

Cremation Association of North America
Model Cremation Law*
As Modified and Endorsed by the National Funeral Directors
Association

1
Definitions

- A. Authorizing Agent(s).** An authorizing agent(s) is a person legally entitled to authorize the cremation of human remains.
- B. Body Parts.** Limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or human bodies or any portion of bodies that have been donated to science for medical research purposes.
- C. Burial Transit Permit.** A permit for disposition of a dead human body as required by state legal requirements. The title of this document may vary from state to state.
- D. Casket.** A rigid container which is designed for the encasement of human remains, is usually constructed of wood, metal or like material and ornamented and lined with fabric, and which may or may not be combustible.
- E. Change of Ownership.** A transfer of more than 50% of the stock or assets of a crematory authority.
- F. Closed Container.** Any container in which cremated remains can be placed and closed in a manner so as to prevent leakage or spillage of remains or the entrance of foreign material.
- G. Cremated Remains.** All the remains of the cremated human body recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions and may possibly include the residue of any foreign matter including casket material, bridgework or eye glasses that were cremated with the human remains.
- H. Cremation.** The technical process, using direct flame and heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation. Cremation includes the processing and usually includes the pulverization of the bone fragments.

* The National Funeral Directors Association has endorsed CANA's Model Cremation Law with certain modifications. The primary modifications made by NFDA are noted in the text of this document.

I. Cremation Chamber. The enclosed space within which the cremation process takes place. Cremation chambers covered by these procedures shall be used exclusively for the cremation of human remains.

J. Cremation Container. The container in which the human remains are transported to the crematory and placed in the cremation chamber for a cremation. A cremation container should meet substantially all of the following standards:

- (1) Be composed of readily combustible materials suitable for cremation;
- (2) Be able to be closed in order to provide a complete covering for the human remains;
- (3) Be resistant to leakage or spillage;
- (4) Be rigid enough for handling with ease; and
- (5) Be able to provide protection for the health, safety and personal integrity of crematory personnel.

K. Cremation Interment Container (Urn Vault). A rigid outer container that, subject to a cemetery's rules and regulations, is composed of concrete, steel, fiberglass, or some similar material in which an urn is placed prior to being interred in the ground, and which is designed to withstand prolonged exposure to the elements and to support the earth above the urn.

L. Crematory authority. The legal entity or the authorized representative of the legal entity which is licensed by the state to operate a crematory and perform cremation.

M. Crematory. The building or portion of a building that houses the cremation chamber and the holding facility.

N. Department. The state agency that administers this law.

O. Final Disposition. The burial or other disposition on a permanent basis of a dead human body, cremated remains or parts of a dead human body.

P. Funeral Director. A person known by the title of "funeral director", "funeral director and embalmer", or other similar words or titles, defined by state law and licensed by the state to practice funeral directing or funeral directing and embalming.

Q. Funeral Establishment. A building or separate portion of a building having a specific street address and location and devoted to activities relating to the shelter, care, custody, and preparation of a deceased human body and which may contain facilities for funeral, memorial and visitation services.

R. Holding Facility. An area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that shall:

- (1) Comply with any applicable public health law;
- (2) Preserve the dignity of the human remains;
- (3) Recognize the integrity, health and safety of the crematory authority personnel operating the crematory; and
- (4) Be secure from access by anyone other than authorized personnel.

S. Human Remains. The body of a deceased person, or part of a body or limb that has been removed from a living person, including the body, part of a body or limb in any stage of decomposition.

T. Niche. A compartment or cubicle for the memorialization or permanent placement of an urn containing cremated remains.

U. Processing. The reduction of identifiable bone fragments after the completion of the cremation process to unidentifiable bone fragments by manual means.

V. Pulverization. The reduction of identifiable bone fragments after the completion of the cremation and processing to granulated particles by manual or mechanical means.

W. Scattering Area. A designated area for the scattering of cremated remains usually in a cemetery and located on dedicated cemetery property where cremated remains, which have been removed from their container, can be mixed with, or placed on top of, the soil or ground cover or buried in an underground receptacle on a co-mingled basis.

X. Temporary Container. A temporary container is a receptacle for cremated remains usually made of cardboard, plastic or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

Y. Urn. A receptacle designed to permanently encase the cremated remains.

2

Establishment of Crematory and Licensure of Crematory Authority

A. Any person doing business in this state, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity if licensed under this Act may erect, maintain and conduct a crematory in this state and

provide the necessary appliances and facilities for the cremation of human remains in accordance with the provisions of this Act.

