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HOUSE BILL NO. 286

Offered January 12, 2022

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A BILL to amend and reenact §§ 32.1-263 and 54.1-2972 of the Code of Virginia, relating to nurse practitioners; declaration of death and cause of death.

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Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-263 and 54.1-2972 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-263. Filing death certificates; medical certification; investigation by Office of the Chief Medical Examiner.

A. A death certificate, including, if known, the social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342 of the deceased, shall be filed for each death that occurs in the Commonwealth. Non-electronically filed death certificates shall be filed with the registrar of any district in the Commonwealth within three days after such death and prior to final disposition or removal of the body from the Commonwealth. Electronically filed death certificates shall be filed with the State Registrar of Vital Records through the Electronic Death Registration System within three days after such death and prior to final disposition or removal of the body from the Commonwealth. Any death certificate shall be registered by such registrar if it has been completed and filed in accordance with the following requirements:

1. If the place of death is unknown, but the dead body is found in the Commonwealth, the death shall be registered in the Commonwealth and the place where the dead body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation, taking into consideration all relevant information, including information provided by the immediate family regarding the date and time that the deceased was last seen alive, if the individual died in his home; and

2. When death occurs in a moving conveyance, in the United States of America and the body is first removed from the conveyance in the Commonwealth, the death shall be registered in the Commonwealth and the place where it is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in the Commonwealth, the death shall be registered in the Commonwealth but the certificate shall show the actual place of death insofar as can be determined.

B. The licensed funeral director, funeral service licensee, office of the state anatomical program, or next of kin as defined in § 54.1-2800 who first assumes custody of a dead body shall complete the certificate of death. He shall obtain personal data of the deceased necessary to complete the certificate of death, including the social security number of the deceased or control number issued to the deceased by the Department of Motor Vehicles pursuant to § 46.2-342, from the best qualified person or source available and obtain the medical certification from the person responsible therefor.

If a licensed funeral director, funeral service licensee, or representative of the office of the state anatomical program completes the certificate of death, he shall file the certificate of death with the State Registrar of Vital Records electronically using the Electronic Death Registration System and in accordance with the requirements of subsection A. If a member of the next of kin of the deceased completes the certificate of death, he shall file the certificate of death in accordance with the requirements of subsection A but shall not be required to file the certificate of death electronically.

C. The medical certification shall be completed and filed electronically with the State Registrar of Vital Records using the Electronic Death Registration System within 24 hours after death by the physician or autonomous nurse practitioner in charge of the patient's care for the illness or condition which that resulted in death except when inquiry or investigation by the Office of the Chief Medical Examiner is required by § 32.1-283 or 32.1-285.1, or by the physician ~~that~~ or autonomous nurse practitioner who pronounces death pursuant to § 54.1-2972. If the death occurred while under the care of a hospice provider, the medical certification shall be completed by the decedent's health care provider and filed electronically with the State Registrar of Vital Records using the Electronic Death Registration System for completion of the death certificate.

In the absence of such physician or autonomous nurse practitioner or with his approval, the certificate may be completed and filed by the following: (i) another physician or autonomous nurse practitioner employed or engaged by the same professional practice; (ii) a physician assistant supervised by such physician; (iii) a nurse practitioner who is not an autonomous nurse practitioner practicing in

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59 accordance with the provisions of § 54.1-2957; (iv) the chief medical officer or medical director, or his
60 designee, of the institution, hospice, or nursing home in which death occurred; (v) a physician *or*
61 *autonomous nurse practitioner* specializing in the delivery of health care to hospitalized or emergency
62 department patients who is employed by or engaged by the facility where the death occurred; (vi) the
63 physician who performed an autopsy upon the decedent; (vii) an individual to whom the physician *or*
64 *autonomous nurse practitioner* has delegated authority to complete and file the certificate, if such
65 individual has access to the medical history of the case and death is due to natural causes; or (viii) a
66 physician who is not licensed by the Board of Medicine who was in charge of the patient's care for the
67 illness or condition that resulted in death. A physician described in clause (viii) who completes a
68 certificate in accordance with this subsection shall not be required to register with the Electronic Death
69 Registration System or complete the certificate electronically.

70 *As used in this subsection, "autonomous nurse practitioner" has the same meaning as provided in*
71 *§ 54.1-2972.*

72 D. When inquiry or investigation by the Office of the Chief Medical Examiner is required by
73 § 32.1-283 or 32.1-285.1, the Chief Medical Examiner shall cause an investigation of the cause of death
74 to be made and the medical certification portion of the death certificate to be completed and filed within
75 24 hours after being notified of the death. If the Office of the Chief Medical Examiner refuses
76 jurisdiction, the physician last furnishing medical care to the deceased shall prepare and file the medical
77 certification portion of the death certificate.

78 E. If the death is a natural death and a death certificate is being prepared pursuant to § 54.1-2972
79 and the physician, nurse practitioner, or physician assistant is uncertain about the cause of death, he
80 shall use his best medical judgment to certify a reasonable cause of death or contact the health district
81 physician director in the district where the death occurred to obtain guidance in reaching a determination
82 as to a cause of death and document the same.

