

2009 HOUSE JUDICIARY

HB 1323

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1323

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/28/09

Recorder Job Number: 8030, 8032

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1323.

Rep. Mike Nathe: Sponsor, support. This clarifies that the funeral operator will be able to honor the wishes of the person who made the arrangements instead of the PR, etc.

Chairman DeKrey: When a person dies, their body becomes the property of the next-of-kin right.

Rep. Nathe: Correct.

Chairman DeKrey: So this would step in front of that, whatever were the person's wishes would be honored.

Rep. Nathe: Yes. Sometimes a Personal Representative will want to do a certain thing that differs from the deceased person's will. Now we can honor what is in the Will.

Rep. Klemin: I'm not too sure about the word "wishes", it isn't a legal term.

Rep. Nathe: Instructions?

Rep. Klemin: Yes instructions would probably be the best evidence of what they want to do. The other question is that the decedent's wishes may be reflected in a variety of methods and then there is a list. Usually we say that including, but not limited to... I'm wondering to what extent we may have a problem if we allow the PR's that say, he told me just before he died

that he wanted this change...his dying breath was that he wanted to be cremated. Is that going to be satisfactory?

Rep. Nathe: I'm not sure exactly what they mean by "intent". Sometimes they come in and write down on a piece of paper that this is their wish.

Rep. Klemin: I've never seen this in a Living Will or Power of Attorney for Healthcare or Power of Attorney.

Rep. Delmore: Is there any kind of penalty, any protection in this bill at all, if someone's wishes are given and not followed.

Rep. Nathe: The family could initiate a lawsuit if something is done wrong now.

Rep. Delmore: What if the family members disagree what to do, if there isn't something written by the person who died.

Rep. Nathe: We sit down with the family members and work it out. This will give us more credence to say that this is how the person wanted his/her body handled after death. That way a family member can't say to do it this way or that way just to make trouble.

Rep. Hatlestad: If it's written in the Will, how do you get access to that information on how the person wanted to be buried; since the Will probably isn't opened immediately?

Rep. Nathe: We ask the family to bring the Will in and we find out if the person provided instruction or not.

Rep. Klemin: On page 2, subsection 2, there is some awkward and confusing language that may need to be revised. At the end of line 30, the document must be notarized, witnessed in writing by at least one adult who affirms that the notary or witness was present.

Rep. Nathe: Perhaps Rep. Dahl can answer that.

Ch. DeKrey: Thank you. Further testimony in support. Testimony in opposition. Neutral.

Christopher Dodson, ND Catholic Conference: Neutral. We don't call it a Living Will any longer. We now call it a Healthcare Directive Act. There is language in the Healthcare Directive Act; that has to do with a person's intent based on what is written in a document or expressed orally.

Rep. Koppelman: Are you saying that both the terms, Living Will and Durable of Power of Attorney for Healthcare do not apply.

Christopher Dodson: That's correct.

Rep. Koppelman: What if those documents were drawn up and that section of law is repealed, are they still in effect.

Christopher Dodson: They are still in force and effect. The term to be used now is Healthcare Directive. Then you have an agent, and that speeds up the process.

Chairman DeKrey: Thank you. Further testimony. We will close the hearing. I will appoint a subcommittee of Rep. Klemin, Rep. Dahl, and Rep. Griffin to look at this and bring something to committee next week.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1323

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/3/09

Recorder Job Number: 8495

Committee Clerk Signature



Minutes:

Ch. DeKrey: We will take a look at HB 1323.

Rep. Dahl: Explained the amendment. I move the amendment. We took out the word "wishes" and replaced it with "instructions". We replaced living will with health care directive.

On page 2, on line 27 we inserted "the legally competent adult must sign and date the statement", and removed lines 29-31 because they weren't needed and unnecessary. On page 3, line 17, after reliance insert "upon instructions of a decedent pursuant to section 23-06-03 or", and on line 18, replace "immune from criminal and" with "not subject to" and on line 19 replace "and is not subject to" with "or".

Rep. Klemin: Second.

Chairman DeKrey: Voice vote. Motion carried. We now have the bill before us as amended.

Rep. Dahl: I move a Do Pass as amended.

Rep. Delmore: Second.

12 YES 0 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Dahl

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1323

Page 2, line 10, replace "wishes" with "instructions"

Page 2, line 11, replace "wishes" with "instructions"

Page 2, line 12, replace "wishes" with "instructions"

Page 2, line 13, replace "wishes" with "instructions"

Page 2, line 15, replace "living will" with "health care directive"

Page 2, remove lines 18 through 21

Page 2, line 27, after the period insert "The legally competent adult must sign and date the statement."

Page 2, remove lines 29 through 31

Page 3, remove lines 1 through 3

Page 3, line 5, replace "wishes" with "instructions"

Page 3, line 15, replace "wishes" with "instructions"

Page 3, line 17, after "reliance" insert "upon instructions of a decedent pursuant to section 23-06-03 or"

Page 3, line 18, replace "immune from criminal and" with "not subject to"

Page 3, line 19, replace "and is not subject to" with "or"

Renumber accordingly

VR
2/4/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1323

Page 2, line 10, replace "wishes" with "instructions"

Page 2, line 11, replace "wishes" with "instructions"

Page 2, line 12, replace "wishes" with "instructions"

Page 2, line 13, replace "wishes" with "instructions"

Page 2, line 15, replace "living will" with "health care directive"

Page 2, line 17, remove the underscored period

Page 2, remove lines 18 through 20

Page 2, line 21, remove "body in accordance with the instructions"

Page 2, line 28, after "statement" insert "must be signed and dated by the legally competent adult and"

Page 2, remove lines 29 through 31

Page 3, remove lines 1 through 3

Page 3, line 4, replace "3." with "2."

