STATE OF NEW YORK

3254

2019-2020 Regular Sessions

IN SENATE

February 5, 2019

Introduced by Sens. PARKER, ADDABBO, BAILEY, BRESLIN, KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

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:

Section 1. Section 1517 of the not-for-profit corporation law, as added by chapter 579 of the laws of 2006, is amended to read as follows:

§ 1517. Crematory operations.

Cemetery corporations that operate a crematory shall have the following duties and obligations:

(a) Maintenance and privacy. (1) A crematory facility shall be maintained in a clean, orderly, and sanitary manner, with adequate ventilation and shall have a temporary storage area available to store the remains of deceased human beings pending disposition by cremation, the interior of which shall not be accessible to the general public.

(2) Entrances and windows of the crematory facility shall be maintained at all times to secure privacy, including (i) doors shall be tightly closed and rigid; (ii) windows shall be covered; and (iii) entrances shall be locked and secured when not actively attended by authorized crematory personnel.

(b) Cremation process. (1) The cremation process shall be conducted in privacy. No person except authorized persons shall be admitted into the retort area, holding facility, or the temporary storage facility while the remains of deceased human beings are being cremated. Authorized persons, on admittance, shall comply with all rules of the crematory corporation and not infringe upon the privacy of the remains of deceased human beings.

(2) The following are authorized persons: (i) licensed, registered funeral directors, registered residents, and enrolled students of mortu-

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

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ary science; (ii) officers and trustees of the cemetery corporation; (iii) authorized employees or their authorized agents of the cemetery corporation; (iv) public officers acting in the discharge of their duties; (v) authorized instructors of funeral directing schools; (vi) licensed physicians or nurses; and (vii) members of the immediate family of the deceased and their authorized agents and designated representatives.

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

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

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

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

(2) In such instances in which the casket, alternative container, or wrappings are opened after delivery to the crematory, such action shall only be conducted by the licensed funeral director or registered resident delivering the remains of the deceased human being and if necessary, with the assistance of crematory personnel and a record shall be made, which shall include the reason for such action, the signature of the person authorizing the opening thereof, and the names of the person opening the container and the witness thereto, which shall be retained in the permanent file of the crematory. The opening of the container

shall be conducted in the presence of the witness and shall comply with all rules and regulations intended to protect the health and safety of crematory personnel.

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

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

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

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

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

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

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

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

(5) The pulverized cremains shall be transferred to a sealable container or containers whose inside dimension shall be of suitable size 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 pursuant to this section and shall be directed to a section of a cemetery corporation where veterans are memorialized by a veteran's marker if eligible, a veterans' section of a cemetery corporation or a veterans' cemetery if the deceased veteran is eligible for interment in such a manner. Such interment, entombment, inurnment or scattering of the cremains of an individual known to be a veteran by such a veterans' organization shall occur within sixty days. The authorizing agent shall**

be responsible for reimbursing the cemetery corporation or the veterans' organization for all reasonable expenses incurred in disposing of the cremains. Upon disposition of the cremains, the cemetery corporation and the veterans' organization as defined in this section 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:

(i) 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

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

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

(k) Crematory operation certification. Any employee of a crematory whose function is to conduct the daily operations of the cremation process shall be certified by an organization approved by the division of cemeteries. Proof of such certification must be posted in the crematory and available for inspection at any time. Any new employees of a crematory required to be certified under this section shall be certified within one year of their employment. Any employees of a crematory required to be certified under this section and retained prior to the effective date of this paragraph shall be certified within one year of such effective date. Renewal of such certification shall be completed every five years from the date of certification.

§ 2. This act shall take effect November 11, 2020.