

**REPORT OF THE  
DEPARTMENT OF PROFESSIONAL AND  
OCCUPATIONAL REGULATION  
BOARD FOR PROFESSIONAL AND  
OCCUPATIONAL REGULATION**

**REPORT ON THE REGULATION  
OF NONPROFIT CEMETERIES**

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



**HOUSE DOCUMENT NO. 19**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2000**





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November 16, 1999

To the Governor and Members of the General Assembly of Virginia:

House Joint Resolution 745 requested the Board for Professional and Occupational Regulation, in conjunction with the Virginia Cemetery Board and the Virginia Cemetery Association, to study the "extent to which consumers experience dissatisfaction with products and services provided by cemeteries in Virginia other than those subject to regulation by the Commonwealth and the means available for protecting the interests of consumers who engage the services of non-regulated cemeteries."

I am pleased to transmit to you the results of the study you requested. We are aware that issues surrounding the maintenance and services of cemeteries are of concern to many consumers, but our query for consumers' dissatisfaction with goods and services did not foster support for state regulation of these cemeteries. The Board for Professional and Occupational Regulation therefore does not recommend state regulation of nonprofit, church-related, municipal, city, state or other cemeteries currently not regulated. The Cemetery Board and Virginia Cemetery Association submitted several issues and concerns, which are outlined in this report.

This report, approved November 16, 1999, outlines the findings, conclusions and recommendations. Members of the Board for Professional and Occupational Regulation would be pleased to answer any questions.

Respectfully submitted,

Morris A. Nunes  
Chairman, Board for Professional and  
Occupational Regulation

MAN/kzw



*BOARD FOR PROFESSIONAL AND  
OCCUPATIONAL REGULATION*

**Report on the Need for  
the Regulation of Non-profit  
Cemeteries**

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## I. Executive Summary

House Joint Resolution 745 requested the Board for Professional and Occupational Regulation (the Board) in conjunction with the Virginia Cemetery Board and the Virginia Cemetery Association (VCA) study the extent to which consumers experience dissatisfaction with products and services provided by cemeteries other than those regulated by the state and the means available for protecting the interests of consumers who engage the services of non-regulated cemeteries. This report will explain the methodology used in studying this issue and the information gleaned in the study process. It will summarize the public comment provided to the Board, and conclude with recommendations to the Governor and the General Assembly.

The Board recognizes that the various discussions of cemeteries and their upkeep are matters that may stir great interest and intense concern. Throughout this study process, the Board attempted to follow its statutory authority in § 54.1-310 A of the *Code of Virginia* to determine whether the public interest requires that these cemeteries be regulated by the state. The *Code of Virginia* clearly states that government regulation of any business or profession should be implemented only when necessary for public protection. While other principles regarding the maintenance and preservation of cemeteries may need to be addressed, and private interests are certainly encouraged to do so, public protection is the responsibility of state government.

Based on the General Assembly's request that the Board address consumer dissatisfaction, the Board contacted numerous consumer groups in Virginia to solicit their comments through public hearings and/or written comments. The Board received only five comments that expressed concern or dissatisfaction with three cemeteries. Information received from the Office of Consumer Affairs at the Department of Agriculture and Consumer Services revealed that less than twenty percent of the complaints received in the previous four years were filed against cemeteries that are the subject of this study.

The Board did receive numerous comments from church-related cemeteries. Such comments not only opposed any state regulation, but also questioned whether such state regulatory measures would implicate and infringe upon the rights to religious freedom that are afforded in the Virginia and Federal Constitutions. Many municipal cemeteries also opposed state regulation based on the argument that few complaints have been filed and that local government can provide the necessary public protection.

The Virginia Cemetery Board and the Virginia Cemetery Association raised several issues and concerns regarding the cemeteries that are not subject to Section 54.1-2310 et seq. of the *Code of Virginia*. These issues and concerns are outlined in the report. While the Board agrees that some of these issues should be addressed, the Board concludes that further state regulation is not the appropriate response at this time. Based on the dearth of consumer complaints or concerns regarding the operation of these cemeteries, the Board can only conclude that for the most part, consumers are not dissatisfied with the goods and services received at nonprofit, church-related, municipal, city, state or other cemeteries and to the

limited extent there are manifestations of dissatisfaction they fall far short of the threshold for state regulation. In addition, certain problems, whether documented or alleged, may not be prevented, remedied or otherwise addressed by requiring these cemeteries to be licensed under the Cemetery Act. Absent consumer outcry, the Board finds that state regulation of these cemeteries could mean unnecessary government interference for some cemeteries, and in the case of church-related cemeteries, could imperil First Amendment rights to the free exercise of religious practices.

## **II. Introduction**

### **A. Background and purpose of report**

In 1998, the General Assembly passed legislation creating a Virginia Cemetery Board with the authority to license for-profit cemeteries. Section 54.1-2312 specifically exempts the following cemeteries: cemeteries wholly owned and operated by the state or a county, city or town; a church; or a non-stock corporation not operated for profit if the corporation 1) does not compensate any officer or director except for reimbursement of reasonable expenses incurred in the performance of his official duties, (2) does not sell or construct or directly or indirectly contract for the sale of construction of vaults or lawn, garden or mausoleum crypts, and (3) uses proceeds from the sale of all graves and entombment rights for the sole purpose of defraying the direct expenses of maintaining the cemetery. In addition, the law exempts any community cemetery not operated for profit or any family cemetery provided that no graves or entombment rights therein are sold or offered for sale to the public. It is estimated that this new law, which is effective July 1, 2000, will cover 115 cemeteries.

The 1999 General Assembly requested that the Board for Professional and Occupational Regulation study the extent to which consumers experience dissatisfaction with products and services provided by cemeteries in Virginia other than those subject to regulation by the Commonwealth and the means available for protecting the interests of consumers who engage the services of nonregulated cemeteries. The Board was instructed to work in conjunction with the Virginia Cemetery Board and the Virginia Cemetery Association. (See Appendix A for a copy of House Joint Resolution 745.)

### **B. Statutory authority**

Section 54.1-310 of the *Code of Virginia* provides the statutory authority for the Board to study and recommend regulation of professions and occupations. Section 54.1-310.A.6 states that the Board shall: "evaluate constantly each profession and occupation in the Commonwealth not otherwise regulated for consideration as to whether such profession or occupation should be regulated, and, if so, the degree of regulation that should be imposed."

Other statutes provide the basis for determining when state regulation is necessary. Section 54.1-100 states:

The right of every person to engage in any lawful profession, trade or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when it is clearly found that such abridgement is necessary for the

preservation of the health, safety and welfare of the public.

No regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:

1. The unregulated practice of the profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;
2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor;
3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and
4. The public is not effectively protected by other means.

No regulation of a profession or occupation shall conflict with the Constitution of the United States, the Constitution of Virginia, the laws of the United States, or the laws of the Commonwealth of Virginia. Periodically and at least annually, all agencies regulating a profession or occupation shall review such regulations to ensure that no conflict exists.

