

Cremation Association of North America
MODEL CREMATION LAW AND EXPLANATION
Approved by the CANA Board of Directors, November 16, 2017

PREAMBLE

There are many considerations that must be taken into account when a Crematory is entrusted with the disposition of human remains. The identification of the deceased, the holding of the remains for cremation, the actual cremation and the processing of cremated remains, packing and the disposition and memorialization of the cremated remains are all major items of concern not only to the crematory, but to the consuming public as well. High standards must be maintained during all phases of the cremation process.

When the Cremation Association of North America ("CANA") first published its Model Cremation Law in 1984, there was an absence of comprehensive cremation legislation throughout North America. In addition, CANA has circulated drafts of this Model Legislation to other interested parties in the industry for comments and has incorporated suggestions in the final version published in August of 1999. In June 2003 the Model was revised to include the training and certification of cremation operators. In late November, 2009 and again in 2017, the Cremation Model Law was again reviewed and revised and unanimously approved by the Board of Directors. The 2017 version expanded language concerning the right to control disposition, chain of identification, updated procedures and new language related to medical implants. While some progress has been made, it is still necessary for uniform statutory provisions to be developed in many states and provinces, in order that the industry can maintain the public trust expected of those involved in a vital service.

It is the objective of this revised model legislation to present current statutory provisions that will assist those individuals, organization, associations, state and provincial authorities which attempt to enact comprehensive cremation legislation. Both versions were based in part on a research project of the statutory laws of the 50 states, and several Canadian provinces and a review of current court cases involving cremation problems. All drafts were reviewed extensively by the CANA Board. Revisions were made based on comments received from the Board during each review.

PART I: TERMINOLOGY

Introduction

The use of consistent terminology in cremation legislation is important to the industry and the public. Unfortunately, the industry uses terminology that has not been generally accepted by the public. The public also use terms concerning cremation that have in some instances been popularized by popular culture. One example is the use of the term "ashes" or "cremains" for the term "cremated remains". Because of these variations, it is very important that legislation throughout the states and provinces use consistent terms and definitions. The following definitions have been developed by the industry to provide uniformity and consistency. Similar definitions are presently used in those states that have enacted comprehensive laws involving cremation. States or Provinces may have other laws dealing with licensing funeral directors and cemeteries which may define some of the following terms in an inconsistent manner. Definitions from other laws should only be substituted when consistent with the intent to have a comprehensive law dealing with the subject of cremation.

A. Alternative Container

See the definition of "Cremation Container"

Explanation

The term "Alternative Container" is the term used in the FTC Funeral Rule. CANA believes the term "Cremation Container" is a better term for public use.

B. Anatomical Material

See also Body Parts

Limbs, organs or other portions of the anatomy that are removed from human remains or any portion of remains that have been donated to science for medical education, research or clinical purposes.

C. Authorizing Agent(s)

An Authorizing Agent(s) is a person legally entitled to authorize the cremation of human remains.

Explanation

In most cases, the Authorizing Agent and the person with Right to Control (nearest kinship) are the same, but not in every case. A funeral establishment, an employee or agent of a funeral establishment or a licensee shall exercise due diligence to obtain the consent required pursuant to subsection 3 (A) of this Law from the proper authorizing agent.

D. Body Donation

The donation of human remains or any portion of human bodies to science for medical education, research or clinical practice purposes.

E. Body parts

see also Anatomical Material

Limbs, organs, or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, transplantation, which may be cremated at the discretion of the individual or medical professional; or any portion of remains that have been donated to science for medical research purposes.

F. Burial transit permit

A permit for the disposition of a dead human body is required by state and provincial legal requirements. The title of this document may vary.

G. Casket

A rigid container which is designed for the encasement of human remains, usually constructed of wood, metal or like materials and ornamented and lined with fabric, which may or may not be combustible or biodegradable.

