

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2139

Introduced by

Senators Rummel, Cleary

Representatives Lefor, Steiner

1 A BILL for an Act to amend and reenact sections 11-19.1-15 and 23-06-03 of the North Dakota
2 Century Code, relating to final disposition of individuals who are indigent.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 11-19.1-15 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **11-19.1-15. Notice of next of kin, disposition of personal belongings - Disposition of**
7 **body when next of kin cannot be found.**

8 The coroner of the county in which a death is discovered shall take charge of the case and
9 ensure that relatives or friends of the deceased individual, if known, are notified as soon as
10 possible, giving details of the death and disposition of the deceased individual. If the relatives or
11 friends of the deceased are unknown, the coroner shall dispose of the personal effects and
12 body in the following manner:

- 13 1. After using such clothing as may be necessary in the final disposition of the body, the
14 remaining personal effects of the deceased must be turned over to law enforcement
15 for appropriate disposition.
- 16 2. The remains must be:
- 17 a. Disposed of in accordance with section 23-06-14; or
- 18 b. Otherwise disposed of in accordance with the laws governing ~~the burial~~final
19 disposition of residents within the state who are indigent persons within this state.

20 **SECTION 2. AMENDMENT.** Section 23-06-03 of the North Dakota Century Code is
21 amended and reenacted as follows:

1 **23-06-03. Duty of final disposition - ~~Indigent burial~~Final disposition of individuals**
2 **who are indigent - Decedent's instructions.**

- 3 1. The duty of final disposition of the body of a deceased individual devolves upon the
4 following individual in the order of priority:
- 5 a. Any legally competent adult given the duty of final disposition by the deceased
6 individual in a statement conforming with section 23-06-31, except the legally
7 competent adult specified in the statement conforming with section 23-06-31 may
8 decline the duty of final disposition unless the individual would otherwise have
9 the duty of final disposition under this section;
 - 10 b. The surviving spouse if the deceased was married;
 - 11 c. If the deceased was not married but left kindred, upon the majority of the adult
12 children of the decedent; however, in the absence of actual knowledge to the
13 contrary, a funeral director or mortician may rely on instructions given by the child
14 who represents to be the sole surviving child or the children who represent to
15 constitute a majority of the surviving children;
 - 16 d. The surviving parent or parents of the decedent, each having equal authority;
 - 17 e. The adult sibling or the majority of the adult siblings of the decedent; however, in
18 the absence of actual knowledge to the contrary, a funeral director or mortician
19 may rely on instructions given by the sibling who represents to be the sole
20 surviving sibling or the siblings who represent to constitute a majority of the
21 surviving siblings;
 - 22 f. The adult grandchild or the majority of the adult grandchildren of the decedent;
23 however, in the absence of actual knowledge to the contrary, a funeral director or
24 mortician may rely on instructions given by a grandchild who represents to be the
25 only grandchild reasonably available to control final disposition of the decedent's
26 remains or the grandchildren who represent to constitute a majority of
27 grandchildren reasonably available to control final disposition of the decedent's
28 remains;
 - 29 g. The grandparent or the grandparents of the decedent, each having equal
30 authority;

- 1 h. The adult nieces and nephews of the decedent or a majority of the adult nieces
2 and nephews; however, in the absence of actual knowledge to the contrary, a
3 funeral director or mortician may rely on instructions given by a niece or nephew,
4 who represents to be the only niece or nephew reasonably available to control
5 final disposition of the decedent's remains or the nieces and nephews who
6 represent to constitute a majority of the nieces and nephews reasonably
7 available to control final disposition of the decedent's remains;
- 8 i. An individual who was acting as the guardian of the decedent with authority to
9 make health care decisions for the decedent at the time of death;
- 10 j. An adult who exhibited special care and concern for the decedent;
- 11 k. An individual respectively in the next degree of kinship in the order named by law
12 to inherit the estate of the decedent; or
- 13 l. The appropriate public or court authority, as required by law. For purposes of this
14 subdivision, the appropriate public or court authority includes the human service
15 zone of the county in which the death occurred if the individual dies without
16 apparent financial means to provide for final disposition or the district court in the
17 county in which the death occurred. If the duty of final disposition devolves to this
18 level, the appropriate public or court authority may direct final disposition to a
19 mortician or funeral director after the coroner notifies the appropriate public or
20 court authority in writing that no individuals identified in subdivisions a through k
21 have accepted the duty of final disposition. A person identified under this
22 subdivision who exercises the duty of final disposition of the body of a deceased
23 individual is immune from civil liability for any act or omission arising out of the
24 duty of final disposition.
- 25 2. If there is only one individual in a degree of relationship to the decedent described in
26 subsection 1, and a district court determines the person and the decedent were
27 estranged at the time of death, the right to control and the duty of disposition devolves
28 to the next degree of relationship under subsection 1. For purposes of this subsection,
29 "estranged" means having a relationship characterized by mutual enmity, hostility, or
30 indifference.

