

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

# **PRENEED FUNERAL CONTRACTS**

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



## **HOUSE DOCUMENT NO. 73**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1995**

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**Report of the  
Joint Subcommittee Studying  
Preneed Funeral Contracts  
To  
The Governor and the  
General Assembly of Virginia  
Richmond, Virginia  
1995**

TO: The Honorable George F. Allen, Governor,  
and  
the General Assembly of Virginia

**EXECUTIVE SUMMARY**

House Joint Resolution 141 (*Appendix A*) established a joint subcommittee to examine marketing and financing practices associated with preneed funeral contracts.

Marketed by funeral establishments, preneed funeral contracts enable individuals to make advance purchases of their funeral arrangements and to establish payment sources when the services are performed. Trusts or insurance policies fund most preneed contracts, but a purchaser may prepay the full sales price directly to the funeral establishment.

Preneed funeral contracts were last studied by a joint subcommittee of the Virginia General Assembly pursuant to House Joint Resolution 50 of 1988. That study focused on preneed contract solicitation practices, service and financial considerations. Recommendations made in the subcommittee's report to the Governor and the 1989 General Assembly (HB 52, 1989; attached as *Appendix B*) included assigning preneed contract oversight responsibilities to the Board of Funeral Directors and Embalmers; prescribing mandatory disclosures within preneed contracts; and establishing purchaser rights and procedures for contract cancellation and refunds.

The 1988 joint subcommittee emphasized that "consumer protection is a primary concern in the regulation of preneed funeral contracts" (HD 52, p. 2). HJR 141 echoed that theme six years later, directing this subcommittee to determine whether the work of the 1989 General Assembly currently provides adequate protection for consumers purchasing preneed contracts.

**Authority of the Department of Health Professions.** It was suggested to the joint subcommittee that the Department of Health Professions should be authorized to intervene more expeditiously in cases where preneed contract purchase money may be lost and to seek injunctive relief or the appointment of a receiver in such circumstances. The subcommittee's draft language on this issue is attached as *Appendix M*; HB 1839 (*Appendix O*) contains the language passed by the 1995 General Assembly.

**House Bill 999.** House Bill 999, carried over from 1994 to 1995 in the House Corporations, Insurance and Banking Committee (CIB) was reviewed by the joint subcommittee. The bill (copy attached as *Appendix E*) would have required that funds used to purchase any preneed funding contract or instrument incorporating the word "trust" be deposited in a Virginia financial institution. The joint subcommittee made an advisory recommendation that the bill not be recommended by House CIB.

**Centralized preneed recordskeeping.** Finally, the joint subcommittee reviewed and recommended a proposal to permit centralized preneed recordskeeping by funeral establishments in Virginia under common ownership, management or control. The recommendation was intended to assist companies with several chapels which must, under current Board regulations, maintain preneed contracts and related records at the funeral establishments. The subcommittee recommended language attached as *Appendix N*; House Bill 1494 (*Appendix P*) is the measure passed by the 1995 General Assembly.

## I. INTRODUCTION

### A. AUTHORITY AND MEMBERSHIP

House Joint Resolution 141 (*Appendix A*) established a joint subcommittee to examine marketing and financing practices associated with preneed funeral contracts. The resolution's chief patron was Delegate Harvey B. Morgan. The 13-member joint subcommittee's membership included the following legislative members: Delegates Ward L. Armstrong of Martinsville, Alan E. Mayer of Lincolnia, Harvey B. Morgan of Gloucester, and James M. Schuler of Blacksburg, all appointed by the Speaker of the House of Delegates; and Senators Joseph B. Benedetti of Richmond, W. Henry Maxwell of Newport News, and Jackson E. Reasor, Jr. of Bluefield, all appointed by the Senate Committee on Privileges and Elections. Delegate Morgan and Senator Maxwell were elected chairman and vice-chairman, respectively.

The Virginia State Corporation Commission (SCC) was represented on the joint subcommittee by Steven T. Foster, Commissioner of the SCC's Bureau of

Insurance, and by Sidney A. Bailey, Commissioner of the SCC's Bureau of Financial Institutions. Citizen members representing key groups with an interest in the issues under consideration included Michael J. Leonard of Norfolk, Gary Williams of Vinton, Carl U. Eggleston of Farmville and Sidney M. Oman of Chesapeake.

## **B. STUDY PARTICIPANTS AND MEETING SCHEDULE**

**Study Participants.** The Board of Funeral Directors and Embalmers and the Department of Health Professions provided extensive information to the subcommittee concerning preneed regulatory practices. The Virginia Funeral Directors Association (VFDA) furnished brochures, contracts and related materials to the joint subcommittee. The Virginia Morticians Association (VMA) was also an active participant in the subcommittee's work. Banks furnishing preneed trust services were represented by Chesapeake Bank of Kilmarnock, Virginia. Insurers selling preneed insurance policies were represented by the United Family Life and Forethought insurance companies.

The Blue Ridge Mutual Association, a burial society licensed under Virginia's insurance laws, also submitted extensive briefing memoranda to the subcommittee. Additionally, the Virginia Cemetery Association, at the subcommittee's request, briefed the subcommittee on the preneed cemetery industry, its preneed financing, and marketing practices. The American Association of Retired Persons (AARP) participated extensively in the study, as it had in the 1988 study. Finally, many funeral directors attended the public hearing conducted by the subcommittee and expressed their views on the study issues.

**Meeting Schedule.** The HJR 141 joint subcommittee met four times in 1994. At its initial meeting on August 10, its members learned about current preneed sales and marketing practices, and determined what issues would be examined further. At its second meeting on October 6, the joint subcommittee discussed the central issues emerging from the first meeting--such as timely regulatory intervention on preneed complaints--before convening a public hearing. Following the November 22 meeting, the subcommittee staff was directed to prepare drafts for subsequent discussion and review. At last meeting on December 22, the subcommittee finalized its recommendations to the Governor and the 1995 Session of the General Assembly. A chart summarizing the issues and subcommittee action is attached as *Appendix L*.

## II. THE WORK OF THE JOINT SUBCOMMITTEE

### A. BACKGROUND

#### 1. Overview of Preneed Contracts

Preneed funeral contracts encompass the advance sale of funeral services and supplies by funeral directors or embalmers to members of the public. Through preneed contracts, individuals direct the disposition of their remains and select funeral merchandise, e.g. a casket and floral arrangements. A price for the services and merchandise selected is established in the agreement. Commonly marketed by direct-mail solicitation since current Virginia law prohibits in-person solicitation, preneed contracts are usually funded by preneed trusts or insurance policies that are established or purchased concurrently with the execution of the preneed services agreement.

Preneed funeral contracts establish a guaranteed price for funeral goods and services provided at a future date. Funeral expenses have risen significantly during the past several years, with costs for a moderately priced funeral in Virginia reportedly ranging between \$3500 and \$7500, depending on location and the services and merchandise selected. Thus, the subcommittee learned, many Virginians purchase preneed contracts to ensure adequate funding for the kind and quality of funeral arrangements they desire.

The sale of preneed contracts in Virginia is regulated by the Board of Funeral Directors and Embalmers. Only persons licensed by the Board may sell them. However, the Board has no regulatory authority over preneed trust agreements or insurance policies. Insurers issuing preneed policies in Virginia are regulated by the Virginia State Corporation Commission's (SCC) Bureau of Insurance. Virginia banks and trust companies providing preneed trust services are regulated by the SCC's Bureau of Financial Institutions.

#### 2. Significant Past Legislation Addressing Preneed Contracts

**1988 Study.** Preneed funeral contracts were last studied by the Virginia General Assembly pursuant to House Joint Resolution 50 of 1988. That study examined preneed contract solicitation practices, service and financial considerations. Recommendations made in the subcommittee's report to the Governor and the 1989 General Assembly (HD 52, 1989; attached as *Appendix B*) included placing preneed contract oversight responsibilities within the Board of Funeral Directors and Embalmers; prescribing mandatory disclosures within preneed contracts; and establishing purchaser rights and procedures for contract cancellation and refunds.

The 1989 General Assembly adopted virtually all of the HJR 50 subcommittee's recommendation when it passed House Bill 1259, enrolled as Chapter 684 of the 1989 Acts of Assembly (*Appendix C*). That Act accomplished the following:

- Vested the Board of Funeral Directors and Embalmers with regulatory authority over preneed funeral contracts.
- Required licensure of persons engaged in the business of preneed funeral planning.
- Prohibited in-person solicitation of preneed funeral contracts.
- Prohibited interference with individuals' freedom to choose funeral service providers and preneed funeral plans.
- Mandated disclosures to be made by preneed funeral contract sellers to the purchasers of such contracts. Such disclosures included (i) a complete description of the goods and services purchased and (ii) information concerning the guaranteeing of prices of goods and services purchased.

In addition to these key provisions, the Act exempted preneed funeral trusts from garnishment under Virginia's debtor-creditor laws. The Act also granted fiduciaries statutory authority to execute preneed contracts on behalf of persons deemed incompetent under Virginia's mental health laws (Va. Code Title 37.1).

**Recent legislation; financing mechanisms.** Since the 1989 bill's enactment, the General Assembly has passed additional legislation affecting preneed funeral contract financing practices. Amendments to Virginia Code § 54.1-2820 in the 1991 and 1992 Sessions resulted in requirements that (i) the face value of life insurance or annuity contracts used to fund preneed contracts be adjusted annually to reflect increases in the Consumer Price Index or (ii) the benefit payable at death equal all premiums paid *plus* interest compounded annually at a rate of five percent for the first 15 years; thereafter, interest and dividends must be paid but no rate is specified.

A 1993 bill added Virginia Code § 32.1-325.01, which stipulates that whenever a term life insurance policy funding a preneed contract pays benefits in excess of actual funeral expenses, the excess is subject to recovery by the Department of Medical Assistance Services for Medicaid payments made on behalf of the deceased insured. Two bills affecting preneed financing were introduced in the 1994 Session but not enacted. House Bill 963 (copy attached as *Appendix D*) addressed cash surrender values of single-premium term insurance funding preneed contracts purchased by Medicaid applicants. House Bill 999 (attached as

*Appendix E*) addressed the use of the term "trust" in connection with preneed contract financing.

### **3. Focus of the HJR 141 Study.**

The 1988 joint subcommittee emphasized in its final report that "consumer protection is a primary concern in the regulation of preneed funeral contracts" (*Appendix B, p. 2*). House Joint Resolution 141 echoed that theme six years later, directing this subcommittee to determine whether the work of the 1989 General Assembly provided adequate statutory protection for consumers presently purchasing preneed contracts.

The joint subcommittee examined the following issues:

a. The preneed funeral contract industry in Virginia with particular emphasis on (i) current preneed contract funding options and (ii) typical contractual terms and conditions for these options.

b. Financial incentives, including commissions, paid to funeral home licensees by insurers and other originators of preneed funding instruments.

c. Regulatory oversight of the preneed funeral contract industry, currently divided among the Virginia Board of Funeral Directors and Embalmers, the State Corporation Commission's Bureau of Insurance, and the State Corporation Commission's Bureau of Financial Institutions.

d. Proposed preneed bonding, errors and omissions insurance and guaranty funds.

e. The marketing and sale of preneed cemetery contracts, and their potential overlap with the solicitation of preneed funeral contracts.

### **B. THE PRENEED INDUSTRY**

The sale of preneed funeral contracts is a significant source of funeral industry revenues. John Moore, President of Estate Assurance Systems, a preneed funding company, testified that preneed contract sales by Virginia funeral establishments since 1989 have exceeded \$200 million, with current annual sales estimated at \$50 million. The average age of preneed contract purchasers is 75, according to Moore.

Persons licensed by the Board of Funeral Directors and Embalmers are the only authorized sellers of preneed contracts in the Commonwealth; the funeral establishment is the important "point of sale." The funeral establishment typically

serves as an intermediary between the preneed purchaser and preneed funding sources, frequently offering funding options to the preneed purchasers. How funeral establishments address the funding issue is largely within their discretion; they are under no statutory or regulatory restriction as to the type or source of funding products offered.

