

1 SENATE BILL 444

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Pete Campos

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10 AN ACT

11 RELATING TO PROFESSIONAL LICENSES; CHANGING THE NAME OF THE
12 THANATOPRACTICE ACT TO THE FUNERAL SERVICES ACT; ELIMINATING
13 CERTAIN LICENSES; CREATING THE ORGAN TISSUE PROCUREMENT
14 ADVISORY COMMITTEE; CERTIFYING ORGAN TISSUE PROCUREMENT
15 ORGANIZATIONS.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 61-32-1 NMSA 1978 (being Laws 1993,
19 Chapter 204, Section 1, as amended) is amended to read:

20 "61-32-1. SHORT TITLE.--Chapter 61, Article 32 NMSA 1978
21 may be cited as the "~~[Thanatopractice]~~ Funeral Services Act"."

22 SECTION 2. Section 61-32-3 NMSA 1978 (being Laws 1993,
23 Chapter 204, Section 3, as amended) is amended to read:

24 "61-32-3. DEFINITIONS.--As used in the [~~Thanatopractice]~~
25 Funeral Services Act:

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1 A. "assistant funeral service practitioner" means a
2 person licensed to engage in practice at a funeral
3 establishment or commercial establishment, licensed pursuant to
4 the [~~Thanatopractice~~] Funeral Services Act, as an assistant
5 funeral service practitioner as provided in that act;

6 B. "associate funeral service practitioner" means a
7 person licensed to engage in practice at a funeral
8 establishment or commercial establishment, licensed pursuant to
9 the [~~Thanatopractice~~] Funeral Services Act, as an associate
10 funeral service practitioner as provided in that act;

11 C. "board" means the board of [~~thanatopractice~~]
12 funeral services;

13 D. "committal service" means a service at a place
14 of interment or entombment that follows a funeral conducted at
15 another location;

16 E. "cremains" means cremated remains;

17 F. "cremation" means the reduction of a dead human
18 body by direct flame to a residue, which includes bone
19 fragments;

20 G. "crematory" means every place or premises that
21 is devoted to or used for cremation and pulverization of the
22 cremains;

23 H. "crematory authority" means the individual who
24 is ultimately responsible for the operation of a crematory;

25 I. "department" means the regulation and licensing

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1 department;

2 J. "direct disposer" means a person licensed to
3 engage solely in providing direct disposition at a direct
4 disposition establishment, licensed pursuant to the
5 [~~Thanatopractice~~] Funeral Services Act, as provided in that
6 act;

7 K. "direct disposition" means only the disposition
8 of a dead human body as quickly as possible, without a funeral,
9 graveside service, committal service or memorial service,
10 whether public or private, and without embalming of the body
11 unless embalming is required by the place of disposition;

12 L. "direct supervision" means that the supervising
13 funeral service practitioner is physically present with and in
14 direct control of the person being trained;

15 M. "disposition" means the final disposal of a dead
16 human body, whether it be by earth interment, above-ground
17 interment or entombment, cremation, burial at sea or delivery
18 to a medical school, when the medical school assumes complete
19 responsibility for the disposal of the body following medical
20 study or to an organ tissue procurement agency;

21 N. "embalming" means the disinfection, preservation
22 and restoration, when possible, of a dead human body by a
23 licensed funeral service practitioner, a licensed associate
24 funeral service practitioner or a licensed funeral service
25 intern under the supervision of a licensed funeral service

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1 practitioner;

2 O. "ennichement" means interment of cremains in a
3 niche in a columbarium, whether in an urn or not;

4 P. "entombment" means interment of a casketed body
5 or cremains in a crypt in a mausoleum;

6 Q. "establishment" means every office, premises or
7 place of business where the practice of funeral service or
8 direct disposition is conducted or advertised as being
9 conducted and includes commercial establishments that provide
10 for the practice of funeral service or direct disposition
11 services exclusively to licensed funeral or direct disposition
12 establishments or a school of medicine;

13 R. "funeral" means a period following death in
14 which there is an organized, purposeful, time-limited,
15 group-centered ceremony or rite, whether religious or not, with
16 the body of the deceased present;

17 S. "funeral merchandise" means that personal
18 property offered for sale in connection with the
19 transportation, funeralization or disposition of a dead human
20 body, including the enclosure into which a dead human body is
21 or cremains are directly placed, and excluding mausoleum
22 crypts, interment enclosures preset in a cemetery and
23 columbarium niches;

24 T. "funeral service intern" means a person licensed
25 to be in training for the practice of funeral service under the

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1 supervision and instruction of a funeral service practitioner
2 at a funeral establishment or commercial establishment,
3 licensed pursuant to the [~~Thanatopractice~~] Funeral Services
4 Act;

5 U. "funeral service practitioner" means a person
6 licensed to engage in the practice of funeral service at a
7 funeral establishment or commercial establishment that is
8 licensed pursuant to the [~~Thanatopractice~~] Funeral Services Act
9 [~~as provided in that act~~];

10 V. "funeral services" means those immediate
11 post-death activities related to a dead human body, and its
12 care and disposition, whether with or without rites or
13 ceremonies; but "funeral services" does not include disposition
14 of the body by a school of medicine following medical study;

15 [~~V.~~] W. "general supervision" means that the
16 supervising funeral service practitioner is not necessarily
17 physically present in the establishment with the person being
18 trained but is available for advice and assistance;

19 [~~W.~~] X. "graveside service" means a funeral held at
20 the graveside only, excluding a committal service that follows
21 a funeral conducted at another location;

22 [~~X.~~] Y. "jurisprudence examination" means an
23 examination prescribed by the board on the statutes, rules and
24 regulations pertaining to the practice of funeral service or
25 direct disposition, including the [~~Thanatopractice~~] Funeral

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1 Services Act, the rules of the board, state health regulations
2 governing human remains and the Vital Statistics Act;

3 ~~[Y.]~~ Z. "licensee in charge" means a funeral
4 service practitioner who is ultimately responsible for the
5 conduct of a funeral or commercial establishment and its
6 employees or a direct disposer who is ultimately responsible
7 for the conduct of a direct disposition establishment and its
8 employees;

