

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 441

Introduced by Seiler, 33.

Read first time January 22, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Funeral Directing and Embalming Practice
2 Act; to amend sections 12-1101, 38-1425, 38-1426, and
3 38-1427, Reissue Revised Statutes of Nebraska, and
4 sections 30-2201 and 71-605, Revised Statutes Cumulative
5 Supplement, 2012; to change provisions relating to the
6 Burial Pre-Need Sale Act and the control of dead human
7 remains; to harmonize provisions; and to repeal the
8 original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 12-1101, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 12-1101 Sections 12-1101 to 12-1121 and section 2 of this
4 act shall be known and may be cited as the Burial Pre-Need Sale Act.

5 Sec. 2. The contract for a pre-need sale shall not be
6 subject to cancellation or substantial revision unless the
7 cancellation or substantial revision has been ordered by a person
8 that the decedent has appointed in the contract as the person
9 authorized to cancel or revise the terms of the contract or unless
10 any resources set aside to fund the contract are insufficient under
11 the terms of the contract to carry out the contract. The person
12 authorized to cancel or revise the contract shall not be considered
13 an attorney in fact pursuant to sections 30-3401 to 30-3432.

14 Sec. 3. Section 30-2201, Revised Statutes Cumulative
15 Supplement, 2012, is amended to read:

16 30-2201 Sections 30-2201 to 30-2902, 30-3901 to 30-3923,
17 and 30-4001 to 30-4045 and section 4 of this act shall be known and
18 may be cited as the Nebraska Probate Code.

19 Sec. 4. (1) Except as otherwise provided by section
20 23-1824, a person, who is eighteen years of age or older and of sound
21 mind, by testamentary disposition, by entering into a pre-need sale
22 as defined by section 12-1102, or by affidavit as provided in
23 subdivision (2)(a)(ii) of this section, may direct the location,
24 manner, and conditions of disposition of his or her remains and the
25 arrangements for funeral goods and services to be provided upon his

1 or her death.

2 (2) Except as set forth in subsection (3) of this section
3 or in section 71-20,121, the right of disposition, including the
4 right to control the disposition of the remains of a deceased person,
5 the location, manner, and conditions of disposition, and the
6 arrangements for funeral goods and services to be provided, vests in
7 the following order if the person listed is eighteen years of age or
8 older and is of sound mind:

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

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

16 State of }
17 County of }

18 I,, do hereby designate
19 with the right to control the disposition of my remains upon my
20 death. I (..... have) (..... have not) attached specific directions
21 concerning the disposition of my remains which the designee shall
22 substantially comply with, so long as such directions are lawful and
23 there are sufficient resources in my estate to carry out the
24 directions. This affidavit does not constitute a durable power of
25 attorney for health care.

1 (signature of person executing
2 affidavit)

3 Subscribed and sworn to before me this day of the
4 month of of the year

5 (signature of notary public);

6 (b) The surviving spouse of the decedent;

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

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

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

1 a majority of the surviving siblings;

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

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

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

17 (i) The personal representative of the estate of the
18 decedent. The powers and duties under this section of the personal
19 representative shall commence upon his or her appointment. Such
20 powers and duties of the personal representative shall relate back in
21 time to give acts by the personal representative which are beneficial
22 to the disposition of the decedent's remains occurring prior to
23 appointment the same effect as those occurring thereafter. Prior to
24 appointment, the personal representative may carry out written
25 instructions of the decedent relating to his or her body, funeral,

1 and burial arrangements. The personal representative may also ratify
2 and accept acts regarding disposition of the decedent's remains done
3 by others where the acts would have been proper for the personal
4 representative;

5 (j) The State Anatomical Board or the county board of the
6 county where the death occurred in the case of an indigent person or
7 any other person the disposition of whose remains is a responsibility
8 of the state or county;

9 (k) A representative as described in section 38-1426 or
10 38-1427 that has arranged with the funeral establishment, cemetery,
11 or crematory authority to cremate or bury a body part in the case of
12 body parts received from the entity described in section 38-1426 or
13 38-1427; and

14 (1) In the absence of any person listed in subdivisions
15 (2)(a) through (k) of this section, any other person willing to
16 assume the right of disposition, including the funeral director with
17 custody of the body, after attesting, in writing, that a good faith
18 effort has been made to no avail to contact the persons listed in
19 subdivisions (2)(a) through (k) of this section.

