

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

The Business Practices of For-Profit Cemeteries

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 57

**COMMONWEALTH OF VIRGINIA
RICHMOND
1989**

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Report of the Joint Subcommittee Studying
The Business Practices of For-Profit Cemeteries
to
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1989

To: Honorable Gerald L. Baliles, Governor of Virginia
and
The General Assembly of Virginia

INTRODUCTION

The following resolution, House Joint Resolution No. 73, agreed to during the 1988 General Assembly Session, established a joint subcommittee to study the business practices of for-profit cemeteries, including preneed contracts. The subcommittee was asked to consider whether for-profit cemeteries should be regulated to a greater extent than they are currently and to review the use of preneed contracts by for-profit cemeteries.

GENERAL ASSEMBLY OF VIRGINIA -- 1988 SESSION

HOUSE JOINT RESOLUTION NO. 73

Requesting the establishment of a joint subcommittee to study the business practices of for-profit cemeteries.

Agreed to by the House of Delegates, March 11, 1988
Agreed to by the Senate, March 9, 1988

WHEREAS, cemeteries are places that provide a setting of quiet solitude for a person visiting the gravesite of a loved one; and

WHEREAS, for the most part, cemetery lot owners and families of the deceased are satisfied with the care and maintenance of their lots; and

WHEREAS, some of the business practices of the for-profit cemeteries pertaining to perpetual care fees should be scrutinized due to complaints from families and other consumers regarding unitemized bills; and

WHEREAS, a study should be undertaken to consider whether for-profit cemeteries should be regulated further; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the business practices of for-profit cemeteries, including preneed contracts. The joint subcommittee shall be composed in the following manner: three members from the House of Delegates to be appointed by the Speaker of the House of Delegates; two members of the Senate to be appointed by the Senate Committee on Privileges and Elections; one representative of the Virginia Cemetery Industry to be appointed by the Governor; and one citizen member to be appointed by the Governor.

The joint subcommittee shall complete its work and submit any recommendations to the 1989 Session of the General Assembly.

The indirect costs of this study are estimated to be \$10,650; the direct costs of this study shall not exceed \$5,040.

BACKGROUND

The subcommittee reviewed the current system of regulation of for-profit cemeteries. Under existing Virginia law, there is no single regulating body governing the operation of for-profit cemeteries. Commissioners of Accounts are given the responsibility of enforcing requirements applicable to perpetual care and preneed trust accounts. There is no central receptacle for handling or monitoring consumer complaints related to the cemetery industry. There are no training or licensure requirements for cemetery owners or others who provide cemetery related goods and services. There are no requirements that consumers receive an itemized list of perpetual care fees or charges for cemetery related goods and services such as the Federal Trade Commission requires for funeral goods and services. Chapter 3 of Title 57 contains the following provisions applicable to practices of for-profit cemeteries.

Article 3.1 of Chapter 3 provides for endowment trusts for perpetual care of cemeteries. Is it unlawful to sell or offer to sell a cemetery lot and represent that it will be perpetually cared for unless adequate provision has been made for perpetual care. Any person who develops a cemetery must deposit a minimum of \$25,000 in an irrevocable trust fund in a bank or savings and loan association in Virginia before any sale is made. Thereafter, ten percent of the receipts from the sale of lots, interment rights, crypts and niches must also be deposited in the account. If the trustee is not a qualified bank or savings and loan association, the trustee must furnish a fidelity bond of fifty percent of the value of the principal of the trust fund. The bond is deposited with the commissioner of accounts of the county or city where the owner, operator or developer of the cemetery has his principal place of business. The trustee is required to furnish a report to the appropriate commissioner of accounts annually. Cemetery owners are also required to provide to the commissioner of accounts annual reports of all transactions subject to the perpetual care trusting requirement.

Article 6 of Chapter 3 governs preneed burial contracts. The article provides protection for purchasers of burial property or services when delivery of the property or services may be delayed 120 days. The article requires that 40% of the retail purchase price be placed in a special preneed trust account. The sale of graves, right of use, sepulcher or interment rights is not covered by the article. Sellers must keep detailed accounts of all contracts and transactions subject to the preneed trusting requirement and must submit reports annually to the commissioner of accounts in the county or city where the cemetery is located.

A major difficulty in evaluating effectiveness of current cemetery regulations is the fact that there is no central receptacle for complaints. Consumers direct complaints to a variety of sources, including consumer offices, the Board of Funeral Directors and Embalmers, Commonwealth's attorneys, police departments, zoning and health boards, the Virginia Cemetery Association and the Cemetery Consumer Service Council. A number of these organizations refer complaints to each other, while some feel they are the proper receptacle for complaints. Registered complaints include alleged misleading advertising practices, lack of maintenance and vandalism of cemetery property, substitution of merchandise and hidden and increased fees and charges. At the time of this study, there were also two criminal cases pending against cemetery owners in Southwest Virginia for failing to properly trust funds.

ACTIVITIES AND FINDINGS

The joint subcommittee held six meetings, including a public hearing and a tour of a local cemetery. The subcommittee heard from numerous representatives of the cemetery industry. The Virginia Cemetery Association, a voluntary association representing sixty-six of the eighty-six for-profit cemeteries in Virginia, actively participated in the subcommittee's proceedings. The subcommittee studied the advertising and pricing practices of for-profit cemeteries and the operation of both perpetual care and preneed trust regulations. In addition, the subcommittee members reviewed cemetery laws in other states. The subcommittee noted that there are significant differences between the requirements for cemetery goods and services and funeral goods and services and determined that, because of the diversity between the two industries, parallel regulations were not appropriate.

During its proceedings, the subcommittee heard from individual consumers and consumer groups, including the American Association of Retired Persons. The subcommittee determined that providing a receptacle for handling and monitoring consumer complaints was of primary importance. In addition, adequate disclosure provisions should apply to preneed purchases.

The subcommittee determined that the current system of enforcing cemetery regulations through commissioners of accounts is not effective. The subcommittee distributed a questionnaire to all commissioners of accounts in the Commonwealth. Of the forty-five commissioners responding to the survey, approximately one-quarter felt the system was not effective, one half felt the system was effective and one quarter had no opinion. According to the results of the survey and statements of the commissioners of accounts who testified before the subcommittee, there is little consistency in how commissioners handle cemetery companies. A major problem is that commissioners do not know, and cannot easily determine, who is required to report to them. The handbook for commissioners does not mention duties related to cemeteries and some commissioners did not know that cemeteries were required to file reports with them.

RECOMMENDATIONS

The subcommittee recommends licensure of cemetery owners in order to set standards for the industry, and provide a mechanism to assure fiduciary responsibility and a means of enforcing cemetery regulations. The subcommittee does not advocate training or educational requirements for licensure and recommends that existing cemeteries be granted a license after meeting minimum qualifications.

