

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

March 17, 2009

IN SENATE -- Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

IN ASSEMBLY -- Introduced by M. of A. PHEFFER -- read once and referred to the Committee on Judiciary

AN ACT to amend the general business law and the social services law, in relation to irrevocable trust accounts for funeral and burial expenses

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

1 Section 1. Paragraph (d) of subdivision 1 of section 453 of the gener-
2 al business law, as amended by chapter 557 of the laws of 2001, is
3 amended to read as follows:
4 (d) Moneys paid for such an agreement for an applicant or recipient of
5 supplemental security income benefits under section two hundred nine of
6 the social services law or of medical assistance under section three
7 hundred sixty-six of such law, OR, TO THE EXTENT TREATED AS AN EXEMPT
8 ASSET UNDER FEDERAL GUIDELINES, FOR A FAMILY MEMBER OF ANY SUCH AGREE-
9 MENT ESTABLISHED OR FUNDED BY SUCH AN APPLICANT OR RECIPIENT, shall be
10 placed into a trust which shall be irrevocable but under which such
11 [applicant/recipient] APPLICANT/RECIPIENT/PURCHASER reserves the right
12 to select any funeral firm, funeral director, undertaker, cemetery or
13 any other person, firm or corporation to whom such payment is made and
14 to change such selection any time to any type of funeral or any funeral
15 firm, funeral director, cemetery or any other person, firm or corpo-
16 ration to whom such payment is made, located in the state of New York or
17 any other state. Any such change must be carried out within ten business
18 days following receipt of a request by the purchaser to the funeral
19 firm, funeral director, cemetery or any other person, firm or corpo-
20 ration to whom such payment is made, with which such trust was estab-

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

1 lished. This requirement is subject to any limits set forth in federal
2 law or regulation pertaining to disregarded resources or income.

3 S 2. Paragraph (f) of subdivision 3 of section 453 of the general
4 business law, as added by chapter 660 of the laws of 1996, is amended to
5 read as follows:

6 (f) With respect to an agreement for an irrevocable trust fund pursu-
7 ant to section two hundred nine of the social services law OR PARAGRAPH
8 (D) OF SUBDIVISION ONE OF THIS SECTION, include the following statement
9 in the agreement in conspicuous print of at least twelve point type:

10 DISCLOSURE

11 NEW YORK LAW REQUIRES THIS AGREEMENT TO BE IRREVOCABLE FOR APPLICANTS
12 FOR RECEIPT OF SUPPLEMENTAL SECURITY BENEFITS UNDER SECTION TWO HUNDRED
13 NINE OF THE SOCIAL SERVICES LAW OR OF MEDICAL ASSISTANCE UNDER SECTION
14 THREE HUNDRED SIXTY-SIX OF THE SOCIAL SERVICES LAW OR FOR ACCOUNTS
15 ESTABLISHED FOR FAMILY MEMBERS UNDER PARAGRAPH (D) OF SUBDIVISION ONE OF
16 SECTION FOUR HUNDRED FIFTY-THREE OF THE GENERAL BUSINESS LAW, AND FOR
17 THE MONEYS PUT INTO A TRUST UNDER THIS AGREEMENT TO BE USED ONLY FOR
18 FUNERAL AND BURIAL EXPENSES. IF ANY MONEY IS LEFT OVER AFTER [YOUR] THE
19 FUNERAL AND BURIAL EXPENSES HAVE BEEN PAID, IT WILL GO TO THE COUNTY.
20 [YOU] THE APPLICANT MAY CHANGE [YOUR] THEIR CHOICE OF FUNERAL HOME AT
21 ANY TIME, WHILE EACH FAMILY MEMBER MAY DO SO ONLY UPON THE DEATH OF THE
22 APPLICANT.

23 S 3. Subdivision 6 of section 209 of the social services law, as
24 amended by chapter 660 of the laws of 1996, paragraphs (a) and (b) as
25 amended by chapter 317 of the laws of 2002, is amended to read as
26 follows:

27 6. (a) As applicable federal law, rules and regulations so provide, a
28 recipient of supplemental security income benefits or medical assistance
29 in the state of New York or any other state, OR THE FAMILY MEMBER OR
30 MEMBERS OF AN ACCOUNT ESTABLISHED PURSUANT TO PARAGRAPH (D) OF SUBDIVI-
31 SION ONE OF SECTION FOUR HUNDRED FIFTY-THREE OF THE GENERAL BUSINESS
32 LAW, may establish an irrevocable trust fund for the exclusive purpose
33 of their funeral and burial. Such trust fund and any accumulated inter-
34 est not withdrawn by the recipient shall remain the responsibility of
35 the funeral firm, funeral director, undertaker, cemetery or any other
36 person, firm or corporation to whom such payment is made to administer
37 for funeral and burial expenses of the recipient. Those persons who
38 establish such a trust fund shall be given the opportunity to select the
39 funeral firm, funeral director, undertaker, cemetery or any other
40 person, firm or corporation to whom such payment is made of their choice
41 to provide for their burial arrangements and to change such selection at
42 any time to any funeral firm, funeral director, undertaker, cemetery or
43 any other person, firm or corporation to whom such payment is made,
44 located either in the state of New York or any other state. Any such
45 change of funeral firm, funeral director, undertaker, cemetery, or any
46 other person, firm or corporation to whom such payment is made, must be
47 carried out within ten business days following receipt of a request by
48 the purchaser to the funeral firm, funeral director, undertaker, ceme-
49 tery, or any other person, firm or corporation to whom such payment is
50 made with which the current trust fund was established. Funds in such
51 trust fund shall be placed in an interest bearing account pursuant to
52 section four hundred fifty-three of the general business law. Accumu-
53 lated interest from such account shall not be reported as "countable
54 income" pursuant to section two hundred eight of this title.

