WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1999

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2004

(By Delegates Amores, Spencer, Capito and Ashley)

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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.
(a) Any cemetery company contract shall:

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

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

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

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

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

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

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

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

(2) “Cemetery company contract” means a contract for the sale of real and personal property, goods or services used in
§35-5-8. Abandoned interment rights.

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

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

(2) If the registered letter is undeliverable or if no response is received within thirty days after the registered letter was sent, then the cemetery company shall advertise a notice of its intent to declare the interment rights abandoned in a newspaper of general circulation in the county where the cemetery is located and also in the county of the last known address of the owner of record, which notice shall contain the name and business address of the cemetery and the name of the last owner of record. If no response to the newspaper notice is made on behalf of the owner of record or his or her heirs or assigns within one hundred twenty days, then the interment rights shall be deemed abandoned and shall revert to the cemetery company. Upon the reversion of interment rights to the cemetery company, the cemetery company shall amend its records accordingly and maintain these records for thirty years. If a written response is received, then the records of the cemetery 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
48 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;
(5) Provide that if the particular property, goods or services specified in the contract are unavailable at the time of delivery, the seller shall furnish property, goods or services similar in size and style and equal in quality of material and workmanship, and that the representative of the deceased has the right to reasonably choose the property, goods or services to be substituted; and

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

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

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

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

(2) If the registered letter is undeliverable or if no response is received within thirty days after the registered letter was sent, then the cemetery company shall advertise a notice of its intent to declare the interment rights abandoned in a newspaper of general circulation in the county where the cemetery is located and also in the county of the last known address of the owner of record, which notice shall contain the name and business address of the cemetery and the name of the last owner of record. If no response to the newspaper notice is made on behalf of the owner of record or his or her heirs or assigns
within one hundred twenty days, then the interment rights shall be deemed abandoned and shall revert to the cemetery company. Upon the reversion of the interment rights to the cemetery company, the cemetery company shall amend its records accordingly and maintain these records for thirty years. If a written response is received, then the records of the cemetery company shall be amended accordingly and the interment rights shall be maintained for seventy-five years from the date the written response was received by the cemetery company.

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

(d) The provisions of this section shall take effect on the first day of July, one thousand nine hundred ninety-nine, and shall not be construed to apply retroactively.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within approved this the 21st

day of April, 1999.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date 3/30/99
Time 3:20 pm