

HOUSE BILL 407

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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AN ACT

RELATING TO THE DISPOSITION OF DEAD BODIES; REQUIRING COUNTIES TO GIVE REASONABLE OPPORTUNITY FOR LEGAL NEXT OF KIN TO TAKE POSSESSION OF AN UNCLAIMED DECEDENT; DEFINING "LEGAL NEXT OF KIN"; ALLOWING FOR COUNTIES TO AUTHORIZE THE DISPOSITION OF UNCLAIMED DEAD BODIES AND SET THE RATE THAT IS PAID FOR BURIAL OR CREMATION; CHANGING THE AMOUNT OF TIME A COUNTY SHALL RETAIN CREMATED REMAINS; REQUIRING THE ESTATE OF AN UNCLAIMED DECEDENT TO REIMBURSE THE COUNTY FOR BURIAL OR CREMATION EXPENSES; MAKING TECHNICAL CHANGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 24-12-1 NMSA 1978 (being Laws 1973, Chapter 354, Section 1, as amended) is amended to read:

"24-12-1. NOTIFICATION OF ~~[RELATIVES]~~ LEGAL NEXT OF KIN OF ~~[DECEASED]~~ DECEDENT--AUTHORIZATION OF PERSON DESIGNATED ON

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1 RECORD OF EMERGENCY DATA FORM TO DIRECT BURIAL--UNCLAIMED
2 DECEDENTS.--

3 A. As used in this section:

4 (1) "due diligence" means the reasonable steps
5 taken to satisfy the legal requirement relating to the
6 disposition of dead bodies, including attempts to identify the
7 body and locate legal next of kin; and

8 (2) "legal next of kin" means the following
9 persons in the order listed:

10 (a) the surviving spouse;

11 (b) a majority of the surviving adult
12 children of the decedent;

13 (c) the surviving parents of the
14 decedent;

15 (d) a majority of the surviving siblings
16 of the decedent;

17 (e) the adult person of the next degree
18 of kinship in the order named by New Mexico law to inherit the
19 estate of the decedent; or

20 (f) an adult who has exhibited special
21 care and concern for the decedent and is aware of the
22 decedent's views and desires regarding the disposition of the
23 decedent's body and is willing and able to make a decision
24 about the disposition of the decedent's body.

25 ~~[A.]~~ B. State, county, ~~[or]~~ municipal officials or

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1 other person having charge or control of [~~a~~] the body of a
2 [~~dead person~~] decedent shall use due diligence to notify the
3 [~~relatives~~] legal next of kin or other claimant of the
4 [~~deceased~~] decedent.

5 [~~B.~~] C. If the decedent died while serving in any
6 branch of the United States armed forces, the United States
7 reserve forces or the national guard, during any period of duty
8 when the secretary of the military service concerned can
9 provide for the recovery, care and disposition of remains, and
10 the [~~decedent~~] decedent completed a United States department
11 of defense record of emergency data form or its successor form,
12 the authority to direct the burial of the decedent or to
13 provide other funeral and disposition arrangements for the
14 decedent devolves on the person designated by the decedent
15 pursuant to that form.

16 [~~G. If no claimant is found who will assume the~~
17 ~~cost of burial, the official having charge or control of the~~
18 ~~body shall notify the medical investigator stating, when~~
19 ~~possible, the name, age, sex, and cause of death of the~~
20 ~~deceased.~~]

21 D. If reasonable opportunity has been afforded to
22 the legal next of kin and if no other claimant has been found,
23 the decedent may be deemed unclaimed and the legal next of kin
24 deemed to have waived the right to take possession of the body.
25 Unless the medical investigator retains the body in accordance

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1 with Section 24-12-2 NMSA 1978, the county shall authorize
2 disposition of the body. As used in this subsection,
3 "reasonable opportunity" means fifteen days after the legal
4 next of kin has been notified at the legal next of kin's last
5 known addresses.

