

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

Preneed Contracts for Funeral Services

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



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**COMMONWEALTH OF VIRGINIA
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Report of the Joint Subcommittee Studying
Preneed Contracts for Funeral Services

to

The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1989

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

INTRODUCTION

The following resolution, House Joint Resolution No. 50, agreed to during the 1988 General Assembly Session, established a joint subcommittee to study the laws related to preneed contracts for funeral services. The joint subcommittee was asked to study the laws related to preneed contracts for funeral services and determine the feasibility of proposing a comprehensive law on preneed contacts.

GENERAL ASSEMBLY OF VIRGINIA -- 1988 SESSION

HOUSE JOINT RESOLUTION NO. 50

Establishing a joint subcommittee to study the laws related to preneed contracts for funeral services.

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

Agreed to by the Senate, March 9, 1988

WHEREAS, the laws relating to the sale of preneed contracts for funeral services are located in several titles of the Code of Virginia; and

WHEREAS, several organizations are committed to the development of comprehensive state laws governing prepaid funeral arrangements; and

WHEREAS, at this time the funeral service industry appears to be in a state of evolution with diverse parties engaged in marketing contracts for funeral arrangements on a preneed basis; and

WHEREAS, among these parties are individuals licensed to practice funeral services as well as various insurance companies; and

WHEREAS, some insurance companies have developed agreements with funeral homes to provide services to their insureds upon the insureds' deaths and are including brochures picturing funeral merchandise and discussions of the costs of funeral services in their marketing strategies; and

WHEREAS, since March of 1984, the Office of the Attorney General has issued five opinions relating to the sale of preneed contracts for funeral services and the management of the trust accounts for such contracts; and

WHEREAS, certain of these opinions construe the laws of Virginia to authorize only licensed funeral service providers to arrange and complete preneed contracts, to prohibit certain forms of solicitation of preneed contracts, to require certain price disclosures at any time a preneed contract is arranged, to prohibit irrevocable trust agreements in preneed contracts and to require that the funds of preneed contracts be deposited in separate, identifiable trust accounts regardless of the availability of computerized systems for separate accounting, tax forms and FDIC insurance coverage; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee is hereby established to study the laws related to preneed contracts for funeral services. The joint subcommittee shall determine the advisability of proposing a comprehensive law on preneed contracts and shall identify the essential components of any such law. In its deliberations, the joint subcommittee shall receive comments from representatives of all industries involved in selling preneed contracts, except for preneed contracts of the cemetery industry, which shall be studied under the provisions of House Joint Resolution No. 73, the insurance industry, consumer organizations and any other interested parties. The joint subcommittee shall also consult with the Department of Health Regulatory Boards and the Board of Funeral Directors and Embalmers as well as the Bureau of Insurance.

The joint subcommittee's deliberations shall include, but not be limited to, the following issues:

1. What forms of solicitation for preneed contracts should be allowed or should the solicitation of preneed contracts continue to be prohibited as provided in the present law?

2. How can adequate protection and education be provided to the consumer in such areas as rights to refunds, commingling of trust funds, revocable versus irrevocable trusts and assignments, guaranteed versus nonguaranteed prices, penalties for nondelivery of services, delivery of damaged merchandise, time and place for delivery of merchandise and comparability of merchandise?

3. How can the poor and elderly be protected from entering into burial contracts which might render them ineligible for medical assistance services?

The joint subcommittee shall consist of seven members to be appointed as follows: two members from the House Committee on Health, Welfare and Institutions, one member from the House Committee on Corporations, Insurance and Banking and one member at large from the House of Delegates to be appointed by the Speaker of the House of Delegates; two members of the Senate Committee on Education and Health and one member of the Senate Committee on Commerce and Labor to be appointed by the Senate Committee on Privileges and Elections.

The joint subcommittee shall complete its work in time to make its recommendations to the 1989 Session of the General Assembly.

The indirect cost of this study is estimated to be \$13,045; the direct cost shall not exceed \$6,300.

BACKGROUND

Preneed contracts are contracts for funeral arrangements executed while the individual whose funeral is being arranged is alive. The popularity of preneed contracts in Virginia, as well as throughout the nation, is increasing. The Federal Trade Commission projects that the steady growth of preneed contracts will continue and a major shift in funeral purchasing behavior may be underway. Funeral homes may generate anywhere from 30 to 75% of their gross annual sales through preneed contracts. Insurance companies are becoming active in this area, and the funding of preneed contracts through life insurance policies and annuity contracts is a growing trend. There are a number of companies that sell preneed contracts for funeral services in Virginia. New types of plans and methods of marketing preneed funeral services are constantly being developed as competition in the preneed area increases.

