

# **Cremation Association of North America MODEL CREMATION LAW AND EXPLANATION (Approved by the CANA Board of Directors, January 22, 2010)**

## **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. Since that time, several states and some of the provinces in Canada have addressed virtually all aspects of the cremation process. Other states have dealt in part with the subject and in some instances different approaches to the issues have been developed. California, Florida, Georgia, Idaho, Illinois, Louisiana, North Carolina, Ohio and the province of British Columbia have addressed this subject in great detail and those laws are good sources for anyone contemplating enacting cremation legislation. 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. 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, the Cremation Model Law was again reviewed and revised and unanimously approved by the Board of Directors.

## **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 the movie industry. One example is the use of the term "ashes" 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. When the term "states" is used hereafter in this document, it is intended to refer to "states or provinces". 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 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. The industry believes the term "Cremation Container" is a better term for public use.

#### **B. Authorizing Agent(s)**

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

#### **C. 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.

#### **D. Burial transit permit**

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

#### **E. 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.

#### **Explanation**

This term has to be defined in any comprehensive legislation because it is against the federal and state 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.

#### **F. Change of ownership**

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

#### **G. 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 foreign materials.

#### **H. 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 foreign matter including casket or container material, bridgework 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". 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.

#### **I. 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.

#### **J. 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.

#### **K. 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, safety and personal integrity 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 canvass 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.

#### **L. 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 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.

#### **M. Crematory Authority**

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

#### **N. Crematory**

It is the building or portion of a building that houses the cremation chamber and the holding facility.

#### **O. Department**

This refers to the state Department of Public Health or any other appropriate agency that administers this law.

#### **P. 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.

#### **Q. Foreign Materials**

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.

#### **R. Funeral Director**

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

#### **S. 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.

#### **T. 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.

#### **U. 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.

#### **V. Niche**

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

#### **W. Processing**

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

#### **X. Pulverization**

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

#### **Y. Scattering Area**

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

#### **Z. 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.

#### **AA. Unique Identification Number**

The crematory shall provide an identification disc 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 disc 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.

#### **BB. Urn**

A receptacle designed to permanently encase the cremated remains.

### **PART 2: ESTABLISHMENT OF CREMATORY AND LICENSURE OF CREMATORY AUTHORITY**

1. 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.
2. 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.
3. 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 laws.
4. Application for a license as a Crematory Authority shall be on forms furnished and prescribed by the Department. Applications for Crematory Authorities in existence prior to the effective date of the Law 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 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 Authorities 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 proceeding 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 unless he or she has completed training in performing cremation services and received certification by a reputable organization approved by the State. 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. For the purposes of the Act, the State agency shall recognize reputable national training programs that provide training in the operation of a cremation device, in the maintenance of a clean facility, and in the proper handling of human remains. The State agency shall accept any courses that are conducted by a recognized death care trade association in the United States, or 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 Authorities 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 Department may reasonably require.

**E.** 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 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 Office of 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 in 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.

**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 Department 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 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 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 (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) Any person serving as executor or legal representative of a decedent's estate and acting according to the decedent's written instructions.

(3) The individual who was the spouse of the decedent at the time of the decedent's death.

(4) 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.

(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 any of its instrumentality's, 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.

(8) 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 pre-need 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.

(9) In the absence of any person under paragraphs (1) through (8), 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 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.

#### **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 and the time and date of death.
    - (b) 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.
    - (c) The name of the funeral director and funeral establishment that obtained the cremation authorization.
    - (d) 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.
    - (e) The name of the authorizing agent and the relationship between the authorizing agent and the decedent.
    - (f) 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.
    - (g) Authorization for the crematory authority to cremate the human remains.
    - (h) 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.
    - (i) The name of the person authorized to receive the cremated remains from the crematory authority.
    - (j) 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.
    - (k) 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.
    - (l) A specific statement as to whether the authoring 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.
- (m) The signature of the authorizing agent, attesting to the accuracy of all representations contained on the cremation authorization form.
  - (n) 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 9.
  - (o) 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) and (g) 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.
- (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, any 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; 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 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.

#### **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 Department, pursuant to the laws of the state.

#### **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.

#### **PART 6: 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 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.

#### **PART 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, or any sooner than allowed by law. 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 time requirement is waived in writing by the medical examiner where the death occurred.

