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HOUSE BILL NO. 1077

Offered January 26, 1998

A BILL to amend and reenact §§ 2.1-1.6 and 9-6.25:2 of the Code of Virginia and to amend the Code of Virginia by adding in Subtitle II of Title 54.1 a chapter numbered 23.1, consisting of sections numbered 54.1-2310 through 54.1-2340, and to repeal Article 3.2 (§§ 57-35.11 through 57-35.35) of Chapter 3 of Title 57 of the Code of Virginia, relating to the Department of Professional and Occupational Regulation; regulation of cemetery companies; penalty.

Patrons—Reid, Barlow, Bryant, Cantor, Darnier, Davies, Day, DeBoer, Hamilton, Jones, D.C., McEachin and Wagner; Senators: Bolling, Houck, Howell, Lambert, Lucas, Martin, Maxwell, Quayle and Schrock

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.6 and 9-6.25:2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Subtitle II of Title 54.1 a chapter numbered 23.1, consisting of sections numbered 54.1-2310 through 54.1-2340, as follows:

§ 2.1-1.6. State boards.

A. There shall be, in addition to such others as may be established by law, the following permanent collegial bodies affiliated with a state agency within the executive branch:

Accountancy, Board for

Aging, Advisory Board on the

Agriculture and Consumer Services, Board of

Air Pollution, State Advisory Board on

Alcoholic Beverage Control Board, Virginia

Apple Board, Virginia State

Appomattox State Scenic River Advisory Board

Aquaculture Advisory Board

Architects, Professional Engineers, Land Surveyors and Landscape Architects, State Board for

Art and Architectural Review Board

Athletic Board, Virginia

Auctioneers Board

Audiology and Speech-Language Pathology, Board of

Aviation Board, Virginia

Barbers, Board for

Branch Pilots, Board for

Bright Flue-Cured Tobacco Board, Virginia

Building Code Technical Review Board, State

Catoctin Creek State Scenic River Advisory Board

Cattle Industry Board, Virginia

Cave Board

Cemetery Board

Certified Seed Board, State

Chesapeake Bay Local Assistance Board

Chickahominy State Scenic River Advisory Board

Child Abuse and Neglect, Advisory Board on

Chippokes Plantation Farm Foundation, Board of Trustees

Clinch Scenic River Advisory Board

Coal Mining Examiners, Board of

Coal Research and Development Advisory Board, Virginia

Coal Surface Mining Reclamation Fund Advisory Board

Conservation and Development of Public Beaches, Board on

Conservation and Recreation, Board of

Contractors, Board for

Corn Board, Virginia

Correctional Education, Board of

Corrections, State Board of

Cosmetology, Board for

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60 Criminal Justice Services Board
61 Dark-Fired Tobacco Board, Virginia
62 Deaf and Hard-of-Hearing, Advisory Board for the Department for the
63 Dentistry, Board of
64 Design-Build/Construction Management Review Board
65 Education, State Board of
66 Egg Board, Virginia
67 Emergency Medical Services Advisory Board, State
68 Farmers Market Board, Virginia
69 Fire Services Board, Virginia
70 Forestry, Board of
71 Funeral Directors and Embalmers, Board of
72 Game and Inland Fisheries, Board of
73 Geology, Board for
74 Goose Creek Scenic River Advisory Board
75 Health Planning Board, Virginia
76 Health Professions, Board of
77 Health, State Board of
78 Hearing Aid Specialists, Board for
79 Hemophilia Advisory Board
80 Historic Resources, Board of
81 Housing and Community Development, Board of
82 Irish Potato Board, Virginia
83 Juvenile Justice, State Board of
84 Litter Control and Recycling Fund Advisory Board
85 Marine Products Board, Virginia
86 Medical Advisory Board, Department of Motor Vehicles
87 Medicare and Medicaid, Advisory Board on
88 Medicine, Board of
89 Mental Health, Mental Retardation and Substance Abuse Services Board, State
90 Migrant and Seasonal Farmworkers Board
91 Military Affairs, Board of
92 Mineral Mining Examiners, Board of
93 Minority Business Enterprise, Interdepartmental Board of the Department of
94 Networking Users Advisory Board, State
95 Neurotrauma Initiative Advisory Board, Commonwealth
96 North Meherrin State Scenic River Advisory Board
97 Nottoway State Scenic River Advisory Board
98 Nursing, Board of
99 Nursing Home Administrators, Board of
100 Occupational Therapy, Advisory Board on
101 Oil and Gas Conservation Board, Virginia
102 Opticians, Board for
103 Optometry, Board of
104 Peanut Board, Virginia
105 Personnel Advisory Board
106 Pesticide Control Board
107 Pharmacy, Board of
108 Physical Therapy to the Board of Medicine, Advisory Board on
109 Plant Pollination Advisory Board
110 Polygraph Examiners Advisory Board
111 Pork Industry Board, Virginia
112 Poultry Products Board, Virginia
113 Private College Advisory Board
114 Private Security Services Advisory Board
115 Professional and Occupational Regulation, Board for
116 Professional Counselors, Board of
117 Professional Soil Scientists, Board for
118 Psychiatric Advisory Board
119 Psychology, Board of
120 Public Buildings Board, Virginia
121 Public Broadcasting Board, Virginia

