

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

HOUSE BILL NO. 1294

(Representatives Seibel, B. Anderson, C. Johnson, Laning, Lefor, Nathe, J. Nelson, Rohr)
(Senators Klein, Unruh)

AN ACT to amend and reenact section 11-19.1-15, subsections 9 and 18 of section 23-02.1-01, sections 23-02.1-08, 23-02.1-21, and 23-02.1-22, subsection 2 of section 23-02.1-32, sections 23-06-02, 23-06-03, 23-06-04, 23-06-05, 23-06-06, 23-06-07, 23-06-08, 23-06-09, 23-06-10, 23-06-11, 23-06-12, 23-06-13, and 23-06-26, subsection 8 of section 23-06.6-13, section 30.1-28-06, subsection 4 of section 43-10-01, and sections 43-10-15.4, 43-10-21, and 43-10.1-02 of the North Dakota Century Code, relating to transportation and disposition upon death; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

SECTION 2. AMENDMENT. Subsections 9 and 18 of section 23-02.1-01 of the North Dakota Century Code are amended and reenacted as follows:

9. "Final disposition" means the entombment, burial, interment, cremation, whole-body donation to a school of medicine, removal from the state, or other disposition of a dead body or fetus.
18. "Subregistrar" means a funeral ~~director~~practitioner or other suitable individual from a licensed funeral home who is appointed by the state registrar for the purpose of issuing ~~burial-transit~~final disposition-transit permits.

SECTION 3. AMENDMENT. Section 23-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-08. Duties of subregistrars.

A subregistrar may issue ~~burial-transit~~final disposition-transit permits for those counties served by the funeral home the subregistrar is employed by. The subregistrar or cemetery sexton shall file all completed ~~burial-transit~~final disposition-transit permits with the county recorder in the county where the

final disposition took place within ten days after the date of ~~interment~~final disposition or within the time prescribed by the local board of health. The subregistrar is subject to the supervision and control of the state registrar and may be removed by the state registrar for reasonable cause. The subregistrar is subject to the penalties for neglect of duties as provided in section 23-02.1-32.

SECTION 4. AMENDMENT. Section 23-02.1-21 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-21. Permits.

1. The funeral ~~director~~practitioner who first obtains custody of a dead body or fetus shall obtain a ~~burial-transit~~final disposition-transit permit before final disposition or removal from this state of the body or fetus.
2. The ~~burial-transit~~final disposition-transit permits must be issued by the state registrar or a subregistrar and must be filed in the office of the county recorder where the final disposition occurs in accordance with the requirements of sections 23-02.1-19 and 23-02.1-20.
3. A ~~burial-transit~~final disposition-transit permit issued under the laws of another state which accompanies a dead body or fetus brought into this state is authority for final disposition of the body or fetus in this state.
4. A permit for disinterment and reinterment is required before disinterment of a dead body or fetus except as authorized by rules or otherwise provided by law. The permit must be issued by the state registrar to a ~~licensed embalmer~~funeral practitioner upon proper application.

SECTION 5. AMENDMENT. Section 23-02.1-22 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-22. Extension of time.

1. The state department of health may, by regulation and upon such conditions as it may prescribe to assure compliance with the purposes of this chapter, provide for the extension of the periods of time prescribed in sections 23-02.1-19, 23-02.1-20, and 23-02.1-21 for the filing of death records, fetal death records, medical certification of death, and for the obtaining of ~~burial-transit~~final disposition-transit permits in cases in which compliance with the applicable prescribed period would result in undue hardship.
2. Regulations of the state department of health may provide for the issuance of a ~~burial-transit~~final disposition-transit permit under section 23-02.1-21 ~~prior to~~before the filing of a record of death or fetal death upon conditions designed to assure compliance with the purposes of this chapter in cases in which compliance with the requirement that the records be filed ~~prior to~~before the issuance of the permit would result in undue hardship.

SECTION 6. AMENDMENT. Subsection 2 of section 23-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

2. a. Any person who refuses to provide information required by this chapter;
 - b. Any person who knowingly transports or accepts for transportation, interment, or other final disposition of a dead body or fetus without an accompanying final disposition-transit permit as provided in this chapter; or
 - c. Any person who willfully neglects or violates any of the provisions of this chapter or refuses to perform any of the duties imposed upon the person by this chapter;
- is guilty of an infraction.

SECTION 7. AMENDMENT. Section 23-06-02 of the North Dakota Century Code is amended and reenacted as follows:

23-06-02. Custody of body.

The person charged with the duty of ~~burying~~final disposition of the body of a deceased person is entitled to the custody of such body for the purpose of ~~burying it~~arranging for final disposition. When the coroner is required to hold an inquest, however, the coroner is entitled to the custody of the body until such inquest has been completed.

