

## 1 HOUSE BILL NO. 323

2 INTRODUCED BY B. THOMAS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA RIGHT OF DISPOSITION ACT  
5 PERTAINING TO FUNERAL OR OTHER DISPOSITION ARRANGEMENTS; ESTABLISHING A PRIORITY OF  
6 PERSONS WHO MAY ARRANGE FOR THE FUNERAL OR DISPOSITION OF OTHERS; PROVIDING FOR THE  
7 LOSS OF THE RIGHT OF DISPOSITION; PROVIDING FOR THE RESOLUTION OF DISPUTES AS TO THE  
8 RIGHT OF DISPOSITION; ESTABLISHING RIGHTS AND IMMUNITY FOR A MORTICIAN WHO RELIES ON  
9 THE INSTRUCTIONS OF A PERSON WHOM THE MORTICIAN REASONABLY BELIEVES HAS THE RIGHT  
10 OF DISPOSITION; REVISING DEFINITIONS; AND AMENDING SECTION 37-19-101, MCA."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Montana Right of  
15 Disposition Act".

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17 NEW SECTION. **Section 2. Purpose.** The legislature declares that it is the public policy of this state  
18 to provide an orderly and uniform system to determine which individuals hold the right to direct and carry out  
19 funeral and disposition arrangements for the remains of deceased individuals.

20

21 NEW SECTION. **Section 3. Prepaid funeral arrangements.** (1) A person who is 18 years of age or  
22 older and of sound mind, by entering into a prepaid funeral contract with any mortuary licensed under Title 37,  
23 chapter 19, part 4, may direct the location, manner, and conditions of disposition of the person's remains and the  
24 arrangements for funeral goods and services to be provided upon the person's death.

25

(2) The disposition directions and funeral prearrangements that are prepaid and contracted for with a  
26 licensed mortuary may not be canceled or substantially revised unless the cancellation or substantial revision has  
27 been ordered by a person appointed by the decedent in the prepaid funeral contract as the person authorized  
28 to cancel or revise the terms of the prepaid funeral contract.

29

30 NEW SECTION. **Section 4. Priority of rights to disposition.** Except as provided in [sections 3 and

1 7], the right to control the disposition of the remains of a deceased person, including the location, manner,  
2 conditions of disposition, and arrangements for funeral goods and services vests in the following persons in the  
3 order named if the named person is 18 years of age or older and is of sound mind:

4 (1) the surviving spouse;

5 (2) the sole surviving child of the decedent or, if there is more than one child of the decedent, the majority  
6 of the surviving children. However, less than one-half of the surviving children may be vested with the rights  
7 provided in this section if those surviving children have used reasonable efforts to notify all other surviving  
8 children of their instructions and they are not aware of opposition to their instructions on the part of more than  
9 one-half of all surviving children.

10 (3) the surviving parent or parents of the decedent. If one of the surviving parents is absent, the  
11 remaining parent may be vested with the rights and duties provided in this section if that parent's reasonable  
12 efforts have been unsuccessful in locating the absent surviving parent.

13 (4) the surviving sibling of the decedent or, if there is more than one sibling of the decedent, the majority  
14 of the surviving siblings. However, less than a majority of surviving siblings may be vested with the rights and  
15 duties provided in this section if those siblings have used reasonable efforts to notify all other surviving siblings  
16 of their instructions and they are not aware of any opposition to their instructions on the part of more than one-half  
17 of all surviving siblings.

18 (5) the surviving grandparent of the decedent or, if there is more than one surviving grandparent, the  
19 majority of the grandparents. However, less than the majority of the surviving grandparents may be vested with  
20 the rights and duties provided in this section if those grandparents have used reasonable efforts to notify all other  
21 surviving grandparents of their instructions and are not aware of any opposition to their instructions on the part  
22 of more than one-half of all surviving grandparents.

