

**SENATE BILL NO. 2208**

Introduced by

Senators J. Lee, Mathern, K. Roers

Representatives Nathe, Schreiber-Beck, Tveit

1 A BILL for an Act to amend and reenact sections 23-06-03 and 23-06-31 of the North Dakota  
2 Century Code, relating to authority to and immunity for disposition of the dead.

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 final disposition - Indigent burial - Decedent's instructions.**

7 1. The duty of 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 spouse if the deceased was married;
- 15 c. If the deceased was not married but left kindred, upon the majority of the adult  
16 children of the decedent; however, in the absence of actual knowledge to the  
17 contrary, a funeral director or mortician may rely on instructions given by the child  
18 who represents to be the sole surviving child or the children who represent to  
19 constitute a majority of the surviving children;
- 20 d. The surviving parent or parents of the decedent, each having equal authority;
- 21 e. The adult sibling or the majority of the adult siblings of the decedent; however, in  
22 the absence of actual knowledge to the contrary, a funeral director or mortician  
23 may rely on instructions given by the sibling who represents to be the sole

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

1 to the next degree of relationship under subsection 1. For purposes of this subsection,  
2 "estranged" means having a relationship characterized by mutual enmity, hostility, or  
3 indifference.

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

7 a. To another individual with the same degree of relationship to the decedent as the  
8 individual refusing to accept or declining to act; or

9 b. To the individual in the next degree of relationship to the decedent under  
10 subsection 1.

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

19 a. The reasonableness, practicality, and resources available for payment of the  
20 proposed arrangements and final disposition;

21 b. The degree of the personal relationship between the decedent and each of the  
22 individuals in the same degree of relationship to the decedent;

23 c. The expressed wishes and directions of the decedent and the extent to which the  
24 decedent provided resources for the purpose of carrying out the wishes or  
25 directions; and

26 d. The degree to which the arrangements and final disposition will allow for  
27 participation by all who wish to pay respect to the decedent.

28 5. If the individual who has the duty of final disposition does not arrange for final  
29 disposition of the body within the time required by this chapter, the individual next  
30 specified shall bury or otherwise dispose of the body within the requirements of this  
31 chapter.

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

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 or cremate 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.

9. A funeral director or mortician has complete authority to control the final disposition and to proceed under this chapter to recover reasonable charges for the final disposition if:

a. The funeral director or mortician has actual knowledge none of the individuals described in subsection 1 exist, can be found after reasonable inquiry, or can be contacted by reasonable means; and

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

**SECTION 2. AMENDMENT.** Section 23-06-31 of the North Dakota Century Code is amended and reenacted as follows:

**23-06-31. Cremation or other lawful disposition of a body - Authorization document - Immunity.**

1. A legally competent adult may prepare a written statement directing the cremation or other lawful disposition of that adult's own remains pursuant to section 23-06-03. The written statement must be signed and dated by the legally competent adult and may be part of the legally competent adult's will.

- 1        2. A document that conforms to this section authorizes a crematorium or funeral  
2        establishment to carry out the instructions of the legally competent adult who is the  
3        subject of the document. It is not necessary for a crematorium or funeral establishment  
4        to obtain the consent or concurrence of any other person when the crematorium or  
5        funeral establishment cremates or otherwise provides for the lawful disposition of a  
6        body pursuant to instructions contained in a document that conforms to this section.
- 7        3. This section does not mandate that a crematorium or funeral establishment cremate or  
8        otherwise provide for the lawful disposition of a body pursuant to the document unless  
9        the legally competent adult who executed the document articulated and funded in a  
10       pre-need funeral service contract the legally competent adult's instructions as  
11       expressed in the document.
- 12       4. A crematorium or funeral establishment that cremates or otherwise provides for the  
13       lawful disposition of a body in good-faith reliance upon instructions of a decedent or an  
14       individual to whom the crematorium or funeral establishment reasonably believes is  
15       entitled to control final disposition pursuant to section 23-06-03 or on an apparently  
16       genuine document executed pursuant to this section is not subject to criminal  
17       prosecution, civil liability, or professional discipline. The decision of a crematorium or  
18       funeral establishment to cremate or otherwise provide for the lawful disposition of a  
19       body in reliance on a document executed pursuant to this section is presumed to be  
20       made in good faith.