

SENATE BILL 263

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

James P. White

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO PROFESSIONAL LICENSES; CREATING ADDITIONAL LICENSES UNDER THE FUNERAL SERVICES ACT; ADDING DEFINITIONS; MAKING TECHNICAL AND CONFORMING CHANGES SJC → ~~AMENDING AND ENACTING SECTIONS OF THE NMSA 1978~~ ← SJC.

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

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

"61-32-3. DEFINITIONS.--As used in the Funeral Services Act:

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- A. "board" means the board of funeral services;
- B. "committal service" means a service at a place of interment or entombment that follows a funeral conducted at another location;
- C. "cremains" means cremated remains;
- D. "cremation" means the reduction of a dead human body by direct flame to a residue [~~which~~] that includes bone fragments;
- E. "crematory" means every place or premises that is devoted to or used for cremation and pulverization of the cremains;
- F. "crematory authority" means the individual who is ultimately responsible for the operation of a crematory;
- G. "department" means the regulation and licensing department;
- H. "direct disposer" means a person licensed to engage solely in providing direct disposition at a direct disposition establishment, licensed pursuant to the Funeral Services Act, as provided in that act;
- I. "direct disposition" means only the disposition of a dead human body as quickly as possible, without a direct disposer performing or arranging a funeral, graveside service, committal service or memorial service, whether public or private, and without embalming of the body unless embalming is required by the place of disposition;

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

K. "disposition" means the final disposal of a dead human body, whether it be by earth interment, above-ground interment or entombment, cremation, burial at sea or delivery to a medical school, when the medical school assumes complete responsibility for the disposal of the body following medical study;

L. "embalmer" means a person licensed to engage in embalming and preparing a dead human body for funeral service at a funeral establishment that is licensed pursuant to the Funeral Services Act;

[~~L.~~] M. "embalming" means the disinfection, preservation and restoration, when possible, of a dead human body by a licensed funeral service practitioner, licensed embalmer or a licensed funeral service intern under the supervision of a licensed funeral service practitioner;

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

[~~N.~~] O. "entombment" means interment of a casketed body or cremains in a crypt in a mausoleum;

[~~O.~~] P. "establishment" means every office, premises or place of business where the practice of funeral service or direct disposition is conducted or advertised as

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being conducted and includes commercial establishments that provide for the practice of funeral service or direct disposition services exclusively to licensed funeral or direct disposition establishments or a school of medicine;

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

R. "funeral arranger" means a person licensed to engage in arrangements and directing of funeral services at a funeral establishment that is licensed pursuant to the Funeral Services Act;

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

[R-] T. "funeral service intern" means a person licensed to be in training for the practice of funeral service under the supervision and instruction of a funeral service practitioner at a funeral establishment or commercial establishment, licensed pursuant to the Funeral Services Act;

[S-] U. "funeral service practitioner" means a

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person licensed to engage in the practice of funeral service at a funeral establishment or commercial establishment that is licensed pursuant to the Funeral Services Act;

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

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

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

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

[~~X.~~] Z. "licensee in charge" means a funeral service practitioner who is ultimately responsible for the conduct of a funeral or commercial establishment and its employees; or a direct disposer who is ultimately responsible

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for the conduct of a direct disposition establishment and its employees;

[Y.] AA. "make arrangements" means advising or counseling about specific details for a funeral, graveside service, committal service, memorial service, disposition or direct disposition;

[Z.] BB. "memorial service" means a gathering of persons for recognition of a death without the presence of the body of the deceased;

[AA.] CC. "practice of funeral service" means those activities allowed under the Funeral Services Act by a funeral service practitioner, funeral arranger, embalmer or funeral service intern; and

[BB.] DD. "pulverization" means the process that reduces cremains to a granular substance."

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

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

A. Unless licensed to practice under the Funeral Services Act, a person shall not:

(1) practice as a funeral service practitioner, funeral arranger, embalmer, funeral service intern or direct disposer;

(2) use the title or make any representation as being a funeral service practitioner, funeral arranger,

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embalmer, funeral service intern or direct disposer or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice as a funeral service practitioner, funeral arranger, embalmer, funeral service intern or direct disposer; or

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

B. A person who engages in the practice or acts in the capacity of a funeral service practitioner, funeral arranger, embalmer, funeral service intern or direct disposer in this state, with or without a New Mexico license, is subject to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of a provision of the Funeral Services Act.

