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

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2009-2010 Regular Sessions

I N S E N A T E

January 15, 2009

Introduced by Sen. LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to amend the general business law, in relation to the unauthorized sale of veterans' commemorative property that has been placed in a cemetery and the unauthorized sale of cemetery markers and flagholders

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

Section 1. The general business law is amended by adding a new section 450-b to read as follows:

S 450-B. UNAUTHORIZED SALE OF VETERAN'S COMMEMORATIVE PROPERTY THAT HAS BEEN PLACED IN A CEMETERY. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

(A) "BOARD" MEANS THE CEMETERY BOARD CREATED PURSUANT TO SECTION FIFTEEN HUNDRED FOUR OF THE NOT-FOR-PROFIT CORPORATION LAW.

(B) "CEMETERY" MEANS ANY REAL OR PERSONAL PROPERTY USED OR MAINTAINED AS A CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL PLACE, NICHE, CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE OF HUMAN REMAINS OR CREMATED HUMAN REMAINS, INCLUDING BUT NOT LIMITED TO ANY CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL PLACE, NICHE, CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE OF HUMAN REMAINS OR CREMATED HUMAN REMAINS WHICH IS OWNED OR CONTROLLED BY ANY UNINCORPORATED ASSOCIATION, PUBLIC CEMETERY CORPORATION, FAMILY CEMETERY CORPORATION, PRIVATE CEMETERY CORPORATION, RELIGIOUS CORPORATION OR MUNICIPAL CORPORATION, OR WHICH IS ABANDONED OR NOT CONTROLLED BY ANY EXISTING BOARD OR BODY.

(C) "VETERAN" MEANS A DECEASED PERSON WHO:

(1)(A) SERVED IN THE ACTIVE MILITARY OR NAVAL SERVICE OF THE UNITED STATES DURING A WAR IN WHICH THE UNITED STATES ENGAGED; OR

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

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(B) SERVED IN ACTIVE DUTY IN A FORCE OF ANY ORGANIZED STATE MILITIA (NOT INCLUDING THE INACTIVE NATIONAL GUARD AND NOT INCLUDING THE NEW YORK GUARD WHEN IN AN INACTIVE STATUS) IN A FULL TIME STATUS; AND

(2) WAS RELEASED FROM SUCH SERVICE OTHERWISE THAN BY DISHONORABLE DISCHARGE OR WAS FURLOUGHED TO THE RESERVE.

(D) "VETERAN'S COMMEMORATIVE PROPERTY" MEANS ANY MONUMENT, HEADSTONE, MARKER, MEMORIAL, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG HOLDER, BADGE, SHIELD, ITEM OF MEMORABILIA OR OTHER EMBELLISHMENT, THAT:

(1) IS OVER SEVENTY-FIVE YEARS OLD;

(2) IDENTIFIES OR COMMEMORATES ANY VETERAN OR GROUP OF VETERANS, INCLUDING BUT NOT LIMITED TO ANY VETERANS' ORGANIZATION OR ANY MILITARY UNIT, COMPANY, BATTALION, OR DIVISION; AND

(3) HAS BEEN PLACED IN ANY CEMETERY.

2. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION THREE OF THIS SECTION, IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM, ASSOCIATION, PARTNERSHIP, LIMITED PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION OR OTHER ENTITY TO ENGAGE IN THE PURCHASE, SALE OR TRANSFER OF ANY VETERAN'S COMMEMORATIVE PROPERTY. A VIOLATION OF THE PROVISIONS OF THIS SUBDIVISION SHALL CONSTITUTE A CLASS B MISDEMEANOR AS DEFINED IN THE PENAL LAW.

3. (A) ANY UNINCORPORATED ASSOCIATION, PUBLIC CEMETERY CORPORATION, FAMILY CEMETERY CORPORATION, PRIVATE CEMETERY CORPORATION, RELIGIOUS CORPORATION OR MUNICIPAL CORPORATION THAT OWNS OR CONTROLS A CEMETERY WHERE ANY VETERAN'S COMMEMORATIVE PROPERTY HAS BEEN PLACED MAY PETITION THE BOARD FOR PERMISSION TO SELL, TRADE OR TRANSFER ALL OR ANY PART OF SUCH VETERAN'S COMMEMORATIVE PROPERTY. THE CRITERIA FOR APPROVING SUCH SALE, TRADE OR TRANSFER OF SUCH VETERAN'S COMMEMORATIVE PROPERTY ARE AS FOLLOWS:

(1) SUCH VETERAN'S COMMEMORATIVE PROPERTY IS AT REASONABLE RISK OF PHYSICALLY DETERIORATING SO THAT IT WILL BECOME UNRECOGNIZABLE AS IDENTIFYING OR COMMEMORATING THE VETERAN OR GROUP OF VETERANS ORIGINALLY IDENTIFIED OR COMMEMORATED THEREBY;

