

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 2.1-1.6 and 9-6.25:2 of the Code of Virginia; to amend the Code of*
3 *Virginia by adding in Subtitle II of Title 54.1 a chapter numbered 23.1, consisting of sections*
4 *numbered 54.1-2310 through 54.1-2342; and to repeal Article 3.2 (§§ 57-35.11 through 57-35.35) of*
5 *Chapter 3 of Title 57 of the Code of Virginia, relating to the Department of Professional and*
6 *Occupational Regulation; regulation of cemetery companies; penalty; study.*

7 [H 1077]

8 Approved

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

10 **1. That §§ 2.1-1.6 and 9-6.25:2 of the Code of Virginia are amended and reenacted and that the**
11 **Code of Virginia is amended by adding in Subtitle II of Title 54.1 a chapter numbered 23.1,**
12 **consisting of sections numbered 54.1-2310 through 54.1-2342, as follows:**

13 § 2.1-1.6. State boards.

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

16 Accountancy, Board for

17 Aging, Advisory Board on the

18 Agriculture and Consumer Services, Board of

19 Air Pollution, State Advisory Board on

20 Alcoholic Beverage Control Board, Virginia

21 Apple Board, Virginia State

22 Appomattox State Scenic River Advisory Board

23 Aquaculture Advisory Board

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

25 Art and Architectural Review Board

26 Athletic Board, Virginia

27 Auctioneers Board

28 Audiology and Speech-Language Pathology, Board of

29 Aviation Board, Virginia

30 Barbers, Board for

31 Branch Pilots, Board for

32 Bright Flue-Cured Tobacco Board, Virginia

33 Building Code Technical Review Board, State

34 Catoctin Creek State Scenic River Advisory Board

35 Cattle Industry Board, Virginia

36 Cave Board

37 *Cemetery Board*

38 Certified Seed Board, State

39 Chesapeake Bay Local Assistance Board

40 Chickahominy State Scenic River Advisory Board

41 Child Abuse and Neglect, Advisory Board on

42 Chippokes Plantation Farm Foundation, Board of Trustees

43 Clinch Scenic River Advisory Board

44 Coal Mining Examiners, Board of

45 Coal Research and Development Advisory Board, Virginia

46 Coal Surface Mining Reclamation Fund Advisory Board

47 Conservation and Development of Public Beaches, Board on

48 Conservation and Recreation, Board of

49 Contractors, Board for

50 Corn Board, Virginia

51 Correctional Education, Board of

52 Corrections, State Board of

53 Cosmetology, Board for

54 Criminal Justice Services Board

55 Dark-Fired Tobacco Board, Virginia

56 Deaf and Hard-of-Hearing, Advisory Board for the Department for the

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

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

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

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

CHAPTER 23.1.

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

268 § 54.1-2310. Definitions.

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

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

271 "At-need" means at the time of death or while death is imminent.

272 "Board" means the Cemetery Board.

273 "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.

276 "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, vaults, grave liners, urns, memorials, markers, and monuments 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 more 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.

286 "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.

288 "Cost requirement" means the total cost to the seller of the property or services subject to the deposit requirements of § 54.1-2325 required by that seller's total contracts.

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

291 "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.

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

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

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

297 "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.

300 "Lawn crypt" means a burial vault with some minor modifications for the improvement of drainage

301 in and around the receptacle and is considered personal property.

302 "Licensee" means any person holding a valid license issued by the Board.

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

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

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

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

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

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

319 "Seller" means the cemetery company.

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

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

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

325 § 54.1-2311. Cemetery operators required to be licensed by the Board.

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

339 § 54.1-2312. Exemptions.

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

347 B. The provisions of this chapter shall not apply to any community cemetery not operated for profit
348 if the cemetery (i) does not compensate any officer or director except for reimbursement of reasonable
349 expenses incurred in the performance of his official duties, and uses the proceeds from the sale of the
350 graves and mausoleum spaces for the sole purpose of defraying the direct expenses of maintaining its
351 facilities, or (ii) was chartered by the Commonwealth prior to 1857 A.D.

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

354 D. The provisions of the chapter shall not apply to any family cemetery provided that no graves or
355 entombment rights therein are sold or offered for sale to the public.

356 § 54.1-2313. Board; appointment; terms; vacancies; meetings; quorum; other powers; regulations.

357 A. The Cemetery Board shall consist of seven members to be appointed by the Governor as follows:
358 four cemetery operators who have operated a cemetery in the Commonwealth for at least five
359 consecutive years immediately prior to appointment, no more than two of whom shall be affiliated with
360 a cemetery company incorporated in the Commonwealth which is owned, operated or affiliated, directly
361 or indirectly, with a foreign corporation; one representative of local government, and two citizen

members. Appointments to the Board shall generally represent the geographical areas of the Commonwealth.

