

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 wifespouse 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 expensesthe 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, and is not survived by an individual
6 described by subsection 1 and identified for financial responsibility within the
7 county's general assistance policy, within fifteen days of application for services
8 the county social service board of the county in which the deceased had
9 residence for county general assistance purposes or, if residence cannot be
10 established, within fifteen days of application for assistance the county social
11 service board of the county in which the death occurs shall employ ~~some~~a person
12 to arrange for and supervise the ~~burial or cremation~~final disposition. If the
13 deceased was a resident or inmate of a public institution, within fifteen days of
14 application for assistance the county in which the deceased was a resident for
15 county general assistance purposes immediately before entering the institution
16 shall employ a person to arrange for and supervise the burial or cremation.
- 17 b. Each board of county commissioners may negotiate with the interested funeral
18 directors or funeral homes regarding cremation expenses and burial expenses
19 but the total charges for burial services, including transportation of the deceased
20 to the place of burial, the grave box or vault, grave space, and grave opening and
21 closing expenses, may not be less than one thousand five hundred dollars.
- 22 c. The county social services board may provide for the use of a military casket or
23 urn, if the deceased was a veteran as defined in section 37-01-40, unless the
24 additional cost exceeds the negotiated expenses of this section or a surviving
25 spouse or the nearest of kin of the deceased elects a nonmilitary casket.
- 26 d. The county social service board shall pay the charge for funeral expenses as
27 negotiated by the board of county commissioners, ~~less any.~~ The county social
28 service board may not decrease the county payment due to a nominal amount
29 left by the deceased or contributed by kin or any other party to defray the
30 expenses of burial or cremation. Funds adequate to allow for burial instead of
31 cremation are considered nominal under this section.

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