

1 SENATE BILL 285

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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5 Siah Correa Hemphill
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10 AN ACT

11 RELATING TO CREMATION; EXPANDING THE DEFINITION OF "CREMATION"
12 TO INCLUDE ALKALINE HYDROLYSIS; MAKING TECHNICAL CHANGES.
13

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

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

17 "24-12A-1. RIGHT TO AUTHORIZE CREMATION--DEFINITIONS.--

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

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

24 (2) including an express statement in [~~his~~]
25 the individual's will indicating that the testator desired that

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1 ~~[his]~~ the individual's remains be cremated upon ~~[his]~~ death.

2 B. A personal representative acting pursuant to a
3 will or ~~[Article 3 of]~~ Chapter 45, Article 3 NMSA 1978 or a
4 funeral establishment, a commercial establishment, a direct
5 disposition establishment or a crematory shall comply with a
6 statement made in conformance with the provisions of Subsection
7 A of this section. A statement that conforms to the provisions
8 of Subsection A of this section is authorization to a personal
9 representative, funeral establishment, commercial
10 establishment, direct disposition establishment or crematory
11 that the remains of the decedent are to be cremated.
12 Statements dated prior to ~~[the effective date of this act]~~
13 April 5, 1993 are to be given effect if they meet the
14 requirements of Subsection A of this section.

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

21 D. No funeral establishment, commercial
22 establishment, direct disposition establishment, crematory or
23 employee of a funeral establishment, commercial establishment,
24 direct disposition establishment or crematory or other person
25 that relies in good faith on a statement written pursuant to

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1 this section shall be subject to liability for cremating the
2 remains in accordance with the express instructions of a
3 decedent. The written document is a complete defense to a
4 cause of action by any person against any other person acting
5 in accordance with the instructions of the decedent.

6 E. As used in this section:

7 (1) "commercial establishment" means an
8 office, premises or place of business that provides for the
9 practice of funeral service or direct disposition services
10 exclusively to licensed funeral or direct disposition
11 establishments;

12 (2) "cremate" means to reduce a dead human
13 body by direct flame or alkaline hydrolysis to a residue that
14 may include bone fragments; and

15 (3) "direct disposition establishment" means
16 an office, premises or place of business that provides for the
17 disposition of a dead human body as quickly as possible,
18 without a funeral, graveside service, committal service or
19 memorial service, whether public or private, and without
20 embalming of the body unless embalming is required by the place
21 of disposition."

22 SECTION 2. Section 58-17-3 NMSA 1978 (being Laws 2001,
23 Chapter 149, Section 3) is amended to read:

24 "58-17-3. DEFINITIONS.--As used in the Endowed Care
25 Cemetery Act:

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1 A. "affiliate" means a corporation that is related
2 to another corporation by shareholdings or other means of
3 control and includes a subsidiary, parent or sibling
4 corporation;

5 B. "burial park" means a tract of land that has
6 been dedicated to the purposes of and used, and intended to be
7 used, for the interment of remains in graves;

8 C. "care funds" means realty or personalty
9 impressed with a trust by the terms of a gift, grant,
10 contribution, payment, devise, bequest or contract, and income
11 accumulated therefrom where legally so directed by the terms of
12 the transaction by which the principal was established;

13 D. "cemetery" means a place dedicated to and used
14 and intended to be used for the permanent interment of remains;

15 E. "cemetery authority" means a person that owns,
16 operates, controls or manages a cemetery or holds lands for
17 burial purposes;

18 F. "columbarium" means a structure or space in a
19 structure used, or intended to be used, to contain cremated
20 remains;

21 G. "cremated remains" means ~~[remains after~~
22 ~~incineration in a crematory]~~ any residue that may include bone
23 fragments recovered after cremation;

24 H. "cremation" means the ~~[irreversible process of~~
25 ~~reducing remains to bone fragments through intense heat and~~

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1 ~~evaporation in a specifically designed furnace or retort and~~
2 ~~includes a mechanical or thermal process whereby the bone~~
3 ~~fragments are pulverized, or otherwise further reduced in size~~
4 ~~or quantity]~~ reduction of a dead human body by direct flame or
5 alkaline hydrolysis to cremated remains;

6 I. "crematory" means ~~[a structure of most durable~~
7 ~~and lasting fireproof construction containing one or more~~
8 ~~specifically designed furnaces or retorts, used, or intended to~~
9 ~~be used, for]~~ every place or premises that is devoted to or
10 used for cremation and pulverization of cremated remains;

