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## HOUSE BILL NO. 2116

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend and reenact §§ 32.1-309.1, 54.1-2800, 54.1-2807, and 54.1-2825 of the Code of Virginia, and to repeal §§ 54.1-2807.01 and 54.1-2807.02 of the Code of Virginia, relating to the disposition of the remains of a decedent; right to control.*

Patron—Sickles

Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-309.1, 54.1-2800, 54.1-2807, and 54.1-2825 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, 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 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.

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.

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 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 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

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59 to make arrangements for disposition of the decedent's remains for disposition, and the claimant shall  
60 bear the expenses of such disposition.

61 If the identity of the decedent is known or the primary law-enforcement agency is able to determine  
62 the identity of the decedent but the primary law-enforcement agency is unable, despite good faith efforts,  
63 to identify and notify the decedent's next of kin or other person authorized by law to make arrangements  
64 for disposition of the decedent's remains within 10 days of the date of contact by the person or  
65 institution having initial custody of the dead body, or the primary law-enforcement agency is able to  
66 identify and notify the decedent's next of kin or other person authorized by law to make arrangements  
67 for disposition of the decedent's remains but the next of kin or other person authorized by law to make  
68 arrangements for disposition of the decedent's remains fails or refuses to claim the body within 10 days,  
69 the primary law-enforcement agency shall notify the person or institution having initial custody of the  
70 dead body, and the body shall be disposed of in accordance with § 32.1-309.2.

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

78 F. No dead body that is the subject of an investigation pursuant to § 32.1-283 or autopsy pursuant to  
79 § 32.1-285 shall be transferred for purposes of disposition until such investigation or autopsy has been  
80 completed.

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

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

89 **§ 54.1-2800. Definitions.**

90 As used in this chapter, unless the context requires a different meaning:

91 "Advertisement" means any information disseminated or placed before the public.

92 "At-need" means at the time of death or while death is imminent.

93 "Board" means the Board of Funeral Directors and Embalmers.

94 "Cremate" means to reduce a dead human body to ashes and bone fragments by the action of fire.

95 "Cremator" means a person or establishment that owns or operates a crematory or crematorium or  
96 cremates dead human bodies.

97 "Crematory" or "crematorium" means a facility containing a furnace for cremation of dead human  
98 bodies.

99 "Embalmer" means any person engaged in the practice of embalming.

100 "Embalming" means the process of chemically treating the dead human body by arterial injection and  
101 cavity treatment or, when necessary, hypodermic tissue injection to reduce the presence and growth of  
102 microorganisms to temporarily retard organic decomposition.

103 "Funeral directing" means the for-profit profession of directing or supervising funerals, preparing  
104 human dead for burial by means other than embalming, or making arrangements for funeral services or  
105 the financing of funeral services.

106 "Funeral director" means any person engaged in the practice of funeral directing.

107 "Funeral service establishment" means any main establishment, branch, or chapel that is permanently  
108 affixed to the real estate and for which a certificate of occupancy has been issued by the local building  
109 official where any part of the profession of funeral directing, the practice of funeral services, or the act  
110 of embalming is performed.

111 "Funeral service intern" means a person who is preparing to be licensed for the practice of funeral  
112 services under the direct supervision of a practitioner licensed by the Board.

113 "Funeral service licensee" means a person who is licensed in the practice of funeral services.

114 "In-person communication" means face-to-face communication and telephonic communication.

115 "Next of kin" means any of the following persons, regardless of the relationship to the decedent: any  
116 person designated to make arrangements for the disposition of the decedent's remains upon his death  
117 pursuant to § 54.1-2825, the legal spouse, child aged 18 years or older, parent of a decedent aged 18  
118 years or older, custodial parent or noncustodial parent of a decedent younger than 18 years of age,  
119 siblings over 18 years of age, guardian of minor child, guardian of minor siblings, maternal  
120 grandparents, paternal grandparents, maternal siblings over 18 years of age and paternal siblings over 18

years of age, or any other relative in the descending order of blood relationship listed in subsection C of § 54.1-2825.

"Practice of funeral services" means engaging in the care and disposition of the human dead, the preparation of the human dead for the funeral service, burial or cremation, the making of arrangements for the funeral service or for the financing of the funeral service and the selling or making of financial arrangements for the sale of funeral supplies to the public.

"Preneed" means at any time other than at-need.

"Preneed funeral contract" means any agreement where payment is made by the consumer prior to the receipt of services or supplies contracted for, which evidences arrangements prior to death for (i) the providing of funeral services or (ii) the sale of funeral supplies.

"Preneed funeral planning" means the making of arrangements prior to death for (i) the providing of funeral services or (ii) the sale of funeral supplies.

"Solicitation" means initiating contact with consumers with the intent of influencing their selection of a funeral plan or funeral service provider.

