

SENATE BILL 1003

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By: **Senator Muse**

Introduced and read first time: February 12, 2014

Assigned to: Rules

A BILL ENTITLED

AN ACT concerning

Business Regulation – Pet Cemeteries – Establishment and Operational Requirements

FOR the purpose of exempting pet cemeteries from the registration and permitting requirements of the Office of Cemetery Oversight; requiring the owner of certain land used or to be used as a pet cemetery to file a certain declaration in the office of the clerk of the circuit court of the county in which the land is located; providing for the execution and recordation of a certain declaration; providing that a certain restriction recorded in a certain declaration may be removed in accordance with certain provisions of law; requiring each pet cemetery owner to have a perpetual care trust fund; establishing the requirements, purpose, initial deposit amount, and use for the funds in a certain perpetual care trust fund; requiring a certain annual report for a certain perpetual care trust fund to be prepared, maintained, made available for inspection, and filed in a certain manner; prohibiting money in a certain perpetual care trust fund from being made available to certain creditors in the event of a bankruptcy or insolvency or an adverse judgment against a certain pet cemetery owner; providing that a certain perpetual care trust fund is not subject to judgment, execution, garnishment, attachment, or seizure under certain circumstances; requiring each burial lot sold or conveyed in a pet cemetery to be held by the owner for the purpose of burial of a pet; prohibiting a human body from being interred in a pet cemetery; requiring a pet cemetery owner to comply with certain requirements; requiring a certain purchaser of a burial lot or burial right in a pet cemetery to notify the pet cemetery owner of a change of address in a certain manner; providing for the removal of a certain land restriction in a recorded declaration under certain circumstances; prohibiting a certain person from establishing, operating, or allowing a pet cemetery to be operated in violation of certain provisions of law; establishing certain penalties for violations of this Act; defining certain terms; and generally relating to the establishment of and operational requirements for pet cemeteries.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY repealing and reenacting, with amendments,
 Article – Business Regulation
 Section 5–102
 Annotated Code of Maryland
 (2010 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, without amendments,
 Article – Business Regulation
 Section 5–405
 Annotated Code of Maryland
 (2010 Replacement Volume and 2013 Supplement)

BY adding to
 Article – Business Regulation
 Section 5–8A–01 through 5–8A–08 to be under the new subtitle “Subtitle 8A.
 Pet Cemeteries”
 Annotated Code of Maryland
 (2010 Replacement Volume and 2013 Supplement)

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

Article – Business Regulation

5–102.

(a) The registration and permitting provisions of this title do not apply to:

(1) a person that owns and operates a bona fide religious–nonprofit cemetery in this State;

(2) a cemetery owned by a not for profit organization created before 1900 by an act of the General Assembly;

(3) a county, city, or municipal corporation that owns and operates a cemetery in the State;

(4) a veterans’ cemetery operated by the State; [or]

(5) a private family cemetery that does not conduct public sales; **OR**

(6) A PET CEMETERY.

(b) This title does not apply to:

- (1) the operation of a funeral establishment, including the sale of burial goods in the ordinary course of the funeral establishment's business;
- (2) the operation or ownership of a crematory in which a person who is licensed and regulated under Title 7 of the Health Occupations Article owns a greater percentage of the crematory than a registered cemeterian, registered seller, or holder of a permit for the operation of a cemetery or burial goods business;
- (3) the operation or ownership of a crematory or incinerator at a licensed medical facility or educational institution;
- (4) a licensed funeral director acting within the scope of the funeral director's license; or
- (5) a mortician acting within the scope of the mortician's license.

5-405.

Except for a cemetery in which no burials have taken place within the previous 5 years, a cemetery that is exempt under § 5-102 of this title from the registration and permitting requirements of this title shall file with the Office, once every 2 years, a statement that includes:

- (1) the name and address of the cemetery;
- (2) the name and address of the organization that owns and operates the cemetery; and
- (3) the name and address of the individual who is responsible for the oversight of the cemetery.

SUBTITLE 8A. PET CEMETERIES.

5-8A-01.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "BURIAL RIGHT" MEANS THE RIGHT OF INTERMENT.

(C) "INTERMENT" MEANS THE DISPOSITION OF PET REMAINS BY EARTH BURIAL, ENTOMBMENT IN A MAUSOLEUM, OR INURNMENT IN A COLUMBARIUM.

(D) (1) "PET" MEANS AN ANIMAL THAT HAS BEEN ADAPTED OR TAMED FOR COMPANIONSHIP OR FOR THE PLEASURE OR ADVANTAGE OF PEOPLE.

(2) “PET” INCLUDES DOGS, CATS, BIRDS, RABBITS, AND HAMSTERS.

(E) (1) “PET CEMETERY” MEANS LAND, TOGETHER WITH ANY STRUCTURES, FACILITIES, OR BUILDINGS APPURTENANT TO THE LAND, OFFERED TO MEMBERS OF THE GENERAL PUBLIC FOR USE OR RESERVATION FOR USE FOR INTERMENT OF PET REMAINS THROUGH:

**(I) INDIVIDUAL INTERMENT, ABOVE OR BELOW GROUND;
OR**

(II) A COMBINATION OF INDIVIDUAL INTERMENT AND COMMUNAL BURIAL.

