

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 32.1-309.1, 32.1-309.2, 54.1-2800, and 54.1-2818.1 of the Code of Virginia, relating to disposition of dead bodies.

[S 951]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-309.1, 32.1-309.2, 54.1-2800, and 54.1-2818.1 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, "~~next~~ 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 ~~burial or the disposition~~ of his 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.

~~B.~~ 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.

~~C.~~ 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, 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.

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

If the identity of the decedent is known or the primary law-enforcement agency is able to determine the identity of the decedent but the primary law-enforcement agency is unable, despite good faith efforts, to identify and notify the decedent's next of kin *or other person authorized by law to make arrangements for disposition of the decedent's remains* within 10 days of the date of contact by the person or institution having initial custody of the dead body, or the primary law-enforcement agency is

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57 able to identify and notify the decedent's next of kin *or other person authorized by law to make*
58 *arrangements for disposition of the decedent's remains* but the next of kin *or other person authorized by*
59 *law to make arrangements for disposition of the decedent's remains* fails or refuses to claim the body
60 within 10 days, the primary law-enforcement agency shall notify the person or institution having initial
61 custody of the dead body, and the body shall be disposed of in accordance with § 32.1-309.2.

62 ~~D.~~ E. In cases in which a dead body is claimed by the decedent's next of kin *or other person*
63 *authorized by law to make arrangements for disposition of the decedent's remains* but the next of kin *or*
64 *other person authorized by law to make arrangements for disposition of the decedent's remains* is unable
65 to pay the reasonable costs of disposition of the body and the costs are paid by the county or city in
66 which the decedent resided or in which the death occurred in accordance with this section, and the
67 decedent has an estate out of which ~~burial~~ *disposition* expenses may be paid, in whole or in part, such
68 assets shall be seized for such purpose.

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

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

77 ~~G.~~ H. Nothing in this section shall prevent a law-enforcement agency other than the primary
78 law-enforcement agency from performing the duties established by this section if so requested by the
79 primary law-enforcement agency and agreed to by the other law-enforcement agency.

80 **§ 32.1-309.2. Disposition of unclaimed dead body; how expenses paid.**

81 A. In any case in which (i) the primary law-enforcement agency is unable to identify and notify the
82 next of kin of the decedent *or other person authorized by law to make arrangements for disposition of*
83 *the decedent's remains* within 10 days of the date of contact by the person or institution having initial
84 custody of the dead body despite good faith efforts to do so or (ii) the next of kin of the decedent *or*
85 *other person authorized by law to make arrangements for disposition of the decedent's remains* fails or
86 refuses to claim the body within 10 days of receipt of notice of the decedent's death, the primary
87 law-enforcement agency shall notify the attorney for the county or city in which the person or institution
88 is located or, if there is no county or city attorney, the attorney for the Commonwealth, and such
89 attorney shall without delay request an order authorizing the person or institution having initial custody
90 of the dead body to transfer custody of the body to a funeral service establishment for final disposition.
91 Upon entry of a final order for disposition of the dead body, the person or institution having initial
92 custody of the body shall transfer custody of the body to a funeral service establishment, which shall
93 take possession of the dead body for disposition in accordance with the provisions of such order. Except
94 as provided in subsection B or C, the reasonable expenses of disposition of the body shall be borne (a)
95 by the county or city in which the decedent resided at the time of death if the decedent was a resident
96 of Virginia or (b) by the county or city where death occurred if the decedent was not a resident of
97 Virginia or the location of the decedent's residence cannot reasonably be determined. However, no such
98 expenses shall be paid by such county or city until allowed by an appropriate court in such county or
99 city.

100 B. In the case of a person who has been received into the state corrections system and died prior to
101 his release, whose body is unclaimed, the Department of Corrections shall accept the body for proper
102 disposition and shall bear the reasonable expenses for cremation or other disposition of the body. In the
103 case of a person who has been received into the state corrections system and died prior to his release
104 and whose claimant is financially unable to pay reasonable expenses of disposition, the expenses shall
105 be borne by the county or city where the claimant resides.