23 (6) the guardian of the decedent at the time of the decedent's death, if a guardian had been appointed;

24 (7) the personal representative of the estate of the decedent;

25 (8) the person in the classes of the next degree of kinship, in descending order, under the laws of  
26 descent and distribution to inherit the estate of the decedent. If there is more than one person of the same  
27 degree, any person of that degree may exercise the right of disposition.

28 (9) if the disposition of the remains of the decedent is the responsibility of the state or a local  
29 government, the public officer, administrator, or employee responsible for arranging the final disposition of the  
30 decedent's remains; and

1 (10) in the absence of any person provided for in subsections (1) through (9), any other person, including  
2 the mortician with custody of the remains, who is willing to assume the responsibility to act and arrange the final  
3 disposition of the decedent's remains after attesting in writing that a good faith effort has been made to contact  
4 the individuals provided for in subsections (1) through (9).

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6 **NEW SECTION. Section 5. Arrangements provided by survivors.** The provisions of [section 3] do  
7 not prevent the decedent's survivors, in the order listed in [section 4], from pursuing, at their own expense,  
8 meaningful services and making arrangements for funeral services that do not conflict with the decedent's  
9 instructions for disposition made in accordance with [section 3].

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11 **NEW SECTION. Section 6. Loss of right of disposition.** A person entitled to the right of disposition  
12 under [section 4] forfeits that right and the right is passed on to the next qualifying person listed in [section 4]  
13 under the following circumstances:

14 (1) the person is charged with deliberate or negligent homicide in connection with the decedent's death.  
15 However, if the charges against the person are dismissed or if the person is acquitted of the charges, the right  
16 of disposition is returned to the person.

17 (2) the person does not exercise the person's right of disposition within 2 days after notification of the  
18 death of the decedent or within 3 days of the decedent's death, whichever is earlier;

19 (3) the person and the decedent are spouses and a petition to dissolve the marriage was pending at the  
20 time of the decedent's death; or

21 (4) the district court, pursuant to [section 7], determines that the person entitled to the right of disposition  
22 and the decedent were estranged at the time of death. For purposes of this subsection, "estranged" means a  
23 physical and emotional separation from the decedent existing at the time of death and that existed for a period  
24 of time prior to death that clearly demonstrates an absence of affection, trust, and regard for the decedent.

25  
26 **NEW SECTION. Section 7. Disputes.** (1) The district court for the county where the decedent resided  
27 may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry  
28 out the right of disposition and make decisions regarding the decedent's remains if those sharing the right of  
29 disposition under [section 4] cannot agree.

30 (2) The following provisions apply to the court's determination under subsection (1):

1 (a) If the persons holding the right of disposition are two or more persons with the same relationship to  
2 the decedent and they cannot, by majority vote, make a decision regarding the disposition of the decedent's  
3 remains, any of the persons or a mortician with custody of the remains may file a petition asking the district court  
4 to make a determination in the matter.

5 (b) In making a determination, the district court shall consider the following:

6 (i) the reasonableness and practicality of any proposed funeral arrangements and disposition;

7 (ii) the degree of the personal relationship between the decedent and each of the persons claiming the  
8 right of disposition;

9 (iii) the desires of the person or persons who are able and willing to pay the cost of the funeral  
10 arrangements and disposition;

11 (iv) the convenience and needs of other family and friends wishing to pay respects;

12 (v) the desires of the decedent; and

13 (vi) the degree to which the funeral arrangements would allow maximum participation by all those wishing  
14 to pay their respects.

15 (3) (a) In the event of a dispute regarding the right of disposition, a mortician may not be held liable for  
16 refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the  
17 arrangements for the final disposition of the remains until the mortician receives a court order or a written  
18 agreement signed by the parties to the disagreement that decides the final disposition of the remains.

19 (b) If the mortician retains the remains for final disposition while the parties are in disagreement, the  
20 mortician may embalm or refrigerate and shelter the body, or both, in order to preserve the body while awaiting  
21 the final decision of the district court and may add the cost of embalming or refrigeration and sheltering, or both,  
22 to the final disposition costs.

