

412

2009-2010 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 7, 2009

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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:

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

3     1. Article 43 of the public health law requires any donor and speci-  
4     fied authorized individuals to authorize the use of anatomical gifts for  
5     transplantation, therapy, research, and education purposes.

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

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

12    4. It is the intent of the legislature to require persons who partic-  
13    ipate in the public display of human remains for commercial purposes to  
14    provide evidence of informed consent from the decedent or relatives of  
15    all humans whose remains are put on display, and to provide for the  
16    continued use of human remains in the educational, medical, and scien-  
17    tific communities to promote human health and safety.

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

20                                    ARTICLE 43-D

21                                    COMMERCIAL DISPLAY OF HUMAN REMAINS

22    SECTION 4380. DEFINITIONS.

23                    4381. COMMERCIAL DISPLAY OF HUMAN REMAINS.

24                    4382. PERMIT.

25                    4383. APPLICATION.

26    S 4380. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS  
27    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 1. "COMMERCIAL PURPOSES" MEANS EITHER:

2 (A) A DISPLAY FOR WHICH THE PUBLIC IS CHARGED A FEE OR OTHER CONSIDER-  
3 ATION AS A CONDITION OF VIEWING; OR

4 (B) A DISPLAY FOR WHICH AN EXHIBITOR ACCEPTS PAYMENT OR OTHER CONSID-  
5 ERATION.

6 2. "EXHIBITOR" MEANS A PERSON OR ENTITY WHO SHOWS OR PUTS ON, OR  
7 CONTRACTS TO SHOW OR PUT ON, A TEMPORARY PUBLIC DISPLAY OF HUMAN  
8 REMAINS.

9 3. "MUSEUM FACILITY" MEANS A PUBLIC OR PRIVATE NONPROFIT INSTITUTION  
10 THAT IS ACCREDITED THE AMERICAN ASSOCIATION OF MUSEUMS OR IS A PART OF  
11 AN ACCREDITED COLLEGE OR UNIVERSITY, AND THAT IS ORGANIZED ON A PERMA-  
12 NENT BASIS FOR ESSENTIALLY EDUCATIONAL OR AESTHETIC PURPOSES AND THAT  
13 OWNS OR USES TANGIBLE OBJECTS, CARES FOR THOSE OBJECTS, AND EXHIBITS  
14 THEM TO THE GENERAL PUBLIC ON A REGULAR BASIS.

15 S 4381. COMMERCIAL DISPLAY OF HUMAN REMAINS. 1. EXCEPT AS PROVIDED IN  
16 SUBDIVISION TWO OF THIS SECTION, A PERSON SHALL NOT DISPLAY HUMAN  
17 REMAINS TO THE PUBLIC FOR COMMERCIAL PURPOSES WITHOUT FIRST OBTAINING A  
18 PERMIT ISSUED BY THE DEPARTMENT AS REQUIRED BY SECTION FORTY-THREE  
19 HUNDRED EIGHTY-TWO OF THIS ARTICLE.

20 2. SUBDIVISION ONE OF THIS SECTION SHALL NOT APPLY TO A DISPLAY OF  
21 HUMAN REMAINS THAT IS ANY OF THE FOLLOWING:

22 (A) MORE THAN ONE HUNDRED YEARS OLD;

23 (B) CONSISTING SOLELY OF HUMAN TEETH OR HAIR;

24 (C) PART OF THE ORDINARY DISPLAY OR VIEWING OF THE DECEASED AT A  
25 FUNERAL ESTABLISHMENT OR PART OF A SIMILAR FUNERAL OR MEMORIAL SERVICE;

26 (D) AN OBJECT OF RELIGIOUS VENERATION;

27 (E) CONSISTING SOLELY OF BODIES TRANSPORTED INTO AND REMAINING IN THE  
28 STATE FOR DISPLAY PRIOR TO THE EFFECTIVE DATE OF THIS SECTION; OR

29 (F) IN THE POSSESSION OF A MUSEUM FACILITY.

30 HOWEVER, IF THE MUSEUM FACILITY PAID OR OFFERED OTHER CONSIDERATION TO  
31 AN EXHIBITOR TO DISPLAY THE REMAINS, AND THE REMAINS ARE NOT EXEMPT FROM  
32 THIS SECTION PURSUANT TO PARAGRAPHS (A) THROUGH (D) OF THIS SUBDIVISION,  
33 THE EXHIBITOR SHALL BE REQUIRED TO OBTAIN A PERMIT PURSUANT TO SECTION  
34 FORTY-THREE HUNDRED EIGHTY-TWO OF THIS ARTICLE.

35 3. ANY PERSON WHO VIOLATES THIS SECTION SHALL BE SUBJECT TO A CIVIL  
36 PENALTY OF AN AMOUNT THAT DOES NOT EXCEED TEN THOUSAND DOLLARS FOR EACH  
37 VIOLATION.

38 S 4382. PERMIT. THE DEPARTMENT SHALL ESTABLISH A PERMIT PROGRAM UNDER  
39 THIS ARTICLE. A PERMIT MAY BE ISSUED TO ANY PERSON FOR THE PURPOSE  
40 DESCRIBED IN SECTION FORTY-THREE HUNDRED EIGHTY-ONE OF THIS ARTICLE ONLY  
41 UPON A DETERMINATION BY THE DEPARTMENT THAT THE PERSON HAS PROVIDED  
42 VALID WRITTEN AUTHORIZATION TO DISPLAY HUMAN REMAINS FOR CONSIDERATION  
43 FROM ANY OF THE FOLLOWING INDIVIDUALS:

44 1. THE DECEDENT, INCLUDING, BUT NOT LIMITED TO, AUTHORIZATION GIVEN BY  
45 WILL;

46 2. ANY PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT UNDER ARTICLE  
47 FORTY-THREE OF THIS CHAPTER.

48 S 4383. APPLICATION. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO  
49 APPLY TO THE UTILIZATION OF HUMAN REMAINS IN A MANNER THAT MEETS THE  
50 PURPOSES SET FORTH IN ARTICLE FORTY-THREE OF THIS CHAPTER RELATING TO  
51 ANATOMICAL GIFTS.

52 S 3. This act shall take effect on the ninetieth day after it shall  
53 have become a law. Effective immediately the commissioner of the depart-  
54 ment of health is authorized to promulgate any and all rules and regu-  
55 lations and take any other measures necessary to implement this act on  
56 its effective date, on or before such date.