
By: **Chairman, Economic Matters Committee**

Introduced and read first time: February 8, 2006

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Office of Cemetery Oversight - Sunset Extension and Program Evaluation**

3 FOR the purpose of authorizing a designee of the Director of the Office of Cemetery
4 Oversight to conduct a certain investigation and inspection, commence
5 proceedings on a complaint, and review a complaint and attempt to negotiate a
6 settlement of a complaint; requiring the Director to maintain a list of all for
7 profit and nonreligious-nonprofit cemeteries associated with a registrant or
8 permit holder for each fiscal year; requiring the Director to maintain a list of all
9 bona fide religious-nonprofit cemeteries, veterans' cemeteries, and local
10 government-owned cemeteries that have filed a certain statement or report;
11 requiring that all lists maintained by the Director be open to inspection by any
12 person; requiring the Director to conduct an inventory of all known burial sites
13 in the State and to update the inventory periodically and to report, beginning on
14 a certain date, to the General Assembly on the number of certain types of
15 cemeteries; requiring the Director, beginning on a certain date, to annually
16 assess the rate of compliance with certain registration, permit, and reporting
17 requirements in a certain manner; requiring the Director to annually report to
18 the General Assembly on the implementation of a certain action plan; repealing
19 the Cemetery Oversight Fund; requiring the Office to pay all money collected
20 under the Maryland Cemetery Act into the General Fund of the State; requiring
21 the Director, on or before a certain date each year, to report to the General
22 Assembly on the nature of certain complaints, the manner in which certain
23 complaints are resolved, the number of complaints against certain persons, and
24 any disciplinary or enforcement actions taken against certain persons; altering
25 the scope of certain limitations on burial land; specifying that a certain
26 certificate of ownership, under the seal of certain persons, has the same effect as
27 a certain conveyance of real property; repealing an exemption for certain
28 cemeteries from certain provisions of law relating to perpetual care
29 requirements; altering certain requirements relating to perpetual care;
30 requiring certain persons to provide consumers of certain goods and services
31 with certain written disclosures, a copy of certain documents, and a certain price
32 list; continuing the Office in accordance with the provisions of the Maryland
33 Program Evaluation Act (Sunset Law) by extending to a certain date the
34 termination provisions relating to statutory and regulatory authority of the
35 Office; specifying that a preliminary evaluation is not required for the next full

1 evaluation of the Office; requiring that an evaluation of the Office, and the
2 statutes and regulations that relate to the Office, be performed on or before a
3 certain date; requiring that any moneys remaining in the Cemetery Oversight
4 Fund after a certain date revert into the General Fund of the State; requiring
5 the Office to provide status reports on the implementation of certain
6 recommendations to certain committees of the General Assembly and the
7 Department of Legislative Services on or before certain dates; requiring the
8 Advisory Council on Cemetery Operations to study the issue of abandoned and
9 neglected cemeteries in a certain manner and develop a legislative proposal;
10 defining a certain term; making certain conforming, clarifying, and technical
11 changes; and generally relating to the Office of Cemetery Oversight and the
12 operation of cemeteries and burial goods businesses in the State.

13 BY repealing and reenacting, with amendments,
14 Article - Business Regulation
15 Section 5-102(a), 5-204, 5-205, 5-311, 5-501, 5-502, 5-504, 5-601 through
16 5-608, 5-801, and 5-1002
17 Annotated Code of Maryland
18 (2004 Replacement Volume and 2005 Supplement)

19 BY adding to
20 Article - Business Regulation
21 Section 5-601
22 Annotated Code of Maryland
23 (2004 Replacement Volume and 2005 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article - State Government
26 Section 8-403(b)(11)
27 Annotated Code of Maryland
28 (2004 Replacement Volume and 2005 Supplement)

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

31 **Article - Business Regulation**

32 5-102.

33 (a) The registration and permitting provisions of this title do not apply to:

34 (1) a person that owns and operates a bona fide [religious, nonprofit]
35 RELIGIOUS-NONPROFIT cemetery in this State;

36 (2) a not for profit organization created before 1900 by an act of the
37 General Assembly;

1 (3) a county, city, or municipal corporation that owns and operates a
2 cemetery in the State; or

3 (4) a veterans' cemetery operated by the State.

