

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 848

Introduced by Sullivan, 41.

Read first time January 06, 2012

Committee: Health and Human Services

A BILL

- 1 FOR AN ACT relating to the Funeral Directing and Embalming Practice
- 2 Act; to amend section 38-1425, Reissue Revised Statutes
- 3 of Nebraska; to change provisions relating to control of
- 4 remains; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 38-1425, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 ~~38-1425 (1) Except as otherwise provided in section~~
4 ~~71-20,121, the right to control the disposition of the remains of a~~
5 ~~deceased person, except in the case of a minor subject to section~~
6 ~~23-1824 and unless other directions have been given by the decedent~~
7 ~~in the form of a testamentary disposition or a pre-need contract,~~
8 ~~vests in the following persons in the order named:~~

9 ~~(a) Any person authorized to direct the disposition of~~
10 ~~the decedent's body pursuant to a notarized affidavit authorizing~~
11 ~~such disposition and signed and sworn to by the decedent. Such an~~
12 ~~affidavit shall be sufficient legal authority for authorizing~~
13 ~~disposition without additional authorization from the decedent, the~~
14 ~~decedent's family, or the decedent's estate. Such person shall not be~~
15 ~~considered an attorney in fact pursuant to sections 30-3401 to~~
16 ~~30-3432;~~

17 ~~(b) The surviving spouse of the decedent;~~

18 ~~(c) If the surviving spouse is incompetent or not~~
19 ~~available or if there is no surviving spouse, the decedent's~~
20 ~~surviving adult children. If there is more than one adult child, any~~
21 ~~adult child, after confirmation in writing of the notification of all~~
22 ~~other adult children, may direct the manner of disposition unless the~~
23 ~~funeral establishment or crematory authority receives written~~
24 ~~objection to the manner of disposition from another adult child;~~

25 ~~(d) The decedent's surviving parents;~~

1 ~~(e) The persons in the next degree of kinship under the~~
2 ~~laws of descent and distribution to inherit the estate of the~~
3 ~~decedent. If there is more than one person of the same degree, any~~
4 ~~person of that degree may direct the manner of disposition;~~

5 ~~(f) A guardian of the person of the decedent at the time~~
6 ~~of such person's death;~~

7 ~~(g) The personal representative of the decedent;~~

8 ~~(h) The State Anatomical Board or county board in the~~
9 ~~case of an indigent person or any other person the disposition of~~
10 ~~whose remains is the responsibility of the state or county; or~~

11 ~~(i) A representative of an entity described in section~~
12 ~~38-1426 that has arranged with the funeral establishment or crematory~~
13 ~~authority to cremate a body part in the case of body parts received~~
14 ~~from such entity described in section 38-1426.~~

15 ~~(2) A funeral director, funeral establishment, crematory~~
16 ~~authority, or crematory operator shall not be subject to criminal~~
17 ~~prosecution or civil liability for carrying out the otherwise lawful~~
18 ~~instructions of the person or persons described in this section if~~
19 ~~the funeral director or crematory authority or operator reasonably~~
20 ~~believes such person is entitled to control the final disposition of~~
21 ~~the remains of the deceased person.~~

22 ~~(3) The liability for the reasonable cost of the final~~
23 ~~disposition of the remains of the deceased person devolves jointly~~
24 ~~and severally upon all kin of the decedent in the same degree of~~
25 ~~kindred and upon the estate of the decedent and, in cases when the~~

1 ~~county board has the right to control disposition of the remains~~
2 ~~under subdivision (1)(h) of this section, upon the county in which~~
3 ~~death occurred from funds available for such purpose.~~

4 (1) Except as otherwise provided by sections 23-1824 and
5 71-20,121, a person, who is eighteen years of age or older and of
6 sound mind, by testamentary disposition or by entering into a pre-
7 need sale as defined by section 12-1102, may direct the location,
8 manner, and conditions of disposition of the person's remains and the
9 arrangements for funeral goods and services to be provided upon the
10 person's death. The disposition directions and funeral
11 prearrangements that are contained in a pre-need contract shall not
12 be subject to cancellation or substantial revision unless the
13 cancellation or substantial revision has been ordered by a person who
14 the decedent has appointed in the pre-need contract as the person
15 authorized to cancel or revise the terms of the pre-need contract or
16 unless any resources set aside to fund the pre-need contract are
17 insufficient under the terms of the pre-need contract to carry out
18 the disposition directions and funeral prearrangements contained in
19 the pre-need contract. Such person shall not be considered an
20 attorney in fact pursuant to sections 30-3401 to 30-3432.