The subcommittee recommends that the Department of Commerce serve as the regulating body for cemetery companies. The Department will serve as a central facility for handling consumer complaints related to the industry and monitor the perpetual care and preneed trust accounts. These trusts should be audited annually by an independent certified accountant. Trusting requirements for perpetual care funds and preneed purchases were determined to be satisfactory; however, the subcommittee recommends that individuals who serve as trustees of perpetual care funds be approved by the Department of Commerce.

It was determined adequate protections should be afforded consumers in the preneed purchase of cemetery property and services. Comprehensive disclosures should accompany preneed burial contracts. The subcommittee voted to consolidate existing and proposed laws applicable to for-profit cemeteries and preneed burial contracts and place such consolidated laws in Chapter 9.1 of Title 54.1. The proposed legislation contains housekeeping and editorial changes, as well as substantive changes. Each substantive change is summarized on the following page.

§ 54.1-927.2

Provides for the establishment of a Cemetery Advisory Board which will advise the Director of the Department of Commerce on matters relating to the regulation of for-profit cemeteries.

§ 54.1-927.4

Requires for-profit cemetery companies to appoint a compliance agent and be licensed by the Department of Commerce.

§ 54.1-927.9

If the trustee of a perpetual care trust fund is not a qualified bank, savings and loan or banking institution, the trustee must be approved by the Director of the Department of Commerce.

§ 54.1-927.14

Provides that cemetery companies' records related to perpetual care trust requirement are subject to examination by the Director of the Department of Commerce, instead of a commissioner of accounts.

§ 54.1-927.15

Requires that cemetery companies have an independent certified accountant audit perpetual care accounts and trust funds and file a report with the Department of Commerce.

§ 54.1-927.17 -- Sets forth numerous consumer protection provisions applicable to preneed burial contracts, including detailed disclosure requirements and procedures for substitution if merchandise purchased preneed is not available at time of need.

§ 54.1-927.21

Provides that cemetery companies' records related to preneed burial accounts are subject to examination by the Director of the Department of Commerce, instead of a commissioner of accounts.

§ 54.1-927.22

Requires that cemetery companies have preneed burial accounts and trust funds audited by an independent certified accountant and file a report with the Department of Commerce annually.

Page 31, line 13:

Repeals Article 3.1 of Chapter 3 of Title 57 and Article 6 of Chapter 3 of Title 57. The majority of these provisions have been transferred to Title 54.1.

CONCLUSION

The Joint Subcommittee Studying the Business Practices of For-Profit Cemeteries recommends that the 1989 General Assembly adopt the proposed legislation.

Respectfully submitted,

Delegate Leslie L. Byrne, Chairman

Senator Robert C. Scott, Vice Chairman

Delegate Alan E. Mayer

Delegate William T. Wilson

Senator William A. Truban*
(Please see Additional Statements)

Susan S. Modlin Hart

Philip N. Daly*
(Please see Additional Statements)

ADDITIONAL STATEMENTS

I do not recommend legislation proposed by the Joint Subcommittee Studying the Business Practices of For-Profit Cemeteries because, while a few problems exist, I do not believe the end justifies the means. The cost far exceeds the problems non-regulation has seen. I believe this industry can regulate itself and that another bureaucracy is unnecessary.

Respectfully submitted,

Senator William A. Truban

As a member of the Joint Subcommittee Studying the Business Practices of For-Profit Cemeteries and as owner of two cemeteries with thirty years' experience in the industry, I wish to share my thoughts on HJR 73. I submit involving the Department of Commerce, a compliance agent, licensing of each cemetery, a Cemetery Advisory Board, etc., proposes too much unnecessary regulation with a costly budget, and will end up costing the public. I feel the independent CPA audit report of the perpetual care and merchandise trust deposits is the only new legislation needed to protect the public. (See Appendix B for additional comments.)

Respectfully submitted,

Philip N. Daly
Joint Subcommittee Member

APPENDICES

1 D 1/13/89 Elkin C 1/15/89 smw

APPENDIX A

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact §§ 2.1-1.6, 2.1-20.4, 9-6.25:1 and 11-24
4 of the Code of Virginia and to amend the Code of Virginia by
5 adding in Title 54.1 a chapter numbered 9.1, consisting of
6 sections numbered 54.1-927.1 through 54.1-927.29 and to repeal
7 Article 3.1 of Chapter 3 of Title 57 and Article 6 of Chapter 3
8 of Title 57, consisting respectively of §§ 57-35.1 through
9 57-35.10 and §§ 57-39.8 through 57-39.18 of the Code of Virginia,
10 relating to the regulation of cemeteries.

11

12 Be it enacted by the General Assembly of Virginia:

13 1. That §§ 2.1-1.6, 2.1-20.4, 9-6.25:1 and 11-24 of the Code of
14 Virginia are amended and reenacted and that the Code of Virginia is
15 amended by adding in Title 54.1 a chapter numbered 9.1, consisting of
16 sections numbered 54.1-927.1 through 54.1-927.29, as follows:

17 § 2.1-1.6. State boards.--A. There shall be, in addition to such
18 others as may be established by law, the following permanent collegial
19 bodies affiliated with a state agency within the executive branch:

20 Accountancy, Board for

21 Aging, Advisory Board on the

22 Agriculture and Consumer Services, Board of

23 Air Pollution, State Advisory Board on

24 Alcoholic Beverage Control Board

25 Apple Board, Virginia State

26 Appomattox State Scenic River Advisory Board

27 Architects, Professional Engineers, Land Surveyors and Landscape

28 Architects, Board for

1 Art and Architectural Review Board
2 Athletic Board
3 Auctioneers Board
4 Audiology and Speech Pathology, Board of
5 Aviation Board, Virginia
6 Barbers, Board for
7 Boating Advisory Board
8 Branch Pilots, Board for
9 Bright Flue-Cured Tobacco Board, Virginia
10 Building Code Technical Review Board, State
11 Catoctin Creek State Scenic River Advisory Board
12 Cattle Industry Board, Virginia
13 Cave Board
14 Cemetery Advisory Board
15 Certified Seed Board, State
16 Chesapeake Bay Local Assistance Board
17 Child Abuse and Neglect, Advisory Board on
18 Children, Advisory Board for the Department for
19 Chippokes Plantation Farm Foundation, Board of Trustees
20 Coal Research and Development Advisory Board, Virginia
21 Coal Surface Mining Reclamation Fund Advisory Board
22 Commerce, Board of
23 Commercial Driver Training Schools, Board of
24 Conservation and Development of Public Beaches, Board on
25 Conservation and Historic Resources, Board of
26 Continuing Education Advisory Board
27 Contractors, Board for
28 Corn Board, Virginia

