

# STATE OF NEW YORK

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3662

2017-2018 Regular Sessions

## IN ASSEMBLY

January 30, 2017

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Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Corporations, Authorities and Commissions

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 § 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  
18 retort area, holding facility, or the temporary storage facility while  
19 the remains of deceased human beings are being cremated. Authorized  
20 persons, on admittance, shall comply with all rules of the crematory  
21 corporation and not infringe upon the privacy of the remains of deceased  
22 human beings.

23 (2) The following are authorized persons: (i) licensed, registered  
24 funeral directors, registered residents, and enrolled students of mortu-  
25 ary science; (ii) officers and trustees of the cemetery corporation;

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

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1 (iii) authorized employees or their authorized agents of the cemetery  
2 corporation; (iv) public officers acting in the discharge of their  
3 duties; (v) authorized instructors of funeral directing schools; (vi)  
4 licensed physicians or nurses; and (vii) members of the immediate family  
5 of the deceased and their authorized agents and designated represen-  
6 tatives.

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

26 (2) Upon good cause being shown rebutting the presumption of the iden-  
27 tity of such remains, the cremation shall not commence until reasonable  
28 confirmation of the identity of the deceased human being is made. This  
29 proof may be in the form of, but not limited to, a signed affidavit from  
30 a licensed physician, a member of the family of the deceased human  
31 being, the authorizing agent or a court order from the state supreme  
32 court within the county of the cemetery corporation. Such proof shall be  
33 provided by the authorizing agent.

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

39 (d) Opening of container holding the remains of the deceased human  
40 being. (1) The casket, alternative container, or external wrappings  
41 holding the remains of the deceased human being shall not be opened  
42 after delivery to the crematory unless there exists good cause to  
43 confirm the identity of the deceased, or to assure that no material is  
44 enclosed which might cause injury to employees or damage to crematory  
45 property, or upon reasonable demand by members of the immediate family  
46 or the authorized agent.

47 (2) In such instances in which the casket, alternative container, or  
48 wrappings are opened after delivery to the crematory, such action shall  
49 only be conducted by the licensed funeral director or registered resi-  
50 dent delivering the remains of the deceased human being and if neces-  
51 sary, with the assistance of crematory personnel and a record shall be  
52 made, which shall include the reason for such action, the signature of  
53 the person authorizing the opening thereof, and the names of the person  
54 opening the container and the witness thereto, which shall be retained  
55 in the permanent file of the crematory. The opening of the container  
56 shall be conducted in the presence of the witness and shall comply with

1 all rules and regulations intended to protect the health and safety of  
2 crematory personnel.

3 (e) Ceremonial casket cremation disclosure. In those instances in  
4 which the remains of deceased human beings are to be delivered to a  
5 crematory in a casket that is not to be cremated with the deceased,  
6 timely disclosure thereof must be made by the person making the funeral  
7 arrangements to the crematory that prior to cremation the remains of the  
8 deceased human being shall be transferred to an alternative container.  
9 Such signed acknowledgement of the authorizing person, that the timely  
10 disclosure has been made, shall be retained by the crematory in its  
11 permanent records.

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

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

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

31 (h) Processing of cremains. (1) Upon the completion of the cremation  
32 of the remains of a deceased human being, the interior of the retort  
33 shall be thoroughly swept so as to render the retort reasonably free of  
34 all matter. The contents thereof shall be placed into an individual  
35 container and not commingled with other cremains. The cremation permit  
36 shall be attached to the individual container preparatory to final proc-  
37 essing.

