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HOUSE BILL NO. 997

Offered January 8, 2014

Prefiled January 8, 2014

A BILL to amend and reenact § 57-38.1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 57 an article numbered 5.1, consisting of sections numbered 57-39.7:1 and 57-39.7:2, relating to cemeteries; procedure for the removal and relocation of human remains.

Patrons—Anderson, Lingamfelter, Futrell and Torian

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 57-38.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 57 an article numbered 5.1, consisting of sections numbered 57-39.7:1 and 57-39.7:2 as follows:

§ 57-38.1. Proceedings by landowner for removal of remains from abandoned family graveyard.

The owner of any land on which is located an abandoned family graveyard, and there has been no reservation of rights in such graveyard, or when the beneficiaries of any reservations of rights desire to waive such rights, and in which no body has been interred for twenty-five years may file a bill in equity in the circuit court of the county or in the circuit or corporation court wherein such land is located for the purpose of having the remains interred in such graveyard removed to some more suitable repository. To such bill all persons in interest, known or unknown, other than the plaintiffs shall be duly made defendants. If any of such parties be unknown, publication shall be had *once a week for eight successive weeks, in one or more newspapers, or such longer period as the court directs; the costs of such publication shall be paid by the petitioner or applicant. At least 90 days' notice shall also be (i) posted on genealogical websites in the geographical area where such land is located, (ii) posted at the cemetery or family graveyard, (iii) given to the Department of Historical Resources for a determination of historical significance in accordance with § 10.1-2305, and (iv) given to any local historical commissions or organization located wherein such land is located. The court shall require the petitioner to provide proof of publication and posting of the notice required by this section. The Department shall be considered an interested party in the court proceedings considering the abandonment of legally constituted cemeteries or family graveyards with historic significance.* Upon the case being properly matured for hearing, and proof being made of the propriety of the removal, the court may order the removal made and the remains properly deposited in another place, at the expense of the petitioner. Such removal and reinterment shall be done with due care and decency.

In determining the question of removal the court shall consider the historical significance of such graveyard and shall consider as well the wishes of the parties concerned so far as they are brought to its knowledge, including the desire of any beneficiaries of any reservation of rights to waive such reservation of rights in favor of removal, and so considering shall exercise a sound discretion in granting or refusing the relief prayed for.

Article 5.1.**Removal and Relocation of Human Remains.****§ 57-39.7:1. Permit for removal and relocation of human remains required; exception.**

A. The owner of any land on which is located a cemetery or a family graveyard shall apply to the circuit court in which the cemetery or graveyard is located for a permit prior to the disinterment and reinterment of any human remains located in such cemetery or graveyard. A permit issued by the court shall be required prior to the disinterment of such human remains and prior to the institution of any proceedings authorized in in this article or Article 4 (§ 57-35.36 et seq.). However, notice to any heir at law or descendant of such deceased person shall be required in the same manner as set forth in Article 4 (§ 57-35.36 et seq.), which notice shall state that a permit application is pending before the court and that any such heir or descendant has a right to be made a party to the proceedings before the court or to make comment to the court concerning the removal of the remains.

B. Prior to the issuance of any permit, the court shall require the owner of any such land to provide evidence satisfactory to the court that the notice required by subsection A has been given. The court shall afford any such heir or descendant an opportunity to be heard prior to the issuance of the permit at such time and place as determined by the court.

C. No permit shall be required if such cemetery or family graveyard is determined to be of historical significance pursuant to § 10.1-2305, but the owner of the cemetery or family graveyard shall be subject to the provisions of Chapter 23 (§ 10.1-2300 et seq.) of Title 10.1.

INTRODUCED

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59 **§ 57-39.7:2. Proceedings by landowner for removal of remains from cemetery or family graveyard.**

60 Prior to the removal of any remains, the owner of any land on which is located a cemetery or family
61 graveyard shall file a bill in equity in the circuit court wherein such land is located for the purpose of
62 having the remains interred in such cemetery or graveyard removed to some more suitable repository.
63 The petitioner shall provide the court with a written justification for the removal of the remains. To
64 such bill, all persons in interest, known or unknown, other than the plaintiffs shall be duly made
65 defendants. If any of such parties be unknown, publication shall be had once a week for eight successive
66 weeks, in one or more newspapers, or such longer period as the court directs; the costs of such
67 publication shall be paid by the petitioner or applicant. At least 90 days' notice shall also be (i) posted
68 on genealogical websites in the geographical area where such land is located, (ii) posted at the
69 cemetery or family graveyard, (iii) given to the Department of Historical Resources for a determination
70 of historical significance in accordance with § 10.1-2305, and (iv) given to any local historical
71 commissions or organization located wherein such land is located. The court shall require the petitioner
72 to provide proof of publication and posting of the notice required by this section. The Department shall
73 be considered an interested party in the court proceedings considering the legally constituted cemeteries
74 or family graveyards with historic significance.

75 In determining the question of removal and relocation of the remains, the court shall consider the
76 historical significance of such graveyard and shall consider as well the wishes of any next-of-kin first,
77 followed by the wishes of any other parties concerned, other than the petitioner, so far as they are
78 brought to its knowledge, including the desire of any beneficiaries of any reservation of rights to waive
79 such reservation of rights in favor of removal. If there are no next-of-kin, the court shall designate a
80 historical or cemetery preservation organization to represent the interest of the next-of-kin. In so
81 considering all of the evidence and statements of the parties, the court shall exercise a sound discretion
82 in granting or refusing the relief prayed for.

83 Upon the case being properly matured for hearing, and proof being made of the propriety of the
84 removal, the court may order the removal made and the remains properly deposited in another place, at
85 the expense of the petitioner. Such removal and reinterment shall be done with due care and decency.