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

7728

I N S E N A T E

May 5, 2010

Introduced by Sens. SAMPSON, SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, the vehicle and traffic law, the public health law and the tax law, in relation to anatomical gifts, rights and responsibilities

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

Section 1. The section heading and subdivision 1 of section 95-d of the state finance law, as added by chapter 415 of the laws of 2003, are amended to read as follows:

"[Life pass it on] NEW YORK STATE DONATE LIFE trust fund". 1. There is hereby established in the joint custody of the commissioner of taxation and finance and the comptroller, a special fund to be known as the "[life pass it on] NEW YORK STATE DONATE LIFE trust fund".

S 2. Subdivision 1 of section 502 of the vehicle and traffic law, as amended by chapter 639 of the laws of 2006, is amended to read as follows:

1. Application for license. Application for a driver's license shall be made to the commissioner. The fee prescribed by law may be submitted with such application. The applicant shall furnish such proof of identity, age, and fitness as may be required by the commissioner. The commissioner may also provide that the application procedure shall include the taking of a photo image or images of the applicant in accordance with rules and regulations prescribed by the commissioner. In addition, the commissioner also shall require that the applicant provide his or her social security number and provide space on the application so that the applicant may register CONSENT TO MAKE AN ANATOMICAL GIFT AND BE ENROLLED in the New York state [organ and tissue donor] DONATE LIFE registry [under] PURSUANT TO section forty-three hundred ten of the public health law, AS INDICATED BY THE APPLICANT'S SIGNATURE WITHIN A DESIGNATED AREA THAT IS SEPARATE FROM THE FINAL SIGNATURE CERTIFYING THE VALIDITY OF THE INFORMATION PROVIDED IN THE OVERALL APPLICATION FOR A DRIVER'S LICENSE. In addition, an applicant for a commercial driver's license who will operate a commercial motor vehicle in interstate

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

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commerce shall certify that such applicant meets the requirements to operate a commercial motor vehicle, as set forth in public law 99-570, title XII, and title 49 of the code of federal regulations, and all regulations promulgated by the United States secretary of transportation under the hazardous materials transportation act. Upon a determination that the holder of a commercial driver's license has made any false statement, with respect to the application for such license, the commissioner shall revoke such license.

S 3. Paragraph (a) of subdivision 1 of section 504 of the vehicle and traffic law, as separately amended by chapters 568 and 639 of the laws of 2006, is amended to read as follows:

(a) Every license or renewal thereof shall contain [a distinguishing mark and] adequate space upon which an anatomical gift, pursuant to section forty-three hundred ten of the public health law, by the licensee shall be recorded and shall contain such other information and shall be issued in such form as the commissioner shall determine; provided, however, every license or renewal thereof issued to a person under the age of twenty-one years shall have prominently imprinted upon it the statement "UNDER 21 YEARS OF AGE" in notably distinctive print or format; provided further, however, every license or renewal thereof issued to a person [making an anatomical gift] WHO HAS CONSENTED TO MAKE AN ANATOMICAL GIFT AND BE ENROLLED IN THE NEW YORK STATE DONATE LIFE REGISTRY PURSUANT TO SECTION FORTY-THREE HUNDRED TEN OF THE PUBLIC HEALTH LAW THROUGH THE DEPARTMENT shall have prominently printed upon the front of such license or renewal thereof the statement "ORGAN DONOR" in notably distinctive print or format. The commissioner shall not require fees for the issuance of such licenses or renewals thereof to persons under twenty-one years of age or to persons making an anatomical gift which are different from the fees required for the issuance of licenses or renewals thereof to persons twenty-one years of age or over or to persons not making an anatomical gift.

