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

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I N S E N A T E

March 16, 2010

Introduced by Sen. FOLEY -- 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 establishing the "disposition of veterans' cremated remains act"

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

Section 1. This act shall be known and may be cited as the "disposition of veterans' cremated remains act."

S 2. The public health law is amended by adding three new sections, 4203, 4204, and 4205, to read as follows:

S 4203. DEFINITIONS. AS USED IN THIS TITLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "AUTHORIZING AGENT" MEANS A PERSON WHO IS LEGALLY ENTITLED TO AUTHORIZE THE CREMATION AND FINAL DISPOSITION OF THE CREMATED REMAINS OF THE DECEASED PERSON IN ACCORDANCE WITH THIS TITLE.

2. "CREMATORY AUTHORITY" MEANS A LEGAL ENTITY THAT IS LICENSED BY THE STATE OF NEW YORK TO OPERATE A CREMATORY AND TO PERFORM CREMATIONS.

3. "FUNERAL DIRECTOR" MEANS A PERSON, KNOWN BY THE TITLE OF "FUNERAL DIRECTOR" OR OTHER SIMILAR WORDS OR TITLES, LICENSED UNDER THE APPLICABLE LAWS OF THE STATE AND WHO PRACTICES FUNERAL DIRECTING.

4. "VETERAN" MEANS A NEW YORK STATE RESIDENT WHO HAS SERVED AS A MEMBER OF THE UNITED STATES ARMED SERVICES ON ACTIVE DUTY, A MEMBER OF THE NEW YORK STATE NATIONAL GUARD, OR A MEMBER OF THE UNITED STATES RESERVE FORCES, AND WHO HAS RECEIVED AN HONORABLE DISCHARGE.

5. "VETERANS ORGANIZATION" MEANS AN ASSOCIATION OR OTHER ENTITY ORGANIZED FOR THE BENEFIT OF VETERANS OR WHOSE PRIMARY PURPOSE IS TO LOCATE, IDENTIFY, AND INTER THE UNCLAIMED CREMATED REMAINS OF AMERICAN VETERANS LIKE THE MISSING IN AMERICA PROJECT OR ONE THAT HAS BEEN RECOGNIZED OR FEDERALLY CHARTERED BY THE UNITED STATES CONGRESS.

S 4204. FUNERAL DIRECTOR OR CREMATORY AUTHORITY RESPONSIBILITIES. 1. A FUNERAL DIRECTOR OR CREMATORY AUTHORITY MUST MAKE A REASONABLE EFFORT TO DETERMINE WHETHER A DECEASED PERSON, WHOSE HUMAN REMAINS HAVE BEEN SUBMITTED TO A FUNERAL ESTABLISHMENT FOR FINAL DISPOSITION BY CREMATION, IS ONE OF THE FOLLOWING:

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

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(A) A VETERAN;
(B) THE SPOUSE OF A VETERAN; OR
(C) THE DEPENDANT CHILD OF A VETERAN.

2. THIS DETERMINATION MUST BE MADE AT, OR SHORTLY AFTER, THE TIME AN AT-NEED CREMATION AUTHORIZATION IS SIGNED BY THE AUTHORIZING AGENT. THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY MUST START HIS OR HER INQUIRY WITH THE AUTHORIZING AGENT AND NOTIFY THE AUTHORIZING AGENT OF THE FUNERAL DIRECTOR'S OR CREMATORY AUTHORITY'S RESPONSIBILITIES UNDER THIS TITLE. NOTHING IN THIS TITLE SHALL DELAY THE CREMATION OF A DECREASED PERSON'S REMAINS AS AUTHORIZED BY AN AT-NEED CREMATION AUTHORIZATION.

3. IF THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY CANNOT DETERMINE, WITH CERTAINTY, THE DECEASED PERSON'S STATUS AND NO AUTHORIZING AGENT EXISTS, THEN THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY MAY ALLOW THE NATIONAL CEMETERY ADMINISTRATION'S NATIONAL CEMETERY SCHEDULING OFFICE OR ANY VETERANS' ORGANIZATION WHOSE PRIMARY PURPOSE IS TO LOCATE, IDENTIFY, AND INTER THE UNCLAIMED CREMATED REMAINS OF AMERICAN VETERANS, OR ANY FEDERALLY CHARTERED VETERANS' SERVICE ORGANIZATION TO HAVE ACCESS TO THE CREMATED REMAINS, AND ALL INFORMATION REGARDING THE DECEASED PERSON IN THE POSSESSION OF THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY, SO THAT IT MAY ATTEMPT TO DETERMINE WHETHER THE DECEASED PERSON QUALIFIES UNDER SUBDIVISION ONE OF THIS SECTION.

