

1 AN ACT concerning remains.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Disposition of Remains Act.

6 Section 5. Right to control disposition; priority. Unless a
7 decedent has left directions in writing for the disposition of
8 the decedent's remains as provided in Section 65 of the
9 Crematory Regulation Act or in subsection (a) of Section 40 of
10 this Act, the following persons, in the priority listed, have
11 the right to control the disposition, including cremation, of
12 the decedent's remains and are liable for the reasonable costs
13 of the disposition:

14 (1) the person designated in a written instrument that
15 satisfies the provisions of Sections 10 and 15 of this Act;

16 (2) any person serving as executor or legal
17 representative of the decedent's estate and acting
18 according to the decedent's written instructions contained
19 in the decedent's will;

20 (3) the individual who was the spouse of the decedent
21 at the time of the decedent's death;

22 (4) the sole surviving competent adult child of the
23 decedent, or if there is more than one surviving competent
24 adult child of the decedent, the majority of the surviving
25 competent adult children; however, less than one-half of
26 the surviving adult children shall be vested with the
27 rights and duties of this Section if they have used
28 reasonable efforts to notify all other surviving competent
29 adult children of their instructions and are not aware of
30 any opposition to those instructions on the part of more
31 than one-half of all surviving competent adult children;

32 (5) the surviving competent parents of the decedent; if

1 one of the surviving competent parents is absent, the
2 remaining competent parent shall be vested with the rights
3 and duties of this Act after reasonable efforts have been
4 unsuccessful in locating the absent surviving competent
5 parent;

6 (6) the surviving competent adult person or persons
7 respectively in the next degrees of kindred or, if there is
8 more than one surviving competent adult person of the same
9 degree of kindred, the majority of those persons; less than
10 the majority of surviving competent adult persons of the
11 same degree of kindred shall be vested with the rights and
12 duties of this Act if those persons have used reasonable
13 efforts to notify all other surviving competent adult
14 persons of the same degree of kindred of their instructions
15 and are not aware of any opposition to those instructions
16 on the part of one-half or more of all surviving competent
17 adult persons of the same degree of kindred;

18 (7) in the case of indigents or any other individuals
19 whose final disposition is the responsibility of the State
20 or any of its instrumentalities, a public administrator,
21 medical examiner, coroner, State appointed guardian, or
22 any other public official charged with arranging the final
23 disposition of the decedent;

24 (8) in the case of individuals who have donated their
25 bodies to science, or whose death occurred in a nursing
26 home or other private institution, who have executed
27 cremation authorization forms under Section 65 of the
28 Crematory Regulation Act and the institution is charged
29 with making arrangements for the final disposition of the
30 decedent, a representative of the institution; or

31 (9) any other person or organization that is willing to
32 assume legal and financial responsibility.

33 As used in Section, "adult" means any individual who has
34 reached his or her eighteenth birthday.

35 Section 10. Form. The written instrument authorizing the

1 disposition of remains shall be in substantially the following
2 form:

3 "APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

4 I,, being of sound
5 mind, willfully and voluntarily make known my desire that,
6 upon my death, the disposition of my remains shall be
7 controlled by (name of agent) and,
8 with respect to that subject only, I hereby appoint such
9 person as my agent (attorney-in-fact). All decisions made
10 by my agent with respect to the disposition of my remains,
11 including cremation, shall be binding.

12 SPECIAL DIRECTIONS:

13 Set forth below are any special directions limiting
14 the power granted to my agent:

15
16
17

18 AGENT:

19 Name:
20 Address:
21 Telephone Number:
22 Acceptance of Appointment:
23 Signature of Agent:
24 Date of Signature:

25 SUCCESSORS:

26 If my agent dies, becomes legally disabled, resigns, or
27 refuses to act, I hereby appoint the following persons
28 (each to act alone and successively, in the order named) to
29 serve as my agent (attorney-in-fact) to control the
30 disposition of my remains as authorized by this document:

1 1. First Successor

2 Name:

3 Address:

4 Telephone Number:

5 Signature Indicating Acceptance of Appointment:

6 Date of Signature:

7 2. Second Successor

8 Name:

9 Address:

10 Telephone Number:

11 Signature Indicating Acceptance of Appointment:

12 Date of Signature:

13 DURATION:

14 This appointment becomes effective upon my death.

15 PRIOR APPOINTMENTS REVOKED:

16 I hereby revoke any prior appointment of any person to
17 control the disposition of my remains.

18 RELIANCE:

19 I hereby agree that any cemetery organization,
20 business operating a crematory or columbarium or both,
21 funeral director or embalmer, or funeral establishment who
22 receives a copy of this document may act under it. Any
23 modification or revocation of this document is not
24 effective as to any such party until that party receives
25 actual notice of the modification or revocation. No such
26 party shall be liable because of reliance on a copy of this
27 document.

