

HOUSE BILL NO. 1363

Introduced by

Representatives Rios, Conmy, Dakane, Dyk, Roers Jones, Swiontek

Senators Beard, Bekkedahl

1 A BILL for an Act to amend and reenact section 23-06-03 of the North Dakota Century Code,
2 relating to the duty of final disposition.

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~~:
- 15 (1) The deceased was married;
- 16 (2) The surviving spouse has not been arrested for, or pled guilty or nolo
17 contendere to, or has been found guilty of intentionally and feloniously killing
18 the deceased; and
- 19 (3) The surviving spouse has not admitted to or been charged with intentionally
20 and feloniously killing the deceased.
- 21 c. If the deceased was not married ~~but~~ or was intentionally and feloniously killed by
22 the surviving spouse, or the surviving spouse was arrested for, admitted to, or
23 was charged with intentionally and feloniously killing the deceased, and left
24 kindred, upon the majority of the adult children of the decedent; however, in the

- 1 absence of actual knowledge to the contrary, a funeral director or mortician may
2 rely on instructions given by the child who represents to be the sole surviving
3 child or the children who represent to constitute a majority of the surviving
4 children;
- 5 d. The surviving parent or parents of the decedent, each having equal authority;
- 6 e. The adult sibling or the majority of the adult siblings of the decedent; however, in
7 the absence of actual knowledge to the contrary, a funeral director or mortician
8 may rely on instructions given by the sibling who represents to be the sole
9 surviving sibling or the siblings who represent to constitute a majority of the
10 surviving siblings;
- 11 f. The adult grandchild or the majority of the adult grandchildren of the decedent;
12 however, in the absence of actual knowledge to the contrary, a funeral director or
13 mortician may rely on instructions given by a grandchild who represents to be the
14 only grandchild reasonably available to control final disposition of the decedent's
15 remains or the grandchildren who represent to constitute a majority of
16 grandchildren reasonably available to control final disposition of the decedent's
17 remains;
- 18 g. The grandparent or the grandparents of the decedent, each having equal
19 authority;
- 20 h. The adult nieces and nephews of the decedent or a majority of the adult nieces
21 and nephews; however, in the absence of actual knowledge to the contrary, a
22 funeral director or mortician may rely on instructions given by a niece or nephew,
23 who represents to be the only niece or nephew reasonably available to control
24 final disposition of the decedent's remains or the nieces and nephews who
25 represent to constitute a majority of the nieces and nephews reasonably
26 available to control final disposition of the decedent's remains;
- 27 i. An individual who was acting as the guardian of the decedent with authority to
28 make health care decisions for the decedent at the time of death;
- 29 j. An adult who exhibited special care and concern for the decedent;
- 30 k. An individual respectively in the next degree of kinship in the order named by law
31 to inherit the estate of the decedent; or

- 1 I. The appropriate public or court authority, as required by law. For purposes of this
2 subdivision, the appropriate public or court authority includes the human service
3 zone of the county in which the death occurred if the individual dies without
4 apparent financial means to provide for final disposition or the district court in the
5 county in which the death occurred.
- 6 2. If there is only one individual in a degree of relationship to the decedent described in
7 subsection 1, and a district court determines the person and the decedent were
8 estranged at the time of death, the right to control and the duty of disposition devolves
9 to the next degree of relationship under subsection 1. For purposes of this subsection,
10 "estranged" means having a relationship characterized by mutual enmity, hostility, or
11 indifference.
- 12 3. If an individual to whom the right to control and duty of disposition devolves under
13 subsection 1, refuses to accept or declines to act upon the right or duty, that right and
14 duty passes as follows:
 - 15 a. To another individual with the same degree of relationship to the decedent as the
16 individual refusing to accept or declining to act; or
 - 17 b. To the individual in the next degree of relationship to the decedent under
18 subsection 1.
- 19 4. If a dispute exists regarding the right to control or duty of disposition, the parties in
20 dispute or the mortician or funeral director may file a petition in the district court in the
21 county of residence of the decedent requesting the court make a determination in the
22 matter. If the right to control and duty of disposition devolves to more than one
23 individual with the same degree of relationship to the decedent and those individuals
24 do not, by majority vote, make a decision regarding arrangements and final disposition
25 and a district court has been petitioned to make a determination, the court shall
26 consider the following factors in making a determination:
 - 27 a. The reasonableness, practicality, and resources available for payment of the
28 proposed arrangements and final disposition;
 - 29 b. The degree of the personal relationship between the decedent and each of the
30 individuals in the same degree of relationship to the decedent;

- 1 c. The expressed wishes and directions of the decedent and the extent to which the
2 decedent provided resources for the purpose of carrying out the wishes or
3 directions; and
- 4 d. The degree to which the arrangements and final disposition will allow for
5 participation by all who wish to pay respect to the decedent.
- 6 5. If the individual who has the duty of final disposition does not arrange for final
7 disposition of the body within the time required by this chapter, the individual next
8 specified shall bury or otherwise dispose of the body within the requirements of this
9 chapter.
- 10 6. a. If the deceased did not leave sufficient means to pay for expenses of final
11 disposition, including the cost of a casket, and is not survived by an individual
12 described by subsection 1 and identified for financial responsibility within the
13 human service zone's general assistance policy, within fifteen days of application
14 for services the human service zone of the county in which the deceased had
15 residence for general assistance purposes or, if residence cannot be established,
16 within fifteen days of application for assistance the human service zone of the
17 county in which the death occurs shall employ a person to arrange for and
18 supervise the final disposition. If the deceased was a resident or inmate of a
19 public institution, within fifteen days of application for assistance the human
20 service zone in which the deceased was a resident for general assistance
21 purposes immediately before entering the institution shall employ a person to
22 arrange for and supervise the final disposition.
- 23 b. The department of health and human services may negotiate with the interested
24 funeral directors or funeral homes regarding cremation expenses and burial
25 expenses but the total charges for burial services, including transportation of the
26 deceased to the place of burial, the grave box or vault, grave space, and grave
27 opening and closing expenses, may not be less than one thousand five hundred
28 dollars.
- 29 c. The department of health and human services may provide for the use of a
30 military casket or urn, if the deceased was a veteran as defined in section
31 37-01-40, unless the additional cost exceeds the negotiated expenses of this

1 section or a surviving spouse or the nearest of kin of the deceased elects a
2 nonmilitary casket.

3 d. The human service zone shall pay the charge for funeral expenses as negotiated
4 by the department of health and human services. The human service zone may
5 not decrease the human service zone payment due to a nominal amount left by
6 the deceased or contributed by kin or any other party to defray the expenses of
7 burial or cremation. Funds adequate to allow for burial instead of cremation are
8 considered nominal under this section.

9 7. If the individual with the duty of final disposition under this section, or the personal
10 representative of the decedent's estate, if any, is aware of the decedent's instructions
11 regarding the disposition of the remains, that person shall honor those instructions, to
12 the extent reasonable and possible, to the extent the instructions do not impose an
13 economic or emotional hardship. A decedent's instructions may be reflected in a
14 variety of methods, including pre-need funeral arrangements a deceased articulated
15 and funded in a pre-need funeral service contract, a health care directive, a durable
16 power of attorney for health care, a power of attorney, a will, a document created
17 under section 23-06-31, or a document of gift for an anatomical gift.

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

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

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

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