(2) SUCH VETERAN'S COMMEMORATIVE PROPERTY IS PROPOSED TO BE SOLD, TRADED OR TRANSFERRED TO A SUITABLE PERSON, FIRM, ASSOCIATION, PARTNERSHIP, LIMITED PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION OR OTHER ENTITY THAT WILL PRESERVE THE CURRENT CONDITION OF SUCH VETERAN'S COMMEMORATIVE PROPERTY AND PLACE SUCH VETERAN'S COMMEMORATIVE PROPERTY IN A SUITABLE PLACE THAT WILL COMMEMORATE SUCH VETERAN OR GROUP OF VETERANS;

(3) THE PETITIONER NEEDS TO SELL, TRADE OR TRANSFER SUCH VETERAN'S COMMEMORATIVE PROPERTY TO ENSURE THAT SUFFICIENT FUNDS ARE AVAILABLE TO SUITABLY MAINTAIN THE CEMETERY WHERE SUCH VETERAN'S COMMEMORATIVE PROPERTY WAS PLACED, AND THE SPECIFIC LOT, PLOT, GRAVE, BURIAL PLACE, NICHE, CRYPT OR OTHER PLACE OF INTERMENT OF SUCH VETERAN OR GROUP OF VETERANS, SO THAT SUCH PLACES WILL RETAIN THE RESPECT THAT SUCH HALLOWED PLACES DESERVE;

(4) THE VETERAN'S COMMEMORATIVE PROPERTY THAT IS TO BE SOLD, TRADED OR TRANSFERRED SHALL BE REPLACED AT ITS ORIGINAL SITE BY A FITTING REPLACEMENT COMMEMORATIVE PROPERTY, MONUMENT OR MARKER THAT APPROPRIATELY IDENTIFIES AND COMMEMORATES SUCH VETERAN OR GROUP OF VETERANS;

(5) IF THE VETERAN'S COMMEMORATIVE PROPERTY TO BE SOLD, TRADED OR TRANSFERRED IS REASONABLY KNOWN TO THE PETITIONER TO HAVE BEEN DONATED TO THE PETITIONER BY ANY VETERANS' ORGANIZATION, INCLUDING BUT NOT LIMITED TO THE GRAND ARMY OF THE REPUBLIC, THE SONS OF UNION VETERANS OF THE CIVIL WAR, THE SONS OF CONFEDERATE VETERANS, THE VETERANS OF FOREIGN WARS, THE DISABLED AMERICAN VETERANS, THE UNITED SPANISH WAR VETERANS, THE JEWISH WAR VETERANS OF THE UNITED STATES, INC., THE CATHOLIC WAR

VETERANS, INC., THE AMERICAN LEGION, AMVETS, THE AMERICAN VETERANS OF WORLD WAR II, THE ITALIAN AMERICAN WAR VETERANS OF THE UNITED STATES INCORPORATED, THE MASONIC WAR VETERANS OF THE STATE OF NEW YORK, INCORPORATED, THE SOCIETY OF THE CINCINNATI, OR ANY OTHER CORPORATION OR ASSOCIATION OF VETERANS, THAT SUCH SALE, TRADE OR TRANSFER SHALL HAVE BEEN CONSENTED TO BY SUCH VETERANS' ORGANIZATION; AND

(6) IF THE PETITIONER IS NOT THE OWNER OF THE VETERAN'S COMMEMORATIVE PROPERTY THAT IS TO BE SOLD, TRADED OR TRANSFERRED, THAT THE PETITIONER IS AUTHORIZED BY THE OWNER OF SUCH VETERAN'S COMMEMORATIVE PROPERTY OR BY OPERATION OF LAW, OTHER THAN THIS SECTION, TO SELL, TRADE OR TRANSFER SUCH VETERAN'S COMMEMORATIVE PROPERTY AND TO RETAIN AND USE THE PROCEEDS OF SUCH SALE, TRADE OR TRANSFER.

(B) A PETITION UNDER PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE DELIVERED TO THE DIVISION OF CEMETERIES WITHIN THE DEPARTMENT OF STATE. UPON THE DELIVERY OF ANY SUCH PETITION TO THE DIVISION OF CEMETERIES, EITHER THE BOARD OR THE DIVISION OF CEMETERIES SHALL FIX A DATE, TIME AND PLACE OF THE HEARING. THE DATE FIXED FOR SUCH HEARING SHALL BE WITHIN A REASONABLE TIME, NOT TO EXCEED ONE HUNDRED DAYS, AFTER THE PETITION IS RECEIVED BY THE DIVISION OF CEMETERIES.

(C) THE PETITIONER SHALL SERVE NOTICE OF THE HEARING AND A COPY OF THE PETITION UPON THE PERSONS AND ENTITIES MENTIONED IN SUBPARAGRAPHS TWO, THREE, FOUR, FIVE, SIX AND SEVEN OF PARAGRAPH (D) OF THIS SUBDIVISION WHO COULD REASONABLY BE ASCERTAINED AND CONTACTED BY THE PETITIONER AND UPON SUCH OTHER PERSON OR PERSONS AS MAY BE DIRECTED BY THE BOARD OR THE DIVISION OF CEMETERIES. SERVICE OF THE NOTICE OF HEARING AND PETITION SHALL BE MADE IN SUCH MANNER AND BY SUCH DATE AS SHALL BE SPECIFIED BY THE BOARD OR THE DIVISION OF CEMETERIES.