4 5-204.

5 (a) With the advice of the Advisory Council and after consultation with
6 representatives of the cemetery industry, the Director shall adopt:

7 (1) rules and regulations to carry out this title; and

8 (2) a code of ethics for engaging in the operation of a cemetery or
9 providing burial goods.

10 (b) Upon receipt of a written complaint, or at the discretion of the Director, the
11 Director OR THE DIRECTOR'S DESIGNEE may conduct an investigation and an
12 inspection of the records and site of a registered cemeterian, registered seller, and
13 permit holder.

14 (c) The Director may hold hearings on any matter covered by this title.

15 (d) To enforce this title, the Director may:

16 (1) administer oaths;

17 (2) examine witnesses; and

18 (3) receive evidence.

19 (e) (1) The Director may issue a subpoena for the attendance of a witness to
20 testify or for the production of evidence in connection with any investigation or
21 hearing conducted in accordance with this section.

22 (2) If a person fails to comply with a subpoena issued under this
23 subsection, on petition of the Director, a circuit court may compel compliance with the
24 subpoena.

25 (f) (1) The Director may sue in the name of the State to enforce any
26 provision of this title by injunction.

27 (2) In seeking an injunction under this subsection, the Director is not
28 required to:

29 (i) post bond; or

30 (ii) allege or prove either that:

31 1. an adequate remedy at law does not exist; or

1 GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT
2 ARTICLE, ON THE NUMBER OF FOR PROFIT CEMETERIES,
3 NONRELIGIOUS-NONPROFIT CEMETERIES, BONA FIDE RELIGIOUS-NONPROFIT
4 CEMETERIES, VETERANS' CEMETERIES, AND LOCAL GOVERNMENT-OWNED
5 CEMETERIES.

6 (2) BEGINNING DECEMBER 1, 2007, THE DIRECTOR SHALL ANNUALLY
7 ASSESS THE RATE OF COMPLIANCE WITH THE REGISTRATION, PERMIT, AND
8 REPORTING REQUIREMENTS OF THIS TITLE BY COMPARING THE LISTS REQUIRED
9 UNDER SUBSECTION (I)(1)(II) AND (III) OF THIS SECTION WITH THE MOST RECENT
10 INVENTORY OF ALL KNOWN BURIAL SITES CONDUCTED UNDER PARAGRAPH (1) OF
11 THIS SUBSECTION.

12 (3) BEGINNING WITH A REPORT DUE ON JANUARY 31, 2008, FOR FISCAL
13 YEAR 2007, THE DIRECTOR SHALL ANNUALLY REPORT TO THE GENERAL ASSEMBLY,
14 IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON THE
15 IMPLEMENTATION OF AN ACTION PLAN, IF APPROPRIATE, TO ADDRESS ANY
16 NONCOMPLIANCE ISSUES IDENTIFIED BY THE ASSESSMENT REQUIRED UNDER
17 PARAGRAPH (2) OF THIS SUBSECTION.

18 5-205.

19 (a) [There is a Cemetery Oversight Fund.

20 (b)] (1) By regulation, the Director shall establish reasonable fees and a fee
21 schedule for the issuance and renewal of registrations and permits.

22 (2) In establishing the fees, the Director shall consider the size of the
23 business, whether the business is for-profit or designated as tax exempt under §
24 501(c) of the Internal Revenue Code, the volume of business conducted, and the type
25 of services provided, including the percentage of preneed contracts written.

26 [(c) The fees charged shall be set so as to approximate the direct and indirect
27 cost of maintaining the Office.

28 (d) The Director shall pay all funds collected under this title to the
29 Comptroller who shall distribute the fees to the Cemetery Oversight Fund.

30 (e) (1) The Fund shall be used to cover the actual documented direct and
31 indirect costs of fulfilling the statutory and regulatory duties of the Office.

32 (2) The Fund is a continuing nonlapsing fund, not subject to § 7-302 of
33 the State Finance and Procurement Article.

34 (3) Any unspent portions of the Fund may not revert or be transferred to
35 the General Fund of the State, but shall remain in the Fund to be used for the
36 purposes specified in this title.

37 (4) No other State money may be used to support the Fund.

