

042776772

SENATE BILL NO. 303

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 54.1-2313, 54.1-2324 and 54.1-2333 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 3 of Title 57 a section numbered 57-27.3, relating to the Cemetery Board; reports; authorization for interment.

Patron—O'Brien

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2313, 54.1-2324 and 54.1-2333 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Article 1 of Chapter 3 of Title 57 a section numbered 57-27.3 as follows:

§ 54.1-2313. Board; appointment; terms; vacancies; meetings; quorum; other powers; regulations.

A. The Cemetery Board shall consist of seven members to be appointed by the Governor as follows: four cemetery operators who have operated a cemetery in the Commonwealth for at least five consecutive years immediately prior to appointment, no more than two of whom shall be affiliated with a cemetery company incorporated in the Commonwealth which is owned, operated or affiliated, directly or indirectly, with a foreign corporation; one representative of local government, and two citizen members. Appointments to the Board shall generally represent the geographical areas of the Commonwealth.

B. Of the members initially appointed to the Board, three shall be appointed for a term of four years, two shall be appointed for a term of three years, and two shall be appointed for a term of two years. Thereafter, all appointments shall be for terms of four years, except that appointment to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for more than two successive four-year terms.

C. The Board shall annually elect a chairman and a vice chairman from among its members. The Board shall hold at least two meetings each year and may meet as often as its duties require. Four members shall constitute a quorum.

D. In addition to the general powers and duties conferred in this subtitle, the Board shall have the power and duty to (i) regulate preneed burial contracts and perpetual care trust fund accounts as prescribed by this chapter, including, but not limited to, the authority to prescribe preneed contract forms, disclosure requirements and disclosure forms and to require reasonable bonds to insure performance of preneed contracts and, (ii) regulate and register sales personnel employed by a cemetery company, and (iii) regulate and establish qualifications and standards of conduct for compliance agents employed by a cemetery company to assure compliance of the cemetery with the provisions of this chapter.

E. In addition to such other regulations the Board deems appropriate, the Board shall adopt regulations which provide:

1. A method for executing, at-need, a preneed burial contract, including the petitioning a court of competent jurisdiction for the appointment of a receiver, where a licensee who is a party to such preneed burial contract has had his license to operate a cemetery revoked or suspended for violation of this chapter or Board regulations; and

2. Consumer protections which are consistent with those provisions of the Federal Trade Commission Funeral Rules which the Board finds may be appropriately applied to cemetery companies.

§ 54.1-2324. Financial report and written assurance required for perpetual care trust funds.

A. Within four months after the close of its fiscal year, the cemetery company shall report the following information to the Board, *on forms prescribed by the Board*:

1. The total amount of principal in the perpetual care trust fund;

2. The securities in which the perpetual care trust fund is invested and the amount of cash on hand as of the close of the fiscal year;

3. The income received from the perpetual care trust fund, and the sources of such income, during the preceding fiscal year;

4. An affidavit executed by the compliance agent that all applicable provisions of this chapter relating to perpetual care trust funds have been complied with;

5. The total receipts subject to the ten percent trust requirement;

6. All expenditures from the perpetual care trust fund;

INTRODUCED

SB303

59 7. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank
60 or savings institution doing business in the Commonwealth, proof that the required fidelity bond has
61 been secured and that it is in effect;

62 8. A separate total of expenses incurred for general care and maintenance, embellishment and
63 administration of its cemeteries.

64 B. The cemetery company shall employ an independent certified public accountant to audit and
65 provide assurance that, with regard to the total of all receipts subject to § 54.1-2317, the report of the
66 owner, operator or developer is true and correct and that the required deposits to the perpetual care trust
67 fund have been made on a timely basis. Such audit shall provide full disclosure of any transactions
68 between the perpetual care trust fund and any directors, officers, stockholders, or employees of the
69 cemetery company, or relatives of the cemetery company's employees, and shall include a description of
70 the transactions, the parties involved, the dates and amounts of the transactions, and the reasons for the
71 transactions.

72 C. The information required to be filed hereunder with the Board shall be exempt from the
73 Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.).

74 § 54.1-2333. Financial report and written assurance required for preneed trust accounts.

75 A. The cemetery company shall report the following information to the Board within four months
76 following the cemetery company's fiscal year, *on forms prescribed by the Board*:

77 1. The total amount of principal in the preneed trust account;

78 2. The securities in which the preneed trust account is invested;

79 3. The income received from the trust and the source of that income during the preceding fiscal year;

80 4. An affidavit executed by the compliance agent that all provisions of this chapter applicable to the
81 seller relating to preneed trust accounts have been complied with;

82 5. Forty percent of the total receipts required to be deposited in the preneed trust account;

83 6. All expenditures from the preneed trust account; and

84 7. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank
85 or savings institution doing business in the Commonwealth, proof that the required fidelity bond has
86 been secured and that it is in effect.

87 B. The cemetery company shall employ an independent certified public accountant to audit and
88 provide assurance that ~~forty~~40 percent of the cash receipts from the sale of preneed property or services
89 not to be delivered or performed within 120 days after receipt of the initial payment on account has
90 been deposited in the account within ~~thirty~~30 days after the close of the month in which the payment
91 was received. Such audit shall provide full disclosure of any transactions between the preneed trust
92 account and any directors, officers, stockholders, or employees of the cemetery company, or relatives of
93 the cemetery company's employees, and shall include a description of the transactions, the parties
94 involved, the dates and amounts of the transactions, and the reasons for the transactions.

95 C. The information required to be filed hereunder with the Board shall be exempt from the
96 Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.).

97 § 57-27.3. Authorization for interment.

98 A cemetery may accept the notarized signature of one next of kin of a decedent for the purpose of
99 authorizing the interment or entombment, and for erecting a memorial on the grave, crypt or niche,
100 unless the cemetery is on written notice that there exists a dispute between next of kin over such
101 interment, entombment or memorialization. In the case of such a dispute, the cemetery shall have no
102 obligation to perform the interment, entombment or memorialization until there is agreement of all next
103 of kin, or a court order adjudicating the issue among all necessary parties.

104 For purposes of this section, "next of kin" means any of the following persons, regardless of the
105 relationship to the decedent: any person designated to make arrangements for the disposition of the
106 decedent's remains upon his death pursuant to § 54.1-2825, the legal spouse, child over 18 years of age,
107 custodial parent, noncustodial parent, siblings over 18 years of age, guardian of minor child, guardian
108 of minor siblings, maternal grandparents, paternal grandparents, maternal siblings over 18 years of age
109 and paternal siblings over 18 years of age, or any other relative in the descending order of blood
110 relationship.

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