9 ~~[Z.]~~ AA. "make arrangements" means advising or
10 counseling about specific details for a funeral, graveside
11 service, committal service, memorial service, disposition or
12 direct disposition;

13 ~~[AA.]~~ BB. "memorial service" means a gathering of
14 persons for recognition of a death without the presence of the
15 body of the deceased;

16 CC. "organ tissue procurement" means removing and
17 dissecting organs or tissue from human cadavers for transplant
18 or medical research;

19 ~~[BB.]~~ DD. "practice of funeral service" means those
20 activities allowed under the ~~[Thanatopractice]~~ Funeral Services
21 Act by a funeral service practitioner, associate funeral
22 service practitioner, assistant funeral service practitioner or
23 funeral service intern; and

24 ~~[GG.]~~ EE. "pulverization" means the process that
25 reduces cremains to a granular substance ~~[and~~

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1 DD. ~~"thanatopractice" means those immediate post-~~
2 ~~death activities related to the dead human body, its care and~~
3 ~~disposition, whether with or without rites or ceremonies, but~~
4 ~~not including disposition of the body by a school of medicine~~
5 ~~following medical study]."~~

6 SECTION 3. Section 61-32-4 NMSA 1978 (being Laws 1993,
7 Chapter 204, Section 4, as amended) is amended to read:

8 "61-32-4. LICENSE REQUIRED.--

9 A. Unless licensed to practice under the
10 [~~Thanatopractice~~] Funeral Services Act, a person shall not:

11 (1) practice as a funeral service
12 practitioner, associate funeral service practitioner, assistant
13 funeral service practitioner, funeral service intern or direct
14 disposer or engage in procurement of body organs or tissues;

15 (2) use the title or [~~represent himself as~~]
16 make any representation as being a funeral service
17 practitioner, associate funeral service practitioner, assistant
18 funeral service practitioner, funeral service intern or direct
19 disposer or use any other title, abbreviation, letters,
20 figures, signs or devices that indicate the person is licensed
21 to practice as a funeral service practitioner, associate
22 funeral service practitioner, assistant funeral service
23 practitioner, funeral service intern or direct disposer; or

24 (3) maintain, manage or operate a funeral
25 establishment, a commercial establishment, a direct disposition

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1 establishment [~~or~~], a crematory or an organ tissue procurement
2 agency.

3 B. A person who engages in the practice or acts in
4 the capacity of a funeral service practitioner, associate
5 funeral service practitioner, assistant funeral service
6 practitioner, funeral service intern or direct disposer in this
7 state, with or without a New Mexico license, is subject to the
8 jurisdiction of the state and to the administrative
9 jurisdiction of the board and is subject to all penalties and
10 remedies available for a violation of a provision of the
11 [~~Thanatopractice~~] Funeral Services Act.

12 C. A person who maintains, manages or operates a
13 funeral establishment, commercial establishment, direct
14 disposition establishment or a crematory in this state, with or
15 without a New Mexico establishment or crematory license, is
16 subject to the jurisdiction of the state and to the
17 administrative jurisdiction of the board and is subject to all
18 penalties and remedies available for a violation of a provision
19 of the [~~Thanatopractice~~] Funeral Services Act."

20 SECTION 4. Section 61-32-5 NMSA 1978 (being Laws 1993,
21 Chapter 204, Section 5, as amended) is amended to read:

22 "61-32-5. BOARD CREATED.--

23 A. There is created the "board of [~~thanatopractice~~]
24 funeral services".

25 B. The board is administratively attached to the

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1 department.

2 C. The board consists of six members. Three
3 members shall be funeral service practitioners who have been
4 licensed in this state for at least five years; two members
5 shall represent the public and shall not have been licensed for
6 the practice of funeral service or direct disposition in this
7 state or any other jurisdiction and shall not ever have had any
8 financial interest, direct or indirect, in any funeral,
9 commercial or direct disposition establishment or crematory;
10 and one member shall be a licensed [~~direct disposer or~~] health
11 care practitioner from the office of the medical investigator
12 who has been licensed in this state for at least five years.

13 D. Members of the board shall be appointed by the
14 governor for terms of four years. Each member shall hold
15 office until [~~his~~] the member's successor is duly qualified and
16 appointed. Vacancies shall be filled for [~~any~~] an unexpired
17 term in the same manner as original appointments.

18 E. Members of the board shall be reimbursed per
19 diem and mileage as provided in the Per Diem and Mileage Act
20 and shall receive no other compensation, perquisite or
21 allowance.

22 F. A simple majority of the board members currently
23 serving constitutes a quorum.

24 G. The board shall hold at least two regular
25 meetings each year and shall meet at such other times as it

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1 deems necessary.

2 H. No board member shall serve more than two full
3 consecutive terms. The board shall recommend removal of any
4 board member who has three unexcused absences from properly
5 noticed meetings within a twelve-month period and may recommend
6 removal of a board member for any other just cause.

7 I. The board shall elect a [~~chairman~~] chair and
8 other officers as deemed necessary to administer its duties."

9 SECTION 5. Section 61-32-6 NMSA 1978 (being Laws 1993,
10 Chapter 204, Section 6, as amended) is amended to read:

11 "61-32-6. BOARD POWERS.--

12 A. In addition to any other authority provided by
13 law, the board has the power to:

14 (1) adopt, in accordance with the provisions
15 of the Uniform Licensing Act, and file, in accordance with the
16 State Rules Act, rules [~~and regulations~~] necessary to carry out
17 the provisions of the [~~Thanatopractice~~] Funeral Services Act;

18 (2) adopt rules implementing continuing
19 education requirements;

20 (3) conduct hearings upon charges relating to
21 the discipline of licensees and take administrative actions
22 pursuant to Section 61-1-3 NMSA 1978;

23 (4) establish reasonable fees to carry out the
24 provisions of the [~~Thanatopractice~~] Funeral Services Act;

25 (5) provide for investigations necessary to

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1 determine violations of the [~~Thanatopractice~~] Funeral Services
2 Act;

3 (6) establish committees as the board deems
4 necessary for carrying out the provisions of the
5 [~~Thanatopractice~~] Funeral Services Act;

6 (7) apply for injunctive relief to enforce the
7 provisions of the [~~Thanatopractice~~] Funeral Services Act or to
8 restrain any violation of that act;

9 (8) impose a fine not to exceed five thousand
10 dollars (\$5,000) for each violation, in addition to other
11 administrative or disciplinary costs, and all fines shall be
12 deposited in the [~~thanatopractice~~] funeral services fund; and

13 (9) conduct criminal background checks on
14 applicants for licensure.

