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HOUSE BILL 64

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Ray Begaye

AN ACT

RELATING TO PROFESSIONAL LICENSES; CHANGING THE NAME OF THE
THANATOPRACTICE ACT TO THE FUNERAL SERVICES ACT; CHANGING
CERTAIN EDUCATIONAL REQUIREMENTS; DISCONTINUING AND CONVERTING
CERTAIN LICENSES; ALLOWING FOR A COMMON PREPARATION ROOM;
PROVIDING FOR THE RELINQUISHMENT OF ESTABLISHMENT LICENSES IN
CERTAIN CASES; PROVIDING FOR CEASE AND DESIST ORDERS; AMENDING,
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 12-10A-6 NMSA 1978 (being Laws 2003,
Chapter 218, Section 6) is amended to read:

"12-10A-6. SPECIAL POWERS DURING A PUBLIC HEALTH
EMERGENCY.--

A. In order to protect the health, safety and
welfare of the people in the state during a public health

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1 emergency, the secretary of health, in coordination with the
2 secretary of public safety and the director, may:

3 (1) utilize, secure or evacuate health care
4 facilities for public use; and

5 (2) inspect, regulate or ration health care
6 supplies as provided in Subsection B of this section.

7 B. If a public health emergency results in a
8 statewide or regional shortage of health care supplies, the
9 secretary of health may control, restrict and regulate the
10 allocation, sale, dispensing or distribution of health care
11 supplies.

12 C. The state medical investigator, after
13 consultation with the secretary of health, the secretary of
14 public safety, the director and the [~~chairman~~] chair of the
15 board of [~~thanatopractice~~] funeral services, may implement and
16 enforce measures to provide for the safe disposal of human
17 remains that may be reasonable and necessary to respond to a
18 public health emergency. The measures may include special
19 provisions for embalming, burial, cremation, interment,
20 disinterment, transportation and disposal of human remains. To
21 the extent possible, the religious, cultural, family and
22 individual beliefs of a deceased person or of the family of a
23 deceased person shall be considered when disposing of human
24 remains."

25 SECTION 2. Section 24-11-1 NMSA 1978 (being Laws 1971,

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1 Chapter 112, Section 1, as amended) is amended to read:

2 "24-11-1. BOARD OF MEDICAL INVESTIGATORS--CREATION--
3 MEMBERSHIP--COMPENSATION.--There is created the "board of
4 medical investigators", consisting of the dean of the
5 university of New Mexico school of medicine, the secretary of
6 health, the chief of the New Mexico state police, the
7 ~~[chairman]~~ chair of the ~~[state]~~ board of ~~[thanatopractice]~~
8 funeral services and the ~~[director of the New Mexico office]~~
9 secretary of Indian affairs. The members of the board of
10 medical investigators shall receive no compensation for their
11 services as board members other than as provided in the Per
12 Diem and Mileage Act."

13 SECTION 3. Section 61-32-1 NMSA 1978 (being Laws 1993,
14 Chapter 204, Section 1, as amended) is amended to read:

15 "61-32-1. SHORT TITLE.--Chapter 61, Article 32 NMSA 1978
16 may be cited as the "~~[Thanatopractice]~~ Funeral Services Act"."

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

19 "61-32-2. PURPOSE.--In the interest of public health,
20 safety and welfare and to protect the public from the
21 unprofessional, improper, incompetent and unlawful practice of
22 the care and disposition of the dead human body, it is
23 necessary to provide laws and regulations to govern the
24 handling and care of the dead and the sensitivities of those
25 who survive, whether they wish or do not wish rites or

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1 ceremonies. The primary responsibility and obligation of the
2 board [~~of thanatopractice~~] of funeral services is to protect
3 the public."

4 SECTION 5. Section 61-32-3 NMSA 1978 (being Laws 1993,
5 Chapter 204, Section 3, as amended) is amended to read:

6 "61-32-3. DEFINITIONS.--As used in the [~~Thanatopractice~~]
7 Funeral Services Act:

8 [~~A. "assistant funeral service practitioner" means~~
9 ~~a person licensed to engage in practice at a funeral~~
10 ~~establishment or commercial establishment, licensed pursuant to~~
11 ~~the Thanatopractice Act, as an assistant funeral service~~
12 ~~practitioner as provided in that act;~~

13 [~~B. "associate funeral service practitioner" means a~~
14 ~~person licensed to engage in practice at a funeral~~
15 ~~establishment or commercial establishment, licensed pursuant to~~
16 ~~the Thanatopractice Act, as an associate funeral service~~
17 ~~practitioner as provided in that act;~~

18 [~~G.~~] A. "board" means the board of [~~thanatopractice~~]
19 funeral services;

20 [~~D.~~] B. "committal service" means a service at a
21 place of interment or entombment that follows a funeral
22 conducted at another location;

23 [~~E.~~] C. "cremains" means cremated remains;

24 [~~F.~~] D. "cremation" means the reduction of a dead
25 human body by direct flame to a residue, which includes bone

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1 fragments;

2 [G.] E. "crematory" means every place or premises
3 that is devoted to or used for cremation and pulverization of
4 the cremains;

5 [H.] F. "crematory authority" means the individual
6 who is ultimately responsible for the operation of a crematory;