The Board uses this statute as a benchmark for determining when state regulation is necessary.

### **C. Methodology**

The Board for Professional and Occupational Regulation worked in conjunction with the Cemetery Board and the Virginia Cemetery Association to obtain information. The following methods were used:

- Review of "A Study of the Adequacy of Virginia Law Related to the Removal of Human Remains From Archaeological Sites and Abandoned Private Cemeteries," a 1999 report of the Virginia Department of Historic Resources;
- Review of cemetery regulations in selected states;

- A Virginia Cemetery Association survey of its members regarding the name and location of non-profit cemeteries, church-related cemeteries, municipal cemeteries, and private cemeteries.
- Two public hearings and the solicitation of written comments including mailings to:
  - Virginia Cemetery Association membership list;
  - Virginia Council of Churches' listing of church newsletters or church leaders;
  - Virginia Municipal League;
  - Virginia Association of Counties;
  - Virginia Funeral Home Association;
  - Virginia Citizen Consumer Council;
  - Funeral Consumer Information Society;
  - Virginia Chapter of the American Association of Retired Persons;
  - Consumer Affairs Offices in Fairfax, Alexandria, Arlington and Virginia Beach;
  - Department of Aging (25 area chapters);
  - Virginia Cooperative Extension Office;
- Consultation with the Office of Consumer Affairs regarding the nature and number of complaints received regarding cemeteries; and
- Consultation with the International Cemetery and Funeral Association.

### **III. Findings**

#### **A. Existing federal and state regulations**

The Federal Trade Commission's (FTC) Funeral Rule which became effective in 1984, and was amended in 1994, requires providers of funeral goods and services to give consumers itemized lists of funeral goods and services that not only state prices and descriptions, but also contain specific disclosures. The FTC announced a regulatory review of the Funeral Rule in April 1999, and sought comments on whether to expand the scope of the Rule to include cemeteries, monument dealers, and casket sellers, and redefine "funeral provider." The FTC will determine in the spring of 2000 whether to recommend proposed changes in the Funeral Rule. Since the FTC's charter does not include nonprofit entities, it is not anticipated that any proposal would affect nonprofit cemeteries. There are no other federal guidelines for the regulation of cemeteries.

On the state level, Title 57 of the *Code of Virginia* addresses some cemetery issues. Section 57-35.36 requires cemeteries operated by a county or city to keep accurate records of the ownership of cemetery lots, and to make a good faith effort to ensure, prior to interment, that the ownership of a cemetery lot is vested in the decedent's estate or that permission for the interment has been granted by the person holding such ownership. Section 57-39.1 states that an adjacent property owner or local governing body can request the owners of property containing a private graveyard to improve and maintain the graveyard if it has been allowed to deteriorate to the point that it lessens the value of the adjacent property. If the owner refuses, the adjacent property owner or local government can petition the court to require that they (the petitioners) be allowed to come on the property and improve and maintain the cemetery at their own expense. If no entombment rights were ever sold (as in the case of most family cemeteries) the court cannot require the owner of the property to maintain or pay for the maintenance of the cemetery. If entombment rights were sold, the court shall determine whether the property owner or the petitioners shall pay the costs.

Another Virginia statute, which must be reviewed in the context of this study, is Title 59, the Virginia Consumer Protection Act of 1977. The intent of this act was to promote fair and ethical standards of dealings between suppliers and the consuming public. This statute covers consumer transactions, prohibits misrepresentation of goods, advertising, etc. This act, as administered by the Office of Consumer Affairs, provides an umbrella for consumer complaints.

## **B. Consumer complaints**

Board staff contacted the consumer affairs offices regarding the number and nature of cemetery complaints. The Virginia Beach and Alexandria Consumer Affairs Offices reported that they had not received complaints against cemeteries other than for-profit cemeteries. The Fairfax County Consumer Services Division reported one case in 1996 in which the complainant alleged unfair business practice regarding placement of a mausoleum near the site of a burial plot. The respondent offered to exchange the site or sell, but never followed through with the offer. The complainant considered Small Claims Court. Two cases were filed in 1997. One complaint was regarding the costs of opening and closing a crypt and no action was taken. The other complaint was forwarded to the State Office of Consumer Affairs. One complaint was also filed in 1998 regarding alleged misrepresentation and was also forwarded to the State Office of Consumer Affairs.

The Virginia Department of Agriculture and Consumer Services, Division of Consumer Protection, Office of Consumer Affairs is charged with the registration of for-profit cemeteries in Virginia. The Office of Consumer Affairs receives and investigates consumer complaints against cemeteries. The for-profit cemeteries are also required to file the fiduciary information regarding trust accounts with their Local Commissioners of Revenue. Effective July 1, 2000, the Cemetery Board at the

Department of Professional and Occupational Regulation will license for-profit cemeteries and maintain the registration of sales personnel of such cemeteries.

Staff for the Office of Consumer Affairs testified that only twenty percent of filed complaints in the past four years pertained to unregulated entities (religious, community, municipal and family cemeteries). Consumer Affairs staff used the previous six months as an example of the types of complaints received. During that time, the Office of Consumer Affairs had received twenty-five complaints and the five relating to non-regulated entities included three headstone or payment issues with municipal or community cemeteries and two complaints involving non-preneed monument companies. In the past four years, less than fifteen complaints had been filed against religious cemeteries, but Consumer Affairs staff agreed that it is unusual for complainants to call a state agency regarding a church cemetery. The complainant would more likely try to work with the church to resolve the issue. Consumer Affairs staff testified that consumer complaints modestly increased, but agreed with a Board member that such complaints remain a very small number and represent vastly less than one percent of the number of interments per year in Virginia.

The Board also sought to obtain consumer concerns or complaints through the public hearing process and written comments. In addition to the required notices given in the Virginia Register, the Board sent notices of the public hearings and a request for written comments to a list of interested parties including consumer groups, church organizations, and cemeteries. The Board also received newspaper, radio and television coverage of the study and the public hearings.

At the Richmond public hearing, one couple from Nottoway County testified that land across from their property had been used by a funeral home to bury people without the use of a casket or vault. Staff conversations with the Nottoway Health Department verified that the land had been a family cemetery for some time, and that a local funeral home had received permission from the family to bury an indigent person there. If the cemetery plot was sold, the family cemetery would be subject to the provisions of the Cemetery Act (Section 54.1-2312 of the *Code of Virginia*).

Written comments included two complaints regarding Lewinsville Presbyterian Church cemetery in McLean, Virginia and two complaints regarding the upkeep of Oakwood Cemetery which is operated by the City of Richmond.

A member of the Virginia Cemetery Association testified that his for-profit cemeteries receive many telephone calls from consumers concerned about activities at unregulated cemeteries. While many municipal and church cemeteries may be properly maintained, his concern was where consumers should turn for assistance when they have complaints regarding an unregulated cemetery.

