

LEGISLATIVE BILL 420

Approved by the Governor May 7, 2013

Introduced by McGill, 26.

FOR AN ACT relating to disposition of human remains; to amend section 38-1425, Reissue Revised Statutes of Nebraska; to provide an additional method of designation of authorization; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

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

38-1425 (1) Except as otherwise provided in subsection (2) of this section or section 71-20,121, the right to control the disposition of the remains of a deceased person, except in the case of a minor subject to section 23-1824 and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests in the following persons in the order named:

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

(b) The surviving spouse of the decedent;

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

(d) The decedent's surviving parents;

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

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

(g) The personal representative of the decedent;

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

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

(2) If the decedent died during active military service, as provided in 10 U.S.C. 1481 (a) (1) through (8), in any branch of the United States armed forces, United States reserve forces, or national guard, the person authorized by the decedent to direct disposition pursuant to section 564 of Public Law 109-163, as listed on the decedent's United States Department of Defense record of emergency data, DD Form 93, or its successor form, shall take priority over all other persons described in subsection (1) of this section.

~~(2)~~ (3) A funeral director, funeral establishment, crematory authority, or crematory operator shall not be subject to criminal prosecution or civil liability for carrying out the otherwise lawful instructions of the person or persons described in this section if the funeral director or crematory authority or operator reasonably believes such person is entitled to control the final disposition of the remains of the deceased person.

~~(3)~~ (4) The liability for the reasonable cost of the final disposition of the remains of the deceased person devolves jointly and severally upon all kin of the decedent in the same degree of kindred and upon the estate of the decedent and, in cases when the county board has the right to control disposition of the remains under subdivision (1)(h) of this section, upon the county in which death occurred from funds available for such purpose.

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

Sec. 3. Since an emergency exists, this act takes effect when passed and approved according to law.