

HOUSE BILL 85

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2001 Regular Session
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(PRE-FILED)

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

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 20, 2001

CHAPTER _____

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; altering certain trust
10 reporting requirements relating to perpetual care; requiring certain cemeteries
11 created after a certain date to establish a perpetual care trust fund; providing
12 for civil enforcement actions against unregistered businesses; specifying that
13 certain interest and finance charges charged by a cemetery are subject to
14 certain requirements; designating that a trustee of a preneed trust account may
15 be a person who provides a certain bond; specifying that the records of each
16 seller of preneed goods and preneed services are subject to examination by the
17 Director of the Office; altering certain trust reporting requirements pertaining
18 to preneed goods and services; requiring registrants and permit holders to
19 provide each buyer or prospective buyer with a general price list; authorizing
20 the Director to refer certain violations to certain persons; providing for the
21 effective dates of this Act; making technical and clarifying changes; defining
22 certain terms; altering certain definitions; and generally relating to the
23 operation of cemeteries and burial goods businesses in the State.

24 BY repealing and reenacting, with amendments,
25 Article - Business Regulation

1 Section 5-101, 5-102, 5-303, 5-304, 5-308, 5-309, 5-310, 5-403, 5-405, 5-601,
2 5-602, 5-605, 5-607, 5-608, 5-704, 5-706, 5-707, 5-710, 5-801, 5-901,
3 5-902, and 5-903
4 Annotated Code of Maryland
5 (1998 Replacement Volume and 2000 Supplement)

6 BY adding to
7 Article - Business Regulation
8 Section 5-905
9 Annotated Code of Maryland
10 (1998 Replacement Volume and 2000 Supplement)

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

13 **Article - Business Regulation**

14 5-101.

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

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

17 (2) "Burial goods" includes:

18 (i) a casket;

19 (ii) a grave liner;

20 (iii) a memorial;

21 (iv) a monument;

22 (v) a scroll;

23 (vi) an urn;

24 (vii) a vase; and

25 (viii) a vault.

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

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

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

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

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

3 (1) ~~the establishment or improvement~~ IMPROVEMENT, CARE,
4 PRESERVATION, OR EMBELLISHMENT of a cemetery;

5 (2) interment; and

6 (3) ~~the care, preservation, or embellishment of a cemetery~~ PROVIDING
7 OF BURIAL SPACE OR BURIAL GOODS.

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

9 (1) earth burial;

10 (2) mausoleum entombment; and

11 (3) niche or columbarium interment.

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

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

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

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

19 (k) "Provide burial goods" means A RETAIL TRANSACTION:

20 (1) ~~to sell, erect, SERVICE, or inscribe burial monuments~~ MEMORIALS;
21 ~~AND OR~~

22 (2) to sell burial goods.

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

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

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

30 (O) "RESPONSIBLE PARTY" MEANS A SOLE PROPRIETOR OR THE INDIVIDUAL
31 DESIGNATED BY A PARTNERSHIP, LIMITED LIABILITY COMPANY, OR CORPORATION
32 TO BE RESPONSIBLE FOR THE OPERATIONS OF A CEMETERY OR BURIAL GOODS
33 BUSINESS.

1 5-102.

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

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

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

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

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

10 (b) This title does not apply to:

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

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

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

16 5-303.

17 (a) An applicant shall register by:

18 (1) submitting to the Director an application on the form that the
19 Director provides; and

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

21 (b) The application shall state:

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

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

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

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

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

3 5-304.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 5-308.

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

6 (1) cemetery or burial goods business with which a registrant is
7 affiliated;

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

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

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

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

15 5-309.

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

18 5-310.

19 (a) Subject to the hearing provisions of § 5-312 of this subtitle, the Director
20 may deny a registration or permit to an applicant, reprimand a registrant or permit
21 holder, or suspend or revoke a registration or permit, if an applicant, registrant, or
22 permit holder, or an agent, employee, officer, director, or partner of the applicant,
23 registrant, or permit holder:

24 (1) fraudulently or deceptively obtains or attempts to obtain a
25 registration or permit;

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

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

28 (i) felony; or

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

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

34 (5) violates this title;

- 1 (6) violates the code of ethics adopted by the Director;
- 2 (7) violates a regulation adopted under this title;
- 3 (8) fails to provide reasonable and adequate supervision of the operation
4 of the cemetery or the provision of burial goods by agents, employees, officers,
5 directors, or partners affiliated with a cemetery or burial goods business;
- 6 (9) refuses to allow an inspection required by this title;
- 7 (10) fails to comply with an order of the Director;
- 8 (11) fails to comply with any terms of settlement under a binding
9 arbitration agreement; or
- 10 (12) is found guilty by a court in this State of violating an unfair and
11 deceptive trade practices provision under Title 13 of the Commercial Law Article.

