

HOUSE BILL NO. 2005

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on/for _____

on _____)

(Patron Prior to Substitute--Delegate Sickles)

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.

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~~

27 ~~shall be authorized to make arrangements for such disposition of the decedent's remains. If a funeral~~
28 ~~service establishment or funeral service licensee makes arrangements with a person other than a next of~~
29 ~~kin, designated person, agent, or guardian in accordance with this section, then the funeral service licensee~~
30 ~~or funeral service establishment shall be immune from civil liability unless such act, decision, or omission~~
31 ~~resulted from bad faith or malicious intent~~ Except as otherwise provided in this chapter, the right of a
32 person to make arrangements and otherwise be responsible for a decedent's funeral and arrangements for
33 the disposition of a decedent's remains shall be governed by § 54.1-2825.

34 C. Upon the death of any person, irrespective of the cause and manner of death, and irrespective
35 of whether a medical examiner's investigation is required pursuant to § 32.1-283 or 32.1-285.1, the person
36 or institution having initial custody of the dead body shall make good faith efforts to determine the identity
37 of the decedent, if unknown, and to identify and notify the next of kin of the decedent regarding the
38 decedent's death. If, upon notification of the death of the decedent, the next of kin of the decedent or other
39 person authorized by law to make arrangements for disposition of the decedent's remains is willing and
40 able to claim the body, the body may be claimed by the next of kin or other person authorized by law to
41 make arrangements for disposition of the decedent's remains for disposition, and the claimant shall bear
42 the expenses of such disposition. If the next of kin of the decedent or other person authorized by law to
43 make arrangements for disposition of the decedent's remains fails or refuses to claim the body within 10
44 days of receiving notice of the death of the decedent, the body shall be disposed of in accordance with §
45 32.1-309.2.

46 D. If the person or institution having initial custody of the dead body is unable to determine the
47 identity of the decedent or to identify and notify the next of kin of the decedent regarding the decedent's
48 death, the person or institution shall contact the primary law-enforcement agency for the locality in which
49 the person or institution is located, which shall make good faith efforts to determine the identity of the
50 decedent and to identify and notify the next of kin of the decedent. However, in cases in which the identity
51 of the decedent and the county or city in which the decedent resided at the time of death are known, the
52 person or institution having initial custody of the dead body shall notify the primary law-enforcement
53 agency for the county or city in which the decedent resided regarding the decedent's death, and the law-

54 enforcement agency for the county or city in which the decedent resided shall make good faith efforts to
55 identify and notify the next of kin of the decedent.

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

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

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

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

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

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

92 **§ 54.1-2800. Definitions.**

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

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

95 "Arrangements for disposition" means arrangements for the burial, interment, entombment,
96 cremation, or other authorized disposition of a dead body or the remains thereof permitted by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

120 "Next of kin" means ~~any of the following persons, regardless of the relationship to the decedent:~~
121 ~~any person designated to make arrangements for the disposition of the decedent's remains upon his death~~
122 ~~pursuant to § 54.1-2825, the legal spouse, child aged 18 years or older, parent of a decedent aged 18 years~~
123 ~~or older, custodial parent or noncustodial parent of a decedent younger than 18 years of age, siblings over~~
124 ~~18 years of age, guardian of minor child, guardian of minor siblings, maternal grandparents, paternal~~
125 ~~grandparents, maternal siblings over 18 years of age and paternal siblings over 18 years of age, or any~~
126 ~~other relative in the descending order of blood relationship~~ the person or persons identified in § 54.1-2825
127 as having the right to make arrangements and otherwise be responsible for a decedent's funeral and the
128 disposition of a decedent's remains.

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

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

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

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

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

141 **§ 54.1-2807. Other prohibited activities.**

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

146 B. Except as provided in § 32.1-301 and Chapter 8.1 (§ 32.1-309.1 et seq.) of Title 32.1, funeral
147 service establishments shall not accept a dead human body from any public officer, except the Chief
148 Medical Examiner, an Assistant Chief Medical Examiner, or a medical examiner appointed pursuant to §
149 32.1-282, or from any public or private facility or person having a professional relationship with the
150 decedent without having first inquired about the desires of the next of kin and the persons liable for the
151 funeral expenses of the decedent. The authority and directions of any next of kin shall govern the disposal
152 of the body, subject to the provisions of ~~§ 54.1-2807.01~~ or 54.1-2825.

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

158 C. No company, corporation, or association engaged in the business of paying or providing for the
159 payment of the expenses for the care of the remains of deceased certificate holders or members or engaged
160 in providing life insurance when the contract might or could give rise to an obligation to care for the

161 remains of the insured shall contract to pay or pay any benefits to any licensee of the Board or other
162 individual in a manner which could restrict the freedom of choice of the representative or next of kin of a
163 decedent in procuring necessary and proper services and supplies for the care of the remains of the
164 decedent.

