

(PRE-FILED)

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By: **Chairman, Economic Matters Committee (Departmental - Labor,  
Licensing and Regulation)**

Requested: October 14, 2000

Introduced and read first time: January 10, 2001

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Office of Cemetery Oversight - Scope of Authority**

3 FOR the purpose of exempting certain cemeteries from the registration and  
4 permitting requirements; clarifying who may be a registered cemeterian;  
5 clarifying the application process for registering with the Office of Cemetery  
6 Oversight; revising financial review procedures; authorizing the Office to  
7 impose certain penalties instead of or in addition to reprimanding a registrant  
8 or permit holder; altering the qualifications for a permit; exempting certain  
9 cemeteries from the perpetual care requirements; requiring certain cemeteries  
10 created after a certain date to establish a perpetual care trust fund; providing  
11 for civil enforcement actions against unregistered businesses; specifying that  
12 certain interest and finance charges charged by a cemetery are subject to  
13 certain requirements; designating that a trustee of a preneed trust account may  
14 be a person who provides a certain bond; specifying that the records of each  
15 seller of preneed goods and preneed services are subject to examination by the  
16 Director of the Office; altering certain trust reporting requirements pertaining  
17 to preneed goods and services; requiring registrants and permit holders to  
18 provide each buyer or prospective buyer with a general price list; authorizing  
19 the Director to refer certain violations to certain persons; providing for the  
20 effective dates of this Act; defining certain terms; altering certain definitions;  
21 and generally relating to the operation of cemeteries and burial goods  
22 businesses in the State.

23 BY repealing and reenacting, with amendments,  
24 Article - Business Regulation  
25 Section 5-101, 5-102, 5-303, 5-304, 5-308, 5-309, 5-310, 5-403, 5-405, 5-601,  
26 5-602, 5-605, 5-607, 5-608, 5-704, 5-706, 5-707, 5-710, 5-801, 5-901,  
27 5-902, and 5-903  
28 Annotated Code of Maryland  
29 (1998 Replacement Volume and 2000 Supplement)

30 BY adding to  
31 Article - Business Regulation

1 Section 5-905  
2 Annotated Code of Maryland  
3 (1998 Replacement Volume and 2000 Supplement)

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

6 **Article - Business Regulation**

7 5-101.

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

9 (b) (1) "Burial goods" means goods that are used in connection with burial.

10 (2) "Burial goods" includes:

11 (i) a casket;

12 (ii) a grave liner;

13 (iii) a memorial;

14 (iv) a monument;

15 (v) a scroll;

16 (vi) an urn;

17 (vii) a vase; and

18 (viii) a vault.

19 (c) "Burial goods business" means a business that provides burial goods.

20 (d) (1) "Cemetery" means land used or to be used for [burial] INTERMENT.

21 (2) "Cemetery" includes a structure used or to be used for [burial]  
22 INTERMENT.

23 (e) "Director" means the Director of the Office of Cemetery Oversight.

24 (f) "Engage in the operation of a cemetery" means owning, controlling, or  
25 managing a cemetery, including performing activities necessary for:

26 (1) the establishment or improvement of a cemetery;

27 (2) interment; and

28 (3) the care, preservation, or embellishment of a cemetery.

1 (g) "Interment" means all final disposition of human remains, including:

2 (1) earth burial;

3 (2) mausoleum entombment; and

4 (3) niche or columbarium interment.

5 (h) "Office" means the Office of Cemetery Oversight.

6 (i) "Permit" means a permit issued by the Director to allow a partnership,  
7 limited liability company, or corporation to operate a business through which a  
8 registrant may engage in the operation of a cemetery or provide burial goods.

9 (j) (1) "Preneed goods" means burial goods that are sold before the buyer's  
10 death.

11 (2) "Preneed goods" does not include burial space.

12 (k) "Provide burial goods" means:

13 (1) to sell, erect, SERVICE, or inscribe burial monuments; AND

14 (2) to sell burial goods.

15 (l) "Registration" means a registration issued by the Director authorizing an  
16 individual to operate a cemetery or to provide burial goods.

17 (m) "Registered cemeterian" means an individual registered to operate a  
18 cemetery as a sole proprietor or on behalf of a SOLE PROPRIETOR OR OF A permit  
19 holder.

