

STATE OF NEW YORK

1486

2023-2024 Regular Sessions

IN SENATE

January 12, 2023

Introduced by Sen. ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to the priority of persons with responsibility to determine the disposition of human remains

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

1 Section 1. Subdivision 1 of section 4201 of the public health law is
2 amended by adding a new paragraph (e) to read as follows:

3 (e) "Member of the military or reserves" means (i) an active duty
4 member of the United States army, navy, air force, marines, coast guard,
5 army national guard, air national guard and/or reserves thereof; or (ii)
6 a member of the New York guard or the New York naval militia called up
7 to active duty.

8 § 2. Paragraph (a) of subdivision 2 of section 4201 of the public
9 health law, as amended by chapter 401 of the laws of 2007, the opening
10 paragraph as amended by chapter 191 of the laws of 2022, is amended to
11 read as follows:

12 (a) The following persons in descending priority shall have the right
13 to control the disposition of the remains of such decedent; provided
14 that if there are more than two members of a class listed in subpara-
15 graph [~~(iii)~~] (v), [~~or~~] (vii) or (ix) of this paragraph entitled to
16 control the disposition of remains of a decedent, the disposition shall
17 be determined by a majority of the members of the class who are reason-
18 ably available:

19 (i) if the decedent is a member of the military or reserves, who died
20 in the course of their duties therein as described in section 1481 of
21 title 10 of the United States Code, then the individual designated, if
22 any, by the decedent on the decedent's United States department of
23 defense record of emergency data, DD Form 93, or its successor form, so

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

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1 long as the written instrument was completed in accordance with federal
2 law;

3 (ii) the person designated in a written instrument executed pursuant
4 to the provisions of this section;

5 [~~(ii)~~] (iii) the decedent's surviving spouse;

6 [~~(ii-a)~~] (iv) the decedent's surviving domestic partner;

7 [~~(iii)~~] (v) any of the decedent's surviving children eighteen years of
8 age or older;

9 [~~(iv)~~] (vi) either of the decedent's surviving parents;

10 [~~(v)~~] (vii) any of the decedent's surviving siblings eighteen years of
11 age or older;

12 [~~(vi)~~] (viii) a guardian appointed pursuant to article seventeen or
13 seventeen-A of the surrogate's court procedure act or article eighty-one
14 of the mental hygiene law;

15 [~~(vii)~~] (ix) any person eighteen years of age or older who would be
16 entitled to share in the estate of the decedent as specified in section
17 4-1.1 of the estates, powers and trusts law, with the person closest in
18 relationship having the highest priority;

19 [~~(viii)~~] (x) a duly appointed fiduciary of the estate of the decedent;

20 [~~(ix)~~] (xi) a close friend or relative who is reasonably familiar with
21 the decedent's wishes, including the decedent's religious or moral
22 beliefs, when no one higher on this list is reasonably available, will-
23 ing, or competent to act, provided that such person has executed a writ-
24 ten statement pursuant to subdivision seven of this section; or

25 [~~(x)~~] (xii) a chief fiscal officer of a county or a public administra-
26 tor appointed pursuant to article twelve or thirteen of the surrogate's
27 court procedure act, or any other person acting on behalf of the dece-
28 dent, provided that such person has executed a written statement pursu-
29 ant to subdivision seven of this section.

30 § 3. This act shall take effect immediately.