Explanation

This term has to be defined in any comprehensive legislation because it is against the federal and state or provincial law to require the use of a casket for a cremation. This definition is slightly different from the FTC Funeral Rule definition because it is being used in comprehensive cremation legislation. Most crematories will not accept metal caskets because they are not combustible, consumable or otherwise suitable for cremation. If metal caskets are accepted, the crematory operator should have a ready means for their disposal. It should also be disclosed to the Authorizing Agents that the casket lid will be opened during the cremation process and that the metal casket will not be completely consumed in the process.

H. Change of ownership

It is a transfer of more than 50% of the stock or assets of a crematory authority.

I. Closed Container

Any container in which cremated remains can be placed and closed in a manner so as to provide dignity, prevent leakage or spillage of remains, and one that prevents the placing of unauthorized non-organic wastes.

J. Columbarium

A structure, room, or other space in a building or structure containing niches for permanent inurnment of cremated remains.

K. 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 consist of unidentifiable dimensions and may possibly include the residue of any non-organic waste which may include, but is not limited to: casket hardware, orthopedic and dental implants or eye glasses that were cremated with the human remains. Cremated remains are sometimes referred to as Human Cremated Remains.

Explanation

Cremated remains are often referred to erroneously as "ashes" or "cremains". CANA has tried to promote the correct concept that cremated remains consist of bone fragments. In addition, it is possible that foreign matter may be included with the cremated remains even though processing and pulverization have occurred.

L. Cremation

The mechanical and/or thermal or other dissolution process that reduces human remains to bone fragments. Cremation includes the processing and usually includes the pulverization of the bone fragments.

Explanation

There are various technical processes used for cremation. This definition was intended to encompass them all without using any descriptive term directed to a particular process.

M. 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. (Pet cremators shall be used exclusively for the cremation of pet/animal remains.)

Explanation

The term human remains may include tissue, limbs and fetuses. CANA, however, believes it is not a good practice to cremate surgical waste or pets in the same cremation chamber.

N. Cremation Container

It is 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 the following standards:

- (1) Be composed of readily combustible or consumable 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 and safety of crematory personnel.

Explanation

The definition of cremation container is intended to allow for the use of any type of container which complies with a set standard. CANA historically has been opposed to the use of certain types of containers, such as bed sheets, body bags, plastic and canvas for health safety and personal handling reasons. Some crematories will also be asked to accept the human remains on a stretcher, in a body pouch or in non-rigid containers. Because of the possibility of contagious diseases and other problems related thereto, CANA believes these practices should be discouraged.

O. Cremation Interment Container (Urn Vault)

A rigid outer container that, subject to a cemetery's rules and regulations, is composed of concrete, steel, fiberglass, plastic or 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.

P. Cremator

The total mechanical unit for the cremation process.

Q. Crematory or Crematorium

It is the building or portion of a building that houses the cremation chamber(s) and the holding facility. It can be a building that serves this one function or a multi-purpose building that also contains the administrative offices, mortuary preparation rooms, or cemetery maintenance facilities.

R. Crematory Authority

Is considered the legal entity or the authorized representative of the legal entity, which is licensed by the Regulatory Authority to operate a crematory and perform cremations.

S. Crematory Operator or Cremationist

The individual who is authorized and/or licensed by the board to operate the cremator and perform the cremation process.

T. 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.

U. Funeral Director or Mortician

A funeral service professional employed as a licensed “funeral director” or “funeral director and embalmer” as defined by State or Provincial law to practice funeral directing or funeral directing and embalming.

Explanation

Any person engaged in or conducting, or holding himself out as engaged in or conducting, any of the following activities: (a) caring for or preparing dead human bodies for burial, cremation or disposal; (b) disinfecting or preparing dead human bodies by embalming, or otherwise, for funeral service, transportation, burial, cremation or disposal; (c) directing or supervising the burial, cremation or disposal of dead human bodies; (d) arranging for funeral services for dead human bodies; (e) selling funeral goods and services to the public; (f) conducting, directing or supervising a funeral service.