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

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

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

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

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

53 (i) Disposition of cremains. The authorizing agent shall be responsi-  
54 ble for the final disposition of the cremains. Cremains must be disposed  
55 of by placing them in a grave, crypt, or niche, by scattering them in a  
56 designated scattering garden or area, or in any manner whatever on the

1 private property of a consenting owner or by delivery to the authorizing  
2 agent or a person specifically designated by the authorizing agent. Upon  
3 completion of the cremation process, if the cemetery corporation has not  
4 been instructed to arrange for the interment, entombment, inurnment or  
5 scattering of the cremains, the cemetery corporation shall deliver the  
6 cremains to the individual specified on the cremation authorization form  
7 or the funeral firm of record. The delivery may be made in person or by  
8 registered mail. Upon receipt of the cremains, the individual receiving  
9 them may transport them in any manner in the state without a permit, and  
10 may dispose of them in accordance with this section. After delivery, the  
11 cemetery corporation shall be discharged from any legal obligation or  
12 liability concerning the cremains. If, after a period of one hundred  
13 twenty days from the date of the cremation, the authorizing agent has  
14 not instructed the cemetery corporation to arrange for the final dispo-  
15 sition of the cremains or claimed the cremains, the cemetery corporation  
16 may dispose of the cremains in any manner permitted by this section. The  
17 cemetery corporation, however, shall keep a permanent record identifying  
18 the site of final disposition. The authorizing agent shall be responsi-  
19 ble for reimbursing the cemetery corporation for all reasonable expenses  
20 incurred in disposing of the cremains. Upon disposing of the cremains,  
21 the cemetery corporation shall be discharged from any legal obligation  
22 or liability concerning the cremains. Except with the express written  
23 permission of the authorizing agent, no person shall:

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

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

30 (j) Disposition of unclaimed cremated remains of a veteran. (1) Pursu-  
31 ant to the requirements of paragraph (i) of this section, if, upon  
32 completion of the cremation process, the cemetery corporation has not  
33 been instructed to arrange for the interment, entombment, inurnment or  
34 scattering of the cremains of an individual known to be a veteran and  
35 provided a diligent effort has been made to locate and notify the next  
36 of kin or authorizing agent that signed the cremation authorization for  
37 the deceased veteran, after a period of one hundred twenty days from the  
38 date of the cremation, where the authorizing agent has not instructed  
39 the cemetery corporation to arrange for the final disposition of the  
40 cremains or claimed the cremains, the cemetery corporation may also  
41 dispose of the cremains in any manner permitted by this section or by  
42 relinquishing possession of veterans' cremains for disposition by a  
43 veterans' organization that qualifies as a section 501(c)(3) or  
44 501(c)(19) tax exempt organization under the Internal Revenue Code, or a  
45 federally chartered veterans' service organization. The cemetery corpo-  
46 ration, however, shall keep a permanent record identifying the veterans'  
47 organization receiving the remains and the site designated for final  
48 disposition by the organization. The method of disposition shall be made  
49 pursuant to this section and shall be directed to a section of a ceme-  
50 tery corporation where veterans are memorialized by a veteran's marker  
51 if eligible, a veterans' section of a cemetery corporation or a veter-  
52 ans' cemetery if the deceased veteran is eligible for interment in such  
53 a manner. Such interment, entombment, inurnment or scattering of the  
54 cremains of an individual known to be a veteran by such a veterans'  
55 organization shall occur within sixty days. The authorizing agent shall  
56 be responsible for reimbursing the cemetery corporation or the veterans'

1 organization for all reasonable expenses incurred in disposing of the  
2 cremains. Upon disposition of the cremains, the cemetery corporation and  
3 the veterans' organization as defined in this section shall be  
4 discharged from any legal obligation or liability concerning the  
5 cremains. Except with the express written permission of the authorizing  
6 agent, no person shall:

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

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

13 (2) For the purposes of this paragraph, "diligent effort" shall mean a  
14 reasonable effort, and includes a certified letter, delivery receipt  
15 requested, mailed to the next of kin or authorizing agent that signed  
16 the cremation authorization.

17 (k) Crematory operation certification. Any employee of a crematory  
18 whose function is to conduct the daily operations of the cremation proc-  
19 ess shall be certified by an organization approved by the division of  
20 cemeteries. Proof of such certification must be posted in the crematory  
21 and available for inspection at any time. Any new employees of a crema-  
22 tory required to be certified under this section shall be certified  
23 within one year of their employment. Any employees of a crematory  
24 required to be certified under this section and retained prior to the  
25 effective date of this paragraph shall be certified within one year of  
26 such effective date. Renewal of such certification shall be completed  
27 every five years from the date of certification.

28 § 2. This act shall take effect November 11, 2018.