Unofficial Copy C2 2001 Regular Session 1lr0044

(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

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Office of Cemetery Oversight - Scope of Authority

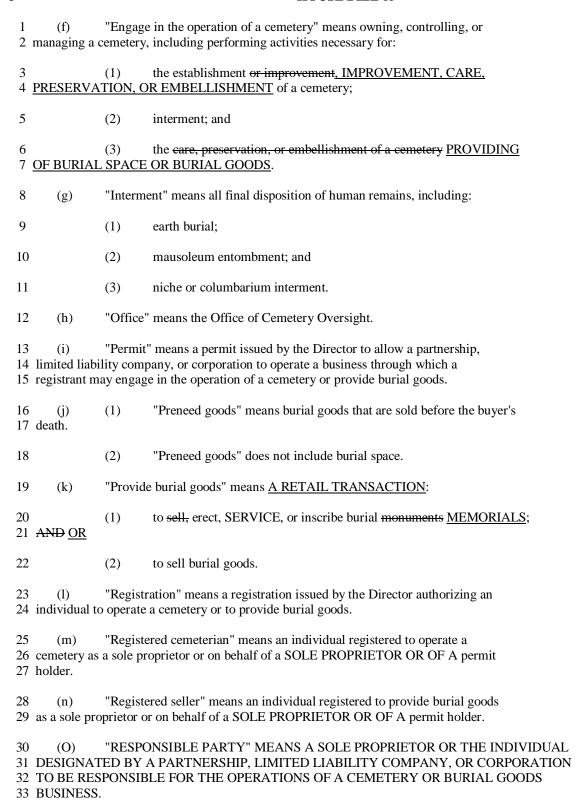
- 3 FOR the purpose of exempting certain cemeteries from the registration and
- 4 permitting requirements; clarifying who may be a registered cemeterian;
- 5 clarifying the application process for registering with the Office of Cemetery
- 6 Oversight; revising financial review procedures; authorizing 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; <u>altering certain trust</u>
- 10 reporting requirements relating to perpetual care; requiring certain cemeteries
- created after a certain date to establish a perpetual care trust fund; providing
- for civil enforcement actions against unregistered businesses; specifying that
- 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
- be a person who provides a certain bond; specifying that the records of each
- seller of preneed goods and preneed services are subject to examination by the
- 17 Director of the Office; altering certain trust reporting requirements pertaining
- 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

2				HOUSE BILL 85					
1 2 3 4 5	Annota	Section 5-101, 5-102, 5-303, 5-304, 5-308, 5-309, 5-310, 5-403, 5-405, 5-601, 5-602, 5-605, 5-607, 5-608, 5-704, 5-706, 5-707, 5-710, 5-801, 5-901, 5-902, and 5-903 Annotated Code of Maryland (1998 Replacement Volume and 2000 Supplement)							
6 1 7 8 9 10	BY adding to Article - Business Regulation Section 5-905 Annotated Code of Maryland (1998 Replacement Volume and 2000 Supplement)								
11 12				ACTED BY THE GENERAL ASSEMBLY OF s of Maryland read as follows:					
13				Article - Business Regulation					
14	5-101.								
15	(a)	In this	title the f	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)	"Buria		usiness" means a business that provides burial goods.					
27	(d)	(1)		tery" means land used or to be used for [burial] INTERMENT.					
28 29	INTERME	(2) NT.	"Ceme	tery" includes a structure used or to be used for [burial]					

