



2023 South Dakota Legislature
Senate Bill 141
ENROLLED

AN ACT

ENTITLED An Act to clarify and modernize cremation requirements and procedures.

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 right and the duty to control the disposition of a decedent's remains, including the location, manner, and conditions of disposition, and arrangements for the provision of funeral goods and services, vests in the following, in the order named, provided the person is 18 years or older and is of sound mind:

- (1) A person designated by the decedent, in accordance with § 34-26-77;
- (2) A person designated in the federal Record of Emergency Date Form DD 93 or its successor form, 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 decedent's spouse;
- (4) The child of the decedent or the majority of the decedent's children, provided that a lesser number must suffice if they have made reasonable efforts to notify the other children of their instructions and are not aware of any opposition on the part of the majority;
- (5) The parents of the decedent or one parent of the decedent, if reasonable efforts to locate the other parent have been unsuccessful;
- (6) The sibling of the decedent or the majority of the decedent's siblings, provided that a lesser number must suffice if they have made reasonable efforts to notify the other siblings of their instructions and are not aware of any opposition on the part of the majority;
- (7) The grandparent of the decedent or the majority of the decedent's grandparents, provided that a lesser number must suffice if they have made reasonable efforts

- to notify the other grandparents of their instructions and are not aware of any opposition on the part of the majority;
- (8) The decedent's guardian;
 - (9) The person named as the personal representative in the decedent's last will and testament;
 - (10) The person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution, provided if there is more than one person of the same degree, any person of that degree may control the disposition;
 - (11) The public officer, administrator, or employee responsible for final dispositions, if the decedent was the responsibility of the state or a political subdivision of this state; or
 - (12) Any other willing person, including the funeral director with custody of the body, provided the person attests that reasonable efforts have been made to contact other persons listed in this section.

For the purposes of this section, the right and the duty to control disposition includes providing authorization for a cremation.

Section 2. That § 34-26A-1 be AMENDED:

34-26A-1. Terms used in this chapter mean:

- (1) "Alternative container," a receptacle into which a decedent is placed for transport to a crematory and cremation and which:
 - (a) Is made of combustible material;
 - (b) Provides complete covering for the decedent;
 - (c) Is impermeable;
 - (d) Is sufficiently rigid for handling; and
 - (e) Provides protection for the health and safety of crematory personnel;
- (2) "Cremated remains," all human remains recovered upon completion of the cremation process, together with the residual of:
 - (a) The container used for the cremation, if combustible;
 - (b) Dental work; and
 - (c) Combustible personal effects;
- (3) "Cremation," the process of:
 - (a) Using heat and flame to reduce human remains to ashes and bone fragments; and
 - (b) The subsequent pulverization of any remaining bone fragments;

- (4) "Cremation chamber," the enclosed space within which the cremation process occurs;
- (5) "Crematory," the building or portion of a building that houses the cremation chamber and the holding facility;
- (6) "Holding facility," an area that is within or adjacent to a crematory, designated for the retention of decedents prior to their cremation, and secure from access by unauthorized persons;
- (7) "Processing," the reduction of identifiable bone fragments to unidentifiable bone fragments; and
- (8) "Temporary container," a receptacle made of cardboard, plastic film, or similar material, intended for the purpose of holding cremated remains until an urn or other permanent container is acquired.

Section 3. That § 34-26A-3 be AMENDED:

34-26A-3. The operation of any crematory in this state, other than a medical facility crematory, must at all times be under the direction and supervision of a person who:

- (1) Is licensed as a funeral director, in accordance with chapter 36-19; and
- (2) Has successfully completed a crematory operator program approved by the State Board of Funeral Service.

Section 4. That chapter 34-26A be amended with a NEW SECTION:

Each crematory in this state must be licensed by the State Board of Funeral Service. To obtain licensure for a crematory, a person must:

- (1) Submit an application to the board, at the time and in the manner required by the board;
- (2) Identify, on the application, all certified crematory operators employed at the crematory;
- (3) Provide evidence that a motorized or mechanical device is available for the processing of cremated remains; and
- (4) Provide evidence that a refrigerated facility is available for the retention of decedents awaiting cremation.

Upon approval of an application, the board shall require that the applicant pay an initial licensure fee in an amount not exceeding one hundred dollars.

Section 5. That chapter 34-26A be amended with a NEW SECTION:

Licensure as a crematory, issued in accordance with section 4 of this Act, expires one year after the date of issuance and must be renewed annually, at the time and in the manner determined by the State Board of Funeral Service. The board may inspect any crematory, during regular business hours, to verify compliance with applicable laws and rules and shall inspect each crematory, during regular business hours, at least once every three years.

The board shall require a renewal fee in the amount of one hundred dollars.

