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HOUSE BILL NO. 1077

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws
on March 4, 1998)

(Patrons Prior to Substitute—Delegates Reid and Rhodes [HB 1333])

A BILL to amend and reenact §§ 2.1-1.6 and 9-6.25:2 of the Code of Virginia; 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 54.1-2342; 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; study.

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 54.1-2342, 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
Catocin 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
Criminal Justice Services Board
Dark-Fired Tobacco Board, Virginia
Deaf and Hard-of-Hearing, Advisory Board for the Department for the
Dentistry, Board of

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

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

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

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

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

"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, 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.

"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 § 54.1-2325 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.

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

"Marker base" means the visible part of the marker or monument upon which the marker or

monument rests and is considered personal property.

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

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

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

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

"Preneed burial contract" means a contract for the sale of 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 for more than 120 days after the receipt of initial payment on account of such sale. Such property includes but is 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.

"Seller" means the cemetery company.

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

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

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

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

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

§ 54.1-2312. Exemptions.

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

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

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

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

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

A. The Cemetery Board shall consist of seven members to be appointed by the Governor as follows: four cemetery operators who have operated a cemetery in the Commonwealth for at least five consecutive years immediately prior to appointment, no more than two of whom shall be affiliated with a cemetery company incorporated in the Commonwealth which is owned, operated or affiliated, directly 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- 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- or full-time basis, from offering cemetery

429 company goods and services on a commission basis.

430 § 54.1-2316. *Certain representations unlawful; perpetual care trust fund required.*

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

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

440 § 54.1-2317. *Who may serve as trustee of perpetual care trust fund.*

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

445 A trustee that is not a Virginia trust company or trust subsidiary or a federally insured bank or
446 savings institution doing business in the Commonwealth shall apply to the Board for approval, and the
447 Board shall approve the trustee when it has become satisfied that the applicant:

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

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

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

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

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

466 § 54.1-2318. *Application of Title 26.*

467 Trustees appointed pursuant to this chapter shall be governed in their investment of trust funds by
468 §§ 26-40 through 26-45.1, except as otherwise provided in this chapter.

469 § 54.1-2319. *Deposit in perpetual care trust fund required upon sale of graves, etc.*

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

476 § 54.1-2320. *Additional deposit not required upon subsequent sale of same grave, crypt or niche.*

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

480 § 54.1-2321. *Recovery of original perpetual care trust fund deposit.*

481 Once the cemetery company has deposited in the perpetual care trust fund a sum equal to twice the
482 amount of the original deposit, exclusive of the original deposit, the trustee shall allow the cemetery
483 company to recover its original deposit by withholding the money that would otherwise be required to
484 be deposited in the perpetual care trust fund until the amount of the original deposit is recovered. Once
485 the cemetery company has recovered an amount equal to its original deposit, deposits to the perpetual
486 care trust fund shall be resumed.

487 § 54.1-2322. *Use of income from perpetual care trust fund.*

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

490 § 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.

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

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

682 *§ 54.1-2336. Trustee may rely on certifications and affidavits.*

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

685 *§ 54.1-2337. Transfer of trust funds to another trustee.*

686 *The seller may, upon notification in writing to the trustee, and upon such other terms and conditions*
687 *as the agreement between them may specify, transfer its account funds to another trustee qualified under*
688 *the provisions of this chapter. The trustee may, upon notification in writing to the seller, and upon such*
689 *other terms and conditions as the agreement between them may specify, transfer the trust funds to*
690 *another trustee qualified under the provisions of this chapter. No seller's account funds or trustee's trust*
691 *funds may be transferred to another trustee unless the seller provides written notice at least five days*
692 *prior to such transfer to the Board.*

693 *§ 54.1-2338. Use of trustee's name in advertisements.*

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

696 *§ 54.1-2339. Construction and development of mausoleums and garden crypts.*

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

703 *§ 54.1-2340. Waiver of chapter void.*

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

705 *§ 54.1-2341. Exemption from levy, garnishment and distress.*

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

708 *§*

709 *54.1-2342. Penalties.*

710 *It shall be unlawful for any person to violate any of the provisions of this chapter. Any such*
711 *violation shall be deemed a Class 1 misdemeanor, and any person convicted of such violation shall be*
712 *punished in accordance with the provisions of § 18.2-11. However, any violation of or failure to comply*
713 *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*
714 *any person convicted of such violation shall be punished in accordance with the provisions of § 18.2-10.*

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

717 **3. That the provisions of this act shall become effective on July 1, 2000, except that the**
718 **amendments to §§ 2.1-1.6 and 9-6.25:2 and § 54.1-2313 shall become effective on July 1, 1998.**

719 **4. That the Cemetery Board shall adopt final regulations in accordance with Chapter 23.1**
720 **(§ 54.1-2310 et seq.) of Title 54.1 on or before July 1, 2000.**

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

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

729 **7. That the provisions of this act may result in a net increase in periods of imprisonment in state**
730 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
731 **is \$0.**