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

24 (a) Any person charged with first or second degree murder
25 or voluntary manslaughter in connection with the decedent's death and

1 whose charges are known to the funeral director. If the charges
2 against such person are dismissed, or if such person is acquitted of
3 the charges, the right of disposition is returned to such person;

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

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

11 (d) If a county court pursuant to subsection (4) of this
12 section determines that the person entitled to the right of
13 disposition and the decedent were estranged at the time of death. For
14 purposes of this subdivision, estranged means a physical and
15 emotional separation from the decedent at the time of death which has
16 existed for a period of time that clearly demonstrates an absence of
17 due affection, trust, and regard for the decedent.

18 (4)(a) If two or more persons with the same relationship
19 to the decedent hold the right of disposition and cannot by majority
20 vote make a decision regarding the disposition of the decedent's
21 remains, any of such persons or a funeral home with custody of the
22 remains may file a petition asking the court to make a determination
23 in the matter;

24 (b) Notwithstanding subsections (1) through (3) of this
25 section, the county court of the county where the decedent died may

1 award the right of disposition to the person determined by the court
2 to be the most fit and appropriate to carry out the right of
3 disposition and may make decisions regarding the decedent's remains
4 if those sharing the right of disposition cannot agree.

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

7 (i) The reasonableness and practicality of the proposed
8 funeral arrangements and disposition;

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

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

14 (iv) The convenience and needs of other families and
15 friends wishing to pay respects;

16 (d) In the event of a dispute regarding the right of
17 disposition, a funeral establishment, cemetery, or crematory
18 authority is not liable for refusing to accept the remains or to
19 inter or otherwise dispose of the remains of the decedent or complete
20 the arrangements for the final disposition of the remains until the
21 funeral establishment, cemetery, or crematory authority receives a
22 court order or other written agreement signed by the parties in the
23 disagreement that decides the final disposition of the remains. If
24 the funeral establishment, cemetery, or crematory authority retains
25 the remains for final disposition while the parties are in

1 disagreement, the funeral establishment may embalm or refrigerate and
2 shelter the body, or both, in order to preserve it while awaiting the
3 final decision of the court and may add the cost of embalming or
4 refrigeration and sheltering to the final disposition costs. If a
5 funeral home brings an action under this subsection, the funeral
6 establishment, cemetery, or crematory authority may add the legal
7 fees and court costs associated with a petition under this subsection
8 to the cost of final disposition. This subsection may not be
9 construed to require or to impose a duty upon a funeral
10 establishment, cemetery, or crematory authority to bring an action
11 under this subsection. A funeral establishment, cemetery, or
12 crematory authority and its employees shall not be held criminally or
13 civilly liable for choosing not to bring an action under this
14 subsection;

15 (e) Except to the degree it may be considered by the
16 court under subdivision (4)(c)(iii) of this section, the fact that a
17 person has paid or agreed to pay for all or part of the funeral
18 arrangements and final disposition does not give that person a
19 greater right to the right of disposition than the person would
20 otherwise have. The personal representative of the estate of the
21 decedent does not, by virtue of being the personal representative,
22 have a greater claim to the right of disposition than the personal
23 representative would otherwise have.

24 Sec. 5. Section 38-1425, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 38-1425 (1) ~~Except as otherwise provided in section~~
2 ~~71-20,121, the right to control the disposition of the remains of a~~
3 ~~deceased person, except in the case of a minor subject to section~~
4 ~~23-1824 and unless other directions have been given by the decedent~~
5 ~~in the form of a testamentary disposition or a pre-need contract,~~
6 ~~vests in the following persons in the order named:~~

7 (a) ~~Any person authorized to direct the disposition of~~
8 ~~the decedent's body pursuant to a notarized affidavit authorizing~~
9 ~~such disposition and signed and sworn to by the decedent. Such an~~
10 ~~affidavit shall be sufficient legal authority for authorizing~~
11 ~~disposition without additional authorization from the decedent, the~~
12 ~~decedent's family, or the decedent's estate. Such person shall not be~~
13 ~~considered an attorney in fact pursuant to sections 30-3401 to~~
14 ~~30-3432;~~