1 Correctional Education, Board of
2 Corrections, State Board of
3 Cosmetology, Board for
4 Criminal Justice Services Board
5 Dark-Fired Tobacco Board, Virginia
6 Deaf and Hard-of-Hearing, Advisory Board for the Department for
7 the
8 Dentistry, Board of
9 Education, State Board of
10 Education for Health Professions and Occupations, Board on
11 Egg Board, Virginia
12 Emergency Medical Services Advisory Board
13 Employment Agency Advisory Board
14 Fire Services Board, Virginia
15 Forestry, Board of
16 Funeral Directors and Embalmers, Board of
17 Game and Inland Fisheries, Board of
18 Geology, Board for
19 Goose Creek Scenic River Advisory Board
20 Health, State Board of
21 Health Professions, Board of
22 Hearing Aid Specialists, Board for
23 Hemophilia Advisory Board
24 Historic Landmarks Board, Virginia
25 Housing and Community Development, Board of
26 Industrial Development Services Advisory Board
27 Insurance Advisory Board, State
28 Irish Potato Board, Virginia

1 Laboratory Services Advisory Board
2 Marine Products Board, Virginia
3 Medical Advisory Board, Department of Motor Vehicles
4 Medical Board of the Virginia Supplemental Retirement System
5 Medicare and Medicaid, Advisory Board on
6 Medicine, State Board of
7 Mental Health, Mental Retardation and Substance Abuse Services
8 Board, State
9 Migrant and Seasonal Farmworkers Board
10 Military Affairs, Board of
11 Mine Safety Board
12 Mines, Minerals and Energy, Board of Examiners in the Department
13 of
14 Minority Business Enterprise, Interdepartmental Board of the
15 Department of
16 Motor Vehicle Dealers' Advisory Board
17 Networking Users Advisory Board, State
18 Nottoway State Scenic River Advisory Board
19 Nursing, Board of
20 Nursing Home Administrators, Board of
21 Oil and Gas Conservation Board, Virginia
22 Opticians, Board for
23 Optometry, Board of
24 Outdoor Recreation Advisory Board
25 Peanut Board, Virginia
26 Perinatal Services Advisory Board, State
27 Personnel Advisory Board
28 Pesticide Advisory Board

1 Pharmacy, Board of
2 Physical Therapy to the Board of Medicine, Advisory Board on
3 Plant Pollination Advisory Board
4 Polygraph Examiners Advisory Board
5 Pork Industry Board, Virginia
6 Poultry Products Board, Virginia
7 Private College Advisory Board
8 Private Security Services Advisory Board
9 Professional Counselors, Board of
10 Professional Soil Scientists, Board for
11 Psychiatric Advisory Board
12 Psychology, Board of
13 Public Buildings Board, Virginia
14 Public Telecommunications Board, Virginia
15 Radiation Advisory Board
16 Real Estate Board
17 Reciprocity Board, Department of Motor Vehicles
18 Reforestation Board
19 Rehabilitative Services, Board of
20 Retirement System Review Board
21 Safety and Health Codes Board
22 Seed Potato Board, State
23 Sewage Handling and Disposal Appeal Review Board, State Health
24 Department
25 Shenandoah State Scenic River Advisory Board
26 Small Business Advisory Board
27 Social Services, Board of
28 Social Work, Board of

- 1 Soil and Water Conservation Board, Virginia
- 2 Soybean Board, Virginia
- 3 State Air Pollution Control Board
- 4 Substance Abuse Certification Board
- 5 Surface Mining Review, Board of
- 6 Sweet Potato Board, Virginia
- 7 Teacher Education Advisory Board
- 8 Tourism and Travel Services Advisory Board
- 9 Toxic Substances Advisory Board
- 10 Transportation Board, Commonwealth
- 11 Transportation Safety, Board of
- 12 Treasury Board, The, Department of the Treasury
- 13 Veterans' Affairs, Board on
- 14 Veterinary Medicine, Board of
- 15 Virginia Employment Commission, State Advisory Board for
- 16 Virginia Supplemental Retirement System, Board of Trustees
- 17 Virginia Waste Management Board
- 18 Visually Handicapped, Board for the
- 19 Voluntary Formulary Board, Virginia
- 20 Volunteerism, Advisory Board for the Department of
- 21 War Memorial Board, Virginia
- 22 Water Resources Research Center Statewide Advisory Board,
- 23 Virginia
- 24 Waterworks and Wastewater Works Operators, Board for
- 25 Well Review Board, Virginia.
- 26 B. Notwithstanding the definition for "board" as provided in §
- 27 2.1-1.2, the following entities shall be referred to as boards:
- 28 Compensation Board

1 State Board of Elections

2 State Water Control Board

3 Virginia Parole Board.

4 § 2.1-20.4. Bodies receiving compensation.--A. Notwithstanding
5 any other provision of law, the following commissions, boards, etc.,
6 shall be those which receive compensation from state funds pursuant to
7 § 2.1-20.3:

8 Accountancy, Board for

9 Agriculture and Consumer Services, Board of

10 Air Pollution Control Board, State

11 Airports Authority, Virginia

12 Apprenticeship Council

13 Architects, Professional Engineers, Land Surveyors and Landscape

14 Architects, Board for

15 Athletic Board

16 Auctioneers Board

17 Audiology and Speech Pathology, Board of

18 Aviation Board, Virginia

19 Barbers, Board for

20 Branch Pilots, Board for

21 Building Code Technical Review Board, State

22 Cemetery Advisory Board

23 Chesapeake Bay Local Assistance Board

24 College Building Authority

25 Commerce, Board of

26 Commercial Driver Training Schools, Board for

27 Commonwealth Transportation Board

28 Conservation and Historic Resources, Board of

1 Contractors, Board for
2 Correctional Education, Board of
3 Corrections, Board of
4 Cosmetology, Board for
5 Criminal Justice Services Board
6 Deaf and Hard-of-Hearing, Advisory Board for the
7 Dentistry, Board of
8 Education, State Board of
9 Education Loan Authority, Virginia - Board of Directors
10 Elections, State Board of
11 Environment, Council on the
12 Fire Services Board, Virginia
13 Funeral Directors and Embalmers, Board of
14 Game and Inland Fisheries, Board of
15 Geology, Board for
16 Health, State Board of
17 Health Coordinating Council, Statewide
18 Health Professions, Board on
19 Hearing Aid Specialists, Board for
20 Higher Education, State Council of
21 Housing and Community Development, Board of
22 Information Management, Council on
23 Librarians, Board for
24 Marine Resources Commission
25 Medical Assistance Services, Board of
26 Medical Complaint Investigation Committee
27 Medicine, Board of
28 Mental Health, Mental Retardation and Substance Abuse Services