- 122 Radiation Advisory Board
- 123 Real Estate Appraiser Board
- 124 Real Estate Board
- 125 Reciprocity Board, Department of Motor Vehicles
- 126 Recreational Fishing Advisory Board, Virginia
- 127 Recreation Specialists, Board of
- 128 Reforestation Board
- 129 Rehabilitation Providers, Advisory Board on
- 130 Rehabilitative Services, Board of
- 131 Respiratory Therapy, Advisory Board on
- 132 Rockfish State Scenic River Advisory Board
- 133 Safety and Health Codes Board
- 134 Seed Potato Board
- 135 Sewage Handling and Disposal Appeal Review Board, State Health Department
- 136 Shenandoah State Scenic River Advisory Board
- 137 Small Business Advisory Board
- 138 Small Business Environmental Compliance Advisory Board
- 139 Small Grains Board, Virginia
- 140 Social Services, Board of
- 141 Social Work, Board of
- 142 Soil and Water Conservation Board, Virginia
- 143 Soybean Board, Virginia
- 144 State Air Pollution Control Board
- 145 Substance Abuse Certification Board
- 146 Surface Mining Review, Board of
- 147 Sweet Potato Board, Virginia
- 148 T & M Vehicle Dealers' Advisory Board
- 149 Teacher Education and Licensure, Advisory Board on
- 150 Transportation Board, Commonwealth
- 151 Transportation Safety, Board of
- 152 Treasury Board, The, Department of the Treasury
- 153 Veterans' Affairs, Board on
- 154 Veterinary Medicine, Board of
- 155 Virginia Board for Asbestos and Lead
- 156 Virginia Coal Mine Safety Board
- 157 Virginia Correctional Enterprises Advisory Board
- 158 Virginia Cotton Board
- 159 Virginia Employment Commission, State Advisory Board for the
- 160 Virginia Geographic Information Network Advisory Board
- 161 Virginia Horse Industry Board
- 162 Virginia Manufactured Housing Board
- 163 Virginia Retirement System, Board of Trustees
- 164 Virginia Schools for the Deaf and the Blind, Advisory Commission on the
- 165 Virginia Sheep Industry Board
- 166 Virginia Veterans Cemetery Board
- 167 Virginia Waste Management Board
- 168 Visually Handicapped, Virginia Board for the
- 169 Voluntary Formulary Board, Virginia
- 170 War Memorial Foundation, Virginia, Board of Trustees
- 171 Waste Management Facility Operators, Board for
- 172 Water Resources Research Center Statewide Advisory Board, Virginia
- 173 Waterworks and Wastewater Works Operators, Board for
- 174 Well Review Board, Virginia.
- 175 B. Notwithstanding the definition for "board" as provided in § 2.1-1.2, the following entities shall be
- 176 referred to as boards:
- 177 Compensation Board
- 178 State Board of Elections
- 179 State Water Control Board
- 180 Virginia Parole Board
- 181 Virginia Veterans Care Center Board of Trustees.
- 182 § 9-6.25:2. Policy boards, commissions and councils.