V. 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 or wake services.

W. 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.

X. 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 body or limb in any stage of decomposition.

Y. Niche

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

Z. Non-organic waste

Materials which are not attributable to human remains, any clothing worn or any part of the container used. These materials are simultaneously removed from the cremation chamber with the cremated remains and subsequently removed prior to pulverization and disposed of in a legal and professional manner.

Explanation

Some items should be removed prior to cremation per manufacturer recommendations. Pre-cremation items include but are not limited to: pacemakers, defibrillators and other battery powered implants which should be removed and sanitized before return to the manufacturer or placed in the appropriate recycling container for processing. Other pre-cremation waste may include casket ornamentation such as handles, and should be removed prior to cremation and recycled.

AA. Processing

The pre-pulverization process of removing any non-organic waste (non-body and container) from the cremated remains in preparation for pulverization.

BB. Pulverization

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

CC. Regulatory Authority

This refers to the state or provincial agency that administers this law.

DD. Scattering Area

A designated legal and approved area for the scattering of cremated remains after removing the cremated remains from their container. Remains may be scattered over water, mixed with or placed atop ground soil or ground cover, or buried in an underground receptacle on a co-mingled, non-retrievable basis.

EE. 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.

FF. Unique Identification Number

The crematory shall provide a unique number associated with and corresponding to each human remains, which is to be individually imprinted with consecutive numbers, the name of the crematory facility and its city and state. The assigned number, displayed on a non-combustible disc or other legal method, is to accompany the human remains throughout the entire cremation, processing and pulverization process, and ultimately be attached to the human cremated remains to which it was assigned.

GG. Urn

A receptacle designed to permanently encase the cremated remains.

PART 2: ESTABLISHMENT OF CREMATORY AND LICENSURE OF CREMATORY AUTHORITY

- A.** Any person doing business in this state or province, 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 or provincial, and federal health and environmental protection requirements and shall obtain all necessary licenses and permits from the Regulatory Authority, the federal and state or provincial Regulatory Authorities, and the State or Provincial and federal Environmental Protection Agencies, or such other appropriate local, State or Provincial 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 or state or provincial laws.
- D.** Application for a license as a Crematory Authority shall be on forms furnished and prescribed by the Regulatory Authority. Applications for Crematory Authorities in existence prior to the effective date of the Law shall provide the Regulatory Authority 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 every member and the business if the applicant is a partnership; the full name and address of every member of the board of directors and the business 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 business 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 up to date licenses or permits required for a crematory to operate in the state.
 - (7) Performance of Cremation Service: Training. A Person may not perform a cremation service in this State or Province unless he or she has completed training in performing cremation services and received certification by a reputable organization approved by the State or Province. The crematory authority must conspicuously display the certification at the crematory authority's place of business. Any new employee shall have a reasonable time period, not to exceed one year, to be trained and become certified by a recognized training program. In the interim, the new employee may perform a cremation service if he or

she has received training from another person who has attended and received certification from a program recognized by the State or Province and from the Manufacturer of the crematory equipment. For the purposes of the Act, the State or Provincial agency shall recognize reputable national training programs that provide training in the operation of a cremation device, in the maintenance of the facility, and in the proper handling of human remains. The State or Provincial agency shall accept any courses that are conducted by a recognized death care trade association in the United States or Canada, and by a Manufacturer of a cremation unit, that is consistent with the standards provided in the Act. Applications for new Crematory Authorities shall be in writing and shall contain the following:

