

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 73

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

AN ACT

RELATING TO PROFESSIONAL LICENSES; CHANGING THE NAME OF THE
THANATOPRACTICE ACT TO THE FUNERAL SERVICES ACT; CHANGING AND
ADDING CERTAIN EDUCATIONAL REQUIREMENTS; CONVERTING CERTAIN
LICENSES TO INTERN LICENSES; PROVIDING FOR THE RELINQUISHMENT
OF ESTABLISHMENT LICENSES IN CERTAIN CASES; PROVIDING FOR
REIMBURSEMENT OF CERTAIN COSTS; PROVIDING FOR CEASE AND DESIST
ORDERS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA
1978.

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

SECTION 1. Section 12-10A-6 NMSA 1978 (being Laws 2003,
Chapter 218, Section 6) is amended to read:

"12-10A-6. SPECIAL POWERS DURING A PUBLIC HEALTH
EMERGENCY.--

A. In order to protect the health, safety and

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underscored material = new
[bracketed material] = delete

1 welfare of the people in the state during a public health
2 emergency, the secretary of health, in coordination with the
3 secretary of public safety and the director, may:

4 (1) utilize, secure or evacuate health care
5 facilities for public use; and

6 (2) inspect, regulate or ration health care
7 supplies as provided in Subsection B of this section.

8 B. If a public health emergency results in a
9 statewide or regional shortage of health care supplies, the
10 secretary of health may control, restrict and regulate the
11 allocation, sale, dispensing or distribution of health care
12 supplies.

13 C. The state medical investigator, after
14 consultation with the secretary of health, the secretary of
15 public safety, the director and the [~~chairman~~] chair of the
16 board of [~~thanatopractice~~] funeral services, may implement and
17 enforce measures to provide for the safe disposal of human
18 remains that may be reasonable and necessary to respond to a
19 public health emergency. The measures may include special
20 provisions for embalming, burial, cremation, interment,
21 disinterment, transportation and disposal of human remains. To
22 the extent possible, the religious, cultural, family and
23 individual beliefs of a deceased person or of the family of a
24 deceased person shall be considered when disposing of human
25 remains."

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1 **SECTION 2.** Section 24-11-1 NMSA 1978 (being Laws 1971,
2 Chapter 112, Section 1, as amended) is amended to read:

3 "24-11-1. BOARD OF MEDICAL INVESTIGATORS--CREATION--
4 MEMBERSHIP--COMPENSATION.--There is created the "board of
5 medical investigators", consisting of the dean of the
6 university of New Mexico school of medicine, the secretary of
7 health, the chief of the New Mexico state police, the
8 [~~chairman~~] chair of the [~~state~~] board of [~~thanatopractice~~]
9 funeral services and the [~~director of the New Mexico office~~]
10 secretary of Indian affairs. The members of the board of
11 medical investigators shall receive no compensation for their
12 services as board members other than as provided in the Per
13 Diem and Mileage Act."

14 **SECTION 3.** Section 61-32-1 NMSA 1978 (being Laws 1993,
15 Chapter 204, Section 1, as amended) is amended to read:

16 "61-32-1. SHORT TITLE.--Chapter 61, Article 32 NMSA 1978
17 may be cited as the "[~~Thanatopractice~~] Funeral Services Act".

18 **SECTION 4.** Section 61-32-2 NMSA 1978 (being Laws 1993,
19 Chapter 204, Section 2) is amended to read:

20 "61-32-2. PURPOSE.--In the interest of public health,
21 safety and welfare and to protect the public from the
22 unprofessional, improper, incompetent and unlawful practice of
23 the care and disposition of the dead human body, it is
24 necessary to provide laws and regulations to govern the
25 handling and care of the dead and the sensitivities of those

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1 who survive, whether they wish or do not wish rites or
2 ceremonies. The primary responsibility and obligation of the
3 board [~~of thanatopractice~~] of funeral services is to protect
4 the public."

