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SENATE BILL NO. 951

Offered January 14, 2015

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A *BILL to amend and reenact §§ 32.1-309.1, 32.1-309.2, and 54.1-2818.1 of the Code of Virginia, relating to disposition of dead bodies.*

Patrons—Alexander; Delegate: Spruill

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-309.1, 32.1-309.2, and 54.1-2818.1 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~~ *unless the context requires a different meaning:*

"Disposition" means the burial, interment, entombment, cremation, or other authorized disposition of a dead body permitted by law.

"Next of kin" has the same meaning assigned to it in § 54.1-2800.

B. In the absence of a next of kin, a person designated to make arrangements for *disposition* of 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.~~ C. 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 *or other person authorized by law to make arrangements for disposition of the decedent's remains* is willing and able to claim the body, the body may be claimed by the next of kin *or other person authorized by law to make arrangements for disposition of the decedent's remains* for disposition, and the claimant shall bear the expenses of such disposition. If the next of kin of the decedent *or other person authorized by law to make arrangements for disposition of the decedent's remains* 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.~~ D. 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, 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.

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 *or other person authorized by law to make arrangements for disposition of the decedent's remains*, and the next of kin of the decedent *or other person authorized by law to make arrangements for disposition of the decedent's remains* is willing and able to claim the body, the body may be claimed by the next of kin *or other person authorized by law to make arrangements for disposition of the decedent's remains* 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 *or other person authorized by law to make*

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SB951

59 *arrangements for disposition of the decedent's remains* within 10 days of the date of contact by the
60 person or institution having initial custody of the dead body, or the primary law-enforcement agency is
61 able to identify and notify the decedent's next of kin *or other person authorized by law to make*
62 *arrangements for disposition of the decedent's remains* but the next of kin *or other person authorized by*
63 *law to make arrangements for disposition of the decedent's remains* fails or refuses to claim the body
64 within 10 days, the primary law-enforcement agency shall notify the person or institution having initial
65 custody of the dead body, and the body shall be disposed of in accordance with § 32.1-309.2.

66 ~~D.~~ E. In cases in which a dead body is claimed by the decedent's next of kin *or other person*
67 *authorized by law to make arrangements for disposition of the decedent's remains* but the next of kin *or*
68 *other person authorized by law to make arrangements for disposition of the decedent's remains* is unable
69 to pay the reasonable costs of disposition of the body and the costs are paid by the county or city in
70 which the decedent resided or in which the death occurred in accordance with this section, and the
71 decedent has an estate out of which ~~burial~~ *disposition* expenses may be paid, in whole or in part, such
72 assets shall be seized for such purpose.

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

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

81 ~~G.~~ H. Nothing in this section shall prevent a law-enforcement agency other than the primary
82 law-enforcement agency from performing the duties established by this section if so requested by the
83 primary law-enforcement agency and agreed to by the other law-enforcement agency.

84 **§ 32.1-309.2. Disposition of unclaimed dead body; how expenses paid.**

85 A. In any case in which (i) the primary law-enforcement agency is unable to identify and notify the
86 next of kin of the decedent *or other person authorized by law to make arrangements for disposition of*
87 *the decedent's remains* within 10 days of the date of contact by the person or institution having initial
88 custody of the dead body despite good faith efforts to do so or (ii) the next of kin of the decedent *or*
89 *other person authorized by law to make arrangements for disposition of the decedent's remains* fails or
90 refuses to claim the body within 10 days of receipt of notice of the decedent's death, the primary
91 law-enforcement agency shall notify the attorney for the county or city in which the person or institution
92 is located or, if there is no county or city attorney, the attorney for the Commonwealth, and such
93 attorney shall without delay request an order authorizing the person or institution having initial custody
94 of the dead body to transfer custody of the body to a funeral service establishment for final disposition.
95 Upon entry of a final order for disposition of the dead body, the person or institution having initial
96 custody of the body shall transfer custody of the body to a funeral service establishment, which shall
97 take possession of the dead body for disposition in accordance with the provisions of such order. Except
98 as provided in subsection B or C, the reasonable expenses of disposition of the body shall be borne (a)
99 by the county or city in which the decedent resided at the time of death if the decedent was a resident
100 of Virginia or (b) by the county or city where death occurred if the decedent was not a resident of
101 Virginia or the location of the decedent's residence cannot reasonably be determined. However, no such
102 expenses shall be paid by such county or city until allowed by an appropriate court in such county or
103 city.

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

110 C. In the case of a person who has been committed to the custody of the Department of Behavioral
111 Health and Developmental Services and died prior to his release, whose body is unclaimed, the
112 Department of Behavioral Health and Developmental Services shall bear the reasonable expenses for
113 cremation or other disposition of the body. In the case of a person who has been committed to the
114 custody of the Department of Behavioral Health and Developmental Services and died prior to his
115 release and whose claimant is financially unable to pay reasonable expenses of disposition, the expenses
116 shall be borne by the county or city where the claimant resides.

117 D. Any person or institution having initial custody of a dead body may enter into an agreement with
118 a local funeral service establishment whereby the funeral service establishment shall take possession of
119 the dead body for the purpose of storing the dead body during such time as the person or institution
120 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 until such time as custody is transferred in accordance with this chapter.

E. In cases in which a decedent whose remains are disposed of in accordance with this section has an estate out of which ~~burial~~ *burial disposition* 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 or autopsy pursuant to § 32.1-285 shall be transferred for purposes of disposition until such investigation or autopsy has been completed.

G. Any sheriff or primary law-enforcement officer, county, city, health care provider, funeral service establishment, or funeral service licensee; the Department of Corrections; or any other person or institution that 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.

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

§ 54.1-2818.1. Prerequisites for cremation.

No dead human body shall be cremated without permission of the Office of the Chief Medical Examiner as required by § 32.1-309.3 and visual identification of the deceased by the next-of-kin or his representative, who may be any person designated to make arrangements for the ~~decedent's burial or the~~ disposition of ~~his~~ *the decedent's* 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, in cases in which the next of kin or his representative fails or refuses to provide visual identification of the deceased, by any other person 18 years of age or older who is able to provide positive identification of the deceased.* If no such next of kin, ~~designated person, agent, or guardian~~ *or his representative or other person 18 years of age or older* is available or willing to make visual identification of the deceased, such identification shall be made by a member of the primary law-enforcement agency of the city or county in which the person or institution having initial custody of the body is located, pursuant to court order. When visual identification is not feasible, other positive identification of the deceased may be used as a prerequisite for cremation. Unless such act, decision, or omission resulted from bad faith or malicious intent, the funeral service establishment, funeral service licensee, crematory, cemetery, primary law-enforcement officer, sheriff, county, or city shall be immune from civil liability for any act, decision, or omission resulting from cremation. Nothing in this section shall prevent a law-enforcement agency other than the primary law-enforcement agency from performing the duties established by this section if so requested by the primary law-enforcement agency and agreed to by the other law-enforcement agency.