7 [I.] G. "department" means the regulation and
8 licensing department;

9 [J.] H. "direct disposer" means a person licensed
10 to engage solely in providing direct disposition at a direct
11 disposition establishment, licensed pursuant to the
12 Thanatopractice Act, as provided in that act;

13 [K.] I. "direct disposition" means only the
14 disposition of a dead human body as quickly as possible,
15 without a funeral, graveside service, committal service or
16 memorial service, whether public or private, and without
17 embalming of the body unless embalming is required by the place
18 of disposition;

19 [L.] J. "direct supervision" means that the
20 supervising funeral service practitioner is physically present
21 with and in direct control of the person being trained;

22 [M.] K. "disposition" means the final disposal of a
23 dead human body, whether it be by earth interment, above-ground
24 interment or entombment, cremation, burial at sea or delivery
25 to a medical school, when the medical school assumes complete

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1 responsibility for the disposal of the body following medical
2 study;

3 [N-] L. "embalming" means the disinfection,
4 preservation and restoration, when possible, of a dead human
5 body by a licensed funeral service practitioner [~~a licensed~~
6 ~~associate funeral service practitioner~~] or a licensed funeral
7 service intern under the supervision of a licensed funeral
8 service practitioner;

9 [O-] M. "ennichement" means interment of cremains
10 in a niche in a columbarium, whether in an urn or not;

11 [P-] N. "entombment" means interment of a casketed
12 body or cremains in a crypt in a mausoleum;

13 [Q-] O. "establishment" means every office,
14 premises or place of business where the practice of funeral
15 service or direct disposition is conducted or advertised as
16 being conducted and includes commercial establishments that
17 provide for the practice of funeral service or direct
18 disposition services exclusively to licensed funeral or direct
19 disposition establishments or a school of medicine;

20 [R-] P. "funeral" means a period following death in
21 which there is an organized, purposeful, time-limited,
22 group-centered ceremony or rite, whether religious or not, with
23 the body of the deceased present;

24 [S-] Q. "funeral merchandise" means that personal
25 property offered for sale in connection with the

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

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

12 [U.] S. "funeral service practitioner" means a
13 person licensed to engage in the practice of funeral service at
14 a funeral establishment or commercial establishment that is
15 licensed pursuant to the [~~Thanatopractice~~] Funeral Services Act
16 [~~as provided in that act~~];

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

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

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1 ~~[W.]~~ V. "graveside service" means a funeral held at
2 the graveside only, excluding a committal service that follows
3 a funeral conducted at another location;

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

10 ~~[Y.]~~ X. "licensee in charge" means a funeral
11 service practitioner who is ultimately responsible for the
12 conduct of a funeral or commercial establishment and its
13 employees; or a direct disposer who is ultimately responsible
14 for the conduct of a direct disposition establishment and its
15 employees;

16 ~~[Z.]~~ Y. "make arrangements" means advising or
17 counseling about specific details for a funeral, graveside
18 service, committal service, memorial service, disposition or
19 direct disposition;

20 ~~[AA.]~~ Z. "memorial service" means a gathering of
21 persons for recognition of a death without the presence of the
22 body of the deceased;

23 ~~[BB.]~~ AA. "practice of funeral service" means those
24 activities allowed under the ~~[Thanatopractice]~~ Funeral Services
25 Act by a funeral service practitioner ~~[associate funeral~~

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1 ~~service practitioner, assistant funeral service practitioner]~~
2 or funeral service intern; and

3 [GG.] BB. "pulverization" means the process that
4 reduces cremains to a granular substance [~~and~~

5 ~~DD. "thanatopractice" means those immediate post-~~
6 ~~death activities related to the dead human body, its care and~~
7 ~~disposition, whether with or without rites or ceremonies, but~~
8 ~~not including disposition of the body by a school of medicine~~
9 ~~following medical study]."~~

10 SECTION 6. Section 61-32-4 NMSA 1978 (being Laws 1993,
11 Chapter 204, Section 4, as amended) is amended to read:

12 "61-32-4. LICENSE REQUIRED.--

13 A. Unless licensed to practice under the
14 [~~Thanatopractice~~] Funeral Services Act, a person shall not:

15 (1) practice as a funeral service
16 practitioner, [~~associate funeral service practitioner, assistant~~
17 ~~funeral service practitioner~~] funeral service intern or direct
18 disposer;

19 (2) use the title or [~~represent himself as~~]
20 make any representation as being a funeral service practitioner,
21 [~~associate funeral service practitioner, assistant funeral~~
22 ~~service practitioner~~] funeral service intern or direct disposer
23 or use any other title, abbreviation, letters, figures, signs or
24 devices that indicate the person is licensed to practice as a
25 funeral service practitioner, [~~associate funeral service~~

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1 ~~practitioner, assistant funeral service practitioner]~~ funeral
2 service intern or direct disposer; or

3 (3) maintain, manage or operate a funeral
4 establishment, a commercial establishment, a direct disposition
5 establishment or a crematory.

