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HOUSE BILL 548

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Gail C. Beam

AN ACT

RELATING TO THE DISPOSITION OF BODIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978 PERTAINING TO CREMATION AND BURIAL OF INDIGENTS AND UNCLAIMED DECEDENTS.

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. --

A. State, county or municipal officials having charge or control of [~~bodies to be buried at public expense~~] a body of a dead person shall use due diligence to notify the relatives of the deceased.

B. 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

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1 possible, the name, age, sex and cause of death of [~~any person~~
2 ~~required to be buried at public expense~~] the deceased.

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

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

19 "24-12-2. DISPOSITION OF UNCLAIMED BODY--TRANSMISSION OF
20 RECORDS OF INSTITUTION. --

21 A. Upon the issuance of his certificate that the
22 remains are unclaimed, the medical investigator shall retain
23 the body for use only for medical education or shall certify
24 that the body is unnecessary or unsuited for medical education
25 and release it to the state, county or municipal officials

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1 having charge or control of the body for burial. The state,
2 county or municipal officials shall have the body removed for
3 disposition within two weeks from the date on which the
4 medical investigator released the body.

5 B. If the body is retained for use in medical
6 education, the facility or person receiving the body for
7 [~~such~~] that use shall pay the costs of preservation and
8 transportation of the body and shall keep a permanent record
9 of bodies received.

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

16 Section 3. A new Section 24-12A-3 NMSA 1978 is enacted
17 to read:

18 "24-12A-3. [NEW MATERIAL] UNCLAIMED BODIES AND BODIES OF
19 INDIGENT PERSONS--CREMATION PERMITTED. --The body of an
20 unclaimed decedent or an indigent person, the disposition of
21 which is the responsibility of the county pursuant to the
22 provisions of Chapter 24, Article 13 NMSA 1978, may be
23 cremated upon the order of the county official responsible for
24 ensuring the disposition of the body or upon the order of any
25 other government official authorized to order the cremation.

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1 Absent a showing of bad faith or malicious intent, the
2 official ordering the cremation and the person or
3 establishment carrying out the cremation shall be immune from
4 liability related to the cremation. "

5 Section 4. Section 24-13-1 NMSA 1978 (being Laws 1939,
6 Chapter 224, Section 1) is amended to read:

7 "24-13-1. BURIAL OR CREMATION OF UNCLAIMED DECEDENTS AND
8 OF INDIGENTS. -- For the purposes of Chapter 24, Article 13 NMSA
9 1978, a dead person whose body has not been claimed by a
10 friend, relative or other interested person assuming the
11 responsibility for and expense of disposition shall be
12 considered an unclaimed decedent. It ~~[shall be]~~ is the duty
13 of the board of county commissioners of each county in this
14 state to cause to be decently interred or cremated the body of
15 any ~~[dead]~~ unclaimed decedent or indigent person ~~[having no~~
16 ~~visible estate out of which to defray the cost of his burial,~~
17 ~~and when no relative or friend of such decedent will undertake~~
18 ~~to bury him]~~. The county shall ensure that the body is buried
19 or cremated no later than thirty days after a determination
20 has been made that the body has not been claimed, but no less
21 than two weeks after death. "

22 Section 5. Section 24-13-2 NMSA 1978 (being Laws 1939,
23 Chapter 224, Section 2) is amended to read:

24 "24-13-2. PERSONS DEEMED INDIGENT. -- ~~[No]~~ A deceased
25 person shall be considered to be an indigent ~~[if there are any~~

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1 ~~sums, no matter how small, with which to defray]~~ for purposes
2 of Chapter 24, Article 13 NMSA 1978 if his estate is
3 insufficient to cover the cost of [such] burial or cremation."

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

6 "24-13-3. EXPENSES FOR BURIAL OR CREMATION. -- ~~[The~~
7 ~~expenses for the burial or cremation of an indigent person]~~ If
8 the unclaimed decedent had known assets or property of
9 sufficient value to defray the expenses of cremation or
10 burial, invoices for the expenses shall be forwarded to such
11 person or official authorized by law to be appointed
12 administrator of the estate of the decedent, and such person
13 or official shall pay the expenses out of the decedent's
14 estate. To the extent that the deceased person is indigent,
15 the burial or cremation expenses shall be borne by the county
16 of residence of the deceased person if known, and if not
17 known, the county in which the body was found, and may be paid
18 by the county out of the general fund in an amount up to six
19 hundred dollars (\$600) for the burial or cremation of any
20 adult or minor."

