

HB 2004

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WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1999



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**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2004**

(By Delegates Amores, Spencer, Capito and Ashley)



Passed March 13, 1999

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 2004

(BY DELEGATE AMORES, SPENCER, CAPITO AND ASHLEY)

[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to amend article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections seven and eight; to amend and reenact section five, article five-b of said chapter; and to further amend said article by adding thereto a new section, designated section nineteen, all relating to cemetery contracts generally; itemization of costs and services in a cemetery contract; and abandoned interment rights.

Be it enacted by the Legislature of West Virginia:

That article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections seven and eight; that section five, article five-b of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section nineteen, all to read as follows:

ARTICLE 5. CEMETERIES.

§35-5-7. Requirements for cemetery company contracts.

1 (a) Any cemetery company contract shall:

2 (1) Be written in clear understandable language and printed
3 in easy-to-read type, size and style;

4 (2) Include the name and address of the seller, the contract
5 buyer and the person for whom the contract is bought if other
6 than the contract buyer;

7 (3) Contain a complete description of the property, goods
8 or services bought, including an itemization of the retail price
9 of the property, goods or services bought and, specifically, the
10 retail price of the monument, marker, installation, foundation,
11 the opening and closing of the grave site and any other charges.
12 Failure to provide this information is a violation of subsection
13 (f), section one hundred two, article six, chapter forty-six-a of
14 this code, relating to unfair methods of competition and unfair
15 or deceptive acts or practices;

16 (4) Clearly disclose whether the retail price of the property,
17 goods or services bought is guaranteed;

18 (5) Provide that when the particular property, goods or
19 services specified in the contract are unavailable at the time of
20 delivery, the seller shall furnish property, goods or services
21 similar in size, style and equal in quality of material and
22 workmanship, and that the representative of the deceased has
23 the right to reasonably choose the property, goods or services
24 to be substituted; and

25 (6) Be executed in duplicate and a signed copy given to the
26 buyer.

27 (b) For purposes of this article, the following words and
28 phrases have the following meanings:

29 (1) "Cemetery company" or "seller" means any person,
30 partnership, firm or corporation engaged in the business of
31 operating a cemetery or selling property, goods or services used
32 in connection with interring or disposing of the remains or
33 commemorating the memory of a deceased human being.

34 (2) "Cemetery company contract" means a contract for the
35 sale of real and personal property, goods or services used in

36 connection with interring or disposing of the remains or
37 commemorating the memory of a deceased human being.

§35-5-8. Abandoned interment rights.

1 (a) A cemetery company contract may include a provision
2 whereby interment rights that are not used for a period of
3 seventy-five years or more shall be deemed abandoned if
4 unclaimed and shall revert to the cemetery company if the
5 procedures in subsection (b) are followed.

6 (b) (1) Prior to deeming an owner's interment rights
7 abandoned, a cemetery company shall send notice of such intent
8 to the owner of record, his or her heirs or assigns or any next of
9 kin, by a registered letter, return receipt requested, at the
10 owner's last known address requesting the owner's current
11 address or the names and addresses of the heirs or assigns of the
12 owner of record. If a written response is received, then the
13 records of the cemetery company shall be amended accordingly
14 and the interment rights shall be maintained for seventy-five
15 years from the date the written response was received by the
16 cemetery company.

17 (2) If the registered letter is undeliverable or if no response
18 is received within thirty days after the registered letter was sent,
19 then the cemetery company shall advertise a notice of its intent
20 to declare the interment rights abandoned in a newspaper of
21 general circulation in the county where the cemetery is located
22 and also in the county of the last known address of the owner of
23 record, which notice shall contain the name and business
24 address of the cemetery and the name of the last owner of
25 record. If no response to the newspaper notice is made on
26 behalf of the owner of record or his or her heirs or assigns
27 within one hundred twenty days, then the interment rights shall
28 be deemed abandoned and shall revert to the cemetery com-
29 pany. Upon the reversion of interment rights to the cemetery
30 company, the cemetery company shall amend its records
31 accordingly and maintain these records for thirty years. If a
32 written response is received, then the records of the cemetery
33 company shall be amended accordingly and the interment rights

34 shall be maintained for seventy-five years from the date the
35 written response was received by the cemetery company.