183 There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the
184 following policy boards, commissions and councils:
185 Apprenticeship Council
186 Athletic Board
187 Auctioneers Board
188 Blue Ridge Regional Education and Training Council
189 Board for Accountancy
190 Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects
191 Board for Barbers
192 Board for Contractors
193 Board for Cosmetology
194 Board for Geology
195 Board for Hearing Aid Specialists
196 Board for Opticians
197 Board for Professional and Occupational Regulation
198 Board for Professional Soil Scientists
199 Board for Waterworks and Wastewater Works Operators
200 Board of Agriculture and Consumer Services
201 Board of Audiology and Speech-Language Pathology
202 Board of Coal Mining Examiners
203 Board of Conservation and Recreation
204 Board of Correctional Education
205 Board of Dentistry
206 Board of Directors, Virginia Student Assistance Authorities
207 Board of Funeral Directors and Embalmers
208 Board of Health Professions
209 Board of Historic Resources
210 Board of Housing and Community Development
211 Board of Medical Assistance Services
212 Board of Medicine
213 Board of Mineral Mining Examiners
214 Board of Nursing
215 Board of Nursing Home Administrators
216 Board of Optometry
217 Board of Pharmacy
218 Board of Professional Counselors
219 Board of Psychology
220 Board of Recreation Specialists
221 Board of Social Services
222 Board of Social Work
223 Board of Surface Mining Review
224 Board of Veterinary Medicine
225 Board on Conservation and Development of Public Beaches
226 *Cemetery Board*
227 Chesapeake Bay Local Assistance Board
228 Child Day-Care Council
229 Commission on Local Government
230 Commonwealth Transportation Board
231 Council on Human Rights
232 Council on Information Management
233 Criminal Justice Services Board
234 Design-Build/Construction Management Review Board
235 Disability Services Council
236 Farmers Market Board, Virginia
237 Interdepartmental Council on Rate-setting for Children's Facilities
238 Library Board, The Library of Virginia
239 Marine Resources Commission
240 Milk Commission
241 Pesticide Control Board
242 Real Estate Appraiser Board
243 Real Estate Board
244 Reciprocity Board, Department of Motor Vehicles

245 Safety and Health Codes Board
 246 Seed Potato Board
 247 Southside Virginia Marketing Council
 248 Specialized Transportation Council
 249 State Air Pollution Control Board
 250 State Board of Corrections
 251 State Board of Elections
 252 State Board of Health
 253 State Board of Juvenile Justice
 254 State Health Department, Sewage Handling and Disposal Appeal Review Board
 255 State Library Board
 256 State Mental Health, Mental Retardation and Substance Abuse Services Board
 257 State Water Control Board
 258 Substance Abuse Certification Board
 259 Treasury Board, The, Department of the Treasury
 260 Virginia Aviation Board
 261 Virginia Board for Asbestos and Lead
 262 Virginia Fire Services Board
 263 Virginia Gas and Oil Board
 264 Virginia Health Planning Board
 265 Virginia Manufactured Housing Board
 266 Virginia Parole Board
 267 Virginia Public Broadcasting Board
 268 Virginia Soil and Water Conservation Board
 269 Virginia Voluntary Formulary Board
 270 Virginia Waste Management Board
 271 Waste Management Facility Operators, Board for.

CHAPTER 23.1.

CEMETERY OPERATORS, PERPETUAL CARE TRUST FUNDS AND PRENEED BURIAL CONTRACTS.

§ 54.1-2310. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Advertisement" means any information disseminated or placed before the public.

"Board" means the Cemetery Board.

"Cemetery" means any land or structure used or intended to be used for the interment of human remains. The sprinkling of ashes or their burial in a biodegradable container on church grounds or their placement in a columbarium on church property shall not constitute the creation of a cemetery.

"Cemetery company" means any person engaged in the business of (i) selling or offering for sale any grave or entombment right in a cemetery and representing to the public that the entire cemetery, a single grave, or entombment right therein will be perpetually cared for or (ii) selling property or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or performance of the service may be delayed later than 120 days after receipt of the initial payment on account of such sale. Such property or services include but are not limited to burial vaults, mausoleum crypts, garden crypts, lawn crypts, memorials, and marker bases, but shall not include graves or incidental additions such as dates, scrolls, or other supplementary matter representing not more than ten percent of the total contract price.

"Compliance agent" means a natural person who owns or is employed by a cemetery company to assure the compliance of the cemetery company with the provisions of this chapter.

"Cost requirement" means the total cost to the seller of the property or services subject to the deposit requirements of § 54.1-2323 required by that seller's total contracts.

"Department" means the Department of Professional and Occupational Regulation.

"Garden crypt" means a burial receptacle, usually constructed of reinforced concrete, installed in quantity on gravel or tile underlay. Each crypt becomes an integral part of a given garden area and is considered real property.

"General funds" means the sum total of specific funds put together in a single fund.

"Grave" means a below-ground right of interment.

"In-person communication" means face-to-face communication and telephonic communication.

