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Proposed Regulation Agency Background Document

Agency name	Board of Funeral Directors and Embalmers, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 60-20
Regulation title	Regulations of the Board of Funeral Directors and Embalmers
Action title	Increase in fees
Document preparation date	2/9/06

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Amendments to regulation are adopted in order to increase certain fees for the regulants of the Board as necessary to provide sufficient funding for its licensing and disciplinary functions. An annual renewal fee for a funeral service licensee would be increased from \$150 to \$175 and for a funeral establishment from \$225 to \$300. Other fees, such as application and late fees that are tied to the renewal fee, would be increased correspondingly.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

18VAC65-20-10 et seq. Regulations of the Board of Funeral Directors and Embalmers are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board the authority to promulgate regulations to administer the regulatory system and to levy fees:

§ 54.1-2400. General powers and duties of health regulatory Boards.--The general powers and duties of health regulatory Boards shall be:

...4. To establish schedules for renewals of registration, certification and licensure.

5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory Boards.

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title...

The specific statutory mandate for an increase in fees is found in § 54.1 113:

§ 54.1-113. Regulatory Boards to adjust fees.

Following the close of any biennium, when the account for any regulatory Board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the Board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory Board shall be performed to ensure that each Board has sufficient revenue to cover its expenditures. At the conclusion of fiscal year '06, it is projected that the deficit of the Board will be \$5,472 and will continue to have a deficit through the next biennium, estimated to be \$104,116 at the end of FY07 and \$210,104 at the end of FY08. Since it is projected that fees from licensees will no longer generate sufficient funds to pay operating expenses for the Board, a fee increase is essential in 2007.

The purpose of the proposed amendments is to establish fees sufficient to cover the administrative and disciplinary activities of the Board of Funeral Directors and Embalmers. Without adequate funding, the licensing of practitioners could be delayed and the Board would

soon not have sufficient funding to carry out its investigative and disciplinary activities in order to protect the public health, safety and welfare.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

Section 70 is being amended to comply with a statutory mandate for the Board to provide sufficient funding to cover expenses related to licensing, investigations and disciplinary proceedings. Renewal fees for funeral services licensees will increase from \$150 to \$175 per year; renewal fees for funeral establishments will increase from \$225 to \$300 per year. Other fees are amended proportionately, i.e., inactive fees are typically one-half the active renewal fee and late fees are one-third the renewal fee. The application fee for a funeral service license is increased from \$150 to \$275 and for establishments from \$225 to \$300 to be inclusive of the first annual renewal. As proposed, the reinstatement fee would be inclusive of the renewal fee, the late fee and the fee for a reinstatement application, and the reinstatement fee following suspension would be \$500 and after revocation, it would be \$1,000 to account for costs relating to background investigations and conducting hearings.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

1) The primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions:

Fee increases proposed by the Board of Funeral Directors and Embalmers should have no disadvantage to the consuming public. There is no projection of a reduction in the number of applicants for licensure or the number of licensed persons available to provide funeral services to the public. An increase in the renewal fee will result in an additional \$25 per year for a funeral service license and \$75 per year for an establishment license. With those increases spread across the consuming population, it is not anticipated that the proposed fee increases will have any effect on prices for consumers.

There would be considerable disadvantages to the public if the Board took no action to address its deficit by increasing its fees to cover expenses. The only alternative currently available under the Code of Virginia would be a reduction in services and staff, which would result in delays in

licensing applicants who would be unable to work and delays in approval or disapproval of candidates to sit for examinations. Potentially, the most serious consequence would be a reduction in or reprioritization of investigation of complaints against funeral directors and establishments. There may be delays in adjudicating cases of substandard practice or fraud, resulting in potential danger to consumers in the Commonwealth.

Practitioners licensed by the Board will experience increased renewal fees under the proposed regulations. While that is a disadvantage to the licensees, the alternative of reduced services for the Board would be unacceptable to applicants, licensees and the general public. As a special-fund agency, renewal fees pay the vast majority of the expenses of Board operations, which include inspections, investigation of complaints, adjudication of disciplinary cases, review and approval of applicants, verification of licensure to other jurisdictions and entities, and communications with licensees about current practice and regulation.

2) The primary advantages and disadvantages to the agency or the Commonwealth:

As is stated above, the consequence of not increasing fees of the Board would be a reduction in services and staff, resulting in delays in licensing, reductions or delays in the cases investigated and brought through administrative proceedings to a hearing before the Board. The Board and the Department of Health Professions are solely funded by the fees charged to applicants and licensees.

