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

412

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. KAVANAGH -- read once and referred to the Committee on Health

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

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

Section 1. Legislative findings. The legislature finds and declares that:

1. Article 43 of the public health law requires any donor and specified authorized individuals to authorize the use of anatomical gifts for transplantation, therapy, research, and education purposes.

2. Every city, county, or state official responsible for the remains of unclaimed dead bodies is required to use due diligence to notify the relatives of the decedent.

3. The public display of human remains must be regulated to protect individual bodily integrity, as well as the social and cultural values of the state.

4. It is the intent of the legislature to require persons who participate in the public display of human remains for commercial purposes to provide evidence of informed consent from the decedent or relatives of all humans whose remains are put on display, and to provide for the continued use of human remains in the educational, medical, and scientific communities to promote human health and safety.

S 2. The public health law is amended by adding a new article 43-D to read as follows:

ARTICLE 43-D

COMMERCIAL DISPLAY OF HUMAN REMAINS

SECTION 4380. DEFINITIONS.
4381. COMMERCIAL DISPLAY OF HUMAN REMAINS.
4382. PERMIT.
4383. APPLICATION.

S 4380. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

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

LBD01032-01-9

1. "COMMERCIAL PURPOSES" MEANS EITHER:
(A) A DISPLAY FOR WHICH THE PUBLIC IS CHARGED A FEE OR OTHER CONSIDERATION AS A CONDITION OF VIEWING; OR
(B) A DISPLAY FOR WHICH AN EXHIBITOR ACCEPTS PAYMENT OR OTHER CONSIDERATION.
2. "EXHIBITOR" MEANS A PERSON OR ENTITY WHO SHOWS OR PUTS ON, OR CONTRACTS TO SHOW OR PUT ON, A TEMPORARY PUBLIC DISPLAY OF HUMAN REMAINS.
3. "MUSEUM FACILITY" MEANS A PUBLIC OR PRIVATE NONPROFIT INSTITUTION THAT IS ACCREDITED THE AMERICAN ASSOCIATION OF MUSEUMS OR IS A PART OF AN ACCREDITED COLLEGE OR UNIVERSITY, AND THAT IS ORGANIZED ON A PERMANENT BASIS FOR ESSENTIALLY EDUCATIONAL OR AESTHETIC PURPOSES AND THAT OWNS OR USES TANGIBLE OBJECTS, CARES FOR THOSE OBJECTS, AND EXHIBITS THEM TO THE GENERAL PUBLIC ON A REGULAR BASIS.
S 4381. COMMERCIAL DISPLAY OF HUMAN REMAINS. 1. EXCEPT AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, A PERSON SHALL NOT DISPLAY HUMAN REMAINS TO THE PUBLIC FOR COMMERCIAL PURPOSES WITHOUT FIRST OBTAINING A PERMIT ISSUED BY THE DEPARTMENT AS REQUIRED BY SECTION FORTY-THREE HUNDRED EIGHTY-TWO OF THIS ARTICLE.
2. SUBDIVISION ONE OF THIS SECTION SHALL NOT APPLY TO A DISPLAY OF HUMAN REMAINS THAT IS ANY OF THE FOLLOWING:
(A) MORE THAN ONE HUNDRED YEARS OLD;
(B) CONSISTING SOLELY OF HUMAN TEETH OR HAIR;
(C) PART OF THE ORDINARY DISPLAY OR VIEWING OF THE DECEASED AT A FUNERAL ESTABLISHMENT OR PART OF A SIMILAR FUNERAL OR MEMORIAL SERVICE;
(D) AN OBJECT OF RELIGIOUS VENERATION;
(E) CONSISTING SOLELY OF BODIES TRANSPORTED INTO AND REMAINING IN THE STATE FOR DISPLAY PRIOR TO THE EFFECTIVE DATE OF THIS SECTION; OR
(F) IN THE POSSESSION OF A MUSEUM FACILITY.
HOWEVER, IF THE MUSEUM FACILITY PAID OR OFFERED OTHER CONSIDERATION TO AN EXHIBITOR TO DISPLAY THE REMAINS, AND THE REMAINS ARE NOT EXEMPT FROM THIS SECTION PURSUANT TO PARAGRAPHS (A) THROUGH (D) OF THIS SUBDIVISION, THE EXHIBITOR SHALL BE REQUIRED TO OBTAIN A PERMIT PURSUANT TO SECTION FORTY-THREE HUNDRED EIGHTY-TWO OF THIS ARTICLE.
3. ANY PERSON WHO VIOLATES THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF AN AMOUNT THAT DOES NOT EXCEED TEN THOUSAND DOLLARS FOR EACH VIOLATION.
S 4382. PERMIT. THE DEPARTMENT SHALL ESTABLISH A PERMIT PROGRAM UNDER THIS ARTICLE. A PERMIT MAY BE ISSUED TO ANY PERSON FOR THE PURPOSE DESCRIBED IN SECTION FORTY-THREE HUNDRED EIGHTY-ONE OF THIS ARTICLE ONLY UPON A DETERMINATION BY THE DEPARTMENT THAT THE PERSON HAS PROVIDED VALID WRITTEN AUTHORIZATION TO DISPLAY HUMAN REMAINS FOR CONSIDERATION FROM ANY OF THE FOLLOWING INDIVIDUALS:
1. THE DECEDENT, INCLUDING, BUT NOT LIMITED TO, AUTHORIZATION GIVEN BY WILL;
2. ANY PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT UNDER ARTICLE FORTY-THREE OF THIS CHAPTER.
S 4383. APPLICATION. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO APPLY TO THE UTILIZATION OF HUMAN REMAINS IN A MANNER THAT MEETS THE PURPOSES SET FORTH IN ARTICLE FORTY-THREE OF THIS CHAPTER RELATING TO ANATOMICAL GIFTS.
S 3. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately the commissioner of the department of health is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on its effective date, on or before such date.