It is noteworthy that in this context a significant number of communications were received from church-related writers opposing regulation as unnecessary, costly, burdensome without benefit, and violative of Constitutional rights.

The Board references the Consumer Affairs Office's analysis of complaints over the past four years. Less than thirty percent of complaints filed that relate to cemeteries pertained to possible violations of the Cemetery Act. Some problems, whether documented or alleged, would not be prevented, remedied or otherwise addressed by requiring these cemeteries to be licensed under any of the provisions of the Cemetery Act.

### **C. Regulation in other states**

Section 54.1-311 B.3 of the *Code of Virginia* states that when determining the appropriate level of regulation for a profession or occupation, the Board for Professional and Occupational Regulation shall determine the number of states, which have regulatory provisions similar to those proposed. Using the membership directory of the North American Cemetery Regulators Association, the Board contacted several states to determine the number of states which regulate non-profit, church-related or municipal cemeteries.

Iowa, Minnesota, and Oregon regulate municipal, religious and non-profit cemeteries. Indiana regulates these cemeteries if they are ten acres or more, but does not require a fee and does not investigate complaints filed against these cemeteries. Louisiana also regulates these cemeteries if they sell cemetery space or maintenance fees for more than \$300. Wisconsin and California also regulate non-profit cemeteries if they sell ten or more cemetery lots per year. Some states such as Colorado, Nebraska and Maryland regulate only pre-need sales. A law was signed in May that exempts Maryland religious nonprofit cemeteries from the state's pre-need laws. Florida has general statutes regarding burial records, discrimination, solicitation, etc. which apply to every cemetery, but the state does not license the municipal or church related-cemeteries. Florida does regulate non-profit cemeteries if they sell burial spaces.

### **D. Public comments**

The Board conducted two public hearings to gather information and opinions on the extent to which consumers experience dissatisfaction with products and services provided by cemeteries other than for-profit cemeteries in Virginia. In addition, the Board requested that written comments be submitted.

At a May 13, 1999, hearing in Richmond, members of the Virginia Cemetery Association testified that the General Assembly passed the Cemetery Act with the intent of protecting the public, but only a small number of the state's cemeteries will be regulated. In



addition, association members expressed concern that consumers will be confused regarding where to file complaints since the Cemetery Board will only have authority to regulate 115 for-profit cemeteries. The Virginia Cemetery Association's position is that while many municipal and church cemeteries are doing a good job, there are also some cemeteries that are not properly maintained, and the public is not protected. Industry representatives suggested that registration of all cemeteries is important so the Cemetery Board has information regarding every cemetery.

The executive director of the Virginia Assembly of Independent Baptists noted that the General Assembly passed the Cemetery Act with the exemption for church cemeteries, and the law should not be amended. Likewise, representatives from various churches reported that their church cemeteries have a mechanism in place for maintaining their cemeteries and government interference is unnecessary. The attorney for the Catholic Diocese of Richmond testified that government regulation of religious cemeteries would raise First Amendment implications.

A member of the public raised a concern that there are a number of churches that are closing and the cemeteries could be abandoned. A representative of the Association of Independent Funeral Homes in Virginia cautioned that the projected number of regulated cemeteries might not be accurate, and encouraged the Board to read the studies conducted over the past years regarding cemeteries. The Chesterfield Historical Society of Virginia reported that they had identified three hundred cemeteries in the county. The representative expressed personal concern that family cemeteries do not need to be regulated by the state.

The Director of Public Works for the Town of Culpeper also opposed regulation of municipal cemeteries noting that complaints are more appropriately handled at the local level. A couple from Nottoway County testified to a burial that had occurred near their property (see page seven).

At a public hearing in Virginia Beach on June 18, 1999, the town manager of Bluefield alleged that the smaller Virginia communities take pride in making sure their cemetery is properly maintained. He purported that municipal cemeteries are really owned by the people and state regulation is not necessary.

An attorney for Mount Vernon Baptist Church noted that the lack of consumer complaints is evidence of lack of a problem. He reminded the Board that Virginia law requires that there be a demonstrated threat to public health, safety or welfare when requiring a new regulation. A church cemetery is part of the church's ministry and their commitment is much greater consumer protection that state regulation could provide. Other church representatives also voiced opposition to state regulation of church cemeteries.

A representative for the Virginia Cemetery Association reiterated the association's support of registration as an attempt to create an official listing of cemeteries. This would provide consumers with information for addressing complaints, etc.

A nonprofit cemetery president testified that most of the complaints about nonprofit cemeteries relate to maintenance or customer service. Such problems are largely the result of understaffed or under-funded facilities. The spokesman argued that state regulation, including licensing fees, would not change this problem, but place additional burdens on these cemeteries.

Written comments were also received from numerous churches who all agreed that state regulation of church cemeteries is unwarranted and unconstitutional. One pastor wrote "I am unable to conceive of anything your department or any other government department could require of us that would result in our cemetery being cared for any better than it is now." The author went on to argue that government regulation would constitute an unnecessary intrusion of government into the affairs of the church.

Opposition was also received from city officials representing Gordonsville, Williamsburg, Farmville, Galax, Franklin, and Norfolk. The administrators argued that local governments are more responsive to consumer complaints and provide the necessary consumer protections.

As noted in a previous section, two consumers expressed concern about Lewinsville Presbyterian Church in McLean, Virginia. Two other citizens wrote regarding the deterioration of Oakwood Cemetery, which is operated by the City of Richmond. See Appendix B for a summary of public comments.

#### **E. Constitutional concerns regarding regulation of religious cemeteries**

Written comments also raised constitutional questions regarding government regulation of church cemeteries. The counsel for the Catholic Diocese of Richmond noted that both the constitutions of the United States and of the Commonwealth of Virginia prohibit the lawmakers of each from enacting laws that infringe upon religious freedom and practice. It was argued that the study yielded no data to conclude that consumer protection considerations mandate government regulation of religious cemeteries.

General counsel to the Catholic Diocese of Arlington commented that the Catholic Church has well defined procedures for establishing Catholic cemeteries (Canon 1208 in the Code of Canon Law) and in protecting the sanctity of Catholic cemeteries (Canon 1211 of the Code of Canon Law) which necessarily involves the proper maintenance of cemeteries. Their stated position was that regulation of church cemeteries would constitute impermissible restrictions on the free exercise of religion. "This is particularly the case since the proposed regulations do not involve matters of health and safety, but would apparently be focused on matters of economic regulation."

## **F. Cemetery maintenance**

The Board is aware that there are cemeteries in the Commonwealth that are not properly maintained and understands the emotional impact those cemeteries have on the families of individuals buried in them. Recent media attention has been focused on those cemeteries in the most severe disrepair. Neglect of the physical plant and landscaping of a cemetery reinforces the importance of perpetual care trust funds that must be available for cemetery upkeep and maintenance. The Board recognizes and applauds the efforts of private citizen volunteers, scout troops, historical society members, and others, who are working to clean up these cemeteries. The Board also encourages municipalities to be vigilant in cemetery maintenance because of the historical significance of cemeteries in the Commonwealth. Absent the availability of appropriate trust funds, municipalities should seek to secure other monies through private or public sources to ensure proper maintenance.

