
By: Delegates Morhaim, Harrison, and Muse (~~Task Force to Examine the State's Cemetery and Funeral Industry~~) and Delegates Muse, Pitkin, Frank, Finifter, Holt, and DeCarlo, DeCarlo, Fulton, and Pendergrass

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Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 21, 1997

CHAPTER _____

1 AN ACT concerning

2 **Office of Cemetery Oversight**

3 FOR the purpose of creating the Office of Cemetery Oversight in the Department of
 4 Labor, Licensing, and Regulation; requiring the Secretary of State Labor, Licensing,
 5 and Regulation to establish an advisory ~~board~~ council; specifying the membership of
 6 the advisory ~~board~~ council; providing for the terms of the members of the advisory
 7 council; providing for a Director of the Office of Cemetery Oversight; providing for
 8 the powers and duties of the ~~director~~ Director; ~~authorizing the director to establish~~
 9 ~~certain rules and fees~~; authorizing the Director to adopt certain regulations and
 10 establish certain fees; requiring the Director to adopt certain regulations and
 11 establish certain fees; establishing a Cemetery Oversight Fund; specifying the use of
 12 the Fund; requiring registration in order to engage in the operation of a cemetery or
 13 in order to provide burial goods in this State; providing certain exceptions;
 14 ~~providing~~ establishing certain registration criteria; providing for the renewal of
 15 registration; providing for the denial of a registration or reprimand of a registrant or
 16 a permit holder under certain circumstances; providing for the suspension or
 17 revocation of a registrant or a permit holder under certain circumstances; providing
 18 certain hearing procedures under certain circumstances; requiring a permit in order
 19 to engage in the operation of a cemetery or burial goods business as a corporation,
 20 limited liability company, or partnership; ~~providing~~ establishing certain permit
 21 criteria; requiring registrants and permit holders to make certain disclosures when
 22 entering into certain contracts; providing certain penalties ~~for practicing without a~~
 23 ~~registration, providing services without a permit, and misrepresentation~~; providing
 24 for the evaluation and termination of the Office of Cemetery Oversight; ~~providing~~
 25 ~~certain conforming changes in accordance with the Program Evaluation Act~~; making
 26 certain technical changes; defining certain terms; requiring certain sellers of certain

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1 preneed contracts, including funeral directors and morticians, to provide certain
 2 disclosures and certain price lists to buyers under certain circumstances; requiring
 3 the Director of the Office of Cemetery Oversight to take certain actions by a certain
 4 date; providing civil immunity to certain persons under certain circumstances;
 5 requiring the Office of Cemetery Oversight to collect certain information and make
 6 a certain report on or before a certain date; providing for certain effective dates for
 7 certain provisions of this Act; and generally relating to the creation of the Office of
 8 Cemetery Oversight and the industries and professions providing burial goods or
 9 services to consumers in the State.

10 BY renumbering

11 Article - Business Regulation
 12 Section 5-201 through 5-204 and the subtitle "Subtitle 2. Cemetery Corporations";
 13 5-302 through 5-309 and the subtitle "Subtitle 3. Perpetual Care of
 14 Cemeteries"; 5-401 through 5-412 and the subtitle "Subtitle 4. Preneed Burial
 15 Contracts"; 5-501 and 5-502; and 5-601 and the subtitle "Subtitle 6.
 16 Miscellaneous Provisions", respectively
 17 to be Section 5-501 through 5-504 to be under the amended subtitle "Subtitle 5.
 18 Cemetery Property"; 5-601 through 5-608 to be under the amended subtitle
 19 "Subtitle 6. Perpetual Care"; 5-701 through 5-712 and the subtitle "Subtitle 7.
 20 Preneed Burial Contracts"; 5-505 and 5-506; and 5-802 and the subtitle
 21 "Subtitle 8. Miscellaneous Provisions", respectively
 22 Annotated Code of Maryland
 23 (1992 Volume and 1996 Supplement)

24 BY adding to

25 Article - Business Regulation
 26 Section 5-102, to be under the amended subtitle "Subtitle 1. Definitions; General
 27 Provisions"; 5-201 through 5-206, inclusive, to be under the new subtitle
 28 "Subtitle 2. Office of Cemetery Oversight"; 5-301 through 5-312, inclusive, to
 29 be under the new subtitle "Subtitle 3. Registration"; 5-401 through ~~5-404~~
 30 5-405, inclusive, to be under the new subtitle "Subtitle 4. Permits"; 5-801;
 31 5-901 through 5-904, inclusive, to be under the new subtitle "Subtitle 9.
 32 Prohibited Acts"; and 5-1001 and 5-1002 to be under the new subtitle
 33 "Subtitle 10. Short Title; Termination of Title"
 34 Annotated Code of Maryland
 35 (1992 Volume and 1996 Supplement)

36 BY repealing and reenacting, with amendments,

37 Article - Business Regulation
 38 Section 5-101
 39 Annotated Code of Maryland
 40 (1992 Volume and 1996 Supplement)

41 BY repealing and reenacting, with amendments,

42 Article - Business Regulation
 43 Section 5-501 through 5-504, 5-602, 5-604 through 5-608, 5-701, 5-704(e), 5-705,

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1 5-710, and 5-711
 2 Annotated Code of Maryland
 3 (1992 Volume and 1996 Supplement)
 4 (As enacted by Section 1 of this Act)

5 BY repealing

6 Article - Business Regulation
 7 Section 5-301; and the subtitle designation "Subtitle 5. Sale of Burial Ground for
 8 Another Purpose" of Title 5
 9 Annotated Code of Maryland
 10 (1992 Volume and 1996 Supplement)

11 BY adding to

12 Article - Courts and Judicial Proceedings
 13 Section 5-399.8
 14 Annotated Code of Maryland
 15 (1995 Replacement Volume and 1996 Supplement)

16 BY adding to

17 Article - Health Occupations
 18 Section 7-405(g) through (i)
 19 Annotated Code of Maryland
 20 (1994 Replacement Volume and 1996 Supplement)

21 BY adding to

22 Article - State Government
 23 Section 8-403(p)
 24 Annotated Code of Maryland
 25 (1995 Replacement Volume and 1996 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 27 MARYLAND, That Section(s) 5-201 through 5-204 and the subtitle "Subtitle 2.
 28 Cemetery Corporations"; 5-302 through 5-309 and the subtitle "Subtitle 3. Perpetual
 29 Care of Cemeteries"; 5-401 through 5-412 and the subtitle "Subtitle 4. Preneed Burial
 30 Contracts"; 5-501 and 5-502; and 5-601 and the subtitle "Subtitle 6. Miscellaneous
 31 Provisions", respectively, of Article - Business Regulation of the Annotated Code of
 32 Maryland be renumbered to be Section(s) 5-501 through 5-504 to be under the amended
 33 subtitle "Subtitle 5. Cemetery Property"; 5-601 through 5-608 to be under the amended
 34 subtitle "Subtitle 6. Perpetual Care"; 5-701 through 5-712 and the subtitle "Subtitle 7.
 35 Preneed Burial Contracts"; 5-505 and 5-506; and 5-802 and the subtitle "Subtitle 8.
 36 Miscellaneous Provisions", respectively.

37 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 38 read as follows:

4

1 **Article - Business Regulation**

2 Subtitle 1. Definitions; GENERAL PROVISIONS.

3 5-101.

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

5 (B) (1) "BURIAL GOODS" MEANS GOODS THAT ARE USED IN CONNECTION
6 WITH BURIAL.

7 (2) "BURIAL GOODS" INCLUDES:

8 (I) A CASKET;

9 (II) A GRAVE LINER;

10 (III) A MEMORIAL;

11 (IV) A MONUMENT;

12 (V) A SCROLL;

13 (VI) AN URN;

14 (VII) A VASE; AND

15 (VIII) A VAULT.

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

17 (2) "Burial" includes:

18 (i) earth burial;

19 (ii) mausoleum entombment; and

20 (iii) niche or columbarium interment.] "BURIAL GOODS BUSINESS"
21 MEANS A BUSINESS THAT PROVIDES BURIAL GOODS.

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

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

24 ~~(d)~~ (E) "DIRECTOR" MEANS THE DIRECTOR OF THE OFFICE OF CEMETERY
25 OVERSIGHT.

26 ~~(e)~~ (F) "ENGAGE IN THE OPERATION OF A CEMETERY" MEANS OWNING,
27 CONTROLLING, ~~AND MAINTAINING~~ OR MANAGING A CEMETERY, INCLUDING
28 PERFORMING ACTIVITIES NECESSARY FOR:

29 (1) THE ESTABLISHMENT OR IMPROVEMENT OF A CEMETERY;

30 (2) INTERMENT; AND

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

5

1 ~~(F)~~ (G) "INTERMENT" MEANS ALL FINAL DISPOSITION OF HUMAN REMAINS,
2 INCLUDING:

- 3 (1) EARTH BURIAL;
- 4 (2) MAUSOLEUM ENTOMBMENT; AND
- 5 (3) NICHE OR COLUMBARIUM INTERMENT.