**Preneed Life Insurance.** One popular funding option, preneed term life insurance, illustrates the growth of the preneed funding industry. United Family Life, a Georgia-based insurance company, for example, has expanded its preneed term life insurance sales operations to 43 states, including Virginia. In Virginia, a number of funeral directors are reportedly licensed to sell life insurance; they serve as agents for insurers marketing preneed policies and are paid on a commission basis. Other funeral establishments reportedly engage licensed insurance agents to preneed insurance.

Preneed customers are offered an array of preneed insurance products including single- and multiple-premium policies. Policies without cash value are available to purchasers wanting to ensure that their funeral arrangement's funding source is not counted as an asset in determining Medicaid eligibility. Additionally, some customers make irrevocable assignments of their policies in trust for the same purpose.

**Preneed Bank Trusts.** Financial institutions, including Chesapeake Bank, a Northern Neck financial institution, are also capitalizing on the expanding market for preneed trust services. Douglas Monroe, Chesapeake Bank's president, told the subcommittee that his bank's preneed trust business has grown substantially since 1982 when the bank first offered preneed trusts. Chesapeake currently offers its preneed trust services through 150-200 funeral establishments across the Commonwealth.

Bank trust options parallel their insurance counterparts in some respects: installments trusts are available, and some preneed purchasers make irrevocable assignments of their interests in preneed trusts for Medicaid purposes. Overlap between preneed bank trusts and preneed life insurance can occur, the subcommittee learned, when the proceeds of preneed life insurance policies fund a preneed bank trust. While funeral directors and other Board licensees typically receive no compensation for their assistance in establishing a preneed bank trust, the sale of preneed policies to fund such trusts may result in commission payments.

**Preneed Contract Provisions.** The joint subcommittee examined and discussed a sampling of preneed funeral services and funding contracts furnished them by funeral homes, preneed insurers (including United Family Life), and Chesapeake Bank. Preneed funeral services contracts must conform to Board regulations. These regulations, however, do not prescribe the content or format of

the funding contracts, e.g., insurance applications and policies, or trust instruments.

Representative preneed service and funding contracts (attached as *Appendix F*) contain provisions for placing deposited funds or insurance policies in irrevocable trusts. The irrevocability option invokes current Medicaid eligibility regulations excluding from countable assets those funds set aside for funeral expenses and burial space items. Irrevocable trusts provide one popular means of satisfying the regulations' criteria for exclusion.

Some of the preneed insurance marketing and contractual materials examined used the term "trust" to describe irrevocable assignments. It was suggested to the joint subcommittee that some purchasers might not appreciate the difference between purchasing a preneed insurance policy to be "placed in trust," and establishing a preneed "trust account" in a financial institution. One preneed insurer advised the joint subcommittee of its intentions to revise its marketing materials and contracts to address that concern.

In a related matter, HB 999 (*Appendix E*), carried over from 1994 to 1995 in the House Corporations, Insurance and Banking Committee, required any funds paid to fund any preneed arrangement described as a "trust" to be deposited in a financial institution in the Commonwealth. While not formally referred to the joint subcommittee, the bill was nevertheless discussed at some length by its members. An advisory recommendation was made by the majority of those voting that the bill be passed by indefinitely by the House Committee.

### **C. REGULATION OF PRENEED**

**Authority of Regulatory Board.** The Board of Funeral Directors and Embalmers is the principal regulator of Virginia's funeral industry. It determines the professional requirements for funeral practice licensure within the Commonwealth, and it oversees disciplinary proceedings involving its licensees. In 1989 the Board received statutory authority via HB 1265 (*Appendix C*) to regulate its licensees' sale of preneed funeral contracts.

Since 1992, the Board has adjudicated 22 cases of preneed complaints against Board licensees involving 67 counts of individual allegations. Board review of these cases disclosed six founded violations involving licensee misappropriation of preneed funds. These violations involved the failure of a Board licensee to transfer preneed contract purchase money to the preneed funding source. According to a Board representative, the money was recovered in all cases involving such violations. In December 1994, cases involving seven misappropriation allegations were pending before the Board. There were also pending four allegations of licensees holding preneed moneys in nonsegregated accounts beyond

the 30-day period permitted by law. A summary of past and pending preneed allegations before the Board as of November 1994 is attached as *Appendix G*.

Concerns were expressed by subcommittee members about the lengthy period typically required by the Board to adjudicate preneed complaints. Robert Nebiker, Deputy Director of the Department of Health Professions, told the subcommittee that the Board has no statutory authority to intervene summarily through cease and desist orders or otherwise. Preneed-related complaints received by the Board's staff are first turned over to the Department's investigators. The complaints are processed by the Board once the investigation is completed. The hearing process that follows can take up to one year to complete.

The Board's complaint investigation process conforms to the Virginia Administrative Process Act (APA). The APA provides administrative agencies no authority to issue cease and desist orders. A Virginia Court of Appeals case, *Greenwald Cassell Associates v. The Department of Commerce*, 15 Va. App. 236 (Court of Appeals 1992), highlights the APA's limitations on expedited administrative action. The options are to (i) refer the matter to a Commonwealth's attorney for prosecution (whenever criminal conduct may be occurring) or (ii) petition a circuit court for injunctive relief. In *Greenwald*, the Virginia Court of Appeals vacated a Department of Commerce cease and desist order issued via an administrative letter. The Court held that such a letter was without basis in the APA or elsewhere.

The joint subcommittee learned that some boards within the Department of Health Professions (e.g., the Boards of Medicine and Pharmacy) have explicit statutory authority to summarily suspend their licensees' professional activities. However, the joint subcommittee determined that where preneed funding is in jeopardy, e.g., where the Department of Health Professions has reason to believe that preneed funding has been misappropriated, the Department should have the further authority to seek the appointment of a receiver for the funeral establishment. This action, rather than license suspension, would furnish the best method of promptly locating and protecting purchasers' preneed funding.

**Public Hearing.** Representatives of the funeral and insurance industries attended the joint subcommittee's meetings, and many of them testified at a public hearing on October 6. Funeral directors testifying before the joint subcommittee echoed the theme expressed in letters from the Northern Virginia and Tidewater Funeral Directors Associations. Both letters (attached as *Appendix H*) questioned the need for additional regulation of the preneed industry, citing the 1989 legislation's breadth and the limited number of preneed complaints received by the Board of Funeral Directors since 1989. The letters and witnesses also urged the retention of all current preneed funding options.

Insurers marketing preneed insurance products in Virginia including United Family Life, represented by Henry McVey, also questioned the need for any additional regulation. David Peters, representing Forethought, another preneed insurance carrier, advised the joint subcommittee that his examination of preneed complaints at the offices of the Board of Funeral Directors and Embalmers and at the State Corporation Commission revealed no complaints containing allegations of misconduct by any insurers in connection with preneed policies. Additionally, Malcolm Osborne, a representative of the Blue Ridge Mutual Association (Virginia's sole remaining burial society), urged the subcommittee to leave undisturbed existing laws concerning preneed insurance.

#### **D. DISCLOSURE, BONDING AND ACCOUNTING**

The joint subcommittee learned that once a preneed funding contract is sold, there is no statutory or regulatory requirement for regular or periodic updates on the status or current value of the funding instrument, whether it is a preneed insurance policy or bank trust. According to Douglas Monroe of Chesapeake Bank, some financial institutions (including Chesapeake) providing preneed trust services furnish periodic account statements to trust account customers.

It was suggested to the joint subcommittee that (i) financial institutions providing preneed trust services and (ii) insurers selling policies funding preneed contracts or intermediaries holding these policies in trust or in some similar arrangement, all be required to provide annual or periodic account statements to policy purchasers. According to Monroe, one significant benefit of these statements is that they may prevent an account holder's next-of-kin from overlooking the existence of preneed funding arrangements (Monroe's remarks attached as *Appendix I*).

The American Association of Retired Persons (AARP) favored post-purchase disclosure of earnings associated with preneed funding contracts. Additionally, the AARP proposed: (i) independent audit reports of all trust funds submitted at least annually to a state enforcement agency and (ii) bonding requirements for all who accept, handle or have access to preneed trust funds.

Robert F. Haas, representing the AARP, told the subcommittee that his Association supports the enactment of legislation aimed at protecting preneed funding from the time it leaves a purchaser's hands until it is deposited in a preneed trust account or is used to purchase a preneed insurance policy. He suggested that the joint subcommittee recommend legislation requiring fidelity bonding to cover these funds or, in the alternative, establishing a preneed guaranty fund created by nominal, per-contract payments by funeral licensees.

In North Carolina, Haas noted, funeral establishment licensees pay \$15 per preneed contract sold into a preneed guaranty fund (North Carolina G.S. § 90-210.66, *Appendix J*). If a licensee misappropriates preneed funds and purchaser reimbursement cannot be obtained from the licensee or his business, the purchaser is paid from the guaranty fund. A former member of Virginia's Board of Funeral Directors and Embalmers also recommended bonding or some form of mandatory errors and omissions insurance to address this issue.

The joint subcommittee made no recommendations concerning bonding, a guaranty fund, or errors and omissions insurance.

#### **E. PRENEED CEMETERY CONTRACTS**

Preneed funeral contracts are one component of the preneed market. The other is the marketing and sale of preneed cemetery contracts involving the sale of gravesites and related merchandise such as memorials and burial vaults. Sellers of preneed cemetery contracts are required to register with the Department of Agriculture and Consumer Affairs, but are not otherwise licensed by any regulatory agency. Additionally, in-person solicitation of prospective preneed cemetery contract purchasers is not prohibited, as it is for the sale of preneed funeral contracts.

Members of the joint subcommittee learned of the emergence of funeral homes and cemeteries that are affiliated or held in common ownership. This suggested to some joint subcommittee members the possibility of joint, in-person solicitation for preneed cemetery contracts and preneed funeral contracts. The joint subcommittee received testimony on this issue from Mark A. Droughman, representing the Virginia Cemetery Association (copy of remarks attached as *Appendix K*).

Droughman emphasized that funeral homes and cemeteries have separate laws governing each industry. Common ownership would not eliminate the obligation of each business to comply with regulations applicable to its operation. Addressing the solicitation "cross-over" issue, he stated that cemetery representatives are barred by a combination of statutory and case law from marketing funeral services and related items.

Droughman and Vernon E. Stuart of the Parklawn Memorial Park in Hampton told the joint subcommittee that current preneed statutes and regulations provide a bright line separating permitted from prohibited preneed marketing activities. These clear-cut restrictions, combined with the low level of preneed-related complaints, suggested that the current framework is working.

Droughman and Stuart also noted that the demographics of preneed funeral and preneed cemetery sales are quite different. According to Droughman, a typical preneed funeral customer is between 65-75 years old. Preneed cemetery contract marketing, on the other hand, targets a younger audience between the ages of 45 and 60 suggesting, Droughman said, a less vulnerable purchasing group. The Joint Subcommittee made no legislative recommendations concerning preneed cemetery contracts.

### **III. JOINT SUBCOMMITTEE RECOMMENDATION AND LEGISLATIVE ACTION.**

Recommendations received and reviewed by the joint subcommittee during the course of its work are summarized in *Appendix L*. Significant proposals recommended and not recommended are described below.

#### **1. Recommended.**

**Authority of the Department of Health Professions.** It was suggested to the joint subcommittee that the Department of Health Professions should be authorized to intervene more expeditiously in cases where preneed contract purchase money may be lost. A proposal permitting the Department to seek injunctive relief or the appointment of a receiver in such circumstances was made to the joint subcommittee (*Appendix M*). This measure was passed by the 1995 General Assembly as HB 1839 (*Appendix O*).

**Centralized preneed recordskeeping.** The joint subcommittee reviewed and recommended a proposal to permit centralized preneed recordskeeping by funeral establishments in Virginia under common ownership, management or control (*Appendix N*). The recommendation was intended to assist companies with several chapels which must, under current Board regulations, maintain preneed contracts and related records at the funeral establishments. A copy of the proposal is attached as *Appendix N*. The measure passed as HB 1494 (*Appendix P*).