1 Board, State
2 Milk Commission
3 Mines, Minerals and Energy, Board of Examiners in the Department
4 of
5 Nursing, Board of
6 Nursing Home Administrators, Board of
7 Oil and Gas Conservation Board, Virginia
8 Opticians, Board for
9 Optometry, Board of
10 Pharmacy, Board of
11 Physical Therapy, Advisory Board on
12 Port Authority, Board of Commissioners of the Virginia
13 Professional Counselors, Board of
14 Professional Soil Scientists, Board for
15 Psychology, Board of
16 Public School Authority, Virginia
17 Purchases and Supply Appeals Board
18 Real Estate Board
19 Rehabilitative Services, Board of
20 Safety and Health Codes Board
21 Seed Potato Board
22 Social Services, Board of
23 Social Work, Board of
24 State Health Department Sewage Handling and Disposal Appeal
25 Review Board
26 Substance Abuse Certification Board
27 Surface Mining Review, Board of
28 Treasury Board

1 Veterans' Affairs, Board on
2 Veterinary Medicine, Board of
3 Virginia Supplemental Retirement System, Board of Trustees
4 Virginia Waste Management Board
5 Visually Handicapped, Virginia Board for the
6 Water Control Board, State
7 Waterworks and Wastewater Works Operators, Board for
8 Well Review Board, Virginia

9 B. Individual members of boards, commissions, committees,
10 councils, and other similar bodies appointed at the state level and
11 receiving compensation for their services on January 1, 1980, but who
12 will not receive compensation under the provisions of this article,
13 shall continue to receive compensation at the January 1, 1980, rate
14 until such member's current term expires.

15 § 9-6.25:1. Advisory boards, commissions and councils.--There
16 shall be, in addition to such others as may be designated in
17 accordance with § 9-6.25, the following advisory boards, commissions
18 and councils within the executive branch:

19 Advisory Board for the Department of Volunteerism

20 Advisory Board for the Department for Children

21 Advisory Board for the Department for the Deaf and
22 Hard-of-Hearing

23 Advisory Board on the Aging

24 Advisory Board on Child Abuse and Neglect

25 Advisory Board on Medicare and Medicaid

26 Advisory Board on Physical Therapy to the Board of Medicine

27 Advisory Commission on Mapping, Surveying, and Land Information
28 Systems

1 Advisory Council on Revenue Estimates
2 Appomattox State Scenic River Advisory Board
3 Art and Architectural Review Board
4 Board of Conservation and Historic Resources
5 Board of Directors, Virginia Truck and Ornamentals Research
6 Station
7 Board of Forestry
8 Board of Health Professions
9 Board of Military Affairs
10 Board of Transportation Safety
11 Board of Trustees of the Family and Children's Trust Fund
12 Board of Visitors, Gunston Hall Plantation
13 Board on Education for Health Professions and Occupations
14 Board on Veterans' Affairs
15 Boating Advisory Board
16 Catoctin Creek State Scenic River Advisory Board
17 Cave Board
18 Cemetery Advisory Board
19 Coal Surface Mining Reclamation Fund Advisory Board
20 Continuing Education Advisory Board
21 Council on Indians
22 Council on the Status of Women
23 Emergency Medical Services Advisory Board
24 Falls of the James Committee
25 Goose Creek Scenic River Advisory Board
26 Governor's Council on Alcohol and Drug Abuse Problems
27 Governor's Mined Land Reclamation Advisory Committee
28 Handicapped Children, Interagency Coordinating Council on

1 Delivery of Related Services to
2 Hemophilia Advisory Board
3 Human Services Information and Referral Advisory Council
4 Industrial Development Services Advisory Board
5 Interagency Coordinating Council on Housing for the Disabled
6 Interdepartmental Board of the Department of Minority Business
7 Enterprise
8 Korean-Vietnam War History Council
9 Laboratory Services Advisory Board
10 Land Evaluation Advisory Council
11 Local Advisory Board to the Blue Ridge Community College
12 Local Advisory Board to the Central Virginia Community College
13 Local Advisory Board to the Dabney S. Lancaster Community College
14 Local Advisory Board to the Danville Community College
15 Local Advisory Board to the Eastern Shore Community College
16 Local Advisory Board to the Germanna Community College
17 Local Advisory Board to the J. Sargeant Reynolds Community
18 College
19 Local Advisory Board to the John Tyler Community College
20 Local Advisory Board to the Lord Fairfax Community College
21 Local Advisory Board to the Mountain Empire Community College
22 Local Advisory Board to the New River Community College
23 Local Advisory Board to the Northern Virginia Community College
24 Local Advisory Board to the Patrick Henry Community College
25 Local Advisory Board to the Paul D. Camp Community College
26 Local Advisory Board to the Piedmont Virginia Community College
27 Local Advisory Board to the Rappahannock Community College
28 Local Advisory Board to the Southwest Virginia Community College

- 1 Local Advisory Board to the Thomas Nelson Community College
- 2 Local Advisory Board to the Tidewater Community College
- 3 Local Advisory Board to the Virginia Highlands Community College
- 4 Local Advisory Board to the Virginia Western Community College
- 5 Local Advisory Board to the Wytheville Community College
- 6 Local Government Advisory Council
- 7 Long-Term Care Council
- 8 Medical Advisory Board, Department of Motor Vehicles
- 9 Medical Board of the Virginia Supplemental Retirement System
- 10 Migrant and Seasonal Farmworkers Board
- 11 Mine Safety Board
- 12 Motor Vehicle Dealer's Advisory Board
- 13 Nottoway State Scenic River Advisory Board
- 14 Outdoor Recreation Advisory Board
- 15 Personnel Advisory Board
- 16 Pesticide Advisory Board
- 17 Plant Pollination Advisory Board
- 18 Private College Advisory Board
- 19 Private Security Services Advisory Board
- 20 Psychiatric Advisory Board
- 21 Radiation Advisory Board
- 22 Rappahannock Scenic River Advisory Board
- 23 Reforestation Board
- 24 Retirement System Review Board
- 25 Shenandoah State Scenic River Advisory Board
- 26 Small Business Advisory Board
- 27 St. Mary's Scenic River Advisory Committee
- 28 State Advisory Board on Air Pollution