4. IF THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY DETERMINES THAT THE DECEASED PERSON IS EITHER A VETERAN, THE SPOUSE OF A VETERAN, OR THE DEPENDENT CHILD OF A VETERAN, THEN THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY MUST IMMEDIATELY NOTIFY THE AUTHORIZING AGENT OF THIS FINDING AND ADVISE THE AUTHORIZING AGENT THAT THE DECEASED PERSON MAY BE ELIGIBLE TO BE INTERRED AT AN APPROPRIATE VETERANS' CEMETERY.

5. IF THE CREMATED REMAINS OF A VETERAN, THE SPOUSE OF A VETERAN, OR THE DEPENDENT CHILD OF A VETERAN ARE NOT CLAIMED BY AN AUTHORIZING AGENT, THEN THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY MUST HOLD ANY CREMATED REMAINS FOR AT LEAST ONE HUNDRED EIGHTY DAYS. AFTER ONE HUNDRED EIGHTY DAYS HAVE EXPIRED, THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY MUST THEN SEND WRITTEN NOTICE TO AN AUTHORIZING AGENT REQUESTING DISPOSITION INSTRUCTIONS. IF THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY DOES NOT RECEIVE A WRITTEN RESPONSE FROM AN AUTHORIZING AGENT WITHIN THIRTY DAYS AFTER THIS WRITTEN NOTICE IS SENT, THEN THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY MUST CONTACT ANY VETERANS' ORGANIZATION WHOSE PRIMARY PURPOSE IS TO LOCATE, IDENTIFY, AND INTER OR INURN THE UNCLAIMED CREMATED REMAINS OF AMERICAN VETERANS, OR ANY FEDERALLY-CHARTERED VETERANS SERVICE ORGANIZATION, SO THAT ARRANGEMENTS FOR THE DISPOSITION OF THE CREMATED REMAINS OF THE VETERAN, SPOUSE OF A VETERAN, OR DEPENDENT CHILD OF A VETERAN MAY BE MADE IN A STATE OR NATIONAL VETERANS' CEMETERY.

6. THE FUNERAL DIRECTOR OR CREMATORY AUTHORITY MAY RELEASE ANY RELEVANT INFORMATION TO THE UNITED STATES DEPARTMENT OF VETERANS' AFFAIRS, ANY VETERANS ORGANIZATION WHOSE PRIMARY PURPOSE IS TO LOCATE, IDENTIFY, AND INTER OR INURN THE UNCLAIMED CREMATED REMAINS OF AMERICAN VETERANS, OR ANY FEDERALLY CHARTERED VETERANS SERVICE ORGANIZATION, TO EFFECT THE TIMELY AND ACCURATE IDENTIFICATION AND INTERMENT OR INURNMENT OF THE CREMATED REMAINS OF A DECEDENT AS EITHER A VETERAN, THE SPOUSE OF A VETERAN, OR THE DEPENDENT CHILD OF A VETERAN.

S 4205. IMMUNITY. A FUNERAL DIRECTOR OR CREMATORY AUTHORITY COMPLYING WITH THIS TITLE IS IMMUNE FROM ANY CRIMINAL OR CIVIL LIABILITY REGARDING THE RELEASE OF INFORMATION RELATING TO:

1. THE DETERMINATION OF THE DECEASED PERSON'S STATUS AS A VETERAN, THE SPOUSE OF A VETERAN, OR THE DEPENDENT CHILD OF A VETERAN,

2. THE AVAILABILITY OF INTERMENT OR INURNMENT AS A VETERAN, OR

3. THE RELEASE OF THE CREMATED REMAINS TO A VETERANS' CEMETERY. A FUNERAL DIRECTOR OR CREMATORY AUTHORITY SHALL BE IMMUNE FROM CIVIL LIABILITY FOR ANY ACT OR OMISSION UNDER THIS TITLE, EXCEPT FOR WILLFUL OR WANTON MISCONDUCT. A VETERANS' ORGANIZATION OR FEDERALLY CHARTERED VETERANS SERVICE ORGANIZATION SHALL BE IMMUNE FROM CIVIL LIABILITY FOR ANY ACT OR OMISSION RELATED TO THE DISPOSITION OF CREMATED REMAINS UNDER THIS TITLE, EXCEPT FOR WILLFUL OR WANTON MISCONDUCT.

S 3. This act shall take effect immediately and shall apply to all cremated remains left in a funeral director's or crematory authority's possession.