

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 420

Introduced by McGill, 26.

Read first time January 22, 2013

Committee: Health and Human Services

A BILL

- 1 FOR AN ACT relating to disposition of human remains; to amend section
- 2 38-1425, Reissue Revised Statutes of Nebraska; to provide
- 3 an additional method of designation of authorization; and
- 4 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 the more recent of (i) a United
11 States Department of Defense Record of Emergency Data if the deceased
12 died while in military service as specified in 10 U.S.C. 1481 or (ii)
13 a notarized affidavit authorizing such disposition and signed and
14 sworn to by the decedent. Such ~~an~~ official Department of Defense
15 record or affidavit shall be sufficient legal authority for
16 authorizing disposition without additional authorization from the
17 decedent, the decedent's family, or the decedent's estate. Such
18 person shall not be considered an attorney in fact pursuant to
19 sections 30-3401 to 30-3432;

20 (b) The surviving spouse of the decedent;

21 (c) If the surviving spouse is incompetent or not
22 available or if there is no surviving spouse, the decedent's
23 surviving adult children. If there is more than one adult child, any
24 adult child, after confirmation in writing of the notification of all
25 other adult children, may direct the manner of disposition unless the

1 funeral establishment or crematory authority receives written
2 objection to the manner of disposition from another adult child;

3 (d) The decedent's surviving parents;

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

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

10 (g) The personal representative of the decedent;

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

14 (i) A representative of an entity described in section
15 38-1426 that has arranged with the funeral establishment or crematory
16 authority to cremate a body part in the case of body parts received
17 from such entity described in section 38-1426.

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

25 (3) The liability for the reasonable cost of the final

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

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