15 (b) ~~The surviving spouse of the decedent;~~

16 (c) ~~If the surviving spouse is incompetent or not~~
17 ~~available or if there is no surviving spouse, the decedent's~~
18 ~~surviving adult children. If there is more than one adult child, any~~
19 ~~adult child, after confirmation in writing of the notification of all~~
20 ~~other adult children, may direct the manner of disposition unless the~~
21 ~~funeral establishment or crematory authority receives written~~
22 ~~objection to the manner of disposition from another adult child;~~

23 (d) ~~The decedent's surviving parents;~~

24 (e) ~~The persons in the next degree of kinship under the~~
25 ~~laws of descent and distribution to inherit the estate of the~~

1 ~~decedent. If there is more than one person of the same degree, any~~
2 ~~person of that degree may direct the manner of disposition;~~

3 ~~(f) A guardian of the person of the decedent at the time~~
4 ~~of such person's death;~~

5 ~~(g) The personal representative of the decedent;~~

6 ~~(h) The State Anatomical Board or county board in the~~
7 ~~case of an indigent person or any other person the disposition of~~
8 ~~whose remains is the responsibility of the state or county; or~~

9 ~~(i) A representative of an entity described in section~~
10 ~~38-1426 that has arranged with the funeral establishment or crematory~~
11 ~~authority to cremate a body part in the case of body parts received~~
12 ~~from such entity described in section 38-1426.~~

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

20 ~~(3) The liability for the reasonable cost of the final~~
21 ~~disposition of the remains of the deceased person devolves jointly~~
22 ~~and severally upon all kin of the decedent in the same degree of~~
23 ~~kindred and upon the estate of the decedent and, in cases when the~~
24 ~~county board has the right to control disposition of the remains~~
25 ~~under subdivision (1)(h) of this section, upon the county in which~~

1 ~~death occurred from funds available for such purpose.~~

2 (1) Any person signing a funeral service agreement, a
3 cremation authorization form, or any other authorization for
4 disposition shall be deemed to warrant the truthfulness of any facts
5 set forth in such agreement, form, or authorization, including the
6 identity of the decedent whose remains are to be buried, cremated, or
7 otherwise disposed of and the person's right of disposition. A
8 funeral establishment, cemetery, or crematory authority shall have
9 the right to rely on such agreement, form, or authorization and shall
10 have the authority to carry out the instructions of the person or
11 persons whom the funeral establishment, cemetery, or crematory
12 authority reasonably believes holds the right of disposition. No
13 funeral establishment, cemetery, or crematory authority shall have
14 the responsibility to contact or to independently investigate the
15 existence of any next-of-kin or relative of the decedent. If there is
16 more than one person in a class equal in priority and the funeral
17 establishment, cemetery, or crematory authority has no knowledge of
18 any objection by other members of such class, the funeral
19 establishment, cemetery, or crematory authority shall be entitled to
20 rely on and act according to the instructions of the first such
21 person in the class to make funeral and disposition arrangements so
22 long as no other person in such class provides written notice of his
23 or her objections to the funeral establishment, cemetery, or
24 crematory authority, as the case may be.

25 (2) No funeral establishment, funeral director, cemetery,

1 crematory authority, or crematory operator who relies in good faith
2 upon the instructions of a person claiming the right of disposition
3 shall be subject to criminal or civil liability or subject to
4 disciplinary action for carrying out the disposition of the remains
5 in accordance with such instructions.

6 (3) The liability for the reasonable cost of the final
7 disposition of the decedent devolves jointly and severally upon all
8 kin of the decedent in the same degree of kindred into which the
9 right of disposition fell and upon the estate of the decedent and, in
10 cases where a county board has the right to control disposition of
11 the remains under subdivision (2)(b)(j) of section 4 of this act,
12 upon the county in which the death occurred from funds available for
13 such purpose.

