

HOUSE BILL 463

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

INTRODUCED BY

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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"; INCREASING THE AMOUNT THAT COUNTIES PAY FOR CREMATION OR
BURIAL TO ONE THOUSAND DOLLARS (\$1,000); MAKING TECHNICAL
CHANGES; REPEALING A SECTION OF THE NMSA 1978.

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:

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

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

7 (a) the surviving spouse;

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

10 (c) the surviving parents of the
11 decedent;

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

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

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

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

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1 ~~[deceased]~~ decedent.

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

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

18 D. If reasonable opportunity has been afforded to
19 the legal next of kin and if no other claimant has been found,
20 the decedent may be deemed unclaimed and the legal next of kin
21 deemed to have waived the right to take possession of the body.
22 Unless the medical investigator retains the body in accordance
23 with Section 24-12-2 NMSA 1978, the county shall authorize
24 disposition of the body. As used in this subsection,
25 "reasonable opportunity" means fifteen days after the legal

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1 next of kin has been notified at the legal next of kin's last
2 known addresses.

3 ~~[D.]~~ E. The body shall be embalmed, if required,
4 and buried or cremated according to rules of the ~~[state]~~ agency
5 having jurisdiction. After the exercise of due diligence
6 required in Subsection ~~[A]~~ B of this section ~~[and the report to~~
7 ~~the medical investigator required in Subsection C of this~~
8 ~~section]~~, the medical investigator shall be ~~[furnished~~
9 ~~detailed]~~ provided material data demonstrating ~~[such]~~ due
10 diligence and the fact that no claimant has been found. When
11 the medical investigator has determined that due diligence has
12 been exercised, that reasonable opportunity has been afforded
13 ~~[relatives]~~ to legal next of kin to claim the body and that the
14 body has not been claimed, the medical investigator shall
15 ~~[issue a certificate determining]~~ determine that the remains
16 are unclaimed. In no case shall an unclaimed body be disposed
17 of in less than two weeks from the date of the discovery of the
18 body."

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

21 "24-12-2. AUTHORITY OF THE OFFICE OF THE STATE MEDICAL
22 INVESTIGATOR--DISPOSITION OF UNCLAIMED BODY--TRANSMISSION OF
23 RECORDS OF INSTITUTION.--

24 A. Upon the ~~[issuance of his certificate]~~
25 determination that ~~[the remains are]~~ a body is unclaimed, the

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1 medical investigator shall retain the body for use only for
2 medical education or shall certify that the body is unnecessary
3 or unsuited for medical education and release it to the state,
4 county or municipal officials having charge or control of the
5 body for burial. The state, county, ~~[or]~~ municipal officials
6 or other person having charge or control of the body of a
7 decedent shall have the body removed for disposition within
8 three weeks from the date on which the medical investigator
9 ~~[released the body]~~ notified the appropriate entity.

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

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

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

23 "24-12-3. PENALTIES.--

24 A. ~~[Any]~~ A person who conducts a post-mortem
25 examination on an unclaimed body without express permission of

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1 the medical investigator is guilty of a misdemeanor and shall
2 be [~~punished by imprisonment in the county jail for not more~~
3 ~~than one year or by the imposition of a fine of not more than~~
4 ~~one thousand dollars (\$1,000) or both such imprisonment and~~
5 ~~fine]~~ sentenced pursuant to the provisions of Section 31-19-1
6 NMSA 1978.

7 B. [~~Any~~] A person who unlawfully disposes of, uses
8 or sells an unclaimed body is guilty of a fourth degree felony
9 and shall be [~~punished by imprisonment in the state~~
10 ~~penitentiary for a term of not less than one year nor more than~~
11 ~~five years or by the imposition of a fine of not more than five~~
12 ~~thousand dollars (\$5,000) or both such imprisonment and fine]~~
13 sentenced pursuant to the provisions of Section 31-18-15 NMSA
14 1978."

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

17 "24-12-4. POST-MORTEM EXAMINATIONS AND AUTOPSIES--CONSENT
18 REQUIRED.--

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

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

25 (2) authorization of [~~any~~] a person or on

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1 behalf of any [~~entity~~] person whom the [~~deceased~~] decedent
2 designated in writing during [~~his~~] the person's lifetime to
3 take charge of [~~his~~] the decedent's body for burial or other
4 purposes;

5 (3) authorization of the [~~deceased's~~]
6 decedent's surviving spouse;

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

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

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

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

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1 be performed.

