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SENATE BILL NO. 1434

Offered January 23, 2015

A *BILL to amend and reenact §§ 32.1-309.1 and 32.1-309.2 of the Code of Virginia, relating to disposition of dead bodies.*

Patron—Hanger

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-309.1 and 32.1-309.2 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-309.1. Identification of decedent, next of kin; disposition of claimed dead body.

A. As used in this chapter, "next of kin" has the same meaning assigned to it in § 54.1-2800. In the absence of a next of kin, a person designated to make arrangements for the decedent's burial or the disposition of his remains pursuant to § 54.1-2825, an agent named in an advance directive pursuant to § 54.1-2984, or any guardian appointed pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 who may exercise the powers conferred in the order of appointment or by § 64.2-2019, or upon the failure or refusal of such next of kin, designated person, agent, or guardian to accept responsibility for the disposition of the decedent, then any other person 18 years of age or older who is able to provide positive identification of the deceased and is willing to pay for the costs associated with the disposition of the decedent's remains shall be authorized to make arrangements for such disposition of the decedent's remains. If a funeral service establishment or funeral service licensee makes arrangements with a person other than a next of kin, designated person, agent, or guardian in accordance with this section, then the funeral service licensee or funeral service establishment shall be immune from civil liability unless such act, decision, or omission resulted from bad faith or malicious intent.

B. Upon the death of any person, irrespective of the cause and manner of death, and irrespective of whether a medical examiner's investigation is required pursuant to § 32.1-283 or 32.1-285.1, 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 fails or refuses to claim the body within 10 days of receiving notice of the death of the decedent, the body shall be disposed of in accordance with § 32.1-309.2.

C. If the person or institution having initial custody of the dead body is unable to determine the identity of the decedent or to identify and notify the next of kin of the decedent regarding the decedent's death, the person or institution shall contact the primary law-enforcement agency for the locality *in which the person or institution is located*, which shall make good faith efforts to determine the identity of the decedent and to identify and notify the next of kin of the decedent. *However, in cases in which the identity of the decedent and the county or city in which the decedent resided at the time of death are known, the person or institution having initial custody of the dead body shall notify the primary law-enforcement agency for the county or city in which the decedent resided regarding the decedent's death, and the law-enforcement agency for the county or city in which the decedent resided shall make good faith efforts to identify and notify the next of kin of the decedent.*

If the identity of the decedent is known to the primary law-enforcement agency or the primary law-enforcement agency is able to identify the decedent, the primary law-enforcement agency is able to identify and notify the next of kin of the decedent, and 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 identity of the decedent is known or the primary law-enforcement agency is able to determine the identity of the decedent but the primary law-enforcement agency is unable, despite good faith efforts, to identify and notify the decedent's next of kin within 10 days of the date of contact by the person or institution having initial custody of the dead body, or the primary law-enforcement agency is able to identify and notify the decedent's next of kin but the next of kin fails or refuses to claim the body within 10 days, the primary law-enforcement agency shall notify the person or institution having initial custody of the dead body, and the body shall be disposed of in accordance with § 32.1-309.2.

D. In cases in which a dead body is claimed by the decedent's next of kin but the next of kin is unable to pay the reasonable costs of disposition of the body and the costs are paid by the county or

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59 city in which the decedent resided or in which the death occurred in accordance with this section, and
60 the decedent has an estate out of which burial expenses may be paid, in whole or in part, such assets
61 shall be seized for such purpose.

62 E. No dead body that is the subject of an investigation pursuant to § 32.1-283 or autopsy pursuant to
63 § 32.1-285 shall be transferred for purposes of disposition until such investigation or autopsy has been
64 completed.

65 F. Any sheriff or primary law-enforcement officer, county, city, health care provider, funeral service
66 establishment, funeral service licensee, or other person or institution that acts in accordance with the
67 requirements of this chapter shall be immune from civil liability for any act, decision, or omission
68 resulting from acceptance and disposition of the dead body in accordance with this section, unless such
69 act, decision, or omission resulted from bad faith or malicious intent.

70 G. Nothing in this section shall prevent a law-enforcement agency other than the primary
71 law-enforcement agency from performing the duties established by this section if so requested by the
72 primary law-enforcement agency and agreed to by the other law-enforcement agency.