#### **2. Not Recommended.**

**House Bill 999.** Carried over from the 1994 Session in the House Corporations, Insurance and Banking Committee (CIB), House Bill 999 (*Appendix E*) was reviewed informally by the joint subcommittee. The bill would have required that funds used to purchase any preneed funding contract or instrument incorporating the word "trust" be deposited in a Virginia financial institution. The joint subcommittee made an advisory recommendation that the bill not be recommended by House CIB.

**Preneed cemetery contracts.** Concerns expressed by some joint subcommittee members about potential dual-solicitation of preneed funeral and preneed cemetery contracts resulted in the study's expansion to include a brief review of preneed cemetery regulation. Modifying preneed cemetery contract solicitation laws was suggested to the joint subcommittee but not recommended.

**Preneed regulatory oversight.** It was suggested to the joint subcommittee that the separate service and funding components of preneed funeral contracts result in fragmented regulatory oversight. The Board of Funeral Directors and Embalmers can address complaints within the scope of its authority over its licensees. However, the Board has no authority vis-à-vis banks and insurance companies selling preneed funding products and services. Complaints addressing funding fall within the jurisdiction of the State Corporation Commission's Bureau of Financial Institutions or Bureau of Insurance. The joint subcommittee made no recommendations to modify the current regulatory structure.

**Statements of account.** A recommendation to require all sellers of preneed funding products and services, e.g., insurance companies and banks, to provide periodic statements of account to preneed customers was not endorsed by the joint subcommittee.

**Audits, bonding, and recovery fund.** The suggestions of the AARP and others that Virginia should require a state regulatory agency to perform period audits of preneed operations; require bonding of all individuals involved in preneed sales; and establish a recovery fund to compensate individuals whose preneed funds were misappropriated were not adopted by the joint subcommittee.

**Appreciation of preneed insurance policies and annuity contracts.** It was suggested by a subcommittee member that current law requiring that preneed insurance policies and annuities appreciate at the rate of five percent or the annual increases in the CPI be repealed or broadened to require banks providing preneed trust services to guarantee the same rate of return. The subcommittee did not recommend either suggestion.

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#### IV. Appendices

- Appendix A. House Joint Resolution 141 (1994).
- Appendix B. House Document 52 (1989; appendix omitted).
- Appendix C. Chapter 684 (1989 Acts of Assembly, HB 1265)
- Appendix D. House Bill 963 (1994).
- Appendix E. House Bill 999 (1994).
- Appendix F. Samples of preneed service and funding contracts.
- Appendix G. Summary of past and pending preneed allegations before the Board of Funeral Directors and Embalmers as of November 1994.
- Appendix H. Correspondence to the joint subcommittee from the Northern Virginia and Tidewater Funeral Directors' Associations.
- Appendix I. Remarks of Douglas Monroe, President, Chesapeake National Bank.
- Appendix J. North Carolina G.S. § 90-210.66.(establishing preneed recovery fund)
- Appendix K. Remarks of Mark A. Droughman, representing the Virginia Cemetery Association.
- Appendix L. Summary of recommendations made to joint subcommittee, and action thereon.
- Appendix M. Draft proposal authorizing the Department of Health Professions to seek the judicial appointment of a receiver and other equitable relief whenever funds entrusted to Department licensees are in jeopardy.
- Appendix N. Draft proposal authorizing affiliated funeral establishments to maintain preneed records at a central location.
- Appendix O. House Bill 1839 (as enrolled).
- Appendix P. House Bill 1494 (as enrolled).

## GENERAL ASSEMBLY OF VIRGINIA -- 1994 SESSION

## HOUSE JOINT RESOLUTION 141

*Establishing a joint subcommittee to study sales, marketing and financing practices associated with preneed funeral contracts.*

Agreed to by the House of Delegates, March 10, 1994

Agreed to by the Senate, March 8, 1994

WHEREAS, the sale of preneed funeral contracts within the Commonwealth is a multi-million dollar component of funeral industry revenues; and

WHEREAS, a large percentage of preneed funeral contract sales are made to elderly Virginians who, in many cases, lack the sophistication, education, or capacity to understand the documents and agreements that comprise such agreements; and

WHEREAS, in many cases, preneed funeral contracts cost purchasers several thousand dollars, representing a substantial investment by such purchasers, and frequently a large percentage of their savings; and

WHEREAS, the marketing and financing of such contracts are largely unregulated; and

WHEREAS, the potential for misleading sales, marketing and financing practices associated with the sale of such contracts is very great; and

WHEREAS, it is in the public interest that purchasers of such contracts be protected from such practices; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study sales, marketing and financing practices associated with the sale of preneed funeral contracts within the Commonwealth, as well as related issues deemed relevant. The joint subcommittee shall consist of thirteen members; four members of the House of Delegates to be appointed by the Speaker of the House; three members of the Senate to be appointed by the Senate Committee on Privileges and Elections; one funeral director from the Virginia Funeral Directors Association to be appointed by the Speaker; one funeral director from the Virginia Morticians Association to be appointed by the Senate Committee on Privileges and Elections; one representative of insurers selling life insurance or annuities used to fund preneed funeral contracts to be appointed by the Speaker; one representative of Virginia financial institutions providing trust services in connection with preneed funeral contracts to be appointed by the Senate Committee on Privileges and Elections; and the Commissioner of Insurance and the Commissioner of Financial Institutions within the State Corporation Commission or their designees.

The direct costs of this study shall not exceed \$ 7,250.

The joint subcommittee shall complete this study in time to submit its findings and recommendations to the Governor and the 1995 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING

# Preneed Contracts for Funeral Services

TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA



## HOUSE DOCUMENT NO. 52

COMMONWEALTH OF VIRGINIA  
RICHMOND  
1989

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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 contracts.

# 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

## 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 5

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

marijuana upon the property, including buildings and grounds, of any public, private or parochial elementary, middle or high school, upon public property within 1,000 feet of such school property or while on any school bus as defined in § 46.1-1.

B. Violation of this section shall constitute a separate and distinct felony. Any person violating the provisions of this section shall, upon conviction, be guilty of a Class 6 felony imprisoned for a term of not less than one year nor more than five years and fined not more than \$100,000. However, if such person proves that he sold such controlled substance or marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance or marijuana to use or become addicted to or dependent upon such controlled substance or marijuana, he shall be guilty of a Class 1 misdemeanor.

C. If a person commits an act violating the provisions of this section, and the same act also violates another provision of law that provides for penalties greater than those provided for by this section, then nothing in this section shall prohibit or bar any prosecution or proceeding under that other provision of law or the imposition of any penalties provided for thereby.

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### CHAPTER 683

*An Act to amend and reenact § 53.1-240 of the Code of Virginia, relating to per diem cost of maintenance in detention homes.*

[H 1259]

Approved April 5, 1989

Be it enacted by the General Assembly of Virginia:

1. That § 53.1-240 of the Code of Virginia is amended and reenacted as follows:

§ 53.1-240. Schedules of per diem cost of maintenance in detention homes; reimbursements of cities and counties.—The Board shall establish schedules setting forth the per diem cost to each locality for maintaining a child in a detention home. In accordance with the schedule the Board shall, in addition to all other reimbursements on account of such detention homes, reimburse each city or county for the cost of maintaining in such homes any children committed to the Department. *The Board shall review annually and adjust, if justified, the per diem it pays to localities for the care of state wards.*

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### CHAPTER 684

*An Act to amend and reenact §§ 8.01-512.4, 37.1-142, 38.2-4021, 54.1-2800 and 54.1-2803 through 54.1-2807 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 28 of Title 54.1 an article numbered 5, consisting of sections numbered 54.1-2820 through 54.1-2825, and to repeal Chapter 5 of Title 11 of the Code of Virginia, consisting of sections numbered 11-24 through 11-29, the amended, added and repealed sections relating to preneed funeral contracts.*

[H 1265]

Approved April 5, 1989

Be it enacted by the General Assembly of Virginia:

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

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

**NOTICE TO JUDGMENT DEBTOR**

**HOW TO CLAIM EXEMPTIONS FROM GARNISHMENT**

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

The law provides that certain property and wages cannot be taken in garnishment. Such property is said to be exempted. A summary of some of the major exemptions is set forth in the request for hearing form. There is no exemption solely because you are having difficulty paying your debts.

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

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

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

**REQUEST FOR HEARING-GARNISHMENT EXEMPTION CLAIM**

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

**MAJOR EXEMPTIONS UNDER FEDERAL AND STATE LAW**

- ..... 1. Social Security benefits and Supplemental Security Income (SSI) (42 U.S.C. § 407).
- ..... 2. Veterans' benefits (38 U.S.C. § 3101).
- ..... 3. Federal civil service retirement benefits (5 U.S.C. § 8346).
- ..... 4. Annuities to survivors of federal judges (28 U.S.C. § 376(n)).
- ..... 5. Longshoremen and Harborworkers Compensation Act (33 U.S.C. § 916).
- ..... 6. Black lung benefits.

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

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

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

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

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

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

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

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

- ..... ~~11a.~~ 13. Workers' Compensation benefits (§ 65.1-82, Code of Virginia).
- ..... ~~12.~~ 14. Growing crops (§ 8.01-489, Code of Virginia).
- ..... ~~13.~~ 15. Benefits from group life insurance policies (§ 38.2-3339, Code of Virginia).
- ..... ~~14.~~ 16. Proceeds from industrial sick benefits insurance (§ 38.2-3549, Code of Virginia).
- ..... 15. 17. Assignments of certain salary and wages (§ 55-165, Code of Virginia).
- ..... ~~16.~~ Burial contracts (~~§ 11-28, Code of Virginia~~).
- ..... ~~17.~~ 18. Benefits for victims of crime (§ 19.2-368.12, Code of Virginia).
- ..... ~~18.~~ [Repealed.]
- ..... 19. *Preneed funeral trusts* (§ 54.1-2823, Code of Virginia).
- ..... ~~19.~~ 20. Other (describe exemption): \$ .....

I request a court hearing to decide the validity of my claim. Notice of the hearing should be given me at:

..... (address) ..... (telephone no.)

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

..... (date) ..... (signature of judgment debtor)

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

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

C. The fiduciary of a ward's estate may make a gift, not to exceed \$100 to each donee in a calendar year and not to exceed a total of \$500 per calendar year from such income and principal, without the requirement of a court-appointed guardian ad litem for the ward, without the requirement of notification to the ward or to any person who would be an heir or distributee of the ward if he were dead or a beneficiary under any known will of the ward and without requiring a court hearing. Prior to the making of such a gift, the fiduciary must consider conditions (i) through (vii) as set forth in subsection B of this section and must also find that the ward has shown a history of giving the same or a similar gift to a specific donee for the previous three years prior to the appointment of the fiduciary.

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

§ 38.2-4021. Interest in benefits; assignability; liability to attachment, etc.—No beneficiary

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

§ 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.

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

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

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

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

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

"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.

"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.

"Resident trainee" 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.

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

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

1. To establish standards of service and practice for the funeral service profession in this Commonwealth.
2. To regulate and inspect funeral service establishments, their operation and licenses.
3. To require licensees and resident trainees to submit all information relevant to their practice or business.
4. To enforce the relevant regulations of the Board of Health.
5. To enforce local ordinances relating to funeral service establishments.
6. To determine the qualifications for inspectors serving as its agents.
7. To establish, supervise, regulate and control, in accordance with the law, programs for resident trainees.

