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## SENATE BILL NO. 1268

Offered January 13, 2021

Prefiled January 11, 2021

A *BILL to amend and reenact §§ 32.1-309.1, 54.1-2800, 54.1-2807, and 54.1-2825 of the Code of Virginia; to amend the Code of Virginia by adding in Article 5 of Chapter 28 of Title 54.1 a section numbered 54.1-2825.1; and to repeal §§ 54.1-2807.01 and 54.1-2807.02 of the Code of Virginia, relating to disposition of the remains of a decedent; persons to make arrangements for funeral and disposition of remains.*

Patron—Deeds

Referred to Committee on General Laws and Technology

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-309.1, 54.1-2800, 54.1-2807, and 54.1-2825 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 5 of Chapter 28 of Title 54.1 a section numbered 54.1-2825.1 as follows:**

**§ 32.1-309.1. Identification of decedent, next of kin; disposition of claimed dead body.**

A. As used in this chapter, 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 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 *Except as provided otherwise in this chapter, the right of a person to make arrangements and otherwise be responsible for a decedent's funeral and the disposition of human decedent's remains shall be governed by § 54.1-2825.*

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.

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 in which the person or institution is located, 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. However, in cases in which the identity of the decedent and the county or city in which the decedent resided at the time of death are known, the person or institution having initial custody of the dead body shall notify the primary law-enforcement agency for the county or city in which the decedent resided regarding the decedent's death, and the law-enforcement agency for the county or city in which the decedent resided shall make good faith efforts to identify and notify the next of kin of the decedent.

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59 If the identity of the decedent is known to the primary law-enforcement agency or the primary  
60 law-enforcement agency is able to identify the decedent, the primary law-enforcement agency is able to  
61 identify and notify the next of kin of the decedent or other person authorized by law to make  
62 arrangements for disposition of the decedent's remains, and the next of kin of the decedent or other  
63 person authorized by law to make arrangements for disposition of the decedent's remains is willing and  
64 able to claim the body, the body may be claimed by the next of kin or other person authorized by law  
65 to make arrangements for disposition of the decedent's remains for disposition, and the claimant shall  
66 bear the expenses of such disposition.

67 If the identity of the decedent is known or the primary law-enforcement agency is able to determine  
68 the identity of the decedent but the primary law-enforcement agency is unable, despite good faith efforts,  
69 to identify and notify the decedent's next of kin or other person authorized by law to make arrangements  
70 for disposition of the decedent's remains within 10 days of the date of contact by the person or  
71 institution having initial custody of the dead body, or the primary law-enforcement agency is able to  
72 identify and notify the decedent's next of kin or other person authorized by law to make arrangements  
73 for disposition of the decedent's remains but the next of kin or other person authorized by law to make  
74 arrangements for disposition of the decedent's remains fails or refuses to claim the body within 10 days,  
75 the primary law-enforcement agency shall notify the person or institution having initial custody of the  
76 dead body, and the body shall be disposed of in accordance with § 32.1-309.2.

77 E. In cases in which a dead body is claimed by the decedent's next of kin or other person authorized  
78 by law to make arrangements for disposition of the decedent's remains but the next of kin or other  
79 person authorized by law to make arrangements for disposition of the decedent's remains is unable to  
80 pay the reasonable costs of disposition of the body and the costs are paid by the county or city in which  
81 the decedent resided or in which the death occurred in accordance with this section, and the decedent  
82 has an estate out of which disposition expenses may be paid, in whole or in part, such assets shall be  
83 seized for such purpose.

84 F. No dead body that is the subject of an investigation pursuant to § 32.1-283 or autopsy pursuant to  
85 § 32.1-285 shall be transferred for purposes of disposition until such investigation or autopsy has been  
86 completed.

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

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

95 **§ 54.1-2800. Definitions.**

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

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

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

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

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

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

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

105 "*Disposition*" means the burial, interment, entombment, cremation, or other authorized disposition of  
106 a dead body or the remains thereof permitted by law.

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

108 "Embalming" means the process of chemically treating the dead human body by arterial injection and  
109 cavity treatment or, when necessary, hypodermic tissue injection to reduce the presence and growth of  
110 microorganisms to temporarily retard organic decomposition.

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

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

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

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

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

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

"Next of kin" means any of the following persons, regardless of the relationship to the decedent: any person designated to make arrangements for the disposition of the decedent's remains upon his death pursuant to § 54.1-2825, the legal spouse, child aged 18 years or older, parent of a decedent aged 18 years or older, custodial parent or noncustodial parent of a decedent younger than 18 years of age, siblings over 18 years of age, guardian of minor child, guardian of minor siblings, maternal grandparents, paternal grandparents, maternal siblings over 18 years of age and paternal siblings over 18 years of age, or any other relative in the descending order of blood relationship the person or persons identified in § 54.1-2825 as having the right to make arrangements and otherwise be responsible for a decedent's funeral and the disposition of his remains.

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

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

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

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

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

**§ 54.1-2807. Other prohibited activities.**

A. A person licensed for the practice of funeral service shall not (i) remove or embalm a body when he has information indicating the death was such that an investigation by the Office of the Chief Medical Examiner is required pursuant to § 32.1-283 or 32.1-285.1 or (ii) cremate or bury at sea a body until he has obtained permission of the Office of the Chief Medical Examiner as required by § 32.1-309.3.