SECTION 8. AMENDMENT. Section 23-06-03 of the North Dakota Century Code is amended and reenacted as follows:

23-06-03. Duty of ~~burial~~final disposition.

1. The duty of ~~burying~~final disposition of the body of a deceased individual devolves upon the following individuals in order of priority:
 - a. Any legally competent adult given the duty of final disposition by the deceased individual in a statement conforming with section 23-06-31, except the legally competent adult specified in the statement conforming with section 23-06-31 may decline the duty of final disposition unless the individual would otherwise have the duty of final disposition under this section;
 - b. The surviving husband or wife~~spouse~~ if the deceased was married or, if;
 - c. If the deceased was not married but left kindred, upon one or more individuals in the same degree, of adult age, nearest of kin to the deceased and possessed of sufficient means to defray the necessary expenses the majority of the adult children of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the child who represents to be the sole surviving child or the children who represent to constitute a majority of the surviving children;
 - d. The surviving parent or parents of the decedent, each having equal authority;
 - e. The adult sibling or the majority of the adult siblings of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the sibling who represents to be the sole surviving sibling or the siblings who represent to constitute a majority of the surviving siblings;
 - f. The adult grandchild or the majority of the adult grandchildren of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a grandchild who represents to be the only grandchild reasonably available to control final disposition of the decedent's remains or the grandchildren who represent to constitute a majority of grandchildren reasonably available to control final disposition of the decedent's remains;
 - g. The grandparent or the grandparents of the decedent, each having equal authority;
 - h. The adult nieces and nephews of the decedent or a majority of the adult nieces and nephews; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a niece or nephew, who represents to be the only niece or nephew reasonably available to control final disposition of the decedent's remains or the nieces and nephews who represent to constitute a majority of the nieces and nephews reasonably available to control final disposition of the decedent's remains;

employ some person to arrange for and supervise the ~~burial or cremation~~final disposition. If the deceased was a resident or inmate of a public institution, the county in which the deceased was a resident for county general assistance purposes immediately before entering the institution shall employ a person to arrange for and supervise the ~~burial or cremation~~final disposition. Each board of county commissioners may negotiate with the interested funeral directors or funeral homes regarding cremation expenses and burial expenses but the total charges for burial services, including transportation of the deceased to the place of burial, the grave box or vault, grave space, and grave opening and closing expenses, may not be less than one thousand five hundred dollars. The county social services board may provide for the use of a military casket or urn, if the deceased was a veteran as defined in section 37-01-40, unless the additional cost exceeds the negotiated expenses of this section or a surviving spouse or the nearest of kin of the deceased elects a nonmilitary casket. The county social service board shall pay the charge for funeral expenses as negotiated by the board of county commissioners, less any amount left by the deceased to defray the expenses.

- 4.7. If the ~~person~~individual with the duty of ~~burial~~final disposition under this section, or the personal representative of the decedent's estate, if any, is aware of the decedent's instructions regarding the disposition of the remains, that person shall honor those instructions, to the extent reasonable and possible, to the extent the instructions do not impose an economic or emotional hardship. A decedent's instructions may be reflected in a variety of methods, including pre-need funeral arrangements a deceased articulated and funded in a pre-need funeral service contract, a health care directive, a durable power of attorney for health care, a power of attorney, a will, a document created under section 23-06-31, or a document of gift for an anatomical gift.
- 5.8. If the decedent died while serving in any branch of the United States armed forces, the United States reserve forces, or the national guard, as provided by 10 U.S.C. 1481 section (a)(1) through (8) as effective through December 2001, and completed a United States department of defense record of emergency data, DD form 93, or its successor form or its equivalent branch's form, the duty to bury the decedent or to provide other funeral and disposition arrangements for the decedent devolves on the person authorized by the decedent pursuant to that form.

SECTION 9. AMENDMENT. Section 23-06-04 of the North Dakota Century Code is amended and reenacted as follows:

23-06-04. Time within which ~~burial or cremation~~final disposition must be made - Exceptions.

1. The dead body of a human being must be ~~buried or cremated~~disposed of by the person charged with that duty within eight days after the death of such person except when any of the following occur:
 1. a. The right to dissect the body is expressly conferred by law.
 2. b. The body is being carried through this state.
 3. c. The body is being removed from this state for the purpose of ~~burial or cremation~~final disposition in some other state.
 4. d. A permit is obtained from the local health officer or the state department of health allowing a longer time during which the body need not be ~~buried or cremated~~disposed. The permit shall state the additional length of time during which the body need not be ~~buried or cremated~~disposed.
 5. e. The body is being stored for an extended period of time in a vault determined suitable by the state department of health, but the body may not be stored in a vault for a period of more than eight days during the months of June through October unless a permit is obtained from the local health officer or the state department of health.