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

9. To adopt a common seal.

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

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

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

§ 54.1-2806. Refusal, suspension or revocation of license.—The Board may refuse to admit a candidate to any examination, refuse to issue a license to any applicant and may suspend a license for a stated period or indefinitely, or revoke any license or censure or reprimand any licensee or place him on probation for such time as it may designate for any of the following causes:

1. Conviction of any felony or any crime involving moral turpitude;
2. Unprofessional conduct which is likely to defraud or to deceive the public or clients;
3. Misrepresentation or fraud in the conduct of the funeral service profession, or in obtaining or renewing a license;
4. False or misleading advertising or solicitation ;
5. Solicitation of ~~dead human bodies at need or any preneed solicitation using in-person communication~~ by the licensee, his agents, assistants or employees ; ~~whether such solicitation occurs after death or while death is impending ; however, general advertising and preneed solicitation, other than in-person communication, shall be allowed;~~
6. Employment by the licensee of persons known as "cappers" or "steerers," or "solicitors," or other such persons to obtain the services of a holder of a license for the practice of funeral service;
7. Employment directly or indirectly of any agent, employee or other person, on part or full time, or on a commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;
8. Direct or indirect payment or offer of payment of a commission *to others* by the licensee, his agents, or employees for the purpose of securing business;
9. Use of alcohol or drugs to the extent that such use renders him unsafe to practice ~~funeral service his licensed activity ;~~
10. Aiding or abetting an unlicensed person to practice within the funeral service profession;
11. Using profane, indecent or obscene language within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of;
12. Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or cemetery;
13. Violation of any statute, ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;
14. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to custody;
15. Knowingly making any false statement on a certificate of death;
16. Violation of any provisions of Chapter 5 (§ 11-24 et seq.) of Title 11 and Chapter 7 (§ 32.1-249 et seq.) of Title 32.1;

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

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

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

20. Violating or cooperating with others to violate any provision of this chapter or the regulations of the Board of Funeral Directors and Embalmers or the Board of Health.

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

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

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

C. No company, corporation or association engaged in the business of paying or providing for the payment of the expenses for the care of the remains of deceased certificate holders or members or engaged in providing life insurance when the contract might or could 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 or other individual in a manner which could restrict the freedom of choice of the representative or next of kin of a decedent in procuring necessary and proper services and supplies for the care of the remains of the decedent.

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

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

#### Article 5.

##### *Preneed Funeral Contracts.*

§ 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;

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; if the purchaser terminates the contract within thirty 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 thirty 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. If a life insurance or annuity contract is used to fund the preneed funeral contract, 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.

C. 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.

D. 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.

§ 54.1-2821. Exemptions.—This article shall not apply to the preneed sale of cemetery services or supplies regulated under Article 3.2 of Chapter 3 of Title 57 (§ 57-35.11 et seq.).

§ 54.1-2822. Deposit of money received pursuant to preneed funeral contract.—Within thirty days following the receipt of any money paid pursuant to any preneed funeral contract or interest or income accrued thereon, unless such amounts are paid to fund either an annuity or an insurance policy which will be used to purchase the funeral supplies or services contracted for, the person receiving such amounts shall deposit all consideration paid pursuant to the terms of a preneed funeral contract in which the price of the supplies and services is not guaranteed, or ninety percent of all consideration paid pursuant to the terms of a preneed funeral contract in which the price of the supplies and

## 1994 SESSION

LD2937364

## HOUSE BILL NO. 963

Offered January 25, 1994

A BILL to amend and reenact § 32.1-325.01 of the Code of Virginia, relating to single-premium term life insurance policies funding preneed funeral contracts: cash surrender value.

Patron—Morgan

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-325.01 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-325.01. Certain term life insurance considered resources.

A. When making eligibility determinations for institutional or community-based care to be paid for by the Department, the Department shall consider as an uncompensated transfer all resources that are used by an applicant to purchase any term life insurance policy that does not have a benefit payable at death that will equal or exceed twice the sum of all premiums paid for such policy if such policy was purchased within thirty months prior to the date of application for assistance.

B. The provisions of this section shall not apply to term life insurance policies for pre-need funerals pursuant to § 54.1-2820, except that any benefits paid under such policy in excess of such actual expenses shall be subject to recovery by the Department of Medical Assistance Services for Medicaid payments made on behalf of the deceased insured. The provisions of this section shall not apply to any term life insurance policies purchased prior to the effective date of this law.

C. Single-premium, term life insurance policies funding preneed funeral contracts described in § 54.1-2820 shall be deemed to have cash surrender values of at least fifty percent of their face value for the sole purpose of making eligibility determinations for institutional or community-based care to be paid for by the Department.

## Official Use By Clerks

## Passed By

## The House of Delegates

without amendment with amendment substitute substitute w/amdt 

## Passed By The Senate

without amendment with amendment substitute substitute w/amdt 

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Clerk of the House of Delegates

Clerk of the Senate

## 1994 SESSION

LD2938364

## HOUSE BILL NO. 999

Offered January 25, 1994

*A BILL to amend and reenact § 54.1-2822 of the Code of Virginia, relating to preneed funeral contracts; deposit of trust principal in Virginia financial institutions.*

Patron—Morgan

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2822 of the Code of Virginia is amended and reenacted as follows:

§ 54.1-2822. Deposit of money received pursuant to preneed funeral contract.

A. Within thirty days following the receipt of any money paid pursuant to any preneed funeral contract or interest or income accrued thereon, unless such amounts are paid to fund either an annuity or an insurance policy which will be used to purchase the funeral supplies or services contracted for, the person receiving such amounts shall deposit all consideration paid pursuant to the terms of a preneed funeral contract in which the price of the supplies and services is not guaranteed, or ninety percent of all consideration paid pursuant to the terms of a preneed funeral contract in which the price of the supplies and services is guaranteed, in a special account in a bank or savings institution doing business in this Commonwealth.

B. Notwithstanding any provision in subsection A, any amounts paid to fund any preneed funeral contract, or any agreement supplementary thereto, that is described as or denominated a trust agreement, trust contract, trust instrument, funeral trust, or otherwise uses the term "trust" to connote or suggest that any such amounts will be placed or held in trust or in a comparable fiduciary status, shall be deposited in a special account in a bank or savings institution doing business in this Commonwealth as provided in subsection A.

The funds shall be deposited in separate, identifiable trust accounts setting forth the names of the depositor, the trustee for the 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 subject of the contract. The purchaser shall have the right to change the beneficiary and trustee of the trust at any time prior to the furnishing of the services or supplies contracted for under the preneed funeral contract. Trust account records shall be subject to examination by the Board.

No funeral director, embalmer, funeral service licensee, owner of a funeral establishment, or any person employed by or having an interest in a funeral establishment shall serve as trustee of a trust account for which any such person, or any funeral establishment owned by or employing such person or in which such person has an interest, has been named the beneficiary or designated the provider of services, unless two or more such persons are named and serve as trustees and are required to act jointly in such fiduciary capacity.



CHESAPEAKE NATIONAL BANK TRUSTEE  
P.O. BOX 1419  
GILMARTON, VA. 22482

THANK YOU FOR ALLOWING ESTATE ASSURANCE  
SYSTEMS THROUGH CHESAPEAKE NATIONAL BANK  
TO SERVE YOU. WE ARE VIRGINIANS DOING  
BUSINESS WITH VIRGINIANS.

TRUST DEPARTMENT STATEMENT

BENEFICIARY:  
FUNERAL HOME:  
TYPE OF TRUST:

SOCIAL SECURITY #:  
FEDERAL TAX ID #:

ACCOUNT NUMBER:  
DATE TRUST OPENED:

DATE MATURED:  
FINAL BALANCE PAID:

CURRENT BALANCE: \$

THE ABOVE CURRENT TRUST BALANCE REFLECTS ACCOUNT TOTAL AT YOUR TRUST  
ACCOUNTING YEAR END AND NET OF ALL DEDUCTIONS. THE FOLLOWING IS A  
SUMMARY OF ACCOUNT CHANGES:

FEDERAL INCOME TAXES PAID, \$ . STATE TAXES PAID, \$ .  
YEAR-TO-DATE ADMINISTRATIVE FEES, \$ .

ALL FEDERAL AND STATE TAXES HAVE BEEN PAID ON THIS TRUST FOR  
THIS TAXABLE YEAR. THERE IS NO FURTHER INCOME TAX LIABILITY.

Dear Trust Customer:

Enclosed is the annual statement for your Trust Account. All fees have been paid and all interest earned on this account has been reported to the Internal Revenue Service. Chesapeake National Bank will handle the Federal and Virginia State Tax filing for your account. Therefore, there is no further tax liability on your part.

**SECURITY IS OUR NUMBER ONE ASSET.** You have chosen one of the most secure investment methods available for your pre-arrangement funds - - a bank trust. No other pre-need plan is as secure.

In order to provide our trust customers with the most efficient service on their accounts, Chesapeake National Bank utilizes the expertise of Estate Assurance Systems, Inc. (EASI), which is a corporation that specializes in these trust services.

Estate Assurance Systems, Inc. (EASI) and Chesapeake National Bank (CNB) are separate and unaffiliated corporate entities. EASI markets the Provider Trust and Horizon Trust programs for which CNB serves as trustee and also provides certain administration and other support services to CNB in connection with these programs. For these services, EASI receives a fee payable by CNB that is based on the aggregate principal amount held in trust by CNB under these programs. Trust fees paid to CNB by participants in the Provider Trust and Horizon Trust programs and specific fees paid to EASI are published in the bank's annual report and Provider Fixed Income Common Trust Fund audit which are available to all existing and prospective customers by writing to the following address:

Provider/Horizon Trust  
Chesapeake National Bank  
P.O. Box 1419  
Kilmarnock, Virginia 22482

**CHESAPEAKE NATIONAL BANK**

**ESTATE ASSURANCE SYSTEMS, INC.**

# PROVIDER

## Burial Trust Agreement

### A Living Trust

Date \_\_\_\_\_

No. \_\_\_\_\_

THIS TRUST AGREEMENT is made between \_\_\_\_\_  
(hereinafter called "Trustor")

\_\_\_\_\_  
(Social Security Number) (Date of Birth) (Address)

and CHESAPEAKE BANK (hereinafter called "Trustee"), a banking association headquartered in Kilmarnock, Virginia.

The Trustor desires to create a trust which, upon the death of \_\_\_\_\_  
(the "Deceased")

\_\_\_\_\_  
(Social Security Number) (Date of Birth) (Address)

will provide and pay for the funeral services of the Deceased and to that end has transferred and delivered to the Trustee the funds or other property specified in paragraph 1 hereof. The Trustor hereby appoints \_\_\_\_\_

\_\_\_\_\_  
(The Funeral Director) (Address)

to provide the funeral services in accordance with the terms of the Trust.

NOW, THEREFORE, the Trustor and the Trustee agree as follows:

1. **Establishment and Purpose of Trust Fund.** The Trustor hereby conveys to the Trustee  \$ \_\_\_\_\_ an insurance policy to be held by it in trust (the "Trust Fund") with all powers and authority hereinafter conferred, and the Trustee shall hold, administer, and dispose of the Trust Fund in accordance with the terms hereof. The Trust Fund shall be used solely for the payment of the funeral services and property described below or that may be selected at a later date by the Trustor or, if no selection is made by the Trustor, by the Trustee or other person authorized by the Trustee. The Trust Fund shall be deemed to include all net interest and income accrued thereon.

2. **Description of Funeral Services.** The Trustor hereby selects the following services and personal property. The Trustee has the power and authority to approve the substitution of such services and property in the event the items selected are not available upon the death of the Deceased.

Services: (check  where applicable) To be selected at a later date .  
Professional & Administrative Services ; Preparation of the Body ; Embalming ; Use of Facilities (chapel, viewing, etc.) ;  
Transportation - Removal ; Funeral Coach ; Flower Car ; Service Car ; Family Car .

Personal Property: (check  where applicable) To be selected at a later date .  
Casket - Bronze ; Copper ; Steel ; Hardwood ; Cloth ; Vault of Other Burial Receptacle - Air Seal ; Top Seal ;  
Steel ; Concrete ; Other ; Other Merchandise \_\_\_\_\_

Additional Instructions:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. **Type of Trust.** This Trust Agreement shall be irrevocable and the funds placed in trust hereunder are not refundable. The Trustor expressly waives all rights and powers to revoke or terminate this Trust and renounces any interest, either vested or contingent, in the Trust Fund. The Trustor shall have no access to or right to revoke, alter, or amend the Trust or to change beneficiary or beneficiaries of the irrevocable Trust account once the Trust is established.