83 If the cause of death cannot be determined within 24 hours after death, the medical certification shall
84 be completed as provided by regulations of the Board. The attending physician *or autonomous nurse*
85 *practitioner, as defined in § 54.1-2972, or the Chief Medical Examiner, an Assistant Chief Medical*
86 *Examiner, or a medical examiner appointed pursuant to § 32.1-282 shall give the funeral director or*
87 *person acting as such notice of the reason for the delay, and final disposition of the body shall not be*
88 *made until authorized by the attending physician, autonomous nurse practitioner, the Chief Medical*
89 *Examiner, an Assistant Chief Medical Examiner, or a medical examiner appointed pursuant to*
90 *§ 32.1-282.*

91 F. A physician, nurse practitioner, physician assistant, or individual delegated authority to complete
92 and file a certificate of death by a physician who, in good faith, files a certificate of death or determines
93 the cause of death shall be immune from civil liability, only for such filing and determination of causes
94 of death on such certificate, absent gross negligence or willful misconduct.

95 **§ 54.1-2972. When person deemed medically and legally dead; determination of death; nurses',**
96 **physician assistants', or nurse practitioners' authority to pronounce death under certain**
97 **circumstances.**

98 A. *As used in this subsection, "autonomous nurse practitioner" means a nurse practitioner who is*
99 *authorized to practice without a practice agreement pursuant to subsection I of § 54.1-2957.*

100 B. A person shall be medically and legally dead if:

101 1. In the opinion of a physician duly authorized to practice medicine in the Commonwealth *or*
102 *autonomous nurse practitioner*, based on the ordinary standards of medical practice, there is the absence
103 of spontaneous respiratory and spontaneous cardiac functions and, because of the disease or condition
104 that directly or indirectly caused these functions to cease, or because of the passage of time since these
105 functions ceased, attempts at resuscitation would not, in the opinion of such physician *or autonomous*
106 *nurse practitioner*, be successful in restoring spontaneous life-sustaining functions, and, in such event,
107 death shall be deemed to have occurred at the time these functions ceased; or

108 2. In the opinion of a physician, who shall be duly licensed to practice medicine in the
109 Commonwealth and board-eligible or board-certified in the field of neurology, neurosurgery, or critical
110 care medicine, when based on the ordinary standards of medical practice, there is irreversible cessation
111 of all functions of the entire brain, including the brain stem, and, in the opinion of such physician, based
112 on the ordinary standards of medical practice and considering the irreversible cessation of all functions
113 of the entire brain, including the brain stem, and the patient's medical record, further attempts at
114 resuscitation or continued supportive maintenance would not be successful in restoring such functions,
115 and, in such event, death shall be deemed to have occurred at the time when all such functions have
116 ceased.

117 B. A registered nurse ~~or~~ a physician assistant, *or nurse practitioner who is not an autonomous nurse*
118 *practitioner* may pronounce death if the following criteria are satisfied: (i) the nurse is employed by or
119 the physician assistant *or autonomous nurse practitioner* works at (a) a home care organization as
120 defined in § 32.1-162.7, (b) a hospice as defined in § 32.1-162.1, (c) a hospital or nursing home as

defined in § 32.1-123, including state-operated hospitals for the purposes of this section, (d) the Department of Corrections, or (e) a continuing care retirement community registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2; (ii) the nurse or physician assistant, *or nurse practitioner who is not an autonomous nurse practitioner* is directly involved in the care of the patient; (iii) the patient's death has occurred; (iv) the patient is under the care of a physician *or autonomous nurse practitioner* when his death occurs; (v) the patient's death has been anticipated; and (vi) the physician *autonomous nurse practitioner* is unable to be present within a reasonable period of time to determine death; and (vii) there is a valid Do Not Resuscitate Order pursuant to § ~~54.1-2987.1~~ for the patient who has died. The nurse or, physician assistant, *or nurse practitioner who is not an autonomous nurse practitioner* shall inform the patient's attending and consulting physicians *physician or autonomous nurse practitioner* of the patient's death as soon as practicable.

The nurse or, physician assistant, *or nurse practitioner who is not an autonomous nurse practitioner* shall have the authority to pronounce death in accordance with such procedural regulations, if any, as may be promulgated by the Board of Medicine; however, if the circumstances of the death are not anticipated or the death requires an investigation by the Office of the Chief Medical Examiner, ~~the~~ *such* nurse or, physician assistant, *or nurse practitioner* shall notify the Office of the Chief Medical Examiner of the death and the body shall not be released to the funeral director.

This subsection shall not authorize a nurse or, physician assistant, *or nurse practitioner who is not an autonomous nurse practitioner* to determine the cause of death. Determination of cause of death shall continue to be the responsibility of the attending physician *or autonomous nurse practitioner*, except as provided in § 32.1-263. Further, this subsection shall not be construed to impose any obligation to carry out the functions of this subsection.

This subsection shall not relieve any registered nurse or, physician assistant, *or nurse practitioner who is not an autonomous nurse practitioner* from any civil or criminal liability that might otherwise be incurred for failure to follow statutes or Board of Nursing or Board of Medicine regulations.

C. The alternative definitions of death provided in subdivisions A 1 and 2 may be utilized for all purposes in the Commonwealth, including the trial of civil and criminal cases.