20 (n) "Registered seller" means an individual registered to provide burial goods  
21 as a sole proprietor or on behalf of a SOLE PROPRIETOR OR OF A permit holder.

22 (O) "RESPONSIBLE PARTY" MEANS A SOLE PROPRIETOR OR THE INDIVIDUAL  
23 DESIGNATED BY A PARTNERSHIP, LIMITED LIABILITY COMPANY, OR CORPORATION  
24 TO BE RESPONSIBLE FOR THE OPERATIONS OF A CEMETERY OR BURIAL GOODS  
25 BUSINESS.

26 5-102.

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

28 (1) a person that owns and operates a bona fide religious, nonprofit  
29 cemetery in this State; [or]

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

1 (3) A COUNTY, CITY, OR MUNICIPAL CORPORATION THAT OWNS AND  
2 OPERATES A CEMETERY IN THE STATE; OR

3 (4) A VETERANS' CEMETERY OPERATED BY THE STATE.

4 (b) This title does not apply to:

5 (1) the operation of a funeral establishment, including the sale of burial  
6 goods in the ordinary course of the funeral establishment's business;

7 (2) a licensed funeral director acting within the scope of the funeral  
8 director's license; or

9 (3) a mortician acting within the scope of the mortician's license.

10 5-303.

11 (a) An applicant shall register by:

12 (1) submitting to the Director an application on the form that the  
13 Director provides; and

14 (2) paying a nonrefundable application fee set by the Director.

15 (b) The application shall state:

16 (1) the name, date of birth, and residential address of the applicant;

17 (2) the name and fixed address of the affiliated cemetery or burial goods  
18 business;

19 (3) whether the cemetery or burial goods business with which the  
20 applicant is affiliated is owned or controlled by a SOLE PROPRIETOR, partnership,  
21 limited liability company, or corporation;

22 (4) IF THE APPLICANT IS DESIGNATED AS THE RESPONSIBLE PARTY, the  
23 name and residential address of each employee who sells [cemetery] BURIAL SPACE,  
24 [goods] GOODS, or services to the public for the [applicant] BUSINESS while  
25 engaging in the operation of a cemetery or burial goods business; and

26 (5) any other reasonable information that the Director determines is  
27 necessary to carry out this title.

28 5-304.

29 (a) Each applicant DESIGNATED AS THE RESPONSIBLE PARTY shall  
30 demonstrate the financial stability of the [cemetery or burial goods] business with  
31 which the applicant is affiliated by providing the Director with a financial statement  
32 OR OTHER REPORTS REQUIRED UNDER SUBSECTION (E) OF THIS SECTION with the  
33 application for registration.

1 (b) If the [applicant] BUSINESS is A CEMETERY THAT SELLS BURIAL GOODS  
2 AND IS an existing business, the financial statement shall:

3 (1) be on the form that the Director requires;

4 (2) contain a statement by a certified public accountant [employed]  
5 RETAINED by the [applicant] BUSINESS, detailing the assets and liabilities of the  
6 cemetery [or burial goods business] for the last fiscal year; and

7 (3) contain [an opinion] A REVIEW by the certified public accountant as  
8 to the financial stability of the cemetery [or burial goods business].

9 (C) IF THE BUSINESS IS AN EXISTING CEMETERY THAT DOES NOT SELL  
10 BURIAL GOODS OR AN EXISTING BURIAL GOODS BUSINESS NOT AFFILIATED WITH A  
11 CEMETERY, THE APPLICANT SHALL:

12 (1) COMPLETE A FORM THAT THE DIRECTOR REQUIRES; AND

13 (2) SATISFY CRITERIA THAT THE DIRECTOR ADOPTS UNDER  
14 SUBSECTION (E) OF THIS SECTION.

15 [(c)] (D) If the [applicant] BUSINESS is a new business, the [financial  
16 statement] APPLICANT shall:

17 (1) [be on] COMPLETE a form that the Director requires; and

18 (2) satisfy criteria that the Director adopts under subsection [(d)] (E) of  
19 this section.

20 [(d)] (E) (1) The Director shall make a determination of the financial  
21 stability of each applicant based on criteria that the Director adopts FOR EACH CLASS  
22 OF BUSINESS.

23 (2) The Director shall adopt separate criteria to determine the financial  
24 stability of applicants that are new businesses or existing businesses.