**§ 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 an investigation by the Office of the Chief Medical Examiner 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 Office of the Chief Medical Examiner as required by § 32.1-309.3.

B. Except as provided in § 32.1-301 and Chapter 8.1 (§ 32.1-309.1 et seq.) of Title 32.1, funeral service establishments shall not accept a dead human body from any public officer, except the Chief Medical Examiner, an Assistant Chief Medical Examiner, or a medical examiner appointed pursuant to § 32.1-282, 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.

**§ 54.1-2825. Person to make arrangements for funeral and disposition of remains.**

A. Any person may provide written instructions, in a signed and notarized writing or in a valid preneed funeral contract, the location, manner, and conditions of disposition of his remains upon his death. No person shall cancel or substantially revise such written instructions unless authorized to do so in the writing or contract. Additionally, any person may designate in a signed and notarized writing, which has been accepted in writing by the person so designated, an individual who shall make arrangements and be otherwise responsible for his funeral and the disposition of his remains, including cremation, interment, entombment, or memorialization, or some combination thereof, upon his death. Such designee shall have priority over all persons otherwise entitled to make such arrangements, provided that a copy of the signed and notarized writing is provided to the funeral service establishment and to the cemetery, if any, no later than 48 hours after the funeral service establishment has received the remains. Nothing in this section shall preclude any next of kin from paying any costs associated with any funeral or disposition of any remains, provided that such payment is made with the concurrence of any person designated to make arrangements.

B. In cases in which a person has designated in a U.S. Department of Defense Record of Emergency Data (DD Form 93) or any successor form an individual to make arrangements for his funeral and

182 disposition of his remains, and such person dies while serving in any branch of the United States Armed  
183 Forces as defined in 10 U.S.C. § 1481, such designee shall be responsible for making such  
184 arrangements.

185 *C. Except as provided in subsection D, the right to control the disposition of the remains of a*  
186 *decendent, the location, manner, and condition of disposition, and the arrangements for funeral goods*  
187 *and services to be provided shall rest with the following persons, provided that such person is 18 years*  
188 *of age or older, in the priority order listed:*

189 *1. A person designated by the decedent in accordance with subsection A or, if relevant, subsection B.*

190 *2. The surviving spouse.*

191 *3. The sole surviving child of the decedent or, if there is more than one child of the decedent, the*  
192 *majority of the surviving children. However, fewer than a majority of the surviving children shall be*  
193 *vested with the rights of this section if an attempt was made to notify all other surviving children of*  
194 *their instructions and are not aware of any opposition to those instructions on the part of a majority of*  
195 *all surviving children.*

196 *4. The surviving parent or parents of the decedent. If one of the surviving parents is absent, the*  
197 *remaining parent shall be vested with the rights and duties of this section after an attempt has been*  
198 *unsuccessful in locating the absent surviving parent.*

199 *5. The surviving sibling of the decedent or, if there is more than one sibling of the decedent, the*  
200 *majority of the surviving siblings. However, fewer than a majority of the surviving siblings shall be*  
201 *vested with the rights of this section if an attempt was made to notify all other surviving siblings of*  
202 *their instructions and are not aware of any opposition to those instructions on the part of a majority of*  
203 *all surviving siblings.*

204 *6. The surviving grandparent of the decedent or, if there is more than one surviving grandparent of*  
205 *the decedent, the majority of the surviving grandparents. However, fewer than a majority of the*  
206 *surviving grandparents shall be vested with the rights of this section if an attempt was made to notify*  
207 *all other surviving grandparents of their instructions and are not aware of any opposition to those*  
208 *instructions on the part of a majority of all surviving grandparents.*

209 *7. The surviving grandchild of the decedent or, if there is more than one surviving grandchild of the*  
210 *decedent, the majority of the surviving grandchildren. However, fewer than a majority of the surviving*  
211 *grandchildren shall be vested with the rights of this section if an attempt was made to notify all other*  
212 *surviving grandchildren of their instructions and are not aware of any opposition to those instructions*  
213 *on the part of a majority of all surviving grandchildren.*

214 *8. The guardian of the decedent at the time of death.*

215 *9. The personal representative of the estate of the decedent.*

216 *10. The person in the classes of the next degree of kinship, in descending order, under the laws of*  
217 *descent and distribution to inherit the estate of the decedent. If there is more than one person of the*  
218 *same degree, any person of that degree may exercise the right of disposition.*

219 *11. Any representative of the Commonwealth or one of its political subdivisions that has the statutory*  
220 *obligation to provide for the disposition of the remains of the decedent.*

221 *12. Any other person who is willing to assume the responsibilities to act and arrange the final*  
222 *disposition of the decedent's remains, including the funeral director with custody of the body after*  
223 *attesting in writing that a good faith effort has been made to contact the individuals under subdivisions*  
224 *1 through 11 and no person willing to assume the right of disposition has been located.*