6 B. A person who engages in the practice or acts in
7 the capacity of a funeral service practitioner, [~~associate~~
8 ~~funeral service practitioner, assistant funeral service~~
9 ~~practitioner]~~ funeral service intern or direct disposer in this
10 state, with or without a New Mexico license, is subject to the
11 jurisdiction of the state and to the administrative jurisdiction
12 of the board and is subject to all penalties and remedies
13 available for a violation of a provision of the
14 [~~Thanatopractice]~~ Funeral Services Act.

15 C. A person who maintains, manages or operates a
16 funeral establishment, commercial establishment, direct
17 disposition establishment or a crematory in this state, with or
18 without a New Mexico establishment or crematory license, is
19 subject to the jurisdiction of the state and to the
20 administrative jurisdiction of the board and is subject to all
21 penalties and remedies available for a violation of a provision
22 of the [~~Thanatopractice]~~ Funeral Services Act."

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

25 "61-32-5. BOARD CREATED.--

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1 A. There is created the "board of [~~thanatopractice~~]
2 funeral services".

3 B. The board is administratively attached to the
4 department.

5 C. The board consists of six members. Three members
6 shall be funeral service practitioners who have been licensed in
7 this state for at least five years; two members shall represent
8 the public and shall not have been licensed for the practice of
9 funeral service or direct disposition in this state or any other
10 jurisdiction and shall not ever have had any financial interest,
11 direct or indirect, in any funeral, commercial or direct
12 disposition establishment or crematory; and one member shall be
13 a licensed direct disposer or health care practitioner from the
14 office of the state medical investigator who has been licensed
15 in this state for at least five years.

16 D. Members of the board shall be appointed by the
17 governor for terms of four years. Each member shall hold office
18 until [~~his~~] the member's successor is duly qualified and
19 appointed. Vacancies shall be filled for [~~any~~] an unexpired
20 term in the same manner as original appointments.

21 E. Members of the board shall be reimbursed per diem
22 and mileage as provided in the Per Diem and Mileage Act and
23 shall receive no other compensation, perquisite or allowance.

24 F. A simple majority of the board members currently
25 serving constitutes a quorum.

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1 G. The board shall hold at least two regular
2 meetings each year and shall meet at such other times as it
3 deems necessary.

4 H. No board member shall serve more than two full
5 consecutive terms. The board shall recommend removal of any
6 board member who has three unexcused absences from properly
7 noticed meetings within a twelve-month period and may recommend
8 removal of a board member for any other just cause.

9 I. The board shall elect a [~~chairman~~] chair and
10 other officers as deemed necessary to administer its duties."

11 **SECTION 8.** Section 61-32-6 NMSA 1978 (being Laws 1993,
12 Chapter 204, Section 6, as amended) is amended to read:

13 "61-32-6. BOARD POWERS.--

14 A. In addition to any other authority provided by
15 law, the board has the power to:

16 (1) adopt, in accordance with the provisions
17 of the Uniform Licensing Act, and file, in accordance with the
18 State Rules Act, rules [~~and regulations~~] necessary to carry out
19 the provisions of the [~~Thanatopractice~~] Funeral Services Act;

20 (2) adopt rules implementing continuing
21 education requirements;

22 (3) conduct hearings upon charges relating to
23 the discipline of licensees and take administrative actions
24 pursuant to Section 61-1-3 NMSA 1978;

25 (4) establish reasonable fees to carry out the

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1 provisions of the [~~Thanatopractice~~] Funeral Services Act;

2 (5) provide for investigations necessary to
3 determine violations of the [~~Thanatopractice~~] Funeral Services
4 Act;

5 (6) establish committees as the board deems
6 necessary for carrying out the provisions of the
7 [~~Thanatopractice~~] Funeral Services Act;

8 (7) apply for injunctive relief to enforce the
9 provisions of the [~~Thanatopractice~~] Funeral Services Act or to
10 restrain any violation of that act;

11 (8) impose a fine not to exceed five thousand
12 dollars (\$5,000) for each violation, in addition to other
13 administrative or disciplinary costs, and all fines shall be
14 deposited in the [~~thanatopractice~~] funeral services fund; and

15 (9) conduct criminal background checks on
16 applicants for licensure.

17 B. No action or other legal proceedings for damages
18 shall be instituted against the board, any board member or
19 employee of the board for any act performed in good faith and in
20 the intended performance of any power or duty granted under the
21 [~~Thanatopractice~~] Funeral Services Act or for any neglect or
22 default in the good faith performance or exercise of any such
23 power or duty."

24 SECTION 9. Section 61-32-7 NMSA 1978 (being Laws 1993,
25 Chapter 204, Section 7) is amended to read:

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1 "61-32-7. BOARD DUTIES.--The board shall:

2 A. administer the provisions of the

3 [~~Thanatopractice~~] Funeral Services Act;

4 B. provide for the examination, licensing and
5 renewal of applicants or licensees; and

6 C. provide for the inspection of establishments and
7 crematories."

8 SECTION 10. Section 61-32-8 NMSA 1978 (being Laws 1993,
9 Chapter 204, Section 8, as amended) is amended to read:

10 "61-32-8. INSPECTION--ACCESS--COUNSEL.--

11 A. Inspection of establishments and crematories,
12 including all records, financial or otherwise, is authorized
13 during regular business hours. Acceptance of a license shall
14 include permission for the board or its designee to enter the
15 premises without legal process.

