

AMENDMENTS TO LB632

Introduced by Hansen, 16.

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 **Section 1.** Section 30-2223, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 30-2223 (1) Except as otherwise provided by section 23-1824, a
6 person who is eighteen years of age or older and of sound mind, by
7 testamentary disposition, by entering into a pre-need sale as defined by
8 section 12-1102, or by affidavit as provided in subdivision (2)(a)(ii) of
9 this section, may direct the location, manner, and conditions of
10 disposition of his or her remains and the arrangements for funeral goods
11 and services to be provided upon his or her death.

12 (2) Except as set forth in subsection (3) of this section, ~~or in~~
13 section 71-20,121, or section 3 of this act, the right of disposition,
14 including the right to control the disposition of the remains of a
15 deceased person, the location, manner, and conditions of disposition, and
16 the arrangements for funeral goods and services to be provided, vests in
17 the following order if the person listed is eighteen years of age or
18 older and is of sound mind:

19 (a)(i) A person designated by the decedent as the person with the
20 right of disposition in an affidavit executed in accordance with
21 subdivision (2)(a)(ii) of this section.

22 (ii) A person who is eighteen years of age or older and of sound
23 mind wishing to convey the right of disposition to another person may
24 execute an affidavit before a notary public in substantially the
25 following form:

26 State of)

27 County of)

1 I,, do hereby designate with the right
2 to control the disposition of my remains upon my death. I (..... have)
3 (..... have not) attached specific directions concerning the disposition
4 of my remains which the designee shall substantially comply with, so long
5 as such directions are lawful and there are sufficient resources in my
6 estate to carry out the directions. This affidavit does not constitute a
7 durable power of attorney for health care.

8 (signature of person executing affidavit)

9 Subscribed and sworn to before me this day of the month
10 of of the year

11 (signature of notary public);

12 (b) The surviving spouse of the decedent;

13 (c) The sole surviving child of the decedent or, if there is more
14 than one child of the decedent, the majority of the surviving children,
15 except that less than a majority of the surviving children shall be
16 vested with the right of disposition if they have used reasonable efforts
17 to notify all other surviving children of their instructions regarding
18 the right of disposition and are not aware of any opposition to those
19 instructions on the part of a majority of the surviving children;

20 (d) The surviving parent or parents of the decedent. If one of the
21 surviving parents is absent, the remaining parent shall be vested with
22 the right of disposition after reasonable efforts have been unsuccessful
23 in locating the absent surviving parent;

24 (e) The surviving brother or sister of the decedent or, if there is
25 more than one sibling of the decedent, the majority of the surviving
26 siblings, except that less than the majority of the surviving siblings
27 shall be vested with the right of disposition if they have used
28 reasonable efforts to notify all other surviving siblings of their
29 instructions regarding the right of disposition and are not aware of any
30 opposition to those instructions on the part of a majority of the
31 surviving siblings;

1 (f) The surviving grandparent of the decedent or, if there is more
2 than one surviving grandparent, the majority of the grandparents, except
3 that less than the majority of the surviving grandparents shall be vested
4 with the right of disposition if they have used reasonable efforts to
5 notify all other surviving grandparents of their instructions regarding
6 the right of disposition and are not aware of any opposition to those
7 instructions on the part of a majority of the surviving grandparents;

8 (g) The person in the next degree of kinship, in descending order,
9 under the laws of descent and distribution, to inherit the estate of the
10 decedent. If there is more than one person of the same degree, any person
11 of that degree may exercise the right of disposition;

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

14 (i) The personal representative of the estate of the decedent. The
15 powers and duties under this section of the personal representative shall
16 commence upon his or her appointment. Such powers and duties of the
17 personal representative shall relate back in time to give acts by the
18 personal representative which are beneficial to the disposition of the
19 decedent's remains occurring prior to appointment the same effect as
20 those occurring thereafter. Prior to appointment, the personal
21 representative may carry out written instructions of the decedent
22 relating to his or her body, funeral, and burial arrangements. The
23 personal representative may also ratify and accept acts regarding
24 disposition of the decedent's remains done by others where the acts would
25 have been proper for the personal representative;

26 (j) The State Anatomical Board or the county board of the county
27 where the death occurred in the case of an indigent person or any other
28 person the disposition of whose remains is a responsibility of the state
29 or county;

30 (k) A representative as described in section 38-1426 or 38-1427 that
31 has arranged with the funeral establishment, cemetery, or crematory

1 authority to cremate or bury a body part in the case of body parts
2 received from the entity described in section 38-1426 or 38-1427; and

3 (1) In the absence of any person listed in subdivisions (2)(a)
4 through (k) of this section, any other person willing to assume the right
5 of disposition, including the funeral director with custody of the body,
6 after attesting, in writing, that a good faith effort has been made to no
7 avail to contact the persons listed in subdivisions (2)(a) through (k) of
8 this section.

