

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

Introduced and read first time: February 6, 2006

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Office of Cemetery Oversight - Investigative and Enforcement Power -**
3 **Entities Without Registrations or Permits**

4 FOR the purpose of authorizing the Director of the Office of Cemetery Oversight to
5 take certain investigative and enforcement actions for certain violations under
6 certain circumstances; requiring an applicant for registration to be affiliated
7 with a registered or permitted business; extending the authority of the Director
8 to certain unregistered and unpermitted entities; requiring certain cemeteries to
9 maintain trust accounts; and generally relating to the operation of cemeteries
10 and burial goods businesses.

11 BY repealing and reenacting, with amendments,
12 Article - Business Regulation
13 Section 5-204(b), 5-302, 5-310, 5-311(c)(1) and (g), 5-602(b)(1), (c), (d), (f), and
14 (g), 5-603(c), 5-604(a), 5-605, 5-606(a), 5-607, and 5-801(a), (g), and (h)
15 Annotated Code of Maryland
16 (2004 Replacement Volume and 2005 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article - Business Regulation
19 Section 5-602(a)
20 Annotated Code of Maryland
21 (2004 Replacement Volume and 2005 Supplement)

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

24 **Article - Business Regulation**

25 5-204.

26 (b) Upon receipt of a written complaint, or at the discretion of the Director, the
27 Director may conduct an investigation and an inspection of the records and site of a

1 registered cemeterian, registered seller, [and] permit holder, OR ANY OTHER PERSON
2 SUBJECT TO THE REGISTRATION OR PERMIT PROVISIONS OF THIS TITLE.

3 5-302.

4 (a) In order to register, an applicant shall meet the requirements of this
5 section.

6 (b) The applicant must be at least 18 years old.

7 (c) The applicant must be of good character and reputation.

8 (D) THE APPLICANT MUST BE AFFILIATED WITH A CEMETERY OR BURIAL
9 GOODS BUSINESS OPERATED BY A REGISTRANT OR PERMIT HOLDER.

10 [(d)] (E) The cemetery or burial goods business with which the applicant is
11 affiliated must be financially stable in accordance with § 5-304 of this subtitle.

12 5-310.

13 (a) Subject to the hearing provisions of § 5-312 of this subtitle, the Director
14 may deny a registration or permit to an applicant, reprimand a [registrant or permit
15 holder] PERSON SUBJECT TO THE REGISTRATION OR PERMIT PROVISIONS OF THIS
16 TITLE, or suspend or revoke a registration or permit if an applicant, registrant, or
17 permit holder, or an agent, employee, officer, director, or partner of the applicant,
18 registrant, or permit holder:

19 (1) fraudulently or deceptively obtains or attempts to obtain a
20 registration or permit;

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

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

23 (i) felony; or

24 (ii) misdemeanor that is directly related to the fitness and
25 qualifications of the applicant, registrant, or permit holder to own or operate a
26 cemetery or provide burial goods;

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

29 (5) violates this title;

30 (6) violates the code of ethics adopted by the Director;

31 (7) violates a regulation adopted under this title;

1 (8) fails to provide reasonable and adequate supervision of the operation
2 of the cemetery or the provision of burial goods by agents, employees, officers,
3 directors, or partners affiliated with a cemetery or burial goods business;

4 (9) refuses to allow an inspection required by this title;

5 (10) fails to comply with an order of the Director;

6 (11) fails to comply with any terms of settlement under a binding
7 arbitration agreement; or

8 (12) is found guilty by a court in this State of violating an unfair and
9 deceptive trade practices provision under Title 13 of the Commercial Law Article.

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

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

16 (i) the court lifts the order; or

17 (ii) the charges are adjudicated or dismissed.

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

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

24 (2) take [other] ANY actions as are appropriate to protect the public
25 interest.

26 (d) Instead of or in addition to reprimanding a [registrant or permit holder]
27 PERSON, or suspending or revoking a registration or permit, the Director may impose
28 a civil penalty:

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

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

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

35 (1) the seriousness of the violation;

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

6 (f) Any civil penalties collected under this section shall be paid into the

7 General Fund of the State.

8 (g) The Director shall consider the following facts in the granting, denial,

9 renewal, suspension, or revocation of a registration or permit or the reprimand of a

10 registrant or permit holder when an applicant, registrant, or permit holder, or an

11 agent, employee, officer, director, or partner of an applicant, registrant, or permit

12 holder is convicted of a felony or misdemeanor described in subsection (a)(3) of this

13 section:

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

24 5-311.

25 (c) (1) The Director shall review each complaint and shall attempt to

26 negotiate a settlement of the complaint between the complainant and the registrant

27 [or], permit holder, OR ANY OTHER PERSON SUBJECT TO THE REGISTRATION OR

28 PERMIT PROVISIONS OF THIS TITLE.

29 (g) Once a complaint has been referred for binding arbitration, the registrant

30 [or], permit holder, OR ANY OTHER PERSON SUBJECT TO THE REGISTRATION OR

31 PERMIT PROVISIONS OF THIS TITLE shall comply with the terms of the settlement.

32 5-602.

