

2307

2013-2014 Regular Sessions

I N S E N A T E

January 15, 2013

Introduced by Sen. BALL -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to disposition of human remains

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Section 4201 of the public health law, as amended by chap-
2 ter 76 of the laws of 2006, paragraph (a) of subdivision 2 as amended by
3 chapter 401 of the laws of 2007, paragraph (e) of subdivision 2 as added
4 by section 1 of part B of chapter 491 of the laws of 2012, subdivision
5 4-a as added by chapter 348 of the laws of 2009, is amended to read as
6 follows:
7 S 4201. Disposition of remains; responsibility therefor. 1. As used in
8 this section, the following terms shall have the following meanings,
9 unless the context otherwise requires:
10 (a) "Cremation" means the incineration of human remains.
11 (b) "Disposition" means the care, disposal, transportation, burial,
12 cremation or embalming of the body of a deceased person, and associated
13 measures.
14 (c) "Domestic partner" means a person who, with respect to another
15 person:
16 (i) is formally a party in a domestic partnership or similar relation-
17 ship with the other person, entered into pursuant to the laws of the
18 United States or any state, local or foreign jurisdiction, or registered
19 as the domestic partner of the person with any registry maintained by
20 the employer of either party or any state, municipality, or foreign
21 jurisdiction; or
22 (ii) is formally recognized as a beneficiary or covered person under
23 the other person's employment benefits or health insurance; or
24 (iii) is dependent or mutually interdependent on the other person for
25 support, as evidenced by the totality of the circumstances indicating a

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 mutual intent to be domestic partners including but not limited to:
2 common ownership or joint leasing of real or personal property; common
3 householding, shared income or shared expenses; children in common;
4 signs of intent to marry or become domestic partners under subparagraph
5 (i) or (ii) of this paragraph; or the length of the personal relation-
6 ship of the persons.

7 Each party to a domestic partnership shall be considered to be the
8 domestic partner of the other party. "Domestic partner" shall not
9 include a person who is related to the other person by blood in a manner
10 that would bar marriage to the other person in New York state. "Domestic
11 partner" shall also not include any person who is less than eighteen
12 years of age or who is the adopted child of the other person or who is
13 related by blood in a manner that would bar marriage in New York state
14 to a person who is the lawful spouse of the other person.

15 (d) "Person" means a natural person eighteen years of age or older.

16 2. (a) The following persons in descending priority shall have the
17 right to control the disposition of the remains of such decedent:

18 (i) the person designated in a written instrument executed pursuant to
19 [the provisions of] this section;

20 (ii) the decedent's surviving spouse;

21 (ii-a) the decedent's surviving domestic partner;

22 (iii) any of the decedent's surviving children eighteen years of age
23 or older;

24 (iv) either of the decedent's surviving parents;

25 (v) any of the decedent's surviving siblings eighteen years of age or
26 older;

27 (vi) a guardian appointed pursuant to article seventeen or seventeen-A
28 of the surrogate's court procedure act or article eighty-one of the
29 mental hygiene law;

30 (vii) any person eighteen years of age or older who would be entitled
31 to share in the estate of the decedent as specified in section 4-1.1 of
32 the estates, powers and trusts law, with the person closest in relation-
33 ship having the highest priority;

34 (viii) a duly appointed fiduciary of the estate of the decedent;

35 (ix) a close friend or relative who is reasonably familiar with the
36 decedent's wishes, including the decedent's religious or moral beliefs,
37 when no one higher on this list is reasonably available, willing, or
38 competent to act, provided that such person has executed a written
39 statement pursuant to subdivision seven of this section; or

40 (x) a chief fiscal officer of a county or a public administrator
41 appointed pursuant to article twelve or thirteen of the surrogate's
42 court procedure act, or any other person acting on behalf of the dece-
43 dent, provided that such person has executed a written statement pursu-
44 ant to subdivision seven of this section.

45 (b) If a person designated to control the disposition of a decedent's
46 remains, pursuant to this subdivision, is not reasonably available,
47 unwilling or not competent to serve, and such person is not expected to
48 become reasonably available, willing or competent, then those persons of
49 equal priority and, if there be none, those persons of the next succeed-
50 ing priority shall have the right to control the disposition of the
51 decedent's remains.

52 (c) The person in control of disposition, pursuant to this section,
53 shall faithfully carry out the directions of the decedent to the extent
54 lawful and practicable, including consideration of the financial capaci-
55 ty of the decedent's estate and other resources made available for
56 disposition of the remains. The person in control of disposition shall

also dispose of the decedent in a manner appropriate to the moral and individual beliefs and wishes of the decedent provided that such beliefs and wishes do not conflict with the directions of the decedent. The person in control of disposition may seek to recover any costs related to the disposition from the fiduciary of the decedent's estate in accordance with section eighteen hundred eleven of the surrogate's court procedure act.