4. **Disbursement to Funeral Director.** Upon the receipt by the Trustee of a certified copy of the death certificate of the Deceased, and an itemized statement signed by the Funeral Director showing that he complied with all the Trustor's instructions hereunder, the Trustee shall pay over and deliver to the funeral director the entire Trust Fund, or so much thereof as provided for in the Agreement and Understanding (Attachment B) which is incorporated by reference and made a part of this Trust Agreement.

5. **Disbursement of Funds Not Paid to Funeral Director.** If any balance remains in the Trust Fund after payment of the funeral related expenses, or if no such expenses are actually incurred, the Trustee shall transfer the Trust Fund, or the remaining balance thereof, to the persons who would have been entitled to receive the Estate of The Deceased (as determined by the Trustee after reasonable investigation or upon certification believed to be accurate) and in the same proportions as they would have taken, had the Deceased died intestate, unmarried, and domiciled in the State of Virginia.

6. **Appointment of New Funeral Director.** The Trustor shall have the right to appoint a new funeral director to provide funeral services for the Deceased. In the absence of any employment of a Funeral Director by the Trustor, the Trustee shall appoint a Funeral Director to provide funeral services for the Deceased, or the Trustee shall reimburse, in the manner it deems appropriate, any other person for the funeral expenses incurred by him on behalf of the Deceased. In the event the Trustee, in its sole discretion, determines that it is not advisable to have the Funeral Director appointed hereunder provide the designated funeral services, the Trustee shall appoint a new Funeral Director to provide such funeral services.

7. **Trustee's Powers and Duties.** The Trustee agrees to serve as Trustee for the benefit of the Trustor in accordance with the terms of this Trust. In managing and administering the Trust Fund, the Trustee shall have all the powers, subject to the provisions of the Agreement and Understanding (Attachment B), set forth in Section 64.1-57 of the Code of Virginia as in force on the date of this Trust Agreement. The Trustee may resign and appoint a successor Trustee upon reasonable notice in writing to the Trustor and Funeral Director. The Trustee shall provide an annual statement to both the Trustor and Funeral Director showing principal funds plus accrued interest, and in addition shall provide an annual statement of income to the Trustor for tax purposes where such a statement is required. The Trustee has authority to deposit all or any portion of the Trust Fund in Chesapeake Bank interest-bearing accounts and to put all or any portion of the Trust Fund into a common trust fund.

8. **Trustee's Fees.** For its services, the Trustee shall be entitled to take and receive a fee in accordance with its published fee schedule at the time the services are rendered for similar trust services. The Trustee shall be reimbursed for any reasonable expenses incurred in the performance of services under this Trust Agreement.

9. Attachments to this Trust Agreement are:  
Policy# \_\_\_\_\_  
Underwriter \_\_\_\_\_  
Other \_\_\_\_\_

IN WITNESS WHEREOF, the Trustor and the Trustee have executed this Trust Agreement all as of the date first above written.

Trustor \_\_\_\_\_ Chesapeake Bank, Trustee \_\_\_\_\_  
By: \_\_\_\_\_ By: \_\_\_\_\_



### Agreement

It is represented that I have read the statements and answers given on the first page of this application; they are true, complete and correctly recorded to the best of my knowledge and belief. It is agreed that this application will be the basis for and form a part of any policy issued on this application. It is further agreed that any policy issued on this application will not take effect unless both of the following conditions are met: (a) the full first premium is paid; and (b) the policy is issued during the lifetime of the Proposed Insured/Annuitant and, if this application is for insurance, during the continued insurability of the Proposed Insured.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

✓ \_\_\_\_\_  
Signature of Witness (Agent must witness where required by law)

✗ \_\_\_\_\_  
Signature of Proposed Insured/Annuitant

\_\_\_\_\_  
Signature of Owner (if other than Proposed Insured/Annuitant)

Agent's Replacement Statement: To the best of my knowledge, the policy applied for \_\_\_\_\_ will \_\_\_\_\_ will not replace or change any existing life insurance or annuity policy.

Dated \_\_\_\_\_  
Month Day Year

✓ \_\_\_\_\_  
Signature of Agent

### Authorization and Disclosure Notice

I (Proposed Insured) authorize any physician, medical practitioner, medically related facility, insurance or reinsuring company, the Medical Information Bureau, Inc., or other organization or person having information available about my physical or mental condition, non-medical information, and/or treatment of me relevant to my insurability, to give to Allianz Life Insurance Company (Allianz Life), or its reinsurers, any and all such information.

I understand the information obtained by this Authorization will be used by Allianz Life to determine eligibility for insurance and/or benefits under an existing policy and for other business purposes in connection with the insurance relationship. The information obtained may not be released to any person or organization except to reinsuring companies, the Medical Information Bureau, Inc., or other persons or organizations performing services in connection with my application, claim or as may be otherwise lawfully required or as I may further authorize.

I have read and received the Medical Information Bureau Pre-Notice and the Fair Credit Reporting Act Notification of Investigation before completing this application. I understand that this Authorization shall be valid for 26 months from the date shown below and that, upon request, I have a right of access to and correction of personal information.

Dated \_\_\_\_\_  
Month Day Year

✗ \_\_\_\_\_  
Signature of Proposed Insured

Funeral Home \_\_\_\_\_  
Endorsement \_\_\_\_\_  
Other \_\_\_\_\_  
Funded by \_\_\_\_\_

Retail \_\_\_\_\_  
Credit \_\_\_\_\_  
Savings \_\_\_\_\_  
Total Value \_\_\_\_\_

Assignment: In return for the promise to provide such services as agreed upon and described in a Funeral Contract bearing the same date as this Assignment, I hereby assign to the funeral home named above the proceeds of the policy of insurance funding such Funeral Contract. It is understood that: (a) said funeral home will hold the funding policy of insurance in my personal file in their office; and (b) make such policy available for my review upon request.

Revocation: I or my legal representative may revoke this Assignment by giving written notice at any time before the death of the person insured under the funding policy of insurance.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Owner

# Pre-Need Funeral Contract

For

\_\_\_\_\_  
 Name of Recipient of Services

\_\_\_\_\_  
 (Zip)

Charges shown are for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reason in writing below. If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain below.  FULL SERVICE  CREMATION  IMMEDIATE BURIAL  SHIP OUT

**I. A. PROFESSIONAL SERVICES**

- I. Basic Services of Funeral Director and Staff .....\$ \_\_\_\_\_
  - II. Funeral Home Facilities and Staff
    - a. Facilities and Staff for viewing/visitation .....\$ \_\_\_\_\_
    - b. Facilities and Staff for funeral ceremony (chapel or rooms).....\$ \_\_\_\_\_
    - c. Facilities and Staff for memorial service.....\$ \_\_\_\_\_
    - d. Equipment and Staff for graveside service.....\$ \_\_\_\_\_
    - e. Equipment and Staff for off-premise service.....\$ \_\_\_\_\_
    - f. Additional Staff for off-premise service at night and all out-of-town service.....\$ \_\_\_\_\_
    - g. Organist.....\$ \_\_\_\_\_
  - III. Embalming & Other Preparation of Remains
    - a. Embalming.....\$ \_\_\_\_\_
    - b. Cosmetizing, Dressing & Casketing.....\$ \_\_\_\_\_
    - c. Beautician.....\$ \_\_\_\_\_
  - IV. Immediate Burial.....\$ \_\_\_\_\_
  - V. Direct Cremation.....\$ \_\_\_\_\_
  - VI. Forwarding Remains to another Funeral Home.....\$ \_\_\_\_\_
  - VII. Receiving Remains for another Funeral Home.....\$ \_\_\_\_\_
  - VII. Automotive Equipment
    - a. Transfer remains to funeral home.....\$ \_\_\_\_\_
    - b. Hearse.....\$ \_\_\_\_\_
    - c. Floral Car.....\$ \_\_\_\_\_
    - d. Service Car.....\$ \_\_\_\_\_
    - e. Additional Mileage @ \_\_\_\_\_/mile.....\$ \_\_\_\_\_
- Total of Services Selected .....\$ \_\_\_\_\_

**D. MERCHANDISE\***

- Casket.....\$ \_\_\_\_\_
  - Outer Burial Container.....\$ \_\_\_\_\_
  - Delivery Charge - Sat. Sun. Holiday.....\$ \_\_\_\_\_
  - Grave Equipment.....\$ \_\_\_\_\_
  - Candles & Kneeler.....\$ \_\_\_\_\_
  - Supplies.....\$ \_\_\_\_\_
  - Clothing.....\$ \_\_\_\_\_
  - Cremation Urn.....\$ \_\_\_\_\_
  - Padat or Cremation Container.....\$ \_\_\_\_\_
  - Cremation Vault.....\$ \_\_\_\_\_
  - Total Misc. Selected.....\$ \_\_\_\_\_
  - Total Services & Mdsc. Selected.....\$ \_\_\_\_\_
- \*Merchandise Subject to \_\_\_\_\_% Va. Sales Tax

**C. SERVICE & MERCHANDISE - By Others**

- Certificates @ \$ \_\_\_\_\_/ea.....\$ \_\_\_\_\_
- Police Escort.....\$ \_\_\_\_\_
- Clergy Honorarium.....\$ \_\_\_\_\_
- Organist @ Church.....\$ \_\_\_\_\_
- Soloist.....\$ \_\_\_\_\_
- Cremation Fee.....\$ \_\_\_\_\_
- Medical Examiner Fee.....\$ \_\_\_\_\_
- Toll Telephone Calls.....\$ \_\_\_\_\_
- FAX.....\$ \_\_\_\_\_
- Air or Rail Fare.....\$ \_\_\_\_\_
- Other Funeral Homes Charges.....\$ \_\_\_\_\_
- Limousine Service @ \_\_\_\_\_/ea.....\$ \_\_\_\_\_
- .....\$ \_\_\_\_\_
- .....\$ \_\_\_\_\_
- .....\$ \_\_\_\_\_
- .....\$ \_\_\_\_\_
- .....\$ \_\_\_\_\_
- Total Services & Mdsc. By Others.....\$ \_\_\_\_\_

**SUMMARY**

- Total A & B.....\$ \_\_\_\_\_
- Total C.....\$ \_\_\_\_\_
- Total A, B + C.....\$ \_\_\_\_\_
- Va. Sales Tax.....\$ \_\_\_\_\_
- TOTAL.....\$ \_\_\_\_\_**

Reason for Embalming \_\_\_\_\_

The only warranties, express or implied, granted in connection with the goods sold in this pre-need funeral contract, are the express written warranties, if any, extended by the manufacturers thereof. No other warranties and no warranties of MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE are extended by the Funeral Service.

**II STATEMENT OF GUARANTEE**

By signing this contract, Biley Funeral Service agrees to the statement checked below (check one):  
 Pre-financing guarantees that no additional payment will be required from the family or estate for guaranteed services and supplies provided the Grand Total of these arrangements is paid in full and the interest is allowed to accumulate in your account. Payment of the difference will be required for the non-guaranteed estimated items if they increase in price.  
 The prices for items under merchandise and professional services are not guaranteed.

In witness whereof, the Buyer and the Funeral Home have executed this contract, intending its terms to be in accordance with the Code of Virginia and any regulations implementing the Code. By signing this contract you acknowledge that you have been provided access to the opportunity to read the Disclosure Statements.

