STATE OF NEW YORK

5535

2021-2022 Regular Sessions

IN SENATE

March 10, 2021

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, in relation to the creation, operation, and duties of natural organic reduction facilities as cemetery corporations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraphs (a), (m), (n) and (o) of section 1502 of the not-for-profit corporation law, paragraph (a) as added by chapter 871 of the laws of 1977, paragraphs (m), (n) and (o) as added by chapter 579 of the laws of 2006, are amended and two new paragraphs (t) and (u) are added to read as follows:

(a) The term "cemetery corporation" means any corporation formed under a general or special law for the disposal or burial of deceased human beings, by cremation**, natural organic reduction** or in a grave, mausoleum, vault, columbarium or other receptacle but does not include a family cemetery corporation or a private cemetery corporation.

(m) The term "holding facility" or "temporary storage facility" means an area that (i) is designated for the retention of human remains prior to cremation **or natural organic reduction**; (ii) complies with all applicable public health laws, (iii) preserves the health and safety of the crematory **or natural organic reduction facility** personnel; and (iv) is secure from access by anyone other than authorized persons. The interior of such facility shall not be visible from any area accessible to the general public.

(n) The [~~term~~] **terms** "cremation permit" [~~means~~] **and "natural organic reduction permit" mean** the burial and removal permit required pursuant to section forty-one hundred forty-five of the public health law that is annotated for disposition of the remains of a deceased human being by cremation **or natural organic reduction**.

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

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(o) The [~~term~~] terms "cremation authorization" [~~means~~] and "natural organic reduction authorization" mean the crematory or natural organic reduction form authorizing a cremation or natural organic reduction which is signed by the next of kin or authorizing agent. This crematory or natural organic reduction form must be a separate document and cannot be a part of another form or document.

(t) The term "natural organic reduction" means the contained, accelerated conversion of human remains to soil.

(u) The term "natural organic reduction facility" means a structure, room, or other space in a building or real property where natural organic reduction of a human body occurs.

§ 2. Section 1503 of the not-for-profit corporation law, as separately amended by chapters 579 and 580 of the laws of 2006, is amended to read as follows:

§ 1503. Application.

(a) Except as otherwise provided in paragraph (b) of this section, section fifteen hundred five-b, paragraph (c) of section fifteen hundred seven, [~~and~~] paragraph (m) of section fifteen hundred ten, and section fifteen hundred eighteen of this article does not apply to (1) a religious corporation, (2) a municipal corporation, (3) a cemetery corporation owning a cemetery operated, supervised or controlled by or in connection with a religious corporation or (4) a cemetery belonging to a religious or a municipal corporation, or operated, supervised or controlled by or in connection with a religious corporation unless any officer, member or employee of any such corporation shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, other than reasonable compensation for services in effecting one or more of the purposes of such corporation or as proper beneficiaries of its strictly charitable purposes or unless the organization of any such corporation for any of its avowed purposes be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation, or for any of its officers, members or employees, and unless any such corporation is not, in good faith, organized or conducted exclusively for one or more of its stated purposes.

(b) All crematories or natural organic reduction facilities shall be subject to inspection by the division of cemeteries. Upon inspection, the crematory or natural organic reduction facility may be asked to produce any and all records for the operation and maintenance of the crematory or natural organic reduction facility. These records may include but not be limited to cremation or natural organic reduction authorizations, rules and regulations of the crematory or natural organic reduction facility, procedures as set forth in section fifteen hundred seventeen of this article, and the written procedure of the identification of remains.

§ 3. The not-for-profit corporation law is amended by adding a new section 1505-b to read as follows:

§ 1505-b. Additional requirements for incorporation of natural organic reduction facilities.

(a) Approval. A cemetery corporation seeking the approval to operate a natural organic reduction facility shall submit for approval by the cemetery board the following:

(1) a list of the directors, employees, and certificate holders of the cemetery corporation;

(2) a certified survey of the site and location within the county it will be situated;

(3) a business plan for the operation of the natural organic reduction facility to include, but not be limited to, number of expected natural organic reductions per year, number of natural organic reduction units, manufacture, capital costs, financing, anticipated number of employees, types of services provided, pricing thereof;

(4) a description of the impact of the proposed natural organic reduction facility on other natural organic reduction facilities, if any, within the county;

(5) plans, designs, and costs of any structures to be erected or retrofitted for the natural organic reduction facility use; and

(6) a description of any approvals or permits required by state or local law. No natural organic reduction facility shall be approved until such other approvals or permits have been obtained.

