

10247

I N A S S E M B L Y

March 12, 2010

Introduced by M. of A. RAIA, WEISENBERG, MONTESANO, MURRAY, MENG, CASTELLI -- Multi-Sponsored by -- M. of A. BURLING, CALHOUN, CHRISTENSEN, CONTE, CROUCH, FIELDS, GIGLIO, LANCMAN, P. LOPEZ, McDONOUGH, SALADINO, THIELE, TOWNS -- read once and referred to the Committee on Veterans' Affairs

AN ACT to amend the public health law, in relation to establishing the "disposition of veterans' cremated remains act"

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

1 Section 1. This act shall be known and may be cited as the "disposi-
2 tion of veterans' cremated remains act."

3 S 2. The public health law is amended by adding three new sections,
4 4203, 4204, and 4205, to read as follows:

5 S 4203. DEFINITIONS. AS USED IN THIS TITLE, THE FOLLOWING TERMS SHALL
6 HAVE THE FOLLOWING MEANINGS:

7 1. "AUTHORIZING AGENT" MEANS A PERSON WHO IS LEGALLY ENTITLED TO
8 AUTHORIZE THE CREMATION AND FINAL DISPOSITION OF THE CREMATED REMAINS OF
9 THE DECEASED PERSON IN ACCORDANCE WITH THIS ACT.

10 2. "CREMATORY AUTHORITY" MEANS A LEGAL ENTITY THAT IS LICENSED BY THE
11 STATE OF NEW YORK TO OPERATE A CREMATORY AND TO PERFORM CREMATIONS.

12 3. "FUNERAL DIRECTOR" MEANS A PERSON, KNOWN BY THE TITLE OF "FUNERAL
13 DIRECTOR" OR OTHER SIMILAR WORDS OR TITLES, LICENSED UNDER THE APPLICA-
14 BLE LAWS OF THE STATE AND WHO PRACTICES FUNERAL DIRECTING.

15 4. "VETERAN" MEANS A NEW YORK STATE RESIDENT WHO HAS SERVED AS A
16 MEMBER OF THE UNITED STATES ARMED SERVICES ON ACTIVE DUTY, A MEMBER OF
17 THE NEW YORK STATE NATIONAL GUARD, OR A MEMBER OF THE UNITED STATES
18 RESERVE FORCES, AND WHO HAS RECEIVED AN HONORABLE DISCHARGE.

19 5. "VETERANS ORGANIZATION" MEANS AN ASSOCIATION OR OTHER ENTITY ORGAN-
20 IZED FOR THE BENEFIT OF VETERANS OR WHOSE PRIMARY PURPOSE IS TO LOCATE,
21 IDENTIFY, AND INTER THE UNCLAIMED CREMATED REMAINS OF AMERICAN VETERANS
22 LIKE THE MISSING IN AMERICA PROJECT OR ONE THAT HAS BEEN RECOGNIZED OR
23 FEDERALLY CHARTERED BY THE UNITED STATES CONGRESS.

24 S 4204. FUNERAL DIRECTOR OR CREMATORY AUTHORITY RESPONSIBILITIES. 1.
25 A FUNERAL DIRECTOR OR CREMATORY AUTHORITY MUST MAKE A REASONABLE EFFORT

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

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1 TO DETERMINE WHETHER A DECEASED PERSON, WHOSE HUMAN REMAINS HAVE BEEN
2 SUBMITTED TO A FUNERAL ESTABLISHMENT FOR FINAL DISPOSITION BY CREMATION,
3 IS ONE OF THE FOLLOWING:

- 4 (A) A VETERAN;
- 5 (B) THE SPOUSE OF A VETERAN; OR
- 6 (C) THE DEPENDANT CHILD OF A VETERAN.

7 2. THIS DETERMINATION MUST BE MADE AT, OR SHORTLY AFTER, THE TIME AN
8 AT-NEED CREMATION AUTHORIZATION IS SIGNED BY THE AUTHORIZING AGENT. THE
9 FUNERAL DIRECTOR OR CREMATORY AUTHORITY MUST START HIS OR HER INQUIRY
10 WITH THE AUTHORIZING AGENT AND NOTIFY THE AUTHORIZING AGENT OF THE
11 FUNERAL DIRECTOR'S OR CREMATORY AUTHORITY'S RESPONSIBILITIES UNDER THIS
12 ACT. NOTHING IN THIS ACT SHALL DELAY THE CREMATION OF A DECREASED
13 PERSON'S REMAINS AS AUTHORIZED BY AN AT-NEED CREMATION AUTHORIZATION.

14 3. IF THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY CANNOT DETERMINE,
15 WITH CERTAINTY, THE DECEASED PERSON'S STATUS AND NO AUTHORIZING AGENT
16 EXISTS, THEN THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY MAY ALLOW THE
17 NATIONAL CEMETERY ADMINISTRATION'S NATIONAL CEMETERY SCHEDULING OFFICE
18 OR ANY VETERANS' ORGANIZATION WHOSE PRIMARY PURPOSE IS TO LOCATE, IDEN-
19 TIFY, AND INTER THE UNCLAIMED CREMATED REMAINS OF AMERICAN VETERANS, OR
20 ANY FEDERALLY CHARTERED VETERANS' SERVICE ORGANIZATION TO HAVE ACCESS TO
21 THE CREMATED REMAINS, AND ALL INFORMATION REGARDING THE DECEASED PERSON
22 IN THE POSSESSION OF THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY, SO
23 THAT IT MAY ATTEMPT TO DETERMINE WHETHER THE DECEASED PERSON QUALIFIES
24 UNDER SUBDIVISION ONE OF THIS SECTION.

