

Part 6 Control of Disposition

58-9-601 Advance directions.

- (1) A person may provide written directions, acknowledged before a Notary Public or executed with the same formalities required of a will under Section 75-2-502, to direct the preparation, type, and place of the person's disposition, including:
 - (a) designating a funeral service establishment;
 - (b) providing directions for burial arrangements; or
 - (c) providing directions for cremation arrangements.
- (2) A funeral service director shall carry out the written directions of the decedent prepared under this section to the extent that:
 - (a) the directions are lawful; and
 - (b) the decedent has provided resources to carry out the directions.
- (3) Directions for disposition contained in a will shall be carried out pursuant to Subsection (2) regardless of:
 - (a) the validity of other aspects of the will; or
 - (b) the fact that the will may not be offered or admitted to probate until a later date.
- (4) A person may change or cancel written directions prepared under this section at any time prior to the person's death by providing written notice to all applicable persons, including:
 - (a) if the written directions designate a funeral service establishment or funeral service director, the funeral service establishment or funeral service director designated in the written directions; and
 - (b) if the written directions are contained in a will, the personal representative as defined in Section 75-1-201.

Amended by Chapter 364, 2013 General Session

58-9-602 Determination of control of disposition.

The right and duty to control the disposition of a deceased person, which may include cremation as well as the location, manner and conditions of the disposition, and arrangements for funeral goods and services to be provided, vests in the following degrees of relationship in the order named, provided the person is at least 18 and is mentally competent:

- (1) the person designated:
 - (a) in a written instrument, excluding a power of attorney that terminates at death under Section 75-9-110, if the written instrument is acknowledged before a Notary Public or executed with the same formalities required of a will under Section 75-2-502; or
 - (b) by a service member while serving in a branch of the United States Armed Forces as defined in 10 U.S.C. Sec. 1481 in a federal Record of Emergency Data, DD Form 93 or subsequent form;
- (2) the surviving, legally recognized spouse of the decedent, unless a personal representative was nominated by the decedent subsequent to the marriage, in which case the personal representative shall take priority over the spouse;
- (3) the person nominated to serve as the personal representative of the decedent's estate in a will executed with the formalities required in Section 75-2-502;
- (4)

- (a) the sole surviving child of the decedent, or if there is more than one child of the decedent, the majority of the surviving children;
- (b) less than one-half of the surviving children are vested with the rights of this section if they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving children;
- (5) the surviving parent or parents of the decedent, however:
 - (a) if one of the surviving parents is absent, the remaining parent is vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving parent; or
 - (b) if the parents are divorced or separated and the decedent was an incapacitated adult, the parent who was designated as the guardian of the decedent is vested with the rights and duties of this section;
- (6)
 - (a) the surviving brother or sister of the decedent, or if there is more than one sibling of the decedent, the majority of the surviving siblings;
 - (b) less than the majority of surviving siblings, if they have used reasonable efforts to notify all other surviving siblings of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving siblings;
- (7) the person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent, and if there is more than one person of the same degree, any person of that degree may exercise the right of disposition;
- (8) in the absence of any person under Subsections (1) through (7), the person who was the decedent's guardian at the time of death;
- (9) any public official charged with arranging the disposition of deceased persons; and
- (10) in the absence of any person under Subsections (1) through (9), any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the personal representative of the decedent's estate or the funeral service director with custody of the body, after attesting in writing that a good faith effort has been made to no avail to contact the individuals referred to in Subsections (1) through (9).

Amended by Chapter 256, 2016 General Session

58-9-603 Loss of right of disposition.

- (1) As used in this section, "estranged" means a physical and emotional separation from the decedent at the time of death which has existed for a period of time that clearly demonstrates an absence of affection, trust, and regard for the decedent.
- (2) A person who has a right of disposition under this chapter forfeits that right and the right is passed on to the next qualifying person as listed in Section 58-9-602 under the following circumstances:
 - (a) the person is charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death, and the charges are known by the funeral service director, except that if the charges against the person are dropped or if the person is acquitted of the charges, the right of disposition is returned to the person;
 - (b) the person does not exercise the person's right of disposition within three days of notification of the decedent's death or within five days of the decedent's death, whichever is earlier; or
 - (c) if a probate court under Section 58-9-605 determines that the person entitled to the right of disposition and the decedent were estranged at the time of death.

Repealed and Re-enacted by Chapter 144, 2007 General Session

58-9-604 Control by funeral service director.

