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HOUSE BILL NO. 1269

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on _____)

(Patron Prior to Substitute--Delegate Head)

A BILL to amend and reenact §§ 38.2-3100.3 and 54.1-2820 of the Code of Virginia, relating to preneed funeral contracts; emergency.

Be it enacted by the General Assembly of Virginia:

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

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

A. For purposes of this section, "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.

§ 54.1-2820. Requirements of preneed funeral contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

64 C. If a life insurance or annuity contract is used to fund the preneed funeral contract, the ~~life~~
65 ~~insurance or annuity contract shall provide either that the face value thereof shall be adjusted annually by~~
66 ~~a factor equal to the annualized Consumer Price Index as published by the Bureau of Labor Statistics of~~
67 ~~the United States Department of Labor, or a benefit payable at death under such contract that will equal~~
68 ~~or exceed the sum of all premiums paid for such contract plus interest or dividends, which for the first 15~~
69 ~~years shall be compounded annually at a rate of at least five percent. In any event, interest or dividends~~
70 ~~shall continue to be paid after 15 years. In addition, the face amount of any life insurance policy issued to~~
71 ~~fund a preneed funeral contract shall not be decreased over the life of the life insurance policy except for~~
72 ~~life insurance policies that have lapsed due to the nonpayment of premiums or have gone to a nonforfeiture~~
73 ~~option that lowers the face amount as allowed for in the provisions of the policy. The following must also~~
74 be disclosed as prescribed by the Board:

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

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

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

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

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

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

95 **2. That an emergency exists and this act is in force from its passage.**

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