It is generally agreed that consumer protection is a primary concern in the regulation of preneed funeral contracts. The consumer makes payments for goods and services that will not be delivered or rendered until after his death. In most cases companies selling preneed contracts target the elderly population. There are few documented cases of abuses by companies selling preneed contracts in Virginia, although the Board of Funeral Directors and Embalmers has received some consumer complaints.

The American Association of Retired Persons (AARP) has developed a Model Law for Prepaid Funeral Arrangements, and its representatives have contacted several Virginia legislators to discuss the possibility of enacting such a law in Virginia. The National Association of Insurance Commissioners established a Working Group on Prepaid Funeral Plans which identified disclosure to consumers as its principal concern.

Virginia currently requires that a preneed contract be in writing and revocable by the consumer. All money paid under the contract must be deposited into a separate, identifiable trust account pursuant to Title 11 (§ 11-24 et seq. of the Code of Virginia). Title 54.1 also addresses preneed funeral contracts. Only a funeral service licensee may arrange and complete a preneed contract for funeral services. A funeral service licensee must complete forty-five hours of coursework, graduate from a two-to-four year program at an approved mortuary school and complete a two-year resident traineeship. The traineeship requires the trainee to assist in embalming bodies and conducting funeral services. The Board of Funeral Directors and Embalmers issues licenses to funeral services licensees, enforces laws and promulgates regulations governing the funeral service industry. Solicitation of preneed contracts door to door or by telephone is prohibited.

In October, 1987, Guardian Plans, Inc., filed a lawsuit in federal district court against the members of the Virginia Board of Funeral Directors and Embalmers and the Director of the Department of Health Regulatory Boards. Guardian is one of the major companies marketing preneed insurance-funded contracts in Virginia. It is a subsidiary of Service Corporation International, which is the largest funeral service firm in North America. In its lawsuit, Guardian alleged that Virginia's ban on solicitation and licensure requirements were unconstitutional. The suit was defended by the Office of the Attorney General, which argued that the laws being challenged provided consumer protection and were within the prerogative of the General Assembly. The Virginia Funeral Directors Association, which intervened in the suit, took the position that certain types of solicitation could be prohibited but that the existing law does not expressly prohibit preneed solicitation. The court dismissed Guardian's lawsuit, stating that Virginia's rules governing the funeral industry may not and need not be the wisest, as long as the goal is to protect the public. The court cited House Joint Resolution 50 and stated that the legislature is the appropriate forum to study the regulations. The case is currently on appeal.

ACTIVITIES AND FINDINGS

The subcommittee held five meetings, including two public hearings, to evaluate existing legislation and determine the need for a comprehensive law regarding preneed funeral contracts. The subcommittee heard from individual consumers and consumer groups, including the American Association of Retired Persons, the Memorial Society of Northern Virginia and the Virginia Citizens Consumer Council. The major consumer issues presented were the need for better disclosure of the terms of both the preneed contract and funding mechanism and freedom of choice in making funeral arrangements. Other consumer concerns included discrepancies between the quality of merchandise delivered compared to that originally selected and additional payments required when merchandise originally selected is no longer available.

The Board of Funeral Directors and Embalmers (the Board), the Virginia Funeral Directors Association, the Virginia Morticians' Association and numerous individual members of the funeral service industry actively participated in all meetings of the subcommittee. The Board, the Virginia Funeral Directors Association and the Virginia Morticians' Association took the position that selling funeral services preneed requires a licensed funeral professional who has completed a comprehensive training program, including a resident traineeship. All supported the continued ban on in-person solicitation for preneed funeral contracts.

The Virginia Morticians' Association expressed its concern over the existence of exclusive agency agreements between funeral service providers and insurers, which can limit the consumer's choice of funeral service providers and funding mechanisms. The subcommittee also received testimony from burial associations, group life insurance associations, the Bureau of Insurance and a bank which regularly serves as the trustee for preneed trusts.

Service Corporation International (SCI) participated in the subcommittee's proceedings and opposed prohibition of telemarketing activities for solicitation of preneed contracts and the requirement that only a funeral service licensee may engage in preneed planning. SCI proposed legislation establishing a separate category of licensure for persons engaged in selling preneed contracts, with a maximum of 100 hours of coursework required for licensure.