11 J. "crypt" means the chamber in a mausoleum of
12 sufficient size to entomb the remains;

13 K. "depository institution" means an insured bank,
14 thrift institution or credit union;

15 L. "director" means the director of the financial
16 institutions division of the regulation and licensing
17 department;

18 M. "endowed care" means the general maintenance of
19 the cemetery area dedicated to endowed care, including the
20 cutting and trimming of lawns, shrubs and trees at reasonable
21 intervals, keeping all places where interments have been made
22 in proper order and keeping in repair the drains, waterlines,
23 roads, buildings, fences and other structures consistent with a
24 well-maintained cemetery; "endowed care" includes overhead
25 expenses necessary for the foregoing purposes, including

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1 maintenance of machinery, tools and equipment, compensation of
2 employees for the performance of duties related to endowed
3 care, including reasonable payments for employees' pension and
4 other benefit plans, payment of reasonable and necessary
5 insurance premiums, the maintenance of necessary records of lot
6 ownership, transfers and burials and the administration of care
7 funds in those instances where those administering the funds
8 fail or refuse to act;

9 N. "endowed or perpetual care cemetery" means a
10 cemetery or that designated portion of a cemetery for the
11 benefit of which a care fund is established;

12 O. "entombment" means the permanent interment of
13 remains in a crypt or vault;

14 P. "fraternal cemetery" means a cemetery owned,
15 operated, controlled or managed by any fraternal organization
16 or its auxiliary organizations, in which the sale of burial
17 space is restricted principally to its members;

18 Q. "grave" means a space of ground in a burial park
19 intended to be used for the permanent interment in the ground
20 of remains;

21 R. "interment" means the permanent disposition of
22 the remains by inurnment, entombment or burial;

23 S. "inurnment" means placing cremated remains in an
24 urn;

25 T. "lot", "plot" or "burial space" means space in a

1 cemetery owned by one or more individuals, an association or
2 fraternal or other organization and used, or intended to be
3 used, for the permanent interment of the remains of one or more
4 deceased persons and includes adjoining graves, adjoining
5 crypts or adjoining niches;

6 U. "mausoleum" means a structure or building of
7 most durable and lasting fireproof construction used or
8 intended to be used for the permanent interment in crypts of
9 remains;

10 V. "municipal cemetery" means a cemetery owned,
11 operated, controlled or managed by a incorporated or
12 unincorporated political subdivision;

13 W. "niche" means a recess in a columbarium used, or
14 intended to be used, for the permanent interment of cremated
15 remains;

16 X. "no endowed care cemetery" means a cemetery for
17 the benefit of which no care fund has been established;

18 Y. "plot owner", "owner" or "lot proprietor" means
19 a person in whose name a burial plot is recorded in the office
20 of the cemetery authority as owner of the exclusive right of
21 burial, or who holds from the authority a conveyance of the
22 exclusive rights of burial or a certificate of ownership of the
23 exclusive right of burial;

24 Z. "religious cemetery" means a cemetery owned,
25 operated, controlled or managed by a recognized church,

1 religious society, association or denomination, or by a
2 cemetery authority or a corporation administering, or through
3 which is administered the secular matters of a recognized
4 church, religious society, association or denomination;

5 AA. "remains" means the body of a deceased person;
6 and

7 BB. "vault" means a container that is designed for
8 placement in a grave space around a casket or urn."

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

11 "61-32-3. DEFINITIONS.--As used in the Funeral Services
12 Act:

13 A. "board" means the board of funeral services;

14 B. "committal service" means a service at a place
15 of interment or entombment that follows a funeral conducted at
16 another location;

17 C. "cremains" means cremated remains;

18 D. "cremation" means the reduction of a dead human
19 body by direct flame or alkaline hydrolysis to a residue that
20 includes bone fragments;

21 E. "crematory" means every place or premises that
22 is devoted to or used for cremation and pulverization of the
23 cremains;

24 F. "crematory authority" means the individual who
25 is ultimately responsible for the operation of a crematory;

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1 G. "department" means the regulation and licensing
2 department;

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

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

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

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

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

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1 M. "embalming" means the disinfection, preservation
2 and restoration, when possible, of a dead human body by a
3 licensed funeral service practitioner, licensed embalmer or a
4 licensed funeral service intern under the supervision of a
5 licensed funeral service practitioner;

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

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

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

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

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

25 S. "funeral merchandise" means that personal

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

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

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

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

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

25 X. "graveside service" means a funeral held at the

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1 graveside only, excluding a committal service that follows a
2 funeral conducted at another location;

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

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

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

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

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

25 DD. "pulverization" means the process that reduces

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