

Sixty-eighth  
Legislative Assembly  
of North Dakota

## ENGROSSED 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 residents within the state who are indigent persons within this state.

20 **SECTION 2. AMENDMENT.** Section 23-06-03 of the North Dakota Century Code is  
21 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 after the coroner notifies the appropriate public or  
20          court authority in writing that no individuals identified in subdivisions a through k  
21          have accepted the duty of final disposition. A person identified under this  
22          subdivision who exercises the duty of final disposition of the body of a deceased  
23          individual is immune from civil liability for any act or omission arising out of the  
24          duty of final disposition.
- 25          2. If there is only one individual in a degree of relationship to the decedent described in  
26          subsection 1, and a district court determines the person and the decedent were  
27          estranged at the time of death, the right to control and the duty of disposition devolves  
28          to the next degree of relationship under subsection 1. For purposes of this subsection,  
29          "estranged" means having a relationship characterized by mutual enmity, hostility, or  
30          indifference.

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

1 human service zone's general assistance policy, within ~~fifteen~~seven days of  
2 application for services the human service zone of the county in which the  
3 deceased had residence for general assistance purposes or, if residence cannot  
4 be established, within ~~fifteen~~seven days of application for assistance the human  
5 service zone of the county in which the death occurs shall employ a person to  
6 arrange for and supervise the final disposition. If the deceased was a resident or  
7 inmate of a public institution, within ~~fifteen~~seven days of application for  
8 assistance the human service zone in which the deceased was a resident for  
9 general assistance purposes immediately before entering the institution shall  
10 employ a person to arrange for and supervise the final disposition.

- 11 b. ~~The department of health and human services may negotiate with the interested~~  
12 ~~funeral directors or funeral homes regarding cremation~~reimbursement for  
13 ~~expenses and burial expenses but the total charges for burial services, including~~  
14 ~~transportation of the deceased to the place of burial, the grave box or vault, grave~~  
15 ~~space, and grave opening and closing expenses, may not be less than one~~  
16 ~~thousand of final disposition under this subsection is three thousand~~ five hundred  
17 dollars.
- 18 c. The department of health and human services may provide for the use of a  
19 military casket or urn, if the deceased was a veteran as defined in section  
20 37-01-40, unless the additional cost exceeds the ~~negotiated expenses~~  
21 ~~efreimbursement rate under~~ this sectionsubsection or a surviving spouse or the  
22 nearest of kin of the deceased elects a nonmilitary casket or urn.
- 23 d. The human service zone shall pay the charge for ~~funeral expenses as negotiated~~  
24 ~~by the department of health and human services~~cremation or burial of an  
25 individual who is indigent as provided under this section. The presumption of final  
26 disposition of an individual who is indigent is by cremation. The human service  
27 zone shall create a process to review and accommodate a request for burial due  
28 to religious beliefs. The human service zone may not decrease the human  
29 service zone payment due to a nominal amount left by the deceased or  
30 contributed by kin or any other party to ~~defray the~~contribute to non-burial or

1                    ~~non-cremation~~ expenses of burial or cremation. Funds adequate to allow for  
2                    ~~burial instead of cremation are considered nominal under this section.~~

3                    e. The department of health and human services and human service zones shall  
4                    maintain a standardized eligibility policy and application form to be used for the  
5                    purposes of indigent burial application.

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

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

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

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

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