25 4. IF THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY DETERMINES THAT THE
26 DECEASED PERSON IS EITHER A VETERAN, THE SPOUSE OF A VETERAN, OR THE
27 DEPENDENT CHILD OF A VETERAN, THEN THE FUNERAL DIRECTOR OR CREMATORY
28 AUTHORITY MUST IMMEDIATELY NOTIFY THE AUTHORIZING AGENT OF THIS FINDING
29 AND ADVISE THE AUTHORIZING AGENT THAT THE DECEASED PERSON MAY BE ELIGI-
30 BLE TO BE INTERRED AT AN APPROPRIATE VETERANS' CEMETERY.

31 5. IF THE CREMATED REMAINS OF A VETERAN, THE SPOUSE OF A VETERAN, OR
32 THE DEPENDENT CHILD OF A VETERAN ARE NOT CLAIMED BY AN AUTHORIZING
33 AGENT, THEN THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY MUST HOLD ANY
34 CREMATED REMAINS FOR AT LEAST ONE HUNDRED EIGHTY DAYS. AFTER ONE HUNDRED
35 EIGHTY DAYS HAVE EXPIRED, THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY
36 MUST THEN SEND WRITTEN NOTICE TO AN AUTHORIZING AGENT REQUESTING DISPO-
37 SITION INSTRUCTIONS. IF THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY DOES
38 NOT RECEIVE A WRITTEN RESPONSE FROM AN AUTHORIZING AGENT WITHIN THIRTY
39 DAYS AFTER THIS WRITTEN NOTICE IS SENT, THEN THE FUNERAL DIRECTOR OR
40 CREMATORY AUTHORITY MUST CONTACT ANY VETERANS' ORGANIZATION WHOSE PRIMA-
41 RY PURPOSE IS TO LOCATE, IDENTIFY, AND INTER OR INURN THE UNCLAIMED
42 CREMATED REMAINS OF AMERICAN VETERANS, OR ANY FEDERALLY-CHARTERED VETER-
43 ANS SERVICE ORGANIZATION, SO THAT ARRANGEMENTS FOR THE DISPOSITION OF
44 THE CREMATED REMAINS OF THE VETERAN, SPOUSE OF A VETERAN, OR DEPENDENT
45 CHILD OF A VETERAN MAY BE MADE IN A STATE OR NATIONAL VETERANS' CEME-
46 TERY.

47 6. THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY MAY RELEASE ANY RELE-
48 VANT INFORMATION TO THE UNITED STATES DEPARTMENT OF VETERANS' AFFAIRS,
49 ANY VETERANS ORGANIZATION WHOSE PRIMARY PURPOSE IS TO LOCATE, IDENTIFY,
50 AND INTER OR INURN THE UNCLAIMED CREMATED REMAINS OF AMERICAN VETERANS,
51 OR ANY FEDERALLY CHARTERED VETERANS SERVICE ORGANIZATION, TO EFFECT THE
52 TIMELY AND ACCURATE IDENTIFICATION AND INTERMENT OR INURNMENT OF THE
53 CREMATED REMAINS OF A DECEDENT AS EITHER A VETERAN, THE SPOUSE OF A
54 VETERAN, OR THE DEPENDENT CHILD OF A VETERAN.

1 S 4205. IMMUNITY. A FUNERAL DIRECTOR OR CREMATORY AUTHORITY COMPLYING
2 WITH THIS ACT IS IMMUNE FROM ANY CRIMINAL OR CIVIL LIABILITY REGARDING
3 THE RELEASE OF INFORMATION RELATING TO:
4 1. THE DETERMINATION OF THE DECEASED PERSON'S STATUS AS A VETERAN, THE
5 SPOUSE OF A VETERAN, OR THE DEPENDENT CHILD OF A VETERAN,
6 2. THE AVAILABILITY OF INTERMENT OR INURNMENT AS A VETERAN, OR
7 3. THE RELEASE OF THE CREMATED REMAINS TO A VETERANS' CEMETERY. A
8 FUNERAL DIRECTOR OR CREMATORY AUTHORITY SHALL BE IMMUNE FROM CIVIL
9 LIABILITY FOR ANY ACT OR OMISSION UNDER THIS ACT, EXCEPT FOR WILLFUL OR
10 WANTON MISCONDUCT. A VETERANS' ORGANIZATION OR FEDERALLY CHARTERED
11 VETERANS SERVICE ORGANIZATION SHALL BE IMMUNE FROM CIVIL LIABILITY FOR
12 ANY ACT OR OMISSION RELATED TO THE DISPOSITION OF CREMATED REMAINS UNDER
13 THIS ACT, EXCEPT FOR WILLFUL OR WANTON MISCONDUCT.
14 S 3. This act shall take effect immediately and shall apply to all
15 cremated remains left in a funeral director's or crematory authority's
16 possession.