5 SECTION 5. Section 61-32-3 NMSA 1978 (being Laws 1993,
6 Chapter 204, Section 3, as amended) is amended to read:

7 "61-32-3. DEFINITIONS.--As used in the [~~Thanatopractice~~]
8 Funeral Services Act:

9 [~~A.~~] ~~"assistant funeral service practitioner" means~~
10 ~~a person licensed to engage in practice at a funeral~~
11 ~~establishment or commercial establishment, licensed pursuant to~~
12 ~~the Thanatopractice Act, as an assistant funeral service~~
13 ~~practitioner as provided in that act;~~

14 [~~B.~~] ~~"associate funeral service practitioner" means a~~
15 ~~person licensed to engage in practice at a funeral~~
16 ~~establishment or commercial establishment, licensed pursuant to~~
17 ~~the Thanatopractice Act, as an associate funeral service~~
18 ~~practitioner as provided in that act;~~

19 [~~G.~~] A. "board" means the board of [~~thanatopractice~~]
20 funeral services;

21 [~~D.~~] B. "committal service" means a service at a
22 place of interment or entombment that follows a funeral
23 conducted at another location;

24 [~~E.~~] C. "cremains" means cremated remains;

25 [~~F.~~] D. "cremation" means the reduction of a dead

1 human body by direct flame to a residue, which includes bone
2 fragments;

3 ~~[G.]~~ E. "crematory" means every place or premises
4 that is devoted to or used for cremation and pulverization of
5 the cremains;

6 ~~[H.]~~ F. "crematory authority" means the individual
7 who is ultimately responsible for the operation of a crematory;

8 ~~[I.]~~ G. "department" means the regulation and
9 licensing department;

10 ~~[J.]~~ H. "direct disposer" means a person licensed
11 to engage solely in providing direct disposition at a direct
12 disposition establishment, licensed pursuant to the
13 Thanatopractice Act, as provided in that act;

14 ~~[K.]~~ I. "direct disposition" means only the
15 disposition of a dead human body as quickly as possible,
16 without a funeral, graveside service, committal service or
17 memorial service, whether public or private, and without
18 embalming of the body unless embalming is required by the place
19 of disposition;

20 ~~[L.]~~ J. "direct supervision" means that the
21 supervising funeral service practitioner is physically present
22 with and in direct control of the person being trained;

23 ~~[M.]~~ K. "disposition" means the final disposal of a
24 dead human body, whether it be by earth interment, above-ground
25 interment or entombment, cremation, burial at sea or delivery

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1 to a medical school, when the medical school assumes complete
2 responsibility for the disposal of the body following medical
3 study;

4 [N.] L. "embalming" means the disinfection,
5 preservation and restoration, when possible, of a dead human
6 body by a licensed funeral service practitioner [~~a licensed~~
7 ~~associate funeral service practitioner~~] or a licensed funeral
8 service intern under the supervision of a licensed funeral
9 service practitioner;

10 [O.] M. "ennichement" means interment of cremains
11 in a niche in a columbarium, whether in an urn or not;

12 [P.] N. "entombment" means interment of a casketed
13 body or cremains in a crypt in a mausoleum;

14 [Q.] O. "establishment" means every office,
15 premises or place of business where the practice of funeral
16 service or direct disposition is conducted or advertised as
17 being conducted and includes commercial establishments that
18 provide for the practice of funeral service or direct
19 disposition services exclusively to licensed funeral or direct
20 disposition establishments or a school of medicine;

21 [R.] P. "funeral" means a period following death in
22 which there is an organized, purposeful, time-limited,
23 group-centered ceremony or rite, whether religious or not, with
24 the body of the deceased present;

25 [S.] Q. "funeral merchandise" means that personal

1 property offered for sale in connection with the
 2 transportation, funeralization or disposition of a dead human
 3 body, including the enclosure into which a dead human body is
 4 or cremains are directly placed, and excluding mausoleum
 5 crypts, interment enclosures preset in a cemetery and
 6 columbarium niches;

7 ~~[F.]~~ R. "funeral service intern" means a person
 8 licensed to be in training for the practice of funeral service
 9 under the supervision and instruction of a funeral service
 10 practitioner at a funeral establishment or commercial
 11 establishment, licensed pursuant to the ~~[Thanatopractice]~~
 12 Funeral Services Act;

13 ~~[U.]~~ S. "funeral service practitioner" means a
 14 person licensed to engage in the practice of funeral service at
 15 a funeral establishment or commercial establishment that is
 16 licensed pursuant to the ~~[Thanatopractice]~~ Funeral Services Act
 17 ~~[as provided in that act];~~