14 Sec. 6. Section 38-1426, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 38-1426 (1) A decedent, prior to his or her death, may
17 direct the preparation for the final disposition of his or her
18 remains by written instructions as provided in section 38-1425 and
19 section 4 of this act. If such instructions are in a will or other
20 written instrument, the decedent may direct that the whole or any
21 part of such remains be given to a teaching institution, university,
22 college, or legally licensed hospital, to the director, or to or for
23 the use of any nonprofit blood bank, artery bank, eye bank, or other
24 therapeutic service operated by any agency approved by the director
25 under rules and regulations established by the director. The person

1 or persons otherwise entitled to control the disposition of the
2 remains under this section shall faithfully carry out the directions
3 of the decedent.

4 (2) If such instructions are contained in a will or other
5 written instrument, they shall be immediately carried out, regardless
6 of the validity of the will in other respects or of the fact that the
7 will may not be offered for or admitted to probate until a later
8 date.

9 (3) This section shall be administered and construed to
10 the end that such expressed instructions of any person shall be
11 faithfully and promptly performed.

12 (4) A funeral director and embalmer, physician, or
13 cemetery authority shall not be liable to any person or persons for
14 carrying out such instructions of the decedent, and any teaching
15 institution, university, college, or legally licensed hospital or the
16 director shall not be liable to any person or persons for accepting
17 the remains of any deceased person under a will or other written
18 instrument as set forth in this section.

19 Sec. 7. Section 38-1427, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 38-1427 A written authorization for an autopsy given by
22 the ~~survivor or survivors, as enumerated person listed in~~ section
23 38-1425, having the right to ~~control the~~ of disposition of the
24 remains may, subject to section 23-1824 and when not inconsistent
25 with any directions given by the decedent pursuant to section

1 38-1426, include authorization for the removal of any specifically
2 named organ or organs for therapeutic or scientific purposes.
3 Pursuant to any such written authorization, any structure or organ
4 may be given to the director or to any other therapeutic service
5 operated by any nonprofit agency approved by the director, including,
6 but not limited to, a teaching institution, university, college,
7 legally licensed hospital, nonprofit blood bank, nonprofit artery
8 bank, nonprofit eye bank, or nationally recognized nonprofit hormone
9 and pituitary program. The person or persons performing any autopsy
10 shall do so within a reasonable time and without delay and shall not
11 exceed the removal permission contained in such written
12 authorization, and the remains shall not be significantly altered in
13 external appearance nor shall any portion thereof be removed for
14 purposes other than those expressly permitted in this section.

15 Sec. 8. Section 71-605, Revised Statutes Cumulative
16 Supplement, 2012, is amended to read:

17 71-605 (1) The funeral director and embalmer in charge of
18 the funeral of any person dying in the State of Nebraska shall cause
19 a certificate of death to be filled out with all the particulars
20 contained in the standard form adopted and promulgated by the
21 department. Such standard form shall include a space for veteran
22 status and the period of service in the armed forces of the United
23 States and a statement of the cause of death made by a person holding
24 a valid license as a physician, physician assistant, or nurse
25 practitioner who last attended the deceased. The standard form shall

1 also include the deceased's social security number. Death and fetal
2 death certificates shall be completed by the funeral directors and
3 embalmers and physicians, physician assistants, or nurse
4 practitioners for the purpose of filing with the department and
5 providing child support enforcement information pursuant to section
6 43-3340.

7 (2) The physician, physician assistant, or nurse
8 practitioner shall have the responsibility and duty to complete and
9 sign in his or her own handwriting or by electronic means pursuant to
10 section 71-603.01, within twenty-four hours from the time of death,
11 that part of the certificate of death entitled medical certificate of
12 death. In the case of a death when no person licensed as a physician,
13 physician assistant, or nurse practitioner was in attendance, the
14 funeral director and embalmer shall refer the case to the county
15 attorney who shall have the responsibility and duty to complete and
16 sign the death certificate in his or her own handwriting or by
17 electronic means pursuant to section 71-603.01.

