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HOUSE BILL NO. 650

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact § 54.1-2807 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2807.01, relating to funeral services; disputes between next of kin.*

Patron—Armstrong

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2807 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-2807.01 as follows:

§ 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, *subject to the provisions of § 54.1-2807.01 or 54.1-2825.*

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.

§ 54.1-2807.01. *When next of kin disagree.*

A. *In the absence of a designation under § 54.1-2825, when there is a disagreement among a decedent's next of kin concerning the arrangements for his funeral or the disposition of his remains, any of the next of kin may petition the circuit court where the decedent resided at the time of his death to determine which of the next of kin shall have the authority to make arrangements for the decedent's funeral or the disposition of his remains. The petition may be ex parte; however, the court may require notice to and the convening of such of the next of kin as it deems proper.*

B. *In determining the matter before it, the court shall consider the expressed wishes, if any, of the decedent, the legal and factual relationship between or among the disputing next of kin and between each of the disputing next of kin and the decedent, and any other factor the court considers relevant to determine who should be authorized to make the arrangements for the decedent's funeral or the disposition of his remains.*

C. *If the court concludes that there is insufficient evidence to determine the issue before it by clear and convincing evidence, the court shall authorize the decedent's next of kin in the following order of priority to make all arrangement for the decedent's funeral or the disposition of his remains:*

1. *The decedent's spouse, except where a divorce action has been filed;*

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- 59** 2. *The decedent's adult children;*
60 3. *The decedent's parents;*
61 4. *The decedent's adult siblings; or*
62 5. *The decedent's adult kindred as set forth in § 64.1-1, in the priority established therein.*
63 *If there is division within the members of the priority category, the court shall grant the authority to*
64 *such of them as in the exercise of its discretion it deems appropriate.*