55 (b) An applicant for or a recipient of medical assistance in the state
56 of New York or any other state, OR A FAMILY MEMBER BENEFICIARY OF AN

1 AGREEMENT UNDER PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED
2 FIFTY-THREE OF THE GENERAL BUSINESS LAW, who enters into an agreement
3 pursuant to SUCH section four hundred fifty-three [of the general busi-
4 ness law] shall establish a single irrevocable trust fund FOR EACH INDI-
5 VIDUAL PERSON pursuant to paragraph (a) of this subdivision.

6 (c) A funeral firm, funeral director, undertaker, cemetery, or any
7 other person, firm or corporation which makes an agreement for and
8 accepts payment for such an irrevocable trust fund, shall comply with
9 the provisions of section four hundred fifty-three of the general busi-
10 ness law, and shall include the following statement in any such agree-
11 ment in conspicuous print of at least twelve point type:

12 DISCLOSURE

13 NEW YORK LAW REQUIRES THIS AGREEMENT TO BE IRREVOCABLE FOR APPLICANTS
14 FOR RECEIPT OF SUPPLEMENTAL SECURITY BENEFITS UNDER SECTION TWO HUNDRED
15 NINE OF THE SOCIAL SERVICES LAW OR OF MEDICAL ASSISTANCE UNDER SECTION
16 THREE HUNDRED SIXTY-SIX OF THE SOCIAL SERVICES LAW, OR FOR ACCOUNTS
17 ESTABLISHED FOR FAMILY MEMBERS UNDER PARAGRAPH (D) OF SUBDIVISION ONE OF
18 SECTION FOUR HUNDRED FIFTY-THREE OF THE GENERAL BUSINESS LAW, AND FOR
19 THE MONEYS PUT INTO A TRUST UNDER THIS AGREEMENT TO BE USED ONLY FOR
20 FUNERAL AND BURIAL EXPENSES. IF ANY MONEY IS LEFT OVER AFTER [YOUR] THE
21 FUNERAL AND BURIAL EXPENSES HAVE BEEN PAID, IT WILL GO TO THE COUNTY.
22 [YOU] THE APPLICANT MAY CHANGE [YOUR] THEIR CHOICE OF FUNERAL HOME AT
23 ANY TIME, WHILE EACH FAMILY MEMBER MAY DO SO ONLY UPON THE DEATH OF THE
24 APPLICANT.

25 (d) Any promotional literature prepared after January first, [nineteen
26 hundred ninety-seven] TWO THOUSAND TEN by a funeral firm, funeral direc-
27 tor, undertaker, cemetery, or any other person, firm or corporation for
28 prearranged funeral and burial services must contain language disclosing
29 the irrevocable nature of burial trusts established for an applicant or
30 recipient of supplemental security income benefits or medical
31 assistance, OR PURSUANT TO PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION
32 FOUR HUNDRED FIFTY-THREE OF THE GENERAL BUSINESS LAW.

33 S 4. Paragraph (g) of subdivision 3 of section 453 of the general
34 business law, as added by chapter 660 of the laws of 1996, is amended to
35 read as follows:

36 (g) Any promotional literature prepared after January first, [nineteen
37 hundred ninety-seven] TWO THOUSAND TEN by a funeral firm, funeral direc-
38 tor, undertaker, cemetery, or any other person, firm or corporation for
39 prearranged funeral and burial services must contain language disclosing
40 the irrevocable nature of burial trusts established for an applicant or
41 recipient of supplemental security income benefits or medical assistance
42 OR PURSUANT TO PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION.

43 S 5. Subdivision 6 of section 141 of the social services law, as added
44 by chapter 660 of the laws of 1996, is amended to read as follows:

45 6. If an applicant for or a recipient of public assistance or care or
46 of medical assistance under section two hundred nine or three hundred
47 sixty-six of this chapter dies having established an irrevocable trust
48 for the payment of his or her funeral expenses under section four
49 hundred fifty-three of the general business law, OR, TO THE EXTENT
50 TREATED AS AN EXEMPT ASSET UNDER FEDERAL GUIDELINES, FOR A FAMILY MEMBER
51 UNDER PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED
52 FIFTY-THREE OF THE GENERAL BUSINESS LAW, any funds remaining in such
53 trust after the payment of all funeral expenses must be paid over to the
54 social services official responsible for arranging for burials under
55 this section in the local government subdivision where the [decedent

1 resided] APPLICANT OR RECIPIENT WHO FIRST ESTABLISHED SUCH IRREVOCABLE
2 TRUST OR TRUSTS RESIDED AT THE DATE OF THEIR DEATH.

3 S 6. This act shall take effect on the first of January next succeed-
4 ing the date on which it shall become a law and shall apply to funeral
5 and burial accounts established on or after such effective date.