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

8322

2015-2016 Regular Sessions

I N A S S E M B L Y

June 24, 2015

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public health law is amended by adding a new section 4210-d to read as follows:

S 4210-D. LIMITATIONS TO THE RETENTION OF BODY PARTS. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND EXCEPT AS PROVIDED HEREIN, IN THE ABSENCE OF A COMPELLING PUBLIC NECESSITY, NO MEDICAL EXAMINER OR CORONER SHALL, UPON COMPLETION OF AN AUTOPSY OR DISSECTION, RETAIN A BODY PART OR PARTS OF A DECEDENT OVER THE OBJECTION OF A SURVIVING RELATIVE OR FRIEND OF SUCH DECEDENT.

2. FOR THE PURPOSES OF THIS SECTION:

(A) "COMPELLING PUBLIC NECESSITY" SHALL MEAN:

(I) THAT THE RETENTION OF SUCH BODY PART OR PARTS IS ESSENTIAL TO THE CONDUCT OF A CRIMINAL INVESTIGATION OF A HOMICIDE, AS DEFINED IN SECTION 125.00 OF THE PENAL LAW, OF WHICH THE DECEDENT IS THE VICTIM; OR

(II) THAT THE RETENTION OF SUCH BODY PART OR PARTS IS NECESSARY TO MEET AN IMMEDIATE AND SUBSTANTIAL THREAT TO THE PUBLIC HEALTH; OR

(III) THAT THE NEED FOR RETENTION OF SUCH BODY PART OR PARTS IS ESTABLISHED IN ACCORDANCE WITH SUBDIVISION FOUR OF THIS SECTION.

(B) "RELATIVE" SHALL MEAN THE PERSON MOST CLOSELY RELATED TO THE DECEDENT BY CONSANGUINITY OR AFFINITY. IN THE EVENT SUCH PERSON IS UNAVAILABLE, THE OBJECTION MAY BE RAISED ON HIS OR HER BEHALF BY THE NEXT MOST CLOSELY RELATED PERSON. THE MEDICAL EXAMINER OR CORONER SEEKING TO RETAIN ANY BODY PART OR PARTS OF THE DECEDENT MAY REQUIRE A RELATIVE TO PRESENT AN AFFIDAVIT STATING HIS OR HER RELATIONSHIP TO THE DECEDENT, AND THAT HE OR SHE WILL ASSUME RESPONSIBILITY FOR THE LAWFUL DISPOSITION 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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(C)"FRIEND" SHALL MEAN ANY PERSON WHO, PRIOR TO THE DECEDENT'S DEATH, MAINTAINED SUCH REGULAR CONTACT WITH THE DECEDENT AS TO BE FAMILIAR WITH HIS OR HER ACTIVITIES AND WHO PRESENTS AN AFFIDAVIT STATING THE FACTS AND CIRCUMSTANCES UPON WHICH THE CLAIM THAT HE OR SHE IS SUCH FRIEND IS BASED, AND THAT HE OR SHE WILL ASSUME RESPONSIBILITY FOR THE LAWFUL DISPOSITION OF THE BODY OF THE DECEDENT.

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

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

S 2. This act shall take effect immediately.