B. A crematory authority shall be subject to all local, state, and federal health and environmental protection requirements and shall obtain all necessary licenses and permits from the department, the federal and state departments of health and human services, and the state and federal environmental protection agencies, or such other appropriate local, state or federal agencies.

C. A crematory may be constructed on or adjacent to any cemetery, in or adjacent to any funeral home or at any other location consistent with local zoning regulations and state laws.

D. Applications for crematory authorities in existence prior to the effective date of this Act shall be on forms furnished and prescribed by the department and shall provide the department with the following information:

- (1) The full name and address, both residence and business, of the applicant if the applicant is an individual; the full name and address of each partner and the partnership if the applicant is a partnership; the full name and address of every member of the board of directors and the association if the applicant is an association; and the name and address of every officer, director, and shareholder holding more than 25% of the corporate stock of the corporation and the name of the corporation if the applicant is a corporation.
- (2) A detailed statement of the crematory authority's assets and liabilities.
- (3) A detailed statement for each of the individuals listed in the application under (1) above providing their business experience for the last 10 years immediately preceding the application, any felony or misdemeanor convictions or involvement in civil litigation in which fraud was an essential element of the crime or complaint and any information about a loss or suspension of any license by this state or any other state related to the business of funeral directing, operation of a cemetery or crematory.
- (4) The address and location of the crematory.
- (5) Evidence confirming the date the crematory authority was established.
- (6) Copies of all licenses or permits required for a crematory to operate in the state.

- (7) Any further information that the department may reasonably request.

E. Application for new crematory authorities shall be on forms furnished and prescribed by the department and shall provide the department with the following information:

- (1) The full name and address, both residence and business, of the applicant if the applicant is an individual; the full name and address of each partner and the partnership if the applicant is a partnership; the full name and address of every member of the board of directors and the association if the applicant is an association; and the name and address of every officer, director, and shareholder holding more than 25% of the corporate stock and the corporation and the name of the corporation if the applicant is a corporation.
- (2) A detailed statement of the crematory authority's assets and liabilities.
- (3) A detailed statement for each of the individuals listed in the application under (1) above providing their business experience for the last 10 years immediately preceding the application, any felony or misdemeanor convictions or involvement in civil litigation in which fraud was an essential element of the crime or complaint and any information about the loss or suspension of any license by this state or any other state related to the business of funeral directing, operation of a cemetery or crematory.
- (4) The address and location of the crematory.
- (5) A description of the type of structure and equipment to be used in the operation of the crematory.
- (6) Copies of all applications for any licenses or permits issued for a crematory to operate in a state.
- (7) Any further information that the department may reasonably require.

F. Each crematory authority shall file an annual report with the department, accompanied with a fee in the amount of \$_____, providing any changes required in the information provided under Subsections D or E or indicating that no changes have occurred. The annual report shall be filed by a crematory authority on or before March 15 of each calendar year with the department. If the fiscal year of a crematory authority is other than on a calendar year basis, then the crematory authority shall file the report required by this section within 75 days after the end of its

fiscal year. The department shall, for good cause shown, grant an extension for the filing of the annual report upon written request of the crematory authority. An extension shall not exceed 60 days. The department may grant additional 60 day extensions for good cause. If a crematory authority fails to submit an annual report to the department within the time specified in this section, the department shall impose upon the crematory authority a penalty of \$_____ for each and every day the crematory authority remains delinquent in submitting the annual report.

G. All records relating to the registration and annual report of the crematory authority required to be filed under this section shall be subject to inspection by the department upon reasonable notice.

H. No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and under the limitations provided in this Act.

3 Authorizing Agent

A. The following persons, in the priority listed, shall have the right to serve as a crematory authority:

- * * (1) Any person acting on the instructions of a decedent who authorized his or her own cremation through the execution, on a preneed basis, of a crematory authorization form which specifically states that no changes can be made by survivors as set out in Subsection 12(B)(1) of the Act, unless the authorization specifically provides for a designated survivor to alter the arrangements under Subsection (B)(2) of this Act, and the designated survivor has contacted the crematory authority and expressed the desire to alter the arrangements.
- (2) The individual who was the spouse of the decedent at the time of the decedent's death.
- (3) The decedent's surviving adult children. If there is more than one adult child, any adult child who confirms in writing the notification of all other adult children, may serve as the authorizing agent, unless the crematory authority receives a written objection to the cremation from another adult child.
- (4) The decedent's surviving parent. If the decedent is survived by two parents, a parent who confirms

in writing the notification of the other parent may serve as the authorizing agent, unless the crematory authority receives a written objection to the cremation for the other parent.

