

(PRE-FILED)

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

Requested: October 26, 2001

Introduced and read first time: January 9, 2002

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Office of Cemetery Oversight - Perpetual Care**

3 FOR the purpose of requiring regulated cemeteries to disclose whether or not  
4 perpetual care is provided; clarifying the method of calculation of deposits to the  
5 perpetual care trust fund; authorizing income from the perpetual care trust  
6 fund to be used for the cutting of grass abutting memorials or monuments;  
7 requiring the perpetual care trust fund to be a single purpose trust fund not  
8 subject to seizure, sale, assignment, or other alienation except under certain  
9 circumstances; requiring that a copy of the most recent trust report be retained  
10 in the cemetery's office for inspection by an owner or prospective purchaser of a  
11 burial lot, above ground crypt, niche, or burial right; requiring that certain  
12 trustees of the perpetual care trust fund be bonded in a certain manner;  
13 prohibiting a trustee of a perpetual care trust fund to have certain interests in  
14 the cemetery to which the fund pertains; limiting a trustee's actions in regard to  
15 the perpetual care trust fund; authorizing the Director of the Office of Cemetery  
16 Oversight to require correction of underfunding of a perpetual care trust fund;  
17 and generally relating to perpetual care trust funds.

18 BY repealing and reenacting, with amendments,  
19 Article - Business Regulation  
20 Section 5-602, 5-603, and 5-605  
21 Annotated Code of Maryland  
22 (1998 Replacement Volume and 2001 Supplement)

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

25 **Article - Business Regulation**

26 5-602.

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

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

5 (b) (1) Each sole proprietor registered cemeterian or permit holder who sells  
6 or offers to sell to the public a burial lot or burial right in a cemetery as to which  
7 perpetual care is stated or implied shall have a perpetual care trust fund.

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

10 (3) ON THE GENERAL PRICE LIST, CONTRACT OF SALE OF BURIAL  
11 SPACE, AND ANY CONVEYANCE DOCUMENTS, ALL CEMETERIES SUBJECT TO THE  
12 PROVISIONS OF THIS SUBTITLE SHALL STATE IN WRITING THE FOLLOWING USING 12  
13 POINT OR LARGER TYPE FONT:

- 14 (I) "THE CEMETERY IS A PERPETUAL CARE CEMETERY."; OR
- 15 (II) "THE CEMETERY IS NOT A PERPETUAL CARE CEMETERY."

16 [(3)] (4) A cemetery created in the State after October 1, 2001, that is  
17 not exempt under § 5-601 of this subtitle shall be required to establish a perpetual  
18 care trust fund.

19 (c) Each sole proprietor registered cemeterian or permit holder initially shall  
20 deposit in the perpetual care trust fund at least:

- 21 (1) [\$10,000] \$25,000, if the developed land area of the cemetery is 10  
22 acres or less; or
- 23 (2) [\$25,000] \$50,000, if the developed land area of the cemetery is more  
24 than 10 acres.

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

27 (2) Except as provided in paragraph [(3)] (4) of this subsection, within 30  
28 days after the end of the month when the buyer of a burial lot, above-ground crypt,  
29 niche, or burial right makes a final payment, the registered cemeterian or permit  
30 holder shall pay in cash to the trustee for deposit in the perpetual care trust fund [at  
31 least the greater of:

- 32 (i) 10% of the selling price of each burial lot, above-ground crypt,  
33 niche, or burial right sold; or
- 34 (ii) 35 cents for each square foot of land burial space.]:

1 (I) AT LEAST 10% OF THE ACTUAL SELLING PRICE OF EACH BURIAL  
2 LOT, ABOVE-GROUND CRYPT, NICHE, OR BURIAL RIGHT; OR

3 (II) IF THE BURIAL SPACE IS SOLD AT A DISCOUNT OR AT NO COST,  
4 AT LEAST 10% OF THE IMPUTED COST OF THE FAIR RETAIL VALUE.

5 (3) THE AMOUNT OF DEPOSIT TO THE PERPETUAL CARE TRUST FUND  
6 SHALL BE DEDUCTED FROM THE PROCEEDS OF THE LISTED SELLING PRICE OF THE  
7 BURIAL LOT, ABOVE-GROUND CRYPT, NICHE, OR BURIAL RIGHT, AND MAY NOT BE  
8 CHARGED AS AN ADD-ON TO THE PURCHASER.