18 T. "funeral services" means those immediate
 19 post-death activities related to a dead human body and its care
 20 and disposition, whether with or without rites or ceremonies;
 21 but "funeral services" does not include disposition of the body
 22 by a school of medicine following medical study;

23 ~~[V.]~~ U. "general supervision" means that the
 24 supervising funeral service practitioner is not necessarily
 25 physically present in the establishment with the person being

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1 trained but is available for advice and assistance;

2 ~~[W.]~~ V. "graveside service" means a funeral held at
3 the graveside only, excluding a committal service that follows
4 a funeral conducted at another location;

5 ~~[X.]~~ W. "jurisprudence examination" means an
6 examination prescribed by the board on the statutes, rules and
7 regulations pertaining to the practice of funeral service or
8 direct disposition, including the ~~[Thanatopractice]~~ Funeral
9 Services Act, the rules of the board, state health regulations
10 governing human remains and the Vital Statistics Act;

11 ~~[Y.]~~ X. "licensee in charge" means a funeral
12 service practitioner who is ultimately responsible for the
13 conduct of a funeral or commercial establishment and its
14 employees; or a direct disposer who is ultimately responsible
15 for the conduct of a direct disposition establishment and its
16 employees;

17 ~~[Z.]~~ Y. "make arrangements" means advising or
18 counseling about specific details for a funeral, graveside
19 service, committal service, memorial service, disposition or
20 direct disposition;

21 ~~[AA.]~~ Z. "memorial service" means a gathering of
22 persons for recognition of a death without the presence of the
23 body of the deceased;

24 ~~[BB.]~~ AA. "practice of funeral service" means those
25 activities allowed under the ~~[Thanatopractice]~~ Funeral Services

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1 Act by a funeral service practitioner [~~associate funeral~~
 2 ~~service practitioner, assistant funeral service practitioner~~]
 3 or funeral service intern; and

4 [GG.] BB. "pulverization" means the process that
 5 reduces cremains to a granular substance [~~and~~

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

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

13 "61-32-4. LICENSE REQUIRED.--

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

16 (1) practice as a funeral service
 17 practitioner, [~~associate funeral service practitioner, assistant~~
 18 ~~funeral service practitioner~~] funeral service intern or direct
 19 disposer;

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

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1 funeral service practitioner, [~~associate funeral service~~
2 ~~practitioner, assistant funeral service practitioner~~] funeral
3 service intern or direct disposer; or

4 (3) maintain, manage or operate a funeral
5 establishment, a commercial establishment, a direct disposition
6 establishment or a crematory.

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

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

24 SECTION 7. Section 61-32-5 NMSA 1978 (being Laws 1993,
25 Chapter 204, Section 5, as amended) is amended to read:

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1 "61-32-5. BOARD CREATED.--

2 A. There is created the "board of [~~thanatopractice~~]
3 funeral services".

4 B. The board is administratively attached to the
5 department.

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

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

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

25 F. A simple majority of the board members currently

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1 serving constitutes a quorum.

2 G. The board shall hold at least two regular
3 meetings each year and shall meet at such other times as it
4 deems necessary.

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

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

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

14 "61-32-6. BOARD POWERS.--

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

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

21 (2) adopt rules implementing continuing
22 education requirements;

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

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

3 (5) provide for investigations necessary to
4 determine violations of the [~~Thanatopractice~~] Funeral Services
5 Act;

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

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

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

16 (9) conduct criminal background checks on
17 applicants for licensure.

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

25 SECTION 9. Section 61-32-7 NMSA 1978 (being Laws 1993,

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1 Chapter 204, Section 7) is amended to read:

2 "61-32-7. BOARD DUTIES.--The board shall:

- 3 A. administer the provisions of the
4 [~~Thanatopractice~~] Funeral Services Act;
5 B. provide for the examination, licensing and
6 renewal of applicants or licensees; and
7 C. provide for the inspection of establishments and
8 crematories."