6 ~~(G)~~ (H) "OFFICE" MEANS THE OFFICE OF CEMETERY OVERSIGHT.

7 ~~(H)~~ (I) "PERMIT" MEANS A PERMIT ISSUED BY THE DIRECTOR TO ALLOW A
8 PARTNERSHIP, LIMITED LIABILITY COMPANY, OR CORPORATION TO OPERATE A
9 BUSINESS THROUGH WHICH A REGISTRANT MAY ENGAGE IN THE OPERATION OF A
10 CEMETERY OR PROVIDE BURIAL GOODS.

11 (J) (1) "PRENEED GOODS" MEANS BURIAL GOODS THAT ARE SOLD BEFORE
12 THE BUYER'S DEATH.

13 (2) "PRENEED GOODS" DOES NOT INCLUDE BURIAL SPACE.

14 ~~(I)~~ (K) "PROVIDE BURIAL GOODS" MEANS:

- 15 (1) TO SELL, ERECT, OR INSCRIBE BURIAL MONUMENTS;
- 16 (2) TO SELL ~~CASKETS, VAULTS, GRAVE LINERS, OR ANY OTHER~~
17 ~~CEMETERY~~ BURIAL GOODS.

18 ~~(J)~~ (L) "REGISTRATION" MEANS A REGISTRATION ISSUED BY THE
19 DIRECTOR AUTHORIZING AN INDIVIDUAL TO OPERATE A CEMETERY OR TO
20 PROVIDE BURIAL GOODS.

21 ~~(K)~~ (M) "REGISTERED CEMETERIAN" MEANS AN INDIVIDUAL REGISTERED
22 TO OPERATE A CEMETERY AS A SOLE ~~PRACTITIONER PROPRIETOR~~ OR ON BEHALF
23 OF A PERMIT HOLDER.

24 ~~(L)~~ (N) "REGISTERED ~~SELLERS~~ SELLER" MEANS AN INDIVIDUAL
25 REGISTERED TO PROVIDE BURIAL GOODS AS A SOLE ~~PRACTITIONER PROPRIETOR~~
26 OR ON BEHALF OF A PERMIT HOLDER.

27 5-102.

28 (A) THE REGISTRATION AND PERMITTING PROVISIONS OF THIS TITLE DO
29 NOT APPLY TO A PERSON THAT OWNS AND OPERATES A BONA FIDE RELIGIOUS,
30 NONPROFIT CEMETERY IN THIS STATE AND DOES NOT SELL PRENEED GOODS.

31 (B) THIS TITLE DOES NOT APPLY TO:

32 (1) THE OPERATION OF A FUNERAL ESTABLISHMENT, INCLUDING THE
33 SALE OF BURIAL GOODS IN THE ORDINARY COURSE OF THE FUNERAL
34 ESTABLISHMENT'S BUSINESS;

35 (2) A LICENSED FUNERAL DIRECTOR ACTING WITHIN THE SCOPE OF
36 THE FUNERAL DIRECTOR'S LICENSE; OR

1 (3) A MORTICIAN ACTING WITHIN THE SCOPE OF THE
2 MORTICIAN'S LICENSE.

3 SUBTITLE 2. OFFICE OF CEMETERY OVERSIGHT.

4 5-201.

5 (A) THERE IS AN OFFICE OF CEMETERY OVERSIGHT IN THE DEPARTMENT.

6 (B) THE OFFICE EXERCISES ITS RIGHTS, POWERS, AND DUTIES SUBJECT TO
7 THE AUTHORITY OF THE SECRETARY.

8 (C) (1) THE SECRETARY SHALL APPOINT AN ADVISORY COUNCIL ON
9 CEMETERY OPERATIONS.

10 ~~(2) THE ADVISORY COUNCIL SHALL CONSIST OF NINE MEMBERS AS~~
11 ~~FOLLOWS:~~

12 ~~(I) ONE MEMBER REPRESENTING A NONPROFIT CEMETERY;~~

13 ~~(II) ONE MEMBER REPRESENTING A FOR-PROFIT CEMETERY;~~

14 ~~(III) ONE MEMBER REPRESENTING A RELIGIOUS CEMETERY;~~

15 ~~(IV) ONE MEMBER REPRESENTING A MUNICIPAL CEMETERY;~~

16 ~~(V) ONE MEMBER REPRESENTING A MONUMENT COMPANY; AND~~

17 ~~(VI) FOUR MEMBERS WHO ARE CONSUMER REPRESENTATIVES.~~

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

19 (3) OF THE ELEVEN MEMBERS OF THE BOARD:

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

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

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

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

28 (V) FIVE SHALL BE CONSUMER MEMBERS.

29 ~~(3)~~ (4) THE ADVISORY COUNCIL SHALL BE CONVENED AT LEAST
30 ONCE A YEAR TO GIVE ADVICE TO THE SECRETARY AND THE DIRECTOR.

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

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

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1 5-202.

2 (A) (1) THE SECRETARY SHALL APPOINT A DIRECTOR OF THE OFFICE WITH
3 THE APPROVAL OF THE GOVERNOR.

4 (2) THE DIRECTOR SERVES AT THE PLEASURE OF THE SECRETARY.

5 (B) THE DIRECTOR SHALL DEVOTE FULL TIME TO THE DUTIES OF THE
6 OFFICE.

7 (C) THE DIRECTOR IS ENTITLED TO:

8 (1) COMPENSATION IN ACCORDANCE WITH THE STATE BUDGET; AND

9 (2) REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE
10 TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

11 (D) THE DIRECTOR SHALL:

12 (1) ADMINISTER AND OPERATE THE OFFICE; AND

13 (2) BE RESPONSIBLE TO THE SECRETARY.

14 (E) IN ADDITION TO ANY REQUIREMENTS OF THE STATE ETHICS LAW, THE
15 DIRECTOR MAY NOT:

16 (1) HOLD ANY POSITION OR ENGAGE IN ANOTHER BUSINESS THAT
17 INTERFERES OR CONFLICTS WITH THE POSITION OF THE DIRECTOR;

18 (2) BE A REGISTERED CEMETERIAN OR A REGISTERED SELLER;

19 (3) ENGAGE IN ANY ACT FOR WHICH A REGISTRATION IS REQUIRED
20 UNDER THIS TITLE; OR

21 (4) IN CONNECTION WITH ANY REGISTERED CEMETERIAN,
22 REGISTERED SELLER, PERMIT HOLDER, FUNERAL DIRECTOR, FUNERAL
23 ESTABLISHMENT, OR RELATED DEATH CARE ENTITY, DIRECTLY OR INDIRECTLY
24 RECEIVE OR BECOME ENTITLED TO RECEIVE ANY FEE, PERQUISITE, OR
25 COMPENSATION.

26 5-203.

27 THE DIRECTOR MAY EMPLOY A STAFF IN ACCORDANCE WITH THE STATE
28 BUDGET.

29 5-204.

30 (A) WITH THE ADVICE OF THE ADVISORY COUNCIL AND AFTER
31 CONSULTATION WITH REPRESENTATIVES OF THE CEMETERY INDUSTRY, THE
32 DIRECTOR SHALL ADOPT:

33 (1) RULES AND REGULATIONS TO CARRY OUT THIS TITLE; AND

34 (2) A CODE OF ETHICS FOR ENGAGING IN THE OPERATION OF A
35 CEMETERY OR PROVIDING BURIAL GOODS.

8

1 (B) UPON RECEIPT OF A WRITTEN COMPLAINT, OR AT THE DISCRETION OF
2 THE DIRECTOR, THE DIRECTOR MAY CONDUCT AN INVESTIGATION AND AN
3 INSPECTION OF THE RECORDS AND SITE OF A REGISTERED CEMETERIAN,
4 REGISTERED SELLER, AND PERMIT HOLDER.

5 (C) THE DIRECTOR MAY HOLD HEARINGS ON ANY MATTER COVERED BY
6 THIS TITLE.

7 (D) TO ENFORCE THIS TITLE, THE DIRECTOR MAY:

8 (1) ADMINISTER OATHS;

9 (2) EXAMINE WITNESSES; AND

10 (3) RECEIVE EVIDENCE.

11 (E) (1) THE DIRECTOR MAY ISSUE A SUBPOENA FOR THE ATTENDANCE OF
12 A WITNESS TO TESTIFY OR FOR THE PRODUCTION OF EVIDENCE IN CONNECTION
13 WITH ANY INVESTIGATION OR HEARING CONDUCTED IN ACCORDANCE WITH THIS
14 SECTION.

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

18 (F) (1) THE DIRECTOR MAY SUE IN THE NAME OF THE STATE TO ENFORCE
19 ANY PROVISION OF THIS TITLE BY INJUNCTION.

20 (2) IN SEEKING AN INJUNCTION UNDER THIS SUBSECTION, THE
21 DIRECTOR IS NOT REQUIRED TO:

22 (I) POST BOND; OR

23 (II) ALLEGE OR PROVE EITHER THAT:

24 1. AN ADEQUATE REMEDY AT LAW DOES NOT EXIST; OR

25 2. SUBSTANTIAL OR IRREPARABLE DAMAGE WOULD
26 RESULT FROM THE CONTINUED VIOLATION OF THE PROVISION.

