

10104120D

HOUSE BILL NO. 1333

Offered January 22, 2010

A *BILL to amend and reenact §§ 38.2-1809, 38.2-3100.3, and 54.1-2820 of the Code of Virginia, relating to the sale of preneed funeral contracts to be funded by the proceeds of a life insurance policy.*

Patron—Morgan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1809, 38.2-3100.3, and 54.1-2820 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1809. Power of Commission to investigate affairs of persons engaged in insurance business; penalties for refusal to permit investigation.

A. The Commission shall have power to examine and investigate the business affairs of any person engaged or alleged to be engaged in the business of insurance in ~~this~~ *the* Commonwealth, including all agents, to determine whether the person has engaged or is engaging in any violation of this title. *The Commission shall have the power to examine and investigate the business affairs of any person engaged in the sale of preneed funeral contracts that are to be funded by the proceeds of a life insurance policy, in order to ensure compliance by such person with the requirements of §§ 38.2-3100.3 and 54.1-2820, including any regulations adopted by the Board of Funeral Directors and Embalmers regarding the sale of preneed funeral contracts that are to be funded by the proceeds of a life insurance policy.* The Commission shall have the right to examine all records relating to the writing or alleged writing of insurance by any such person in this Commonwealth to determine whether the person is now or has been violating any of the provisions of this title. Any licensee under this title, or any person purporting to be a licensee under this title, or any person whose actions have led any person to believe that he is a licensee under this title, who refuses to permit the Commission or any of its employees or agents, including employees of the Bureau of Insurance, to make an examination or who fails or refuses to comply with the provisions of this section may, after notice and an opportunity to be heard, be subject to any of the penalties relating to licensees under this title, as provided in this title, including the denial, suspension or revocation of his license.

B. Except as otherwise provided in this title, every licensee shall retain all of his records relative to insurance transactions for the three previous calendar years except that records of premium quotations which are not accepted by the insured or prospective insured need not be kept. These records shall be made available promptly upon request for examination by the Commission or its employees without notice during normal business hours.

§ 38.2-3100.3. Requirements of life insurance or annuity contracts used to fund preneed funeral contracts.

A. For purposes of this section, ~~"preneed:~~

"Life insurance or annuity contracts used to fund preneed funeral contracts" includes any life insurance policy or annuity contract that is marketed or sold in the Commonwealth through the use of application or marketing materials that include information regarding costs associated with a funeral, including a casket or vault, in a manner that implies a connection between the amount of coverage and the cost of a funeral.

"Preneed funeral contract" means any agreement where payment is made by the insured prior to the receipt of services or supplies contracted for, which evidences arrangements prior to death for (i) the providing of funeral services or (ii) the sale of funeral supplies.

B. Each individual and group life insurance policy issued or issued for delivery in Virginia, each individual and group annuity contract issued or issued for delivery in Virginia, and each certificate issued in connection with a group life insurance policy or group annuity contract issued or issued for delivery in Virginia shall include a provision specifying the means by which face amount adjustments will be made and benefits payable upon death will be adjusted, according to the provisions of subsection C of § 54.1-2820, when such a policy or contract will be used to fund a preneed funeral contract.

C. Each insurer proposing to issue individual or group life insurance policies or individual or group annuity contracts in Virginia for purposes of funding preneed funeral contracts shall clearly disclose the intended purpose and market for such policies and contracts when submitting the forms with the Commission for approval, in accordance with § 38.2-316.

D. *No person issuing or issuing for delivery in Virginia an individual or group life insurance policy,*

INTRODUCED

HB1333

59 *individual or group annuity contract, or certificate issued in connection with a group life insurance*
60 *policy or group annuity contract that will be used to fund a preneed funeral contract shall engage in*
61 *any conduct prohibited by Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1 or any regulations adopted by*
62 *the Board of Funeral Directors and Embalmers pursuant thereto. Without limiting the foregoing, an*
63 *insurer proposing to issue individual or group life insurance policies or annuity contracts in Virginia*
64 *for purposes of funding preneed funeral contracts shall not use or employ a person to entice another to*
65 *purchase a product or to direct the course of action and choice of the buyer in a preneed funeral*
66 *contract sale.*

67 § 54.1-2820. Requirements of preneed funeral contracts.