(2) “PET CEMETERY” DOES NOT INCLUDE LAND USED EXCLUSIVELY FOR LANDFILLING OR THE COMMUNAL BURIAL OF PETS.

(F) “PET CEMETERY OWNER” INCLUDES THE PERSON WHO OWNS, OPERATES, OR OVERSEES A PET CEMETERY.

5-8A-02.

(A) (1) THE OWNER OF ANY LAND USED OR TO BE USED AS A PET CEMETERY SHALL FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF THE COUNTY IN WHICH THE LAND IS LOCATED A DECLARATION RESTRICTING THE USE OF THE LAND TO USE AS A PET CEMETERY.

(2) THE DECLARATION SHALL BE EXECUTED IN THE SAME MANNER AND WITH THE SAME EFFECT AS A CONVEYANCE OF AN INTEREST IN LAND.

(3) THE CLERK SHALL RECORD THE DECLARATION IN THE RECORDS AND INDEX IT IN THE NAME OF THE OWNER.

(B) (1) A RESTRICTION ESTABLISHED IN A RECORDED DECLARATION UNDER THIS SECTION MAY BE REMOVED ONLY AS PROVIDED IN § 5-8A-06 OF THIS SUBTITLE.

(2) A PERSON MAY NOT USE LAND THAT IS SUBJECT TO A RESTRICTION RECORDED UNDER THIS SECTION FOR ANY PURPOSE OTHER THAN AS A PET CEMETERY.

5-8A-03.

(A) (1) EACH PET CEMETERY OWNER WHO SELLS OR OFFERS TO SELL TO THE PUBLIC A BURIAL LOT OR BURIAL RIGHT IN A PET CEMETERY SHALL ESTABLISH AND MAINTAIN A PERPETUAL CARE TRUST FUND IN ACCORDANCE WITH THIS SECTION.

(2) A SEPARATE PERPETUAL CARE TRUST FUND SHALL BE ESTABLISHED FOR EACH CEMETERY TO WHICH THIS SECTION APPLIES.

(3) A PERPETUAL CARE TRUST FUND REQUIRED UNDER THIS SUBSECTION SHALL BE A SINGLE PURPOSE TRUST FUND.

(B) EACH PET CEMETERY OWNER SHALL DEPOSIT IN THE PERPETUAL CARE TRUST FUND AT LEAST \$10,000 BEFORE THE FIRST LOT, PARCEL OF LAND, BURIAL, OR INTERMENT RIGHT IS SOLD.

(C) THE INCOME FROM THE PERPETUAL CARE TRUST FUND SHALL BE USED ONLY FOR THE PERPETUAL CARE OF THE PET CEMETERY, INCLUDING:

(1) THE MAINTENANCE, ADMINISTRATION, SUPERVISION, IMPROVEMENT, AND PRESERVATION OF THE GROUNDS, LOTS, MARKERS, BUILDINGS, EQUIPMENT, STATUARY, AND OTHER REAL AND PERSONAL PROPERTY OF THE PET CEMETERY; AND

(2) FOR THE PAYMENT OF REAL PROPERTY TAXES.

(D) A PET CEMETERY OWNER SHALL MAINTAIN RECORDS AND PREPARE AN ANNUAL REPORT CONCERNING ALL OF THE ASSETS AND INVESTMENTS OF THE PERPETUAL CARE TRUST FUND, AND SHALL:

(1) MAKE THE REPORT AVAILABLE FOR INSPECTION AT REASONABLE TIMES TO ANY OWNER OF A BURIAL RIGHT IN THE PET CEMETERY; AND

(2) FILE THE REPORT WITH THE OFFICE IN ACCORDANCE WITH § 5-405 OF THIS TITLE.

(E) (1) MONEY IN THE PERPETUAL CARE TRUST FUND MAY NOT BE MADE AVAILABLE TO ANY CREDITOR AS ASSETS OF THE PET CEMETERY OWNER OR AS PAYMENT FOR ANY EXPENSES OF ANY BANKRUPTCY OR SIMILAR PROCEEDING, BUT SHALL BE RETAINED INTACT TO PROVIDE FOR THE FUTURE MAINTENANCE OF THE PET CEMETERY IN THE EVENT OF:

(I) THE BANKRUPTCY OR INSOLVENCY OF THE PET CEMETERY OWNER;

(II) AN ASSIGNMENT BY THE PET CEMETERY OWNER FOR THE BENEFIT OF CREDITORS; OR

(III) AN ADVERSE JUDGMENT AGAINST THE PET CEMETERY OWNER.

(2) THE PERPETUAL CARE TRUST FUND IS NOT ASSIGNABLE AND IS NOT SUBJECT TO JUDGMENT, EXECUTION, GARNISHMENT, ATTACHMENT, OR OTHER SEIZURE BY PROCESS IN BANKRUPTCY OR OTHERWISE, OR TO SALE, PLEDGE, MORTGAGE, OR OTHER ALIENATION.

5-8A-04.