1 State Advisory Board for the Virginia Employment Commission
2 State Building Code Technical Review Board
3 State Council on Local Debt
4 State Insurance Advisory Board
5 State Networking Users Advisory Board
6 State Perinatal Services Advisory Board
7 State Public Records Advisory Council
8 Staunton Scenic River Advisory Committee
9 Teacher Education Advisory Board
10 Tourism and Travel Services Advisory Board
11 Toxic Substances Advisory Board
12 Virginia Coal Research and Development Advisory Board
13 Virginia Commission for the Arts
14 Virginia Commission on the Bicentennial of the United States
15 Constitution
16 Virginia Council on Coordinating Prevention
17 Virginia Equal Employment Opportunity Council
18 Virginia Military Advisory Council
19 Virginia Public Buildings Board
20 Virginia Transplant Council
21 Virginia War Memorial Board
22 Virginia Water Resources Research Center, Statewide Advisory
23 Board
24 Virginia Winegrowers Advisory Board.
25 § 11-24. Delivery of goods or merchandise; execution of
26 contracts; money or other consideration to be held in trust;
27 acknowledgment and recordation.--It shall be unlawful for any person,
28 firm or corporation, residing or doing business within this

1 Commonwealth, to make, either directly or indirectly by any means, an
2 agreement for the sale of personal property to be used in connection
3 with the final disposition of a dead human body, or for the furnishing
4 of professional services of a funeral director or funeral service
5 licensee, including cremation services, wherein the personal property
6 is not to be delivered or the services are not to be rendered until
7 the occurrence of the death of the person for whose funeral, burial or
8 other disposition such property or services are to be furnished unless
9 (i) any such agreement be in writing, signed in duplicate by the
10 parties thereto, setting forth the date thereof, the consideration
11 paid or delivered, or, if the consideration is to be paid or
12 delivered, the terms of such payment or delivery, where such
13 consideration is to be deposited as required by § 11-25; a brief
14 description of the personal property or services to be delivered or
15 performed, a provision that upon the furnishing of such personal
16 property or services, the consideration deposited, together with any
17 interest or income accrued thereon, shall become the property of the
18 person, firm or corporation furnishing such personal property or
19 services, and a further provision that the person or persons who make
20 such payments or such agreement shall be given an option to terminate
21 the agreement at any time prior to the furnishing of such personal
22 property or services and, upon such termination, to be refunded all
23 consideration paid or delivered, together with any interest or income
24 accrued thereon; (ii) such agreement be acknowledged in the manner
25 provided by law for the recordation of deeds; (iii) if the
26 consideration consists in whole or in part of any real estate, such
27 agreement be recorded as an attachment to the deed whereby such real
28 estate is conveyed, said deed to be recorded in the clerk's office of

1 the circuit court of the city or county in which the real estate being
2 conveyed is situated; (iv) all moneys paid pursuant to such agreement
3 be deposited in the manner provided in § 11-25 until the obligations
4 of the agreement are fulfilled according to its terms or refund is
5 made as provided in (i); and (v) each party receives a copy of the
6 signed agreement. If any funeral supplies are sold and delivered prior
7 to the death of the subject for whom they are provided, and the seller
8 or any legal entity in which he or a member of his family has an
9 interest thereafter stores these supplies, the risk of loss or damage
10 shall be upon the seller during such period of storage.

11 This section shall not apply to agreements for the care of
12 cemetery lots, mausoleums, columbaria, or other places of sepulture
13 perpetually or for lesser periods of time nor to the property or
14 services set forth in § 57-39-8 et seq. regulated by Chapter 9.1 (§
15 54.1-927.1 of Title 54.)

16 CHAPTER 9.1.

17 CEMETERIES.

18 Article 1.

19 General Provisions.

20 § 54.1-927.1. Definitions.--As used in this chapter unless the
21 context requires a different meaning:

22 "Cemetery" means any land or structure used or intended to be
23 used for the interment of human remains. The sprinkling of ashes or
24 their burial in a biodegradable container on church grounds or their
25 placement in a columbarium on church property shall not constitute the
26 creation of a cemetery.

27 "Cemetery company" means any person engaged in the business of
28 (i) selling or offering for sale any grave or entombment right in a

1 cemetery and representing to the public that the entire cemetery, a
2 single grave, or entombment right therein will be perpetually cared
3 for or (ii) selling property or services used in connection with
4 interring or disposing of the remains or commemorating the memory of a
5 deceased human being, where delivery of the property or performance of
6 the service may be delayed later than 120 days after receipt of the
7 initial payment on account of such sale. Such property or services
8 include but are not limited to burial vaults, mausoleum crypts, garden
9 crypts, lawn crypts, memorials, and marker bases, but shall not
10 include graves or incidental additions such as dates, scrolls, or
11 other supplementary matter representing not more than ten percent of
12 the total contract price.

13 "Compliance agent" means a natural person who owns or is employed
14 by a licensed cemetery company to assure the compliance of the
15 cemetery company with this title and who meets the following criteria:
16 (i) be at least eighteen years of age; (ii) not have been convicted of
17 a felony or a misdemeanor related to the operation of a cemetery
18 company; and (iii) hold a high school diploma or its equivalent. The
19 Director, in his discretion, may license a cemetery company if the
20 compliance agent designated by the company has been convicted of a
21 felony, or a misdemeanor related to the operation of a cemetery
22 company, if the agent has been pardoned or has had his civil rights
23 restored. The Director, in his discretion, may refuse to license a
24 cemetery company if the compliance agent designated by the company has
25 a criminal or disciplinary proceeding pending against him in any
26 jurisdiction in the United States.

27 "Cost requirement" means the total cost to the seller of the
28 property or services subject to the deposit requirements of §

1 54.1-927.16 required by that seller's total contracts.

2 "Department" means the Department of Commerce.

3 "Director" means the Director of the Department of Commerce.

4 "Garden crypt" means a burial receptacle, usually constructed of
5 reinforced concrete, installed in quantity on gravel or tile underlay.
6 Each crypt becomes an integral part of a given garden area and is
7 considered real property.

8 "General funds" means the sum total of specific funds put
9 together in a single fund.

10 "Grave" means a below-ground right of interment.

11 "Interment" means all forms of final disposal of human remains
12 including, but not limited to, earth burial, mausoleum entombment and
13 niche or columbarium inurnment. The sprinkling of ashes on church
14 grounds shall not constitute interment.

15 "Lawn crypt" means a burial vault with some minor modifications
16 for the improvement of drainage in and around the receptacle and is
17 considered personal property.

18 "Marker base" means the visible part of the marker or monument
19 upon which the marker or monument rests and is considered personal
20 property.

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

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

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

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

3 "Preneed burial contract" means a contract for the sale of
4 property or services used in connection with interring or disposing of
5 the remains or commemorating the memory of a deceased human being,
6 where delivery of the property or performance of the service may be
7 delayed for more than 120 days after the receipt of initial payment on
8 account of such sale. Such property or services include but are not
9 limited to burial vaults, mausoleum crypts, garden crypts, lawn
10 crypts, memorials, and marker bases, but shall not include graves or
11 incidental additions such as dates, scrolls, or other supplementary
12 matter representing not more than ten percent of the total contract
13 price.