68 A. It shall be unlawful for any person residing or doing business within ~~this~~ the Commonwealth, to
69 make, either directly or indirectly by any means, a preneed funeral contract unless the contract:

70 1. Is made on forms prescribed by the Board and is written in clear, understandable language and
71 printed in easy-to-read type, size and style;

72 2. Identifies the seller, seller's license number and contract buyer and the person for whom the
73 contract is purchased if other than the contract buyer;

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

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

76 5. States if funds are required to be trusted pursuant to § 54.1-2822, the amount to be trusted, the
77 name of the trustee, the disposition of the interest, the fees, expenses and taxes which may be deducted
78 from the interest and a statement of the buyer's responsibility for taxes owed on the interest;

79 6. Contains the name, address and telephone number of the Board and lists the Board as the
80 regulatory agency which handles consumer complaints;

81 7. Provides that any person who makes payment under the contract may terminate the agreement at
82 any time prior to the furnishing of the services or supplies contracted for except as provided pursuant to
83 subsection B; if the purchaser terminates the contract within 30 days of execution, the purchaser shall be
84 refunded all consideration paid or delivered, together with any interest or income accrued thereon; if the
85 purchaser terminates the contract after 30 days, the purchaser shall be refunded any amounts required to
86 be deposited under § 54.1-2822, together with any interest or income accrued thereon;

87 8. Provides that if the particular supplies and services specified in the contract are unavailable at the
88 time of delivery, the seller shall be required to furnish supplies and services similar in style and at least
89 equal in quality of material and workmanship and the representative of the deceased shall have the right
90 to choose the supplies or services to be substituted;

91 9. Discloses any penalties or restrictions, including but not limited to geographic restrictions or the
92 inability of the provider to perform, on the delivery of merchandise, services or prearrangement
93 guarantee; and

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

95 If the contract seller will not be furnishing the supplies and services to the purchaser, the contract
96 seller must attach to the preneed funeral contract a copy of the seller's agreement with the provider.

97 B. Subject to the requirements of § 54.1-2822, a preneed funeral contract may provide for an
98 irrevocable trust or an amount in an irrevocable trust that is specifically identified as available
99 exclusively for funeral or burial expenses, where:

100 1. A person irrevocably contracts for funeral goods and services, such person funds the contract by
101 prepaying for the goods and services, and the funeral provider residing or doing business within the
102 Commonwealth subsequently places the funds in a trust; or

103 2. A person establishes an irrevocable trust naming the funeral provider as the beneficiary; however,
104 such person shall have the right to change the beneficiary to another funeral provider pursuant to
105 § 54.1-2822.

106 C. If a life insurance or annuity contract is used to fund the preneed funeral contract, the life
107 insurance or annuity contract shall provide either that the face value thereof shall be adjusted annually
108 by a factor equal to the annualized Consumer Price Index as published by the Bureau of Labor Statistics
109 of the United States Department of Labor, or a benefit payable at death under such contract that will
110 equal or exceed the sum of all premiums paid for such contract plus interest or dividends, which for the
111 first 15 years shall be compounded annually at a rate of at least five percent. In any event, interest or
112 dividends shall continue to be paid after 15 years. *In addition to the authority of the Board to regulate*
113 *the sale of preneed funeral contracts pursuant to this chapter, the State Corporation Commission shall*
114 *be authorized to regulate the sale of any individual or group life insurance policy, individual or group*
115 *annuity contract, or certificate issued in connection with a group life insurance policy or annuity*
116 *contract that will be used to fund a preneed funeral contract, as provided in §§ 38.2-1809 and*
117 *38.2-3100.3. In addition, the following must also be disclosed as prescribed by the Board:*

118 1. The fact that a life insurance policy or annuity contract is involved or being used to fund the
119 preneed contract;

120 2. The nature of the relationship among the soliciting agent, the provider of the supplies or services,

121 the prearranger and the insurer;

122 3. The relationship of the life insurance policy or annuity contract to the funding of the preneed
123 contract and the nature and existence of any guarantees relating to the preneed contract; and

124 4. The impact on the preneed contract of (i) any changes in the life insurance policy or annuity
125 contract including but not limited to changes in the assignment, beneficiary designation or use of the
126 proceeds, (ii) any penalties to be incurred by the policyholder as a result of failure to make premium
127 payments, (iii) any penalties to be incurred or moneys to be received as a result of cancellation or
128 surrender of the life insurance policy or annuity contract, and (iv) all relevant information concerning
129 what occurs and whether any entitlements or obligations arise if there is a difference between the
130 proceeds of the life insurance policy or annuity contract and the amount actually needed to fund the
131 preneed contract.

132 D. When the consideration consists in whole or in part of any real estate, the contract shall be
133 recorded as an attachment to the deed whereby such real estate is conveyed, and the deed shall be
134 recorded in the clerk's office of the circuit court of the city or county in which the real estate being
135 conveyed is located.

136 E. If any funeral supplies are sold and delivered prior to the death of the subject for whom they are
137 provided, and the seller or any legal entity in which he or a member of his family has an interest
138 thereafter stores these supplies, the risk of loss or damage shall be upon the seller during such period of
139 storage.

140 **2. That the State Corporation Commission shall conduct a review of its existing regulations**
141 **regarding the marketing of life insurance policies and, if appropriate, amend such regulations to**
142 **address the failure, if any is found to exist, of existing regulations to ensure that life insurance**
143 **policies associated with the costs of funerals are not marketed through the use of deceptive or**
144 **misleading practices.**