

8322

2015-2016 Regular Sessions

I N   A S S E M B L Y

June 24, 2015

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Introduced by M. of A. SILVER, LENTOL -- read once and referred to the  
Committee on Health

AN ACT to amend the public health law, in relation to limitations on the  
retention of body parts of a decedent by a medical examiner or coroner

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

1     Section 1. The public health law is amended by adding a new section  
2     4210-d to read as follows:  
3     S 4210-D. LIMITATIONS TO THE RETENTION OF BODY PARTS. 1.     NOTWITH-  
4     STANDING ANY OTHER PROVISION OF LAW AND EXCEPT AS PROVIDED HEREIN, IN  
5     THE ABSENCE OF A COMPELLING PUBLIC NECESSITY, NO MEDICAL EXAMINER OR  
6     CORONER SHALL, UPON COMPLETION OF AN AUTOPSY OR DISSECTION, RETAIN A  
7     BODY PART OR PARTS OF A DECEDENT OVER THE OBJECTION OF A SURVIVING RELA-  
8     TIVE OR FRIEND OF SUCH DECEDENT.  
9     2. FOR THE PURPOSES OF THIS SECTION:  
10    (A) "COMPELLING PUBLIC NECESSITY" SHALL MEAN:  
11    (I) THAT THE RETENTION OF SUCH BODY PART OR PARTS IS ESSENTIAL TO THE  
12    CONDUCT OF A CRIMINAL INVESTIGATION OF A HOMICIDE, AS DEFINED IN SECTION  
13    125.00 OF THE PENAL LAW, OF WHICH THE DECEDENT IS THE VICTIM; OR  
14    (II) THAT THE RETENTION OF SUCH BODY PART OR PARTS IS NECESSARY TO  
15    MEET AN IMMEDIATE AND SUBSTANTIAL THREAT TO THE PUBLIC HEALTH; OR  
16    (III) THAT THE NEED FOR RETENTION OF SUCH BODY PART OR PARTS IS ESTAB-  
17    LISHED IN ACCORDANCE WITH SUBDIVISION FOUR OF THIS SECTION.  
18    (B) "RELATIVE" SHALL MEAN THE PERSON MOST CLOSELY RELATED TO THE DECE-  
19    DENT BY CONSANGUINITY OR AFFINITY. IN THE EVENT SUCH PERSON IS UNAVAIL-  
20    ABLE, THE OBJECTION MAY BE RAISED ON HIS OR HER BEHALF BY THE NEXT MOST  
21    CLOSELY RELATED PERSON. THE MEDICAL EXAMINER OR CORONER SEEKING TO  
22    RETAIN ANY BODY PART OR PARTS OF THE DECEDENT MAY REQUIRE A RELATIVE TO  
23    PRESENT AN AFFIDAVIT STATING HIS OR HER RELATIONSHIP TO THE DECEDENT,  
24    AND THAT HE OR SHE WILL ASSUME RESPONSIBILITY FOR THE LAWFUL DISPOSITION  
25    OF THE BODY OF THE DECEDENT.

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

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1 (C) "FRIEND" SHALL MEAN ANY PERSON WHO, PRIOR TO THE DECEDENT'S DEATH,  
2 MAINTAINED SUCH REGULAR CONTACT WITH THE DECEDENT AS TO BE FAMILIAR WITH  
3 HIS OR HER ACTIVITIES AND WHO PRESENTS AN AFFIDAVIT STATING THE FACTS  
4 AND CIRCUMSTANCES UPON WHICH THE CLAIM THAT HE OR SHE IS SUCH FRIEND IS  
5 BASED, AND THAT HE OR SHE WILL ASSUME RESPONSIBILITY FOR THE LAWFUL  
6 DISPOSITION OF THE BODY OF THE DECEDENT.

7 3. NO MEDICAL EXAMINER OR CORONER SHALL RETAIN ANY BODY PART OR PARTS  
8 OF A DECEDENT DUE TO A COMPELLING PUBLIC NECESSITY OVER THE OBJECTION OF  
9 A SURVIVING RELATIVE OR FRIEND UNTIL NOTICE THEREOF IS GIVEN TO SUCH  
10 SURVIVING RELATIVE OR FRIEND TO PERMIT SUCH SURVIVING RELATIVE OR FRIEND  
11 TO INSTITUTE LEGAL PROCEEDINGS TO DETERMINE THE PROPRIETY OF SUCH  
12 RETENTION OF SUCH BODY PART OR PARTS.

13 4. WHENEVER ANY CORONER OR MEDICAL EXAMINER SHALL DEEM IT NECESSARY TO  
14 RETAIN A BODY PART OR PARTS OF A DECEDENT OVER THE OBJECTION OF A  
15 SURVIVING RELATIVE OR FRIEND IN CIRCUMSTANCES NOT PROVIDED FOR IN  
16 SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (A) OF SUBDIVISION TWO OF THIS  
17 SECTION, HE OR SHE MAY INSTITUTE A SPECIAL PROCEEDING, WITHOUT FEE, IN  
18 THE SUPREME COURT OR COUNTY COURT FOR AN ORDER AUTHORIZING SUCH  
19 RETENTION OF A BODY PART OR PARTS. SUCH PROCEEDING SHALL BE INSTITUTED  
20 AS SOON AS PRACTICABLE, BROUGHT ON BY AN ORDER TO SHOW CAUSE ON NOTICE  
21 TO THE NEXT OF KIN OR FRIEND, OR IF NONE IS KNOWN TO THE PETITIONER,  
22 THEN TO SUCH PARTY AS THE COURT MAY DIRECT, RETURNABLE AT THE EARLIEST  
23 POSSIBLE TIME. THE PROCEEDING SHALL HAVE PREFERENCE OVER ALL OTHER CASES  
24 IN THE COURT AND SHALL BE DETERMINED SUMMARILY UPON THE PETITION AND  
25 SUCH ORAL OR WRITTEN PROOF AS MAY BE OFFERED BY THE PARTIES. THE COURT  
26 SHALL GRANT THE RELIEF SOUGHT IN THE PETITION IF IT FINDS THAT THE PETI-  
27 TIONER HAD ESTABLISHED A DEMONSTRABLE NEED TO RETAIN SUCH BODY PART OR  
28 PARTS UNDER ALL CIRCUMSTANCES OF THE CASE. IF THE PETITION IS DENIED,  
29 AND NO STAY IS GRANTED BY THE COURT OR THE APPELLATE DIVISION, ALL BODY  
30 PARTS OF THE DECEDENT SHALL IMMEDIATELY BE RETURNED TO THE SURVIVING  
31 RELATIVE OR FRIEND FOR THE LAWFUL DISPOSITION OF THE BODY OF THE DECE-  
32 DENT.

33 S 2. This act shall take effect immediately.