2. The date of ~~burial or cremation~~final disposition must be the date of the committal service or date of placement in a storage vault ~~or school of medicine~~.

SECTION 10. AMENDMENT. Section 23-06-05 of the North Dakota Century Code is amended and reenacted as follows:

23-06-05. Failure to ~~bury~~dispose within required time - Penalty.

Any person ~~whethat~~ fails to comply with or who violates any of the provisions of section 23-06-04, or ~~whethat~~ refuses or neglects promptly to obey any order or instruction of the local board of health, is guilty of a class B misdemeanor.

SECTION 11. AMENDMENT. Section 23-06-06 of the North Dakota Century Code is amended and reenacted as follows:

23-06-06. Neglect of ~~burial~~final disposition - Penalty.

Every person upon ~~whom~~which the duty of making ~~burial~~final disposition of the remains of a deceased person is imposed by law ~~whethat~~ omits to perform that duty as required in this chapter is guilty of a class B misdemeanor.

SECTION 12. AMENDMENT. Section 23-06-07 of the North Dakota Century Code is amended and reenacted as follows:

23-06-07. Regulation of ~~burial~~final disposition - Issuance of ~~burial-transit~~final disposition-transit permit regulated.

The body of any ~~person~~individual whose death occurs in this state may not be interred, deposited in a vault or tomb, cremated, ~~donated to a school of medicine~~, or otherwise disposed of ~~as authorized by law~~, until a ~~burial-transit~~final disposition-transit permit has been properly issued by a subregistrar. ~~A burial-transit permit may not be issued by any subregistrar until a complete and satisfactory certificate and return of the death has been filed with the state registrar.~~ If the certificate is incorrect or incomplete, the subregistrar may not issue the permit until it is corrected or completed. In the case of any death outside of this state, a ~~burial-transit~~final disposition-transit permit issued in accordance with the law and the health regulations in force in the state where the death occurred, when accompanying a body shipped through or into this state, may be accepted with the same effect as a permit from a subregistrar. If the death occurred from some disease that is held to be communicable by the state department of health, the subregistrar shall refuse to issue a permit for the removal or other disposition of the body except under the conditions prescribed by the state department of health and the local board of health.

SECTION 13. AMENDMENT. Section 23-06-08 of the North Dakota Century Code is amended and reenacted as follows:

23-06-08. ~~Burial-transit~~Final disposition-transit permit - Contents.

The ~~burial-transit~~final disposition-transit permit must be on the form prescribed by the state registrar of vital statistics, must be signed by the subregistrar issuing it, and may be limited to a statement by the subregistrar showing:

1. That a satisfactory death record has been filed with the state registrar as required by law.
2. That permission is granted to inter, remove, or otherwise dispose of as authorized by law the body of the deceased.
3. The name, age, and sex, ~~and the cause of death~~ of the deceased and any other necessary details.

SECTION 14. AMENDMENT. Section 23-06-09 of the North Dakota Century Code is amended and reenacted as follows:

23-06-09. Disposition of ~~burial-transit~~final disposition-transit permit.

The ~~undertaker~~funeral practitioner, or ~~person~~individual acting as ~~undertaker~~funeral practitioner, shall secure the ~~burial-transit~~final disposition-transit permit from the subregistrar. The ~~undertaker~~funeral practitioner, or person acting as ~~undertaker~~funeral practitioner, shall deliver such permit to the sexton or person in charge of the place of ~~burial~~final disposition before interring the body, ~~cremating the body, donating the body to a medical school, or otherwise disposing of the body as authorized by law,~~ or shall attach it to the box containing the corpse when the same is shipped by any transportation company. Such permit must be accepted by the sexton ~~or person in charge~~ as authority for the ~~interment~~final disposition of the body. A body may not be accepted for carriage by a common carrier unless the permit is attached as required in this section.

SECTION 15. AMENDMENT. Section 23-06-10 of the North Dakota Century Code is amended and reenacted as follows:

23-06-10. Sextons to endorse and return ~~burial-transit~~final disposition-transit permit - Record of burials.

Each sexton or person in charge of the burial ground shall endorse the date of interment upon the ~~burial-transit~~final disposition-transit permit over the person's signature, and return the ~~burial-transit~~final disposition-transit permit to the ~~subregistrar~~county recorder. The subregistrar ~~or sexton~~ shall file all completed permits, so endorsed, with the county recorder within ten days after the date of interment or within the time prescribed by the local board of health.

The sexton shall keep a record of all interments made in the premises under the sexton's charge, stating the name of the deceased ~~person~~individual, the place of death, the date of burial, and the name and address of the ~~undertaker or funeral director~~practitioner. Such record at all times must be open to public inspection.

In the absence of a sexton, the funeral director making the burial shall endorse and return the ~~burial-transit~~final disposition-transit permit to the subregistrar.

