

HOUSE BILL 407

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

INTRODUCED BY

Janelle Anyanonu and D. Wonda Johnson

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

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

.224163.3AIC February 22, 2023 (5:10pm)

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MAKING TECHNICAL CHANGES.

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

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

"24-12-1. NOTIFICATION OF ~~[RELATIVES]~~ LEGAL NEXT OF KIN OF ~~[DECEASED]~~ DECEDENT--AUTHORIZATION OF PERSON DESIGNATED ON RECORD OF EMERGENCY DATA FORM TO DIRECT BURIAL--UNCLAIMED DECEDENTS.--

A. As used in this section:

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

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

(a) the surviving spouse;

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

(c) the surviving parents of the decedent;

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

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

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

[A.] B. State, county, [or] municipal officials or other person having charge or control of [a] the body of a [dead person] decedent shall use due diligence to notify the [relatives] legal next of kin or other claimant of the [deceased] decedent.

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

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

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Hf11→D. If no claimant is found who will assume the cost of burial, the official having charge or control of the decedent shall notify the county, stating, when possible, the name, age, sex, legal next of kin and cause of death of the deceased and any other information obtained that the county could use to conduct due diligence. The county may perform additional due diligence if reasonably determined necessary.←Hf11

Hf11→D.←Hf11 Hf11→E.←Hf11 If reasonable opportunity has been afforded to the legal next of kin and if no other claimant has been found, the decedent may be deemed unclaimed and the legal next of kin deemed to have waived the right to take possession of the body. Unless the medical investigator retains the body in accordance with Section 24-12-2 NMSA 1978, the county shall authorize disposition of the body. As used in this subsection, "reasonable opportunity" means Hf11→fifteen←Hf11 Hf11→fourteen←Hf11 days after the legal next of kin has been notified at the legal next of kin's last known addresses.

[D.] Hf11→E.←Hf11 Hf11→F.←Hf11 The body shall be embalmed, if required, and buried or cremated according to rules of the [state] agency having jurisdiction. After the exercise of due diligence required in Subsection [A] B of this section [~~and the report to the medical investigator required in Subsection C of this section~~], the medical investigator shall

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be [~~furnished detailed~~] provided material data demonstrating
[~~such~~] due diligence and the fact that no claimant has been
found. When the medical investigator has determined that due
diligence has been exercised, that reasonable opportunity has
been afforded [~~relatives~~] to legal next of kin to claim the
body and that the body has not been claimed, the medical
investigator shall [~~issue a certificate determining~~] determine
that the remains are unclaimed. In no case shall an unclaimed
body be disposed of in less than two weeks from the date of the
discovery of the body."

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

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

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

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

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

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

"24-12-3. PENALTIES.--

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

B. [~~Any~~] A person who unlawfully disposes of, uses or sells an unclaimed body is guilty of a fourth degree felony and shall be [~~punished by imprisonment in the state penitentiary for a term of not less than one year nor more than~~

~~five years or by the imposition of a fine of not more than five thousand dollars (\$5,000) or both such imprisonment and fine]~~
sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

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

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

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

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

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

(3) authorization of the [~~deceased's~~] decendent's surviving spouse;

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

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

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

B. An autopsy or post-mortem examination shall not be performed under authorization given [~~under~~] pursuant to the provisions of Paragraph (4) of Subsection A of this section by any one of the persons enumerated if, before the procedure is performed, any one of the other persons enumerated objects in writing to the physician or surgeon by whom the procedure is to be performed.

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

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

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

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

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

A. ~~[Any]~~ An adult may authorize ~~[his]~~ the adult's own cremation and the lawful disposition of ~~[his]~~ the cremated remains by:

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

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

B. A personal representative acting pursuant to a will or ~~[Article 3 of]~~ the provisions of Chapter 45, Article 3 NMSA 1978 or a funeral service establishment, ~~[a commercial establishment]~~ a direct disposition establishment or a crematory shall comply with a statement made in conformance with the provisions of Subsection A of this section. ~~[A]~~ The statement ~~[that conforms to the provisions of Subsection A of this section]~~ is authorization to ~~[a]~~ the personal

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representative, funeral establishment, HGEIC→**commercial establishment**,←HGEIC direct disposition establishment or crematory that the remains of the decedent are to be cremated. Statements dated prior to [~~the effective date of this act~~] April 5, 1993 are to be given effect if they meet the requirements of Subsection A of this section.

C. A personal representative, funeral service establishment, direct disposition establishment or crematory acting in reliance upon a document executed pursuant to the provisions of this section, who has no actual notice of revocation or contrary indication, is presumed to be acting in good faith.

D. [~~No~~] A funeral service establishment, [~~commercial establishment~~] direct disposition establishment, crematory or employee of a funeral establishment, HGEIC→**commercial establishment**,←HGEIC direct disposition establishment or crematory or other person that relies in good faith on a statement written pursuant to this section shall not be subject to liability for cremating the remains in accordance with the express instructions of a decedent. The written document is a complete defense to a cause of action by any person against any other person acting in accordance with the instructions of the decedent.

E. As used in this section:

[~~(1) "commercial establishment" means an office, premises or place of business that provides for the~~

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~~practice of funeral service or direct disposition services exclusively to licensed funeral or direct disposition establishments;~~

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

(3)] (2) "direct disposition establishment" means an office, premises or place of business that provides for the disposition of a dead human body as quickly as possible, without 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."