15 B. No action or other legal proceedings for damages
16 shall be instituted against the board, any board member or
17 employee of the board for any act performed in good faith and
18 in the intended performance of any power or duty granted under
19 the [~~Thanatopractice~~] Funeral Services Act or for any neglect
20 or default in the good faith performance or exercise of any
21 such power or duty."

22 SECTION 6. Section 61-32-7 NMSA 1978 (being Laws 1993,
23 Chapter 204, Section 7) is amended to read:

24 "61-32-7. BOARD DUTIES.--The board shall:

25 A. administer the provisions of the

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1 ~~[Thanatopractice]~~ Funeral Services Act;

2 B. provide for the examination, licensing and
3 renewal of applicants or licensees; and

4 C. provide for the inspection of establishments and
5 crematories."

6 SECTION 7. Section 61-32-8 NMSA 1978 (being Laws 1993,
7 Chapter 204, Section 8, as amended) is amended to read:

8 "61-32-8. INSPECTION--ACCESS--COUNSEL.--

9 A. Inspection of establishments and crematories,
10 including all records, financial or otherwise, is authorized
11 during regular business hours. Acceptance of a license shall
12 include permission for the board or its designee to enter the
13 premises without legal process.

14 B. An establishment or crematory shall maintain
15 business records required by law or rule at the establishment
16 or crematory.

17 C. The board shall be represented by the attorney
18 general. The board may employ special counsel, upon approval
19 of the attorney general, to review and prosecute cases of
20 consumer complaints against any person, establishment or
21 crematory licensed pursuant to the ~~[Thanatopractice]~~ Funeral
22 Services Act. Payment for the services shall be by the board."

23 SECTION 8. Section 61-32-9 NMSA 1978 (being Laws 1993,
24 Chapter 204, Section 9, as amended) is amended to read:

25 "61-32-9. REQUIREMENTS FOR LICENSURE--FUNERAL SERVICE

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1 PRACTITIONER--FUNERAL SERVICE INTERN--DIRECT DISPOSER
2 [~~ASSOCIATE FUNERAL SERVICE PRACTITIONER--ASSISTANT FUNERAL~~
3 ~~SERVICE PRACTITIONER--TEMPORARY LICENSES~~].--

4 A. A license to practice as a funeral service
5 practitioner shall be issued to any person who files a
6 completed application, accompanied by the required fees and
7 documentation, and who submits satisfactory evidence that [he]
8 the person:

9 (1) is at least eighteen years of age;

10 (2) has served as a licensed funeral service
11 intern for not less than twelve months, under the supervision
12 of a licensed funeral service practitioner. During the
13 training period, the applicant shall have assisted in the
14 embalming of at least fifty bodies, making of at least fifty
15 funeral arrangements and the directing of at least fifty
16 funerals;

17 (3) has successfully completed [~~any~~] an
18 examination, including a jurisprudence examination, prescribed
19 by board rules;

20 (4) has not been convicted of unprofessional
21 conduct or incompetency; and

22 [~~(5) has graduated from an institution~~
23 ~~accredited by the American board of funeral service education~~
24 ~~or any other successor recognized by the United States office~~
25 ~~of education for funeral service education; and~~

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1 ~~(6) has successfully completed at least sixty~~
2 ~~semester hours of academic and professional instruction in an~~
3 ~~accredited college or university; provided, however, that an~~
4 ~~assistant funeral service practitioner need not satisfy the~~
5 ~~provisions of Paragraphs (5) and (6) of this subsection if the~~
6 ~~assistant funeral service practitioner has successfully~~
7 ~~completed examinations required by the board for practice as an~~
8 ~~associate funeral service practitioner and a funeral service~~
9 ~~practitioner]~~

10 (5) has successfully graduated and obtained an
11 associate's degree in funeral science from an institution
12 accredited by the American board of funeral service education
13 or any other successor recognized by the United States
14 government and in doing so must have completed at least sixty
15 semester hours.

16 B. A license to practice as a funeral service
17 intern shall be issued to any person who files a completed
18 application, accompanied by the required fees and
19 documentation, and who submits satisfactory evidence that [he]
20 the person:

21 (1) is at least eighteen years of age;
22 (2) has graduated from high school or the
23 equivalent;

24 (3) has submitted proof of employment and
25 supervision as required by board rules. Except as may be

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1 allowed by board rule, a license as a funeral service intern is
2 not ambulatory and is issued for a specific funeral
3 establishment ~~[only]~~ or an establishment that is part of a
4 multi-unit enterprise;

5 (4) has successfully completed ~~[any]~~ an
6 examination, including a jurisprudence examination, prescribed
7 by board rules; and

8 (5) has not been convicted of unprofessional
9 conduct or incompetency.