\_\_\_\_\_  
 (Designee of Funeral Home)

\_\_\_\_\_  
 (Buyer)

Joseph W. Biley Co., Inc.  
 (Funeral Home)

\_\_\_\_\_  
 (Contract Date)

**III. GENERAL INFORMATION**

In order that the buyer may understand the relationships of all parties involved in this pre-need arrangement and contract, the following is provided:

- A. Buyer Applicant
- B. Funeral Home Providing Services Bliley
- C. Pre-need arranger R. Seay  
Employed by: (Funeral Home) Bliley  
Licensed Funeral Director  
in Virginia yes X no \_\_\_\_\_  
Funeral Director License  
Number # 229807211

The following information will be given if an insurance policy or annuity contract is used to fund this agreement:

- A. Buyer Applicant
- B. Insurance Company: Allianz
- C. Insurance Agent R. Seay  
Employed by General Agent  
(Insurance Co.) Bliley Co.  
0001

**Method of Funding**

- A. Insurance Yes-Annuity
- B. Trust \_\_\_\_\_  
1. Amount to be trusted: \_\_\_\_\_  
2. Name of Trustee: \_\_\_\_\_  
3. Disposition of Interest: Paid-up Life Insurance  
4. Fees, Expenses, Taxes deducted from earned interest: N/A  
5. Buyer's Responsibility for Taxes owed on interest: N/A

**IV. CONSUMER INFORMATION**

The Board of Funeral Directors and Embalmers is authorized by 54.1-2800 et. seq. of the Code of Virginia to regulate the practice of pre-need funeral planning. Consumer complaints should be directed to:

The Board of Funeral Directors and Embalmers  
1601 Rolling Hills Drive, Suite 200  
Richmond, Virginia 23229-5005  
Telephone Number (804) 662-9907  
Toll Free Number (800) 533-1560

**V. DISCLOSURES**

The Disclosure Statements will be available for your review. The General Price List will be furnished to you by the pre-need arranger. These contain information that you must receive by law and/or the authority of the Board of Funeral Directors and Embalmers. You are entitled to receive all information in clear and simple language including the language of the funding agreement for this pre-need arrangement.

If any law, cemetery, or crematory requires the purchase of any of these items listed in Part I, the requirements will be explained in writing.

By signing this contract, buyer acknowledges availability of and opportunity to read a copy of all of the required documents.

**VI. TERMINATION OF CONTRACT**

Any person who funds this contract through a trust agreement may terminate this pre-need agreement at any time prior to the furnishing of the services or supplies contracted for:

**Within 30 Days**

If you terminate this pre-need contract in writing within thirty days of the date of this contract, you will be refunded all payments of whatever type you have made, plus any interest or income you may have earned.

**More than 30 Days**

If you terminate this pre-need contract more than thirty days after the date on this contract, you will be refunded whatever amount was required to be placed in a revocable trust fund, plus any interest or income it has earned. Any person who funds this contract through a trust fund which is irrevocable or through an insurance/annuity policy or through the transfer of real estate/personal property may not be eligible for a refund.

**VII. PENALTIES OR RESTRICTIONS**

The \_\_\_\_\_ Funeral Service has the following penalties or restrictions on the provisions of this contract.

1. Removal or burial within \_\_\_\_\_ mile radius of \_\_\_\_\_
2. Maximum distance serviced at no charge: \_\_\_\_\_
3. Amount of removal or burial outside of service area \_\_\_\_\_ per mile.
4. Maximum distance would not service: \_\_\_\_\_
5. Insert an explanation of the Funeral Home's inability to perform the request(s) of the Buyer:  
\_\_\_\_\_  
\_\_\_\_\_
6. If selected goods and services specified in the contract are unavailable at the time of need:
  - A. The funeral home shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship and
  - B. The representative of the deceased shall have the right to choose the supplies or services to be substituted.

In the event that the pre-need contract designates a person other than the buyer or recipient of services to make arrangements for disposition of remains, an addendum as follows shall be attached to the pre-need contract:

**DESIGNEE AGREEMENT**

Indesignate \_\_\_\_\_ of address \_\_\_\_\_

to assist with the pre-need arrangements in my behalf. This individual is also authorized to work with the funeral home after my death to ensure that these arrangements are fulfilled. The relationship of my designee to me is \_\_\_\_\_

Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

I accept the request of (buyer) \_\_\_\_\_ to assist with his/her pre-need arrangements and to work with the funeral home after his/her death to ensure that these arrangements are fulfilled.

Designee: \_\_\_\_\_ Date: \_\_\_\_\_

The foregoing was acknowledged before me this \_\_\_\_\_

day of \_\_\_\_\_, 19 \_\_\_\_\_

Notary: \_\_\_\_\_

Date Commission Expires: \_\_\_\_\_

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below.

Funeral Services

Basic services of Funeral Director and staff \$
Embalming \$

If you selected a funeral that may require embalming such as a funeral with a viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you select arrangements such as direct cremation or immediate burial. If we charge for embalming we will explain why:

Other Preparation \$
Facilities and staff for visitation and viewing \$
Facilities and staff for funeral ceremony \$
Facilities for staff and memorial service \$
Equipment for staff and graveside service \$
Immediate Burial \$ Direct Cremation \$
Opening and closing fee \$
Transfer to Funeral Home \$
Funeral Coach \$
Family Vehicle(s) \$
Additional Services (specify) \$
Forwarding/Receiving Remains \$
TOTAL FUNERAL SERVICES \$

Casket \$
Manufacturer
Model
Materials
Colors

Outer burial container \$
Manufacturer
Model
Material
Other (specify) \$

Total Funeral Goods \$
Miscellaneous \$
Total Miscellaneous Items \$
TOTAL GUARANTEED ITEMS \$

Non-Guaranteed Cash Advance Items

Obituary Notices \$
Death Certificate \$
Flowers \$
Music \$
Clergy Honorarium \$
Register Book \$

Acknowledgement Cards \$
Sales Tax (as applicable) \$
Other (specify) \$

Total Non-Guaranteed Cash Advance Items \$
TOTAL GUARANTEED AND NON-GUARANTEED ITEMS \$

We charge you for our services in obtaining: (Specify cash advance items)

The following are any Legal, Cemetery or Crematory Requirements that compel the purchase of funeral goods or service:

Insurance Agent Name Agent License Number

Employer of Agent

Funeral Firm Name

Person for whom Funeral Services are to be provided

Signature of Funeral Firm Representative

Name of Purchaser

Funeral License #

Telephone

Date

Purchaser's Signature



## Preneed Funeral Contract

**AGREEMENT:** Funeral Home agrees to provide funeral goods and services for the person named in the Statement of Funeral Goods and Services unless factors beyond its control prevent it from doing so. If the Funeral Home is unable to provide the planned funeral, another funeral establishment may be chosen.

**FUNDING:** This Agreement is funded by a life insurance policy, certificate or annuity contract ("Policy") on the life of the person named in the Statement of Funeral Goods and Service issued by United Family Life Insurance Company, Atlanta, Georgia. The face value will be adjusted annually by a factor equal to the Consumer Price Index.

**GUARANTEE OF FUNERAL PRICE:** Funeral Home's retail price for the guaranteed price funeral goods and services chosen under this Agreement (as indicated in the Statement of Funeral Goods and Services) will not exceed the retail price in effect at the time of need or the total death benefit payable under the Policy, whichever is less. This guarantee means that no additional payment will be required from the family or estate for the guaranteed goods and services provided full benefits are paid under the Policy.

The price for non-guaranteed cash advance items (as indicated in the Statement of Goods and Services) are not guaranteed at the signing of this agreement and will be determined at the time of need. Payment for the difference for non-guaranteed items will be required if they increase in price. Funeral Home will not apply that portion of the Policy purchased to fund non-guaranteed items to pay for guaranteed items.

If the proceeds of the Policy exceed the at-need retail price of the goods and services selected, the excess amount will be paid to the estate of the insured or contingent beneficiary, in accordance with the terms of the Policy, subject to any state or local laws concerning the recovery of excess proceeds.

**EFFECTIVE DATE OF GUARANTEE:** Where the Policy is a full benefits policy (not a limited benefits policy), the price guarantee shall take effect immediately. Where the Policy is a limited benefits policy, the price guarantee shall take effect on the date when full benefits are payable under the Policy; during the limited benefits period, the price of all goods and services chosen shall be the at-need price, and if insurance proceeds are inadequate to cover this amount the difference would have to be paid by the family or other legal representative.

**TERMINATION OF PROVISIONS:** The Agreement may be cancelled at any time prior to Funeral Home furnishing goods and services. Cancellation of the Agreement does not cancel either the Policy, which terminates in accordance with its own terms and conditions, or any irrevocable assignment of the Policy to the Pre-Thana Agreement Trust. Any premiums paid will be fully refunded if the Policy is cancelled within 30 days of issue. Funeral Home may declare this Agreement void and terminated in the event of the following: a) changing, in whole or in part, the beneficiary designation where the change negatively affects Funeral Home's right to obtain proceeds; b) failure to pay premiums when due; c) cancellation, surrendering or lapse of the Policy; d) borrowing against the Policy; e) revoking or changing the assignment of the Policy or its proceeds; or f) any other action which may result in Policy cancellation or nonpayment of proceeds.

**MISCELLANEOUS:** Funeral Home reserves the right to substitute funeral goods similar in style and of equivalent or higher quality in materials and workmanship to be selected by the representative of the deceased. Funeral Home will not be liable for any failure to furnish goods and services if the failure is caused by factors beyond its control.

**DISCLOSURES:** By signing this Agreement, you acknowledge the following disclosures: a. A current General, Casket and Outer Burial Container price list was shown prior to discussing these prices, services or merchandise; b. State law does not require the purchase of any of the funeral goods or services, except as set forth in the Statement of Funeral Goods and Services selected; c. The insurance agent is the funeral director or someone who is working under the direction or control of the funeral director. A sales commission will be paid to the insurance agent who sold you the policy. The funeral home makes no warranties or representations concerning the products sold herein. The only warranties are the express written warranties, if any, extended by the manufacturer, including, but not limited to; the implied warranties of merchantability and fitness for a particular purpose; e. You have read understood and received a copy of this Agreement and preneed disclosure information.

Consumer complaints should be directed to the Virginia Board of Funeral Directors and Embalmers, 6606 West Broad Street, 4th floor, Richmond, Virginia 23230-1717, (804) 662-9907 or 1-(800) 533-4560.

# GROUP ENROLLMENT FORM

## 1a. Insured \_\_\_\_\_

First Name                      Middle Initial                      Last Name

Street

City

State                                      Zip Code

Soc. Sec. # \_\_\_\_\_ Birthdate \_\_\_\_/\_\_\_\_/\_\_\_\_

Phone # \_\_\_\_\_ Age \_\_\_\_\_ Sex \_\_\_\_\_

## 1b. Applicant (if other than Insured) \_\_\_\_\_

First Name                      Middle Initial                      Last Name

Street

City

State                                      Zip Code

Relationship to Insured

## 2. Payment Options \_\_\_\_\_

<input type="checkbox"/> Single Premium	\$	Premium Amount	\$	Face Amount
<input type="checkbox"/> 3 Pay <input type="checkbox"/> 5 Pay <input type="checkbox"/> 10 Pay	\$	Premium Amount	\$	Face Amount
<input type="checkbox"/> Annual <input type="checkbox"/> Semi-Annual <input type="checkbox"/> Quarterly <input type="checkbox"/> Monthly <input type="checkbox"/> Automatic Payment (Complete back of form)				

## 3. Beneficiary \_\_\_\_\_

After payment under any assignments, remaining proceeds are to be paid to the estate of the insured unless another beneficiary is specified below.

Beneficiary \_\_\_\_\_

## 4. Replacement \_\_\_\_\_

Is any of the insurance applied for intended to replace any other insurance or annuities now in force with any company?

Yes     No

## 5. Health Questions \_\_\_\_\_

If the insured is physically or mentally unable to complete the application OR if the answer to either question is "yes" OR if neither question is answered, a policy with limited benefits during the first one or two years (depending on plan) will be issued.

1) In the past three years, has the insured had, been medically advised of having, or been treated for, or hospitalized for any of the following:

Stroke	Kidney Dialysis	Heart Attack
Cancer	Heart/Artery Surgery	AIDS/ARC

Yes     No

2) Is the insured currently confined to, or a resident of a hospital, hospice, rehabilitation center, convalescence center or similar such facility?

Yes     No

## 6. Certification \_\_\_\_\_

To the best of my knowledge and belief, the information on this application is complete and true. Also, if I am the applicant for insurance on the life of the insured, I certify that I have an insurable interest in his/her life and full authority to use his/her funds as premiums on the insurance applied for. Your signature enrolls you as a member in the ASSOCIATION FOR PERSONAL RESOURCE PLANNING, INC. through which United Family Group Life Insurance is provided.

Signature of Insured or Applicant if other than Insured \_\_\_\_\_

Date \_\_\_\_\_

## 7. Agent's Certification \_\_\_\_\_

I certify that all information contained in this application is true to the best of my knowledge, was recorded accurately and that this application was signed in my presence.

