

AN ACT

RELATING TO DEATH; AUTHORIZING A PERSON DESIGNATED ON A UNITED STATES DEPARTMENT OF DEFENSE RECORD OF EMERGENCY DATA FORM TO PROVIDE DISPOSITION ARRANGEMENTS FOR REMAINS OF A DECEDENT; ALLOWING A PERSON AUTHORIZED BY A UNITED STATES DEPARTMENT OF DEFENSE RECORD OF EMERGENCY DATA FORM TO DETERMINE THE DISPOSITION OF REMAINS OF A DECEDENT.

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 OF DECEASED--
AUTHORIZATION OF PERSON DESIGNATED ON RECORD OF EMERGENCY DATA
FORM TO DIRECT BURIAL--UNCLAIMED DECEDENTS.--

A. State, county or municipal officials having charge or control of a body of a dead person shall use due diligence to notify the relatives of the deceased.

B. 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 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.

D. The body shall be embalmed according to rules of the state agency having jurisdiction. After the exercise of due diligence required in Subsection A of this section and the report to the medical investigator required in Subsection C of this section, the medical investigator shall be furnished detailed 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 claim the body and that the body has not been claimed, the medical investigator shall issue a certificate determining 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 24-12A-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

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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 in the order listed 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;

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

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."

SECTION 3. Section 61-32-19 NMSA 1978 (being Laws 1993, Chapter 204, Section 19, as amended) is amended to read:

"61-32-19. CREMATION--REQUIREMENTS--RIGHT TO AUTHORIZE CREMATION--DISPOSITION OF CREMAINS.--

A. No cremation shall be performed until all necessary documentation is obtained authorizing the cremation.

B. An adult person may authorize the person's own cremation and the lawful disposition of the person's cremains by:

(1) stating the person's desire to be cremated in a written statement that is signed by the person and notarized or witnessed by two other persons; or

(2) including an express statement in the person's will indicating that the testator desired that the testator's remains be cremated upon the testator's death.

C. A personal representative acting pursuant to the Uniform Probate Code or an establishment or crematory shall comply with a statement made in accordance with the provisions of this section. A statement that conforms to the

provisions of this section authorizes a personal representative, establishment or crematory to cremate a decedent's remains, and the permission of next of kin or any other person shall not be required for such authorization. Statements dated prior to June 18, 1993 shall be given effect if they meet this section's requirements.

D. A personal representative, 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.

E. No establishment, crematory or employee of an establishment or crematory or other person that relies in good faith on a statement written pursuant to this section shall be subject to liability for cremating the remains in accordance with the provisions of this section. The written authorization is a complete defense to a cause of action by a person against any other person acting in accordance with that authorization.

F. Except as provided in Subsection G of this section, if a decedent has left no written instructions regarding the disposition of the decedent's remains, the following persons in the order listed 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;
- (3) the surviving parents of the decedent;
- (4) a majority of the surviving siblings of the decedent;
- (5) an adult person 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) the adult person of the next degree of kinship in the order named by New Mexico law to inherit the estate of the decedent.

G. 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.

H. A licensed establishment or crematory shall

keep an accurate record of all cremations performed and the place of disposition of the cremains for a period of not less than seven years.

I. Cremains may be disposed of by any licensed establishment, crematory authority, cemetery or person having the right to control the disposition of the cremains, or that person's agent, in a lawful manner.

J. Legal forms for cremation authorization shall provide that persons giving the authorization will hold harmless an establishment from any liability for disposing of unclaimed cremains in a lawful manner after a period of one year following the return of the cremains to the establishment."
