
By: Senator Della

Introduced and read first time: February 2, 1996

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Cemeteries - Licensing - Cemetery Guaranty Fund**

3 FOR the purpose of establishing a State Board of Cemeteries with certain powers and
4 duties; establishing a State Board of Cemeteries Fund; requiring that a person be
5 licensed as a cemetery owner under certain circumstances; establishing
6 qualifications for a certain license and the renewal of the license; authorizing
7 denial, suspension, or revocation of a license and the discipline of certain persons
8 under certain circumstances; transferring certain responsibilities as to perpetual
9 care funds and preneed burial contracts from the Secretary of State to the Board;
10 establishing a Cemetery Guaranty Fund; authorizing the Board to take certain
11 actions against a licensee under certain circumstances; establishing a qualified
12 immunity under certain circumstances; defining certain terms; providing an
13 exemption from licensing requirements for certain persons for a certain period of
14 time; specifying the terms of the initial members of the Board; and generally
15 relating to the licensing and regulation of cemeteries.

16 BY repealing and reenacting, with amendments,
17 Article - Business Regulation
18 Section 5-101, 5-306, 5-307, 5-410, and 5-411
19 Annotated Code of Maryland
20 (1992 Volume and 1995 Supplement)

21 BY adding to
22 Article - Business Regulation
23 Section 5-1A-01 through 5-1A-18, inclusive, to be under the new subtitle "Subtitle
24 1A. State Board of Cemeteries"; and 5-3A-01 through 5-3A-11, inclusive, to
25 be under the new subtitle "Subtitle 3A. Cemetery Guaranty Fund"
26 Annotated Code of Maryland
27 (1992 Volume and 1995 Supplement)

28 BY adding to
29 Article - Courts and Judicial Proceedings
30 Section 5-399.7
31 Annotated Code of Maryland
32 (1995 Replacement Volume and 1995 Supplement)

2

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

3 **Article - Business Regulation**

4 5-101.

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

6 (B) "BOARD" MEANS THE STATE BOARD OF CEMETERIES.

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

8 (2) "Burial" includes:

9 (i) earth burial;

10 (ii) mausoleum entombment; and

11 (iii) niche or columbarium interment.

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

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

14 SUBTITLE 1A. STATE BOARD OF CEMETERIES.

15 5-1A-01.

16 THERE IS A STATE BOARD OF CEMETERIES IN THE DEPARTMENT.

17 5-1A-02.

18 (A) (1) THE BOARD CONSISTS OF TWELVE MEMBERS.

19 (2) OF THE TWELVE MEMBERS OF THE BOARD:

20 (I) FOUR SHALL BE CEMETERY OWNERS OR EMPLOYEES OF
21 CEMETERIES THAT:

22 1. ARE INCORPORATED IN THIS STATE; AND

23 2. ARE NOT CONTROLLED BY AN OUT-OF-STATE

24 CORPORATION; AND

25 (II) EIGHT SHALL BE CONSUMER MEMBERS.

26 (3) EACH BOARD MEMBER SHALL BE A RESIDENT OF THE STATE.

27 (4) THE GOVERNOR SHALL APPOINT THE MEMBERS WITH THE ADVICE
28 OF THE SECRETARY AND WITH THE ADVICE AND CONSENT OF THE SENATE.

29 (B) EACH CONSUMER MEMBER OF THE BOARD:

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

3

1 (2) MAY NOT BE OR EVER HAVE BEEN A CEMETERY OWNER OR
2 EMPLOYEE OF A CEMETERY;

3 (3) MAY NOT HAVE A HOUSEHOLD MEMBER WHO IS A CEMETERY
4 OWNER OR EMPLOYEE OF A CEMETERY;

5 (4) MAY NOT PARTICIPATE OR EVER HAVE PARTICIPATED IN A
6 COMMERCIAL OR PROFESSIONAL FIELD RELATED TO CEMETERY OPERATION; AND

7 (5) MAY NOT, WITHIN 2 YEARS BEFORE APPOINTMENT, HAVE HAD A
8 SUBSTANTIAL FINANCIAL INTEREST IN A PERSON REGULATED BY THE BOARD.

9 (C) EACH MEMBER OF THE BOARD MAY NOT:

10 (1) BE OR EVER HAVE BEEN A MORTICIAN, FUNERAL DIRECTOR, OR
11 APPRENTICE, AS DEFINED IN § 7-101 OF THE HEALTH OCCUPATION ARTICLE;

12 (2) HAVE A HOUSEHOLD MEMBER WHO IS A MORTICIAN, FUNERAL
13 DIRECTOR, OR APPRENTICE; AND

14 (3) PARTICIPATE OR EVER HAVE PARTICIPATED IN A COMMERCIAL OR
15 PROFESSIONAL FIELD RELATED TO THE PRACTICE OF MORTUARY SCIENCE.

16 (D) WHILE A MEMBER OF THE BOARD, A CONSUMER MEMBER MAY NOT
17 HAVE A SUBSTANTIAL FINANCIAL INTEREST IN A PERSON REGULATED BY THE
18 BOARD.

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

21 (F) (1) THE TERM OF A MEMBER IS 4 YEARS AND BEGINS ON OCTOBER 1.

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

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

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

29 (5) TO THE EXTENT PRACTICABLE, THE GOVERNOR SHALL FILL A
30 VACANCY ON THE BOARD OCCURRING DURING THE TERM OF AN APPOINTED
31 MEMBER WITHIN 60 DAYS AFTER THE DATE OF THE VACANCY.

32 (6) A MEMBER MAY NOT SERVE MORE THAN TWO CONSECUTIVE FULL
33 TERMS.

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

4

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

4 5-1A-03.

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

7 (B) THE BOARD SHALL DETERMINE:

8 (1) THE MANNER OF ELECTION OF OFFICERS;

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

10 (3) THE DUTIES OF EACH OFFICER.

11 5-1A-04.