28 ASSUMPTION:

1 THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS
2 APPOINTMENT, AGREES TO AND ASSUMES THE OBLIGATIONS
3 PROVIDED HEREIN.

4 Signed this day of,

5 STATE OF

6 COUNTY OF

7 BEFORE ME, the undersigned, a Notary Public, on this
8 day personally appeared, proved to me
9 on the basis of satisfactory evidence to be the person
10 whose name is subscribed to the foregoing instrument and
11 acknowledged to me that he/she executed the same for the
12 purposes and consideration therein expressed.

13 GIVEN UNDER MY HAND AND SEAL OF OFFICE this day
14 of, 2.....

15 Printed Name:

16 Notary Public, State of

17 My Commission Expires:

18".

19 Section 15. Requirements for written instrument. A written
20 instrument is legally sufficient under Section 5 if the wording
21 of the instrument complies substantially with Section 10, the
22 instrument is properly completed, the instrument is signed by
23 the decedent, the agent, and each successor agent, and the
24 signature of the decedent is notarized. The written instrument
25 may be modified or revoked only by a subsequent written

1 instrument that complies with this Section.

2 Section 20. Duties of authorized agent.

3 (a) A person listed in Section 5 has the right, duty, and
4 liability provided by that Section only if there is no person
5 in a priority listed before the person.

6 (b) If any person who would otherwise have the right to
7 control disposition pursuant to Section 5 has been charged with
8 first or second degree murder or voluntary manslaughter in
9 connection with the decedent's death and those charges are
10 known to the funeral director or cemetery authority, that
11 person's right to control is relinquished and passed on to the
12 next listed person or group of persons in accordance with
13 Section 5.

14 Section 25. Body parts. In the case of body parts, a
15 representative of the institution that has arranged with a
16 funeral home, cemetery, or crematory authority to cremate or
17 make other appropriate disposition of the body parts may serve
18 as the authorizing agent.

19 Section 30. Prohibition of cremation; written
20 instructions. No person shall be allowed to authorize cremation
21 when a decedent has left written instructions that he or she
22 does not wish to be cremated.

23 Section 35. Misrepresentation; liability. A person who
24 represents that he or she knows the identity of a decedent and,
25 in order to procure the disposition, including cremation, of
26 the decedent's remains, signs an order or statement, other than
27 a death certificate, warrants the identity of the decedent and
28 is liable for all damages that result, directly or indirectly,
29 from that warrant.

30 Section 40. Directions by decedent.

31 (a) A person may provide written directions for the

1 disposition, including cremation, of the person's remains in a
2 will, a prepaid funeral, burial or cremation contract, or in a
3 written instrument that satisfies the provisions of Sections 10
4 and 15 and that is signed by the person and notarized. The
5 directions may be modified or revoked only by a subsequent
6 writing signed by the person and notarized. The person
7 otherwise entitled to control the disposition of a decedent's
8 remains under this Act shall faithfully carry out the
9 directions of the decedent to the extent that the decedent's
10 estate or the person controlling the disposition are
11 financially able to do so.

12 (b) If the directions are in a will, they shall be carried
13 out immediately without the necessity of probate. If the will
14 is not probated or is declared invalid for testamentary
15 purposes, the directions are valid to the extent to which they
16 have been acted on in good faith.

17 Section 45. Liability. There shall be no liability for a
18 cemetery organization, a business operating a crematory or
19 columbarium or both, a funeral director or an embalmer, or a
20 funeral establishment that carries out the written directions
21 of a decedent or the directions of any person who represents
22 that the person is entitled to control the disposition of the
23 decedent's remains. Nothing herein shall be intended or
24 construed to reduce or eliminate liability for the gross
25 negligence or willful acts of any cemetery organization,
26 business operating a crematory or columbarium or both, funeral
27 director or embalmer, or funeral establishment.

