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# A BILL FOR AN ACT

RELATING TO DISPOSITION OF REMAINS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that forty-eight states  
2 have enacted right of disposition laws to specify the priority  
3 of persons who may control the disposition of a decedent's  
4 remains or the arrangements for funeral goods and services.

5           The legislature further finds that specifying the priority  
6 of persons able to control disposition of a decedent's remains  
7 permits funeral establishments, cemeteries, mortuaries, and  
8 crematories to take direction from these persons and promptly  
9 provide needed services.

10          The purpose of this Act is to:

- 11          (1) Determine the priority of the persons who may direct  
12             the disposition of a decedent's remains and the  
13             arrangements for funeral goods and services;
- 14          (2) Permit funeral establishments, cemeteries, mortuaries,  
15             and crematories to rely and act upon written  
16             directions from the decedent or persons who have the  
17             right of disposition without liability; and



1 (3) Permit funeral establishments, cemeteries, mortuaries,  
2 and crematories to control the disposition and dispose  
3 of a decedent's remains in certain circumstances.

4 SECTION 2. The Hawaii Revised Statutes is amended by  
5 adding a new chapter to be appropriately designated and to read  
6 as follows:

7 "CHAPTER

8 DISPOSITION OF REMAINS

9 § -1 **Short title.** This chapter shall be known and may  
10 be cited as the Disposition of Remains Act.

11 § -2 **Definitions.** As used in this chapter:

12 "Cemetery" means any property, or part interest therein,  
13 dedicated to and used or intended to be used for the permanent  
14 interment of human remains. It may be a burial park with one or  
15 more plots, for earth interment; a mausoleum with one or more  
16 vaults or crypt interments; a structure or place with one or  
17 more niches, recesses, or other receptacles for the interment of  
18 cremated remains, or any combination of one or more thereof.

19 "Crematory" means a structure containing a furnace used or  
20 intended to be used for the cremation of human remains.

21 "Estranged" means a physical and emotional separation from  
22 the decedent at the time of death which has existed for a period



1 of time that clearly demonstrates an absence of due affection,  
2 trust, and regard for the decedent.

3 "Funeral establishment" means a place of business used in  
4 the care and preparation for interment or transportation of  
5 human remains, embalming, placing the same on display, or  
6 otherwise providing for final disposition of human remains.

7 "Mortuary" means a place of business devoted exclusively to  
8 furnishing funeral services and related commodities.

9 "Person" means an individual eighteen years of age or  
10 older.

11 § -3 **Direction for disposition.** A person may provide  
12 written directions for the location, manner, and conditions of  
13 disposition of the person's remains in a testamentary  
14 disposition, in a pre-need contract pursuant to chapter 441, or  
15 by any written document signed by the person and notarized. The  
16 written directions may also include arrangements for funeral  
17 goods and services to be provided upon that person's death and  
18 shall take precedence over wishes or other direction by any  
19 other person.

20 § -4 **Right to control disposition; priority.** (a)  
21 Unless a decedent has left directions in writing for the  
22 disposition of remains pursuant to section -3 or -5 or a



1 person has forfeited the right of disposition pursuant to  
2 section -6, the following persons, in the priority listed,  
3 have the right to control the disposition of the decedent's  
4 remains and the location, manner, and conditions of disposition  
5 of the decedent's remains:

6 (1) A person designated by the decedent in a testamentary  
7 disposition or a written instrument executed in  
8 accordance with section -5;

9 (2) The surviving spouse, if the decedent was legally  
10 married at the time of death; the surviving partner,  
11 as defined in section 572B-1, if the decedent had  
12 legally entered into a civil union at the time of  
13 death; or the surviving reciprocal beneficiary, as  
14 defined in section 572C-3, if the decedent was in a  
15 reciprocal beneficiary relationship at the time of  
16 death;

17 (3) The sole surviving child of the decedent, or if there  
18 is more than one surviving child, the majority of the  
19 surviving children. Less than the majority of the  
20 surviving children shall be vested with the rights and  
21 duties of this section if they have used reasonable  
22 efforts to notify all other surviving children and the



1 other surviving children cannot be located or have not  
2 responded within five days of the notification of the  
3 decedent's death;

4 (4) The surviving parent or parents of the decedent. Only  
5 one surviving parent shall be vested with the rights  
6 and duties of this section if that surviving parent  
7 used reasonable efforts to notify the other surviving  
8 parent and the other surviving parent cannot be  
9 located or has not responded within five days of the  
10 notification of the decedent's death;

