

Sixty-fifth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1338

Introduced by

Representatives Seibel, Kreidt, Nathe, Porter

Senators Klein, D. Larson, J. Lee

1 A BILL for an Act to amend and reenact section 23-06-03 of the North Dakota Century Code,  
2 relating to indigent burial.

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

4 **SECTION 1. AMENDMENT.** Section 23-06-03 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **23-06-03. Duty of burial - Indigent burial - Decedent's instructions.**

7 1. The duty of ~~burying~~disposition of the body of a deceased individual devolves upon the  
8 following individual in the order of priority:

9 a. Any legally competent adult given the duty of final disposition by the deceased  
10 individual in a statement conforming with section 23-06-31, except the legally  
11 competent adult specified in the statement conforming with section 23-06-31 may  
12 decline the duty of final disposition unless the individual would otherwise have  
13 the duty of final disposition under this section;

14 b. The surviving husband or wife~~spouse~~ if the deceased was married ~~or, if ;~~ ;

15 c. If the deceased was not married but left kindred, upon one or more individuals in  
16 the same degree, of adult age, nearest of kin to the deceased and possessed of  
17 sufficient means to defray the necessary expenses~~the majority of the adult~~  
18 children of the decedent; however, in the absence of actual knowledge to the  
19 contrary, a funeral director or mortician may rely on instructions given by the child  
20 who represents to be the sole surviving child or the children who represent to  
21 constitute a majority of the surviving children;

22 d. The surviving parent or parents of the decedent, each having equal authority;

23 e. The adult sibling or the majority of the adult siblings of the decedent; however, in  
24 the absence of actual knowledge to the contrary, a funeral director or mortician

- 1           may rely on instructions given by the sibling who represents to be the sole  
2           surviving sibling or the siblings who represent to constitute a majority of the  
3           surviving siblings:
- 4           f. The adult grandchild or the majority of the adult grandchildren of the decedent;  
5           however, in the absence of actual knowledge to the contrary, a funeral director or  
6           mortician may rely on instructions given by a grandchild who represents to be the  
7           only grandchild reasonably available to control final disposition of the decedent's  
8           remains or the grandchildren who represent to constitute a majority of  
9           grandchildren reasonably available to control final disposition of the decedent's  
10          remains;
- 11          g. The grandparent or the grandparents of the decedent, each having equal  
12          authority;
- 13          h. The adult nieces and nephews of the decedent or a majority of the adult nieces  
14          and nephews; however, in the absence of actual knowledge to the contrary, a  
15          funeral director or mortician may rely on instructions given by a niece or nephew,  
16          who represents to be the only niece or nephew reasonably available to control  
17          final disposition of the decedent's remains or the nieces and nephews who  
18          represent to constitute a majority of the nieces and nephews reasonably  
19          available to control final disposition of the decedent's remains;
- 20          i. An individual who was acting as the guardian of the decedent with authority to  
21          make health care decisions for the decedent at the time of death;
- 22          j. An adult who exhibited special care and concern for the decedent;
- 23          k. An individual respectively in the next degree of kinship in the order named by law  
24          to inherit the estate of the decedent; or
- 25          l. The appropriate public or court authority, as required by law. For purposes of this  
26          subdivision, the appropriate public or court authority includes the county social  
27          service board of the county in which the death occurred if the individual dies  
28          without apparent financial means to provide for final disposition or the district  
29          court in the county in which the death occurred.
- 30          2. If there is only one individual in a degree of relationship to the decedent described in  
31          subsection 1, and a district court determines the person and the decedent were

1 estranged at the time of death, the right to control and the duty of disposition devolves  
2 to the next degree of relationship under subsection 1. For purposes of this subsection,  
3 "estranged" means having a relationship characterized by mutual enmity, hostility, or  
4 indifference.

5 3. If an individual to whom the right to control and duty of disposition devolves under  
6 subsection 1, refuses to accept or declines to act upon the right or duty, that right and  
7 duty passes as follows:

- 8 a. To another individual with the same degree of relationship to the decedent as the  
9 individual refusing to accept or declining to act; or  
10 b. To the individual in the next degree of relationship to the decedent under  
11 subsection 1.

