

The Legislature
of the
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER 22

HOUSE BILL 15

Introduced by

REPRESENTATIVE ELISEO LEE ALCON



FOR THE MILITARY AND VETERANS'
AFFAIRS COMMITTEE

CHAPTER 22

AN ACT

1
2 RELATING TO DEATH; AUTHORIZING A PERSON DESIGNATED ON A UNITED
3 STATES DEPARTMENT OF DEFENSE RECORD OF EMERGENCY DATA FORM TO
4 PROVIDE DISPOSITION ARRANGEMENTS FOR REMAINS OF A DECEDENT;
5 ALLOWING A PERSON AUTHORIZED BY A UNITED STATES DEPARTMENT OF
6 DEFENSE RECORD OF EMERGENCY DATA FORM TO DETERMINE THE
7 DISPOSITION OF REMAINS OF A DECEDENT.

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

10 SECTION 1. Section 24-12-1 NMSA 1978 (being Laws 1973,
11 Chapter 354, Section 1, as amended) is amended to read:

12 "24-12-1. NOTIFICATION OF RELATIVES OF DECEASED--
13 AUTHORIZATION OF PERSON DESIGNATED ON RECORD OF EMERGENCY DATA
14 FORM TO DIRECT BURIAL--UNCLAIMED DECEDENTS.--

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

18 B. If the decedent died while serving in any
19 branch of the United States armed forces, the United States
20 reserve forces or the national guard, during any period of
21 duty when the secretary of the military service concerned can
22 provide for the recovery, care and disposition of remains, and
23 the decedent completed a United States department of defense
24 record of emergency data form or its successor form, the
25 authority to direct the burial of the decedent or to provide

1 other funeral and disposition arrangements for the decedent
2 devolves on the person designated by the decedent pursuant to
3 that form.

4 C. If no claimant is found who will assume the
5 cost of burial, the official having charge or control of the
6 body shall notify the medical investigator stating, when
7 possible, the name, age, sex and cause of death of the
8 deceased.

9 D. The body shall be embalmed according to rules
10 of the state agency having jurisdiction. After the exercise
11 of due diligence required in Subsection A of this section and
12 the report to the medical investigator required in Subsection
13 C of this section, the medical investigator shall be furnished
14 detailed data demonstrating such due diligence and the fact
15 that no claimant has been found. When the medical
16 investigator has determined that due diligence has been
17 exercised, that reasonable opportunity has been afforded
18 relatives to claim the body and that the body has not been
19 claimed, the medical investigator shall issue a certificate
20 determining that the remains are unclaimed. In no case shall
21 an unclaimed body be disposed of in less than two weeks from
22 the date of the discovery of the body."

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

25 "24-12A-2. NO WRITTEN INSTRUCTIONS--PRIORITY OF OTHERS

1 TO DECIDE DISPOSITION.--

2 A. Except as provided in Subsection B of this
3 section, if a decedent has left no written instructions
4 regarding the disposition of the decedent's remains, the
5 following persons in the order listed shall determine the
6 means of disposition, not to be limited to cremation, of the
7 remains of the decedent:

8 (1) the surviving spouse;

9 (2) a majority of the surviving adult
10 children of the decedent;

11 (3) the surviving parents of the decedent;

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

14 (5) an adult who has exhibited special care
15 and concern for the decedent, who is aware of the decedent's
16 views and desires regarding the disposition of the decedent's
17 body and who is willing and able to make a decision about the
18 disposition of the decedent's body; or

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

22 B. If a decedent left no written instructions
23 regarding the disposition of the decedent's remains, died
24 while serving in any branch of the United States armed forces,
25 the United States reserve forces or the national guard and

1 completed a United States department of defense record of
2 emergency data form or its successor form, the person
3 authorized by the decedent to determine the means of
4 disposition on a United States department of defense record of
5 emergency data form shall determine the means of disposition,
6 not to be limited to cremation."

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

9 "61-32-19. CREMATION--REQUIREMENTS--RIGHT TO AUTHORIZE
10 CREMATION--DISPOSITION OF CREMAINS.--

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

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

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

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

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

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

7 D. A personal representative, establishment or
8 crematory acting in reliance upon a document executed pursuant
9 to the provisions of this section, who has no actual notice of
10 revocation or contrary indication, is presumed to be acting in
11 good faith.

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

20 F. Except as provided in Subsection G of this
21 section, if a decedent has left no written instructions
22 regarding the disposition of the decedent's remains, the
23 following persons in the order listed shall determine the
24 means of disposition, not to be limited to cremation, of the
25 remains of the decedent:

- 1 (1) the surviving spouse;
- 2 (2) a majority of the surviving adult
3 children of the decedent;
- 4 (3) the surviving parents of the decedent;
- 5 (4) a majority of the surviving siblings of
6 the decedent;
- 7 (5) an adult person who has exhibited
8 special care and concern for the decedent, who is aware of the
9 decedent's views and desires regarding the disposition of the
10 decedent's body and who is willing and able to make a
11 decision about the disposition of the decedent's body; or
- 12 (6) the adult person of the next degree of
13 kinship in the order named by New Mexico law to inherit the
14 estate of the decedent.

15 G. If a decedent left no written instructions
16 regarding the disposition of the decedent's remains, died
17 while serving in any branch of the United States armed forces,
18 the United States reserve forces or the national guard and
19 completed a United States department of defense record of
20 emergency data form or its successor form, the person
21 authorized by the decedent to determine the means of
22 disposition on a United States department of defense record of
23 emergency data form shall determine the means of disposition,
24 not to be limited to cremation.

25 H. A licensed establishment or crematory shall

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

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

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

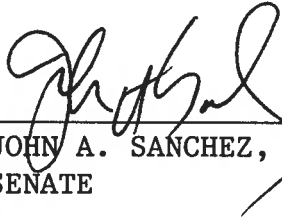
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BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES

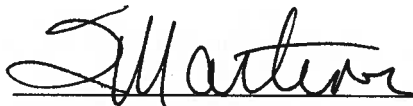


JOHN A. SANCHEZ, PRESIDENT
SENATE



LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 1st day of April, 2011



SUSANA MARTINEZ, GOVERNOR
STATE OF NEW MEXICO

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