

(PRE-FILED)

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

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Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 2002

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CHAPTER \_\_\_\_\_

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

21 BY repealing and reenacting, with amendments,  
22 Article - Business Regulation  
23 Section 5-602, 5-603, and 5-605  
24 Annotated Code of Maryland

1 (1998 Replacement Volume and 2001 Supplement)

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

4 **Article - Business Regulation**

5 5-602.

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

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

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

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

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

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

22 [(3)] (4) A cemetery created in the State after October 1, 2001, that is  
23 not exempt under § 5-601 of this subtitle shall be required to establish a perpetual  
24 care trust fund.

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

27 (1) ~~[\$10,000]~~ \$25,000, if the developed land area of the cemetery is 10  
28 acres or less AND THE CEMETERY IS A NONPROFIT CEMETERY WHICH DOES NOT  
29 SELL BURIAL GOODS; ~~or~~

30 (2) ~~[\$25,000]~~ \$50,000, if the developed land area of the cemetery is more  
31 than 10 acres AND THE CEMETERY IS A NONPROFIT CEMETERY WHICH DOES NOT  
32 SELL BURIAL GOODS;

1           (3)     \$25,000, IF THE DEVELOPED LAND AREA OF THE CEMETERY IS 10  
2 ACRES OR LESS AND THE CEMETERY IS A FOR-PROFIT CEMETERY OR A NONPROFIT  
3 CEMETERY WHICH SELLS BURIAL GOODS; OR

4           (4)     \$50,000, IF THE DEVELOPED LAND AREA OF THE CEMETERY IS MORE  
5 THAN 10 ACRES AND THE CEMETERY IS A FOR-PROFIT CEMETERY OR A NONPROFIT  
6 CEMETERY WHICH SELLS BURIAL GOODS.

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

9           (2)     Except as provided in paragraph [(3)] (4) of this subsection, within 30  
10 days after the end of the month when the buyer of a RIGHT OF INTERMENT IN A burial  
11 lot, above-ground crypt, OR niche, ~~or burial right~~ makes a final payment, the  
12 registered cemeterian or permit holder shall pay in cash to the trustee for deposit in  
13 the perpetual care trust fund [at least the greater of:

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

16                   (ii)    35 cents for each square foot of land burial space.];

17                   (I)     AT LEAST 10% OF THE ACTUAL SELLING PRICE OF EACH RIGHT  
18 OF INTERMENT IN A BURIAL LOT, ABOVE-GROUND CRYPT, OR NICHE, ~~OR BURIAL~~  
19 ~~RIGHT~~; OR

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

22           (3)     THE AMOUNT OF DEPOSIT TO THE PERPETUAL CARE TRUST FUND  
23 SHALL BE DEDUCTED FROM THE PROCEEDS OF THE LISTED SELLING PRICE OF THE  
24 RIGHT OF INTERMENT IN A BURIAL LOT, ABOVE-GROUND CRYPT, OR NICHE, ~~OR~~  
25 ~~BURIAL RIGHT~~, AND MAY NOT BE CHARGED AS AN ADD-ON TO THE PURCHASER.

26           [(3)] (4)     This subsection does not apply to THE SALE OF A SECOND  
27 RIGHT OF INTERMENT OR the resale of a RIGHT OF INTERMENT IN A burial lot,  
28 above-ground crypt, OR niche, ~~or burial right~~ for which the cemetery already has paid  
29 into the perpetual care trust fund the deposit required by this subsection.

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

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

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

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

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

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

4 (2) IN THE EVENT OF THE BANKRUPTCY OR INSOLVENCY OF, OR  
5 ASSIGNMENT FOR THE BENEFIT OF CREDITORS BY, OR AN ADVERSE JUDGMENT  
6 AGAINST THE SOLE PROPRIETOR REGISTERED CEMETERIAN OR PERMIT HOLDER,  
7 THE PERPETUAL CARE TRUST FUNDS MAY NOT BE MADE AVAILABLE TO ANY  
8 CREDITOR AS ASSETS OF THE SOLE PROPRIETOR REGISTERED CEMETERIAN OR  
9 PERMIT HOLDER OR AS PAYMENT FOR ANY EXPENSES OF ANY BANKRUPTCY OR  
10 SIMILAR PROCEEDINGS, BUT SHALL BE RETAINED INTACT TO PROVIDE FOR THE  
11 FUTURE MAINTENANCE OF THE CEMETERY.