25 (3) THE DIRECTOR SHALL REQUIRE THAT ALL FINANCIAL STATEMENTS  
26 OF A NEW CEMETERY SUBMITTED UNDER SUBSECTION (D) OF THIS SECTION BE  
27 PREPARED BY A CERTIFIED PUBLIC ACCOUNTANT RETAINED BY THE BUSINESS.

28 5-308.

29 Within 1 week after the effective date of the change, [a registrant or permit  
30 holder] THE APPLICANT DESIGNATED AS THE RESPONSIBLE PARTY OR THE  
31 REGISTERED RESPONSIBLE PARTY shall submit to the Director an application form  
32 that shows a change in the:

33 (1) cemetery or burial goods business with which a registrant is  
34 affiliated;

1 (2) [registered cemeterian or registered seller designated as]  
2 INDIVIDUAL DESIGNATED AS THE responsible PARTY [for the cemetery operations or  
3 for providing burial goods for the permit holder];

4 (3) employees of the [permit holder] BUSINESS who engage in the sale of  
5 BURIAL SPACE, [goods] GOODS, or services to the public;

6 (4) officers, directors, members, or agents of the permit holder; or

7 (5) name or address of the registrant or permit holder.

8 5-309.

9 Each registrant AND PERMIT HOLDER shall display the registration OR PERMIT  
10 conspicuously at the business address of the registrant OR PERMIT HOLDER.

11 5-310.

12 (a) Subject to the hearing provisions of § 5-312 of this subtitle, the Director  
13 may deny a registration or permit to an applicant, reprimand a registrant or permit  
14 holder, or suspend or revoke a registration or permit, if an applicant, registrant, or  
15 permit holder, or an agent, employee, officer, director, or partner of the applicant,  
16 registrant, or permit holder:

17 (1) fraudulently or deceptively obtains or attempts to obtain a  
18 registration or permit;

19 (2) fraudulently or deceptively uses a registration or permit;

20 (3) under the laws of the United States or of any state, is convicted of a:

21 (i) felony; or

22 (ii) misdemeanor that is directly related to the fitness and  
23 qualification of the applicant, registrant, or permit holder to own or operate a  
24 cemetery or provide burial goods;

25 (4) fails to provide or misrepresents any information required to be  
26 provided under this title;

27 (5) violates this title;

28 (6) violates the code of ethics adopted by the Director;

29 (7) violates a regulation adopted under this title;

30 (8) fails to provide reasonable and adequate supervision of the operation  
31 of the cemetery or the provision of burial goods by agents, employees, officers,  
32 directors, or partners affiliated with a cemetery or burial goods business;

33 (9) refuses to allow an inspection required by this title;

1 (10) fails to comply with an order of the Director;

2 (11) fails to comply with any terms of settlement under a binding  
3 arbitration agreement; or

4 (12) is found guilty by a court in this State of violating an unfair and  
5 deceptive trade practices provision under Title 13 of the Commercial Law Article.

6 (b) (1) If a registrant or permit holder is charged with a violation of this title  
7 that could result in suspension or revocation of the registration or permit, the  
8 Director may seek an immediate restraining order in a circuit court in this State to  
9 prohibit the registrant or permit holder from engaging in the operation of any  
10 cemetery or burial goods business.

11 (2) The restraining order is in effect until:

12 (i) the court lifts the order; or

13 (ii) the charges are adjudicated or dismissed.

14 (c) If a registrant or permit holder is charged with a violation of this title that  
15 could result in suspension or revocation of the registration or permit, the Director  
16 may petition a court to:

17 (1) appoint a receiver or trustee to take charge of the assets and operate  
18 the business of the person in the event that the registration or permit is suspended or  
19 revoked; and

20 (2) take other actions as are appropriate to protect the public interest.

21 (d) Instead of or in addition to REPRIMANDING A REGISTRANT OR PERMIT  
22 HOLDER, OR suspending or revoking a registration OR PERMIT, the Director may  
23 impose a civil penalty:

24 (1) not to exceed \$5,000 for each violation of this title or an order of the  
25 Director under this title; and

26 (2) not to exceed \$500 for each day a violation continues past the time set  
27 for its correction.

28 (e) To determine the amount of the penalty imposed under this subsection, the  
29 Director shall consider:

30 (1) the seriousness of the violation;

31 (2) the harm caused by the violation;

32 (3) the good faith efforts of the registrant or permit holder; and

33 (4) any history of previous violations by the registrant or permit holder.

