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AN ACT

RELATING TO PROFESSIONAL LICENSES; CREATING ADDITIONAL
LICENSES UNDER THE FUNERAL SERVICES ACT; ADDING DEFINITIONS;
MAKING TECHNICAL AND CONFORMING CHANGES.

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:

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 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;

1 H. "direct disposer" means a person licensed to
2 engage solely in providing direct disposition at a direct
3 disposition establishment, licensed pursuant to the Funeral
4 Services Act, as provided in that act;

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

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

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

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

24 M. "embalming" means the disinfection,
25 preservation and restoration, when possible, of a dead human

1 body by a licensed funeral service practitioner, licensed
2 embalmer or a licensed funeral service intern under the
3 supervision of a licensed funeral service practitioner;

4 N. "ennichement" means interment of cremains in a
5 niche in a columbarium, whether in an urn or not;

6 O. "entombment" means interment of a casketed body
7 or cremains in a crypt in a mausoleum;

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

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

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

23 S. "funeral merchandise" means that personal
24 property offered for sale in connection with the
25 transportation, funeralization or disposition of a dead human

1 body, including the enclosure into which a dead human body is
2 or cremains are directly placed, and excluding mausoleum
3 crypts, interment enclosures preset in a cemetery and
4 columbarium niches;

5 T. "funeral service intern" means a person
6 licensed to be in training for the practice of funeral
7 service under the supervision and instruction of a funeral
8 service practitioner at a funeral establishment or commercial
9 establishment, licensed pursuant to the Funeral Services Act;

10 U. "funeral service practitioner" means a person
11 licensed to engage in the practice of funeral service at a
12 funeral establishment or commercial establishment that is
13 licensed pursuant to the Funeral Services Act;

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

20 W. "general supervision" means that the
21 supervising funeral service practitioner is not necessarily
22 physically present in the establishment with the person being
23 trained but is available for advice and assistance;

24 X. "graveside service" means a funeral held at the
25 graveside only, excluding a committal service that follows a

1 funeral conducted at another location;

2 Y. "jurisprudence examination" means an
3 examination prescribed by the board on the statutes, rules
4 and regulations pertaining to the practice of funeral service
5 or direct disposition, including the Funeral Services Act,
6 the rules of the board, state health regulations governing
7 human remains and the Vital Statistics Act;

8 Z. "licensee in charge" means a funeral service
9 practitioner who is ultimately responsible for the conduct of
10 a funeral or commercial establishment and its employees; or a
11 direct disposer who is ultimately responsible for the conduct
12 of a direct disposition establishment and its employees;

13 AA. "make arrangements" means advising or
14 counseling about specific details for a funeral, graveside
15 service, committal service, memorial service, disposition or
16 direct disposition;

17 BB. "memorial service" means a gathering of
18 persons for recognition of a death without the presence of
19 the body of the deceased;

20 CC. "practice of funeral service" means those
21 activities allowed under the Funeral Services Act by a
22 funeral service practitioner, funeral arranger, embalmer or
23 funeral service intern; and

24 DD. "pulverization" means the process that reduces
25 cremains to a granular substance."

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

3 "61-32-4. LICENSE REQUIRED.--

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

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

9 (2) use the title or make any representation
10 as being a funeral service practitioner, funeral arranger,
11 embalmer, funeral service intern or direct disposer or use
12 any other title, abbreviation, letters, figures, signs or
13 devices that indicate the person is licensed to practice as a
14 funeral service practitioner, funeral arranger, embalmer,
15 funeral service intern or direct disposer; or

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

19 B. A person who engages in the practice or acts in
20 the capacity of a funeral service practitioner, funeral
21 arranger, embalmer, funeral service intern or direct disposer
22 in this state, with or without a New Mexico license, is
23 subject to the jurisdiction of the state and to the
24 administrative jurisdiction of the board and is subject to
25 all penalties and remedies available for a violation of a

1 provision of the Funeral Services Act.

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

10 SECTION 3. Section 61-32-9 NMSA 1978 (being Laws 1993,
11 Chapter 204, Section 9, as amended) is amended to read:

12 "61-32-9. REQUIREMENTS FOR LICENSURE--FUNERAL SERVICE
13 PRACTITIONER--FUNERAL ARRANGER--EMBALMER--FUNERAL SERVICE
14 INTERN--DIRECT DISPOSER--CONVERSION OF CERTAIN LICENSES--
15 TEMPORARY LICENSES.--

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

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

22 (2) has served as a licensed funeral service
23 intern for not less than twelve months, under the supervision
24 of a licensed funeral service practitioner. During the
25 training period, the applicant shall have assisted in the

1 embalming of at least fifty bodies, making of at least fifty
2 funeral arrangements and the directing of at least fifty
3 funerals;

