STATE OF NEW YORK

90

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sen. TEDISCO -- 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 disposition of fetal remains

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

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

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

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

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

4. For the purposes of this article, a fetal death shall be considered as a birth and as a death except that, for a fetal death, separate birth 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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recorded, except as provided in section forty-one hundred sixty-a of this title.

[~~4.~~] **5.** Local registrars of each district in which fetal death certificates were filed prior to the effective date of this subdivision shall dispose of such certificates in the manner prescribed by the commissioner.

[~~5.~~] **6.** Notwithstanding any other provision of this chapter, the disclosure of information filed pursuant to this section shall be limited to the mother, her lawful representative and to authorized personnel of the department.

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

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

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

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

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

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

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

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

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

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

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

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