

BY: Finance Committee
(To be offered in the Finance Committee)

AMENDMENTS TO HOUSE BILL NO. 304
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike line 2 in its entirety and substitute “State Board of Cemeteries - Licensing and Regulation”; and strike beginning with “a” in line 3 down through “Industry.” in line 8 and substitute “the State Board of Cemeteries; providing for the appointment, membership, and terms of the Board members; specifying the terms of the initial Board members; providing for the powers and duties of the Board; requiring the licensure of certain persons that engage in operating a cemetery; delineating the scope of the licenses; establishing the application requirements for the licenses; providing for the terms and renewal of the licenses, reinstatements of lapsed licenses, and qualifications and duties of licensees; providing for the denial of license applications under certain circumstances, the revocation or denial of licenses in certain circumstances, and the imposition of fines under certain circumstances; providing for hearings and certain rights of appeal under certain circumstances; specifying certain prohibited acts; imposing certain penalties for certain violations; establishing an immunity from civil liability for certain persons under certain circumstances; defining certain terms; providing for the application of this Act; and generally relating to the licensure and regulation of persons operating cemeteries in the State.”

BY repealing and reenacting, with amendments,

Article - Business Regulation

Section 5-101, 5-306, 5-307, 5-309, 5-410, and 5-411

Annotated Code of Maryland

(1992 Volume and 1995 Supplement)

BY adding to

Article - Business Regulation

Section 5-102; 5-1A-01 through 5-1A-08, inclusive, to be under the new subtitle

“Subtitle 1A. State Board of Cemeteries”; and 5-2A-01 through 5-2A-14,

(Over)

inclusive, to be under the new subtitle “Subtitle 2A. Licensing”; and
5-701 to be under the new subtitle “Subtitle 7. Prohibited Acts; Penalties”

Annotated Code of Maryland
(1992 Volume and 1995 Supplement)

BY repealing and reenacting, without amendments,

Article - Business Regulation

Section 5-412

Annotated Code of Maryland
(1992 Volume and 1995 Supplement)

BY adding to

Article - Courts and Judicial Proceedings

Section 5-399.7

Annotated Code of Maryland
(1995 Replacement Volume and 1995 Supplement)”.

AMENDMENT NO. 2

On pages 1 through 3, strike in their entirety the lines beginning with line 9 on page 1 through line 18 on page 3, inclusive, and substitute:

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

Article - Business Regulation

5-101.

(a) In this title the following words have the meanings indicated.

(B) “BOARD” MEANS THE STATE BOARD OF CEMETERIES.

[(b)] (C) (1) “Burial” means all final disposition of human remains.

(2) “Burial” includes:

(i) earth burial;

(ii) mausoleum entombment; and

(iii) niche or columbarium interment.

[(c)] (D) (1) "Cemetery" means land used or to be used for burial.

(2) "Cemetery" includes a structure used or to be used for burial.

(E) "FIRM" MEANS A PARTNERSHIP, CORPORATION, OR OTHER LEGAL ENTITY.

(F) "LICENSE" MEANS A LICENSE ISSUED BY THE BOARD TO ENGAGE IN OPERATING A CEMETERY.

(G) "OPERATING A CEMETERY" MEANS OWNING, CONTROLLING, OR MAINTAINING A CEMETERY, INCLUDING PERFORMING THE ACTIVITY NECESSARY FOR OR INCIDENT TO:

(1) ESTABLISHING OR IMPROVING A CEMETERY;

(2) BURIAL; AND

(3) THE CARE, PRESERVATION, OR EMBELLISHMENT OF A CEMETERY.

5-102.

THE GENERAL ASSEMBLY FINDS THAT IT IS IN THE PUBLIC INTEREST TO REGULATE CEMETERIES TO ENSURE THAT SOUND BUSINESS PRACTICES ARE FOLLOWED IN THE OPERATION OF CEMETERIES.

SUBTITLE 1A. STATE BOARD OF CEMETERIES.

5-1A-01.

(Over)

THERE IS A STATE BOARD OF CEMETERIES IN THE DEPARTMENT.

5-1A-02.

(A) (1) THE BOARD CONSISTS OF SEVEN MEMBERS.

(2) OF THE SEVEN MEMBERS OF THE BOARD:

(I) THREE SHALL BE LICENSEES, OR REPRESENTATIVES OF LICENSEES, APPOINTED BY THE GOVERNOR; AND

(II) FOUR SHALL BE CONSUMER MEMBERS, APPOINTED BY THE GOVERNOR.

(3) THE GOVERNOR SHALL APPOINT THE MEMBERS WITH THE ADVICE OF THE SECRETARY AND THE ADVICE AND CONSENT OF THE SENATE.

(B) EACH MEMBER SHALL BE A RESIDENT OF THE STATE.