The subcommittee also received testimony from the Department of Medical Assistance Services regarding Medicaid eligibility and preneed trusts. The Department advised the subcommittee that the Medicare Catastrophic Coverage Act of 1988 changed the transfer of assets policy and that Medicaid has adopted a burial exclusion provision which allows a Medicaid recipient to set aside funds for burial. The funds need not be in an irrevocable trust. The Department has promulgated emergency regulations to this effect, and an administration bill will be introduced during the 1989 General Assembly Session to amend the Virginia Code to reflect these changes. These changes will resolve the previous conflict between the requirement that a preneed funeral contract must be revocable and the exclusionary rule which provided that funds must be in an irrevocable trust to be excluded from an applicant's assets when determining Medicaid eligibility.

The subcommittee studied the Model Law prepared by the AARP, existing trust requirements for preneed contracts and current regulation of the funeral industry by the Board. The subcommittee identified the need for a comprehensive statute which would address the myriad of preneed arrangements currently being marketed and provide adequate disclosure to consumers in Virginia.

RECOMMENDATIONS

The subcommittee determined that preneed contracts for funeral goods and services for which the consumer pays in advance should be regulated regardless of how the contracts are funded. This includes preneed contracts tied to the types of funding mechanisms that currently exist, such as trust accounts and annuity and life insurance contracts, as well as funding mechanisms that may be developed in the future. The subcommittee decided that the preneed contracts should be regulated by the Board of Funeral Directors and Embalmers and the contract which provides for the funding of the funeral arrangements should be regulated by the appropriate agency for that particular type of funding, i.e. life insurance and annuity contracts should continue to be regulated by insurance laws and the Bureau of Insurance, bank trust accounts and certificates of deposit should be regulated by banking laws and regulations.

The subcommittee determined that preneed funeral planning should be done only by licensed professionals. The subcommittee elected not to alter current licensure requirements for selling preneed contracts but granted the Board of Funeral Directors and Embalmers the authority to determine requirements for selling preneed. The subcommittee voted to clarify and retain the current ban on face-to-face and telephone solicitation for preneed planning. The subcommittee also recommends numerous consumer protection provisions, including comprehensive disclosure requirements applicable to both the preneed contracts and related funding contracts. In addition, the subcommittee voted to consolidate proposed and existing laws applicable to preneed funeral contracts and to place such consolidated laws in Chapter 28 of Title 54.1. The proposed legislation contains housekeeping and editorial changes as well as substantive changes. Each substantive change is summarized below.

§ 54.1-2803, page 9, line 6

Specifically grants authority to regulate preneed funeral contracts to the Board of Funeral Directors and Embalmers.

§ 54.1-2805, page 9, line 20

Makes it illegal to engage in the business of preneed funeral planning without a license.

§ 54.1-2806 page 10, line 9

Prohibits preneed solicitation using in-person (face-to-face and by telephone) communication.

§ 54.1-2807 D, page 13, line 5

Forbids interference with the freedom of choice of the public in selecting funeral service providers or preneed funeral plans.

§ 54.1-2820 page 13, line 16

Requires numerous consumer protection provisions of preneed funeral contracts (contracts must be on forms prescribed by the Board; contracts must disclose whether the price of the supplies and services purchased is guaranteed and must enumerate the provisions of any preneed trust; contracts must be revocable and provide for refund upon termination of the contract by the consumer). Sets forth requirements for substitution if substitution of supplies or services is necessary. Specifies additional disclosures which are required when a life insurance or annuity contract is used to fund the preneed funeral contract.

§ 54.1-2822, page 16, line 13

Reduces from 100 to 90% the amount of money to be placed in trust if the price of the supplies and services contracted for is guaranteed.

Page 18, line 5

Repeals Chapter 5 of Title 11; the majority of these sections have been incorporated into Title 54.1

The Joint Subcommittee Studying Preneed Funeral Contracts recommends that the 1989 General Assembly adopt the proposed legislation.

Respectfully submitted,

Delegate Alan E. Mayer, Chairman

Senator Edward M. Holland, Vice Chairman

Delegate William T. Wilson

Delegate Leslie L. Byrne

Delegate William J. Howell

Senator Frank W. Nolen
(See additional remarks attached
as Appendix B)

Senator Robert C. Scott

1 D 12/28/88 Elkin C 1/8/89 jds

APPENDIX A

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact §§ 8.01-512.4, 37.1-142, 38.2-4021,
4 54.1-2800, 54.1-2803 through 54.1-2807 and 57-39.16 of the Code
5 of Virginia and to amend the Code of Virginia by adding in
6 Chapter 28 of Title 54.1 an article numbered 5, consisting of
7 sections numbered 54.1-2820 through 54.1-2825, and to repeal
8 Chapter 5 of Title 11 of the Code of Virginia, consisting of
9 sections numbered 11-24 through 11-29, the amended, added and
10 repealed sections relating to preneed funeral contracts.