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

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

170 **§ 54.1-2825. Person to make arrangements for funeral and disposition of remains.**

171 A. Any person may designate in a signed and notarized writing, which has been accepted in writing
172 by the ~~person~~ individual so designated, ~~an individual~~ one or more individuals who shall have the right to
173 make arrangements and be otherwise responsible for his funeral and the disposition of his remains,
174 ~~including cremation, interment, entombment, or memorialization, or some combination thereof,~~ upon his
175 death. Such designee or designees shall have priority over all persons otherwise entitled to make such
176 arrangements, provided that a copy of the signed and notarized writing is provided to the funeral service
177 establishment and to the cemetery, if any, no later than 48 hours after the funeral service establishment
178 has received the remains. ~~Nothing in this section shall preclude any next of kin from paying any costs~~
179 ~~associated with any funeral or disposition of any remains, provided that such payment is made with the~~
180 ~~concurrence of any person designated to make arrangements.~~

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

185 ~~B. C.~~ In cases in which a person has designated in a U.S. Department of Defense Record of
186 Emergency Data (DD Form 93) or any successor form an individual to make arrangements for his funeral
187 and disposition of his remains, and such person dies while serving in any branch of the United States

188 Armed Forces as defined in 10 U.S.C. § 1481, such designee shall be responsible for making such
189 arrangements.

190 D. In cases in which a person is the subject of a guardianship pursuant to Chapter 20 (§ 64.2-2000
191 et seq.) of Title 64.2, provided the court order appointing the guardian specifically grants to the guardian
192 the right to make arrangements for the disposition of remains of the person who is the subject of the order
193 of appointment, and the order of appointment has not been revoked, terminated, or modified to remove
194 such grant at the time the person dies, such guardian shall be responsible for making arrangements for the
195 decedent's funeral and disposition of the person's body and shall have priority over all persons otherwise
196 entitled to make such arrangements, provided that the guardian provides a copy of the court order
197 appointing him as the guardian to the funeral services establishment and the cemetery, if any, no later than
198 48 hours after the funeral service establishment has received the remains.

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

203 1. A guardian appointed by a court of competent jurisdiction pursuant to Chapter 20 (§ 64.2-2000)
204 of Title 64.2, provided the court order appointing the guardian specifically grants to the guardian the right
205 to make arrangements for the disposition of remains of the person who is the subject of the order of
206 appointment, and the order of appointment has not been revoked, terminated, or modified to remove such
207 grant at the time the person dies.

208 2. A person designated in a preneed funeral contract or otherwise designated by the decedent in a
209 writing pursuant to subsection A or B or, if applicable, subsection C.

210 3. The surviving spouse of the decedent, except where a divorce action has been filed and the
211 divorce is not final or there has been a judicial separation.

212 4. The surviving child of the decedent or, if there is more than one surviving child of the decedent,
213 the majority of the surviving children.

214 5. The surviving parent of the decedent or, if there is more than one surviving parent of the
215 decedent, the surviving parents.

216 6. The surviving siblings of the decedent, or if there is more than one surviving sibling of the
217 decedent, the majority of the surviving siblings.

218 7. Any other person who is willing to make arrangements and otherwise be responsible for the
219 decedent's funeral and the disposition of his remains, including the funeral service establishment with
220 custody of the remains, provided that such other person, including a funeral service establishment, attests
221 in writing that he has made a good faith effort to locate and contact the individuals in subdivisions 1
222 through 5 and either no such persons could be located or contacted or no such persons are willing to make
223 arrangements and otherwise be responsible for the decedent's funeral and the disposition of his remains.

224 F. A person entitled under this section to make arrangements and otherwise be responsible for a
225 decedent's funeral and the disposition of his remains, including a person designated in a preneed funeral
226 contract, a person designated by the decedent in a writing pursuant to subsection A or B or, if applicable,
227 subsection C, or a guardian described in subsection D shall forfeit that right, and the right shall be
228 exercisable by the next qualifying person in the order of priority in subsection E, under the following
229 circumstances:

230 1. Such person does not notify the funeral service establishment having custody of the decedent's
231 remains of his intention to exercise such right within 48 hours of notification of the decedent's death,
232 provided that the funeral service establishment receives a response indicating that such person received
233 such notification of death.

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

236 G. A person who seeks to exercise the right to make arrangements and otherwise be responsible
237 for a decedent's funeral and the disposition of his remains shall attest to his right to make such
238 arrangements and be so responsible for such funeral and disposition in a signed writing and shall deliver
239 such signed writing to the funeral service establishment. Any funeral service establishment, funeral service
240 establishment manager of record, funeral service licensee, funeral director, embalmer, registered

241 crematory, registered crematory owner, registered crematory manager of record, or certified crematory
242 operator that relies upon such signed writing shall be immune from civil or criminal liability for any act,
243 decision, or omission in connection with following such person's direction related to the decedent's funeral
244 and the disposition of his remains, unless such act, decision, or omission resulted from willful neglect or
245 bad faith. Such attestation shall include the following information:

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

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

251 3. All other persons with the same or higher priority to make arrangements and otherwise be
252 responsible for the decedent's funeral and the disposition of his remains consent to such person making
253 such arrangements, or after reasonable inquiry, (i) there are no persons who have the same or higher
254 priority, or (ii) no persons who have the same or higher priority could be located or contacted. Such
255 reasonable inquiry shall be made in good faith. An attempt to contact such person at his last known
256 address, telephone number, email address, or any known social media accounts shall be considered a
257 reasonable inquiry made in good faith.

258 H. A person who has the right to make arrangements and otherwise be responsible for the
259 decedent's funeral and disposition of the decedent's remains who is unwilling or unable to make such
260 arrangements or to otherwise be responsible for the decedent's funeral and disposition of the decedent's
261 remains may relinquish such rights in a signed written statement. A person who relinquishes his rights
262 pursuant to this subsection may designate another person who shall be responsible for the decedent's
263 funeral and disposition of the decedent's remains. Such designation shall be made in writing and signed
264 by the person so designating. If a person who relinquishes his rights pursuant to this subsection does not
265 designate another person who shall be responsible for the decedent's funeral and disposition of the
266 decedent's remains, the right of a person to make arrangements and otherwise be responsible for a

267 decendent's funeral and the disposition of the decedents remains shall be determined in accordance with
268 subsection E.

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

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

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