## **G. Virginia Cemetery Board and Virginia Cemetery Association**

The General Assembly directed the Board for Professional and Occupational Regulation to conduct this study in conjunction with the Virginia Cemetery Board and the Virginia Cemetery Association. Representatives of each attended the public hearings and received copies of all written comments. The Board for Professional and Occupational Regulation requested that the Cemetery Board and the Virginia Cemetery Association submit their recommendations to the Board in writing. The following is a summary of the recommendations submitted by each body. Letters from the Cemetery Board and the Virginia Cemetery Association are attached as Appendix C.

### **Cemetery Board**

1. Supports an approach where church run or family cemeteries that sell pre-need merchandise or services, regardless of type of ownership or status, should be subject to the benefits and protections of Title 54.1. This recommendation only encompasses cemeteries with existing sales activities and no legislative action is recommended with respect to cemeteries with no existing sales activity.
2. Notes that the public perception issue voiced by the Cemetery Association is valid and believes the study should address that issue.
3. Declines to endorse the possibility of registration. However, the Cemetery Board does note that many people and organizations document the location of graves and cemeteries and that it would be worthwhile to collect such information and develop a database for public use.
4. Contends that with the advances made in information systems, the maintenance of interment records should be required of all cemeteries, regardless of their license status.

5. Many states have a specific criminal cemetery vandalism statute. The need for such a statute should be assessed with an appropriate emphasis on restitution.
6. If further regulation is recommended, the Cemetery Board recommends that authority be granted to waive all or part of the deposit requirements for non-profit cemeteries that are unable to meet the requirement in § 54.1-2316 of the *Code of Virginia*.

#### Virginia Cemetery Association (VCA)

1. The Cemetery Board should be authorized to compile and maintain a list of all Virginia cemeteries along with a designated representative of those cemeteries. The VCA is willing to assist the Cemetery Board with this task. The list should be kept up to date at all times, with the cemetery charged with the responsibility to notify the Cemetery Board of any change in ownership or the designated representative of the cemetery. Regulating only 115 of the approximately 4,000 cemeteries creates a huge void. The VCA believes the Cemetery Board should be permitted to oversee the operation of all cemeteries in the Commonwealth and to provide consumer protection on cemetery issues to all of the citizens of the Commonwealth.
2. All complaints registered against cemeteries operating in Virginia, whether regulated or unregulated, should be received by one governmental entity to avoid confusion among members of the public and the perception that the Cemetery Board is powerless (which was the chief complaint against the Office of Consumer Affairs).
3. The Cemetery Board is the governmental entity best suited to receive all consumer complaints registered against all cemeteries operating in Virginia.
4. All cemeteries in Virginia that either 1) sell pre-need merchandise or services, or 2) perform five or more interments per year should be required to register with the Cemetery Board and provide and keep current the name and address of a designated representative with authority to act on behalf of the cemetery. A nominal fee (e.g. \$25) should be charged to the cemetery for this registration on an annual basis. Interment of the deceased, perpetual care, pre-need sales, trust funds, etc. warrant public protection regardless of the type of cemetery.
5. The report made pursuant to House Joint Resolution 745 should recommend to the Governor and to the General Assembly that DPOR be authorized to mediate complaints and disputes between consumers and cemeteries in Virginia. With the growing acceptance of the value of alternate dispute resolution, it would

seem that DPOR should make good use of such services in connection with its other boards as well.

6. The VCA will agree to establish a specific mediation program to assist DPOR with complaints against cemeteries (until DPOR establishes its own program for cases involving unregulated cemeteries or for appropriate cases where industry expertise is needed).

One member of the Virginia Cemetery Association who participated in the study provided comments separate from the association's position. As president of a nonprofit cemetery, he noted that the study produced no problems for which a regulatory solution is needed. He argued that the General Assembly was aware of these facts when it specifically exempted non-commercial cemeteries from the operation of the new cemetery law. He stated that this was not an oversight, but a specific decision by the General Assembly that the law need not and did not apply to exempt cemeteries.

#### **IV. Conclusions**

##### **A. Response to Cemetery Board and Cemetery Association comments**

The Board for Professional and Occupational Regulation appreciates the expertise and perspective of the Cemetery Board and the representatives of the Virginia Cemetery Association who were involved in this study. The Board agrees that interment records should be kept by all cemeteries and would encourage an amendment to Title 57 to make interment records a requirement for all cemeteries. Likewise, the Cemetery Board may wish to review other state statutes regarding criminal cemetery vandalism and determine whether prosecution under general statutes pertaining to vandalism is adequate.

In response to the public perception issue, the Board believes that the Office of Consumer Affairs has done a good job handling and mediating consumer complaints. Most consumers are familiar with a local consumer affairs office or the state Office of Consumer Affairs. The Department of Professional and Occupational Regulation should continue discussions with the Office of Consumer Affairs including a memorandum of understanding regarding the referral of consumer questions. In addition, the Board will encourage the Department of Professional and Occupational Regulation to make a conscious effort to provide information to the public through the use of brochures, the agency's web site and speaker's bureau. The Board would support an effort for a consumer guide to funeral and cemetery purchases which could be a joint effort of the Cemetery Board, the Board of Funeral Directors and Embalmers at the Department of Health Professions, and the Office of Consumer Affairs.

While a database with information regarding cemeteries in Virginia may be helpful, the Board concludes that state regulation should not be used for that purpose. The efforts of private entities such as historical societies, however, should certainly be encouraged.

**B. Conclusions and recommendation**

Based on the dearth of consumer complaints or concerns, the Board can only conclude that for the most part, consumers are not dissatisfied with the goods and services received at non-profit, church-related, municipal, city, state or other cemeteries and to the limited extent there are manifestations of dissatisfaction they fall far short of the threshold for state regulation. In addition, certain problems, whether documented or alleged, may not be prevented, remedied or otherwise addressed by requiring these cemeteries to be licensed under the Cemetery Act. The Board also concludes that the Office of Consumer Affairs provides a means for protecting the interests of consumers who engage the services of these cemeteries. The Board recommends no further regulation.

1999 SESSION

994666204

HOUSE JOINT RESOLUTION NO. 745

Offered January 21, 1999

Requesting the Board of Professional and Occupational Regulation, in conjunction with the Virginia Cemetery Board and the Virginia Cemetery Association, to study the extent to which consumers experience dissatisfaction with products and services provided by cemeteries in Virginia other than those subject to regulation by the Commonwealth and the means available for protecting the interests of consumers who engage the services of nonregulated cemeteries.