6 ~~[D.]~~ E. The body shall be embalmed, if required,
7 and buried or cremated according to rules of the ~~[state]~~ agency
8 having jurisdiction. After the exercise of due diligence
9 required in Subsection ~~[A]~~ B of this section ~~[and the report to~~
10 ~~the medical investigator required in Subsection C of this~~
11 ~~section],~~ the medical investigator shall be ~~[furnished~~
12 ~~detailed]~~ provided material data demonstrating ~~[such]~~ due
13 diligence and the fact that no claimant has been found. When
14 the medical investigator has determined that due diligence has
15 been exercised, that reasonable opportunity has been afforded
16 ~~[relatives]~~ to legal next of kin to claim the body and that the
17 body has not been claimed, the medical investigator shall
18 ~~[issue a certificate determining]~~ determine that the remains
19 are unclaimed. In no case shall an unclaimed body be disposed
20 of in less than two weeks from the date of the discovery of the
21 body."

22 SECTION 2. Section 24-12-2 NMSA 1978 (being Laws 1973,
23 Chapter 354, Section 2, as amended) is amended to read:

24 "24-12-2. AUTHORITY OF THE OFFICE OF THE STATE MEDICAL
25 INVESTIGATOR--DISPOSITION OF UNCLAIMED BODY--TRANSMISSION OF

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1 RECORDS OF INSTITUTION.--

2 A. Upon the [~~issuance of his certificate~~]
3 determination that [~~the remains are~~] a body is unclaimed, the
4 medical investigator shall retain the body for use only for
5 medical education or shall certify that the body is unnecessary
6 or unsuited for medical education and release it to the state,
7 county or municipal officials having charge or control of the
8 body for burial. The state, county, [~~or~~] municipal officials
9 or other person having charge or control of the body of a
10 decendent shall have the body removed for disposition within
11 three weeks from the date on which the medical investigator
12 [~~released the body~~] notified the appropriate entity.

13 B. If the unclaimed body is retained for use in
14 medical education, the facility or person receiving the body
15 for that use shall pay the costs of preservation and
16 transportation of the body and shall keep a permanent record of
17 bodies received.

18 C. If [~~a deceased person~~] a decendent was an inmate
19 of a public institution, the institution shall transmit, upon
20 request of the medical investigator, a brief medical history of
21 the [~~unclaimed dead~~] person for purposes of identification and
22 permanent record. The records shall be open to inspection by
23 any state or county official or district attorney."

24 SECTION 3. Section 24-12-3 NMSA 1978 (being Laws 1973,
25 Chapter 354, Section 3) is amended to read:

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1 "24-12-3. PENALTIES.--

2 A. ~~[Any]~~ A person who conducts a post-mortem
3 examination on an unclaimed body without express permission of
4 the medical investigator is guilty of a misdemeanor and shall
5 be ~~[punished by imprisonment in the county jail for not more~~
6 ~~than one year or by the imposition of a fine of not more than~~
7 ~~one thousand dollars (\$1,000) or both such imprisonment and~~
8 ~~fine]~~ sentenced pursuant to the provisions of Section 31-19-1
9 NMSA 1978.

10 B. ~~[Any]~~ A person who unlawfully disposes of, uses
11 or sells an unclaimed body is guilty of a fourth degree felony
12 and shall be ~~[punished by imprisonment in the state~~
13 ~~penitentiary for a term of not less than one year nor more than~~
14 ~~five years or by the imposition of a fine of not more than five~~
15 ~~thousand dollars (\$5,000) or both such imprisonment and fine]~~
16 sentenced pursuant to the provisions of Section 31-18-15 NMSA
17 1978."

