

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

1 the extent reasonable and possible, to the extent the instructions do not impose an
2 economic or emotional hardship. A decedent's instructions may be reflected in a
3 variety of methods, including pre-need funeral arrangements a deceased articulated
4 and funded in a pre-need funeral service contract, a health care directive, a durable
5 power of attorney for health care, a power of attorney, a will, a document created
6 under section 23-06-31, or a document of gift for an anatomical gift.

7 8. If the decedent died while serving in any branch of the United States armed forces, the
8 United States reserve forces, or the national guard, as provided by 10 U.S.C. 1481
9 section (a)(1) through (8) as effective through December 2001, and completed a
10 United States department of defense record of emergency data, DD form 93, or its
11 successor form or its equivalent branch's form, the duty to bury or cremate the
12 decedent or to provide other funeral and disposition arrangements for the decedent
13 devolves on the person authorized by the decedent pursuant to that form.

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

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

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

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

26 **23-06-31. Cremation or other lawful disposition of a body - Authorization document -**
27 **Immunity.**

28 1. A legally competent adult may prepare a written statement directing the cremation or
29 other lawful disposition of that adult's own remains pursuant to section 23-06-03. The
30 written statement must be signed and dated by the legally competent adult and may
31 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.