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

SECTION 3. Section 61-32-9 NMSA 1978 (being Laws 1993,

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Chapter 204, Section 9, as amended) is amended to read:

"61-32-9. REQUIREMENTS FOR LICENSURE--FUNERAL SERVICE
PRACTITIONER--FUNERAL ARRANGER--EMBALMER--FUNERAL SERVICE
INTERN--DIRECT DISPOSER--CONVERSION OF CERTAIN
LICENSES--TEMPORARY LICENSES.--

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

- (1) is at least eighteen years of age;
- (2) has served as a licensed funeral service intern for not less than twelve months, under the supervision of a licensed funeral service practitioner. During the training period, the applicant shall have assisted in the embalming of at least fifty bodies, making of at least fifty funeral arrangements and the directing of at least fifty funerals;
- (3) has successfully completed an examination, including a jurisprudence examination, prescribed by board rules;
- (4) has successfully completed both the arts and science sections of the national board examination administered by the international conference of funeral service examining boards;

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[~~(4)~~] (5) has not been convicted of unprofessional conduct or incompetency; and

[~~(5)~~] (6) has obtained an associate's degree in funeral science requiring the completion of at least sixty semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government.

B. A license to practice as a funeral arranger shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the person:

(1) is at least eighteen years of age;
(2) has served as a licensed funeral service intern for not less than twelve months, under the supervision of a licensed funeral service practitioner. During the training period, the applicant shall have assisted in the making of at least fifty funeral arrangements and the directing of at least fifty funerals;

(3) has successfully completed an examination, including a jurisprudence examination, prescribed by board rules;

(4) has successfully completed the arts section of the national board examination administered by the

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international conference of funeral service examining boards;

(5) has not been convicted of unprofessional conduct or incompetency; and

(6) has obtained an associate's degree in funeral science requiring the completion of at least sixty semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government.

C. A license to practice as an embalmer shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the person:

(1) is at least eighteen years of age;

(2) has served as a licensed funeral service intern for not less than twelve months, under the supervision of a licensed funeral service practitioner. During the training period, the applicant shall have assisted in the embalming of at least fifty bodies;

(3) has successfully completed an examination, including a jurisprudence examination, prescribed by board rules;

(4) has successfully completed the science section of the national board examination administered by the international conference of funeral service examining boards;

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(5) has not been convicted of unprofessional conduct or incompetency; and

(6) has obtained an associate's degree in funeral science requiring the completion of at least sixty semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government.

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

- (1) is at least eighteen years of age;
- (2) has graduated from high school or the equivalent;
- (3) has submitted proof of employment and supervision as required by board rules. Except as may be allowed by board rule, a license as a funeral service intern is issued only for a specific funeral establishment or an establishment that is part of a multi-establishment enterprise;
- (4) has successfully completed an examination, including a jurisprudence examination, prescribed by board rules; and
- (5) has not been convicted of unprofessional

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conduct or incompetency.

[G-] E. A license to practice as a direct disposer shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the person:

- (1) is at least eighteen years of age;
- (2) has obtained an associate's degree in funeral science requiring the completion of at least sixty semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education and recognized by the United States government;
- (3) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules; and
- (4) has not been convicted of unprofessional conduct or incompetency.

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

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intern license subject to the general supervision of a licensed funeral services practitioner pursuant to the Funeral Services Act.

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

SECTION 4. Section 61-32-10 NMSA 1978 (being Laws 1993, Chapter 204, Section 10, as amended) is amended to read:

"61-32-10. LICENSURE BY CREDENTIALS.--After successful completion of a jurisprudence examination, the board may license an applicant as a funeral service practitioner, funeral arranger or embalmer; provided the applicant possesses a valid license or its equivalent for the practice of funeral service issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation, and provided the applicant [~~has actively practiced five out of the last ten years in another state, territory or foreign nation as a licensed funeral service practitioner, or its equivalent~~] presents proof that the applicant is currently licensed in good standing in a jurisdiction that has standards for licensure that are at least equal to those for licensure in New Mexico as required by the Funeral Services Act."