225 *An attempt to locate or notify a person described in subdivisions three through seven shall be made*  
226 *in good faith. An attempt to contact such a person at his last known address, telephone number, email*  
227 *address, or known social media accounts shall be considered in good faith.*

228 *D. A person entitled under this section to the right of disposition shall forfeit that right, and the*  
229 *right shall be passed on to the next qualifying person as listed in subsection C, under the following*  
230 *circumstances:*

231 *1. Such person is charged with first or second degree murder or voluntary manslaughter in*  
232 *connection with the decedent's death, and such charges are known to the funeral director, provided,*  
233 *however, that if the charges are dropped, or if such person is acquitted of the charges prior to final*  
234 *disposition, the right of disposition is restored.*

235 *2. Such person does not exercise his right of disposition within 48 hours of notification of the death*  
236 *of the decedent or within 72 hours of the decedent's death, whichever is earlier.*

237 *3. Such person possesses the right of disposition but is unwilling to assume the liability for the costs*  
238 *of such arrangement and disposition if sufficient resources are not available in the decedent's estate to*  
239 *pay such costs.*

240 *4. Such person and the decedent are spouses and a petition to dissolve the marriage was pending at*  
241 *the time of decedent's death.*

242 *5. The circuit court determines that such person and the decedent were estranged at the time of*  
243 *death. For purposes of this subdivision, "estranged" means a physical and emotional separation from*

the decedent for a period of time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

E. Notwithstanding the foregoing, the circuit court where the decedent resided at the time of his death may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition and may make the decisions regarding the decedent's remains if those sharing the right of disposition cannot agree. If the persons holding the right of disposition are two or more persons with the same relationship to the decedent, and they cannot, by majority agreement, make a decision regarding the disposition of the decedent's remains, any of such persons or a licensed funeral establishment with custody of the remains may file a petition asking the circuit court to make a determination in the matter. In making its determination, circuit court shall consider the following:

1. The reasonableness and practicality of the proposed funeral arrangements and disposition.
2. The degree of the personal relationship between the decedent and each of the persons claiming the right of disposition.
3. The desires of the person who is ready, willing, and able to pay the cost of the funeral arrangements and disposition.
4. The convenience and needs of other family members and friends wishing to pay respects.
5. The desires of the decedent.
6. The degree to which the funeral arrangements would allow maximum participation by all wishing to pay respect.

F. In the event of a dispute regarding the right of disposition, a licensed funeral establishment is not liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the licensed funeral establishment receives a court order or other written agreement signed by the parties in the disagreement that decides the final disposition of the remains. If the licensed funeral establishment retains the remains for final disposition while the parties are in disagreement, the licensed funeral establishment may embalm or refrigerate and shelter the body, or both, in order to preserve it while the final decision of the circuit court is pending and may add the cost of such to the final disposition costs. If a licensed funeral establishment brings an action under this section, the licensed funeral establishment may add the legal fees and court costs associated with such action to the cost of final disposition. The provisions of this section shall not be construed to require a licensed funeral establishment to bring an action under the section. No licensed funeral establishment or its employees shall be held criminally or civilly liable for not exercising the right to bring an action under this section.

G. Except to the degree it may be considered by the circuit court under subsection E, the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and the final disposition does not give that person a greater right to the right of disposition than the person otherwise would have. The personal representative of the estate, does not, by virtue of being the personal representative of the estate of the decedent, have a greater claim to the right of disposition than the person otherwise would have.

H. Any person signing a funeral service agreement, cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of, and the party's authority to order such disposition. A licensed funeral establishment or registered crematory shall have the right to rely on such funeral service contract or authorization and shall have the authority to carry out the instructions of the person whom the licensed funeral establishment reasonably believes holds the right of disposition. The licensed funeral establishment shall have no responsibility to contact or to independently investigate the existence of any next of kin or relative of the decedent. If there is more than one person in a class who are equal in priority and the licensed funeral establishment has no knowledge of any objection by other members of such class, the licensed funeral establishment or registered crematory shall be entitled to rely on and act according to the instructions of the first such person in the class to make funeral and disposition arrangements, provided that no other person in such class provides written notice of his objections to the licensed funeral establishment within the time frame laid out in subdivision D 2.

I. No licensed funeral establishment, funeral service licensee, registered crematory, or registered crematory operator who relies in good faith upon the instructions of an individual claiming the right of disposition shall be subject to criminal or civil liability for negligent infliction of emotional distress or subject to disciplinary action for carrying out the disposition of the remains in accordance with the instructions.

2. That § 54.1-2807.01 and 54.1-2807.02 of the Code of Virginia are repealed.