36 (c) If, within thirty years after the interment rights have
37 been declared abandoned, the owner of record or his or her
38 heirs or assigns can prove to a cemetery company or a court of
39 competent jurisdiction that he or she would be entitled to the
40 interment rights of the owner of record if those rights had not
41 reverted to the cemetery company as provided for by this
42 section, then the cemetery company shall, at no cost, provide a
43 right of interment similar to the one that was deemed aban-
44 doned.

45 (d) The provisions of this section shall take effect on the
46 first day of July, one thousand nine hundred ninety-nine, and
47 shall not be construed to apply retroactively.

**ARTICLE 5B. PRENEED CEMETERY COMPANY PROPERTY, GOODS
AND SERVICES; RELATED CONTRACTS.**

**§35-5B-5. Requirements for preneed cemetery company con-
tracts.**

1 (a) A preneed cemetery company contract shall:

2 (1) Be written in clear understandable language and printed
3 in easy-to-read type, size and style;

4 (2) Include the name and address of the seller, the contract
5 buyer and the person for whom the contract is bought if other
6 than the contract buyer;

7 (3) Contain a complete description of the property, goods
8 or services bought, including an itemization of the retail price
9 of the property, goods or services bought and, specifically, the
10 retail price of the monument, marker, installation, foundation,
11 opening and closing of the grave site, and any other charges.
12 Failure to provide this information is a violation of subsection
13 (f), section one hundred two, article six, chapter forty-six-a of
14 this code, relating to unfair methods of competition and unfair
15 or deceptive acts or practices;

16 (4) Clearly disclose whether the price of the property,
17 goods or services bought is guaranteed;

18 (5) Provide that if the particular property, goods or services
19 specified in the contract are unavailable at the time of delivery,
20 the seller shall furnish property, goods or services similar in
21 size and style and equal in quality of material and workman-
22 ship, and that the representative of the deceased has the right to
23 reasonably choose the property, goods or services to be
24 substituted; and

25 (6) Be executed in duplicate and a signed copy given to the
26 buyer.

§35-5B-19. Abandoned interment rights.

1 (a) A preneed cemetery company contract may include a
2 provision whereby interment rights that are not used for a
3 period of seventy-five years or more shall be deemed aban-
4 doned if unclaimed and shall revert to the cemetery company if
5 the procedures in subsection (b) are followed.

6 (b) (1) Prior to deeming an owner's interment rights
7 abandoned, a cemetery company shall send notice of such intent
8 to the owner of record, his or her heirs or assigns or any next of
9 kin, by registered letter, return receipt requested, at the owner's
10 last known address requesting the owner's current address or
11 the names and addresses of the heirs or assigns of the owner of
12 record. If a written response is received, then the records of the
13 cemetery company shall be amended accordingly and the
14 interment rights shall be maintained for seventy-five years from
15 the date the written response was received by the cemetery
16 company.

17 (2) If the registered letter is undeliverable or if no response
18 is received within thirty days after the registered letter was sent,
19 then the cemetery company shall advertise a notice of its intent
20 to declare the interment rights abandoned in a newspaper of
21 general circulation in the county where the cemetery is located
22 and also in the county of the last known address of the owner of
23 record, which notice shall contain the name and business
24 address of the cemetery and the name of the last owner of
25 record. If no response to the newspaper notice is made on
26 behalf of the owner of record or his or her heirs or assigns

27 within one hundred twenty days, then the interment rights shall
28 be deemed abandoned and shall revert to the cemetery com-
29 pany. Upon the reversion of the interment rights to the
30 cemetery company, the cemetery company shall amend its
31 records accordingly and maintain these records for thirty years.
32 If a written response is received, then the records of the
33 cemetery company shall be amended accordingly and the
34 interment rights shall be maintained for seventy-five years from
35 the date the written response was received by the cemetery
36 company.

37 (c) If, within thirty years after the interment rights have
38 been declared abandoned, the owner of record or his or her
39 heirs or assigns can prove to a cemetery company or a court of
40 competent jurisdiction that he or she would be entitled to the
41 interment rights of the owner of record if those rights had not
42 reverted to the cemetery company as provided for by this
43 section, then the cemetery company shall, at no cost, provide a
44 right of interment similar to the one that was deemed aban-
45 doned.

46 (d) The provisions of this section shall take effect on the
47 first day of July, one thousand nine hundred ninety-nine, and
48 shall not be construed to apply retroactively.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Ray Schomover
Chairman Senate Committee

John F. Smith
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Norval E. Adams
Clerk of the Senate

Darryl A. Day
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *approved* this the *7th*
day of *April*, 1999.

[Signature]
Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/99

Time 3:20 pm