

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL NO. 559

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Muse (Task Force to Examine the State’s Cemetery and Funeral Industry) and Delegates” and substitute “Muse.”; in the same line strike “and DeCarlo” and substitute “, DeCarlo, Fulton, and Pendergrass”; in line 3, after “Oversight” insert “in the Department of Labor, Licensing, and Regulation”; in line 4, strike “State” and substitute “Labor, Licensing, and Regulation”; in lines 4 and 5, in each instance, strike “board” and substitute “council”; in line 5, after the first semicolon, insert “providing for the terms of the members of the advisory council.”; in line 6, strike the first “director” and substitute “Director”; strike beginning with “authorizing” in line 6 down through “fees;” in line 7 and substitute “authorizing the Director to adopt certain regulations and establish certain fees; requiring the Director to adopt certain regulations and establish certain fees; establishing a Cemetery Oversight Fund; specifying the use of the Fund.”; in line 8, after “State;” insert “providing certain exceptions.”; in line 8, strike “providing” and substitute “establishing certain”; in line 10, after “registrant” insert “or a permit holder under certain circumstances; providing for the suspension or revocation of a registrant or a permit holder under certain circumstances”; in line 13, strike “providing” and substitute “establishing certain”; strike beginning with “for” in line 15, down through “misrepresentation” in line 16; in line 16, after the first “the” insert “evaluation and”; in line 17, strike “; providing certain technical changes” and substitute “in accordance with the Program Evaluation Act; making certain technical changes”; in line 17, after “terms;” insert “requiring certain sellers of certain preneed contracts, including funeral directors and morticians, to provide certain disclosures and certain price lists to buyers under certain circumstances.”; in line 19, after “date;” insert “providing civil immunity to certain persons under certain circumstances; requiring the Office of Cemetery Oversight to collect certain information and make a certain report on or before a certain date; providing for certain effective dates for certain provisions of this Act.”; in line 19, after “Oversight” insert “and the industries and professions providing burial goods or services to consumers in the State”.

On page 2, in line 3, after “Section” insert “5-102, to be under the amended subtitle “Subtitle

(Over)

1. Definitions; General Provisions”;; in line 6, strike “5-404” and substitute “5-405”; in line 19, after “5-704(e),” insert “5-705,”; after line 29, insert:

“BY adding to

Article - Courts and Judicial Proceedings
Section 5-399.8
Annotated Code of Maryland
(1995 Replacement Volume and 1996 Supplement)

BY adding to

Article - Health Occupations
Section 7-405(g) through (i)
Annotated Code of Maryland
(1994 Replacement Volume and 1996 Supplement)

BY adding to

Article - State Government
Section 8-403(p)
Annotated Code of Maryland
(1995 Replacement Volume and 1996 Supplement)”.

On page 3, in line 2, after “Definitions” insert “; GENERAL PROVISIONS”.

On page 4, strike beginning with “CASKETS,” in line 1 down through “CEMETERY” in line 2 and substitute “BURIAL”; in lines 7 and 10, in each instance, strike “PRACTITIONER” and substitute “PROPRIETOR”; and in line 9, strike “SELLERS” and substitute “SELLER”.

AMENDMENT NO. 2

On page 3, after line 4, insert “(B)(1) “BURIAL GOODS” MEANS GOODS THAT ARE USED IN CONNECTION WITH BURIAL.”

(2) “BURIAL GOODS” INCLUDES:

(I) A CASKET;

(II) A GRAVE LINER;

(III) A MEMORIAL;

(IV) A MONUMENT;

(V) A SCROLL;

(VI) AN URN;

(VII) A VASE; AND

(VIII) A VAULT.”;

in lines 5, 11, 13, 15, 21, 26, 27, and 31, strike “(b)”, “(c)”, “(D)”, “(E)”, “(F)”, “(G)”, “(H)”, and “(I)”, respectively, and substitute “(C)”, “(D)”, “(E)”, “(F)”, “(G)”, “(H)”, “(I)”, and “(K)”, respectively; in line 16, strike “AND MAINTAINING” and substitute “OR MANAGING”; after line 30, insert:

“(J) (1) “PRENEED GOODS” MEANS BURIAL GOODS THAT ARE SOLD BEFORE THE BUYER’S DEATH.

(2) “PRENEED GOODS” DOES NOT INCLUDE BURIAL SPACE.”.