10 ~~[G. A license to practice as a direct disposer~~
11 ~~shall be issued to any person who files a completed~~
12 ~~application, accompanied by the required fees and~~
13 ~~documentation, and who submits satisfactory evidence that he:~~

14 ~~(1) is at least eighteen years of age;~~

15 ~~(2) has graduated from high school or the~~
16 ~~equivalent;~~

17 ~~(3) has successfully completed any~~
18 ~~examination, including a jurisprudence examination, prescribed~~
19 ~~by board rules; and~~

20 ~~(4) has not been convicted of unprofessional~~
21 ~~conduct or incompetency.~~

22 ~~D. A license to practice as an assistant funeral~~
23 ~~service practitioner shall be issued to any person who, prior~~
24 ~~to June 18, 1993, held a valid license as an assistant funeral~~
25 ~~service practitioner and who was qualified to receive a renewal~~

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1 ~~license on July 1, 1993.~~

2 ~~E. A license to practice as an associate funeral~~
3 ~~service practitioner shall be issued to any person who files a~~
4 ~~completed application, accompanied by the required fees and~~
5 ~~documentation, and who submits satisfactory evidence that he:~~

6 ~~(1) has been licensed as an assistant funeral~~
7 ~~service practitioner;~~

8 ~~(2) has successfully completed any~~
9 ~~examination, including a jurisprudence examination, prescribed~~
10 ~~by board rules; and~~

11 ~~(3) has not been convicted of unprofessional~~
12 ~~conduct or incompetency.]~~

13 C. No new license shall be issued for direct
14 disposers, assistant funeral service practitioners or associate
15 funeral service practitioners. A license issued prior to July
16 1, 2011 shall not be renewed after January 1, 2013.

17 ~~[F-]~~ D. The board may adopt by rule requirements
18 for issuing a temporary license that will be valid until the
19 next scheduled board meeting."

20 SECTION 9. Section 61-32-11 NMSA 1978 (being Laws 1993,
21 Chapter 204, Section 11, as amended) is amended to read:

22 "61-32-11. LICENSURE OF ESTABLISHMENTS FUNERAL
23 ESTABLISHMENTS--COMMERCIAL ESTABLISHMENTS [~~DIRECT DISPOSITION~~
24 ~~ESTABLISHMENTS~~]~~--CREMATORIES--~~ORGAN TISSUE PROCUREMENT
25 LICENSES.--

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1 A. Funeral establishment licenses shall only be
2 granted under the following terms and conditions:

3 (1) applications for licensure shall be upon
4 forms furnished by the board and shall be accompanied by the
5 required fee;

6 (2) the establishment shall be maintained at a
7 specific location primarily devoted to the practice of funeral
8 service and shall comply with the following minimum
9 requirements:

10 (a) a chapel shall be present in which
11 funerals may be conducted;

12 (b) ~~[a display room shall be present for~~
13 ~~displaying caskets and other funeral merchandise]~~ an
14 arrangement room shall be present for displaying funeral
15 merchandise in models, graphics or by a virtual display through
16 electronic means; and

17 (c) a preparation room shall be present
18 with necessary drainage and ventilation and necessary
19 instruments and supplies for the preparation and embalming of
20 dead human bodies for burial or other disposition or
21 transportation. If the establishment is part of a multi-unit
22 enterprise, a central preparation room may be designated to
23 service all facilities, provided the distance from the
24 designated facility is within seventy-five miles; and

25 (3) a license shall not be issued or renewed

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1 by the board unless the establishment is in compliance with the
2 [~~Thanatopractice~~] Funeral Services Act and board rules.

3 B. Commercial establishment licenses shall only be
4 granted under the following terms and conditions:

5 (1) applications for licensure shall be upon
6 forms furnished by the board and shall be accompanied by the
7 required fee;

8 (2) the establishment shall be maintained at a
9 specific location primarily devoted to the practice allowed for
10 a commercial establishment and shall comply with the following
11 minimum requirements:

12 (a) a preparation room shall be present
13 with the necessary drainage and ventilation and necessary
14 instruments and supplies for the preparation and embalming of
15 dead human bodies for burial or other disposition and
16 transportation; and

17 (b) an office shall be present for
18 conducting business; and

19 (3) a license shall not be issued or renewed
20 by the board unless the establishment is in compliance with the
21 [~~Thanatopractice~~] Funeral Services Act and board rules.

22 [~~G. Direct disposition establishment licenses shall~~
23 ~~only be granted under the following terms and conditions:~~

24 (1) ~~applications for licensure shall be upon~~
25 ~~forms furnished by the board and shall be accompanied by the~~

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1 ~~required fee;~~

2 ~~(2) the establishment shall be maintained at a~~
3 ~~specific location primarily devoted to the practice allowed for~~
4 ~~a direct disposer and shall comply with the following minimum~~
5 ~~requirements:~~

6 ~~(a) a room shall be present with~~
7 ~~necessary drainage and ventilation for housing a refrigeration~~
8 ~~unit;~~

9 ~~(b) a refrigeration unit,~~
10 ~~thermodynamically controlled with a minimum storage area of~~
11 ~~twelve and one-half cubic feet per body, shall be present for~~
12 ~~sheltering of dead human bodies prior to burial or other~~
13 ~~disposition or transportation;~~

14 ~~(c) an office shall be present for~~
15 ~~conducting business;~~

16 ~~(d) necessary supplies for safely~~
17 ~~handling unembalmed dead human bodies; and~~

18 ~~(e) if funeral merchandise is made~~
19 ~~available, a display room shall be present for displaying~~
20 ~~caskets and other funeral merchandise; and~~

21 ~~(3) no license shall be issued or renewed by~~
22 ~~the board unless the establishment is in compliance with the~~
23 ~~Thanatopractice Act and board rules.~~

24 ~~D.]~~ C. Crematory licenses shall only be granted
25 under the following terms and conditions:

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1 (1) applications for licensure shall be upon
2 forms furnished by the board and shall be accompanied by the
3 required fee;

4 (2) the crematory shall be maintained at a
5 specific location, including a funeral, commercial or direct
6 disposition establishment, primarily devoted to the practice
7 allowed for a crematory and shall comply with the following
8 minimum requirements:

9 (a) a room shall be present with
10 necessary ventilation for housing a cremation retort;

11 (b) a cremation retort shall be present
12 for cremating dead human bodies; and

13 (c) a unit to pulverize cremated dead
14 human bodies shall be present; and

15 (3) no license shall be issued or renewed by
16 the board unless the crematory is in compliance with the
17 [~~Thanatopractice~~] Funeral Services Act and board rules.