- (a) The full name and address, both residence and business, of the applicant if the applicant is an individual; the full name and address of every member and the business if the applicant is a partnership; the full name and address of every member of the board of directors and the business 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 business if the applicant is a corporation.
 - (b) A detailed statement of the Crematory Authority's assets and liabilities.
 - (c) 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.
 - (d) The address and location of the crematory.
 - (e) A description of the type of structure and equipment to be used in the operation of the crematory.
 - (f) Copies of all applications for and any licenses or permits issued for a crematory to operate in a state.
 - (g) Any further information that the Regulatory Authority may reasonably require.
- E. Each crematory authority shall file an annual report with the Regulatory Authority for license renewal, accompanied with a fee in the amount of \$_____, providing any changes required in the information provided under Subsection D 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, in the Regulatory Authority. 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 Regulatory Authority 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 Regulatory Authority may grant additional 60 day extensions in good cause. If a crematory authority fails to submit an annual report to the Regulatory Authority within the time specified in this Section, the Regulatory Authority shall impose upon the crematory authority a penalty of \$_____ for each and every day the crematory authority remains delinquent in submitting the annual report.
- F. 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 Regulatory Authority upon reasonable notice.

Explanation

It is not intended by CANA that any new requirements be established for crematories already established. Such operations should be allowed to obtain a license without being subject to any new requirements unless there is reason to believe they are violating the laws or are dangerous to the public.

- G. 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.

PART 3: AUTHORIZING AGENT

- A. The following persons, in the priority listed, shall have the right to authorize cremation of human remains:
- (1) Any person acting on the instructions of a decedent who authorized his or her own cremation through the execution, on a pre-need 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 Law, unless the authorization specifically provides for a designated survivor to alter the arrangements under Subsection 12 (B) (2) of this Law, and the designated survivor has contacted the crematory authority and expressed the desire to alter the arrangements. The actions of such a designated survivor, however, shall not prevent another individual, who has a priority right superior to that of the designated survivor according to this Section, from authorizing the cremation of the decedent by executing a new cremation authorization form.
 - (2) The individual who was the spouse of the decedent at the time of the decedent's death unless:
 - (a) The decedent was legally separated from the person's spouse.
 - (b) A petition for divorce or for legal separation from the decedent's spouse was filed before the person's death and remains pending at the time of death.

- (3) On the person who is designated as having power of attorney for the decedent in the decedent's most recent health care power of attorney if that power of attorney specifically gives that person the authority to make decisions regarding the disposition of the decedent's remains or a durable power of attorney if that power of attorney specifically gives that person the authority to make decisions regarding the disposition of the decedent's remains.
- (4) The majority of the decedent's surviving adult children.
- (5) 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 from the other parent.
- (6) 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.
- (7) In the case of indigents or any other individuals whose final disposition is the responsibility of the State or Province or any of its instrumentalities, a public administrator, medical examiner, coroner, State or Province appointed guardian, or any other public official charged with arranging the final disposition of the decedent may serve as the authorizing agent.
- (8) In the absence of any person under paragraphs (1) through (7) who is financially capable of providing for the burial or other funeral and disposition arrangements, or cannot be located on reasonable inquiry, any person willing to assume the responsibility as authorizing agent, or by court order.

Explanation

In the case of multiple surviving agents with equal authority, CANA recommends a majority determine the final disposition. A company's policy may exceed the law (i.e., unanimity) but not fewer.

- 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 authorized 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.

Explanation

Decedent's rights and preferences should be honored where possible. Any laws governing Right to Control should align with existing laws about decedent's rights.

PART 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 be provided by the crematory authority and shall contain, at a minimum, the following information:
 - (a) The identity of the human remains.
 - (b) The time and date of death.
 - (c) A unique identification number assigned by the crematory for purposes of tracking the human remains while they are in the crematory during different phases of the cremation process.
 - (d) The name of the funeral director and funeral establishment that obtained the cremation authorization.
 - (e) Notification as to whether the death occurred from a disease declared by the Regulatory Authority to be infectious, contagious, communicable, or dangerous to the public health.
 - (f) The name of the authorizing agent and the relationship between the authorizing agent and the decedent.
 - (g) 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.
 - (h) Authorization for the crematory authority to cremate the human remains.
 - (i) A representation that the human remains do not contain a battery-powered implant or any radioactive or other material that may be potentially hazardous or cause damage to the cremation chamber or the person performing the cremation.
 - (j) The name of the person authorized to receive the cremated remains from the crematory authority.
 - (k) 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 Law.