9 [(3)] (4) This subsection does not apply to the resale of a burial lot,  
10 above-ground crypt, niche, or burial right for which the cemetery already has paid  
11 into the perpetual care trust fund the deposit required by this subsection.

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

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

14 (i) the maintenance, INCLUDING THE CUTTING OF GRASS  
15 ABUTTING MEMORIALS OR MONUMENTS, administration, supervision, and  
16 embellishment of the cemetery and its grounds, roads, and paths; and

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

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

20 (F) (1) THE PERPETUAL CARE TRUST FUND AUTHORIZED BY THIS  
21 SUBSECTION SHALL BE A SINGLE PURPOSE TRUST FUND.

22 (2) IN THE EVENT OF THE BANKRUPTCY OR INSOLVENCY OF, OR  
23 ASSIGNMENT FOR THE BENEFIT OF CREDITORS BY, OR AN ADVERSE JUDGMENT  
24 AGAINST THE SOLE PROPRIETOR REGISTERED CEMETERIAN OR PERMIT HOLDER,  
25 THE PERPETUAL CARE TRUST FUNDS MAY NOT BE MADE AVAILABLE TO ANY  
26 CREDITOR AS ASSETS OF THE SOLE PROPRIETOR REGISTERED CEMETERIAN OR  
27 PERMIT HOLDER OR AS PAYMENT FOR ANY EXPENSES OF ANY BANKRUPTCY OR  
28 SIMILAR PROCEEDINGS, BUT SHALL BE RETAINED INTACT TO PROVIDE FOR THE  
29 FUTURE MAINTENANCE OF THE CEMETERY.

30 (3) EXCEPT IN AN ACTION UNDER THIS TITLE, THE PERPETUAL CARE  
31 TRUST FUND IS NOT SUBJECT TO JUDGMENT, EXECUTION, GARNISHMENT,  
32 ATTACHMENT, OR OTHER SEIZURE BY PROCESS IN BANKRUPTCY OR OTHERWISE, OR  
33 TO SALE, PLEDGE, MORTGAGE, OR OTHER ALIENATION AND IS NOT ASSIGNABLE  
34 EXCEPT AS APPROVED BY THE DIRECTOR.

35 (G) A SOLE PROPRIETOR REGISTERED CEMETERIAN OR PERMIT HOLDER  
36 SHALL MAINTAIN IN THE OFFICE OF THE CEMETERY A COPY OF THE MOST RECENT  
37 TRUST REPORT FILED WITH THE OFFICE OF THE CEMETERY UNDER § 5-605 OF THIS  
38 TITLE AND SHALL MAKE THE REPORT AVAILABLE FOR INSPECTION BY AN OWNER OR

1 A PROSPECTIVE PURCHASER OF A BURIAL LOT, ABOVE-GROUND CRYPT, NICHE, OR  
2 BURIAL RIGHT.

3 5-603.

4 (A) A trustee appointed under this subtitle must be:

5 (1) a national banking association;

6 (2) a bank, as defined in the Maryland Uniform Fiduciaries Act;

7 (3) a savings bank insured by a unit of the federal government;

8 (4) a savings and loan association insured by a unit of the federal  
9 government; or

10 (5) [a person who provides a fidelity bond from a recognized bonding  
11 institution in an amount equal to the trust fund and inuring to the benefit of the trust  
12 account of the cemetery or its burial lot owners or both] A PERSON WHO ANNUALLY  
13 PROVIDES, WITH THE TRUST REPORT, THE PROOF OF A FIDELITY BOND THAT MEETS  
14 THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION FROM A RECOGNIZED  
15 BONDING INSTITUTION AUTHORIZED TO DO BUSINESS IN THE STATE IN AN AMOUNT  
16 EQUAL TO THE TRUST FUND.

17 (B) THE FIDELITY BOND PROVIDED UNDER SUBSECTION (A)(5) OF THIS  
18 SECTION SHALL BE:

19 (1) FOR THE BENEFIT OF THE TRUST ACCOUNT OF THE CEMETERY OR  
20 ITS BURIAL LOT OWNERS OR BOTH;

21 (2) CONDITIONED SUCH THAT THE APPLICANT SHALL COMPLY WITH  
22 ALL MARYLAND LAWS AND REGULATIONS RELATING TO TRUST ACCOUNTS; AND

23 (3) SUBJECT TO THE APPROVAL OF THE DIRECTOR.

