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HOUSE BILL NO. 2128

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 23, 2023)

(Patron Prior to Substitute—Delegate Wilt)

*A BILL to amend and reenact § 64.2-604 of the Code of Virginia, relating to Virginia Small Estate Act; funeral expenses and disposition.***Be it enacted by the General Assembly of Virginia:****1. That § 64.2-604 of the Code of Virginia is amended and reenacted as follows:****§ 64.2-604. Payment or delivery of small asset; funeral expenses and disposition.**

~~Thirty~~ *A. Notwithstanding the provisions of this article, 30 days after the death of a decedent upon whose estate there shall have been no application for the appointment of a personal representative pending or granted in any jurisdiction, any person ~~holding~~ having possession of a small asset belonging to the decedent may shall, at the request of a successor, pay or deliver to the licensed funeral service establishment handling the funeral, if there is one, and the disposition of the decedent so much of the small asset as does not exceed the amount given priority by § 64.2-528 to the undertaker or mortuary handling the funeral of the decedent, and a receipt of the payee shall be a full and final release of the payor as to such sum and has not already been so paid upon being presented an affidavit made by the licensed funeral service establishment, at the request of a successor, stating:*

1. That it is the licensed funeral service establishment handling the funeral, if there is one, and the disposition of the decedent;

2. The legal name and business address of the licensed funeral service establishment;

3. The amount given priority by § 64.2-528, or the amount due to it for the funeral, if there is one, and the disposition of the decedent reduced by any other payments it has received or expects to receive;

4. The reasons and supporting evidence that the person to whom the affidavit will be presented is in possession of a small asset belonging to the decedent; and

5. That a successor has represented to it in writing that at least 30 days have elapsed since the decedent's death and no application for the appointment of a personal representative is pending, has been granted, or is expected in any jurisdiction.

B. 1. Any person paying or delivering a small asset pursuant to this section is discharged and released to the same extent as if that person dealt with the personal representative of the decedent and a receipt of the payee shall be a full and final release of the payor as to such sum. Such person is not required to see the application of the small asset or to inquire into the truth of any statement in any affidavit presented pursuant to subsection A.

2. If any person to whom an affidavit is presented pursuant to subsection A refuses to pay or deliver any small asset belonging to the decedent of which he is in possession pursuant to this section, it may be recovered, or its payment or delivery compelled, and damages may be recovered, on proof of rightful claim in a proceeding brought for that purpose by or on behalf of the licensed funeral service establishment. However, no such damages may be recovered if it is established in such proceeding that the refusal to pay or deliver the small asset was made in good faith.

C. Any licensed funeral service establishment to whom payment or delivery of a small asset has been made under this section is answerable and accountable therefor to any personal representative of the decedent's estate or to any successor having an equal or superior right.