23 (c) If a mortician files a petition under this section for an order of disposition from the district court, the  
24 mortician may add the legal fees and court costs associated with the petition to the cost of final disposition.

25 (d) This section may not be construed to require or to impose a duty upon a mortician to bring an action  
26 under this section. A mortician may not be held criminally or civilly liable for choosing not to bring an action under  
27 this section.

28 (4) Except to the extent that it may be considered by the district court under subsection (2)(b)(iii), the fact  
29 that a person has paid or agreed to pay for all or part of the funeral arrangements and final disposition does not  
30 give that person a greater right of disposition than the person would otherwise have.

1 (5) The personal representative of the estate of the decedent does not, by virtue of being the personal  
 2 representative, have a greater claim to the right of disposition than the person would otherwise have under the  
 3 provisions of [sections 1 through 9].

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 5 **NEW SECTION. Section 8. Right to rely.** (1) A person who signs a funeral service agreement,  
 6 cremation authorization form, or other authorization for disposition must be considered as warranting the  
 7 truthfulness of any facts set forth in the agreement, form, or authorization, including:

8 (a) the identity of the decedent whose remains are subject to the disposition; and

9 (b) the person's authority to order the disposition.

10 (2) A mortician may rely on the funeral service agreement, cremation authorization form, or other  
 11 authorization and may carry out the instructions of the person or persons whom the mortician reasonably believes  
 12 hold the right of disposition.

13 (3) A mortician is not responsible to contact or to independently investigate the existence of any next of  
 14 kin or relatives of the decedent.

15 (4) If there is more than one person in a class who are equal in priority, a mortician is entitled to rely on  
 16 and act according to the instructions of the first person in the class to make funeral and disposition arrangements  
 17 if another person in the class has not provided written notice of the person's objections to the arrangements to  
 18 the mortician and the mortician does not have knowledge of any objection to the arrangements by other members  
 19 of the class.

20  
 21 **NEW SECTION. Section 9. Immunity.** A mortuary or mortician who relies in good faith upon the  
 22 instructions of an individual claiming the right of disposition is not subject to criminal or civil liability or subject to  
 23 disciplinary action for carrying out the disposition of the remains in accordance with the instructions.

24  
 25 **Section 10.** Section 37-19-101, MCA, is amended to read:

26 **"37-19-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions  
 27 apply:

28 (1) (a) "Arrangements" includes:

29 ~~(a)(i) planning the details of funeral service, including time of service, type of service, and, if requested,~~  
 30 ~~acquiring the services of clergy and reviewing with the authorizing agent the details of a funeral or disposition of~~

1 human remains, including but not limited to the manner and specifics of the funeral or disposition of the human  
 2 remains;

3 ~~(b)(ii) filing for and obtaining the necessary information for filing removal permits, burial permits, and~~  
 4 ~~death certificates; and~~

5 ~~(c) comparing or discussing prices, including merchandise prices and financial arrangements; and~~

6 ~~——(d) providing for onsite direction and coordination of participants and onsite direction, coordination, and~~  
 7 ~~facilitation at funeral, graveside, or memorial services or rites~~

8 (iii) communicating with others to arrange and carry out funeral and disposition services.

9 (b) The term does not include filing obituary notices with newspapers, ordering flowers for funeral  
 10 services, reporting prices to consumers from a mortuary's price list, and other clerical work.

