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HOUSE BILL NO. 247

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws)

(Patron Prior to Substitute—Delegate Shuler)

House Amendments in [] — February 13, 1996

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 57 an article numbered 8, consisting of sections numbered 57-39.20 through 57-39.25, relating to pet cemeteries; penalties.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 57 an article numbered 8, consisting of sections numbered 57-39.20 through 57.39-25, as follows:

Article 8.

Pet Cemeteries.

§ 57-39.20. Definitions.

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

"Burial right" means the right of interment.

"Interment" means the disposition of pet remains by earth burial, entombment in a mausoleum, or inurnment in a columbarium.

"Operator" means any person engaged in the business of selling or offering for sale any burial or interment right in a pet cemetery and representing to the public that such cemetery, single burial or interment right therein will be perpetually cared for.

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

"Pet" means an animal that has been adapted or tamed to live in intimate association with or for the pleasure of people and includes but is not limited to dogs, cats, birds, rabbits, and hamsters.

"Pet cemetery" means land, together with any structures, facilities, or buildings appurtenant thereto provided to members of the public for use or reservation for use for the individual interment, above or below ground, of pet remains. "Pet cemetery" does not include land used exclusively for landfilling or the communal burial of pets, but does include [~~a pet cemetery~~ an area] where a portion of the land is used for the communal burial of pets.

§ 57-39.21. Duty to file declaration of land use restriction.

The owner of any land used or to be used as a pet cemetery shall file in the office of the clerk of the circuit court for the locality where the land is located a declaration restricting the use of the land to use as a pet cemetery. The owner shall execute the declaration in the same manner and with the same effect as a conveyance of an interest in land. The clerk shall record the declaration in the deed book and index it in the name of the owner. The restriction established in such a recorded declaration may be removed only as provided in § 57-39.24. Unless a restriction is so removed, no person shall use land restricted pursuant to this section for any purpose other than as a pet cemetery.

§ 57-39.22. Certain representations unlawful; perpetual care trust fund required.

A. Effective July 1, 1996, it shall be unlawful to sell or offer for sale in the Commonwealth any burial right in a pet cemetery, and in connection therewith to represent to the public, in any manner, express or implied, that the entire pet cemetery or any burial or interment right therein will be perpetually cared for, unless adequate provision has been made for the perpetual care of the cemetery and all burials and interment rights therein as to which such representation has been made.

B. Each pet cemetery operator shall establish in a bank, savings and loan or other federally insured investment banking institution doing business in the Commonwealth an irrevocable trust fund in the amount of at least \$12,000 before the first lot, parcel of land, burial or interment right is sold. This fund shall be designated the perpetual care fund.

Once the operator has deposited in the perpetual care fund a total of \$24,000, the operator may withdraw the original deposit of \$12,000 from the fund.

C. Any person operating any pet cemetery after July 1, 1996, shall place into a perpetual care fund required by this section a maintenance fee of not less than fifty dollars, which shall be charged as part of the purchase price for the sale of any burial right. This fee shall be placed in the perpetual care fund no later than thirty days following the month in which the entire gross sales proceeds from the sale of the burial right are received.

D. The moneys of a perpetual care fund shall be invested as provided by §§ 26-40 through 26-45.1, except as provided otherwise herein.

E. The income from the perpetual care fund shall be used only for the maintenance, supervision, improvement, and preservation of the grounds, lots, markers, memorials, buildings, equipment, statuary, and other real and personal property of the pet cemetery and for the payment of real property taxes.

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60 Annual reports of all the assets and investments of the perpetual care fund shall be prepared and
61 maintained by the operator, and shall be available for inspection at reasonable times to any owner of a
62 burial right in the pet cemetery. Such records shall be subject to examination by the commissioner of
63 revenue.

64 § 57-39.23. Change of address required from owner of burial right.

65 It shall be the duty of a purchaser of a burial right in a pet cemetery to notify the operator of a
66 change in address.

67 § 57-39.24. Removal of restriction on land.

68 A. After a declaration has been filed pursuant to § 57-39.21, the restriction may be removed in
69 accordance with this section by order of the circuit court for the locality where the land is located in a
70 proceeding brought by the pet cemetery owner or his heirs or assigns.

71 B. The circuit court may remove the restriction on the land upon proof satisfactory to the court that
72 either of the following has occurred:

73 1. No interments have been made in the land from which the restriction is sought to be removed; or

74 2. If, after notice sent by registered mail, return receipt requested, to the last known address of a
75 person who owns a burial right in a pet cemetery, the owner of the pet cemetery has received from such
76 persons written authorization, acknowledged before a notary public, to remove the restriction from the
77 land. If no response is received by the cemetery owner after thirty days from the date of the notice,
78 consent to remove the restriction from the land shall be presumed. Any person granting this
79 authorization who wishes to have a pet that is already interred in the pet cemetery removed and
80 reinterred elsewhere shall so state on the authorization, and the pet cemetery owner shall provide proof
81 of this removal and reinterment. A pet cemetery owner need not obtain the authorization described in
82 this subdivision from a person who has purchased a burial right in the pet cemetery but who has not
83 yet used that right for the interment of a pet, if the owner refunds to the purchaser or his heirs or
84 assigns all moneys taken for the burial right, plus interest accrued in six-month increments, at a rate
85 equal to the Federal Reserve Board discount rate as of January 1 of each year, beginning January 1,
86 1996.

87 C. A holder of a lien on the restricted land may object to the removal of the restriction, and the
88 circuit court shall consider any such objection before issuing an order to remove the restriction.

89 D. An order issued by the circuit court removing a restriction pursuant to this section shall be filed
90 in the office of the clerk of the circuit court for the locality where the land is located. The clerk shall
91 record the order in the deed book.

92 § 57-39.25. Violation a misdemeanor.

93 It shall be unlawful for any person to violate the provisions of § 57-39.22 of this article. Any such
94 violation shall be deemed a Class 3 misdemeanor, and any person convicted of such violation shall be
95 punished in accordance with the provisions of § 18.2-11.