



2023 South Dakota Legislature
House Bill 1145
ENROLLED

AN ACT

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

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

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

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

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

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

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

I certify that the attached Act originated in
the:
House as Bill No. 1145

Received at this Executive Office
this ____ day of _____,
2023 at _____ M.

Chief Clerk

By _____
for the Governor

Speaker of the House

The attached Act is hereby
approved this ____ day of
_____, A.D., 2023

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2023
at _____ o'clock __ M.

Secretary of the Senate

Secretary of State

House Bill No. 1145
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State