(b) Further information. Within thirty-five days following receipt of the information required by paragraph (a) of this section, the cemetery board or the division of cemeteries may request from the cemetery corporation any additional information or documentation and technical assistance deemed necessary to review such information. Such information shall not be deemed complete until the requested additional information has been received. If no such request is made, the submission shall be deemed complete on the thirty-fifth day after its receipt by the division of cemeteries.

(c) Determination. The cemetery board shall approve or deny the proposed natural organic reduction facility within ninety days of the completed submission.

(d) Notification. The cemetery board shall provide written notice of its determination to the cemetery corporation. If a negative determination is made, such notice shall state the reasons therefor. Notice shall be made by registered or certified mail addressed to the cemetery corporation at its principal office.

§ 4. Paragraph (c) of section 1508 of the not-for-profit corporation law, as amended by chapter 579 of the laws of 2006, is amended to read as follows:

(c) Cemetery payment for administration. To defray the expenses of examination and administration, each cemetery corporation shall not later than March fifteenth in each calendar year, pay to the cemetery board the sum of three dollars per interment and cremation or natural organic reduction in excess of fifteen interments [~~or~~], cremations, or natural organic reductions for the preceding calendar year. No contribution shall be collected upon the interment of the [~~cremains~~] remains of a deceased person where a contribution was collected upon cremation or natural organic reduction.

§ 5. Paragraph (c) of section 1510 of the not-for-profit corporation law, as amended by chapter 579 of the laws of 2006, is amended to read as follows:

(c) Record of burials, natural organic reductions or cremations. A record shall be kept of every burial in the cemetery of a cemetery corporation, showing the date of burial, the name, age, and place of birth of the person buried, when these particulars can be conveniently obtained, and the lot, plot, or part thereof, in which such burial was made. A copy of such record, duly certified by the secretary of such corporation, shall be furnished on demand and payment of such fees therefor as are allowed the county clerk for certified copies of records. Notwithstanding any other provision of this section, all cemetery corporations which conduct cremations or natural organic reductions shall maintain permanent records of the name of the deceased human

being, the funeral home from which the remains were received, the receipt of delivery of the deceased human remains, the authorizing agent for the cremation **or natural organic reduction**, and the manner of disposition of the [~~**cremains**~~] **remains**. Such records may be reviewed by the division of cemeteries at any time.

§ 6. The not-for-profit corporation law is amended by adding a new section 1518 to read as follows:

§ 1518. Natural organic reduction facility operations.

Cemetery corporations that operate a natural organic reduction facility shall have the following duties and obligations:

(a) Maintenance and privacy. (1) A natural organic reduction 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 natural organic reduction, the interior of which shall not be accessible to the general public.

(2) Entrances and windows of the 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 facility personnel.

(b) Natural organic reduction process. (1) The natural organic reduction process shall be conducted in privacy. No person except authorized persons shall be admitted into the reduction area, holding facility, or the temporary storage facility while the remains of deceased human beings are being naturally organically reduced. Authorized persons, on admittance, shall comply with all rules of the cemetery 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 mortuary 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 natural organic reduction facility shall naturally organically reduce the remains of any deceased human being without the accompanying natural organic reduction permit, required pursuant to section forty-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 natural organic reduction facilities situated outside the city of New York, must comply with paragraph (b) of subdivision two of section forty-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 natural organic reduction facility, until the time the natural organic reduction facility distributes the remains as directed, the facility shall be responsible for the remains of the deceased human being. Further, a natural organic reduction authorization form shall accompany the permit required in section forty-one hundred forty-five of the public health law. This form, provided or approved by the facility, shall be signed by the next of kin or authorizing agent attesting to the permission for the natural organic reduction of the deceased, and disclosing to the natural

organic reduction facility 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 natural organic reduction process.