11 (2) "At-need" arrangements means arrangements made with a licensed funeral director or licensed  
 12 mortician at or after the time of death by an ~~authorized person~~ authorizing agent ~~on behalf of a deceased.~~

13 (3) "Authorizing agent" means a person legally entitled to order the final disposition of human remains,  
 14 including burial, cremation, entombment, donation to medical science, or other means, ~~of human remains.~~ An  
 15 authorizing agent is, in The order of preference: for an authorizing agent is subject to the priority of rights to  
 16 disposition established in [section 4]

17 ~~(a) a spouse;~~

18 ~~——(b) a majority of adult children;~~

19 ~~——(c) a parent;~~

20 ~~——(d) a close relative of the deceased; or~~

21 ~~——(e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal~~  
 22 ~~representative, a public administrator, the deceased through a preneed authorization, or others as designated~~  
 23 ~~by board rule.~~

24 (4) "Board" means the board of funeral service provided for in 2-15-1743.

25 (5) "Branch establishment" means a separate facility that may or may not have a suitable visitation room  
 26 or preparation room and that is owned by, a subsidiary of, or otherwise financially connected to or controlled by  
 27 a licensed mortuary.

28 (6) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used  
 29 for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth  
 30 interments, a mausoleum for crypt or niche interments, or a columbarium.

- 1 (7) "Cemetery company" means an individual, partnership, corporation, or association that:
- 2 (a) owns or controls cemetery lands or property and conducts the business of a cemetery; or
- 3 (b) applies to the board to own or control cemetery lands or property and conduct the business of a
- 4 cemetery.
- 5 (8) "Closed container" means a container in which cremated remains can be placed and enclosed in a
- 6 manner that prevents leakage or spillage of cremated remains or entrance of foreign material.
- 7 (9) "Columbarium" means a room or space in a building or structure used or intended to be used for the
- 8 interment of cremated remains.
- 9 (10) "Cremated remains" means all human remains recovered after the completion of the cremation,
- 10 including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.
- 11 (11) "Cremation" means the technical process, using heat, that reduces human remains to bone
- 12 fragments. The reduction takes place through heat and evaporation.
- 13 (12) "Cremation chamber" means the enclosed space within which the cremation process takes place.
- 14 Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of
- 15 human remains.
- 16 (13) "Cremation container" means the container in which the human remains are placed in the cremation
- 17 chamber for a cremation. A cremation container must meet substantially all of the following standards:
- 18 (a) be composed of readily combustible materials suitable for cremation;
- 19 (b) be able to be closed in order to provide a complete covering for the human remains;
- 20 (c) be resistant to leakage and spillage;
- 21 (d) be rigid enough for handling with ease; and
- 22 (e) be able to provide protection for the health, safety, and integrity of crematory personnel.
- 23 (14) "Crematory" means the building or portion of a building that houses the cremation chamber and the
- 24 holding facility.
- 25 (15) "Crematory operator" means the person in charge of the licensed crematory facility.
- 26 (16) "Crematory technician" means an employee of a crematory facility who is trained to perform
- 27 cremations and is licensed by the board.
- 28 (17) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.
- 29 (18) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part
- 30 17.

- 1 (19) "Embalming" means:
- 2 ~~—— (a) obtaining burial or removal permits or assuming other duties incidental to the practice of embalming;~~
- 3 ~~—— (b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in parts~~
- 4 ~~by the use of chemical substances, fluids, or gases ordinarily intended for that use by introducing the chemical~~
- 5 ~~substances, fluids, or gases into the body by vascular or hypodermic injection or by direct introduction into the~~
- 6 ~~organs or cavities; and~~
- 7 ~~—— (c) restorative art.~~
- 8 (20) "Funeral directing" includes conducting or engaging in or representing or holding oneself out as
- 9 being authorized to engage in or conduct any one or any combination of the following practices:
- 10 (a) ~~supervising funerals;~~
- 11 ~~—— (b) the making of preneed or at-need contractual arrangements for funerals;~~
- 12 ~~—— (c) preparing dead bodies for burial, other than by embalming;~~
- 13 ~~—— (d) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and~~
- 14 ~~—— (e) representing to the public that one is a funeral director.~~
- 15 (a) using, in connection with a name or practice, the word mortician, funeral director, undertaker,
- 16 mortuary, funeral home, funeral parlor, funeral chapel, or any other title implying that the person is engaged in
- 17 the practice of funeral directing;
- 18 (b) operating a place for preparing human remains for disposition or for caring for human remains prior
- 19 to disposition;
- 20 (c) the removal of human remains from the place of death, except that:
- 21 (i) a mortician may employ persons who are not licensed morticians to perform the removal of human
- 22 remains from the place of death if those persons have received any training that the board may prescribe for the
- 23 safe handling and transportation of human remains; and
- 24 (ii) the transportation of human remains that are embalmed or otherwise prepared and enclosed in an
- 25 appropriate container to some place that is not the place of final disposition or the transportation of deceased
- 26 human remains to a cemetery, crematory, or other place of final disposition may be performed by persons who
- 27 are not licensed morticians as long as those persons are under the general supervision of a mortician. The
- 28 supervision does not have to be immediate and direct.
- 29 (d) carrying out, conducting, or assuming responsibility for carrying out or conducting at-need or preneed
- 30 arrangements;