- (l) 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.
 - (m) 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.
 - (n) The signature of the authorizing agent, attesting to the accuracy of all representations contained on the cremation authorization form.
 - (o) If a cremation authorization form is being executed on a pre-need basis, the cremation authorization form shall contain the disclosure required by the Pre-need provisions of this Law in Section 12.
 - (p) The cremation authorization form, other than pre-need 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 merely execute the cremation authorization form as a witness and shall not be responsible for any of the representations made by the authorizing agent, unless the individual has actual knowledge to the contrary. The information requested by items (a), (b), (c), (d) and (h) of this Subsection, however, shall be considered to be representations of the authorizing agent and may be the representations of the funeral director or funeral establishment. In addition, 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.
 - (q) Disclosure of disposal of non-organic waste or non-organic waste through recycling or other legal means.
- (2) A completed and executed burial transit permit, as provided in (laws of state), indicating that human remains are to be cremated, and,
 - (3) Any other documentation required by the state or province, any county or municipality.

Explanation

Disclosure and documentation is essential. It is vital for the representative of the Cremation Authority and the Authorizing Agent to discuss medical treatments, implants and policies regarding recycling as part of executing the cremation authorization.

Disclosure of medical implants and medical procedures is increasingly important. CANA has technical papers on a number of topics related to specific medical conditions, including Creutzfeld-Jakob Disease, radioactive implants and recycling of non-organic waste. In all cases, universal precautions should be employed. In the case of medical treatments utilizing radioactive materials, consulting the treating hospital's radiology department is involved to document the half-life of the isotope and timeframe for safe cremation.

- 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, email, 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; and
 - (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 crematory authority is not liable for relying on a cremation authorization form executed in compliance with this section.
- C.** A Crematory Authority may have the right to refuse any human remains, unless otherwise authorized herein or by court order.

Explanation

The majority of complaints filed in court proceedings against funeral directors, funeral establishments and crematory authorities concerning cremation involve the misidentification of human remains. It is very important that a Crematory Authority not be required to accept unidentified human remains. The burden of a misidentification of the human remains should be on the authorizing agent. Upon completion of the cremation, the Crematory Authority shall file the Burial Transit Permit with the Regulatory Authority, pursuant to the laws of the state or province.

PART 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 corresponding crematory identification number, 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 corresponding crematory identification number, 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 discarded improperly or placed in an unauthorized location. 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 Law.
- D. The crematory authority shall maintain a record of all cremated remains disposed of by the crematory authority in accordance with this Law.
- 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 and the cemetery issued a receipt acknowledging the transfer of cremated remains.

Explanation

Document Retention and Destruction policies are important tools to encourage to support this section. State or provincial legislators should also consider allowing the scanning and digital storage of documents and future adoption of new technologies.

PART 6: CREMATION CONTAINERS

- A. Human remains must be delivered to a crematory in a cremation container. Human remains shall not be removed from the cremation container and the 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. 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.

PART 7: CREMATION PROCEDURES

- A. Human remains shall not be cremated until all civil and state or provincial requirements have been met.

Explanation

Cremation is an irreversible process and occasionally it may be necessary for legal reasons to delay cremations in order for legal authorities to examine a body or for proper identification. Accordingly, a cremation should be delayed for a reasonable period to allow for the legal authorities to act.

- B. No human remains shall be knowingly cremated with battery-operated implant or other potentially hazardous implant in place. Exceptions can be made with written authorization by equipment manufacturers stating their process allowing for implants will not cause any hazards to the operator's safety or the equipment. 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 hazardous implants are removed prior to cremation.