18 SECTION 4. Section 24-12-4 NMSA 1978 (being Laws 1973,
19 Chapter 354, Section 4, as amended) is amended to read:

20 "24-12-4. POST-MORTEM EXAMINATIONS AND AUTOPSIES--CONSENT
21 REQUIRED.--

22 A. An autopsy or post-mortem examination may be
23 performed on the body of a ~~[deceased person]~~ decedent by a
24 physician or surgeon whenever consent to the procedure has been
25 given by:

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1 (1) written authorization signed by the
2 [~~deceased~~] decedent during [~~his~~] the person's lifetime;

3 (2) authorization of [~~any~~] a person or on
4 behalf of any [~~entity~~] person whom the [~~deceased~~] decedent
5 designated in writing during [~~his~~] the person's lifetime to
6 take charge of [~~his~~] the decedent's body for burial or other
7 purposes;

8 (3) authorization of the [~~deceased's~~]
9 decedent's surviving spouse;

10 (4) authorization of an adult child, parent or
11 adult brother or sister of the [~~deceased~~] decedent if there is
12 no surviving spouse or if the surviving spouse is unavailable,
13 incompetent or has not claimed the body for burial after
14 notification of the death of the decedent;

15 (5) authorization of any other relative of the
16 [~~deceased~~] decedent if none of the persons enumerated in
17 [~~Paragraphs (2) through~~] Paragraph (4) of this subsection is
18 available or competent to give authorization; or

19 (6) authorization of the public official,
20 agency or person having custody of the body for burial if none
21 of the persons enumerated in Paragraphs (2) through (5) of this
22 subsection is available or competent to give authorization.

23 B. An autopsy or post-mortem examination shall not
24 be performed under authorization given [~~under~~] pursuant to the
25 provisions of Paragraph (4) of Subsection A of this section by

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1 any one of the persons enumerated if, before the procedure is
2 performed, any one of the other persons enumerated objects in
3 writing to the physician or surgeon by whom the procedure is to
4 be performed.

5 C. An autopsy or post-mortem examination may be
6 performed by a pathologist at the written direction of the
7 district attorney or ~~[his]~~ the district attorney's authorized
8 representative in any case in which the district attorney is
9 conducting a criminal investigation.

10 D. An autopsy or post-mortem examination may be
11 performed by a pathologist at the direction of the state,
12 district or deputy medical investigator when ~~[he]~~ the state,
13 district or deputy medical investigator suspects the death was
14 caused by a criminal act or omission or if the cause of death
15 is obscure.

16 E. For purposes of this section, "autopsy" means a
17 post-mortem dissection of a dead human body in order to
18 determine the cause, seat or nature of disease or injury and
19 includes the retention of tissues customarily removed during
20 the course of autopsy for evidentiary, identification,
21 diagnosis, scientific or therapeutic purposes."

22 SECTION 5. Section 24-12A-1 NMSA 1978 (being Laws 1993,
23 Chapter 200, Section 1) is amended to read:

24 "24-12A-1. RIGHT TO AUTHORIZE CREMATION--DEFINITIONS.--

25 A. ~~[Any]~~ An adult may authorize ~~[his]~~ the adult's

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1 own cremation and the lawful disposition of [~~his~~] the cremated
2 remains by:

3 (1) stating [~~his~~] the desire to be cremated in
4 a written statement that is signed by the [~~individual~~] adult
5 and notarized or witnessed by two persons; or

6 (2) including an express statement in [~~his~~]
7 the will indicating that the testator desired that [~~his~~] the
8 remains be cremated upon [~~his~~] death.

9 B. A personal representative acting pursuant to a
10 will or [~~Article 3 of~~] the provisions of Chapter 45, Article 3
11 NMSA 1978 or a funeral service establishment, [~~a commercial~~
12 ~~establishment~~] a direct disposition establishment or a
13 crematory shall comply with a statement made in conformance
14 with the provisions of Subsection A of this section. [~~A~~] The
15 statement [~~that conforms to the provisions of Subsection A of~~
16 ~~this section~~] is authorization to [~~a~~] the personal
17 representative, funeral establishment, commercial
18 establishment, direct disposition establishment or crematory
19 that the remains of the decedent are to be cremated.
20 Statements dated prior to [~~the effective date of this act~~]
21 April 5, 1993 are to be given effect if they meet the
22 requirements of Subsection A of this section.