3) Other pertinent matters of interest to the regulated community, government officials, and the public:

During the development of the NOIRA and proposed regulations, representatives of Virginia Funeral Directors Association, the Virginia Morticians Association and the Independent Funeral Homes of Virginia have been present. There was no comment from licensees or from the associations.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going costs to the agency.</p>
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<p>Projected cost of the regulation on localities</p>	<p>There are none.</p>														
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The individuals that may be affected by the regulation are licensees and applicants for licensure or registration.</p>														
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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.</p>	<p>Licensees who would be employees of funeral establishments would include:</p> <table border="0"> <tr> <td>Funeral service provider</td> <td>1454</td> </tr> <tr> <td>Funeral director</td> <td>119</td> </tr> <tr> <td>Embalmer</td> <td>6</td> </tr> </table> <p>There are currently 470 licensed funeral establishments; of that number approximately 320 to 340 would be considered small businesses. The rest are establishments that are owned by large, national or international corporations.</p> <p>In addition, other licensees or regulated entities affected by these regulations that would be considered small businesses would include:</p> <table border="0"> <tr> <td>Crematory</td> <td>70</td> </tr> <tr> <td>Courtesy card holder</td> <td>101</td> </tr> <tr> <td>Surface removal and transportation</td> <td>34</td> </tr> <tr> <td>Continuing education provider</td> <td>31</td> </tr> </table>	Funeral service provider	1454	Funeral director	119	Embalmer	6	Crematory	70	Courtesy card holder	101	Surface removal and transportation	34	Continuing education provider	31
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<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>The cost for compliance will depend on the type of license held and the particular fee being paid. For example, if a funeral director pays his renewal before the expiration date, he will pay \$175; if the renewal fee is late, he will owe an additional \$60. An establishment will owe \$300 for renewal and another \$100 if the renewal is late. For the projected costs to each of the affected entities and a projection of the number of persons or entities that will be affected, see a description of the changes below.</p>														

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

In the Code of Virginia, § 54.1-2400 requires the Board to: *“levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory Boards.”* In order to carry out its statutory mandate to protect the public health, safety and welfare and to levy sufficient fees to cover the direct expenses of the Board of Funeral Directors and Embalmers and the departmental expenses allocated to the Board, an increase in fees was necessary.

To resolve the budgetary issues, the Board directed the Finance staff to prepare the least burdensome option for resolving the projected deficit. As presented, the annual renewal fee would be increased for funeral service licensees \$25; the renewal fee for an establishment would be increased by \$75 because the current fee is insufficient to cover the oversight of funeral establishments including an inspection at least once every three years. With the proposed increase, it is anticipated that the Board will have a modest surplus of \$17,149 after renewals in 2007, and by June 30, 2008, the surplus is projected at \$32,426. If revenue continues to exceed expenditures beyond 2008, the Board would be able to adopt a one-time reduction in renewal fees to resolve the surplus under an exemption in the Administrative Process Act.

In taking action to respond to deficits incurred by a regulatory board, the Board may consider three options as follows:

1. Increase fees through the promulgation of regulations.

As required by law, the Board is obligated to establish and collect fees that are necessary to fund operations of the Board and the Department. An alternative is to seek the revenue from licensees and applicants to fully fund appropriated expenditures. Costs of services will be paid by consumers who use the services of funeral providers, but licensure fees represent a small percentage of the over-all costs of those services. The cost of operation of regulatory boards does not significantly affect the cost or access to funeral service. However, failure to fully fund the licensing and disciplinary services through fees will have a detrimental affect on quality and availability of care.

2. General Fund Support.

If the alternative is not to increase professional fees to meet increased cost of operations, then the only other source of funding the cash deficit is the General Fund. To permit General Fund support, the *Code of Virginia* would need to be amended to allow such funding as the *Code* restricts board revenue to fees. There are, however, potential and serious consequences with General Fund support.

1. Increasing General Fund support as more boards acquire deficits in the future.
2. Negative public reaction.
3. The use of general revenues (taxes) to support health regulatory boards which does not target costs to providers and consumers of services.

3. Reduce department/board operations and staff and remain at current fee level.

In order to prevent deficit spending, the Board would basically need to lay off staff to reduce expenses associated with operations. The net result being a delay in the performance of or the elimination of the following responsibilities:

- Investigations and discipline
- License renewals

- Regulation
- Inspections of funeral establishments

Delays in licensing and investigation could place consumers and employees at risk as funeral establishment that should not be operating would continue in practice, and the supply of funeral service providers needed for establishments would be delayed or curtailed. It is believed that these consequences would not be acceptable to the administration, the General Assembly, or to the general public.