B. Except as provided in § 32.1-301 and Chapter 8.1 (§ 32.1-309.1 et seq.) of Title 32.1, funeral service establishments shall not accept a dead human body from any public officer, except the Chief Medical Examiner, an Assistant Chief Medical Examiner, or a medical examiner appointed pursuant to § 32.1-282, or from any public or private facility or person having a professional relationship with the decedent without having first inquired about the desires of the next of kin and the persons liable for the funeral expenses of the decedent. The authority and directions of any next of kin shall govern the disposal of the body, subject to the provisions of § 54.1-2807.01 or 54.1-2825.

Any funeral service establishment violating this subsection shall not charge for any service delivered without the directions of the next of kin. However, in cases of accidental or violent death, the funeral service establishment may charge and be reimbursed for the removal of bodies and rendering necessary professional services until the next of kin or the persons liable for the funeral expenses have been notified.

C. No company, corporation, or association engaged in the business of paying or providing for the payment of the expenses for the care of the remains of deceased certificate holders or members or engaged in providing life insurance when the contract might or could give rise to an obligation to care for the remains of the insured shall contract to pay or pay any benefits to any licensee of the Board or other individual in a manner which could restrict the freedom of choice of the representative or next of kin of a decedent in procuring necessary and proper services and supplies for the care of the remains of the decedent.

D. No person licensed for the practice of funeral service or preneed funeral planning or any of his agents shall interfere with the freedom of choice of the general public in the choice of persons or establishments for the care of human remains or of preneed funeral planning or preneed funeral contracts.

E. This section shall not be construed to apply to the authority of any administrator, executor, trustee, or other person having a fiduciary relationship with the decedent.

**§ 54.1-2825. Person to make arrangements for funeral and disposition of remains.**

A. Any person may designate in a signed and notarized writing, which has been accepted in writing by the person persons so designated, an individual one or more individuals who shall have the right to make arrangements and be otherwise responsible for his funeral and the disposition of his remains, including cremation, interment, entombment, or memorialization, or some combination thereof, upon his death. Such designee or designees shall have priority over all persons otherwise entitled to make such arrangements, provided that a copy of the signed and notarized writing is provided to the funeral service

182 establishment and to the cemetery, if any, no later than 48 hours after the funeral service establishment  
183 has received the remains. ~~Nothing in this section shall preclude any next of kin from paying any costs~~  
184 ~~associated with any funeral or disposition of any remains, provided that such payment is made with the~~  
185 ~~concurrence of any person designated to make arrangements.~~

186 *B. A person who has previously designated one or more individuals who shall have the right to make*  
187 *arrangements and be otherwise responsible for his funeral and the disposition of his remains may make*  
188 *a subsequent designation in a signed and notarized writing. Upon acceptance in writing of the*  
189 *subsequent designation by the persons so designated, all previous designations shall be invalid.*

190 ~~B. C. In cases in which a person has designated in a U.S. Department of Defense Record of~~  
191 ~~Emergency Data (DD Form 93) or any successor form an individual to make arrangements for his~~  
192 ~~funeral and disposition of his remains, and such person dies while serving in any branch of the United~~  
193 ~~States Armed Forces as defined in 10 U.S.C. § 1481, such designee shall be responsible for making such~~  
194 ~~arrangements.~~

195 *D. Except as provided in subsection E and subject to subsection F, the right to make arrangements*  
196 *and otherwise be responsible for a person's funeral and the disposition of his remains shall be*  
197 *exercisable by the following persons, provided that any such person is 18 years of age or older and of*  
198 *sound mind, in the following order of priority:*

199 *1. A person designated in a preneed funeral contract or otherwise designated by the decedent in a*  
200 *writing pursuant to subsection A or B or, if applicable, subsection C.*

201 *2. The surviving spouse of the decedent, except where a divorce action has been filed and the*  
202 *divorce is not final or there has been a judicial separation.*

203 *3. The surviving child of the decedent or, if there is more than one surviving child of the decedent,*  
204 *the majority of the surviving children.*

205 *4. The surviving parent of the decedent or, if there is more than one surviving parent of the*  
206 *decedent, the surviving parents.*

207 *5. The surviving siblings of the decedent, or if there is more than one surviving sibling of the*  
208 *decedent, the majority of the surviving siblings.*

209 *6. Any other person who is willing to make arrangements and otherwise be responsible for the*  
210 *decedent's funeral and the disposition of his remains, including the funeral service establishment with*  
211 *custody of the remains, provided that such other person, including a funeral service establishment,*  
212 *attests in writing that he has made a good faith effort to locate and contact the individuals in*  
213 *subdivisions 1 through 5 and either no such persons could be located or contacted or no such persons*  
214 *are willing to make arrangements and otherwise be responsible for the decedent's funeral and the*  
215 *disposition of his remains.*