** NFDA has not adopted a position on whether an individual should be able to select cremation over the conflicting wishes of the surviving spouse or next-of-kin. If the State elects to give the decedent the paramount right to select cremation, it should retain Subsection 1; if the surviving spouse and next-of-kin are to have the paramount right to decide whether to cremate the decedent's remains, Subsection 1 should be deleted.

- (5) The person in the next degree of kinship under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may serve as the authorizing agent.
- (6) In the case of indigents or any other individual whose final disposition is the responsibility of the state or any of its instrumentalities, a public administrator, medical examiner, coroner, state appointed guardian, or any other public official charged with arranging the final disposition of the decedent may serve as the authorizing agent.
- (7) In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or other private institution, who have executed preneed cremation authorization forms and the institution is charged with making arrangements for the final disposition of the decedent, a representative of the institution may serve as the authorizing agent.
- (8) In the absence of any person under paragraphs (1) through (7), any person willing to assume the responsibility as authorizing agent, as specified in this Act.

B. In the case of body parts, a representative of the institution that has arranged with the crematory authority to cremate the body parts may serve as the authorizing agent, providing that the person whose body parts are being cremated or an authorizing agent has previously approved the cremation of the body parts.

C. No person may serve or shall be allowed to serve as an authorizing agent when a decedent has left written instructions in a will or other document provided by law that they do not wish to be cremated.

4 Authorization to Cremate

A. Except as otherwise provided in this section, a crematory authority shall not cremate human remains until it has received:

- (1) A cremation authorization form signed by an authorizing agent. The cremation authorization form shall contain, at a minimum, the following information:
 - (a) The identity of the human remains and the time and date of death.
 - (b) The name of the funeral director and funeral establishment that obtained the cremation authorization.
 - (c) 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.
 - (d) The name of the authorizing agent and the relationship between the authorizing agent and the decedent.
 - (e) A representation that the authorizing agent does in fact have the right to authorize the cremation of the decedent, and that the authorizing agent is not aware of any of any living person who has a superior or equal priority right to that of the authorizing agent. In the event there is another living person who has a superior or equal priority right to the authorizing agent, the form shall contain a representation that the authorizing agent has made reasonable efforts to contact that person, has been unable to do so, and has no reason to believe that the person would object to the cremation of the decedent.
 - (f) Authorization for the crematory authority to cremate the human remains.
 - (g) A representation that the human remains do not contain a pacemaker or any other material or implant that may be potentially hazardous or cause damage to the cremation chamber or the person performing the cremation.
 - (h) The name of the person authorized to receive the cremated remains from the crematory authority.
 - (i) The manner in which final disposition of the cremated remains is to take place, if known.

If the cremation authorization form does not specify a method of final disposition provided for in Section 8 of this Act, then the form may indicate that the cremated remains will be held by the crematory authority for 30 days before they are released, unless they are picked up from the crematory authority prior to that time, in person, by the authorizing agent. At the end of the 30 days the crematory authority may return the cremated remains to the authorizing agent if no final disposition arrangements are made; or at the end of 60 days the crematory authority may dispose of the cremated remains in accordance with disposition provisions of the Act.

- (j) A listing of any items of value to be delivered to the crematory authority along with the human remains, and instructions as to how the items should be handled.
- (k) A specific statement as to whether the authorizing agent has made arrangements for any type of viewing of the decedent before cremation, or for a service with the decedent present before cremation in connection with the cremation, and if so, the date and time of the viewing or service and whether the crematory authority is authorized to proceed with the cremation upon receipt of the human remains.
- (l) The signature of the authorizing agent, attesting to the accuracy of all representations contained on the cremation authorization form.
- (m) If a cremation authorization form is being executed on a preneed basis, the cremation authorization form shall contain the disclosure required by the preneed provisions of this Act in Section 9.
- (n) The cremation authorization form, other than preneed cremation forms, shall also be signed by a funeral director or other representative of the funeral establishment that obtained the cremation authorization. That individual shall execute the cremation authorization form as a witness and shall not be responsible for any of the representations made by the authorizing agent, except the funeral director or funeral establishment shall warrant to the crematory that the human remains delivered to the crematory authority

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. Such identification shall be made in person or by photograph by the authorizing agent or designated representative of the authorizing agent.