#### **Explanation**

Cremation is an irreversible process and occasionally it may be necessary for legal reasons to delay a cremation in order for legal authorities to examine a body or for proper identification. Accordingly, all cremation should be delayed for a reasonable period to allow for the legal authorities to act. The time selected in this section was the result of a survey of state laws on the subject. It is recognized that some states may have longer or shorter periods already set out in their laws.

**B.** No human remains shall be cremated with a pacemaker 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.

**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 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 adult person within the same cremation chamber is not allowed or usually possible, but it will never be performed even if possible, 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. The simultaneous cremation of the human remains of one adult and one or more children will not be performed 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 product 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 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 metallic particles, implants and other foreign objects) shall then be separate from anything other than bone fragments and then be 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 the temporary container shall not be used for permanent storage of the cremated remains in a niche, crypt, cremation interment container 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, 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.

## **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, except scattering. The Authorizing Agent shall 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, except for scattering in a manner where the remains would not be recoverable. The time period for this disposition is left open to the state 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 pursuant to Section 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, the Authorizing Agent shall provide the Crematory Authority, with the written consent of the property owner.

## Explanation

At the time the original CANA Model Law was proposed, there was extensive litigation in the State of California related to the subject of disposition of cremated remains. Prior to the filing of those lawsuits, California has allowed cremated remains to be dispersed over public lands as well as in the sea outside of certain limits. Some of the litigation involves a claim against an air delivery service that cremated remains were improperly placed on a vacant lot rather than dispersed in the public areas as requested. Because of that litigation, the State of California restricted scattering of this type. Accordingly, this provision was drafted in a manner consistent with those changes. Subsequently, the California legislature reviewed the area again and made some changes. During 1997, another California air delivery service was discovered with over 5,000 cremated remains that had not been scattered in accordance with contractual obligations. A lawsuit was filed and the California legislature changed the laws to be consistent with this section of the Model Act. CANA believes, however, it is proper to scatter over uninhabited public land, as long as permission is obtained from any agency required and the environmental rules are followed. Accordingly, CANA adopted that position on this scattering method. Because cremated remains are bone fragments, CANA does not advocate scattering on private property. However, if it is decided to permit it then at a minimum, the written consent of the property owner should be obtained.

**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 commingled 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 creation 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.

**F.** Cremated remains may be scattered over uninhabitable public land, a public waterway or sea, subject to health and environmental standards, 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. A person may utilize a boat or airplane to perform such scattering. Cremated remains shall be removed from their closed container before they are scattered. Any person who scatters such human remains, pursuant to this Section, shall file with the local registrar of births and deaths, in the county nearest the point where the cremated remains are to be scattered, a verified statement containing the name of the deceased person, the time and place of death, the place at which the cremated remains are to be scattered, and any other information that the local registrar of births and deaths may require. 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.

## Explanation

In some states, many people select to scatter the cremated remains in other appropriate places. The selection sets out the requirement for such a disposition. Scattering over uninhabited public land has been eliminated from this section as previously explained. The Georgia legislature enacted a more specific law on the subject. This law can be found in the Georgia statutes at section 31-21-4, which provides as follows: Burial at sea of cremated remains; notification that cremated remains are ready for interment; unclaimed cremated remains.

(a) (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. Cremated remains shall be removed from their container before such remains are buried at sea.

(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.

(b) Any person who requests that a dead body be cremated shall provide the funeral establishment or other person responsible for the cremation an address at which such person can be notified when the cremated remains are ready for interment. Notification shall be made by first class mail to such person at the address provided. If the cremated remains are not claimed for interment or other disposition within 60 days from the date that the notification is mailed, such remains shall be turned over to the coroner, medical examiner or other appropriate state agency to be interred in a plot or niche in a cemetery where indigents are buried.

## **PART 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 director may rely upon the representations of the authorizing agent 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 valuables delivered to the Crematory Authority with human remains.
- D.** A funeral director 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 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. Normally state legislatures are hesitant to limit liability. However, the 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.

## **PART 10: PACEMAKERS**

If an authorizing agent informs the funeral director and the cremation authority on the cremation authorization form of the presence of a pacemaker in the human remains, then the funeral director shall also be responsible for ensuring that all necessary steps have been taken to remove the pacemaker before delivering the human remains to the crematory. Should the funeral director who delivers the human remains to the crematory fail to ensure that the pacemaker has been removed from the human remains prior to delivery, and should the human remains be cremated with the pacemaker, 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**

- A.** The Department may adopt, promulgate, amend and repeal such reasonable regulations as may be consistent with this Act governing the cremation of human remains. 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 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 \_\_\_\_\_.

## **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 affect 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.

## **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.