On page 4, in lines 3, 6, and 9, strike “(J)”, “(K)”, and “(L)”, respectively, and substitute “(L)”, “(M)”, and “(N)”, respectively.

On page 21, strike in their entirety lines 16 through 28, inclusive; and in line 29, strike “(f)” and substitute “(E)”.

On page 22, in lines 1, 3, and 5, strike “(g)”, “(h)”, and “(i)”, respectively, and substitute “(F)”, “(G)”, and “(H)”, respectively.

(Over)

AMENDMENT NO. 3

On page 4, strike in their entirety lines 19 through 26, inclusive, and substitute:

“(2) THE ADVISORY COUNCIL CONSISTS OF ELEVEN MEMBERS.

(3) OF THE ELEVEN MEMBERS OF THE BOARD:

(I) THREE SHALL BE REGISTERED CEMETERIANS REPRESENTING THE FOR-PROFIT CEMETERY INDUSTRY;

(II) ONE SHALL BE A REGISTERED CEMETERIAN REPRESENTING A NONPROFIT CEMETERY;

(III) ONE SHALL BE A REGISTERED SELLER FROM A MONUMENT COMPANY;

(IV) ONE SHALL BE A REPRESENTATIVE FROM A RELIGIOUS CEMETERY; AND

(V) FIVE SHALL BE CONSUMER MEMBERS.”;

in line 27, strike “(3)” and substitute “(4)”; and after line 28, insert:

“(5) IN ADDITION TO THE ANNUAL MEETING, THE ADVISORY COUNCIL MAY MEET AS NECESSARY.

(D) THE TERM OF A MEMBER IS 3 YEARS.”.

AMENDMENT NO. 4

On page 4, after line 11, insert:

“5-102.

(A) THE REGISTRATION AND PERMITTING PROVISIONS OF THIS TITLE DO NOT

APPLY TO A PERSON THAT OWNS AND OPERATES A BONA FIDE RELIGIOUS, NONPROFIT CEMETERY IN THIS STATE AND DOES NOT SELL PRENEED GOODS.

(B) THIS TITLE DOES NOT APPLY TO AN INDIVIDUAL LICENSED AS A FUNERAL DIRECTOR OR MORTICIAN UNDER TITLE 7 OF THE HEALTH OCCUPATIONS ARTICLE.”.

AMENDMENT NO. 5

On page 5, in line 7, after “(E)” insert “IN ADDITION TO ANY REQUIREMENTS OF THE STATE ETHICS LAW.”.

On page 7, after line 9, insert:

“(A) THERE IS A CEMETERY OVERSIGHT FUND.”;

and in lines 10, 16, 18, 21, 30, and 33, strike “(A)”, “(B)”, “(C)”, “(D)”, “(E)”, and “(F)”, respectively, and substitute “(B)”, “(C)”, “(D)”, “(E)”, “(F)”, and “(G)”, respectively.

AMENDMENT NO. 6

On page 7, in line 1, after the first “THE” insert “STATE”; in line 10, after “FEES” insert “AND A FEE SCHEDULE”; and in line 13, after “BUSINESS,” insert “WHETHER THE BUSINESS IS FOR-PROFIT OR DESIGNATED AS TAX EXEMPT UNDER § 501(C) OF THE INTERNAL REVENUE CODE,”; and in line 38, strike “5-388” and substitute “5-399.8”.

On page 25, after line 20, insert:

“Article - Courts and Judicial Proceedings

5-399.8.

A PERSON WHO ACTS IN GOOD FAITH AND WITHIN THE SCOPE OF THE DUTIES AND RESPONSIBILITIES PROVIDED TO THE OFFICE OF CEMETERY OVERSIGHT UNDER TITLE 5 OF THE BUSINESS REGULATION ARTICLE IS NOT CIVILLY LIABLE FOR GIVING INFORMATION TO THE DIRECTOR OF THE OFFICE OF CEMETERY OVERSIGHT

(Over)

OR OTHERWISE PARTICIPATING IN THE ACTIVITIES OF THE OFFICE OF CEMETERY OVERSIGHT.”.

AMENDMENT NO. 7

On page 8, in line 28, strike “RESIDENCE” and substitute “RESIDENTIAL”; in line 31, strike “MONUMENT” and substitute “GOODS”.

