

1                                   **CONTROL OF THE DISPOSITION OF A**  
2                                   **DECEASED PERSON**  
3                                   2003 GENERAL SESSION  
4                                   STATE OF UTAH

5                                   **Sponsor: Jackie Biskupski**

6   **This act modifies the Funeral Services Licensing Act to enact provisions dealing with the**  
7   **right and duty to control the disposition of a deceased person, and provides immunity to**  
8   **funeral service directors who control the disposition of a deceased person under some**  
9   **circumstances. The act modifies the Utah Health Code and the Utah Uniform Probate**  
10 **Code to provide cross references to the Funeral Services Licensing Act. The act makes**  
11 **technical changes.**

12 This act affects sections of Utah Code Annotated 1953 as follows:

13 AMENDS:

14         **26-2-18**, as last amended by Chapter 86, Laws of Utah 2000

15         **26-4-16**, as enacted by Chapter 126, Laws of Utah 1981

16         **75-1-107**, as repealed and reenacted by Chapter 39, Laws of Utah 1998

17 ENACTS:

18         **58-9-25**, Utah Code Annotated 1953

19         **58-9-26**, Utah Code Annotated 1953

20         **58-9-27**, Utah Code Annotated 1953

21         **58-9-28**, Utah Code Annotated 1953

22         **58-9-29**, Utah Code Annotated 1953

23         **58-9-30**, Utah Code Annotated 1953

24 *Be it enacted by the Legislature of the state of Utah:*

25         Section 1. Section **26-2-18** is amended to read:

26         **26-2-18. Interments -- Duties of sexton or person in charge -- Record of**  
27 **interments -- Information filed with local registrar.**



28 (1) (a) A sexton or person in charge of any premises in which interments are made may  
29 not inter or permit the interment of any dead body or dead fetus unless the interment is made by  
30 a funeral director licensed under Title 58, Chapter 9, Funeral Services Licensing Act, or by a  
31 person holding a burial-transit permit.

32 (b) The right and duty to control the disposition of a deceased person shall be governed  
33 by Sections 58-9-25 through 58-9-30.

34 (2) The sexton or the person in charge of any premises where interments are made shall  
35 keep a record of all interments made in the premises under his charge, stating the name of the  
36 decedent, place of death, date of burial, and name and address of the funeral director or other  
37 person making the interment. This record shall be open to public inspection. A city or county  
38 clerk may, at the clerk's option, maintain the interment records on behalf of the sexton or  
39 person in charge of any premises in which interments are made.

40 (3) Not later than the tenth day of each month, the sexton, person in charge of the  
41 premises, or city or county clerk who maintains the interment records shall send to the local  
42 registrar and the department a list of all interments made in the premises during the preceding  
43 month. The list shall be in the form prescribed by the state registrar.

44 Section 2. Section **26-4-16** is amended to read:

45 **26-4-16. Release of body for funeral preparations.**

46 (1) Where a body is held for investigation or autopsy under the provisions of this  
47 chapter or for any medical investigation permitted by law, the body shall, if requested by [~~next~~  
48 ~~of kin~~] the person given priority under Section 58-9-26, be released for funeral preparations no  
49 later than 24 hours after the arrival at the office of the medical examiner or regional medical  
50 facility. An extension may be ordered only by a district court.

51 (2) The right and duty to control the disposition of a deceased person shall be governed  
52 by Sections 58-9-25 through 58-9-30.

53 Section 3. Section **58-9-25** is enacted to read:

54 **58-9-25. Advance directions.**

55 (1) A person may provide written directions to direct the preparation, type, and place of  
56 the person's disposition, including:

57 (a) designating a funeral service establishment;

58 (b) providing directions for burial arrangements; or

59 (c) providing directions for cremation arrangements.

60 (2) The written directions described in Subsection (1) shall be on a form prepared by  
61 the division under Section 58-9-30.

62 (3) The person with the right and duty to control the disposition of the decedent under  
63 Section 58-9-26 shall carry out the directions of the decedent to the extent that:

64 (a) the directions are reasonable;

65 (b) the directions are lawful; and

66 (c) the decedent has provided resources to carry out the directions.

67 (4) Directions for disposition contained in a will shall be carried out regardless of:

68 (a) the validity of other aspects of the will; or

69 (b) the fact that the will may not be offered or admitted to probate until a later date.

70 (5) A person may change or cancel written directions prepared under this section at any  
71 time prior to the person's death by providing written notice to all applicable parties.