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

11 "61-32-8. INSPECTION--ACCESS--COUNSEL.--

- 12 A. Inspection of establishments and crematories,
13 including all records, financial or otherwise, is authorized
14 during regular business hours. Acceptance of a license shall
15 include permission for the board or its designee to enter the
16 premises without legal process.
17 B. An establishment or crematory shall maintain
18 business records required by law or rule at the establishment or
19 crematory.
20 C. The board shall be represented by the attorney
21 general. The board may employ special counsel, upon approval of
22 the attorney general, to review and prosecute cases of consumer
23 complaints against any person, establishment or crematory
24 licensed pursuant to the [~~Thanatopractice~~] Funeral Services Act.
25 Payment for the services shall be by the board."

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

3 "61-32-9. REQUIREMENTS FOR LICENSURE--FUNERAL SERVICE
4 PRACTITIONER--FUNERAL SERVICE INTERN--DIRECT DISPOSER--
5 [~~ASSOCIATE FUNERAL SERVICE PRACTITIONER--ASSISTANT FUNERAL~~
6 ~~SERVICE PRACTITIONER~~] CONVERSION OF CERTAIN LICENSES--TEMPORARY
7 LICENSES.--

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

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

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

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

22 (4) has not been convicted of unprofessional
23 conduct or incompetency; and

24 ~~[(5) has graduated from an institution~~
25 ~~accredited by the American board of funeral service education or~~

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1 ~~any other successor recognized by the United States office of~~
2 ~~education for funeral service education; and~~

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

12 (5) has obtained an associate's degree in
13 funeral science requiring the completion of at least sixty
14 semester hours from an institution accredited by the American
15 board of funeral service education or any other successor
16 institution offering funeral service education recognized by the
17 United States government.

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

- 22 (1) is at least eighteen years of age;
23 (2) has graduated from high school or the
24 equivalent;
25 (3) has submitted proof of employment and

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

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

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

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

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

16 [~~(2) has graduated from high school or the~~
 17 ~~equivalent;~~]

18 (2) has obtained an associate's degree in
 19 funeral science requiring the completion of at least sixty
 20 semester hours from an institution accredited by the American
 21 board of funeral service education or any other successor
 22 institution offering funeral service education and recognized by
 23 the United States government;

24 (3) has successfully completed any
 25 examination, including a jurisprudence examination, prescribed

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1 by board rules; and

2 (4) has not been convicted of unprofessional
3 conduct or incompetency.

4 ~~[D. A license to practice as an assistant funeral
5 service practitioner shall be issued to any person who, prior to
6 June 18, 1993, held a valid license as an assistant funeral
7 service practitioner and who was qualified to receive a renewal
8 license on July 1, 1993.~~

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

13 ~~(1) has been licensed as an assistant funeral
14 service practitioner;~~

15 ~~(2) has successfully completed any
16 examination, including a jurisprudence examination, prescribed
17 by board rules; and~~

18 ~~(3) has not been convicted of unprofessional
19 conduct or incompetency.]~~

20 D. On and after July 1, 2012, the board shall not
21 issue a new license that was formerly designated an "assistant
22 funeral services practitioner" or "associate funeral services
23 practitioner" license under a version of the Funeral Services
24 Act in effect on June 30, 2012. A person holding one of these
25 licenses that is valid as of June 30, 2012 shall be considered

1 as holding a valid, renewable funeral services intern license
 2 subject to the general supervision of a licensed funeral
 3 services practitioner pursuant to the Funeral Services Act.

4 ~~[F-]~~ E. The board may adopt by rule requirements for
 5 issuing a temporary license that will be valid until the next
 6 scheduled board meeting."

7 **SECTION 12.** Section 61-32-11 NMSA 1978 (being Laws 1993,
 8 Chapter 204, Section 11, as amended) is amended to read:

9 "61-32-11. LICENSURE OF ESTABLISHMENTS--FUNERAL
 10 ESTABLISHMENTS--COMMERCIAL ESTABLISHMENTS--DIRECT DISPOSITION
 11 ESTABLISHMENTS--CREMATORIES.--

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

14 (1) applications for licensure shall be upon
 15 forms furnished by the board and shall be accompanied by the
 16 required fee;

17 (2) the establishment shall be maintained at a
 18 specific location primarily devoted to the practice of funeral
 19 service and shall comply with the following minimum
 20 requirements:

21 (a) a chapel shall be present in which
 22 funerals may be conducted;

23 (b) a display room shall be present for
 24 displaying caskets and other funeral merchandise; and