12 (A) A MAJORITY OF THE FULL AUTHORIZED MEMBERSHIP OF THE BOARD IS
13 A QUORUM TO DO BUSINESS.

14 (B) (1) THE BOARD SHALL MEET AT LEAST ONCE A YEAR, AT THE TIMES
15 AND PLACES THAT IT SETS IN ITS BYLAWS AND RULES AND REGULATIONS.

16 (2) THE BOARD SHALL HOLD SPECIAL MEETINGS:

17 (I) THAT IT CONSIDERS NECESSARY; OR

18 (II) AS THE SECRETARY DIRECTS.

19 (C) EACH MEMBER OF THE BOARD IS ENTITLED TO:

20 (1) COMPENSATION IN ACCORDANCE WITH THE BUDGET OF THE
21 BOARD FOR EACH MEETING THAT THE MEMBER ATTENDS; AND

22 (2) REIMBURSEMENT FOR EXPENSES AT A RATE DETERMINED BY THE
23 BOARD.

24 (D) (1) THE BOARD MAY APPOINT A BOARD SECRETARY, WHO MAY BE A
25 MEMBER OF THE BOARD.

26 (2) THE BOARD MAY EMPLOY INSPECTORS AND OTHER STAFF IN
27 ACCORDANCE WITH THE BUDGET OF THE BOARD.

28 5-1A-05.

29 IN ADDITION TO THE POWERS AND DUTIES SET FORTH ELSEWHERE IN THIS
30 TITLE, THE BOARD HAS THE FOLLOWING POWERS AND DUTIES:

31 (1) TO ADOPT BYLAWS, RULES, AND REGULATIONS TO CARRY OUT THE
32 PROVISIONS OF THIS TITLE;

33 (2) TO ADOPT A SEAL;

34 (3) TO KEEP A LIST OF ALL INDIVIDUALS CURRENTLY LICENSED BY THE
35 BOARD;

5

1 (4) TO INVESTIGATE ANY ALLEGED VIOLATION OF THIS TITLE; AND

2 (5) TO INSPECT THE RECORDS AND SITES OF LICENSEES TO DETERMINE
3 COMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE.

4 5-1A-06.

5 (A) THERE IS A STATE BOARD OF CEMETERIES FUND.

6 (B) (1) THE BOARD MAY SET REASONABLE FEES FOR ITS SERVICES.

7 (2) THE FEES CHARGED SHALL BE SET SO AS TO APPROXIMATE THE
8 COST OF MAINTAINING THE BOARD INCLUDING THE COMPENSATION AND
9 EXPENSES OF THE BOARD MEMBERS.

10 (C) (1) THE BOARD SHALL PAY ALL FEES AND OTHER REVENUE
11 COLLECTED UNDER THIS TITLE TO THE COMPTROLLER OF THE STATE.

12 (2) THE COMPTROLLER SHALL DISTRIBUTE THE FEES TO THE STATE
13 BOARD OF CEMETERIES FUND.

14 (D) (1) THE FUND SHALL BE USED TO COVER THE ACTUAL DOCUMENTED
15 DIRECT AND INDIRECT COSTS OF FULFILLING THE STATUTORY AND REGULATORY
16 DUTIES OF THE BOARD AS PROVIDED BY THIS TITLE.

17 (2) THE FUND IS A CONTINUING NONLAPSING FUND, NOT SUBJECT TO §
18 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

19 (3) ANY UNSPENT PORTIONS OF THE FUND MAY NOT BE TRANSFERRED
20 OR REVERT TO THE GENERAL FUND OF THE STATE, BUT SHALL REMAIN IN THE
21 FUND TO BE USED FOR THE PURPOSES SPECIFIED IN THIS TITLE.

22 (4) NO OTHER STATE MONEY MAY BE USED TO SUPPORT THE FUND.

23 (E) (1) A DESIGNEE OF THE BOARD SHALL ADMINISTER THE FUND.

24 (2) MONEYS IN THE FUND MAY BE EXPENDED ONLY FOR A LAWFUL
25 PURPOSE AUTHORIZED UNDER THE PROVISIONS OF THIS TITLE.

26 (F) THE LEGISLATIVE AUDITOR SHALL AUDIT THE ACCOUNTS AND
27 TRANSACTIONS OF THE FUND AS PROVIDED IN § 2-1215 OF THE STATE GOVERNMENT
28 ARTICLE.

29 5-1A-07.

30 A PERSON SHALL HAVE THE IMMUNITY FROM LIABILITY DESCRIBED UNDER §
31 5-399.7 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE FOR GIVING
32 INFORMATION TO THE BOARD OR OTHERWISE PARTICIPATING IN ITS ACTIVITIES.

33 5-1A-08.

34 A PERSON SHALL BE LICENSED BY THE BOARD AS A CEMETERY OWNER
35 BEFORE THE PERSON MAY OWN, OPERATE, OR DEVELOP A CEMETERY IN THE
36 STATE.

6

1 5-1A-09.

2 TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL MEET ANY REQUIREMENTS
3 THAT THE BOARD ESTABLISHES FOR LICENSE APPLICANTS.

4 5-1A-10.

5 (A) AN APPLICANT FOR A LICENSE SHALL:

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

8 (2) PAY TO THE BOARD AN APPLICATION FEE SET BY THE BOARD.

9 (B) EACH APPLICATION FOR A LICENSE MADE BY A CORPORATION SHALL
10 STATE THE NAME AND ADDRESS OF EACH OFFICER AND DIRECTOR OF THE
11 CORPORATION.

12 5-1A-11.

13 (A) THE BOARD SHALL EXAMINE ALL APPLICATIONS FOR LICENSURE AND
14 SHALL ISSUE A LICENSE TO EACH APPLICANT THAT MEETS THE REQUIREMENTS OF
15 THIS SUBTITLE.

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

17 (1) THE SIGNATURE OF THE SECRETARY OF THE DEPARTMENT; AND

18 (2) THE SEAL OF THE BOARD.

19 5-1A-12.

