

1615--B

2013-2014 Regular Sessions

I N   S E N A T E

(PREFILED)

January 9, 2013

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Introduced by Sens. PARKER, ADDABBO, BRESLIN, LATIMER, SAMPSON, SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the not-for-profit corporation law, in relation to disposition of unclaimed cremated remains of a veteran

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

1     Section 1. Section 1517 of the not-for-profit corporation law, as  
2     added by chapter 579 of the laws of 2006, is amended to read as follows:  
3     S 1517. Crematory operations.  
4     Cemetery corporations that operate a crematory shall have the follow-  
5     ing duties and obligations:  
6     (a) Maintenance and privacy. (1) A crematory facility shall be main-  
7     tained in a clean, orderly, and sanitary manner, with adequate venti-  
8     lation and shall have a temporary storage area available to store the  
9     remains of deceased human beings pending disposition by cremation, the  
10    interior of which shall not be accessible to the general public.  
11    (2) Entrances and windows of the crematory facility shall be main-  
12    tained at all times to secure privacy, including (i) doors shall be  
13    tightly closed and rigid; (ii) windows shall be covered; and (iii)  
14    entrances shall be locked and secured when not actively attended by  
15    authorized crematory personnel.  
16    (b) Cremation process. (1) The cremation process shall be conducted in  
17    privacy. No person except authorized persons shall be admitted into the

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

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1 retort area, holding facility, or the temporary storage facility while  
2 the remains of deceased human beings are being cremated. Authorized  
3 persons, on admittance, shall comply with all rules of the crematory  
4 corporation and not infringe upon the privacy of the remains of deceased  
5 human beings.

6 (2) The following are authorized persons: (i) licensed, registered  
7 funeral directors, registered residents, and enrolled students of mortu-  
8 ary science; (ii) officers and trustees of the cemetery corporation;  
9 (iii) authorized employees or their authorized agents of the cemetery  
10 corporation; (iv) public officers acting in the discharge of their  
11 duties; (v) authorized instructors of funeral directing schools; (vi)  
12 licensed physicians or nurses; and (vii) members of the immediate family  
13 of the deceased and their authorized agents and designated represen-  
14 tatives.

15 (c) Identification of deceased human beings. (1) No crematory shall  
16 cremate the remains of any deceased human being without the accompanying  
17 cremation permit, required pursuant to section four thousand one hundred  
18 forty-five of the public health law which permit shall constitute  
19 presumptive evidence of the identity of the said remains. In addition,  
20 all crematories situated outside the city of New York, must comply with  
21 paragraph (b) of subdivision two of section four thousand one hundred  
22 forty-five of the public health law pertaining to the receipt for the  
23 deceased human being. From the time of such delivery to the crematory,  
24 until the time the crematory delivers the cremains as directed, the  
25 crematory shall be responsible for the remains of the deceased human  
26 being. Further, a cremation authorization form must accompany the permit  
27 required in section four thousand one hundred forty-five of the public  
28 health law. This form, provided or approved by the crematory, must be  
29 signed by the next of kin or authorizing agent attesting to the permis-  
30 sion for the cremation of the deceased, and disclosing to the crematory  
31 that such body does not contain a battery, battery pack, power cell,  
32 radioactive implant, or radioactive device, if any, and that these mate-  
33 rials were removed prior to the cremation process.

34 (2) Upon good cause being shown rebutting the presumption of the iden-  
35 tity of such remains, the cremation shall not commence until reasonable  
36 confirmation of the identity of the deceased human being is made. This  
37 proof may be in the form of, but not limited to, a signed affidavit from  
38 a licensed physician, a member of the family of the deceased human  
39 being, the authorizing agent or a court order from the state supreme  
40 court within the county of the cemetery corporation. Such proof shall be  
41 provided by the authorizing agent.

42 (3) The crematory shall have a written plan to assure that the iden-  
43 tification established by the cremation permit accompanies the remains  
44 of the deceased human being through the cremation process and until the  
45 identity of the deceased is accurately and legibly inscribed on the  
46 container in which the cremains are placed.

47 (d) Opening of container holding the remains of the deceased human  
48 being. (1) The casket, alternative container, or external wrappings  
49 holding the remains of the deceased human being shall not be opened  
50 after delivery to the crematory unless there exists good cause to  
51 confirm the identity of the deceased, or to assure that no material is  
52 enclosed which might cause injury to employees or damage to crematory  
53 property, or upon reasonable demand by members of the immediate family  
54 or the authorized agent.

55 (2) In such instances in which the casket, alternative container, or  
56 wrappings are opened after delivery to the crematory, such action shall

1 only be conducted by the licensed funeral director or registered resi-  
2 dent delivering the remains of the deceased human being and if neces-  
3 sary, with the assistance of crematory personnel and a record shall be  
4 made, which shall include the reason for such action, the signature of  
5 the person authorizing the opening thereof, and the names of the person  
6 opening the container and the witness thereto, which shall be retained  
7 in the permanent file of the crematory. The opening of the container  
8 shall be conducted in the presence of the witness and shall comply with  
9 all rules and regulations intended to protect the health and safety of  
10 crematory personnel.