- (2) A completed and executed burial transit permit, as provided by state law, indicating that human remains are to be cremated.
- (3) Any other documentation required by the state, county or municipality.

B. If an authorizing agent is not available to execute the cremation authorization form, that person may delegate that authority to another person in writing, including a facsimile transmission, telegram, or other electronic transmission.

A written delegation of authority of an authorizing agent must include:

- (1) The name, address, and relationship of the authorizing agent to the decedent.
- (2) The name and address of the person to whom authority is delegated and that:
 - (a) The person authorized under this section may serve as the authorizing agent and execute the cremation authorization form.
 - (b) The funeral establishment and the crematory authority are not liable for relying on a cremation authorization form executed in compliance with this section.

C. A crematory authority shall not accept unidentified human remains. If the crematory authority takes custody of a cremation container subsequent to the human remains being placed within it, the crematory authority can rely on the identification made before the body was placed in the cremation container. The crematory authority shall place appropriate identification upon the exterior of the cremation container based on the prior identification.

D. Upon completion of the cremation, the crematory authority shall file the burial transit permit, pursuant to the laws of the state.

5 Recordkeeping

A. The crematory authority shall furnish to the person who delivers human remains to the crematory authority a receipt signed by both the crematory authority and the person who delivers the human remains, showing the date and time of the delivery, the type of casket or alternative container that was delivered, the name of the person from whom the human remains were received and the name of the funeral establishment or other entity with whom the person is affiliated, the name of the person who received the human remains on behalf of the crematory authority, and the name of the decedent. The crematory shall retain a copy of this receipt in its permanent records.

B. Upon its release of cremated remains, the crematory authority shall furnish to the person who receives the cremated remains from the crematory authority a receipt signed by both the crematory authority and the person who receives the cremated remains, showing the date and time of the release, the name of the person to whom the cremated remains were released and, if applicable, the name of the funeral establishment, cemetery, or other entity with whom the person is affiliated, the name of the person who released the cremated remains on behalf of the crematory authority and the name of the decedent. The receipt shall also contain a representation from the person receiving the cremated remains confirming that the cremated remains will not be used for any improper purpose. The crematory shall retain a copy of this receipt in its permanent records.

C. A crematory authority shall maintain at its place of business a permanent record of each cremation that took place at its facility which shall contain the name of the decedent, the date of cremation, the final disposition of the cremated remains and any other document required by this Act.

D. The crematory authority shall maintain a record of all cremated remains disposed of by the crematory authority in accordance with this Act.

E. Upon completion of the cremation, the crematory authority shall file the burial transit permit as required by law, and transmit a photocopy of the burial transit permit along with the cremated remains to whoever receives the cremated remains from the authorizing agent unless the cremated remains are to be interred, entombed, inurned, or placed in a scattering area, in which case the crematory authority shall retain a copy of the burial transit permit and shall send the permit, along with the cremated remains, to the cemetery, which shall file the permit with the interment, entombment, inurnment, or scattering has taken place.

F. All cemeteries shall maintain a record of all cremated remains that are disposed of on their property, provided that the cremated remains were properly transferred to the cemetery which issued a receipt acknowledging the transfer of cremated remains.

Cremation Containers

A. Except as provided in Subsection B, no crematory authority shall make or enforce any rules requiring that human remains be placed in a casket before cremation or that human remains be cremated in a casket, nor shall the crematory refuse to accept human remains for cremation for the reason that they are not in a casket.

B. Human remains must be delivered to a crematory in a casket or cremation container. Human remains shall not be removed from the casket or cremation container and the casket or cremation container shall be cremated with the human remains, unless the crematory authority has been provided with written instructions to the contrary by the authorizing agent or unless the crematory authority does not accept metal caskets for cremation.

7

Cremation Procedures

A. Human remains shall not be cremated within 48 hours after the time of death, as indicated on the regular medical certificate of death, or the coroner's certificate. In the event such death comes under the authority of the coroner or medical examiner, the human remains shall not be received by the crematory authority until authorization to cremate has been received in writing from the coroner or medical examiner of the county in which the death occurred. In the event the crematory authority is also authorized to perform funerals as well as cremation, this restriction on the receipt of human remains shall not be applicable. In no instance shall the lapse of time between the death and any cremation be less than 48 hours, unless such death was a result of an infectious, contagious or communicable and dangerous disease, and such requirement is waived in writing by the medical examiner where the death occurred.