18 D. The board shall adopt rules that set appropriate
19 standards and guidelines for granting licenses for organ-tissue
20 procurement. Prior to adopting these standards and guidelines,
21 the board shall seek input from all organ procurement
22 organizations, tissue banks and eye banks based in this state.
23 The standards and guidelines shall be substantially based on
24 the existing laws of the United States and of this state and
25 the existing standards and guidelines of the united network for

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1 organ sharing, the American association of tissue banks, the
2 American foundation for donation and transplantation, the North
3 American transplant coordinators organization and the eye bank
4 association of America.

5 E. The board may adopt by rule additional
6 requirements in the interest of public health, safety and
7 welfare."

8 SECTION 10. Section 61-32-13 NMSA 1978 (being Laws 1993,
9 Chapter 204, Section 13, as amended) is amended to read:

10 "61-32-13. ESTABLISHMENTS--REQUIREMENTS--TEMPORARY
11 LICENSES.--

12 A. Each establishment shall have a full-time
13 licensee in charge; provided the establishment license is a
14 privilege granted to the person to whom it is issued and is not
15 transferable to other owners or operators or to another
16 location than that designated on the license.

17 B. The board may adopt by rule special requirements
18 for multi-unit establishments that are located within [~~fifty~~]
19 seventy-five miles of each other and that wish to share a
20 licensee in charge.

21 C. The board may adopt by rule the requirements for
22 reapplication or reinspection.

23 D. The board may adopt by rule requirements for
24 issuing a temporary establishment or crematory license that
25 will be valid until the next scheduled board meeting."

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1 **SECTION 11.** Section 61-32-15 NMSA 1978 (being Laws 1993,
2 Chapter 204, Section 15) is amended to read:

3 "61-32-15. ASSOCIATE FUNERAL SERVICE PRACTITIONER--
4 LIMITATIONS.--An associate funeral service practitioner may
5 engage in the practice of funeral service to the same extent
6 and subject to the same limitations and grounds for
7 disciplinary action as prescribed by the [~~Thanatopractice~~]
8 Funeral Services Act and the rules of the board for the license
9 of a funeral service practitioner; provided that an associate
10 funeral service practitioner shall not be the licensee in
11 charge of a funeral establishment or the supervisor of a
12 funeral service intern, except as otherwise expressly permitted
13 by the board in a particular circumstance upon the basis of
14 public interest or need."

15 **SECTION 12.** Section 61-32-16 NMSA 1978 (being Laws 1993,
16 Chapter 204, Section 16) is amended to read:

17 "61-32-16. ASSISTANT FUNERAL SERVICE PRACTITIONER--SCOPE
18 OF PRACTICE--LIMITATIONS.--An assistant funeral service
19 practitioner may engage in the practice of funeral service to
20 the same extent and subject to the same limitations and grounds
21 for disciplinary action as prescribed by the [~~Thanatopractice~~]
22 Funeral Services Act and the rules of the board for the license
23 of a funeral service practitioner; provided that an assistant
24 funeral service practitioner shall not embalm, be the licensee
25 in charge of a funeral establishment or be the supervisor of a

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1 funeral service intern."

2 SECTION 13. Section 61-32-17 NMSA 1978 (being Laws 1993,
3 Chapter 204, Section 17, as amended) is amended to read:

4 "61-32-17. DIRECT DISPOSER--SCOPE OF PRACTICE--
5 LIMITATIONS.--

6 A. Except as otherwise provided in the
7 [~~Thanatopractice~~] Funeral Services Act, a direct disposer may
8 transport and dispose of a dead human body and participate in
9 any rites or ceremonies after final disposition of the body.

10 B. Prior to interment, entombment or other final
11 disposition of the body, a direct disposer shall not:

12 (1) participate in any rites or ceremonies in
13 connection with the final disposition of the body;

14 (2) provide facilities for any such rites or
15 ceremonies; and

16 (3) have the body embalmed unless embalming is
17 required by the place of disposition."

18 SECTION 14. Section 61-32-20 NMSA 1978 (being Laws 1993,
19 Chapter 204, Section 20, as amended) is amended to read:

20 "61-32-20. EMBALMING.--

21 A. All dead human bodies not disposed of within
22 twenty-four hours after death or release or receipt by the
23 establishment or crematory shall be embalmed in accordance with
24 the [~~Thanatopractice~~] Funeral Services Act or stored under
25 refrigeration as determined by board rule, unless otherwise

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1 required by regulation of the office of the state medical
2 investigator or the secretary of health or by orders of an
3 authorized official of the office of the state medical
4 investigator, a court of competent jurisdiction or other
5 authorized official.

6 B. A dead human body shall not be embalmed except
7 by a funeral service practitioner, an associate funeral service
8 practitioner or a funeral service intern under the supervision
9 of a funeral service practitioner.

10 C. When embalming is not required under the
11 provisions of this section, a dead human body shall not be
12 embalmed without express authorization by the:

- 13 (1) surviving spouse or next of kin;
14 (2) legal agent or personal representative of
15 the deceased; or
16 (3) person assuming responsibility for final
17 disposition.

18 D. When embalming is not required, and prior to
19 obtaining authorization for the embalming, a dead human body
20 may be washed and other health procedures, including closing of
21 the orifices, may be performed without authorization.

22 E. When a dead human body is embalmed, the funeral
23 service practitioner or associate funeral service practitioner
24 who embalms the body or the funeral service intern who embalms
25 the body and the funeral service practitioner who supervises

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1 the embalming shall, within twenty-four hours after the
2 embalming procedure, complete and sign an embalming case report
3 describing the elapsed time since death, the condition of the
4 remains before and after embalming and the embalming procedures
5 used. The embalming case report shall be kept on file at the
6 establishment for a period of not less than seven years
7 following the embalming.

8 F. Except as provided in Subsection A of this
9 section, embalming is not required."

10 SECTION 15. Section 61-32-24 NMSA 1978 (being Laws 1993,
11 Chapter 204, Section 24, as amended) is amended to read:

12 "61-32-24. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW.--

13 A. The board, in accordance with the procedures set
14 forth in the Uniform Licensing Act, may take disciplinary
15 action against any licensee, temporary licensee or applicant.

