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SENATE BILL NO. 535

Offered January 8, 2014

Prefiled January 8, 2014

A *BILL to amend and reenact §§ 32.1-298, 32.1-299, 54.1-2807, and 54.1-2818.1 of the Code of Virginia; to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 8.1, consisting of sections numbered 32.1-304.1 through 32.1-304.4; and to repeal §§ 32.1-284, 32.1-288, and 32.1-288.1 of the Code of Virginia, relating to disposition of dead bodies.*

Patron—Martin

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-298, 32.1-299, 54.1-2807, and 54.1-2818.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 8.1, consisting of sections numbered 32.1-304.1 through 32.1-304.4, as follows:

§ 32.1-298. Notification of Commissioner and delivery of bodies.

Any person having charge or control of any dead human body ~~which~~ *that* is unclaimed for disposition, ~~which is required to be buried at the public expense, or which that~~ has been lawfully donated for scientific study shall notify the Commissioner whenever and as soon as any such body comes to his possession, charge, or control and shall, without fee or reward, permit the Commissioner or his agents to remove such body, to be used for the advancement of health science.

§ 32.1-299. Distribution of bodies.

A. The bodies received pursuant to §§ 32.1-298 ~~and 32.1-288~~ shall be distributed by the Commissioner to institutions and individuals as they may be needed for the purposes of scientific education and training in health and related subjects as follows:

1. First, to the medical schools in Virginia;
2. Second, equitably to the several colleges and schools of this Commonwealth authorized by law to teach health science and issue diplomas and such physicians and surgeons as the Commissioner may designate;
3. Third, to colleges and schools in other states and the District of Columbia authorized by law to teach health science and issue diplomas.

B. Before any institution or individual may receive any body pursuant to this section, such institution or individual shall have given a bond to the Commonwealth in the penalty of \$1,000 with condition that any body received shall be used only for scientific education and training in health and related subjects. Evidence of such bond shall be filed with the Commissioner.

C. All expenses incurred in the distribution and delivery of bodies pursuant to this section shall be paid by those receiving the bodies in such amount as may be prescribed by the Commissioner.

D. The Commissioner is authorized to employ carriers to effect the distribution of dead human bodies pursuant to this section. Any carrier so employed shall obtain a receipt by name, or, if the name be unknown, by a description for each body delivered by him and shall deposit such receipt with the Commissioner.

CHAPTER 8.1.**DISPOSITION OF DEAD HUMAN BODIES.**

§ 32.1-304.1. Identification of decedent, next of kin; disposition of claimed claimed dead body.

A. *As used in this chapter, "next of kin" has the same meaning assigned to it in § 54.1-2800. In cases in which no person described in § 54.1-2800 is willing or able to claim the body of the decedent, "next of kin" shall also include any person over 18 years of age who agrees to claim the body of the decedent and pay the cost of disposition of the body of the decedent.*

B. *Upon the death of any person, the person or institution having initial custody of the dead body shall make good faith efforts to determine the identity of the decedent, if unknown, and to identify and notify the next of kin of the decedent regarding the decedent's death. If, upon notification of the death of the decedent, the next of kin of the decedent is willing and able to claim the body, the body may be claimed by the next of kin for disposition, and the claimant shall bear the expenses of such disposition. If the next of kin of the decedent is willing to claim the body but is unable to pay the reasonable costs of disposition of the body, the costs shall be borne (i) by the county or city in which the decedent resided at the time of death if the decedent was a resident of Virginia or (ii) by the county or city in which the death occurred if the decedent was not a resident of Virginia or the location of the decedent's residence cannot reasonably be determined. If the next of kin of the decedent fails or refuses to claim*

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59 the body within 30 days of receiving notice of the death of the decedent, the body shall be disposed of
60 in accordance with § 32.1-304.2.