1 (f) (1) The Director shall administer the Fund.

2 (2) Moneys in the Fund may be expended for any lawful purpose
3 authorized under the provisions of this title.

4 (g) The Legislative Auditor shall audit the accounts and transactions of the
5 Fund as provided in § 2-1220 of the State Government Article.]

6 (B) THE DIRECTOR SHALL PAY ALL FUNDS COLLECTED UNDER THIS TITLE
7 INTO THE GENERAL FUND OF THE STATE.

8 5-311.

9 (a) Subject to the provisions of this section, the Director OR THE DIRECTOR'S
10 DESIGNEE shall commence proceedings on a complaint made by any person to the
11 Director.

12 (b) A complaint shall:

13 (1) be in writing;

14 (2) state specifically the facts on which the complaint is based; and

15 (3) be made under oath by the person who submits the complaint.

16 (c) (1) The Director OR THE DIRECTOR'S DESIGNEE shall review each
17 complaint and shall attempt to negotiate a settlement of the complaint between the
18 complainant and the registrant or permit holder.

19 (2) Notwithstanding § 5-102 of this title, the Director OR THE
20 DIRECTOR'S DESIGNEE may receive and attempt to negotiate a settlement to resolve
21 complaints concerning persons required to file statements under § 5-405 of this title
22 and in connection with the operation of a cemetery or the sale of preneed goods.

23 (3) The Director may not take any actions described in subsection (d)(1)
24 and (2) of this section for complaints involving persons exempt under § 5-102 OF THIS
25 TITLE.

26 (d) If the Director OR THE DIRECTOR'S DESIGNEE is unable to negotiate a
27 settlement of the complaint, the Director may:

28 (1) at the request of either party, refer the complaint to the Office of the
29 Attorney General or the Office of Administrative Hearings for binding arbitration, if
30 both parties agree to binding arbitration;

31 (2) initiate an investigation; or

32 (3) dismiss the complaint.

33 (e) If, after investigation, the Director determines that there is a reasonable
34 basis to believe that there are grounds for disciplinary action under § 5-310 of this

1 subtitle, the Director shall provide the person against whom the action is
2 contemplated notice and an opportunity for a hearing under § 5-312 of this subtitle.

3 (f) (1) If, after investigation, the Director determines that there is not a
4 reasonable basis to believe that there are grounds for disciplinary action, the Director
5 shall dismiss the complaint.

6 (2) Any party aggrieved by the dismissal may take a judicial appeal in
7 accordance with the provisions of Title 10 of the State Government Article.

8 (g) Once a complaint has been referred for binding arbitration, the registrant
9 or permit holder shall comply with the terms of the settlement.

10 (h) (1) The Director shall adopt guidelines that establish a schedule for the
11 prompt and timely processing and resolution of each complaint made to the Director.

12 (2) Beginning December 31, 1998, and on or before December 31 of each
13 year thereafter, the Director shall report, subject to § 2-1246 of the State Government
14 Article, to the General Assembly on:

15 (I) the number of complaints resolved within the schedule adopted
16 under paragraph (1) of this subsection [and];

17 (II) the number of complaints received under subsection (c)(2) of
18 this section BY THE TYPE OF REGISTRANT, PERMIT HOLDER, OR EXEMPTION FROM
19 THE REGISTRATION AND PERMIT REQUIREMENTS OF THIS TITLE;

20 (III) THE NUMBER OF COMPLAINTS RECEIVED UNDER SUBSECTION
21 (C)(2) OF THIS SECTION BY PERSONS SUBJECT TO, BUT NOT IN COMPLIANCE WITH,
22 THE REGISTRATION AND PERMIT REQUIREMENTS OF THIS TITLE;

23 (IV) THE NATURE OF COMPLAINTS RECEIVED UNDER SUBSECTION
24 (C)(2) OF THIS SECTION, INCLUDING WHETHER COMPLAINTS ARE RELATED TO THE
25 ILLEGAL RECYCLING OF GRAVES;

26 (V) WHETHER COMPLAINTS REPORTED UNDER ITEM (I) OF THIS
27 PARAGRAPH WERE RESOLVED THROUGH NEGOTIATION, BINDING ARBITRATION, OR
28 ANOTHER METHOD; AND

29 (VI) ANY DISCIPLINARY OR ENFORCEMENT ACTIONS TAKEN
30 AGAINST A REGISTRANT, PERMIT HOLDER, OR A PERSON SUBJECT TO, BUT NOT IN
31 COMPLIANCE WITH, THE REGISTRATION AND PERMIT REQUIREMENTS OF THIS
32 TITLE.