27 (3) THE DIRECTOR OR STAFF MAY NOT BE HELD PERSONALLY LIABLE
28 FOR ANY ACTION TAKEN UNDER THIS TITLE IN GOOD FAITH AND WITH
29 REASONABLE GROUNDS.

30 (G) THE DIRECTOR MAY ISSUE A CEASE AND DESIST ORDER, IF THE
31 DIRECTOR FINDS A VIOLATION OF THIS TITLE.

32 (H) THE DIRECTOR MAY REFER TO THE OFFICE OF THE ATTORNEY
33 GENERAL:

34 (1) A VIOLATION OF THIS TITLE FOR ENFORCEMENT; AND

35 (2) AN ALLEGED UNFAIR OR DECEPTIVE TRADE PRACTICE UNDER
36 TITLE 13 OF THE COMMERCIAL LAW ARTICLE.

1 (I) THE DIRECTOR SHALL MAINTAIN A LIST OF ALL REGISTRANTS AND
2 PERMIT HOLDERS.

3 (J) (1) THE DIRECTOR SHALL DISTRIBUTE A COPY OF THE MARYLAND
4 CEMETERY ACT, CODE OF ETHICS, AND APPLICABLE REGULATIONS TO EACH
5 APPLICANT FOR REGISTRATION OR PERMIT.

6 (2) UPON RENEWAL OF A REGISTRATION OR PERMIT, THE DIRECTOR
7 SHALL DISTRIBUTE ANY AMENDMENTS TO THE MARYLAND CEMETERY ACT, CODE
8 OF ETHICS, OR APPLICABLE RULES AND REGULATIONS THAT HAVE OCCURRED
9 SINCE THE LAST APPLICATION.

10 (K) IN CONJUNCTION WITH THE STATE BOARD OF MORTICIANS AND THE
11 DIVISION OF CONSUMER PROTECTION OF THE OFFICE OF THE ATTORNEY GENERAL,
12 THE DIRECTOR SHALL PUBLISH A CONSUMER INFORMATION PAMPHLET THAT
13 DESCRIBES:

14 (1) THE RIGHTS OF CONSUMERS IN THE PURCHASE OF FUNERAL AND
15 CEMETERY GOODS AND SERVICES; AND

16 (2) ANY OTHER INFORMATION THAT THE DIRECTOR CONSIDERS
17 REASONABLY NECESSARY TO AID CONSUMERS.

18 5-205.

19 (A) THERE IS A CEMETERY OVERSIGHT FUND.

20 ~~(A)~~ (B) (1) THE DIRECTOR SHALL ESTABLISH REASONABLE FEES AND A
21 FEE SCHEDULE FOR THE ISSUANCE AND RENEWAL OF REGISTRATIONS AND
22 PERMITS.

23 (2) IN ESTABLISHING THE FEES, THE DIRECTOR SHALL CONSIDER THE
24 SIZE OF THE BUSINESS, WHETHER THE BUSINESS IS FOR-PROFIT OR DESIGNATED AS
25 TAX EXEMPT UNDER § 501(C) OF THE INTERNAL REVENUE CODE, THE VOLUME OF
26 BUSINESS CONDUCTED, AND THE TYPE OF SERVICES PROVIDED, INCLUDING THE
27 PERCENTAGE OF PRENEED CONTRACTS WRITTEN.

28 ~~(B)~~ (C) THE FEES CHARGED SHALL BE SET SO AS TO APPROXIMATE THE
29 DIRECT AND INDIRECT COST OF MAINTAINING THE OFFICE.

30 ~~(C)~~ (D) THE DIRECTOR SHALL PAY ALL FUNDS COLLECTED UNDER THIS
31 TITLE TO THE COMPTROLLER WHO SHALL DISTRIBUTE THE FEES TO THE
32 CEMETERY OVERSIGHT FUND.

33 ~~(D)~~ (E) (1) THE FUND SHALL BE USED TO COVER THE ACTUAL
34 DOCUMENTED DIRECT AND INDIRECT COSTS OF FULFILLING THE STATUTORY AND
35 REGULATORY DUTIES OF THE OFFICE.

36 (2) THE FUND IS A CONTINUING NONLAPSING FUND, NOT SUBJECT TO §
37 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

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

10

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

2 ~~(E)~~ (F) (1) THE DIRECTOR SHALL ADMINISTER THE FUND.

3 (2) MONEYS IN THE FUND MAY BE EXPENDED FOR ANY LAWFUL
4 PURPOSE AUTHORIZED UNDER THE PROVISIONS OF THIS TITLE.

5 ~~(F)~~ (G) THE LEGISLATIVE AUDITOR SHALL AUDIT THE ACCOUNTS AND
6 TRANSACTIONS OF THE FUND AS PROVIDED IN § 2-1215 OF THE STATE GOVERNMENT
7 ARTICLE.

8 5-206.

9 A PERSON SHALL HAVE THE IMMUNITY FROM LIABILITY DESCRIBED UNDER §
10 ~~5-388~~ 5-399.8 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE FOR GIVING
11 INFORMATION TO THE DIRECTOR OR OTHERWISE PARTICIPATING IN THE
12 ACTIVITIES OF THE OFFICE.

13 [5-301.

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

15 (b) "Cemetery owner" means a person who owns, operates, or develops a
16 cemetery.

17 (c) "Trust fund" means a perpetual care trust fund under this subtitle.]

18 SUBTITLE 3. REGISTRATION.

19 5-301.

20 AN INDIVIDUAL SHALL REGISTER WITH THE OFFICE BEFORE:

21 (1) ENGAGING IN THE OPERATION OF A CEMETERY IN THIS STATE; OR

22 (2) PROVIDING BURIAL GOODS IN THIS STATE.

23 5-302.

24 (A) IN ORDER TO REGISTER, AN APPLICANT SHALL MEET THE
25 REQUIREMENTS OF THIS SECTION.

26 (B) THE APPLICANT MUST BE AT LEAST 18 YEARS OLD.

27 (C) THE APPLICANT MUST BE OF GOOD CHARACTER AND REPUTATION.

28 (D) THE CEMETERY OR BURIAL GOODS BUSINESS WITH WHICH THE
29 APPLICANT IS AFFILIATED MUST BE FINANCIALLY STABLE IN ACCORDANCE WITH §
30 5-304 OF THIS SUBTITLE.

31 5-303.

32 (A) AN APPLICANT SHALL REGISTER BY:

33 (1) SUBMITTING TO THE DIRECTOR AN APPLICATION ON THE FORM
34 THAT THE DIRECTOR PROVIDES; AND

11

1 (2) PAYING A NONREFUNDABLE APPLICATION FEE SET BY THE
2 DIRECTOR.

3 (B) THE APPLICATION SHALL STATE:

4 (1) THE NAME, DATE OF BIRTH, AND ~~RESIDENCE~~ RESIDENTIAL
5 ADDRESS OF THE APPLICANT;

6 (2) THE NAME AND FIXED ADDRESS OF THE AFFILIATED CEMETERY OR
7 BURIAL ~~MONUMENT~~ GOODS BUSINESS;

8 (3) WHETHER THE CEMETERY OR BURIAL GOODS BUSINESS WITH
9 WHICH THE APPLICANT IS AFFILIATED IS OWNED OR CONTROLLED BY A
10 PARTNERSHIP, LIMITED LIABILITY COMPANY, OR CORPORATION;

11 (4) THE NAME AND ~~RESIDENCE~~ RESIDENTIAL ADDRESS OF EACH
12 EMPLOYEE WHO SELLS CEMETERY GOODS OR SERVICES TO THE PUBLIC FOR THE
13 APPLICANT WHILE ENGAGING IN THE OPERATION OF A CEMETERY OR BURIAL
14 GOODS BUSINESS; AND

15 (5) ANY OTHER REASONABLE INFORMATION THAT THE DIRECTOR
16 DETERMINES IS NECESSARY TO CARRY OUT THIS TITLE.

17 5-304.

18 (A) EACH APPLICANT SHALL DEMONSTRATE THE FINANCIAL STABILITY OF
19 THE CEMETERY OR BURIAL GOODS BUSINESS WITH WHICH THE APPLICANT IS
20 AFFILIATED BY PROVIDING THE DIRECTOR WITH A FINANCIAL STATEMENT WITH
21 THE APPLICATION FOR REGISTRATION.

22 (B) IF THE APPLICANT IS AN EXISTING BUSINESS, THE FINANCIAL STATEMENT
23 SHALL:

24 (1) BE ON THE FORM THAT THE DIRECTOR REQUIRES;

25 (2) CONTAIN A STATEMENT BY A CERTIFIED PUBLIC ACCOUNTANT
26 EMPLOYED BY THE APPLICANT, DETAILING THE ASSETS AND LIABILITIES OF THE
27 CEMETERY OR BURIAL GOODS BUSINESS FOR THE LAST FISCAL YEAR; AND

28 (3) CONTAIN AN OPINION BY THE CERTIFIED PUBLIC ACCOUNTANT AS
29 TO THE FINANCIAL STABILITY OF THE CEMETERY OR BURIAL GOODS BUSINESS.