(C) EACH CONSUMER MEMBER OF THE BOARD:

(1) SHALL BE A MEMBER OF THE GENERAL PUBLIC;

(2) MAY NOT BE A LICENSEE OR OTHERWISE BE SUBJECT TO REGULATION BY THE BOARD;

(3) MAY NOT BE REQUIRED TO MEET THE QUALIFICATIONS FOR THE MEMBERS OF THE BOARD DESCRIBED IN SUBSECTION (A)(2)(I) OF THIS SECTION; AND

(4) MAY NOT, WITHIN 1 YEAR BEFORE APPOINTMENT, HAVE HAD A FINANCIAL INTEREST IN OR HAVE RECEIVED COMPENSATION FROM A PERSON REGULATED BY THE BOARD.

(D) WHILE A MEMBER OF THE BOARD, A CONSUMER MEMBER MAY NOT HAVE A FINANCIAL INTEREST IN OR RECEIVE COMPENSATION FROM A PERSON REGULATED BY THE BOARD.

(E) BEFORE TAKING OFFICE, EACH MEMBER OF THE BOARD SHALL TAKE THE OATH REQUIRED BY ARTICLE I, SECTION 9 OF THE MARYLAND CONSTITUTION.

(F) (1) THE TERM OF A MEMBER IS 5 YEARS AND BEGINS ON OCTOBER 1.

(2) THE TERMS OF APPOINTED MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE BOARD ON OCTOBER 1, 1996.

(3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(5) A MEMBER MAY NOT SERVE MORE THAN TWO CONSECUTIVE FULL TERMS.

(G) (1) THE GOVERNOR MAY REMOVE A MEMBER FOR INCOMPETENCE OR MISCONDUCT.

(2) ON THE RECOMMENDATION OF THE SECRETARY, THE GOVERNOR MAY REMOVE A MEMBER WHOM THE SECRETARY FINDS TO HAVE BEEN ABSENT FROM TWO SUCCESSIVE BOARD MEETINGS WITHOUT ADEQUATE REASON.

5-1A-03.

(Over)

(A) FROM AMONG ITS MEMBERS, THE BOARD SHALL ELECT A PRESIDENT, A FIRST VICE PRESIDENT, AND A SECOND VICE PRESIDENT.

(B) THE BOARD SHALL DETERMINE:

(1) THE MANNER OF ELECTION OF OFFICERS;

(2) THE TERM OF OFFICE OF EACH OFFICER; AND

(3) THE DUTIES OF EACH OFFICER.

5-1A-04.

(A) A MAJORITY OF THE MEMBERS THEN SERVING ON THE BOARD IS A QUORUM.

(B) THE BOARD SHALL MEET AT LEAST ONCE A YEAR, AT THE TIMES AND PLACES THAT IT SETS IN ITS BYLAWS AND RULES AND REGULATIONS.

(C) EACH MEMBER OF THE BOARD IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

(D) THE BOARD MAY EMPLOY A STAFF IN ACCORDANCE WITH THE STATE BUDGET.

5-1A-05.

IN ADDITION TO ANY POWERS SET FORTH ELSEWHERE IN THIS TITLE, THE BOARD MAY:

(1) ADOPT BYLAWS, RULES, AND REGULATIONS TO CARRY OUT THIS TITLE;

(2) ADOPT A SEAL;

(3) SUE TO ENFORCE ANY PROVISION OF THIS TITLE AGAINST A LICENSEE;

(4) INSPECT THE RECORDS AND SITES OF LICENSEES TO DETERMINE COMPLIANCE WITH THE PROVISIONS OF THIS TITLE;

(5) INVESTIGATE ANY ALLEGED VIOLATION OF THIS TITLE BY A LICENSEE;

(6) KEEP A LIST OF ALL LICENSEES;

(7) ADOPT REGULATIONS ESTABLISHING STANDARDS FOR LICENSEES AND EMPLOYEES OF LICENSEES;

(8) SUBMIT AN ANNUAL REPORT TO THE DEPARTMENT;

(9) ISSUE A CEASE AND DESIST ORDER, AND ORDER RESTITUTION, IF THE BOARD FINDS A VIOLATION OF THIS TITLE;

(10) REFER A VIOLATION OF THIS TITLE TO THE STATE'S ATTORNEY FOR ENFORCEMENT; AND

(11) REFER TO THE ATTORNEY GENERAL AN ALLEGED UNFAIR OR DECEPTIVE TRADE PRACTICE UNDER TITLE 13 OF THE COMMERCIAL LAW ARTICLE.

5-1A-06.

THE BOARD, IN CONSULTATION WITH THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL, SHALL PUBLISH A CONSUMER INFORMATION PAMPHLET THAT INFORMS CONSUMERS OF:

(Over)

(1) THE RIGHTS OF CONSUMERS OF CEMETERY GOODS AND SERVICES;

AND

(2) ANY OTHER INFORMATION THAT THE BOARD CONSIDERS NECESSARY OR USEFUL TO CONSUMERS.