11 (5) The surviving sibling of the decedent, or if there is  
12 more than one surviving sibling, the majority of the  
13 surviving siblings. Less than the majority of the  
14 surviving siblings shall be vested with the rights and  
15 duties of this section if they have used reasonable  
16 efforts to notify all other surviving siblings and the  
17 other surviving siblings cannot be located or have not  
18 responded within five days of the notification of the  
19 decedent's death;

20 (6) The surviving grandparent of the decedent, or if there  
21 is more than one surviving grandparent, the majority  
22 of the surviving grandparents. Less than the majority



1 of the surviving grandparents shall be vested with the  
2 rights and duties of this section if they have used  
3 reasonable efforts to notify all other surviving  
4 grandparents and the other surviving grandparents  
5 cannot be located or have not responded within five  
6 days of the notification of the decedent's death;

7 (7) The surviving grandchild of the decedent, or if there  
8 is more than one surviving grandchild, the majority of  
9 the surviving grandchildren. Less than the majority  
10 of the surviving grandchildren shall be vested with  
11 the rights and duties of this section if they have  
12 used reasonable efforts to notify all other surviving  
13 grandchildren and the other surviving grandchildren  
14 cannot be located or have not responded within five  
15 days of the notification of the decedent's death;

16 (8) The guardian of the decedent at the time of the  
17 decedent's death, if one had been appointed;

18 (9) The personal representative of the estate of the  
19 decedent;

20 (10) The person in the next degree of kinship to the  
21 decedent, in descending order, subject to descent and  
22 distribution under the laws of succession of the



1 State. If there is more than one person of the same  
2 degree of kinship to the decedent, any person of that  
3 degree may exercise the right of disposition;

4 (11) If the disposition of the remains of the decedent is  
5 the responsibility of the State or a political  
6 subdivision of the State, the public officer,  
7 administrator, or employee responsible for arranging  
8 the final disposition of decedent's remains; and

9 (12) In the absence of any person under paragraphs (1)  
10 through (10) of this section, any other person willing  
11 to assume the responsibilities to act and arrange the  
12 final disposition of the decedent's remains, after  
13 attesting in writing that a good faith effort has been  
14 made to notify the individuals under paragraphs (1)  
15 through (10) of the decedent's death, and no persons  
16 have agreed to assume the responsibilities or have  
17 responded within five days of the notification.

18 (b) If a United States Department of Defense Record of  
19 Emergency Data, DD Form 93, or its successor form, was in effect  
20 at the time of death for a decedent who died in a manner  
21 described by title 10 United States Code sections 1481(a)(1)  
22 through (8), the DD Form 93 controls any other written



1 instrument described in section -3 or -5 with respect to  
 2 designating a person to control the disposition of the  
 3 decedent's remains. Notwithstanding section -3 or -5, the  
 4 form is legally sufficient if it is properly completed, signed  
 5 by the decedent, and witnessed in the manner required by the  
 6 form.

7 § -5 Written instrument to control disposition of  
 8 remains. A person who wishes to authorize another person to  
 9 control the disposition of remains and the arrangements for  
 10 funeral goods and services may execute a written instrument  
 11 before a notary public. The written instrument shall be in  
 12 substantially the following form:

13  
 14 "State of \_\_\_\_\_  
 15 County of \_\_\_\_\_  
 16

17 I, \_\_\_\_\_ do hereby designate \_\_\_\_\_ as the  
 18 sole person who will have the right to determine and decide the  
 19 disposition of my remains upon my death and the arrangements for  
 20 funeral goods and services. I \_\_\_ have/ \_\_\_ have not attached  
 21 specific directions concerning the disposition of my remains.  
 22 If I have attached specific directions, the designee shall





1 substantially comply with the specific directions, provided the  
2 directions are lawful and there are sufficient resources in my  
3 estate to carry out the directions.

4

5 SIGNATURE: Sign and date the form here:

6

\_\_\_\_\_

7

(sign your name)

(date)

8

9

\_\_\_\_\_

10

(print your name)

11

12 DECLARATION OF NOTARY:

13

14 Subscribed and sworn before me, \_\_\_\_\_ (insert name  
15 of notary public), on this \_\_\_\_\_ day of \_\_\_\_\_,  
16 in the year \_\_\_\_\_.