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

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

18 (i) the court lifts the order; or

19 (ii) the charges are adjudicated or dismissed.

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

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

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

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

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

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

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

- 3 (1) the seriousness of the violation;
- 4 (2) the harm caused by the violation;
- 5 (3) the good faith efforts of the registrant or permit holder; and
- 6 (4) any history of previous violations by the registrant or permit holder.

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

9 (g) The Director shall consider the following facts in the granting, denial,
10 renewal, suspension, or revocation of a registration or permit or the reprimand of a
11 registrant or permit holder when an applicant, registrant, or permit holder, or an
12 agent, employee, officer, director, or partner of an applicant, registrant, or permit
13 holder, is convicted of a felony or misdemeanor described in subsection (a)(3) of this
14 section:

- 15 (1) the nature of the crime;
- 16 (2) the relationship of the crime to the activities authorized by the
17 registration or permit;
- 18 (3) with respect to a felony, the relevance of the conviction to the fitness
19 and qualification of the applicant, [registrant] REGISTRANT, or permit holder or
20 agent, employee, officer, director, or partner to operate a cemetery or provide burial
21 goods;
- 22 (4) the length of time since the conviction; and
- 23 (5) the behavior and activities of the applicant, registrant, or permit
24 holder, or agent, employee, officer, director, or partner before and after the conviction.
25 5-403.

26 To qualify for a permit, a corporation, limited liability company, or partnership
27 shall:

- 28 (1) designate a separate registered cemeterian or registered seller as the
29 [individual] responsible PARTY for the operations of each affiliated cemetery or
30 burial goods business;
- 31 (2) provide the name and business address of each affiliated cemetery or
32 burial goods business; [and]
- 33 (3) provide a list of the officers, directors, members, partners, agents,
34 and employees of the entity applying for the permit; AND

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

2 5-405.

3 Except for a cemetery in which no burials have taken place within the previous
4 5 years, a [bona fide religious, nonprofit] cemetery that is exempt under § 5-102 of
5 this title from the registration and permitting requirements of this title shall file with
6 the Office, once every 2 years, a statement that includes:

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

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

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

12 5-601.

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

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

15 (2) is owned and operated by:

16 (i) a county;

17 (ii) a municipal corporation;

18 (iii) a church;

19 (iv) a synagogue;

20 (v) a religious organization; [or]

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

23 (VII) A STATE VETERANS AGENCY.

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

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

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

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

1 (3) the withdrawal from the fund of income on deposits made after July
2 1, 1973.

3 5-605.

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

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

10 (i) the Director;

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

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

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

19 (2) The report shall:

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

21 (ii) be certified as to correctness by a certified public accountant
22 RETAINED BY THE CEMETERY;

23 (iii) BE ACCOMPANIED BY A TRUSTEE'S SUMMARY STATEMENT OF
24 ASSETS;

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

26 [(iv)] (V) include:

27 1. the name of the SOLE PROPRIETOR registered cemeterian
28 or permit holder;

29 2. each location of the SOLE PROPRIETOR registered
30 cemeterian or permit holder;

31 3. the amount of money in each perpetual care trust fund at
32 the beginning of the calendar or other fiscal year chosen by the SOLE PROPRIETOR
33 registered cemeterian or permit holder;

1 5-704.

2 (a) A preneed burial contract shall contain:

3 (1) the name of the buyer;

4 (2) the name of the seller;

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

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

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

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

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

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

15 (i) transfer physical possession of the preneed goods to the buyer or
16 designee of the buyer;

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

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

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

22 1. cause title to be transferred to the buyer or designee of the
23 buyer; and

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

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

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

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

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

4 (3) IF A CEMETERY IMPOSES INTEREST OR A FINANCE CHARGE AS
5 PERMITTED IN PARAGRAPH (2) OF THIS SUBSECTION, THE INTEREST OR FINANCE
6 ~~CHARGES ARE SUBJECT TO CHARGE SHALL BE AT A FIXED RATE OR SUM NOT~~
7 ~~GREATER THAN ALLOWED BY THE PROVISIONS OF TITLE 12, SUBTITLE 6 OF THE~~
8 COMMERCIAL LAW ARTICLE.

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

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

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

18 5-706.

19 (a) Each trust account shall be:

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

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

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

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

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

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

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

33 (c) A seller may:

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

35 (2) establish more than 1 trust account.