11 (e) Ceremonial casket cremation disclosure. In those instances in  
12 which the remains of deceased human beings are to be delivered to a  
13 crematory in a casket that is not to be cremated with the deceased,  
14 timely disclosure thereof must be made by the person making the funeral  
15 arrangements to the crematory that prior to cremation the remains of the  
16 deceased human being shall be transferred to an alternative container.  
17 Such signed acknowledgement of the authorizing person, that the timely  
18 disclosure has been made, shall be retained by the crematory in its  
19 permanent records.

20 (f) Transferring remains. (1) The remains of a deceased human being  
21 shall not be removed from the casket, alternative container, or external  
22 wrappings in which it is delivered to the crematory unless explicit,  
23 signed authorization is provided by the person making funeral arrange-  
24 ments or by a public officer discharging his or her statutory duty,  
25 which signed authorization shall be retained by the crematory in its  
26 permanent records.

27 (2) When the remains of a deceased human being are to be transferred  
28 to an alternative container, the transfer shall be conducted in privacy  
29 with dignity and respect and by the licensed funeral director or regis-  
30 tered resident who delivered those remains and if necessary, with the  
31 assistance of crematory personnel. The transferring operation shall  
32 comply with all rules and regulations intended to protect the health and  
33 safety of crematory personnel.

34 (g) Commingling human remains. The cremation of remains of more than  
35 one deceased human being in a retort at any one time is unlawful, except  
36 upon the explicit, signed authorization provided by the persons making  
37 funeral arrangements and the signed approval of the crematory, which  
38 shall be retained by the crematory in its permanent records.

39 (h) Processing of cremains. (1) Upon the completion of the cremation  
40 of the remains of a deceased human being, the interior of the retort  
41 shall be thoroughly swept so as to render the retort reasonably free of  
42 all matter. The contents thereof shall be placed into an individual  
43 container and not commingled with other cremains. The cremation permit  
44 shall be attached to the individual container preparatory to final proc-  
45 essing.

46 (2) A magnet and sieve, or other appropriate method of separation, may  
47 be used to divide the cremains from unrecognizable incidental or foreign  
48 material.

49 (3) The incidental and foreign material of the cremation process shall  
50 be disposed of in a safe manner in compliance with all sanitary rules  
51 and regulations as byproducts.

52 (4) The cremains shall be pulverized until no single fragment is  
53 recognizable as skeletal tissue.

54 (5) The pulverized cremains shall be transferred to a sealable  
55 container or containers whose inside dimension shall be of suitable size  
56 to contain the entire cremains of the person who was cremated.

(6) The prescribed sealable container or containers shall be accurately and legibly labeled with the identification of the human being whose cremains are contained therein, in a manner acceptable to the division of cemeteries.

(i) Disposition of cremains. The authorizing agent shall be responsible for the final disposition of the cremains. Cremains must be disposed of by placing them in a grave, crypt, or niche, by scattering them in a designated scattering garden or area, or in any manner whatever on the private property of a consenting owner or by delivery to the authorizing agent or a person specifically designated by the authorizing agent. Upon completion of the cremation process, if the cemetery corporation has not been instructed to arrange for the interment, entombment, inurnment or scattering of the cremains, the cemetery corporation shall deliver the cremains to the individual specified on the cremation authorization form or the funeral firm of record. The delivery may be made in person or by registered mail. Upon receipt of the cremains, the individual receiving them may transport them in any manner in the state without a permit, and may dispose of them in accordance with this section. After delivery, the cemetery corporation shall be discharged from any legal obligation or liability concerning the cremains. If, after a period of one hundred twenty days from the date of the cremation, the authorizing agent has not instructed the cemetery corporation to arrange for the final disposition of the cremains or claimed the cremains, the cemetery corporation may dispose of the cremains in any manner permitted by this section. The cemetery corporation, however, shall keep a permanent record identifying the site of final disposition. The authorizing agent shall be responsible for reimbursing the cemetery corporation for all reasonable expenses incurred in disposing of the cremains. Upon disposing of the cremains, the cemetery corporation shall be discharged from any legal obligation or liability concerning the cremains. Except with the express written permission of the authorizing agent, no person shall:

(1) dispose of cremains in a manner or in a location so that the cremains are commingled with those of another person. This prohibition shall not apply to the scattering of cremains at sea, by air, or in an area located in a cemetery and used exclusively for those purposes; and

(2) place cremains of more than one person in the same temporary container or urn.