"Interment" means all forms of final disposal of human remains including, but not limited to, earth burial, mausoleum entombment and niche or columbarium inurnment. The sprinkling of ashes on church grounds shall not constitute interment.

"Lawn crypt" means a burial vault with some minor modifications for the improvement of drainage in and around the receptacle and is considered personal property.

306 "Marker base" means the visible part of the marker or monument upon which the marker or
307 monument rests and is considered personal property.

308 "Mausoleum crypt" means a burial receptacle usually constructed of reinforced concrete and usually
309 constructed or assembled above the ground and is considered real property.

310 "Memorials, markers or monuments" means the object used to identify the deceased and is
311 considered personal property.

312 "Perpetual care trust fund" means a fund created to provide income to a cemetery to provide care,
313 maintenance, administration and embellishment of the cemetery.

314 "Preneed" means at any time other than either at the time of death or while death is imminent.

315 "Preneed burial contract" means a contract for the sale of property or services used in connection
316 with interring or disposing of the remains or commemorating the memory of a deceased human being,
317 where delivery of the property or performance of the service may be delayed for more than 120 days
318 after the receipt of initial payment on account of such sale. Such property or services include but are
319 not limited to burial vaults, mausoleum crypts, garden crypts, lawn crypts, memorials, and marker
320 bases, but shall not include graves or incidental additions such as dates, scrolls, or other supplementary
321 matter representing not more than ten percent of the total contract price.

322 "Seller" means the cemetery company.

323 "Seller's trust account" means the total specific trust funds deposited from all of a specific seller's
324 contracts, plus income on such funds allotted to that seller.

325 "Solicitation" means initiating contact with consumers with the intent of influencing their selection of
326 a cemetery.

327 "Specific trust funds" means funds identified to a certain contract for personal property or services.

328 § 54.1-2311. Cemetery operators required to register with Board.

329 No person shall engage in the business of a cemetery company in the Commonwealth without first
330 having registered with the Board. The cemetery company shall renew its registration as required by the
331 Board. Such registration and such renewal of registration shall (i) be on forms prescribed by the Board
332 and shall include the name and address of each cemetery in Virginia in which the cemetery company
333 has a business interest, the name and address of all officers and directors of the cemetery company, the
334 registered agent for the cemetery company, the compliance agent, and any such other information as the
335 Board may require consistent with the purposes of this chapter and (ii) include a fee as prescribed by
336 the Board for each cemetery in Virginia in which the cemetery company has a business interest. The
337 cemetery company shall notify the Board of any change in the information required to be filed within
338 thirty days after the change. A new registration shall be required if there is a change in the ownership
339 of the cemetery company or if there is a change in the compliance agent designated by the cemetery
340 company. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special
341 fund of the Department to be used in the administration of this chapter.

342 § 54.1-2312. Exemptions.

343 A. The provisions of this chapter shall not apply to cemeteries wholly owned and operated by a
344 county, city or town; a church; or a nonstock corporation not operated for profit if the corporation (i)
345 does not compensate any officer or director except for reimbursement of reasonable expenses incurred
346 in the performance of his official duties, (ii) does not sell or construct or directly or indirectly contract
347 for the sale or construction of vaults or lawn, garden or mausoleum crypts and (iii) uses proceeds from
348 the sale of all graves and entombment rights for the sole purpose of defraying the direct expenses of
349 maintaining the cemetery.

350 B. The provisions of this chapter shall not apply to any community cemetery not operated for profit
351 if the cemetery (i) does not compensate any officer or director except for reimbursement of reasonable
352 expenses incurred in the performance of his official duties, (ii) uses the proceeds from the sale of the
353 graves and mausoleum spaces for the sole purpose of defraying the direct expenses of maintaining its
354 facilities, and (iii) was chartered by the Commonwealth prior to 1850 A.D.

355 C. The provisions of this chapter regarding preneed burial contracts shall not apply to prearranged
356 funeral plans entered into by licensees of the Board of Funeral Directors and Embalmers.

357 § 54.1-2313. Board; appointment; terms; vacancies; meetings; quorum; other powers.

358 A. The Cemetery Board shall consist of seven members to be appointed by the Governor as follows:
359 five cemetery operators who have operated a cemetery in the Commonwealth for at least five
360 consecutive years immediately prior to appointment, four of whom shall be affiliated with a cemetery
361 company incorporated in the Commonwealth which is not owned, operated or affiliated, directly or
362 indirectly, with a foreign corporation; and two citizen members. Appointments to the Board shall
363 generally represent the geographical areas of the Commonwealth.