On page 9, in line 1, strike “RESIDENCE” and substitute “RESIDENTIAL”; in line 11, after “(B)” insert “IF THE APPLICANT IS AN EXISTING BUSINESS,”; after line 17, insert:

“(C) IF THE APPLICANT IS A NEW BUSINESS, THE FINANCIAL STATEMENT SHALL:

(1) BE ON A FORM THAT THE DIRECTOR REQUIRES; AND

(2) SATISFY CRITERIA THAT THE DIRECTOR ADOPTS UNDER SUBSECTION (D) OF THIS SECTION.”;

and in line 18, strike “(C)” and substitute “(D)(1)”; strike beginning with “ESTABLISHED” in line 19 down through “DIRECTOR” in line 20 and substitute “THAT THE DIRECTOR ADOPTS”; and after line 20, insert:

“(2) THE DIRECTOR SHALL ADOPT SEPARATE CRITERIA TO DETERMINE THE FINANCIAL STABILITY OF APPLICANTS THAT ARE NEW BUSINESSES OR EXISTING BUSINESSES.”.

On page 11, in line 19, strike “ADEQUATELY SUPERVISE” and substitute “PROVIDE REASONABLE AND ADEQUATE SUPERVISION OF THE OPERATION OF THE CEMETERY OR THE PROVISION OF BURIAL GOODS BY”.

On page 12, in line 5, strike “WHOSE” and substitute “IN THE EVENT THAT THE”; in line 35, after “(C)” insert “(1)”; in line 36, strike “MEDIATE” and substitute “NEGOTIATE A SETTLEMENT OF”; and after line 37, insert:

“(2) NOTWITHSTANDING § 5-102 OF THIS TITLE, THE DIRECTOR MAY RECEIVE AND ATTEMPT TO NEGOTIATE A SETTLEMENT TO RESOLVE COMPLAINTS CONCERNING PERSONS REQUIRED TO FILE STATEMENTS UNDER § 5-405 OF THIS TITLE AND IN CONNECTION WITH THE OPERATION OF A CEMETERY OR THE SALE OF PRENEED GOODS.”.

On page 13, in line 1, strike “MEDIATE” and substitute “NEGOTIATE A SETTLEMENT OF”.

AMENDMENT NO. 8

On page 13, in line 4, after “GENERAL” insert “OR THE OFFICE OF ADMINISTRATIVE HEARINGS”; in line 10, strike “CASE SHALL BE SET” and substitute “DIRECTOR SHALL PROVIDE THE PERSON AGAINST WHOM THE ACTION IS CONTEMPLATED NOTICE AND AN OPPORTUNITY”; in line 12, strike beginning with “IF” in line 12 down through “DISMISSED” in line 13 and substitute “IF, AFTER INVESTIGATION, THE DIRECTOR DETERMINES THAT THERE IS NOT A REASONABLE BASIS TO BELIEVE THAT THERE ARE GROUNDS FOR DISCIPLINARY ACTION, THE DIRECTOR SHALL DISMISS THE COMPLAINT”; in line 28, after “REPORT” insert “, SUBJECT TO § 2-1312 OF THE STATE GOVERNMENT ARTICLE,”; in lines 21 and 22, strike “, AFTER THE APPEAL PERIOD HAS PASSED,”; in the same line, after “HEARING” insert “ON THE ARBITRATION SETTLEMENT”; in line 31, after “(A)” insert “(1)”; in the same line, strike “TITLE 10, SUBTITLE 4” and substitute “§ 10-226”; in line 33, strike “INDIVIDUAL” and substitute “PERSON”; in line 34, strike “AN OPPORTUNITY FOR” and substitute “NOTICE OF THE DIRECTOR’S PROPOSED ACTION AND THE OPPORTUNITY TO REQUEST”; after line 35, insert:

“(2) A PERSON SHALL FILE A REQUEST FOR A HEARING NOT LATER THAN 30 DAYS AFTER THE DATE THE NOTICE PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION IS MAILED.”;

and in line 36, strike “A” and substitute “THE”.