S 4. Subdivisions 1 and 5 of section 4301 of the public health law, as amended by chapter 348 of the laws of 2009, are amended to read as follows:

1. Any individual of sound mind and eighteen years of age or more may give all or any part of his or her body for any purpose specified in section forty-three hundred two of this article, the gift to take effect upon death. In any case where the donor has properly executed an organ donor card, driver's license authorization to make an anatomical gift, pursuant to paragraph (a) of subdivision one of section five hundred four of the vehicle and traffic law, [registered] CONSENTED TO MAKE AN ANATOMICAL GIFT AND BE ENROLLED in the New York state [organ and tissue donor] DONATE LIFE registry [under] PURSUANT TO section forty-three hundred ten of this article, or has otherwise given written authorization for organ or tissue donation, authorization for donation shall not be rescinded by an objection by a member of any of the classes specified in paragraphs (a) through (h) of subdivision two of this section, except upon a showing that the donor revoked the authorization.

5. The donee shall not accept the gift under the following circumstances:

(a) the donee has actual notice of contrary indication by the decedent;

(b) where the donor has not properly executed an organ donor card, driver's license authorization to make an anatomical gift, pursuant to paragraph (a) of subdivision one of section five hundred four of the vehicle and traffic law, [registered] CONSENTED TO MAKE AN ANATOMICAL

GIFT AND BE ENROLLED in the New York state [organ and tissue donor] DONATE LIFE registry [under] PURSUANT TO section forty-three hundred ten of this article, or otherwise given written authorization for organ or tissue donation, or has revoked any such authorization, and the gift is opposed by a person or persons in the highest priority available of the classes specified in paragraph (a), (b), (c), (d), (e), (f), (g) or (h) of subdivision two of this section; or

(c) the donee has reason to believe that an anatomical gift is contrary to the decedent's religious or moral beliefs.

S 5. Section 4310 of the public health law, as amended by chapter 639 of the laws of 2006, the section heading and subdivision 1 as separately amended by chapter 640 of the laws of 2006 and subdivision 2 as amended by chapter 362 of the laws of 2008, is amended to read as follows:

S 4310. New York state donate life registry for organ and tissue donations. 1. The department shall establish an organ and tissue donor registry, which shall be called and be referred to as the "NEW YORK STATE donate life registry", which shall contain a listing of all donors who have [declared their consent] CONSENTED to make an anatomical gift ON FORMS PROVIDED BY, AND FILED WITH, THE DEPARTMENT OF MOTOR VEHICLES OR THE DEPARTMENT.

2. Such registration of consent to make an anatomical gift can be made through (a) [indication] A CONSENT made on the application or renewal form of a DRIVER'S license, OR (b) [indication] A CONSENT made on a non-driver identification card application or renewal form, OR (c) enrolling in the registry website maintained by the department, OR (d) indication made on a voter registration form pursuant to subdivision five of section 5-210 of the election law, or (e) through any other method identified by the commissioner. The registration shall take effect upon the department sending written notice of the registration to the person enrolling in the registry.

3. (a) Information contained in the registry shall be accessible to (i) federally regulated organ procurement agencies, (ii) eye and tissue banks licensed by the department pursuant to article forty-three-B of this chapter, (iii) any other entity formally approved by the commissioner.

(b) The information contained in the registry shall not be released to any person except as expressly authorized by this section solely for the purpose of identifying potential organ and tissue donors at or near the time of death.

(C) FEDERALLY REGULATED ORGAN PROCUREMENT ORGANIZATIONS, AND NEW YORK STATE LICENSED TISSUE BANKS, HOSPITALS AND HEALTH CARE PROFESSIONALS, AND THEIR AGENTS AND EMPLOYEES, WHO PROCURE ORGANS AND TISSUES IN REASONABLE AND GOOD FAITH RELIANCE ON THE INFORMATION PROVIDED IN THE NEW YORK STATE DONATE LIFE REGISTRY SHALL NOT BE LIABLE FOR DAMAGES IN ANY CIVIL ACTION OR SUBJECT TO PROSECUTION IN ANY CRIMINAL PROCEEDING FOR HIS OR HER ACTS.

(D) THE STATE OF NEW YORK AND ITS AGENTS AND EMPLOYEES SHALL NOT BE LIABLE FOR ANY ACT OR OMISSION RELATED TO THE ENTRY OF INFORMATION INTO THE NEW YORK STATE DONATE LIFE REGISTRY WHERE SUCH AGENT OR EMPLOYEE ACTED REASONABLY AND IN GOOD FAITH IN THE PERFORMANCE OF HIS OR HER DUTIES.

