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:

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

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

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

(a) The following persons in descending priority shall have the right to control the disposition of the remains of such decedent; provided that if there are more than two members of a class listed in subparagraph [~~(iii),~~] (v), [~~or~~] (vii) **or (ix)** of this paragraph entitled to control the disposition of remains of a decedent, the disposition shall be determined by a majority of the members of the class who are reasonably available:

(i) **if the decedent is a member of the military or reserves, who died in the course of their duties therein as described in section 1481 of title 10 of the United States Code, then the individual designated, if any, by the decedent on the decedent's United States department of 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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long as the written instrument was completed in accordance with federal law;

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

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

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

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

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

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

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

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

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

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

[~~(x)~~] (xii) a chief fiscal officer of a county or a public administrator appointed pursuant to article twelve or thirteen of the surrogate's court procedure act, or any other person acting on behalf of the decedent, provided that such person has executed a written statement pursuant to subdivision seven of this section.

§ 3. This act shall take effect immediately.