12 (3) ~~EXCEPT IN AN ACTION UNDER THIS TITLE,~~ THE PERPETUAL CARE  
13 TRUST FUND IS NOT SUBJECT TO JUDGMENT, EXECUTION, GARNISHMENT,  
14 ATTACHMENT, OR OTHER SEIZURE BY PROCESS IN BANKRUPTCY OR OTHERWISE, OR  
15 TO SALE, PLEDGE, MORTGAGE, OR OTHER ALIENATION AND IS NOT ASSIGNABLE  
16 ~~EXCEPT AS APPROVED BY THE DIRECTOR.~~

17 (G) A SOLE PROPRIETOR REGISTERED CEMETERIAN OR PERMIT HOLDER  
18 SHALL MAINTAIN IN THE OFFICE OF THE CEMETERY A COPY OF THE MOST RECENT  
19 TRUST REPORT FILED WITH THE OFFICE OF THE CEMETERY UNDER § 5-605 OF THIS  
20 TITLE AND SHALL MAKE THE REPORT AVAILABLE FOR INSPECTION BY AN OWNER OR  
21 A PROSPECTIVE PURCHASER OF A RIGHT OF INTERMENT IN A BURIAL LOT,  
22 ABOVE-GROUND CRYPT, OR NICHE, ~~OR BURIAL RIGHT.~~

23 5-603.

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

25 (1) a national banking association;

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

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

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

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

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

1 (1) FOR THE BENEFIT OF THE TRUST ACCOUNT OF THE CEMETERY OR  
2 ITS BURIAL ~~LOT~~ SPACE OWNERS OR BOTH;

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

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

6 (C) A TRUSTEE MAY NOT:

7 ~~(1) BE A REGISTRANT, PERMIT HOLDER, AN ENTITY OWNED OR UNDER  
8 THE CONTROL OF A REGISTRANT OR PERMIT HOLDER, OR A SPOUSE, CHILD, PARENT,  
9 OR SIBLING OF A REGISTRANT; OR~~

10 ~~(2) USE ANY PERPETUAL CARE TRUST FUNDS REQUIRED TO BE HELD IN  
11 TRUST IN ACCORDANCE WITH THIS SUBTITLE TO;~~

12 (1) PURCHASE AN INTEREST IN ANY CONTRACT OR AGREEMENT TO  
13 WHICH THE REGISTRANT OR PERMIT HOLDER OR ANY ENTITY OWNED OR UNDER  
14 THE CONTROL OF A REGISTRANT, PERMIT HOLDER, OR A SPOUSE, CHILD, PARENT, OR  
15 SIBLING OF A REGISTRANT IS A PARTY OR INVEST, DIRECTLY OR INDIRECTLY, IN THE  
16 REGISTRANT'S OR PERMIT HOLDER'S BUSINESS OPERATIONS; OR

17 ~~(D) EXCEPT UPON WRITTEN APPROVAL OF THE DIRECTOR, A TRUSTEE MAY  
18 NOT USE ANY PERPETUAL CARE TRUST FUNDS TO~~

19 (2) MAKE ANY LOAN OR DIRECT OR INDIRECT INVESTMENT OF ANY  
20 KIND:

21 ~~(1) (I) TO ANY REGISTRANT, OR PERMIT HOLDER, OR PARTY OWNING  
22 10% OR MORE OF THE CEMETERY TO WHICH THE TRUST PERTAINS; OR TO ANY  
23 SPOUSE, CHILD, PARENT, OR SIBLING OF A REGISTRANT;~~

24 ~~(2) (II) TO OR IN ANY ENTITY OR BUSINESS OPERATIONS OWNED OR  
25 UNDER THE CONTROL OF A REGISTRANT, PERMIT HOLDER, OR A SPOUSE, CHILD,  
26 PARENT, OR SIBLING OF A REGISTRANT;~~

27 ~~(3) (III) ON OR IN ANY PRODUCTIVE OR UNPRODUCTIVE REAL ESTATE,  
28 OF A CEMETERY; OR~~

29 ~~(4) (IV) IN ANY PERMANENT IMPROVEMENTS OF A CEMETERY OR ITS  
30 FACILITIES, OR ANY NOTE, BOND, MORTGAGE, OR DEED OF TRUST IN WHICH ANY  
31 REGISTRANT, PERMIT HOLDER, OR PARTY OWNING 10% OR MORE OF A CEMETERY  
32 HAS A FINANCIAL INTEREST.~~

33 5-605.

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

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

4                   (i)     the Director;

5                   (ii)    the Attorney General or an authorized representative of the  
6 Attorney General; and

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

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

13           (2)     The report shall:

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

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

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

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

19                   (v)     include:

20                           1.     the name of the sole proprietor registered cemeterian or  
21 permit holder;

22                           2.     each location of the sole proprietor registered cemeterian  
23 or permit holder;

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

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

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

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