16 B. An establishment or crematory shall maintain
17 business records required by law or rule at the establishment or
18 crematory.

19 C. The board shall be represented by the attorney
20 general. The board may employ special counsel, upon approval of
21 the attorney general, to review and prosecute cases of consumer
22 complaints against any person, establishment or crematory
23 licensed pursuant to the [~~Thanatopractice~~] Funeral Services Act.
24 Payment for the services shall be by the board."

25 SECTION 11. Section 61-32-9 NMSA 1978 (being Laws 1993,

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1 Chapter 204, Section 9, as amended) is amended to read:

2 "61-32-9. REQUIREMENTS FOR LICENSURE--FUNERAL SERVICE
3 PRACTITIONER--FUNERAL SERVICE INTERN--~~[DIRECT DISPOSER--~~
4 ~~ASSOCIATE FUNERAL SERVICE PRACTITIONER--ASSISTANT FUNERAL~~
5 ~~SERVICE PRACTITIONER]~~ DISCONTINUANCE AND CONVERSION OF CERTAIN
6 LICENSES--TEMPORARY LICENSES.--

7 A. A license to practice as a funeral service
8 practitioner shall be issued to any person who files a completed
9 application, accompanied by the required fees and documentation,
10 and who submits satisfactory evidence that ~~[he]~~ the person:

- 11 (1) is at least eighteen years of age;
- 12 (2) has served as a licensed funeral service
13 intern for not less than twelve months, under the supervision of
14 a licensed funeral service practitioner. During the training
15 period, the applicant shall have assisted in the embalming of at
16 least fifty bodies, making of at least fifty funeral
17 arrangements and the directing of at least fifty funerals;

18 (3) has successfully completed ~~[any]~~ an
19 examination, including a jurisprudence examination, prescribed
20 by board rules;

21 (4) has not been convicted of unprofessional
22 conduct or incompetency; and

23 ~~[(5) has graduated from an institution~~
24 ~~accredited by the American board of funeral service education or~~
25 ~~any other successor recognized by the United States office of~~

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1 ~~education for funeral service education; and~~

2 ~~(6) has successfully completed at least sixty~~
3 ~~semester hours of academic and professional instruction in an~~
4 ~~accredited college or university; provided, however, that an~~
5 ~~assistant funeral service practitioner need not satisfy the~~
6 ~~provisions of Paragraphs (5) and (6) of this subsection if the~~
7 ~~assistant funeral service practitioner has successfully~~
8 ~~completed examinations required by the board for practice as an~~
9 ~~associate funeral service practitioner and a funeral service~~
10 ~~practitioner]~~

11 (5) has obtained an associate's degree in
12 funeral science requiring the completion of at least sixty
13 semester hours from an institution accredited by the American
14 board of funeral service education or any other successor
15 recognized by the United States government.

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

- 20 (1) is at least eighteen years of age;
- 21 (2) has graduated from high school or the
22 equivalent;
- 23 (3) has submitted proof of employment and
24 supervision as required by board rules. Except as may be
25 allowed by board rule, a license as a funeral service intern is

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1 ~~[not ambulatory and is]~~ issued only for a specific funeral
2 establishment ~~[only]~~ or an establishment that is part of a
3 multi-establishment enterprise;

4 (4) has successfully completed ~~[any]~~ an
5 examination, including a jurisprudence examination, prescribed
6 by board rules; and

7 (5) has not been convicted of unprofessional
8 conduct or incompetency.

9 ~~[G. A license to practice as a direct disposer shall~~
10 ~~be issued to any person who files a completed application,~~
11 ~~accompanied by the required fees and documentation, and who~~
12 ~~submits satisfactory evidence that he:~~

13 ~~(1) is at least eighteen years of age;~~

14 ~~(2) has graduated from high school or the~~
15 ~~equivalent;~~

16 ~~(3) has successfully completed any~~
17 ~~examination, including a jurisprudence examination, prescribed~~
18 ~~by board rules; and~~

19 ~~(4) has not been convicted of unprofessional~~
20 ~~conduct or incompetency.~~

21 ~~D. A license to practice as an assistant funeral~~
22 ~~service practitioner shall be issued to any person who, prior to~~
23 ~~June 18, 1993, held a valid license as an assistant funeral~~
24 ~~service practitioner and who was qualified to receive a renewal~~
25 ~~license on July 1, 1993.~~

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1 ~~E. A license to practice as an associate funeral~~
2 ~~service practitioner shall be issued to any person who files a~~
3 ~~completed application, accompanied by the required fees and~~
4 ~~documentation, and who submits satisfactory evidence that he:~~

5 ~~(1) has been licensed as an assistant funeral~~
6 ~~service practitioner;~~

7 ~~(2) has successfully completed any~~
8 ~~examination, including a jurisprudence examination, prescribed~~
9 ~~by board rules; and~~

10 ~~(3) has not been convicted of unprofessional~~
11 ~~conduct or incompetency.]~~

12 C. On and after July 1, 2012:

13 (1) the board shall not issue a new direct
14 disposer license. A person holding a direct disposer license
15 that is valid as of June 30, 2012 may continue to renew the
16 license as provided in the Funeral Services Act; and

17 (2) the board shall not issue a new license
18 that was formerly designated an "assistant funeral services
19 practitioner" or "associate funeral services practitioner"
20 license under a version of the Funeral Services Act in effect on
21 June 30, 2012. A person holding one of these licenses that is
22 valid as of June 30, 2012 shall be considered as holding a
23 valid, renewable funeral services intern license subject to the
24 general supervision of a licensed funeral services practitioner
25 pursuant to the Funeral Services Act.