25 (c) a preparation room shall be present

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1 with necessary drainage and ventilation and necessary
2 instruments and supplies for the preparation and embalming of
3 dead human bodies for burial or other disposition or
4 transportation; and

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

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

10 (1) applications for licensure shall be upon
11 forms furnished by the board and shall be accompanied by the
12 required fee;

13 (2) the establishment shall be maintained at a
14 specific location primarily devoted to the practice allowed for
15 a commercial establishment and shall comply with the following
16 minimum requirements:

17 (a) a preparation room shall be present
18 with the 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 and
21 transportation; and

22 (b) an office shall be present for
23 conducting business; and

24 (3) a license shall not be issued or renewed
25 by the board unless the establishment is in compliance with the

1 [~~Thanatopractice~~] Funeral Services Act and board rules.

2 C. Direct disposition establishment licenses shall
3 only be granted under the following terms and conditions:

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

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

11 (a) a room shall be present with
12 necessary drainage and ventilation for housing a refrigeration
13 unit;

14 (b) a refrigeration unit,
15 thermodynamically controlled with a minimum storage area of
16 twelve and one-half cubic feet per body, shall be present for
17 sheltering of dead human bodies prior to burial or other
18 disposition or transportation;

19 (c) an office shall be present for
20 conducting business;

21 (d) necessary supplies for safely
22 handling unembalmed dead human bodies; and

23 (e) if funeral merchandise is made
24 available, a display room shall be present for displaying
25 caskets and other funeral merchandise; and

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

4 D. Crematory licenses shall only be granted under
5 the following terms and conditions:

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

9 (2) the crematory shall be maintained at a
10 specific location, including a funeral, commercial or direct
11 disposition establishment, primarily devoted to the practice
12 allowed for a crematory and shall comply with the following
13 minimum requirements:

14 (a) a room shall be present with
15 necessary ventilation for housing a cremation retort;

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

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

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

23 E. The board may adopt by rule additional
24 requirements in the interest of public health, safety and
25 welfare."

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

3 "61-32-13. ESTABLISHMENTS--REQUIREMENTS--TEMPORARY
4 LICENSES.--

5 A. Each establishment shall have a full-time
6 licensee in charge; provided the establishment license is a
7 privilege granted to the person to whom it is issued and is not
8 transferable to other owners or operators or to another location
9 than that designated on the license. Whenever an establishment
10 no longer employs or otherwise has a full-time licensee in
11 charge, the establishment shall immediately cease the practice
12 of funeral service or direct disposition and the person to whom
13 the establishment license is granted shall immediately return
14 the establishment license to the board by certified mail, return
15 receipt requested, or by another delivery service that provides
16 a means of tracing an item in its delivery system.

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

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

24 D. The board may adopt by rule requirements for
25 issuing a temporary establishment or crematory license that will

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1 be valid until the next scheduled board meeting."

2 SECTION 14. 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 15. 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

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 by
7 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 may
20 be washed and other health procedures, including closing of the
21 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 the

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1 embalming shall, within twenty-four hours after the embalming
2 procedure, complete and sign an embalming case report describing
3 the elapsed time since death, the condition of the remains
4 before and after embalming and the embalming procedures used.
5 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 16. Section 61-32-22 NMSA 1978 (being Laws 1993,
11 Chapter 204, Section 22, as amended) is amended to read:

12 "61-32-22. INACTIVE STATUS.--

13 A. A funeral service practitioner, [~~associate~~
14 ~~funeral service practitioner~~] funeral service intern or direct
15 disposer who has a current license may request that the license
16 be placed on inactive status. Except as provided in Subsection
17 E of this section, the board shall approve each request for
18 inactive status.

19 B. A license placed on inactive status may be
20 renewed within a period not to exceed five years following the
21 date the board granted the inactive status.

22 C. Renewal of an inactive license requires payment
23 of renewal and reinstatement fees as set forth by board rule and
24 compliance with the following requirements:

25 (1) certification by the licensee that [~~he~~]

1 the licensee has not engaged in the practice of funeral service
2 or direct disposition in this state during the inactive status;

3 (2) compliance with continuing education
4 requirements established by board rule; and

5 (3) successful completion of an examination,
6 which shall be administered at the discretion of the board, to
7 certify continuing competency.

