S T A T E O F N E W Y O R K

1338

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. WRIGHT -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to admissibility of certain evidence

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

Section 1. The civil practice law and rules is amended by adding a new section 4517-a to read as follows:

S 4517-A. STATEMENT UNDER BELIEF OF IMPENDING DEATH. STATEMENTS MADE UNDER THE BELIEF OF IMPENDING DEATH BY A DECEASED PERSON ARE ADMISSIBLE IN EVIDENCE IN ALL CIVIL AND CRIMINAL TRIALS AND OTHER PROCEEDINGS BEFORE COURTS, COMMISSIONS AND OTHER TRIBUNALS TO THE SAME EXTENT AND FOR THE SAME PURPOSES THAT THEY MIGHT HAVE BEEN ADMISSIBLE HAD THE DECEASED SURVIVED AND BEEN SWORN AS WITNESS IN THE PROCEEDINGS, UNDER THE FOLLOWING RESTRICTIONS. TO RENDER THE STATEMENTS OF THE DECEASED COMPETENT EVIDENCE, IT MUST BE SATISFACTORILY PROVED:

1. THAT AT THE TIME OF THE MAKING OF SUCH STATEMENT THE DECLARANT WAS CONSCIOUS OF APPROACHING DEATH AND BELIEVED THERE WAS NO HOPE FOR RECOVERY;

2. THAT SUCH STATEMENT WAS VOLUNTARILY MADE, AND NOT THROUGH THE PERSUASION OF ANY PERSON;

3. THAT SUCH STATEMENT WAS NOT MADE IN ANSWER TO INTERROGATORIES CALCULATED TO LEAD THE DECEASED TO MAKE ANY PARTICULAR STATEMENT; AND

4. THAT THE DECLARANT WAS OF SOUND MIND AT THE TIME OF MAKING THE DECLARATION.

S 2. This act shall take effect immediately.

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

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