1 (f) Any civil penalties collected under this section shall be paid into the  
2 General Fund of the State.

3 (g) The Director shall consider the following facts in the granting, denial,  
4 renewal, suspension, or revocation of a registration or permit or the reprimand of a  
5 registrant or permit holder when an applicant, registrant, or permit holder, or an  
6 agent, employee, officer, director, or partner of an applicant, registrant, or permit  
7 holder, is convicted of a felony or misdemeanor described in subsection (a)(3) of this  
8 section:

9 (1) the nature of the crime;

10 (2) the relationship of the crime to the activities authorized by the  
11 registration or permit;

12 (3) with respect to a felony, the relevance of the conviction to the fitness  
13 and qualification of the applicant, [registrant] REGISTRANT, or permit holder or  
14 agent, employee, officer, director, or partner to operate a cemetery or provide burial  
15 goods;

16 (4) the length of time since the conviction; and

17 (5) the behavior and activities of the applicant, registrant, or permit  
18 holder, or agent, employee, officer, director, or partner before and after the conviction.  
19 5-403.

20 To qualify for a permit, a corporation, limited liability company, or partnership  
21 shall:

22 (1) designate a separate registered cemeterian or registered seller as the  
23 [individual] responsible PARTY for the operations of each affiliated cemetery or  
24 burial goods business;

25 (2) provide the name and business address of each affiliated cemetery or  
26 burial goods business; [and]

27 (3) provide a list of the officers, directors, members, partners, agents,  
28 and employees of the entity applying for the permit; AND

29 (4) COMPLY WITH § 5-303(B)(4) AND § 5-304 OF THIS TITLE.

30 5-405.

31 Except for a cemetery in which no burials have taken place within the previous  
32 5 years, a [bona fide religious, nonprofit] cemetery that is exempt under § 5-102 of  
33 this title from the registration and permitting requirements of this title shall file with  
34 the Office, once every 2 years, a statement that includes:

35 (1) the name and address of the cemetery;



1           (2)     the name and address of the [religious] organization that owns and  
2 operates the cemetery; and

3           (3)     the name and address of the individual who is responsible for the  
4 oversight of the cemetery.

5 5-601.

6     (a)     This subtitle does not apply to a cemetery that:

7           (1)     has less than 1 acre available for burial; or

8           (2)     is owned and operated by:

9                 (i)     a county;

10                (ii)    a municipal corporation;

11                (iii)   a church;

12                (iv)   a synagogue;

13                (v)    a religious organization; [or]

14                (vi)   a not for profit organization created before 1900 by an act of the  
15 General Assembly; OR

16                   (VII)   A STATE VETERANS AGENCY.

17     (b)     This subtitle does not apply to the sale of a below-ground earth-covered  
18 chamber.

19     (c)     This subtitle does not amend a trust agreement covering a perpetual care  
20 fund that existed on or before July 1, 1973, except as to:

21           (1)     the appointment of a successor trustee or cotrustee;

22           (2)     deposits into the fund after July 1, 1973; and

23           (3)     the withdrawal from the fund of income on deposits made after July  
24 1, 1973.

25 5-605.

26     (a)     (1)     Each SOLE PROPRIETOR registered cemeterian or permit holder  
27 subject to the trust requirements of this subtitle shall keep detailed records of all  
28 sales of burial lots or burial rights in a cemetery and money received.

29           (2)     The records of each SOLE PROPRIETOR registered cemeterian or  
30 permit holder and of each trustee appointed by the SOLE PROPRIETOR registered  
31 cemeterian or permit holder are subject to examination by:

- 1 (i) the Director;
- 2 (ii) the Attorney General or an authorized representative of the  
3 Attorney General; and
- 4 (iii) the State's Attorney for the county where the cemetery owner  
5 does business or where the cemetery is located.

6 (b) (1) Each SOLE PROPRIETOR registered cemeterian or permit holder  
7 subject to the trust requirements of this subtitle shall submit a report to the Director  
8 within 120 days after the close of each calendar or other fiscal year chosen by the  
9 SOLE PROPRIETOR registered cemeterian or permit holder.