17

18 Notary Seal

19

20

\_\_\_\_\_

21

(Signature of Notary Public)"



1           §   -6 Forfeiture of right to direct disposition. A  
2 person entitled under law to the right of disposition shall  
3 forfeit that right, and the right is passed on to the next  
4 person in the order of priority as listed in section   -4,  
5 under the following circumstances:

6           (1) The person is charged with murder or manslaughter in  
7 connection with the decedent's death, and the charges  
8 are known to the funeral director or manager of the  
9 funeral establishment, cemetery, mortuary, or  
10 crematory; provided that if the charges against the  
11 person are dismissed, or if the person is acquitted of  
12 the charges, the right of disposition is returned to  
13 that person, unless the dismissal or acquittal occurs  
14 after the final disposition has been completed;

15           (2) The person does not exercise the person's right of  
16 disposition within five days of notification of the  
17 decedent's death or within seven days of the  
18 decedent's death, whichever is earlier;

19           (3) The person and the decedent are spouses, civil union  
20 partners, or reciprocal beneficiaries, and at the time  
21 of the decedent's death, proceedings for annulment,  
22 divorce, or separation had been initiated or a



1            declaration for termination of the reciprocal  
2            beneficiary relationship had been filed; or  
3            (4) The probate court pursuant to section        -7 determines  
4            that the person entitled to the right of disposition  
5            and the decedent were estranged at the time of death.

6            §    -7 **Disputes.** (a) Any dispute among any of the  
7 persons listed in section        -4 concerning the right of  
8 disposition or priority shall be resolved by the probate court  
9 for the county where the decedent resided. The probate court  
10 may award the right of disposition to the person determined by  
11 the court to be the most fit and appropriate to carry out the  
12 right of disposition, and may make decisions regarding the  
13 decedent's remains.

14            (b) The following provisions shall apply to the court's  
15 determination under this section:

16            (1) If two or more persons with the same priority class  
17 hold the right of disposition and cannot agree by  
18 majority vote regarding the disposition of the  
19 decedent's remains, or there are any persons who claim  
20 to have priority over any other person, any of these  
21 persons or a funeral establishment, cemetery,  
22 mortuary, or crematory with custody of the remains may



1 file a petition asking the probate court to make a  
2 determination in the matter; and

3 (2) In making a determination in a case where there are  
4 two or more persons with the same priority class who  
5 cannot agree by majority vote, the probate court may  
6 consider the following:

7 (A) The reasonableness and practicality of the  
8 proposed funeral arrangements and disposition;

9 (B) The degree of the personal relationship between  
10 the decedent and each of the persons claiming the  
11 right of disposition;

12 (C) The desires of the person or persons who are  
13 ready, able, and willing to pay the cost of the  
14 funeral arrangements and disposition;

15 (D) The convenience and needs of other families and  
16 friends wishing to pay respects;

17 (E) The desires of the decedent; and

18 (F) The degree to which the funeral arrangements  
19 would allow maximum participation by all wishing  
20 to pay respect.

21 (c) In the event of a dispute regarding the right of  
22 disposition, a funeral establishment, cemetery, mortuary, or



1 crematory shall not be liable for refusing to accept the  
2 remains, to inter or otherwise dispose of the remains of the  
3 decedent, or complete the arrangements for the final disposition  
4 of the remains until it receives a court order or other written  
5 agreement signed by the parties in the disagreement that the  
6 dispute has been resolved or settled.

7       If the funeral establishment, cemetery, mortuary, or  
8 crematory retains the remains for final disposition while the  
9 parties are in disagreement, it may embalm or refrigerate and  
10 shelter the body, or both, while awaiting the final decision of  
11 the probate court and may add the cost of embalming or  
12 refrigeration and sheltering to the cost of final disposition.

13       If a funeral establishment, cemetery, mortuary, or  
14 crematory brings an action under this section, it may add the  
15 legal fees and court costs associated with a petition under this  
16 section to the cost of final disposition.

17       This section shall not be construed to require or impose a  
18 duty upon a funeral establishment, cemetery, mortuary, or  
19 crematory to bring an action under this section.

20       A funeral establishment, cemetery, mortuary, or crematory  
21 and its officers, directors, managers, members, partners, or



1 employees may not be held criminally or civilly liable for  
2 choosing not to bring an action under this section.