Section 6. That chapter 34-26A be amended with a NEW SECTION:

The State Board of Funeral Service may, after notice and a hearing, suspend or revoke licensure issued in accordance with section 4 of this Act. The board shall promulgate rules, in accordance with chapter 1-26, to establish the grounds for suspension or revocation of the licensure.

Section 7. That chapter 34-26A be amended with a NEW SECTION:

Whenever a decedent is delivered to a crematory for cremation, crematory personnel shall complete a receipt that includes:

- (1) The name of the decedent;
- (2) The name and employer of the person who delivered the decedent to the crematory;
- (3) The date and time of the delivery;
- (4) The name of the crematory employee who accepted the delivery; and
- (5) Any funeral home or other entity involved in the disposition of the decedent's remains.

The receipt must be signed by the person who delivered the decedent to the crematory and by the employee who accepted the delivery on behalf of the crematory.

The crematory shall retain the receipt in accordance with the record retention provisions set forth in section 24 of this Act.

A crematory may not accept unidentified human remains.

Section 8. That chapter 34-26A be amended with a NEW SECTION:

Except as otherwise provided in this section, a decedent may not be cremated for twenty-four hours following:

- (1) The decedent's time of death, as pronounced by a physician, or other health care professional acting within the person's scope of practice; or
- (2) The time at which a declaration of the decedent's death is made by the coroner or other person having the authority to make that declaration.

The prohibition set forth in this section may be waived, in writing, by a physician or by the coroner, if death is the result of a virulent communicable disease.

If a death is being investigated by a coroner, cremation may not take place before a written release is provided by the investigating coroner.

Section 9. That chapter 34-26A be amended with a NEW SECTION:

A form authorizing cremation must:

- (1) Contain the decedent's name and the manner in which the decedent's identity was verified;
- (2) Contain the name of the crematory and the person accepting the authorization to cremate on behalf of the crematory;
- (3) Indicate the auspices under which the person is authorizing the cremation, as set forth in § 34-26-75;
- (4) Provide for a statement indicating that the person authorizing the cremation:
 - (a) Has no knowledge of any other person with a superior right to authorize the cremation, as provided for in § 34-26-75; or
 - (b) Has knowledge of another person with a superior right to authorize the cremation, as provided for in § 34-26-75, has made a reasonable effort but been unable to contact that other person, and has no reason to believe that the other person would object to the authorization of a cremation;
- (5) Provide for a question regarding knowledge of any pacemaker, defibrillator, or other device or implant that might:
 - (a) Pose a hazard to the health or safety of crematory personnel; or
 - (b) Cause damage to the cremation chamber;
- (6) Indicate whether the cremation is to include the casket or an alternative container in which the decedent was delivered to the crematory;
- (7) Include the name of any person authorized to witness the cremation;
- (8) Include the name of the person who is to receive the cremated remains;
- (9) Include instructions regarding the manner in which any personal property delivered to the crematory with the decedent's remains are to be handled;

- (10) Include instructions for the disposition of the cremated remains, in accordance with the provisions of this chapter or directives set forth in a pre-need cremation contract;
- (11) Include an attestation, by the person authorizing the cremation, indicating that to the best of his or her knowledge, all statements and information contained in the authorization are accurate; and
- (12) Include a statement specifically authorizing the cremation of the decedent and the processing and disposition of the remains in accordance with the directives set forth in the form.

A crematory may not proceed with the cremation of a decedent until the authorization form has been completed in accordance with the requirements of this section.

The crematory shall retain each authorization form required by this section in accordance with the record retention provisions set forth in section 24 of this Act.

Section 10. That chapter 34-26A be amended with a NEW SECTION:

If the person who signs an authorization to cremate, in accordance with section 9 of this Act, is aware of a pre-need contract that the decedent has entered into, the signer shall, to the extent possible, follow the decedent's directives.

Section 11. That § 34-26A-7 be AMENDED:

34-26A-7. If the person who has the right and duty to control the decedent's remains, as provided for in § 34-26-75, is not physically present to execute the form authorizing cremation, the person may delegate that authority to another.

Once a crematory has received written notice of a delegation under this section, including the name and address of the delegatee, the crematory may allow the delegatee to execute the form authorizing cremation.

A crematory that relies upon an authorization executed in accordance with this section is immune from liability for any acts or omissions resulting from that reliance.

Section 12. That chapter 34-26A be amended with a NEW SECTION:

No funeral home or crematory, or any employee of either is required to verify the information provided in the form authorizing cremation, as set forth in section 9 of this Act, and no funeral home or crematory, or any employee of either may be held liable for

any act or omission in reliance on the information provided in the form, unless the funeral home, crematory, or employee knew or should have known that the information was not accurate.

Section 13. That chapter 34-26A be amended with a NEW SECTION:

Upon accepting for cremation a body that has been embalmed, a crematory shall place the body in a holding facility, until the time of cremation.

