

HOUSE BILL 349

C2

3lr0037

By: **Chair, Economic Matters Committee (By Request – Departmental – Labor, Licensing and Regulation) and Delegates O'Donnell and Fisher**

Introduced and read first time: January 25, 2013

Assigned to: Economic Matters

Reassigned: Health and Government Operations, January 31, 2013

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 2013

CHAPTER _____

1 AN ACT concerning

2 **Business Regulation – Cemeteries – Prohibited Acts and Penalties**

3 FOR the purpose of altering a certain prohibition on establishing, operating, or
4 allowing a cemetery to be operated in violation of certain provisions of law
5 regarding the perpetual care of cemeteries; altering the penalties for violations
6 of certain provisions of law relating to perpetual care trusts, preneed trusts, and
7 the operation of a cemetery, crematory, or burial goods business; providing that
8 corporate officers who are responsible for a violation of certain provisions of law
9 relating to the perpetual care of cemeteries are guilty of a misdemeanor and are
10 subject to certain penalties; providing that a person who willfully
11 misappropriates or intentionally and fraudulently converts perpetual care trust
12 funds or preneed trust funds in excess of a certain amount is guilty of a felony
13 and subject to a certain penalty; repealing certain obsolete language and
14 provisions of law relating to penalties for violations of certain provisions of law
15 regarding the perpetual care of cemeteries; and generally relating to cemeteries.

16 BY repealing and reenacting, with amendments,
17 Article – Business Regulation
18 Section 5–609, 5–712, and 5–904
19 Annotated Code of Maryland
20 (2010 Replacement Volume and 2012 Supplement)

21 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Business Regulation
2 Section 5–610
3 Annotated Code of Maryland
4 (2010 Replacement Volume and 2012 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Business Regulation**

8 5–609.

9 [(a) A person] **EXCEPT AS PROVIDED IN § 5–602 OF THIS SUBTITLE, A**
10 **SOLE PROPRIETOR REGISTERED CEMETERIAN, PERMIT HOLDER, OR ANY OTHER**
11 **PERSON SUBJECT TO THE PERMIT OR REGISTRATION REQUIREMENTS OF THIS**
12 **TITLE** may not establish [or], operate [a public or private cemetery], or allow a
13 [public or private] cemetery to be operated in violation of this subtitle.

14 [(b) A person who violates this section is guilty of a misdemeanor and, on
15 conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1
16 year or both.

17 (c) If a sole proprietor registered cemeterian, a permit holder, or any other
18 person subject to the trust requirements of this subtitle violates this subtitle, that
19 person is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding
20 \$1,000 or imprisonment not exceeding 1 year or both.]

21 **5–610.**

22 (A) **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (C) OF THIS**
23 **SECTION, A SOLE PROPRIETOR REGISTERED CEMETERIAN, PERMIT HOLDER, OR**
24 **ANY OTHER PERSON SUBJECT TO THE PERMIT OR REGISTRATION**
25 **REQUIREMENTS OF THIS TITLE WHO VIOLATES THIS SUBTITLE IS GUILTY OF A**
26 **MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO:**

27 (1) **FOR A FIRST VIOLATION, A FINE NOT EXCEEDING \$5,000 OR**
28 **IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH;**

29 (2) **FOR A SECOND VIOLATION, A FINE NOT EXCEEDING ~~\$15,000~~**
30 **\$10,000 OR IMPRISONMENT NOT EXCEEDING 2 YEARS OR BOTH; AND**

31 (3) **FOR A THIRD OR SUBSEQUENT VIOLATION, A FINE NOT**
32 **EXCEEDING ~~\$25,000~~ \$20,000 OR IMPRISONMENT NOT EXCEEDING 3 YEARS OR**
33 **BOTH.**

1 **(B) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (C) OF THIS**
2 **SECTION, IF A CORPORATION VIOLATES THIS SUBTITLE, EACH OFFICER**
3 **RESPONSIBLE FOR THE VIOLATION IS GUILTY OF A MISDEMEANOR AND, ON**
4 **CONVICTION, IS SUBJECT TO:**

5 **(1) FOR A FIRST VIOLATION, A FINE NOT EXCEEDING \$5,000 OR**
6 **IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH;**