106 C. In the case of a person who has been committed to the custody of the Department of Behavioral
107 Health and Developmental Services and died prior to his release, whose body is unclaimed, the
108 Department of Behavioral Health and Developmental Services shall bear the reasonable expenses for
109 cremation or other disposition of the body. In the case of a person who has been committed to the
110 custody of the Department of Behavioral Health and Developmental Services and died prior to his
111 release and whose claimant is financially unable to pay reasonable expenses of disposition, the expenses
112 shall be borne by the county or city where the claimant resides.

113 D. Any person or institution having initial custody of a dead body may enter into an agreement with
114 a local funeral service establishment whereby the funeral service establishment shall take possession of
115 the dead body for the purpose of storing the dead body during such time as the person or institution
116 having initial custody of the body or the primary local law-enforcement agency is engaged in identifying
117 the decedent, attempting to identify and contact the next of kin of the decedent, and making

118 arrangements for the final disposition of the body in accordance with this section, provided that at all
119 times during which the funeral service establishment is providing storage of the body, the person or
120 institution having initial custody of the dead body shall continue to have legal custody of the body until
121 such time as custody is transferred in accordance with this chapter.

122 E. In cases in which a decedent whose remains are disposed of in accordance with this section has
123 an estate out of which ~~burial~~ *burial disposition* expenses may be paid, in whole or in part, such assets shall be
124 seized for such purpose.

125 F. No dead body that is the subject of an investigation pursuant to § 32.1-283 or autopsy pursuant to
126 § 32.1-285 shall be transferred for purposes of disposition until such investigation or autopsy has been
127 completed.

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

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

137 **§ 54.1-2800. Definitions.**

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

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

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

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

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

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

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

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

148 "Embalming" means the preservation and disinfection of the human dead by external or internal
149 application of chemicals.

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

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

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

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

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

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

162 "Next of kin" means any of the following persons, regardless of the relationship to the decedent: any
163 person designated to make arrangements for the disposition of the decedent's remains upon his death
164 pursuant to § 54.1-2825, the legal spouse, child ~~over aged~~ *over aged* 18 years ~~of age or older~~, *parent of a*
165 *decedent aged 18 years or older*, custodial parent, *or noncustodial parent of a decedent younger than 18*
166 *years of age*, siblings over 18 years of age, guardian of minor child, guardian of minor siblings,
167 maternal grandparents, paternal grandparents, maternal siblings over 18 years of age and paternal
168 siblings over 18 years of age, or any other relative in the descending order of blood relationship.

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

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

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

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

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

181 **§ 54.1-2818.1. Prerequisites for cremation.**

182 No dead human body shall be cremated without permission of the Office of the Chief Medical
183 Examiner as required by § 32.1-309.3 and visual identification of the deceased by the next-of-kin or his
184 representative, who may be any person designated to make arrangements for the ~~decedent's burial or the~~
185 disposition of ~~his~~ *the decedent's* remains pursuant to § 54.1-2825, an agent named in an advance
186 directive pursuant to § 54.1-2984, or any guardian appointed pursuant to Chapter 20 (§ 64.2-2000 et
187 seq.) of Title 64.2 who may exercise the powers conferred in the order of appointment or by
188 § 64.2-2019, *or, in cases in which the next of kin or his representative fails or refuses to provide visual*
189 *identification of the deceased, by any other person 18 years of age or older who is able to provide*
190 *positive identification of the deceased.* If no such next of kin, ~~designated person, agent, or guardian or~~
191 *his representative or other person 18 years of age or older* is available or willing to make visual
192 identification of the deceased, such identification shall be made by a member of the primary
193 law-enforcement agency of the city or county in which the person or institution having initial custody of
194 the body is located, pursuant to court order. When visual identification is not feasible, other positive
195 identification of the deceased may be used as a prerequisite for cremation. Unless such act, decision, or
196 omission resulted from bad faith or malicious intent, the funeral service establishment, funeral service
197 licensee, crematory, cemetery, primary law-enforcement officer, sheriff, county, or city shall be immune
198 from civil liability for any act, decision, or omission resulting from cremation. Nothing in this section
199 shall prevent a law-enforcement agency other than the primary law-enforcement agency from performing
200 the duties established by this section if so requested by the primary law-enforcement agency and agreed
201 to by the other law-enforcement agency.