11

12 Be it enacted by the General Assembly of Virginia:

13 1. That §§ 8.01-512.4, 37.1-142, 38.2-4021, 54.1-2800, 54.1-2803
14 through 54.1-2807 and 57-39.16 of the Code of Virginia are amended and
15 reenacted and that the Code of Virginia is amended by adding in
16 Chapter 28 of Title 54.1 an article numbered 5, consisting of sections
17 numbered 54.1-2820 through 54.1-2825, as follows:

18 § 8.01-512.4. Notice of exemptions from garnishment.--No summons
19 in garnishment shall be issued or served unless a notice of exemptions
20 and claim for exemption form are attached. The notice shall contain
21 the following statement:

22 NOTICE TO JUDGMENT DEBTOR HOW TO CLAIM EXEMPTIONS FROM GARNISHMENT

23 The attached Summons in Garnishment has been issued on request of
24 a creditor who holds a judgment against you. The Summons may cause
25 your property or wages to be held or taken to pay the judgment.

26 The law provides that certain property and wages cannot be taken
27 in garnishment. Such property is said to be exempted. A summary of
28 some of the major exemptions is set forth in the request for hearing

1 form. There is no exemption solely because you are having difficulty
2 paying your debts.

3 If you claim an exemption, you should (i) fill out the claim for
4 exemption form and (ii) deliver or mail the form to the clerk's office
5 of this court. You have a right to a hearing within seven business
6 days from the date you file your claim with the court. If the creditor
7 is asking that your wages be withheld, the method of computing the
8 amount of wages which are exempt from garnishment by law is indicated
9 on the Summons in Garnishment attached. You do not need to file a
10 claim for exemption to receive this exemption, but if you believe the
11 wrong amount is being withheld you may file a claim for exemption.

12 On the day of the hearing you should come to court ready to
13 explain why your property is exempted, and you should bring any
14 documents which may help you prove your case. If you do not come to
15 court at the designated time and prove that your property is exempt,
16 you may lose some of your rights.

17 It may be helpful to you to seek the advice of an attorney in
18 this matter.

19 REQUEST FOR HEARING-GARNISHMENT EXEMPTION CLAIM

20 I claim that the exemption(s) from garnishment which are checked
21 below apply in this case:

22 MAJOR EXEMPTIONS UNDER FEDERAL AND STATE LAW

- 23 . . . 1. Social Security benefits and Supplemental Security
- 24 Income (SSI) (42 U.S.C. § 407).
- 25 . . . 2. Veterans' benefits (38 U.S.C. § 3101).
- 26 . . . 3. Federal civil service retirement benefits (5 U.S.C. §
- 27 8346).
- 28 . . . 4. Annuities to survivors of federal judges (28 U.S.C. §

1 376(n)).

2 . . . 5. Longshoremen and Harborworkers Compensation Act (33
3 U.S.C. § 916).

4 . . . 6. Black lung benefits.

5 Exemptions listed under 1 through 6 above may not be applicable
6 in child support and alimony cases (42 U.S.C. § 659).

7 . . . ~~6a-~~ 7. Seaman's, master's or fisherman's wages, except
8 for child support or spousal support and maintenance (46 U.S.C.A. §
9 1109).

10 . . . ~~7-~~ 8. Unemployment compensation benefits (§ 60.2-600,
11 Code of Virginia).

12 This exemption may not be applicable in child support cases (§
13 60.2-608, Code of Virginia).

14 . . . ~~8-~~ 9. Portions or amounts of wages subject to
15 garnishment (§ 34-29, Code of Virginia).

16 . . . ~~9-~~ 10. Public assistance payments (§ 63.1-88, Code of
17 Virginia).

18 . . . ~~10-~~ 11. Homestead exemption of \$5,000 in cash (§ 34-4,
19 Code of Virginia). This exemption may not be available in certain
20 cases, such as payment of rent or services of a laborer or mechanic (
21 34-5, Code of Virginia).

22 . . . ~~11-~~ 12. Property of disabled veterans - additional
23 \$2,000 cash (§ 34-4.1, Code of Virginia).

24 . . . ~~11a-~~ 13. Workers' Compensation benefits (§ 65.1-82,
25 Code of Virginia).

26 . . . ~~12-~~ 14. Growing crops (§ 8.01-489, Code of Virginia).

27 . . . ~~13-~~ 15. Benefits from group life insurance policies (§
28 38.2-3339, Code of Virginia).

1 . . . ~~14.~~ 16. Proceeds from industrial sick benefits
2 insurance (§ 38.2-3549, Code of Virginia).

3 . . . ~~15.~~ 17. Assignments of certain salary and wages (§
4 55-165, Code of Virginia).