16 B. The board has the authority to take any action
17 set forth in Section 61-1-3 NMSA 1978 upon a finding by the
18 board that the applicant or licensee is guilty of any of the
19 following acts of commission or omission:

20 (1) conviction of an offense punishable by
21 incarceration in a state penitentiary or federal prison,
22 provided the board receives a copy of the record of conviction,
23 certified to by the clerk of the court entering the conviction,
24 which shall be conclusive evidence of the conviction;

25 (2) fraud or deceit in procuring or attempting

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1 to procure a license;

2 (3) gross negligence or incompetence;

3 (4) unprofessional or dishonorable conduct,

4 which includes:

5 (a) misrepresentation or fraud;

6 (b) false or misleading advertising;

7 (c) solicitation of dead human bodies by
8 the licensee [~~his~~] or the licensee's agents, assistants or
9 employees, whether the solicitation occurs after death or while
10 death is impending, provided that this shall not be deemed to
11 prohibit general advertising;

12 (d) solicitation or acceptance by a
13 licensee of [~~any~~] a commission, bonus or rebate in
14 consideration of recommending or causing a dead human body to
15 be disposed of in [~~any~~] a cemetery, mausoleum or crematory;

16 (e) using any funeral merchandise
17 previously purchased, in whole or in part, except for
18 transportation purposes, without prior written permission of
19 the person selecting or paying for the use of the merchandise;
20 and

21 (f) failing to make disposition of a
22 dead human body in the enclosure or container that was
23 purchased for that purpose by the arrangers;

24 (5) violation of [~~any of~~] the provisions of
25 the [~~Thanatopractice~~] Funeral Services Act or [~~any~~] a rule of

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1 the board;

2 (6) violation of any local, state or federal
3 ordinance, law or regulation affecting the practice of funeral
4 service, direct disposition or cremation, including the
5 Prearranged Funeral Plan Regulatory Law or any regulations
6 ordered by the superintendent of insurance;

7 (7) willful or negligent practice beyond the
8 scope of the license issued by the board;

9 (8) refusing to release properly a dead human
10 body to the custody of the person or entity who has the legal
11 right to effect the release, when the authorized cost has been
12 paid;

13 (9) failure to secure a necessary permit
14 required by law for removal from this state or cremation of a
15 dead human body;

16 (10) knowingly making a false statement on a
17 certificate of death;

18 (11) failure to give full cooperation to the
19 board or one of its committees, staff, inspectors, agents or an
20 attorney for the board in the performance of official duties;

21 (12) [~~has~~] having had a license, certificate
22 or registration to practice revoked, suspended or denied in any
23 jurisdiction, territory or possession of the United States or
24 another country for actions of the licensee or applicant
25 similar to acts described in this subsection. A certified copy

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1 of the record of the jurisdiction taking the disciplinary
2 action is conclusive evidence of the violation;

3 (13) failure to supervise adequately
4 subordinate personnel;

5 (14) conduct unbecoming a licensee or
6 detrimental to the safety or welfare of the public;

7 (15) employing fraudulent billing practices;
8 or

9 (16) practicing funeral service, direct
10 disposition or cremation without a current license.

11 C. In addition to the offenses listed in Subsection
12 B of this section, the board has the authority to take any
13 action set forth in Section 61-1-3 NMSA 1978 upon a finding by
14 the board that a person who is licensed as or is an applicant
15 for a license as a funeral service practitioner, associate
16 funeral service practitioner, assistant funeral service
17 practitioner or funeral service intern is guilty of any of the
18 following acts of commission or omission:

19 (1) practicing funeral service without a
20 license or aiding or abetting an unlicensed person to practice
21 funeral service; or

22 (2) permitting an associate funeral service
23 practitioner, assistant funeral service practitioner or a
24 funeral service intern to exceed the limitations set forth in
25 the provisions of the [~~Thanatopractice~~] Funeral Services Act or

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1 the rules of the board.

2 D. In addition to taking action for the offenses
3 listed in Subsection B of this section, the board has the
4 authority to take any action set forth in Section 61-1-3 NMSA
5 1978 upon a finding by the board that a direct disposer
6 licensee or applicant or a direct disposition establishment
7 licensee or applicant is guilty of any of the following acts of
8 commission or omission:

9 (1) embalming, restoring, acting as a
10 cosmetician or in any way altering the condition of a dead
11 human body, except for washing and dressing;

12 (2) causing a body to be embalmed when
13 embalming is not required by a place of disposition;

14 (3) prior to interment, entombment or other
15 final disposition of a dead human body, participating in any
16 rites or ceremonies in connection with such final disposition
17 of the body, or providing facilities for any such rites or
18 ceremonies;

19 (4) reclaiming, transporting or causing to be
20 transported a dead human body after written release for
21 disposition; [~~or~~]

22 (5) practicing direct disposition without a
23 license or aiding or abetting an unlicensed person to practice
24 direct disposition; or

25 (6) practicing organ tissue procurement

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1 without a license.

2 E. In addition to the offenses listed in Subsection
3 B of this section, the board has the authority to take any
4 action set forth in Section 61-1-3 NMSA 1978 upon a finding by
5 the board that a crematory licensee or applicant or a crematory
6 authority is guilty of any of the following acts of commission
7 or omission:

8 (1) engaging or [~~holding oneself out~~] making
9 any representation as engaging in the practice of funeral
10 service or direct disposition, unless the applicant or
11 crematory authority has a license to practice funeral service
12 or direct disposition;

13 (2) operating a crematory without a license or
14 aiding and abetting a crematory to operate without a license;
15 or

16 (3) engaging in conduct or activities for
17 which a license to engage in the practice of funeral service or
18 direct disposition is required or aiding and abetting an
19 unlicensed person to engage in conduct or activities for which
20 a license to practice funeral service or direct disposition is
21 required.