(D) AT SUCH HEARING, THE FOLLOWING PERSONS AND ENTITIES, OR THEIR REPRESENTATIVES, MAY BE HEARD:

(1) THE PETITIONER,

(2) ANY PERSON OR ENTITY, OTHER THAN THE PETITIONER, WHO IS THE OWNER OF THE VETERAN'S COMMEMORATIVE PROPERTY IN QUESTION,

(3) ANY VETERAN'S ORGANIZATION THAT DONATED THE VETERAN'S COMMEMORATIVE PROPERTY IN QUESTION TO THE PETITIONER,

(4) THE FAMILY OF EACH VETERAN AT WHOSE LOT, PLOT, GRAVE, BURIAL PLACE, NICHE, CRYPT OR OTHER PLACE OF INTERMENT THE VETERAN'S COMMEMORATIVE PROPERTY IN QUESTION IS OR WAS PLACED,

(5) THE DIVISION OF VETERANS' AFFAIRS,

(6) THE DIVISION OF MILITARY AND NAVAL AFFAIRS,

(7) THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, AND

(8) ANY OTHER MEMBER OF THE PUBLIC WHO WOULD LIKE TO OFFER WRITTEN OR ORAL TESTIMONY. TESTIMONY MAY BE HEARD IN PERSON OR BY COUNSEL OR SUBMITTED IN WRITING.

(E) THE BOARD SHALL RENDER ITS DECISION IN WRITING, WITHIN SIXTY DAYS OF THE HEARING, AND SHALL FORWARD A COPY THEREOF TO EACH PERSON WHO APPEARED AT THE HEARING. ANY ORDER OR DETERMINATION OF THE BOARD SHALL BE SUBJECT TO JUDICIAL REVIEW PURSUANT TO PARAGRAPH (D) OF SECTION FIFTEEN HUNDRED FOUR OF THE NOT-FOR-PROFIT CORPORATION LAW. ANY ORDER OR DETERMINATION OF THE BOARD GRANTING THE PETITION IN WHOLE OR IN PART MAY, AT THE DISCRETION OF THE BOARD, SPECIFY THE MANNER IN WHICH THE PETITIONER IS TO USE OR APPLY THE PROCEEDS OF THE SALE, TRADE OR TRANSFER. IN PARTICULAR, BUT NOT BY WAY OF LIMITATION, IF THE PETITIONER IS AN UNINCORPORATED ASSOCIATION OR CORPORATION THAT IS SUBJECT TO THE PROVISIONS OF ARTICLE FIFTEEN OF THE NOT-FOR-PROFIT CORPORATION LAW, ANY ORDER OR DETERMINATION OF THE BOARD GRANTING THE PETITION IN WHOLE OR IN PART MAY, AT THE DISCRETION OF THE BOARD, SPECIFY THAT PETITIONER DEPOS-

IT THE PROCEEDS OF THE SALE, TRADE OR TRANSFER IN THE PERMANENT MAINTENANCE FUND MAINTAINED BY PETITIONER PURSUANT TO PARAGRAPH (A) OF SECTION FIFTEEN HUNDRED SEVEN OF THE NOT-FOR-PROFIT CORPORATION LAW.

(F) THE BOARD SHALL ADOPT SUCH REGULATIONS REGARDING PETITIONS, HEARINGS AND PROCEDURES UNDER THIS SUBDIVISION AS MAY BE APPROPRIATE.

S 2. Section 450-a of the general business law, as added by chapter 478 of the laws of 1979, is amended to read as follows:

S 450-a. Unauthorized sale of cemetery markers and flag holders. Except for a veterans' organization, those businesses which normally carry on such trade, or are authorized by veterans' organizations to do so, it shall be unlawful for any person, firm, association or corporation to engage in the buying or selling of metal cemetery markers and flag holders bearing the insignia of any veterans' organization placed upon the graves of veterans. A violation of the provisions of this section shall constitute a violation and shall be punishable by a fine of not more than five hundred dollars or not more than fifteen days imprisonment or both. NOTHING IN THIS SECTION SHALL PROHIBIT THE SALE, TRADE OR TRANSFER OF ANY METAL CEMETERY MARKER OR FLAG HOLDER BEARING THE INSIGNIA OF ANY VETERANS' ORGANIZATION IF SUCH METAL CEMETERY MARKER OR FLAG HOLDER IS VETERAN'S COMMEMORATIVE PROPERTY, AS DEFINED IN SECTION FOUR HUNDRED FIFTY-B OF THIS ARTICLE, AND SUCH SALE, TRADE OR TRANSFER SHALL HAVE BEEN AUTHORIZED BY THE CEMETERY BOARD IN ACCORDANCE WITH THE PROVISIONS OF SUCH SECTION.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that the cemetery board in the division of cemeteries in the department of state may promulgate rules and regulations prior to such effective date to implement the provisions of this act.