B. No body shall be cremated with a pacemaker or other potentially hazardous implant in place. The authorizing agent for the cremation of the human remains shall be responsible for informing the funeral director about a pacemaker or other potentially hazardous implant. The authorizing agent shall be ultimately responsible to ensure that any pacemakers or implants are removed prior to cremation.

C. A crematory authority shall hold human remains, prior to their cremation, according to the following provisions of this Subsection:

- (1) Whenever a crematory authority is unable to create the human remains immediately upon taking custody thereof, the crematory authority shall place the human remains in a refrigeration facility at 40 degrees Fahrenheit or less, unless the human remains have been embalmed.

- (2) A crematory authority shall not be required to accept for holding a cremation container from which there is evidence of leakage of the body fluids from the human remains therein.

D. No unauthorized person shall be permitted in the crematory area while any human remains are in the crematory area awaiting cremation, being cremated or being removed from the cremation chamber.

E. The unauthorized, simultaneous cremation of the human remains of more than one person within the same cremation chamber is not allowed, unless the crematory authority shall have received specific written authorization to do so from all authorizing agents for the human remains to be so cremated. A written authorization shall exempt the crematory authority from all liability for co-mingling of the cremated remains during the cremation process.

F. Immediately prior to being placed within the cremation chamber, the identification of the human remains, as indicated on the cremation container, shall be verified by the crematory authority and the identification shall be removed from the cremation container and placed near the cremation chamber control panel where it shall remain in place until the cremation process is complete.

G. Upon completion of the cremation, and in so far as is possible, all of the recoverable residue of the cremation process shall be removed from the cremation chamber. Insofar as possible, all residue from the cremation process shall then be separate from anything other than bone fragments. The bone fragments shall be processed so as to reduce them to unidentifiable particles. Anything other than the particles shall be removed from the cremated residuals as far as possible and shall be disposed of by the crematory authority.

H. Cremated remains shall be packed according to the following provisions of this Subsection:

- (1) The cremated remains with proper identification shall be placed in a temporary container or urn. The temporary container or urn contents shall be packed in clean packing materials and not be contaminated with any other object, unless specific authorization has been received from the authorizing agent or as provided in Subsection (2) of this part.
- (2) The cremated remains with proper identification shall be placed within the temporary container or urn ordered by the authorizing agent.
- (3) If the cremated remains will not fit within the dimensions of a temporary container or urn, the remainder of the cremated remains shall be

returned to the authorizing agent or his or her representative in a separate container. Both containers or urns shall be clearly marked on the outside of the container or urn with the name of the deceased person whose cremated remains are contained therein and an indication that two containers are being used to hold the cremated remains.

- (4) If the cremated remains are to be shipped, the temporary container or designated receptacle ordered by the authorizing agent shall be packed securely in a suitable, sturdy and pressure resistant container which is not fragile and is sealed properly. Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery.

8

Disposition of Cremated Remains

A. The authorizing agent shall be required to provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. A copy of this statement shall be retained by the crematory authority.

B. The authorizing agent is responsible for the disposition of the cremated remains. If, after a period of 60 days from the date of cremation, the authorizing agent or his representative has not specified the ultimate disposition or claimed the cremated remains, the crematory authority, the funeral establishment or other person in possession of the cremated remains may dispose of the cremated remains in any manner permitted by law, except scattering. The authorizing agent shall be responsible for reimbursing the crematory authority and funeral establishment for all reasonable expenses incurred in disposing of the cremated remains pursuant to this Section. A record of such disposition shall be made and kept by the person making such disposition. Upon disposing of cremated remains in accordance with such Section, the crematory authority, funeral establishment, or person in possession of the cremated remains shall be discharged from any legal obligation or liability concerning such cremated remains. This provision shall apply to all cremated remains currently in the possession of a crematory authority, funeral establishment, or other party.

C. In addition to disposing of cremated remains in a crypt, niche, grave or scattering garden located in a dedicated cemetery, or by scattering over inhabited public land, the sea or other public waterways pursuant to Subsection F, cremated remains may be disposed of in any manner on the private property of a consenting owner, upon direction of the authorizing agent. If cremated remains are to be disposed of on private property, other

than dedicated cemetery property, by the crematory authority, the authorizing agent shall provide the crematory authority with the written consent of the property owner.

