

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:

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

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

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

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

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

20 (1)(A) SERVED IN THE ACTIVE MILITARY OR NAVAL SERVICE OF THE UNITED
21 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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1 (B) SERVED IN ACTIVE DUTY IN A FORCE OF ANY ORGANIZED STATE MILITIA
2 (NOT INCLUDING THE INACTIVE NATIONAL GUARD AND NOT INCLUDING THE NEW
3 YORK GUARD WHEN IN AN INACTIVE STATUS) IN A FULL TIME STATUS; AND

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

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

9 (1) IS OVER SEVENTY-FIVE YEARS OLD;

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

13 (3) HAS BEEN PLACED IN ANY CEMETERY.

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

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

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

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

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

46 (4) THE VETERAN'S COMMEMORATIVE PROPERTY THAT IS TO BE SOLD, TRADED OR
47 TRANSFERRED SHALL BE REPLACED AT ITS ORIGINAL SITE BY A FITTING REPLACE-
48 MENT COMMEMORATIVE PROPERTY, MONUMENT OR MARKER THAT APPROPRIATELY IDEN-
49 TIFIES AND COMMEMORATES SUCH VETERAN OR GROUP OF VETERANS;

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

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

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

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

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

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

30 (1) THE PETITIONER,

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

33 (3) ANY VETERAN'S ORGANIZATION THAT DONATED THE VETERAN'S COMMEMORA-
34 TIVE PROPERTY IN QUESTION TO THE PETITIONER,

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

38 (5) THE DIVISION OF VETERANS' AFFAIRS,

39 (6) THE DIVISION OF MILITARY AND NAVAL AFFAIRS,

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

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

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

1 IT THE PROCEEDS OF THE SALE, TRADE OR TRANSFER IN THE PERMANENT MAINTENANCE FUND MAINTAINED BY PETITIONER PURSUANT TO PARAGRAPH (A) OF SECTION 2 FIFTEEN HUNDRED SEVEN OF THE NOT-FOR-PROFIT CORPORATION LAW.

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

4 S 2. Section 450-a of the general business law, as added by chapter 5 478 of the laws of 1979, is amended to read as follows:

6 S 450-a. Unauthorized sale of cemetery markers and flag holders. 7 Except for a veterans' organization, those businesses which normally 8 carry on such trade, or are authorized by veterans' organizations to do 9 so, it shall be unlawful for any person, firm, association or corpo- 10 ration to engage in the buying or selling of metal cemetery markers and 11 flag holders bearing the insignia of any veterans' organization placed 12 upon the graves of veterans. A violation of the provisions of this 13 section shall constitute a violation and shall be punishable by a fine 14 of not more than five hundred dollars or not more than fifteen days 15 imprisonment or both. NOTHING IN THIS SECTION SHALL PROHIBIT THE SALE, 16 TRADE OR TRANSFER OF ANY METAL CEMETERY MARKER OR FLAG HOLDER BEARING 17 THE INSIGNIA OF ANY VETERANS' ORGANIZATION IF SUCH METAL CEMETERY MARKER 18 OR FLAG HOLDER IS VETERAN'S COMMEMORATIVE PROPERTY, AS DEFINED IN 19 SECTION FOUR HUNDRED FIFTY-B OF THIS ARTICLE, AND SUCH SALE, TRADE OR 20 TRANSFER SHALL HAVE BEEN AUTHORIZED BY THE CEMETERY BOARD IN ACCORDANCE 21 WITH THE PROVISIONS OF SUCH SECTION.

22 S 3. This act shall take effect on the one hundred eightieth day after 23 it shall have become a law; provided, however, that the cemetery board 24 in the division of cemeteries in the department of state may promulgate 25 rules and regulations prior to such effective date to implement the 26 provisions of this act. 27 28