364 B. Of the members initially appointed to the Board, three shall be appointed for a term of four
365 years, two shall be appointed for a term of three years, and two shall be appointed for a term of two
366 years. Thereafter, all appointments shall be for terms of four years, except that appointment to fill
367 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 regulate (i) 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) sales personnel employed by a cemetery company.

§ 54.1-2314. Certain representations unlawful; perpetual care trust fund required.

It shall be unlawful to sell or offer for sale in the Commonwealth any grave or entombment right in a cemetery and, in connection therewith, to represent to the public in any manner, express or implied, that the entire cemetery or any grave or entombment right therein will be perpetually cared for, unless adequate provision has been made for the perpetual care of the cemetery and all graves and entombment rights therein as to which such representation has been made.

Each cemetery company shall establish in a bank, savings institution or other federally insured investment financial institution doing business in the Commonwealth an irrevocable trust fund in the amount of at least \$25,000 before the first lot, parcel of land, burial or entombment right is sold. This fund shall be designated the perpetual care trust fund.

§ 54.1-2315. Who may serve as trustee of perpetual care trust fund.

A. The trustee of the perpetual care trust fund shall be appointed by the person owning, operating, or developing a cemetery company. If the trustee is other than a bank, savings institution or other federally insured investment financial institution doing business in the Commonwealth, the trustee shall be approved by the Board.

A trustee that is not a bank, savings institution or other federally insured investment financial institution doing business in the Commonwealth shall apply to the Board for approval, and the Board shall approve the trustee when he has become satisfied that the applicant:

1. Employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others;

2. Will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized; and

3. Is authorized to do business in the Commonwealth and has adequate facilities to perform its duties as trustee.

B. If the trustee is other than a bank, savings institution or other federally insured investment financial institution doing business in the Commonwealth, the trustee shall furnish a fidelity bond with corporate surety thereon, payable to the trust established, which shall be designated "Perpetual Care Trust Fund for (name of cemetery company)," in a sum equal to not less than 100 percent of the value of the principal of the trust estate at the beginning of each calendar year, which bond shall be deposited with the Board.

C. If the trustee is other than a bank, savings institution or other federally insured investment financial institution doing business in the Commonwealth and if it appears that an officer, director or employee of the trustee is dishonest, incompetent, or reckless in the management of a perpetual care trust fund, the Board may bring an action in the appropriate court to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

§ 54.1-2316. Application of Title 26.

Trustees appointed pursuant to this chapter shall be governed in their investment of trust funds by §§ 26-40 through 26-45.1 of Chapter 3 of Title 26, except as provided otherwise herein.

§ 54.1-2317. Deposit in perpetual care trust fund required upon sale of graves, etc.

Each cemetery company shall deposit a minimum of ten percent of the receipts from the sale of graves and above-ground crypts and niches, excluding below-ground burial vaults, in cash in the perpetual care trust fund within thirty days after the close of the month in which such receipts are paid to it. If the purchaser's payment is made on an installment or deferred payment basis, the cemetery company shall have the option of paying ten percent of the amount of principal in each payment received into the perpetual care trust fund.

§ 54.1-2318. Additional deposit not required upon subsequent sale of same grave, crypt or niche.

If ten percent of the sales price of a grave or above-ground crypt or niche has been deposited in a perpetual care trust fund, no deposit shall be required on subsequent sales of the same grave, crypt or niche.

§ 54.1-2319. Recovery of original perpetual care trust fund deposit.

Once the cemetery company has deposited in the perpetual care trust fund a sum equal to twice the

429 amount of the original deposit, exclusive of the original deposit, the trustee shall allow the cemetery
430 company to recover its original deposit by withholding the money that would otherwise be required to
431 be deposited in the perpetual care trust fund until the amount of the original deposit is recovered. Once
432 the cemetery company has recovered an amount equal to its original deposit, deposits to the perpetual
433 care trust fund shall be resumed.

434 § 54.1-2320. Use of income from perpetual care trust fund.

435 The income from the perpetual care trust fund shall be used solely and exclusively for the general
436 care, maintenance, administration and embellishment of the cemetery.

437 § 54.1-2321. Financial records required.

438 The cemetery company shall file with the Board detailed accounts of all transactions, receipts and
439 accounts receivable subject to the ninety percent trust requirement and of all expenditures of income
440 from the perpetual care trust fund at such times as required by the Board.

441 § 54.1-2322. Financial report and written assurance required for perpetual care trust funds.