5-1A-07.

(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE BOARD SHALL SET REASONABLE FEES FOR THE ISSUANCE AND RENEWAL OF LICENSES AND FOR ITS OTHER SERVICES.

(B) THE FEES SET BY THE BOARD SHALL BE SET IN A MANNER THAT WILL:

(1) PRODUCE FUNDS SUFFICIENT TO COVER THE ACTUAL DIRECT AND INDIRECT COST OF REGULATING, IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE, THE CEMETERIES LICENSED UNDER THIS TITLE; AND

(2) TAKE INTO CONSIDERATION THE SIZE OF A LICENSEE, INCLUDING THE LICENSEE'S REVENUES AND ANNUAL NUMBER OF BURIALS.

(C) THE BOARD SHALL PAY ALL MONEY COLLECTED UNDER THIS TITLE INTO THE GENERAL FUND OF THE STATE.

5-1A-08.

A PERSON SHALL HAVE THE IMMUNITY FROM LIABILITY DESCRIBED UNDER § 5-399.7 OF THE COURTS ARTICLE FOR GIVING INFORMATION TO THE BOARD OR OTHERWISE PARTICIPATING IN ITS ACTIVITIES.

SUBTITLE 2A. LICENSING.

5-2A-01.

(A) THIS SUBTITLE DOES NOT APPLY TO A:

(1) PERSON OPERATING A CEMETERY THAT HAS LESS THAN 1 ACRE AVAILABLE FOR BURIAL;

(2) COUNTY;

(3) MUNICIPAL CORPORATION;

(4) CHURCH;

(5) SYNAGOGUE;

(6) RELIGIOUS ORGANIZATION; OR

(7) NOT-FOR-PROFIT ORGANIZATION CREATED BEFORE 1900 BY AN ACT OF THE GENERAL ASSEMBLY.

(B) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON SHALL BE LICENSED BY THE BOARD BEFORE THE PERSON MAY ENGAGE IN OPERATING A CEMETERY IN THE STATE.

5-2A-02.

(A) TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL MEET THE REQUIREMENTS OF THIS SECTION.

(B) IF THE APPLICANT IS AN INDIVIDUAL, THE APPLICANT SHALL BE:

(1) OF GOOD MORAL CHARACTER AND REPUTATION; AND

(2) AT LEAST 18 YEARS OLD.

(C) (1) IF THE APPLICANT IS A FIRM, THE FIRM SHALL:

(Over)

(I) HAVE A PERMANENT OFFICE IN THE STATE, FROM WHICH THE LICENSEE IS TO ENGAGE IN OPERATING A CEMETERY; OR

(II) SUBMIT PROOF, SATISFACTORY TO THE BOARD, OF THE INTENT OF THE FIRM TO ESTABLISH IMMEDIATELY A PERMANENT OFFICE IN THE STATE, FROM WHICH THE LICENSEE IS TO ENGAGE IN OPERATING A CEMETERY.

(2) EACH PERMANENT OFFICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE MANAGED BY A PARTNER, OFFICER, OR DIRECTOR OF THE FIRM.

(3) FOR A PARTNER, OFFICER, OR DIRECTOR OF THE FIRM, IF A MAJORITY OF THE WORK THAT THE INDIVIDUAL PERFORMS FOR THE FIRM IS PERFORMED WITHIN THE STATE, THAT PARTNER, OFFICER, OR DIRECTOR SHALL BE:

(I) OF GOOD MORAL CHARACTER AND REPUTATION; AND

(II) AT LEAST 18 YEARS OLD.

(D) AN APPLICANT SHALL MEET ANY OTHER REASONABLE QUALIFICATIONS OR REQUIREMENTS THAT THE BOARD ESTABLISHES FOR LICENSE APPLICANTS.

5-2A-03.

(A) THE APPLICATION SHALL REQUIRE:

(1) INFORMATION THAT IDENTIFIES THE FORM OF LEGAL ENTITY THAT WILL ENGAGE IN OPERATING A CEMETERY AND THE PROPOSED FINANCIAL STRUCTURE OF THAT ENTITY;

(2) EVIDENCE OF THE ESTABLISHMENT OF A PERPETUAL CARE TRUST FUND TO THE EXTENT REQUIRED BY SUBTITLE 3 OF THIS TITLE;

(3) DESIGNATION, BY THE PERSON OPERATING OR SEEKING TO ENGAGE IN OPERATING A CEMETERY, OF A GENERAL MANAGER WHO MUST BE AN INDIVIDUAL WITH NO LESS THAN 2 YEARS EXPERIENCE IN A CEMETERY BUSINESS;

(4) IF THE APPLICANT IS AN INDIVIDUAL:

(I) THE NAME OF THE APPLICANT;

(II) THE AGE OF THE APPLICANT; AND

(III) THE ADDRESS OF THE APPLICANT;

(5) IF THE APPLICANT IS A FIRM, A LIST OF ALL OF THE PARTNERS, OFFICERS, OR DIRECTORS OF THE FIRM; AND

(6) ANY OTHER INFORMATION THAT THE BOARD CONSIDERS APPROPRIATE.