SECTION 16. AMENDMENT. Section 23-06-11 of the North Dakota Century Code is amended and reenacted as follows:

23-06-11. Burial without ~~burial-transit~~final disposition-transit permit - Penalty.

It is unlawful for a person, acting as an ~~undertaker~~a funeral practitioner, to inter, remove, or otherwise dispose of ~~as authorized by law~~ the body of any deceased ~~person~~individual without having received a ~~burial-transit~~final disposition-transit permit.

SECTION 17. AMENDMENT. Section 23-06-12 of the North Dakota Century Code is amended and reenacted as follows:

23-06-12. Transporting body without ~~burial-transit~~final disposition-transit permit.

It is unlawful for a transportation company or common carrier to transport, or accept for transportation, the body of any deceased ~~person~~individual unless that body is accompanied by a ~~burial-transit~~final disposition-transit permit issued in accordance with the provisions of this chapter.

SECTION 18. AMENDMENT. Section 23-06-13 of the North Dakota Century Code is amended and reenacted as follows:

23-06-13. Dissection - When allowed.

The dead body of a human being may be dissected:

1. When the death occurs under circumstances in which a coroner is authorized by law to hold an inquest upon the body, and a coroner authorizes such dissection for the purposes of the inquest;
2. ~~When~~~~If the husband, wife~~~~spouse,~~ or one of the next of kin of a deceased ~~person~~individual, charged by law with the duty of ~~burial~~final disposition, authorizes such dissection for the purposes of ascertaining the cause of death; or
3. When permission has been given therefor by deceased.

SECTION 19. AMENDMENT. Section 23-06-26 of the North Dakota Century Code is amended and reenacted as follows:

23-06-26. Purchasing body forbidden - Penalty.

Every person who purchases or who receives, except for the purpose of burial~~final disposition~~, any dead body of a human being, knowing that the same has been removed contrary to the provisions of this chapter, is guilty of a class C felony.

SECTION 20. AMENDMENT. Subsection 8 of section 23-06.6-13 of the North Dakota Century Code is amended and reenacted as follows:

8. Subject to subsection 9 of section 23-06.6-10 and section 23-06.6-22, the rights of the person to which a part passes under section 23-06.6-10 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, whole-body donation to a school of medicine, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 23-06.6-11, upon the death of the donor and before embalming, burial, whole-body donation to a school of medicine, or cremation, shall cause the part to be removed without unnecessary mutilation.

SECTION 21. AMENDMENT. Section 30.1-28-06 of the North Dakota Century Code is amended and reenacted as follows:

30.1-28-06. (5-306) Termination of guardianship.

The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, except, the guardian may arrange for a deceased ward's burial~~final disposition~~ and refer the ward's estate to probate, if no other person is available to perform those acts, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 30.1-28-07. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect the guardian's liability for prior acts nor the guardian's obligation to account for funds and assets of the ward.

SECTION 22. AMENDMENT. Subsection 4 of section 43-10-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Final disposition" means the entombment, burial in a cemetery, ~~or cremation,~~ removal from the state, or whole-body donation to a school of medicine of a dead human body.

SECTION 23. AMENDMENT. Section 43-10-15.4 of the North Dakota Century Code is amended and reenacted as follows:

43-10-15.4. Intern embalmer - Application - Qualifications.

The board shall issue a certificate of registration as an intern embalmer to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by a fee not to exceed fifty dollars, and who furnishes sufficient evidence to the board that the applicant:

1. Is at least eighteen years of age;
2. Is of good moral character; and
3. Has completed an accredited four-year high school course of study and ~~two years~~one year of accredited college or university studies; ~~and~~
4. ~~Has graduated from an accredited college of mortuary science.~~

SECTION 24. AMENDMENT. Section 43-10-21 of the North Dakota Century Code is amended and reenacted as follows:

43-10-21. Definition.

As used in sections 43-10-21 through 43-10-24, the term "funeral establishment" ~~shall mean~~means a place of business situated at a specific street address or location, and used in the care and preparation for burial, transportation, or other disposition of dead human bodies, or used for the purpose of conducting funeral services. ~~A branch establishment is a funeral establishment and must be independently licensed.~~

SECTION 25. AMENDMENT. Section 43-10.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-02. Pre-need funeral service contracts.

A person may not engage in the sale or execution of a pre-need funeral service contract unless that person is the operator, agent, employee, or manager of a licensed funeral establishment or cemetery association. As part of the sale of a pre-need funeral service contract, the seller shall inform the purchaser of the extent to which the person with the duty of ~~burial~~final disposition under section 23-06-03 might be bound by any pre-need funeral arrangements.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1294.

House Vote: Yeas 90 Nays 1 Absent 3

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State