33 5-501.

34 (a) Except as otherwise provided in this section, a [registered cemeterian or
35 permit holder] PERSON may not buy, hold, or use, for burial:

36 (1) more than 100 acres in the State; or

1 (2) any land within the limits of a municipal corporation in the State,
2 unless authorized to do so by the municipal corporation.

3 (b) (1) In the Spauldings Election District of Prince George's County, a
4 [registered cemeterian or permit holder] PERSON may buy, hold, or use, for burial, up
5 to 125 acres in 1 tract.

6 (2) In the Laurel Election District of Prince George's County, a
7 [registered cemeterian or permit holder] PERSON that operated A CEMETERY on OR
8 BEFORE June 1, 1955, may buy, hold, or use, for burial, up to 200 acres in 1 tract.

9 (3) In the Kent Election District of Prince George's County, a [registered
10 cemeterian or permit holder] PERSON may buy, hold, or use, for burial, up to 150
11 acres in 1 tract.

12 (c) In Frederick County, a [registered cemeterian or permit holder] PERSON
13 may buy, hold, or use, for burial, up to 150 acres in 1 tract.

14 (d) In Baltimore County, a [registered cemeterian or permit holder] PERSON
15 may buy, hold, or use, for burial, up to 200 acres in 1 tract.

16 5-502.

17 (a) An alley, canal, road, or other public thoroughfare may not be opened
18 through property of a cemetery if that property is used or to be used for burial.

19 (b) This section does not authorize a registered cemeterian, [or] permit
20 holder, OR OTHER PERSON to obstruct:

21 (1) a public road in use when the cemetery is formed; or

22 (2) the site of a future public road that, when the cemetery is formed, is
23 shown on a plat made by authority of the State, a county, or a municipal corporation.
24 5-504.

25 A certificate, under seal of a SOLE PROPRIETOR registered cemeterian, [or]
26 permit holder, OR OTHER CEMETERY OWNER, of ownership of a burial lot or crypt has
27 the same effect as a conveyance of real property that is executed, acknowledged, and
28 recorded as required by law.

29 5-601.

30 IN THIS SUBTITLE, "PERPETUAL CARE":

31 (1) MEANS THE MAINTENANCE, INCLUDING THE CUTTING OF GRASS
32 ABUTTING MEMORIALS OR MONUMENTS, ADMINISTRATION, SUPERVISION, AND
33 EMBELLISHMENT OF A CEMETERY AND ITS GROUNDS, ROADS, AND PATHS; AND

34 (2) INCLUDES THE REPAIR AND RENEWAL OF BUILDINGS, INCLUDING
35 COLUMBARIA AND MAUSOLEUMS, AND THE PROPERTY OF THE CEMETERY.

1 [5-601.] 5-602.

2 (a) This subtitle does not apply to a cemetery that:

3 (1) has less than 1 acre available for burial; or

4 (2) is owned and operated by[:

5 (i) a county;

6 (ii) a municipal corporation;

7 (iii) a church;

8 (iv) a synagogue;

9 (v) a religious organization;

10 (vi) a not for profit organization created before 1900 by an act of the
11 General Assembly; or

12 (vii)] a State veterans agency.

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

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

17 (1) the appointment of a successor trustee or cotrustee;

18 (2) deposits into the fund after July 1, 1973; and

19 (3) the withdrawal from the fund of income on deposits made after July
20 1, 1973.

21 [5-602.] 5-603.

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

23 (1) that is available for burial;

24 (2) where roads, paths, or buildings have been laid out or built; or

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

27 (b) (1) Each sole proprietor registered cemeterian, [or] permit holder, OR
28 OTHER CEMETERY OWNER who sells or offers to sell to the public a burial lot or burial
29 right in a cemetery as to which perpetual care is stated or implied shall have a
30 perpetual care trust fund.