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

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

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

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

21 "24-12A-1. RIGHT TO AUTHORIZE CREMATION--DEFINITIONS.--

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

25 (1) stating [~~his~~] the desire to be cremated in

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1 a written statement that is signed by the [~~individual~~] adult
2 and notarized or witnessed by two persons; or

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

6 B. A personal representative acting pursuant to a
7 will or [~~Article 3 of~~] the provisions of Chapter 45, Article 3
8 NMSA 1978 or a funeral service establishment, [~~a commercial~~
9 ~~establishment~~] a direct disposition establishment or a
10 crematory shall comply with a statement made in conformance
11 with the provisions of Subsection A of this section. [~~A~~] The
12 statement [~~that conforms to the provisions of Subsection A of~~
13 ~~this section~~] is authorization to [~~a~~] the personal
14 representative, funeral establishment, [~~commercial~~
15 ~~establishment~~] direct disposition establishment or crematory
16 that the remains of the decedent are to be cremated.

17 Statements dated prior to [~~the effective date of this act~~]
18 April 5, 1993 are to be given effect if they meet the
19 requirements of Subsection A of this section.

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

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1 D. ~~[No]~~ A funeral service establishment,
2 ~~[commercial establishment]~~ direct disposition establishment,
3 crematory or employee of a funeral establishment, ~~[commercial~~
4 ~~establishment]~~ direct disposition establishment or crematory or
5 other person that relies in good faith on a statement written
6 pursuant to this section shall not be subject to liability for
7 cremating the remains in accordance with the express
8 instructions of a decedent. The written document is a complete
9 defense to a cause of action by any person against any other
10 person acting in accordance with the instructions of the
11 decedent.

12 E. As used in this section:

13 ~~[(1)]~~ ~~"commercial establishment" means an~~
14 ~~office, premises or place of business that provides for the~~
15 ~~practice of funeral service or direct disposition services~~
16 ~~exclusively to licensed funeral or direct disposition~~
17 ~~establishments;~~

18 ~~(2)]~~ (1) "cremate" means to reduce a dead
19 human body by direct flame to a residue that may include bone
20 fragments; and

21 ~~[(3)]~~ (2) "direct disposition establishment"
22 means an office, premises or place of business that provides
23 for the disposition of a dead human body as quickly as
24 possible, without a funeral, graveside service, committal
25 service or memorial service, whether public or private, and

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1 without embalming of the body unless embalming is required by
2 the place of disposition."

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

5 "24-12A-2. NO WRITTEN INSTRUCTIONS--PRIORITY OF OTHERS TO
6 DECIDE DISPOSITION.--

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

- 13 (1) the surviving spouse;
- 14 (2) a majority of the surviving adult children
15 of the decedent;
- 16 (3) the surviving parents of the decedent;
- 17 (4) a majority of the surviving siblings of
18 the decedent;

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

24 ~~{6)}~~ (5) the adult person of the next degree
25 of kinship in the order named by New Mexico law to inherit the

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1 estate of the decedent; or

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

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

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

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

22 "24-12A-3. UNCLAIMED BODIES [~~AND BODIES OF INDIGENT~~
23 ~~PERSONS]~~--CREMATION PERMITTED.--~~[The body of an unclaimed~~
24 ~~decedent or an indigent person]~~ An unclaimed body, the
25 disposition of which is the responsibility of the county

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1 pursuant to the provisions of Chapter 24, Article 13 NMSA 1978,
2 may be cremated upon the order of the county official
3 responsible for ensuring the disposition of the body or upon
4 the order of any other government official authorized to order
5 the cremation. Absent a showing of bad faith or malicious
6 intent, the official ordering the cremation and the person or
7 establishment carrying out the cremation shall be immune from
8 liability related to the cremation."

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

11 "24-13-1. BURIAL OR CREMATION OF UNCLAIMED DECEDENTS [~~AND~~
12 ~~OF INDIGENTS~~].--For the purposes of Chapter 24, Article 13 NMSA
13 1978, a dead [~~person whose~~] body that has not been claimed by a
14 friend, relative or other interested person assuming the
15 responsibility for and expense of disposition shall be
16 considered an unclaimed decedent. It is the duty of [~~the board~~
17 ~~of county commissioners of~~] each county in this state to [~~cause~~
18 ~~to be decently interred~~] authorize interment or [~~cremated the~~
19 ~~body~~] cremation of [~~any~~] an unclaimed decedent [~~or indigent~~
20 ~~person~~]. The county shall ensure that the body is buried or
21 cremated no later than thirty days after a determination has
22 been made that the body has not been claimed, but no less than
23 [~~two weeks~~] fifteen days after death or discovery of the body.
24 If the body is cremated, the county shall ensure that the
25 cremated remains are retained and stored for [~~no less than~~] at

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1 least two years in a manner that allows for identification of
2 the remains. After the expiration of two years, the cremated
3 remains may be disposed of; provided the county retains a
4 record of the place and manner of disposition for not less than
5 five years after [~~such~~] disposition."