12 4. If a dispute exists regarding the right to control or duty of disposition, the parties in  
13 dispute or the mortician or funeral director may file a petition in the district court in the  
14 county of residence of the decedent requesting the court make a determination in the  
15 matter. If the right to control and duty of disposition devolves to more than one  
16 individual with the same degree of relationship to the decedent and those individuals  
17 do not, by majority vote, make a decision regarding arrangements and final disposition  
18 and a district court has been petitioned to make a determination, the court shall  
19 consider the following factors in making a determination:

- 20 a. The reasonableness, practicality, and resources available for payment of the  
21 proposed arrangements and final disposition;  
22 b. The degree of the personal relationship between the decedent and each of the  
23 individuals in the same degree of relationship to the decedent;  
24 c. The expressed wishes and directions of the decedent and the extent to which the  
25 decedent provided resources for the purpose of carrying out the wishes or  
26 directions; and  
27 d. The degree to which the arrangements and final disposition will allow for  
28 participation by all who wish to pay respect to the decedent.

29 5. If the individual who has the duty of ~~burial~~final disposition does not ~~bury~~arrange for  
30 final disposition of the body within the time required by this chapter, the individual next

1 specified shall bury or otherwise dispose of the body within the requirements of this  
2 chapter.

3 ~~3-6.~~ a. If the deceased is not survived by an individual described by subsection 1 and  
4 did not leave sufficient means to ~~defray funeral pay for expenses of final~~  
5 disposition, including the cost of a casket, within fifteen days of application for  
6 services the county social service board of the county in which the deceased had  
7 residence for county general assistance purposes or, if residence cannot be  
8 established, within fifteen days of application for assistance the county social  
9 service board of the county in which the death occurs shall employ ~~some~~ a person  
10 to arrange for and supervise the ~~burial or cremation~~ final disposition. If the  
11 deceased was a resident or inmate of a public institution, within fifteen days of  
12 application for assistance the county in which the deceased was a resident for  
13 county general assistance purposes immediately before entering the institution  
14 shall employ a person to arrange for and supervise the burial or cremation.

15 b. Each board of county commissioners may negotiate with the interested funeral  
16 directors or funeral homes regarding cremation expenses and burial expenses  
17 but the total charges for burial services, including transportation of the deceased  
18 to the place of burial, the grave box or vault, grave space, and grave opening and  
19 closing expenses, may not be less than one thousand five hundred dollars.

20 c. The county social services board may provide for the use of a military casket or  
21 urn, if the deceased was a veteran as defined in section 37-01-40, unless the  
22 additional cost exceeds the negotiated expenses of this section or a surviving  
23 spouse or the nearest of kin of the deceased elects a nonmilitary casket.

24 d. The county social service board shall pay the charge for funeral expenses as  
25 negotiated by the board of county commissioners, ~~less any.~~ The county social  
26 service board may not decrease the county payment due to a nominal amount  
27 left by the deceased or contributed by kin or any other party to defray the  
28 expenses of burial or cremation. Funds adequate to allow for burial instead of  
29 cremation are considered nominal under this section.

30 ~~4-7.~~ If the individual with the duty of ~~burial~~ final disposition under this section, or the  
31 personal representative of the decedent's estate, if any, is aware of the decedent's

1 instructions regarding the disposition of the remains, that person shall honor those  
2 instructions, to the extent reasonable and possible, to the extent the instructions do  
3 not impose an economic or emotional hardship. A decedent's instructions may be  
4 reflected in a variety of methods, including pre-need funeral arrangements a deceased  
5 articulated and funded in a pre-need funeral service contract, a health care directive, a  
6 durable power of attorney for health care, a power of attorney, a will, a document  
7 created under section 23-06-31, or a document of gift for an anatomical gift.

8 5-8. If the decedent died while serving in any branch of the United States armed forces, the  
9 United States reserve forces, or the national guard, as provided by 10 U.S.C. 1481  
10 section (a)(1) through (8) as effective through December 2001, and completed a  
11 United States department of defense record of emergency data, DD form 93, or its  
12 successor form or its equivalent branch's form, the duty to bury or cremate the  
13 decedent or to provide other funeral and disposition arrangements for the decedent  
14 devolves on the person authorized by the decedent pursuant to that form.