5 - - - ~~16.~~ Burial contracts (§ 11-28, Code of Virginia)-

6 . . . ~~17.~~ 18. Benefits for victims of crime (§ 19.2-368.12,
7 Code of Virginia).

8 - - - ~~18.~~ {Repealed.}

9 . . . 19. Preneed funeral trusts (§ 54.1-2823, Code of
10 Virginia).

11 . . . ~~19.~~ 20. Other (describe exemption): \$

12

13 I request a court hearing to decide the validity of my claim.

14 Notice of the hearing should be given me at:

15

16 (address) (telephone no.)

17 The statements made in this request are true to the best of my
18 knowledge and belief.

19

20 (date) (signature of judgment debtor)

21 § 37.1-142. Preservation, management and gifts of ward's
22 estate.--A. Subject to any conditions or limitations set forth in the
23 order appointing him, the fiduciary shall take care of and preserve
24 the ward's estate and manage it to the best advantage. He shall apply
25 the personal estate, or so much as may be necessary, to the payment of
26 the debts of his ward, and the rents and profits of the residue of his
27 estate, real and personal, and the residue of the personal estate, or
28 so much as may be necessary, to the maintenance of such person and of

1 his family, if any.

2 B. On petition of the fiduciary to the court that appointed him,
3 the court may direct the fiduciary to make gifts from income and
4 principal not necessary for the ward's maintenance to those persons to
5 whom the ward would, in the judgment of the court, have made gifts if
6 the ward had been of sound mind. A guardian ad litem shall be
7 appointed to represent the interest of the ward, and reasonable notice
8 of the hearing shall be given to the ward and to all persons who would
9 be heirs or distributees of the ward if he were dead, or beneficiaries
10 under any known will of the ward. However, the court in its discretion
11 may authorize the hearing to proceed without notice to any beneficiary
12 who would not be substantially affected by the proposed gift. In a
13 manner not inconsistent with the ward's estate plan, the court shall
14 determine the amounts, recipients and proportions of any gifts of the
15 ward's estate after considering (i) the size and composition of the
16 ward's estate, (ii) the nature and probable duration of the ward's
17 incapacity, (iii) the effect of such gifts on the estate's financial
18 ability to meet the ward's foreseeable maintenance needs, (iv) the
19 ward's estate plan, (v) prior patterns of assistance or gifts to the
20 proposed donees, (vi) the tax effect of the proposed gifts, and (vii)
21 such other factors as the court may deem relevant.

22 C. The fiduciary of a ward's estate may make a gift, not to
23 exceed \$100 to each donee in a calendar year and not to exceed a total
24 of \$500 per calendar year from such income and principal, without the
25 requirement of a court-appointed guardian ad litem for the ward,
26 without the requirement of notification to the ward or to any person
27 who would be an heir or distributee of the ward if he were dead or a
28 beneficiary under any known will of the ward and without requiring a

1 court hearing. Prior to the making of such a gift, the fiduciary must
2 consider conditions (i) through (vii) as set forth in subsection B of
3 this section and must also find that the ward has shown a history of
4 giving the same or a similar gift to a specific donee for the previous
5 three years prior to the appointment of the fiduciary.

6 D. The fiduciary may transfer assets of a ward or a ward's estate
7 into an irrevocable trust where such transfer has been designated
8 solely for burial of the ward or spouse of the ward in accordance with
9 conditions set forth in § 32.1-325 (2) and may also contractually bind
10 a ward or a ward's estate by executing a preneed funeral contract
11 described in § ~~11-24~~ Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1 ,
12 for the benefit of the ward.

13 § 38.2-4021. Interest in benefits; assignability; liability to
14 attachment, etc.--No beneficiary shall have or obtain any vested
15 interest in a benefit until the benefit has become due and payable
16 upon the death of the member. No certificate of membership in any
17 burial society, nor any interest or rights in the certificate shall be
18 assigned unless the assignment is to a person authorized by §
19 38.2-4019 to be named as a beneficiary except for the purpose of
20 funding or paying for a ~~pre-need~~ preneed funeral contract as
21 ~~described~~ defined in § ~~11-24~~ 54.1-2800 , notwithstanding the
22 provisions of § 38.2-4022, and so long as such assignment is revocable
23 by the assignor. No money or other benefit provided by any burial
24 society shall be liable to attachment, garnishment or other process,
25 or be seized, taken, appropriated or applied by any legal or equitable
26 process or operation of law to pay any debt or liability of a member
27 or beneficiary, or any other person who may have a right to the
28 benefit, either before or after payment.