(2) Upon good cause being shown rebutting the presumption of the identity of such remains, the natural organic reduction 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 facility shall have a written plan to assure that the identification established by the natural organic reduction permit accompanies the remains of the deceased human being through the natural organic reduction process and until the identity of the deceased is accurately and legibly inscribed on the container in which the remains are temporarily placed.

(d) Opening of a container holding the remains of the deceased human being. (1) The remains of a deceased human being shall be delivered to the natural organic reduction facility in an alternative container or in external wrappings sufficient to contain the remains and also designed to fully decompose in the natural reduction process. Such alternative container or external wrappings holding the remains of the deceased human being shall not be opened after delivery to the natural organic reduction facility 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 natural organic reduction facility property, or upon reasonable demand by members of the immediate family or the authorized agent.

(2) In such instances in which alternative container or wrappings are opened after delivery to the natural organic reduction facility, such action shall only be conducted by the licensed funeral director or registered resident delivering the remains of the deceased human being 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 or wrappings and the witness thereto, which shall be retained in the permanent file of the natural organic reduction facility. The opening of the container or wrapping 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 natural organic reduction facility personnel.

(e) Ceremonial casket natural organic reduction disclosure. In those instances in which the remains of deceased human beings are to be delivered to a natural organic reduction facility in a casket that is not to be naturally organically reduced with the deceased, timely disclosure thereof must be made by the person making the funeral arrangements to the natural organic reduction facility that prior to natural organic reduction 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 natural organic reduction facility 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 natural organic reduction

facility 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 natural organic reduction facility 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. The transferring operation shall comply with all rules and regulations intended to protect the health and safety of facility personnel.

(g) Commingling human remains. The natural organic reduction of remains of more than one deceased human being in a reduction container 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 natural organic reduction facility, which shall be retained by the natural organic reduction facility in its permanent records.

(h) Processing of remains. (1) Upon the completion of the natural organic reduction of the remains of a deceased human being, the interior of the natural organic reduction container shall be thoroughly swept or otherwise cleaned so as to render the natural organic reduction container reasonably free of all matter. The contents thereof shall be placed into an individual container and not commingled with other remains. The natural organic reduction 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 remains from unrecognizable incidental or foreign material.

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

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

(5) The pulverized remains shall be transferred to a container or to multiple containers, if so requested in writing by the person making the funeral arrangements for the natural organic reduction. Such container or containers shall have inside dimensions of suitable size to contain the remains of the person who was naturally organically reduced.

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

(i) Disposition of remains. The authorizing agent shall be responsible for the final disposition of the remains. Disposition of remains resulting from the natural organic reduction process are not recoverable once scattered or interred. Remains shall be disposed of by scattering them in a designated scattering garden or area in a cemetery, or by prior authorization by the cemetery corporation, by placing them in a grave, crypt, or niche, or retrieval of the remains pursuant to prior authorization by the authorizing agent or a person specifically designated by the authorizing agent. Upon completion of the natural organic reduction process, the cemetery corporation shall notify the authorizing agent and funeral firm making such arrangements that the natural organic reduction process has been completed and that the remains are prepared to be disposed of in accordance with this paragraph. After disposition, the cemetery corporation shall be discharged from any legal obligation or

liability concerning the remains. If, after a period of one hundred twenty days from the date of the natural organic reduction, the authorizing agent has not instructed the cemetery corporation to arrange for the final disposition of the remains or claimed the remains, the cemetery corporation may dispose of the remains 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 remains. Upon disposing of the remains, the cemetery corporation shall be discharged from any legal obligation or liability concerning the remains. Except with the express written permission of the authorizing agent, no person shall place remains of more than one person in the same temporary container or urn.

(j) Natural organic reduction facility operation certification. Any employee of a natural organic reduction whose function is to conduct the daily operations of the cremation or natural organic reduction process shall be certified by an organization approved by the division of cemeteries. Proof of such certification shall be posted in the natural organic reduction facility and available for inspection at any time. Any new employees of a natural organic reduction facility required to be certified under this section shall be certified within one year of their employment. Any employees of a natural organic reduction facility 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.

§ 7. This act shall take effect on the ninetieth day after it shall have become a law.