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HOUSE BILL NO. 151

Offered January 11, 2006

Prefiled December 28, 2005

A BILL to amend and reenact §§ 54.1-2800, 54.1-2803, 54.1-2806, 54.1-2813, and 54.1-2817 of the Code of Virginia, relating to funeral directors and embalmers.

 Patron—Alexander

 Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2800, 54.1-2803, 54.1-2806, 54.1-2813, and 54.1-2817 of the Code of Virginia are amended and reenacted as follows:

§ 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.

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

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

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

"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, the practice of funeral services, or the act of embalming is performed.

"Funeral service intern" 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.

"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 18 years of age, custodial parent, noncustodial parent, siblings over 18 years of age, guardian of minor child, guardian of minor siblings, maternal grandparents, paternal grandparents, maternal siblings over 18 years of age and paternal siblings over 18 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.

§ 54.1-2803. Specific powers and duties of Board.

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59 In addition to the general powers and duties conferred in this subtitle, the Board shall have the
60 following specific powers and duties to:

61 1. Establish standards of service and practice for the funeral service profession in the
62 Commonwealth.

63 2. Regulate and inspect funeral service establishments, their operation and licenses.

64 3. Require licensees and *funeral service interns* ~~resident trainees~~ to submit all information relevant to
65 their practice or business.

66 4. Enforce the relevant regulations of the Board of Health.

67 5. Enforce local ordinances relating to funeral service establishments.

68 6. Advise the Department of Health Professions of any training appropriate for inspectors serving as
69 the Board's agents.

70 7. Establish, supervise, regulate and control, in accordance with the law, programs for *funeral service*
71 *interns* ~~resident trainees~~.

72 8. Establish standards for and approve schools of mortuary science or funeral service.

73 9. Regulate preneed funeral contracts and preneed funeral trust accounts as prescribed by this chapter,
74 including, but not limited to, the authority to prescribe preneed contract forms, disclosure requirements
75 and disclosure forms and to require reasonable bonds to insure performance of preneed contracts.

76 10. Inspect crematories and their operations.

77 § 54.1-2806. Refusal, suspension or revocation of license.

78 The Board may refuse to admit a candidate to any examination, refuse to issue a license to any
79 applicant and may suspend a license for a stated period or indefinitely, or revoke any license or censure
80 or reprimand any licensee or place him on probation for such time as it may designate for any of the
81 following causes:

82 1. Conviction of any felony or any crime involving moral turpitude;

83 2. Unprofessional conduct which is likely to defraud or to deceive the public or clients;

84 3. Misrepresentation or fraud in the conduct of the funeral service profession, or in obtaining or
85 renewing a license;

86 4. False or misleading advertising or solicitation;

87 5. Solicitation at-need or any preneed solicitation using in-person communication by the licensee, his
88 agents, assistants or employees; however, general advertising and preneed solicitation, other than
89 in-person communication, shall be allowed;

90 6. Employment by the licensee of persons known as "cappers" or "steerers," or "solicitors," or other
91 such persons to obtain the services of a holder of a license for the practice of funeral service;

92 7. Employment directly or indirectly of any agent, employee or other person, on part or full time, or
93 on a commission, for the purpose of calling upon individuals or institutions by whose influence dead
94 human bodies may be turned over to a particular funeral establishment;

95 8. Direct or indirect payment or offer of payment of a commission to others by the licensee, his
96 agents, or employees for the purpose of securing business;

97 9. Use of alcohol or drugs to the extent that such use renders him unsafe to practice his licensed
98 activity;

99 10. Aiding or abetting an unlicensed person to practice within the funeral service profession;

100 11. Using profane, indecent or obscene language within the immediate hearing of the family or
101 relatives of a deceased, whose body has not yet been interred or otherwise disposed of;

102 12. Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of
103 recommending or causing a dead human body to be disposed of in any crematory, mausoleum or
104 cemetery;

105 13. Violation of any statute, ordinance or regulation affecting the handling, custody, care or
106 transportation of dead human bodies;

107 14. Refusing to surrender promptly the custody of a dead human body upon the express order of the
108 person lawfully entitled to custody;

109 15. Knowingly making any false statement on a certificate of death;

110 16. Violation of any provisions of Chapter 7 (§ 32.1-249 et seq.) of Title 32.1;

111 17. Failure to comply with § 54.1-2812, and to keep on file an itemized statement of funeral
112 expenses in accordance with Board regulations;

113 18. Knowingly disposing of parts of human remains, including viscera, that are received with the
114 body by the funeral establishment, in a manner different from that used for final disposition of the body,
115 unless the persons authorizing the method of final disposition give written permission that the body parts
116 may be disposed of in a manner different from that used to dispose of the body;

117 19. Violating or failing to comply with Federal Trade Commission rules regulating funeral industry
118 practices;

119 20. Violating or cooperating with others to violate any provision of this chapter or the regulations of
120 the Board of Funeral Directors and Embalmers or the Board of Health;

21. Failure to comply with the reporting requirements as set forth in § 54.1-2817 for registered funeral service interns ~~trainees~~;

22. Failure to provide proper and adequate supervision and training instruction to registered funeral service interns ~~trainees~~ as required by regulations of the Board;

23. Violating any statute or regulation of the Board regarding the confidentiality of information pertaining to the deceased or the family of the deceased or permitting access to the body in a manner that is contrary to the lawful instructions of the next-of-kin of the deceased;

24. Failure to include, as part of the general price list for funeral services, a disclosure statement notifying the next of kin that certain funeral services may be provided off-premises by other funeral service providers; and

25. Disciplinary action against a license, certificate or registration issued by another state, the District of Columbia or territory or possession of the United States.