Patrons—Diamonstein, Bloxom, Council, Cranwell, Davies, Dillard, Keating, Moss and Putney; Senators: Barry, Chichester, Colgan, Edwards, Gartlan, Holland, Saslaw, Wampler, Williams and Woods

Referred to Committee on General Laws

WHEREAS, for-profit cemeteries in Virginia have been required for years to register with the Office of Consumer Affairs within the Virginia Department of Agriculture and Consumer Services, which received and investigated consumer complaints relating to cemeteries; and

WHEREAS, the 1998 Session of the General Assembly created the Virginia Cemetery Board within the Department of Professions and Occupations to license for-profit cemeteries and maintain the registration of sales personnel of such cemeteries, with the regulations of the Cemetery Board to become effective on July 1, 2000; and

WHEREAS, for-profit cemeteries account for only a small percentage of all cemeteries in Virginia as well as a small percentage of the annual interments made in the Commonwealth, leaving most cemeteries in Virginia and most consumer transactions involving cemeteries exempt from the new state regulatory requirements; and

WHEREAS, neither the Department of Agriculture and Consumer Services nor the Virginia Cemetery Board has or will have regulatory authority over cemeteries that operate on a nonprofit basis; and

WHEREAS, national and state media attention has focused recently on problems within the cemetery industry, occurring in many instances at cemeteries that are not subject to governmental regulation; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Board of Professional and Occupational Regulation, in conjunction with the Virginia Cemetery Board and the Virginia Cemetery Association, be requested to study the extent to which consumers experience dissatisfaction with products and services provided by cemeteries in Virginia other than those subject to regulation by the Commonwealth and the means available for protecting the interests of consumers who engage the services of nonregulated cemeteries

All agencies of the Commonwealth shall provide assistance to the Board of Professional and Occupational Regulation for this study, upon request.

The Board of Professional and Occupational Regulation shall complete its work in time to submit its findings and recommendations to the Governor and the 2000 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

994666204

HJ745

1/27/99 9:40

**Summary of Written Comments  
House Joint Resolution 745  
Non-regulated Cemeteries**

<b>Name and Affiliation</b>	<b>Summary of Comments</b>
Charles F. Reynolds, Trustee, Hebron Presbyterian Church	Church cemetery was established in 1928, and has sold 157 gravesites to church members since that time. A perpetual care trust agreement has been established with proceeds to be used solely for cemetery upkeep. Hebron Presbyterian Church sees no need for state regulation of church cemeteries.
David L. Gilliam, Virginia Cemetery Association	The new cemetery law is inadequate and may result in increased confusion and even less protection for the consumer. Only a relatively small percentage of all cemeteries operating in the Commonwealth will be required to register with the Cemetery Board. Potential options include 1) allowing the Cemetery Board to refer complaints about non-registered cemeteries to the Office of Consumer Affairs, 2) expanding the registration requirements to include municipal, church, and non-profit cemeteries and waiving the registration fees, or 3) expanding the regulatory authority of the Cemetery Board to include those cemeteries with a minimum number of interments or entombments per year.
James E. Miller, District Executive, Church of the Brethren	Never heard of any complaints regarding church cemeteries in the Shenandoah District. Believes that the cemeteries are well run and well received by those involved.
Paulette Neas, Fairfax County Consumer Services Division	A search of records reveals that since July 1, 1996, the Consumer Services Division has received and closed four complaints concerning practices by cemeteries.
Rev. David J. Crawford, Indian Creek – Welcome Independent Baptist Church Ministries	Church was established in 1856 and has operated a cemetery for members only. The church members maintain the grounds and would like to continue functioning as a church run cemetery.



<b>Name and Affiliation</b>	<b>Summary of Comments</b>
David Farris, Member, Virginia Cemetery Board	Disappointed to see that only two public hearings were scheduled for the study pursuant to House Joint Resolution 745, and that both are several hours from Southwest Virginia. Encouraged the Board to consider conducting public hearings in Roanoke to allow citizens from Southwest Virginia to attend.
Dr. Ken H. Smith, Pastor, Rosedale Baptist Church	Please do not add any restrictions to church run and church operated cemeteries. Believes their church cemetery is properly maintained.
Gerald J. Spates, Town Manager, Farmville	Town of Farmville owns and operates Westview Cemetery. As a municipal cemetery, Westview is regulated by the Town Council. Citizens with complaints or suggestions regarding operating policies, products, services or pricing have direct recourse to an elected governing body. Sees no need for state regulation of municipal cemeteries.
John S. Dooley, Associate Pastor, Colonial Baptist Church	Opposed to any state regulation of church and nonprofit cemeteries. Hillcrest Cemetery has been part of the church's ministry to the community and any government intervention would only be detrimental to the church, the community, and cemetery itself.
Grayson Delano, Pastor, Faith Bible Baptist Church	Objects to including non-profit and church cemeteries in state regulatory program. There are no complaints about the maintenance of their church cemetery.

<b>Name and Affiliation</b>	<b>Summary of Comments</b>
J. Hubert Allen, Jr., Town Administrator, Gordonsville	Town of Gordonsville owns Maplewood Cemetery and a Board of Trustees appointed by the Town Council is responsible for its operation. This system has worked since the mid-1800s. The Board of Trustees addresses consumer complaints first. If the consumer is not pleased, they may address the Town Council or finally the Circuit Judge. All complaints received by the office are handled in less than a day, which is much quicker than any state agency would respond.
Rev. Joe Carruthers, Pastor, Mount Moriah Baptist Church	Can not conceive of anything that a state agency could require of their church cemetery that would result in maintaining it better than it is currently maintained. Believes this suggested regulation would mean the burden of unnecessary and unconstitutional government involvement in the affairs of the church. Government involvement will only force the church to spend more money to do what is already being done. Even if a church is dissolved or falls on hard times, the cemetery creates no danger to or negative impact upon the citizens of the Commonwealth that could possibly merit this government intervention. Church cemeteries have been maintained successfully for nearly a century and a half without the benefit of government oversight or control.
Jackson C. Tuttle, City Manager, City of Williamsburg	City of Williamsburg has owned and operated Cedar Grove Cemetery since 1859. Sees no need for municipal cemeteries to be regulated by the state.
Harry V. Carter, Woodbine Baptist Church Cemetery	Cemetery has been in existence over one hundred years. Interested in establishing a perpetual care trust fund to protect the cemetery funds.