(A) EACH BURIAL LOT SOLD OR CONVEYED IN A PET CEMETERY SHALL BE HELD BY THE OWNER OF THE LOT ONLY FOR THE BURIAL OF A PET.

(B) A HUMAN BODY MAY NOT BE INTERRED IN A PET CEMETERY.

5-8A-05.

(A) A PET CEMETERY OWNER SHALL COMPLY WITH THE REQUIREMENTS OF § 5-405 OF THIS TITLE.

(B) THE PURCHASER OF A BURIAL LOT OR BURIAL RIGHT IN A PET CEMETERY SHALL NOTIFY THE PET CEMETERY OWNER IN WRITING OF A CHANGE IN ADDRESS.

5-8A-06.

(A) AFTER A DECLARATION HAS BEEN FILED UNDER § 5-8A-02 OF THIS SUBTITLE, THE LAND RESTRICTION MAY BE REMOVED IN ACCORDANCE WITH THIS SECTION BY ORDER OF THE CIRCUIT COURT IN THE COUNTY WHERE THE LAND IS LOCATED IN A PROCEEDING BROUGHT BY THE PET CEMETERY OWNER OR THE PET CEMETERY OWNER'S HEIRS OR ASSIGNS.

(B) (1) THE CIRCUIT COURT MAY ORDER REMOVAL OF THE RESTRICTION ON THE LAND UNDER SUBSECTION (A) OF THIS SECTION IF:

(I) NO INTERMENTS HAVE BEEN MADE IN, OR ALL PET REMAINS HAVE BEEN REMOVED FROM, THE LAND THAT IS SUBJECT TO THE RESTRICTION; OR

(II) AFTER NOTICE SENT BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, TO THE LAST KNOWN ADDRESS OF A PERSON WHO OWNS A BURIAL RIGHT IN A PET CEMETERY, THE PET CEMETERY OWNER OR THE PET CEMETERY OWNER'S HEIRS OR ASSIGNS HAVE RECEIVED, FROM THOSE PERSONS WHO OWN BURIAL RIGHTS IN THE PET CEMETERY OR THEIR HEIRS OR ASSIGNS, WRITTEN AUTHORIZATION, ACKNOWLEDGED BEFORE A NOTARY PUBLIC, TO REMOVE THE RESTRICTION FROM THE LAND.

(2) FOR PURPOSES OF PARAGRAPH (1)(II) OF THIS SUBSECTION, IF NO RESPONSE IS RECEIVED BY THE PET CEMETERY OWNER AFTER 30 DAYS FROM THE DATE OF THE NOTICE, CONSENT TO REMOVE THE RESTRICTION FROM THE LAND SHALL BE PRESUMED.

(3) ANY PERSON GRANTING AUTHORIZATION UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION WHO WISHES TO HAVE A PET THAT IS ALREADY INTERRED IN THE PET CEMETERY REMOVED AND REINTERRED ELSEWHERE, SHALL STATE THIS REQUEST ON THE AUTHORIZATION AND THE PET CEMETERY OWNER SHALL PROVIDE PROOF OF REMOVAL AND REINTERMENT TO THE PERSON.

(4) A PET CEMETERY OWNER IS NOT REQUIRED TO OBTAIN THE AUTHORIZATION UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION FROM A PERSON WHO HAS PURCHASED A BURIAL RIGHT IN THE PET CEMETERY BUT HAS NOT YET USED THAT RIGHT FOR THE INTERMENT OF A PET, IF THE PET CEMETERY OWNER REFUNDS TO THE PURCHASER OR THE PURCHASER'S HEIRS OR ASSIGNS ALL MONEY TAKEN FOR THE BURIAL RIGHT PLUS INTEREST ACCRUED IN 6-MONTH INCREMENTS, AT A RATE EQUAL TO THE FEDERAL RESERVE BOARD DISCOUNT RATE AS OF JANUARY 1 OF EACH YEAR, BEGINNING ON JANUARY 1, 2015.

(C) A HOLDER OF A LIEN ON THE RESTRICTED LAND MAY OBJECT TO THE REMOVAL OF THE RESTRICTION AND THE CIRCUIT COURT SHALL CONSIDER ANY SUCH OBJECTION BEFORE ISSUING AN ORDER TO REMOVE THE RESTRICTION.

(D) AN ORDER ISSUED BY THE CIRCUIT COURT REMOVING A RESTRICTION UNDER THIS SECTION SHALL BE FILED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN THE COUNTY IN WHICH THE LAND IS LOCATED AND SHALL BE RECORDED.

5-8A-07.

A PERSON MAY NOT ESTABLISH, OPERATE, OR ALLOW A PET CEMETERY TO BE OPERATED IN VIOLATION OF THIS SUBTITLE.

5-8A-08.

(A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON WHO VIOLATES THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$3,000 OR IMPRISONMENT NOT EXCEEDING 2 YEARS OR BOTH.

(B) A PERSON WHO WILLFULLY MISAPPROPRIATES OR INTENTIONALLY AND FRAUDULENTLY CONVERTS PERPETUAL CARE TRUST FUND MONEY IN EXCESS OF \$100 TO THAT PERSON'S OWN USE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$10,000 OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.