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HOUSE BILL NO. 857

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 54.1-2316 and 54.1-2322 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2313.1, relating to the Cemetery Board; perpetual care trust funds and preneed burial contracts; appointment of receiver.

Patron—Jones, S.C.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2316 and 54.1-2322 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 54.1-2313.1 as follows:

§ 54.1-2313.1. Protection of preneed burial and perpetual care trust funds; operation of cemetery company; appointment of receiver.

No licensee or any agent of the licensee shall divert or misuse any funds held in trust or otherwise held by him for another. If preneed or perpetual care funds are held in trust and the Board or its agents have reason to believe that (i) the licensee is not able to adequately protect the interest of the person involved, (ii) the licensee has had his license suspended, revoked or surrendered, or (iii) the conduct of the licensee or the operation of the cemetery threatens the interests of the public, the Board may file a petition with any court of record having equity jurisdiction over the licensee or any of the funds held by him stating the facts upon which it relies and the relief requested. The court may temporarily enjoin further activity by the licensee and take such further action as shall be necessary to ensure that the cemetery company is operated in full compliance with this chapter and the Board's regulations, or to conserve, protect, and disburse the funds involved, or both, including the appointment of a receiver to operate the cemetery company. The Board shall not be liable for any expenses or fees of the receiver.

§ 54.1-2316. Certain representations unlawful; perpetual care trust fund required.

It shall be unlawful to sell or offer for sale in the Commonwealth any grave or entombment right in a cemetery and, in connection therewith, to represent to the public in any manner, express or implied, that the entire cemetery or any grave or entombment right therein will be perpetually cared for, unless adequate provision has been made for the perpetual care of the cemetery and all graves and entombment rights therein as to which such representation has been made.

Each cemetery company shall establish in a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, an irrevocable trust fund in the amount of at least ~~\$25,000~~ \$50,000 before the first lot, parcel of land, burial or entombment right is sold. This fund shall be designated the perpetual care trust fund.

§ 54.1-2322. Use of income from perpetual care trust fund.

The income from the perpetual care trust fund shall be used solely and exclusively for the general care, maintenance, administration and embellishment of the cemetery. Unless prior approval has been obtained from the Board or a court of competent jurisdiction, the principal of the perpetual care trust fund shall only be used for investment purposes.

2. That the Board shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

INTRODUCED

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