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

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

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

7 (1) 2 officers of a corporate seller; or

8 (2) at least 2 individuals authorized to withdraw money for an
9 unincorporated seller.

10 5-707.

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

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

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

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

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

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

21 (d) A trustee:

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

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

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

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

30 (i) remain in the trust account;

31 (ii) be reinvested and compounded; and

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

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

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

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

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

12 5-710.

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

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

17 (i) THE DIRECTOR;

18 (II) the Attorney General or an authorized representative of the
19 Attorney General; and

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

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

25 (2) The report shall:

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

27 (ii) be certified by a certified public accountant ~~employed~~
28 RETAINED by the seller;

29 (iii) BE ACCOMPANIED BY A TRUSTEE'S SUMMARY STATEMENT OF
30 ASSETS;

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

32 [(iv) (V) include:

33 1. the name of the seller;

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

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

5 (4) if the preneed contract provides for goods or services to be delivered
6 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 other
9 preneed burial contracts that do not provide for goods or services to be delivered or
10 performed before death;

11 (iii) the manner of delivery of goods including where the goods are
12 stored; and

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

14 (e) The Director may adopt regulations:

15 (1) to administer this section; and

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

17 5-801.

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

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

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

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

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

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

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

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

1 (e) The disclosure shall occur:

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

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

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

8 (g) If the purchase by the consumer includes a cemetery plot, the registered
9 ceterian or permit holder shall provide the consumer with a copy of a location
10 survey, performed by a licensed land surveyor, which indicates the location of the
11 purchased plot within the cemetery, or by any other means approved by the Director.

12 (H) REGISTRANTS AND PERMIT HOLDERS SHALL PROVIDE EACH BUYER OR
13 PROSPECTIVE BUYER WITH A GENERAL PRICE LIST FOR THE BUYER OR
14 PROSPECTIVE BUYER TO KEEP 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 BURIAL GOODS.

21 5-901.

22 (a) Except as otherwise provided in this title, an individual may not engage in
23 cemetery operations, attempt to engage in cemetery operations, or PROVIDE OR offer
24 to provide [cemetery] BURIAL ~~goods~~ SPACE, GOODS, and services unless the
25 individual is a [registered ceterian] AUTHORIZED AS A REGISTRANT.

26 (b) Except as otherwise provided in this title, an individual may not engage in
27 a burial goods business or attempt to provide burial goods unless the individual is a
28 [registered seller] AUTHORIZED AS A REGISTRANT.

29 5-902.

30 Except for a registered ceterian or registered seller who operates a business
31 as a sole [practitioner] PROPRIETOR OR A REGISTRANT EMPLOYED BY A SOLE
32 PROPRIETOR, a person may not engage in the operation of a cemetery or burial goods
33 business unless:

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

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

5 5-903.

6 Unless a person is a [registered cemeterian or registered seller] AUTHORIZED
7 AS A REGISTRANT, a person may not represent to the public, by use of a title,
8 including cemeterian, registered cemeterian, burial goods seller, or registered seller,
9 by description of services, methods, or procedures, or otherwise, that the person is
10 authorized to engage in the operation of a cemetery or provide burial goods.

11 5-905.

12 (A) IF THE DIRECTOR FINDS THAT A PERSON HAS VIOLATED THIS SUBTITLE
13 OR A REGULATION ADOPTED UNDER THIS SUBTITLE, THE DIRECTOR MAY REFER THE
14 MATTER TO:

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

16 (2) THE APPROPRIATE STATE'S ATTORNEY FOR CRIMINAL
17 PROSECUTION.

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

19 (1) INJUNCTIVE OR OTHER EQUITABLE RELIEF;

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

21 (3) BOTH.

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

24 **Article - Business Regulation**

25 5-602.

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

27 (1) that is available for burial;

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

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

1 (b) (1) Each SOLE PROPRIETOR registered cemeterian or permit holder who
2 sells or offers to sell to the public a burial lot or burial right in a cemetery as to which
3 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 (3) A CEMETERY CREATED IN THE STATE AFTER OCTOBER 1, 2001, THAT
7 IS NOT EXEMPT UNDER § 5-601 OF THIS SUBTITLE SHALL BE REQUIRED TO
8 ESTABLISH A PERPETUAL CARE TRUST FUND.

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

11 (1) \$10,000, if the developed land area of the cemetery is 10 acres or less;
12 or

13 (2) \$25,000, if the developed land area of the cemetery is more than 10
14 acres.

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

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

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

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

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

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

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

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

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

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

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

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