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1 [F-] D. The board may adopt by rule requirements for
2 issuing a temporary license that will be valid until the next
3 scheduled board meeting."

4 **SECTION 12.** Section 61-32-11 NMSA 1978 (being Laws 1993,
5 Chapter 204, Section 11, as amended) is amended to read:

6 "61-32-11. LICENSURE OF ESTABLISHMENTS--FUNERAL
7 ESTABLISHMENTS--COMMERCIAL ESTABLISHMENTS--DIRECT DISPOSITION
8 ESTABLISHMENTS--CREMATORIES.--

9 A. Funeral establishment licenses shall only be
10 granted under the following terms and conditions:

11 (1) applications for licensure shall be upon
12 forms furnished by the board and shall be accompanied by the
13 required fee;

14 (2) the establishment shall be maintained at a
15 specific location primarily devoted to the practice of funeral
16 service and shall comply with the following minimum
17 requirements:

18 (a) a chapel shall be present in which
19 funerals may be conducted;

20 (b) a display room shall be present for
21 displaying caskets and other funeral merchandise and an
22 arrangement room shall be present for displaying funeral
23 merchandise in models and graphics or a virtual display through
24 electronic means; and

25 (c) a preparation room shall be present

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1 with necessary drainage and ventilation and necessary
2 instruments and supplies for the preparation and embalming of
3 dead human bodies for burial or other disposition or
4 transportation; provided that if a funeral establishment
5 applicant is part of a multi-establishment enterprise, a
6 preparation room at one of the establishments in the enterprise
7 may be designated to serve the applicant establishment if the
8 applicant establishment is within thirty miles of the designated
9 establishment and the designated establishment has an
10 establishment license at the time the application is made; and

11 (3) a license shall not be issued or renewed
12 by the board unless the establishment is in compliance with the
13 [~~Thanatopractice~~] Funeral Services Act and board rules.

14 B. Commercial establishment licenses shall only be
15 granted under the following terms and conditions:

16 (1) applications for licensure shall be upon
17 forms furnished by the board and shall be accompanied by the
18 required fee;

19 (2) the establishment shall be maintained at a
20 specific location primarily devoted to the practice allowed for
21 a commercial establishment and shall comply with the following
22 minimum requirements:

23 (a) a preparation room shall be present
24 with the necessary drainage and ventilation and necessary
25 instruments and supplies for the preparation and embalming of

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1 dead human bodies for burial or other disposition and
2 transportation; and

3 (b) an office shall be present for
4 conducting business; and

5 (3) a license shall not be issued or renewed
6 by the board unless the establishment is in compliance with the
7 [~~Thanatopractice~~] Funeral Services Act and board rules.

8 C. Direct disposition establishment licenses shall
9 only be granted under the following terms and conditions:

10 (1) applications for licensure shall be upon
11 forms furnished by the board and shall be accompanied by the
12 required fee;

13 (2) the establishment shall be maintained at a
14 specific location primarily devoted to the practice allowed for
15 a direct disposer and shall comply with the following minimum
16 requirements:

17 (a) a room shall be present with
18 necessary drainage and ventilation for housing a refrigeration
19 unit;

20 (b) a refrigeration unit,
21 thermodynamically controlled with a minimum storage area of
22 twelve and one-half cubic feet per body, shall be present for
23 sheltering of dead human bodies prior to burial or other
24 disposition or transportation;

25 (c) an office shall be present for

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1 conducting business;

2 (d) necessary supplies for safely
3 handling unembalmed dead human bodies; and

4 (e) if funeral merchandise is made
5 available, a display room shall be present for displaying
6 caskets and other funeral merchandise; and

7 (3) no license shall be issued or renewed by
8 the board unless the establishment is in compliance with the
9 Thanatopractice Act and board rules.

10 D. Crematory licenses shall only be granted under
11 the following terms and conditions:

12 (1) applications for licensure shall be upon
13 forms furnished by the board and shall be accompanied by the
14 required fee;

15 (2) the crematory shall be maintained at a
16 specific location, including a funeral, commercial or direct
17 disposition establishment, primarily devoted to the practice
18 allowed for a crematory and shall comply with the following
19 minimum requirements:

20 (a) a room shall be present with
21 necessary ventilation for housing a cremation retort;

22 (b) a cremation retort shall be present
23 for cremating dead human bodies; and

24 (c) a unit to pulverize cremated dead
25 human bodies shall be present; and

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1 (3) no license shall be issued or renewed by
2 the board unless the crematory is in compliance with the
3 [~~Thanatopractice~~] Funeral Services Act and board rules.