1 § 54.1-2800. Definitions.--As used in this chapter, unless the
2 context requires a different meaning:

3 "Advertisement" means any information disseminated or placed
4 before the public.

5 "At-need" means at the time of death or while death is imminent.

6 "Board" means the Board of Funeral Directors and Embalmers.

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

8 "Embalming" means the preservation and disinfection of the human
9 dead by external or internal application of chemicals.

10 "Funeral directing" means the for-profit profession of directing
11 or supervising funerals or preparing human dead for burial by means
12 other than embalming.

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

15 "Funeral service establishment" means any main establishment,
16 branch or chapel where any part of the profession of funeral directing
17 or the act of embalming is performed.

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

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

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

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

1 "Preneed funeral contract" means any agreement where payment is
2 made by the consumer prior to the receipt of services or supplies
3 contracted for, which evidences arrangements prior to death for: (i)
4 the providing of funeral services or (ii) the sale of funeral
5 supplies.

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

9 "Resident trainee" means a person who is preparing to be licensed
10 for the practice of funeral services under the direct supervision of a
11 practitioner licensed by the Board.

12 "Solicitation" means initiating contact with consumers with the
13 intent of influencing their selection of a funeral plan or funeral
14 service provider.

15 § 54.1-2803. Specific powers and duties of Board.--In addition
16 to the general powers and duties conferred in this subtitle, the Board
17 shall have the following specific powers and duties:

18 1. To establish standards of service and practice for the funeral
19 service profession in this Commonwealth.

20 2. To regulate and inspect funeral service establishments, their
21 operation and licenses.

22 3. To require licensees and resident trainees to submit all
23 information relevant to their practice or business.

24 4. To enforce the relevant regulations of the Board of Health.

25 5. To enforce local ordinances relating to funeral service
26 establishments.

27 6. To determine the qualifications for inspectors serving as its
28 agents.

1 7. To establish, supervise, regulate and control, in accordance
2 with the law, programs for resident trainees.

3 8. To establish standards for and approve schools of mortuary
4 science or funeral service.

5 9. To adopt a common seal.

6 10. To regulate preneed funeral contracts and preneed funeral
7 trust accounts as prescribed by this chapter, including, but not
8 limited to, the authority to prescribe preneed contract forms,
9 disclosure requirements and disclosure forms and to require reasonable
10 bonds to insure performance of preneed contracts.

11 § 54.1-2804. Licensing authority.--The Board of Funeral
12 Directors and Embalmers is authorized to determine the qualifications
13 to enable any person to engage in the practice of funeral service,
14 preneed funeral planning, funeral directing, embalming and the
15 operation of a funeral service establishment.

16 § 54.1-2805. Engaging in the funeral service profession or the
17 business of preneed funeral planning or acting as a funeral director
18 or embalmer without a license.--It shall be unlawful for any person to
19 engage in or hold himself out as engaging in the funeral service
20 profession or the business of preneed funeral planning , to operate a
21 funeral service establishment, or to act as a funeral director or
22 embalmer or hold himself out as such unless he is licensed by the
23 Board.

24 § 54.1-2806. Refusal, suspension or revocation of license.--The
25 Board may refuse to admit a candidate to any examination, refuse to
26 issue a license to any applicant and may suspend a license for a
27 stated period or indefinitely, or revoke any license or censure or
28 reprimand any licensee or place him on probation for such time as it

1 may designate for any of the following causes:

2 1. Conviction of any felony or any crime involving moral
3 turpitude;

4 2. Unprofessional conduct which is likely to defraud or to
5 deceive the public or clients;

6 3. Misrepresentation or fraud in the conduct of the funeral
7 service profession, or in obtaining or renewing a license;

8 4. False or misleading advertising or solicitation ;

9 5. Solicitation ~~of dead human bodies~~ at-need or any preneed
10 solicitation using in-person communication by the licensee, his
11 agents, assistants or employees ; ~~whether such solicitation occurs~~
12 ~~after death or while death is impending~~ ; however, general advertising
13 and preneed solicitation, other than in-person communication, shall be
14 allowed;

15 6. Employment by the licensee of persons known as "cappers" or
16 "steerers," or "solicitors," or other such persons to obtain the
17 services of a holder of a license for the practice of funeral service;

18 7. Employment directly or indirectly of any agent, employee or
19 other person, on part or full time, or on a commission, for the
20 purpose of calling upon individuals or institutions by whose influence
21 dead human bodies may be turned over to a particular funeral
22 establishment;

23 8. Direct or indirect payment or offer of payment of a
24 commission to others by the licensee, his agents, or employees for the
25 purpose of securing business;

26 9. Use of alcohol or drugs to the extent that such use renders
27 him unsafe to practice ~~funeral service~~ his licensed activity ;

