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HOUSE BILL NO. 1299

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact § 54.1-2800, 54.1-2803, 54.1-2806, and 54.1-2822.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2824.1, relating to the establishment of a preneed funeral contract recovery fund.

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, and 54.1-2822.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-2824.1, 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.

"Claimant" means any person with an unsatisfied judgment entered by a court of competent jurisdiction against any seller of a preneed funeral contract for damages resulting from the seller's malfeasance, misfeasance, default, failure, or insolvency in connection with the sale of a preneed funeral contract or performance of the duties imposed by this chapter upon the seller with respect to the preneed funeral contract.

"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 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.

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59 "Recovery fund" or "fund" means the Preneed Funeral Contract Recovery Fund established pursuant
60 to § 54.1-2824.1.

61 "Resident trainee" means a person who is preparing to be licensed for the practice of funeral services
62 under the direct supervision of a practitioner licensed by the Board.

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

65 § 54.1-2803. Specific powers and duties of Board.

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

68 1. Establish standards of service and practice for the funeral service profession in the
69 Commonwealth.

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

71 3. Require licensees and resident trainees to submit all information relevant to their practice or
72 business.

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

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

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

77 7. Establish, supervise, regulate and control, in accordance with the law, programs for resident
78 trainees.

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

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

83 10. Inspect crematories and their operations.

84 11. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)
85 consistent with this chapter for (i) the administration and management of the recovery fund to assure
86 the satisfaction of claims pursuant to § 54.1-2824.1; (ii) the presentation and processing of claims; and
87 (iii) subrogation or assignment of the rights of any reimbursed claimant.

88 12. Maintain an accurate record of all transactions involving the Fund.

89 § 54.1-2806. Refusal, suspension or revocation of license.

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

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

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

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

98 4. False or misleading advertising or solicitation;

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

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

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

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

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

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

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

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

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

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

15. Knowingly making any false statement on a certificate of death;
16. Violation of any provisions of Chapter 7 (§ 32.1-249 et seq.) of Title 32.1;
17. Failure to comply with § 54.1-2812, and to keep on file an itemized statement of funeral expenses in accordance with Board regulations;
18. Knowingly disposing of parts of human remains, including viscera, that are received with the body by the funeral establishment, in a manner different from that used for final disposition of the body, unless the persons authorizing the method of final disposition give written permission that the body parts may be disposed of in a manner different from that used to dispose of the body;
19. Violating or failing to comply with Federal Trade Commission rules regulating funeral industry practices;
20. Violating or cooperating with others to violate any provision of this chapter or the regulations of 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 trainees;
22. Failure to provide proper and adequate supervision and training instruction to registered funeral 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; ~~and~~
26. *Failure to pay any fee or assessment to the Board required pursuant to § 54.1-2822.1 or 54.1-2824.1.*
- § 54.1-2822.1. Funeral establishments to remit fees and copies of contracts and maintain records.
- A. Every person selling preneed funeral contracts within this Commonwealth, *whether funded by a trust deposit or a prearrangement insurance policy*, shall (i) *remit to the Board, within 10 days of the sale, a fee not to exceed \$2 for each sale and a copy of each contract* and (ii) keep and maintain such records of preneed transactions, including copies of preneed contracts, as may be prescribed by the Board. All such records shall be maintained on the premises of the funeral establishment providing the preneed services and supplies, except that preneed records of funeral establishments under common ownership, control, or management may be maintained at a single location within this Commonwealth.
- B. *The person shall pay a late fee of not more than \$25 for each late filing and payment.*
- C. *The Board may suspend the requirement that fees under this section be remitted to the Board at any time and for any period for which the Board determines that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve.*
- § 54.1-2824.1. *Preneed Funeral Contract Recovery Fund established; assessments; payment of certain judgments awarded to claimants.*
- A. *There is hereby established in the state treasury a special nonreverting fund to be known as the Preneed Funeral Contract Recovery Fund, hereinafter referred to as "the Fund." The Fund shall be established in the books of the Comptroller. All assessments collected pursuant to subsection B of this section and fees collected pursuant to § 54.1-2822.1 shall be paid into the state treasury and credited to the Fund. Any interest on money in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of satisfying unpaid judgments as provided in this section and for no other purpose, except the Board may expend moneys from the interest earned on the Fund for the administration of this article, in accordance with the general appropriation act. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the president of the Board.*
- B. *The minimum balance of the Fund shall be \$50,000. Every person licensed pursuant to Article 3 (§ 54.1-2813 et seq.) of this chapter shall pay, at the time of initial issuance of the license or upon the first renewal of the license following July 1, 2006, an initial assessment fee of \$100. In order to maintain the minimum balance of the Fund, the Board may levy a special assessment on all persons licensed pursuant to Article 3 (§ 54.1-2813 et seq.) of this chapter. The Board may suspend or reinstate collection of this assessment at any time that the balance of the Fund exceeds its required minimum.*
- C. *If a claimant is awarded a judgment on or after July 1, 2006, in a court of competent jurisdiction in the Commonwealth against any seller of a preneed funeral contract for damages resulting from the seller's malfeasance, misfeasance, default, failure, or insolvency in connection with the sale of a preneed*

182 funeral contract or performance of the duties imposed by this chapter upon the seller with respect to the
183 preneed funeral contract, the claimant may file a verified claim with the Board to obtain a directive
184 ordering payment from the Fund of the amount unpaid upon the judgment, as provided in this section
185 and subject to the following conditions:

186 1. A verified claim shall be filed with the Board no later than 12 months after the judgment becomes
187 final. Such verified claim shall be accompanied by the copies of the order for the underlying judgment;

188 2. The claimant is not (i) an employee of such judgment debtor, (ii) a person licensed under this
189 chapter, or (iii) the spouse or child of the judgment debtor nor the employee of such spouse or child;

190 3. The claim of one claimant against the fund because of a single violation by a judgment debtor
191 does not exceed \$10,000;

192 4. The Fund balance is sufficient to pay the award;

193 5. The claimant has assigned the Board all rights and claims against the judgment debtor;

194 6. The claimant has agreed to subrogate to the Board all rights of the claimant to the extent of
195 payment;

196 7. The damage sustained by the claimant is not bonded or otherwise covered, protected or
197 reimbursed; and

198 8. The claimant has complied with all applicable rules of the Board.

199 D. The Board shall investigate all claims made and may reject or allow such claims in whole or in
200 part to the extent that monies are available in the Fund. The Board shall have complete discretion to
201 determine the order and manner of payment of approved claims. All payments shall be a matter of
202 privilege and not of right, and no person shall have any right in the Fund as a third-party beneficiary
203 or otherwise.

204 E. The amount of damages awarded by the Board shall be limited to actual, compensatory damages
205 and shall not include attorney's fees.

206 F. If payment is made to a claimant from the Fund, the Board shall be subrogated in the reimbursed
207 amount and may bring any action it deems advisable against the judgment debtor. The Board may
208 enforce any claims it may have for restitution or otherwise.