Name and Affiliation	Summary of Comments
Daniel J. Campbell, City Manager, Galax	City of Galax owns two cemeteries, and the Galax City Council governs both facilities. Complaints are handled by the City Council, and these cemeteries do not need to be subjected to any further regulation or mandate.
Wesley Wirt, Mount Hermon Church of the Brethren	Cemetery was officially started in 1940 and started perpetual care in 1978. The cemetery has a total of 1,935 grave spaces.
Rowland L. Taylor, City Manager, Franklin	City of Franklin owns and operates two municipal cemeteries. Consumer complaints and suggestions are handled by elected officials. It is not prudent or responsible to create another level of government to oversee a municipal operation which has been in service for so many years.
Westin W. Gupton, Gravel Hill Baptist Church	Concerned that the General Assembly feels compelled to interfere in church cemetery affairs. Does not want church cemeteries to become subject to any government regulation. The government already regulates too much.
W. A. Hurt, Church Cemetery Committee	Sees no need for regulation of church cemeteries. A trust fund has been in existence to provide for maintenance of the cemetery. Sees need for regulation of for-profit cemeteries and perhaps for new non-profit cemeteries, but pre-existing ones should be exempt from state regulation.
Virginia Finney, High Hills Baptist Church	Ancestors have served the church in various positions throughout the past 212 years. The cemetery is well kept and members take pride in its care. Agrees with Baptist publication that it is a "dangerous gambit" to allow government agencies to regulate any church-owned property or ministry.
Danny W. Connelly	Opposes state regulation of church cemeteries. Church cemetery has to comply with county health regulations and zoning requirements. Local ordinances provide necessary protection.

Name and Affiliation	Summary of Comments
Daniel A. Montgomery, Cecil D. Bower, Marvin D. Bowman, Old German Baptist Church, Franklin County	The cemetery has always enjoyed a good relationship with the families it serves. Wish to continue to be free from any regulation or bureaucratic requirement.
Marguerite G. Mohon	Has concern about the decline in maintenance of the Lewinsville Presbyterian Church Cemetery in McLean, Virginia. Ample funds have been set aside for cemetery maintenance, but the volunteers do not properly trim trees and shrubs, etc.
Bruce Cole, Hopeful Baptist Church	No government body or agency should infringe on the separation of church and state in the matter of placing government regulations on church property (cemeteries). Neither the state nor the burial industry has constitutional right to dictate in any manner in the ministries of the church.
Virginia F. Chandler	Pleased with the improved upkeep of Forest Lawn Cemetery since its purchase by Carriage Services. Concerned about the upkeep of Oakwood Cemetery because of the changes and crime in the surrounding area.
Rev. C. Anthony Wilbourne, High Hills Baptist Church	Churches do not use their cemeteries as a means of profit, but as a ministry to its members and community. Church cemeteries are usually self regulated because the people have some connection to the church, its ancestry or its current membership. State regulation would be a gross violation of the separation of church and state and would be an infringement upon a cherished and longstanding ministry of the church.
Virginia Brink	Concerned about Lewinsville Presbyterian Church in McLean, VA. Were shocked to learn that her family's lots were covered over by a children's playground. Has received inadequate information from volunteers of the church cemetery.
"Concerned Citizen", Madison Heights	Concerned about what the state wants to control.

<b>Name and Affiliation</b>	<b>Summary of Comments</b>
Bill Axelle, Jr., Williams Mullen Clark & Dobbins	There is no proven problem for which a regulatory solution is needed. Testimony from the Division of Consumer Affairs clearly indicates that there are no real problems with the operation of church cemeteries. Problems can and should be addressed at the church with local people ministering in that area. State intervention is not needed or advisable, but an attempt to expand the regulatory authority of the Cemetery Board.
Frank A. Rice, Pastor, Slate Hill Baptist Church	Church adopted resolution opposing governmental regulation or restrictions on church cemeteries. Church shares Thomas Jefferson's philosophy that the interests of both church and state are best served when neither impinges on the sovereignty of the other.
Joel H. Jamison, Jacob L. Rutrough, Elwood C. Bowman, Franklin Clearview Cemetery Association	Have had no complaints or dissatisfaction of families served by the cemetery. Would prefer to enjoy the freedom of any regulation or state requirements.
Anton Joseph Stelly, Attorney for the Catholic Diocese of Richmond	Catholic Diocese of Richmond operates four cemeteries. In addition, sixty individual parishes in the Diocese have and maintain their own cemeteries. Opposes any recommendation that would encourage expanding the current regulatory scheme to regulate religious cemeteries because there is no evidence that consumer complaints relating to religious cemeteries justify such regulation. Also opposes state regulation of religious cemeteries because such state regulatory measures would implicate and infringe upon rights to religious freedom that are afforded in the Virginia and Federal Constitutions. Evidence indicates that religious cemeteries operate virtually without complaint and state regulation would impose an unnecessary financial burden on many church cemeteries.

<b>Name and Affiliation</b>	<b>Summary of Comments</b>
Thomas J. Fadoul, Jr., General Counsel to the Catholic Diocese of Arlington	The Catholic Diocese of Arlington serves approximately 350,000 Catholics at some seventy parishes and missions. The Diocese and/or its constituent parishes own and operate nine cemeteries and/or columbariums. Opposes state regulation of church cemeteries. The current zoning and subdivision statutes and ordinances sufficiently address the location of cemeteries. The Catholic Church has well defined procedures for establishing and protecting the sanctity of Catholic cemeteries in the Code of Canon Law. Regulation of the operation of religious cemeteries will constitute impermissible restrictions on the free exercise of religion. Sufficient evidence has not been presented that churches are unfairly treating consumers of cemetery services. Catholic entities that operate cemeteries have been very responsive to the concerns of families since the leaders of the parishes are very visible members of their communities, and are readily accessible if complaints should arise. If the complaints are not resolved locally, recourse to diocesan administrative and/or judicial processes is always available.
Regina V.K. Williams, City Manager, City of Norfolk	City cemetery is unaware of any serious problems or complaints. There is no better regulator of a municipal cemetery than the local government body. No need for state regulation of municipal cemeteries.
Theresa G. French	Concern regarding the deterioration of Oakwood Cemetery which is operated by the City of Richmond. Family paid extra to ensure perpetual care, but the funds are no longer trusted and the money was used for other purposes. The city should be required to trust perpetual care funds so there is sufficient income to maintain the cemetery.

**Summary of Public Hearing Comments**  
**Regulation of Cemeteries**  
**May 13, 1999**  
**Richmond, VA**

Name and Affiliation	Summary of Comments
Joe Herron, Senior Investigator, Office of Consumer Affairs	Concerned how consumer complaints will be handled when the Cemetery Board begins regulating for-profit cemeteries, because most complaints do not fit into areas that are covered by the Cemetery Act. Twenty-five complaints were received by Consumer Affairs in the past six months regarding cemeteries and five involved non-regulated cemeteries. Fifteen of the complaints involving regulated cemeteries did not involve issues which are addressed by the Cemetery Act, but rather issues such as overpricing, nondelivery of goods, unauthorized movement of headstones, etc.
Robert Marston, Presbyterian Church	Sees no need for government regulation of church cemeteries. Church has a memorial association that maintains the cemetery.
Jack Knapp, Executive Director of the Virginia Assembly of Independent Baptists	Association is conducting survey of member churches to determine the number of churches that have cemeteries. The feeling of the General Assembly in passing the Cemetery Act was that church cemeteries should be exempt. Encouraged the board to maintain that exemption. Noted that churches that aggressively sell lots may be opening themselves up to regulation.
Don Caskie, Christ Church Middlesex County	Christ Church cemetery charges a fee, but one hundred percent of the money has been placed in a trust fund. The cemetery is operated with proceeds from the income from the trust fund. There is a committee and trustees of the cemetery. The church vestry receives reports, and the funds are kept on deposit at the Diocese of Virginia. The cemetery is also on the national register so there is an element of control at that point. Requests that church cemeteries be exempt from state regulation.