442 A. Within four months after the close of its fiscal year, the cemetery company shall report the
443 following information to the Board:

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

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

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

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

451 5. The total receipts subject to the ninety percent trust requirement.

452 6. All expenditures from the perpetual care trust fund.

453 7. If the trustee is other than a bank, savings institution, or other federally insured investment
454 financial institution doing business in the Commonwealth, proof that the required fidelity bond has been
455 secured and that it is in effect.

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

458 B. The cemetery company shall employ an independent certified public accountant to audit and
459 provide assurance that, with regard to the total of all receipts subject to § 54.1-2317, the report of the
460 owner, operator or developer is true and correct and that the required deposits to the perpetual care
461 trust fund have been made on a timely basis. Such audit shall provide full disclosure of any transactions
462 between the perpetual care trust fund and any directors, officers, stockholders, employees, or relatives
463 thereof, and shall include a description of the transactions, the parties involved, the dates and amounts
464 of the transactions, and the reasons for the transactions.

465 C. The information required to be filed hereunder with the Board shall be exempt from the Privacy
466 Protection Act (§ 2.1-377 et seq.).

467 § 54.1-2323. Deposit in preneed trust required upon sale of property or services not to be delivered
468 within 120 days.

469 A. Each cemetery company shall deposit into a trust fund the receipts from the sale of property or
470 services purchased pursuant to a preneed burial contract, when the delivery thereof will be delayed
471 more than 120 days from the initial payment on said contract. The cemetery company shall establish a
472 special trust fund in a bank, savings institution or other federally insured investment financial institution
473 doing business in the Commonwealth. The trust shall bear the legend "Preneed Trust Account." Deposits
474 are required to be made by the cemetery company within thirty days after the close of the month in
475 which said receipts are paid to it.

476 B. If the purchaser's payment is made on an installment or deferred payment basis, the seller shall
477 have the option of paying each payment received into the preneed trust account.

478 § 54.1-2324. Who may serve as trustee of preneed trust fund.

479 A. The trustee of the preneed trust fund shall be appointed by the person owning, operating, or
480 developing a cemetery company. If the trustee is other than a bank, savings institution or other federally
481 insured investment financial institution doing business in the Commonwealth, the trustee shall be
482 approved by the Board.

483 A trustee that is not a bank, savings institution or other federally insured investment financial
484 institution doing business in the Commonwealth shall apply to the Board for approval, and the Board
485 shall approve the trustee when he has become satisfied that the applicant:

486 1. Employs and is directed by persons who are qualified by character, experience, and financial
487 responsibility to care for and invest the funds of others;

488 2. Will perform its duties in a proper and legal manner and that the trust funds and interest of the
489 public generally will not be jeopardized; and

490 3. Is authorized to do business in the Commonwealth and has adequate facilities to perform its duties

as trustee.

B. If the trustee is other than a bank, savings institution or other federally insured investment financial institution doing business in the Commonwealth, the trustee shall furnish a fidelity bond with corporate surety thereon, payable to the trust established, which shall be designated "Preneed Trust Fund for (name of cemetery company)," in a sum equal to but not less than 100 percent of the value of the principal of the trust estate at the beginning of each calendar year, which bond shall be deposited with the Board.

C. If the trustee is other than a bank, savings institution or other federally insured investment financial institution doing business in the Commonwealth and if it appears that an officer, director or employee of the trustee is dishonest, incompetent, or reckless in the management of a preneed trust fund, the Board may bring an action in the appropriate court to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

§ 54.1-2325. Itemized statement and general price list of burial expenses to be furnished; solicitations prohibited.

Every cemetery company registered pursuant to the provisions of this chapter shall furnish a written general price list and a written itemized statement of charges in connection with burial services provided by the cemetery company.

Individuals inquiring in person about burial arrangements or the prices of property or services shall be given the general price list. Upon beginning discussion of burial arrangements or the selection of any property or services, the general price list shall be offered by the cemetery company.

The itemized statement shall include, but not be limited to, the following charges: burial vaults or other burial receptacles, facilities used, and other professional services used, which shall be set forth in a clear and conspicuous manner.

Further, there shall be included a statement of all anticipated cash advances and expenditures requested by the person contracting for the burial services and such other items as required by regulation of the Board. The statement shall be furnished to the person contracting for burial services at the time such arrangements are made if the person is present and, if not present, no later than the time of the final disposition of the body.

