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HOUSE BILL NO. 223

Offered January 13, 2010

Prefiled January 11, 2010

A BILL to amend and reenact §§ 32.1-127, 58.1-901, 58.1-902, 58.1-905, and 58.1-912 of the Code of Virginia, relating to the estate tax and dedication of the revenues collected from such tax.

Patrons—Watts, Kory, Plum, Scott, J.M. and Surovell; Senators: Petersen and Ticer

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-127, 58.1-901, 58.1-902, 58.1-905, and 58.1-912 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-127. Regulations.

A. The regulations promulgated by the Board to carry out the provisions of this article shall be in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established and recognized by medical and health care professionals and by specialists in matters of public health and safety, including health and safety standards established under provisions of Title XVIII and Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.) of this chapter.

B. Such regulations:

1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing homes and certified nursing facilities to assure the environmental protection and the life safety of its patients and employees and the public; (ii) the operation, staffing and equipping of hospitals, nursing homes and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and certified nursing facilities, except those professionals licensed or certified by the Department of Health Professions; and (iv) conditions under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence;

2. Shall provide that at least one physician who is licensed to practice medicine in this Commonwealth shall be on call at all times, though not necessarily physically present on the premises, at each hospital which operates or holds itself out as operating an emergency service;

3. May classify hospitals and nursing homes by type of specialty or service and may provide for licensing hospitals and nursing homes by bed capacity and by type of specialty or service;

4. Shall also require that each hospital establish a protocol for organ donation, in compliance with federal law and the regulations of the Centers for Medicare & Medicaid Services (CMS), particularly 42 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization designated in CMS regulations for routine contact, whereby the provider's designated organ procurement organization certified by CMS (i) is notified in a timely manner of all deaths or imminent deaths of patients in the hospital and (ii) is authorized to determine the suitability of the decedent or patient for organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from potential donors and to avoid interference with organ procurement. The protocol shall ensure that the hospital collaborates with the designated organ procurement organization to inform the family of each potential donor of the option to donate organs, tissues, or eyes or to decline to donate. The individual making contact with the family shall have completed a course in the methodology for approaching potential donor families and requesting organ or tissue donation that (i) is offered or approved by the organ procurement organization and designed in conjunction with the tissue and eye bank community and (ii) encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of the relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement organization in educating the staff responsible for contacting the organ procurement organization's personnel on donation issues, the proper review of death records to improve identification of potential donors, and the proper procedures for maintaining potential donors while necessary testing and placement of potential donated organs, tissues, and eyes takes place. This process shall be followed, without exception, unless the family of the relevant decedent or patient has expressed opposition to organ donation, the chief administrative officer of the hospital or his designee knows of such opposition, and no donor card or other relevant document, such as an advance directive, can be found;

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59 5. Shall require that each hospital that provides obstetrical services establish a protocol for admission
60 or transfer of any pregnant woman who presents herself while in labor;

61 6. Shall also require that each licensed hospital develop and implement a protocol requiring written
62 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall
63 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother
64 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,
65 treatment services, comprehensive early intervention services for infants and toddlers with disabilities
66 and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C.
67 § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to
68 the extent possible, the father of the infant and any members of the patient's extended family who may
69 participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant
70 to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to
71 federal law restrictions, the community services board of the jurisdiction in which the woman resides to
72 appoint a discharge plan manager. The community services board shall implement and manage the
73 discharge plan;

74 7. Shall require that each nursing home and certified nursing facility fully disclose to the applicant
75 for admission the home's or facility's admissions policies, including any preferences given;

76 8. Shall require that each licensed hospital establish a protocol relating to the rights and
77 responsibilities of patients which shall include a process reasonably designed to inform patients of such
78 rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to
79 patients on admission, shall be based on Joint Commission on Accreditation of Healthcare Organizations'
80 standards;

81 9. Shall establish standards and maintain a process for designation of levels or categories of care in
82 neonatal services according to an applicable national or state-developed evaluation system. Such
83 standards may be differentiated for various levels or categories of care and may include, but need not be
84 limited to, requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols;

85 10. Shall require that each nursing home and certified nursing facility train all employees who are
86 mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting
87 procedures and the consequences for failing to make a required report;

