

LEGISLATIVE BILL 146

Approved by the Governor March 18, 2015

Introduced by Crawford, 45; Bloomfield, 17; Hansen, 26; Garrett, 3.

A BILL FOR AN ACT relating to the Cremation of Human Remains Act; to amend sections 71-1355, 71-1382, and 80-104, Reissue Revised Statutes of Nebraska, and section 71-1356, Revised Statutes Cumulative Supplement, 2014; to define and redefine terms; to provide for disposition of certain unclaimed cremated remains in a veteran cemetery as prescribed; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 71-1355, Reissue Revised Statutes of Nebraska, is amended to read:

71-1355 Sections 71-1355 to 71-1385 and section 4 of this act shall be known and may be cited as the Cremation of Human Remains Act.

Sec. 2. Section 71-1356, Revised Statutes Cumulative Supplement, 2014, is amended to read:

71-1356 For purposes of the Cremation of Human Remains Act, unless the context otherwise requires:

(1) Alternative container means a container in which human remains are placed in a cremation chamber for cremation;

(2) Authorizing agent means a person vested with the right to control the disposition of human remains pursuant to section 30-2223 or a person authorized on the decedent's United States Department of Defense record of emergency data, DD Form 93, or its successor form, as provided in section 38-1425;

(3) Casket means a rigid container made of wood, metal, or other similar material, ornamented and lined with fabric, which is designed for the encasement of human remains;

(4) Cremated remains means the residue of human remains recovered after cremation and the processing of such remains by pulverization, leaving only bone fragments reduced to unidentifiable dimensions, and the unrecoverable residue of any foreign matter, such as eyeglasses, bridgework, or other similar material, that was cremated with the human remains;

(5) Cremated remains receipt form means a form provided by a crematory authority to an authorizing agent or his or her representative that identifies cremated remains and the person authorized to receive such remains;

(6) Cremation means the technical process that uses heat and evaporation to reduce human remains to bone fragments;

(7) Cremation chamber means the enclosed space within which a cremation takes place;

(8) Crematory means a building or portion of a building which contains a cremation chamber and holding facility;

(9) Crematory authority means the legal entity subject to licensure by the department to maintain and operate a crematory and perform cremation;

(10) Crematory operator means a person who is responsible for the operation of a crematory;

(11) Delivery receipt form means a form provided by a funeral establishment to a crematory authority to document the receipt of human remains by such authority for the purpose of cremation;

(12) Department means the Division of Public Health of the Department of Health and Human Services;

(13) Director means the Director of Public Health of the Division of Public Health;

(14) Funeral director has the same meaning as in section 71-507;

(15) Funeral establishment has the same meaning as in section 38-1411;

(16) Holding facility means the area of a crematory designated for the retention of human remains prior to cremation and includes a refrigerated facility;

(17) Human remains means the body of a deceased person, or a human body part, in any stage of decomposition and includes limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research;

(18) Permanent container means a receptacle made of durable material for the long-term placement of cremated remains; ~~and~~

(19) Temporary container means a receptacle made of cardboard, plastic, or other similar material in which cremated remains are placed prior to the placement of such remains in an urn or other permanent container; ~~-~~

(20) Veteran means a person who served on active duty as a member of the United States Armed Forces, a member of the Nebraska National Guard, or a member of the United States Reserve Forces, who was discharged or released from such service under conditions other than dishonorable, and who is eligible for burial in a veteran cemetery;

(21) Veteran cemetery means a cemetery under the control of the United States Department of Veterans Affairs National Cemetery Administration or the Nebraska Department of Veterans' Affairs; and

(22) Veterans service organization means an association, corporation, or

other entity that is:

(a) A charitable organization that is tax exempt under section 501(c)(3), 501(c)(4), or 501(c)(19) of the Internal Revenue Code of 1986; and

(b) Organized for the benefit of veterans burial and interment and recognized by the Memorial Affairs Division of the United States Department of Veterans Affairs or the Nebraska Department of Veterans' Affairs. The term includes a member or employee of an eligible nonprofit veterans association, corporation, or entity that specifically assists in facilitating the identification, recovery, and interment of the unclaimed cremated remains of veterans.

Sec. 3. Section 71-1382, Reissue Revised Statutes of Nebraska, is amended to read:

71-1382 (1) For purposes of the Cremation of Human Remains Act, the delivery of the cremated remains to the authorizing agent or his or her representative shall constitute final disposition. If, after a period of sixty days after the date of cremation, the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of the cremated remains or claimed the cremated remains for final disposition as provided in this section, the crematory authority or the funeral establishment in possession of the cremated remains may dispose of the cremated remains after making a reasonable attempt to contact the authorizing agent or his or her representative. This method of disposition may be used by any crematory authority or funeral establishment to dispose of all cremated remains in the possession of a crematory authority or funeral establishment on or after August 31, 2003.

(2)(a) Cremated remains shall be delivered or released by the crematory authority or funeral establishment to the representative specified by the authorizing agent on the cremation authorization form.

