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SENATE BILL NO. 959

Offered January 19, 2018

A *BILL to amend and reenact § 32.1-309.2 of the Code of Virginia, relating to disposition of unclaimed dead body; final orders of transportation and disposition.*

Patron—McDougle

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-309.2 of the Code of Virginia is amended and reenacted as follows:

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

A. In any case in which (i) the primary law-enforcement agency of the county or city in which the person or institution having initial custody of the dead body of the decedent is located or the county or city in which the decedent resided, as may be appropriate pursuant to § 32.1-309.1, is unable 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 within 10 days of the date of contact by the person or institution having initial custody of the dead body despite good faith efforts to do so or (ii) 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 receipt of notice of the decedent's death, the primary law-enforcement agency shall notify (a) the attorney for the county or city in which the decedent resided at the time of death, if known, or (b) if the decedent's county or city of residence at the time of death is not known, the attorney for the county or city in which the person or institution having initial custody of the dead body is located or, if there is no county or city attorney, the attorney for the Commonwealth in such county or city, and such attorney shall *forthwith and* without delay request an order *to be entered by the court within one business day of receiving such request* authorizing the person or institution having initial custody of the dead body to transfer custody of the body to a funeral service establishment for final disposition. *Such request shall contain transportation and disposition instructions for the unclaimed dead body.* Upon entry of a final order for disposition of the dead body, the person or institution having initial custody of the body shall transfer custody of the body to a funeral service establishment, which shall take possession of the dead body for disposition in accordance with the provisions of such order. *A court may authorize the clerk to issue a final order for disposition of an unclaimed dead body, without judicial review, to such attorney who has submitted a completed request for a final order in accordance with this subsection. The clerk shall be immune from civil liability arising from any acts or omissions relating to the issuance of a final order for disposition of an unclaimed dead body without judicial review pursuant to this subsection unless the clerk was grossly negligent or engaged in willful misconduct. This immunity shall not be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law, or to affect any cause of action accruing prior to July 1, 2018.* Except as provided in subsection B or C, the reasonable expenses of disposition of the body shall be borne (1) by the county or city in which the decedent resided at the time of death if the decedent was a resident of Virginia or (2) by the county or city where death occurred if the decedent was not a resident of Virginia or the location of the decedent's residence cannot reasonably be determined. However, no such expenses shall be paid by such county or city until allowed by an appropriate court in such county or city.

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

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

D. Any person or institution having initial custody of a dead body may enter into an agreement with a local funeral service establishment whereby the funeral service establishment shall take possession of

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59 the dead body for the purpose of storing the dead body during such time as the person or institution
60 having initial custody of the body or the primary local law-enforcement agency is engaged in identifying
61 the decedent, attempting to identify and contact the next of kin of the decedent, and making
62 arrangements for the final disposition of the body in accordance with this section, provided that at all
63 times during which the funeral service establishment is providing storage of the body, the person or
64 institution having initial custody of the dead body shall continue to have legal custody of the body until
65 such time as custody is transferred in accordance with this chapter.

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

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

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

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