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HOUSE BILL 15

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Eliseo Lee Alcon

FOR THE MILITARY AND VETERANS' AFFAIRS COMMITTEE

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

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1 diligence to notify the relatives of the deceased.

2 B. If the decedent died while serving in any branch
3 of the United States armed forces, the United States reserve
4 forces or the national guard, during any period of duty when
5 the secretary of the military service concerned can provide for
6 the recovery, care and disposition of remains, and the
7 decedent completed a United States department of defense
8 record of emergency data form or its successor form, the
9 authority to direct the burial of the decedent or to provide
10 other funeral and disposition arrangements for the decedent
11 devolves on the person designated by the decedent pursuant to
12 that form.

13 [~~B.~~] C. If no claimant is found who will assume the
14 cost of burial, the official having charge or control of the
15 body shall notify the medical investigator stating, when
16 possible, the name, age, sex and cause of death of the
17 deceased.

18 [~~C.~~] D. The body shall be embalmed according to
19 [~~regulations~~] rules of the state agency having jurisdiction.
20 After the exercise of due diligence required in Subsection A of
21 this section and the report to the medical investigator
22 required in Subsection [~~B.~~] C. of this section, the medical
23 investigator shall be furnished detailed data demonstrating
24 such due diligence and the fact that no claimant has been
25 found. When the medical investigator has determined that due

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1 diligence has been exercised, that reasonable opportunity has
2 been afforded relatives to claim the body and that the body has
3 not been claimed, [~~he~~] the medical investigator shall issue
4 [~~his~~] a certificate determining that the remains are unclaimed.
5 In no case shall an unclaimed body be disposed of in less than
6 two weeks from the date of the discovery of the body."

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

9 "24-12A-2. NO WRITTEN INSTRUCTIONS--PRIORITY OF OTHERS TO
10 DECIDE DISPOSITION.--

11 A. Except as provided in Subsection B of this
12 section, if a decedent has left no written instructions
13 regarding the disposition of [~~his~~] the decedent's remains, the
14 following persons in the order listed shall determine the means
15 of disposition, not to be limited to cremation, of the remains
16 of the decedent:

17 [~~A.~~] (1) the surviving spouse;

18 [~~B.~~] (2) a majority of the surviving adult
19 children of the decedent;

20 [~~C.~~] (3) the surviving parents of the
21 decedent;

22 [~~D.~~] (4) a majority of the surviving siblings
23 of the decedent;

24 [~~E.~~] (5) an adult who has exhibited special
25 care and concern for the decedent, who is aware of the

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1 decedent's views and desires regarding the disposition of [~~his~~]
2 the decedent's body and who is willing and able to make a
3 decision about the disposition of the decedent's body; or

4 [~~F-~~] (6) the adult person of the next degree
5 of kinship in the order named by New Mexico law to inherit the
6 estate of the decedent.

7 B. If a decedent left no written instructions
8 regarding the disposition of the decedent's remains, died while
9 serving in any branch of the United States armed forces, the
10 United States reserve forces or the national guard and
11 completed a United States department of defense record of
12 emergency data form or its successor form, the person
13 authorized by the decedent to determine the means of
14 disposition on a United States department of defense record of
15 emergency data form shall determine the means of disposition,
16 not to be limited to cremation."

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

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

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

23 B. [~~Any~~] An adult person may authorize [~~his~~] the
24 person's own cremation and the lawful disposition of [~~his~~
25 cremated remains] the person's cremains by:

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1 (1) stating [~~his~~] the person's desire to be
2 cremated in a written statement that is signed by the
3 [~~individual~~] person and notarized or witnessed by two other
4 persons; or

5 (2) including an express statement in [~~his~~]
6 the person's will indicating that the testator desired that
7 [~~his~~] the testator's remains be cremated upon [~~his~~] the
8 testator's death.

9 C. A personal representative acting pursuant to the
10 Uniform Probate Code or an establishment or crematory shall
11 comply with a statement made in accordance with the provisions
12 of this section. A statement that conforms to the provisions
13 of this section authorizes a personal representative,
14 establishment or crematory to cremate a decedent's remains, and
15 the permission of next of kin or any other person shall not be
16 required for such authorization. Statements dated prior to
17 June 18, 1993 shall be given effect if they meet this section's
18 requirements.

19 D. A personal representative, establishment or
20 crematory acting in reliance upon a document executed pursuant
21 to the provisions of this section, who has no actual notice of
22 revocation or contrary indication, is presumed to be acting in
23 good faith.

24 E. No establishment, crematory or employee of an
25 establishment or crematory or other person that relies in good

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1 faith on a statement written pursuant to this section shall be
2 subject to liability for cremating the remains in accordance
3 with the provisions of this section. The written authorization
4 is a complete defense to a cause of action by ~~any~~ a person
5 against any other person acting in accordance with that
6 authorization.

7 F. Except as provided in Subsection G of this
8 section, if a decedent has left no written instructions
9 regarding the disposition of ~~his~~ the decedent's remains, the
10 following persons in the order listed shall determine the means
11 of disposition, not to be limited to cremation, of the remains
12 of the decedent:

- 13 (1) the surviving spouse;
- 14 (2) a majority of the surviving adult children
15 of the decedent;
- 16 (3) the surviving parents of the decedent;
- 17 (4) a majority of the surviving siblings of
18 the decedent;
- 19 (5) an adult person who has exhibited special
20 care and concern for the decedent, who is aware of the
21 decedent's views and desires regarding the disposition of ~~his~~
22 the decedent's body and who is willing and able to make a
23 decision about the disposition of the decedent's body; or
- 24 (6) the adult person of the next degree of
25 kinship in the order named by New Mexico law to inherit the

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1 estate of the decedent.

2 G. If a decedent left no written instructions
3 regarding the disposition of the decedent's remains, died while
4 serving in any branch of the United States armed forces, the
5 United States reserve forces or the national guard and
6 completed a United States department of defense record of
7 emergency data form or its successor form, the person
8 authorized by the decedent to determine the means of
9 disposition on a United States department of defense record of
10 emergency data form shall determine the means of disposition,
11 not to be limited to cremation.

12 [~~G.~~] H. A licensed establishment or crematory shall
13 keep an accurate record of all cremations performed and the
14 place of disposition of the cremains for a period of not less
15 than seven years.

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

20 [~~I.~~] J. Legal forms for cremation authorization
21 shall provide that persons giving the authorization will hold
22 harmless an establishment from any liability for disposing of
23 unclaimed cremains in a lawful manner after a period of one
24 year following the return of the cremains to the
25 establishment."

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