D. Except with the express written permission of the authorizing agent, no person shall:

- (1) Dispose of or scatter cremated remains in such a manner or in such a location that the cremated remains are co-mingled with those of another person. The provisions of this paragraph shall not apply to the scattering of cremated remains at sea or by air from individual closed container or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for such purposes.
- (2) Place cremated remains of more than one person in the same closed container. This paragraph shall not apply to placing the cremated remains of members of the same family in a common closed container designed for the cremated remains of more than one person.

E. Cremated remains shall be delivered by the crematory authority to the individual specified by the authorizing agent on the cremation authorization form. The representative of the crematory authority and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased, and the date, time and place of the receipt, and other information set out in Subsection 5 B of this Act. The crematory authority shall retain a copy of the receipt. After this delivery, the cremated remains may be transported in any manner in this state, without a permit, and disposed of in accordance with the provisions of this Act.

F. Cremated remains may be scattered over uninhabitable public land, a public waterway or sea, subject to health and environmental laws and regulations, or on private property of a consenting owner pursuant to Subsection C, if they are reduced to a particle size of one-eighth inch or less. Cremated remains shall be removed from their closed container before they are scattered. If cremated remains are to be scattered pursuant to this Section, the crematory authority shall not release the cremated remains to the authorizing authority or his designated representative until the crematory authority has been provided with a receipt indicating that the proper filing has been made with the local registrar of births and deaths.

G.

- (1) Cremated remains may be taken by boat from any harbor in this state, or by air, for burial at sea at a point not less than three miles from the nearest shoreline.
- (2) Any person who buries at sea, either from a boat or from the air, any human cremated remains shall carry

out the burial services within 50 days from the reduction of the body to cremated remains and file with the local registrar of births, deaths, and other vital records in the county nearest the point where the remains were buried a verified statement containing the name of the deceased person, the time and place of death, the place at which the cremated remains were buried, and any other information that the local registrar may require. Burial services may be delayed until weather conditions improve if inclement weather prevents safe burial.

9

Limitation of Liability

A. Any person signing a cremation authorization form as an authorizing agent shall be deemed to warrant the truthfulness of any facts set forth in the cremation authorization form, including the identity of the deceased whose remains are sought to be cremated and that person's authority to order such cremation. Any person signing a cremation authorization form as an authorizing agent shall be personally and individually liable for all damage occasioned thereby and resulting therefrom. A crematory authority and a funeral establishment may rely upon the representations of the authorizing agent in the cremation authorization form.

B. A funeral establishment shall have the authority to arrange the cremation of human remains upon the receipt of a cremation authorization form signed by an authorizing agent. A crematory authority shall have authority to cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent. A funeral establishment or crematory authority that arranges a cremation, cremates human remains, or releases or disposes of the cremated remains pursuant to such authorization shall not be liable for such actions.

C. A crematory authority shall not be responsible or liable for any valuables delivered to the crematory authority with human remains.

D. A funeral establishment that refuses to arrange a cremation and a crematory authority that refuses to accept a body or to perform a cremation shall not be liable for refusing to accept a body or to perform a cremation until they receive a court order or other suitable confirmation that a dispute has been settled if:

- (1) They are aware of any dispute concerning the cremation of human remains,
- (2) They have a reasonable basis for questioning any of the representations made by the authorizing agent, or

(3) For any other lawful reason.

If a funeral establishment or crematory authority is aware of any dispute concerning the release or disposition of the cremated remains, the funeral establishment or crematory authority may refuse to release the cremated remains until the dispute has been resolved or the funeral establishment or crematory authority has been provided with a court order authorizing the release or disposition of the cremated remains. Funeral establishments and crematory authorities shall not be liable for the refusal to release or dispose of cremated remains in accordance with this Subsection.

10

Pacemakers and Other Battery-Powered Implants

If any authorizing agent informs the funeral establishment in writing on the cremation authorization form of the presence of a pacemaker or other battery-powered implants in the human remains, then the funeral establishment shall be responsible for ensuring that all necessary steps have been taken to remove the pacemaker or other battery-powered implants before delivering the human remains to the crematory. Should the funeral establishment that has received written notice of the presence of such pacemaker or implant, deliver the human remains to the crematory without removing the pacemaker or implant from the human remains, and should the human remains be cremated with the pacemaker or implant, then the funeral establishment that delivered the human remains to the crematory shall also be liable for all resulting damages along with the authorizing agent.