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

E. In addition to such other regulations the Board deems appropriate, the Board shall adopt regulations which provide:

1. A method for executing, at-need, a preneed burial contract, including the petitioning a court of competent jurisdiction for the appointment of a receiver, where a licensee who is a party to such preneed burial contract has had his license to operate a cemetery revoked or suspended for violation of this chapter or Board regulations; and

2. Consumer protections which are consistent with those provisions of the Federal Trade Commission Funeral Rules which the Board finds may be appropriately applied to cemetery companies.

§ 54.1-2314. Refusal, suspension or revocation of license or registration.

The Board may refuse to license or register any applicant, suspend a license or registration for a stated period or indefinitely, revoke any license or registration, censure or reprimand any person licensed or registered by the Board or place such person on probation for such time as it may designate for any of the following causes related to the sale or offering to the public of cemetery vaults, grave liners, urns, memorials, markers or monuments:

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

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

3. Misrepresentation or fraud in the conduct of the cemetery company or its sales personnel, or in obtaining or renewing a license or registration;

4. False or misleading advertising;

5. Solicitation in violation of subsection B of § 54.1-2327;

6. Direct or indirect payment or offer of payment of a commission to others by the licensee, his sales representatives, agents, or employees for the purpose of securing business;

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

8. Aiding or abetting an unlicensed person to engage in the business of a cemetery company;

9. Using profane, indecent or obscene language within the immediate hearing of the family or relatives of a deceased, whose body has been interred or otherwise disposed of;

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

11. Failure to comply with subsection A of § 54.1-2327 and to keep on file an itemized statement of all retail prices and fees charged related to the sale of property or services as required by Board regulations and this chapter;

12. Charging third-party handling fees, which shall not include installation fees; and

13. Refusing to honor the transfer of preneed contract arrangements to another party. However the licensee shall not be responsible for paying additional costs associated with any actual transfer.

§ 54.1-2315. Other prohibited activities.

The following acts shall be prohibited:

1. Employment directly or indirectly of any sales representative, agent, employee or other person, on a part-time or full-time basis, or on a commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment or cemetery company;

2. Solicitation, offer, payment, or acceptance by a licensee or registered sales personnel of a licensee, of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or cemetery;

3. Violating or cooperating with others to violate any provision of this chapter or Board regulations;

4. Interfering with the freedom of choice of the general public in the choice of persons or establishments providing funeral services, preneed funeral planning or preneed funeral contracts.

Nothing in this section shall preclude a cemetery company employing or retaining a sales representative, agent, employee or other person, on a part-time or full-time basis, from offering cemetery company goods and services on a commission basis.

§ 54.1-2316. 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 Virginia trust company or trust subsidiary or a federally insured bank or savings 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.

§ 54.1-2317. 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 Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall be approved by the Board.

A trustee that is not a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth shall apply to the Board for approval, and the Board shall approve the trustee when it 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 Virginia trust company or trust subsidiary or a federally insured bank or savings 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 Virginia trust company or trust subsidiary or a federally insured bank or savings 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.

§ 54.1-2318. 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, except as otherwise provided in this chapter.

§ 54.1-2319. 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.

§ 54.1-2320. 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.

§ 54.1-2321. 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 amount of the original deposit, exclusive of the original deposit, the trustee shall allow the cemetery company to recover its original deposit by withholding the money that would otherwise be required to be deposited in the perpetual care trust fund until the amount of the original deposit is recovered. Once the cemetery company has recovered an amount equal to its original deposit, deposits to the perpetual

care trust fund shall be resumed.

§ 54.1-2322. Use of income from perpetual care trust fund.

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

§ 54.1-2323. Financial records required.

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

§ 54.1-2324. Financial report and written assurance required for perpetual care trust funds.

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

1. The total amount of principal in the perpetual care trust fund;
2. The securities in which the perpetual care trust fund is invested and the amount of cash on hand as of the close of the fiscal year;
3. The income received from the perpetual care trust fund, and the sources of such income, during the preceding fiscal year;

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

5. The total receipts subject to the ten percent trust requirement;

6. All expenditures from the perpetual care trust fund;

7. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, proof that the required fidelity bond has been secured and that it is in effect;

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

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

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

§ 54.1-2325. Deposit in preneed trust required upon sale of property or services not to be delivered within 120 days.

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

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

§ 54.1-2326. Who may serve as trustee of preneed trust fund.

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

A trustee that is not a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth shall apply to the Board for approval, and the Board shall approve the trustee when the Board 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 that 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 Virginia trust company or trust subsidiary or a federally insured bank or savings 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 Virginia trust company or trust subsidiary or a federally insured bank or savings 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.

