

STATE OF NEW YORK

242

2023-2024 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2023

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

AN ACT to amend the public health law, in relation to the disposition of fetal remains

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

1 Section 1. Section 4160 of the public health law, as amended by chap-
2 ter 436 of the laws of 1967, subdivision 2 as amended and subdivisions 4
3 and 5 as added by chapter 809 of the laws of 1987 and subdivision 3 as
4 amended by chapter 552 of the laws of 2011, is amended to read as
5 follows:

6 § 4160. Fetal deaths; registration. 1. Fetal death is defined as death
7 prior to the complete expulsion or extraction from its mother of a prod-
8 uct of conception; the death is indicated by the fact that after such
9 separation, the fetus does not breathe or show any other evidence of
10 life such as beating of the heart, pulsation of the umbilical cord, or
11 definite movement of voluntary muscles.

12 2. A fetal death shall be registered within seventy-two hours after
13 expulsion of [~~such fetus~~] a fetus of any gestational age, by filing
14 directly with the commissioner a certificate of such death. In addition,
15 a report of fetal death shall be reported to the registrar in the
16 district in which the fetal death occurred.

17 3. In the case of a spontaneous fetal death at any gestational age,
18 the attending physician or a person designated by the hospital shall
19 ensure that the mother of the fetus is informed of her right to access
20 the report of fetal death and to direct either burial, entombment or
21 cremation of the fetal remains.

22 4. For the purposes of this article, a fetal death shall be considered
23 as a birth and as a death except that, for a fetal death, separate birth
24 and death certificates shall not be required to be prepared and

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

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1 recorded, except as provided in section forty-one hundred sixty-a of
2 this title.

3 ~~[4-]~~ 5. Local registrars of each district in which fetal death certifi-
4 cates were filed prior to the effective date of this subdivision shall
5 dispose of such certificates in the manner prescribed by the commission-
6 er.

7 ~~[5-]~~ 6. Notwithstanding any other provision of this chapter, the
8 disclosure of information filed pursuant to this section shall be limit-
9 ed to the mother, her lawful representative and to authorized personnel
10 of the department.

11 § 2. Section 4162 of the public health law, as amended by chapter 809
12 of the laws of 1987, is amended to read as follows:

13 § 4162. Fetal deaths; burial and removal; permits. 1. The remains
14 resulting from a spontaneous fetal death at any gestational age shall be
15 released to the mother of the fetus upon request and upon issuance of a
16 permit pursuant to subdivision three of this section.

17 2. A permit shall be required for the removal, transportation, burial
18 or other disposition of remains resulting from a fetal death, other than
19 fetal tissue, hydatidiform mole or other evidence of pregnancy recovered
20 by curettage or operative procedures or other products of conception of
21 under twenty weeks uterogestation.

22 ~~[2-]~~ 3. Such permit shall be issued by the local registrar of the
23 district in which the fetal death occurred upon presentation by the
24 funeral director or the mother of the fetus of a report of fetal death,
25 on the form prescribed by the commissioner. The issuance of such permit
26 shall be subject to the provisions of title IV of this article.

27 4. The physician or a person designated by a hospital shall ensure
28 that the mother of the fetus is informed both orally and in writing
29 about her right to access the report of fetal death and to direct either
30 burial, entombment or cremation of the fetal remains.

31 § 3. Section 4200 of the public health law is amended to read as
32 follows:

33 § 4200. Cadavers; duty of burial. 1. Except in the cases in which a
34 right to dissect it is expressly conferred by law, every body of a
35 deceased person, within this state, shall be decently buried or inciner-
36 ated within a reasonable time after death.

37 2. The remains resulting from a spontaneous fetal death at any gesta-
38 tional age shall be released to the mother of the fetus upon request, in
39 accordance with section forty-one hundred sixty-two of this chapter. Any
40 costs associated with the release, burial, entombment or cremation of
41 these fetal remains shall be borne by the mother.

42 3. The provisions of this section shall not impair the right to carry
43 the body of a deceased person through this state, or to remove from this
44 state the body of a person who has died within it, for the purpose of
45 burying the same elsewhere.

46 § 4. Subdivision 1 of section 1389-dd of the public health law is
47 amended by adding a new paragraph (e) to read as follows:

48 (e) In the case of remains resulting from spontaneous fetal death, by
49 burial, entombment or cremation at the request of the mother, pursuant
50 to section forty-one hundred sixty-two of this chapter.

51 § 5. This act shall take effect on the ninetieth day after it shall
52 have become a law. Effective immediately, the addition, amendment
53 and/or repeal of any rule or regulation necessary for the implementation
54 of this act on its effective date are authorized to be made and
55 completed on or before such date.