bodies to such college or school shall be paid by the college or school receiving the same. ~~In the event~~ If the deceased person has not expressed a desire during the person's last illness that the person's body should be buried or cremated and ~~should have no relatives that request~~ person authorized to control the deceased person's remains under section 144C.5 requests the person's body for burial or cremation, and if a friend objects to the use of the deceased person's body for scientific purposes, said deceased person's body shall be forthwith delivered to such friend for burial or cremation at no expense to the state or county. Unless such friend provides for burial and burial expenses within five days, the body shall be used for scientific purposes under this chapter.

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

144.34 DISINTERMENT — PERMIT.

Disinterment of a dead body or fetus shall be allowed for the purpose of autopsy or reburial only, and then only if accomplished by a funeral director. A permit for such disinterment and, thereafter, reinterment shall be issued by the state registrar according to rules adopted pursuant to chapter 17A or when ordered by the district court of the county in which such body is buried. The state registrar, without a court order, shall not issue a permit without the consent of the ~~surviving spouse or in case of such spouse's absence, death, or incapacity, the next of kin~~ person authorized to control the decedent's remains under section 144C.5. Disinterment for the purpose of reburial may be allowed by court order only upon a showing of substantial benefit to the public. Disinterment for the purpose of autopsy or reburial by court order shall be allowed only when reasonable cause is shown that someone is criminally or civilly responsible for such death, after hearing, upon reasonable notice prescribed by the court to the ~~surviving spouse or in the spouse's absence, death, or incapacity, the next of kin~~ person authorized to control the decedent's remains under section 144C.5. Due consideration shall be given to the public health, the dead, and the feelings of relatives.

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

144.56 AUTOPSY.

An autopsy or post-mortem examination may be performed upon the body of a deceased

person by a physician whenever the written consent to the examination or autopsy has been obtained by any of the following persons, in order of priority stated when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or prior class:

1. The spouse.
2. An adult son or daughter.
3. Either parent.
4. An adult brother or sister.
5. A guardian of the person of the decedent at the time of the decedent's death.
6. Any other person authorized or under obligation to dispose of the body from the person authorized to control the deceased person's remains under section 144C.5.

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

Sec. 4. Section 144B.1, Code 2007, is amended by adding the following new subsection: NEW SUBSECTION. 1A. "Designee" means a person named in a declaration under chapter 144C that is contained in or attached to a durable power of attorney for health care.

Sec. 5. Section 144B.5, Code 2007, is amended by adding the following new subsection: NEW SUBSECTION. 5. A durable power of attorney for health care may include a declaration under chapter 144C that names a designee and alternate designees who may be different persons than the attorney in fact or alternate attorneys in fact who are designated in the durable power of attorney for health care.

Sec. 6. NEW SECTION. 144C.1 SHORT TITLE.

This chapter may be cited as the "Final Disposition Act".

Sec. 7. NEW SECTION. 144C.2 DEFINITIONS.

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

1. "Adult" means a person who is married or who is eighteen years of age or older.
2. "Adult day services program" means adult day services program as defined in section 231D.1.
3. "Assisted living program facility" means assisted living program facility as defined in section 231C.2.
4. "Ceremony" means a formal act or set of formal acts established by custom or authority to commemorate a decedent.
5. "Child" means a son or daughter of a person, whether by birth or adoption.
6. "Decedent" means a deceased adult.
7. "Declarant" means a competent adult who executes a declaration pursuant to this chapter.
8. "Declaration" means a written instrument, contained in or attached to a durable power of attorney for health care under chapter 144B, that is executed by a declarant in accordance with the requirements of this chapter, and that names a designee who shall have the sole responsibility and discretion for making decisions concerning the final disposition of the declarant's remains and the ceremonies planned after the declarant's death.
9. "Designee" means a competent adult designated under a declaration who shall have the sole responsibility and discretion for making decisions concerning the final disposition of the declarant's remains and the ceremonies planned after the declarant's death.
10. "Elder group home" means elder group home as defined in section 231B.1.
11. "Final disposition" means the burial, interment, cremation, removal from the state, or other disposition of remains.
12. "Health care facility" means health care facility as defined in section 135C.1.
13. "Health care provider" means health care provider as defined in section 144A.2.

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

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

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

17. "Reasonable under the circumstances" means consideration of what is appropriate in relation to the declarant's finances, cultural or family customs, and religious or spiritual beliefs. "Reasonable under the circumstances" may include but is not limited to consideration of the declarant's preneed funeral, burial, or cremation plan, and known or reasonably ascertainable creditors of the declarant.

18. "Remains" means the body or cremated remains of a decedent.

19. a. "Third party" means a person who is requested to dispose of remains by an adult with the right to dispose of a decedent's remains under section 144C.5 or assist with arrangements for ceremonies planned after the declarant's death.

b. "Third party" includes but is not limited to a funeral director, funeral establishment, cremation establishment, cemetery, the state medical examiner, or a county medical examiner.

Sec. 8. NEW SECTION. 144C.3 DECLARATION — DESIGNEE.

