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

S. 3377 A. 6926

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:

Section 1. Paragraph (d) of subdivision 1 of section 453 of the general business law, as amended by chapter 557 of the laws of 2001, is amended to read as follows:

(d) Moneys paid for such an agreement for an applicant or recipient of supplemental security income benefits under section two hundred nine of the social services law or of medical assistance under section three hundred sixty-six of such law, OR, TO THE EXTENT TREATED AS AN EXEMPT ASSET UNDER FEDERAL GUIDELINES, FOR A FAMILY MEMBER OF ANY SUCH AGREEMENT ESTABLISHED OR FUNDED BY SUCH AN APPLICANT OR RECIPIENT, shall be placed into a trust which shall be irrevocable but under which such [applicant/recipient] APPLICANT/RECIPIENT/PURCHASER reserves the right to select any funeral firm, funeral director, undertaker, cemetery or any other person, firm or corporation to whom such payment is made and to change such selection any time to any type of funeral or any funeral firm, funeral director, cemetery or any other person, firm or corporation to whom such payment is made, located in the state of New York or any other state. Any such change must be carried out within ten business days following receipt of a request by the purchaser to the funeral firm, funeral director, cemetery or any other person, firm or corporation 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.

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

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

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

DISCLOSURE

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

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

6. (a) As applicable federal law, rules and regulations so provide, a recipient of supplemental security income benefits or medical assistance in the state of New York or any other state, OR THE FAMILY MEMBER OR MEMBERS OF AN ACCOUNT ESTABLISHED PURSUANT TO PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED FIFTY-THREE OF THE GENERAL BUSINESS LAW, may establish an irrevocable trust fund for the exclusive purpose of their funeral and burial. Such trust fund and any accumulated interest not withdrawn by the recipient shall remain the responsibility of the funeral firm, funeral director, undertaker, cemetery or any other person, firm or corporation to whom such payment is made to administer for funeral and burial expenses of the recipient. Those persons who establish such a trust fund shall be given the opportunity to select the funeral firm, funeral director, undertaker, cemetery or any other person, firm or corporation to whom such payment is made of their choice to provide for their burial arrangements and to change such selection at any time to any funeral firm, funeral director, undertaker, cemetery or any other person, firm or corporation to whom such payment is made, located either in the state of New York or any other state. Any such change of funeral firm, funeral director, undertaker, cemetery, or any other person, firm or corporation to whom such payment is made, must be carried out within ten business days following receipt of a request by the purchaser to the funeral firm, funeral director, undertaker, cemetery, or any other person, firm or corporation to whom such payment is made with which the current trust fund was established. Funds in such trust fund shall be placed in an interest bearing account pursuant to section four hundred fifty-three of the general business law. Accumulated interest from such account shall not be reported as "countable income" pursuant to section two hundred eight of this title.

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

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

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

DISCLOSURE

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

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

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

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

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

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

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

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