

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

S. 3377--A

A. 6926--A

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 Sens. KLEIN, BRESLIN, HASSELL-THOMPSON, C. JOHNSON, SAVINO, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. PHEFFER -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 to change such selection any time to any type of funeral or any funeral
2 firm, funeral director, cemetery or any other person, firm or corpo-
3 ration to whom such payment is made, located in the state of New York or
4 any other state. Any such change must be carried out within ten business
5 days following receipt of a request by the purchaser to the funeral
6 firm, funeral director, cemetery or any other person, firm or corpo-
7 ration to whom such payment is made, with which such trust was estab-
8 lished. This requirement is subject to any limits set forth in federal
9 law or regulation pertaining to disregarded resources or income.

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

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

17 DISCLOSURE

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

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

34 6. (a) As applicable federal law, rules and regulations so provide, a
35 recipient of supplemental security income benefits or medical assistance
36 in the state of New York or any other state, OR THE FAMILY MEMBER OR
37 MEMBERS OF AN ACCOUNT ESTABLISHED PURSUANT TO PARAGRAPH (D) OF SUBDIVI-
38 SION ONE OF SECTION FOUR HUNDRED FIFTY-THREE OF THE GENERAL BUSINESS
39 LAW, may establish an irrevocable trust fund for the exclusive purpose
40 of their funeral and burial. Such trust fund and any accumulated inter-
41 est not withdrawn by the recipient shall remain the responsibility of
42 the funeral firm, funeral director, undertaker, cemetery or any other
43 person, firm or corporation to whom such payment is made to administer
44 for funeral and burial expenses of the recipient. Those persons who
45 establish such a trust fund shall be given the opportunity to select the
46 funeral firm, funeral director, undertaker, cemetery or any other
47 person, firm or corporation to whom such payment is made of their choice
48 to provide for their burial arrangements and to change such selection at
49 any time to any funeral firm, funeral director, undertaker, cemetery or
50 any other person, firm or corporation to whom such payment is made,
51 located either in the state of New York or any other state. Any such
52 change of funeral firm, funeral director, undertaker, cemetery, or any
53 other person, firm or corporation to whom such payment is made, must be
54 carried out within ten business days following receipt of a request by
55 the purchaser to the funeral firm, funeral director, undertaker, ceme-
56 tery, or any other person, firm or corporation to whom such payment is

1 made with which the current trust fund was established. Funds in such
2 trust fund shall be placed in an interest bearing account pursuant to
3 section four hundred fifty-three of the general business law. Accumu-
4 lated interest from such account shall not be reported as "countable
5 income" pursuant to section two hundred eight of this title.

6 (b) An applicant for or a recipient of medical assistance in the state
7 of New York or any other state, OR A FAMILY MEMBER BENEFICIARY OF AN
8 AGREEMENT UNDER PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED
9 FIFTY-THREE OF THE GENERAL BUSINESS LAW, who enters into an agreement
10 pursuant to SUCH section four hundred fifty-three [of the general busi-
11 ness law] shall establish a single irrevocable trust fund FOR EACH INDI-
12 VIDUAL PERSON pursuant to paragraph (a) of this subdivision.

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

19 DISCLOSURE

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

32 (d) Any promotional literature prepared after January first, [nineteen
33 hundred ninety-seven] TWO THOUSAND ELEVEN by a funeral firm, funeral
34 director, undertaker, cemetery, or any other person, firm or corporation
35 for prearranged funeral and burial services must contain language
36 disclosing the irrevocable nature of burial trusts established for an
37 applicant or recipient of supplemental security income benefits or
38 medical assistance, OR PURSUANT TO PARAGRAPH (D) OF SUBDIVISION ONE OF
39 SECTION FOUR HUNDRED FIFTY-THREE OF THE GENERAL BUSINESS LAW.

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

43 (g) Any promotional literature prepared after January first, [nineteen
44 hundred ninety-seven] TWO THOUSAND ELEVEN by a funeral firm, funeral
45 director, undertaker, cemetery, or any other person, firm or corporation
46 for prearranged funeral and burial services must contain language
47 disclosing the irrevocable nature of burial trusts established for an
48 applicant or recipient of supplemental security income benefits or
49 medical assistance OR PURSUANT TO PARAGRAPH (D) OF SUBDIVISION ONE OF
50 THIS SECTION.

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

53 6. If an applicant for or a recipient of public assistance or care or
54 of medical assistance under section two hundred nine or three hundred
55 sixty-six of this chapter dies having established an irrevocable trust
56 for the payment of his or her funeral expenses under section four

1 hundred fifty-three of the general business law, OR, TO THE EXTENT
2 TREATED AS AN EXEMPT ASSET UNDER FEDERAL GUIDELINES, FOR A FAMILY MEMBER
3 UNDER PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED
4 FIFTY-THREE OF THE GENERAL BUSINESS LAW, any funds remaining in such
5 trust after the payment of all funeral expenses must be paid over to the
6 social services official responsible for arranging for burials under
7 this section in the local government subdivision where the [decedent
8 resided] APPLICANT OR RECIPIENT WHO FIRST ESTABLISHED SUCH IRREVOCABLE
9 TRUST OR TRUSTS RESIDED AT THE DATE OF THEIR DEATH.

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