Explanation

Traditionally, pacemakers and other battery-powered devices could explode when subjected to the high heat of a crematory and thus had to be removed to prevent harm to the operator or damage to the equipment. As medicine continues to advance, implants including deep brain stimulators, radioactive seeds, and dental work may need to be removed for safety, but changes to their energy source or chemical components may bring exceptions. Businesses should inquire about all decedents' treatments to prevent harm and check manufacturer recommendations regarding 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 cremate the human remains immediately upon taking custody thereof, the Crematory Authority shall place the human remains in a proper refrigeration facility, 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 damage or evidence of leakage of the bodily 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 unless they have prearranged witnessing the cremation process with the business beforehand.
- 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 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 insofar as is possible; all of the reasonably recoverable residue of the cremation process shall be removed from the cremation chamber. Insofar as possible, all residue of the cremation process (not from the human body or cremation container, but including non-organic waste, including but not limited to metallic particles, implants and other foreign objects) shall then be separate from anything other than bone fragments and then processed so as to reduce them to an unidentifiable particle. 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 in a legal and professional manner.
- 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. The temporary container shall contain a label disclosing that this temporary container shall not be used for permanent storage of the cremated remains in a niche, crypt, cremation interment or interment space.
 - (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 its representative in a separate container attached together with the first container or urn with both being marked as being together.
 - (4) When a temporary container is used to return the cremated remains, that container shall be placed in a suitable box and all box seams taped closed to increase the integrity of that container. The outside of the container shall be clearly identified with the name of the deceased person whose cremated remains are contained therein, the name of the Crematory Authority and an indication the container is a temporary container.
 - (5) If the cremated remains are to be shipped or carried for travel, the temporary container or designated receptacle ordered by the Authorizing Agent shall be packed securely in a suitable, sturdy 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 following best practices of the shipping company and which provides a receipt signed by the person accepting delivery.

PART 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 or the person in possession of the cremated remains may dispose of the cremated remains in any manner permitted by law. The Authorizing Agent may be responsible for reimbursing the Crematory Authority 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 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 or other party.

Explanation

It has been the experience of many CANA members that Authorizing Agents do not always make arrangements for the disposition of cremated remains. Accordingly, it is CANA's position that the Crematory Authority should have the authority to dispose of the cremated remains in accordance with the law. The time period requirement for contacting authorized agents and recognized modes of disposition for this disposition are left open to the state or provincial authorities to establish.

- 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 uninhabited public land, the sea or other public waterways, 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, 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 containers 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 Section 5 (B) of this law. 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.

Explanation

States or province may choose to add language to this section concerning scattering and additional requirement of permitting and document retention.

PART 9: LIMITATION OF LIABILITY

- A. Any person(s) 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. A Crematory Authority and a funeral director shall have no liability for relying on the representations of the authorizing agent(s) in the cremation authorization form.
- B. A funeral director 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. There shall be no liability for a funeral director or Crematory Authority that pursuant to such authorization arranges a cremation, cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization.
- C. A Crematory Authority shall not be responsible or liable for any items delivered to the Crematory Authority with human remains.
- D. A Crematory Authority shall have the right to open the container and inspect the human remains prior to cremation by a representative to confirm identity of the decedent and the contents of the container.

Explanation

This section has been added to empower crematory operators or managers to inspect contents of a container prior to cremation. This is an important protection for employee and equipment safety and may be considered with caveats such as requiring the presence of a funeral director.

- E. A funeral director who 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 director or Crematory Authority is aware of any dispute concerning the release or disposition of the cremated remains, the funeral director or Crematory Authority may refuse to release the cremated remains until the dispute has been resolved or the funeral director or Crematory Authority has been provided with a court order authorizing the release or disposition of the cremated remains. Funeral directors and Crematory Authorities shall not be liable for refusing to release or dispose of cremated remains in accordance with this Subsection.

Explanation

The Limitation of Liability section is the most important part of any comprehensive cremation law. This section is usually enacted when it is explained that a crematory authority and funeral director are acting on representations of the authorizing agents and it is necessary that liability be limited, if the cremation is performed on the basis of those representations. Additionally, agreements that include mutual indemnification language are encouraged between funeral homes and third party crematories.