Page 3, line 5, replace "wishes" with "instructions"

Page 3, line 11, replace "4." with "3."

Page 3, line 15, replace "wishes" with "instructions"

Page 3, line 16, replace "5." with "4."

Page 3, line 17, after "reliance" insert "upon instructions of a decedent pursuant to section 23-06-03 or"

Page 3, line 18, replace "immune from criminal and" with "not subject to"

Page 3, line 19, replace "and is not subject to" with "or"

Renumber accordingly

Date: 2/3/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1323

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Dahl Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf		
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 1

Floor Carrier: Rep. Dahl

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1323: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1323 was placed on the Sixth order on the calendar.

Page 2, line 10, replace "wishes" with "instructions"

Page 2, line 11, replace "wishes" with "instructions"

Page 2, line 12, replace "wishes" with "instructions"

Page 2, line 13, replace "wishes" with "instructions"

Page 2, line 15, replace "living will" with "health care directive"

Page 2, line 17, remove the underscored period

Page 2, remove lines 18 through 20

Page 2, line 21, remove "body in accordance with the instructions"

Page 2, line 28, after "statement" insert "must be signed and dated by the legally competent adult and"

Page 2, remove lines 29 through 31

Page 3, remove lines 1 through 3

Page 3, line 4, replace "3." with "2."

Page 3, line 5, replace "wishes" with "instructions"

Page 3, line 11, replace "4." with "3."

Page 3, line 15, replace "wishes" with "instructions"

Page 3, line 16, replace "5." with "4."

Page 3, line 17, after "reliance" insert "upon instructions of a decedent pursuant to section 23-06-03 or"

Page 3, line 18, replace "immune from criminal and" with "not subject to"

Page 3, line 19, replace "and is not subject to" with "or"

Re-number accordingly

2009 SENATE JUDICIARY

HB 1323

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1323

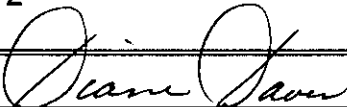
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/11/09

Recorder Job Number: 10672

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to preparations for disposition at death, relating to duty of burial.

Representative Stacie Dahl – District 42 – Introduced the bill – See written testimony.

Senator Nething - Asks about the amendments the House made.

Rep. Dahl – Says they made small technical changes about changing wishes to instructions.

This was modeled after an Arizona law.

Senator Nething – Asks her if this is only binding if they have a preneed funeral service contract.

Rep. Dahl – Yes, in subsection 3. It insures that just because there is a will it doesn't mandate that the funeral establishment provide services solely based on that document, there can be a contract.

Senator Nething – Gives a scenario and wonders if the agreement would still stand.

Rep. Dahl – This provision just provides we don't put a mandate on anyone.

Senator Nething – It is still binding on the family.

Rep. Dahl – Replies, that is correct.

Senator Nething – Assuming they have made financial arrangements the funeral home can proceed with the cremation and not be held liable for any responsibility.

Senator Fiebiger – Questions section one, are they okay with the word kindred and kin.

Rep. Dahl – There was no discussion with that on the House side.

Senator Fiebiger – Questions section two, does the document need to be notarized or witnessed other than just signed and dated.

Rep. Dahl – Said you don't need to have a will notarized to have an effective will. Since that is one of the documents you may express your intent it is a requirement you don't need.

Senator Schneider - Asks what falls under an economic hardship.

Rep. Dahl – Responds, that may be an issue for the courts to decide.

Jack McDonald – For the ND Funeral Directors Association- In support of. He relates the dilemma for funeral directors.

Close hearing 1323

Senator Lyson moves do pass

Senator Olafson seconds

Senator Schneider will carry

Date: 5/11/91
Roll Call Vote #: 1

1323

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen Lysa Seconded By Sen Okeson

[illegible]

Total (Yes) 6 (N) 0

Absent

Floor Assignment Sen. Schneider

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1323, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1323 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1323

HB 1323

March 11, 2009

Stacey Dahl, State Representative, District 42

Mr. Chairman and Members of the Committee,

For the record I am Representative Stacey Dahl from District 42 in Grand Forks. This bill is before you this morning, because too often the decision of the disposition of the deceased is left with the next of kin who do not always uphold the wishes of the deceased. I worked with a civil law firm in Grand Forks and this issue arose when one of the attorneys in the office had a client this affected.

Page one of the bill provides style and grammar changes. Subsection 4 on page two strengthens state law in providing additional means by which the deceased can express their wishes with respect to their remains.

Section 2- deals specifically with the document that authorizes the disposition of the body. I.e. it provides that it must be signed and dated. It further makes clear the funeral establishment may rely on the document and do not need permission from any other individual to carry out the wishes of the deceased. This section also makes clear that a document is not a mandate on a funeral establishment if there were no pre-funded contract. Finally, the bill seeks to limit the liability of a funeral home that relies on a document authorized by this statute in good faith.

Mr. Chairman and members of the committee, I am certainly not an expert in this area, but would attempt to answer any questions you may have regarding this bill.