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

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

19 § 54.1-927.2. Cemetery Advisory Board.--There shall be a Cemetery
20 Advisory Board which shall be composed of six members appointed by the
21 Director of the Department of Commerce. Four of the members shall be
22 employed by a cemetery company qualified for licensure and two shall
23 be citizen members as defined in § 54.1-107. All members shall be
24 appointed for four-year terms, except that initial appointments shall
25 be as follows: two shall be for two-year terms, two shall be for
26 three-year terms and two shall be for four-year terms. No member
27 shall serve more than two successive full terms. Any vacancy
28 occurring other than by expiration of terms shall be filled for the

1 unexpired term. The Cemetery Advisory Board shall advise the Director
2 on all matters relating to the regulation of cemetery companies,
3 including the regulation of perpetual care funds and preneed trust
4 accounts.

5 § 54.1-927.3. Exemptions.--A. The provisions of this chapter
6 shall not apply to cemeteries owned and operated by a county, city or
7 town or by a church or by a nonstock corporation not operated for
8 profit if the corporation (i) does not compensate any officer or
9 director except for reimbursement of reasonable expenses incurred in
10 the performance of official duties, (ii) does not sell or construct or
11 directly or indirectly contract for the sale or construction of vaults
12 or lawn, garden or mausoleum crypts and (iii) uses proceeds from the
13 sale of all graves and entombment rights for the sole purpose of
14 defraying the direct expenses of maintaining the cemetery.

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

18 § 54.1-927.4. License and payment of fee required to engage in
19 the business of a cemetery company.--A. No person shall engage in the
20 business of a cemetery company in this Commonwealth without having
21 obtained a license from the Department. Each license shall be issued
22 for a two-year period. No person shall be issued a cemetery license
23 until a compliance agent is designated in writing on forms provided by
24 the Department. The compliance agent shall meet the qualifications
25 and perform the duties required by this chapter.

26 B. The Director shall have the power to charge each applicant
27 for licensure a nonrefundable license fee to cover the cost of the
28 Department in administering this chapter pursuant to § 54.1-113. This

1 license fee shall include a minimum registration fee to be determined
2 by the Director, and a graduated fee based on the number of interments
3 conducted by the cemetery company in the previous license period.

4 C. The Director shall promulgate regulations establishing
5 requirements for licensure of a cemetery company.

6 § 54.1-927.5. Existing cemetery companies.--Cemetery companies
7 in existence on the effective date of this Act shall be granted a
8 license upon designation of the required compliance agent. Such
9 companies shall be required to comply with the other provisions of
10 this chapter.

11 § 54.1-927.6. Regulations.--The Director shall promulgate and
12 enforce regulations to carry out the provisions of this chapter.

13 § 54.1-927.7. Enforcement.--In addition to the other powers
14 granted the Director, the Director shall have the power pursuant to
15 the Administrative Process Act to order restitution of verified
16 damages by a cemetery company to consumers whose purchases were
17 subject to the perpetual care fund requirement or who purchased a
18 preneed burial contract. The Director shall also have the power to
19 modify a cemetery license to suspend, revoke or prohibit the right of
20 a cemetery company to sell preneed burial contracts. A cemetery
21 company's failure to pay a final order of restitution of verified
22 damages may serve as grounds for modification of the cemetery's
23 license as described above.

24 Article 2.

25 Perpetual Care Funds.

26 § 54.1-927.8. Certain representations unlawful; perpetual care
27 trust fund required.--It shall be unlawful to sell or offer for sale
28 in the Commonwealth any grave or entombment right in a cemetery, and

1 in connection therewith to represent to the public, in any manner,
2 express or implied, that the entire cemetery or any grave or
3 entombment right therein will be perpetually cared for, unless
4 adequate provision has been made for the perpetual care of the
5 cemetery and all graves and entombment rights therein as to which such
6 representation has been made.

7 Each cemetery company shall establish in a bank, savings and loan
8 or other federally insured investment banking institution doing
9 business in this Commonwealth an irrevocable trust fund in the amount
10 of at least \$25,000 before the first lot, parcel of land, burial or
11 entombment right is sold. This fund shall be designated the perpetual
12 care fund.

13 § 54.1-927.9. Who may serve as trustee.--A. The trustee of the
14 perpetual care fund shall be appointed by the person owning,
15 operating, or developing a cemetery company. If the trustee is other
16 than a bank, savings and loan or other federally insured banking
17 institution doing business in the Commonwealth, the trustee shall be
18 approved by the Director of the Department of Commerce and shall be
19 subject to supervision by the Department as provided herein.

20 A trustee that is not a bank, savings and loan or other federally
21 insured banking institution doing business in the Commonwealth shall
22 apply to the Director for approval, and the Director shall approve the
23 trustee when he has become satisfied that:

24 (i) The applicant employs and is directed by persons who are
25 qualified by character, experience, and financial responsibility to
26 care for and invest the funds of others;

27 (ii) The applicant will perform its duties in a proper and legal
28 manner and the trust funds and interest of the public generally will

1 not be jeopardized; and

2 (iii) The applicant is authorized to do business in the
3 Commonwealth and has adequate facilities to perform its duties as
4 trustee.

5 B. If the trustee is other than a bank, savings and loan or
6 other federally insured investment banking institution doing business
7 in the Commonwealth, the trustee shall furnish a fidelity bond with
8 corporate surety thereon, payable to the trust established, which
9 shall be designated Perpetual Care Trust Fund for (name of cemetery
10 company), in a sum equal to not less than fifty percent of the value
11 of the principal of the trust estate at the beginning of each calendar
12 year, which bond shall be deposited with the Director.

13 C. If the trustee is other than a bank, savings and loan or
14 other federally insured investment banking institution doing business
15 in the Commonwealth and if it appears that an officer, director or
16 employee of the trustee is dishonest, incompetent, or reckless in the
17 management of a perpetual care trust fund, the Director may bring an
18 action in the courts to remove the trustee and to impound the property
19 and business of the trustee as may be reasonably necessary to protect
20 the trust funds.

21 § 54.1-927.10. Deposit in perpetual care trust fund required upon
22 sale of graves, etc.--Each cemetery company shall deposit a minimum of
23 ten percent of the receipts from the sale of graves and above-ground
24 crypts and niches, excluding below-ground burial vaults, in cash in
25 the perpetual care trust fund within thirty days after the close of
26 the month in which such receipts are paid to it. If payment is made
27 on an installment or deferred payment basis, the cemetery company
28 shall have the option of paying ten percent of the amount of principal

1 in each payment received into the perpetual care trust fund.