4 E. The board may adopt by rule additional
5 requirements in the interest of public health, safety and
6 welfare."

7 SECTION 13. Section 61-32-13 NMSA 1978 (being Laws 1993,
8 Chapter 204, Section 13, as amended) is amended to read:

9 "61-32-13. ESTABLISHMENTS--REQUIREMENTS--TEMPORARY
10 LICENSES.--

11 A. Each establishment shall have a full-time
12 licensee in charge; provided the establishment license is a
13 privilege granted to the person to whom it is issued and is not
14 transferable to other owners or operators or to another location
15 than that designated on the license. Whenever an establishment
16 no longer employs or otherwise has a full-time licensee in
17 charge, the establishment shall immediately cease the practice
18 of funeral service or direct disposition and the person to whom
19 the establishment license is granted shall immediately return
20 the establishment license to the board by certified mail, return
21 receipt requested, or by another delivery service that provides
22 a means of tracing an item in its delivery system.

23 B. The board may adopt by rule special requirements
24 for [~~multi-unit establishments that~~] multi-establishment
25 enterprises where the establishments are located within fifty

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1 miles of each other and [~~that~~] wish to share a licensee in
2 charge.

3 C. The board may adopt by rule the requirements for
4 reapplication or reinspection.

5 D. The board may adopt by rule requirements for
6 issuing a temporary establishment or crematory license that will
7 be valid until the next scheduled board meeting."

8 SECTION 14. 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 with
14 the [~~Thanatopractice~~] Funeral Services Act or stored under
15 refrigeration as determined by board rule, unless otherwise
16 required by regulation of the office of the state medical
17 investigator or the secretary of health or by orders of an
18 authorized official of the office of the state medical
19 investigator, a court of competent jurisdiction or other
20 authorized official.

21 B. A dead human body shall not be embalmed except by
22 a funeral service practitioner [~~an associate funeral service~~
23 ~~practitioner~~] or a funeral service intern under the supervision
24 of a funeral service practitioner.

25 C. When embalming is not required under the

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1 provisions of this section, a dead human body shall not be
2 embalmed without express authorization by the:

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

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

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

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

25 SECTION 15. Section 61-32-22 NMSA 1978 (being Laws 1993,

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1 Chapter 204, Section 22, as amended) is amended to read:

2 "61-32-22. INACTIVE STATUS.--

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

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

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

15 (1) certification by the licensee that [~~he~~
16 the licensee] has not engaged in the practice of funeral service
17 or direct disposition in this state during the inactive 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, to
22 certify continuing competency.

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

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

4 **SECTION 16.** 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 set
8 forth in the Uniform Licensing Act, may take disciplinary action
9 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 the board receives a copy of the record of conviction,
17 certified to by the clerk of the court entering the conviction,
18 which shall be conclusive evidence of the conviction;

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

21 (3) gross negligence or incompetence;

22 (4) unprofessional or dishonorable conduct,

23 which includes:

24 (a) misrepresentation or fraud;

25 (b) false or misleading advertising;

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1 (c) solicitation of dead human bodies by
2 the licensee [~~his~~] or the licensee's agents, assistants or
3 employees, whether the solicitation occurs after death or while
4 death is impending, provided that this shall not be deemed to
5 prohibit general advertising;

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

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

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

17 (5) violation of [~~any of~~] the provisions of
18 the [~~Thanatopractice~~] Funeral Services Act or [~~any~~] a rule of
19 the board;

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

25 (7) willful or negligent practice beyond the

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1 scope of the license issued by the board;

2 (8) refusing to release properly a dead human
3 body to the custody of the person or entity who has the legal
4 right to effect the release, [~~when~~] whether or not the
5 authorized cost has been paid;

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

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

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

14 (12) [~~has~~] having had a license, certificate
15 or registration to practice revoked, suspended or denied in any
16 jurisdiction, territory or possession of the United States or
17 another country for actions of the licensee or applicant similar
18 to acts described in this subsection. A certified copy of the
19 record of the jurisdiction taking the disciplinary action is
20 conclusive evidence of the violation;

21 (13) failure to supervise adequately
22 subordinate personnel;

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

25 (15) employing fraudulent billing practices;

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1 or

2 (16) practicing funeral service [~~direct~~
3 ~~disposition~~] or cremation without a current license.

4 C. In addition to the offenses listed in Subsection
5 B of this section, the board has the authority to take any
6 action set forth in Section 61-1-3 NMSA 1978 upon a finding by
7 the board that a person who is licensed as or is an applicant
8 for a license as a funeral service practitioner [~~associate~~
9 ~~funeral service practitioner, assistant funeral service~~
10 ~~practitioner~~] or funeral service intern is guilty of any of the
11 following acts of commission or omission:

12 (1) practicing funeral service without a
13 license or aiding or abetting an unlicensed person to practice
14 funeral service; or

15 (2) permitting [~~an associate funeral service~~
16 ~~practitioner, assistant funeral service practitioner or~~] a
17 funeral service intern to exceed the limitations set forth in
18 the provisions of the [~~Thanatopractice~~] Funeral Services Act or
19 the rules of the board.