10 (2) The report shall:

- 11 (i) be on the form that the Director requires;
- 12 (ii) be certified as to correctness by a certified public accountant;
- 13 (iii) BE ACCOMPANIED BY A TRUSTEE'S SUMMARY STATEMENT OF  
14 ASSETS;
- 15 (IV) be accompanied by a fee of \$25; and
- 16 [(iv)] (V) include:
- 17 1. the name of the SOLE PROPRIETOR registered cemeterian  
18 or permit holder;
- 19 2. each location of the SOLE PROPRIETOR registered  
20 cemeterian or permit holder;
- 21 3. the amount of money in each perpetual care trust fund at  
22 the beginning of the calendar or other fiscal year chosen by the SOLE PROPRIETOR  
23 registered cemeterian or permit holder;
- 24 4. the amount of money that the SOLE PROPRIETOR  
25 registered cemeterian or permit holder received during that year that is subject to the  
26 trust requirements of this subtitle;
- 27 5. the amount of money actually deposited into each  
28 perpetual care trust fund in that year;
- 29 6. the amount of money spent during that year to provide  
30 care, maintenance, administration, and embellishment of each cemetery, except for  
31 money used for the care of monuments and memorials; and
- 32 7. the name and address of each trustee.

33 (3) A SOLE PROPRIETOR registered cemeterian or permit holder who  
34 stops selling burial lots or burial rights in a cemetery as to which perpetual care is

1 stated or implied shall notify the Director in the required report for the year in which  
2 sales stop.

3 (c) The Director may adopt regulations:

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

5 (2) for determining whether registered cemeterians and permit holders  
6 are complying with this subtitle.

7 5-607.

8 A registered cemeterian or permit holder may not sell or offer to sell to a  
9 member of the public a burial lot or burial right in a cemetery and represent to the  
10 public in any way, express or implied, that the cemetery or the burial lot or burial  
11 right in the cemetery will have perpetual care unless the SOLE PROPRIETOR  
12 registered cemeterian or permit holder has provided adequately for that perpetual  
13 care.

14 5-608.

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

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

20 (c) If a SOLE PROPRIETOR REGISTERED CEMETERIAN OR A permit holder  
21 violates this subtitle, the SOLE PROPRIETOR REGISTERED CEMETERIAN, THE permit  
22 holder, or [registered cemeterian designated as the person] THE responsible PARTY  
23 [for the operations of the cemetery under § 5-403 of this title] is guilty of a  
24 misdemeanor and, on conviction, is subject to a fine not exceeding \$1,000 or  
25 imprisonment not exceeding 1 year or both.

26 5-704.

27 (a) A preneed burial contract shall contain:

28 (1) the name of the buyer;

29 (2) the name of the seller;

30 (3) the name of each individual, other than the buyer, as to whom the  
31 preneed goods or preneed services are to be furnished;

32 (4) a description of the preneed goods or preneed services; and

33 (5) the amount of the buyer's financial obligation.

1 (b) (1) A preneed burial contract shall be dated and executed in duplicate by  
2 the buyer and seller.

3 (2) The seller shall give the buyer a duplicate original of the preneed  
4 burial contract.

5 (c) (1) A preneed burial contract may provide for delivery of identified  
6 preneed goods by providing for the seller to:

7 (i) transfer physical possession of the preneed goods to the buyer or  
8 designee of the buyer;

9 (ii) attach the preneed goods to a designated burial space;

10 (iii) pay for and suitably store the preneed goods until needed, at a  
11 cemetery or other location of the seller, if the preneed goods are marked with the  
12 name of the buyer and the sale is supported by a verifiable record; or

13 (iv) have the supplier of the preneed goods:

14 1. cause title to be transferred to the buyer or designee of the  
15 buyer; and

16 2. agree in writing to ship the preneed goods at the direction  
17 of the buyer or designee of the buyer.

18 (2) If a preneed burial contract does not provide for the manner of  
19 delivery of preneed goods, compliance with paragraph (1)(i) or (ii) of this subsection is  
20 delivery in accordance with this subtitle.

21 (d) Notwithstanding any provision in a preneed burial contract, identified  
22 preneed services are not considered to have been performed until performance  
23 actually occurs.