2 § 54.1-927.11. Additional deposit not required upon subsequent
3 sale of same grave, crypt or niche.--If ten percent of the sales price
4 of a grave or above-ground crypt or niche has been deposited in a
5 perpetual care trust fund, no deposit shall be required on subsequent
6 sales of the same grave, crypt or niche.

7 § 54.1-927.12. Recovery of original perpetual care fund trust
8 deposit.--Once the cemetery company has deposited in the perpetual
9 care trust fund a sum equal to twice the amount of the original
10 deposit, exclusive of the original deposit, the trustee shall allow
11 the cemetery company to recover the original deposit by withholding
12 the money that would otherwise be required to be deposited in the
13 perpetual care trust fund until the amount of the original deposit is
14 recovered. Once the cemetery company has recovered an amount equal to
15 the original deposit, deposits to the perpetual care trust fund shall
16 be resumed.

17 § 54.1-927.13. Use of income from perpetual care trust fund.--The
18 income from the perpetual care trust fund shall be used solely and
19 exclusively for the general care, maintenance, administration and
20 embellishment of the cemetery.

21 § 54.1-927.14. Financial records required.--The cemetery company
22 shall maintain detailed accounts of all transactions, receipts and
23 accounts receivable subject to the ten percent trust requirement and
24 of all expenditures of income from the perpetual care trust fund.
25 Records shall be subject to examination by the Director.

26 § 54.1-927.15. Financial report and written assurance
27 required.--A. Within four months after the close of its fiscal year,
28 the cemetery company shall report the following information to the

1 Department:

2 1. The total amount of principal in the perpetual care trust
3 fund.

4 2. The securities in which the perpetual care trust fund is
5 invested and the amount of cash on hand as of the close of the fiscal
6 year.

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

9 4. An affidavit executed by the compliance agent that all
10 applicable provisions of this article have been complied with.

11 5. The total receipts subject to the ten percent trust
12 requirement.

13 6. All expenditures from the perpetual care trust fund.

14 B. An independent certified accountant shall provide a written
15 assurance to the Department on forms provided by the Department that
16 the cemetery company's report of the information required by
17 subdivisions 1, 2, 3, 5 and 6 of this section is true and correct and
18 that the required deposits to the perpetual care trust fund have been
19 made.

20 Article 3.

21 Preneed Burial Contracts.

22 § 54.1-927.16. Deposit in preneed trust required upon sale of
23 property or services not to be delivered within 120 days.--A. Each
24 cemetery company shall deposit into a trust fund forty percent of the
25 receipts from the sale of property or services purchased pursuant to a
26 preneed burial contract, when the delivery thereof will be delayed
27 more than 120 days from the initial payment on said contract. The
28 cemetery company shall establish a special trust fund in a bank,

1 savings and loan or other federally insured financial institution
2 doing business in the Commonwealth. The trust shall bear the legend
3 "Preneed Trust Account." Deposits are required to be made by the
4 cemetery company within thirty days after the close of the month in
5 which said receipts are paid to it.

6 B. If payment is made on an installment or deferred payment
7 basis, the seller shall have the option of paying forty percent of the
8 amount of principal in each payment received into the preneed trust
9 account.

10 § 54.1-927.17. Requirements for preneed burial contracts.--A
11 preneed burial contract shall:

12 1. Be written in clear understandable language and printed in
13 easy-to-read type, size and style;

14 2. Identify the seller, the contract buyer and the person for
15 whom the contract is bought if other than the contract buyer;

16 3. Contain a complete description of the property or services
17 bought;

18 4. Clearly disclose whether the price of the property or
19 services bought is guaranteed;

20 5. Contain the name, address and telephone number of the
21 Department of Commerce and state that the Department is the regulatory
22 agency which handles consumer complaints;

23 6. Provide that if the particular property and services
24 specified in the contract are unavailable at the time of delivery, the
25 seller shall be required to furnish supplies and services similar in
26 size and style and at least equal in quality of material and
27 workmanship and that the representative of the deceased shall have the
28 right to reasonably choose the property or services to be substituted;

1 7. Comply with all disclosure requirements imposed by the
2 Department; and

3 8. Be executed in duplicate and a signed copy given to the
4 buyer.

5 § 54.1-927.18. Identification of specific funds.--Specific funds
6 deposited in the trust account shall be identified in the records of
7 the seller by the contract number and by the name of the buyer. The
8 trustee may commingle the deposits in any preneed trust account for
9 the purposes of the management thereof and the investment of funds
10 therein.

11 § 54.1-927.19. Specific funds and income to remain in preneed
12 trust account; exception.--The specific funds, after payment of any
13 appropriate trustee fees, commissions and costs, shall remain intact
14 until the property is delivered or services performed as specified in
15 the contract, and the net income from the preneed trust account shall
16 remain in the account and be reinvested and compounded. However, the
17 trustee shall, as of the close of the cemetery company's fiscal year,
18 upon certification to the trustee of a certified public accountant
19 employed by the seller, return to the seller any amount in the
20 seller's account which is in excess of the current cost requirements
21 for all undelivered property or services included in the seller's
22 preneed burial contracts. The seller's cost requirements shall be
23 certified in its records by an affidavit sworn by the compliance agent
24 and shall be determined by the seller as of the close of the cemetery
25 company's fiscal year.

26 § 54.1-927.20. Disbursement of trust funds upon performance of
27 contract.--A. Upon performance of the preneed burial contract, the
28 seller shall certify to the trustee by affidavit the amount of

1 specific funds in the trust, identified to the contract performed,
2 which the trustee shall pay to the seller. The seller may in its
3 records itemize the property or services and the consideration paid or
4 to be paid therefor, to which the deposit requirements of this article
5 apply. In such case the seller may, upon certification to the trustee
6 of performance or delivery of such property or services and of the
7 amount of specific trust funds identified in its records to such
8 items, request disbursement of that portion of the specific funds
9 deposited pursuant to the contract, which the trustee shall pay to the
10 seller.

11 B. If the preneed contract provides for two or more persons, the
12 seller may, at its option, designate in its records the consideration
13 paid for each individual in the preneed burial contract. In such
14 case, upon performance of that portion of the contract identified to a
15 particular individual, the seller may request, by certification in the
16 manner described above, the disbursement of trust funds applicable to
17 that portion of the contract, which the trustee shall pay to the
18 seller.

19 § 54.1-927.21. Seller required to keep records.--Each seller of
20 a preneed burial contract shall record and keep detailed accounts of
21 all contracts and transactions regarding preneed burial contracts, and
22 the records shall be subject to examination by the Director.