22 F. Unless exonerated by the board, persons who have
23 been subjected to formal disciplinary sanctions by the board
24 shall be responsible for the payment of costs of the
25 disciplinary proceedings, which include costs for:

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- 1 (1) court reporters;
- 2 (2) transcripts;
- 3 (3) certification or notarization;
- 4 (4) photocopies;
- 5 (5) witness attendance and mileage fees;
- 6 (6) postage for mailings required by law;
- 7 (7) expert witnesses; and
- 8 (8) depositions.

9 G. All fees, fines and costs imposed on an
10 applicant, licensee, establishment or crematory shall be paid
11 in full to the board before an initial or renewal license may
12 be issued."

13 SECTION 16. Section 61-32-25 NMSA 1978 (being Laws 1993,
14 Chapter 204, Section 25) is amended to read:

15 "61-32-25. ADDITIONAL PROHIBITIONS.--

16 A. No person licensed [~~under~~] pursuant to the
17 provisions of the [Thanatopractice] Funeral Services Act shall
18 advertise under any name that tends to mislead the public or
19 that sufficiently resembles the professional or business name
20 of another license holder or that may cause confusion or
21 misunderstanding.

22 B. No person licensed [~~under~~] pursuant to the
23 provisions of the [Thanatopractice] Funeral Services Act shall
24 transport or cause to be transported by common carrier any dead
25 human body out of this state when the licensee knows or [~~had~~]

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1 has reason to believe that the dead human body carries any
2 notifiable communicable disease or when the transportation
3 would take place more than twenty-four hours after death,
4 unless the body has been prepared or embalmed as provided in
5 the [~~Thanatopractice~~] Funeral Services Act, unless approval for
6 transportation has been given by the office of the medical
7 investigator, the secretary of health, a court of competent
8 jurisdiction or other authorized official or unless the body is
9 placed in a sealed container.

10 C. No person licensed [~~under~~] pursuant to the
11 provisions of the [~~Thanatopractice~~] Funeral Services Act shall
12 remove, and no authorized person shall embalm, a dead human
13 body when the authorized person has information indicating
14 crime or violence of any sort in connection with the cause or
15 manner of death, unless in accordance with instructions or
16 regulations of the office of the medical investigator or until
17 permission has been obtained from the office of the medical
18 investigator or other authorized official."

19 **SECTION 17.** Section 61-32-26 NMSA 1978 (being Laws 1993,
20 Chapter 204, Section 26, as amended) is amended to read:

21 "61-32-26. **FUND ESTABLISHED.--**

22 A. There is created in the state treasury the
23 "[~~thanatopractice~~] funeral services fund".

24 B. All money received or collected by the board or
25 the department pursuant to provisions of the [~~Thanatopractice~~]

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1 Funeral Services Act shall be deposited with the state
2 treasurer for credit to the [~~thanatopractice~~] funeral services
3 fund. The state treasurer shall invest the fund as other state
4 funds are invested. All balances in the fund at the end of any
5 fiscal year shall remain in the fund and shall not revert to
6 the general fund.

7 C. Money in the [~~thanatopractice~~] funeral services
8 fund is appropriated to the board and shall be used only for
9 the purpose of carrying out the provisions of the
10 [~~Thanatopractice~~] Funeral Services Act."

11 SECTION 18. Section 61-32-27 NMSA 1978 (being Laws 1993,
12 Chapter 204, Section 27) is amended to read:

13 "61-32-27. CRIMINAL OFFENDER EMPLOYMENT ACT.--The
14 provisions of the Criminal Offender Employment Act shall govern
15 any consideration of criminal records required or permitted
16 [~~under~~] pursuant to the provisions of the [~~Thanatopractice~~]
17 Funeral Services Act."

18 SECTION 19. Section 61-32-29 NMSA 1978 (being Laws 1993,
19 Chapter 204, Section 29) is amended to read:

20 "61-32-29. CONSTRUCTION.--Nothing in the
21 [~~Thanatopractice~~] Funeral Services Act shall be construed to:

22 A. prohibit a funeral service practitioner [~~an~~
23 ~~associate funeral service practitioner, assistant funeral~~
24 ~~service practitioner~~] or funeral service intern under the
25 supervision of a funeral service practitioner from providing a

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1 direct disposition at a funeral or commercial establishment; or

2 B. govern or limit the authority of any personal
3 representative, trustee or other person having a fiduciary
4 relationship with the deceased."

5 SECTION 20. Section 61-32-30 NMSA 1978 (being Laws 1993,
6 Chapter 204, Section 30, as amended) is amended to read:

7 "61-32-30. CRIMINAL PENALTIES.--~~Any~~ A person who
8 commits any of the following acts is guilty of a misdemeanor
9 and upon conviction shall be punished by a fine of not less
10 than one hundred dollars (\$100) or more than one thousand
11 dollars (\$1,000) or by imprisonment of less than one year, or
12 both:

13 A. violation of any provision of the
14 ~~[Thanatopractice]~~ Funeral Services Act;

15 B. rendering or offering to render funeral
16 services, direct disposition services or cremation services
17 without a current valid license issued pursuant to the
18 ~~[Thanatopractice]~~ Funeral Services Act; or

19 C. advertising or using any designation, diploma or
20 certificate tending to imply that the person is a practitioner
21 of funeral services, direct disposition services or cremation
22 services without a current valid license issued pursuant to the
23 ~~[Thanatopractice]~~ Funeral Services Act."

24 SECTION 21. Section 61-32-30.1 NMSA 1978 (being Laws
25 2003, Chapter 420, Section 11) is amended to read:

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1 "61-32-30.1. UNLICENSED ACTIVITY--CIVIL PENALTY.--The
2 board may impose a fine as set forth in the [~~Thanatopractice~~]
3 Funeral Services Act on a person who is found to have acted
4 without a license in violation of the [~~Thanatopractice~~] Funeral
5 Services Act by a court or an administrative proceeding as
6 provided for in the [~~Thanatopractice~~] Funeral Services Act."