On page 14, strike in their entirety lines 1 through 3, inclusive, and substitute:

(Over)

“(D) IF A HEARING IS NOT REQUESTED WITHIN THE TIME PERIOD SPECIFIED UNDER SUBSECTION (A)(2) OF THIS SECTION OR IF THE PERSON FAILS TO APPEAR FOR THE HEARING AFTER REQUESTING A HEARING, THE PROPOSED ACTION OF THE DIRECTOR SHALL BE AFFIRMED.”;

and in line 14, strike “CHALLENGER” and substitute “APPELLANT”; in the same line, after “COSTS” insert “, AS SPECIFIED BY THE OFFICE IN ITS REGULATIONS”.

AMENDMENT NO. 9

On page 14, in line 15, strike “PERMITS” and substitute “PERMITS AND STATEMENT FILINGS”; and in line 19, after “BUSINESS”, insert “AS A SOLE PROPRIETOR OR”.

On page 15, after line 32, insert:

“5-405.

A BONA FIDE RELIGIOUS, NONPROFIT 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 RELIGIOUS 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.”.

AMENDMENT NO. 10

On page 22, after line 18, insert:

“5-705.

(a) (1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, [A] A seller shall put in trust the second 50% of the total preneed burial contract price as the seller receives payments from the buyer.

[(b)] (2) Within 30 days after receipt of the last payment, the seller shall deposit an additional amount to make the balance in the trust account equal to 55% of the total contract price.

(B) A SELLER SHALL PUT IN TRUST AN AMOUNT FROM THE PAYMENT THAT IS EQUAL TO 100% OF THE SELLING PRICE OF A CASKET OR CASKET VAULT.

(c) This section does not apply to:

(1) a preneed burial contract under which all preneed goods and preneed services, other than dates, scrolls, and other additions that represent not more than 10% of the total contract price, must be delivered or performed within 120 days after receipt of 50% of the total contract price;
or

(2) money that a seller receives for preneed goods or preneed services to be delivered or performed within 120 days after receipt of any payment on account of the sale, if the buyer's obligation for these preneed goods or preneed services is separately itemized.

5-707.

(g) (1) Except as otherwise provided in this subsection, each trustee shall submit to the [Commissioner of Financial Regulation] DIRECTOR an annual statement of account of the money in each trust account.

(2) A savings and loan association shall submit the annual statement of account to the [State Director of the Division of Savings and Loan Associations] DIRECTOR.”.

AMENDMENT NO. 11

On page 23, strike in their entirety lines 6 through 8 and substitute:

(Over)

“(3) (I) A SELLER OF PRENEED GOODS OR PRENEED SERVICES THAT SELLS ITS BUSINESS, FILES A PETITION IN BANKRUPTCY, OR CEASES TO OPERATE SHALL PROVIDE WRITTEN NOTICE WITHIN 15 DAYS:

1. TO THE DIRECTOR, DETAILING THE CHANGES AND THE ARRANGEMENTS THE SELLER HAS MADE FOR CARRYING OUT THE PRENEED BURIAL CONTRACTS AND THE DISBURSEMENT OF ANY MONEYS HELD IN AN ESCROW OR TRUST ACCOUNT; AND

2. TO EACH BUYER OF A PRENEED BURIAL CONTRACT, ADVISING THE BUYER OF THE BUYER’S OPTIONS UNDER STATE LAW IN REGARD TO THE PRENEED CONTRACT.

(II) NOTHING IN THIS PARAGRAPH EXEMPTS A SELLER OF PRENEED GOODS OR SERVICES THAT SELLS ITS BUSINESS, FILES A PETITION IN BANKRUPTCY, OR CEASES TO OPERATE FROM FILING THE ANNUAL REPORT REQUIRED UNDER THIS SECTION.

(C) ON REQUEST, A SELLER OF A PRENEED BURIAL CONTRACT SHALL PROVIDE EACH BUYER OR PROSPECTIVE BUYER WITH A GENERAL PRICE LIST FOR THE BUYER OR PROSPECTIVE BUYER TO KEEP WHICH SHALL INCLUDE:

(1) SPECIFIC PRICES FOR:

(I) GROUND OPENING AND CLOSING;

(II) EXTRA DEPTH INTERMENT;

(III) INTERMENT OF CREMATED REMAINS; AND

(IV) MAUSOLEUM ENTOMBMENT; AND

(2) GENERAL PRICE RANGES FOR BURIAL SPACE OR PRENEED GOODS.

