

5001

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to disposition of human remains

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

1 Section 1. Section 4201 of the public health law, as amended by chap-
2 ter 76 of the laws of 2006 and paragraph (a) of subdivision 2 as amended
3 by chapter 401 of the laws of 2007, is amended to read as follows:

4 S 4201. Disposition of remains; responsibility therefor. 1. As used in
5 this section, the following terms shall have the following meanings,
6 unless the context otherwise requires:

7 (a) "Cremation" means the incineration of human remains.

8 (b) "Disposition" means the care, disposal, transportation, burial,
9 cremation or embalming of the body of a deceased person, and associated
10 measures.

11 (c) "Domestic partner" means a person who, with respect to another
12 person:

13 (i) is formally a party in a domestic partnership or similar relation-
14 ship with the other person, entered into pursuant to the laws of the
15 United States or any state, local or foreign jurisdiction, or registered
16 as the domestic partner of the person with any registry maintained by
17 the employer of either party or any state, municipality, or foreign
18 jurisdiction; or

19 (ii) is formally recognized as a beneficiary or covered person under
20 the other person's employment benefits or health insurance; or

21 (iii) is dependent or mutually interdependent on the other person for
22 support, as evidenced by the totality of the circumstances indicating a
23 mutual intent to be domestic partners including but not limited to:
24 common ownership or joint leasing of real or personal property; common
25 householding, shared income or shared expenses; children in common;

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

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1 signs of intent to marry or become domestic partners under subparagraph
2 (i) or (ii) of this paragraph; or the length of the personal relation-
3 ship of the persons.

4 Each party to a domestic partnership shall be considered to be the
5 domestic partner of the other party. "Domestic partner" shall not
6 include a person who is related to the other person by blood in a manner
7 that would bar marriage to the other person in New York state. "Domestic
8 partner" shall also not include any person who is less than eighteen
9 years of age or who is the adopted child of the other person or who is
10 related by blood in a manner that would bar marriage in New York state
11 to a person who is the lawful spouse of the other person.

12 (d) "Person" means a natural person eighteen years of age or older.

13 2. (a) The following persons in descending priority shall have the
14 right to control the disposition of the remains of such decedent:

15 (i) the person designated in a written instrument executed pursuant to
16 [the provisions of] this section;

17 (ii) the decedent's surviving spouse;

18 (ii-a) the decedent's surviving domestic partner;

19 (iii) any of the decedent's surviving children eighteen years of age
20 or older;

21 (iv) either of the decedent's surviving parents;

22 (v) any of the decedent's surviving siblings eighteen years of age or
23 older;

24 (vi) a guardian appointed pursuant to article seventeen or seventeen-A
25 of the surrogate's court procedure act or article eighty-one of the
26 mental hygiene law;

27 (vii) any person eighteen years of age or older who would be entitled
28 to share in the estate of the decedent as specified in section 4-1.1 of
29 the estates, powers and trusts law, with the person closest in relation-
30 ship having the highest priority;

31 (viii) a duly appointed fiduciary of the estate of the decedent;

32 (ix) a close friend or relative who is reasonably familiar with the
33 decedent's wishes, including the decedent's religious or moral beliefs,
34 when no one higher on this list is reasonably available, willing, or
35 competent to act, provided that such person has executed a written
36 statement pursuant to subdivision seven of this section; or

37 (x) a chief fiscal officer of a county or a public administrator
38 appointed pursuant to article twelve or thirteen of the surrogate's
39 court procedure act, or any other person acting on behalf of the dece-
40 dent, provided that such person has executed a written statement pursu-
41 ant to subdivision seven of this section.

42 (b) If a person designated to control the disposition of a decedent's
43 remains, pursuant to this subdivision, is not reasonably available,
44 unwilling or not competent to serve, and such person is not expected to
45 become reasonably available, willing or competent, then those persons of
46 equal priority and, if there be none, those persons of the next succeed-
47 ing priority shall have the right to control the disposition of the
48 decedent's remains.

49 (c) The person in control of disposition, pursuant to this section,
50 shall faithfully carry out the directions of the decedent to the extent
51 lawful and practicable, including consideration of the financial capaci-
52 ty of the decedent's estate and other resources made available for
53 disposition of the remains. The person in control of disposition shall
54 also dispose of the decedent in a manner appropriate to the moral and
55 individual beliefs and wishes of the decedent provided that such beliefs
56 and wishes do not conflict with the directions of the decedent. The

1 person in control of disposition may seek to recover any costs related
2 to the disposition from the fiduciary of the decedent's estate in
3 accordance with section eighteen hundred eleven of the surrogate's court
4 procedure act.