A funeral service director may control the disposition of the decedent and recover reasonable charges if:

- (1)
 - (a) the funeral service director has actual knowledge that none of the persons described in Section 58-9-602 exist; or
 - (b) after reasonable efforts the funeral service director is not able to contact any of the persons described in Section 58-9-602; and
- (2) the appropriate public official charged with arranging the disposition of deceased persons fails to assume responsibility for disposition of the decedent within 36 hours after receiving written notice from the funeral service director.

Enacted by Chapter 49, 2003 General Session

58-9-605 Disputes.

- (1) Notwithstanding Sections 58-9-601 through 58-9-604, the probate court for the county in which the decedent resided may:
 - (a) award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition; and
 - (b) make decisions regarding the decedent's remains if those sharing the right of disposition cannot agree.
- (2) The following provisions apply to the probate court's determinations under this section:
 - (a) if the persons holding the right of disposition are two or more persons with the same relationship to the decedent, and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of those persons or a funeral service director with custody of the remains may petition the probate court to make the decision;
 - (b) in making a determination the probate court shall consider:
 - (i) the reasonableness and practicality of the proposed funeral arrangements and disposition;
 - (ii) the degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;
 - (iii) the desires of the person or persons who are ready, able, and willing to pay the cost of the funeral arrangements and disposition;
 - (iv) the convenience and needs of other families and friends wishing to pay their respects;
 - (v) the desires of the decedent; and
 - (vi) the degree to which the funeral arrangements would allow maximum participation by all who wish to pay their respects.
- (3)
 - (a) In a dispute regarding the right of disposition, until the funeral service director receives a court order or other written agreement signed by the parties to the dispute that decides the final disposition of the remains, the funeral service director is not liable for refusing to:
 - (i) accept the decedent's remains;
 - (ii) inter or otherwise dispose of the decedent's remains; or
 - (iii) complete the arrangements for the final disposition of the decedent's remains.
 - (b) If, during a dispute, a funeral service director retains a decedent's remains for final disposition, the director may:

- (i) embalm or refrigerate and shelter the body, or both, to preserve it while awaiting the final decision of the probate court; and
 - (ii) add the costs incurred under Subsection (3)(b)(i) to the final disposition costs.
- (4) The legal fees and court costs incurred by a funeral service director for petitioning the probate court under Subsection (2)(a) may be added to the final disposition costs.
- (5)
- (a) This section does not require or impose a duty upon a funeral service director to bring an action under Subsection (2)(a).
 - (b) A funeral service director may not be held criminally or civilly liable for failing to bring an action under Subsection (2)(a).
- (6) Except to the degree that it may be considered by the probate court under Subsection (2)(b)(iii), the fact that a person has paid for or agreed to pay for all or part of the decedent's funeral arrangements and final disposition does not give that person a higher priority to the right of disposition than the person would otherwise have.
- (7) The personal representative of the decedent's estate does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the personal representative would otherwise have.

Enacted by Chapter 144, 2007 General Session

58-9-606 Right to rely -- Immunity.

- (1) A person signing a funeral service agreement, cremation authorization form, or other authorization for a decedent's disposition warrants the truthfulness of the facts set forth in the document, including the identity of the decedent and the person's authority to order the disposition.
- (2) A funeral service establishment has the right to rely on a contract or authorization executed under Subsection (1) and may carry out the instructions of the person whom its funeral service director reasonably believes holds the right of disposition.
- (3) A funeral service director incurs no civil or criminal liability for failure to contact or independently investigate the existence of any next-of-kin or relative of the decedent.
- (4) If there are at least two persons in the nearest class of the next-of-kin who are equal in priority and a funeral service director has no knowledge of an objection by other members of the class, the funeral service director may rely on and act according to the instructions of the first person in the class to make funeral and disposition arrangements.
- (5) A funeral service establishment or funeral service director who relies in good faith on the instructions of a person claiming the right of disposition under this part is immune from civil and criminal liability and disciplinary action in carrying out the disposition of a decedent's remains in accordance with that person's instructions.

Enacted by Chapter 144, 2007 General Session

58-9-607 Authorization to cremate -- Penalties for removal of items from human remains.

- (1) Except as otherwise provided in this section, a funeral service establishment may not cremate human remains until it has received:
 - (a) a cremation authorization form signed by an authorizing agent;
 - (b) a completed and executed burial transit permit or similar document, as provided by state law, indicating that human remains are to be cremated; and
 - (c) any other documentation required by the state, county, or municipality.