23 C. A personal representative, funeral service
24 establishment, direct disposition establishment or crematory
25 acting in reliance upon a document executed pursuant to the

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1 provisions of this section, who has no actual notice of
2 revocation or contrary indication, is presumed to be acting in
3 good faith.

4 D. ~~[No]~~ A funeral service establishment,
5 ~~[commercial establishment]~~ direct disposition establishment,
6 crematory or employee of a funeral establishment, commercial
7 establishment, direct disposition establishment or crematory or
8 other person that relies in good faith on a statement written
9 pursuant to this section shall not be subject to liability for
10 cremating the remains in accordance with the express
11 instructions of a decedent. The written document is a complete
12 defense to a cause of action by any person against any other
13 person acting in accordance with the instructions of the
14 decedent.

15 E. As used in this section:

16 ~~[(1) "commercial establishment" means an~~
17 ~~office, premises or place of business that provides for the~~
18 ~~practice of funeral service or direct disposition services~~
19 ~~exclusively to licensed funeral or direct disposition~~
20 ~~establishments;~~

21 ~~(2)]~~ (1) "cremate" means to reduce a dead
22 human body by direct flame to a residue that may include bone
23 fragments; and

24 ~~[(3)]~~ (2) "direct disposition establishment"
25 means an office, premises or place of business that provides

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1 for the disposition of a dead human body as quickly as
2 possible, without a funeral, graveside service, committal
3 service or memorial service, whether public or private, and
4 without embalming of the body unless embalming is required by
5 the place of disposition."

6 SECTION 6. Section 24-12A-2 NMSA 1978 (being Laws 1993,
7 Chapter 200, Section 2, as amended) is amended to read:

8 "24-12A-2. NO WRITTEN INSTRUCTIONS--PRIORITY OF OTHERS TO
9 DECIDE DISPOSITION.--

10 A. Except as provided in Subsection B of this
11 section, if a decedent has left no written instructions
12 regarding the disposition of the decedent's remains, the
13 following persons are legal next of kin, in the order listed,
14 and shall determine the means of disposition, not to be limited
15 to cremation, of the remains of the decedent:

- 16 (1) the surviving spouse;
17 (2) a majority of the surviving adult children
18 of the decedent;
19 (3) the surviving parents of the decedent;
20 (4) a majority of the surviving siblings of
21 the decedent;

22 [~~(5) an adult who has exhibited special care~~
23 ~~and concern for the decedent, who is aware of the decedent's~~
24 ~~views and desires regarding the disposition of the decedent's~~
25 ~~body and who is willing and able to make a decision about the~~

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1 ~~disposition of the decedent's body; or~~

2 ~~(6)]~~ (5) the adult person of the next degree
3 of kinship in the order named by New Mexico law to inherit the
4 estate of the decedent; or

5 (6) an adult who has exhibited special care
6 and concern for the decedent and is aware of the decedent's
7 views and desires regarding the disposition of the decedent's
8 body and who is willing and able to make a decision about the
9 disposition of the decedent's body.

10 B. If a decedent left no written instructions
11 regarding the disposition of the decedent's remains, died while
12 serving in any branch of the United States armed forces, the
13 United States reserve forces or the national guard and
14 completed a United States department of defense record of
15 emergency data form or its successor form, the person
16 authorized by the decedent to determine the means of
17 disposition on a United States department of defense record of
18 emergency data form shall determine the means of disposition,
19 not to be limited to cremation.

20 C. The state, county, municipality or other person
21 having charge or control of the body of a decedent shall notify
22 or attempt to notify the legal next of kin."