Name and Affiliation	Summary of Comments
Tommy Beales, Director of Public Works for the Town of Culpeper	Fairview Cemetery is owned and operated by the Town of Culpeper. The records will show that the cemetery is definitely not for-profit. While the town council entertained the idea of privatizing the cemetery, the citizens did not support such an arrangement and wanted to keep the cemetery. The complaints are resolved by the Public Works Committee of the Town Council and on rare occasions are taken to the mayor. Opposes any state regulation of municipal cemeteries.
Brian Pashby, Virginia Cemetery Association	Concerned about the cemeteries that are not doing a good job serving the public and taking care of families. Every week his cemetery receives phones calls from the public regarding cemeteries in Richmond that will not be regulated under the new cemetery law. Believes the existing law will not protect the public.
Rev. Eddie Perry, St. John Baptist Church, Charles City County	Opposes any government regulation of church cemeteries. A mechanism has been established to maintain the cemeteries at churches, and they are responsible for that maintenance.
Anton Joseph Stelly, Catholic Diocese of Richmond	Does not feel that the government has any right or need to regulate church cemeteries. Churches have been doing it very well for a long, long time. Questions whether the Commonwealth or any government entity can regulate church cemeteries. Any regulation of religious worship would raise First Amendment implications. The Code of Canon Law provides remedies for people who feel they have not been treated fairly under church law. Notes that the church was doing due process before it was even a concept in England.
Glenda Blackwell, on behalf of her parents, Norman and Margaret Blackwell, Nottoway County	Testified that her parents witnessed a burial in a field that has been designated as a cemetery and there was no coffin, vault, etc. The land was purchased by Down Funeral Home. There appears to be no general upkeep, but the property is used for burials when no family is involved.



Name and Affiliation	Summary of Comments
Mark Drougham, Virginia Cemetery Association	The Cemetery Act passed the General Assembly with the thought that it was creating consumer protection, and yet only a small number of cemeteries will be regulated. While many church cemeteries do not have problems, there are some church and community cemeteries that do have consumer complaints. The municipal cemeteries in Richmond provide an example of a possible lack of funds to maintain the cemeteries. While regulation may not be necessary, we need to know where these cemeteries are and we need a system to preserve our heritage.
David Gilliam, General Manager of Hollywood Cemetery, Richmond	The goal behind the study is not to increase regulation, but simply to bring all players together in an attempt to remedy the perceived weaknesses in the new regulations. The biggest problem with the new cemetery law is that the process of dealing with consumer complaints against certain cemeteries was left out. What could result is a state of increased confusion and possibly even less protection for the consumer. Possible options would be 1) to have the Cemetery Board refer consumer complaints against nonregistered cemeteries to the Office of Consumer Affairs; 2) to allow the Cemetery Board to expand the registration requirements of cemeteries (these cemeteries would maintain their exempt status from the cemetery law except the registration requirement); 3) to expand the duties of the Cemetery Board to include the arbitration of consumer complaints filed against exempt registrants.
Jarene Fleming	Concerned that there are a number of churches that are closing and the cemetery is abandoned. Believes the most important thing would be to get a registration of all properties and who is responsible for them.
Bruce Keeney, Executive Director and Legislative Counsel for the Association of Independent Funeral Homes in Virginia	Cautioned that the projected number of 115 regulated cemeteries may not be accurate. Non-profit cemeteries that choose to retain salespersons, etc. may be regulated when they become profitable ventures. Encouraged the board to read the studies conducted over the past years regarding cemeteries.
Rachel Lipowicz, Chesterfield Historical Society of Virginia	The Society documents and researches cemeteries in Chesterfield County, and has identified three hundred cemeteries in the county. Expressed concern about family cemeteries and personally does not feel regulation is necessary. An abandoned cemetery, that no one knows exists, presents no public harm.

**Summary of Public Hearing Comments**  
**Regulation of Cemeteries**  
**June 18, 1999**  
**Virginia Beach, VA**

Name and Affiliation	Summary of Comments
J. C. Higginbotham, Town Manager, Bluefield	Has only received one complaint about service at the municipal cemetery. As a manager of smaller Virginia communities, he has experienced much pride in making sure the cemetery is properly maintained. The municipal cemeteries are really owned by the people and they want to make sure they are run correctly. Adding state regulation may take away that pride in the cemetery. The town does subsidize the cemetery with approximately \$50,000 a year and has a perpetual care trust fund.
Randy Gleason, Sherwood Memorial Park, Salem	Supports some form of registration so that all the cemeteries can be identified and to create an official list in case there are complaints. Consumers would then know who is in charge of the cemetery and where to address the complaint.
Joe Herron, Senior Investigator, Office of Consumer Affairs	Complaints against unregulated cemeteries make up less than twenty percent of the total complaints received. Over fifty percent of complaints were directed against cemeteries that will be licensed related to the Virginia Cemetery Act. Complaints filed against cemeteries are definitely on the rise. There were two complaints filed against church cemeteries in the past six to eight months. In the last four years, there were approximately fifteen complaints against church cemeteries.
W. R. Eichhammer, King of Glory Lutheran Church, James City County	Calls attention to Section 57-35.11 of the <i>Code of Virginia</i> regarding a columbarium on church property. Church cremation gardens and columbaria should not be covered by this study.

Name and Affiliation	Summary of Comments
Bill Axelle, Jr., Williams, Mullen, Clark and Dobbins, Richmond	Speaking on behalf of Mount Vernon Baptist Church, he notes that lack of consumer complaints is evidence of lack of a problem. Reminds the board that Section 54.1-100 of the <i>Code of Virginia</i> requires that there be a demonstrated threat to public health, safety or welfare when requiring new regulation. Mount Vernon Baptist Church relocated from a commercial area and moved its cemetery to the new location. The church does not have the perspective of making money, but operating with sound business practices. The cemetery is part of the church's ministry and their commitment is much greater consumer protection than state regulation could provide.
Lewis Witt, Saint Mary's Catholic Cemetery, Norfolk	A cemetery is operated on behalf of twelve Catholic parishes in the Tidewater area. Additional regulations toward church cemeteries are not justified at this time. The cemetery has a perpetual care fund managed by A. G. Edwards and does not sell pre-need agreements.
Robert Cratch, Monta Vista Memorial Gardens, Galax	Noted the Supreme Court ruling of Norfolk Presbyterian versus Bowling in 1974, which stated that the home office of the church has the right to sell a cemetery space. Number one problem is the lack of Commonwealth attorneys willing to enforce the current laws.
Rev. Eddie Perry, Pastor, St. John Baptist Church, Charles City County	Commented on the resolution's reference to national and state media attention on cemeteries. Such media stories are not about church cemeteries. St. John Baptist Church's cemetery is part of the church ministry and the church doesn't submit to a higher denominational office. The local church governs, and they will fight state regulation.