§ 54.1-2327. Itemized statement and general price list of burial fees to be furnished; solicitations prohibited.

A. Every cemetery company licensed 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.

The general price list and itemized statement of burial fees shall comply with forms prescribed by Board regulation, which regulations shall promote the purposes of this section.

B. No cemetery company licensed 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, which is false, misleading, or contrary to the stated purpose. However, general advertising and preneed solicitation shall be permitted.

§ 54.1-2328. Requirements of preneed burial contracts.

A. It shall be unlawful for any person 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 § 54.1-2325, the amount to be trusted, and the name of the trustee;

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 purchaser who makes payment under the contract may terminate the agreement within three days of execution and that such purchaser shall be refunded all consideration paid or delivered, less amounts paid for any property or supplies that have been delivered;

8. Provides that if the particular property or services specified in the contract are unavailable at the time of delivery, the seller shall be required to furnish property or 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, which shall be at least equal or reasonably equivalent in quality of material, workmanship, and cost;

9. Discloses any additional costs that the purchaser may be required to pay at-need, including disclosure of the cost of opening and closing the grave;

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

11. Is executed in duplicate and a signed copy given to the buyer; and

12. Provides that the contract buyer shall have the right to change the contract provider at any time prior to the furnishing of the property or services, excluding any mausoleum crypt or garden crypt, contracted for under the preneed burial contract. If the contract seller will not be furnishing the property and services to the purchaser, the contract seller shall attach to the preneed burial contract a copy of the seller's agreement with the provider.

B. Any preneed burial contract sold or offered by any cemetery company or agent with a trust fund deposit of less than 100 percent shall be required to include the following printed statement in capitalized letters, in ten-point, bold-faced type:

THIS PRENEED BURIAL CONTRACT REQUIRES THE PLACEMENT IN TRUST OF A

MINIMUM OF 40% OF THE FUNDS INCLUDED IN THIS CONTRACT. THE BALANCE OF FUNDS MAY BE USED FOR CARE AND MAINTENANCE OF THE CEMETERY AND ARE NOT REQUIRED TO BE PLACED IN TRUST.

§ 54.1-2329. Identification of specific funds.

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

§ 54.1-2330. Specific funds and income to remain in preneed trust account; exception.

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

§ 54.1-2331. Disbursement of trust funds upon performance of contract.

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

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

§ 54.1-2332. Seller required to keep records.

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

§ 54.1-2333. Financial report and written assurance required for preneed trust accounts.

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

1. The total amount of principal in the preneed trust account;
2. The securities in which the preneed trust account is invested;
3. The income received from the trust and the source of that income during the preceding fiscal year;
4. An affidavit executed by the compliance agent that all provisions of this chapter applicable to the seller relating to preneed trust accounts have been complied with;
5. Forty percent of the total receipts required to be deposited in the preneed trust account;
6. All expenditures from the preneed trust account; and
7. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, proof that the required fidelity bond has been secured and that it is in effect.

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

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

§ 54.1-2334. Inclusion of property and services to be delivered within 120 days.

Nothing in this chapter shall be deemed to prohibit the sale within the preneed burial contract of

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 forty percent of the total consideration for the entire contract.

§ 54.1-2335. 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.

§ 54.1-2336. 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.

§ 54.1-2337. 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. No seller's account funds or trustee's trust funds may be transferred to another trustee unless the seller provides written notice at least five days prior to such transfer to the Board.

§ 54.1-2338. 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.

§ 54.1-2339. 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.

§ 54.1-2340. Waiver of chapter void.

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

§ 54.1-2341. Exemption from levy, garnishment and distress.

Any money, personal property or real property paid, delivered or conveyed subject to § 54.1-2325 shall be exempt from levy, garnishment or distress.

§ 54.1-2342. Penalties.

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. However, any violation of or failure to comply with §§ 54.1-2319, 54.1-2321, 54.1-2322, 54.1-2325 or § 54.1-2326 shall be deemed a Class 6 felony, and any person convicted of such violation shall be punished in accordance with the provisions of § 18.2-10.

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 July 1, 2000, except that the amendments to §§ 2.1-1.6 and 9-6.25:2 and § 54.1-2313 shall become effective on July 1, 1998.

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 July 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 July 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 Board for Professional and Occupational Regulation shall conduct a study to determine the appropriate level of regulation of cemetery companies and related trust funds. The Board shall also determine the approximate costs to regulants, the affected businesses and the impact on consumers. The Board shall report its findings and recommendations to the Governor and the 1999 Session of the General Assembly by December 1, 1998.

7. That the provisions of this act may result in a net increase in periods of imprisonment in state

728 correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation
729 is \$0.

ENROLLED

HB1077ER