23 SECTION 7. Section 24-12A-3 NMSA 1978 (being Laws 1999,
24 Chapter 241, Section 3) is amended to read:

25 "24-12A-3. UNCLAIMED BODIES [~~AND BODIES OF INDIGENT~~

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1 ~~PERSONS]~~--CREMATION PERMITTED.--~~[The body of an unclaimed~~
2 ~~decedent or an indigent person]~~ An unclaimed body, the
3 disposition of which is the responsibility of the county
4 pursuant to the provisions of Chapter 24, Article 13 NMSA 1978,
5 may be cremated upon the order of the county official
6 responsible for ensuring the disposition of the body or upon
7 the order of any other government official authorized to order
8 the cremation. Absent a showing of bad faith or malicious
9 intent, the official ordering the cremation and the person or
10 establishment carrying out the cremation shall be immune from
11 liability related to the cremation."

12 **SECTION 8.** Section 24-13-1 NMSA 1978 (being Laws 1939,
13 Chapter 224, Section 1, as amended) is amended to read:

14 "24-13-1. BURIAL OR CREMATION OF UNCLAIMED DECEDENTS [~~AND~~
15 ~~OF INDIGENTS]~~--For the purposes of Chapter 24, Article 13 NMSA
16 1978, a dead [~~person whose~~] body that has not been claimed by a
17 friend, relative or other interested person assuming the
18 responsibility for and expense of disposition shall be
19 considered an unclaimed decedent. It is the duty of [~~the board~~
20 ~~of county commissioners of]~~ each county in this state to [~~cause~~
21 ~~to be decently interred]~~ authorize interment or [~~cremated the~~
22 ~~body]~~ cremation of [~~any]~~ an unclaimed decedent [~~or indigent~~
23 ~~person]~~. The county shall ensure that the body is buried or
24 cremated no later than thirty days after a determination has
25 been made that the body has not been claimed, but no less than

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1 ~~[two weeks]~~ fifteen days after death or discovery of the body.
2 If the body is cremated, the county shall ensure that the
3 cremated remains are retained and stored for ~~[no less than]~~ at
4 least two years in a manner that allows for identification of
5 the remains. After the expiration of two years, the cremated
6 remains may be disposed of; provided the county retains a
7 record of the place and manner of disposition for not less than
8 five years after ~~[such]~~ disposition."

9 SECTION 9. Section 24-13-2 NMSA 1978 (being Laws 1939,
10 Chapter 224, Section 2, as amended) is amended to read:

11 "24-13-2. PERSONS DEEMED INDIGENT.--A ~~[deceased person]~~
12 decedent shall be considered to be an indigent for purposes of
13 Chapter 24, Article 13 NMSA 1978 if ~~[his]~~ the decedent's estate
14 is insufficient to cover the cost of burial or cremation or if
15 the decedent's body is unclaimed."

16 SECTION 10. Section 24-13-3 NMSA 1978 (being Laws 1939,
17 Chapter 224, Section 3, as amended) is amended to read:

18 "24-13-3. EXPENSES FOR BURIAL OR CREMATION.--If the
19 unclaimed decedent had known assets or property of sufficient
20 value to defray the expenses of cremation or burial, invoices
21 for the expenses shall be forwarded to ~~[such person or official~~
22 ~~authorized by law to be appointed administrator]~~ the executor
23 of the estate of the decedent, and such person ~~[or official]~~
24 shall pay the expenses out of the decedent's estate. To the
25 extent that the ~~[deceased person is indigent]~~ decedent is

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1 unclaimed and has no estate, the burial or cremation expenses
2 shall be borne by the county of residence of the [~~deceased~~
3 ~~person~~] decedent. If the county of residence of the [~~deceased~~
4 ~~person~~] decedent is not known, the burial or cremation expenses
5 shall be borne by the county in which the [~~body~~] decedent was
6 found. The burial or cremation expenses may be paid by the
7 county out of the general fund or the [~~county indigent hospital~~
8 ~~claims~~] health care assistance fund in an amount up to [~~six~~
9 ~~hundred dollars (\$600)~~] one thousand dollars (\$1,000) for the
10 burial or cremation of [~~any adult or minor~~] the unclaimed
11 decedent."