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

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

29 (3) **IF A CEMETERY IMPOSES INTEREST OR A FINANCE CHARGE AS  
30 PERMITTED IN PARAGRAPH (2) OF THIS SUBSECTION, THE INTEREST OR FINANCE  
31 CHARGES ARE SUBJECT TO THE PROVISIONS OF TITLE 12, SUBTITLE 6 OF THE  
32 COMMERCIAL LAW ARTICLE.**

33 (4) A registered cemeterian or permit holder may sell a preneed burial  
34 contract to a commercial lending institution **AT THE FINANCING TERMS IN THE  
35 CONTRACT** if the preneed burial contract signed by the original buyer of the preneed  
36 goods or preneed services contains the following language in 12-point or larger type:

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

4 (f) A provision of a preneed burial contract that purports to waive any  
5 provision of this subtitle is void.

6 5-706.

7 (a) Each trust account shall be:

8 (1) titled "preneed trust account"; and

9 (2) established by the seller in the seller's name.

10 (b) A trustee appointed under this subtitle must be:

11 (1) a national banking association, as defined in the Financial  
12 Institutions Article;

13 (2) a banking institution, as defined in the Financial Institutions Article;  
14 [or]

15 (3) any other financial institution allowed by law to engage in the trust  
16 business; OR

17 (4) A PERSON WHO PROVIDES A FIDELITY BOND FROM A RECOGNIZED  
18 BONDING INSTITUTION IN AN AMOUNT EQUAL TO THE TRUST FUND AND INURING TO  
19 THE BENEFIT OF THE TRUST ACCOUNT OF THE CEMETERY OR BURIAL GOODS  
20 BUSINESS, OR THE PRENEED BUYERS, OR BOTH.

21 (c) A seller may:

22 (1) commingle money from 2 or more preneed burial contracts; and

23 (2) establish more than 1 trust account.

24 (d) (1) A trust account established under this subtitle shall be a single  
25 purpose trust.

26 (2) Money in the trust account is not available to a creditor as an asset of  
27 the seller.

28 (e) Money in the trust account may be withdrawn only on the combined  
29 signatures of:

30 (1) 2 officers of a corporate seller; or

31 (2) at least 2 individuals authorized to withdraw money for an  
32 unincorporated seller.

1 5-707.

2 (a) In this section, "seller's account" means:

3 (1) the total of specific funds deposited from all preneed burial contracts  
4 of a seller commingled in a single fund; and

5 (2) any income derived from investing the money in the fund.

6 (b) Trust accounts shall be administered as this subtitle provides.

7 (c) (1) Except as otherwise provided in this subtitle, a trustee appointed  
8 under this subtitle is subject to the law that is generally applicable to trustees.

9 (2) If a trustee appointed under this subtitle is not located in the State,  
10 the agreement between the seller and the trustee expressly shall incorporate this  
11 subtitle.

12 (d) A trustee:

13 (1) may rely on all certifications made under or required by this subtitle;  
14 and

15 (2) is not liable to any person for that reliance.

16 (e) (1) A trustee may invest money of a trust account in any security that is  
17 a lawful investment for a fiduciary, including a time deposit or certificate of deposit  
18 issued by the trustee.

19 (2) Except as otherwise provided in this subtitle, to ensure that money in  
20 the trust account is adequate, the trust income shall:

21 (i) remain in the trust account;

22 (ii) be reinvested and compounded; and

23 (iii) be disbursed only for payment of appropriate trustee's fees,  
24 commissions, and other costs of the trust account.

25 (f) (1) A seller, on written notice to the trustee and in accordance with the  
26 agreement between them, may transfer the seller's account to another trustee.

27 (2) A trustee, on written notice to the seller and in accordance with the  
28 agreement between them, may transfer the seller's account to another trustee.

29 [(g) (1) Except as otherwise provided in this subsection, each trustee shall  
30 submit to the Director an annual statement of account of the money in each trust  
31 account.

32 (2) A savings and loan association shall submit the annual statement of  
33 account to the Director.]

1 5-710.

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 DIRECTOR;

7 (II) the Attorney General or an authorized representative of the  
8 Attorney General; and

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

11 (b) (1) Each seller subject to the trust requirements of this subtitle shall  
12 submit a report to the Director within 120 days after the close of each calendar or  
13 other fiscal year chosen by the seller.

