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HOUSE BILL NO. 1909

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact §§ 2.2-713, 32.1-288, 32.1-301, 54.1-2800, 54.1-2807, 54.1-2825, and 57-27.3 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 54.1-2807.2 and 54.1-2807.3, relating to designation of persons authorized to make funeral and burial decisions.

 Patron—Armstrong

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-713, 32.1-288, 32.1-301, 54.1-2800, 54.1-2807, 54.1-2825, and 57-27.3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 54.1-2807.2 and 54.1-2807.3 as follows:

§ 2.2-713. Minimum requirements for local programs; authority.

Every local or regional program with which the Department contracts to provide services as a public guardian or conservator shall (i) furnish bond with corporate surety in an amount deemed sufficient by the Department to afford adequate financial protection to the maximum number of incapacitated persons to be served by the program; (ii) have in place a multi-disciplinary panel to (a) screen cases for the purpose of ensuring that appointment of a guardian or conservator is appropriate under the circumstances and is the least restrictive alternative available to assist the incapacitated person and (b) continually review cases being handled by the program as required by the Department; (iii) accept only appointments as guardian or conservator that generate no fee or would generate a minimal fee as defined by regulation payable from a public source of funds and not from the estate of the incapacitated person; (iv) have a direct service staff to client ratio that is consistent with that specified by regulation of the Department; and (v) develop a plan, in consultation with the local circuit court and sheriffs where appropriate, to provide advance notice to the court when the program falls below or exceeds the ideal range of staff to client ratios in order to assure continuity of services. Volunteers shall not be counted for purposes of ascertaining compliance with the staff to client ratio specified by the Department.

A local or regional program that exceeds the specified staff to client ratio shall not be disqualified from serving as a guardian or conservator except as provided by regulation or if the court or the Department finds that there is an immediate threat to the person or property of any incapacitated person or that exceeding the specified ratio is having or will have a material and adverse effect on the ability of the program to properly serve all of the incapacitated persons it has been designated to serve.

A local or regional program appointed as a guardian or conservator shall have all the powers and duties specified in Article 2 (§ 37.2-1019 et seq.) of Chapter 10 of Title 37.2, except as otherwise specifically limited by the court. In addition, a public guardian or conservator shall have a continuing duty to seek a proper and suitable person who is willing and able to serve as guardian or conservator for the incapacitated person. A public guardian or conservator shall have authority to make funeral, cremation, or burial arrangements if the public guardian or conservator is not aware of any person that has been otherwise designated to make arrangements for disposition of remains as set forth in § 54.1-2825 of the Code of Virginia. A public guardian or conservator shall have authority to make funeral, cremation, or burial arrangements after the death of an incapacitated person if the next of kin of the incapacitated does not wish to make the arrangements and the public guardian or conservator has made a good faith effort to locate the next of kin to determine if the next of kin wishes to make the burial, cremation or funeral arrangements. Good faith effort shall include contacting the next of kin identified in the petition for appointment of a guardian or conservator. The funeral service licensee, funeral service establishment, registered crematory, public guardian or conservator shall be immune from civil liability for any act, decision, or omission resulting from acceptance of any dead body for burial, cremation or other disposition when the provisions of this section are met, unless such acts, decisions or omissions resulted from bad faith or malicious intent.

A public guardian shall not have authority to admit an incapacitated person to a psychiatric hospital or mental health facility without a civil commitment proceeding, or to approve or authorize a sterilization procedure except when specific authority has been given pursuant to a proceeding in the circuit court. A public guardian may authorize mental health treatment, including the administration of psychotropic medication, unless the appointing court specifically provides otherwise.

A local or regional program appointed as a guardian or conservator may delegate the powers, duties

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59 and responsibilities to individual volunteers or professional staff as authorized in the contract with the
60 Department.

61 In addition to funds received from the Department, a local or regional program may accept private
62 funds solely for the purposes of providing public education, supplemental services for incapacitated
63 persons and support services for private guardians and conservators, consistent with the purposes of this
64 article.

65 § 32.1-288. Disposition of dead body; how expenses paid.

