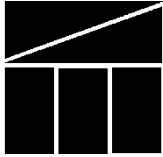


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes¹ Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

18 VAC 65-20 Regulations of the Board of Funeral Directors and Embalmers
Virginia Department of Health Professions
Town Hall Action/Stage: 5165/8704
September 28, 2019

Summary of the Proposed Amendments to Regulation

The Board of Funeral Directors and Embalmers (“Board”) proposes to amend 18 VAC 65-20 *Regulations of the Board of Funeral Directors and Embalmers* in order to implement the results of a periodic review. Accordingly, the Board proposes to make a number of changes to the regulation, the majority of which serve to clarify or update existing requirements. Examples of such changes include: allowing the board to send renewal notices electronically, defining “affiliation” as it applies to branches or chapels that may be affiliated with a funeral home, moving information on renewal fees and late fees from the text to the table that contains the overall fee structure that is in the current regulation, and adding “inappropriate sexual contact” between a supervisor and an intern to the list of practices that are considered unprofessional conduct. The following section summarizes the more substantive changes.

Background

The proposed amendments were developed as part of a periodic review completed in 2018, and thus affect almost all aspects of service provision. The most substantive changes are briefly summarized below:

¹ Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

- i. Providers of Surface Transport and Removal (ST&R) services would be required to inform the Board within 14 days (rather than 30) if the manager of record has changed. This would make the requirements consistent with the requirements for managers of record at funeral establishments and crematories (18 VAC 65-20-60 *Accuracy of information*).
- ii. Providers of ST&R services would be required to provide proof of bonding or liability insurance coverage related to the operation of the service (18 VAC 65-20-400 *Registration of surface transportation and removal services*).
- iii. Courtesy card holders would be explicitly prohibited from “establishing or engaging generally in the business of funeral directing and embalming in Virginia” (18 VAC 65-20-440 *Courtesy Cards*). The courtesy card is intended to allow limited practice (removal, arranging, embalming) in occasional circumstances, but not general practice in Virginia. Such circumstances typically arise when a death occurs in Virginia but the family of the deceased is in another state and wishes to hire funeral director who is familiar to them from that state.
- iv. In order to renew a courtesy card, the courtesy card holder would be required to provide evidence of an active and unrestricted license for funeral service, funeral directing, or embalming from the licensing authorities in the state in which they practice (18 VAC 65-20-130 *Renewal of license; registration*). While these requirements are already in place for first-time courtesy card applicants, renewal applicants are currently only required to submit a form and a fee.
- v. Licensees applying for their first renewal would now be exempt from the continuing education requirements (18 VAC 65-20-151 *Continued competency requirements for renewal of an active license*).
- vi. In the event of an emergency that prevents the use of a funeral establishment the impacted service providers may receive approval from the Board to continue to operate out of another licensed funeral establishment for up to 60 days, with a 30-day extension if they show good cause (18 VAC 65-20-170 *Requirements for an establishment license*). Although the Board previously allowed this as a hardship waiver, the proposed addition of this provision to the regulations would allow small or independent funeral homes that

- don't have branches or affiliates to plan for contingencies that might require evacuating the establishment for an extended period of time.
- vii. Applicants for funeral service licensure by examination were previously required to submit an application package at least 30 days prior to the date of a state examination, and could have provided unofficial mortuary school transcripts in their applications. However, the state examination is now computerized, so the proposed amendment would remove the 30-day requirement and specifically require official transcripts (18 VAC 65-20-240 *Requirements for funeral service licensure by examination*).
- viii. In instances where the funeral establishment is sold, and when transferred documents include preneed contracts, the new owner would be required to retain and maintain those documents in accordance with the existing regulations that currently apply to price lists, itemized statements, and embalming reports (18 VAC 65-20-700 *Retention of Documents*).

Estimated Benefits and Costs

In general, the proposed amendments add clarity to a number of current requirements, which is likely to benefit regulants and consumers. According to the Department of Health Professions, items (i) and (ii) relating to ST&R services have been promulgated in response to specific incidents that had been reported to the Board where customers have been “left high and dry” without a registered ST&R provider and/or suffered delays. Requiring ST&R businesses to report updated information regarding the manager of record may help the Board respond to such situations in a timely manner.