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

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

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

35 ~~(D) (1)~~ (D) (1) THE DIRECTOR SHALL MAKE A DETERMINATION OF THE
36 FINANCIAL STABILITY OF EACH APPLICANT BASED ON CRITERIA ~~ESTABLISHED BY~~
37 ~~THE DIRECTOR~~ THAT THE DIRECTOR ADOPTS.

12

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

4 5-305.

5 (A) THE DIRECTOR SHALL ISSUE A REGISTRATION TO AN APPLICANT WHO
6 MEETS THE REQUIREMENTS OF THIS TITLE.

7 (B) A REGISTRATION ISSUED BY THE DIRECTOR UNDER THIS TITLE IS NOT
8 TRANSFERABLE.

9 5-306.

10 (A) WHILE A REGISTRATION IS IN EFFECT, IT AUTHORIZES THE REGISTRANT
11 TO ENGAGE IN THE OPERATION OF A CEMETERY OR BURIAL GOODS BUSINESS.

12 (B) THIS TITLE DOES NOT LIMIT THE RIGHT OF A PERSON TO PRACTICE
13 FUNERAL DIRECTION OR MORTUARY SCIENCE, IF THE PERSON IS LICENSED OR
14 OTHERWISE AUTHORIZED UNDER TITLE 7 OF THE HEALTH OCCUPATIONS ARTICLE.

15 5-307.

16 (A) UNLESS A REGISTRATION IS RENEWED AS PROVIDED IN THIS SECTION,
17 THE REGISTRATION EXPIRES ON THE SECOND ANNIVERSARY OF ITS EFFECTIVE
18 DATE.

19 (B) AT LEAST 90 DAYS BEFORE A LICENSE EXPIRES, THE DIRECTOR SHALL
20 MAIL TO THE REGISTRANT, AT THE LAST KNOWN ADDRESS OF THE REGISTRANT:

21 (1) A RENEWAL APPLICATION FORM; AND

22 (2) A NOTICE THAT STATES:

23 (I) THE DATE ON WHICH THE CURRENT REGISTRATION EXPIRES;

24 (II) THE DATE BY WHICH THE DIRECTOR MUST RECEIVE THE
25 RENEWAL APPLICATION FOR THE RENEWAL TO BE ISSUED AND MAILED BEFORE
26 THE REGISTRATION EXPIRES; AND

27 (III) THE AMOUNT OF THE RENEWAL FEE.

28 (C) BEFORE A REGISTRATION EXPIRES, THE REGISTRANT PERIODICALLY
29 MAY RENEW IT FOR AN ADDITIONAL 2-YEAR TERM, IF THE REGISTRANT:

30 (1) IS OTHERWISE ENTITLED TO BE REGISTERED;

31 (2) MEETS THE QUALIFICATIONS SET FORTH FOR AN ORIGINAL
32 REGISTRATION;

33 (3) PAYS THE RENEWAL FEE SET BY THE DIRECTOR; AND

34 (4) SUBMITS TO THE DIRECTOR A RENEWAL APPLICATION ON THE
35 FORM THAT THE DIRECTOR PROVIDES.

13

1 (D) THE DIRECTOR SHALL RENEW THE REGISTRATION OF EACH
2 REGISTRANT WHO MEETS THE REQUIREMENTS OF THIS SECTION.

3 5-308.

4 WITHIN 1 WEEK AFTER THE EFFECTIVE DATE OF THE CHANGE, A REGISTRANT
5 OR PERMIT HOLDER SHALL SUBMIT TO THE DIRECTOR AN APPLICATION FORM
6 THAT SHOWS A CHANGE IN THE:

7 (1) CEMETERY OR BURIAL GOODS BUSINESS WITH WHICH A
8 REGISTRANT IS AFFILIATED;

9 (2) REGISTERED CEMETERIAN OR REGISTERED SELLER DESIGNATED
10 AS RESPONSIBLE FOR THE CEMETERY OPERATIONS OR FOR PROVIDING BURIAL
11 GOODS FOR THE PERMIT HOLDER;

12 (3) EMPLOYEES OF THE PERMIT HOLDER WHO ENGAGE IN THE SALE OF
13 GOODS OR SERVICES TO THE PUBLIC;

14 (4) OFFICERS, DIRECTORS, MEMBERS, OR AGENTS OF THE PERMIT
15 HOLDER; OR

16 (5) NAME OR ADDRESS OF THE REGISTRANT OR PERMIT HOLDER.

17 5-309.

18 EACH REGISTRANT SHALL DISPLAY THE REGISTRATION CONSPICUOUSLY AT
19 THE BUSINESS ADDRESS OF THE REGISTRANT.

20 5-310.

21 (A) SUBJECT TO THE HEARING PROVISIONS OF § 5-312 OF THIS SUBTITLE, THE
22 DIRECTOR MAY DENY A REGISTRATION OR PERMIT TO AN APPLICANT, REPRIMAND
23 A REGISTRANT OR PERMIT HOLDER, OR SUSPEND OR REVOKE A REGISTRATION OR
24 PERMIT, IF AN APPLICANT, REGISTRANT, OR PERMIT HOLDER, OR AN AGENT,
25 EMPLOYEE, OFFICER, DIRECTOR, OR PARTNER OF THE APPLICANT, REGISTRANT,
26 OR PERMIT HOLDER:

27 (1) FRAUDULENTLY OR DECEPTIVELY OBTAINS OR ATTEMPTS TO
28 OBTAIN A REGISTRATION OR PERMIT;

29 (2) FRAUDULENTLY OR DECEPTIVELY USES A REGISTRATION OR
30 PERMIT;

31 (3) IS CONVICTED OF A FELONY, THEFT OFFENSE, OR CRIME OF MORAL
32 TURPITUDE;

33 (4) FAILS TO PROVIDE OR MISREPRESENTS ANY INFORMATION
34 REQUIRED TO BE PROVIDED UNDER THIS TITLE;

35 (5) VIOLATES THIS TITLE;

36 (6) VIOLATES THE CODE OF ETHICS ADOPTED BY THE DIRECTOR;

37 (7) VIOLATES A REGULATION ADOPTED UNDER THIS TITLE;

14

1 (8) FAILS TO ~~ADEQUATELY SUPERVISE~~ PROVIDE REASONABLE AND
2 ADEQUATE SUPERVISION OF THE OPERATION OF THE CEMETERY OR THE
3 PROVISION OF BURIAL GOODS BY AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, OR
4 PARTNERS AFFILIATED WITH A CEMETERY OR BURIAL GOODS BUSINESS;

5 (9) REFUSES TO ALLOW AN INSPECTION REQUIRED BY THIS TITLE;

6 (10) FAILS TO COMPLY WITH AN ORDER OF THE DIRECTOR;

7 (11) FAILS TO COMPLY WITH ANY TERMS OF SETTLEMENT UNDER A
8 BINDING ARBITRATION AGREEMENT; OR

9 (12) IS FOUND GUILTY BY A COURT IN THIS STATE OF VIOLATING AN
10 UNFAIR AND DECEPTIVE TRADE PRACTICES PROVISION UNDER TITLE 13 OF THE
11 COMMERCIAL LAW ARTICLE.

12 (B) (1) IF A REGISTRANT OR PERMIT HOLDER IS CHARGED WITH A
13 VIOLATION OF THIS TITLE THAT COULD RESULT IN SUSPENSION OR REVOCATION
14 OF THE REGISTRATION OR PERMIT, THE DIRECTOR MAY SEEK AN IMMEDIATE
15 RESTRAINING ORDER IN A CIRCUIT COURT IN THIS STATE TO PROHIBIT THE
16 REGISTRANT OR PERMIT HOLDER FROM ENGAGING IN THE OPERATION OF ANY
17 CEMETERY OR BURIAL GOODS BUSINESS.

18 (2) THE RESTRAINING ORDER IS IN EFFECT UNTIL:

19 (I) THE COURT LIFTS THE ORDER; OR

20 (II) THE CHARGES ARE ADJUDICATED OR DISMISSED.

21 (C) IF A REGISTRANT OR PERMIT HOLDER IS CHARGED WITH A VIOLATION
22 OF THIS TITLE THAT COULD RESULT IN SUSPENSION OR REVOCATION OF THE
23 REGISTRATION OR PERMIT, THE DIRECTOR MAY PETITION A COURT TO:

24 (1) APPOINT A RECEIVER OR TRUSTEE TO TAKE CHARGE OF THE
25 ASSETS AND OPERATE THE BUSINESS OF THE PERSON ~~WHOSE~~ IN THE EVENT THAT
26 THE REGISTRATION OR PERMIT IS SUSPENDED OR REVOKED; AND

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

29 (D) INSTEAD OF OR IN ADDITION TO SUSPENDING OR REVOKING A
30 REGISTRATION, THE DIRECTOR MAY IMPOSE A CIVIL PENALTY:

31 (1) NOT TO EXCEED \$5,000 FOR EACH VIOLATION OF THIS TITLE OR AN
32 ORDER OF THE DIRECTOR UNDER THIS TITLE; AND

33 (2) NOT TO EXCEED \$500 FOR EACH DAY A VIOLATION CONTINUES PAST
34 THE TIME SET FOR ITS CORRECTION.