20 (A) WHILE A LICENSE IS IN EFFECT, IT AUTHORIZES THE LICENSEE TO OWN,
21 OPERATE, OR DEVELOP A CEMETERY.

22 (B) A LICENSE ISSUED BY THE BOARD UNDER THIS SUBTITLE IS NOT
23 TRANSFERABLE.

24 5-1A-13.

25 IF A CORPORATION IS SOLD, DECLARES BANKRUPTCY, OR CEASES TO
26 OPERATE, WRITTEN NOTICE MUST BE SUBMITTED TO:

27 (1) THE BOARD, WITHIN 2 WEEKS OF THE OCCURRENCE, DETAILING
28 THE CHANGES AND THE ARRANGEMENTS FOR CARRYING OUT, UNDER SUBTITLE 4
29 OF THIS TITLE, PRENEED BURIAL CONTRACTS AND DISBURSEMENT OF MONEY
30 HELD IN ESCROW; AND

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

33 5-1A-14.

34 (A) (1) A LICENSE ISSUED UNDER THIS TITLE EXPIRES ON THE DATE SET BY
35 THE BOARD, UNLESS THE LICENSE IS RENEWED FOR AN ADDITIONAL TERM AS
36 PROVIDED IN THIS SECTION.

7

1 (2) A LICENSE MAY NOT BE RENEWED FOR A TERM LONGER THAN 2
2 YEARS.

3 (B) AT LEAST 1 MONTH BEFORE A LICENSE EXPIRES, THE BOARD SHALL SEND
4 TO THE LICENSEE, BY FIRST-CLASS MAIL TO THE LAST KNOWN ADDRESS OF THE
5 LICENSEE, A RENEWAL APPLICATION FORM AND A NOTICE THAT STATES:

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

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

10 (3) THE AMOUNT OF THE RENEWAL FEE.

11 (C) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, BEFORE A LICENSE
12 EXPIRES, THE LICENSEE PERIODICALLY MAY RENEW IT FOR AN ADDITIONAL TERM,
13 IF THE LICENSEE:

14 (1) IS OTHERWISE ENTITLED TO BE LICENSED;

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

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

18 (D) EACH APPLICATION FOR RENEWAL MADE BY A CORPORATION SHALL
19 STATE THE NAME AND ADDRESS OF EACH OFFICER AND DIRECTOR OF THE
20 CORPORATION.

21 (E) (1) THE BOARD SHALL RENEW THE LICENSE OF AND ISSUE A RENEWAL
22 CERTIFICATE TO EACH LICENSEE WHO MEETS THE REQUIREMENTS OF THIS
23 SECTION.

24 (2) THE SECRETARY OF THE BOARD MAY ISSUE A RENEWAL
25 CERTIFICATE DURING THE INTERIM BETWEEN MEETINGS OF THE BOARD.

26 (3) THE BOARD SHALL INCLUDE ON EACH RENEWAL CERTIFICATE
27 THAT THE BOARD ISSUES:

28 (I) THE SIGNATURE OF THE SECRETARY OF THE DEPARTMENT;
29 AND

30 (II) THE SEAL OF THE BOARD.

31 5-1A-15.

32 (A) SUBJECT TO THE HEARING PROVISIONS OF § 5-1A-17 OF THIS SUBTITLE,
33 THE BOARD MAY DENY A LICENSE TO AN APPLICANT, REPRIMAND A LICENSEE,
34 PLACE A LICENSEE ON PROBATION, OR SUSPEND OR REVOKE A LICENSE IF THE
35 APPLICANT OR LICENSEE:

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

8

1 (2) FRAUDULENTLY OR DECEPTIVELY USES A LICENSE;

2 (3) COMMITS FRAUD OR MISREPRESENTATION IN THE OPERATION OF A
3 CEMETERY;

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

8 (5) AIDS OR ABETS AN UNAUTHORIZED PERSON IN THE OPERATION OF
9 A CEMETERY;

10 (6) ADVERTISES FALSELY OR IN A MISLEADING MANNER;

11 (7) FAILS, AFTER PROPER DEMAND, TO REFUND PROMPTLY ANY
12 PAYMENTS RECEIVED UNDER A PRENEED BURIAL CONTRACT;

13 (8) OPERATES A CEMETERY UNDER A NAME OTHER THAN THE NAME
14 THAT APPEARS ON THE LICENSE OF THAT PERSON;

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

18 (10) IS DISCIPLINED BY A LICENSING OR DISCIPLINARY AUTHORITY OF
19 ANY OTHER STATE OR COUNTRY OR CONVICTED OR DISCIPLINED BY A COURT OF
20 ANY STATE OR COUNTRY FOR AN ACT THAT WOULD BE GROUNDS FOR
21 DISCIPLINARY ACTION UNDER THE PROVISIONS OF THIS TITLE;

22 (11) WILLFULLY MAKES OR FILES A FALSE REPORT OR RECORD IN THE
23 OPERATION OF A CEMETERY;

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

27 (13) SUBMITS A FALSE STATEMENT TO COLLECT A FEE;

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

29 (15) FAILS TO COMPLY WITH INSPECTION REQUIREMENTS IN THE TIME
30 SPECIFIED BY THE BOARD;

31 (16) VIOLATES ANY PROVISION OF THIS TITLE; OR

32 (17) VIOLATES ANY RULE OR REGULATION ADOPTED BY THE BOARD.

33 (B) (1) IF, AFTER THE BOARD BRINGS AN ACTION UNDER SUBSECTION (A)
34 OF THIS SECTION, THE BOARD FINDS THAT THERE ARE GROUNDS TO PLACE A
35 LICENSEE ON PROBATION OR SUSPEND OR REVOKE A LICENSE, THE BOARD MAY
36 IMPOSE A PENALTY NOT EXCEEDING \$5,000:

37 (I) INSTEAD OF SUSPENDING OR REVOKING THE LICENSE; OR

9

1 (II) IN ADDITION TO PLACING THE LICENSEE ON PROBATION OR
2 SUSPENDING OR REVOKING THE LICENSE.