21 (2) Except as set forth in subsection (3) of this
22 section, the right to control the disposition of the remains of a
23 deceased person, the location, manner, and conditions of disposition,
24 and the arrangements for funeral goods and services to be provided
25 vests in the following in the order named, if such person is eighteen

1 years of age or older and is of sound mind:

2 (a)(i) A person designated by the decedent as the person
3 with the right to control the disposition in an affidavit executed in
4 accordance with subdivision (2)(a)(ii) of this section.

5 (ii) A person who is eighteen years of age or older and
6 of sound mind wishing to authorize another person to control the
7 disposition of his or her remains may execute an affidavit before a
8 notary public in substantially the following form:

9 State of }

10 County of }

11 I, do hereby designate with
12 the right to control the disposition of my remains upon my death.

13 I have/..... have not attached specific directions concerning
14 the disposition of my remains which the designee shall substantially
15 comply with, so long as such directions are lawful and there are
16 sufficient resources in my estate to carry out the directions.

17 Subscribed and sworn to before me this day of the
18 month of of the year

19 (signature of notary public);

20 (b) The surviving spouse of the decedent;

21 (c) The sole surviving child of the decedent, or if there
22 is more than one child of the decedent, the majority of the surviving
23 children. However, less than one-half of the surviving children shall
24 be vested with the rights and duties conferred under this section if
25 they have used reasonable efforts to notify all other surviving

1 children of their instructions and are not aware of any opposition to
2 those instructions on the part of more than one-half of all surviving
3 children;

4 (d) The surviving parent or parents of the decedent. If
5 one of the surviving parents is absent, the remaining parent shall be
6 vested with the rights and duties conferred under this section after
7 reasonable efforts have been unsuccessful in locating the absent
8 surviving parent;

9 (e) The surviving brother or sister of the decedent, or
10 if there is more than one sibling of the decedent, the majority of
11 the surviving siblings. However, less than the majority of surviving
12 siblings shall be vested with the rights and duties conferred under
13 this section if they have used reasonable efforts to notify all other
14 surviving siblings of their instructions and are not aware of any
15 opposition to those instructions on the part of more than one-half of
16 all surviving siblings;

17 (f) The surviving grandparent of the decedent, or if
18 there is more than one surviving grandparent, the majority of the
19 grandparents. However, less than the majority of the surviving
20 grandparents shall be vested with the rights and duties conferred
21 under this section if they have used reasonable efforts to notify all
22 other surviving grandparents of their instructions and are not aware
23 of any opposition to those instructions on the part of more than one-
24 half of all surviving grandparents;

25 (g) The person in the next degree of kinship, in

1 descending order, under the laws of descent and distribution, to
2 inherit the estate of the decedent. If there is more than one person
3 of the same degree, any person of that degree may exercise the right
4 of disposition;

5 (h) The guardian of the person of the decedent at the
6 time of the decedent's death, if one had been appointed;

7 (i) The personal representative of the estate of the
8 decedent;

9 (j) The State Anatomical Board or the county board in the
10 case of an indigent person or any other person the disposition of
11 whose remains is a responsibility of the state or county;

12 (k) A representative as described in section 38-1426 that
13 has arranged with the funeral establishment or crematory authority to
14 cremate or bury a body part in the case of body parts received from
15 the entity described in section 38-1426; and

16 (1) In the absence of any person under subdivisions (2)
17 (a) through (k) of this section, any other person willing to assume
18 the responsibilities to act and arrange the final disposition of the
19 decedent's remains, including the funeral director with custody of
20 the body, after attesting, in writing, that a good faith effort has
21 been made to no avail to contact the individuals under subdivisions
22 (2)(a) through (k) of this section.

23 (3) A person entitled under law to the right of
24 disposition shall forfeit that right, and the right is passed on to
25 the next qualifying person as listed in subdivisions (2)(a) through

1 (1) of this section, in the following circumstances:

2 (a) Any person charged with first or second degree murder
3 or voluntary manslaughter in connection with the decedent's death and
4 whose charges are known to the funeral director. If, however, the
5 charges against such person are dismissed or if such person is
6 acquitted of the charges the right of disposition is returned to the
7 person;

8 (b) Any person who does not exercise his or her right of
9 disposition within three days after notification of the death of
10 decedent or within four days after the decedent's death, whichever is
11 earlier;

12 (c) If the person and the decedent are spouses and a
13 petition to dissolve the marriage was pending at the time of
14 decedent's death; and

15 (d) If a county court pursuant to subsection (4) of this
16 section determines that the person entitled to the right of
17 disposition and the decedent were estranged at the time of death. For
18 purposes of this subdivision, estranged means a physical and
19 emotional separation from the decedent at the time of death which has
20 existed for a period of time that clearly demonstrates an absence of
21 due affection, trust, and regard for the decedent.

