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HOUSE BILL NO. 789

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 9, 2016)

(Patron Prior to Substitute—Delegate Adams)

A *BILL to amend and reenact § 32.1-286 of the Code of Virginia, relating to exhumations; notice to next of kin.*

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-286 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-286. Exhumations.

A. In any case of death described in subsection A of § 32.1-283, where the body is buried without investigation by the Chief Medical Examiner, an Assistant Chief Medical Examiner, or a medical examiner appointed pursuant to § 32.1-282 into the cause and manner of death or where sufficient cause develops for further investigation after a body is buried, the Chief Medical Examiner shall authorize such investigation and shall send a copy of the report, *which shall include the name and contact information of the next of kin, as defined in § 54.1-2800, of the dead person, if known,* to the appropriate attorney for the Commonwealth who shall communicate such report to a judge of the appropriate circuit court. *In cases in which the name and contact information of the next of kin is not known at the time the report is prepared, the Chief Medical Examiner shall so indicate on the report. Upon receipt of such report, the clerk of the court shall send notice of the investigation and the request for exhumation to the next of kin of the dead person when the name and contact information of the next of kin is included in the report.* ~~Such~~ The judge may order that the body be exhumed and an autopsy performed thereon by the Chief Medical Examiner, an Assistant Chief Medical Examiner, or a pathologist with whom the Commissioner has entered into an agreement pursuant to § 32.1-281. The pertinent facts disclosed by ~~the~~ an autopsy conducted pursuant to an order entered in accordance with this subsection shall be communicated to the judge who ordered ~~it~~ the autopsy.

B. Upon petition of the attorney for the Commonwealth to whom a report is submitted in accordance with subsection A and a finding that good cause exists, a judge for the appropriate circuit court may, for a period of time not to exceed ninety days, order that (i) notification of the next of kin of the dead person be withheld, (ii) the report and order for exhumation be sealed by the clerk of the circuit court, and (iii) any parties involved in the investigation or exhumation not disclose to the next of kin of the dead person or any other person that the court may deem appropriate that the investigation or exhumation has occurred. Upon the petition of the attorney for the Commonwealth and a finding that good cause exists, the court may extend any such time period for additional periods not to exceed ninety days for each extension granted.

~~B.~~ C. In any case of death in which a private person has an interest, such person may petition the judge of the circuit court exercising jurisdiction over the place of interment ~~and, upon~~ *to have the body exhumed. Such petition shall include the name and contact information of the next of kin of the dead person or, in cases in which the name and contact information is not known, an affirmation that good faith efforts to determine the name and contact information have been made. Upon receipt of the petition, the clerk of the court shall send notice of the petition to the next of kin of the dead person when the name and contact information of the next of kin is included in the petition. Upon proper showing of sufficient cause, such judge may order the body exhumed. Such petition or exhumation or both shall not require the participation of the Chief Medical Examiner or any Assistant Chief Medical Examiner. Costs shall be paid by the party requesting the exhumation.*

~~C.~~ D. ~~Upon the petition of a~~ A party attempting to prove, in accordance with the provisions of §§ 64.2-102 and 64.2-103, that he is the issue of a dead person, ~~a court may order the exhumation of the body of any dead person for the conduct of scientifically reliable genetic tests, including DNA tests, to prove a biological relationship may petition the judge of the circuit court exercising jurisdiction over the place of interment to have the body exhumed.~~ The petition shall be accompanied by the petitioner's sworn statement that sets forth facts establishing a reasonable possibility of a biological relationship between the petitioner and his alleged ancestors, *and shall include the name and contact information of the next of kin of the dead person or, in cases in which the name and contact information is not known, an affirmation that good faith efforts to determine the name and contact information have been made. Upon receipt of the petition, the clerk of the court shall send notice of the petition to the next of kin of the dead person when the name and contact information of the next of kin is included in the petition. The court may order the exhumation of the dead person for the conduct of scientifically reliable genetic tests, including DNA tests, to prove a biological relationship. The costs of exhumation, testing, and reinterment shall be paid by the petitioner unless, for good cause shown, the court orders such costs paid*

60 from the estate in which the petitioner is claiming an interest. This provision is intended to provide a
61 procedural mechanism for obtaining posthumous samples for reliable genetic testing and shall not
62 require substantive proof of parentage to obtain the exhumation order.