88 11. Shall permit hospital personnel, as designated in medical staff bylaws, rules and regulations, or
89 hospital policies and procedures, to accept emergency telephone and other verbal orders for medication
90 or treatment for hospital patients from physicians, and other persons lawfully authorized by state statute
91 to give patient orders, subject to a requirement that such verbal order be signed, within a reasonable
92 period of time not to exceed 72 hours as specified in the hospital's medical staff bylaws, rules and
93 regulations or hospital policies and procedures, by the person giving the order, or, when such person is
94 not available within the period of time specified, co-signed by another physician or other person
95 authorized to give the order;

96 12. Shall require, unless the vaccination is medically contraindicated or the resident declines the offer
97 of the vaccination, that each certified nursing facility and nursing home provide or arrange for the
98 administration to its residents of (i) an annual vaccination against influenza and (ii) a pneumococcal
99 vaccination, in accordance with the most recent recommendations of the Advisory Committee on
100 Immunization Practices of the Centers for Disease Control and Prevention;

101 13. Shall require that each nursing home and certified nursing facility register with the Department of
102 State Police to receive notice of the registration or reregistration of any sex offender within the same or
103 a contiguous zip code area in which the home or facility is located, pursuant to § 9.1-914;

104 14. Shall require that each nursing home and certified nursing facility ascertain, prior to admission,
105 whether a potential patient is a registered sex offender, if the home or facility anticipates the potential
106 patient will have a length of stay greater than three days or in fact stays longer than three days; ~~and~~

107 15. Shall require that each licensed hospital include in its visitation policy a provision allowing each
108 adult patient to receive visits from any individual from whom the patient desires to receive visits,
109 subject to other restrictions contained in the visitation policy including, but not limited to, those related
110 to the patient's medical condition and the number of visitors permitted in the patient's room
111 simultaneously; *and*

112 16. *Shall establish staffing standards in nursing homes to require a minimum of direct care services*
113 *to each resident per 24-hour period as follows: (i) by July 1, 2011, a minimum of 3.5 hours of direct*
114 *care services provided by certified nursing assistants, licensed practical nurses, licensed vocational*
115 *nurses, or registered nurses per 24-hour period, (ii) by July 1, 2015, a minimum of 3.9 hours of direct*
116 *care services provided by certified nursing assistants, licensed practical nurses, licensed vocational*
117 *nurses, or registered nurses per 24-hour period, and (iii) by July 1, 2017, or upon adoption by*
118 *Congress, whichever may be sooner, a minimum of 4.1 hours of direct care services provided by*
119 *certified nursing assistants, licensed practical nurses, licensed vocational nurses, or registered nurses*
120 *per 24-hour period. Any facility that fails to maintain staffing levels sufficient to provide at least three*

hours of direct care services per patient by July 1, 2011, shall be ineligible to accept new patients. Any facility that fails to maintain staffing levels sufficient to provide at least 3.3 hours of direct care services per patient by July 1, 2017, shall be ineligible to accept new patients. Total staffing hours shall be determined based on payroll information reported to the Internal Revenue Service for the positions identified.

C. Upon obtaining the appropriate license, if applicable, licensed hospitals, nursing homes, and certified nursing facilities may operate adult day care centers.

D. All facilities licensed by the Board pursuant to this article which provide treatment or care for hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to be contaminated with an infectious agent, those hemophiliacs who have received units of this contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot which is known to be contaminated shall notify the recipient's attending physician and request that he notify the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail, return receipt requested, each recipient who received treatment from a known contaminated lot at the individual's last known address.

§ 58.1-901. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Decedent" means a deceased person.

"Federal credit" means the maximum amount of the credit for state death taxes allowable by § 2011 of the United States Internal Revenue Code of 1954, as amended or renumbered, or successor provision, in respect to a decedent's taxable estate. The term "maximum amount" shall be construed as to take full advantage of such credit as the laws of the United States may allow. *For deaths occurring on or after July 1, 2010, in no event, however, shall such maximum amount be less than the federal credit allowable by § 2011 of the Internal Revenue Code as it existed on January 1, 1978.*

"Gross estate" means "gross estate" as defined in § 2031 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Interest in a closely held business" means an "interest in a closely held business" as defined in § 6166 of the United States Internal Revenue Code of 1986, as amended or renumbered, or the successor provision of the laws of the United States.

"Nonresident" means a decedent who was domiciled outside of the Commonwealth of Virginia at his death.

"Personal representative" means the personal representative of the estate of the decedent, appointed, qualified and acting within the Commonwealth, or, if there is no personal representative appointed, qualified and acting within the Commonwealth, then any person in actual or constructive possession of the Virginia gross estate of the decedent.