22 (4) Notwithstanding the foregoing, the county court of
23 the county where the decedent resided may award the right of
24 disposition to the person determined by the court to be the most fit
25 and appropriate to carry out the right of disposition and may make

1 decisions regarding the decedent's remains if those sharing the right
2 of disposition cannot agree. The following shall apply to the court's
3 determination under this section:

4 (a) If the persons holding the right of disposition are
5 two or more persons with the same relationship to the decedent and
6 they cannot by majority vote make a decision regarding the
7 disposition of the decedent's remains, any of such persons or a
8 funeral home with custody of the remains may file a petition asking
9 the court to make a determination in the matter;

10 (b) In making a determination under this subsection, the
11 court shall consider the following:

12 (i) The reasonableness and practicality of the proposed
13 funeral arrangements and disposition;

14 (ii) The degree of the personal relationship between the
15 decedent and each of the persons claiming the right of disposition;

16 (iii) The desires of the person or persons who are ready,
17 able, and willing to pay the cost of the funeral arrangements and
18 disposition; and

19 (iv) The convenience and needs of other families and
20 friends wishing to pay respects;

21 (c) In the event of a dispute regarding the right of
22 disposition, a funeral establishment is not liable for refusing to
23 accept the remains or to inter or otherwise dispose of the remains of
24 the decedent or complete the arrangements for the final disposition
25 of the remains until the funeral establishment receives a court order

1 or other written agreement signed by the parties in the disagreement
2 that decides the final disposition of the remains. If the funeral
3 establishment retains the remains for final disposition while the
4 parties are in disagreement, the funeral establishment may embalm or
5 refrigerate and shelter the body, or both, in order to preserve it
6 while awaiting the final decision of the court and may add the cost
7 of embalming or refrigeration and sheltering to the final disposition
8 costs. If a funeral home brings an action under this subdivision, the
9 funeral establishment may add the legal fees and court costs
10 associated with a petition under this subdivision to the cost of
11 final disposition. This subdivision may not be construed to require
12 or to impose a duty upon a funeral establishment to bring an action
13 under this section. A funeral establishment and its employees shall
14 not be held criminally or civilly liable for choosing not to bring an
15 action under this subdivision;

16 (d) Except to the degree it may be considered by the
17 court under subdivision (4)(b)(iii) of this section, the fact that a
18 person has paid or agreed to pay for all or part of the funeral
19 arrangements and final disposition does not give that person a
20 greater right to the right of disposition than the person would
21 otherwise have. The personal representative of the estate of the
22 decedent does not, by virtue of being the personal representative,
23 have a greater claim to the right of disposition than the personal
24 representative would otherwise have.

25 (5) Any person signing a funeral service agreement, a

1 cremation authorization form, or any other authorization for
2 disposition shall be deemed to warrant the truthfulness of any facts
3 set forth in such agreement, form, or authorization, including the
4 identity of the decedent whose remains are to be buried, cremated, or
5 otherwise disposed of, and the person's authority to order such
6 disposition. A funeral establishment or crematory authority shall
7 have the right to rely on agreement, form, or authorization and shall
8 have the authority to carry out the instructions of the person or
9 persons whom the funeral establishment or crematory authority
10 reasonably believes holds the right of disposition. Neither a funeral
11 establishment nor a crematory authority shall have the responsibility
12 to contact or to independently investigate the existence of any next-
13 of-kin or relative of the decedent. If there is more than one person
14 in a class who are equal in priority and the funeral establishment or
15 crematory authority has no knowledge of any objection by other
16 members of such class, the funeral establishment or crematory
17 authority shall be entitled to rely on and act according to the
18 instructions of the first such person in the class to make funeral
19 and disposition arrangements so long as no other person in such class
20 provides written notice of his or her objections to the funeral
21 establishment or crematory authority, as the case may be.

22 (6) No funeral establishment, funeral director, crematory
23 authority, or crematory operator who relies in good faith upon the
24 instructions of an individual claiming the right of disposition shall
25 be subject to criminal or civil liability or subject to disciplinary

1 action for carrying out the disposition of the remains in accordance
2 with the instructions.

3 (7) The liability for the reasonable cost of the final
4 disposition of the decedent devolves jointly and severally upon all
5 kin of the decedent in the same degree of kindred and upon the estate
6 of the decedent and, in cases where a county board has the right to
7 control disposition of the remains under subdivision (2)(b)(j) of
8 this section, upon the county in which the death occurred from funds
9 available for such purpose.

10 Sec. 2. Original section 38-1425, Reissue Revised
11 Statutes of Nebraska, is repealed.