3 (2) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS
4 SECTION INTO THE GENERAL FUND OF THE STATE.

5 5-1A-16.

6 (A) UNLESS THE BOARD AGREES TO ACCEPT THE SURRENDER OF A LICENSE
7 WHILE THE LICENSEE IS UNDER INVESTIGATION OR WHILE CHARGES ARE PENDING
8 AGAINST A LICENSEE, THE LICENSEE MAY NOT:

9 (1) SURRENDER THE LICENSE; OR

10 (2) ALLOW THE LICENSE TO LAPSE BY OPERATION OF THE LAW.

11 (B) THE BOARD MAY SET CONDITIONS ON ITS AGREEMENT WITH THE
12 LICENSEE UNDER INVESTIGATION OR AGAINST WHOM CHARGES ARE PENDING TO
13 ACCEPT SURRENDER OF THE LICENSE.

14 5-1A-17.

15 (A) EXCEPT AS OTHERWISE PROVIDED IN TITLE 10, SUBTITLE 4 OF THE STATE
16 GOVERNMENT ARTICLE, BEFORE THE BOARD TAKES ANY ACTION UNDER § 5-1A-15
17 OF THIS SUBTITLE, IT SHALL GIVE THE PERSON AGAINST WHOM THE ACTION IS
18 CONTEMPLATED AN OPPORTUNITY FOR A HEARING BEFORE THE BOARD.

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

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

22 (D) OVER THE SIGNATURE OF AN OFFICER OR THE ADMINISTRATOR OF THE
23 BOARD, THE BOARD MAY ISSUE SUBPOENAS AND ADMINISTER OATHS IN
24 CONNECTION WITH ANY INVESTIGATION UNDER THIS SUBTITLE AND ANY
25 HEARINGS OR PROCEEDINGS BEFORE IT.

26 (E) IF, WITHOUT LAWFUL EXCUSE, A PERSON DISOBEYS A SUBPOENA FROM
27 THE BOARD OR AN ORDER BY THE BOARD TO TAKE AN OATH OR TO TESTIFY OR
28 ANSWER A QUESTION, THEN, ON PETITION OF THE BOARD, A COURT OF COMPETENT
29 JURISDICTION SHALL COMPEL COMPLIANCE WITH THE SUBPOENA AND MAY PUNISH
30 THE PERSON AS FOR CONTEMPT OF COURT.

31 (F) IF, AFTER DUE NOTICE, THE INDIVIDUAL AGAINST WHOM THE ACTION IS
32 CONTEMPLATED FAILS OR REFUSES TO APPEAR, NEVERTHELESS THE BOARD MAY
33 HEAR AND DETERMINE THE MATTER.

34 (G) IF AFTER A HEARING AN INDIVIDUAL IS FOUND IN VIOLATION OF §
35 5-1A-15 OF THIS SUBTITLE, THE INDIVIDUAL SHALL PAY THE HEARING COSTS.

36 5-1A-18.

37 (A) ANY PERSON AGGRIEVED BY A FINAL DECISION OF THE BOARD IN A
38 CONTESTED CASE, AS DEFINED IN § 10-202 OF THE STATE GOVERNMENT ARTICLE,

10

1 MAY TAKE AN APPEAL AS ALLOWED IN §§ 10-222 AND 10-223 OF THE STATE
2 GOVERNMENT ARTICLE.

3 (B) IF A PERSON APPEALS AN ORDER OF SUSPENSION OR REVOCATION BY
4 THE BOARD, THE ORDER IS STAYED.

5 5-306.

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

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

11 (i) the Attorney General or an authorized representative of the
12 Attorney General; and

13 (ii) the State's Attorney for the county where the cemetery owner does
14 business or where the cemetery is located.

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

18 (2) The report shall:

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

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

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

22 (iv) include:

23 1. the name of the cemetery owner;

24 2. each location of the cemetery owner;

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

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

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

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

34 7. the name and address of each trustee.

11

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

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

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

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

8 5-307.

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

12 (1) the Attorney General for civil enforcement; or

13 (2) the appropriate State's Attorney for criminal prosecution.

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

15 (1) injunctive or other equitable relief;

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

17 (3) both.

18 SUBTITLE 3A. CEMETERY GUARANTY FUND.

19 5-3A-01.

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

22 (B) "LICENSEE" MEANS A PERSON HOLDING A LICENSE AS A CEMETERY
23 OWNER UNDER SUBTITLE 1A OF THIS TITLE.

24 (C) "PERPETUAL CARE COSTS" MEANS THE COSTS OF PROVIDING SERVICES
25 AND MATERIALS FOR PERPETUAL CARE OF AN ITEM OR AREA WITHIN A CEMETERY.

26 (D) "PURCHASER" MEANS A PERSON WHO HAS CONTRACTED WITH A
27 LICENSEE FOR PERPETUAL CARE.

28 5-3A-02.

29 THIS SUBTITLE DOES NOT:

30 (1) LIMIT THE AUTHORITY OF THE BOARD TO TAKE DISCIPLINARY
31 ACTION AGAINST A LICENSEE UNDER SUBTITLE 1A OF THIS TITLE;

32 (2) LIMIT THE AVAILABILITY OF OTHER REMEDIES TO A CLAIMANT; OR

33 (3) REQUIRE A CLAIMANT TO EXHAUST ADMINISTRATIVE REMEDIES
34 BEFORE THE BOARD BEFORE BRINGING AN ACTION IN COURT.

12

1 5-3A-03.

2 (A) THE BOARD SHALL:

3 (1) ESTABLISH A CEMETERY GUARANTY FUND; AND

4 (2) KEEP THE GUARANTY FUND AT A LEVEL OF AT LEAST \$250,000.

5 (B) (1) THE BOARD SHALL DEPOSIT ALL MONEYS COLLECTED TO THE
6 CREDIT OF THE GUARANTY FUND WITH THE STATE TREASURER FOR PLACEMENT
7 INTO A SPECIAL ACCOUNT.