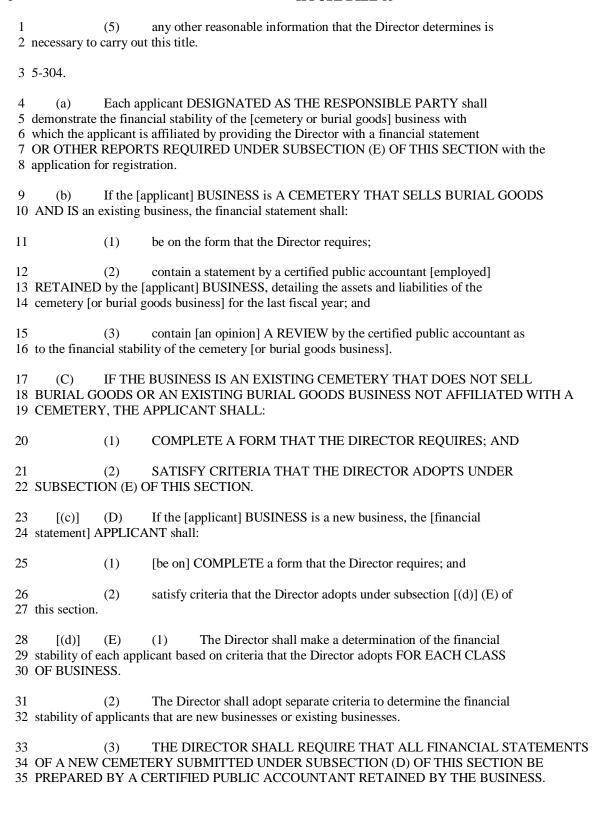
"Director" means the Director of the Office of Cemetery Oversight.

30

(e)



1	5-102.		
2	(a)	The regi	stration and permitting provisions of this title do not apply to:
3 4	cemetery in t	(1) this State	a person that owns and operates a bona fide religious, nonprofit [or]
5 6	General Asse	(2) embly;	a not for profit organization created before 1900 by an act of the
7 8	OPERATES	(3) A CEMI	A COUNTY, CITY, OR MUNICIPAL CORPORATION THAT OWNS AND ETERY IN THE STATE; OR
9		(4)	A VETERANS' CEMETERY OPERATED BY THE STATE.
10	(b)	This title	e does not apply to:
11 12	goods in the	(1) ordinary	the operation of a funeral establishment, including the sale of burial course of the funeral establishment's business;
13 14	director's lic	(2)	a licensed funeral director acting within the scope of the funeral
15		(3)	a mortician acting within the scope of the mortician's license.
16	5-303.		
17	(a)	An appl	icant shall register by:
18 19	Director pro	(1) wides; an	submitting to the Director an application on the form that the d
20		(2)	paying a nonrefundable application fee set by the Director.
21	(b)	The app	lication shall state:
22		(1)	the name, date of birth, and residential address of the applicant;
23 24	business;	(2)	the name and fixed address of the affiliated cemetery or burial goods
			whether the cemetery or burial goods business with which the is owned or controlled by a SOLE PROPRIETOR, partnership, pany, or corporation;
30	[goods] GO	ODS, or s	IF THE APPLICANT IS DESIGNATED AS THE RESPONSIBLE PARTY, the address of each employee who sells [cemetery] BURIAL SPACE, services to the public for the [applicant] BUSINESS while ution of a cemetery or burial goods business; and



1	5-308.
4	Within 1 week after the effective date of the change, [a registrant or permit holder] THE APPLICANT DESIGNATED AS THE RESPONSIBLE PARTY OR THE REGISTERED RESPONSIBLE PARTY shall submit to the Director an application form that shows a change in the:
6 7	(1) cemetery or burial goods business with which a registrant is affiliated;
	(2) [registered cemeterian or registered seller designated as] INDIVIDUAL DESIGNATED AS THE responsible PARTY [for the cemetery operations or for providing burial goods for the permit holder];
11 12	(3) employees of the [permit holder] BUSINESS who engage in the sale of 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 17	Each registrant AND PERMIT HOLDER shall display the registration OR PERMIT conspicuously at the business address of the registrant OR PERMIT HOLDER.
18	5-310.
21 22	(a) Subject to the hearing provisions of § 5-312 of this subtitle, the Director may deny a registration or permit to an applicant, reprimand a registrant or permit holder, or suspend or revoke a registration or permit, if an applicant, registrant, or permit holder, or an agent, employee, officer, director, or partner of the applicant, registrant, or permit holder:
24 25	(1) fraudulently or deceptively obtains or attempts to obtain a 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
	(ii) misdemeanor that is directly related to the fitness and qualification of the applicant, registrant, or permit holder to own or operate a cemetery or provide burial goods;
32 33	(4) fails to provide or misrepresents any information required to be provided under this title;
34	(5) violates this title;