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

- 34 (1) that is available for burial;
- 35 (2) where roads, paths, or buildings have been laid out or built; or

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

3 (b) (1) Each sole proprietor registered cemeterian [or], permit holder, OR
4 ANY OTHER PERSON SUBJECT TO THE REGISTRATION OR PERMIT PROVISIONS OF
5 THIS TITLE who sells or offers to sell to the public a burial lot or burial right in a
6 cemetery as to which perpetual care is stated or implied shall have a perpetual care
7 trust fund.

8 (c) Each sole proprietor registered cemeterian [or], permit holder, OR ANY
9 OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE 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 and the cemetery is a nonprofit cemetery which does not sell burial goods;

13 (2) \$25,000, if the developed land area of the cemetery is more than 10
14 acres and the cemetery is a nonprofit cemetery which does not sell burial goods;

15 (3) \$25,000, if the developed land area of the cemetery is 10 acres or less
16 and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells burial
17 goods; or

18 (4) \$50,000, if the developed land area of the cemetery is more than 10
19 acres and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells
20 burial goods.

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

23 (2) Except as provided in paragraph (4) of this subsection, within 30 days
24 after the end of the month when the buyer of a right of interment in a burial lot,
25 above-ground crypt, or niche makes a final payment, the registered cemeterian [or],
26 permit holder, OR ANY OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF
27 THIS SUBTITLE shall pay in cash to the trustee for deposit in the perpetual care trust
28 fund:

29 (i) at least 10% of the actual selling price of each right of interment
30 in a burial lot, above-ground crypt, or niche; or

31 (ii) if the burial space is sold at a discount or at no cost, at least 10%
32 of the imputed cost of the fair retail value.

33 (3) The amount of deposit to the perpetual care trust fund shall be
34 deducted from the proceeds of the listed selling price of the right of interment in a
35 burial lot, above-ground crypt, or niche, and may not be charged as an add-on to the
36 purchaser.

37 (4) This subsection does not apply to the sale of a second right of
38 interment or the resale of a right of interment in a burial lot, above-ground crypt, or

1 niche for which the cemetery already has paid into the perpetual care trust fund the
2 deposit required by this subsection.

3 (f) (1) The perpetual care trust fund authorized by this subsection shall be a
4 single purpose trust fund.

5 (2) In the event of the bankruptcy or insolvency of, or assignment for the
6 benefit of creditors by, or an adverse judgment against the sole proprietor registered
7 cemeterian [or], permit holder, OR ANY OTHER PERSON SUBJECT TO THE TRUST
8 REQUIREMENTS OF THIS SUBTITLE, the perpetual care trust funds may not be made
9 available to any creditor as assets of the sole proprietor registered cemeterian [or],
10 permit holder, OR ANY OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF
11 THIS SUBTITLE or as payment for any expenses of any bankruptcy or similar
12 proceedings, but shall be retained intact to provide for the future maintenance of the
13 cemetery.

14 (3) The perpetual care trust fund is not subject to judgment, execution,
15 garnishment, attachment, or other seizure by process in bankruptcy or otherwise, or
16 to sale, pledge, mortgage, or other alienation and is not assignable.

17 (g) A sole proprietor registered cemeterian [or], permit holder, OR ANY OTHER
18 PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE shall maintain
19 in the office of the cemetery a copy of the most recent trust report filed with the office
20 of the cemetery under § 5-605 of this subtitle and shall make the report available for
21 inspection by an owner or a prospective purchaser of a right of interment in a burial
22 lot, above-ground crypt, or niche.

23 5-603.

24 (c) A trustee may not use any perpetual care trust funds required to be held in
25 trust in accordance with this subtitle to:

26 (1) purchase an interest in any contract or agreement to which the
27 registrant [or], permit holder, OR ANY OTHER PERSON SUBJECT TO THE TRUST
28 REQUIREMENTS OF THIS SUBTITLE, or any entity owned or under the control of a
29 registrant, permit holder, OR ANY OTHER PERSON SUBJECT TO THE TRUST
30 REQUIREMENTS OF THIS SUBTITLE, or a spouse, child, parent, or sibling of a
31 registrant OR ANY OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS
32 SUBTITLE is a party; or

33 (2) make any loan or direct or indirect investment of any kind:

34 (i) to any registrant [or], permit holder, OR ANY OTHER PERSON
35 SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE or to any spouse, child,
36 parent, or sibling of a registrant OR ANY OTHER PERSON SUBJECT TO THE TRUST
37 REQUIREMENTS OF THIS SUBTITLE;

38 (ii) to or in any entity or business operations owned or under the
39 control of a registrant, permit holder, OR ANY OTHER PERSON SUBJECT TO THE
40 TRUST REQUIREMENTS OF THIS SUBTITLE, or a spouse, child, parent, or sibling of a

1 registrant OR ANY OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS
2 SUBTITLE;

3 (iii) on or in any real estate of a cemetery; or

4 (iv) in any permanent improvements of a cemetery or its facilities.

5 5-604.