(B) (1) IF THE APPLICANT IS AN INDIVIDUAL, THE APPLICATION FORM SHALL BE SIGNED, UNDER OATH, BY THE INDIVIDUAL.

(2) IF THE APPLICANT IS A FIRM, THE APPLICATION FORM SHALL BE SIGNED, UNDER OATH, BY ALL OF THE PARTNERS, OFFICERS, OR DIRECTORS OF THE FIRM.

5-2A-04.

AN APPLICANT FOR A LICENSE SHALL:

(1) SUBMIT TO THE BOARD AN APPLICATION ON THE FORM THAT THE BOARD REQUIRES; AND

(2) PAY TO THE BOARD A REASONABLE APPLICATION FEE SET BY THE BOARD.

(Over)

5-2A-05.

(A) THE BOARD SHALL ISSUE A LICENSE TO EACH APPLICANT THAT MEETS THE REQUIREMENTS OF THIS TITLE.

(B) THE BOARD SHALL INCLUDE ON EACH LICENSE THAT THE BOARD ISSUES:

(1) THE FULL NAME OF THE LICENSEE;

(2) THE LOCATION OF THE PRINCIPAL OFFICE OF THE LICENSEE;

(3) THE DATE ON WHICH THE BOARD ISSUED THE LICENSE; AND

(4) THE DATE ON WHICH THE LICENSE EXPIRES.

5-2A-06.

(A) WHILE A LICENSE IS IN EFFECT, IT AUTHORIZES THE LICENSEE TO ENGAGE IN OPERATING A CEMETERY.

(B) A LICENSE ISSUED BY THE BOARD UNDER THIS TITLE IS NOT TRANSFERABLE.

5-2A-07.

IF A LICENSEE THAT IS A CORPORATION IS SOLD, DECLARES BANKRUPTCY, OR CEASES TO OPERATE, WRITTEN NOTICE MUST BE SUBMITTED, WITHIN 2 WEEKS OF THE OCCURRENCE, TO:

(1) THE BOARD, DETAILING THE CHANGES AND THE ARRANGEMENTS FOR CARRYING OUT, UNDER SUBTITLE 4 OF THIS TITLE, PRENEED BURIAL CONTRACTS AND DISBURSEMENT OF MONEY HELD IN ESCROW; AND

(2) HOLDERS OF PRENEED BURIAL CONTRACTS ADVISING THEM OF THEIR OPTIONS UNDER STATE LAW.

5-2A-08.

(A) UNLESS A LICENSE IS RENEWED FOR A 2-YEAR TERM AS PROVIDED IN THIS SECTION, THE LICENSE EXPIRES ON THE SECOND SEPTEMBER 30 AFTER ITS EFFECTIVE DATE.

(B) AT LEAST 1 MONTH BEFORE A LICENSE EXPIRES, THE BOARD SHALL MAIL TO THE LICENSEE, AT THE LAST KNOWN ADDRESS OF THE LICENSEE, A RENEWAL APPLICATION FORM AND A NOTICE THAT STATES:

(1) THE DATE ON WHICH THE CURRENT LICENSE EXPIRES;

(2) THE DATE BY WHICH THE BOARD MUST RECEIVE THE RENEWAL APPLICATION FOR THE RENEWAL TO BE ISSUED AND MAILED BEFORE THE LICENSE EXPIRES; AND

(3) THE AMOUNT OF THE RENEWAL FEE.

(C) BEFORE A LICENSE EXPIRES, THE LICENSEE PERIODICALLY MAY RENEW IT FOR AN ADDITIONAL 2-YEAR TERM, IF THE LICENSEE:

(1) IS OTHERWISE ENTITLED TO BE LICENSED;

(2) PAYS TO THE BOARD A RENEWAL FEE SET BY THE BOARD; AND

(3) SUBMITS TO THE BOARD A RENEWAL APPLICATION ON THE FORM THAT THE BOARD REQUIRES.

(D) THE BOARD SHALL RENEW THE LICENSE OF EACH LICENSEE THAT MEETS

(Over)

THE REQUIREMENTS OF THIS SECTION.

5-2A-09.

