

VIRGINIA ACTS OF ASSEMBLY -- 2005 RECONVENED SESSION

CHAPTER 905

An Act to amend and reenact §§ 32.1-288 and 54.1-2807 of the Code of Virginia, relating to funeral service establishments.

[H 1683]

Approved April 6, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-288 and 54.1-2807 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-288. Disposition of dead body; how expenses paid.

A. After any investigation authorized or required pursuant to this article has been completed, including an autopsy if one is performed, the sheriff or other person or institution having initial custody of the dead body shall make good faith efforts, pursuant to § 32.1-283, to identify the next of kin of the decedent, and the dead body may be claimed by the relatives or friends of the deceased person for disposition. The claimant shall bear the expenses of such disposition except as provided herein. If no person claims the body, the Commissioner may accept the body for scientific study as provided in Article 3 (§ 32.1-298 et seq.) of this chapter. If the Commissioner refuses to accept the body for scientific study, the dead body shall be accepted by the sheriff of the county or city where death occurred for proper disposition.

B. Except as provided in subsection C, the reasonable expenses of disposition of the body incurred by such sheriff or by the claimant to the extent such claimant is financially unable to pay them shall be borne by the county or city where death occurred, or, if the deceased person was a resident of Virginia at the time of death, by the county or city of residence. No such expenses shall be paid by such county or city until allowed by an appropriate court in such county or city. If the deceased person has an estate out of which burial expenses can be paid, either in whole or in part, such estate shall be taken for such purpose.

C. In the case of a person who has been received into the state corrections system and died prior to his release, whose body is unclaimed and whose body the Commissioner refuses to accept for scientific study, the Department of Corrections shall bear the reasonable expenses for cremation or other disposition of the body. In the case of a person who has been received into the state corrections system and died prior to his release and whose claimant is financially unable to pay reasonable expenses of disposition, the expenses shall be borne by the county or city where the claimant resides.

D. Unless such act, decision, or omission resulted from bad faith or malicious intent, the Commissioner ~~and~~ the Chief Medical Examiner, *the funeral service establishment, funeral service licensee or registered crematory* shall be immune from civil liability for any act, decision, or omission resulting from the acceptance of any dead body for cremation or other disposition.

§ 54.1-2807. Other prohibited activities.

A. A person licensed for the practice of funeral service shall not (i) remove or embalm a body when he has information indicating the death was such that a medical examiner's investigation is required pursuant to § 32.1-283 or § 32.1-285.1 or (ii) cremate or bury at sea a body until he has obtained permission of the medical examiner as required by § 32.1-284.

B. *Except as provided in §§ 32.1-288 and 32.1-301*, funeral service establishments shall not accept a dead human body from any public officer except a medical examiner, or from any public or private facility or person having a professional relationship with the decedent without having first inquired about the desires of the next of kin and the persons liable for the funeral expenses of the decedent. The authority and directions of any next of kin shall govern the disposal of the body.

Any funeral service establishment violating this subsection shall not charge for any service delivered without the directions of the next of kin. However, in cases of accidental or violent death, the funeral service establishment may charge and be reimbursed for the removal of bodies and rendering necessary professional services until the next of kin or the persons liable for the funeral expenses have been notified.

C. No company, corporation or association engaged in the business of paying or providing for the payment of the expenses for the care of the remains of deceased certificate holders or members or engaged in providing life insurance when the contract might or could give rise to an obligation to care for the remains of the insured shall contract to pay or pay any benefits to any licensee of the Board or other individual in a manner which could restrict the freedom of choice of the representative or next of kin of a decedent in procuring necessary and proper services and supplies for the care of the remains of the decedent.

D. No person licensed for the practice of funeral service or preneed funeral planning or any of his agents shall interfere with the freedom of choice of the general public in the choice of persons or

establishments for the care of human remains or of preneed funeral planning or preneed funeral contracts.

E. This section shall not be construed to apply to the authority of any administrator, executor, trustee or other person having a fiduciary relationship with the decedent.

2. That an emergency exists and this act is in force from its passage.