12 SECTION 11. Section 24-13-4 NMSA 1978 (being Laws 1939,
13 Chapter 224, Section 4, as amended) is amended to read:

14 "24-13-4. BURIAL AFTER INVESTIGATION--COST OF OPENING AND
15 CLOSING GRAVE.--The [~~board of~~] county [~~commissioners~~] after
16 proper investigation shall cause [~~any deceased indigent or~~] an
17 unclaimed decedent to be decently interred or cremated. The
18 cost to be paid by the county of opening and closing a grave
19 shall not exceed [~~six hundred dollars (\$600)~~] one thousand
20 dollars (\$1,000), which sum shall be in addition to the sums
21 enumerated in Section 24-13-3 NMSA 1978."

22 SECTION 12. Section 24-13-5 NMSA 1978 (being Laws 1939,
23 Chapter 224, Section 5, as amended) is amended to read:

24 "24-13-5. PAYMENT OF BURIAL OR CREMATION EXPENSES--
25 COMMISSIONERS' LIABILITY.--The board of county commissioners of

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1 any county within this state may authorize payment for the
2 burial or cremation [~~of an indigent person, as defined in~~
3 ~~Section 24-13-2 NMSA 1978 or~~] of an unclaimed decedent, as
4 defined in Section 24-13-1 NMSA 1978. All available assets of
5 the deceased [~~shall~~] may be used to reimburse the county for
6 the cost of burial or cremation. Should the county be required
7 to pay expenses for burial or cremation of an unclaimed
8 decedent who has left an estate, the estate shall reimburse the
9 county for those expenses. The county commissioners [~~shall~~]
10 may be liable [~~either personally or~~] officially to the county
11 they represent in double the amount they have paid toward the
12 burial or cremation of a person other than as authorized by
13 this section."

14 SECTION 13. Section 24-13-6 NMSA 1978 (being Laws 1939,
15 Chapter 224, Section 6, as amended) is amended to read:

16 "24-13-6. MONEY FROM RELATIVES--DUTY OF FUNERAL
17 DIRECTOR.--Should [~~any~~] a funeral director or other person
18 allowed by law to conduct the business of a funeral director
19 accept money from the relatives or [~~friend~~] friends of a
20 [~~deceased person~~] decedent whom the [~~board of~~] county
21 [~~commissioners~~] has determined to be [~~an indigent or~~] an
22 unclaimed decedent, the funeral director shall immediately
23 notify the [~~board of~~] county [~~commissioners~~] of the payment or
24 offer for payment, and the [~~board of~~] county [~~commissioners~~]
25 shall not [~~thereafter~~] pay for the burial or cremation

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1 involved, or, if the ~~[board of]~~ county ~~[commissioners]~~ has
2 already paid for the burial or cremation, the funeral director
3 shall immediately refund the money paid to ~~[him]~~ the funeral
4 director by the ~~[board of]~~ county ~~[commissioners]~~ for the
5 burial or cremation."

6 SECTION 14. Section 24-13-7 NMSA 1978 (being Laws 1939,
7 Chapter 224, Section 7, as amended) is amended to read:

8 "24-13-7. FAILURE TO NOTIFY--FUNERAL DIRECTOR'S
9 LIABILITY.--If ~~[any]~~ a funeral director or other person
10 authorized by law to conduct the business of a funeral director
11 receives or contracts to receive any money or thing of value
12 from relatives or friends of ~~[a deceased alleged indigent or]~~
13 an unclaimed decedent whose burial or cremation expenses are
14 paid or to be paid by the ~~[board of]~~ county ~~[commissioners]~~ and
15 fails to notify the ~~[board of]~~ county ~~[commissioners]~~ of that
16 fact, the funeral director or other person authorized by law to
17 conduct the business of a funeral director shall be liable to
18 the county in an amount double the amount paid or to be paid by
19 the ~~[board of]~~ county ~~[commissioners of that county]~~."

20 SECTION 15. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2023.