(A) IN ACCORDANCE WITH ANY REGULATIONS OF THE BOARD, A LICENSEE THAT HAS FAILED TO RENEW A LICENSE FOR ANY REASON MAY OBTAIN REINSTATEMENT OF THE LICENSE IF THE LICENSEE:

(1) IS OTHERWISE ENTITLED TO BE LICENSED UNDER THIS TITLE;

(2) MEETS THE RENEWAL REQUIREMENTS OF § 5-2A-08 OF THIS SUBTITLE;

(3) PAYS TO THE BOARD A REASONABLE REINSTATEMENT FEE, SET BY THE BOARD, IN ADDITION TO THE RENEWAL FEE REQUIRED UNDER § 5-2A-08 OF THIS SUBTITLE; AND

(4) SUBMITS TO THE BOARD SATISFACTORY EVIDENCE OF COMPLIANCE WITH THE REQUIREMENTS ESTABLISHED UNDER THIS SUBTITLE FOR LICENSE REINSTATEMENTS.

(B) THE BOARD SHALL REINSTATE THE LICENSE OF EACH LICENSEE WHO MEETS THE REQUIREMENTS OF THIS SECTION.

5-2A-10.

(A) EACH LICENSEE SHALL DISPLAY THE LICENSE CONSPICUOUSLY IN THE OFFICE OR PLACE OF BUSINESS OF THE LICENSEE.

(B) EACH LICENSEE SHALL GIVE THE BOARD WRITTEN NOTICE OF ANY CHANGE OF ADDRESS OF THE BUSINESS OFFICE OF THE LICENSEE.

5-2A-11.

(A) SUBJECT TO THE HEARING PROVISIONS OF § 5-2A-12 OF THIS SUBTITLE, THE BOARD, ON THE AFFIRMATIVE VOTE OF A MAJORITY OF ITS MEMBERS THEN SERVING, MAY DENY A LICENSE TO ANY APPLICANT, REPRIMAND ANY LICENSEE, OR SUSPEND OR REVOKE A LICENSE IF THE APPLICANT OR LICENSEE:

(1) FRAUDULENTLY OR DECEPTIVELY OBTAINS OR ATTEMPTS TO OBTAIN A LICENSE FOR THE APPLICANT OR LICENSEE OR FOR ANOTHER;

(2) FRAUDULENTLY OR DECEPTIVELY USES A LICENSE;

(3) COMMITS FRAUD OR MISREPRESENTATION IN OPERATING A CEMETERY OR HAS ENGAGED IN UNETHICAL PRACTICES IN OPERATING A CEMETERY;

(4) VIOLATES THE UNFAIR AND DECEPTIVE TRADE PRACTICES PROVISIONS UNDER TITLE 13 OF THE COMMERCIAL LAW ARTICLE;

(5) IS CONVICTED OF OR PLEADS GUILTY OR NOLO CONTENDERE TO A FELONY OR TO A CRIME INVOLVING MORAL TURPITUDE, WHETHER OR NOT ANY APPEAL OR OTHER PROCEEDING IS PENDING TO HAVE THE CONVICTION OR PLEA SET ASIDE;

(6) ADVERTISES FALSELY OR IN A MISLEADING MANNER;

(7) HAS ENGAGED IN THE OFFENSIVE TREATMENT OF A DEAD HUMAN BODY;

(8) DIRECTLY OR INDIRECTLY OFFERS TO PAY TO OBTAIN CEMETERY BUSINESS;

(9) VIOLATES THE PERPETUAL CARE TRUST PROVISIONS UNDER SUBTITLE 3 OF THIS TITLE OR PRENEED BURIAL CONTRACT PROVISIONS UNDER

SUBTITLE 4 OF THIS TITLE;

(10) FAILS, AFTER PROPER DEMAND, TO REFUND PROMPTLY ANY PAYMENTS RECEIVED UNDER A PRENEED BURIAL CONTRACT UNDER SUBTITLE 4 OF THIS TITLE;

(11) ENGAGES IN OPERATING A CEMETERY UNDER A NAME OTHER THAN THE NAME THAT APPEARS ON THE LICENSE OF THAT PERSON;

(12) SIGNS AN APPLICATION FOR A LICENSE IF THE SIGNER KNEW OR SHOULD HAVE KNOWN THAT GROUNDS EXISTED FOR WHICH THE LICENSE LATER WAS DENIED, SUSPENDED, OR REVOKED;

(13) IS DISCIPLINED BY A LICENSING OR DISCIPLINARY AUTHORITY OF ANOTHER STATE OR COUNTRY OR CONVICTED OR DISCIPLINED BY A COURT OF ANY STATE OR COUNTRY FOR AN ACT THAT WOULD BE GROUNDS FOR DISCIPLINARY ACTION UNDER THE PROVISIONS OF THIS TITLE;

(14) WILLFULLY MAKES OR FILES A FALSE REPORT OR RECORD IN OPERATING A CEMETERY;

(15) WILLFULLY FAILS TO FILE OR RECORD ANY REPORT AS REQUIRED UNDER LAW, WILLFULLY IMPEDES OR OBSTRUCTS THE FILING OR RECORDING OF THE REPORT, OR INDUCES ANOTHER TO FAIL TO FILE OR RECORD THE REPORT;

(16) SUBMITS A FALSE STATEMENT TO COLLECT A FEE;

(17) FAILS TO ALLOW AN INSPECTION REQUIRED BY THIS TITLE;

(18) FAILS TO COMPLY WITH INSPECTION REQUIREMENTS IN THE TIME SPECIFIED BY THE BOARD;

(19) VIOLATES A PROVISION OF THIS TITLE; OR

(20) VIOLATES A RULE OR REGULATION ADOPTED BY THE BOARD.