23 § 54.1-927.22. Financial report and written assurance required
24 .--A. The cemetery company shall report the following information to
25 the Department within four months following the cemetery company's
26 fiscal year:

- 27 1. The total amount of principal in the preneed trust account;
- 28 2. The securities in which the preneed trust account is

1 invested;

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

4 4. An affidavit executed by the compliance agent that all
5 provisions of this article applicable to the seller have been complied
6 with;

7 5. The total receipts required to be deposited in the preneed
8 trust account; and

9 6. All expenditures from the preneed trust account.

10 B. An independent certified accountant shall provide a written
11 assurance to the Department on forms provided by the Department that
12 the cemetery company's report of the information required by
13 subdivisions 1, 2, 3, 5 and 6 of this section is true and correct and
14 that forty percent of the cash receipts required to be deposited in
15 the preneed trust account have been deposited in the account within
16 thirty days after the close of the month in which the payment was
17 received.

18 § 54.1-927.23. Inclusion of property and services to be
19 delivered within 120 days.--Nothing in this article shall be deemed to
20 prohibit the sale within the preneed burial contract of property or
21 services to be delivered within 120 days after the receipt of the
22 initial payment on account of such sale. Contracts may specify
23 separately the total consideration paid or to be paid for preneed
24 property or services not to be delivered or provided within 120 days
25 after receipt of initial payment. If a contract does not so specify,
26 the seller shall deposit forty percent of the total consideration for
27 the entire contract.

28 § 54.1-927.24. Breach of contract by seller; trust to be single

1 purpose trust.--If, after a written request, the seller fails to
2 perform its contractual duties, the purchaser, executor or
3 administrator of the estate, or heirs, or assigns or duly authorized
4 representative of the purchaser shall be entitled to maintain a proper
5 legal or equitable action in any court of competent jurisdiction. No
6 other purchaser need be made a party to or receive notice of any
7 proceeding brought pursuant to this section relating to the
8 performance of any other contract.

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

11 § 54.1-927.25. Trustee may rely on certifications and
12 affidavits.--The trustee may rely upon all certifications and
13 affidavits made pursuant to or required by the provisions of this
14 article and shall not be liable to any person for such reasonable
15 reliance.

16 § 54.1-927.26. Transfer of trust funds to another trustee.--The
17 seller may, upon notification in writing to the trustee, and upon such
18 other terms and conditions as the agreement between them may specify,
19 transfer its account funds to another trustee qualified under the
20 provisions of this article. The trustee may, upon notification in
21 writing to the seller, and upon such other terms and conditions as the
22 agreement between them may specify, transfer the trust funds to
23 another trustee qualified under the provisions of this article.

24 § 54.1-927.27. Use of trustee's name in advertisements.--No
25 person subject to the provisions of this article shall use the name of
26 the trustee in any advertisement or other public solicitation without
27 written permission of the trustee.

28 § 54.1-927.28. Construction and development of mausoleums and

1 garden crypts.--Within four years after the date of the first sale, a
2 cemetery company or other seller of mausoleums and garden crypts shall
3 be required to start construction or development of that undeveloped
4 ground or section of a mausoleum or garden crypt in which sales,
5 contracts for sales, or agreements for sales are being made. The
6 construction or development of such undeveloped mausoleum section or
7 garden crypt shall be completed within five years after the date of
8 the first such sale. Completed construction shall be deemed
9 performance for purposes of this article.

10 § 54.1-927.29. Waiver of article void.--Any provision of any
11 contract which purports to waive any provision of this article shall
12 be void.

13 2. That Article 3.1 of Chapter 3 of Title 57 and Article 6 of Chapter
14 3 of Title 57 of the Code of Virginia, consisting of §§ 57-35.1
15 through 57-35.10 and §§ 57-39.8 through 57-39.18 respectively, are
16 repealed.

17 3. That the provisions of this act shall become effective on January
18 1, 1990.

19 #

January 23, 1989

Dear Legislator:

As a member of the Joint Cemetery Sub Committee and as owner of two cemeteries with 30 years experience in the industry, I wish to share my thought on HJR 73.

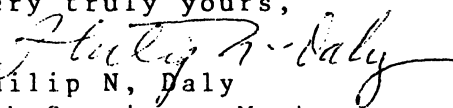
I submit, involving the Department of Commerce, a compliance agent, licensing of each cemetery, a Cemetery Advisory Board etc., all proposes too much unnecessary regulations with a costly budget, and will end up costing the public. With only 86 cemeteries performing over 20,000 annual burials, this new bill is an over kill. The repeated unprofessional conduct complaints against the one cemetery in Northern Virginia should be addressed through a local court.

Summary of my thought and recommendations:

<u>ITEMS IN THE BILL</u>	<u>SHOULD BE</u>
TRUST FUND REPOSTS _____	independent CPA audited
LOCAL COMPLAINTS _____	referred to Local Cemetery then to VCA Ethics Committee*
REPEATED COMPLAINTS UNSOLVED BY VCA _____	handled by local courts
LICENSING OF CEMETERIES _____	strike from bill
DEPARTMENT OF COMMERCE _____	strike from bill (unqualified to review fiduciary)
REGISTRATION OF ALL CEMETERIES _____	not necessary but could be at the Commissioner of Accounts statewide office.
ENFORCEMENT OF LAW _____	controlled by CPA report, Commissioner's view and subpoena.

After Sub Committee complete study and careful consideration, I feel the indepedendt CPA audit report of the prepetual care and merchanise trust deposits is the only new legislation needed to protect the public.

Very truly yours,


Philip N. Daly
Sub Committee Member

* VCA - Virginia Cemetery Association

COMMONWEALTH OF VIRGINIA



E. M. MILLER, JR.
DIRECTOR

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 786-3591
FAX (804) 786-0913

DIVISION OF LEGISLATIVE SERVICES

January 19, 1989

Mr. Philip Niland Daly, Sr.
109 Primrose Place
Danville, Va. 24541

Dear Mr. Daly:

Enclosed is a copy of the minutes of the cemetery meeting of January 10, 1989, and a copy of the draft legislation. I am in the process of preparing the final report of the subcommittee. Please sign and return the statement below so that I may include your recommendation in the report.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Suzanne C. Elkin".

Suzanne C. Elkin, Staff Attorney

☐ I recommend the legislation proposed by the Subcommittee Studying the Business Practices of For-Profit Cemeteries.

☒ I do not recommend the legislation proposed by the Subcommittee Studying the Business Practices of For-Profit Cemeteries.

See attached letter:

A handwritten signature in cursive script, appearing to read "Philip Niland Daly, Sr.".

Philip Niland Daly, Sr.

Enclosures

