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

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I N A S S E M B L Y

April 19, 2010

Introduced by M. of A. MAGNARELLI, GIANARIS, RAIA, SCHIMEL, PHEFFER, GORDON, RABBITT -- Multi-Sponsored by -- M. of A. AMEDORE, McENENY -- read once and referred to the Committee on Veterans' Affairs -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law and the public health law, in relation to the cremated remains of a veteran and their disposition

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

Section 1. The executive law is amended by adding a new section 368 to read as follows:

S 368. CREMATED REMAINS OF A VETERAN. THE CREMATED REMAINS OF A VETERAN MAY BE DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION FORTY-TWO HUNDRED THREE OF THE PUBLIC HEALTH LAW.

S 2. The public health law is amended by adding a new section 4203 to read as follows:

S 4203. CREMATED REMAINS OF A VETERAN; DISPOSITION. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

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

(I) SERVED IN THE ACTIVE MILITARY OR NAVAL SERVICE OF THE UNITED STATES; OR

(II) SERVED IN ACTIVE DUTY IN A FORCE OF ANY ORGANIZED STATE MILITIA IN A FULL-TIME STATUS; OR

(III) SERVED IN THE RESERVE ARMED FORCES OF THE UNITED STATES IN ACTIVE DUTY; OR

(IV) WAS A RECIPIENT OF THE ARMED FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL; AND

(V) WAS RELEASED FROM SUCH SERVICE OTHERWISE THAN BY DISHONORABLE DISCHARGE.

(B) "VETERANS' SERVICE ORGANIZATION" MEANS AN ASSOCIATION, CORPORATION OR OTHER ENTITY THAT QUALIFIES UNDER SECTION 501(C)(3) OR SECTION 501(C)(19) OF THE INTERNAL REVENUE CODE AS A TAX-EXEMPT ORGANIZATION

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

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THAT HAS BEEN ORGANIZED FOR THE BENEFIT OF VETERANS AND RECOGNIZED OR CHARTERED BY THE UNITED STATES CONGRESS, INCLUDING, BUT NOT LIMITED TO THE DISABLED AMERICAN VETERANS, THE VETERANS OF FOREIGN WARS, THE AMERICAN LEGION AND THE VIETNAM VETERANS OF AMERICA. THE TERM ALSO INCLUDES A MEMBER OR EMPLOYEE OF AN ELIGIBLE NON-PROFIT VETERANS' CORPORATION, ASSOCIATION OR ENTITY, SUCH AS THE MISSING IN AMERICA VETERAN RECOVERY PROGRAM, THAT SPECIFICALLY ASSISTS IN FACILITATING THE IDENTIFICATION AND INTERNMENT OF UNCLAIMED REMAINS OF AMERICAN VETERANS.

(C) "NATIONAL CEMETERY" MEANS ANY CEMETERY UNDER THE CONTROL OF THE UNITED STATES DEPARTMENT OF VETERANS' AFFAIRS NATIONAL CEMETERY ADMINISTRATION.

(D) "INTERMENT" SHALL HAVE THE MEANING SET FORTH IN PARAGRAPH (G) OF SECTION FIFTEEN HUNDRED TWO OF THE NOT-FOR-PROFIT CORPORATION LAW.

(E) "DISPOSITION" MEANS DISPOSAL OF CREMATED REMAINS BY PLACEMENT IN A TOMB, MAUSOLEUM, CRYPT, NICHE IN A COLUMBARIUM OR BURIAL IN A CEMETERY. PROVIDED, HOWEVER, FOR THE PURPOSE OF THIS SECTION THE TERM "DISPOSITION" SHALL NOT INCLUDE THE SCATTERING OF CREMATED REMAINS.

(F) "LOCAL VETERANS' SERVICE AGENCIES" SHALL HAVE THE MEANING SET FORTH IN SECTION THREE HUNDRED FIFTY-SEVEN OF THE EXECUTIVE LAW.

2. A FUNERAL DIRECTOR, UNDERTAKER OR FUNERAL FIRM WHICH HAS HELD IN ITS POSSESSION CREMATED REMAINS FOR MORE THAN ONE HUNDRED TWENTY DAYS FROM THE DATE OF CREMATION MAY, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, DETERMINE IF SUCH CREMATED REMAINS ARE THOSE OF A VETERAN, AND IF SO, MAY DISPOSE OF SUCH REMAINS AS PROVIDED IN THIS SECTION.

3. (A) NOTWITHSTANDING ANY LAW OR REGULATION TO THE CONTRARY, NOTHING IN THIS SECTION SHALL PREVENT A FUNERAL DIRECTOR, UNDERTAKER OR FUNERAL FIRM FROM SHARING INFORMATION WITH THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS (VA), A LOCAL VETERANS' SERVICE AGENCY, A VETERANS' SERVICE ORGANIZATION, A NATIONAL CEMETERY, OR COUNTY VETERANS CEMETERY FOR THE PURPOSE OF DETERMINING WHETHER THE CREMATED REMAINS ARE THOSE OF A VETERAN.