6 SECTION 9. Section 24-13-3 NMSA 1978 (being Laws 1939,
7 Chapter 224, Section 3, as amended) is amended to read:

8 "24-13-3. EXPENSES FOR BURIAL OR CREMATION.--If the
9 unclaimed decedent had known assets or property of sufficient
10 value to defray the expenses of cremation or burial, invoices
11 for the expenses shall be forwarded to [~~such person or official~~
12 ~~authorized by law to be appointed administrator~~] the executor
13 of the estate of the decedent, and such person [~~or official~~]
14 shall pay the expenses out of the decedent's estate. To the
15 extent that the [~~deceased person is indigent~~] decedent is
16 unclaimed and has no estate, the burial or cremation expenses
17 shall be borne by the county of residence of the [~~deceased~~
18 ~~person~~] decedent. If the county of residence of the [~~deceased~~
19 ~~person~~] decedent is not known, the burial or cremation expenses
20 shall be borne by the county in which the [~~body~~] decedent was
21 found. The burial or cremation expenses may be paid by the
22 county out of the general fund or the [~~county indigent hospital~~
23 ~~claims~~] health care assistance fund in [~~an amount up to six~~
24 ~~hundred dollars (\$600)~~] the amount of one thousand dollars
25 (\$1,000) for the burial or cremation of [~~any adult or minor~~]

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1 the unclaimed decedent."

2 SECTION 10. Section 24-13-4 NMSA 1978 (being Laws 1939,
3 Chapter 224, Section 4, as amended) is amended to read:

4 "24-13-4. BURIAL AFTER INVESTIGATION--COST OF OPENING AND
5 CLOSING GRAVE.--The [~~board of~~] county [~~commissioners~~] after
6 proper investigation shall cause [~~any deceased indigent or~~] an
7 unclaimed decedent to be decently interred or cremated. The
8 cost to be paid by the county of opening and closing a grave
9 shall not exceed [~~six hundred dollars (\$600)~~] one thousand
10 dollars (\$1,000), which sum shall be in addition to the sums
11 enumerated in Section 24-13-3 NMSA 1978."

12 SECTION 11. Section 24-13-5 NMSA 1978 (being Laws 1939,
13 Chapter 224, Section 5, as amended) is amended to read:

14 "24-13-5. PAYMENT OF BURIAL OR CREMATION EXPENSES--
15 COMMISSIONERS' LIABILITY.--The board of county commissioners of
16 any county within this state may authorize payment for the
17 burial or cremation [~~of an indigent person, as defined in~~
18 ~~Section 24-13-2 NMSA 1978 or~~] of an unclaimed decedent, as
19 defined in Section 24-13-1 NMSA 1978. All available assets of
20 the deceased [~~shall~~] may be used to reimburse the county for
21 the cost of burial or cremation. Should the county be required
22 to pay expenses for burial or cremation of an unclaimed
23 decedent who has left an estate, the estate shall reimburse the
24 county for those expenses. The county commissioners [~~shall~~]
25 may be liable [~~either personally or~~] officially to the county

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1 they represent in double the amount they have paid toward the
2 burial or cremation of a person other than as authorized by
3 this section."

4 SECTION 12. Section 24-13-6 NMSA 1978 (being Laws 1939,
5 Chapter 224, Section 6, as amended) is amended to read:

6 "24-13-6. MONEY FROM RELATIVES--DUTY OF FUNERAL
7 DIRECTOR.--Should [~~any~~] a funeral director or other person
8 allowed by law to conduct the business of a funeral director
9 accept money from the relatives or [~~friend~~] friends of a
10 [~~deceased person~~] decedent whom the [~~board of~~] county
11 [~~commissioners~~] has determined to be [~~an indigent or~~] an
12 unclaimed decedent, the funeral director shall immediately
13 notify the [~~board of~~] county [~~commissioners~~] of the payment or
14 offer for payment, and the [~~board of~~] county [~~commissioners~~]
15 shall not [~~thereafter~~] pay for the burial or cremation
16 involved, or, if the [~~board of~~] county [~~commissioners~~] has
17 already paid for the burial or cremation, the funeral director
18 shall immediately refund the money paid to [~~him~~] the funeral
19 director by the [~~board of~~] county [~~commissioners~~] for the
20 burial or cremation."

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

23 "24-13-7. FAILURE TO NOTIFY--FUNERAL DIRECTOR'S
24 LIABILITY.--If [~~any~~] a funeral director or other person
25 authorized by law to conduct the business of a funeral director

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1 receives or contracts to receive any money or thing of value
2 from relatives or friends of [~~a deceased alleged indigent or~~
3 an unclaimed decedent whose burial or cremation expenses are
4 paid or to be paid by the [~~board of~~] county [~~commissioners~~] and
5 fails to notify the [~~board of~~] county [~~commissioners~~] of that
6 fact, the funeral director or other person authorized by law to
7 conduct the business of a funeral director shall be liable to
8 the county in an amount double the amount paid or to be paid by
9 the [~~board of~~] county [~~commissioners of that county~~]."

10 SECTION 14. REPEAL.--Section 24-13-2 NMSA 1978 (being
11 Laws 1939, Chapter 224, Section 2, as amended) is repealed.

12 SECTION 15. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2023.