66 A. After any investigation authorized or required pursuant to this article has been completed,
67 including an autopsy if one is performed, the sheriff or other person or institution having initial custody
68 of the dead body shall make good faith efforts, pursuant to § 32.1-283, to identify the ~~next of kin of the~~
69 ~~decedent person with the authority to make all necessary arrangements for the decedent's funeral and~~
70 ~~the disposition of his remains pursuant to § 54.1-2807.2,~~ and the dead body may be claimed by ~~the~~
71 ~~relatives or friends of the deceased person~~ *such person* for disposition. The claimant shall bear the
72 expenses of such disposition except as provided herein. If no person claims the body, the Commissioner
73 may accept the body for scientific study as provided in Article 3 (§ 32.1-298 et seq.) of this chapter. If
74 the Commissioner refuses to accept the body for scientific study, the dead body shall be accepted by the
75 sheriff of the county or city where death occurred for proper disposition.

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

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

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

93 § 32.1-301. Burial, cremation, or return of bodies after scientific study.

94 After the bodies distributed pursuant to § 32.1-299 have been used for the purpose of instruction,
95 they shall be decently interred or cremated by the institution or individual receiving them. However, if
96 the decedent has stipulated in writing before his death that the cremated remains of his body, lawfully
97 donated for scientific study, shall be returned to relatives for disposition after scientific study has been
98 completed, or if the ~~decedent's next of kin~~ *person having the authority to make all necessary*
99 *arrangements for a decedent's funeral and the disposition of his remains pursuant to § 54.1-2807.2,* who
100 lawfully donated the body for scientific study, requests the office of the Chief Medical Examiner in
101 writing at the time of donation that the decedent's cremated remains shall be returned ~~to relatives~~ after
102 scientific study has been completed, the institution or individual that received the body shall return the
103 decedent's cremated remains to ~~his next of kin or relatives~~ *such person or his successor*. Any such
104 writing shall acknowledge the responsibility to maintain the current name, address, and telephone
105 number of the ~~relatives~~ *person* to whom the decedent's cremated remains are to be returned.

106 The written request of the ~~decedent's next of kin~~ *person authorized by § 54.1-2807.2* shall include ~~the~~
107 ~~such person's name of the next of kin,~~ the current address to which the cremated remains shall be
108 delivered, and the current telephone number ~~of the next of kin or relatives~~ where ~~they~~ *such person* may
109 be contacted. The costs of transporting and delivering the cremated remains shall be borne by the
110 institution or individual receiving the body. The institution or individual that received the decedent's
111 body and who has received such a written request shall not be obligated to return the decedent's
112 cremated remains if the name, address, and telephone number of the ~~next of kin or relatives~~ *have person*
113 *authorized by § 54.1-2807.2* have not been provided in such written request, or are no longer current.

114 § 54.1-2800. Definitions.

115 As used in this chapter, unless the context requires a different meaning:

116 "Advertisement" means any information disseminated or placed before the public.

117 "At-need" means at the time of death or while death is imminent.

118 "Board" means the Board of Funeral Directors and Embalmers.

119 "Cremate" means to reduce a dead human body to ashes and bone fragments by the action of fire.

120 "Cremator" means a person or establishment that owns or operates a crematory or crematorium or

cremates dead human bodies.

"Crematory" or "crematorium" means a facility containing a furnace for cremation of dead human bodies.

"Embalmer" means any person engaged in the practice of embalming.

"Embalming" means the preservation and disinfection of the human dead by external or internal application of chemicals.

"Funeral directing" means the for-profit profession of directing or supervising funerals, preparing human dead for burial by means other than embalming, or making arrangements for funeral services or the financing of funeral services.

"Funeral director" means any person engaged in the practice of funeral directing.

"Funeral service establishment" means any main establishment, branch or chapel which is permanently affixed to the real estate and for which a certificate of occupancy has been issued by the local building official where any part of the profession of funeral directing, the practice of funeral services, or the act of embalming is performed.

"Funeral service intern" means a person who is preparing to be licensed for the practice of funeral services under the direct supervision of a practitioner licensed by the Board.

"Funeral service licensee" means a person who is licensed in the practice of funeral services.

"Funeral services provider" means any cremator, embalmer, funeral director, funeral service licensee, funeral service establishment, or crematory.

"In-person communication" means face-to-face communication and telephonic communication.

"Next of kin" means any of the following persons, regardless of the relationship to the decedent: any person designated to make arrangements for the disposition of the decedent's remains upon his death pursuant to § 54.1-2825, the legal spouse, child over 18 years of age, custodial parent, noncustodial parent, siblings over 18 years of age, guardian of minor child, guardian of minor siblings, maternal grandparents, paternal grandparents, maternal siblings over 18 years of age and paternal siblings over 18 years of age, or any other relative in the descending order of blood relationship.