5 (d) No funeral director, undertaker, embalmer or no person with an
6 interest in, or who is an employee of any funeral firm, cemetery organ-
7 ization or business operating a crematory, columbarium or any other
8 business, who also controls the disposition of remains in accordance
9 with this section, shall receive compensation or otherwise receive
10 financial benefit for disposing of the remains of a decedent.

11 3. The written instrument referred to in paragraph (a) of subdivision
12 two of this section may be in substantially the following form, and must
13 be signed and dated by the decedent [and the agent] and properly
14 witnessed:

15 APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

16 I, _____
17 (Your name and address)
18 being of sound mind, willfully and voluntarily make known my desire
19 that, upon my death, the disposition of my remains shall be controlled
20 by _____ .
21 (name of agent)

22 With respect to that subject only, I hereby appoint such person as my
23 agent with respect to the disposition of my remains.

24 SPECIAL DIRECTIONS:

25 Set forth below are any special directions limiting the power granted to
26 my agent as well as any instructions or wishes desired to be followed in
27 the disposition of my remains:

28 _____
29 _____
30 _____
31 _____
32 _____

33 Indicate below if you have entered into a [pre-funded] pre-need
34 [agreement subject to section four hundred fifty-three of the general
35 business law] ARRANGEMENT for funeral, CEMETERY OR OTHER merchandise or
36 service in advance of need:

37 No, I have not entered into a [pre-funded] pre-need [agreement
38 subject to section four hundred fifty-three of the general business law]
39 ARRANGEMENT.

40 Yes, I have entered into a [pre-funded] pre-need [agreement subject
41 to section four hundred fifty-three of the general business law]
42 ARRANGEMENT.

43 _____
44 (Name of [funeral firm] ESTABLISHMENT with which you entered into a
45 [pre-funded] pre-need funeral [agreement] ARRANGEMENT to provide
46 merchandise and/or services)

47 AGENT:
48 Name: _____
49 Address: _____
50 Telephone Number: _____

1 SUCCESSORS:

2 If my agent dies, resigns, or is unable to act, I hereby appoint the
3 following persons (each to act alone and successively, in the order
4 named) to serve as my agent to control the disposition of my remains as
5 authorized by this document:

6 1. First Successor

7 Name: _____

8 Address: _____

9 Telephone Number: _____

10 2. Second Successor

11 Name: _____

12 Address: _____

13 Telephone Number: _____

14 DURATION:

15 This appointment becomes effective upon my death.

16 PRIOR APPOINTMENT REVOKED:

17 I hereby revoke any prior appointment of any person to control the
18 disposition of my remains.

19 Signed this _____ day of _____, _____.

20 _____

21 (Signature of person making the appointment)

22 Statement by witness (must be 18 or older)

23 I declare that the person who executed this document is personally known
24 to me and appears to be of sound mind and acting of his or her free
25 will. He or she signed (or asked another to sign for him or her) this
26 document in my presence.

27 Witness [1]: _____ (signature)

28 Address: _____

29 [Witness 2: _____ (signature)

30 Address: _____

31 ACCEPTANCE AND ASSUMPTION BY AGENT:

32 1. I have no reason to believe there has been a revocation of this
33 appointment to control disposition of remains.

34 2. I hereby accept this appointment.

35 Signed this _____ day of _____, _____.

36 _____

37 (Signature of agent)]

38 4. [(a)] In the absence of a written instrument made pursuant to
39 subdivision three of this section, the designation of a person for the
40 disposition of one's remains or directions for the disposition of one's
41 remains in a will executed pursuant to the laws of the state of New York
42 [prior to the effective date of this section], or otherwise executed

1 pursuant to the laws of a jurisdiction outside the state of New York,
2 shall be: [(i) considered reflective of the intent of the decedent] (A)
3 DEEMED TO BE A WRITTEN INSTRUMENT EXECUTED PURSUANT TO THE PROVISIONS OF
4 THIS SECTION with respect to the disposition of the decedent's remains;
5 and [(ii)] (B) superseded by a written instrument subsequently executed
6 pursuant to subdivision three of this section, or by any other subse-
7 quent act by the decedent evidencing a specific intent to supersede the
8 designation or direction in such a will with respect to the disposition
9 of the decedent's remains. All actions taken reasonably and in good
10 faith based upon such authorizations and directions regarding the dispo-
11 sition of one's remains in such a will shall be deemed valid regardless
12 of whether such a will is later probated or subsequently declared inval-
13 id.

