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HOUSE BILL NO. 384

Offered January 8, 2020

Prefiled January 2, 2020

A BILL to amend and reenact §§ 64.2-2300, 64.2-2304, and 64.2-2305 of the Code of Virginia, relating to presumption of death; confessions or convictions of murder.

Patron—Convirs-Fowler

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-2300, 64.2-2304, and 63.2-2305 of the Code of Virginia are amended and reenacted as follows:

§ 64.2-2300. Presumption of death from absence or disappearance; confession or conviction of murder; when applicable.

A. 1. Any person who is a resident of the Commonwealth shall be presumed to be dead if such person:

a. Leaves and does not return to the Commonwealth for seven successive years and is not heard from;

b. Disappears for seven successive years and is not heard from; or

c. Disappears in a foreign country, his body has not been found, and he is not known to be alive, and a report of presumptive death by the Department of State of the United States has been issued.

2. Any person who is not a resident of the Commonwealth, but who owns real or personal property located within the Commonwealth, shall be presumed to be dead if such person disappears for seven successive years from the place of his residence outside of the Commonwealth and is not heard from.

3. The presumption created by this subsection shall be applicable in any action where the person's death is in question, unless proof is offered that the person was alive within the time specified or, in the case of a presumed death in a foreign country, at any time following the person's disappearance, whether before or after the report of presumptive death was issued.

4. Any person who is a resident of the Commonwealth shall be presumed to be dead if such person has disappeared, his body has not been found, he is not known to be alive, and an individual has confessed to such person's murder under oath or has been convicted of such murder.

B. The fact that any person was exposed to a specific peril of death may be a sufficient basis for determining at any time after the exposure that the person is presumed to have died less than seven years after the person was last heard from.

C. Any person on board any ship or vessel underway on the high seas who disappears from such ship or vessel, or any person on board an aircraft that disappears at sea, who is not known to be alive and whose body has not been found or identified prior to a hearing of a board of inquiry as to such disappearance, shall be presumed to be dead upon the findings of a board of inquiry that the person is presumed dead, or six months after the date of such disappearance, whichever occurs first.

D. Before any final order or decree is entered in a cause under ~~subsection A~~ subdivisions A 1, 2, or 3 or subsection B; or C in favor of the alleged heirs, devisees, next of kin, legatees, beneficiaries, survivors, or other successors in interest of the presumed decedent, or persons claiming by, through, or under them, or any of them, proceedings shall be held in conformity with §§ 64.2-2303 through 64.2-2306.

E. The heirs at law, devisees, next of kin, legatees, beneficiaries, survivors, or other successors in interest of the person presumed dead under subsection A, B, or C may be made parties defendant to proceedings in respect to real or personal property in which the presumed decedent may have an undivided interest by order of publication or other process as provided by law. The proceedings shall not be stayed in respect to the division, sale, or other disposition of the entire property. The provisions of subsection D shall be applicable only to the portion of the property set apart or to the share of the proceeds to which such person would be entitled.

§ 64.2-2304. Petition seeking determination of death; hearing; evidence; notice.

A. Whenever a petition is filed seeking a judicial determination that a person is dead, the court that would have jurisdiction over the person's probate estate if such person were dead shall hear evidence concerning the alleged absence of the presumed decedent and the circumstances and duration of such absence. The court shall require that notice of the filing of the petition be published once a week for four successive weeks in a newspaper published in the county or city where the petition is filed, and the notice shall include the date of the hearing, which shall be at least two weeks after the last publication.

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59 B. At the hearing, the court shall hear all admissible evidence offered for the purpose of determining
60 whether or not the presumption of death is applicable. If the court determines that the legal presumption
61 of death is applicable, the court shall enter an order in accordance with § 64.2-2305, provided, however,
62 that if the evidence shows that the length of a presumed decedent's absence is less than 10 years, the
63 court shall immediately require notice of the order to be published once a week for two successive
64 weeks in a newspaper published in the county or city where the petition is filed and, when practicable,
65 in a newspaper published at or near the place where the presumed decedent had his residence when last
66 heard from. The notice shall require the presumed decedent, if alive, or any person for him, produce to
67 the court satisfactory evidence that the presumed decedent is alive within two weeks from the date of
68 the last publication. If no satisfactory evidence is produced within this period, the court shall enter an
69 order in accordance with § 64.2-2305.

70 C. For the purposes of subsections A and B, if there is no newspaper published in the county or city
71 in which the publication required may be had, then the court shall order that the required notice be
72 published in a newspaper having general circulation in such county or city. The cost of the publication
73 pursuant to this section shall be paid by the petitioner.

74 *D. The notice and hearing requirements of this section shall not apply to persons presumed dead*
75 *pursuant to subdivision A 4 of § 64.2-2300.*

76 **§ 64.2-2305. Entry of order that presumption of death is applicable; effect.**

77 A. If, after the hearing conducted pursuant to § 64.2-2304 and any subsequent publication required
78 pursuant to that section, the court determines that the presumption of death is applicable, *or if a person*
79 *is presumed dead pursuant to subdivision A 4 of § 64.2-2300*, the court shall enter an order determining
80 that the presumed decedent is in fact dead. Upon entry of such order, the court shall proceed to admit
81 any will to probate, issue letters of administration to the party entitled thereto, or order that the claim of
82 the heirs at law, devisees, next of kin, legatees, beneficiaries, survivors, or other successors in interest of
83 the presumed decedent be established. If the order is subsequently revoked pursuant to § 64.2-2307, all
84 acts done in pursuance of or in reliance on the order shall be as valid as if the presumed decedent were
85 actually dead.

86 B. The court's order determining a person to be dead shall state the person's date of death to be:

87 1. The date of the expiration of the seven-year period in a proceeding governed by subsection A of
88 § 64.2-2300, except that in a proceeding governed by subdivision A 1 c of § 64.2-2300 it shall be the
89 date of the Department of State's issuance of a report of presumptive death unless the evidence shows
90 the likelihood of death at an earlier date;

91 2. The date of the person's exposure to the specific peril of death in a proceeding governed by
92 subsection B of § 64.2-2300; or

93 3. The date of the person's disappearance in a proceeding governed by subsection C of § 64.2-2300;
94 or

95 4. *The date of a confession or conviction of murder of the person governed by subdivision A 4 of*
96 *§ 64.2-2300, unless the confessor specifies another date in his confession or another date is determined*
97 *by the evidence in conjunction with his conviction.*

98 C. A certified copy of the court's order determining that the presumed decedent is in fact dead shall
99 be accepted as proof of death in all situations in which a certificate of death issued by the State
100 Registrar of Vital Records of the Virginia Department of Health would have been accepted as such
101 proof.