1. A declaration shall name a designee who shall have the sole responsibility and discretion for making decisions concerning the final disposition of the declarant's remains and the ceremonies planned after the declarant's death. A declaration may name one or more alternate designees and may include contact information for the designees and alternate designees.

2. A declaration shall not include directives for final disposition of the declarant's remains and shall not include arrangements for ceremonies planned after the declarant's death.

3. A designee, an alternate designee, and a third party shall act in good faith and in a manner that is reasonable under the circumstances.

4. A funeral director, funeral establishment, cremation establishment, cemetery, elder group home, assisted living program facility, adult day services program, licensed hospice program, or attorney, or any agent, owner, or employee of such an entity, shall not serve as a designee unless related to the declarant within the third degree of consanguinity.¹

5. This section shall not be construed to permit a person who is not licensed pursuant to chapter 156 to make funeral arrangements.

Sec. 9. NEW SECTION. 144C.4 RELIANCE — IMMUNITIES.

1. A designee or third party who relies in good faith on a declaration is not subject to civil liability or to criminal prosecution or professional disciplinary action, to any greater extent than if the designee or third party dealt directly with the declarant as a fully competent and living person.

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

a. That the declaration was validly executed.

b. That the declarant was competent at the time the declaration was executed.

3. A third party who relies in good faith on a declaration is not subject to civil or criminal liability for the proper application of property delivered or surrendered in compliance with decisions made by the designee including but not limited to trust funds held pursuant to chapter 523A.

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

5. The state medical examiner or a county medical examiner shall not be subject to civil liability or to criminal prosecution or professional disciplinary action for releasing a decedent's remains to a person who is not a designee or alternate designee.

6. This section shall not be construed to impair any contractual obligations of a designee or third party incurred in fulfillment of a declaration.

¹ See chapter 1191, §124 herein

Sec. 10. NEW SECTION. 144C.5 FINAL DISPOSITION OF REMAINS — RIGHT TO CONTROL.

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

- a. A designee, or alternate designee, acting pursuant to the decedent's declaration.
- b. The surviving spouse of the decedent, if not legally separated from the decedent, whose whereabouts is reasonably ascertainable.
- c. A surviving child of the decedent, or, if there is more than one, a majority of the surviving children whose whereabouts are reasonably ascertainable.
- d. The surviving parents of the decedent whose whereabouts are reasonably ascertainable.
- e. A surviving grandchild of the decedent, or, if there is more than one, a majority of the surviving grandchildren whose whereabouts are reasonably ascertainable.
- f. A surviving sibling of the decedent, or, if there is more than one, a majority of the surviving siblings whose whereabouts are reasonably ascertainable.
- g. A surviving grandparent of the decedent, or, if there is more than one, a majority of the surviving grandparents whose whereabouts are reasonably ascertainable.
- h. A person in the next degree of kinship to the decedent in the order named by law to inherit the estate of the decedent under the rules of inheritance for intestate succession or, if there is more than one, a majority of such surviving persons whose whereabouts are reasonably ascertainable.
- i. A person who represents that the person knows the identity of the decedent and who signs an affidavit warranting the identity of the decedent and assuming the right to control final disposition of the decedent's remains and the responsibility to pay any expense attendant to such final disposition. A person who warrants the identity of the decedent pursuant to this paragraph is liable for all damages that result, directly or indirectly, from that warrant.
- j. The county medical examiner, if responsible for the decedent's remains.

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

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

Sec. 11. NEW SECTION. 144C.6 DECLARATION OF DESIGNEE — FORM — REQUIREMENTS.

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

I hereby designate as my designee. My designee shall have the sole responsibility for making decisions concerning the final disposition of my remains and the ceremonies to be performed after my death. This declaration hereby revokes all prior declarations. This designation becomes effective upon my death.

My designee shall act in a manner that is reasonable under the circumstances.

I may revoke or amend this declaration at any time. I agree that a third party (such as a funeral or cremation establishment, funeral director, or cemetery) who receives a copy of this declaration may act in reliance on it. Revocation of this declaration is not effective as to a third party until the third party receives notice of the revocation. My estate shall indemnify my designee

and any third party for costs incurred by them or claims arising against them as a result of their good faith reliance on this declaration.

I execute this declaration as my free and voluntary act.

2. A declaration executed pursuant to this chapter shall be in a written form that substantially complies with the form in subsection 1, is properly completed, is contained in or attached to a durable power of attorney for health care under chapter 144B, and is dated and signed by the declarant or another person acting on the declarant's behalf at the direction of and in the presence of the declarant. In addition, a declaration shall be either of the following:

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

b. Acknowledged before a notarial officer.

3. A declaration may include the location of an agreement for prearranged funeral services or funeral merchandise as defined in and executed under chapter 523A, cemetery lots owned by or reserved for the declarant, and special instructions regarding organ donation consistent with chapter 142C.

Sec. 12. NEW SECTION. 144C.7 REVOCATION OF DECLARATION.