216 *E. A person entitled under this section to make arrangements and otherwise be responsible for a*  
217 *decedent's funeral and the disposition of his remains, including a person designated in a preneed*  
218 *funeral contract or otherwise designated by the decedent in a writing pursuant to subsection A or B or,*  
219 *if applicable, subsection C, shall forfeit that right, and the right shall be exercisable by the next*  
220 *qualifying person in the order of priority in subsection D, under the following circumstances:*

221 *1. Such person does not notify the funeral service establishment having custody of the decedent's*  
222 *remains of his intention to exercise such right within 48 hours of notification of the decedent's death or*  
223 *within 72 hours of the decedent's death, whichever is earlier.*

224 *2. Such person is not willing to assume liability for the costs of the decedent's funeral or the*  
225 *disposition of his remains if sufficient resources are not available in the decedent's estate to pay such*  
226 *costs.*

227 *F. A person who seeks to exercise the right to make arrangements and otherwise be responsible for*  
228 *a decedent's funeral and the disposition of his remains shall attest to his right to make such*  
229 *arrangements and be so responsible for such funeral and disposition in a signed writing and shall*  
230 *deliver such signed writing to the funeral service establishment. Any funeral service establishment,*  
231 *funeral service establishment manager of record, funeral service licensee, funeral director, embalmer,*  
232 *registered crematory, registered crematory owner, registered crematory manager of record, or certified*  
233 *crematory operator that relies upon such signed writing shall be immune from civil or criminal liability*  
234 *for any act, decision, or omission in connection with following such person's direction related to the*  
235 *decedent's funeral and the disposition of his remains, unless such act, decision, or omission resulted*  
236 *from willful neglect or bad faith. Such attestation shall include the following information:*

237 *1. Such person has a right pursuant to this section or other applicable law to make arrangements*  
238 *and otherwise be responsible for the decedent's funeral and the disposition of his remains.*

239 *2. Such person will take into account the decedent's religious beliefs and any preferences previously*  
240 *expressed by the decedent whether orally or in writing and was made known to him prior to such*  
241 *arrangements being made.*

242 *3. All other persons with the same or higher priority to make arrangements and otherwise be*  
243 *responsible for the decedent's funeral and the disposition of his remains consent to such person making*

such arrangements, or after reasonable inquiry, (i) there are no persons who have the same or higher priority, or (ii) no persons who have the same or higher priority could be located or contacted. Such reasonable inquiry shall be made in good faith. An attempt to contact such person at his last known address, telephone number, email address, or any known social media accounts shall be considered a reasonable inquiry made in good faith.

G. A person who has the right to make arrangements and otherwise be responsible for the decedent's funeral and disposition of the decedent's remains who is unwilling or unable to make such arrangements or to otherwise be responsible for the decedent's funeral and disposition of the decedent's remains may relinquish such rights in a signed written statement. A person who relinquishes his rights pursuant to this subsection may designate another person who shall be responsible for the decedent's funeral and disposition of the decedent's remains. Such designation shall be made in writing and signed by the person so designating. If a person who relinquishes his rights pursuant to this subsection does not designate another person who shall be responsible for the decedent's funeral and disposition of the decedent's remains, the right of a person to make arrangements and otherwise be responsible for a decedent's funeral and the disposition of the decedent's remains shall be determined in accordance with subsection D.

H. If there is more than one person in the same class in subsection D willing to make arrangements and otherwise be responsible for the decedent's funeral and the disposition of his remains and such persons do not agree on such arrangements, any such person or a funeral service establishment with custody of the remains may petition the circuit court in the county or city wherein the decedent has a known place of residence, or if he has no such known place of residence, then in the county or city wherein the decedent died, to determine who has the right to make arrangements and otherwise be responsible for the decedent's funeral and the disposition of his remains. If a funeral service establishment petitions the court pursuant to this subsection, the court shall award costs and expenses, including reasonable attorney fees, to the funeral service establishment payable by the other parties to the petition as the court deems necessary and appropriate. This subsection shall not be construed to require a funeral service establishment to file a petition with the court and a funeral service establishment shall not be liable for failing to do so.

I. If there is a dispute regarding the identity of any persons who have the right to make arrangements and otherwise be responsible for the decedent's funeral and the disposition of his remains, a funeral service establishment shall not be liable for refusing to dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the funeral service establishment receives a court order or written agreement signed by the parties to the dispute that establishes the final disposition of the remains. If the funeral service establishment retains the remains for final disposition while any such dispute remains pending, it may embalm or refrigerate and shelter the dead body, or both, in order to preserve the dead body until resolution of the dispute in the aforesaid manner. Any costs incurred by the funeral service establishment pursuant to this subsection shall be paid by the person or persons who are adjudged or agreed to have the right to make arrangements and otherwise be responsible for the decedent's funeral and the disposition of his remains.

J. Nothing in this section shall preclude any person from paying any costs associated with any funeral or disposition of any remains, provided that such payment is made with the concurrence of any person designated to make arrangements.

**§ 54.1-2825.1. Exemption of cemeteries or cemetery companies.**

*This article shall not apply to cemeteries or cemetery companies as defined in § 54.1-2310.*

**2. That §§ 54.1-2807.01 and 54.1-2807.02 of the Code of Virginia are repealed.**