(d) No funeral director, undertaker, embalmer or no person with an interest in, or who is an employee of any funeral firm, cemetery organization or business operating a crematory, columbarium or any other business, who also controls the disposition of remains in accordance with this section, shall receive compensation or otherwise receive financial benefit for disposing of the remains of a decedent.

(e) No person who: (1) at the time of the decedent's death, was the subject of an order of protection protecting the decedent; or (2) has been arrested or charged with any crime set forth in article one hundred twenty-five of the penal law as a result of any action allegedly causally related to the death of the decedent shall have the right to control the disposition of the remains of the decedent. However, the application of this paragraph in a particular case may be waived or modified in the interest of justice by order of (i) the court that issued the order of protection or in which the criminal action against the person is pending, or a superior court in which an action or proceeding under the domestic relations law or the family court act between the person and the decedent was pending at the time of the decedent's death, or (ii) if proceeding in that court would cause inappropriate delay, a court in a special proceeding.

3. The written instrument referred to in paragraph (a) of subdivision two of this section may be, BUT IS NOT REQUIRED TO BE, in substantially the following form[, and]. IT must be signed and dated by the decedent [and the agent] and [properly] witnessed BY ONE WITNESS WHO MUST BE EIGHTEEN YEARS OF AGE OR OLDER. A SIGNED ACCEPTANCE BY THE APPOINTED AGENT IS NOT REQUIRED FOR THE WRITTEN INSTRUMENT TO BE VALID:

APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

I, _____
(Your name and address)
being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by _____ .
(name of agent)
With respect to that subject only, I hereby appoint such person as my agent with respect to the disposition of my remains.

SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent as well as any instructions or wishes desired to be followed in the disposition of my remains:

1 Indicate below if you have entered into a [pre-funded] pre-need
2 [agreement subject to section four hundred fifty-three of the general
3 business law] ARRANGEMENT for funeral, CEMETERY OR OTHER merchandise or
4 service in advance of need:

5 ☐ No, I have not entered into a [pre-funded] pre-need [agreement
6 subject to section four hundred fifty-three of the general business law]
7 ARRANGEMENT.

8 ☐ Yes, I have entered into a [pre-funded] pre-need [agreement subject
9 to section four hundred fifty-three of the general business law]
10 ARRANGEMENT.

11 _____
12 (Name of [funeral firm] ESTABLISHMENT with which you entered into a
13 [pre-funded] pre-need funeral [agreement] ARRANGEMENT to provide
14 merchandise and/or services)

15 AGENT:

16 Name: _____

17 Address: _____

18 Telephone Number: _____

19 SUCCESSORS:

20 If my agent dies, resigns, or is unable to act, I hereby appoint the
21 following persons (each to act alone and successively, in the order
22 named) to serve as my agent to control the disposition of my remains as
23 authorized by this document:

24 1. First Successor

25 Name: _____

26 Address: _____

27 Telephone Number: _____

28 2. Second Successor

29 Name: _____

30 Address: _____

31 Telephone Number: _____

32 DURATION:

33 This appointment becomes effective upon my death.

34 PRIOR APPOINTMENT REVOKED:

35 I hereby revoke any prior appointment of any person to control the
36 disposition of my remains.

37 Signed this _____ day of _____, _____.

38 _____
39 (Signature of person making the appointment)

40 Statement by witness (must be 18 or older)

41 I declare that the person who executed this document is personally known
42 to me and appears to be of sound mind and acting of his or her free
43 will. He or she signed (or asked another to sign for him or her) this
44 document in my presence.

1 Witness [1]: _____ (signature)

2 Address: _____

3 [Witness 2: _____ (signature)

4 Address: _____]

5 ACCEPTANCE AND ASSUMPTION BY AGENT:

6 1. I have no reason to believe there has been a revocation of this
7 appointment to control disposition of remains.

8 2. I hereby accept this appointment.

9 Signed this _____ day of _____, _____.

10 _____
11 (Signature of agent)

12 4. [(a)] In the absence of a written instrument made pursuant to
13 subdivision three of this section, the designation of a person for the
14 disposition of one's remains or directions for the disposition of one's
15 remains in a will executed pursuant to the laws of the state of New York
16 [prior to the effective date of this section], or otherwise executed
17 pursuant to the laws of a jurisdiction outside the state of New York,
18 shall be: [(i) considered reflective of the intent of the decedent] (A)
19 DEEMED TO BE A WRITTEN INSTRUMENT EXECUTED PURSUANT TO THIS SECTION with
20 respect to the disposition of the decedent's remains; and [(ii)] (B)
21 superseded by a written instrument subsequently executed pursuant to
22 subdivision three of this section, or by any other subsequent act by the
23 decedent evidencing a specific intent to supersede the designation or
24 direction in such a will with respect to the disposition of the
25 decedent's remains. All actions taken reasonably and in good faith based
26 upon such authorizations and directions regarding the disposition of
27 one's remains in such a will shall be deemed valid regardless of whether
28 such a will is later probated or subsequently declared invalid.