1. A declaration is revocable by a declarant in a writing signed and dated by the declarant.

2. Unless otherwise expressly provided in a declaration:

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

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

Sec. 13. NEW SECTION. 144C.8 FORFEITURE OF DESIGNEE'S AUTHORITY.

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

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

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

Sec. 14. NEW SECTION. 144C.9 INTERSTATE EFFECT OF DECLARATION.

Unless otherwise expressly provided in a declaration:

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

2. A declaration or similar instrument executed in another state that complies with the requirements of this chapter may be relied upon, in good faith, by the designee, an alternate designee, and a third party in this state so long as the declaration is not invalid, illegal, or unconstitutional in this state.

Sec. 15. NEW SECTION. 144C.10 EFFECT OF DECLARATION.

1. The designee designated in a declaration shall have the sole discretion pursuant to the declaration to determine what final disposition of the declarant's remains and ceremonies to be performed after the declarant's death are reasonable under the circumstances.

2. The most recent declaration executed by a declarant shall control.

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

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

Sec. 16. NEW SECTION. 144C.11 PRACTICE OF MORTUARY SCIENCE.

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

Sec. 17. Section 331.802, subsection 3, paragraph h, Code 2007, is amended to read as follows:

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

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

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

Sec. 19. Section 331.804, subsection 1, Code 2007, is amended to read as follows:

1. After an investigation has been completed, including an autopsy if one is performed, the body shall be prepared for transportation. The body shall be transported by a funeral director, ~~if chosen by a relative or friend~~ person authorized to control the remains of the deceased person under section 144C.5, for burial or other appropriate disposition. A medical examiner shall not use influence in favor of a particular funeral director. However, if a person other than a funeral director assumes custody of a dead body, the person shall secure a burial transit permit pursuant to section 144.32. If no one claims a body, it shall be disposed of as provided in chapter 142.

Sec. 20. Section 331.805, subsection 3, paragraph b, Code 2007, is amended to read as follows:

b. If the ~~next of kin, guardian, or other~~ person authorized to act on behalf control the remains of a deceased person under section 144C.5 has requested that the body of the deceased person be cremated, a permit for cremation must be obtained from a medical examiner. Cremation permits by the medical examiner must be made on the most current forms prepared at the direction of and approved by the state medical examiner, with copies forwarded to the state medical examiner's office. Costs for the cremation permit issued by a medical examiner shall not exceed seventy-five dollars. ~~The costs shall be borne by the family, next of kin, guardian of the decedent, or other person of the permit and other reasonable cremation expenses may be paid from the decedent's estate pursuant to section 633.425, subsection 3.~~

Sec. 21. Section 523I.309, Code 2007, is amended to read as follows:

523I.309 INTERMENT, RELOCATION, OR DISINTERMENT OF REMAINS.

1. ~~Any available member of the following classes of persons, in the priority listed,~~ A person authorized to control the deceased person's remains under section 144C.5 shall have the right to control the interment, relocation, or disinterment of a decedent's remains within or from a cemetery:

a. The surviving spouse of the decedent, if not legally separated from the decedent.

b. ~~The decedent's surviving adult children. If there is more than one surviving adult child, any adult child who can confirm, in writing, that all other adult children have been notified of the proposed interment, relocation, or disinterment may authorize the interment, relocation,~~

or disinterment, unless the cemetery receives an objection to such action from another adult child of the decedent. Alternatively, a majority of the surviving adult children of the decedent whose whereabouts are reasonably ascertainable shall have such right to control.

c. The surviving parents of the decedent whose whereabouts are reasonably ascertainable.

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

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

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

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

h. The county medical examiner, if responsible for the decedent's remains.

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

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

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

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

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

~~6.~~ 4. a. If good cause exists to relocate or disinter remains interred in a cemetery, the remains may be removed from the cemetery pursuant to a disinterment permit as required under section 144.34, with the written consent of the cemetery, the current interment rights owner and the person entitled by this section to control the interment, relocation, or disinterment of the decedent's remains under section 144C.5.

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

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

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

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

- a. The date the remains are removed.
- b. The name of the decedent and age at death if those facts can be conveniently obtained.
- c. The place to which the remains are removed.
- d. The name of the cemetery and the location of the interment space from which the remains are removed.

~~8.~~ 6. A cemetery may disinter and relocate remains interred in the cemetery for the purpose of correcting an error made by the cemetery after obtaining a disinterment permit as required by section 144.34. The cemetery shall provide written notice describing the error to the commissioner and to the person who has the right to control the interment, relocation, or disinterment of the remains erroneously interred, by restricted certified mail at the person's last known address and sixty days prior to the disinterment. The notice shall include the location where the disinterment will occur and the location of the new interment space. A cemetery is not civilly or criminally liable for an erroneously made interment that is corrected in compliance with this subsection unless the error was the result of gross negligence or intentional misconduct.

~~9.~~ 7. Relocations and disinterments of human remains shall be done in compliance with sections 144.32 and 144.34. Relocations of human remains held in a columbarium shall be in compliance with the laws regulating the entity maintaining the columbarium.

Sec. 22. APPLICABILITY DATES.

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

Approved April 11, 2008