"Resident" means a decedent who was domiciled in the Commonwealth of Virginia at his death.

"State" means any state, territory or possession of the United States and the District of Columbia.

"Taxable estate" means "taxable estate" as defined in § 2051 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Value" means "value" as finally determined for federal estate tax purposes under the laws of the United States relating to federal estate taxes.

"Working farm" means an interest in a closely held business that operates as an active trade or business for agricultural purposes.

Any reference in this chapter to the laws of the United States relating to federal estate and gift taxes means the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal estate and gift taxes, as the same may be or become effective at any time or from time to time. *If any such provision is repealed and no successor is enacted, then the reference in this chapter shall be given the meaning of such provision as it existed immediately prior to its repeal.*

§ 58.1-902. Tax on transfer of taxable estate of residents; amounts; credit; property of resident defined.

A. A tax in the amount of the federal credit is imposed on the transfer of the taxable estate of every resident, subject, where applicable, to the credit provided for in subsection B. *However, for deaths occurring on or after July 1, 2010, no tax shall be imposed on a gross estate if the majority of the assets of the total estate are an interest in a closely held business or working farm.*

B. If the real and tangible personal property of a resident is located outside of the Commonwealth and is subject to a death tax imposed by another state for which a credit is allowed under § 2011 of the Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States relating to federal estate taxes, the amount of tax due under this section shall be credited with the lesser of:

182 1. The amount of the death tax paid the other state and credited against the federal estate tax; or
183 2. An amount computed by multiplying the federal credit by a fraction, the numerator of which is the
184 value of that part of the gross estate over which another state or states have jurisdiction to the same
185 extent to which Virginia would exert jurisdiction under this chapter with respect to the residents of such
186 other state or states and the denominator of which is the value of the decedent's gross estate.

187 C. Property of a resident includes:

- 188 1. Real property situated in the Commonwealth of Virginia;
189 2. Tangible personal property having an actual situs in the Commonwealth of Virginia; and
190 3. Intangible personal property owned by the resident regardless of where it is located.
191 § 58.1-905. Filing returns; payment of tax due thereon.

192 A. 1. The personal representative of every estate subject to the tax imposed by this chapter who is
193 required by the laws of the United States to file a federal estate tax return shall file with the
194 Department, on or before the date the federal estate tax return is required to be filed: (i) a return for the
195 tax due under this chapter; and (ii) a copy of the federal estate tax return.

196 2. *If the personal representative of any estate subject to the tax imposed by this chapter is not*
197 *required by the laws of the United States to file a federal estate tax return, then the personal*
198 *representative shall file with the Department a return for the tax due under this chapter within the 270*
199 *days immediately following the death of the decedent.*

200 B. 1. If the personal representative has obtained an extension of time for filing the federal estate tax
201 return or paying the federal estate tax or any portion thereof, the filing required by ~~subsection A~~
202 *subdivision A 1* or payment required by subsection C shall be similarly extended until the end of the
203 time period granted in the federal extension. Upon obtaining an extension of time for filing the federal
204 estate tax return, or paying the federal estate tax or any portion thereof, the personal representative shall
205 provide the Department with a true copy of the instrument providing for this extension.

206 2. *For personal representatives described under subdivision A 2, the Department may grant an*
207 *extension of time for filing the state estate tax return or remitting to the Department the tax due*
208 *pursuant to this chapter, or any portion of the tax due. The Department shall establish procedures and*
209 *conditions for an extension.*

210 C. The tax due under this chapter shall be paid by the personal representative to the Department not
211 later than the date specified under subsection A or B. If such tax is paid pursuant to subsection B,
212 interest, at a rate equal to the rate of interest established pursuant to § 58.1-15, shall be added for the
213 period between the date when such tax would have been due had no extension been granted and the
214 date of full payment. D. Notwithstanding any other provision of this section, the extensions provided to
215 individual taxpayers under subdivisions 1 and 2 of subsections F and G of § 58.1-344 shall be applicable
216 in the same manner to the tax imposed by this chapter.

217 § 58.1-912. Deposit of funds.

218 All moneys collected pursuant to this chapter shall be paid into the general fund of the state treasury.
219 *Such moneys shall first be used for funding the staffing standards in nursing homes established pursuant*
220 *to subdivision B 16 of § 32.1-127 requiring a minimum of direct care services to each resident per*
221 *24-hour period, with any remaining moneys to be used as provided in the general appropriation act.*