(B) (1) INSTEAD OF OR IN ADDITION TO SUSPENDING OR REVOKING A LICENSE, THE BOARD MAY IMPOSE A PENALTY AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS SUBSECTION.

(2) THE BOARD MAY IMPOSE A CIVIL PENALTY:

(I) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, NOT EXCEEDING \$5,000 FOR EACH VIOLATION OF THIS TITLE OR AN ORDER OF THE BOARD UNDER THIS TITLE; AND

(II) NOT EXCEEDING \$500 FOR EACH DAY A VIOLATION CONTINUES AGAINST A PERSON WHO FAILS TO CORRECT THE VIOLATION IN THE TIME SET FOR ITS CORRECTION.

(3) THE BOARD MAY IMPOSE A CIVIL PENALTY, NOT EXCEEDING \$10,000 FOR EACH VIOLATION, AGAINST A PERSON WHO WILLFULLY OR REPEATEDLY VIOLATES THIS TITLE OR AN ORDER OF THE BOARD UNDER THIS TITLE.

(4) TO DETERMINE THE AMOUNT OF THE PENALTY IMPOSED UNDER THIS SUBSECTION, THE BOARD SHALL CONSIDER:

(I) THE SERIOUSNESS OF THE VIOLATION;

(II) THE HARM CAUSED BY THE VIOLATION;

(III) THE GOOD FAITH OF THE LICENSEE; AND

(IV) ANY HISTORY OF PREVIOUS VIOLATIONS BY THE LICENSEE.

(5) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS

(Over)

SUBSECTION INTO THE GENERAL FUND OF THE STATE.

(C) IN ADDITION TO THE PROVISIONS OF SUBSECTIONS (A) AND (B) OF THIS SECTION, IF THE BOARD REVOKES A LICENSE, THE BOARD MAY PETITION A COURT OF EQUITY TO:

(1) APPOINT A RECEIVER OR TRUSTEE TO TAKE CHARGE OF THE ASSETS AND OPERATE THE BUSINESS OF THE PERSON WHOSE LICENSE IS SUSPENDED OR REVOKED; AND

(2) TAKE OTHER ACTIONS AS ARE APPROPRIATE TO PROTECT THE PUBLIC INTEREST.

(D) FOR PURPOSES OF THIS SECTION, AN ACT OR OMISSION OF ANY PRINCIPAL, AGENT, OR EMPLOYEE OF AN APPLICANT OR A LICENSEE MAY BE CONSTRUED TO BE THE ACT OR OMISSION OF THE APPLICANT OR LICENSEE, AS WELL AS OF THE PRINCIPAL, AGENT, OR EMPLOYEE.

5-2A-12.

(A) EXCEPT AS OTHERWISE PROVIDED IN TITLE 10, SUBTITLE 4 OF THE STATE GOVERNMENT ARTICLE, BEFORE THE BOARD TAKES ANY FINAL ACTION UNDER § 5-1A-05(9) OF THIS TITLE OR § 5-2A-11 OF THIS SUBTITLE, IT SHALL GIVE THE PERSON AGAINST WHOM THE ACTION IS CONTEMPLATED AN OPPORTUNITY FOR A HEARING BEFORE THE BOARD.

(B) THE BOARD SHALL GIVE NOTICE AND HOLD THE HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(C) THE BOARD MAY ADMINISTER OATHS IN CONNECTION WITH ANY PROCEEDINGS UNDER THIS SECTION.

(D) THE HEARING NOTICE TO BE GIVEN TO THE PERSON SHALL BE SENT BY CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF THE PERSON AT LEAST 30 DAYS

BEFORE THE HEARING.

(E) THE PERSON MAY BE REPRESENTED AT THE HEARING BY COUNSEL.

(F) (1) THE BOARD MAY ISSUE SUBPOENAS IN CONNECTION WITH ANY PROCEEDING UNDER THIS SECTION.

(2) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA ISSUED UNDER THIS SUBSECTION, ON PETITION OF THE BOARD, A CIRCUIT COURT MAY COMPEL COMPLIANCE WITH THE SUBPOENA.