35 (E) TO DETERMINE THE AMOUNT OF THE PENALTY IMPOSED UNDER THIS
36 SUBSECTION, THE DIRECTOR SHALL CONSIDER:

37 (1) THE SERIOUSNESS OF THE VIOLATION;

15

1 (2) THE HARM CAUSED BY THE VIOLATION;

2 (3) THE GOOD FAITH EFFORTS OF THE REGISTRANT OR PERMIT
3 HOLDER; AND

4 (4) ANY HISTORY OF PREVIOUS VIOLATIONS BY THE REGISTRANT OR
5 PERMIT HOLDER.

6 (F) ANY CIVIL PENALTIES COLLECTED UNDER THIS SECTION SHALL BE PAID
7 INTO THE GENERAL FUND OF THE STATE.

8 5-311.

9 (A) SUBJECT TO THE PROVISIONS OF THIS SECTION, THE DIRECTOR SHALL
10 COMMENCE PROCEEDINGS ON A COMPLAINT MADE BY ANY PERSON TO THE
11 DIRECTOR.

12 (B) A COMPLAINT SHALL:

13 (1) BE IN WRITING;

14 (2) STATE SPECIFICALLY THE FACTS ON WHICH THE COMPLAINT IS
15 BASED; AND

16 (3) BE MADE UNDER OATH BY THE PERSON WHO SUBMITS THE
17 COMPLAINT.

18 (C) (1) THE DIRECTOR SHALL REVIEW EACH COMPLAINT AND SHALL
19 ATTEMPT TO ~~MEDIATE~~ NEGOTIATE A SETTLEMENT OF THE COMPLAINT BETWEEN
20 THE COMPLAINANT AND THE REGISTRANT OR PERMIT HOLDER.

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

26 (D) IF THE DIRECTOR IS UNABLE TO ~~MEDIATE~~ NEGOTIATE A SETTLEMENT OF
27 THE COMPLAINT, THE DIRECTOR MAY:

28 (1) AT THE REQUEST OF EITHER PARTY, REFER THE COMPLAINT TO
29 THE OFFICE OF THE ATTORNEY GENERAL OR THE OFFICE OF ADMINISTRATIVE
30 HEARINGS FOR BINDING ARBITRATION, IF BOTH PARTIES AGREE TO BINDING
31 ARBITRATION;

32 (2) INITIATE AN INVESTIGATION; OR

33 (3) DISMISS THE COMPLAINT.

34 (E) IF, AFTER INVESTIGATION, THE DIRECTOR DETERMINES THAT THERE IS
35 A REASONABLE BASIS TO BELIEVE THAT THERE ARE GROUNDS FOR DISCIPLINARY
36 ACTION UNDER § 5-310 OF THIS TITLE, ~~THE CASE SHALL BE SET~~ DIRECTOR SHALL
37 PROVIDE THE PERSON AGAINST WHOM THE ACTION IS CONTEMPLATED NOTICE
38 AND AN OPPORTUNITY FOR A HEARING UNDER § 5-312 OF THIS SUBTITLE.

16

1 (F) (1) ~~IF A COMPLAINT IS NOT SET FOR A HEARING AFTER BEING~~
 2 ~~INVESTIGATED BY THE DIRECTOR, THE COMPLAINT SHALL BE DISMISSED IF, AFTER~~
 3 ~~INVESTIGATION, THE DIRECTOR DETERMINES THAT THERE IS NOT A REASONABLE~~
 4 ~~BASIS TO BELIEVE THAT THERE ARE GROUNDS FOR DISCIPLINARY ACTION, THE~~
 5 ~~DIRECTOR SHALL DISMISS THE COMPLAINT.~~

6 (2) ANY PARTY AGGRIEVED BY THE DISMISSAL MAY TAKE A JUDICIAL
 7 APPEAL IN ACCORDANCE WITH THE PROVISIONS OF TITLE 10 OF THE STATE
 8 GOVERNMENT ARTICLE.

9 (G) (1) ONCE A COMPLAINT HAS BEEN REFERRED FOR BINDING
 10 ARBITRATION, THE REGISTRANT OR PERMIT HOLDER SHALL COMPLY WITH THE
 11 TERMS OF THE SETTLEMENT.

12 (2) IF A REGISTRANT OR PERMIT HOLDER HAS FAILED TO COMPLY
 13 WITH THE TERMS OF THE ARBITRATION SETTLEMENT, THE DIRECTOR SHALL,
 14 ~~AFTER THE APPEAL PERIOD HAS PASSED,~~ CONDUCT A HEARING ON THE
 15 ARBITRATION SETTLEMENT IN ACCORDANCE WITH § 5-312 OF THIS SUBTITLE.

16 (H) (1) THE DIRECTOR SHALL ADOPT GUIDELINES THAT ESTABLISH A
 17 SCHEDULE FOR THE PROMPT AND TIMELY PROCESSING AND RESOLUTION OF EACH
 18 COMPLAINT MADE TO THE DIRECTOR.

19 (2) ON OR BEFORE DECEMBER 31 OF EACH YEAR, THE DIRECTOR SHALL
 20 REPORT, SUBJECT TO § 2-1312 OF THE STATE GOVERNMENT ARTICLE, TO THE
 21 GENERAL ASSEMBLY ON THE NUMBER OF COMPLAINTS RESOLVED WITHIN THE
 22 SCHEDULE ADOPTED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

23 5-312.

24 (A) (1) ~~EXCEPT AS OTHERWISE PROVIDED IN TITLE 10, SUBTITLE 4 § 10-226~~
 25 ~~OF THE STATE GOVERNMENT ARTICLE, BEFORE THE DIRECTOR TAKES A FINAL~~
 26 ~~ACTION UNDER THIS SUBTITLE, THE DIRECTOR SHALL PROVIDE THE INDIVIDUAL~~
 27 ~~PERSON AGAINST WHOM THE ACTION IS CONTEMPLATED AN OPPORTUNITY FOR~~
 28 ~~NOTICE OF THE DIRECTOR'S PROPOSED ACTION AND THE OPPORTUNITY TO~~
 29 ~~REQUEST A HEARING BEFORE THE DIRECTOR.~~

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

33 (B) THE DIRECTOR SHALL PROVIDE NOTICE AND CONDUCT A THE HEARING
 34 IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

35 (C) THE DIRECTOR MAY ADMINISTER OATHS IN CONNECTION WITH A
 36 PROCEEDING UNDER THIS SECTION.

37 ~~(D) THE HEARING NOTICE PROVIDED TO THE INDIVIDUAL SHALL BE SENT BY~~
 38 ~~CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF THE INDIVIDUAL AT LEAST 10~~
 39 ~~DAYS BEFORE THE HEARING.~~

40 (D) IF A HEARING IS NOT REQUESTED WITHIN THE TIME PERIOD SPECIFIED
 41 UNDER SUBSECTION (A)(2) OF THIS SECTION OR IF THE PERSON FAILS TO APPEAR

17

1 FOR THE HEARING AFTER REQUESTING A HEARING, THE PROPOSED ACTION OF
2 THE DIRECTOR SHALL BE AFFIRMED.

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

4 (F) (1) THE DIRECTOR MAY ISSUE SUBPOENAS IN CONNECTION WITH A
5 PROCEEDING UNDER THIS SECTION.

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

9 (G) IF, AFTER DUE NOTICE, THE INDIVIDUAL AGAINST WHOM THE ACTION IS
10 CONTEMPLATED FAILS OR REFUSES TO APPEAR, THE DIRECTOR MAY HEAR AND
11 DETERMINE THE MATTER.

12 (H) IF, AFTER A HEARING, THE PROPOSED ACTION BY THE DIRECTOR IS
13 UPHELD, THE ~~CHALLENGER~~ APPELLANT SHALL PAY THE HEARING COSTS, AS
14 SPECIFIED BY THE OFFICE IN ITS REGULATIONS.

15 SUBTITLE 4. ~~PERMITS~~ PERMITS AND STATEMENT FILINGS.

16 5-401.

17 (A) SUBJECT TO THE PROVISIONS OF THIS SECTION, A REGISTERED
18 CEMETERIAN OR REGISTERED SELLER MAY ENGAGE IN THE OPERATION OF A
19 CEMETERY OR BURIAL GOODS BUSINESS AS A SOLE PROPRIETOR OR THROUGH:

20 (1) A CORPORATION AS AN OFFICER, DIRECTOR, EMPLOYEE, OR AGENT
21 OF THE CORPORATION;

22 (2) A LIMITED LIABILITY COMPANY AS A MEMBER, EMPLOYEE, OR
23 AGENT OF THE LIMITED LIABILITY COMPANY; OR

24 (3) A PARTNERSHIP AS A PARTNER, EMPLOYEE, OR AGENT OF THE
25 PARTNERSHIP.