- (2)
- (a) The cremation authorization form shall contain, at a minimum, the following information:
 - (i) the identity of the human remains and the time and date of death, including a signed declaration of visual identification of the deceased or refusal to visually identify the deceased;
 - (ii) the name of the funeral director and funeral service establishment that obtained the cremation authorization;
 - (iii) notification as to whether the death occurred from a disease declared by the department of health to be infectious, contagious, communicable, or dangerous to the public health;
 - (iv) the name of the authorizing agent and the relationship between the authorizing agent and the decedent;
 - (v) a representation that the authorizing agent has the right to authorize the cremation of the decedent and that the authorizing agent is not aware of any living person with a superior or equal priority right to that of the authorizing agent, except that if there is another living person with a superior or equal priority right, the form shall contain a representation that the authorizing agent has:
 - (A) made reasonable efforts to contact that person;
 - (B) been unable to do so; and
 - (C) no reason to believe that the person would object to the cremation of the decedent;
 - (vi) authorization for the funeral service establishment to cremate the human remains;
 - (vii) a representation that the human remains do not contain a pacemaker or other material or implant that may be potentially hazardous or cause damage to the cremation chamber or the person performing the cremation;
 - (viii) the name of the person authorized to receive the cremated remains from the funeral service establishment;
 - (ix) the manner in which the final disposition of the cremated remains is to take place, if known;
 - (x) a listing of each item of value to be delivered to the funeral service establishment along with the human remains, and instructions as to how each item should be handled;
 - (xi) the signature of the authorizing agent, attesting to the accuracy of all representations contained on the authorization form;
 - (xii) if the cremation authorization form is being executed on a preneed basis, the form shall contain the disclosure required for preneed programs under this chapter; and
 - (xiii) except for a preneed cremation authorization, the signature of the funeral director of the funeral service establishment that obtained the cremation authorization.
 - (b)
 - (i) The individual referred to in Subsection (2)(a)(xiii) shall execute the funeral authorization form as a witness and is not responsible for any of the representations made by the authorizing agent.
 - (ii) The funeral director or the funeral service establishment shall warrant to the crematory that the human remains delivered to the funeral service establishment have been positively identified as the decedent listed on the cremation authorization form by the authorizing agent or a designated representative of the authorizing agent.
 - (iii) The authorizing agent or the agent's designee may make the identification referred to in Subsection (2)(b)(ii) in person or by photograph.
- (3)
- (a) A funeral service establishment may not accept unidentified human remains for cremation.

- (b) If a funeral service establishment takes custody of a cremation container subsequent to the human remains being placed within the container, it can rely on the identification made before the remains were placed in the container.
 - (c) The funeral service establishment shall place appropriate identification on the exterior of the cremation container based on the prior identification.
- (4)
- (a) A person who removes or possesses dental gold or silver, jewelry, or mementos from human remains:
 - (i) with purpose to deprive another over control of the property is guilty of an offense and subject to the punishments provided in Section 76-6-412;
 - (ii) with purpose to exercise unauthorized control and with intent to temporarily deprive another of control over the property is guilty of an offense and subject to the punishments provided in Section 76-6-404.5; and
 - (iii) under circumstances not amounting to Subsection (4)(a)(i) or (ii) and without specific written permission of the individual who has the right to control those remains is guilty of a class B misdemeanor.
 - (b) The fact that residue or any unavoidable dental gold or dental silver or other precious metals remain in a cremation chamber or other equipment or a container used in a prior cremation is not a violation of Subsection (4)(a).

Enacted by Chapter 353, 2008 General Session

58-9-608 Recordkeeping.

- (1)
- (a) A funeral service establishment shall furnish to the person who delivers human remains to the establishment for cremation a receipt signed by a representative of the establishment and the person making the delivery, showing:
 - (i) the date and time of the delivery;
 - (ii) the type of casket or alternative container delivered;
 - (iii) the name of the person from whom the human remains were received;
 - (iv) the name of the funeral establishment or other entity with whom the person making the delivery is affiliated;
 - (v) the name of the person who received the human remains on behalf of the funeral service establishment; and
 - (vi) the name of the decedent.
 - (b) The funeral service establishment shall keep a copy of the receipt in its permanent records for a period of seven years.
- (2)
- (a) Upon release of cremated remains, a funeral service establishment shall furnish to the person who receives the cremated remains a receipt signed by a representative of the funeral service establishment and the person who receives the remains, showing:
 - (i) the date and time of the release;
 - (ii) the name of the person to whom the cremated remains were released; and
 - (iii) if applicable:
 - (A) the name of the funeral establishment, cemetery, or other entity with whom the person receiving the cremated remains is affiliated;
 - (B) the name of the person who released the cremated remains on behalf of the funeral service establishment; and