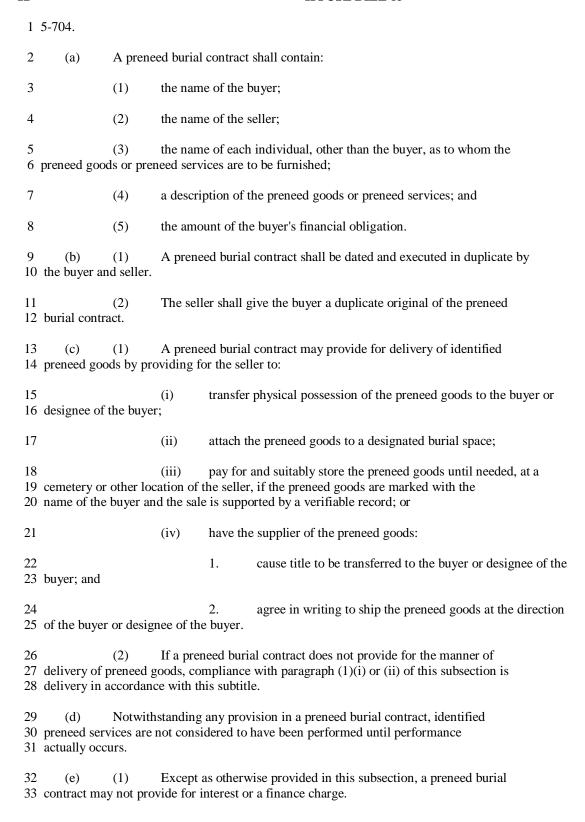
1		(6)	violates	the code of ethics adopted by the Director;
2		(7)	violates	a regulation adopted under this title;
			provisio	provide reasonable and adequate supervision of the operation n of burial goods by agents, employees, officers, with a cemetery or burial goods business;
6		(9)	refuses t	to allow an inspection required by this title;
7		(10)	fails to c	comply with an order of the Director;
8 9	arbitration ag	(11) greement;		comply with any terms of settlement under a binding
10 11	deceptive tra	(12) ade practi		guilty by a court in this State of violating an unfair and ision under Title 13 of the Commercial Law Article.
14 15	Director may	y seek an registrant	spension immedia t or perm	strant or permit holder is charged with a violation of this title or revocation of the registration or permit, the ate restraining order in a circuit court in this State to it holder from engaging in the operation of any ness.
17		(2)	The rest	raining order is in effect until:
18			(i)	the court lifts the order; or
19			(ii)	the charges are adjudicated or dismissed.
	(c) could result may petition	in suspen	sion or r	permit holder is charged with a violation of this title that evocation of the registration or permit, the Director
	the business revoked; and			a receiver or trustee to take charge of the assets and operate he event that the registration or permit is suspended or
26		(2)	take oth	er actions as are appropriate to protect the public interest.
	(d) HOLDER, C impose a civ	OR susper	nding or	ddition to REPRIMANDING A REGISTRANT OR PERMIT revoking a registration OR PERMIT, the Director may
30 31	Director und	(1) ler this tit		sceed \$5,000 for each violation of this title or an order of the
32 33	for its correc	(2) etion.	not to ex	sceed \$500 for each day a violation continues past the time se

