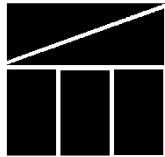


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

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
Department of Health Professions
Town Hall Action/Stage: 4765/8022
October 3, 2017

Summary of the Proposed Amendments to Regulation

The Board of Funeral Directors and Embalmers (Board) proposes to incorporate in the regulation that written permission to embalm a dead human body and mechanical equipment to refrigerate a dead human body are required.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Virginia Code §54.1-2806 (26)¹ and §54.1-2811.1 (B)² states that a dead human body “shall not be embalmed in the absence of express permission by a next of kin of the deceased or a court order.” In Guidance Document 65-8,³ the Board interprets “express permission” to mean verbal authorization so long as the verbal authorization is followed by a signed written document. A written authorization would help determine if in fact there was an authorization in case there is a dispute. Containing the requirement in regulation as opposed to having it in a guidance document should better inform the public and regulants concerning what is required and should bolster the Board’s authority to enforce it through disciplinary action. If additional

¹ <https://law.lis.virginia.gov/vacode/title54.1/chapter28/section54.1-2806/>

² <https://law.lis.virginia.gov/vacode/title54.1/chapter28/section54.1-2811.1/>

³ http://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\223\GDoc_DHP_6169_v1.pdf

enforcement capacity brings some facilities currently out of compliance into compliance, they are unlikely to incur any significant costs since a written permission may be incorporated into forms currently maintained by a funeral establishment.

The Board also proposes to incorporate in the regulation its current interpretation expressed in the Guidance Document 65-18⁴ of the Virginia Code §54.1-2811.1 (B) stating that *“if a dead human body is to be stored for more than 48 hours prior to disposition, a funeral services establishment having custody of such body shall ensure that the dead human body is maintained in refrigeration at no more than approximately 40 degrees Fahrenheit or embalmed.”* The Board interprets this provision to mean that the body be either embalmed or placed in a mechanical refrigeration unit suitable for storing human remains. The Board does not interpret lowering the air conditioning in a storage room to 40 degrees or packing the body in ice or dry ice as meeting the statutory requirement. If a facility does not have a mechanical refrigeration unit, it can contract with another funeral establishment, hospital, or morgue that has such equipment to store the body. Containing the requirement in regulation as opposed to having it in a guidance document should better inform the public and regulants concerning what is required and should bolster the Board’s authority to enforce it through disciplinary action. If additional enforcement capacity brings some facilities currently out of compliance into compliance, they may incur costs: of \$3,000 to \$5,000 to purchase a refrigeration unit⁵, to embalm the body, to contract for refrigeration, or to transfer the remains to another establishment.

Businesses and Entities Affected

There are 76 branch establishments, 113 crematories, and 430 funeral establishments licensed in Virginia. Although it is known there are facilities currently out of compliance with the proposed regulation, there is no estimate of the number of such facilities. Virginia Code §54.1-2811.1, which has been in effect since 2010, requires a dead human body to be maintained in refrigeration at no more than approximately 40 degrees Fahrenheit or embalmed. Furthermore, the guidance documents have been in effect since January 10, 2017. Therefore, it is presumed that the majority of funeral establishments have refrigeration or have made arrangements for storage of human remains in refrigeration.

⁴ http://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\223\GDoc_DHP_6168_v1.pdf

⁵ Source: Department of Health Professions

Localities Particularly Affected

The proposed changes do not disproportionately affect particular localities.

Projected Impact on Employment

No significant impact on employment is expected.

Effects on the Use and Value of Private Property

If a facility has to purchase refrigeration equipment for \$3,000 to \$5,000, its profit would be lowered by the purchase amount and consequently its asset price may be reduced.

Real Estate Development Costs

No impact on real estate development costs is expected.

Small Businesses:**Definition**

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.”

Costs and Other Effects

There is no estimate of the number of independently owned small businesses. Many of the funeral establishments have been bought by large national chains in recent years according to the Department of Health Professions. The costs and effects on them are the same as those discussed above.

Alternative Method that Minimizes Adverse Impact

Given the language in the Virginia Code, there is no alternative method that minimizes the potential adverse impact.

Adverse Impacts:**Businesses:**

Some of the affected funeral establishments may be non-small businesses since many have been bought by large national chains in recent years. The adverse impacts discussed above apply to them.

Localities:

The proposed amendments will not adversely affect localities.

Other Entities:

The proposed amendments will not adversely affect other entities.

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 Number 17 (2014). 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(C): 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.