10. Aiding and abetting an unlicensed person to practice within

1 the funeral service profession;

2 11. Using profane, indecent or obscene language within the
3 immediate hearing of the family or relatives of a deceased, whose body
4 has not yet been interred or otherwise disposed of;

5 12. Solicitation or acceptance by a licensee of any commission or
6 bonus or rebate in consideration of recommending or causing a dead
7 human body to be disposed of in any crematory, mausoleum or cemetery;

8 13. Violation of any statute, ordinance or regulation affecting
9 the handling, custody, care or transportation of dead human bodies;

10 14. Refusing to surrender promptly the custody of a dead human
11 body upon the express order of the person lawfully entitled to
12 custody;

13 15. Knowingly making any false statement on a certificate of
14 death;

15 16. Violation of any provisions of Chapter 5 (~~§ 11-24 et seq.~~) e
16 Title 11 and Chapter 7 (§ 32.1-249 et seq.) of Title 32.1;

17 17. Failure to comply with § 54.1-2812, and to keep on file an
18 itemized statement of funeral expenses in accordance with Board
19 regulations;

20 18. Knowingly disposing of parts of human remains, including
21 viscera, that are received with the body by the funeral establishment,
22 in a manner different from that used for final disposition of the
23 body, unless the persons authorizing the method of final disposition
24 give written permission that the body parts may be disposed of in a
25 manner different from that used to dispose of the body;

26 19. Violating or failing to comply with Federal Trade Commission
27 rules regulating funeral industry practices; and

28 20. Violating or cooperating with others to violate any provisio

1 of this chapter or the regulations of the Board of Funeral Directors
2 and Embalmers or the Board of Health.

3 § 54.1-2807. Other prohibited activities.--A. A person licensed
4 for the practice of funeral service shall not (i) remove or embalm a
5 body when he has information indicating the death was such that a
6 medical examiner's investigation is required pursuant to § 32.1-283 or
7 (ii) cremate or bury at sea a body until he has obtained permission of
8 the medical examiner as required by § 32.1-284.

9 B. Funeral service establishments shall not accept a dead human
10 body from any public officer except a medical examiner, or from any
11 public or private facility or person having a professional
12 relationship with the decedent without having first inquired about the
13 desires of the next of kin and the persons liable for the funeral
14 expenses of the decedent. The authority and directions of any next of
15 kin shall govern the disposal of the body.

16 Any funeral service establishment violating this subsection shall
17 not charge for any service delivered without the directions of the
18 next of kin. However, in cases of accidental or violent death, the
19 funeral service establishment may charge and be reimbursed for the
20 removal of bodies and rendering necessary professional services until
21 the next of kin or the persons liable for the funeral expenses have
22 been notified.

23 C. No company, corporation or association engaged in the
24 business of paying or providing for the payment of the expenses for
25 the care of the remains of deceased certificate holders or members or
26 engaged in providing life insurance when the contract might or could
27 give rise to an obligation to care for the remains of the insured
shall contract to pay or pay any benefits to any licensee of the Board

1 or other individual in a manner which could restrict the freedom of
 2 choice of the representative or next of kin of a decedent in procurin~~g~~
 3 necessary and proper services and supplies for the care of the remains
 4 of the decedent.

5 D. No person licensed for the practice of funeral service or
 6 preneed funeral planning or any of his agents shall have any part in
 7 any transaction which in any way interferes interfere with the
 8 freedom of choice of the general public in the choice of persons or
 9 establishments for the care of human remains or of preneed funeral
 10 planning or preneed funeral contracts .

11 E. This section shall not be construed to apply to the authority
 12 of any administrator, executor, trustee or other person having a
 13 fiduciary relationship with the decedent.

14 Article 5.

15 Preneed Funeral Contracts.

16 § 54.1-2820. Requirements of preneed funeral contracts.--A. It
 17 shall be unlawful for any person residing or doing business within
 18 this Commonwealth, to make, either directly or indirectly by any
 19 means, a preneed funeral contract unless the contract:

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

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

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

28 4. Clearly discloses whether the price of the supplies and

1 services purchased is guaranteed;

2 5. States if funds are required to be trusted pursuant to §
3 54.1-2822, the amount to be trusted, the name of the trustee, the
4 disposition of the interest, the fees, expenses and taxes which may be
5 deducted from the interest and a statement of the buyer's
6 responsibility for taxes owed on the interest;