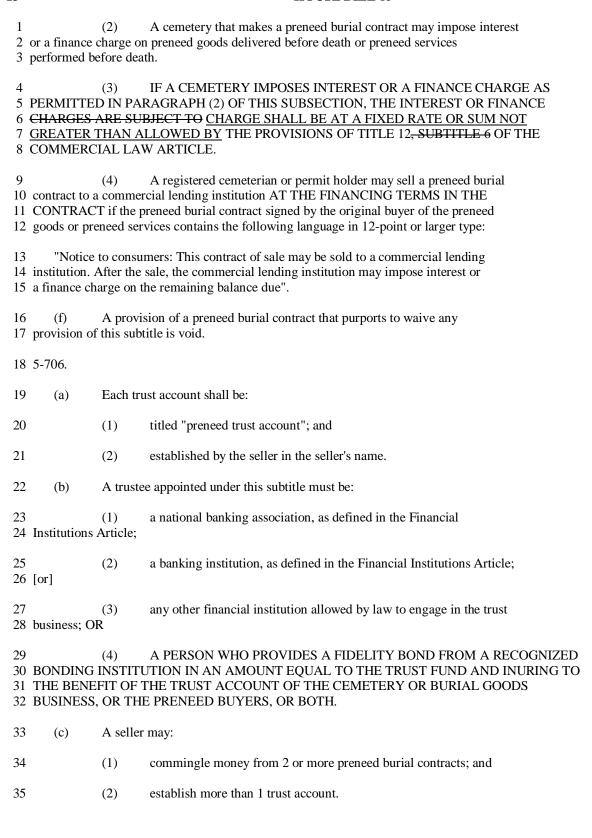
1 2	(e) Director shal		mine the amount of the penalty imposed under this subsection, the r:
3		(1)	the seriousness of the violation;
4		(2)	the harm caused by the violation;
5		(3)	the good faith efforts of the registrant or permit holder; and
6		(4)	any history of previous violations by the registrant or permit holder.
7 8	(f) General Fund		Il penalties collected under this section shall be paid into the tate.
11 12 13	registrant or agent, emplo	pension, permit h byee, offi	ector shall consider the following facts in the granting, denial, or revocation of a registration or permit or the reprimand of a older when an applicant, registrant, or permit holder, or an cer, director, or partner of an applicant, registrant, or permit f a felony or misdemeanor described in subsection (a)(3) of this
15		(1)	the nature of the crime;
16 17	registration	(2) or permit	the relationship of the crime to the activities authorized by the ;
20			with respect to a felony, the relevance of the conviction to the fitness ne applicant, [registrant] REGISTRANT, or permit holder or cer, director, or partner to operate a cemetery or provide burial
22		(4)	the length of time since the conviction; and
	holder, or ag 5-403.	(5) gent, emp	the behavior and activities of the applicant, registrant, or permit loyee, officer, director, or partner before and after the conviction.
26 27	To quali shall:	fy for a p	permit, a corporation, limited liability company, or partnership
	[individual] burial goods		designate a separate registered cemeterian or registered seller as the ble PARTY for the operations of each affiliated cemetery or ;
31 32	burial goods	(2) business	provide the name and business address of each affiliated cemetery or ; [and]
33 34	and employe	(3) ees of the	provide a list of the officers, directors, members, partners, agents, entity applying for the permit; AND

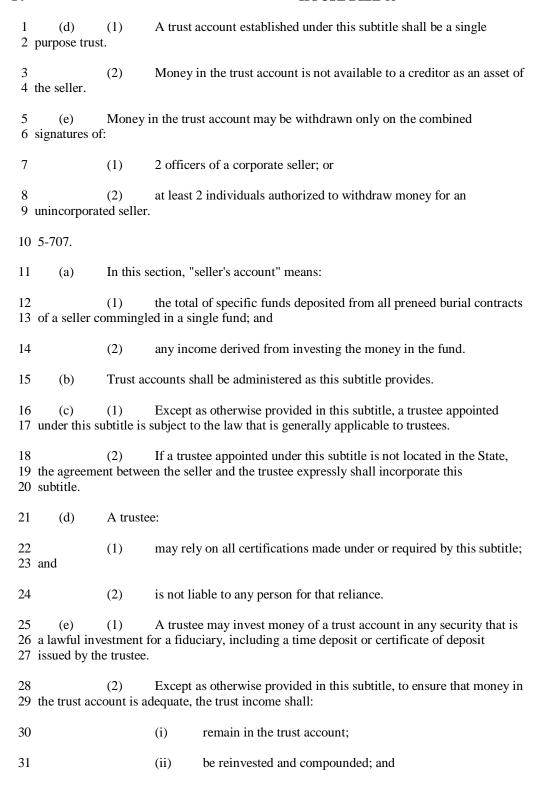
1		(4)	COMPL	LY WITH § 5-303(B)(4) AND § 5-304 OF THIS TITLE.
2	5-405.			
5	5 years, a [bothis title from	ona fide r n the regi	eligious, stration a	which no burials have taken place within the previous nonprofit] cemetery that is exempt under § 5-102 of and permitting requirements of this title shall file with a statement that includes:
7		(1)	the nam	e and address of the cemetery;
8 9	operates the	(2) cemetery		e and address of the [religious] organization that owns and
10 11	oversight of	(3) the ceme		e and address of the individual who is responsible for the
12	5-601.			
13	(a)	This sub	otitle does	s not apply to a cemetery that:
14		(1)	has less	than 1 acre available for burial; or
15		(2)	is owned	d 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 22	General Ass	embly; C	(vi) DR	a not for profit organization created before 1900 by an act of the
23			(VII)	A STATE VETERANS AGENCY.
24 25	(b) chamber.	This sub	otitle does	s not apply to the sale of a below-ground earth-covered
26 27				s not amend a trust agreement covering a perpetual care July 1, 1973, except as to:
28		(1)	the appo	pintment of a successor trustee or cotrustee;
29		(2)	deposits	into the fund after July 1, 1973; and