8 (2) (I) THE STATE TREASURER SHALL INVEST THE MONEY IN THE
9 GUARANTY FUND IN THE SAME WAY THAT MONEY IN THE STATE RETIREMENT AND
10 PENSION SYSTEM IS INVESTED.

11 (II) INVESTMENT EARNINGS SHALL BE CREDITED TO THE
12 GUARANTY FUND.

13 (C) THE BOARD SHALL ADMINISTER THE GUARANTY FUND IN ACCORDANCE
14 WITH THIS SUBTITLE.

15 5-3A-04.

16 (A) BEFORE THE BOARD ISSUES A LICENSE UNDER SUBTITLE 1A OF THIS
17 TITLE, THE APPLICANT SHALL PAY A FEE OF \$100 TO BE CREDITED TO THE
18 GUARANTY FUND.

19 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF THE BOARD
20 FINDS THAT, BECAUSE OF PENDING CLAIMS, THE AMOUNT IN THE GUARANTY FUND
21 MAY FALL BELOW \$250,000, THE BOARD SHALL ASSESS EACH CEMETERY OWNER A
22 FEE OF \$50.

23 (2) THE BOARD MAY NOT ASSESS A CEMETERY OWNER MORE THAN
24 \$150 IN A CALENDAR YEAR.

25 (C) IF A CEMETERY OWNER FAILS TO PAY AN ASSESSMENT WITHIN 60 DAYS
26 AFTER NOTICE OF THE ASSESSMENT, THE CEMETERY OWNER'S LICENSE IS
27 SUSPENDED UNTIL THE ASSESSMENT IS PAID.

28 5-3A-05.

29 (A) SUBJECT TO THIS SUBTITLE, A PURCHASER OR A FAMILY MEMBER OF THE
30 PURCHASER MAY RECOVER COMPENSATION FROM THE GUARANTY FUND FOR
31 PERPETUAL CARE COSTS THAT RESULT FROM A FAILURE OF A LICENSEE TO
32 PROVIDE PERPETUAL CARE IN ACCORDANCE WITH A CONTRACT WITH THE
33 PURCHASER.

34 (B) FOR PURPOSES OF RECOVERY FROM THE GUARANTY FUND, THE
35 FAILURE OF A LICENSEE INCLUDES THE FAILURE OF A SUBCONTRACTOR,
36 SALESPERSON, OR EMPLOYEE OF THE LICENSEE, WHETHER OR NOT AN EXPRESS
37 AGENCY RELATIONSHIP EXISTS.

13

1 (C) A CLAIMANT SHALL COMPLY WITH A WRITTEN AGREEMENT TO SUBMIT A
2 DISPUTE TO ARBITRATION BEFORE SEEKING RECOVERY FROM THE GUARANTY
3 FUND.

4 (D) THE BOARD MAY DENY A CLAIM IF THE BOARD FINDS THAT THE
5 CLAIMANT UNREASONABLY REJECTED GOOD FAITH EFFORTS BY THE LICENSEE TO
6 RESOLVE THE CLAIM.

7 (E) THE BOARD MAY NOT AWARD FROM THE GUARANTY FUND:

8 (1) MORE THAN \$10,000 TO ONE CLAIMANT FOR THE FAILURE OF ONE
9 LICENSEE;

10 (2) MORE THAN \$50,000 TO ALL CLAIMANTS FOR FAILURES OF ONE
11 LICENSEE UNLESS, AFTER THE BOARD HAS PAID OUT \$50,000 ON ACCOUNT OF
12 FAILURES OF THE LICENSEE, THE LICENSEE REIMBURSES \$50,000 TO THE GUARANTY
13 FUND;

14 (3) AN AMOUNT FOR ATTORNEY FEES, CONSEQUENTIAL DAMAGES,
15 COURT COSTS, INTEREST, PERSONAL INJURY DAMAGES, OR PUNITIVE DAMAGES; OR

16 (4) AN AMOUNT AS A RESULT OF A DEFAULT JUDGMENT IN COURT.

17 (F) A CLAIM AGAINST THE GUARANTY FUND BASED ON THE FAILURE OF A
18 PARTICULAR LICENSEE MAY NOT BE MADE BY:

19 (1) A SPOUSE OR OTHER IMMEDIATE RELATIVE OF THE LICENSEE;

20 (2) AN EMPLOYEE, OFFICER, OR PARTNER OF THE LICENSEE; OR

21 (3) AN IMMEDIATE RELATIVE OF AN EMPLOYEE, OFFICER, OR
22 PARTNER OF THE LICENSEE.

23 (G) A CLAIM SHALL BE BROUGHT AGAINST THE GUARANTY FUND WITHIN 3
24 YEARS AFTER THE CLAIMANT DISCOVERED OR, BY USE OF ORDINARY DILIGENCE,
25 SHOULD HAVE DISCOVERED THE FAILURE OF THE LICENSEE TO PROVIDE
26 PERPETUAL CARE.

27 5-3A-06.

28 TO BEGIN A PROCEEDING TO RECOVER FROM THE GUARANTY FUND, A
29 CLAIMANT SHALL SUBMIT TO THE BOARD A CLAIM, UNDER OATH, THAT STATES:

30 (1) THE AMOUNT CLAIMED BASED ON THE PERPETUAL CARE COSTS;

31 (2) THE FACTS GIVING RISE TO THE CLAIM;

32 (3) ANY OTHER EVIDENCE THAT SUPPORTS THE CLAIM; AND

33 (4) ANY OTHER INFORMATION THAT THE BOARD REQUIRES.

14

1 5-3A-07.

2 (A) THE PROCEDURES FOR NOTICE, HEARINGS, AND JUDICIAL REVIEW THAT
3 APPLY TO PROCEEDINGS UNDER SUBTITLE 1A OF THIS TITLE ALSO APPLY TO
4 PROCEEDINGS TO RECOVER FROM THE GUARANTY FUND.