8 D. Disciplinary proceedings may be initiated or
9 continued against a licensee who has been granted inactive
10 status.

11 E. A license shall not be placed on inactive status
12 if the licensee is under investigation or if disciplinary
13 proceedings have been initiated."

14 SECTION 17. Section 61-32-24 NMSA 1978 (being Laws 1993,
15 Chapter 204, Section 24, as amended) is amended to read:

16 "61-32-24. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW.--

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

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

24 (1) conviction of an offense punishable by
25 incarceration in a state penitentiary or federal prison;

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1 provided the board receives a copy of the record of conviction,
2 certified to by the clerk of the court entering the conviction,
3 which shall be conclusive evidence of the conviction;

4 (2) fraud or deceit in procuring or attempting
5 to procure a license;

6 (3) gross negligence or incompetence;

7 (4) unprofessional or dishonorable conduct,
8 which includes:

9 (a) misrepresentation or fraud;

10 (b) false or misleading advertising;

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

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

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

24 (f) failing to make disposition of a dead
25 human body in the enclosure or container that was purchased for

1 that purpose by the arrangers;

2 (5) violation of [~~any of~~] the provisions of
3 the [~~Thanatopractice~~] Funeral Services Act or [~~any~~] a rule of
4 the board;

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

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

12 (8) refusing to release properly a dead human
13 body to the custody of the person or entity who has the legal
14 right to effect the release, [~~when~~] whether or not the
15 authorized cost has been paid. If an establishment receives a
16 dead human body for funeral services but the body is
17 subsequently transferred to another establishment that completes
18 or performs funeral services, the subsequent establishment shall
19 be responsible for all reasonable nonprofessional service
20 charges incurred by the next previous establishment prior to and
21 including transfer of the body and the subsequent establishment
22 shall reimburse the next previous establishment for those
23 charges;

24 (9) failure to secure a necessary permit
25 required by law for removal from this state or cremation of a

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1 dead human body;

2 (10) knowingly making a false statement on a
3 certificate of death;

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

7 (12) ~~has~~ having had a license, certificate
8 or registration to practice revoked, suspended or denied in any
9 jurisdiction, territory or possession of the United States or
10 another country for actions of the licensee or applicant similar
11 to acts described in this subsection. A certified copy of the
12 record of the jurisdiction taking the disciplinary action is
13 conclusive evidence of the violation;

14 (13) failure to supervise adequately
15 subordinate personnel;

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

18 (15) employing fraudulent billing practices;

19 or

20 (16) practicing funeral service [~~direct~~
21 ~~disposition~~] or cremation without a current license.

22 C. In addition to the offenses listed in Subsection
23 B of this section, the board has the authority to take any
24 action set forth in Section 61-1-3 NMSA 1978 upon a finding by
25 the board that a person who is licensed as or is an applicant

1 for a license as a funeral service practitioner [~~associate~~
 2 ~~funeral service practitioner, assistant funeral service~~
 3 ~~practitioner~~] or funeral service intern is guilty of any of the
 4 following acts of commission or omission:

5 (1) practicing funeral service without a
 6 license or aiding or abetting an unlicensed person to practice
 7 funeral service; or

8 (2) permitting [~~an associate funeral service~~
 9 ~~practitioner, assistant funeral service practitioner or~~] a
 10 funeral service intern to exceed the limitations set forth in
 11 the provisions of the [~~Thanatopractice~~] Funeral Services Act or
 12 the rules of the board.

13 D. In addition to the offenses listed in Subsection
 14 B of this section, the board has the authority to take any
 15 action set forth in Section 61-1-3 NMSA 1978 upon a finding by
 16 the board that a direct disposer licensee [~~or applicant~~] or a
 17 direct disposition establishment licensee [~~or applicant~~] is
 18 guilty of any of the following acts of commission or omission:

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

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

24 (3) prior to interment, entombment or other
 25 final disposition of a dead human body, participating in any

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1 rites or ceremonies in connection with such final disposition of
2 the body, or providing facilities for any such rites or
3 ceremonies;

4 (4) reclaiming, transporting or causing to be
5 transported a dead human body after written release for
6 disposition; or

7 (5) practicing direct disposition without a
8 license or aiding or abetting an unlicensed person to practice
9 direct disposition.