26 (B) SUBJECT TO THE PROVISIONS OF THIS TITLE, A CORPORATION, LIMITED
27 LIABILITY COMPANY, OR PARTNERSHIP MAY ENGAGE IN THE OPERATION OF A
28 CEMETERY OR BURIAL GOODS BUSINESS THROUGH A REGISTERED CEMETERIAN
29 OR REGISTERED SELLER.

30 (C) (1) A REGISTERED CEMETERIAN WHO ENGAGES IN THE OPERATION OF
31 A CEMETERY THROUGH A CORPORATION, LIMITED LIABILITY COMPANY, OR
32 PARTNERSHIP UNDER THIS TITLE IS SUBJECT TO ALL OF THE PROVISIONS OF THIS
33 TITLE THAT RELATE TO ENGAGING IN THE OPERATION OF A CEMETERY.

34 (2) A REGISTERED SELLER WHO ENGAGES IN THE OPERATION OF A
35 BURIAL GOODS BUSINESS THROUGH A CORPORATION, LIMITED LIABILITY
36 COMPANY, OR PARTNERSHIP UNDER THIS TITLE IS SUBJECT TO ALL OF THE
37 PROVISIONS OF THIS TITLE THAT RELATE TO PROVIDING BURIAL GOODS SERVICES.

18

1 (D) (1) A CORPORATION, LIMITED LIABILITY COMPANY, OR PARTNERSHIP
2 THAT ENGAGES IN THE OPERATION OF A CEMETERY OR BURIAL GOODS BUSINESS
3 UNDER THIS TITLE IS NOT, BY ITS COMPLIANCE WITH THIS TITLE, RELIEVED OF ANY
4 RESPONSIBILITY THAT THE CORPORATION, LIMITED LIABILITY COMPANY, OR
5 PARTNERSHIP MAY HAVE FOR AN ACT OR AN OMISSION BY ITS OFFICER, DIRECTOR,
6 MEMBER, PARTNER, EMPLOYEE, OR AGENT.

7 (2) AN INDIVIDUAL WHO ENGAGES IN THE OPERATION OF A CEMETERY
8 OR BURIAL GOODS BUSINESS THROUGH A CORPORATION, LIMITED LIABILITY
9 COMPANY, OR PARTNERSHIP IS NOT, BY REASON OF THE INDIVIDUAL'S
10 EMPLOYMENT OR OTHER RELATIONSHIP WITH THE CORPORATION, LIMITED
11 LIABILITY COMPANY, OR PARTNERSHIP, RELIEVED OF ANY INDIVIDUAL
12 RESPONSIBILITY THAT THE INDIVIDUAL MAY HAVE REGARDING THAT PRACTICE.

13 5-402.

14 A CORPORATION, LIMITED LIABILITY COMPANY, OR PARTNERSHIP SHALL
15 OBTAIN A PERMIT ISSUED BY THE DIRECTOR, BEFORE THE CORPORATION, LIMITED
16 LIABILITY COMPANY, OR PARTNERSHIP MAY ENGAGE IN THE OPERATION OF A
17 CEMETERY OR BURIAL GOODS BUSINESS IN THE STATE.

18 5-403.

19 TO QUALIFY FOR A PERMIT, A CORPORATION, LIMITED LIABILITY COMPANY,
20 OR PARTNERSHIP SHALL:

21 (1) DESIGNATE A SEPARATE REGISTERED CEMETERIAN OR
22 REGISTERED SELLER AS THE INDIVIDUAL RESPONSIBLE FOR THE OPERATIONS OF
23 EACH AFFILIATED CEMETERY OR BURIAL GOODS BUSINESS;

24 (2) PROVIDE THE NAME AND BUSINESS ADDRESS OF EACH AFFILIATED
25 CEMETERY OR BURIAL GOODS BUSINESS; AND

26 (3) PROVIDE A LIST OF THE OFFICERS, DIRECTORS, MEMBERS,
27 PARTNERS, AGENTS, AND EMPLOYEES OF THE ENTITY APPLYING FOR THE PERMIT.

28 5-404.

29 AN APPLICANT FOR A PERMIT SHALL SUBMIT TO THE DIRECTOR:

30 (1) AN APPLICATION ON THE FORM THAT THE DIRECTOR PROVIDES;
31 AND

32 (2) AN APPLICATION FEE AS SET BY THE DIRECTOR.

33 5-405.

34 A BONA FIDE RELIGIOUS, NONPROFIT CEMETERY THAT IS EXEMPT UNDER §
35 5-102 OF THIS TITLE FROM THE REGISTRATION AND PERMITTING REQUIREMENTS
36 OF THIS TITLE SHALL FILE WITH THE OFFICE, ONCE EVERY 2 YEARS, A STATEMENT
37 THAT INCLUDES:

38 (1) THE NAME AND ADDRESS OF THE CEMETERY;

19

1 (2) THE NAME AND ADDRESS OF THE RELIGIOUS ORGANIZATION THAT
2 OWNS AND OPERATES THE CEMETERY; AND

3 (3) THE NAME AND ADDRESS OF THE INDIVIDUAL WHO IS RESPONSIBLE
4 FOR THE OVERSIGHT OF THE CEMETERY.

5 [Subtitle 5. Sale of Burial Ground for Another Purpose.]

6 Subtitle 5. Cemetery [Corporations] PROPERTY.

7 5-501.

8 (a) Except as otherwise provided in this section, a [cemetery corporation]
9 REGISTERED CEMETERIAN OR PERMIT HOLDER may not buy, hold, or use, for burial:

10 (1) more than 100 acres in the State; or

11 (2) any land within the limits of a municipal corporation in the State, unless
12 authorized to do so by the municipal corporation.

13 (b) (1) In the Spaldings Election District of Prince George's County, a
14 [cemetery corporation] REGISTERED CEMETERIAN OR PERMIT HOLDER may buy,
15 hold, or use, for burial, up to 125 acres in 1 tract.

16 (2) In the Laurel Election District of Prince George's County, a [cemetery
17 corporation] REGISTERED CEMETERIAN OR PERMIT HOLDER that operated on June 1,
18 1955, may buy, hold, or use, for burial, up to 200 acres in 1 tract.

19 (c) In Frederick County, a [cemetery corporation] REGISTERED CEMETERIAN
20 OR PERMIT HOLDER may buy, hold, or use, for burial, up to 150 acres in 1 tract.

21 5-502.

22 (a) An alley, canal, road, or other public thoroughfare may not be opened through
23 property of a cemetery [corporation] if that property is used or to be used for burial.

24 (b) This section does not authorize a [cemetery corporation] REGISTERED
25 CEMETERIAN OR PERMIT HOLDER to obstruct:

26 (1) a public road in use when the cemetery [corporation] is formed; or

27 (2) the site of a future public road that, when the cemetery [corporation]
28 is formed, is shown on a plat made by authority of the State, a county, or a municipal
29 corporation.

30 5-503.

31 (a) [In this section, "cemetery" includes an incorporated, unincorporated,
32 religious, or secular memorial park and memorial garden.

33 (b)] Each burial lot and each crypt sold or conveyed in a cemetery shall be held by
34 the owner only for the purpose of burial.

20

1 [(c)] (B) The interest of an owner of a burial lot or crypt that is held for the burial
2 of the owner or others and not held as an investment is not:

- 3 (1) considered property;
- 4 (2) subject to attachment or execution for debt;
- 5 (3) subject to the insolvency laws of the State;
- 6 (4) to be inventoried in the estate of the owner; or
- 7 (5) subject to inheritance taxes.

8 [(d)] (C) The interest of an owner of a burial lot or crypt that is held as an
9 investment and not held for the burial of the owner or others is:

- 10 (1) considered personal property;
- 11 (2) subject to attachment or execution for debt;
- 12 (3) subject to the insolvency laws of the State;
- 13 (4) to be inventoried in the estate of the owner; and
- 14 (5) subject to inheritance taxes.

15 [(e)] (D) Subject to the rules of the cemetery owner and to the terms of any
16 contract made with the cemetery owner, the interest of an owner of a burial lot or crypt:

- 17 (1) may be disposed of during the lifetime of the owner of the burial lot or
18 crypt with the consent of the cemetery owner;
- 19 (2) may be disposed of by specific reference in the will of the owner; and
- 20 (3) otherwise passes to the heirs of the owner, as defined in § 1-101(f) of
21 the Estates and Trusts Article.

22 5-504.

23 A certificate, under seal of a [cemetery corporation] REGISTERED CEMETERIAN
24 OR PERMIT HOLDER, of ownership of a burial lot or crypt has the same effect as a
25 conveyance of real property that is executed, acknowledged, and recorded as required by
26 law.

27 5-602.

28 (a) In this section, "developed land area" means land in a cemetery:

- 29 (1) that is available for burial;
- 30 (2) where roads, paths, or buildings have been laid out or built; or
- 31 (3) where burial lots have been outlined on a plat or in a record or sales
32 brochure.