§ 54.1-2813. License for the practice of funeral service.

To be licensed for the practice of funeral service, a person shall (i) be at least 18 years of age; (ii) hold a high school diploma or its equivalent; (iii) have completed a *funeral service internship* ~~resident trainee~~ program prescribed by the Board in regulation; (iv) have graduated from a school of mortuary science or funeral service approved by the Board; and (v) have passed the examination for licensure.

The Board, in its discretion, may license an individual convicted of a felony if he has successfully fulfilled all conditions of sentencing, been pardoned, or has had his civil rights restored.

The Board, in its discretion, may refuse to license an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

§ 54.1-2817. *Funeral service interns* ~~Resident trainees~~.

A person desiring to become a *funeral service intern* ~~resident trainee~~ shall apply on a form provided by the Board. The applicant shall attest that he holds a high school diploma or its equivalent. The Board, in its discretion, may approve an application to be a *funeral service intern* ~~resident trainee~~ for an individual convicted of a felony, if he has successfully fulfilled all conditions of sentencing, been pardoned, or has had his civil rights restored. The Board shall not, however, approve an application to be a *funeral service intern* ~~resident trainee~~ for any person convicted of embezzlement or of violating subsection B of § 18.2-126.

The Board, in its discretion, may refuse to approve an application to be a *funeral service intern* ~~resident trainee~~ for an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

When the Board is satisfied as to the qualifications of an applicant, it shall issue a certificate of *internship* ~~resident traineeship~~. When a *funeral service intern* ~~resident trainee~~ wishes to receive in-service training from a person licensed for the practice of funeral service, a request shall be submitted to the Board. If such permission is granted and the *funeral service intern* ~~resident trainee~~ later leaves the proctorship of the licensee whose service has been entered, the licensee shall give the *funeral service intern* ~~resident trainee~~ an affidavit showing the length of time served with him. The affidavit shall be filed with the Board and made a matter of record in that office. Any *funeral service intern* ~~resident trainee~~ seeking permission to continue in-service training shall submit a request to the Board.

A certificate of *internship* ~~resident traineeship~~ shall be renewable as prescribed by the Board. The Board shall mail at such time as it may prescribe by regulation, to each registered *funeral service intern* ~~resident trainee~~ at his last known address, a notice that the renewal fee is due and that, if not paid by the prescribed time, a penalty fee shall be due in addition to the renewal fee.

The registration of any *funeral service intern* ~~resident trainee~~ who is in the active military service of the United States may, at the discretion of the Board, be held in abeyance for the duration of his service. The Board may also waive the renewal fees for such military personnel.

All registered *funeral service interns* ~~resident trainees~~ shall report to the Board *on a schedule prescribed by the Board at least every six months* upon forms provided by the Board, showing the work which has been completed during the preceding *period of internship* ~~six months of resident traineeship~~. The data contained in the report shall be certified as correct by the person licensed for the practice of funeral service under whom he has served during this period and by the person licensed for the practice of funeral service owning or managing the funeral service establishment.

Before such *funeral service intern* ~~resident trainee~~ becomes eligible to be examined for the practice of funeral service, evidence shall be presented along with an affidavit from any licensee under whom the *intern* ~~trainee~~ worked showing that the *intern* ~~trainee~~ has assisted in embalming at least 25 bodies and that the *intern* ~~trainee~~ has assisted in conducting at least 25 funerals. In all applications of *funeral service interns* ~~resident trainees~~ for licenses for the practice of funeral service, the eligibility of the applicant shall be determined by the records filed with the Board. The successful completion by any person of the *internship* ~~resident traineeship~~ shall not entitle him to any privilege except to be examined for such license.

182 Credit shall not be allowed for any period of *internship* ~~resident traineeship~~ that has been completed
183 more than three years prior to application for license or more than five years prior to examination for
184 license. If all requirements for licensure are not completed within five years of initial application, the
185 Board may deny an additional *internship* ~~traineeship~~. A *funeral service intern* ~~resident trainee~~ may
186 continue to practice for up to 90 days from the completion of his *internship* ~~traineeship~~ or until he has
187 taken and received the results of all examinations required by the Board. However, the Board may
188 waive such limitation for any person in the armed service of the United States when application for the
189 waiver is made in writing within six months of leaving service or if the Board determines that
190 enforcement of the limitation will create an unreasonable hardship.

191 The Board shall have power to suspend or revoke a certificate of *internship* ~~resident traineeship~~ for
192 violation of any provision of this chapter.

193 No more than two *funeral service interns* ~~resident trainees~~ shall be concurrently registered under any
194 one person licensed for the practice of funeral service, funeral directing or embalming. Each sponsor for
195 a registered *funeral service intern* ~~resident trainee~~ must be actively employed by *or under contract with*
196 a funeral establishment.