(D) A SELLER OF A PRENEED BURIAL CONTRACT SHALL DISCLOSE TO THE BUYER:

(1) ALL GOODS AND SERVICES THAT ARE REASONABLY EXPECTED TO BE REQUIRED AT THE TIME OF NEED THAT ARE NOT INCLUDED IN THE PRENEED BURIAL CONTRACT;

(2) THE BUYER'S CANCELLATION AND REFUND RIGHTS UNDER § 5-709 OF THIS SUBTITLE;

(3) THE PERSON RESPONSIBLE FOR INSTALLATION OF THE GOODS SOLD AND ANY WARRANTIES FOR THE GOODS SOLD; AND

(4) IF THE PRENEED CONTRACT PROVIDES FOR GOODS OR SERVICES TO BE DELIVERED OR PERFORMED BEFORE DEATH:

(I) THAT INTEREST OR FINANCE CHARGES MAY BE IMPOSED;

(II) THAT INTEREST OR FINANCE CHARGES ARE NOT ALLOWED ON OTHER PRENEED BURIAL CONTRACTS THAT DO NOT PROVIDE FOR GOODS OR SERVICES TO BE DELIVERED OR PERFORMED BEFORE DEATH;

(III) THE MANNER OF DELIVERY OF GOODS INCLUDING WHERE THE GOODS ARE STORED; AND

(IV) THE BUYER'S REMEDY IF DELIVERED GOODS ARE DAMAGED OR DESTROYED.”;

and in line 9, strike “(c)” and substitute “(E)”.

AMENDMENT NO. 12

On page 25, in line 9, strike “§§ 5-902 AND 5-903 OF”; and before line 21, insert:

(Over)

“Article - Health Occupations

7-405.

(G) ON REQUEST, A SELLER OF A PRE-NEED CONTRACT SHALL PROVIDE THE BUYER WITH A GENERAL PRICE LIST FOR THE BUYER TO KEEP OF THE GOODS AND SERVICES OFFERED BY THE SELLER.

(H) A SELLER OF A PRE-NEED CONTRACT SHALL DISCLOSE TO THE CONSUMER:

(1) ALL GOODS AND SERVICES THAT ARE REASONABLY EXPECTED TO BE REQUIRED AT THE TIME OF NEED, BUT ARE NOT INCLUDED IN THE PRE-NEED CONTRACT; AND

(2) THE BUYER’S CANCELLATION AND REFUND RIGHTS UNDER SUBSECTION (D) OF THIS SECTION.

Article - State Government

8-403.

(P) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (E) OF THIS SECTION, ON OR BEFORE JULY 1, 2006, AN EVALUATION SHALL BE MADE OF THE OFFICE OF CEMETERY OVERSIGHT ESTABLISHED UNDER TITLE 5 OF THE BUSINESS REGULATION ARTICLE AND THE REGULATIONS THAT RELATE TO THE OFFICE OF CEMETERY OVERSIGHT.”.

AMENDMENT NO. 13

On page 25, in line 28, strike “Issue” and substitute “Subject to § 2-1312 of the State Government Article, issue”; and after line 29, insert:

“SECTION 4. AND BE IT FURTHER ENACTED, That the Office of Cemetery Oversight shall document any complaints received between the effective date of this Act and December 31,

1999, concerning the bona fide, religious, nonprofit cemeteries that are not subject to regulation under this Act and report to the House Economic Matters Committee and the Senate Finance Committee on or before January 31, 2000, in accordance with § 2-1312 of the State Government Article.

SECTION 5. AND BE IT FURTHER ENACTED, That the requirement that the members of the Advisory Council on Cemetery Operations who represent nonreligious cemeteries be registered cemeteterians and that the individual representing a monument company be a registered seller does not apply to individuals who fill these positions during the first year of the Council's existence.

SECTION 6. AND BE IT FURTHER ENACTED, That the terms of the initial members of the Advisory Council shall expire as follows:

- (1) four members in 2000;
- (2) four members in 2001; and
- (3) three members in 2002.”;

and strike in their entirety lines 30 and 31 and substitute:

“SECTION 7. AND BE IT FURTHER ENACTED, That the provisions of this Act relating to registration, permitting, or statement filings shall take effect October 1, 1997.

SECTION 8. AND BE IT FURTHER ENACTED, That, except as provided in Section 7 of this Act, this Act shall take effect July 1, 1997.”.