The general price list and itemized statement of burial expenses shall comply with forms prescribed by regulation of the Board. All regulations promulgated herewith shall promote the purposes of this section.

No cemetery company registered pursuant to the provisions of this chapter shall make any solicitation at-need or any preneed solicitation using in-person communication by the cemetery company, his agents, assistants or employees. However, general advertising and preneed solicitation, other than in-person communication, shall be allowed.

§ 54.1-2326. Requirements of preneed burial contracts.

A. It shall be unlawful for any person residing or doing business within the Commonwealth, to make, either directly or indirectly by any means, a preneed burial 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, contract buyer and person for whom the contract is purchased if other than the contract buyer;

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

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

5. States for funds required to be trusted pursuant to § 54.1-2323, 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 property or supplies contracted for; if the purchaser terminates the contract within thirty 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 thirty days, the purchaser shall be refunded any amounts required to be deposited under § 54.1-2323, together with any interest or income accrued thereon;

8. Provides that if the particular property 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 size and style and at least equal in quality of material and workmanship and that the representative of the deceased shall have the right to choose the property or services to be substituted;

9. Discloses any additional costs that the purchaser may be required to pay at-need;

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

552 11. *Be executed in duplicate and a signed copy given to the buyer.*

553 *If the contract seller will not be furnishing the property and services to the purchaser, the contract*
554 *seller shall attach to the preneed burial contract a copy of the seller's agreement with the provider.*

555 § 54.1-2327. *Identification of specific funds.*

556 *Specific funds deposited in the trust account shall be identified in the records of the seller by the*
557 *contract number and by the name of the buyer. The trustee may commingle the deposits in any preneed*
558 *trust account for the purposes of the management thereof and the investment of funds therein.*

559 § 54.1-2328. *Specific funds and income to remain in preneed trust account; exception.*

560 *Specific funds shall remain intact until the property is delivered or services performed as specified in*
561 *the contract. The net income from the preneed trust account, after payment of any appropriate trustee*
562 *fees, commissions, and costs, shall remain in the account and be reinvested and compounded. Any*
563 *trustee fees, commissions, and costs in excess of income shall be paid by the cemetery company and not*
564 *from the trust. However, the trustee shall, as of the close of the cemetery company's fiscal year, upon*
565 *written assurance to the trustee of a certified public accountant employed by the seller, return to the*
566 *seller any income in the seller's account which, when added to the specific funds, is in excess of the*
567 *current cost requirements for all undelivered property or services included in the seller's preneed burial*
568 *contracts. The seller's cost requirements shall be certified in its records by an affidavit sworn by the*
569 *compliance agent and shall be determined by the seller as of the close of the cemetery company's fiscal*
570 *year.*

571 § 54.1-2329. *Disbursement of trust funds upon performance of contract.*

572 A. *Upon performance of the preneed burial contract, the seller shall certify to the trustee by affidavit*
573 *the amount of specific funds in the trust, identified to the contract performed, which the trustee shall*
574 *pay to the seller. The seller may in its records itemize the property or services and the consideration*
575 *paid or to be paid therefor, to which the deposit requirements of this chapter apply. In such case, the*
576 *seller may, upon certification to the trustee of performance or delivery of such property or services and*
577 *of the amount of specific trust funds identified in its records to such items, request disbursement of that*
578 *portion of the specific funds deposited pursuant to the contract, which the trustee shall pay to the seller.*

579 B. *If the preneed contract provides for two or more persons, the seller may, at its option, designate*
580 *in its records the consideration paid for each individual in the preneed burial contract. In such case,*
581 *upon performance of that portion of the contract identified to a particular individual, the seller may*
582 *request, by certification in the manner described above, the disbursement of trust funds applicable to*
583 *that portion of the contract, which the trustee shall pay to the seller.*

584 § 54.1-2330. *Seller required to keep records.*

585 *Each seller of a preneed burial contract shall file with the Board at such time as the Board may*
586 *prescribe, detailed accounts of all contracts and transactions regarding preneed burial contracts.*

587 § 54.1-2331. *Financial report and written assurance required for preneed trust accounts.*

588 A. *The cemetery company shall report the following information to the Board within four months*
589 *following the cemetery company's fiscal year:*

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

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

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

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

596 5. *The total receipts required to be deposited in the preneed trust account;*

597 6. *All expenditures from the preneed trust account; and*

598 7. *If the trustee is other than a bank, savings institution, or other federally insured investment*
599 *financial institution doing business in the Commonwealth, proof that the required fidelity bond has been*
600 *secured and that it is in effect.*