6 (a) The terms of a trust to provide for perpetual care shall be designated in a
7 written agreement between the registered cemeterian [or], permit holder, OR ANY
8 OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE and
9 trustee.

10 5-605.

11 (a) (1) Each sole proprietor registered cemeterian [or], permit holder, OR
12 ANY OTHER PERSON subject to the trust requirements of this subtitle shall keep
13 detailed records of all sales of burial lots or burial rights in a cemetery and money
14 received.

15 (2) The records of each sole proprietor registered cemeterian [or],
16 permit holder, OR ANY OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF
17 THIS SUBTITLE and of each trustee appointed by the sole proprietor registered
18 cemeterian [or], permit holder, OR ANY OTHER PERSON SUBJECT TO THE TRUST
19 REQUIREMENTS OF THIS SUBTITLE are subject to examination by:

20 (i) the Director;

21 (ii) the Attorney General or an authorized representative of the
22 Attorney General; and

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

25 (b) (1) Each sole proprietor registered cemeterian [or], permit holder, OR
26 ANY OTHER PERSON subject to the trust requirements of this subtitle shall submit a
27 report to the Director within 120 days after the close of each calendar or other fiscal
28 year chosen by the sole proprietor registered cemeterian [or], permit holder, OR ANY
29 OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE.

30 (2) The report shall:

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

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

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

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

1 (v) include:

2 1. the name of the sole proprietor registered cemeterian [or],
3 permit holder, OR ANY OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF
4 THIS SUBTITLE;

5 2. each location of the sole proprietor registered cemeterian
6 [or], permit holder, OR ANY OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS
7 OF THIS SUBTITLE;

8 3. the amount of money in each perpetual care trust fund at
9 the beginning of the calendar or other fiscal year chosen by the sole proprietor
10 registered cemeterian [or], permit holder, OR ANY OTHER PERSON SUBJECT TO THE
11 TRUST REQUIREMENTS OF THIS SUBTITLE;

12 4. the amount of money that the sole proprietor registered
13 cemeterian [or], permit holder, OR ANY OTHER PERSON SUBJECT TO THE TRUST
14 REQUIREMENTS OF THIS SUBTITLE received during that year that is subject to the
15 trust requirements of this subtitle;

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

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

21 7. the name and address of each trustee.

22 (3) A sole proprietor registered cemeterian [or], permit holder, OR ANY
23 OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE who
24 stops selling burial lots or burial rights in a cemetery as to which perpetual care is
25 stated or implied shall notify the Director in the required report for the year in which
26 sales stop.

27 (4) The Director may require a sole proprietor registered cemeterian
28 [or], permit holder, OR ANY OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS
29 OF THIS SUBTITLE to correct any underfunding, including interest, due to the
30 perpetual care trust fund.

31 (c) The Director may adopt regulations:

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

33 (2) for determining whether registered cemeterians [or], permit holders,
34 OR ANY OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE
35 are complying with this subtitle.

1 5-606.

2 (a) If the Director finds that a registered cemeterian [or], permit holder, OR
3 ANY OTHER PERSON subject to the trust requirements of this subtitle has violated
4 this subtitle or a regulation adopted under this subtitle, the Director may refer the
5 matter to:

6 (1) the Attorney General for civil enforcement; or

7 (2) the appropriate State's Attorney for criminal prosecution.

8 5-607.

9 A registered cemeterian [or], permit holder, OR ANY OTHER PERSON SUBJECT
10 TO THE TRUST REQUIREMENTS OF THIS SUBTITLE may not sell or offer to sell to a
11 member of the public a burial lot or burial right in a cemetery and represent to the
12 public in any way, express or implied, that the cemetery or the burial lot or burial
13 right in the cemetery will have perpetual care unless the sole proprietor registered
14 cemeterian [or], permit holder, OR ANY OTHER PERSON SUBJECT TO THE TRUST
15 REQUIREMENTS OF THIS SUBTITLE has provided adequately for that perpetual care.

16 5-801.

17 (a) At the time of entering into a contract with a consumer for the sale of
18 burial goods or services, registrants [or], permit holders, OR ANY OTHER PERSON
19 SUBJECT TO THE PROVISIONS OF THIS TITLE shall make the following written
20 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 (g) If the purchase by the consumer includes a cemetery plot, the registered
29 cemeterian [or], permit holder, OR ANY OTHER PERSON SUBJECT TO THE
30 PROVISIONS OF THIS TITLE shall provide the consumer with a copy of a location
31 survey, performed by a licensed land surveyor, which indicates the location of the
32 purchased plot within the cemetery, or by any other means approved by the Director.

33 (h) Registrants [or], permit holders, OR ANY OTHER PERSON SUBJECT TO
34 THE PROVISIONS OF THIS TITLE shall provide each buyer or prospective buyer with a
35 general price list for the buyer or prospective buyer to keep which shall include:

36 (1) specific prices for:

- 1 (i) ground opening and closing;
- 2 (ii) extra depth interment;
- 3 (iii) interment of cremated remains; and
- 4 (iv) mausoleum entombment; and
- 5 (2) general price ranges for burial space or burial goods.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2006.