

IN THE SENATE

SENATE BILL NO. 1077

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO DEATH CERTIFICATES; AMENDING SECTION 54-1142, IDAHO CODE, TO
PROVIDE THAT CERTAIN PERSONS HAVE A DIRECT AND TANGIBLE INTEREST IN
DEATH CERTIFICATES AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1142, Idaho Code, be, and the same is hereby
amended to read as follows:

54-1142. AUTHORITY IN ABSENCE OF OR UNCOVERED PROVISIONS IN A PREAR-
RANGED FUNERAL PLAN. (1) If the decedent has not made a prearranged funeral
plan as set forth in section 54-1139, Idaho Code, or to the extent any pro-
visions relating to the disposition of the person's remains are not clearly
covered in a prearranged funeral plan, the right to control the disposition
of the remains of a deceased person or to determine provisions not clearly
covered in a prearranged funeral plan vests in, and devolves upon the follow-
ing in the order named:

(a) The person designated in a written document executed by the dece-
dent and acknowledged in the same manner as required for instruments
conveying real property, and subject to such limitations, restric-
tions, or directions, as may be set forth in such document or, the person
designated by the decedent as authorized to direct disposition as
listed on the decedent's United States department of defense record of
emergency data, DD form 93, or its successor form, if the decedent died
while serving in military service as described in 10 U.S.C. 1481(a) (1)
through (8) in any branch of the United States armed forces, United
States reserve forces or national guard;

(b) The person designated as agent under a durable power of attorney for
health care executed by the decedent, unless such durable power of at-
torney for health care contains express and clear language denying such
right;

(c) The person designated in a durable power of attorney executed by the
decedent, if such power of attorney contains express and clear language
granting such right to the agent named in such power of attorney;

(d) The competent surviving spouse of the decedent;

(e) A majority of the competent surviving adult children of the dece-
dent, provided that less than one-half (1/2) of the competent surviving
adult children shall be vested with the right to control the disposition
of the remains of the decedent if they have used reasonable efforts to
notify all other competent surviving adult children of their instruc-
tions to dispose of the decedent's remains and are not aware of any oppo-
sition to those instructions on the part of more than one-half (1/2) of
all competent surviving adult children;

1 (f) The competent surviving parents or parent of the decedent, pro-
2 vided that if one (1) of the competent surviving parents is absent, the
3 remaining competent surviving parent shall be vested with the right to
4 control the disposition of the remains of the decedent after reasonable
5 efforts have been made and are unsuccessful in locating the absent com-
6 petent surviving parent;

7 (g) The person appointed by a court of competent jurisdiction as the
8 personal representative or administrator of the estate of the decedent;

9 (h) The person nominated as the personal representative of the estate
10 of the decedent in the will of the decedent;

11 (i) The competent adult person or persons entitled to inherit from the
12 decedent under the intestate succession laws of the state of Idaho, re-
13 spectively in the next degree of kinship, provided that if there is more
14 than one (1) competent surviving adult person of the same degree of kin-
15 ship, the majority of those persons, and provided further that less than
16 the majority of competent surviving adult persons of the same degree of
17 kinship shall be vested with the right to control the disposition of the
18 remains of the decedent if those persons have used reasonable efforts
19 to notify all other competent surviving adult persons of the same degree
20 of kinship of their instructions to dispose of the decedent's remains
21 and are not aware of any opposition to those instructions on the part of
22 one-half (1/2) or more of all competent surviving adult persons of the
23 same degree of kinship;

24 (j) If the persons listed above fail to exercise their right to dispose
25 of the remains of the deceased person within forty (40) days of the death
26 of the deceased person, the person acting as guardian of the ward at the
27 time of the ward's death, or if no guardian was then acting, the person
28 acting as conservator of the protected person at the time of the pro-
29 tected person's death, has the authority to dispose of the deceased per-
30 son's remains, including cremation of the remains.

31 (2) If any person to whom the right of control has vested pursuant to
32 the foregoing has been charged with first or second degree murder or volun-
33 tary manslaughter in connection with the decedent's death, and those charges
34 are known to the funeral director or cemetery authority, the right of con-
35 trol is relinquished and passed on to the next qualifying person as listed
36 above as if the charged person did not exist; provided however, that if the
37 charges against such person are dropped, or if such person is acquitted of
38 the charges, the right of control is returned to the person.

39 (3) For purposes of this section:

40 (a) "Adult" means an individual who is eighteen (18) years of age or
41 older;

42 (b) "Child" means a natural or adopted child of the decedent;

43 (c) "Competent" means the individual has not been declared incompetent
44 by a court of law, or who has been declared competent by a court of law
45 after a prior declaration of incompetence;

46 (d) "Durable power of attorney" means a power of attorney described in
47 section 15-12-102, Idaho Code, or any similar document properly exe-
48 cuted under the laws of another jurisdiction; and

1 (e) "Durable power of attorney for health care" means the document de-
2 scribed in chapter 45, title 39, Idaho Code, or any similar document
3 properly executed under the laws of another jurisdiction;

4 (f) "Will" means any testamentary device which is valid under the Idaho
5 probate code, including, but not limited to, sections 15-2-503, 15-2-
6 504 and 15-2-506, Idaho Code, whether or not originally executed in, or
7 under the laws of, the state of Idaho.

8 (4) (a) A cemetery authority or licensed funeral director or a licensed
9 hospital or its authorized personnel may permit or assist in, and a
10 physician may perform, an autopsy of any remains of a decedent in its
11 custody:

12 (i) If the decedent, prior to his death, authorizes an autopsy
13 in his will or in another written instrument, including, but not
14 limited to, a durable power of attorney for health care; or

15 (ii) Upon the receipt of a written authorization signed by, tele-
16 grammed from, or received by facsimile transmission from, a person
17 representing himself to be the person who is entitled under this
18 section to control the disposition of the remains of the decedent,
19 or to be a coroner or any other duly authorized public officer; or

20 (iii) Upon the receipt of an oral authorization obtained by tele-
21 phone, and recorded on tape or other recording device, from a per-
22 son representing himself to be the person who is entitled under
23 this section to control the disposition of the remains of the de-
24 cedent, or to be a coroner or any other duly authorized public offi-
25 cer.

26 (b) A cemetery authority or a licensed funeral director of a licensed
27 hospital or its authorized personnel is not liable for permitting or as-
28 sisting, and a physician is not liable for performing, an autopsy pur-
29 suant to the authorization provided in paragraph (a) of this subsection
30 unless he has actual notice that such representation is untrue at the
31 time the autopsy is performed. If such authorization is contained in
32 a will, the autopsy may be performed regardless of the validity of the
33 will in other respects and regardless of whether the will may not be of-
34 fered for, or admitted to, probate until a later date.

35 (c) This subsection shall not authorize the obtaining of an oral autho-
36 rization by telephone, recorded on tape or other recording device, for
37 the autopsy of a deceased person if it is made known to the physician who
38 is to perform the autopsy that the deceased person was, at the time of
39 his death, a member of a religion or group which opposes autopsies.

40 (5) Persons designated in subsection (1) of this section have a direct
41 and tangible interest in the death certificate of a decedent pursuant to sec-
42 tion 39-270(b), Idaho Code.