- (C) the name of the decedent.
- (b)
 - (i) The receipt shall contain a representation from the person receiving the cremated remains confirming that the remains will not be used for any improper purpose.
 - (ii) Upon release of the cremated remains, the person to whom the remains were released may transport them in any manner in the state, without a permit, and dispose of them in accordance with this chapter.
- (c) The funeral service establishment shall retain a copy of the receipt in its permanent records for a period of seven years.
- (3)
 - (a) The funeral service establishment shall maintain at its place of business a permanent record of each cremation that took place at its crematory.
 - (b) The permanent record shall contain:
 - (i) the name of the decedent;
 - (ii) the date of cremation;
 - (iii) the final disposition of the cremated remains; and
 - (iv) any other document required by this chapter.

Enacted by Chapter 353, 2008 General Session

58-9-609 Cremation containers.

- (1)
 - (a) Except as provided in Subsection (2), a funeral service establishment may not make or enforce a rule requiring that human remains be:
 - (i) placed in a casket before cremation; or
 - (ii) cremated in a casket.
 - (b) A funeral service establishment may not refuse to accept human remains for cremation because they are not in a casket.
- (2)
 - (a) Human remains must be delivered to a crematory in a casket or cremation container.
 - (b) Human remains may not be removed from a casket or cremation container once delivered to the crematory, and the casket or cremation container shall be cremated with the human remains, unless:
 - (i) the funeral service establishment has been provided with written instructions to the contrary by the authorizing agent; or
 - (ii) the funeral service establishment does not accept metal caskets for cremation.

Enacted by Chapter 353, 2008 General Session

58-9-610 Cremation procedures.

- (1) A funeral service establishment may not cremate human remains until the funeral service establishment:
 - (a) completes and files a death certificate with the office of vital statistics and the county health department as indicated on the regular medical certificate of death or the coroner's certificate; and
 - (b) complies with the provisions of Section 26-4-29.
- (2)

- (a) A funeral service establishment may not cremate human remains with a pacemaker or other battery-powered, potentially hazardous implant in place.
- (b)
 - (i) An authorizing agent for the cremation of human remains is responsible for informing the funeral service establishment in writing on the cremation authorization form about the presence of a pacemaker or other battery-powered, potentially hazardous implant in the human remains to be cremated.
 - (ii)
 - (A) Except as provided in Subsection (2)(b)(ii)(B), the authorizing agent is responsible to ensure that a pacemaker or other battery-powered, potentially hazardous implant is removed prior to cremation.
 - (B) If the authorizing agent informs the funeral service establishment of the presence of a pacemaker or other battery-powered, potentially hazardous implant under Subsection (2)(b)(i), and the funeral service establishment fails to have the pacemaker or other battery-powered, potentially hazardous implant removed prior to cremation, then the funeral service establishment is liable for all resulting damages.
- (3) Only authorized persons are permitted in the crematory while human remains are in the crematory area awaiting cremation, being cremated, or being removed from the cremation chamber.
- (4)
 - (a) Simultaneous cremation of the human remains of more than one person within the same cremation chamber or processor is not allowed, unless the funeral service establishment has received specific written authorization to do so from the authorizing agent of each person to be cremated.
 - (b) The written authorization, described in Subsection (4)(a), exempts the funeral license establishment from liability for co-mingling of the cremated remains during the cremation process.
- (5) A funeral service establishment shall:
 - (a) verify the identification of human remains as indicated on a cremation container immediately before placing the human remains in the cremation chamber;
 - (b) attach a metal identification tag to the cremation container;
 - (c) remove the identification tag from the cremation container; and
 - (d) place the identification tag near the cremation chamber control where the identification tag shall remain until the cremation process is complete.
- (6) Upon completion of a cremation, the funeral service establishment shall:
 - (a) in so far as is possible, remove all of the recoverable residue of the cremation process from the cremation chamber;
 - (b) separate all other residue from the cremation process from remaining bone fragments, in so far as possible, and process the bone fragments so as to reduce them to unidentifiable particles; and
 - (c) remove anything other than the unidentifiable bone particles from the cremated residuals, as far as is possible, and dispose of that material.
- (7)
 - (a) A funeral service establishment shall pack cremated remains, including the identification tag described in Subsection (5), in a temporary container or urn ordered by the authorizing agent.
 - (b) The container or urn shall be packed in clean packing materials and not be contaminated with any other object, unless otherwise directed by the authorizing agent.