(B) A FUNERAL DIRECTOR, UNDERTAKER, OR FUNERAL FIRM SHALL BE DISCHARGED FROM ANY LEGAL OBLIGATIONS OR LIABILITY WITH REGARD TO RELEASING OR SHARING INFORMATION TO THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS, THE LOCAL VETERANS' SERVICE AGENCIES, VETERANS' SERVICE ORGANIZATIONS, A NATIONAL CEMETERY, OR COUNTY VETERANS CEMETERY PURSUANT TO THIS SECTION.

4. (A) SHOULD A FUNERAL DIRECTOR, UNDERTAKER OR FUNERAL FIRM ASCERTAIN THE CREMATED REMAINS IN ITS POSSESSION ARE THOSE OF A VETERAN, AND THEY HAVE NOT BEEN INSTRUCTED BY THE PERSON IN CONTROL OF THE DISPOSITION OF THE DECEDENT TO ARRANGE FOR THE FINAL DISPOSAL OR DELIVERY OF THE CREMATED REMAINS, THE FUNERAL DIRECTOR, UNDERTAKER OR FUNERAL FIRM MAY DISPOSE OF THE CREMATED REMAINS OR RELINQUISH POSSESSION OF THE CREMATED REMAINS TO A VETERANS' SERVICE ORGANIZATION.

(B) THE METHOD OF DISPOSITION SHALL BE MADE PURSUANT TO SECTION FORTY-TWO HUNDRED TWO OF THIS TITLE IN A NATIONAL CEMETERY, A COUNTY VETERANS CEMETERY, A SECTION OF A CEMETERY CORPORATION WHERE VETERANS ARE MEMORIALIZED BY A VETERAN'S MARKER IF ELIGIBLE, A VETERANS' SECTION OF A CEMETERY CORPORATION OR A VETERANS' CEMETERY IF THE DECEASED VETERAN IS ELIGIBLE FOR INTERMENT IN SUCH A MANNER.

5. THE FUNERAL DIRECTOR, UNDERTAKER, FUNERAL FIRM OR VETERANS' SERVICE ORGANIZATION NOTWITHSTANDING ANY LAW TO THE CONTRARY, UPON:

(A) DISPOSING OF CREMATED REMAINS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, SHALL BE HELD HARMLESS FOR ANY COSTS OR DAMAGES, EXCEPT IF THERE IS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; AND

(B) SHALL BE DISCHARGED FROM ANY LEGAL OBLIGATION OR LIABILITY CONCERNING THE CREMATED REMAINS.

6. THE ESTATE OF THE DECEDENT SHALL BE RESPONSIBLE FOR REIMBURSING A FUNERAL DIRECTOR, UNDERTAKER, FUNERAL FIRM OR VETERANS' SERVICE ORGANIZATION FOR ALL REASONABLE EXPENSES INCURRED IN RELATION TO THE DISPOSITION OF SUCH CREMATED REMAINS.

7. A FUNERAL DIRECTOR, UNDERTAKER OR FUNERAL FIRM SHALL ESTABLISH AND MAINTAIN A RECORD IDENTIFYING THE VETERANS' SERVICE ORGANIZATION RECEIVING THE CREMATED REMAINS AND THE SITE DESIGNATED FOR FINAL DISPOSITION OF THE CREMATED REMAINS.

8. NOTHING IN THIS SECTION SHALL REQUIRE A FUNERAL DIRECTOR, UNDERTAKER OR FUNERAL FIRM TO DETERMINE OR SEEK OTHERS TO DETERMINE THAT AN INDIVIDUAL'S CREMATED REMAINS ARE THOSE OF A VETERAN IF THE FUNERAL DIRECTOR, UNDERTAKER OR FUNERAL FIRM WAS INFORMED BY THE PERSON IN CONTROL OF DISPOSITION THAT SUCH INDIVIDUAL WAS NOT A VETERAN, OR TO RELINQUISH POSSESSION OF SUCH CREMATED REMAINS TO A VETERANS' SERVICE ORGANIZATION IF THE FUNERAL DIRECTOR, UNDERTAKER OR FUNERAL FIRM WAS INSTRUCTED BY SUCH PERSON IN CONTROL, OR HAD A REASONABLE BELIEF, THAT THE DECEDENT DID NOT DESIRE ANY FUNERAL OR BURIAL-RELATED SERVICES OR CEREMONIES RECOGNIZING SUCH DECEDENT'S SERVICE AS A VETERAN.

S 3. This act shall take effect November 11, 2010.