14 (2) The report shall:

15 (i) be on the form that the Director requires;

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

18 (iii) BE ACCOMPANIED BY A TRUSTEE'S SUMMARY STATEMENT OF  
19 ASSETS;

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

21 [(iv)] (V) include:

22 1. the name of the seller;

23 2. each location of the seller;

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

26 4. the amount of money actually deposited into trust  
27 accounts in that year; [and]

28 5. THE AMOUNT OF MONEY REQUIRED TO BE DISBURSED  
29 FROM THE TRUST ACCOUNTS IN THAT YEAR;

30 6. THE AMOUNT OF MONEY ACTUALLY DISBURSED FROM  
31 THE TRUST ACCOUNTS IN THAT YEAR; AND

32 [5.] 7. the name and address of the trustee.

1 (3) (i) A seller of preneed goods or preneed services that sells its  
2 business, files a petition in bankruptcy, or ceases to operate shall provide written  
3 notice within 15 days:

4 1. to the Director, detailing the changes and the  
5 arrangements the seller has made for carrying out the preneed burial contracts and  
6 the disbursement of any moneys held in an escrow or trust account; and

7 2. to each buyer of a preneed burial contract, advising the  
8 buyer of the buyer's options under State law in regard to the preneed contract.

9 (ii) Nothing in this paragraph exempts a seller of preneed goods or  
10 services that sells its business, files a petition in bankruptcy, or ceases to operate  
11 from filing the annual report required under this section.

12 (c) A seller of a preneed burial contract shall provide each buyer or  
13 prospective buyer with a general price list for the buyer or prospective buyer to keep  
14 which shall include:

15 (1) specific prices for:

16 (i) ground opening and closing;

17 (ii) extra depth interment;

18 (iii) interment of cremated remains; and

19 (iv) mausoleum entombment; and

20 (2) general price ranges for burial space or preneed goods.

21 (d) A seller of a preneed burial contract shall disclose to the buyer:

22 (1) all goods and services that are reasonably expected to be required at  
23 the time of need that are not included in the preneed burial contract;

24 (2) the buyer's cancellation and refund rights under § 5-709 of this  
25 subtitle;

26 (3) the person responsible for installation of the goods sold and any  
27 warranties for the goods sold; and

28 (4) if the preneed contract provides for goods or services to be delivered  
29 or performed before death:

30 (i) that interest or finance charges may be imposed;

31 (ii) that interest or finance charges are not allowed on other  
32 preneed burial contracts that do not provide for goods or services to be delivered or  
33 performed before death;



1 (iii) the manner of delivery of goods including where the goods are  
2 stored; and

3 (iv) the buyer's remedy if delivered goods are damaged or destroyed.

4 (e) The Director may adopt regulations:

5 (1) to administer this section; and

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

7 5-801.

8 (a) At the time of entering into a contract with a consumer for the sale of  
9 burial goods or [services] SERVICES, registrants and permit holders shall make the  
10 following written disclosures:

11 (1) the itemized cost for each service performed under the contract;

12 (2) a list of services incidental to burial that are not covered by the  
13 contract;

14 (3) a statement regarding the cemetery's policy on the use of  
15 independent monument companies; and

16 (4) the name, address, and telephone number for the State Office of  
17 Cemetery Oversight.

18 (b) The disclosures shall be conspicuously incorporated in the contract in [12  
19 point] 12-POINT type.

20 (c) The disclosure must be signed and dated by the consumer.

21 (d) The consumer must be provided with a copy of the contract at the time of  
22 purchasing the burial goods or services.

23 (e) The disclosure shall occur:

24 (1) not later than the first scheduled face-to-face contact with the  
25 purchaser or party representing the purchaser; or

26 (2) if no face-to-face contact occurs, at the time of the execution of the  
27 contract by the purchaser or party representing the purchaser.

28 (f) The Director may by regulation prescribe the form and wording of the  
29 disclosure.

30 (g) If the purchase by the consumer includes a cemetery plot, the registered  
31 cemeterian or permit holder shall provide the consumer with a copy of a location  
32 survey, performed by a licensed land surveyor, which indicates the location of the  
33 purchased plot within the cemetery, or by any other means approved by the Director.

1 (H) REGISTRANTS AND PERMIT HOLDERS SHALL PROVIDE EACH BUYER OR  
2 PROSPECTIVE BUYER WITH A GENERAL PRICE LIST FOR THE BUYER OR  
3 PROSPECTIVE BUYER TO KEEP WHICH SHALL INCLUDE:

4 (1) SPECIFIC PRICES FOR:

5 (I) GROUND OPENING AND CLOSING;

6 (II) EXTRA DEPTH INTERMENT;

7 (III) INTERMENT OF CREMATED REMAINS; AND

8 (IV) MAUSOLEUM ENTOMBMENT; AND

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

10 5-901.