(G) IF, AFTER DUE NOTICE, THE PERSON AGAINST WHOM THE ACTION IS CONTEMPLATED FAILS OR REFUSES TO APPEAR, THE BOARD MAY HEAR AND DETERMINE THE MATTER.

(H) IF, AFTER A HEARING, A PERSON IS FOUND IN VIOLATION OF § 5-2A-11 OF THIS SUBTITLE, THE PERSON SHALL PAY THE HEARING COSTS.

5-2A-13.

ANY PERSON AGGRIEVED BY A FINAL DECISION OF THE BOARD IN A CONTESTED CASE, AS DEFINED IN § 10-202 OF THE STATE GOVERNMENT ARTICLE, MAY TAKE AN APPEAL AS ALLOWED IN §§ 10-222 AND 10-223 OF THE STATE GOVERNMENT ARTICLE.

5-2A-14.

(A) WHENEVER THE BOARD SUSPENDS OR REVOKES THE LICENSE OF A LICENSEE UNDER § 5-2A-11(A) OF THIS SUBTITLE, THE BOARD SHALL MAIL NOTICE OF THE SUSPENSION OR REVOCATION:

(1) IF THE LICENSEE IS AN INDIVIDUAL, TO THE LICENSEE; AND

(Over)

(2) IF THE LICENSEE IS A FIRM, TO THE LICENSEE'S PERMANENT OFFICE IN THE STATE.

(B) WHENEVER THE BOARD IMPOSES A PENALTY UNDER § 5-2A-11(B) OF THIS SUBTITLE, THE BOARD SHALL MAIL NOTICE OF THE PENALTY:

(1) IF THE LICENSEE IS AN INDIVIDUAL, TO THE LICENSEE; AND

(2) IF THE LICENSEE IS A FIRM, TO THE LICENSEE'S PERMANENT OFFICE IN THE STATE.

5-306.

(a) (1) Each cemetery owner subject to the trust requirements of this subtitle shall keep detailed records of all sales of burial lots or burial rights in a cemetery and money received.

(2) The records of each cemetery owner and of each trustee appointed by the cemetery owner are subject to examination by:

(I) THE BOARD;

[(i)] (II) the Attorney General or an authorized representative of the Attorney General; and

[(ii)] (III) the State's Attorney for the county where the cemetery owner does business or where the cemetery is located.

(b) (1) Each cemetery owner subject to the trust requirements of this subtitle shall submit a report to the [Secretary of State] BOARD within 120 days after the close of each calendar or other fiscal year chosen by the cemetery owner.

(2) The report shall:

(i) be on the form that the [Secretary of State] BOARD requires;

(ii) be certified as to correctness by a certified public accountant;

(iii) be accompanied by a fee of \$25; and

(iv) include:

1. the name of the cemetery owner;

2. each location of the cemetery owner;

3. the amount of money in each trust fund at the beginning of the calendar or other fiscal year chosen by the cemetery owner;

4. the amount of money that the cemetery owner received during that year that is subject to the trust requirements of this subtitle;

5. the amount of money actually deposited into each trust fund in that year;

6. the amount of money spent during that year to provide care, maintenance, administration, and embellishment of each cemetery, except for money used for the care of monuments and memorials; and

7. the name and address of each trustee.

(3) A cemetery owner who stops selling burial lots or burial rights in a cemetery as to which perpetual care is stated or implied shall notify the [Secretary of State] BOARD in the required report for the year in which sales stop.

(c) The [Secretary of State] BOARD may adopt regulations:

(1) to administer subsection (b) of this section; and

(Over)

(2) for determining whether cemetery owners are complying with this subtitle.

5-307.

(a) If the [Secretary of State] BOARD finds that a cemetery owner subject to the trust requirements of this subtitle has violated this subtitle or a regulation adopted under this subtitle, the [Secretary of State] BOARD may refer the matter to:

- (1) the Attorney General for civil enforcement; or
- (2) the appropriate State's Attorney for criminal prosecution.

(b) The Attorney General may sue for and a court may grant:

- (1) injunctive or other equitable relief;
- (2) imposition of a civil penalty [not exceeding \$5,000];

(I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, NOT EXCEEDING \$5,000 FOR EACH VIOLATION OF THIS SUBTITLE OR AN ORDER OF THE BOARD UNDER THIS SUBTITLE; AND

(II) NOT EXCEEDING \$10,000 FOR EACH VIOLATION AGAINST A PERSON WHO WILLFULLY OR REPEATEDLY VIOLATES THIS SUBTITLE OR AN ORDER OF THE BOARD UNDER THIS SUBTITLE; or

- (3) both.

5-309.

(a) A person may not establish or operate a public or private cemetery or allow a public or private cemetery to be operated in violation of this subtitle.

(b) A person who violates this section is guilty of a misdemeanor and, on conviction, is

subject to a fine not exceeding [\$1,000] \$5,000 or imprisonment not exceeding 1 year or both.