72 Section 4. Section **58-9-26** is enacted to read:

73 **58-9-26. Determination of control of disposition.**

74 The right and duty to control the disposition of a deceased person, including the  
75 location and conditions of the disposition, vest in the following degrees of relationship in the  
76 order named:

77 (1) a person designated on a form prepared by the division under Section 58-9-30,  
78 excluding a power of attorney that terminates at death under Sections 75-5-501 and 75-5-502;

79 (2) the surviving, legally recognized spouse of the decedent;

80 (3) the surviving child or children of the decedent over the age of 18;

81 (4) the surviving parent or parents of the decedent;

82 (5) the person or persons in the next degree of succession under Title 75, Chapter 2,  
83 Intestate Succession and Wills;

84 (6) any public official charged with arranging the disposition of deceased persons; and

85 (7) in the absence of any person under Subsections (1) through (6), any person willing  
86 to assume the right and duty to control the disposition.

87 Section 5. Section **58-9-27** is enacted to read:

88 **58-9-27. Refusal of control of disposition.**

89 If a person declines to act on the right and duty to control the disposition as established

90 in this part, the right and duty to control the disposition shall pass:

91 (1) to another person with the same degree of relationship to the decedent as the person  
92 that declines to act on the right and duty to control the disposition; or

93 (2) if no person satisfies Subsection (1), to the person or persons in the next degree of  
94 relationship under Section 58-9-26.

95 Section 6. Section **58-9-28** is enacted to read:

96 **58-9-28. Control by funeral service director.**

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

99 (1) (a) the funeral service director has actual knowledge that none of the persons  
100 described in Section 58-9-26 exist; or

101 (b) after reasonable efforts the funeral service director is not able to contact any of the  
102 persons described in Section 58-9-26; and

103 (2) the appropriate public official charged with arranging the disposition of deceased  
104 persons fails to assume responsibility for disposition of the decedent within 36 hours after  
105 receiving written notice from the funeral service director.

106 Section 7. Section **58-9-29** is enacted to read:

107 **58-9-29. Immunity.**

108 A funeral service director is not criminally or civilly liable for:

109 (1) acting in accordance with this chapter; or

110 (2) carrying out the otherwise lawful instructions of:

111 (a) the decedent; or

112 (b) a person or persons whom the funeral service director reasonably believes is  
113 entitled to control the disposition.

114 Section 8. Section **58-9-30** is enacted to read:

115 **58-9-30. Forms.**

116 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
117 division shall adopt in rule, forms for:

118 (a) advance directives prepared under Section 58-9-25; and

119 (b) designation of the person with the right and duty to control the disposition under  
120 Section 58-9-26.

121 (2) In order to be valid, the forms prepared under Subsection (1) shall require:

122 (a) a signature of the person preparing the form; and

123 (b) the signatures of at least two unrelated individuals who are not designated under

124 Subsection 58-9-26(1), each of whom signed within a reasonable time after witnessing the

125 signing of the form by the person preparing the form.

126 Section 9. Section **75-1-107** is amended to read:

127 **75-1-107. Evidence of death or status.**

128 (1) In addition to the rules of evidence in courts of general jurisdiction, the following

129 rules relating to a determination of death and status apply:

130 [~~1~~] (a) Death occurs when an individual is determined to be dead as provided in Title

131 26, Chapter 34, Uniform Determination of Death Act.

132 [~~2~~] (b) A certified or authenticated copy of a death certificate purporting to be issued

133 by an official or agency of the place where the death purportedly occurred is prima facie

134 evidence of the fact, place, date, and time of death and the identity of the decedent.

135 [~~3~~] (c) A certified or authenticated copy of any record or report of a governmental

136 agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima

137 facie evidence of the status and of the dates, circumstances, and places disclosed by the record

138 or report.

139 [~~4~~] (d) In the absence of prima facie evidence of death under Subsection [~~2~~] (1)(b)

140 or [~~3~~] (c), the fact of death may be established by clear and convincing evidence, including

141 circumstantial evidence.

142 [~~5~~] (e) An individual whose death is not established under Subsection (1)[~~2~~], [~~3~~], or

143 [~~4~~] (a), (b), (c), or (d) who is absent for a continuous period of five years, during which the

144 individual has not been heard from, and whose absence is not satisfactorily explained after

145 diligent search or inquiry, is presumed to be dead. The individual's death is presumed to have

146 occurred at the end of the period unless there is sufficient evidence for determining that death

147 occurred earlier.

148 [~~6~~] (f) In the absence of evidence disputing the time of death stated on a document

149 described in Subsection [~~2~~] (1)(b) or [~~3~~] (c), a document described in Subsection [~~2~~] (1)(b)

150 or [~~3~~] (c) that states a time of death 120 hours or more after the time of death of another

151 individual, however the time of death of the other individual is determined, establishes by clear

152 and convincing evidence that the individual survived the other individual by 120 hours.  
153           (2) The right and duty to control the disposition of a deceased person shall be governed  
154 by Sections 58-9-25 through 58-9-30.

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**Legislative Review Note**  
**as of 1-15-03 3:30 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0101**

**Control of the Disposition of a Deceased Person**

*28-Jan-03*

*11:24 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**