- (c) If the cremated remains cannot fit within the designated temporary container or urn, the funeral service establishment shall:
 - (i) return the excess to the authorizing agent or the agent's representative in a separate container; and
 - (ii) mark both containers or urns on the outside with the name of the deceased person and an indication that the cremated remains of the named decedent are in both containers or urns.
- (8)
 - (a) If the cremated remains are to be shipped, then the funeral services establishment shall pack the designated temporary container or urn in a suitable, sturdy container.
 - (b) The funeral service establishment shall have the remains shipped only by a method that:
 - (i) has an available internal tracing system; and
 - (ii) provides a receipt signed by the person accepting delivery.

Amended by Chapter 68, 2009 General Session
Amended by Chapter 223, 2009 General Session

58-9-611 Disposition of cremated remains.

- (1)
 - (a) An authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the final disposition of the cremated remains, if known.
 - (b) The funeral services establishment shall retain a copy of the statement.
- (2)
 - (a) The authorizing agent is responsible for the disposition of the cremated remains.
 - (b) If the authorizing agent or the agent's representative has not specified the ultimate disposition of or claimed the cremated remains within 60 days from the date of the cremation, the funeral service establishment may dispose of the remains in any manner permitted by law, except scattering.
 - (c) The authorizing agent shall reimburse the funeral services establishment for all reasonable costs incurred in disposing of the cremated remains under Subsection (2)(b).
 - (d) The person or entity disposing of cremated remains under this section:
 - (i) shall make and keep a record of the disposition of the remains; and
 - (ii) is discharged from any legal obligation or liability concerning the remains once the disposition has been made.
 - (e) Subsection (2)(d)(ii) applies to cremated remains in the possession of a funeral services establishment or other responsible party as of May 5, 2008, or any time after that date.
- (3)
 - (a) An authorizing agent may direct a funeral service establishment to dispose of or arrange for the disposition of cremated remains:
 - (i) in a crypt, niche, grave, or scattering garden located in a dedicated cemetery;
 - (ii) by scattering them over inhabited public land, the sea, or other public waterways subject to health and environmental laws and regulations; or
 - (iii) in any manner on the private property of a consenting owner.
 - (b) If cremated remains are to be disposed of on private property, other than dedicated cemetery property, the authorizing agent shall provide the funeral service establishment with the written consent of the property owner prior to disposal of the remains.
 - (c) In order to scatter cremated remains under Subsection (3)(a)(ii) or (iii), the remains must be reduced to a particle size of one-eighth inch or less and removed from their closed container.

- (4) A funeral service establishment may not release cremated remains for scattering under this section to the authorizing agent or the agent's designated representative until the funeral service establishment is given a receipt that shows the proper filing has been made with the local registrar of births and deaths.

Enacted by Chapter 353, 2008 General Session

58-9-612 Limitation of liability.

- (1) An authorizing agent who signs a cremation authorization form warrants the truthfulness of the facts set forth on the form, including:
 - (a) the identity of the deceased whose remains are to be cremated; and
 - (b) the authorizing agent's authority to order the cremation.
- (2) A funeral service establishment may rely upon the representations made by an authorizing agent under Subsection (1).
- (3) The authorizing agent is personally and individually liable for all damage resulting from a misstatement or misrepresentation made under Subsection (1).
- (4)
 - (a) A funeral service establishment may arrange for the cremation of and cremate human remains upon receipt of a cremation authorization form signed by an authorizing agent.
 - (b) A funeral service establishment that arranges a cremation, cremates human remains, or releases or disposes of cremated human remains pursuant to a cremation authorization form is not liable for an action it takes pursuant to that authorization.
- (5) A funeral service establishment is not responsible or liable for any valuables delivered to the establishment with human remains to be cremated.
- (6) A funeral service establishment may refuse to arrange for a cremation, to accept human remains for cremation, or to perform a cremation:
 - (a) if the establishment is aware of a dispute concerning the cremation of the human remains and it has not received a court order or other suitable confirmation that the dispute has been resolved;
 - (b) if the establishment has a reasonable basis for questioning any of the representations made by an authorizing agent; or
 - (c) for any other lawful reason.
- (7)
 - (a) If a funeral service establishment is aware of a dispute concerning the release or disposition of cremated remains in its possession, the establishment may refuse to release the remains until:
 - (i) the dispute has been resolved; or
 - (ii) it has received a court order authorizing the release or disposition of the remains.
 - (b) A funeral service establishment is not liable for its refusal to release or dispose of cremated remains in accordance with this Subsection (7).

Enacted by Chapter 353, 2008 General Session