20 D. In addition to the offenses listed in Subsection
21 B of this section, the board has the authority to take any
22 action set forth in Section 61-1-3 NMSA 1978 upon a finding by
23 the board that a direct disposer licensee [~~or applicant~~] or a
24 direct disposition establishment licensee [~~or applicant~~] is
25 guilty of any of the following acts of commission or omission:

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1 (1) embalming, restoring, acting as a
2 cosmetician or in any way altering the condition of a dead human
3 body, except for washing and dressing;

4 (2) causing a body to be embalmed when
5 embalming is not required by a place of disposition;

6 (3) prior to interment, entombment or other
7 final disposition of a dead human body, participating in any
8 rites or ceremonies in connection with such final disposition of
9 the body, or providing facilities for any such rites or
10 ceremonies;

11 (4) reclaiming, transporting or causing to be
12 transported a dead human body after written release for
13 disposition; or

14 (5) practicing direct disposition without a
15 license or aiding or abetting an unlicensed person to practice
16 direct disposition.

17 E. In addition to the offenses listed in Subsection
18 B of this section, the board has the authority to take any
19 action set forth in Section 61-1-3 NMSA 1978 upon a finding by
20 the board that a crematory licensee or applicant or a crematory
21 authority is guilty of any of the following acts of commission
22 or omission:

23 (1) engaging or [~~holding oneself out~~] making
24 any representation as engaging in the practice of funeral
25 service or direct disposition, unless the applicant or crematory

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1 authority has a license to practice funeral service or direct
2 disposition;

3 (2) operating a crematory without a license or
4 aiding and abetting a crematory to operate without a license; or

5 (3) engaging in conduct or activities for
6 which a license to engage in the practice of funeral service or
7 direct disposition is required or aiding and abetting an
8 unlicensed person to engage in conduct or activities for which a
9 license to practice funeral service or direct disposition is
10 required.

11 F. Unless exonerated by the board, persons who have
12 been subjected to formal disciplinary sanctions by the board
13 shall be responsible for the payment of costs of the
14 disciplinary proceedings, which include costs for:

- 15 (1) court reporters;
- 16 (2) transcripts;
- 17 (3) certification or notarization;
- 18 (4) photocopies;
- 19 (5) witness attendance and mileage fees;
- 20 (6) postage for mailings required by law;
- 21 (7) expert witnesses; and
- 22 (8) depositions.

23 G. All fees, fines and costs imposed on an
24 applicant, licensee, establishment or crematory shall be paid in
25 full to the board before an initial or renewal license may be

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1 issued."

2 SECTION 17. Section 61-32-25 NMSA 1978 (being Laws 1993,
3 Chapter 204, Section 25) is amended to read:

4 "61-32-25. ADDITIONAL PROHIBITIONS.--

5 A. No person licensed [~~under~~] pursuant to the
6 provisions of the [Thanatopractice] Funeral Services Act shall
7 advertise under any name that tends to mislead the public or
8 that sufficiently resembles the professional or business name of
9 another license holder or that may cause confusion or
10 misunderstanding.

11 B. No person licensed [~~under~~] pursuant to the
12 provisions of the [Thanatopractice] Funeral Services Act shall
13 transport or cause to be transported by common carrier any dead
14 human body out of this state when the licensee knows or [~~had~~]
15 has reason to believe that the dead human body carries any
16 notifiable communicable disease or when the transportation would
17 take place more than twenty-four hours after death, unless the
18 body has been prepared or embalmed as provided in the
19 [~~Thanatopractice~~] Funeral Services Act, unless approval for
20 transportation has been given by the office of the medical
21 investigator, the secretary of health, a court of competent
22 jurisdiction or other authorized official or unless the body is
23 placed in a sealed container.

24 C. No person licensed [~~under~~] pursuant to the
25 provisions of the [Thanatopractice] Funeral Services Act shall

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1 remove, and no authorized person shall embalm, a dead human body
2 when the authorized person has information indicating crime or
3 violence of any sort in connection with the cause or manner of
4 death, unless in accordance with instructions or regulations of
5 the office of the medical investigator or until permission has
6 been obtained from the office of the medical investigator or
7 other authorized official."

8 SECTION 18. Section 61-32-26 NMSA 1978 (being Laws 1993,
9 Chapter 204, Section 26, as amended) is amended to read:

10 "61-32-26. FUND ESTABLISHED.--

11 A. There is created in the state treasury the
12 "~~[thanatopractice]~~ funeral services fund".

13 B. All money received or collected by the board or
14 the department pursuant to provisions of the ~~[Thanatopractice]~~
15 Funeral Services Act shall be deposited with the state treasurer
16 for credit to the ~~[thanatopractice]~~ funeral services fund. The
17 state treasurer shall invest the fund as other state funds are
18 invested. All balances in the fund at the end of any fiscal
19 year shall remain in the fund and shall not revert to the
20 general fund.

21 C. Money in the ~~[thanatopractice]~~ funeral services
22 fund is appropriated to the board and shall be used only for the
23 purpose of carrying out the provisions of the ~~[Thanatopractice]~~
24 Funeral Services Act."

25 SECTION 19. Section 61-32-27 NMSA 1978 (being Laws 1993,

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1 Chapter 204, Section 27) is amended to read:

2 "61-32-27. CRIMINAL OFFENDER EMPLOYMENT ACT.--The
3 provisions of the Criminal Offender Employment Act shall govern
4 any consideration of criminal records required or permitted
5 ~~[under]~~ pursuant to the provisions of the [Thanatopractice]
6 Funeral Services Act."