9 (3) A person entitled under this section to the right of disposition
10 shall forfeit that right and the right is passed on to the next
11 qualifying person as listed in subdivisions (2)(a) through (1) of this
12 section in the following circumstances:

13 (a) Any person charged with first or second degree murder or
14 voluntary manslaughter in connection with the decedent's death and whose
15 charges are known to the funeral director. If the charges against such
16 person are dismissed, or if such person is acquitted of the charges, the
17 right of disposition is returned to such person;

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

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

23 (d) If a county court pursuant to subsection (4) of this section
24 determines that the person entitled to the right of disposition and the
25 decedent were estranged at the time of death. For purposes of this
26 subdivision, estranged means a physical and emotional separation from the
27 decedent at the time of death which has existed for a period of time that
28 clearly demonstrates an absence of due affection, trust, and regard for
29 the decedent.

30 (4)(a) If two or more persons with the same relationship to the
31 decedent hold the right of disposition and cannot by majority vote make a

1 decision regarding the disposition of the decedent's remains, any of such
2 persons or a funeral home with custody of the remains may file a petition
3 asking the court to make a determination in the matter.

4 (b) Notwithstanding subsections (1) through (3) of this section, the
5 county court of the county where the decedent died may award the right of
6 disposition to the person determined by the court to be the most fit and
7 appropriate to carry out the right of disposition and may make decisions
8 regarding the decedent's remains if those sharing the right of
9 disposition cannot agree.

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

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

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

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

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

20 (d) In the event of a dispute regarding the right of disposition, a
21 funeral establishment, cemetery, or crematory authority is not liable for
22 refusing to accept the remains or to inter or otherwise dispose of the
23 remains of the decedent or complete the arrangements for the final
24 disposition of the remains until the funeral establishment, cemetery, or
25 crematory authority receives a court order or other written agreement
26 signed by the parties in disagreement that decides the final disposition
27 of the remains. If the funeral establishment, cemetery, or crematory
28 authority retains the remains for final disposition while the parties are
29 in disagreement, the funeral establishment may embalm or refrigerate and
30 shelter the body, or both, in order to preserve it while awaiting the
31 final decision of the court and may add the cost of embalming or

1 refrigeration and sheltering to the final disposition costs. If a funeral
2 home brings an action under this subsection, the funeral establishment,
3 cemetery, or crematory authority may add the legal fees and court costs
4 associated with a petition under this subsection to the cost of final
5 disposition. This subsection may not be construed to require or to impose
6 a duty upon a funeral establishment, cemetery, or crematory authority to
7 bring an action under this subsection.

8 (e) Except to the degree it may be considered by the court under
9 subdivision (4)(c)(iii) of this section, the fact that a person has paid
10 or agreed to pay for all or part of the funeral arrangements and final
11 disposition does not give that person a greater claim to the right of
12 disposition than the person would otherwise have. The personal
13 representative of the estate of the decedent does not, by virtue of being
14 the personal representative, have a greater claim to the right of
15 disposition than the personal representative would otherwise have.

16 **Sec. 2.** Section 71-401, Revised Statutes Cumulative Supplement,
17 2024, is amended to read:

18 71-401 Sections 71-401 to 71-479 and section 3 of this act shall be
19 known and may be cited as the Health Care Facility Licensure Act.

20 **Sec. 3.** (1) The Legislature declares that the purposes of this
21 section are to: (a) Protect the public health and welfare; (b) encourage
22 and express respect for the dignity of unborn children by ensuring that
23 the remains of aborted unborn children are disposed of in a dignified and
24 safe manner; and (c) ensure that a mother who wishes to direct the
25 dignified and safe disposition of her child's remains may do so.

26 (2) For purposes of this section, (a) remains of an aborted unborn
27 child means the physical remains of an unborn child at any stage of
28 gestation whose life has been terminated by an elective abortion and (b)
29 remains of an aborted unborn child shall not include remains from (i) in
30 vitro fertilization or (ii) a chemical or medication abortion.

31 (3) It shall be unlawful for a health care facility at which an

1 elective abortion has been performed and completed to deposit or dispose
2 of the remains of an aborted unborn child in a manner other than as
3 provided in this section.

4 (4) No notice of the disposition shall be required to be given to a
5 woman upon whom an abortion was performed. If, however, the woman
6 expresses a desire to direct the disposition of the remains of her
7 aborted unborn child by individual or collective cremation or by
8 individual or collective interment by burial, the health care facility at
9 which the elective abortion was performed and completed shall comply with
10 her direction.

11 (5) If the woman upon whom the elective abortion was performed does
12 not exercise such direction, the health care facility at which the
13 elective abortion was performed and completed shall provide for the
14 individual disposition of the remains of the aborted unborn child by
15 cremation or interment by burial or as directed by the State Board of
16 Health. The health care facility shall have the sole authority and
17 responsibility of an authorizing agent for the final individual
18 disposition of the remains of the aborted unborn child by cremation or
19 interment by burial. No name or other identifying information other than
20 "aborted unborn child" shall be required for the remains.

21 (6) No person shall have a right of action against a funeral
22 director, an embalmer, a cemetery, or a crematory authority for carrying
23 out the requirements of this section.

24 **Sec. 4.** Original section 30-2223, Reissue Revised Statutes of
25 Nebraska, and section 71-401, Revised Statutes Cumulative Supplement,
26 2024, are repealed.