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

10 7. Provides that any person who makes payment under the contract
11 may terminate the agreement at any time prior to the furnishing of the
12 services or supplies contracted for; if the purchaser terminates the
13 contract within thirty days of execution, the purchaser shall be
14 refunded all consideration paid or delivered, together with any
15 interest or income accrued thereon; if the purchaser terminates the
16 contract after thirty days, the purchaser shall be refunded any
17 amounts required to be deposited under § 54.1-2822, together with any
18 interest or income accrued thereon;

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

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

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

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

7 B. If a life insurance or annuity contract is used to fund the
8 preneed funeral contract, the following must also be disclosed as
9 prescribed by the Board:

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

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

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

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

28 C. When the consideration consists in whole or in part of any

1 real estate, the contract shall be recorded as an attachment to the
2 deed whereby such real estate is conveyed, and the deed shall be
3 recorded in the clerk's office of the circuit court of the city or
4 county in which the real estate being conveyed is located.

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

10 § 54.1-2821. Exemptions.--This article shall not apply to the
11 preneed sale of cemetery services or supplies regulated under §
12 57-39.8 et seq.

13 § 54.1-2822. Deposit of money received pursuant to preneed
14 funeral contract.--Within thirty days following the receipt of any
15 money paid pursuant to any preneed funeral contract or interest or
16 income accrued thereon, unless such amounts are paid to fund either an
17 annuity or an insurance policy which will be used to purchase the
18 funeral supplies or services contracted for, the person receiving such
19 amounts shall deposit all consideration paid pursuant to the terms of
20 a preneed funeral contract in which the price of the supplies and
21 services is not guaranteed, or ninety percent of all consideration
22 paid pursuant to the terms of a preneed funeral contract in which the
23 price of the supplies and services is guaranteed, in a special account
24 in a bank or savings institution doing business in this Commonwealth.

25 The funds shall be deposited in separate, identifiable trust
26 accounts setting forth the names of the depositor, the trustee for the
27 person who is the subject of the contract, the name of the person who
will render the funeral services and the name of the person who is the

1 subject of the contract. The purchaser shall have the right to change
2 the beneficiary and trustee of the trust at any time prior to the
3 furnishing of the services or supplies contracted for under the
4 preneed funeral contract. Trust account records shall be subject to
5 examination by the Board.

6 § 54.1-2823. Exemption from levy, garnishment and distress.--Any
7 money, personal property or real property paid, delivered or conveyed
8 subject to § 54.1-2822 shall be exempt from levy, garnishment or
9 distress.

10 § 54.1-2824. Declaration of trust in consideration other than
11 money.--Within thirty days following the receipt of any personal
12 property other than money delivered pursuant to any preneed funeral
13 contract, the person receiving it, if title thereto is transferred, or
14 the person making such delivery, if title thereto is not transferred,
15 shall execute in writing a declaration of trust setting forth all the
16 terms, conditions and considerations upon which the personal property
17 is delivered, which shall be acknowledged in the same manner as the
18 contract and recorded in the clerk's office of the circuit court of
19 the city or county in which the person delivering the personal
20 property resides; provided, that if such terms, conditions and
21 considerations are contained in the preneed funeral contract, the
22 contract shall be recorded.

23 § 54.1-2825. Person to make arrangements for disposition of
24 remains.--Any person may designate in writing, signed and notarized
25 and accepted in writing by the person so designated, an individual who
26 shall make arrangements for his burial or the disposition of his
27 remains upon his death.

28 § 57-39.16. Funeral directors and embalmers exempted.--Nothing

1 in this article shall be construed to apply to prearranged funeral
2 plans entered into by those persons engaged in the profession of a
3 funeral director and embalmer, said plans being preneed funeral
4 contracts regulated under Title 11, Chapter 5 (§ 11-24 et seq.)
5 Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1 of this Code.
6 2. That Chapter 5 of Title 11 of the Code of Virginia, consisting of
7 sections numbered 11-24 through 11-29, is repealed.

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COMMONWEALTH OF VIRGINIA



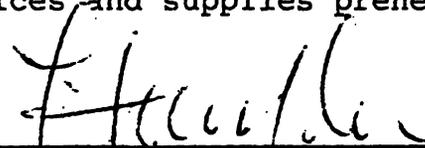
COMMITTEE ASSIGNMENTS
AGRICULTURE, CONSERVATION AND
NATURAL RESOURCES
COMMERCE AND TRADE
EDUCATION AND HEALTH
REHABILITATION AND SERVICES

FRANK W. NOLAN
SENATOR
DISTRICT 11
REPUBLICAN
1982-1988

SENATE

January 19, 1988

I concur with the anti-solicitation provision of the proposed preneed funeral contract legislation but I believe persons other than licensed funeral directors should be permitted to sell funeral services and supplies preneed.


Frank W. Nolen