Signature of Agent \_\_\_\_\_

Signing Agent's Soc. Sec.# \_\_\_\_\_

Account # \_\_\_\_\_



*Fortis* company

Please Print Name \_\_\_\_\_

# Authorization For Automatic Payment

I authorize United Family Life Insurance Company to initiate debt entries to my account to pay for any premiums due on my policies from the following financial institution:

Financial Institution \_\_\_\_\_

Branch Location \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

I understand that I may revoke this authorization upon 30 days advance written notice, and that United Family may immediately revoke this privilege if any debt is not paid when presented to my financial institution.

Name (Please Print) \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

Bank Account Number \_\_\_\_\_

Note: Funds will be withdrawn from your bank account on approximately the 13rd of each month.

~~PLEASE ATTACH VOIDED CHECK HERE~~ \_\_\_\_\_

**IRREVOCABLE TRUST ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned, as owner or holder of Policy Number \_\_\_\_\_ issued by UNITED FAMILY LIFE INSURANCE COMPANY on the life of \_\_\_\_\_ hereby assigns all right, title and interest in said Policy to the PRE-THANA ARRANGEMENT TRUST, its executors, administrators, successors and assigns of said Assignee.

The undersigned by this assignment transfers to said Assignee all incidents of ownership in said Policy. Once assigned, the undersigned waives the right to change the beneficiary, to obtain loans on the Policy, to assign the Policy, to surrender same to the Company for its cash value, and to exercise any right, option or benefit contained in the Policy or permitted by the Insurance Company.

This assignment is subject to any assignment in favor of, or indebtedness to, the UNITED FAMILY LIFE INSURANCE COMPANY.

This assignment shall not be binding on the Insurance Company until an executed original or a duplicate thereof is filed at the Home Office. The Company shall not be held responsible for the validity or sufficiency of this assignment.

Signed at

\_\_\_\_\_

on \_\_\_\_\_, 19 \_\_\_\_\_

Witness

Owner

This assignment should be executed in duplicate. Both original and duplicate should be forwarded to the Home Office.

For Home Office use only:

Acknowledged and filed at the Home Office of the Insurer in Atlanta, Georgia, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

By: \_\_\_\_\_  
Authorized Officer



## COUNTS OF INDIVIDUAL FACTS

22 cases of preneed complaints reported since 1992

67 individual counts of allegations in the 22 cases as follows:

Forms (incorrect forms, failure to provide price lists, failure to provide contracts)

16 founded violations  
19 pending allegations  
4 closed as unfounded

Misappropriation of Funds (funds never reached funding source)

6 founded violations  
7 pending allegations

Money Not Deposited Per Code (funeral home held money beyond 30 days but eventually submitted it to funding source)

3 founded violations  
4 pending allegations  
3 closed as unfounded

Preneed Arrangements Made by Unlicensed Staff

1 pending allegation  
1 closed as no jurisdiction

Disclosures (funeral home failed to provide funding source information)

4 pending

## Tidewater Funeral Directors Association, Inc.

P. O. Box 5706  
Chesapeake, Virginia 23324  
(804) 543-5706

September 20, 1994

The Honorable Harvey B. Morgan, Chairman  
Joint Subcommittee Studying Marketing and  
Financing Practices Associated with Preneed  
Funeral Contracts  
P.O. Box 949  
Gloucester, VA 23601

Dear Mr. Morgan:

I, as President of the Tidewater Funeral Directors Association, was instructed at our monthly meeting on September 19, 1994, to express our concerns regarding The Joint Subcommittee Studying Marketing and Financing Practices Associated with Preneed Funeral Contracts.

First of all, most of our membership, in addition to being licensed Funeral Directors, are also licensed insurance agents for the purpose of pre-funding of funerals. We feel that there is enough regulation and oversight of the financing of preneed funeral contracts. We are, in essence, regulated by three separate organizations, The Virginia Board of Funeral Directors and Embalmers, The Virginia Insurance Commission as well as the Federal Trade Commission. As an Association, we feel that this is more than sufficient regulation and protection for the client families that we serve.

Secondly, while we all strive for perfection, sometimes mistakes are made. As stated in "The Legislative Record" of August, 1994, there have been 18 complaints related to preneed contracts since the year 1989. In light of preneed contracts exceeding \$200 million being written in that time, and the relative small number of complaints, it seems that the existing regulations are doing their job.

Lastly, we have been under a Federal Trade Rule since 1984, that has proven to increase client awareness of their options in relation to funeral services. There, however, seems to be a move afoot to make it unattractive for insurance companies to provide preneed insurance in the Commonwealth. If this should occur, it would leave bank trusts as the only option for the pre-funding of funeral contracts. We feel, as we are sure that you do, that anything that limits options to our client families is not in their best interests.

Sincerely,

Lawrence Hemenway, President  
Tidewater Funeral Directors Association

To all Joint Subcommittee members and Tidewater Funeral Director Assc. members.

*Northern Virginia Funeral  
Directors Association  
P.O. Box 19654  
Alexandria, VA 22320*

October 1, 1994

Mr. Michael J. Leonard  
1501 Columbia Avenue  
Norfolk, Virginia 23517

Dear Mr. Leonard:

As members of the funeral profession who are associating daily with the people of our community in regard to pre-need funeral plans we felt it necessary to state our position on the issues being examined by the subcommittee.

In 1989 sweeping pre-need legislation was passed regulating the marketing practices of pre-need sellers in the Commonwealth of Virginia. We and our clients have experienced that there is adequate protection for consumers. The State Board of Funeral Directors and the Commissioner of Insurance supervises insurance funded pre-need plans. Clients are not losing money and they are satisfied. Therefore we feel that no changes are necessary.

Regarding concerns over whether financial incentives paid to pre-need sellers by insurance companies are appropriate, we feel this practice is reasonable and acceptable in today's marketplace. Many people work in industries which are commission-based (insurance, automotive, banking, etc.) The commissions earned by funeral directors of pre-need plans offset the costs associated with generating the sale to consumers. Costs to market pre-need plans in Virginia are extremely high due to the restrictive nature of the solicitation laws in this state.

Choosing to eliminate insurance funding of pre-need contracts would severely limit the consumer options and stifle competition among pre-need funding suppliers. By stifling competition, new and innovative products which would be beneficial to clients would not be developed.

There have been very few consumer complaints. We feel the current system is non-intrusive yet informative, everything is ethical and legal. We feel it is only fair for funeral directors and consumers to have a choice.

Sincerely,



Sam Found  
President

REMARKS BY DOUGLAS D. MONROE, JR., PRESIDENT, CHESAPEAKE BANK  
ON OCTOBER 6, 1994 TO THE HOUSE JOINT SUBCOMMITTEE HEARING,  
CHAIRMAN BY THE HONORABLE HARVEY B. MORGAN,  
STUDYING MARKETING AND FINANCING PRACTICES ASSOCIATED WITH  
PRENEED FUNERAL CONTRACTS  
HOUSE JOINT RESOLUTION 141 (1994)

Mr. Chairman, Members of the Subcommittee, my remarks will be brief as I will emphasize several positions regarding the financing practices discussed here today.

- Chesapeake Bank is in favor of incentive compensation.
- Chesapeake Bank is in favor of funeral directors receiving commissions for preneed insurance policies which they sell.
- Funeral directors do not need more regulation.
- As mentioned by several prior speakers, the preneed business is consumer driven, and it's relatively new. Chesapeake entered the business in 1982 at the request of several funeral directors finding that they had cash and CD's in unaccountable places and had assumed a great fiduciary responsibility and liability and needed help. Chesapeake is in no position to attack other providers nor do we wish to, as good competition is healthy for business and the consumer. With this in mind:
  - Financial service preneed providers should be accountable to the Commonwealth of Virginia and to the people of Virginia.
  - Trusts should have trustees who are located in the Commonwealth and are accountable to the Commonwealth.
  - Audits of preneed insurance products should be available to the Bureau of Insurance.
  - Financial intermediaries holding preneed funds should report preneed assets to each preneed customer on an annual or regular basis.

- Chesapeake does not pay commissions on trusts, however, commissions are paid directly to funeral directors by insurance companies when insurance is used in Provider Trusts at Chesapeake.

- Insurance companies used to fund trusts were chosen because of:

1) Financial rating of "A" or better by A. M. Best; and

2) Yields paid on policies comply with Virginia law.

Currently one insurance company is using a 5% compounded computation, and a second is using approximately 6%.

- Chesapeake cash trusts are compounded 24 times per year.

Several questions were asked after the above remarks.

Mr. Monroe stated that he felt the term "trust" should be used in compliance with the laws of the Commonwealth as pointed out in the hearing by an attorney for one of the insurance companies. He felt that the financial providers should account to the Commonwealth in some form for the preneed contracts that they are funding and that an individual's account reconciliation should be sent to the consumer at least on an annual basis. Frequently Chesapeake finds that next of kin after receiving an annual statement report that the beneficiary of the trust has died and the service has been performed and paid. At that point steps are taken to have the funds paid to the deceased's estate.

§90-210.65            ART. 13D. FUNERAL TRUST FUNDS            §90-210.66

**§ 90-210.65. Refund of preneed funeral funds.**

(a) Within 30 days of receipt of a written request from the purchaser of a revocable preneed funeral contract who has trust funds deposited with a financial institution pursuant to G.S. 90-210.61(a), the financial institution shall refund to the preneed funeral contract purchaser the entire amount held by the financial institution.

(b) Within 30 days of receipt of a written notice of cancellation of any prearrangement insurance policy purchased pursuant to G.S. 90-210.61(a)(3), the issuing insurance company shall pay such amounts to such person or persons as is provided under the terms of the prearrangement insurance policy.

(c) After making refund pursuant to this section and giving notice of the refund to the preneed licensee, the financial institution or insurance company shall be relieved from all further liability.

(d) Notwithstanding any other provision of this Article, if a preneed funeral contract is revoked or transferred following the death of the preneed funeral contract beneficiary, the purchaser of the preneed funeral contract may be charged according to the contracting preneed licensee's price lists for any services performed or merchandise provided prior to revocation or transfer.

(e) This section shall not apply to irrevocable preneed funeral contracts. Irrevocable preneed funeral contracts may not be revoked nor any proceeds refunded except by order of a court of competent jurisdiction. (1969, c. 187, s. 3; 1981 (Reg. Sess., 1982), c. 1336, s. 2; 1983, c. 657, s. 3; 1985, c. 12, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 901, s. 2.)

**§ 90-210.66. Recovery fund.**

(a) There is established the Preneed Recovery Fund. The Fund shall be administered by the Board. The purpose of the Fund is to reimburse purchasers of preneed funeral contracts who have suffered financial loss as a result of the malfeasance, misfeasance, default, failure or insolvency of any licensee under this Article, and includes refunds due a preneed funeral contract beneficiary from a preneed licensee who has retained any portion of the preneed funeral contract payments pursuant to G.S. 90-210.61(a)(2).

(b) From the fee of fifteen dollars (\$15.00) for each preneed funeral contract as required by G.S. 90-210.67(d), the Board shall deposit two dollars (\$2.00) into the Fund. The Board may suspend the deposits into the Fund at any time and for any period for which the Board determines that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve.

(c) All sums received by the Board pursuant to this section shall be held in a separate account known as the Preneed Recovery Fund. Deposits to and disbursements from the Fund account shall be subject to rules established by the Board.

(d) The Board shall adopt rules governing management of the Fund, the presentation and processing of applications for reimbursement, and subrogation or assignment of the rights of any reimbursed applicant.

(e) The Board may expend monies in the Fund for the following purposes:

- (1) To make reimbursements on approved applications;
- (2) To purchase insurance to cover losses as deemed appropriate by the Board and not inconsistent with the purposes of the Fund;

- (3) To invest such portions of the Fund as are not currently needed to reimburse losses and maintain adequate reserves, as are permitted to be made by fiduciaries under State law; and
- (4) To pay the expenses of the Board for administering the Fund, including employment of legal counsel to prosecute subrogation claims.