5 (B) ON RECEIPT OF A CLAIM, THE BOARD SHALL:

6 (1) SEND A COPY OF THE CLAIM TO THE LICENSEE ALLEGED TO BE
7 RESPONSIBLE FOR THE PERPETUAL CARE COSTS; AND

8 (2) REQUIRE A WRITTEN RESPONSE TO THE ALLEGATIONS SET FORTH
9 IN THE CLAIM WITHIN 10 DAYS.

10 (C) (1) THE BOARD:

11 (I) SHALL REVIEW THE CLAIM AND ANY RESPONSE TO IT; AND

12 (II) MAY INVESTIGATE THE CLAIM.

13 (2) ON THE BASIS OF ITS REVIEW AND ANY INVESTIGATION, THE
14 BOARD MAY:

15 (I) SET THE MATTER FOR A HEARING;

16 (II) DISMISS THE CLAIM, IF THE CLAIM IS FRIVOLOUS, LEGALLY
17 INSUFFICIENT, OR MADE IN BAD FAITH; OR

18 (III) ISSUE A PROPOSED ORDER TO PAY ALL OR PART OF THE
19 CLAIM OR DENY THE CLAIM IF THE TOTAL CLAIM AGAINST A PARTICULAR
20 LICENSEE DOES NOT EXCEED \$2,500.

21 (D) (1) THE BOARD SHALL SEND THE PROPOSED ORDER TO THE CLAIMANT
22 AND THE LICENSEE, AT THE MOST RECENT ADDRESS ON RECORD WITH THE BOARD,
23 BY:

24 (I) PERSONAL DELIVERY; OR

25 (II) BOTH REGULAR MAIL AND CERTIFIED MAIL, RETURN RECEIPT
26 REQUESTED.

27 (2) WITHIN 21 DAYS AFTER SERVICE, RECEIPT, OR ATTEMPTED
28 DELIVERY OF THE PROPOSED ORDER, THE CLAIMANT OR LICENSEE MAY SUBMIT TO
29 THE BOARD:

30 (I) A WRITTEN REQUEST FOR A HEARING BEFORE THE BOARD;
31 OR

32 (II) A WRITTEN EXCEPTION TO THE PROPOSED ORDER.

33 (3) IF THE CLAIMANT OR LICENSEE SUBMITS A TIMELY EXCEPTION TO
34 THE PROPOSED ORDER, THE BOARD MAY:

35 (I) ISSUE A REVISED PROPOSED ORDER;

36 (II) SET A HEARING ON THE CLAIM; OR

15

1 (III) DISMISS THE CLAIM.

2 (4) UNLESS THE CLAIMANT OR LICENSEE SUBMITS A TIMELY REQUEST
3 FOR A HEARING OR A TIMELY EXCEPTION, THE PROPOSED ORDER IS FINAL.

4 (E) (1) AT A HEARING ON A CLAIM, THE CLAIMANT HAS THE BURDEN OF
5 PROOF.

6 (2) IF A SALESPERSON OR OTHER EMPLOYEE OF THE LICENSEE IS
7 NECESSARY TO ADJUDICATE A CLAIM FAIRLY, THE BOARD SHALL ISSUE A
8 SUBPOENA FOR THAT PERSON TO APPEAR AT THE HEARING.

9 5-3A-08.

10 (A) (1) THE BOARD MAY JOIN A PROCEEDING ON A CLAIM AGAINST THE
11 GUARANTY FUND WITH A DISCIPLINARY PROCEEDING AGAINST A LICENSEE UNDER
12 SUBTITLE 1A OF THIS TITLE, IF THE DISCIPLINARY HEARING IS BASED ON THE SAME
13 FACTS ALLEGED IN THE CLAIM.

14 (2) IN A CONSOLIDATED PROCEEDING, THE CLAIMANT IS A PARTY AND
15 MAY PARTICIPATE IN THE HEARING TO THE EXTENT NECESSARY TO ESTABLISH THE
16 CLAIM.

17 (B) (1) NOTWITHSTANDING § 5-3A-02(2) OF THIS SUBTITLE, A CLAIMANT
18 MAY NOT CONCURRENTLY SUBMIT A CLAIM TO RECOVER FROM THE GUARANTY
19 FUND AND BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION AGAINST A
20 LICENSEE BASED ON THE SAME FACTS ALLEGED IN THE CLAIM.

21 (2) IF THE CLAIMANT BRINGS AN ACTION IN A COURT OF COMPETENT
22 JURISDICTION BASED ON THE SAME FACTS ALLEGED IN A PENDING CLAIM, THE
23 BOARD SHALL STAY ITS PROCEEDINGS ON THE CLAIM UNTIL THERE IS A FINAL
24 JUDGMENT AND ALL RIGHTS TO APPEAL ARE EXHAUSTED.

25 (3) (I) TO THE EXTENT THAT A FINAL JUDGMENT OR FINAL AWARD
26 IN ARBITRATION IS DECIDED IN FAVOR OF THE CLAIMANT, THE BOARD SHALL
27 APPROVE THE CLAIM AGAINST THE GUARANTY FUND.

28 (II) IF A FINAL JUDGMENT OR FINAL AWARD IN ARBITRATION IS
29 DECIDED IN FAVOR OF THE DEFENDANT, THE BOARD SHALL DISMISS THE CLAIM
30 AGAINST THE GUARANTY FUND.

31 5-3A-09.

32 (A) THE BOARD MAY ORDER PAYMENT OF A CLAIM AGAINST THE
33 GUARANTY FUND ONLY IF:

34 (1) THE DECISION OR ORDER OF THE BOARD IS FINAL IN ACCORDANCE
35 WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE AND ALL RIGHTS
36 OF APPEAL ARE EXHAUSTED; OR

37 (2) THE CLAIMANT PROVIDES THE BOARD WITH A CERTIFIED COPY OF
38 A FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION OR A FINAL AWARD
39 IN ARBITRATION, WITH ALL RIGHTS OF APPEAL EXHAUSTED, IN WHICH THE COURT
40 OR ARBITRATOR:

16

1 (I) EXPRESSLY HAS FOUND ON THE MERITS THAT THE CLAIMANT
2 IS ENTITLED TO RECOVER UNDER § 5-3A-05(A) OF THIS SUBTITLE; AND

3 (II) HAS FOUND THE VALUE OF THE PERPETUAL CARE COSTS.

