

# VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

## CHAPTER 621

*An Act to amend and reenact §§ 6.1-5, 54.1-2820, and 54.1-2822 of the Code of Virginia, relating to arrangements for payment of burial and funeral expenses.*

[H 1953]

Approved March 20, 2007

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 6.1-5, 54.1-2820, and 54.1-2822 of the Code of Virginia are amended and reenacted as follows:**

§ 6.1-5. Who shall not do a banking or trust business.

No person, copartnership or corporation, except corporations duly chartered and already conducting the banking business or trust business in this Commonwealth under authority of the laws of this Commonwealth or the United States, or which shall hereafter be incorporated under the laws of this Commonwealth or authorized to do business in this Commonwealth under the banking laws of the United States, and except banks which may be authorized, after July 1, 1995, to establish and operate one or more branches in this Commonwealth under Article 5.1 (§ 6.1-44.1 et seq.) or 5.2 (§ 6.1-44.15 et seq.) of this chapter, and except trust companies or institutions that may be authorized to establish and operate one or more trust offices or conduct business in this Commonwealth under Article 3.1 (§ 6.1-32.1 et seq.), Article 3.2 (§ 6.1-32.11 et seq.), Article 3.2:1 (§ 6.1-32.30:1 et seq.) or Article 3.3 (§ 6.1-32.31 et seq.) of this chapter, shall engage in the banking business or trust business in this Commonwealth, and no foreign corporation, except as permitted in Chapter 14 (§ 6.1-390 et seq.) and Chapter 15 (§ 6.1-398 et seq.) of this title, shall do a banking or trust business in this Commonwealth. Nothing in this chapter, however, shall:

(1). Prevent a natural person from qualifying and acting as trustee, personal representative, guardian, conservator, committee or in any other fiduciary capacity,

(2). Prevent any person or copartnership or corporation from lending money on real estate and personal security or collateral, or from guaranteeing the payment of bonds, notes, bills and other obligations, or from purchasing or selling stocks and bonds, or

(3). Prevent any bank or trust company organized under the laws of this Commonwealth from qualifying and acting in another state or in the District of Columbia, as trustee, personal representative, guardian of a minor, conservator or committee or in any other fiduciary capacity, when permitted so to do by the laws of such other state or District; or

4. Prevent an incorporated association that is authorized to sell burial association group life insurance certificates in the Commonwealth, as described in the definition of limited burial insurance authority in § 38.2-1800, whose principal purpose is to assist its members in (i) financial planning for their funerals and burials and (ii) obtaining insurance for the payment, in whole or in part, for funeral, burial, and related expenses, from serving as trustee of a trust established pursuant to § 54.1-2822.

Nothing in this section shall be construed to prevent banks or trust companies organized in this Commonwealth and chartered under the laws of the United States from transacting business in Virginia.

Nothing in this section shall be construed to prevent a real estate broker as defined in § 54.1-2100 from owning or operating a bank provided that the requirements of this chapter are met.

§ 54.1-2820. Requirements of preneed funeral contracts.

A. It shall be unlawful for any person residing or doing business within this Commonwealth, to make, either directly or indirectly by any means, a preneed funeral contract unless the contract:

1. Is made on forms prescribed by the Board and is written in clear, understandable language and printed in easy-to-read type, size and style;

2. Identifies the seller, seller's license number and contract buyer and the person for whom the contract is purchased if other than the contract buyer;

3. Contains a complete description of the supplies or services purchased;

4. Clearly discloses whether the price of the supplies and services purchased is guaranteed;

5. States if funds are required to be trusted pursuant to § 54.1-2822, the amount to be trusted, the name of the trustee, the disposition of the interest, the fees, expenses and taxes which may be deducted from the interest and a statement of the buyer's responsibility for taxes owed on the interest;

6. Contains the name, address and telephone number of the Board and lists the Board as the regulatory agency which handles consumer complaints;

7. Provides that any person who makes payment under the contract may terminate the agreement at any time prior to the furnishing of the services or supplies contracted for except as provided pursuant to subsection B; if the purchaser terminates the contract within 30 days of execution, the purchaser shall be refunded all consideration paid or delivered, together with any interest or income accrued thereon; if the

purchaser terminates the contract after 30 days, the purchaser shall be refunded any amounts required to be deposited under § 54.1-2822, together with any interest or income accrued thereon;

8. Provides that if the particular supplies and services specified in the contract are unavailable at the time of delivery, the seller shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship and the representative of the deceased shall have the right to choose the supplies or services to be substituted;

9. Discloses any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or prearrangement guarantee; and

10. Complies with all disclosure requirements imposed by the Board.

If the contract seller will not be furnishing the supplies and services to the purchaser, the contract seller must attach to the preneed funeral contract a copy of the seller's agreement with the provider.