11 (a) Except as otherwise provided in this title, an individual may not engage in  
12 cemetery operations, attempt to engage in cemetery operations, or PROVIDE OR offer  
13 to provide [cemetery] BURIAL goods and services unless the individual is a  
14 [registered cemeterian] REGISTRANT.

15 (b) Except as otherwise provided in this title, an individual may not engage in  
16 a burial goods business or attempt to provide burial goods unless the individual is a  
17 [registered seller] REGISTRANT.

18 5-902.

19 Except for a registered cemeterian or registered seller who operates a business  
20 as a sole [practitioner] PROPRIETOR, a person may not engage in the operation of a  
21 cemetery or burial goods business unless:

22 (1) the business is a corporation, limited liability company, or  
23 partnership; and

24 (2) the corporation, limited liability company, or partnership holds a  
25 permit issued under this title.

26 5-903.

27 Unless a person is a [registered cemeterian or registered seller] REGISTRANT, a  
28 person may not represent to the public, by use of a title, including cemeterian,  
29 registered cemeterian, burial goods seller, or registered seller, by description of  
30 services, methods, or procedures, or otherwise, that the person is authorized to  
31 engage in the operation of a cemetery or provide burial goods.

1 5-905.

2 (A) IF THE DIRECTOR FINDS THAT A PERSON HAS VIOLATED THIS SUBTITLE  
3 OR A REGULATION ADOPTED UNDER THIS SUBTITLE, THE DIRECTOR MAY REFER THE  
4 MATTER TO:

5 (1) THE ATTORNEY GENERAL FOR CIVIL ENFORCEMENT; OR

6 (2) THE APPROPRIATE STATE'S ATTORNEY FOR CRIMINAL  
7 PROSECUTION.

8 (B) THE ATTORNEY GENERAL MAY SUE FOR AND A COURT MAY GRANT:

9 (1) INJUNCTIVE OR OTHER EQUITABLE RELIEF;

10 (2) IMPOSITION OF A CIVIL PENALTY NOT EXCEEDING \$5,000; OR

11 (3) BOTH.

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

14 **Article - Business Regulation**

15 5-602.

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

17 (1) that is available for burial;

18 (2) where roads, paths, or buildings have been laid out or built; or

19 (3) where burial lots have been outlined on a plat or in a record or sales  
20 brochure.

21 (b) (1) Each SOLE PROPRIETOR registered cemeterian or permit holder who  
22 sells or offers to sell to the public a burial lot or burial right in a cemetery as to which  
23 perpetual care is stated or implied shall have a perpetual care trust fund.

24 (2) A separate perpetual care trust fund shall be established for each  
25 cemetery to which this section applies.

26 (3) A CEMETERY CREATED IN THE STATE AFTER OCTOBER 1, 2001, THAT  
27 IS NOT EXEMPT UNDER § 5-601 OF THIS SUBTITLE SHALL BE REQUIRED TO  
28 ESTABLISH A PERPETUAL CARE TRUST FUND.

29 (c) Each SOLE PROPRIETOR registered cemeterian or permit holder initially  
30 shall deposit in the perpetual care trust fund at least:

31 (1) \$10,000, if the developed land area of the cemetery is 10 acres or less;

32 or

1                   (2)       \$25,000, if the developed land area of the cemetery is more than 10  
2 acres.

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

5                   (2)       Except as provided in paragraph (3) of this subsection, within 30 days  
6 after the end of the month when the buyer of a burial lot, above-ground crypt, niche,  
7 or burial right makes a final payment, the registered cemeterian or permit holder  
8 shall pay in cash to the trustee for deposit in the perpetual care trust fund at least the  
9 greater of:

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

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

13                   (3)       This subsection does not apply to the resale of a burial lot,  
14 above-ground crypt, niche, or burial right for which the cemetery already has paid  
15 into the perpetual care trust fund the deposit required by this subsection.

16       (e)       The income from the perpetual care trust fund:

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

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

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

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

23       SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall  
24 take effect October 1, 2001.

25       SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in  
26 Section 3 of this Act, this Act shall take effect July 1, 2001.