61 C. If the person or institution having initial custody of the dead body is unable to determine the
62 identity of the decedent or to identify and notify the next of kin of the decedent regarding the
63 decedent's death, the person or institution shall contact the primary law-enforcement agency for the
64 locality, which shall make good faith efforts to determine the identity of the decedent and to identify and
65 notify the next of kin of the decedent.

66 If the identity of the decedent is known to the primary law-enforcement agency or the primary
67 law-enforcement agency is able to identify the decedent, the local law-enforcement agency is able to
68 identify and notify the next of kin of the decedent, and the next of kin of the decedent is willing and able
69 to claim the body, the body may be claimed by the next of kin for disposition, and the claimant shall
70 bear the expenses of such disposition. If the next of kin of the decedent is willing to claim the body but
71 is unable to pay the reasonable costs of disposition of the body, the costs shall be borne (i) by the
72 county or city in which the decedent resided at the time of death if the decedent was a resident of
73 Virginia or (ii) by the county or city in which the death occurred if the decedent was not a resident of
74 Virginia or the location of the decedent's residence cannot reasonably be determined.

75 If the identity of the decedent is known or if the primary law-enforcement agency is able to
76 determine the identity of the decedent but the primary law-enforcement agency is unable, despite good
77 faith efforts, to identify and notify the decedent's next of kin or the primary law-enforcement agency is
78 able to identify and notify the decedent's next of kin but the next of kin fails or refuses to claim the body
79 within 30 days, the primary law-enforcement agency shall notify the person or institution having initial
80 custody of the dead body and the body shall be disposed of in accordance with § 32.1-304.2.

81 D. In cases in which a dead body is claimed by the decedent's next of kin but the next of kin is
82 unable to pay the reasonable costs of disposition of the body and the costs are paid by the county or
83 city in which the decedent resided or in which the death occurred in accordance with this section, and
84 the decedent has an estate out of which burial expenses may be paid, in whole or in part, such assets
85 shall be seized for such purpose.

86 E. No dead body that is the subject of an investigation pursuant to §32.1-283 shall be transferred for
87 purposes of disposition until such investigation has been completed.

88 F. Any sheriff or primary law enforcement officer, county, city, health care provider, or other person
89 or institution who acts in accordance with the requirements of this chapter shall be immune from civil
90 liability for any act, decision, or omission resulting from acceptance and disposition of the dead body in
91 accordance with this section, unless such act, decision, or omission resulted from bad faith or malicious
92 intent.

93 **§ 32.1-304.2. Disposition of unclaimed dead body; how expenses paid.**

94 A. In any case in which (i) the primary law-enforcement agency is unable to identify and notify the
95 next of kin of the decedent despite good faith efforts to do so or (ii) the next of kin of the decedent fails
96 or refuses to claim the body within 30 days of receipt of notice of the decedent's death, the person or
97 institution having initial custody of the body shall contact the attorney for the county or city in which
98 the person or institution is located or, if there is no county or city attorney, the attorney for the
99 Commonwealth and shall request an order authorizing the person or institution having initial custody of
100 the dead body to transfer custody of the body to a funeral service establishment for final disposition.
101 Upon entry of a final order for disposition of the dead body, the person or institution having initial
102 custody of the body shall transfer the body to a funeral service establishment for disposition in
103 accordance with the provisions of such order. Except as provided in subsection B or C, the reasonable
104 expenses of disposition of the body shall be borne (i) by the county or city in which the decedent
105 resided at the time of death if the decedent was a resident of Virginia or (ii) by the county or city where
106 death occurred if the decedent was not a resident of Virginia or the location of the decedent's residence
107 cannot reasonably be determined. However, no such expenses shall be paid by such county or city until
108 allowed by an appropriate court in such county or city. If the decedent has an estate out of which
109 burial expenses can be paid, either in whole or in part, such estate shall be taken for such purpose.