(b) If the crematory authority or funeral establishment has documentation that the cremated remains are those of a veteran or the spouse or dependent of a veteran who did not desire any funeral or burial-related services or ceremonies recognizing his or her service as a veteran and the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition or claimed the remains after such sixty-day period, the crematory authority or funeral establishment may dispose of the remains.

(c) If the crematory authority or funeral establishment (i) has no information whether the cremated remains are those of a veteran or the spouse or dependent of a veteran or (ii) has information that the cremated remains are those of a veteran or the spouse or dependent of a veteran but no information on whether such veteran desired a service recognizing his or her service as a veteran, the crematory authority or funeral establishment may use the process provided in section 4 of this act to relinquish control of such cremated remains.

(d) The owner of the crematory authority or his or her representative and the party receiving the cremated remains shall sign a cremated remains receipt form. The form shall include the name of the deceased, the date, time, and place of receipt of the cremated remains, and the signatures of the owner of the crematory or his or her representative and the authorizing agent or his or her representative. If the cremated remains are shipped, a form used by the shipper under subsection (4) of section 71-1381 may be used in lieu of a completed cremated remains receipt form if the shipper's form contains the information required for a cremated remains receipt form. Both the party delivering such remains and the party receiving such remains shall retain a copy of the cremated remains receipt form or shipper's form. Upon delivery, the cremated remains may be further transported within this state in any manner without a permit.

Sec. 4. (1)(a) If the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of cremated remains or claimed cremated remains for final disposition as provided in section 71-1382, the crematory authority or funeral establishment may provide information regarding the unclaimed remains to the United States Department of Veterans Affairs, the Nebraska Department of Veterans' Affairs, or a veterans service organization and request that the department or the veterans service organization working with the department:

(i) Determine if, based on the information received, the unclaimed cremated remains are those of a veteran or the spouse or dependent of a veteran; and

(ii) Verify if the decedent is eligible for burial in a veteran cemetery.

(b) The information provided to the department may include a copy of the person's death certificate, the person's name, date of birth, place of birth, date of death, marriage certificate, social security number, military service number, branch of service, or military rank on date of death, or the Department of Defense Form 214, also known as the DD Form 214.

(c) The information submitted by the crematory authority or funeral establishment to the Nebraska Department of Veterans' Affairs shall not be considered a public record for purposes of sections 84-712 to 84-712.09.

(2) If the crematory authority or funeral establishment receives notification of a determination by the United States Department of Veterans Affairs or the Nebraska Department of Veterans' Affairs that the unclaimed cremated remains are those of a veteran or the spouse or dependent of a veteran and such person is eligible for burial in a veteran cemetery, then the crematory authority or funeral establishment may relinquish control of such remains to a veterans service organization or a designated member or employee

of such organization.

(3)(a) The veterans service organization shall provide disposition of the remains of such veteran or the spouse or dependent of a veteran with a funeral at a veteran cemetery after:

(i) The veterans service organization has made reasonable efforts to locate the authorizing agent to notify him or her of the veterans service organization's intent to claim the cremated remains for the purpose of providing disposition in accordance with this section;

(ii) The cremated remains of such veteran or the spouse or dependent of a veteran have been in the possession of the veterans service organization for a period of at least one year; and

(iii) No attempt has been made to claim the unclaimed cremated remains by the authorizing agent within such one-year period.

(b) The veterans service organization may provide disposition of cremated remains by placement in a tomb, mausoleum, crypt, or columbarium in a veteran cemetery or by burial in a veteran cemetery but shall not scatter the cremated remains.

(4) If the crematory authority or funeral establishment relinquishes control of the unclaimed cremated remains to a veterans service organization, it shall:

(a) Establish and maintain a record identifying the veterans service organization receiving the remains; and

(b) Retain such record for five years from the date of transfer of the remains to the veterans service organization.

(5) A crematory operator, funeral director, crematory authority, funeral establishment, or veterans service organization shall not be liable for the disposition of cremated remains in accordance with this section unless there is negligence or misconduct.

Sec. 5. Section 80-104, Reissue Revised Statutes of Nebraska, is amended to read:

80-104 Except for cremated remains disposed of as provided in section 4 of this act, it ~~is~~ shall be the duty of the county veterans service committee to cause to be decently interred the body of any person who has been discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) from any arm of the military or naval service of the United States, has served during a period of war, as defined in section 80-401.01, or during a period of actual hostilities in any war or conflict in which the United States Government was engaged prior to April 6, 1917, and may hereafter die without leaving sufficient means to defray his or her funeral expenses. Such burials should not be made in any cemetery or burial grounds used exclusively for the burial of pauper dead. If surviving relatives of the deceased shall desire to conduct the funeral, they shall be permitted to do so.

Sec. 6. Original sections 71-1355, 71-1382, and 80-104, Reissue Revised Statutes of Nebraska, and section 71-1356, Revised Statutes Cumulative Supplement, 2014, are repealed.