



2023 South Dakota Legislature

House Bill 1145

Introduced by: **Representative Jamison**

1 **An Act to revise the order of precedence for the right to control the disposition of**
 2 **the remains of a deceased person.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 34-26-75 be AMENDED:**

5 **34-26-75.** Except as provided in §§ 34-26-74 and 34-26-76, the duty to bury,
 6 find a grave for, and provide the grave of the deceased person with a permanent concrete,
 7 metal--anchored--in--concrete, or stone marker~~;~~ and the right to control the disposition
 8 of the remains of a deceased person, the location, manner and conditions of disposition,
 9 and arrangements for funeral goods and services to be provided~~;~~ vests in the following,
 10 in the order named, provided ~~such~~ the person is ~~18~~ eighteen years or older and is of sound
 11 mind:

- 12 (1) A person designated by the decedent as the person with the right to control the
 13 disposition in an affidavit executed in accordance with § 34-26-77;
- 14 (2) A person designated in the federal Record of Emergency Data Form DD 93, or its
 15 successor form, to have the right of disposition by a member of the military who
 16 dies while under active-duty orders, as described in 10 U.S.C. § 1481, in effect on
 17 January 1, 2022;
- 18 (3) The surviving spouse;
- 19 (4) The sole surviving child of the decedent, or if there is more than one child of the
 20 decedent, the majority of the surviving children. However, less than one-half of
 21 the surviving children are vested with the rights of this section if they have used
 22 reasonable efforts to notify all other surviving children of their instructions and are
 23 not aware of any opposition to those instructions on the part of more than one-half
 24 of all surviving children;
- 25 (5) The surviving parent or parents of the decedent. If one of the surviving parents is
 26 absent, the remaining parent is vested with the rights and duties of this section

- 1 after reasonable efforts have been unsuccessful in locating the absent surviving
2 parent;
- 3 (6) The surviving brother or sister of the decedent, or if there is more than one sibling
4 of the decedent, the majority of the surviving siblings. However, less than the
5 majority of surviving siblings are vested with the rights and duties of this section
6 if they have used reasonable efforts to notify all other surviving siblings of their
7 instructions and are not aware of any opposition to those instructions on the part
8 of more than one-half of all surviving siblings;
- 9 (7) The surviving grandparent of the decedent, or if there is more than one surviving
10 grandparent, the majority of the grandparents. However, less than the majority of
11 the surviving grandparents are vested with the rights and duties of this section if
12 they have used reasonable efforts to notify all other surviving grandparents of their
13 instructions and are not aware of any opposition to those instructions on the part
14 of more than one-half of all surviving grandparents;
- 15 (8) ~~The guardian of the person of the~~ named as personal representative in the last will
16 and testament of the decedent ~~at the time of the decedent's death, if one had been~~
17 ~~appointed;~~
- 18 (9) ~~The guardian of the person named as personal representative in the last will and~~
19 ~~testament of the decedent at the time of the decedent's death, if one had been~~
20 appointed;
- 21 (10) The person in the classes of the next degree of kinship, in descending order, under
22 the laws of descent and distribution to inherit the estate of the decedent. If there
23 is more than one person of the same degree, any person of that degree may
24 exercise the right of disposition;
- 25 (11) If the disposition of the remains of the decedent is the responsibility of the state
26 or a political subdivision of the state, the public officer, administrator, or employee
27 responsible for arranging the final disposition of decedent's remains; or
- 28 (12) In the absence of any person under subdivisions (1) to (11), inclusive, of this
29 section, any other person willing to assume the responsibilities to act and arrange
30 the final disposition of the decedent's remains, including the funeral director with
31 custody of the body, after attesting in writing that a good faith effort has been
32 made to no avail to contact the individuals under subdivisions (1) to (11), inclusive,
33 of this section.