14 [(b) In the absence of a written instrument made pursuant to subdivi-
15 sion three of this section, the designation of a person for the disposi-
16 tion of one's remains or directions for the disposition of one's remains
17 in a will executed pursuant to the laws of the state of New York on or
18 after the effective date of this section, shall be considered a
19 reflection of the intent of the decedent with respect to the disposition
20 of the decedent's remains, provided that the person who represents that
21 he or she is entitled to control the disposition of remains of the dece-
22 dent has complied with subdivision five and paragraph (a) of subdivision
23 seven of this section and signed a written statement in accordance with
24 paragraph (b) of subdivision seven of this section.]

25 5. A written instrument executed under this section shall be revoked
26 upon the execution by the decedent of a subsequent written instrument,
27 or by any other subsequent act by the decedent evidencing a specific
28 intent to revoke the prior written instrument [and directions].
29 DIRECTIONS on disposition and agent designations in a [will] WRITTEN
30 INSTRUMENT made pursuant to [subdivision three of] this section shall be
31 superseded by a subsequently executed [will or] written instrument made
32 pursuant to this section, or by any other subsequent act of the decedent
33 evidencing a specific intent to supersede the direction or designation.
34 The designation of the decedent's spouse or domestic partner as an agent
35 in control of disposition of remains shall be revoked upon the divorce
36 or legal separation of the decedent and spouse, or termination of the
37 domestic partnership, unless the decedent specified in writing other-
38 wise.

39 6. A person acting reasonably and in good faith, shall not be subject
40 to any civil liability for:

41 (a) representing himself or herself to be the person in control of a
42 decedent's disposition;

43 (b) disposing of a decedent's remains if done with the reasonable
44 belief that such disposal is consistent with this section; or

45 (c) identifying a decedent.

46 7. No cemetery organization, business operating a crematory or colum-
47 barium, funeral director, undertaker, embalmer, or funeral firm shall be
48 held liable for actions taken reasonably and in good faith to carry out
49 the written directions of a decedent as stated in [a will or in] a writ-
50 ten instrument executed pursuant to this section. No cemetery organiza-
51 tion, business operating a crematory or columbarium, funeral director,
52 undertaker, embalmer or funeral firm shall be held liable for actions
53 taken reasonably and in good faith to carry out the directions of a
54 person who represents that he or she is entitled to control of the
55 disposition of remains, provided that such action is taken only after
56 requesting and receiving A written statement that such person:

1 (a) is the designated agent of the decedent designated in a [will or]
2 written instrument executed pursuant to this section; or

3 (b) that he or she has no knowledge that the decedent executed a writ-
4 ten instrument pursuant to this section [or a will] containing
5 directions for the disposition of his or her remains and that such
6 person is the person having priority under subdivision two of this
7 section.

8 8. Every dispute UNDER THIS SECTION relating to the disposition of the
9 remains of a decedent shall be resolved by a court of competent juris-
10 diction pursuant to a special proceeding under article four of the civil
11 practice law and rules. No person providing services relating to the
12 disposition of the remains of a decedent shall be held liable for
13 refusal to provide such services, when control of the disposition of
14 such remains is contested, until such person receives a court order or
15 other form of notification signed by all parties or their legal repre-
16 sentatives to the dispute establishing such control.

17 9. This section does not supersede, alter or abridge any provision of
18 section four hundred fifty-three of the general business law. In the
19 event of a conflict or ambiguity, [the provisions of] section four
20 hundred fifty-three of the general business law shall govern.

21 10. This section does not supersede, alter or abridge any provision of
22 article forty-three of this chapter including, but not limited to, the
23 persons authorized to execute an anatomical gift pursuant to section
24 forty-three hundred one of this chapter.

25 11. This section does not diminish the enforceability of a contract or
26 agreement in which a person controlling the disposition of the remains
27 of a decedent agrees to pay for goods or services in connection with the
28 disposition of such remains.

29 S 2. This act shall take effect immediately.