28 Section 50. Disputes. Any dispute among any of the persons
29 listed in Section 5 concerning their right to control the
30 disposition, including cremation, of a decedent's remains
31 shall be resolved by a court of competent jurisdiction. A
32 cemetery organization or funeral establishment shall not be
33 liable for refusing to accept the decedent's remains, or to
34 inter or otherwise dispose of the decedent's remains, until it

1 receives a court order or other suitable confirmation that the
2 dispute has been resolved or settled.

3 Section 300. The Crematory Regulation Act is amended by
4 changing Section 15 as follows:

5 (410 ILCS 18/15)

6 Sec. 15. Authorizing agent. The priority of the person or
7 persons who have the right to serve as the authorizing agent
8 for cremation is in the same priority as provided for in
9 Section 5 of the Disposition of Remains Act.

10 ~~(a) The following persons, in the priority listed, shall~~
11 ~~have the right to serve as an authorizing agent:~~

12 ~~(1) The individual who was the spouse of the decedent~~
13 ~~at the time of the decedent's death, except as set forth in~~
14 ~~paragraphs (2) or (3) of this subsection.~~

15 ~~(2) Any person acting on the instructions of a decedent~~
16 ~~who authorized his or her own cremation through the~~
17 ~~execution, on a pre need basis, of a cremation~~
18 ~~authorization form under Section 70, unless the~~
19 ~~authorization specifically provides for a designated~~
20 ~~survivor to alter the arrangements under subsection (b) of~~
21 ~~Section 70, and the designated survivor has contacted the~~
22 ~~crematory authority and expressed the desire to alter the~~
23 ~~arrangements. The actions of such a designated survivor,~~
24 ~~however, shall not prevent another individual, who has a~~
25 ~~priority right superior to that of the designated survivor~~
26 ~~according to this Section, from authorizing the cremation~~
27 ~~of the decedent by executing a new cremation authorization~~
28 ~~form.~~

29 ~~(3) Any person serving as executor or legal~~
30 ~~representative of a decedent's estate and acting according~~
31 ~~to the decedent's written instructions.~~

32 ~~(4) The decedent's surviving adult children. If there~~
33 ~~is more than one adult child, any adult child, who confirms~~
34 ~~in writing the notification of all other adult children,~~

1 ~~may serve as the authorizing agent, unless the crematory~~
2 ~~authority receives a written objection to the cremation~~
3 ~~from another adult child.~~

4 ~~(5) The decedent's surviving parent. If the decedent is~~
5 ~~survived by 2 parents, either parent may serve as the~~
6 ~~authorizing agent unless the crematory authority receives~~
7 ~~a written objection to the cremation from the other parent.~~

8 ~~(6) The person in the next degree of kinship under the~~
9 ~~laws of descent and distribution to inherit the estate of~~
10 ~~the decedent. If there is more than one person of the same~~
11 ~~degree, any person of that degree may serve as the~~
12 ~~authorizing agent.~~

13 ~~(7) In the case of indigents or any other individuals~~
14 ~~whose final disposition is the responsibility of the State~~
15 ~~or any of its instrumentalities, a public administrator,~~
16 ~~medical examiner, coroner, State appointed guardian, or~~
17 ~~any other public official charged with arranging the final~~
18 ~~disposition of the decedent may serve as the authorizing~~
19 ~~agent.~~

20 ~~(8) In the case of individuals who have donated their~~
21 ~~bodies to science or whose death occurred in a nursing home~~
22 ~~or other private institution, who have executed cremation~~
23 ~~authorization forms under Section 65 and the institution is~~
24 ~~charged with making arrangements for the final disposition~~
25 ~~of the decedent, a representative of the institution may~~
26 ~~serve as the authorizing agent.~~

27 ~~(9) In the absence of any person under paragraphs (1)~~
28 ~~through (8), any person willing to assume the~~
29 ~~responsibility as authorizing agent, as specified in this~~
30 ~~Act.~~

31 ~~(b) In the case of body parts, a representative of the~~
32 ~~institution that has arranged with the crematory authority to~~
33 ~~cremate the body part may serve as the authorizing agent.~~

34 ~~(c) No person may serve or shall be allowed to serve as an~~
35 ~~authorizing agent when a decedent has left instructions in the~~
36 ~~manner provided under subsection (a) of this Section that they~~

1 ~~do not wish to be cremated.~~

2 (Source: P.A. 87-1187.)