7 SECTION 20. Section 61-32-29 NMSA 1978 (being Laws 1993,
8 Chapter 204, Section 29) is amended to read:

9 "61-32-29. CONSTRUCTION.--Nothing in the
10 ~~[Thanatopractice]~~ Funeral Services Act shall be construed to:

11 A. prohibit a funeral service practitioner ~~[an~~
12 ~~associate funeral service practitioner, assistant funeral~~
13 ~~service practitioner]~~ or funeral service intern under the
14 supervision of a funeral service practitioner from providing a
15 direct disposition at a funeral or commercial establishment; or

16 B. govern or limit the authority of any personal
17 representative, trustee or other person having a fiduciary
18 relationship with the deceased."

19 SECTION 21. Section 61-32-30 NMSA 1978 (being Laws 1993,
20 Chapter 204, Section 30, as amended) is amended to read:

21 "61-32-30. CRIMINAL PENALTIES.--~~[Any]~~ A person who
22 commits any of the following acts is guilty of a misdemeanor and
23 upon conviction shall be punished by a fine of not less than one
24 hundred dollars (\$100) or more than one thousand dollars
25 (\$1,000) or by imprisonment of less than one year, or both:

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1 A. violation of any provision of the
2 ~~[Thanatopractice]~~ Funeral Services Act;

3 B. rendering or offering to render funeral services,
4 direct disposition services or cremation services without a
5 current valid license issued pursuant to the ~~[Thanatopractice]~~
6 Funeral Services Act; or

7 C. advertising or using any designation, diploma or
8 certificate tending to imply that the person is a practitioner
9 of funeral services, direct disposition services or cremation
10 services without a current valid license issued pursuant to the
11 ~~[Thanatopractice]~~ Funeral Services Act."

12 **SECTION 22.** Section 61-32-30.1 NMSA 1978 (being Laws
13 2003, Chapter 420, Section 11) is amended to read:

14 "61-32-30.1. UNLICENSED ACTIVITY--CIVIL PENALTY.--The
15 board may impose a fine as set forth in the ~~[Thanatopractice]~~
16 Funeral Services Act on a person who is found to have acted
17 without a license in violation of the ~~[Thanatopractice]~~ Funeral
18 Services Act by a court or an administrative proceeding as
19 provided for in the ~~[Thanatopractice]~~ Funeral Services Act."

20 **SECTION 23.** Section 61-32-31 NMSA 1978 (being Laws 1993,
21 Chapter 204, Section 31, as amended) is amended to read:

22 "61-32-31. TERMINATION OF AGENCY LIFE--DELAYED
23 REPEAL.--The board of ~~[thanatopractice]~~ funeral services is
24 terminated on July 1, 2017, pursuant to the provisions of the
25 Sunset Act. The board shall continue to operate according to

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1 the provisions of Section 12-9-18 NMSA 1978 until July 1, 2018.
2 Effective July 1, 2018, the [~~Thanatopractice~~] Funeral Services
3 Act is repealed."

4 SECTION 24. A new section of the Funeral Services Act is
5 enacted to read:

6 "[NEW MATERIAL] CEASE AND DESIST ORDERS--FINES--FINALITY--
7 HEARING REQUEST.--

8 A. Notwithstanding the provisions of Sections 61-1-3
9 and 61-32-24 NMSA 1978, if the board has reasonable cause to
10 believe a person is committing a violation of a provision of the
11 Funeral Services Act, or a rule adopted pursuant to that act,
12 that creates a health risk for the community or a risk to the
13 orderly or prompt disposition of dead human bodies and immediate
14 enforcement is deemed necessary, the board may serve, in the
15 manner prescribed by Section 61-1-5 NMSA 1978, a cease and
16 desist order on a person to require that person to cease the
17 violation. The order shall:

18 (1) indicate the general nature of the
19 evidence of the violation;

20 (2) include a notice that if the person fails
21 to comply with the order within twenty-four hours the person
22 shall be subject to the fines in Section 61-32-6 NMSA 1978 for
23 each violation identified in the order; and

24 (3) include a notice that the person may
25 request a hearing within five days after service of the cease

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1 and desist order by certified mail, return receipt requested,
2 addressed and mailed to the board.

3 B. If the person does not request a hearing as
4 provided in Subsection A of this section, the order shall be
5 final and not subject to review or appeal. The board may apply
6 for injunctive relief to enforce the cease and desist order.

7 C. If a hearing is requested, it shall be conducted
8 pursuant to the hearing procedures of the Uniform Licensing Act
9 that are consistent with this section and the consequences of
10 the hearing, including a right to review, shall occur pursuant
11 to that act.

12 D. An order of the board pursuant to this section or
13 an order of a court to enforce it shall not relieve or absolve a
14 person affected by the order from another liability, penalty or
15 sanction applicable under law."

16 SECTION 25. REPEAL.--Sections 61-32-15 and 61-32-16 NMSA
17 1978 (being Laws 1993, Chapter 204, Sections 15 and 16) are
18 repealed.

19 SECTION 26. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2012.