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## SENATE BILL NO. 1117

Offered January 12, 2011

Prefiled January 11, 2011

A *BILL to amend and reenact §§ 32.1-263 and 54.1-2972 of the Code of Virginia, relating to requirements for death certificates.*

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Patron—Northam

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Referred to Committee on Education and Health

**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 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 which occurs in this Commonwealth with the registrar of the district in which the death occurred within three days after such death and prior to final disposition or removal of the body from the Commonwealth, and 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 this Commonwealth, a death certificate shall be filed in the registration district in which the dead body is found in accordance with this section. 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 but not limited to, 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 this Commonwealth, the death shall be registered in this 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 this Commonwealth, the death shall be registered in this 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 file the certificate of death with the registrar. He shall obtain the personal data, 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 next of kin or the best qualified person or source available and obtain the medical certification from the person responsible therefor.

C. The medical certification shall be completed, signed in black or dark blue ink, and returned to the funeral director within 24 hours after death by the physician in charge of the patient's care for the illness or condition which resulted in death except when inquiry or investigation by a medical examiner is required by § 32.1-283 or 32.1-285.1, or by the physician that pronounces death pursuant to § 54.1-2972.

In the absence of ~~the~~ such physician or with his approval, the certificate may be completed and signed by ~~an associate~~ another physician employed or engaged by the same professional practice, a nurse practitioner or physician assistant supervised by such physician, the chief medical officer of the institution in which death occurred, a physician specializing in the delivery of health care to hospitalized or emergency department patients who is employed by or engaged by the facility where the death occurred, or the physician who performed an autopsy upon the decedent, if such individual has access to the medical history of the case and death is due to natural causes.

D. When inquiry or investigation by a medical examiner is required by § 32.1-283 or 32.1-285.1, the medical examiner shall investigate the cause of death and shall complete and sign the medical certification portion of the death certificate within 24 hours after being notified of the death. If the medical examiner refuses jurisdiction, the physician last furnishing medical care to the deceased shall prepare and sign the medical certification portion of the death certificate.

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

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59 If the cause of death cannot be determined within 24 hours after death, the medical certification shall  
60 be completed as provided by regulations of the Board. The attending physician or medical examiner  
61 shall give the funeral director or person acting as such notice of the reason for the delay, and final  
62 disposition of the body shall not be made until authorized by the attending physician or medical  
63 examiner.

64 *F. A physician, nurse practitioner or physician assistant who, in good faith, signs a certificate of*  
65 *death or determines the cause of death shall be immune from civil liability absent gross negligence or*  
66 *willful misconduct.*

67 § 54.1-2972. When person deemed medically and legally dead; determination of death; nurses' or  
68 physician assistants' authority to pronounce death under certain circumstances.

69 A. A person shall be medically and legally dead if:

70 1. In the opinion of a physician duly authorized to practice medicine in this Commonwealth, based  
71 on the ordinary standards of medical practice, there is the absence of spontaneous respiratory and  
72 spontaneous cardiac functions and, because of the disease or condition which directly or indirectly  
73 caused these functions to cease, or because of the passage of time since these functions ceased, attempts  
74 at resuscitation would not, in the opinion of such physician, be successful in restoring spontaneous  
75 life-sustaining functions, and, in such event, death shall be deemed to have occurred at the time these  
76 functions ceased; or

77 2. In the opinion of a physician, who shall be duly licensed and a specialist in the field of neurology,  
78 neurosurgery, electroencephalography, or critical care medicine, when based on the ordinary standards of  
79 medical practice, there is the absence of brain stem reflexes, spontaneous brain functions and  
80 spontaneous respiratory functions and, in the opinion of another physician and such specialist, based on  
81 the ordinary standards of medical practice and considering the absence of brain stem reflexes,  
82 spontaneous brain functions and spontaneous respiratory functions and the patient's medical record,  
83 further attempts at resuscitation or continued supportive maintenance would not be successful in  
84 restoring such reflexes or spontaneous functions, and, in such event, death shall be deemed to have  
85 occurred at the time when these conditions first coincide.

86 B. A registered nurse or a physician assistant who practices under the supervision of a physician may  
87 pronounce death if the following criteria are satisfied: (i) the nurse is employed by or the physician  
88 assistant works at (a) a home health organization as defined in § 32.1-162.7, or (b) a hospice as defined  
89 in § 32.1-162.1, or (c) a hospital or nursing home as defined in § 32.1-123, including state-operated  
90 hospitals for the purposes of this section, or (d) the Department of Corrections; (ii) the nurse or  
91 physician assistant is directly involved in the care of the patient; (iii) the patient's death has occurred;  
92 (iv) the patient is under the care of a physician when his death occurs; (v) the patient's death has been  
93 anticipated; (vi) the physician is unable to be present within a reasonable period of time to determine  
94 death; and (vii) there is a valid Do Not Resuscitate Order pursuant to § 54.1-2987.1 for the patient who  
95 has died. The nurse or physician assistant shall inform the patient's attending and consulting physicians  
96 of his death as soon as practicable.

97 The nurse or physician assistant shall have the authority to pronounce death in accordance with such  
98 procedural regulations, if any, as may be promulgated by the Board of Medicine; however, if the  
99 circumstances of the death are not anticipated or the death requires an investigation by a medical  
100 examiner, the nurse or physician assistant shall notify the chief medical examiner of the death and the  
101 body shall not be released to the funeral director.

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

106 This subsection shall not relieve any registered nurse or physician assistant from any civil or criminal  
107 liability that might otherwise be incurred for failure to follow statutes or Board of Nursing or Board of  
108 Medicine regulations.

109 C. Death, as defined in subdivision A 2, shall be determined by one of the two physicians and  
110 recorded in the patient's medical record and attested by the other physician. One of the two physicians  
111 determining or attesting to brain death may be the attending physician regardless of his specialty so long  
112 as at least one of the physicians is a specialist, as set out in subdivision A 2.

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