110 B. In the case of a person who has been received into the state corrections system and died prior to
111 his release, whose body is unclaimed, the Department of Corrections shall bear the reasonable expenses
112 for cremation or other disposition of the body. In the case of a person who has been received into the
113 state corrections system and died prior to his release and whose claimant is financially unable to pay
114 reasonable expenses of disposition, the expenses shall be borne by the county or city where the claimant
115 resides.

116 C. In the case of a person who has been committed to the custody of the Department of Behavioral
117 Health and Developmental Services and died prior to his release, whose body is unclaimed, the
118 Department of Behavioral Health and Developmental Services shall bear the reasonable expenses for
119 cremation or other disposition of the body. In the case of a person who has been committed to the
120 custody of the Department of Behavioral Health and Developmental Services 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. Any person or institution having initial custody of a dead body may enter into an agreement with a local funeral service establishment whereby the funeral service establishment shall take possession of the dead body for the purpose of storing the dead body during such time as the person or institution having initial custody of the body or the primary local law-enforcement agency is engaged in identifying the decedent, attempting to identify and contact the next of kin of the decedent, and making arrangements for the final disposition of the body in accordance with this section, provided that at all times during which the funeral service establishment is providing storage of the body, the person or institution having initial custody of the dead body shall continue to have legal custody of the body.

E. In cases in which a decedent whose remains are disposed of in accordance with this section has an estate out of which burial expenses may be paid, in whole or in part, such assets shall be seized for such purpose.

F. No dead body that is the subject of an investigation pursuant to §32.1-283 shall be transferred for purposes of disposition until such investigation has been completed.

G. Any sheriff or primary law enforcement officer, county, city, health care provider, or other person or institution who acts in accordance with the requirements of this chapter shall be immune from civil liability for any act, decision, or omission resulting from acceptance and disposition of the dead body in accordance with this section, unless such act, decision, or omission resulted from bad faith or malicious intent.

§ 32.1-304.3. Cremations and burials at sea.

No dead human body whose death occurred in Virginia shall be cremated or buried at sea, irrespective of the cause and manner of death, unless a medical examiner shall determine that there is no further need for medicolegal inquiry into the death and shall so certify upon a form supplied by the Chief Medical Examiner. For this service the medical examiner shall be entitled to a fee established by the Board, not to exceed the fee provided for in subsection D of § 32.1-283, to be paid by the applicant for the certificate.

§ 32.1-304.4. Determination of hazardous human remains.

The Commissioner, in consultation with the Governor, shall have the authority to determine if human remains are hazardous to the public health. If the Commissioner determines that such remains are hazardous, the Commonwealth, with direction from the Commissioner, shall be charged with the safe handling, identification, and disposition of the remains and shall erect a memorial, as appropriate, at any disposition site.

For the purposes of this section, "hazardous," with regard to human remains, means those remains contaminated with an infectious, radiologic, chemical, or other dangerous agent.

§ 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 32.1-304.3.

B. Except as provided in §§ ~~32.1-288~~ and 32.1-301 and Chapter 8.1 (§ 32.1-304.1 et seq.) of Title 32.1, 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

182 contracts.

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

185 **§ 54.1-2818.1. Prerequisites for cremation.**

186 No dead human body shall be cremated without permission of the medical examiner as required by §
187 ~~32.1-284~~ 32.1-304.3 and visual identification of the deceased by the next-of-kin or his representative,
188 who may be any person designated to make arrangements for the decedent's burial or the disposition of
189 his remains pursuant to § 54.1-2825, an agent named in an advance directive pursuant to § 54.1-2984, or
190 a sheriff, ~~upon court order~~, if no next-of-kin, designated person, or agent is available *and upon court*
191 *order, a representative of the primary law-enforcement agency for the county or city in which the*
192 *person or institution having initial custody of the body is located.* When visual identification is not
193 feasible, other positive identification of the deceased may be used as a prerequisite for cremation.

194 **2. That §§ 32.1-284, 32.1-288, and 32.1-288.1 of the Code of Virginia are repealed.**

195 **3. That an emergency exists and this act is in force from its passage.**