7 SECTION 22. Section 61-32-31 NMSA 1978 (being Laws 1993,
8 Chapter 204, Section 31, as amended) is amended to read:

9 "61-32-31. TERMINATION OF AGENCY LIFE--DELAYED
10 REPEAL.--The board of [~~thanatopractice~~] funeral services is
11 terminated on July 1, [~~2011~~] 2017, pursuant to the provisions
12 of the Sunset Act. The board shall continue to operate
13 according to the provisions of Section 12-9-18 NMSA 1978 until
14 July 1, [~~2012~~] 2018. Effective July 1, [~~2012~~] 2018, the
15 [~~Thanatopractice~~] Funeral Services Act is repealed."

16 SECTION 23. A new section of the Funeral Services Act is
17 enacted to read:

18 "[NEW MATERIAL] ORGAN TISSUE PROCUREMENT ADVISORY
19 COMMITTEE--CREATION--ORGANIZATION--PER DIEM AND MILEAGE--
20 REMOVAL.--

21 A. The "organ tissue procurement advisory
22 committee" is created. The committee shall advise the board on
23 matters related to organ tissue procurement authorized by the
24 Funeral Services Act. The board shall provide administrative
25 and financial support to the committee.

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1 B. The committee shall be composed of five members
2 who are residents of New Mexico and who shall include:

3 (1) one member with expertise in vascular
4 organ procurement, preservation and distribution, who is
5 appointed by the board;

6 (2) one member with expertise in
7 musculoskeletal tissue procurement, processing and
8 distribution, who is appointed by the board;

9 (3) one member with expertise in eye and
10 cornea procurement, processing and distribution, who is
11 appointed by the board;

12 (4) one member with expertise in bone marrow
13 procurement, processing and transplattation, who is appointed
14 by the board; and

15 (5) one member who shall be the state medical
16 investigator or the state medical investigator's designee.

17 C. Terms for committee members shall be as follows:

18 (1) for initial appointments, two members for
19 three-year terms, two members for two-year terms and one member
20 for a one-year term;

21 (2) for regular appointments after the initial
22 appointments, all members for three-year terms; and

23 (3) for a vacancy appointment, the balance of
24 the term of the member who will no longer serve.

25 D. Appointed members of the committee may be

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1 reappointed only once; provided that a member shall continue to
2 serve on the committee until a replacement is appointed.

3 Vacancies on the committee for the board-appointed members
4 shall be filled by appointment of the board.

5 E. The committee shall meet as often as necessary
6 to conduct its duties but not less often than twice per
7 calendar year. A quorum for a committee meeting shall require
8 three members, and meetings are subject to the Open Meetings
9 Act.

10 F. The committee shall elect a chair, and other
11 officers as the committee determines to be necessary, from
12 among its members annually.

13 G. Members of the committee shall be reimbursed per
14 diem and mileage pursuant to the Per Diem and Mileage Act and
15 shall receive no other compensation, perquisite or allowance
16 for each day spent in the discharge of their duties.

17 H. The board may remove a member of the committee
18 for neglect of duties, malfeasance in office, incompetence or
19 unprofessional conduct."

20 SECTION 24. A new section of the Funeral Services Act is
21 enacted to read:

22 "[NEW MATERIAL] LICENSING OF ORGAN TISSUE PROCUREMENT
23 ORGANIZATIONS--FEES.--

24 A. An organization, agency or other entity shall
25 not engage in the practice of organ tissue procurement,

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1 retrieval, processing or distribution in this state unless it
2 is designated as an organ tissue procurement organization by
3 the United States secretary of health and human services or is
4 licensed by the board. Funeral directors or direct disposers
5 that retrieve human eye tissue for an eye bank that is licensed
6 pursuant to the provisions of this section are exempt from the
7 licensing requirements pursuant to this section.

8 B. A physician or organ tissue procurement
9 organization based outside of this state is exempt from
10 licensing requirements if:

11 (1) the organs are procured for an
12 out-of-state patient who is listed on, or referred through, the
13 united network for organ sharing system; and

14 (2) the organs are procured through an
15 agreement with an organ tissue procurement organization
16 licensed by the state.

17 C. The board, with the advice of the organ tissue
18 procurement advisory committee, shall:

19 (1) establish a program for the licensing of
20 organizations, agencies or other entities that are not
21 designated as organ tissue procurement organizations by the
22 United States secretary of health and human services but that
23 are engaged in organ tissue procurement for transplantation,
24 research or education; and

25 (2) adopt rules that set the standards and

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1 guidelines for the licensing program established pursuant to
2 Paragraph (1) of this subsection. These standards and
3 guidelines must be substantially based on the existing laws of
4 the United States and of this state and the existing standards
5 and guidelines of the united network for organ sharing, the
6 American association of tissue banks, the American foundation
7 for donation and transplantation, the North American transplant
8 coordinators organization and the eye bank association of
9 America.

10 D. Prior to adopting rules pursuant to Paragraph
11 (2) of Subsection C of this section, the board shall:

12 (1) seek input from all organ tissue
13 procurement organizations based in this state;

14 (2) collect, keep and make available to the
15 governor and the legislature information regarding the numbers
16 and disposition of organ tissue procured by each licensed
17 entity;

18 (3) monitor participating facilities and
19 agencies for program compliance;

20 (4) develop necessary professional
21 qualifications, including but not limited to the education,
22 training and performance of persons engaged in the various
23 facets of organ tissue procurement, processing, preservation
24 and distribution for transplantation, research and education;
25 and

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1 (5) monitor the appropriate and legitimate
2 expenses associated with organ tissue procurement, processing
3 and distribution for transplantation, research and education
4 and develop methodologies to assure the uniform statewide pre-
5 sorting of data to facilitate the accurate and timely
6 evaluation of the organ tissue procurement and transplantation
7 system.

8 E. The board shall collect an initial application
9 fee not to exceed one thousand dollars (\$1,000) from organ
10 tissue procurement organizations based in this state that are
11 seeking licensing. The fee shall be submitted with each
12 application for initial licensure and is nonrefundable. The
13 board shall assess annual renewal fees not to exceed one
14 thousand dollars (\$1,000) for licensing of organ tissue
15 procurement organizations based in this state."