1 2	1, 1973.	(3)	the with	drawal fi	rom the fund of income on deposits made after July
3	5-605.				
			quiremen	ts of this	OPRIETOR registered cemeterian or permit holder subtitle shall keep detailed records of all semetery and money received.
			each trust	ee appoi	ach SOLE PROPRIETOR registered cemeterian or need by the SOLE PROPRIETOR registered to examination by:
10			(i)	the Dire	ector;
11 12	Attorney Ge	eneral; an	(ii) id	the Atto	orney General or an authorized representative of the
13 14	does busines	ss or whe	(iii) ere the cer		e's Attorney for the county where the cemetery owner located.
17	subject to the within 120 c	lays after	quirement the close	nts of this e of each	OPRIETOR registered cemeterian or permit holder subtitle shall submit a report to the Director calendar or other fiscal year chosen by the terian or permit holder.
19		(2)	The rep	ort shall:	
20			(i)	be on th	e form that the Director requires;
21 22	RETAINED	BY TH	(ii) E CEME		fied as to correctness by a certified public accountant
23 24	ASSETS;		(iii)	BE AC	COMPANIED BY A TRUSTEE'S SUMMARY STATEMENT OF
25			(IV)	be accor	mpanied by a fee of \$25; and
26			[(iv)]	(V)	include:
27 28	or permit ho	older;		1.	the name of the SOLE PROPRIETOR registered cemeterian
29 30	cemeterian o	or permit	holder;	2.	each location of the SOLE PROPRIETOR registered
	the beginnin				the amount of money in each perpetual care trust fund at iscal year chosen by the SOLE PROPRIETOR

	4. the amount of money that the SOLE PROPRIETOR registered cemeterian or permit holder received during that year that is subject to the trust requirements of this subtitle;
4 5	5. the amount of money actually deposited into each perpetual care trust fund in that year;
	6. the amount of money spent during that year to provide care, maintenance, administration, and embellishment of each cemetery, except for money used for the care of monuments and memorials; and
9	7. the name and address of each trustee.
12	(3) A SOLE PROPRIETOR registered cemeterian or permit holder who stops selling burial lots or burial rights in a cemetery as to which perpetual care is stated or implied shall notify the Director in the required report for the year in which sales stop.
14	(c) The Director may adopt regulations:
15	(1) to administer subsection (b) of this section; and
16 17	(2) for determining whether registered cemeterians and permit holders are complying with this subtitle.
18	5-607.
21 22 23	A registered cemeterian or permit holder may not sell or offer to sell to a member of the public a burial lot or burial right in a cemetery and represent to the public in any way, express or implied, that the cemetery or the burial lot or burial right in the cemetery will have perpetual care unless the SOLE PROPRIETOR registered cemeterian or permit holder has provided adequately for that perpetual care.
25	5-608.
26 27	(a) A person may not establish or operate a public or private cemetery or allow a public or private cemetery to be operated in violation of this subtitle.
	(b) A person who violates this section is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.
33 34 35	(c) If a SOLE PROPRIETOR REGISTERED CEMETERIAN OR A permit holder violates this subtitle, the SOLE PROPRIETOR REGISTERED CEMETERIAN, THE permit holder, or [registered cemeterian designated as the person] THE responsible PARTY [for the operations of the cemetery under § 5-403 of this title] is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.