24 (C) A TRUSTEE MAY NOT:

25 (1) BE A REGISTRANT, PERMIT HOLDER, AN ENTITY OWNED OR UNDER  
26 THE CONTROL OF A REGISTRANT OR PERMIT HOLDER, OR A SPOUSE, CHILD, PARENT,  
27 OR SIBLING OF A REGISTRANT; OR

28 (2) USE ANY FUNDS REQUIRED TO BE HELD IN TRUST IN ACCORDANCE  
29 WITH THIS SUBTITLE TO PURCHASE AN INTEREST IN ANY CONTRACT OR  
30 AGREEMENT TO WHICH THE REGISTRANT OR PERMIT HOLDER IS A PARTY OR  
31 INVEST, DIRECTLY OR INDIRECTLY, IN THE REGISTRANT'S OR PERMIT HOLDER'S  
32 BUSINESS OPERATIONS.

33 (D) EXCEPT UPON WRITTEN APPROVAL OF THE DIRECTOR, A TRUSTEE MAY  
34 NOT USE ANY PERPETUAL CARE TRUST FUNDS TO MAKE ANY LOAN OR INVESTMENT  
35 OF ANY KIND:

1 (1) TO ANY REGISTRANT, PERMIT HOLDER, OR PARTY OWNING 10% OR  
2 MORE OF THE CEMETERY TO WHICH THE TRUST PERTAINS; OR

3 (2) ON OR IN ANY PRODUCTIVE OR UNPRODUCTIVE REAL ESTATE, ANY  
4 PERMANENT IMPROVEMENTS OF A CEMETERY OR ITS FACILITIES, OR ANY NOTE,  
5 BOND, MORTGAGE, OR DEED OF TRUST IN WHICH ANY REGISTRANT, PERMIT  
6 HOLDER, OR PARTY OWNING 10% OR MORE OF A CEMETERY HAS A FINANCIAL  
7 INTEREST.

8 5-605.

9 (a) (1) Each sole proprietor registered cemeterian or permit holder subject to  
10 the trust requirements of this subtitle shall keep detailed records of all sales of burial  
11 lots or burial rights in a cemetery and money received.

12 (2) The records of each sole proprietor registered cemeterian or permit  
13 holder and of each trustee appointed by the sole proprietor registered cemeterian or  
14 permit holder are subject to examination by:

15 (i) the Director;

16 (ii) the Attorney General or an authorized representative of the  
17 Attorney General; and

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

20 (b) (1) Each sole proprietor registered cemeterian or permit holder subject to  
21 the trust requirements of this subtitle shall submit a report to the Director within 120  
22 days after the close of each calendar or other fiscal year chosen by the sole proprietor  
23 registered cemeterian or permit holder.

24 (2) The report shall:

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

26 (ii) be certified as to correctness by a certified public accountant  
27 retained by the cemetery;

28 (iii) be accompanied by a trustee's summary statement of assets;

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

30 (v) include:

31 1. the name of the sole proprietor registered cemeterian or  
32 permit holder;

33 2. each location of the sole proprietor registered cemeterian  
34 or permit holder;

1    3.            the amount of money in each perpetual care trust fund at  
2 the beginning of the calendar or other fiscal year chosen by the sole proprietor  
3 registered cemeterian or permit holder;

4    4.            the amount of money that the sole proprietor registered  
5 cemeterian or permit holder received during that year that is subject to the trust  
6 requirements of this subtitle;

7    5.            the amount of money actually deposited into each  
8 perpetual care trust fund in that year;

9    6.            the amount of money spent during that year to provide  
10 care, maintenance, administration, and embellishment of each cemetery, except for  
11 money used for the care of monuments and memorials; and

12    7.            the name and address of each trustee.

13    (3)        A sole proprietor registered cemeterian or permit holder who stops  
14 selling burial lots or burial rights in a cemetery as to which perpetual care is stated or  
15 implied shall notify the Director in the required report for the year in which sales  
16 stop.

17    (4)        THE DIRECTOR MAY REQUIRE A SOLE PROPRIETOR CEMETERIAN OR  
18 PERMIT HOLDER TO CORRECT ANY UNDERFUNDING, INCLUDING INTEREST, DUE TO  
19 THE PERPETUAL CARE TRUST FUND.

20            (c)        The Director may adopt regulations:

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

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

24        SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
25 effect July 1, 2002.