73 **§ 32.1-309.2. Disposition of unclaimed dead body; how expenses paid.**

74 A. In any case in which (i) the primary law-enforcement agency of *the county or city in which the*
75 *person or institution having initial custody of the dead body of the decedent is located or the county or*
76 *city in which the decedent resided, as may be appropriate pursuant to § 32.1-309.1,* is unable to identify
77 and notify the next of kin of the decedent within 10 days of the date of contact by the person or
78 institution having initial custody of the dead body despite good faith efforts to do so or (ii) the next of
79 kin of the decedent fails or refuses to claim the body within 10 days of receipt of notice of the
80 decedent's death, the primary law-enforcement agency shall notify (a) the attorney for the county or city
81 in which the *decedent resided at the time of death, if known, or (b) if the decedent's county or city of*
82 *residence at the time of death is not known, the attorney for the county or city in which the person or*
83 *institution having initial custody of the dead body is located or, if there is no county or city attorney,*
84 *the attorney for the Commonwealth in such county or city,* and such attorney shall without delay request
85 an order authorizing the person or institution having initial custody of the dead body to transfer custody
86 of the body to a funeral service establishment for final disposition. Upon entry of a final order for
87 disposition of the dead body, the person or institution having initial custody of the body shall transfer
88 custody of the body to a funeral service establishment, which shall take possession of the dead body for
89 disposition in accordance with the provisions of such order. Except as provided in subsection B or C,
90 the reasonable expenses of disposition of the body shall be borne ~~(a)~~ (1) by the county or city in which
91 the decedent resided at the time of death if the decedent was a resident of Virginia or ~~(b)~~ (2) by the
92 county or city where death occurred if the decedent was not a resident of Virginia or the location of the
93 decedent's residence cannot reasonably be determined. However, no such expenses shall be paid by such
94 county or city until allowed by an appropriate court in such county or city.

95 B. In the case of a person who has been received into the state corrections system and died prior to
96 his release, whose body is unclaimed, the Department of Corrections shall accept the body for proper
97 disposition and shall bear the reasonable expenses for cremation or other disposition of the body. In the
98 case of a person who has been received into the state corrections system and died prior to his release
99 and whose claimant is financially unable to pay reasonable expenses of disposition, the expenses shall
100 be borne by the county or city where the claimant resides.

101 C. In the case of a person who has been committed to the custody of the Department of Behavioral
102 Health and Developmental Services and died prior to his release, whose body is unclaimed, the
103 Department of Behavioral Health and Developmental Services shall bear the reasonable expenses for
104 cremation or other disposition of the body. In the case of a person who has been committed to the
105 custody of the Department of Behavioral Health and Developmental Services and died prior to his
106 release and whose claimant is financially unable to pay reasonable expenses of disposition, the expenses
107 shall be borne by the county or city where the claimant resides.

108 D. Any person or institution having initial custody of a dead body may enter into an agreement with
109 a local funeral service establishment whereby the funeral service establishment shall take possession of
110 the dead body for the purpose of storing the dead body during such time as the person or institution
111 having initial custody of the body or the primary local law-enforcement agency is engaged in identifying
112 the decedent, attempting to identify and contact the next of kin of the decedent, and making
113 arrangements for the final disposition of the body in accordance with this section, provided that at all
114 times during which the funeral service establishment is providing storage of the body, the person or
115 institution having initial custody of the dead body shall continue to have legal custody of the body until
116 such time as custody is transferred in accordance with this chapter.

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

120 F. No dead body that is the subject of an investigation pursuant to § 32.1-283 or autopsy pursuant to

121 § 32.1-285 shall be transferred for purposes of disposition until such investigation or autopsy has been
122 completed.

123 G. Any sheriff or primary law-enforcement officer, county, city, health care provider, funeral service
124 establishment, or funeral service licensee; the Department of Corrections; or any other person or
125 institution that acts in accordance with the requirements of this chapter shall be immune from civil
126 liability for any act, decision, or omission resulting from acceptance and disposition of the dead body in
127 accordance with this section, unless such act, decision, or omission resulted from bad faith or malicious
128 intent.

129 H. Nothing in this section shall prevent a law-enforcement agency other than the primary
130 law-enforcement agency from performing the duties established by this section if so requested by the
131 primary law-enforcement agency and agreed to by the other law-enforcement agency.