18 No cause of death shall be certified in the case of the
19 sudden and unexpected death of a child between the ages of one week
20 and three years until an autopsy is performed at county expense by a
21 qualified pathologist pursuant to section 23-1824. The parents or
22 guardian shall be notified of the results of the autopsy by their
23 physician, physician assistant, nurse practitioner, community health
24 official, or county coroner within forty-eight hours. The term sudden
25 infant death syndrome shall be entered on the death certificate as

1 the principal cause of death when the term is appropriately
2 descriptive of the pathology findings and circumstances surrounding
3 the death of a child.

4 If the circumstances show it possible that death was
5 caused by neglect, violence, or any unlawful means, the case shall be
6 referred to the county attorney for investigation and certification.
7 The county attorney shall, within twenty-four hours after taking
8 charge of the case, state the cause of death as ascertained, giving
9 as far as possible the means or instrument which produced the death.
10 All death certificates shall show clearly the cause, disease, or
11 sequence of causes ending in death. If the cause of death cannot be
12 determined within the period of time stated above, the death
13 certificate shall be filed to establish the fact of death. As soon as
14 possible thereafter, and not more than six weeks later, supplemental
15 information as to the cause, disease, or sequence of causes ending in
16 death shall be filed with the department to complete the record. For
17 all certificates stated in terms that are indefinite, insufficient,
18 or unsatisfactory for classification, inquiry shall be made to the
19 person completing the certificate to secure the necessary information
20 to correct or complete the record.

21 (3) A completed death certificate shall be filed with the
22 department within five business days after the date of death. If it
23 is impossible to complete the certificate of death within five
24 business days, the funeral director and embalmer shall notify the
25 department of the reason for the delay and file the certificate as

1 soon as possible.

2 (4) Before any dead human body may be cremated, a
3 cremation permit shall first be signed by the county attorney, or by
4 his or her authorized representative as designated by the county
5 attorney in writing, of the county in which the death occurred on a
6 form prescribed and furnished by the department.

7 (5) A permit for disinterment shall be required prior to
8 disinterment of a dead human body. The permit shall be issued by the
9 department to a licensed funeral director and embalmer upon proper
10 application. The request for disinterment shall be made by the ~~next~~
11 ~~of kin of the deceased, as~~ person listed in section 38-1425, or a
12 county attorney on a form furnished by the department. The
13 application shall be signed by the funeral director and embalmer who
14 will be directly supervising the disinterment. When the disinterment
15 occurs, the funeral director and embalmer shall sign the permit
16 giving the date of disinterment and file the permit with the
17 department within ten days of the disinterment.

18 (6) When a request is made under subsection (5) of this
19 section for the disinterment of more than one dead human body, an
20 order from a court of competent jurisdiction shall be submitted to
21 the department prior to the issuance of a permit for disinterment.
22 The order shall include, but not be limited to, the number of bodies
23 to be disinterred if that number can be ascertained, the method and
24 details of transportation of the disinterred bodies, the place of
25 reinterment, and the reason for disinterment. No sexton or other

1 person in charge of a cemetery shall allow the disinterment of a body
2 without first receiving from the department a disinterment permit
3 properly completed.

4 (7) No dead human body shall be removed from the state
5 for final disposition without a transit permit issued by the funeral
6 director and embalmer having charge of the body in Nebraska, except
7 that when the death is subject to investigation, the transit permit
8 shall not be issued by the funeral director and embalmer without
9 authorization of the county attorney of the county in which the death
10 occurred. No agent of any transportation company shall allow the
11 shipment of any body without the properly completed transit permit
12 prepared in duplicate.

13 (8) The interment, disinterment, or reinterment of a dead
14 human body shall be performed under the direct supervision of a
15 licensed funeral director and embalmer, except that hospital
16 disposition may be made of the remains of a child born dead pursuant
17 to section 71-20,121.

18 (9) All transit permits issued in accordance with the law
19 of the place where the death occurred in a state other than Nebraska
20 shall be signed by the funeral director and embalmer in charge of
21 burial and forwarded to the department within five business days
22 after the interment takes place.

23 Sec. 9. Original sections 12-1101, 38-1425, 38-1426, and
24 38-1427, Reissue Revised Statutes of Nebraska, and sections 30-2201
25 and 71-605, Revised Statutes Cumulative Supplement, 2012, are

LB 441

LB 441

1 repealed.