

HOUSE BILL NO. 381

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health and Human Services

on)

(Patron Prior to Substitute—Delegate Bennett-Parker)

A BILL to amend and reenact § 32.1-309.1 of the Code of Virginia, relating to investigation or autopsy of dead bodies; Office of the Chief Medical Examiner; notification of retention of whole organ.

on _____)

Be it enacted by the General Assembly of Virginia:**1. That § 32.1-309.1 of the Code of Virginia is 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, 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.

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.

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 able to identify and notify the decedent's next of kin or other person authorized by law to make arrangements for disposition of the

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

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

72 F. No dead body that is the subject of an investigation pursuant to § 32.1-283 or *an* autopsy pursuant to
73 § 32.1-285 shall be transferred for purposes of disposition until such investigation or autopsy has been
74 completed. *If such investigation or autopsy required the retention of a whole organ from a dead body, the*
75 *Office of the Chief Medical Examiner shall notify the decedent's next of kin, other person authorized by law*
76 *to make arrangements for the disposition of the decedent's remains, or the funeral service establishment or*
77 *funeral service licensee providing for the disposition of the decedent's remains of such retention through*
78 *written communication upon transferring the dead body for purposes of disposition. If the Office of the Chief*
79 *Medical examiner provides written notification to the funeral service establishment or funeral service*
80 *licensee pursuant to this subsection, the funeral service establishment or funeral service licensee shall*
81 *provide such written notice to the decedent's next of kin or other person authorized by law to make*
82 *arrangements for the disposition of the decedent's remains. If a funeral service establishment or funeral*
83 *service licensee fails to provide written notification in accordance with this subsection, then the funeral*
84 *service establishment or funeral service licensee shall be immune from liability unless such act, decision, or*
85 *omission resulted from malicious intent.*

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

91 H. Nothing in this section shall prevent a law-enforcement agency other than the primary law-

- 92** enforcement agency from performing the duties established by this section if so requested by the primary
- 93** law-enforcement agency and agreed to by the other law-enforcement agency.