4 (B) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
5 BOARD SHALL PAY APPROVED CLAIMS IN THE ORDER SUBMITTED.

6 (2) IF APPROVED CLAIMS SUBMITTED TO THE BOARD AGAINST A
7 LICENSEE, COMBINED WITH ANY UNREIMBURSED CLAIM PAYMENTS PREVIOUSLY
8 MADE FOR THE LICENSEE, EXCEED \$50,000, THE BOARD MAY PAY THE APPROVED
9 CLAIMS PROPORTIONATELY SO THAT EACH CLAIMANT RECEIVES THE SAME
10 PERCENTAGE PAYMENT OF THE CLAIMS.

11 (3) AFTER THE GUARANTY FUND IS REIMBURSED, THE BOARD SHALL
12 PAY UNSATISFIED APPROVED CLAIMS.

13 (C) IF THERE IS NOT ENOUGH MONEY IN THE GUARANTY FUND TO PAY AN
14 APPROVED CLAIM WHOLLY OR PARTLY, THE BOARD SHALL PAY THE UNPAID
15 CLAIM:

16 (1) WHEN ENOUGH MONEY IS DEPOSITED IN THE GUARANTY FUND;
17 AND

18 (2) IN THE ORDER THAT EACH CLAIM ORIGINALLY WAS FILED WITH A
19 COURT OF COMPETENT JURISDICTION OR SUBMITTED TO THE BOARD.

20 5-3A-10.

21 (A) (1) AFTER THE BOARD PAYS A CLAIM FROM THE GUARANTY FUND:

22 (I) THE BOARD IS SUBROGATED TO ALL RIGHTS OF THE
23 CLAIMANT IN THE CLAIM UP TO THE AMOUNT PAID;

24 (II) THE CLAIMANT SHALL ASSIGN TO THE BOARD ALL RIGHTS OF
25 THE CLAIMANT IN THE CLAIM UP TO THE AMOUNT PAID; AND

26 (III) THE BOARD HAS A RIGHT TO REIMBURSEMENT OF THE
27 GUARANTY FUND BY THE LICENSEE THAT THE BOARD FINDS RESPONSIBLE FOR
28 THE FAILURE GIVING RISE TO THE CLAIM FOR:

29 1. THE AMOUNT PAID FROM THE GUARANTY FUND; AND

30 2. INTEREST ON THAT AMOUNT AT AN ANNUAL RATE OF AT
31 LEAST 10%, AS SET BY THE BOARD.

32 (2) ALL MONEY THAT THE BOARD RECOVERS ON A CLAIM SHALL BE
33 DEPOSITED IN THE GUARANTY FUND.

34 (B) IF, WITHIN 30 DAYS AFTER THE BOARD GIVES NOTICE, A LICENSEE ON
35 WHOSE ACCOUNT A CLAIM WAS PAID DOES NOT REIMBURSE THE GUARANTY FUND
36 IN FULL, THE BOARD MAY SUE THE LICENSEE IN A COURT OF COMPETENT
37 JURISDICTION FOR THE UNREIMBURSED AMOUNT.

17

1 (C) THE BOARD IS ENTITLED TO A JUDGMENT FOR THE UNREIMBURSED
2 AMOUNT IF THE BOARD PROVES THAT:

3 (1) A CLAIM WAS PAID FROM THE GUARANTY FUND ON ACCOUNT OF
4 THE LICENSEE;

5 (2) THE LICENSEE HAS NOT REIMBURSED THE GUARANTY FUND IN
6 FULL;

7 (3) THE LICENSEE WAS GIVEN NOTICE AND AN OPPORTUNITY TO
8 PARTICIPATE IN A HEARING ON THE CLAIM BEFORE THE BOARD; AND

9 (4) (I) THE BOARD DIRECTED PAYMENT BASED ON A FINAL
10 JUDGMENT OF A COURT OF COMPETENT JURISDICTION OR A FINAL AWARD IN
11 ARBITRATION; OR

12 (II) THE DECISION OR ORDER OF THE BOARD IS FINAL IN
13 ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE
14 AND THERE IS NO PENDING APPEAL.

15 (D) THE BOARD MAY REFER TO THE CENTRAL COLLECTION UNIT FOR
16 COLLECTION UNDER ARTICLE 19, §§ 43 THROUGH 46 OF THE CODE A DEBT OWED TO
17 THE BOARD BY A LICENSEE ON WHOSE ACCOUNT A CLAIM WAS PAID FROM THE
18 GUARANTY FUND AND WHO IS AT LEAST 1 YEAR BEHIND IN REIMBURSEMENT
19 PAYMENTS TO THE GUARANTY FUND.

20 (E) FOR THE PURPOSE OF EXCEPTING TO A DISCHARGE OF A LICENSEE
21 UNDER FEDERAL BANKRUPTCY LAW, THE BOARD IS A CREDITOR OF THE LICENSEE
22 FOR THE AMOUNT PAID FROM THE GUARANTY FUND.

23 (F) (1) (I) IF A PERSON LIABLE FOR REIMBURSING THE GUARANTY FUND
24 UNDER THIS SECTION RECEIVES A DEMAND FOR REIMBURSEMENT AND FAILS TO
25 REIMBURSE THE GUARANTY FUND, THE REIMBURSEMENT AMOUNT AND ANY
26 ACCRUED INTEREST OR COSTS ARE A LIEN IN FAVOR OF THE STATE ON ANY REAL
27 PROPERTY OF THE PERSON IF THE LIEN IS RECORDED AND INDEXED AS PROVIDED
28 IN THIS SUBSECTION.