(E) A PERSON THAT ACTS IN ACCORDANCE WITH THIS ARTICLE OR WITH THE APPLICABLE ANATOMICAL GIFT LAW OF ANOTHER STATE, OR ATTEMPTS IN GOOD FAITH TO DO SO, IS NOT LIABLE FROM THE ACT IN A CIVIL ACTION, CRIMINAL PROSECUTION, OR ADMINISTRATIVE PROCEEDING. FOR THE PURPOSE OF ANY PROCEEDING, CIVIL, CRIMINAL, OR ADMINISTRATIVE, THE GOOD FAITH OF ANY

SUCH PERSON SHALL BE PRESUMED, PROVIDED SUCH PERSON, OFFICIAL OR INSTITUTION WAS ACTING IN DISCHARGE OF THEIR DUTIES AND WITHIN THE SCOPE OF THEIR EMPLOYMENT.

4. [If the department had an established registry prior to the effective date of this section, it shall be deemed to meet the requirements of this section.

5.] The registry shall provide persons enrolled the opportunity to specify which organs and tissues they want to donate and if the donation can be used FOR CONSENT OF THE DONATION OF ORGANS, TISSUES, EYES, OR ALL BODY PARTS for transplantation, THERAPY AND research, [or both] OR ANY COMBINATION THEREOF. IF A PERSON DOES NOT RESTRICT HIS OR HER DONATION, THE CONSENT SHALL BE DEEMED TO BE A CONSENT FOR ANY AND ALL ORGANS AND TISSUES FOR TRANSPLANTATION, THERAPY AND RESEARCH PURPOSES.

[6] 5. A person registered in the [organ and tissue] NEW YORK STATE DONATE LIFE registry before the effective date of this subdivision shall be deemed to have expressed intent to donate, until and unless he or she files an amendment to his or her registration or a new registration expressing consent to donate.

[7. The] 6. TO THE EXTENT PRACTICABLE, THE commissioner shall contact each person registered before the effective date of this subdivision in the [organ and tissue] NEW YORK STATE DONATE LIFE registry in writing to inform him or her that at the time he or she registered, the registry was that of intent and that the registry is now one of consent, to explain in clear and understandable terms the difference between intent and consent, and to provide opportunity for the person to change his or her registration to provide consent by amending his or her current registration or executing a new registration.

[8] 7. The commissioner is authorized to promulgate rules and regulations necessary to implement the provisions of this section.

S 6. Paragraph 38 of subsection (c) of section 612 of the tax law, as added by chapter 565 of the laws of 2006, is amended to read as follows:

(38) An amount of up to ten thousand dollars if a taxpayer, while living, donates one or more of his or her human organs to another human being for human organ transplantation. For purposes of this paragraph, "human organ" means all or part of a liver, pancreas, kidney, intestine, lung, or bone marrow. A subtract modification allowed under this paragraph shall be claimed in the taxable year in which the human organ transplantation occurs, AND MAY ALSO BE CLAIMED IN THE TAXABLE YEAR IMMEDIATELY PRECEDING OR IMMEDIATELY FOLLOWING THE TRANSPLANT PROVIDED THAT THE COMBINED AMOUNT CLAIMED BY THE DONOR DOES NOT EXCEED A TOTAL OF TEN THOUSAND DOLLARS.

(A) A taxpayer shall claim the subtract modification allowed under this paragraph only once and such subtract modification shall be claimed for only the following unreimbursed expenses which are incurred by the taxpayer and related to the taxpayer's organ donation:

(i) travel expenses;

(ii) lodging expenses; and

(iii) lost wages.

(B) The subtract modification allowed under this paragraph shall not be claimed by a part-year resident or a non-resident of this state.

S 7. This act shall take effect immediately and shall apply to anatomical gifts donated and consented to on or after July 1, 2011.