"Practice of funeral services" means engaging in the care and disposition of the human dead, the preparation of the human dead for the funeral service, burial or cremation, the making of arrangements for the funeral service or for the financing of the funeral service and the selling or making of financial arrangements for the sale of funeral supplies to the public.

"Preneed" means at any time other than at-need.

"Preneed funeral contract" means any agreement where payment is made by the consumer prior to the receipt of services or supplies contracted for, which evidences arrangements prior to death for: (i) the providing of funeral services or (ii) the sale of funeral supplies.

"Preneed funeral planning" means the making of arrangements prior to death for: (i) the providing of funeral services or (ii) the sale of funeral supplies.

"Solicitation" means initiating contact with consumers with the intent of influencing their selection of a funeral plan or funeral service provider.

§ 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 services providers 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 received permission from the next of kin and the persons liable for the funeral expenses of the decedent, as defined in § 54.1-2800. The authority and directions of any next of kin the person authorized by § 54.1-2807.2 to make all necessary arrangements for a decedent's funeral and the disposition of his remains shall govern the disposal of the body.

Any funeral service establishment services provider violating this subsection shall not charge for any service delivered without the directions of the next of kin person executing the written statement pursuant to § 54.1-2807.2. However, in cases of accidental or violent death, the funeral service establishment services provider 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 person authorized by § 54.1-2807.2 provides further instructions.

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

182 kin of a decedent in procuring necessary and proper services and supplies for the care of the remains of
183 the decedent.

184 D. No person licensed for the practice of funeral service or preneed funeral planning or any of his
185 agents shall interfere with the freedom of choice of the general public in the choice of persons or
186 establishments for the care of human remains or of preneed funeral planning or preneed funeral
187 contracts.

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

190 § 54.1-2807.2. Funeral and burial arrangement; order of priority.

191 A. The following persons, in the specified order of priority, shall have the authority to make all
192 necessary arrangements for a decedent's funeral and the disposition of his remains:

193 1. A person designated by the decedent in accordance with § 54.1-2825;

194 2. The decedent's spouse, except where a divorce action has been filed and the divorce is not final;

195 3. An adult child of the decedent;

196 4. A parent of the decedent;

197 5. An adult sibling of the decedent;

198 6. The decedent's adult kindred set forth in § 64.1-1, in the priority established therein;

199 7. The decedent's guardian, whether public or private;

200 8. The decedent's conservator, whether public or private;

201 9. The executor named in the decedent's will or the personal representative who qualifies upon his
202 estate; or

203 10. A friend of the decedent.

204 Notwithstanding the foregoing, the priority of any person who is unwilling or, in the determination of
205 the funeral services provider, unable to guarantee payment for the arrangements for a decedent's funeral
206 and the disposition of his remains, to the extent that there are insufficient assets in the decedent's estate
207 for that purpose, shall be deemed to have been waived.

208 B. A funeral services provider who relies upon a written statement executed by any person listed in
209 subsection A stating that (i) he is the one authorized to make all necessary arrangements for a
210 decedent's funeral and the disposition of his remains, (ii) he will take into account the decedent's
211 religious beliefs and any preferences previously expressed by the decedent in either an oral
212 communication to him or a signed writing that is delivered to him prior to the arrangements being
213 made, and either (a) that all of the other persons with the same or a higher priority consent to him
214 making such arrangements, or (b) after reasonable inquiry, he is not aware of anyone who has the
215 same or a higher priority who wishes to be involved with making such arrangements shall be immune
216 from civil liability for any act, decision, or omission in connection with following the person's directions
217 related to the decedent's funeral and disposition of his remains, unless such act, decision, or omission
218 resulted from bad faith.

219 C. If any of the persons listed in the same class in subsection A disagree as to a particular decision,
220 the funeral services provider may rely on the authorization of a majority of the reasonably available
221 members of that class. If there is no such majority, the funeral services provider may (i) rely on the
222 authorization of those whom he, in his discretion, believes most appropriate under the circumstances or
223 (ii) refuse to proceed until there is a court order adjudicating the rights of the parties. In any case, the
224 funeral services provider shall be immune from civil liability for any act, decision, or omission in
225 connection with following such authorization in the absence of any act, decision, or omission resulting
226 from bad faith of the funeral services provider.