3       § -8 **Right to rely on representations.** (a) Any person  
4 signing a funeral service agreement, cremation authorization  
5 form, or any other authorization for disposition shall be deemed  
6 to warrant the truthfulness of any facts set forth therein,  
7 including the identity of the decedent whose remains are to be  
8 buried, cremated, or otherwise disposed of, and the party's  
9 authority to order the disposition.

10       (b) A funeral establishment, cemetery, mortuary, or  
11 crematory shall have the right to rely on the funeral service  
12 agreement, cremation authorization form, or any other  
13 authorization form, including the identification of the  
14 decedent, and shall have the authority to carry out the  
15 instructions of the person or persons whom the funeral  
16 establishment, cemetery, mortuary, or crematory reasonably  
17 believes to hold the right of disposition.

18       (c) The funeral establishment, cemetery, mortuary, or  
19 crematory shall have no responsibility to verify the identity of  
20 the decedent or contact or independently investigate the  
21 existence of any person who may have a right of disposition. If  
22 there is more than one person in the same priority class



1 pursuant to section -4 and the funeral establishment,  
2 cemetery, mortuary, or crematory has no knowledge of any  
3 objection by other members of the priority class, it shall rely  
4 on and act according to the instructions of the first person in  
5 the priority class to make funeral and disposition arrangements;  
6 provided that no other person in the priority class provides  
7 written notice to the funeral establishment, cemetery, mortuary,  
8 or crematory of that person's objections.

9       § -9 Authority to direct and control disposition;  
10 recovery of reasonable expenses. (a) A funeral director or  
11 manager of a funeral establishment, cemetery, mortuary, or  
12 crematory shall have complete authority to direct and control  
13 the final disposition and disposal of a decedent's remains and  
14 to proceed under this chapter to recover reasonable charges for  
15 the final disposition and disposal if:

- 16       (1) The funeral director or manager:
- 17           (A) Has no knowledge that any of the persons  
18           described in section -4(a)(1) through -(10)  
19           exist;
- 20           (B) Has knowledge that the person or persons who may  
21           or do have the right of disposition cannot be



1 found after reasonable inquiry or reasonable  
2 attempts to contact; or

3 (C) Has knowledge that the person or persons who may  
4 or do have the right of disposition have lost  
5 this right pursuant to section -6; and

6 (2) The appropriate public authority fails to assume  
7 responsibility for disposition of the remains within  
8 thirty-six hours after having been given written  
9 notice of the decedent's death. Written notice may be  
10 given by hand delivery, certified mail, facsimile  
11 transmission, or electronic mail transmission.

12 (b) Disposal of the decedent's remains pursuant to this  
13 section shall be by any means that are not prohibited by law.

14 **§ -10 Disposition of unclaimed cremated remains.**

15 Whenever any cremated remains have been in the lawful possession  
16 of any funeral establishment, cemetery, mortuary, or crematory  
17 for sixty or more days, and the person entitled under law to the  
18 right of disposition fails, neglects, or refuses to take custody  
19 of the cremated remains or direct the disposition, the funeral  
20 establishment, cemetery, mortuary, or crematory with lawful  
21 possession of the cremated remains may dispose of the remains by  
22 any manner that is not inconsistent with any law of the State.





# H.B. NO. 134

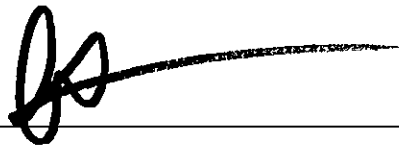
1           §   -11   Immunity.  No funeral establishment, cemetery,  
2 mortuary, or crematory or any of its officers, directors,  
3 members, partners, funeral directors, managers, or employees who  
4 rely in good faith upon the instructions of an individual  
5 claiming the right of disposition shall be subject to criminal  
6 or civil liability or administrative or disciplinary action for  
7 carrying out the disposition of the remains in accordance with  
8 the instructions."

9           SECTION 3.  This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12           SECTION 4.  This Act shall take effect upon its approval.

13

INTRODUCED BY: \_\_\_\_\_



JAN 17 2013



# H.B. NO. 134

**Report Title:**

Dispositions of Remains; Right of Disposition

**Description:**

Establishes the disposition of remains act. Determines the priority of the persons who may direct the disposition of a decedent's remains and the arrangements for funeral goods and services; permits funeral establishments, cemeteries, mortuaries, and crematories to rely and act upon written directions from the decedent or persons who have the right of disposition without liability and control the disposition and dispose of a decedent's remains in certain circumstances.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