(f) Reimbursements from the Fund shall be made only to the extent to which such losses are not bonded or otherwise covered, protected or reimbursed and only after the applicant has complied with all applicable rules of the Board.

(g) The Board shall investigate all applications made and may reject or allow such claims in whole or in part to the extent that monies are available in the Fund. The Board shall have complete discretion to determine the order and manner of payment of approved applications. All payments shall be a matter of privilege and not of right, and no person shall have any right in the Fund as a third-party beneficiary or otherwise. No attorney may be compensated by the Board for prosecuting an application for reimbursement.

(h) In the event reimbursement is made to an applicant under this section, the Board shall be subrogated in the reimbursed amount and may bring any action it deems advisable against any person, including a preneed licensee. The Board may enforce any claims it may have for restitution or otherwise and may employ and compensate consultants, agents, legal counsel, accountants and any other persons it deems appropriate.

(i) The Fund shall apply to losses arising after July 9, 1992, regardless of the date of the underlying preneed funeral contract. (1991 (Reg. Sess., 1992), c. 901, s. 2.)

### § 90-210.67. Application for license.

(a) No person may offer or sell preneed funeral contracts or offer to make or make any funded funeral prearrangements without first securing a license from the Board. There shall be two types of licenses: a preneed funeral establishment license and a preneed sales license. Only funeral establishments holding a valid establishment permit pursuant to G.S. 90-210.25(d) shall be eligible for a preneed funeral establishment license. Employees and agents of such entities, upon meeting the qualifications to engage in preneed funeral planning as established by the Board, shall be eligible for a preneed sales license. The Board shall establish the preneed funeral planning activities that are permitted under a preneed sales license. The Board shall adopt rules establishing such qualifications and activities no later than 12 months following the ratification of this act. Preneed sales licensees may sell preneed funeral contracts, prearrangement insurance policies, and make funded funeral prearrangements only on behalf of one preneed funeral establishment licensee; provided, however, they may sell preneed funeral contracts, prearrangement insurance policies, and make funeral prearrangements for any number of licensed preneed funeral establishments that are wholly owned by or affiliated with, through common ownership or contract, the same entity; provided further, in the event they engage in selling prearrangement insurance policies, they shall meet the licensing requirements of the Commissioner of

**JOINT SUBCOMMITTEE Studying PRENEED FUNERAL CONTRACTS  
(HJR 141)**

Meeting of October 6, 1994

**Mark A. Droughman, Jr.  
Virginia Cemetery Association  
Consumer Protection Committee, Chair**

**STATEMENT:**

On behalf of the Virginia Cemetery Association and as Chairperson of the Consumer Protection Committee, I would like to address several items of concern.

1. HJR 141: This "Resolution" was first introduced to study "Preneed Funeral Contracts" related to the potential for misleading sales, marketing and financing practices associated with funeral contracts. For some reason, this resolution was expanded to include cemetery "Preneed Burial Contracts". In conversations, with Delegate Harvey Morgan, the 1988/1989 sub-committee's Study of Cemetery Practices and the resulting legislation was brought to his attention. On February 28, 1994, in a telephone discussion, Delegate Morgan informed me of his extensive research into the existing laws and verified the efficiency of the administration of the Department of Consumer Affairs. Now it is brought to our attention that the sub-committee feels necessary to rethink its mission and "study" preneed burial contracts. This creates an unfair position for the "for-profit" cemeteries since we have no representation on the committee, are restricted from working sessions, and are limited to comments at public hearings.

2. EXISTING AND/OR PROPOSED LAWS AND REGULATIONS:

I feel it is necessary to paraphrase an expression "don't mix oranges and grapefruits"; though they may look similar, they are totally different. Funeral Homes and Cemeteries have separate laws to govern each industry. These laws were enacted to meet the requirements of the particulars of each individual business. Should an enterprise wish to operate both a cemetery and a funeral home, the operation must conform to the laws for each entity. As an example, "Funerals services and related items" can only be discussed by a licensed funeral director controlled by the Virginia Board of Funeral Directors and Embalmers as demonstrated in the court action of *Guardin Plans Inc. v. Teague, et al. (Va Board of Funeral Directors & Embalmers)*, heard in the United States Court of Appeals, Fourth District, decided March 7, 1989, appealed to the U.S. Supreme Court, who chose not to hear the case, therefore the lower courts decision was let stand. This meant others, including cemetery representatives are barred by law to discuss funeral items and costs, which should lay to rest the possibility of the of "cross-over" question.

Also, it is obvious that the sub-committee's major concern is directed toward "financing and trust practices" as is noted by the representation of members of the SCC's Bureau of Insurance and SCC's Bureau of Financial Institutions, on the sub-committee, as well as the subject matter covered in the previous sub-committee meeting.

To assure security of any funds pre-paid for cemetery merchandise, it should be noted (*Article 3, Section 57.35.27: Financial report and written assurance required for preneed trust accounts*) that the laws governing cemetery's preneed burial contracts requires reporting annually to the Commissioner of Revenue the compliance with all trusting requirements, with an assurance provided by an independent CPA. As mentioned in the previous meeting, regarding preneed funeral contracts, the funeral home trusting is subjected to Board audits, (*Article 5, Section 54.1-2822 Deposit of money received pursuant to preneed funeral contracts.-...Trust account records shall be subject to examination by the Board*)

3. FEDERAL TRADE COMMISSION;

The Federal Trade Commission , through its original investigation and hearings, found no basis to include cemeteries in the FUNERAL PRACTICES RULING. And a more recently review came to the same conclusion.

4. IN CONCLUSION: I feel both the Funeral Home and Cemetery industries have proven "safe guards" in existing legislation. To further an atmosphere of the "free enterprise system" it would be in the best interest of the consumers of the Commonwealth to continue to maintain and govern the two industries independently.

**Joint Subcommittee Studying Marketing and Financing Practices  
Associated with Preneed Funeral Contracts  
pursuant to House Joint Resolution 141**

**Summary of Policy Issues & Options Reviewed by Joint  
Subcommittee to Date**

<i>Issue/Option</i>	<i>Subcommittee Action</i>
<ul style="list-style-type: none"> <li>• Permit the Department of Health Professions to petition court for appointment of receivers and other equitable relief.</li> </ul>	Reviewed at 12/22 meeting: <b>Recommended.</b>
<ul style="list-style-type: none"> <li>• Review current requirement that preneed insurance policies and annuity contracts pay 5 percent or CPI.</li> </ul>	Reviewed at 12/22 meeting: Not recommended.
<ul style="list-style-type: none"> <li>• Require all individuals involved in preneed sales to be covered by bonds or errors and omissions policies.</li> </ul>	Reviewed at 12/22 meeting: Not recommended.
<ul style="list-style-type: none"> <li>• Prohibit the sale of preneed funeral or cemetery policies unless done in conjunction with sale of preneed services contracts.</li> </ul>	Reviewed at 12/22 meeting: Not recommended.
<ul style="list-style-type: none"> <li>• Require periodic statements of account re: preneed funding contracts.</li> </ul>	Reviewed at 10/22 meeting: Not recommended.
<ul style="list-style-type: none"> <li>• Require independent audits of all preneed trusts, submitted at least annually to state enforcement agency.</li> </ul>	Reviewed at 10/22 meeting: Not recommended.
<ul style="list-style-type: none"> <li>• Permit owners of affiliated funeral homes to centralize preneed records management at a central location.</li> </ul>	Reviewed at 10/22 meeting: <b>Recommended.</b>
<ul style="list-style-type: none"> <li>• Modifications to regulatory scheme governing preneed cemetery contracts.</li> </ul>	Reviewed at 10/22 meeting: No recommendations.
<ul style="list-style-type: none"> <li>• House Bill 999; carry-over bill before House Corporations, Insurance &amp; Banking Committee.</li> </ul>	Reviewed at 10/22 meeting: Not recommended.
<ul style="list-style-type: none"> <li>• Modifications to current scheme of regulatory oversight of preneed industry.</li> </ul>	Reviewed at 10/6 meeting: No recommendations.
<ul style="list-style-type: none"> <li>• Enhancing "portability" of preneed services contracts.</li> </ul>	Reviewed at 10/6 meeting: No recommendations.

<b><i>Issue/Option</i></b>	<b><i>Subcommittee Action</i></b>
<ul style="list-style-type: none"> <li>• Modifications to statutory rights of next-of-kin to override provisions of preneed contract.</li> </ul>	Reviewed at 10/6 meeting: No recommendations.
<ul style="list-style-type: none"> <li>• Changes to current statutory scheme for bonding when funeral home stores prepaid, preneed merchandise or retains up to 10 percent of preneed purchase price.</li> </ul>	Reviewed at 10/6 meeting: No recommendations.
<ul style="list-style-type: none"> <li>• Modifications to current provisions permitting cancellation of preneed agreement.</li> </ul>	Reviewed at 10/6 meeting: No recommendations.

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***DRAFT authorizing Director of the Department of Health Professions to seek injunctive and other equitable relief.***

***Recommended by the HJR-141 Joint Subcommittee on 12/22/94***

§ 54.1-2506.2. Protection of escrow funds, etc., held by persons licensed by any of the health regulatory boards.

Whenever funds are held in escrow, in trust, or in some other fiduciary capacity by a person licensed by any of the health regulatory boards and the Director or investigative personnel appointed by him have reason to believe that such person is not able to adequately protect such funds or the interest of any person therein, the Director may file a petition with any court of record having equity jurisdiction over such person or any of the funds held by such person stating the facts upon which he relies. The court may temporarily enjoin further activity by such person and take such further action as shall be necessary to conserve, protect and disburse the funds involved, including the appointment of a receiver. If a receiver is appointed his expenses and a reasonable fee as determined by the court shall be paid by such person.

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***DRAFT authorizing Funeral Homes with multiple locations within the Commonwealth to maintain preneed records at a central location.***

***Recommended, as amended, by the HJR-141 Joint Subcommittee on 12/22/94***

§ 54.1-2822.1. Funeral establishments to maintain preneed records.

Every person selling preneed funeral contracts within this Commonwealth shall keep and maintain such records of preneed transactions, including copies of preneed contracts, as may be prescribed by the Board. All such records shall be maintained on the premises of the funeral establishment providing the preneed services and supplies, except that preneed records of funeral establishments under common ownership, control, or management may be maintained at a central single location within this Commonwealth.

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## VIRGINIA ACTS OF ASSEMBLY -- 1995 RECONVENED SESSION

REENROLLED

## CHAPTER 738

*An Act to amend the Code of Virginia by adding a section numbered 54.1-2506.2, relating to the Department of Health Professions; authority to seek equitable relief.*

[H 1839]

Approved April 6, 1995

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 54.1-2506.2 as follows:

*§ 54.1-2506.2. Protection of escrow funds, etc., held by persons licensed by any of the health regulatory boards.*

*Whenever funds are held in escrow, in trust, or in some other fiduciary capacity by a person licensed by any of the health regulatory boards and the Director or investigative personnel appointed by him have reason to believe that such person is not able or is unwilling to adequately protect such funds or the interest of any person therein, the Director may file a petition with any court of record having equity jurisdiction over such person or any of the funds held by such person stating the facts upon which he relies. The court may temporarily enjoin further activity by such person and take such further action as shall be necessary to conserve, protect and disburse the funds involved, including the appointment of a receiver. If a receiver is appointed his expenses and a reasonable fee as determined by the court shall be paid by such person.*

**CHAPTER 26**

*An Act to amend the Code of Virginia by adding a section numbered 54.1-2822.1, relating to funeral establishments; preneed funeral contracts; record-keeping requirements.*

[H 1494]

Approved February 23, 1995

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 54.1-2822.1 as follows:

*§ 54.1-2822.1. Funeral establishments to maintain preneed records.*

*Every person selling preneed funeral contracts within this Commonwealth shall keep and maintain such records of preneed transactions, including copies of preneed contracts, as may be prescribed by the Board. All such records shall be maintained on the premises of the funeral establishment providing the preneed services and supplies, except that preneed records of funeral establishments under common ownership, control, or management may be maintained at a single location within this Commonwealth.*