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

16 (1) engaging or [~~holding oneself out~~] making
17 any representation as engaging in the practice of funeral
18 service or direct disposition, unless the applicant or crematory
19 authority has a license to practice funeral service or direct
20 disposition;

21 (2) operating a crematory without a license or
22 aiding and abetting a crematory to operate without a license; or

23 (3) engaging in conduct or activities for
24 which a license to engage in the practice of funeral service or
25 direct disposition is required or aiding and abetting an

1 unlicensed person to engage in conduct or activities for which a
 2 license to practice funeral service or direct disposition is
 3 required.

4 F. Unless exonerated by the board, persons who have
 5 been subjected to formal disciplinary sanctions by the board
 6 shall be responsible for the payment of costs of the
 7 disciplinary proceedings, which include costs for:

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

16 G. All fees, fines and costs imposed on an
 17 applicant, licensee, establishment or crematory shall be paid in
 18 full to the board before an initial or renewal license may be
 19 issued."

20 SECTION 18. Section 61-32-25 NMSA 1978 (being Laws 1993,
 21 Chapter 204, Section 25) is amended to read:

22 "61-32-25. ADDITIONAL PROHIBITIONS.--

23 A. No person licensed [~~under~~] pursuant to the
 24 provisions of the [Thanatopractice] Funeral Services Act shall
 25 advertise under any name that tends to mislead the public or

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1 that sufficiently resembles the professional or business name of
2 another license holder or that may cause confusion or
3 misunderstanding.

4 B. No person licensed ~~[under]~~ pursuant to the
5 provisions of the [Thanatopractice] Funeral Services Act shall
6 transport or cause to be transported by common carrier any dead
7 human body out of this state when the licensee knows or ~~[had]~~
8 has reason to believe that the dead human body carries any
9 notifiable communicable disease or when the transportation would
10 take place more than twenty-four hours after death, unless the
11 body has been prepared or embalmed as provided in the
12 ~~[Thanatopractice]~~ Funeral Services Act, unless approval for
13 transportation has been given by the office of the medical
14 investigator, the secretary of health, a court of competent
15 jurisdiction or other authorized official or unless the body is
16 placed in a sealed container.

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

underscored material = new
[bracketed material] = delete

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

3 "61-32-26. FUND ESTABLISHED.--

4 A. There is created in the state treasury the
5 "~~thanatopractice~~ funeral services fund".

6 B. All money received or collected by the board or
7 the department pursuant to provisions of the [~~Thanatopractice~~]
8 Funeral Services Act shall be deposited with the state treasurer
9 for credit to the [~~thanatopractice~~] funeral services fund. The
10 state treasurer shall invest the fund as other state funds are
11 invested. All balances in the fund at the end of any fiscal
12 year shall remain in the fund and shall not revert to the
13 general fund.

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

18 SECTION 20. Section 61-32-27 NMSA 1978 (being Laws 1993,
19 Chapter 204, Section 27) is amended to read:

20 "61-32-27. CRIMINAL OFFENDER EMPLOYMENT ACT.--The
21 provisions of the Criminal Offender Employment Act shall govern
22 any consideration of criminal records required or permitted
23 [~~under~~] pursuant to the provisions of the [~~Thanatopractice~~]
24 Funeral Services Act."

25 SECTION 21. Section 61-32-29 NMSA 1978 (being Laws 1993,

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1 Chapter 204, Section 29) is amended to read:

2 "61-32-29. CONSTRUCTION.--Nothing in the
3 [~~Thanatopractice~~] Funeral Services Act shall be construed to:

4 A. prohibit a funeral service practitioner [~~an~~
5 ~~associate funeral service practitioner, assistant funeral~~
6 ~~service practitioner~~] or funeral service intern under the
7 supervision of a funeral service practitioner from providing a
8 direct disposition at a funeral or commercial establishment; or

9 B. govern or limit the authority of any personal
10 representative, trustee or other person having a fiduciary
11 relationship with the deceased."