21

1 (b) (1) Each [cemetery owner] REGISTERED CEMETERIAN OR PERMIT
2 HOLDER who sells or offers to sell to the public a burial lot or burial right in a cemetery
3 as to which perpetual care is stated or implied shall have a perpetual care trust fund.

4 (2) A separate PERPETUAL CARE trust fund shall be established for each
5 cemetery to which this section applies.

6 (c) Each [cemetery owner] REGISTERED CEMETERIAN OR PERMIT HOLDER
7 initially shall deposit in the PERPETUAL CARE trust fund at least:

8 (1) \$10,000, if the developed land area of the cemetery is 10 acres or less; or

9 (2) \$25,000, if the developed land area of the cemetery is more than 10
10 acres.

11 (d) (1) The deposits required by this subsection are in addition to the deposits
12 required by subsection (c) of this section.

13 (2) Except as provided in paragraph (3) of this subsection, within 30 days
14 after the end of the month when the buyer of a burial lot, above-ground crypt, niche, or
15 burial right makes a final payment, the [cemetery owner] REGISTERED CEMETERIAN
16 OR PERMIT HOLDER shall pay in cash to the trustee for deposit in the PERPETUAL
17 CARE trust fund at least the greater of:

18 (i) 10% of the selling price of each burial lot, above-ground crypt,
19 niche, or burial right sold; or

20 (ii) 35 cents for each square foot of land burial space.

21 (3) This subsection does not apply to the resale of a burial lot,
22 above-ground crypt, niche, or burial right for which the cemetery already has paid into
23 the PERPETUAL CARE trust fund the deposit required by this subsection.

24 (e) The income from the PERPETUAL CARE trust fund:

25 (1) shall be used only for the perpetual care of the cemetery, including:

26 (i) the maintenance, administration, supervision, and embellishment
27 of the cemetery and its grounds, roads, and paths; and

28 (ii) the repair and renewal of buildings, including columbaria and
29 mausoleums, and the property of the cemetery; and

30 (2) may not be used to care for memorials or monuments.

31 5-604.

32 (a) The terms of a trust to provide for perpetual care shall be designated in a
33 written agreement between the [cemetery owner] REGISTERED CEMETERIAN OR
34 PERMIT HOLDER and trustee.

35 (b) The terms of the trust agreement:

36 (1) shall conform to this subtitle; and

22

1 (2) may include provisions about:

2 (i) payment of income;

3 (ii) accumulation of income;

4 (iii) reinvestment of income;

5 (iv) administration of the trust fund; and

6 (v) powers of the trustee as to investments.

7 (c) (1) A trust agreement shall be irrevocable.

8 (2) However, a trust agreement may:

9 (i) give the [cemetery owner] REGISTERED CEMETERIAN OR
10 PERMIT HOLDER the right to remove the trustee and appoint another qualified trustee;
11 and

12 (ii) provide for the appointment of individuals as cotrustees and
13 successor cotrustees with a corporate trustee.

14 5-605.

15 (a) (1) Each [cemetery owner] REGISTERED CEMETERIAN OR PERMIT
16 HOLDER subject to the trust requirements of this subtitle shall keep detailed records of
17 all sales of burial lots or burial rights in a cemetery and money received.

18 (2) The records of each [cemetery owner] REGISTERED CEMETERIAN OR
19 PERMIT HOLDER and of each trustee appointed by the [cemetery owner] REGISTERED
20 CEMETERIAN OR PERMIT HOLDER are subject to examination by:

21 (i) THE DIRECTOR;

22 (II) the Attorney General or an authorized representative of the
23 Attorney General; and

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

26 (b) (1) Each [cemetery owner] REGISTERED CEMETERIAN OR PERMIT
27 HOLDER subject to the trust requirements of this subtitle shall submit a report to the
28 Secretary of State within 120 days after the close of each calendar or other fiscal year
29 chosen by the [cemetery owner] REGISTERED CEMETERIAN OR PERMIT HOLDER.

30 (2) The report shall:

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

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

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

34 (iv) include:

23

- 1 1. the name of the [cemetery owner] REGISTERED
- 2 CEMETERIAN OR PERMIT HOLDER;
- 3 2. each location of the [cemetery owner] REGISTERED
- 4 CEMETERIAN OR PERMIT HOLDER;
- 5 3. the amount of money in each PERPETUAL CARE trust fund
- 6 at the beginning of the calendar or other fiscal year chosen by the [cemetery owner]
- 7 REGISTERED CEMETERIAN OR PERMIT HOLDER;
- 8 4. the amount of money that the [cemetery owner]
- 9 REGISTERED CEMETERIAN OR PERMIT HOLDER received during that year that is
- 10 subject to the trust requirements of this subtitle;
- 11 5. the amount of money actually deposited into each
- 12 PERPETUAL CARE trust fund in that year;
- 13 6. the amount of money spent during that year to provide care,
- 14 maintenance, administration, and embellishment of each cemetery, except for money
- 15 used for the care of monuments and memorials; and
- 16 7. the name and address of each trustee.

17 (3) A [cemetery owner] REGISTERED CEMETERIAN OR PERMIT HOLDER
18 who stops selling burial lots or burial rights in a cemetery as to which perpetual care is
19 stated or implied shall notify the [Secretary of State] DIRECTOR in the required report
20 for the year in which sales stop.

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

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

23 (2) for determining whether [cemetery owners] REGISTERED
24 CEMETERIANS AND PERMIT HOLDERS are complying with this subtitle.

25 5-606.

26 (a) If the [Secretary of State] DIRECTOR finds that a [cemetery owner]
27 REGISTERED CEMETERIAN OR PERMIT HOLDER subject to the trust requirements of
28 this subtitle has violated this subtitle or a regulation adopted under this subtitle, the
29 [Secretary of State] DIRECTOR may refer the matter to:

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

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

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

33 (1) injunctive or other equitable relief;

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

35 (3) both.

24

1 5-607.

2 A [cemetery owner] REGISTERED CEMETERIAN OR PERMIT HOLDER may not
3 sell or offer to sell to a member of the public a burial lot or burial right in a cemetery and
4 represent to the public in any way, express or implied, that the cemetery or the burial lot
5 or burial right in the cemetery will have perpetual care unless the [cemetery owner]
6 REGISTERED CEMETERIAN OR PERMIT HOLDER has provided adequately for that
7 perpetual care.

8 5-608.

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

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

14 (c) If a [corporation] PERMIT HOLDER violates this subtitle, [each officer who
15 is responsible for the violation] THE PERMIT HOLDER OR THE REGISTERED
16 CEMETERIAN DESIGNATED AS THE PERSON RESPONSIBLE FOR THE OPERATIONS OF
17 THE CEMETERY UNDER § 5-403 OF THIS TITLE is guilty of a misdemeanor and, on
18 conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year
19 or both.

20 Subtitle 7. Preneed Burial Contracts.

21 5-701.

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

23 (b) (1) "Burial space" means land or space in a structure used or to be used for
24 burial.

25 (2) "Burial space" includes a burial right in the land or space.

26 (c) "Buyer" means a person who buys preneed goods or preneed services.

27 (d) "Preneed burial contract" means a written instrument under which preneed
28 goods or preneed services are to be sold and delivered or performed.

29 ~~(e) (1) "Preneed goods" means goods that are sold:~~

30 ~~(i) before the buyer's death; and~~

31 ~~(ii) in connection with burial.~~

32 ~~(2) "Preneed goods" includes:~~

33 ~~(I) A CASKET;~~

34 ~~[(i)] (II) a grave liner;~~

35 ~~[(ii)] (III) a memorial;~~

25

1 ~~{(iii)} (IV) a monument;~~

2 ~~{(iv)} (V) a scroll;~~

3 ~~{(v)} (VI) an urn;~~

4 ~~{(vi)} (VII) a vase; and~~

5 ~~{(vii)} (VIII) a vault.~~

6 ~~(3) "Preneed goods" does not include burial space.~~

7 ~~(E)~~ (E) (1) "Preneed services" means services that are sold:

8 (i) before the buyer's death; and

9 (ii) in connection with burial.

10 (2) "Preneed services" includes opening and closing a grave.

11 ~~(F)~~ (F) "Seller" means a [person] REGISTERED CEMETERIAN, REGISTERED
12 SELLER, OR ANY OTHER PERSON who sells preneed goods or preneed services.

13 ~~(G)~~ (G) "Specific funds" means money that is identified to a specific preneed
14 burial contract.

15 ~~(H)~~ (H) "Trust account" means a preneed trust account.

16 5-704.

17 (e) (1) Except as otherwise provided in this subsection, a preneed burial
18 contract may not provide for interest or a finance charge.

19 (2) A cemetery that makes a preneed burial contract may impose interest or
20 a finance charge on preneed goods delivered before death or preneed services performed
21 before death.

22 (3) A [cemetery] REGISTERED CEMETERIAN OR PERMIT HOLDER may
23 sell a preneed burial contract to a commercial lending institution if the preneed burial
24 contract signed by the original buyer of the preneed goods or preneed services contains
25 the following language in 12-point or larger type:

26 "Notice to consumers: This contract of sale may be sold to a commercial lending
27 institution. After the sale, the commercial lending institution may impose interest or a
28 finance charge on the remaining balance due".