7 **(2) FOR A SECOND VIOLATION, A FINE NOT EXCEEDING ~~\$15,000~~**
8 **\$10,000 OR IMPRISONMENT NOT EXCEEDING 2 YEARS OR BOTH; AND**

9 **(3) FOR A THIRD OR SUBSEQUENT VIOLATION, A FINE NOT**
10 **EXCEEDING ~~\$25,000~~ \$20,000 OR IMPRISONMENT NOT EXCEEDING 3 YEARS OR**
11 **BOTH.**

12 **(C) A PERSON WHO WILLFULLY MISAPPROPRIATES OR INTENTIONALLY**
13 **AND FRAUDULENTLY CONVERTS PERPETUAL CARE TRUST FUNDS IN EXCESS OF**
14 **\$100 TO THAT PERSON'S OWN USE IS GUILTY OF A FELONY AND, ON**
15 **CONVICTION, IS SUBJECT TO A FINE NOT EXCEEDING ~~\$50,000~~ \$25,000 OR**
16 **IMPRISONMENT NOT EXCEEDING 10 YEARS OR BOTH.**

17 5-712.

18 (a) A seller may not fail to deposit, as required by this subtitle, money
19 received under or in connection with a preneed burial contract.

20 (b) (1) **[A] EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (C) OF**
21 **THIS SECTION, A person who violates this section is guilty of a misdemeanor and, on**
22 **conviction, is subject to:**

23 **(I) FOR A FIRST VIOLATION, a fine not exceeding [\$5,000]**
24 **\$10,000 or imprisonment not exceeding 1 year or both;**

25 **(II) FOR A SECOND VIOLATION, A FINE NOT EXCEEDING**
26 **\$15,000 OR IMPRISONMENT NOT EXCEEDING 2 YEARS OR BOTH; AND**

27 **(III) FOR A THIRD OR SUBSEQUENT VIOLATION, A FINE NOT**
28 **EXCEEDING ~~\$25,000~~ \$20,000 OR IMPRISONMENT NOT EXCEEDING 3 YEARS OR**
29 **BOTH.**

30 (2) **[If] EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (C) OF**
31 **THIS SECTION, IF a corporation violates this section, each officer responsible for the**
32 **violation is guilty of a misdemeanor and, on conviction, is subject to:**

1 **(I) FOR A FIRST VIOLATION, a fine not exceeding [\$5,000]**
 2 **\$10,000** or imprisonment not exceeding 1 year or both;

3 **(II) FOR A SECOND VIOLATION, A FINE NOT EXCEEDING**
 4 **\$15,000 OR IMPRISONMENT NOT EXCEEDING 2 YEARS OR BOTH; AND**

5 **(III) FOR A THIRD OR SUBSEQUENT VIOLATION, A FINE NOT**
 6 **EXCEEDING ~~\$25,000~~ \$20,000 OR IMPRISONMENT NOT EXCEEDING 3 YEARS OR**
 7 **BOTH.**

8 **(C) A PERSON WHO WILLFULLY MISAPPROPRIATES OR INTENTIONALLY**
 9 **AND FRAUDULENTLY CONVERTS PRENEED TRUST FUNDS IN EXCESS OF \$100 TO**
 10 **THAT PERSON'S OWN USE IS GUILTY OF A FELONY AND, ON CONVICTION, IS**
 11 **SUBJECT TO A FINE NOT EXCEEDING ~~\$50,000~~ \$25,000 OR IMPRISONMENT NOT**
 12 **EXCEEDING 10 YEARS OR BOTH.**

13 5-904.

14 A person who violates this subtitle is guilty of a misdemeanor and, on
 15 conviction, is subject to:

16 **(1) FOR A FIRST VIOLATION, a fine not exceeding [\$3,000] \$5,000** or
 17 imprisonment not exceeding 1 year or both;

18 **(2) FOR A SECOND VIOLATION, A FINE NOT EXCEEDING \$10,000**
 19 **OR IMPRISONMENT NOT EXCEEDING 2 YEARS OR BOTH; AND**

20 **(3) FOR A THIRD OR SUBSEQUENT VIOLATION, A FINE NOT**
 21 **EXCEEDING \$15,000 OR IMPRISONMENT NOT EXCEEDING 3 YEARS OR BOTH.**

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 23 July 1, 2013.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.