

SENATE BILL NO. 2139

Introduced by

Senators Rummel, Cleary

Representatives Lefor, Steiner

1 A BILL for an Act to amend and reenact sections 11-19.1-15 and 23-06-03 of the North Dakota
2 Century Code, relating to final disposition of individuals who are indigent.

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

4 **SECTION 1. AMENDMENT.** Section 11-19.1-15 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **11-19.1-15. Notice of next of kin, disposition of personal belongings - Disposition of**
7 **body when next of kin cannot be found.**

8 The coroner of the county in which a death is discovered shall take charge of the case and
9 ensure that relatives or friends of the deceased individual, if known, are notified as soon as
10 possible, giving details of the death and disposition of the deceased individual. If the relatives or
11 friends of the deceased are unknown, the coroner shall dispose of the personal effects and
12 body in the following manner:

- 13 1. After using such clothing as may be necessary in the final disposition of the body, the
14 remaining personal effects of the deceased must be turned over to law enforcement
15 for appropriate disposition.
- 16 2. The remains must be:
- 17 a. Disposed of in accordance with section 23-06-14; or
- 18 b. Otherwise disposed of in accordance with the laws governing ~~the burial~~final
19 disposition of individuals within the state who are indigent persons within this
20 state.

21 **SECTION 2. AMENDMENT.** Section 23-06-03 of the North Dakota Century Code is
22 amended and reenacted as follows:

1 **23-06-03. Duty of final disposition - ~~Indigent burial~~Final disposition of individuals**
2 **who are indigent - Decedent's instructions.**

- 3 1. The duty of final disposition of the body of a deceased individual devolves upon the
4 following individual in the order of priority:
- 5 a. Any legally competent adult given the duty of final disposition by the deceased
6 individual in a statement conforming with section 23-06-31, except the legally
7 competent adult specified in the statement conforming with section 23-06-31 may
8 decline the duty of final disposition unless the individual would otherwise have
9 the duty of final disposition under this section;
 - 10 b. The surviving spouse if the deceased was married;
 - 11 c. If the deceased was not married but left kindred, upon the majority of the adult
12 children of the decedent; however, in the absence of actual knowledge to the
13 contrary, a funeral director or mortician may rely on instructions given by the child
14 who represents to be the sole surviving child or the children who represent to
15 constitute a majority of the surviving children;
 - 16 d. The surviving parent or parents of the decedent, each having equal authority;
 - 17 e. The adult sibling or the majority of the adult siblings of the decedent; however, in
18 the absence of actual knowledge to the contrary, a funeral director or mortician
19 may rely on instructions given by the sibling who represents to be the sole
20 surviving sibling or the siblings who represent to constitute a majority of the
21 surviving siblings;
 - 22 f. The adult grandchild or the majority of the adult grandchildren of the decedent;
23 however, in the absence of actual knowledge to the contrary, a funeral director or
24 mortician may rely on instructions given by a grandchild who represents to be the
25 only grandchild reasonably available to control final disposition of the decedent's
26 remains or the grandchildren who represent to constitute a majority of
27 grandchildren reasonably available to control final disposition of the decedent's
28 remains;
 - 29 g. The grandparent or the grandparents of the decedent, each having equal
30 authority;

- 1 h. The adult nieces and nephews of the decedent or a majority of the adult nieces
2 and nephews; however, in the absence of actual knowledge to the contrary, a
3 funeral director or mortician may rely on instructions given by a niece or nephew,
4 who represents to be the only niece or nephew reasonably available to control
5 final disposition of the decedent's remains or the nieces and nephews who
6 represent to constitute a majority of the nieces and nephews reasonably
7 available to control final disposition of the decedent's remains;
- 8 i. An individual who was acting as the guardian of the decedent with authority to
9 make health care decisions for the decedent at the time of death;
- 10 j. An adult who exhibited special care and concern for the decedent;
- 11 k. An individual respectively in the next degree of kinship in the order named by law
12 to inherit the estate of the decedent; or
- 13 l. The appropriate public or court authority, as required by law. For purposes of this
14 subdivision, the appropriate public or court authority includes the human service
15 zone of the county in which the death occurred if the individual dies without
16 apparent financial means to provide for final disposition or the district court in the
17 county in which the death occurred. If the duty of final disposition devolves to this
18 level, the appropriate public or court authority may direct final disposition to a
19 mortician or funeral director.
- 20 2. If there is only one individual in a degree of relationship to the decedent described in
21 subsection 1, and a district court determines the person and the decedent were
22 estranged at the time of death, the right to control and the duty of disposition devolves
23 to the next degree of relationship under subsection 1. For purposes of this subsection,
24 "estranged" means having a relationship characterized by mutual enmity, hostility, or
25 indifference.
- 26 3. If an individual to whom the right to control and duty of disposition devolves under
27 subsection 1, refuses to accept or declines to act upon the right or duty, that right and
28 duty passes as follows:
- 29 a. To another individual with the same degree of relationship to the decedent as the
30 individual refusing to accept or declining to act; or