21 Section 7. Section 24-13-4 NMSA 1978 (being Laws 1939,
22 Chapter 224, Section 4, as amended) is amended to read:

23 "24-13-4. BURIAL AFTER INVESTIGATION-- COST OF OPENING
24 AND CLOSING GRAVE. --The board of county commissioners after
25 proper investigation shall cause any deceased indigent or

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1 unclaimed decedent to be decently interred or cremated. The
2 cost to be paid by the county of opening and closing a grave
3 shall not exceed six hundred dollars (\$600), which sum shall
4 be in addition to the sums enumerated in Section 24-13-3 NMSA
5 1978. "

6 Section 8. Section 24-13-5 NMSA 1978 (being Laws 1939,
7 Chapter 224, Section 5) is amended to read:

8 "24-13-5. PAYMENT OF BURIAL OR CREMATION EXPENSES--
9 COMMISSIONERS' LIABILITY.-- [If] The board of county
10 commissioners of any county within this state [~~shall pay to~~
11 ~~any person any sum purporting to be for the burial of an~~
12 ~~indigent person when in fact such deceased person was known by~~
13 ~~the board of county commissioners to be not an indigent, as~~
14 ~~above defined said~~] may authorize payment for the burial or
15 cremation of an indigent person, as defined in Section 24-13-2
16 NMSA 1978 or of an unclaimed decedent, as defined in Section
17 24-13-1 NMSA 1978. All available assets of the deceased shall
18 be used to reimburse the county for the cost of burial or
19 cremation. Should the county be required to pay expenses for
20 burial or cremation of an unclaimed decedent who has left an
21 estate, the estate shall reimburse the county for those
22 expenses. The county commissioners shall be liable either
23 personally or officially to the county [~~which~~] they represent
24 in double the amount [~~which~~] they have paid toward the burial
25 or cremation of a person other than as authorized by this

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1 section. "

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

4 "24-13-6. MONEY FROM RELATIVES--DUTY OF FUNERAL
5 DIRECTOR. -- [~~That~~] Should any funeral director or other person
6 allowed by law to conduct the business of a funeral director
7 accept [~~moneys~~] money from the relatives or friend of a
8 deceased person whom the board of county commissioners [~~have~~]
9 has determined to be an indigent or an unclaimed decedent,
10 [~~said~~] the funeral director [~~must~~] shall immediately notify
11 the board of county commissioners [~~of said county~~] of [~~said~~]
12 the payment or offer for payment, and [~~said~~] the board of
13 county commissioners shall not thereafter pay for the [~~alleged~~
14 ~~indigent~~] burial or cremation involved, or, if [~~said~~] the
15 board of county commissioners [~~have~~] has already paid for
16 [~~such~~] the burial or cremation, the funeral director shall
17 immediately refund the [~~moneys~~] money paid to him by the board
18 of county commissioners for [~~said~~] the burial or cremation. "

19 Section 10. Section 24-13-7 NMSA 1978 (being Laws 1939,
20 Chapter 224, Section 7) is amended to read:

21 "24-13-7. FAILURE TO NOTIFY--FUNERAL DIRECTOR'S
22 LIABILITY. -- If any funeral director or other person authorized
23 by law to conduct the business of a funeral director [~~shall~~
24 ~~receive or contract~~] receives or contracts to receive any
25 [~~moneys~~] money or thing of value from relatives or friends of

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

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 February 23, 1999
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8 Mr. Speaker:
9

10 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
11 whom has been referred
12

13 HOUSE BILL 548
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

- 17 1. On page 3, line 3 strike "two" and insert in lieu
18 thereof "three".
19
- 20 2. On page 5, line 16, after "person" insert a period
21 and strike the remainder of the line and on line 17, strike all
22 underscored language and insert in lieu thereof "If the county
23 of residence of the deceased person is not known, the burial or
24 cremation expenses shall be borne by the county in which the
25 body was found. The burial or cremation expenses".,

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and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

Patsy Trujillo Knauer,
Chairwoman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 4 For 0 Against

Yes: 4

Excused: Hamilton, Hawkins, Vaughn

Absent: None

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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5 March 9, 1999
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7 Mr. Speaker:
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9 Your JUDICIARY COMMITTEE, to whom has been referred
10

11 HOUSE BILL 548, as amended
12

13 has had it under consideration and reports same with
14 recommendation that it DO PASS, amended as follows:

15 1. On page 4, line 21, after the period insert:
16

17 "If the body is cremated, the county shall ensure that
18 the cremated remains are retained and stored for no less
19 than two years in a manner that allows for identification of
20 the remains. After the expiration of two years the cremated
21 remains may be disposed of, provided the county retains a
22 record of the place and manner of disposition for not less
23 than five years after such disposition. ".
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3 HJC/HB 548aa

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Respectfully submitted,

R. David Pederson, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Godbey, Luna, Martinez, Rios, Vaughn, Sanchez

Absent: None

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