(j) DISPOSITION OF UNCLAIMED CREMATED REMAINS OF A VETERAN. (1) PURSUANT TO THE REQUIREMENTS OF PARAGRAPH (I) OF THIS SECTION, IF, UPON COMPLETION OF THE CREMATION PROCESS, THE CEMETERY CORPORATION HAS NOT BEEN INSTRUCTED TO ARRANGE FOR THE INTERMENT, ENTOMBMENT, INURNMENT OR SCATTERING OF THE CREMAINS OF AN INDIVIDUAL KNOWN TO BE A VETERAN AND PROVIDED A DILIGENT EFFORT HAS BEEN MADE TO LOCATE AND NOTIFY THE NEXT OF KIN OR AUTHORIZING AGENT THAT SIGNED THE CREMATION AUTHORIZATION FOR THE DECEASED VETERAN, AFTER A PERIOD OF ONE HUNDRED TWENTY DAYS FROM THE DATE OF THE CREMATION, WHERE THE AUTHORIZING AGENT HAS NOT INSTRUCTED THE CEMETERY CORPORATION TO ARRANGE FOR THE FINAL DISPOSITION OF THE CREMAINS OR CLAIMED THE CREMAINS, THE CEMETERY CORPORATION MAY ALSO DISPOSE OF THE CREMAINS IN ANY MANNER PERMITTED BY THIS SECTION OR BY RELINQUISHING POSSESSION OF VETERANS' CREMAINS FOR DISPOSITION BY A VETERANS' ORGANIZATION THAT QUALIFIES AS A SECTION 501(C)(3) OR 501(C)(19) TAX EXEMPT ORGANIZATION UNDER THE INTERNAL REVENUE CODE, OR A FEDERALLY CHARTERED VETERANS' SERVICE ORGANIZATION. THE CEMETERY CORPORATION, HOWEVER, SHALL KEEP A PERMANENT RECORD IDENTIFYING THE VETERANS' ORGANIZATION RECEIVING THE REMAINS AND THE SITE DESIGNATED FOR FINAL DISPOSITION BY THE ORGANIZATION. THE METHOD OF DISPOSITION SHALL BE MADE

1 PURSUANT TO THIS SECTION AND SHALL BE DIRECTED TO A SECTION OF A CEME-  
2 TERY CORPORATION WHERE VETERANS ARE MEMORIALIZED BY A VETERAN'S MARKER  
3 IF ELIGIBLE, A VETERANS' SECTION OF A CEMETERY CORPORATION OR A VETER-  
4 ANS' CEMETERY IF THE DECEASED VETERAN IS ELIGIBLE FOR INTERMENT IN SUCH  
5 A MANNER. SUCH INTERMENT, ENTOMBMENT, INURNMENT OR SCATTERING OF THE  
6 CREMAINS OF AN INDIVIDUAL KNOWN TO BE A VETERAN BY SUCH A VETERANS'  
7 ORGANIZATION SHALL OCCUR WITHIN SIXTY DAYS. THE AUTHORIZING AGENT SHALL  
8 BE RESPONSIBLE FOR REIMBURSING THE CEMETERY CORPORATION OR THE VETERANS'  
9 ORGANIZATION FOR ALL REASONABLE EXPENSES INCURRED IN DISPOSING OF THE  
10 CREMAINS. UPON DISPOSITION OF THE CREMAINS, THE CEMETERY CORPORATION AND  
11 THE VETERANS' ORGANIZATION AS DEFINED IN THIS SECTION SHALL BE  
12 DISCHARGED FROM ANY LEGAL OBLIGATION OR LIABILITY CONCERNING THE  
13 CREMAINS. EXCEPT WITH THE EXPRESS WRITTEN PERMISSION OF THE AUTHORIZING  
14 AGENT, NO PERSON SHALL:

15 (I) DISPOSE OF CREMAINS IN A MANNER OR IN A LOCATION SO THAT THE  
16 CREMAINS ARE COMMINGLED WITH THOSE OF ANOTHER PERSON. THIS PROHIBITION  
17 SHALL NOT APPLY TO THE SCATTERING OF CREMAINS AT SEA, BY AIR, OR IN AN  
18 AREA LOCATED IN A CEMETERY AND USED EXCLUSIVELY FOR THOSE PURPOSES; AND

19 (II) PLACE CREMAINS OF MORE THAN ONE PERSON IN THE SAME TEMPORARY  
20 CONTAINER OR URN.

21 (2) FOR THE PURPOSES OF THIS PARAGRAPH, "DILIGENT EFFORT" SHALL MEAN A  
22 REASONABLE EFFORT, AND INCLUDES A CERTIFIED LETTER, DELIVERY RECEIPT  
23 REQUESTED, MAILED TO THE NEXT OF KIN OR AUTHORIZING AGENT THAT SIGNED  
24 THE CREMATION AUTHORIZATION.

25 (K) Crematory operation certification. Any employee of a crematory  
26 whose function is to conduct the daily operations of the cremation proc-  
27 ess shall be certified by an organization approved by the division of  
28 cemeteries. Proof of such certification must be posted in the crematory  
29 and available for inspection at any time. Any new employees of a crema-  
30 tory required to be certified under this section shall be certified  
31 within one year of their employment. Any employees of a crematory  
32 required to be certified under this section and retained prior to the  
33 effective date of this paragraph shall be certified within one year of  
34 such effective date. Renewal of such certification shall be completed  
35 every five years from the date of certification.

36 S 2. This act shall take effect November 11, 2015.