29 [(b) In the absence of a written instrument made pursuant to subdivi-
30 sion three of this section, the designation of a person for the disposi-
31 tion of one's remains or directions for the disposition of one's remains
32 in a will executed pursuant to the laws of the state of New York on or
33 after the effective date of this section, shall be considered a
34 reflection of the intent of the decedent with respect to the disposition
35 of the decedent's remains, provided that the person who represents that
36 he or she is entitled to control the disposition of remains of the dece-
37 dent has complied with subdivision five and paragraph (a) of subdivision
38 seven of this section and signed a written statement in accordance with
39 paragraph (b) of subdivision seven of this section.]

40 4-a. A written instrument under this section may limit the disposition
41 of remains agent's authority to consent to organ or tissue donation or
42 designate another person to do so, under article forty-three of this
43 chapter. Failure to state wishes or instruction shall not be construed
44 to imply a wish not to donate.

45 5. A written instrument executed under this section shall be revoked
46 upon the execution by the decedent of a subsequent written instrument,
47 or by any other subsequent act by the decedent evidencing a specific
48 intent to revoke the prior written instrument [and directions].
49 DIRECTIONS on disposition and agent designations in a [will] WRITTEN
50 INSTRUMENT made pursuant to [subdivision three of] this section shall be
51 superseded by a subsequently executed [will or] written instrument made

1 pursuant to this section, or by any other subsequent act of the decedent
2 evidencing a specific intent to supersede the direction or designation.
3 The designation of the decedent's spouse or domestic partner as an agent
4 in control of disposition of remains shall be revoked upon the divorce
5 or legal separation of the decedent and spouse, or termination of the
6 domestic partnership, unless the decedent specified in writing other-
7 wise.

8 6. A person acting reasonably and in good faith, shall not be subject
9 to any civil liability for:

10 (a) representing himself or herself to be the person in control of a
11 decedent's disposition;

12 (b) disposing of a decedent's remains if done with the reasonable
13 belief that such disposal is consistent with this section; or

14 (c) identifying a decedent.

15 7. No cemetery organization, business operating a crematory or colum-
16 barium, funeral director, undertaker, embalmer, or funeral firm shall be
17 held liable for actions taken reasonably and in good faith to carry out
18 the written directions of a decedent as stated in [a will or in] a writ-
19 ten instrument executed pursuant to this section. No cemetery organiza-
20 tion, business operating a crematory or columbarium, funeral director,
21 undertaker, embalmer or funeral firm shall be held liable for actions
22 taken reasonably and in good faith to carry out the directions of a
23 person who represents that he or she is entitled to control of the
24 disposition of remains, provided that such action is taken only after
25 requesting and receiving A written statement that such person:

26 (a) is the designated agent of the decedent designated in a [will or]
27 written instrument executed pursuant to this section; or

28 (b) that he or she has no knowledge that the decedent executed a writ-
29 ten instrument pursuant to this section [or a will] containing
30 directions for the disposition of his or her remains and that such
31 person is the person having priority under subdivision two of this
32 section.

33 8. Every dispute UNDER THIS SECTION relating to the disposition of the
34 remains of a decedent shall be resolved by a court of competent juris-
35 diction pursuant to a special proceeding under article four of the civil
36 practice law and rules. No person providing services relating to the
37 disposition of the remains of a decedent shall be held liable for
38 refusal to provide such services, when control of the disposition of
39 such remains is contested, until such person receives a court order or
40 other form of notification signed by all parties or their legal repre-
41 sentatives to the dispute establishing such control.

42 9. This section does not supersede, alter or abridge any provision of
43 section four hundred fifty-three of the general business law. In the
44 event of a conflict or ambiguity, [the provisions of] section four
45 hundred fifty-three of the general business law shall govern.

46 10. This section does not supersede, alter or abridge any provision of
47 article forty-three of this chapter including, but not limited to, the
48 persons authorized to execute an anatomical gift pursuant to section
49 forty-three hundred one of this chapter.

50 11. This section does not diminish the enforceability of a contract or
51 agreement in which a person controlling the disposition of the remains
52 of a decedent agrees to pay for goods or services in connection with the
53 disposition of such remains.

54 S 2. This act shall take effect immediately.