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

591

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. GOTTFRIED, CASTELLI, DINOWITZ -- read once and referred 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:

Section 1. Section 4201 of the public health law, as amended by chapter 76 of the laws of 2006, paragraph (a) of subdivision 2 as amended by chapter 401 of the laws of 2007 and subdivision 4-a as added by chapter 348 of the laws of 2009, is amended to read as follows:

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

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

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

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

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

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

(iii) is dependent or mutually interdependent on the other person for support, as evidenced by the totality of the circumstances indicating a mutual intent to be domestic partners including but not limited to:

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

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common ownership or joint leasing of real or personal property; common householding, shared income or shared expenses; children in common; signs of intent to marry or become domestic partners under subparagraph (i) or (ii) of this paragraph; or the length of the personal relationship of the persons.

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

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

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

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

(ii) the decedent's surviving spouse;

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

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

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

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

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

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

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

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

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

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

(c) The person in control of disposition, pursuant to this section, shall faithfully carry out the directions of the decedent to the extent lawful and practicable, including consideration of the financial capacity of the decedent's estate and other resources made available for disposition of the remains. The person in control of disposition shall also dispose of the decedent in a manner appropriate to the moral and

individual beliefs and wishes of the decedent provided that such beliefs and wishes do not conflict with the directions of the decedent. The person in control of disposition may seek to recover any costs related to the disposition from the fiduciary of the decedent's estate in accordance with section eighteen hundred eleven of the surrogate's court procedure act.

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

3. The written instrument referred to in paragraph (a) of subdivision two of this section may be, BUT IS NOT REQUIRED TO BE, in substantially the following form[, and]. IT must be signed and dated by the decedent [and the agent] and [properly] witnessed BY ONE WITNESS WHO MUST BE EIGHTEEN YEARS OF AGE OR OLDER. A SIGNED ACCEPTANCE BY THE APPOINTED AGENT IS NOT REQUIRED FOR THE WRITTEN INSTRUMENT TO BE VALID:

APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

I, _____
(Your name and address)
being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by _____ .
(name of agent)
With respect to that subject only, I hereby appoint such person as my agent with respect to the disposition of my remains.

SPECIAL DIRECTIONS:

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

_____
_____
_____
_____
_____

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

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

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

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

AGENT:
Name: _____
Address: _____
Telephone Number: _____

SUCCESSORS:

If my agent dies, resigns, or is unable to act, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent to control the disposition of my remains as authorized by this document:
1. First Successor
Name: _____
Address: _____
Telephone Number: _____

2. Second Successor
Name: _____
Address: _____
Telephone Number: _____

DURATION:

This appointment becomes effective upon my death.
PRIOR APPOINTMENT REVOKED:
I hereby revoke any prior appointment of any person to control the disposition of my remains.

Signed this_____day of_____,_____.
_____
(Signature of person making the appointment)

Statement by witness (must be 18 or older)

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

Witness [1]: _____ (signature)

Address: _____

[Witness 2: _____ (signature)

Address: _____]

ACCEPTANCE AND ASSUMPTION BY AGENT:
1. I have no reason to believe there has been a revocation of this appointment to control disposition of remains.
2. I hereby accept this appointment.
Signed this day of , .
_____
(Signature of agent)

4. [(a)] In the absence of a written instrument made pursuant to subdivision three of this section, the designation of a person for the disposition of one's remains or directions for the disposition of one's remains in a will executed pursuant to the laws of the state of New York [prior to the effective date of this section], or otherwise executed pursuant to the laws of a jurisdiction outside the state of New York, shall be: [(i) considered reflective of the intent of the decedent] (A) DEEMED TO BE A WRITTEN INSTRUMENT EXECUTED PURSUANT TO THIS SECTION with respect to the disposition of the decedent's remains; and [(ii)] (B) superseded by a written instrument subsequently executed pursuant to subdivision three of this section, or by any other subsequent act by the decedent evidencing a specific intent to supersede the designation or direction in such a will with respect to the disposition of the decedent's remains. All actions taken reasonably and in good faith based upon such authorizations and directions regarding the disposition of one's remains in such a will shall be deemed valid regardless of whether such a will is later probated or subsequently declared invalid.

[(b) In the absence of a written instrument made pursuant to subdivision three of this section, the designation of a person for the disposition of one's remains or directions for the disposition of one's remains in a will executed pursuant to the laws of the state of New York on or after the effective date of this section, shall be considered a reflection of the intent of the decedent with respect to the disposition of the decedent's remains, provided that the person who represents that he or she is entitled to control the disposition of remains of the decedent has complied with subdivision five and paragraph (a) of subdivision seven of this section and signed a written statement in accordance with paragraph (b) of subdivision seven of this section.]

4-a. A written instrument under this section may limit the disposition of remains agent's authority to consent to organ or tissue donation or designate another person to do so, under article forty-three of this chapter. Failure to state wishes or instruction shall not be construed to imply a wish not to donate.

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

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

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

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

(c) identifying a decedent.

7. No cemetery organization, business operating a crematory or columbarium, funeral director, undertaker, embalmer, or funeral firm shall be

held liable for actions taken reasonably and in good faith to carry out the written directions of a decedent as stated in [a will or in] a written instrument executed pursuant to this section. No cemetery organization, business operating a crematory or columbarium, funeral director, undertaker, embalmer or funeral firm shall be held liable for actions taken reasonably and in good faith to carry out the directions of a person who represents that he or she is entitled to control of the disposition of remains, provided that such action is taken only after requesting and receiving A written statement that such person:

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

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

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

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

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

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

S 2. This act shall take effect immediately.