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HOUSE BILL NO. 618

Offered January 20, 2000

A BILL to amend and reenact §§ 54.1-2310, 54.1-2319, 54.1-2324 and 54.1-2333 of the Code of Virginia, relating to the Cemetery Board.

Patrons—Ware, Cantor, Cox, Ingram, Wardrup and Woodrum; Senators: Hawkins, Lambert, Rerras and Schrock

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2310, 54.1-2319, 54.1-2324 and 54.1-2333 of the Code of Virginia are amended and reenacted as follows:

§ 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; or (iii) maintaining a facility used for the interment or disposal of the remains and required to maintain perpetual care or preneed trust funds in accordance with this chapter. 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.

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

67 *"Retail sales price" means the standard, nondiscounted price as listed on the general price list*
68 *required by § 54.1-2327.*

69 "Seller" means the cemetery company.

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

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

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

75 § 54.1-2319. Deposit in perpetual care trust fund required upon sale of graves, etc.

76 Each cemetery company shall deposit a minimum of ten percent of the receipts from the sale of
77 graves and above-ground crypts and niches, excluding below-ground burial vaults, in cash in the
78 perpetual care trust fund within thirty days after the close of the month in which such receipts are paid
79 to it. If the purchaser's payment is made on an installment or deferred payment basis, the cemetery
80 company shall have the option of paying ten percent of the amount of principal in each payment
81 received into the perpetual care trust fund. *If the cemetery company provides a grave or an*
82 *above-ground crypt or niche without compensation, ten percent of the retail sales price shall be*
83 *deposited within thirty days after the close of the month in which the property is provided to the*
84 *consumer.*

85 § 54.1-2324. Financial report and written assurance required for perpetual care trust funds.

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

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

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

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

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

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

96 6. All expenditures from the perpetual care trust fund;

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

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

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

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

112 § 54.1-2333. Financial report and written assurance required for preneed trust accounts.

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

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

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

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

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

120 5. Forty percent of the total receipts required to be deposited in the preneed trust account;

121 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, *or employees of the cemetery company*, or relatives ~~thereof of~~ *the cemetery company's employees*, 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.).