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Final Regulation Agency Background Document

Agency name	Board of Funeral Directors and Embalmers, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 65-20
Regulation title	Regulations Governing the Practice of Funeral Directors and Embalmers
Action title	Increase in fees
Document preparation date	9/12/06

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

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

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.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On September 12, 2006, the Board of Funeral Directors and Embalmers adopted a final regulation for 18VAC65-20-10 et seq., Regulations of the Board of Funeral Directors and Embalmers, to increase fees charged to applicants and regulated entities.

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 numbers, if applicable, and (2) promulgating entity, i.e., 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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss 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, the Board had

revenue of \$419,565 and expenditures of \$459,467 with a balance of \$15,820, resulting from excess funds carried forward to FY06. 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 identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" 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 there are no disadvantages to the public or the Commonwealth, please 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:

There is no other pertinent matter of interest related to this action.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

In its adoption of final regulations, the Board determined that the renewal fee for courtesy card holders was not sufficient relative to the amount of staff time and effort involved in processing the renewal. While other licensees and permit holders may renew on-line, generally without direct involvement by staff, courtesy card renewal must be handled in house and involves verification of current licensure in another state. The transaction often involves several attempts in coordination and verification of information between the Board and another licensing entity and can be very time-consuming. While the law prohibits a courtesy card holder from

establishing a full-time business and practice in Virginia, many regularly pick up human remains and make arrangements for funerals, etc., but pay considerably less than a Virginia funeral establishment. For example, the Maryland board charges a Virginia licensee \$500 to hold such a card in its state.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Proposed regulations were published in the Virginia Register of Regulations on June 26, 2006. Public comment was requested for a 60-day period ending August 25, 2006. Mr. Robert Johnson, President of the Virginia Funeral Directors Association, wrote to object to the fee increase. Citing increasing financial pressures on funeral establishments, he noted that it was the wrong time to add to the financial burden on businesses with no apparent increase in the level of service.

A Public Hearing before the Board of Funeral Directors and Embalmers was held on July 18, 2006. There was no comment on the fee increase received at the hearing.

Board Response:

While the Board understands the perspective of the comment and regrets the necessity for an increase in fees, it has a responsibility to uphold its statutory duty to: *“...levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege 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.”*

The VFDA has offered to seek additional appropriations from the General Assembly, but that is not a viable solution since the Board and the Department are non-general fund agencies and do not receive any tax dollars. Increasing costs relating to employee salaries, data systems, etc. can only be addressed by an increase in fees. Since the most significant portion of the Board’s budget relates to its disciplinary caseload, the only alternative is a reduction in the investigation of complaints and adjudication of cases. Such an alternative would not be acceptable to the Board, its licensees or the general public. Therefore, the Board has acted to adopt final regulations for a fee increase that is adequate to meet the expenditures of the Board for the next several years.

All changes made in this regulatory action

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

Current	Proposed	Proposed change and rationale
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section number	new section number, if applicable			
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 <table style="margin-left: 40px; border: none;"> <tr> <td style="text-align: right;">\$150</td> <td style="text-align: right;"><u>275</u></td> </tr> </table> 2. Funeral service establishment license \$225 <u>500</u> 3. Surface transportation and removal service registration \$250 <u>300</u> 4. Courtesy card \$100 <u>275</u> 5. Crematory \$100 <u>200</u> 6. Waiver of full-time manager requirement \$100 <u>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>	\$150	<u>275</u>
\$150	<u>275</u>			
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>\$275</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>\$90</u> 5. Crematory <u>\$50</u> 		

		<p><u>6. Waiver of full-time manager requirement</u> <u>\$35</u> <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="0"> <tr> <td><u>1. License to practice funeral service or as a funeral director or an embalmer</u></td> <td style="text-align: right;"><u>\$275</u></td> </tr> <tr> <td><u>2. Establishment license</u></td> <td style="text-align: right;"><u>\$500</u></td> </tr> <tr> <td><u>3. Surface transportation and removal service registration</u></td> <td style="text-align: right;"><u>\$350</u></td> </tr> <tr> <td><u>4. Courtesy card</u></td> <td style="text-align: right;"><u>\$275</u></td> </tr> <tr> <td><u>5. Crematory</u></td> <td style="text-align: right;"><u>\$225</u></td> </tr> <tr> <td><u>6. Reinstatement following suspension</u></td> <td style="text-align: right;"><u>\$500</u></td> </tr> <tr> <td><u>7. Reinstatement following revocation</u></td> <td style="text-align: right;"><u>\$1,000</u></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> <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>	<u>1. License to practice funeral service or as a funeral director or an embalmer</u>	<u>\$275</u>	<u>2. Establishment license</u>	<u>\$500</u>	<u>3. Surface transportation and removal service registration</u>	<u>\$350</u>	<u>4. Courtesy card</u>	<u>\$275</u>	<u>5. Crematory</u>	<u>\$225</u>	<u>6. Reinstatement following suspension</u>	<u>\$500</u>	<u>7. Reinstatement following revocation</u>	<u>\$1,000</u>
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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="0"> <tr> <td>1. Reinstatement fee for each year of licensure or registration expiration</td> <td style="text-align: right;">\$50</td> </tr> <tr> <td>2. Change of manager or establishment name</td> <td style="text-align: right;"><u>\$50 75</u></td> </tr> <tr> <td>3. Verification of license or registration to another state</td> <td style="text-align: right;"><u>\$50</u></td> </tr> <tr> <td>4. Duplicate license, registration, or courtesy card</td> <td style="text-align: right;"><u>\$15</u></td> </tr> <tr> <td>5. Duplicate wall certificates</td> <td style="text-align: right;"><u>\$25 60</u></td> </tr> <tr> <td>6. Change of ownership</td> <td style="text-align: right;"><u>\$100</u></td> </tr> <tr> <td>7. <u>Non-routine reinspection for (i.e., structural change to preparation room, change of location or ownership)</u></td> <td style="text-align: right;"><u>\$100 300</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	<u>\$50 75</u>	3. Verification of license or registration to another state	<u>\$50</u>	4. Duplicate license, registration, or courtesy card	<u>\$15</u>	5. Duplicate wall certificates	<u>\$25 60</u>	6. Change of ownership	<u>\$100</u>	7. <u>Non-routine reinspection for (i.e., structural change to preparation room, change of location or ownership)</u>	<u>\$100 300</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="0"> <tr> <td><u>1. Application or renewal for continuing education provider</u></td> <td style="text-align: right;"><u>\$200 300</u></td> </tr> <tr> <td><u>2. Late renewal of continuing education provider approval</u></td> <td style="text-align: right;"><u>\$100</u></td> </tr> <tr> <td><u>3. Review of additional courses not included on initial or renewal application</u></td> <td style="text-align: right;"><u>\$300</u></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>	<u>1. Application or renewal for continuing education provider</u>	<u>\$200 300</u>	<u>2. Late renewal of continuing education provider approval</u>	<u>\$100</u>	<u>3. Review of additional courses not included on initial or renewal application</u>	<u>\$300</u>								
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130	Sets out the requirements for renewal of licensure or	<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</i></p>														

	registration	<i>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>
140	Sets out the requirements for reinstatement of a license or registration	<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>
154	Sets out the requirements for an inactive license	<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>

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.