1           (e) assuming custody of human remains, providing shelter or protection and care to human remains, or  
2 carrying out the disposition of human remains;

3           (f) embalming, sanitizing, dressing, restoring, applying cosmetics, or otherwise preparing human remains  
4 for burial, cremation, or disposition, except that directing and supervising the burial or disposition of human  
5 remains if those functions are normally performed by cemetery and crematory personnel in interring or cremating  
6 human remains may not be considered funeral directing; and

7           (g) supervising, conducting, or coordinating funeral, committal, or memorial services.

8           (21) "Holding facility" means an area within or adjacent to the crematory facility designated for the  
9 retention of human remains prior to cremation that must:

10           (a) comply with any applicable public health law;

11           (b) preserve the dignity of the human remains;

12           (c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and

13           (d) be secure from access by anyone other than authorized personnel.

14           (22) "Human remains" means the body of a deceased person or part of a body or limb that has been  
15 removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

16           (23) "Interment" means any lawful disposition of cremated remains or human remains.

17           (24) (a) "Intern" means a person who has met the educational and testing requirements for a license to  
18 practice mortuary science in Montana, has been licensed by the board as an intern, and is engaged in the  
19 practice of mortuary science under the supervision of a licensed mortician.

20           (b) For the purposes of this subsection (24), "supervision" means the extent of oversight that a mortician  
21 believes an intern requires based upon the training, experience, judgment, and professional development of the  
22 intern.

23           (25) "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.

24           (26) "Mausoleum" means a community-type room or space in a building or structure used or intended  
25 to be used for the interment of human remains in crypts or niches.

26           (27) "Mortician" means a person licensed under this chapter to practice mortuary science.

27           (28) (a) "Mortuary" means a place of business licensed by the board, located in a building or portion of  
28 a building having a specific street address or location, containing but not limited to a suitable room for viewing  
29 or visitation and a preparation room, and devoted exclusively to activities that are related to the preparation and  
30 arrangements for funerals, transportation, burial, or other disposition of dead human bodies.

1 (b) The term includes conducting activities from the place of business referred to in subsection (28)(a)  
2 that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or the  
3 transportation, burial, cremation, or other disposition of dead human bodies in any area where those activities  
4 may be conducted.

5 (29) "Mortuary science" means the profession or practice of funeral directing and embalming.

6 (30) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the  
7 interment of the cremated remains or human remains of one or more deceased persons.

8 (31) "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings,  
9 grounds, and lots or grave spaces.

10 (32) "Preneed arrangements" means arrangements made with a licensed funeral director or licensed  
11 mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to  
12 the death of the person.

13 (33) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard,  
14 plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container  
15 is acquired.

16 (34) "Urn" means a receptacle designed to permanently encase the cremated remains."  
17

18 NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 9] are intended to be  
19 codified as an integral part of Title 37, chapter 19, and the provisions of Title 37, chapter 19, apply to [sections  
20 1 through 9].

21 - END -