Fees for the Board of Funeral Directors and Embalmers have not been increased since December 9, 1998. It is anticipated that this proposed increase will be in effect for the 2007 renewal, so licensees will not have experienced an increase in their fees for over eight years.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

The Notice of Intended Regulatory Action was published in the Register on September 19, 2005 and sent to the Public Participation Guidelines list with comment requested until October 19, 2005. There was no comment on the NOIRA.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

In its analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability. There will be a modest impact on disposable family income, as funeral service providers and facilities will experience an increase in the cost of maintaining a license. Compared to other costs of doing business, such as finding and hiring qualified personnel, maintenance of a facility, and services to the public, licensure fees are relatively insignificant.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Current requirement	Proposed change and rationale
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70 A	Subsection A sets fees for renewal and applications for licensees and registrants	<p>A. The following fees shall apply for initial licensure or registration and for renewal of licensure or registration:</p> <ol style="list-style-type: none"> 1. License to practice funeral service or as a funeral director or an embalmer <u>\$150 275</u> 2. Funeral service establishment license <u>\$225 500</u> 3. Surface transportation and removal service registration <u>\$250 300</u> 4. Courtesy card <u>\$100 275</u> 5. Crematory <u>\$100 200</u> 6. Waiver of full-time manager requirement <u>\$100 150</u> <p><i>In the proposed regulations, the application fees are being separated from the renewal fees. According to the fee principles adopted by the Department in 1999, application fees should include the cost of an annual renewal (renewal is not required for at least one year following initial licensure) and the estimated cost of processing reviewing and approving the application for licensure. This board has not differentiated between the two fees and has therefore not been charging applicants anything for processing and approving applications, nor for the production of a wall certificate with licensure information in calligraphy.</i></p> <p><i>The increase in the facility applications is necessary because an inspection is required for approval. For a full service establishment, inspection costs are estimated at \$200 to \$250; for a crematory, the costs would be less.</i></p>
70 B	n/a	<p>Subsection B sets out the fees for renewal of licensure or registration as follows:</p> <ol style="list-style-type: none"> 1. License to practice funeral service or as a funeral director or an embalmer <u>\$175</u> 2. Funeral service establishment license <u>\$300</u> 3. Surface transportation and removal service registration <u>\$250</u> 4. Courtesy card <u>\$175</u> 5. Crematory <u>\$150</u> 6. Waiver of full-time manager requirement <u>\$100</u> <p><i>Individual licensees will have a \$25 increase in their annual renewal; establishment fees will increase by \$75 to offset the costs for an inspection approximately every three years. Such an inspection can be extensive with costs of \$250 to \$300 charged by the Enforcement Division back to the Board. If deficiencies are found, a re-inspection may be ordered at an additional cost. The Board determined that renewal fees for establishments are currently inadequate to support the disciplinary functions of the Board, including routine inspections. The renewal fee for courtesy card holders was increased by \$75 because their renewal must be individually reviewed and handled manually. It is labor-intensive for staff and entitles the holder to engage in the same practice of funeral services, for which a Virginia establishment pays \$300 annually.</i></p>
70 C	n/a	<p>Subsection C sets out the fees for late renewal of licensure or registration up to one year following expiration:</p> <ol style="list-style-type: none"> 1. License to practice funeral service or as a funeral director or an embalmer <u>\$60</u> 2. Funeral service establishment license <u>\$100</u> 3. Surface transportation and removal service registration <u>\$85</u> 4. Courtesy card <u>\$60</u> 5. Crematory <u>\$50</u> 6. Waiver of full-time manager requirement <u>\$35</u> <p><i>Fees for late renewal are typically set at 1/3 the cost of a renewal for any profession or entity at DHP.</i></p>