- 1 b. To the individual in the next degree of relationship to the decedent under
2 subsection 1.
- 3 4. If a dispute exists regarding the right to control or duty of final disposition, the parties
4 in dispute or the mortician or funeral director may file a petition in the district court in
5 the county of residence of the decedent requesting the court make a determination in
6 the matter. If the right to control and duty of final disposition devolves to more than one
7 individual with the same degree of relationship to the decedent and those individuals
8 do not, by majority vote, make a decision regarding arrangements and final disposition
9 and a district court has been petitioned to make a determination, the court shall
10 consider the following factors in making a determination:
- 11 a. The reasonableness, practicality, and resources available for payment of the
12 proposed arrangements and final disposition;
- 13 b. The degree of the personal relationship between the decedent and each of the
14 individuals in the same degree of relationship to the decedent;
- 15 c. The expressed wishes and directions of the decedent and the extent to which the
16 decedent provided resources for the purpose of carrying out the wishes or
17 directions; and
- 18 d. The degree to which the arrangements and final disposition will allow for
19 participation by all who wish to pay respect to the decedent.
- 20 5. If the individual who has the duty of final disposition does not arrange for final
21 disposition of the body within the time required by this chapter, the individual next
22 specified shall ~~bury or otherwise dispose~~ arrange for final disposition of the body within
23 the requirements of this chapter.
- 24 6. a. If the deceased did not leave sufficient means to pay for expenses of final
25 disposition, ~~including the cost of a casket~~, and is not survived by an individual
26 described by subsection 1 and identified for financial responsibility within the
27 human service zone's general assistance policy, within ~~fifteen~~seven days of
28 application for services the human service zone of the county in which the
29 deceased had residence for general assistance purposes or, if residence cannot
30 be established, within ~~fifteen~~seven days of application for assistance the human
31 service zone of the county in which the death occurs shall employ a person to

1 arrange for and supervise the final disposition. If the deceased was a resident or
2 inmate of a public institution, within ~~fifteenseven~~ days of application for
3 assistance the human service zone in which the deceased was a resident for
4 general assistance purposes immediately before entering the institution shall
5 employ a person to arrange for and supervise the final disposition.

6 b. ~~The department of health and human services may negotiate with the interested~~
7 ~~funeral directors or funeral homes regarding cremation~~reimbursement for
8 ~~expenses and burial expenses but the total charges for burial services, including~~
9 ~~transportation of the deceased to the place of burial, the grave box or vault, grave~~
10 ~~space, and grave opening and closing expenses, may not be less than one~~
11 ~~thousand of final disposition under this subsection is three thousand~~ five hundred
12 dollars.

13 c. The department of health and human services may provide for the use of a
14 military ~~casket or~~ urn, if the deceased was a veteran as defined in section
15 37-01-40, unless the additional cost exceeds the ~~negotiated expenses~~
16 of reimbursement rate under this section subsection or a surviving spouse or the
17 nearest of kin of the deceased elects a nonmilitary ~~casket~~urn.

18 d. The human service zone shall pay the charge for ~~funeral expenses as negotiated~~
19 ~~by the department of health and human services~~final disposition of an individual
20 who is indigent as provided under this section. The human service zone may not
21 decrease the human service zone payment due to a nominal amount left by the
22 deceased or contributed by kin or any other party to defray the expenses of ~~burial~~
23 ~~or cremation~~final disposition. Funds adequate to allow for burial instead of
24 cremation are considered nominal under this section.

25 e. Except for burial conducted under subdivision d, final disposition must be
26 conducted by cremation.

27 f. The department of health and human services shall develop a standardized
28 authorization method and application form that must be used for final disposition
29 under this subsection.

30 7. If the individual with the duty of final disposition under this section, or the personal
31 representative of the decedent's estate, if any, is aware of the decedent's instructions

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

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

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

- 18 a. The funeral director or mortician has actual knowledge none of the individuals
19 described in subsection 1 exist, can be found after reasonable inquiry, or can be
20 contacted by reasonable means; and
21 b. Within thirty-six hours after having been given written notice of the facts, the
22 appropriate court or public authority fails to assume responsibility for disposition
23 of the remains. Written notice may be delivered by hand, United States mail, or
24 facsimile transmission.