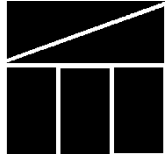


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes¹ Not Needed

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 65-30 Regulations for Preneed Funeral Planning
Department of Health Professions
Town Hall Action/Stage: 5220 / 8786
December 9, 2019

Summary of the Proposed Amendments to Regulation

Following a periodic review,² the Board of Funeral Directors and Embalmers (Board) proposes to require a longer document retention period regarding preneed contracts, as well as additional disclosures, reporting, and notification.

Background

This regulation establishes rules for preneed funeral planning services. Preneed contracts are purchased prior to death and provide funds to pay for the beneficiary's funeral and burial.

Estimated Benefits and Costs

A number of proposed amendments are intended to better inform the consumer about the contents of the preneed contracts. These include requiring a licensee to get a written acknowledgement from the buyer that he/she has received the general price list and preneed disclosure questions and answers; disclosure of information on where the preneed contract was funded, where the funds are maintained, and how the funds are invested; and explanations about the meanings of "guaranteed" and "nonguaranteed" contracts, and the options available to a customer under the preneed contract if a funeral home closes. The changes under this category

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.

² <https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1641>

are not expected to create large costs because licensees are already required to disclose similar information, but the changes are expected to discourage fraud and provide greater assurance that funding for goods and services would be available at the time of need.

The Board also proposes to require a licensee that discontinues operations by closure to: 1) provide the Board a current list of preneed contracts, and 2) notify buyers that they have the right to change providers at any time prior to death. The proposed amendments further specify what must be done if the provider changes ownership. If the preneed contracts are going to be honored by the new owner, a notice in a publication of general circulation would suffice. If the new owner does not intend to honor the contracts, written notice must be sent to all buyers within 90 days of the sale. The notice, as with a closure, must include a statement about the buyer's right to change providers at any time prior to death. These changes would add some costs in terms of additional reporting to the Board, and notifications to the contract holders by mail or in media, but would also help inform the Board about existing contracts, and consumers about the changes and their options in the event a funeral establishment closes or changes ownership.

Finally, the Board proposes to increase the retention period for preneed contracts from one year to three years after the death of the beneficiary. According to the Board, the licensees are already subject to the three year retention period regarding all other records such as embalming and most are believed to already keep the preneed contract records for three years. Therefore this change is not expected to create any significant impact.

Businesses and Other Entities Affected

There are 420 licensed funeral establishments and 79 licensed as branch establishments. There are 1,463 funeral service licensees with current, active licenses.³ The proposed amendments would introduce additional direct administrative costs in terms of the newly required reporting to the Board and notifications to contract holders. Individual establishments and branch establishments hold licenses, but may be owned by large national companies. An adverse economic impact on businesses is indicated because there do not appear to be any offsetting direct benefits to licensees.

³ Data source: Department of Health Professions

Localities⁴ Affected⁵

The proposed amendments should not affect any locality more than others. The proposed amendments do not introduce costs for localities.

Projected Impact on Employment

The proposed amendments should not affect employment.

Effects on the Use and Value of Private Property

The proposed amendments would not substantively affect the use and value of private property. No significant effect is expected on real estate development costs.

Adverse Effect on Small Businesses⁶:

Types and Estimated Number of Small Businesses Affected

The proposed amendments affect licensed funeral establishments and branch establishments that offer preneed contracts, most if not all of which are likely small businesses.⁷ As indicated above, DHP reports 420 licensed funeral establishments and 79 licensed as branch establishments. It is not known how many of these firms offer preneed contracts.

Costs and Other Effects

The proposals to require licensees to get additional written acknowledgement from the buyer, provide additional notification to buyers, and provide additional information to the Board all require some additional staff time.

Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Legal Mandates

⁴ “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.

⁵ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

⁶ 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.”

⁷ Virginia Employment Commission records indicate that as of the first quarter of 2019, the Commonwealth had: a) 349 Funeral Homes and Funeral Services firms, all of which had fewer than 500 employees, and b) 131 Cemeteries and Crematories firms, all of which had fewer than 500 employees.

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.