Upon accepting for cremation a body that has not been embalmed, a crematory may place the body:

- (1) In a refrigerated facility, until the time of cremation; or
- (2) In a holding facility for up to eight hours and thereafter in a refrigerated facility, until the time of cremation.

Section 14. That chapter 34-26A be amended with a NEW SECTION:

Unless otherwise specified in the authorization to cremate form, a crematory may not:

- (1) Remove the decedent from the casket or alternative container in which the decedent was delivered to the crematory;
- (2) Fail to cremate the casket or alternative container in which the decedent was delivered to the crematory;
- (3) Simultaneously cremate more than one decedent in the same cremation chamber;
- (4) Permit any person to be present in the holding facility while a decedent is there awaiting cremation, permit any person to be present during the cremation, or permit any person to be present while the remains are removed from the cremation chamber, except:
 - (a) A crematory employee;
 - (b) The signer of the authorization to cremate form; and
 - (c) An invitee of the crematory director; or
- (5) Remove from the decedent any dental bridge work or fillings, implants, or body parts.

Section 15. That chapter 34-26A be amended with a NEW SECTION:

A crematory that removes recyclable material from the cremation residue, in accordance with the authorization to cremate form, may deliver the material for recycling.

Section 16. That § 34-26A-14 be AMENDED:

34-26A-14. If the crematory receives the remains of a deceased person and crematory personnel have reason to believe that the person may have died by unlawful means or that the person's death is subject to investigation under § 23-14-18, the crematory shall notify the coroner of the county where the death occurred. After this notice, the remains may not be cremated until the coroner has completed any investigation, and provided the crematory with a written release.

Section 17. That § 34-26A-19 be AMENDED:

34-26A-19. The crematory shall have procedures in place to provide for the identification and continuous tracking of human remains throughout the cremation process and until the remains are released.

Section 18. That § 34-26A-20 be AMENDED:

34-26A-20. Upon completion of a cremation, crematory personnel shall remove, from the cremation chamber, all recoverable cremation residue.

Crematory personnel shall place the cremated remains into an urn, if so directed in the authorization to cremate form. If no directives are included in the authorization to cremate form, crematory personnel shall place the cremated remains into a temporary container.

If all of the cremated remains do not fit in the selected urn or temporary container, crematory personnel shall place any remainder into an additional temporary container and release, deliver, or dispose of the urn and any containers in accordance with the directives in the authorization to cremate form.

Section 19. That chapter 34-26A be amended with a NEW SECTION:

Upon completion of a cremation, crematory personnel shall prepare a record of the cremation, and include the name of the decedent and the date and time of the cremation.

The crematory shall retain the record required by this section in accordance with the record retention provisions set forth in section 24 of this Act.

Section 20. That chapter 34-26A be amended with a NEW SECTION:

Upon completion of a cremation, the crematory shall file the burial permit with the local registrar of vital records, pursuant to § 34-25-24.

Section 21. That chapter 34-26A be amended with a NEW SECTION:

Whenever a crematory releases cremated remains, crematory personnel shall complete a receipt that includes:

- (1) The name of the decedent;
- (2) The name of the person to whom the cremated remains were released;
- (3) The date and time of the release;
- (4) The name of the crematory employee who released the cremated remains;
- (5) Any funeral home or other entity involved in the disposition of the cremated remains.

The receipt must be signed by the person who released the cremated remains and the person who received the cremated remains.

If the cremated remains are to be shipped, the receipt must be signed by the person who released the cremated remains for shipping and a copy of the receipt must accompany the remains.

The crematory shall retain a receipt required by this section in accordance with the record retention provisions set forth in section 24 of this Act.

Section 22. That chapter 34-26A be amended with a NEW SECTION:

Any crematory shipping cremated remains shall use a mail or delivery service that provides package tracking and requires an authorized signature upon delivery to the recipient's address.

A crematory may not be held liable for the loss or misplacement of any cremated remains after acceptance, by the mail or delivery service, of the package containing the remains.

Section 23. That chapter 34-26A be amended with a NEW SECTION:

Each crematory shall follow the directives in the authorization to cremate form regarding the disposition of the cremated remains.

If the cremated remains are not claimed and if no other arrangements have been made within sixty days after the date of the cremation, the crematory or a funeral home may dispose of the remains by:

- (1) Placing the remains in a grave, crypt, niche; or
- (2) Scattering the remains in any manner and in any place not otherwise prohibited by law.

Any reasonable costs incurred by a crematory or a funeral home in disposing of unclaimed cremated remains, in accordance with this section, are the responsibility of the person who signed the authorization to cremate form or the person having the right to control the disposition.

Section 24. That chapter 34-26A be amended with a NEW SECTION:

Any record required in accordance with this chapter:

- (1) Must be retained by the crematory for a period of at least seven years; and
- (2) May be inspected by the State Board of Funeral Service, during regular business hours.

