

VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

CHAPTER 247

An Act to amend and reenact §§ 54.1-2800 and 54.1-2820 of the Code of Virginia, relating to preneed funeral contracts; declinable preneed funeral guarantee fee.

[S 521]

Approved March 28, 2024

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2800 and 54.1-2820 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2800. 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 Board of Funeral Directors and Embalmers.

"Cremate" means to reduce a dead human body to ashes and bone fragments by the action of fire.

"Cremator" means a person or establishment that owns or operates a crematory or crematorium or cremates dead human bodies.

"Crematory" or "crematorium" means a facility containing a furnace for cremation of dead human bodies.

"Declinable preneed funeral guarantee fee" means an optional and declinable fee agreed to by a preneed funeral contract purchaser, if offered by a seller, for which the cost of the supplies and services as described in the preneed funeral contract shall be guaranteed. A declinable preneed funeral guarantee fee, when offered by a seller (i) shall not exceed 25 percent of the preneed funeral contract price, (ii) shall be refundable if the purchaser terminates the contract within 30 days of execution, (iii) shall not be considered a finance fee, and (iv) shall be listed on the general price list in accordance with § 54.1-2812.

"Embalmer" means any person engaged in the practice of embalming.

"Embalming" means the process of chemically treating the dead human body by arterial injection and cavity treatment or, when necessary, hypodermic tissue injection to reduce the presence and growth of microorganisms to temporarily retard organic decomposition.

"Funeral directing" means the for-profit profession of directing or supervising funerals, preparing human dead for burial by means other than embalming, or making arrangements for funeral services or the financing of funeral services.

"Funeral director" means any person engaged in the practice of funeral directing.

"Funeral service establishment" means any main establishment, branch, or chapel that is permanently affixed to the real estate and for which a certificate of occupancy has been issued by the local building official where any part of the profession of funeral directing, the practice of funeral services, or the act of embalming is performed.

"Funeral service intern" means a person who is preparing to be licensed for the practice of funeral services under the direct supervision of a practitioner licensed by the Board.

"Funeral service licensee" means a person who is licensed in the practice of funeral services.

"In-person communication" means face-to-face communication and telephonic communication.

"Next of kin" means any of the following persons, regardless of the relationship to the decedent: any person designated to make arrangements for the disposition of the decedent's remains upon his death pursuant to § 54.1-2825, the legal spouse, child aged 18 years or older, parent of a decedent aged 18 years or older, custodial parent or noncustodial parent of a decedent younger than 18 years of age, siblings over 18 years of age, guardian of minor child, guardian of minor siblings, maternal grandparents, paternal grandparents, maternal siblings over 18 years of age and paternal siblings over 18 years of age, or any other relative in the descending order of blood relationship.

"Practice of funeral services" means engaging in the care and disposition of the human dead, the preparation of the human dead for the funeral service, burial or cremation, the making of arrangements for the funeral service or for the financing of the funeral service and the selling or making of financial arrangements for the sale of funeral supplies to the public.

"Preneed" means at any time other than at-need.

"Preneed funeral contract" means any agreement where payment is made by the consumer 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.

"Preneed funeral planning" means the making of arrangements prior to death for (i) the providing of funeral services or (ii) the sale of funeral supplies.

"Solicitation" means initiating contact with consumers with the intent of influencing their selection of

a funeral plan or funeral service provider.

§ 54.1-2820. Requirements of preneed funeral contracts.

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

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

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

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

4. Clearly discloses whether the price of the supplies and services purchased is guaranteed *and whether the guaranteed supplies and services have been secured by a declinable preneed funeral guarantee fee as defined in § 54.1-2800*;

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

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

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

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

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

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

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

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

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

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

C. If a life insurance or annuity contract is used to fund the preneed funeral contract, the face amount of any life insurance policy issued to fund a preneed funeral contract shall not be decreased over the life of the life insurance policy except for life insurance policies that have lapsed due to the nonpayment of premiums or have gone to a nonforfeiture option that lowers the face amount as allowed for in the provisions of the policy. The following must also be disclosed as prescribed by the Board:

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

2. The nature of the relationship among the soliciting agent, the provider of the supplies or services, the prearranger and the insurer;

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

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

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

conveyed is located.

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

2. That the Board of Funeral Directors and Embalmers shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.