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By: **Delegates McClenahan, Bozman, and Conway**  
Introduced and read first time: February 8, 2002  
Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Perpetual Care Trust Funds - Reporting Requirements**

3 FOR the purpose of exempting certain perpetual care trust fund reports from the  
4 requirement that the report be certified as to correctness by a certified public  
5 accountant; and generally relating to perpetual care trust funds.

6 BY repealing and reenacting, without amendments,  
7 Article - Business Regulation  
8 Section 5-601 and 5-602  
9 Annotated Code of Maryland  
10 (1998 Replacement Volume and 2001 Supplement)

11 BY repealing and reenacting, with amendments,  
12 Article - Business Regulation  
13 Section 5-605  
14 Annotated Code of Maryland  
15 (1998 Replacement Volume and 2001 Supplement)

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

18 **Article - Business Regulation**

19 5-601.

- 20 (a) This subtitle does not apply to a cemetery that:
- 21 (1) has less than 1 acre available for burial; or
  - 22 (2) is owned and operated by:
    - 23 (i) a county;
    - 24 (ii) a municipal corporation;

- 1 (iii) a church;
- 2 (iv) a synagogue;
- 3 (v) a religious organization;
- 4 (vi) a not for profit organization created before 1900 by an act of the  
5 General Assembly; or
- 6 (vii) a State veterans agency.

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

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

- 11 (1) the appointment of a successor trustee or cotrustee;
- 12 (2) deposits into the fund after July 1, 1973; and
- 13 (3) the withdrawal from the fund of income on deposits made after July  
14 1, 1973.

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 sells  
22 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 is not  
27 exempt under § 5-601 of this subtitle shall be required to establish a perpetual care  
28 trust fund.

29 (c) Each sole proprietor registered cemeterian or permit holder initially shall  
30 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 5-605.

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

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

30                   (i)     the Director;

31                   (ii)    the Attorney General or an authorized representative of the  
32 Attorney General; and

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

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

5 (2) The report shall:

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

7 (ii) EXCEPT FOR A REPORT SUBMITTED BY A SOLE PROPRIETOR  
8 REGISTERED CEMETERIAN OR PERMIT HOLDER WITH LESS THAN 25 SALES OF  
9 BURIAL LOTS OR BURIAL RIGHTS FOR THE PERIOD COVERED BY THE REPORT, be  
10 certified as to correctness by a certified public accountant retained by the cemetery;

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

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

13 (v) include:

14 1. the name of the sole proprietor registered cemeterian or  
15 permit holder;

16 2. each location of the sole proprietor registered cemeterian  
17 or permit holder;

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

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

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

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

29 7. the name and address of each trustee.

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

34 (c) The Director may adopt regulations:

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

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

3       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
4 effect October 1, 2002.