PART 10: BATTERY-POWERED MEDICAL IMPLANTS

If an authorizing agent informs the funeral director and the cremation authority on the cremation authorization form of the presence of a battery-powered medical implant in the human remains, then the funeral director shall also be responsible for ensuring that all necessary steps have been taken to discern the safety in the cremation of the implant or the necessity to remove the battery-powered medical implant before delivering the human remains to the crematory. Should the funeral director who delivers the human remains to the crematory fail to ensure that any potentially dangerous battery-powered medical implant has been removed from the human remains prior to delivery, and should the human remains be cremated with the battery-powered medical implant, then the funeral director who delivered the human remains to the crematory shall also be liable for all resulting damages along with the Authorizing Agent.

PART 11: ADMINISTRATION

The Regulatory Authority may adopt, promulgate, amend and repeal such reasonable regulations as may be consistent with this Act governing the cremation of human remains.

- A. 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. Such regulation specifically shall include the conditions under which human remains of persons dying from an infectious, contagious, communicable or dangerous disease can be transported from any portion of the state or province to a crematory for the purpose of cremation, and minimum standards of sanitation, required equipment and fire protection for all crematories which the Regulatory Authority may deem necessary for the protection of the public.
- B. Violations of this Act shall be punishable as follows:
 - (1) Maintenance or operation of a building or structure within the state or province as a crematory in violation of the provisions of this Act or the rules and regulations of the Regulatory Authority 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 _____.

PART 12: PRE-NEED CREMATION ARRANGEMENTS

- A. Any pre-need contract sold by, or pre-need 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 director or Crematory Authority by the Authorizing Agent at the time of death, the funeral director and the Crematory Authority shall be authorized to release or dispose of the cremated remains as indicated in the pre-need agreement. Upon compliance with the terms of that pre-need agreement, the funeral director 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, on a pre-need basis, 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 pre-need basis. A copy of this form shall be provided to the person. Any person shall have the right to transfer or cancel this authorization at any time prior to death by destroying the executed cremation authorization form and providing written notice to the crematory authority.
- (2) Any cremation authorization form that is being executed by an individual as his or her own authorizing agent on a pre-need 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:_____.
- (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 pre-need 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 pre-need basis, (ii) is in possession of the designated human remains, and (iii) has received payment for the cremation of the human remains and the final disposition of the cremated 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 Section 12 (B) (2) that allows a designated survivor to select alternative 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.

Explanation

This section is intended to allow an individual to provide the legal authorization for their own cremation. There is a substantial group, who feel that if the wishes of the survivors are contrary and cremation would be objectionable, the cremation should not occur even if so authorized. The provision suggested above is based on Section 65 of the Illinois Crematory Regulation Act, 410 ILCS 18/1 et seq. This section provides an option for the person making the pre-need arrangement to limit the survivors' rights to change the arrangement. Another factor is that many state laws presently do not clearly provide for the legal effect of a pre-need arrangement and there is serious concern about such an authorization even where there is no dispute. CANA's board feels that these should be covered in a law so that the matter will be clear. The Florida legislature addresses the problem of the liability of a party acting on the wishes of a decedent in Section 732.804 of the Florida Statutes as follows: Provisions relating to Cremation. The fact that the cremation occurred pursuant to a provision of a will or any written contract signed by the decedent, in which he or she expressed the intent that his or her body be cremated, is a complete defense to a cause of action against the personal representative or person providing the services.

Other laws may be enacted regarding pre-need regulation, and this section should be reconciled or integrated with those laws.

PART 13: MISCELLANEOUS

This Act shall be construed and interpreted as a comprehensive cremation statute, and the provisions of this Act shall take precedence over any existing laws that govern dead human bodies and human remains that do not specifically address cremation. This Act shall be effective on _____, 20____. A Crematory Authority shall be permitted to employ a licensed funeral director for the purpose of arranging cremations with the general public, transporting human remains to the crematory, and processing all necessary paperwork. No aspect of this provision shall be construed to require a licensed funeral director to perform any functions not otherwise required by law to be performed by a licensed funeral director.