70 D	n/a	<p>Subsection D sets out the fees for reinstatement of licensure or registration:</p> <table border="1"> <tr> <td>1. License to practice funeral service or as a funeral director or an embalmer</td> <td>\$275</td> </tr> <tr> <td>2. Establishment license</td> <td>\$500</td> </tr> <tr> <td>3. Surface transportation and removal service registration</td> <td>\$350</td> </tr> <tr> <td>4. Courtesy card</td> <td>\$275</td> </tr> <tr> <td>5. Crematory</td> <td>\$225</td> </tr> <tr> <td>6. Reinstatement following suspension</td> <td>\$500</td> </tr> <tr> <td>7. Reinstatement following revocation</td> <td>\$1,000</td> </tr> </table> <p><i>The reinstatement fee for a lapsed license should include the cost of the renewal, the late fee and the cost of reviewing an application. Therefore, it is similar to the cost of an initial application for licensure or registration.</i></p> <p><i>Reinstatement of a licensed following suspension or revocation entails additional costs for a background investigation and a hearing before the board or a panel of the board.</i></p>	1. License to practice funeral service or as a funeral director or an embalmer	\$275	2. Establishment license	\$500	3. Surface transportation and removal service registration	\$350	4. Courtesy card	\$275	5. Crematory	\$225	6. Reinstatement following suspension	\$500	7. Reinstatement following revocation	\$1,000
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70 E	Sets out the other fees charged to licensees	<p>Subsection E was subsection B; it sets out the miscellaneous fees:</p> <table border="1"> <tr> <td>1. Reinstatement fee for each year of licensure or registration expiration</td> <td>\$50</td> </tr> <tr> <td>2. Change of manager or establishment name</td> <td>\$50 <u>75</u></td> </tr> <tr> <td>3. Verification of license or registration to another state</td> <td>\$50</td> </tr> <tr> <td>4. Duplicate license, registration, or courtesy card</td> <td>\$15</td> </tr> <tr> <td>5. Duplicate wall certificates</td> <td>\$25 <u>60</u></td> </tr> <tr> <td>6. Change of ownership</td> <td>\$100</td> </tr> <tr> <td>7. <u>Non-routine</u> reinspection for (i.e., structural change to preparation room, change of location or ownership)</td> <td>\$100 <u>300</u></td> </tr> </table> <p><i>The increase in fee for a change in manager or establishment is necessary because the current fee is not sufficient to cover the costs of staff time to review the request, check other information, and reproduce and mail a new license. The increase in the duplicate wall certificate is necessary to cover the cost of producing the document and having it calligraphied.</i></p>	1. Reinstatement fee for each year of licensure or registration expiration	\$50	2. Change of manager or establishment name	\$50 <u>75</u>	3. Verification of license or registration to another state	\$50	4. Duplicate license, registration, or courtesy card	\$15	5. Duplicate wall certificates	\$25 <u>60</u>	6. Change of ownership	\$100	7. <u>Non-routine</u> reinspection for (i.e., structural change to preparation room, change of location or ownership)	\$100 <u>300</u>
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70 F	n/a	<p>Subsection F sets out the fees relating to approval of continuing education providers and courses:</p> <table border="1"> <tr> <td>1. Application or renewal for continuing education provider</td> <td>\$200 <u>300</u></td> </tr> <tr> <td>2. Late renewal of continuing education provider approval</td> <td>\$100</td> </tr> <tr> <td>3. Review of additional courses not included on initial or renewal application</td> <td>\$300</td> </tr> </table> <p><i>There is a significant amount of staff and board time consumed in review of documentation sent by an applicant as an approved continuing education provider. In addition to the collection of all supporting documents by staff, there are often large packages to be copied and d mailed to members of the continuing education committee who must review and approve. Per diem is paid to board members for review time and for meetings in Richmond to set policy or for a hearing related to provider approval. The review of additional courses is equally costly, so the Board has been treating it as a new application and charging the same fee.</i></p>	1. Application or renewal for continuing education provider	\$200 <u>300</u>	2. Late renewal of continuing education provider approval	\$100	3. Review of additional courses not included on initial or renewal application	\$300								
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130	Sets out the requirements for renewal of licensure or registration	<p><u>B. A person who or entity which desires to renew an expired license for up to one year following expiration shall comply with requirements of subsection A of this section and also submit the applicable fee for late renewal.</u></p> <p><i>A new subsection B will allow a licensee or permit holder to renew a lapsed or expired license for up to one year by meeting all requirements for renewal and payment of the late renewal fee. After one year, the license or permit must be reinstated.</i></p>														

<p>140</p>	<p>Sets out the requirements for reinstatement of a license or registration</p>	<p>A. The board may consider reinstatement of an expired license or registration <u>that has not be renewed within one year of expiration</u> for up to three years following expiration. A written application request for reinstatement shall be submitted to the board and shall include payment of all applicable delinquent renewal fees and the additional reinstatement fee prescribed in 18VAC65-20-70.</p> <p><i>The amendments to section 140 clarify that reinstatement is not required until after the license has been expired for one year and that the licensee is not required to pay all delinquent renewal fees in addition to the reinstatement fee.</i></p>
<p>154</p>	<p>Sets out the requirements for an inactive license</p>	<p>A. A funeral service licensee, funeral director or embalmer who holds a current, unrestricted license in Virginia shall, upon a request for inactive status on the renewal application and submission of the required renewal fee of \$75 <u>90</u>, be issued an inactive license. <u>The fee for late renewal up to one year following expiration of an inactive license shall be \$30.</u></p> <p><i>The inactive fee is typically set at 1/2 the renewal fee, so when that fee is increased, the inactive fee would be as well. The late fee is 1/3 the renewal fee, so that fee had to be specified in regulation.</i></p>