(c) If a corporation violates this subtitle, each officer who is responsible for the violation is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding [\$1,000] \$5,000 or imprisonment not exceeding 1 year or both.

5-410.

(a) (1) Each seller shall keep detailed records of all preneed burial contracts and specific funds.

(2) The records of each seller and of each trustee appointed by the seller are subject to examination by:

(I) THE BOARD;

[(i)] (II) the Attorney General or an authorized representative of the Attorney General; and

[(ii)] (III) the State's Attorney for the county where the seller does business.

(b) (1) Each seller subject to the trust requirements of this subtitle shall submit a report to the [Secretary of State] BOARD within 120 days after the close of each calendar or other fiscal year chosen by the seller.

(2) The report shall:

(i) be on the form that the [Secretary of State] BOARD requires;

(ii) be certified by a certified public accountant employed by the seller;

(iii) be accompanied by a fee of \$25; and

(Over)

(iv) include:

1. the name of the seller;
2. each location of the seller;
3. the amount of money that the seller received during that year that is subject to the trust requirements of this subtitle;
4. the amount of money actually deposited into trust accounts in that year; and
5. the name and address of the trustee.

(3) A seller who stops selling preneed goods or preneed services shall notify the [Secretary of State] BOARD in the required report for the year in which sales stop.

(c) The [Secretary of State] BOARD may adopt regulations:

- (1) to administer this section; and
- (2) for determining whether sellers are complying with this subtitle.

5-411.

(a) If the [Secretary of State] BOARD finds that a seller has violated this subtitle or a regulation adopted under this subtitle, the [Secretary of State] BOARD may refer the matter to:

- (1) the Attorney General for civil enforcement; or
- (2) the appropriate State's Attorney for criminal prosecution.

(b) The Attorney General may sue for and a court may grant:

(1) injunctive or other equitable relief;

(2) imposition of a civil penalty [not exceeding \$5,000];

(I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, NOT EXCEEDING \$5,000 FOR EACH VIOLATION OF THIS SUBTITLE OR AN ORDER OF THE BOARD UNDER THIS SUBTITLE; AND

(II) NOT EXCEEDING \$10,000 FOR EACH VIOLATION AGAINST A PERSON WHO WILLFULLY OR REPEATEDLY VIOLATES THIS SUBTITLE OR AN ORDER OF THE BOARD UNDER THIS SUBTITLE; or

(3) both.

5-412.

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

(b) (1) A person who violates this section is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 1 year or both.

(2) If a corporation violates this section, each officer responsible for the violation is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 1 year or both.

SUBTITLE 7. PROHIBITED ACTS; PENALTIES.

5-701.

(A) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT ENGAGE IN OPERATING A CEMETERY IN THE STATE UNLESS LICENSED BY THE BOARD.

(Over)

(B) UNLESS AUTHORIZED UNDER THIS TITLE TO ENGAGE IN OPERATING A CEMETERY, A PERSON MAY NOT REPRESENT TO THE PUBLIC THAT THE PERSON IS AUTHORIZED TO ENGAGE IN OPERATING A CEMETERY IN THE STATE.

(C) A LICENSEE MAY NOT EMPLOY AN INDIVIDUAL IF THE LICENSEE KNOWS OR REASONABLY SHOULD KNOW THAT THE INDIVIDUAL, ON AT LEAST THREE SEPARATE OCCASIONS, HAS BEEN FOUND IN VIOLATION OF THIS TITLE BY THE BOARD OR A COURT OF COMPETENT JURISDICTION.

(D) UNLESS A CRIMINAL PENALTY IS OTHERWISE PROVIDED IN THIS TITLE, A PERSON THAT VIOLATES ANY PROVISION OF THIS TITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$5,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

Article - Courts and Judicial Proceedings

5-399.7.

A PERSON THAT ACTS IN GOOD FAITH AND WITHIN THE SCOPE OF THE JURISDICTION OF THE STATE BOARD OF CEMETERIES IS NOT CIVILLY LIABLE FOR GIVING INFORMATION TO THE BOARD OR OTHERWISE PARTICIPATING IN ITS ACTIVITIES.

SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding § 5-1A-02(f)(1) of the Business Regulation Article, as enacted by Section 1 of this Act, the terms of the initial members of the State Board of Cemeteries shall expire as follows:

(1) 2 members in 1998;

(2) 2 members in 1999;

(3) 2 members in 2000; and

(4) 1 member in 2001.

SECTION 3. AND BE IT FURTHER ENACTED, That, notwithstanding the provisions of Section 1 of this Act, a person who is operating a cemetery on or before October 1, 1996, is not required to obtain a license under this Act until April 1, 1997.”.

AMENDMENT NO. 3

On page 3, in line 19, strike “2.” and substitute “4.”; and in line 20, strike “June” and substitute “October”.