601 B. *The cemetery company shall employ an independent certified public accountant to audit and*
602 *provide assurance that ninety percent of the cash receipts from the sale of preneed property or services*
603 *not to be delivered or performed within 120 days after receipt of the initial payment on account has*
604 *been deposited in the account within thirty days after the close of the month in which the payment was*
605 *received. Such audit shall provide full disclosure of any transactions between the preneed trust account*
606 *and any directors, officers, stockholders, employees, or relatives thereof, and shall include a description*
607 *of the transactions, the parties involved, the dates and amounts of the transactions, and the reasons for*
608 *the transactions.*

609 C. *The information required to be filed hereunder with the Board shall be exempt from the Privacy*
610 *Protection Act (§ 2.1-377 et seq.).*

611 § 54.1-2332. *Inclusion of property and services to be delivered within 120 days.*

612 *Nothing in this chapter shall be deemed to prohibit the sale within the preneed burial contract of*
613 *property or services to be delivered within 120 days after the receipt of the initial payment on account*

of such sale. Contracts may specify separately the total consideration paid or to be paid for preneed property or services not to be delivered or provided within 120 days after receipt of initial payment. If a contract does not so specify, the seller shall deposit ninety percent of the total consideration for the entire contract.

§ 54.1-2333. Breach of contract by seller; trust to be single purpose trust.

If, after a written request, the seller fails to perform its contractual duties, the purchaser, executor or administrator of the estate, or heirs, or assigns or duly authorized representative of the purchaser shall be entitled to maintain a proper legal or equitable action in any court of competent jurisdiction. No other purchaser need be made a party to or receive notice of any proceeding brought pursuant to this section relating to the performance of any other contract.

The trust shall be a single purpose trust, and the trust funds shall not be available to any creditors as assets of the seller.

§ 54.1-2334. Trustee may rely on certifications and affidavits.

The trustee may rely upon all certifications and affidavits made pursuant to or required by the provisions of this chapter and shall not be liable to any person for such reasonable reliance.

§ 54.1-2335. Transfer of trust funds to another trustee.

The seller may, upon notification in writing to the trustee, and upon such other terms and conditions as the agreement between them may specify, transfer its account funds to another trustee qualified under the provisions of this chapter. The trustee may, upon notification in writing to the seller, and upon such other terms and conditions as the agreement between them may specify, transfer the trust funds to another trustee qualified under the provisions of this chapter.

§ 54.1-2336. Use of trustee's name in advertisements.

No person subject to the provisions of this chapter shall use the name of the trustee in any advertisement or other public solicitation without written permission of the trustee.

§ 54.1-2337. Construction and development of mausoleums and garden crypts.

Within four years after the date of the first sale, a cemetery company or other seller of mausoleums and garden crypts shall be required to start construction or development of that undeveloped ground or section of a mausoleum or garden crypt in which sales, contracts for sales, or agreements for sales are being made. The construction or development of such undeveloped mausoleum section or garden crypt shall be completed within five years after the date of the first such sale. Completed construction shall be deemed performance for purposes of this chapter.

§ 54.1-2338. Waiver of chapter void.

Any provision of any contract which purports to waive any provision of this chapter shall be void.

§ 54.1-2339. Exemption from levy, garnishment and distress.

Any money, personal property or real property paid, delivered or conveyed subject to § 54.1-2323 shall be exempt from levy, garnishment or distress.

§ 54.1-2340. Violation a misdemeanor.

It shall be unlawful for any person to violate any of the provisions of this chapter. Any such violation shall be deemed a Class 1 misdemeanor and any person convicted of such violation shall be punished in accordance with the provisions of § 18.2-11.

2. That Article 3.2 (§§ 57-35.11 through 57-35.35) of Chapter 3 of Title 57 of the Code of Virginia is repealed.

3. That the provisions of this act shall become effective on January 1, 2000, except that § 54.1-2313 shall become effective in due course.

4. That the Cemetery Board shall adopt final regulations in accordance with Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 on or before January 1, 2000.

5. That the provisions of Article 3.2 (§ 57-35.11 et seq.) of Chapter 3 of Title 57 shall remain in effect until January 1, 2000, when the Cemetery Board shall regulate cemetery companies and implement its regulations in accordance with Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1.

6. That the Cemetery Board shall study the adequacy of current trusting requirement for perpetual care trusts and report their findings and recommendations to the Governor and the General Assembly on July 1, 2000.