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

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

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

- (1) the surviving spouse;
- (2) a majority of the surviving adult children of the decedent;

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(3) the surviving parents of the decedent;

(4) a majority of the surviving siblings of the decedent;

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

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

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

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

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

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

"24-12A-3. UNCLAIMED BODIES [~~AND BODIES OF INDIGENT PERSONS~~]~~--CREMATION PERMITTED.--~~[~~The body of an unclaimed decedent or an indigent person~~] An unclaimed body, the disposition of which is the responsibility of the county pursuant to the provisions of Chapter 24, Article 13 NMSA 1978, may be cremated upon the order of the county official responsible for ensuring the disposition of the body or upon the order of any other government official authorized to order the cremation. Absent a showing of bad faith or malicious intent, the official ordering the cremation and the person or establishment carrying out the cremation shall be immune from liability related to the cremation."

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

"24-13-1. BURIAL OR CREMATION OF UNCLAIMED DECEDENTS [~~AND OF INDIGENTS~~].--For the purposes of Chapter 24, Article 13 NMSA 1978, a dead [~~person whose~~] body that has not been claimed by a friend, relative or other interested person assuming the responsibility for and expense of disposition shall be considered an unclaimed decedent. It is the duty of [~~the board of county commissioners of~~] each county in this state to [~~cause~~

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~~to be decently interred~~ authorize interment or [~~cremated the body~~] cremation of [~~any~~] an unclaimed decedent [~~or indigent person~~]. The county shall ensure that the body is buried or cremated no later than thirty days after a determination has been made that the body has not been claimed, but no less than [~~two weeks~~] Hf11→fifteen←Hf11 Hf11→fourteen←Hf11 days after death or discovery of the body. If the body is cremated, the county shall ensure that the cremated remains are retained and stored for [~~no less than~~] at least two years Hf11→, or one year for eligible veterans who qualify for veteran burial benefits,←Hf11 in a manner that allows for identification of the remains. After the expiration of two years Hf11→, or one year for eligible veterans who qualify for veteran burial benefits,←Hf11 , the cremated remains may be disposed of; provided the county retains a record of the place and manner of disposition for not less than five years after [~~such~~] disposition."

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

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

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

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"24-13-3. EXPENSES FOR BURIAL OR CREMATION.--If the unclaimed decedent had known assets or property of sufficient value to defray the expenses of cremation or burial, invoices for the expenses shall be forwarded to [~~such person or official authorized by law to be appointed administrator~~] the executor of the estate of the decedent, and such person [~~or official~~] shall pay the expenses out of the decedent's estate. To the extent that the [~~deceased person is indigent~~] decedent is unclaimed and has no estate, the burial or cremation expenses shall be borne by the county of residence of the [~~deceased person~~] decedent. If the county of residence of the [~~deceased person~~] decedent is not known, the burial or cremation expenses shall be borne by the county in which the [~~body~~] decedent was found. The burial or cremation expenses may be paid by the county out of the general fund or the [~~county indigent hospital claims~~] health care assistance fund in HGEIC → ~~an amount up to~~ ← HGEIC HGEIC → the amount of ← HGEIC [~~six hundred dollars (\$600)~~] one thousand dollars (\$1,000) for the burial or cremation of [~~any adult or minor~~] the unclaimed decedent."

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

"24-13-4. BURIAL AFTER INVESTIGATION--COST OF OPENING AND CLOSING GRAVE.--The [~~board of~~] county [~~commissioners~~] after proper investigation shall cause [~~any deceased indigent or~~] an unclaimed decedent to be decently interred or cremated. The cost to be paid by the county of opening and closing a grave

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shall not exceed [~~six hundred dollars (\$600)~~] one thousand dollars (\$1,000), which sum shall be in addition to the sums enumerated in Section 24-13-3 NMSA 1978."

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

"24-13-5. PAYMENT OF BURIAL OR CREMATION EXPENSES-- COMMISSIONERS' LIABILITY.--The board of county commissioners of any county within this state may authorize payment for the burial or cremation [~~of an indigent person, as defined in Section 24-13-2 NMSA 1978 or~~] of an unclaimed decedent, as defined in Section 24-13-1 NMSA 1978. All available assets of the deceased [~~shall~~] may be used to reimburse the county for the cost of burial or cremation. Should the county be required to pay expenses for burial or cremation of an unclaimed decedent who has left an estate, the estate shall reimburse the county for those expenses. The county commissioners [~~shall~~] may be liable [~~either personally or~~] officially to the county they represent in double the amount they have paid toward the burial or cremation of a person other than as authorized by this section."

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

"24-13-6. MONEY FROM RELATIVES--DUTY OF FUNERAL DIRECTOR.--Should [~~any~~] a funeral director or other person allowed by law to conduct the business of a funeral director accept money from the relatives or [~~friend~~] friends of a

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[deceased person] decedent whom the [board of] county [commissioners] has determined to be [an indigent or] an unclaimed decedent, the funeral director shall immediately notify the [board of] county [commissioners] of the payment or offer for payment, and the [board of] county [commissioners] shall not [thereafter] pay for the burial or cremation involved, or, if the [board of] county [commissioners] has already paid for the burial or cremation, the funeral director shall immediately refund the money paid to [him] the funeral director by the [board of] county [commissioners] for the burial or cremation."

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

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

SECTION 15. EFFECTIVE DATE.--The effective date of the .224163.3AIC February 22, 2023 (5:10pm)

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provisions of this act is July 1, 2023.

- 18 -