However, greater consumer protection also incurs certain costs. For any ST&R service providers that may have found it profitable to operate without liability insurance, the proposed requirement is clearly costly. Such firms may be able to absorb the costs, pass them on to customers, or may have to exit the industry depending on their size, the competition they face, and whether or not they already have liability insurance. Smaller providers that find it prohibitively expensive to acquire liability insurance may also have been less likely to implement all of the necessary safety precautions for transporting human remains. On the other hand, providers who newly acquire liability insurance as a result of this proposal and remain in

business may pass along their additional costs to their customers. Hence, consumers may face a mix of costs and benefits depending on the providers in their local market.

Although obtaining liability insurance could impose a cost to ST&R services as discussed above, it appears that most funeral establishments already require evidence of liability insurance when contracting with ST&R service providers. The Department of Planning and Budget contacted two small, family-owned Virginia licensed ST&R companies during its review. Both companies stated that they currently maintain liability insurance, and that it is required by the funeral homes that they work with. To the extent that surviving individuals or families directly contract with ST&R companies, it is possible that they did not inquire about or require liability insurance. The proposal to require liability insurance may thus be beneficial for such individuals or families.

Items (iii) and (iv) relating to courtesy card holders could potentially limit operations in the state by those without a Virginia license, to the extent that courtesy card holders were previously operating with a lapsed or restricted license, or exceeding the privileges afforded to them by the card. At the same time, items (v) and (vii) in the previous section, related to first-time license applicants and first-time renewals respectively, make the requirements more flexible, thereby marginally benefiting individuals wishing to obtain a Virginia license. This is likely to benefit current (1,463) and future funeral service licensees and the customers they serve.

Items (vi) and (viii) potentially benefit small and independent funeral establishments, including crematoriums. Larger funeral service providers with multiple branches and facilities may have been able to respond to a flood or fire by relocating any remains and scheduled funerals within their service network at fairly short notice. However, smaller establishments with a single location would normally stand to lose business to a competitor. The ability to plan for such emergencies and contract with other establishments to use their facility enables the independent facilities to keep their customers and honor their contracts. Similarly, the provision that the new owners of a funeral services business maintain preneed contracts could be used to encourage individuals and families to enter into preneed contracts with small independent funeral homes without worrying about whether those establishments will still be in business when their

services become necessary. This in turn could benefit the smaller providers by allowing them to “lock in” some future demand for their services.

Businesses and Other Entities Affected

The proposed amendments affect 420 licensed funeral establishments and 79 licensed branch establishments, 110 courtesy card holders who are licensed in another jurisdiction, 44 registered ST&R services, 115 registered crematories, and 1,463 funeral service licensees with current active licenses.

Localities² Affected³

The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular, assuming all localities have at least one funeral services establishment.

Projected Impact on Employment

The proposed amendments are unlikely to affect total employment in the industry. Even if some businesses may face new costs, the demand for funeral services as a whole is unlikely to respond to a marginal change in prices, which insulates workers in the funeral services industry.

Effects on the Use and Value of Private Property

The value of small, independent funeral establishments could potentially increase if the proposed changes have the effect of encouraging planning for emergencies and preneed contracts. The proposal to require liability insurance for ST&R companies may reduce the value of any such firms that did not already have liability insurance. Real estate development costs are not affected.

Adverse Effect on Small Businesses⁴:

Types and Estimated Number of Small Businesses Affected

The proposed amendments affect 420 licensed funeral establishments and 79 licensed branch establishments, 44 registered ST&R services and 115 registered crematories.

² “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

³ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

⁴ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

However, the Board has no estimate of the number of small businesses affected. It is likely that most individual establishments and branch establishments would meet the criteria to be a small business. However, some of these establishments may be owned by large national companies.

Costs and Other Effects

ST&R companies that are small businesses and did not previously have liability insurance could be adversely affected by the new requirement, but only to the extent that they are unable to pass on these costs to their customers.

Small independent funeral establishments stand to potentially benefit from proposed provisions that encourage emergency planning and signing preneed contracts.

Alternative Method that Minimizes Adverse Impact

There is no alternative that would meet policy goals and have lower adverse impact.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.