29 (II) INTEREST SHALL CONTINUE AT THE RATE OF INTEREST ON A
30 JUDGMENT AS PROVIDED IN § 11-107(A) OF THE COURTS ARTICLE UNTIL THE FULL
31 AMOUNT DUE THE GUARANTY FUND IS PAID.

32 (2) THE LIEN IN FAVOR OF THE STATE CREATED BY THIS SUBSECTION
33 MAY NOT ATTACH TO SPECIFIC PROPERTY UNTIL THE STATE CENTRAL COLLECTION
34 UNIT RECORDS WRITTEN NOTICE OF THE LIEN IN THE OFFICE OF THE CLERK OF
35 THE COURT FOR THE COUNTY IN WHICH THE PROPERTY SUBJECT TO THE LIEN OR
36 ANY PART OF THE PROPERTY IS LOCATED.

37 (3) THE LIEN IN FAVOR OF THE STATE CREATED BY THIS SUBSECTION
38 DOES NOT HAVE PRIORITY AS TO ANY SPECIFIC PROPERTY OVER ANY PERSON WHO
39 IS A LIENHOLDER OF RECORD AT THE TIME THE NOTICE REQUIRED UNDER
40 PARAGRAPH (2) OF THIS SUBSECTION IS RECORDED.

18

1 (4) THE NOTICE REQUIRED UNDER PARAGRAPH (2) OF THIS
2 SUBSECTION SHALL CONTAIN:

3 (I) THE NAME AND ADDRESS OF THE PERSON AGAINST WHOSE
4 PROPERTY THE LIEN EXISTS;

5 (II) THE AMOUNT OF THE LIEN;

6 (III) A DESCRIPTION OF OR REFERENCE TO THE PROPERTY
7 SUBJECT TO THE LIEN; AND

8 (IV) THE DATE THE GUARANTY FUND PAID THE CLAIM GIVING
9 RISE TO THE LIEN.

10 (5) UPON PRESENTATION OF A RELEASE OF ANY LIEN IN FAVOR OF THE
11 STATE CREATED BY THIS SUBSECTION, THE CLERK OF THE COURT IN WHICH THE
12 LIEN IS RECORDED AND INDEXED SHALL RECORD AND INDEX THE RELEASE AND
13 SHALL NOTE IN THE LIEN DOCKET THE DATE THE RELEASE IS FILED AND THE FACT
14 THAT THE LIEN IS RELEASED.

15 (6) THE NOTICE REQUIRED UNDER PARAGRAPH (2) OF THIS
16 SUBSECTION AND ANY RELEASE FILED UNDER PARAGRAPH (5) OF THIS SUBSECTION
17 SHALL BE INDEXED WITH THE JUDGMENT LIEN RECORDS MAINTAINED BY THE
18 OFFICE OF THE CLERK OF THE COURT WHERE THE NOTICE IS RECORDED.

19 (7) THE CLERK MAY COLLECT A REASONABLE FEE FOR RECORDING
20 AND INDEXING EACH NOTICE OF LIEN OR RELEASE OF ANY LIEN UNDER THIS
21 SUBSECTION.

22 5-3A-11.

23 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IF THE
24 BOARD PAYS A CLAIM AGAINST THE GUARANTY FUND BASED ON A FAILURE OF A
25 LICENSEE, THE BOARD MAY SUSPEND THE LICENSE UNTIL THE LICENSEE
26 REIMBURSES THE GUARANTY FUND IN FULL FOR:

27 (1) THE AMOUNT PAID FROM THE GUARANTY FUND; AND

28 (2) INTEREST ON THAT AMOUNT AT AN ANNUAL RATE OF AT LEAST
29 10%, AS SET BY THE BOARD.

30 (B) THE BOARD MAY NOT SUSPEND THE LICENSE IF THE BOARD FINDS THAT
31 THE LICENSEE OR MANAGEMENT PERSONNEL OF THE LICENSEE:

32 (1) DID NOT KNOW OF THE WRONGFUL CONDUCT; OR

33 (2) COULD NOT PREVENT THE VIOLATION.

34 (C) REIMBURSEMENT OF THE GUARANTY FUND IN FULL BY A LICENSEE, BY
35 ITSELF, DOES NOT NULLIFY OR MODIFY THE EFFECT OF A DISCIPLINARY
36 PROCEEDING AGAINST A LICENSEE.

19

1 5-410.

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

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

6 (i) the Attorney General or an authorized representative of the
7 Attorney General; and

8 (ii) the State's Attorney for the county where the seller does business.

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

12 (2) The report shall:

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

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

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

16 (iv) include:

17 1. the name of the seller;

18 2. each location of the seller;

19 3. the amount of money that the seller received during that year
20 that is subject to the trust requirements of this subtitle;

21 4. the amount of money actually deposited into trust accounts
22 in that year; and

23 5. the name and address of the trustee.

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

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

27 (1) to administer this section; and

28 (2) for determining whether sellers are complying with this subtitle.

29 5-411.

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

33 (1) the Attorney General for civil enforcement; or

34 (2) the appropriate State's Attorney for criminal prosecution.

20

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

2 (1) injunctive or other equitable relief;

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

4 (3) both.

5 **Article - Courts and Judicial Proceedings**

6 5-399.7.

7 (A) IN THIS SECTION, "BOARD" MEANS THE STATE BOARD OF CEMETERIES.

8 (B) A PERSON WHO ACTS IN GOOD FAITH AND WITHIN THE SCOPE OF THE
9 JURISDICTION OF THE BOARD IS NOT CIVILLY LIABLE FOR GIVING INFORMATION
10 TO THE BOARD OR OTHERWISE PARTICIPATING IN ITS ACTIVITIES.

11 SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the initial
12 members of State Board of Cemeteries shall expire as follows:

13 (1) 2 cemetery members in 1997;

14 (2) 2 cemetery members in 1998;

15 (3) 4 consumer members in 1999; and

16 (4) 4 consumer members in 2000.

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

20 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 1996.