12 SECTION 22. Section 61-32-30 NMSA 1978 (being Laws 1993,
13 Chapter 204, Section 30, as amended) is amended to read:

14 "61-32-30. CRIMINAL PENALTIES.--~~Any~~ A person who
15 commits any of the following acts is guilty of a misdemeanor and
16 upon conviction shall be punished by a fine of not less than one
17 hundred dollars (\$100) or more than one thousand dollars
18 (\$1,000) or by imprisonment of less than one year, or both:

19 A. violation of any provision of the
20 [~~Thanatopractice~~] Funeral Services Act;

21 B. rendering or offering to render funeral services,
22 direct disposition services or cremation services without a
23 current valid license issued pursuant to the [~~Thanatopractice~~]
24 Funeral Services Act; or

25 C. advertising or using any designation, diploma or

1 certificate tending to imply that the person is a practitioner
 2 of funeral services, direct disposition services or cremation
 3 services without a current valid license issued pursuant to the
 4 [~~Thanatopractice~~] Funeral Services Act."

5 SECTION 23. Section 61-32-30.1 NMSA 1978 (being Laws
 6 2003, Chapter 420, Section 11) is amended to read:

7 "61-32-30.1. UNLICENSED ACTIVITY--CIVIL PENALTY.--The
 8 board may impose a fine and costs as set forth in the
 9 [~~Thanatopractice~~] Funeral Services Act on a person who is found
 10 to have acted without a license in violation of the
 11 [~~Thanatopractice~~] Funeral Services Act by a court or an
 12 administrative proceeding as provided for in the
 13 [~~Thanatopractice~~] Funeral Services Act."

14 SECTION 24. Section 61-32-31 NMSA 1978 (being Laws 1993,
 15 Chapter 204, Section 31, as amended) is amended to read:

16 "61-32-31. TERMINATION OF AGENCY LIFE--DELAYED
 17 REPEAL.--The board of [~~thanatopractice~~] funeral services is
 18 terminated on July 1, 2017, pursuant to the provisions of the
 19 Sunset Act. The board shall continue to operate according to
 20 the provisions of Section 12-9-18 NMSA 1978 until July 1, 2018.
 21 Effective July 1, 2018, the [~~Thanatopractice~~] Funeral Services
 22 Act is repealed."

23 SECTION 25. A new section of the Funeral Services Act is
 24 enacted to read:

25 "[NEW MATERIAL] CEASE AND DESIST ORDERS--FINES--FINALITY--

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1 HEARINGS.--

2 A. Notwithstanding the provisions of Sections 61-1-3
3 and 61-32-24 NMSA 1978, if the board has reasonable cause to
4 believe a person is committing a violation of a provision of the
5 Funeral Services Act, or a rule adopted pursuant to that act,
6 that creates a health risk for the community or a risk to the
7 orderly or prompt disposition of dead human bodies and immediate
8 enforcement is deemed necessary, the board may serve, in the
9 manner prescribed by Section 61-1-5 NMSA 1978, a cease and
10 desist order on a person to require that person to cease the
11 violation. The order shall:

12 (1) indicate the violation and the general
13 nature of the evidence of the violation;

14 (2) include a notice that if the person fails
15 to comply with the order within twenty-four hours, the person
16 may be subject to fines or costs, as provided in Sections
17 61-32-6 and 61-32-30.1 NMSA 1978, for noncompliance with the
18 order as a violation of the Funeral Services Act, in addition to
19 fines and costs imposed for a violation indicated in the order;
20 and

21 (3) include a notice that a hearing has been
22 scheduled to occur within five working days after service of the
23 cease and desist order and the hearing will proceed unless
24 waived by the person.

25 B. If the person waives a hearing as provided in

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1 Subsection A of this section, the order shall be final and not
2 subject to review or appeal. The board may apply for injunctive
3 relief to enforce the cease and desist order.

4 C. If a hearing is held, it shall be conducted
5 pursuant to the hearing procedures of the Uniform Licensing Act
6 that are consistent with this section and the consequences of
7 the hearing, including a right to review, shall occur pursuant
8 to that act.

9 D. An order of the board pursuant to this section or
10 an order of a court to enforce it shall not relieve or absolve a
11 person affected by the order from another liability, penalty or
12 sanction applicable under law."

13 SECTION 26. REPEAL.--Sections 61-32-15 and 61-32-16 NMSA
14 1978 (being Laws 1993, Chapter 204, Sections 15 and 16) are
15 repealed.

16 SECTION 27. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2012.