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

7 (4) has successfully completed both the arts
8 and science sections of the national board examination
9 administered by the international conference of funeral
10 service examining boards;

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

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

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

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

25 (2) has served as a licensed funeral service

1 intern for not less than twelve months, under the supervision
2 of a licensed funeral service practitioner. During the
3 training period, the applicant shall have assisted in the
4 making of at least fifty funeral arrangements and the
5 directing of at least fifty funerals;

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

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

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

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

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

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

25 (2) has served as a licensed funeral service

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

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

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

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

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

19 D. A license to practice as a funeral service
20 intern shall be issued to any person who files a completed
21 application, accompanied by the required fees and
22 documentation, and who submits satisfactory evidence that the
23 person:

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

25 (2) has graduated from high school or the

1 equivalent;

2 (3) has submitted proof of employment and
3 supervision as required by board rules. Except as may be
4 allowed by board rule, a license as a funeral service intern
5 is issued only for a specific funeral establishment or an
6 establishment that is part of a multi-establishment
7 enterprise;

8 (4) has successfully completed an
9 examination, including a jurisprudence examination,
10 prescribed by board rules; and

11 (5) has not been convicted of unprofessional
12 conduct or incompetency.

13 E. A license to practice as a direct disposer
14 shall be issued to any person who files a completed
15 application, accompanied by the required fees and
16 documentation, and who submits satisfactory evidence that the
17 person:

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

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

25 (3) has successfully completed any

1 examination, including a jurisprudence examination,
2 prescribed by board rules; and

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

5 F. On and after July 1, 2012, the board shall not
6 issue a new license that was formerly designated an
7 "assistant funeral services practitioner" or "associate
8 funeral services practitioner" license under a version of the
9 Funeral Services Act in effect on June 30, 2012. A person
10 holding one of these licenses that is valid as of June 30,
11 2012 shall be considered as holding a valid, renewable
12 funeral services intern license subject to the general
13 supervision of a licensed funeral services practitioner
14 pursuant to the Funeral Services Act.

15 G. The board may adopt by rule requirements for
16 issuing a temporary license that will be valid until the next
17 scheduled board meeting."

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

20 "61-32-10. LICENSURE BY CREDENTIALS.--After successful
21 completion of a jurisprudence examination, the board may
22 license an applicant as a funeral service practitioner,
23 funeral arranger or embalmer; provided the applicant
24 possesses a valid license or its equivalent for the practice
25 of funeral service issued by the appropriate examining board

1 under the laws of any other state or territory of the United
2 States, the District of Columbia or any foreign nation, and
3 provided the applicant presents proof that the applicant is
4 currently licensed in good standing in a jurisdiction that
5 has standards for licensure that are at least equal to those
6 for licensure in New Mexico as required by the Funeral
7 Services Act."

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

10 "61-32-20. EMBALMING.--

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

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

24 C. When embalming is not required under the
25 provisions of this section, a dead human body shall not be

1 embalmed without express authorization by the:

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

7 D. When embalming is not required, and prior to
8 obtaining authorization for the embalming, a dead human body
9 may be washed and other health procedures, including closing
10 of the orifices, may be performed without authorization.

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

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

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

1 "61-32-22. INACTIVE STATUS.--

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

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

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

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

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

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

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

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

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

6 "61-32-24. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW.--

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

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

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

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

22 (3) gross negligence or incompetence;

23 (4) unprofessional or dishonorable conduct,
24 which includes:

25 (a) misrepresentation or fraud;

1 (b) false or misleading advertising;

2 (c) solicitation of dead human bodies

3 by the licensee or the licensee's agents, assistants or
4 employees, whether the solicitation occurs after death or
5 while death is impending; provided that this shall not be
6 deemed to prohibit general advertising;

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

11 (e) using any funeral merchandise
12 previously purchased, in whole or in part, except for
13 transportation purposes, without prior written permission of
14 the person selecting or paying for the use of the
15 merchandise; and

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

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

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

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

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

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

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

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

24 (12) having had a license, certificate or
25 registration to practice revoked, suspended or denied in any

1 jurisdiction, territory or possession of the United States or
2 another country for actions of the licensee or applicant
3 similar to acts described in this subsection. A certified
4 copy of the record of the jurisdiction taking the
5 disciplinary action is conclusive evidence of the violation;

6 (13) failure to supervise adequately
7 subordinate personnel;

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

10 (15) employing fraudulent billing practices;
11 or

12 (16) practicing funeral service or cremation
13 without a current license.

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

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

25 (2) permitting a funeral service intern to

1 exceed the limitations set forth in the provisions of the
2 Funeral Services Act or the rules of the board.

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

25 E. In addition to the offenses listed in

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

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

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

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

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

23 (1) court reporters;

24 (2) transcripts;

25 (3) certification or notarization;

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- (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."

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019. _____