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HOUSE BILL NO. 861

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health
on March 5, 1998)

(Patron Prior to Substitute—Delegate Watts)

A BILL to amend and reenact §§ 32.1-307, 54.1-2800, 54.1-2825, and 54.1-2973 of the Code of Virginia, relating to end-of-life decisions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-307, 54.1-2800, 54.1-2825, and 54.1-2973 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-307. Prerequisites for cremation.

No dead human body shall be cremated without (i) permission of the medical examiner as required by § 32.1-284 and (ii) either (i) visual identification of the deceased by the next-of-kin or their representative, who may be any person designated to make arrangements for the decedent's burial or the disposition of his remains pursuant to § 54.1-2825 or an agent named in an advance directive pursuant to § 54.1-2984, or (iii) a twenty-four-hour waiting period between the time of death and the cremation.

§ 54.1-2800. Definitions.

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

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

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

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

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

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

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

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

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

"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 over eighteen years of age, custodial parent, noncustodial parent, siblings over eighteen years of age, guardian of minor child, guardian of minor siblings, maternal grandparents, paternal grandparents, maternal siblings over eighteen years of age and paternal siblings over eighteen years of age, or any other relative in the descending order of blood relationship.

"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.

"Resident trainee" means a person who is preparing to be licensed for the practice of funeral services under the direct supervision of a practitioner licensed by the Board.

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

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

Any person may designate in a signed and notarized writing, signed and notarized and which has been accepted in writing by the person so designated, an individual who shall make arrangements for his burial or the disposition of his remains, including cremation, upon his death.

60 § 54.1-2973. Persons who may authorize postmortem examination of decedent's body.

61 Any of the following persons, in order of priority stated, may authorize and consent to a postmortem
62 examination and autopsy on a decedent's body for the purpose of determining the cause of death of the
63 decedent, for the advancement of medical or dental education and research, or for the general
64 advancement of medical or dental science, if: (i) no person in a higher class exists or no person in a
65 higher class is available at the time authorization or consent is given, (ii) there is no actual notice of
66 contrary indications by the decedent, and (iii) there is no actual notice of opposition by a member of the
67 same or a prior class.

68 The order of priority shall be as follows: (1) *any person designated to make arrangements for the*
69 *disposition of the decedent's remains upon his death pursuant to § 54.1-2825*; (2) the spouse; (23) an
70 adult son or daughter; (34) either parent; (45) an adult brother or sister; (56) a guardian of the person of
71 the decedent at the time of his death; or (67) any other person authorized or under legal obligation to
72 dispose of the body.

73 If the physician or surgeon has actual notice of contrary indications by the decedent or of opposition
74 to an autopsy by a member of the same or a prior class, the autopsy shall not be performed. The
75 persons authorized herein may authorize or consent to the autopsy after death or before death.

76 In cases of death where official inquiry is authorized or required by law, the provisions of Article 1
77 (§ 32.1-277 et seq.) of Chapter 8 of Title 32.1 shall apply. If at the time of death, a postmortem
78 examination is authorized or required by law, any prior authorization or consent pursuant to this section
79 shall not be valid unless the body is released by the Chief Medical Examiner or one of his assistants.

80 A surgeon or physician acting in accordance with the terms of this section shall not have any
81 liability, civil or criminal, for the performance of the autopsy.