

HOUSE BILL NO. 1323

Introduced by

Representatives Dahl, DeKrey, Nathe

Senators Olafson, Schneider

1 A BILL for an Act to create and enact a new section to chapter 23-06 of the North Dakota
2 Century Code, relating to preparations for disposition at death; and to amend and reenact
3 section 23-06-03 of the North Dakota Century Code, relating to duty of burial.

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

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

7 **23-06-03. Duty of burial.**

- 8 1. The duty of burying the body of a deceased ~~person~~ individual devolves upon the
9 surviving husband or wife if the deceased was married or, if the deceased was not
10 married but left kindred, upon ~~the person or persons~~ one or more individuals in the
11 same degree, of adult age, nearest of kin to the deceased and possessed of
12 sufficient means to defray the necessary expenses.
- 13 2. If the ~~person~~ individual who has the duty of burial does not bury the body within the
14 time required by this chapter, the ~~person~~ individual next specified shall bury the
15 body.
- 16 3. If the deceased is not survived by ~~a person~~ an individual described by subsection 1
17 and did not leave sufficient means to defray funeral expenses, including the cost of
18 a casket, the county social service board of the county in which the deceased had
19 residence for county general assistance purposes or, if residence cannot be
20 established, the county social service board of the county in which the death
21 occurs shall employ some person to arrange for and supervise the burial or
22 cremation. If the deceased was a resident or inmate of a public institution, the
23 county in which the deceased was a resident for county general assistance
24 purposes immediately before entering the institution shall employ a person to

1 arrange for and supervise the burial or cremation. Each board of county
2 commissioners may negotiate with the interested funeral directors or funeral
3 homes regarding cremation expenses and burial expenses but the total charges for
4 burial services, including transportation of the deceased to the place of burial, the
5 grave box or vault, grave space, and grave opening and closing expenses, may not
6 be less than one thousand five hundred dollars. The county social service board
7 shall pay the charge for funeral expenses as negotiated by the board of county
8 commissioners, less any amount left by the deceased to defray the expenses.

9 4. A If the person with the duty of burial under this section, or the personal
10 representative of the decedent's estate, if any, is aware of the decedent's wishes
11 regarding the disposition of the remains, that person shall honor those wishes, to
12 the extent reasonable and possible, any to the extent the wishes do not impose an
13 economic or emotional hardship. A decedent's wishes may be reflected in a
14 variety of methods, including pre-need funeral arrangements a deceased
15 articulated and funded in a pre-need funeral service contract, a living will, a durable
16 power of attorney for health care, a power of attorney, a will, a document created
17 under section 2 of this Act, or a document of gift for an anatomical gift.

18 5. A funeral establishment or crematorium that relies in good faith upon instructions
19 for disposition of a body which are given by a person authorized under this section
20 is not subject to civil liability or subject to disciplinary action for disposition of the
21 body in accordance with the instructions.

22 **SECTION 2.** A new section to chapter 23-06 of the North Dakota Century Code is
23 created and enacted as follows:

24 **Cremation or other lawful disposition of a body - Authorization document -**
25 **Immunity.**

26 1. A legally competent adult may prepare a written statement directing the cremation
27 or other lawful disposition of that adult's own remains pursuant to section 23-06-03.
28 The written statement may be part of the legally competent adult's will.
29 2. The legally competent adult who is the subject of a document described in
30 subsection 1 shall sign and date the document. The document must be notarized
31 or witnessed in writing by at least one adult who affirms that the notary or witness

1 was present when the legally competent adult signed and dated the document and
2 that the legally competent adult appeared to be of sound mind and free from
3 duress at the time of execution of the document.

4 3. A document that conforms to this section authorizes a crematorium or funeral
5 establishment to carry out the wishes of the legally competent adult who is the
6 subject of the document. It is not necessary for a crematorium or funeral
7 establishment to obtain the consent or concurrence of any other person when the
8 crematorium or funeral establishment cremates or otherwise provides for the lawful
9 disposition of a body pursuant to instructions contained in a document that
10 conforms to this section.

11 4. This section does not mandate that a crematorium or funeral establishment
12 cremate or otherwise provide for the lawful disposition of a body pursuant to the
13 document unless the legally competent adult who executed the document
14 articulated and funded in a pre-need funeral service contract the legally competent
15 adult's wishes as expressed in the document.

16 5. A crematorium or funeral establishment that cremates or otherwise provides for the
17 lawful disposition of a body in good-faith reliance on an apparently genuine
18 document executed pursuant to this section is immune from criminal and civil
19 liability and is not subject to professional discipline. The decision of a crematorium
20 or funeral establishment to cremate or otherwise provide for the lawful disposition
21 of a body in reliance on a document executed pursuant to this section is presumed
22 to be made in good faith.