Section 25. That § 34-26A-31 be AMENDED:

34-26A-31. A crematory may refuse to accept a decedent for or perform a cremation if:

- (1) It is aware of any dispute concerning the cremation;
- (2) It has reasonable grounds to question any representation made in the authorization to cremate form; or
- (3) It has any other lawful reason.

A crematory shall accept a decedent for and perform a cremation upon receiving an order from a court directing the activity or upon receipt of sufficient documentation indicating that any dispute or other ground or reason for the initial refusal has been resolved.

A crematory is immune from liability for refusing to accept a decedent for cremation and for refusing to perform a cremation, in accordance with this section.

Section 26. That § 34-26A-32 be AMENDED:

34-26A-32. A crematory may refuse to release or dispose of cremated remains if it is aware of any dispute concerning the release or disposition of the remains.

A crematory shall release or dispose of the cremated remains upon receiving an order from a court directing the activity or upon receipt of sufficient documentation indicating that the dispute has been resolved.

A crematory is immune from liability for refusing to release or dispose of cremated remains, in accordance with this section.

Section 27. That § 34-26A-33 be AMENDED:

34-26A-33. The State Board of Funeral Service shall promulgate rules, in accordance with chapter 1-26, to establish:

- (1) Standards for crematory sanitation;
- (2) Standards for refrigeration;
- (3) Standards for equipment; and
- (4) Fire protection requirements.

Section 28. That § 34-26A-35 be AMENDED:

34-26A-35. It is a Class 1 misdemeanor to:

- (1) Operate a crematory that is not licensed in accordance with this chapter;
- (2) Perform a cremation without first obtaining a completed and signed authorization to cremate form; or
- (3) Sign an authorization to cremate form with the knowledge that the form contains false or misleading information.

Section 29. That § 34-26A-37 be AMENDED:

34-26A-37. If a cremation is provided for in a pre-need contract, the contract must include provisions for the disposition of the cremated remains. Those provisions must be initialed by the individual for or by whom the arrangements are being made.

Section 30. That § 34-26A-38 be AMENDED:

34-26A-38. Notwithstanding § 34-26-75, a person may enter into a pre-need contract to authorize the person's cremation and the disposition of their cremated remains. This authorization must be signed by the person and two witnesses.

A contract entered into in accordance with this section must be retained by the other contracting party for the period of time required to fulfill the obligation, plus the additional period set forth in section 24 of this Act.

Any person who enters into a pre-need contract in accordance with this section may revoke the contract by providing written notice of the revocation to the other contracting party.

Section 31. That chapter 34-26A be amended with a NEW SECTION:

Whenever there is a change in the ownership of a licensed crematory, a representative of the crematory shall report the change to the board, within thirty days.

Section 32. That § 34-26A-40 be AMENDED:

34-26A-40. A crematory that, in good faith, cremates and disposes of the cremated remains, in accordance with any directives contained in a pre-need contract authorizing the cremation, is immune from liability.

Section 33. That § 34-26A-2 be REPEALED.

Section 34. That § 34-26A-4 be REPEALED.

Section 35. That § 34-26A-5 be REPEALED.

Section 36. That § 34-26A-6 be REPEALED.

Section 37. That § 34-26A-8 be REPEALED.

Section 38. That § 34-26A-9 be REPEALED.

Section 39. That § 34-26A-10 be REPEALED.

Section 40. That § 34-26A-11 be REPEALED.

Section 41. That § 34-26A-12 be REPEALED.

Section 42. That § 34-26A-13 be REPEALED.

Section 43. That § 34-26A-15 be REPEALED.

Section 44. That § 34-26A-16 be REPEALED.

Section 45. That § 34-26A-17 be REPEALED.

Section 46. That § 34-26A-18 be REPEALED.

Section 47. That § 34-26A-21 be REPEALED.

Section 48. That § 34-26A-22 be REPEALED.

Section 49. That § 34-26A-23 be REPEALED.

Section 50. That § 34-26A-24 be REPEALED.

Section 51. That § 34-26A-25 be REPEALED.

Section 52. That § 34-26A-26 be REPEALED.

Section 53. That § 34-26A-27 be REPEALED.

Section 54. That § 34-26A-28 be REPEALED.

Section 55. That § 34-26A-29 be REPEALED.

Section 56. That § 34-26A-30 be REPEALED.

Section 57. That § 34-26A-34 be REPEALED.

Section 58. That § 34-26A-36 be REPEALED.

Section 59. That § 34-26A-39 be REPEALED.

Section 60. That § 34-26A-41 be REPEALED.

An Act to clarify and modernize cremation requirements and procedures.

I certify that the attached Act originated in
the:
Senate as Bill No. 141

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

Secretary of the Senate

By _____
for the Governor

President of the Senate

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

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

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

Chief Clerk

Secretary of State

Senate Bill No. 141
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State