B. Subject to the requirements of § 54.1-2822, a preneed funeral contract may provide for an irrevocable trust or an amount in an irrevocable trust that is specifically identified as available exclusively for funeral or burial expenses, where:

1. A person irrevocably contracts for funeral goods and services, such person funds the contract by prepaying for the goods and services, and the funeral provider residing or doing business within the Commonwealth subsequently places the funds in a trust; or

2. A person establishes an irrevocable trust naming the funeral provider as the beneficiary; however, such person shall have the right to change the beneficiary to another funeral provider pursuant to § 54.1-2822.

C. If a life insurance or annuity contract is used to fund the preneed funeral contract, the life insurance or annuity contract shall provide either that the face value thereof shall be adjusted annually by a factor equal to the *annualized* Consumer Price Index as published by the ~~Office of Management and Budget of the United States~~ *Bureau of Labor Statistics of the United States Department of Labor*, or a benefit payable at death under such contract that will equal or exceed the sum of all premiums paid for such contract plus interest or dividends, which for the first 15 years shall be compounded annually at a rate of at least five percent. In any event, interest or dividends shall continue to be paid after 15 years. In addition, the following must also be disclosed as prescribed by the Board:

1. The fact that a life insurance policy or annuity contract is involved or being used to fund the preneed contract;

2. The nature of the relationship among the soliciting agent, the provider of the supplies or services, the prearranger and the insurer;

3. The relationship of the life insurance policy or annuity contract to the funding of the preneed contract and the nature and existence of any guarantees relating to the preneed contract; and

4. The impact on the preneed contract of (i) any changes in the life insurance policy or annuity contract including but not limited to changes in the assignment, beneficiary designation or use of the proceeds, (ii) any penalties to be incurred by the policyholder as a result of failure to make premium payments, (iii) any penalties to be incurred or moneys to be received as a result of cancellation or surrender of the life insurance policy or annuity contract, and (iv) all relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy or annuity contract and the amount actually needed to fund the preneed contract.

D. When the consideration consists in whole or in part of any real estate, the contract shall be recorded as an attachment to the deed whereby such real estate is conveyed, and the deed shall be recorded in the clerk's office of the circuit court of the city or county in which the real estate being conveyed is located.

E. If any funeral supplies are sold and delivered prior to the death of the subject for whom they are provided, and the seller or any legal entity in which he or a member of his family has an interest thereafter stores these supplies, the risk of loss or damage shall be upon the seller during such period of storage.

§ 54.1-2822. Deposit of money received pursuant to preneed funeral contract.

A. Within ~~thirty~~ 30 days following the receipt of any money paid pursuant to any preneed funeral contract or interest or income accrued thereon, unless such amounts are paid to fund either an annuity or an insurance policy which will be used to purchase the funeral supplies or services contracted for, the person receiving such amounts shall deposit all consideration paid pursuant to the terms of a preneed funeral contract in which the price of the supplies and services is not guaranteed, or ninety percent of all consideration paid pursuant to the terms of a preneed funeral contract in which the price of the supplies and services is guaranteed, in a special account in a bank or savings institution doing business in this Commonwealth.

B. The funds shall be deposited in separate, identifiable trust accounts setting forth the names of the depositor, the trustee for the person who is the subject of the contract, the name of the person who will render the funeral services and the name of the person who is the subject of the contract. The purchaser shall have the right to change the beneficiary and trustee of the trust at any time prior to the furnishing

of the services or supplies contracted for under the preneed funeral contract. Trust account records shall be subject to examination by the Board.

C. No funeral director, embalmer, funeral service licensee, owner of a funeral establishment, or any person employed by or having an interest in a funeral establishment shall serve as trustee of a trust account for which any such person, or any funeral establishment owned by or employing such person or in which such person has an interest, has been named the beneficiary or designated the provider of services, unless two or more such persons are named and serve as trustees and are required to act jointly in such fiduciary capacity. *Subject to the terms of this subsection, and notwithstanding any other provision of law, the trustee for any such trust account may be an incorporated association that is authorized to sell burial association group life insurance certificates in the Commonwealth, as described in the definition of limited burial insurance authority in § 38.2-1800, whose principal purpose is to assist its members in (i) financial planning for their funerals and burials and (ii) obtaining insurance for the payment, in whole or in part, for funeral, burial, and related expenses.*