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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:

1 Section 1. Section 4201 of the public health law, as amended by chap-
2 ter 76 of the laws of 2006, paragraph (a) of subdivision 2 as amended by
3 chapter 401 of the laws of 2007 and subdivision 4-a as added by chapter
4 348 of the laws of 2009, is amended to read as follows:
5 S 4201. Disposition of remains; responsibility therefor. 1. As used in
6 this section, the following terms shall have the following meanings,
7 unless the context otherwise requires:
8 (a) "Cremation" means the incineration of human remains.
9 (b) "Disposition" means the care, disposal, transportation, burial,
10 cremation or embalming of the body of a deceased person, and associated
11 measures.
12 (c) "Domestic partner" means a person who, with respect to another
13 person:
14 (i) is formally a party in a domestic partnership or similar relation-
15 ship with the other person, entered into pursuant to the laws of the
16 United States or any state, local or foreign jurisdiction, or registered
17 as the domestic partner of the person with any registry maintained by
18 the employer of either party or any state, municipality, or foreign
19 jurisdiction; or
20 (ii) is formally recognized as a beneficiary or covered person under
21 the other person's employment benefits or health insurance; or
22 (iii) is dependent or mutually interdependent on the other person for
23 support, as evidenced by the totality of the circumstances indicating a
24 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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1 common ownership or joint leasing of real or personal property; common
2 householding, shared income or shared expenses; children in common;
3 signs of intent to marry or become domestic partners under subparagraph
4 (i) or (ii) of this paragraph; or the length of the personal relation-
5 ship of the persons.

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

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

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

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

19 (ii) the decedent's surviving spouse;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

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

28 SPECIAL DIRECTIONS:

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

32 _____
33 _____
34 _____
35 _____
36 _____

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

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

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

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

1 AGENT:

2 Name: _____

3 Address: _____

4 Telephone Number: _____

5 SUCCESSORS:

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

10 1. First Successor

11 Name: _____

12 Address: _____

13 Telephone Number: _____

14 2. Second Successor

15 Name: _____

16 Address: _____

17 Telephone Number: _____

18 DURATION:

19 This appointment becomes effective upon my death.

20 PRIOR APPOINTMENT REVOKED:

21 I hereby revoke any prior appointment of any person to control the
22 disposition of my remains.

23 Signed this _____ day of _____, _____.

24 _____

25 (Signature of person making the appointment)

26 Statement by witness (must be 18 or older)

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

31 Witness [1]: _____ (signature)

32 Address: _____

33 [Witness 2: _____ (signature)

34 Address: _____]

35 ACCEPTANCE AND ASSUMPTION BY AGENT:

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

38 2. I hereby accept this appointment.

39 Signed this _____ day of _____, _____.

40 _____

41 (Signature of agent)

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

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

29 4-a. A written instrument under this section may limit the disposition
30 of remains agent's authority to consent to organ or tissue donation or
31 designate another person to do so, under article forty-three of this
32 chapter. Failure to state wishes or instruction shall not be construed
33 to imply a wish not to donate.

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

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

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

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

54 (c) identifying a decedent.

55 7. No cemetery organization, business operating a crematory or colum-
56 barium, funeral director, undertaker, embalmer, or funeral firm shall be

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

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

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

17 8. Every dispute UNDER THIS SECTION relating to the disposition of the
18 remains of a decedent shall be resolved by a court of competent juris-
19 diction pursuant to a special proceeding under article four of the civil
20 practice law and rules. No person providing services relating to the
21 disposition of the remains of a decedent shall be held liable for
22 refusal to provide such services, when control of the disposition of
23 such remains is contested, until such person receives a court order or
24 other form of notification signed by all parties or their legal repre-
25 sentatives to the dispute establishing such control.

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

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

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

38 S 2. This act shall take effect immediately.