- 1 3. If an individual to whom the right to control and duty of disposition devolves under
2 subsection 1, refuses to accept or declines to act upon the right or duty, that right and
3 duty passes as follows:
- 4 a. To another individual with the same degree of relationship to the decedent as the
5 individual refusing to accept or declining to act; or
6 b. To the individual in the next degree of relationship to the decedent under
7 subsection 1.
- 8 4. If a dispute exists regarding the right to control or duty of final disposition, the parties
9 in dispute or the mortician or funeral director may file a petition in the district court in
10 the county of residence of the decedent requesting the court make a determination in
11 the matter. If the right to control and duty of final disposition devolves to more than one
12 individual with the same degree of relationship to the decedent and those individuals
13 do not, by majority vote, make a decision regarding arrangements and final disposition
14 and a district court has been petitioned to make a determination, the court shall
15 consider the following factors in making a determination:
- 16 a. The reasonableness, practicality, and resources available for payment of the
17 proposed arrangements and final disposition;
18 b. The degree of the personal relationship between the decedent and each of the
19 individuals in the same degree of relationship to the decedent;
20 c. The expressed wishes and directions of the decedent and the extent to which the
21 decedent provided resources for the purpose of carrying out the wishes or
22 directions; and
23 d. The degree to which the arrangements and final disposition will allow for
24 participation by all who wish to pay respect to the decedent.
- 25 5. If the individual who has the duty of final disposition does not arrange for final
26 disposition of the body within the time required by this chapter, the individual next
27 specified shall ~~bury or otherwise dispose~~arrange for final disposition of the body within
28 the requirements of this chapter.
- 29 6. a. If the deceased did not leave sufficient means to pay for expenses of final
30 disposition, ~~including the cost of a casket~~, and is not survived by an individual
31 described by subsection 1 and identified for financial responsibility within the

1 human service zone's general assistance policy, within ~~fifteen~~seven days of
2 application for services the human service zone of the county in which the
3 deceased had residence for general assistance purposes or, if residence cannot
4 be established, within ~~fifteen~~seven days of application for assistance the human
5 service zone of the county in which the death occurs shall employ a person to
6 arrange for and supervise the final disposition. If the deceased was a resident or
7 inmate of a public institution, within ~~fifteen~~seven days of application for
8 assistance the human service zone in which the deceased was a resident for
9 general assistance purposes immediately before entering the institution shall
10 employ a person to arrange for and supervise the final disposition.

11 b. ~~The department of health and human services may negotiate with the interested~~
12 ~~funeral directors or funeral homes regarding cremation~~reimbursement for
13 ~~expenses and burial expenses but the total charges for burial services, including~~
14 ~~transportation of the deceased to the place of burial, the grave box or vault, grave~~
15 ~~space, and grave opening and closing expenses, may not be less than one~~
16 ~~thousand of final disposition under this subsection is three thousand~~ five hundred
17 dollars.

18 c. The department of health and human services may provide for the use of a
19 military ~~casket or~~ urn, if the deceased was a veteran as defined in section
20 37-01-40, unless the additional cost exceeds the ~~negotiated expenses~~
21 ~~efreimbursement rate under~~ this section~~subsection~~ or a surviving spouse or the
22 nearest of kin of the deceased elects a nonmilitary ~~casket or~~ urn.

23 d. The human service zone shall pay the charge for funeral expenses as negotiated
24 by the department of health and human services~~cremation or burial final~~
25 ~~disposition of an individual who is indigent as provided under this section. The~~
26 ~~presumption of final disposition of an individual who is indigent is by cremation.~~
27 The human service zone shall create a process to review and accommodate a
28 request for burial due to religious beliefs. The~~if the deceased is eligible for~~
29 indigent final disposition, the human service zone may not decrease the human
30 service zone payment due to a nominal amount left by the deceased or
31 contributed by ~~kin~~a spouse, parent, adult children, or any other party to ~~defray~~

1 ~~the contribute to non-burial or non-cremation~~ expenses of ~~burial or cremation~~ final
2 disposition. Funds adequate to allow for burial instead of cremation are
3 considered nominal under this section.

4 e. Except for burial conducted under subdivision d, final disposition must be
5 conducted by cremation.

6 f. The department of health and human services and human service zones shall
7 maintain a standardized eligibility policy and application form to be used for the
8 purposes of indigent ~~burial~~ final disposition application.

- 9 7. If the individual with the duty of final disposition under this section, or the personal
10 representative of the decedent's estate, if any, is aware of the decedent's instructions
11 regarding the disposition of the remains, that person shall honor those instructions, to
12 the extent reasonable and possible, to the extent the instructions do not impose an
13 economic or emotional hardship. A decedent's instructions may be reflected in a
14 variety of methods, including pre-need funeral arrangements a deceased articulated
15 and funded in a pre-need funeral service contract, a health care directive, a durable
16 power of attorney for health care, a power of attorney, a will, a document created
17 under section 23-06-31, or a document of gift for an anatomical gift.
- 18 8. If the decedent died while serving in any branch of the United States armed forces, the
19 United States reserve forces, or the national guard, as provided by 10 U.S.C. 1481
20 section (a)(1) through (8) as effective through December 2001, and completed a
21 United States department of defense record of emergency data, DD form 93, or its
22 successor form or its equivalent branch's form, the duty to bury or cremate the
23 decedent or to provide other funeral and disposition arrangements for the decedent
24 devolves on the person authorized by the decedent pursuant to that form.
- 25 9. A funeral director or mortician has complete authority to control the final disposition
26 and to proceed under this chapter to recover reasonable charges for the final
27 disposition if:
- 28 a. The funeral director or mortician has actual knowledge none of the individuals
29 described in subsection 1 exist, can be found after reasonable inquiry, or can be
30 contacted by reasonable means; and

- 1 b. Within thirty-six hours after having been given written notice of the facts, the
- 2 appropriate court or public authority fails to assume responsibility for disposition
- 3 of the remains. Written notice may be delivered by hand, United States mail, or
- 4 facsimile transmission.