<b>Name and Affiliation</b>	<b>Summary of Comments</b>
Tom Bowling, Ivy Hill Cemetery, Alexandria	<p>The statute was written to regulate sales practices and product offerings of commercially operated for-profit cemeteries. Most of the complaints about nonprofit cemeteries are maintenance or customer service related issues. Such problems are largely the result of understaffed, underfunded facilities. State regulation is not going to change or increase the budgets for non-profit cemeteries, but will place additional problems and fees on them. Maryland's experience has proven the problems that can occur. Officers and directors of cemetery boards at non-profit cemeteries are volunteers, and state regulatory burdens often result in these people resigning from their positions. There are distinctive differences between for-profit cemeteries and non-profit cemeteries. Non-profit cemeteries do not have sales personnel. Non-profit cemeteries are also required to have available to the public their letter of determination from the IRS and tax returns for the previous three years. State regulations that would not allow a non-profit cemetery to charge perpetual care monies for property that is resold would limit the cemetery's ability to build their trust fund.</p>



**DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

3600 West Broad Street, Richmond, Virginia 23230-4917

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August 27, 1999

JACK E. KOTVAS  
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Morris A. Nunes, Acting Chair  
Board for Professional and  
Occupational Regulation  
3600 W. Broad Street  
Richmond, Virginia 23230

**Re: Cemetery Study – House Joint Resolution 745**

Dear Mr. Nunes:

The Cemetery Board met on August 18, 1999 and formulated a recommendation to the Board for Professional and Occupational Regulation in accordance with House Joint Resolution 745. The Board makes the following recommendations:

1. An approach where church run or family cemeteries that sell preneed merchandise or services, regardless of type of ownership or status, should be subject to the benefits and protections of Title 54.1 is preferred. Maryland has recently addressed these same issues and has adopted a similar approach.

The Cemetery Board also believes that the public perception issues brought forth by the Virginia Cemetery Association are valid and it is recommended that the Study should satisfactorily address those issues.

It is important to note, however, this recommendation only encompasses cemeteries with existing sales activities and no legislative action is recommended with respect to cemeteries with no existing sales activities.

2. In examining the possibility of registration, the Cemetery Board has been unable to determine a specific benefit for this approach and declines to endorse it. However, the Board does note that many people and organizations document the location of graves and cemeteries and that it would be worthwhile to collect this information to develop a database for public use.

August 27, 1999

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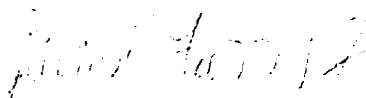
3. The Cemetery Board contends that with the advances made in Information Systems, the maintenance of interment records should be required of all cemeteries, regardless of their license status.
4. With respect to vandalism, many states have a specific criminal cemetery vandalism statute. The need for such a statute should be assessed with an appropriate emphasis on restitution.
5. If this Study results in further regulation, it is foreseen that some non-profit cemeteries may be unable to meet the initial deposit requirements of § 54.1-2316 of the *Code of Virginia*. It is not the desire of the Board to impose any hardship on any cemetery, therefore it is recommended that the Board have the authority to waive all or part of the deposit requirements for these non-profit cemeteries.

Attached is a copy of a document prepared by Mr. William B. French, Jr., Cemetery Board Member. The Board considered this entire document at its meeting and based the recommendation contained above on its contents.

Should you have further questions, please do not hesitate to contact our office at the above address or at 804-367-8552.

Sincerely,

CEMETERY BOARD



David M. Farris, II  
Chairman

Kwo

cc: Jack E. Kotvas, Director  
Cemetery Board  
Debra Vought  
Karen O'Neal  
Eric Olson



## *Virginia Cemetery Association, Inc.*

P. O. Box 527, Richmond, Virginia 23218-0527  
 Phone: 804/353-8699 Fax: 804/353-4930

November 12, 1999

Mrs. Debra Vought  
 Commonwealth of Virginia  
 Department of Professional and Occupational Regulation  
 3600 West Broad Street  
 Richmond, VA 23230-4917

Dear Mrs. Vought:

Please regard this communication as the formal response of the Virginia Cemetery Association regarding the draft report presented by the Board of Professional and Occupational Regulation. From the report it is clear that the concerns expressed by the VCA regarding the fundamental flaws of the new cemetery regulation are not shared by the Board of Professional and Occupational Regulation. We find this extremely disappointing.

We have already stated that a huge void was created with the creation of the Cemetery Board because it will regulate only 115 of the approximately 4,000 cemeteries operating in Virginia. The VCA anticipates great public confusion when problems arise against unregulated cemeteries and it is learned that the Cemetery Board is powerless to assist. The Board of Professional and Occupational Regulation bases its recommendation to limit the extent of the regulatory powers of the Cemetery Board because "less than twenty percent of the complaints received in the previous four years" were filed against unregulated cemeteries. Our position is that any and all complaints should be regulated by the same entity to provide consistent protection of the public. In addition, the subject matter of the regulation (e.g. interment of the deceased, perpetual care, pre-need sales, trust funds, etc.) warrants public protection regardless of the type of cemetery.


Moreover, the Cemetery Board will be a collection of resources and industry knowledge, which could and should be used as an invaluable service to all citizens of the Commonwealth and not limited to only those dealing with the 115 cemeteries out of the 4,000 operating in Virginia.

Finally, we find the conclusions of the Board of Professional and Occupational Regulation study to be quite interesting in that many of the reasons expressed for not supporting the expansion of the regulatory authority of the Cemetery Board are exactly the main points that were expressed by the VCA during an earlier study when we objected to the establishment of the Cemetery Board in the first place. The Board of Professional and Occupational Regulation states that "the Office of Consumer Affairs has done a good job handling and mediating consumer complaints" and "most consumers are familiar with a local consumer affairs office or the state Office of Consumer Affairs", and "certain problems, whether documented or alleged, may not be prevented, remedied or otherwise addressed" just because they are licensed to operate and are regulated by the Cemetery Board. Our point being that the Cemetery Board should be permitted to oversee the operation of all cemeteries in the Commonwealth and to provide consumer protection on cemetery issues to all of the citizens of the Commonwealth.

Accordingly, the VCA respectfully requests that the Board of Professional and Occupation Regulation report be amended to reflect this position, or that this letter be attached to the report.

Respectfully submitted,

VIRGINIA CEMETERY ASSOCIATION

By:   
Randolph C. Gleason  
President