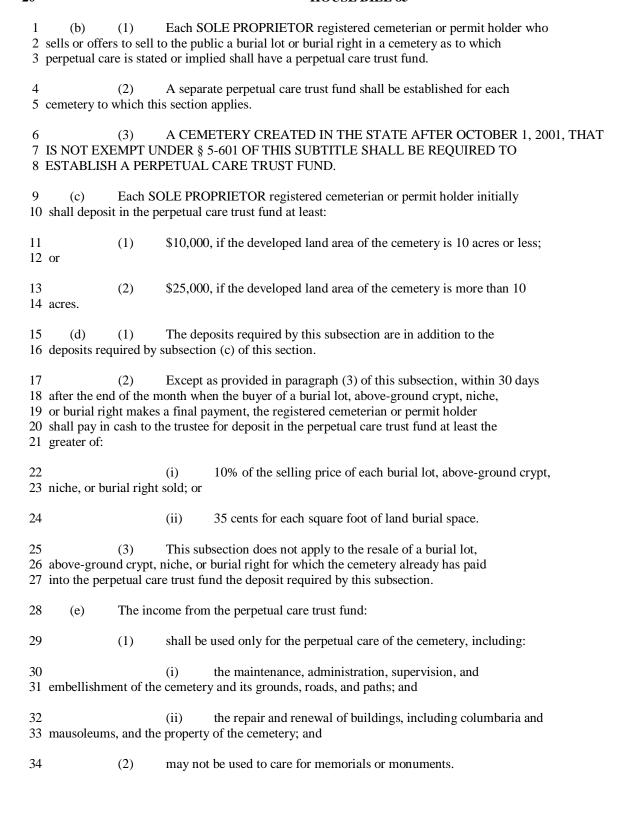
commissions	, and oth	(iii) er costs o		rsed only for payment of appropriate trustee's fees, t account.
(f) agreement be	(1) etween th			en notice to the trustee and in accordance with the he seller's account to another trustee.
agreement be	(2) etween th			ten notice to the seller and in accordance with the he seller's account to another trustee.
[(g) submit to the account.	(1) Director			ise provided in this subsection, each trustee shall ent of account of the money in each trust
account to th	(2) ne Directo		gs and loa	an association shall submit the annual statement of
5-710.				
(a) and specific		Each sel	ler shall	keep detailed records of all preneed burial contracts
are subject t	(2) o examin		ords of ea	ch seller and of each trustee appointed by the seller
		(i)	THE DI	RECTOR;
Attorney Ge	neral; and	(II) d	the Atto	rney General or an authorized representative of the
business.		[(ii)]	(III)	the State's Attorney for the county where the seller does
(b) submit a rep other fiscal y		Director	within 1	ct to the trust requirements of this subtitle shall 20 days after the close of each calendar or
	(2)	The repo	ort shall:	
		(i)	be on the	e form that the Director requires;
RETAINED	by the se	(ii) eller;	be certif	ied by a certified public accountant employed
ASSETS;		(iii)	BE ACC	COMPANIED BY A TRUSTEE'S SUMMARY STATEMENT OF
		(IV)	be accor	npanied by a fee of \$25; and
		[(iv)]	(V)	include:
			1.	the name of the seller;
				1.

1			2.	each location of the seller;
2	year that is subject to	the trust	3. requirem	the amount of money that the seller received during that ents of this subtitle;
4 5	accounts in that year;	[and]	4.	the amount of money actually deposited into trust
6 7	FROM THE TRUST	ACCOU	5. NTS IN T	THE AMOUNT OF MONEY REQUIRED TO BE DISBURSED THAT YEAR;
8 9	THE TRUST ACCOU	JNTS IN	6. THAT Y	THE AMOUNT OF MONEY ACTUALLY DISBURSED FROM YEAR; AND
10			[5.]	7. the name and address of the trustee.
	(3) business, files a petit notice within 15 days			of preneed goods or preneed services that sells its or ceases to operate shall provide written
				to the Director, detailing the changes and the arrying out the preneed burial contracts and n an escrow or trust account; and
17 18	buyer of the buyer's o	options u	2. nder State	to each buyer of a preneed burial contract, advising the e law in regard to the preneed contract.
			files a po	g in this paragraph exempts a seller of preneed goods or etition in bankruptcy, or ceases to operate under this section.
				al contract shall provide each buyer or list for the buyer or prospective buyer to keep
25	(1)	specific	prices fo	r:
26		(i)	ground o	opening and closing;
27		(ii)	extra de	pth interment;
28		(iii)	intermer	nt of cremated remains; and
29		(iv)	mausole	eum entombment; and
30	(2)	general	price rang	ges for burial space or preneed goods.
31	(d) A seller	of a pren	eed buria	al contract shall disclose to the buyer:
32 33	(1) the time of need that			vices that are reasonably expected to be required at n the preneed burial contract;

