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SENATE BILL NO. 1147

Offered January 9, 2013

Prefiled January 9, 2013

A BILL to amend and reenact § 54.1-2312.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2312.2, relating to Cemetery Board; resale of interment rights by churches or religious organizations.

Patrons—Alexander; Delegate: Spruill

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2312.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-2312.2 as follows:

§ 54.1-2312.1. Resale of interment right; conditions for resale transaction; contents of transfer form; approval by cemetery company.

A. No person shall participate as a seller in more than four consummated resale transactions in any calendar year except as authorized by this section *or* § 54.1-2312.2.

B. Unless exempted by subsection A, no resale transaction shall be valid unless:

1. The resale is at-need;

2. The seller is (i) a funeral director, embalmer, establishment, or service licensed pursuant to Chapter 28 (§ 54.1-2800 et seq.) or (ii) a cemetery company licensed pursuant to this chapter;

3. No more than one interment right is transferred by the transaction;

4. Any merchandise, personal property, or service purchased in the original pre-need transaction is transferred with the interment right;

5. The resale is approved, pursuant to subsection C, by the cemetery company that owns the cemetery in which the interment right exists; and

6. The seller provides written notice to the buyer that the resale transaction is contingent upon (i) approval by the cemetery company that owns the cemetery in which the interment right exists, (ii) payment of the cemetery transfer fee, and (iii) compliance with the provisions of this section.

C. A cemetery company shall approve a resale transaction upon receipt of a valid transfer form that has been acknowledged by the buyer as required by subsection D 6, a reasonable cemetery transfer fee to be set by the cemetery company, and a copy of the bill of sale or other document confirming the resale, provided such approval is consistent with the current rules and regulations of the cemetery company.

D. The transfer form shall be provided by the seller to the buyer at the time of the resale and shall be valid only when signed by the seller, buyer, and cemetery company. At a minimum, the transfer form shall contain the following information:

1. The name and address of each seller and buyer;

2. The valid license number of each seller under Chapter 28 (§ 54.1-2800 et seq.) or under this chapter;

3. A complete description of the location of the property for which the interment right is being sold;

4. A clear disclosure of the cemetery transfer fee;

5. The name, address, and telephone number of the Board and a statement that the Board is the regulatory agency that handles consumer complaints; and

6. An acknowledgement that the buyer has read, understands, and agrees to abide by the current rules and regulations of the cemetery and its current general price list, as applicable.

The information required to be included in the transfer form by subdivisions 1 through 5 shall be provided by the seller.

E. In the event a resale is not approved by the cemetery company under this section, the resale transaction shall be void and within 30 days the seller shall refund to the buyer any and all moneys paid pursuant to the transaction and the buyer shall return to the seller any merchandise or personal property that was transferred to the buyer by the seller as a part of the resale.

§ 54.1-2312.2. Resale of interment right by certain churches and religious organizations.

A. In addition to the provisions of § 54.1-2312.1, a church or religious organization may proceed with a resale transaction of an interment right if (i) the church or religious organization is exempt from income tax under Title 58.1 or from taxation pursuant to § 501(c)(3) of the Internal Revenue Code and (ii) the buyer is a member of the church congregation or religious organization or an immediate family member of such member.

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59 *B. Resale transactions under this subsection shall also comply with the following:*

60 1. Any merchandise, personal property, or service purchased in the original preneed transaction is
61 transferred with the interment right;

62 2. The resale is approved, pursuant to subdivision 4, by the cemetery company that owns the
63 cemetery in which the interment right exists;

64 3. The seller provides written notice to the buyer that the resale transaction is contingent upon (i)
65 approval by the cemetery company that owns the cemetery in which the interment right exists, (ii)
66 payment of the cemetery transfer fee, and (iii) compliance with the provisions of this section;

67 4. A cemetery company shall approve a resale transaction upon receipt of a valid transfer form that
68 has been acknowledged by the buyer as required by subdivision 5 e, a reasonable cemetery transfer fee
69 to be set by the cemetery company, and a copy of the bill of sale or other document confirming the
70 resale, provided such approval is consistent with the current rules and regulations of the cemetery
71 company; and

72 5. The transfer form shall be provided by the seller to the buyer at the time of the resale and shall
73 be valid only when signed by the seller, buyer, and cemetery company. A cemetery company may rely
74 in good faith on the representations and documentation submitted by the buyer and seller. At a
75 minimum, the transfer form shall contain the following information:

76 a. The name and address of each seller and buyer;

77 b. A complete description of the location of the property for which the interment right is being sold;

78 c. A clear disclosure of the cemetery transfer fee;

79 d. The name, address, and telephone number of the Board and a statement that the Board is the
80 regulatory agency that handles consumer complaints; and

81 e. An acknowledgment that the buyer has read, understands, and agrees to abide by the current rules
82 and regulations of the cemetery and its current general price list, as applicable.

83 The information required to be included in the transfer for by subdivisions a through d shall be
84 provided by the seller.

85 C. In the event a resale is not approved by the cemetery company under this section, the resale
86 transaction shall be void and within 30 days. The seller shall refund to the buyer all money paid
87 pursuant to the transaction and the buyer shall return to the seller any merchandise or personal
88 property transferred to the buyer by the seller as a part of the resale.

89 D. Nothing in this section shall prevent a church or religious organization exempt from income tax
90 under Title 58.1 or from taxation pursuant to § 501(c)(3) of the Internal Revenue Code from reselling
91 any interment right back to the cemetery company. Subsequent sale of such interment rights by the
92 cemetery company shall not be considered a resale transaction.

93 E. Nothing in this section shall prevent a cemetery company from reselling an interment right of a
94 natural person.