227 D. Any person authorized to make arrangements for a decedent's funeral and the disposition of his
228 remains shall take into account the decedent's religious beliefs, if any, and any preferences previously
229 expressed by the decedent (i) in an oral communication to such authorized person or (ii) in a signed
230 writing that is delivered to such authorized person prior to the arrangements being made.

231 § 54.1-2807.3. Statement of authority; suggested form.

232 A written statement identifying the person authorized to make all necessary arrangements for a
233 decedent's funeral and the disposition of his remains pursuant to § 54.1-2807.2 may, but need not, be in
234 the following form.

235 Arrangements for a Decedent's Funeral and Disposition of the Remains

236 Statement of Authority

237 (I)/(We), the undersigned, hereby represent to _____, a funeral
238 services provider doing business at _____,
239 Virginia, as follows:

240
241 (I)/(We) are the persons authorized by § 54.1-2807.2 of the Code of Virginia to make all of the
242 necessary arrangements for the funeral and the disposition of the remains of the decedent,
243 _____, who died on _____, 20____, and whose

legal residence was _____, _____, Virginia;

(I am)/(We are) listed in the following priority category of § 54.1-2807.2 of the Code of Virginia (initial the category):

- _____ 1. A person designated by the decedent in accordance with § 54.1-2825 of the Code of Virginia;
- _____ 2. The decedent's spouse, and no divorce action has been filed;
- _____ 3. An adult child of the decedent;
- _____ 4. A parent of the decedent;
- _____ 5. An adult brother or sister of the decedent;
- _____ 6. The decedent's adult kindred set forth in § 64.1-1 of the Code of Virginia, in the priorities therein established;
- _____ 7. The decedent's guardian (whether public or private);
- _____ 8. The decedent's conservator (whether public or private);
- _____ 9. The executor named in the decedent's will, or the personal representative who qualified upon the estate; or
- _____ 10. A friend of the decedent.

(I)/(We) further represent that (initial the appropriate statements):

- _____ 1. (I)/(We) will take into account the decedent's religious beliefs and any preferences previously expressed by the decedent (i) in an oral communication to (me)/(us), or (ii) in a signed writing that is delivered to (me)/(us) prior to the arrangements being made, and
- _____ 2. All other persons with the same or a higher authority consent to (my)/(our) making such arrangements, or
- _____ 3. After making a reasonable inquiry, (I am)/(we are) not aware of anyone who has the same or higher priority who wishes to be involved with making such arrangements.

_____, 20____
Signature of Authorized Person Date

_____, 20____
Signature of Authorized Person Date

§ 54.1-2825. Person to make arrangements for funeral and disposition of remains.

Any person may designate in a signed and notarized writing, which has been accepted in writing by the person so designated, an individual who shall make arrangements for his ~~burial or funeral and~~ the disposition of his remains, including cremation, upon his death.

§ 57-27.3. Authorization for interment.

A. A cemetery may accept the notarized signature of one next of kin of a decedent ~~directions from the person authorized by § 54.1-2807.2 for the purpose of authorizing the an~~ interment or entombment, and for erecting a memorial on the grave, crypt or niche, ~~unless the cemetery is on written notice that there exists a dispute between next of kin over such interment, entombment or memorialization. In the case of such a dispute, the cemetery shall have no obligation to perform the interment, entombment or memorialization until there is agreement of all next of kin, or a court order adjudicating the issue among all necessary parties.~~

For purposes of this section, "next of kin" means any of the following persons, regardless of the relationship to the decedent: any person designated to make arrangements for the disposition of the decedent's remains upon his death pursuant to § 54.1-2825, the legal spouse, child over 18 years of age, custodial parent, noncustodial parent, siblings over 18 years of age, guardian of minor child, guardian of minor siblings, maternal grandparents, paternal grandparents, maternal siblings over 18 years of age and

302 paternal siblings over 18 years of age, or any other relative in the descending order of blood relationship
303 under the same terms and conditions and with the same immunity as provided in § 54.1-2807.2.
304 B. Notwithstanding the provisions of subsection A, if a cemetery's records do not show that the
305 decedent or the person authorized by § 54.1-2807.2 has the legal right to determine or control
306 interment, entombment, or memorialization in the grave, crypt, or niche in which the decedent's
307 interment, entombment, or memorialization is sought, the cemetery shall have no obligation to perform
308 such interment, entombment, or memorialization until furnished with (i) a document executed by the
309 person having such right, or an authorized person acting on his behalf, consenting thereto, or (ii) a
310 court order directing the same.