29 5-705.

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

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

26

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

3 (c) This section does not apply to:

4 (1) a preneed burial contract under which all preneed goods and preneed
5 services, other than dates, scrolls, and other additions that represent not more than 10%
6 of the total contract price, must be delivered or performed within 120 days after receipt of
7 50% of the total contract price; or

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

12 5-707.

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

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

19 5-710.

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

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

24 (i) the Attorney General or an authorized representative of the
25 Attorney General; and

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

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

30 (2) The report shall:

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

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

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

34 (iv) include:

35 1. the name of the seller;

36 2. each location of the seller;

27

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

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

5 5. the name and address of the trustee.

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

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

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

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

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

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

26 (1) SPECIFIC PRICES FOR:

27 (I) GROUND OPENING AND CLOSING;

28 (II) EXTRA DEPTH INTERMENT;

29 (III) INTERMENT OF CREMATED REMAINS; AND

30 (IV) MAUSOLEUM ENTOMBMENT; AND

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

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

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

28

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

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

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

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

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

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

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

15 (⇔) (E) The [Secretary of State] DIRECTOR may adopt regulations:

16 (1) to administer this section; and

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

18 5-711.

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

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

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

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

25 (1) injunctive or other equitable relief;

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

27 (3) both.

28 Subtitle 8. Miscellaneous Provisions.

29 5-801.

30 (A) AT THE TIME OF ENTERING INTO A CONTRACT WITH A CONSUMER FOR
31 THE SALE OF BURIAL GOODS OR SERVICES REGISTRANTS AND PERMIT HOLDERS
32 SHALL MAKE THE FOLLOWING WRITTEN DISCLOSURES:

33 (1) THE ITEMIZED COST FOR EACH SERVICE PERFORMED UNDER THE
34 CONTRACT;

29

1 (2) A LIST OF SERVICES INCIDENTAL TO BURIAL THAT ARE NOT
2 COVERED BY THE CONTRACT;

3 (3) A STATEMENT REGARDING THE CEMETERY'S POLICY ON THE USE
4 OF INDEPENDENT MONUMENT COMPANIES; AND

5 (4) THE NAME, ADDRESS, AND TELEPHONE NUMBER FOR THE STATE
6 OFFICE OF CEMETERY OVERSIGHT.

7 (B) THE DISCLOSURES SHALL BE CONSPICUOUSLY INCORPORATED IN THE
8 CONTRACT IN 12 POINT TYPE.

9 (C) THE DISCLOSURE MUST BE SIGNED AND DATED BY THE CONSUMER.

10 (D) THE CONSUMER MUST BE PROVIDED WITH A COPY OF THE CONTRACT AT
11 THE TIME OF PURCHASING THE BURIAL GOODS OR SERVICES.

12 (E) THE DISCLOSURE SHALL OCCUR:

13 (1) NOT LATER THAN THE FIRST SCHEDULED FACE-TO-FACE CONTACT
14 WITH THE PURCHASER OR PARTY REPRESENTING THE PURCHASER; OR

15 (2) IF NO FACE-TO-FACE CONTACT OCCURS, AT THE TIME OF THE
16 EXECUTION OF THE CONTRACT BY THE PURCHASER OR PARTY REPRESENTING THE
17 PURCHASER.

18 (F) THE DIRECTOR MAY BY REGULATION PRESCRIBE THE FORM AND
19 WORDING OF THE DISCLOSURE.

20 (G) IF THE PURCHASE BY THE CONSUMER INCLUDES A CEMETERY PLOT, THE
21 REGISTERED CEMETERIAN OR PERMIT HOLDER SHALL PROVIDE THE CONSUMER
22 WITH A COPY OF A LOCATION SURVEY, PERFORMED BY A LICENSED LAND
23 SURVEYOR, WHICH INDICATES THE LOCATION OF THE PURCHASED PLOT WITHIN
24 THE CEMETERY, OR BY ANY OTHER MEANS APPROVED BY THE DIRECTOR.

25 SUBTITLE 9. PROHIBITED ACTS.

26 5-901.

27 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, AN INDIVIDUAL MAY
28 NOT ENGAGE IN CEMETERY OPERATIONS, ATTEMPT TO ENGAGE IN CEMETERY
29 OPERATIONS, OR OFFER TO PROVIDE CEMETERY GOODS AND SERVICES UNLESS
30 THE INDIVIDUAL IS A REGISTERED CEMETERIAN.

31 (B) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, AN INDIVIDUAL MAY
32 NOT ENGAGE IN A BURIAL GOODS BUSINESS OR ATTEMPT TO PROVIDE BURIAL
33 GOODS UNLESS THE INDIVIDUAL IS A REGISTERED SELLER.

34 5-902.

35 EXCEPT FOR A REGISTERED CEMETERIAN OR REGISTERED SELLER WHO
36 OPERATES A BUSINESS AS A SOLE PRACTITIONER, A PERSON MAY NOT ENGAGE IN
37 THE OPERATION OF A CEMETERY OR BURIAL GOODS BUSINESS UNLESS:

30

1 (1) THE BUSINESS IS A CORPORATION, LIMITED LIABILITY COMPANY,
2 OR PARTNERSHIP; AND

3 (2) THE CORPORATION, LIMITED LIABILITY COMPANY, OR
4 PARTNERSHIP HOLDS A PERMIT ISSUED UNDER THIS TITLE.

5 5-903.

6 UNLESS A PERSON IS A REGISTERED CEMETERIAN OR REGISTERED SELLER, A
7 PERSON MAY NOT REPRESENT TO THE PUBLIC, BY USE OF A TITLE, INCLUDING
8 CEMETERIAN, REGISTERED CEMETERIAN, BURIAL GOODS SELLER, OR REGISTERED
9 SELLER, BY DESCRIPTION OF SERVICES, METHODS, OR PROCEDURES, OR
10 OTHERWISE, THAT THE PERSON IS AUTHORIZED TO ENGAGE IN THE OPERATION OF
11 A CEMETERY OR PROVIDE BURIAL GOODS.

12 5-904.

13 A PERSON WHO VIOLATES ~~§§ 5-902 AND 5-903~~ OF THIS SUBTITLE IS GUILTY OF A
14 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$3,000
15 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

16 SUBTITLE 10. SHORT TITLE; TERMINATION OF TITLE.

17 5-1001.

18 THIS TITLE MAY BE CITED AS THE "MARYLAND CEMETERY ACT".

19 5-1002.

20 SUBJECT TO THE EVALUATION AND REESTABLISHMENT PROVISIONS OF THE
21 MARYLAND PROGRAM EVALUATION ACT, THE OFFICE OF CEMETERY OVERSIGHT,
22 THE PROVISIONS IN THIS TITLE RELATING TO THE OFFICE, AND ALL REGULATIONS
23 ADOPTED BY THE OFFICE SHALL TERMINATE AND BE OF NO EFFECT AFTER JULY 1,
24 2007.

25 **Article - Courts and Judicial Proceedings**

26 5-399.8.

27 A PERSON WHO ACTS IN GOOD FAITH AND WITHIN THE SCOPE OF THE DUTIES
28 AND RESPONSIBILITIES PROVIDED TO THE OFFICE OF CEMETERY OVERSIGHT
29 UNDER TITLE 5 OF THE BUSINESS REGULATION ARTICLE IS NOT CIVILLY LIABLE
30 FOR GIVING INFORMATION TO THE DIRECTOR OF THE OFFICE OF CEMETERY
31 OVERSIGHT OR OTHERWISE PARTICIPATING IN THE ACTIVITIES OF THE OFFICE OF
32 CEMETERY OVERSIGHT.

33 **Article - Health Occupations**

34 7-405.

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

31

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

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

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

8 **Article - State Government**

9 8-403.

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

15 SECTION 3. AND BE IT FURTHER ENACTED, That the Director of the Office
16 of Cemetery Oversight shall:

17 (1) In conjunction with the State Board of Morticians, conduct a study to
18 determine the feasibility of combining the Office of Cemetery Oversight and the State
19 Board of Morticians;

20 (2) Conduct a study regarding the illegal recycling of graves;

21 (3) Conduct a study regarding the historic preservation of graves; and

22 (4) ~~Issue~~ Subject to § 2-1312 of the State Government Article, issue findings and
23 recommendations of the studies to the General Assembly by July 1, 1999.

24 SECTION 4. AND BE IT FURTHER ENACTED, That the Office of Cemetery
25 Oversight shall document any complaints received between the effective date of this Act
26 and December 31, 1999, concerning the bona fide, religious, nonprofit cemeteries that are
27 not subject to regulation under this Act and report to the House Economic Matters
28 Committee and the Senate Finance Committee on or before January 31, 2000, in
29 accordance with § 2-1312 of the State Government Article.

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

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

37 (1) four members in 2000;

38 (2) four members in 2001; and

1 (3) three members in 2002.

2 ~~SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect~~
3 ~~October 1, 1997.~~

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

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