

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1323
(Representatives Dahl, DeKrey, Nathe)
(Senators Olafson, Schneider)

AN ACT to create and enact a new section to chapter 23-06 of the North Dakota Century Code, relating to preparations for disposition at death; and to amend and reenact section 23-06-03 of the North Dakota Century Code, relating to duty of burial.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

23-06-03. Duty of burial.

1. The duty of burying the body of a deceased ~~person~~ individual devolves upon the surviving husband or wife if the deceased was married or, if the deceased was not married but left kindred, upon ~~the person or persons~~ one or more individuals in the same degree, of adult age, nearest of kin to the deceased and possessed of sufficient means to defray the necessary expenses.
2. If the ~~person~~ individual who has the duty of burial does not bury the body within the time required by this chapter, the ~~person~~ individual next specified shall bury the body.
3. If the deceased is not survived by ~~a person~~ an individual described by subsection 1 and did not leave sufficient means to defray funeral expenses, including the cost of a casket, the county social service board of the county in which the deceased had residence for county general assistance purposes or, if residence cannot be established, the county social service board of the county in which the death occurs shall employ some person to arrange for and supervise the burial or cremation. If the deceased was a resident or inmate of a public institution, the county in which the deceased was a resident for county general assistance purposes immediately before entering the institution shall employ a person to arrange for and supervise the burial or cremation. Each board of county commissioners may negotiate with the interested funeral directors or funeral homes regarding cremation expenses and burial expenses but the total charges for burial services, including transportation of the deceased to the place of burial, the grave box or vault, grave space, and grave opening and closing expenses, may not be less than one thousand five hundred dollars. The county social service board shall pay the charge for funeral expenses as negotiated by the board of county commissioners, less any amount left by the deceased to defray the expenses.
4. A If the person with the duty of burial under this section, or the personal representative of the decedent's estate, if any, is aware of the decedent's instructions regarding the disposition of the remains, that person shall honor those instructions, to the extent reasonable and possible, any 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 2 of this Act, or a document of gift for an anatomical gift.

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

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.
2. A document that conforms to this section authorizes a crematorium or funeral establishment to carry out the instructions of the legally competent adult who is the subject of the document. It is not necessary for a crematorium or funeral establishment to obtain the consent or concurrence of any other person when the crematorium or funeral establishment cremates or otherwise provides for the lawful disposition of a body pursuant to instructions contained in a document that conforms to this section.
3. This section does not mandate that a crematorium or funeral establishment cremate or otherwise provide for the lawful disposition of a body pursuant to the document unless the legally competent adult who executed the document articulated and funded in a pre-need funeral service contract the legally competent adult's instructions as expressed in the document.
4. A crematorium or funeral establishment that cremates or otherwise provides for the lawful disposition of a body in good-faith reliance upon instructions of a decedent pursuant to section 23-06-03 or on an apparently genuine document executed pursuant to this section is not subject to civil liability or professional discipline. The decision of a crematorium or funeral establishment to cremate or otherwise provide for the lawful disposition of a body in reliance on a document executed pursuant to this section is presumed to be made in good faith.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1323.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 44 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State