11

Administration

A. The department may adopt, promulgate, amend and repeal such reasonable regulations as may be consistent with this Act. Such regulations shall include the conditions under which human remains of person dying from an infectious, contagious or communicable disease can be transported from any portion of the state to a crematory for the purpose of cremation, and minimum standards of sanitation, required equipment and fire protection for all crematories which the department may deem necessary for the protection of the public.

B. A crematory authority may enact reasonable rules and regulations, not inconsistent with the Act, for the management and operation of a crematory, the types of cremation containers it will accept, authorization forms required, witnesses to a cremation and similar provisions. Nothing in this provision shall prevent a crematory authority from enacting rules and regulations which are more stringent than the provision contained in this Act.

C. Violations of this Act shall be punishable as follows:

- (1) Maintenance or operation of a building or structure within this state as a crematory in violation of the provisions of this Act or the rules and regulations of the department adopted pursuant thereto is hereby declared to be a public nuisance and may be abated as such as provided by law.
- (2) Holding oneself out to the public as a crematory authority without being licensed under this Act, or performing a cremation without a cremation authorization form signed by an authorizing agent is hereby declared to be a _____ punishable by _____.
- (3) A violation of any other provision of this Act is hereby declared to be a _____ punishable by _____.

12

Preneed Cremation Arrangements

A. Any preneed contract sold by, or preneed arrangements made with, a crematory authority, cemetery, funeral establishment or any other party, that includes a cremation, shall specify the ultimate disposition of the cremated remains, if known and that portion of the agreement shall be initialed by the individual making the arrangements. In the event no additional or different instructions are provided to the funeral establishment or crematory authority by the authorizing agent at the time of death, the funeral establishment and the crematory authority shall be authorized to release or dispose of the cremated remains as indicated in the preneed agreement. Upon compliance with the terms of that preneed agreement, the funeral establishment and crematory authority shall be released from any liability concerning the disposition of the cremated remains.

B. (1) Any person, or anyone who has legal authority to act on behalf of a person, may authorize his or her own cremation and the final disposition of his or her cremated remains by executing, as the authorizing agent, a cremation authorization form on a preneed basis. Any person shall have the right to transfer or cancel this authorization at any time prior to death by rescinding the executed cremation authorization form in writing and providing written notice to the crematory authority.

*** (2) Any cremation authorization form that is being executed by an

individual on a preneed basis shall contain the following disclosure, which shall be completed by the authorizing agent:

- I do not wish to allow any of my survivors the option of canceling my cremation and selecting alternative arrangements, regardless of whether my survivors deem a change to be appropriate.
 - I wish to allow only the survivors whom I have designated below the option of canceling my cremation and selecting alternative arrangements, if they deem a change to be appropriate:
-

*** NFDA has not adopted a position on whether an individual should have the legal authority to select cremation over the conflicting wishes of the surviving spouse or next-of-kin. Unless a State elects to provide that authority to an individual, this Subsection (2) should be omitted from the Act.

**** (3) Except as provided in Subsection (2) of this Section, at the time of the death of a person who has executed, as the authorizing agent, a cremation authorization form on a preneed basis, any person in possession of an executed form and any person charged with making arrangements for the final disposition of the decedent who has knowledge of the existence of an executed form, shall use their best efforts to ensure that the decedent is cremated and that the final disposition of the cremated remains is in accordance with the instructions contained on the crematory authorization form. If a crematory authority (i) is in possession of a completed cremation authorization form that was executed on a preneed basis, (ii) is in possession of the designated human remains, and (iii) has received payment for the cremation of the human remains or is otherwise assured of payment, then the crematory authority shall be required to cremate the human remains and dispose of the cremated remains according to the instructions contained on the cremation authorization form, and may do so without any liability unless the authorizing agent has selected the option under Subsection 12 (B)(2) that allows a designated survivor to select alternate arrangements. If the survivor has not selected alternative arrangements at the time of death or within 48 hours thereof, the funeral director and crematory authority may proceed with the cremation without any liability.

**** NFDA has not adopted a position on whether an individual should have the legal authority to select cremation over the conflicting wishes of the surviving spouse or next-of-kin. Unless a State elects to provide that authority to an individual, this Subsection (3) should be omitted from the Act.