1 2	subtitle;	(2)	the buye	r's cancellation and refund rights under § 5-709 of this				
3	warranties fo	(3) or the goo		on responsible for installation of the goods sold and any and				
5 6	or performed	(4) I before d		eneed contract provides for goods or services to be delivered				
7			(i)	that interest or finance charges may be imposed;				
	(ii) that interest or finance charges are not allowed on other preneed burial contracts that do not provide for goods or services to be delivered or performed before death;							
11 12	stored; and		(iii)	the manner of delivery of goods including where the goods are				
13			(iv)	the buyer's remedy if delivered goods are damaged or destroyed				
14	(e)	The Dire	ector may	adopt regulations:				
15		(1)	to admir	nister this section; and				
16		(2)	for deter	rmining whether sellers are complying with this subtitle.				
17	5-801.							
	` /	or [servi	ices] SER	tering into a contract with a consumer for the sale of EVICES, registrants and permit holders shall make the				
21		(1)	the item	ized cost for each service performed under the contract;				
22 23	contract;	(2)	a list of	services incidental to burial that are not covered by the				
24 25	independent	(3) monume		ent regarding the cemetery's policy on the use of anies; and				
26 27	Cemetery O	(4) versight.	the name	e, address, and telephone number for the State Office of				
28 29	(b) point] 12-PC			hall be conspicuously incorporated in the contract in [12				
30	(c)	The disc	closure m	ust be signed and dated by the consumer.				
31 32	(d) purchasing t			ust be provided with a copy of the contract at the time of services.				

- 1 (e) The disclosure shall occur: 2 not later than the first scheduled face-to-face contact with the (1) 3 purchaser or party representing the purchaser; or 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. The Director may by regulation prescribe the form and wording of the 6 (f) 7 disclosure. 8 If the purchase by the consumer includes a cemetery plot, the registered (g) 9 cemeterian 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: SPECIFIC PRICES FOR: 15 (1) 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 Except as otherwise provided in this title, an individual may not engage in 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 cemeterian] AUTHORIZED AS A REGISTRANT. 26 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 cemeterian 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 2	partnership;	(1) and	the business is a corporation, limited liability company, or
3	permit issued	(2) d under th	the corporation, limited liability company, or partnership holds a is title.
5	5-903.		
8 9	AS A REGIStincluding cerby description	STRANT meterian, on of serv	s a [registered cemeterian or registered seller] <u>AUTHORIZED</u> , a person may not represent to the public, by use of a title, registered cemeterian, burial goods seller, or registered seller, ices, methods, or procedures, or otherwise, that the person is in the operation of a cemetery or provide burial goods.
11	5-905.		
	\ /	ULATIO	DIRECTOR FINDS THAT A PERSON HAS VIOLATED THIS SUBTITLE N ADOPTED UNDER THIS SUBTITLE, THE DIRECTOR MAY REFER THE
15		(1)	THE ATTORNEY GENERAL FOR CIVIL ENFORCEMENT; OR
16 17	PROSECUT	(2) TION.	THE APPROPRIATE STATE'S ATTORNEY FOR CRIMINAL
18	(B)	THE AT	TORNEY 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)	ВОТН.
22 23	SECTIOn read as follows:		D BE IT FURTHER ENACTED, That the Laws of Maryland
24			Article - Business Regulation
25	5-602.		
26	(a)	In this so	ection, "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 30	brochure.	(3)	where burial lots have been outlined on a plat or in a record or sales



- 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.