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

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"61-32-20. EMBALMING.--

A. All dead human bodies not disposed of within twenty-four hours after death or release or receipt by the establishment or crematory shall be embalmed in accordance with the Funeral Services Act or stored under refrigeration as determined by board rule, unless otherwise required by regulation of the office of the state medical investigator or the secretary of health or by orders of an authorized official of the office of the state medical investigator, a court of competent jurisdiction or other authorized official.

B. A dead human body shall not be embalmed except by a funeral service practitioner, embalmer or a funeral service intern under the supervision of a funeral service practitioner.

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

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

D. When embalming is not required, and prior to obtaining authorization for the embalming, a dead human body may be washed and other health procedures, including closing of

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the orifices, may be performed without authorization.

E. When a dead human body is embalmed, the funeral service practitioner or embalmer who embalms the body or the funeral service intern who embalms the body and the funeral service practitioner who supervises the embalming shall, within twenty-four hours after the embalming procedure, complete and sign an embalming case report describing the elapsed time since death, the condition of the remains before and after embalming and the embalming procedures used. The embalming case report shall be kept on file at the establishment for a period of not less than seven years following the embalming.

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

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

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

A. A funeral service practitioner, funeral arranger, embalmer, funeral service intern or direct disposer who has a current license may request that the license be placed on inactive status. Except as provided in Subsection E of this section, the board shall approve each request for inactive status.

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

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

(1) certification by the licensee that the licensee has not engaged in the practice of funeral service or direct disposition in this state during the inactive status;

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

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

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

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

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

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

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

B. The board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the

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board that the applicant or licensee is guilty of any of the following acts of commission or omission:

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

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

(3) gross negligence or incompetence;

(4) unprofessional or dishonorable conduct, which includes:

(a) misrepresentation or fraud;

(b) false or misleading advertising;

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

(d) solicitation or acceptance by a licensee of a commission, bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in a cemetery, mausoleum or crematory;

(e) using any funeral merchandise

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previously purchased, in whole or in part, except for transportation purposes, without prior written permission of the person selecting or paying for the use of the merchandise; and

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

(5) violation of the provisions of the Funeral Services Act or a rule of the board;

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

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

(8) refusing to release properly a dead human body to the custody of the person or entity who has the legal right to effect the release, whether or not the authorized cost has been paid. If an establishment receives a dead human body for funeral services but the body is subsequently transferred to another establishment that completes or performs funeral services, the subsequent establishment shall be responsible for all reasonable nonprofessional service charges incurred by the next previous establishment prior to and including transfer of

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the body and the subsequent establishment shall reimburse the next previous establishment for those charges;

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

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

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

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

(13) failure to supervise adequately subordinate personnel;

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

(15) employing fraudulent billing practices;
or

(16) practicing funeral service or cremation

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without a current license.

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

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

(2) permitting a funeral service intern to exceed the limitations set forth in the provisions of the Funeral Services Act or the rules of the board.

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

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

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

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

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

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

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

(1) engaging or making any representation as engaging in the practice of funeral service or direct disposition, unless the applicant or crematory authority has a license to practice funeral service or direct disposition;

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

(3) engaging in conduct or activities for

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which a license to engage in the practice of funeral service or direct disposition is required or aiding and abetting an unlicensed person to engage in conduct or activities for which a license to practice funeral service or direct disposition is required.

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

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

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

SJC → ~~SECTION 8. A new section of the Funeral Services Act is enacted to read:~~

~~"[NEW MATERIAL] FUNERAL ARRANGER--SCOPE OF PRACTICE--LIMITATIONS.--A funeral arranger may engage in arrangements and~~

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~~directing of funeral services at a funeral establishment that
is licensed pursuant to the Funeral Services Act."~~

~~SECTION 9. A new section of the Funeral Services Act is
enacted to read:~~

~~"[NEW MATERIAL] EMBALMER--SCOPE OF PRACTICE--
LIMITATIONS.--An embalmer may engage in embalming and preparing
a dead human body for funeral service at a funeral
establishment that is licensed pursuant to the Funeral Services
Act."←SJC~~

SECTION SJC→10. 8.←SJC EFFECTIVE DATE.--The effective
date of the provisions of this act is July 1, 2019.