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

3 (3) On the general price list, contract of sale of burial space, and any
4 conveyance documents, all cemeteries subject to the provisions of this subtitle shall
5 state in writing the following using 12 point or larger type font:

6 (i) "The cemetery is a perpetual care cemetery."; or

7 (ii) "The cemetery is not a perpetual care cemetery."

8 (4) A SOLE PROPRIETOR REGISTERED CEMETERIAN, PERMIT HOLDER,
9 OR OTHER CEMETERY OWNER SHALL ESTABLISH A PERPETUAL CARE TRUST FUND
10 FOR EACH cemetery created in the State after October 1, 2001, that is not exempt
11 under [§ 5-601 of this subtitle shall be required to establish a perpetual care trust
12 fund] § 5-102(A) OF THIS TITLE.

13 (c) Each sole proprietor registered cemeterian, [or] permit holder, OR OTHER
14 CEMETERY OWNER initially shall deposit in the perpetual care trust fund at least:

15 (1) \$10,000, if the developed land area of the cemetery is 10 acres or less
16 and the cemetery is a nonprofit cemetery which does not sell burial goods;

17 (2) \$25,000, if the developed land area of the cemetery is more than 10
18 acres and the cemetery is a nonprofit cemetery which does not sell burial goods;

19 (3) \$25,000, if the developed land area of the cemetery is 10 acres or less
20 and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells burial
21 goods; or

22 (4) \$50,000, if the developed land area of the cemetery is more than 10
23 acres and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells
24 burial goods.

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 (4) of this subsection, within 30 days
28 after the end of the month when the buyer of a right of interment in a burial lot,
29 above-ground crypt, or niche makes a final payment, the registered cemeterian, [or]
30 permit holder, OR OTHER PERSON THAT SELLS A RIGHT OF INTERMENT IN A BURIAL
31 LOT, ABOVE-GROUND CRYPT, OR NICHE shall pay in cash to the trustee for deposit in
32 the perpetual care trust fund:

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

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

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

5 (4) This subsection does not apply to the sale of a second right of
6 interment or the resale of a right of interment in a burial lot, above-ground crypt, or
7 niche for which the cemetery already has paid into the perpetual care trust fund the
8 deposit required by this subsection.

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

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

11 (i) the maintenance, including the cutting of grass abutting
12 memorials or monuments, administration, supervision, and embellishment of the
13 cemetery and its grounds, roads, and paths; and

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

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

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

19 (2) In the event of the bankruptcy or insolvency of, or assignment for the
20 benefit of creditors by, or an adverse judgment against the sole proprietor registered
21 cemeterian, [or] permit holder, OR OTHER CEMETERY OWNER, the perpetual care
22 trust funds may not be made available to any creditor as assets of the sole proprietor
23 registered cemeterian, [or] permit holder, OR OTHER CEMETERY OWNER, or as
24 payment for any expenses of any bankruptcy or similar proceedings, but shall be
25 retained intact to provide for the future maintenance of the cemetery.

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

29 (g) A sole proprietor registered cemeterian, [or] permit holder, OR OTHER
30 CEMETERY OWNER shall maintain in the office of the cemetery a copy of the most
31 recent trust report filed with the [office of the cemetery] OFFICE under [§ 5-605] §
32 5-606 of this subtitle and shall make the report available for inspection by an owner or
33 a prospective purchaser of a right of interment in a burial lot, above-ground crypt, or
34 niche.

35 [5-603.] 5-604.

36 (a) A trustee appointed under this subtitle must be:

37 (1) a national banking association;

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

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

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

5 (5) a person who annually provides, with the trust report, the proof of a
6 fidelity bond that meets the requirements of subsection (b) of this section from a
7 recognized bonding institution authorized to do business in the State in an amount
8 equal to the trust fund.

9 (b) The fidelity bond provided under subsection (a)(5) of this section shall be:

10 (1) for the benefit of the trust account of the cemetery or its burial space
11 owners or both;

12 (2) conditioned such that the applicant shall comply with all Maryland
13 laws and regulations relating to trust accounts; and

14 (3) subject to the approval of the Director.

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

17 (1) purchase an interest in any contract or agreement to which the
18 [registrant or] REGISTERED CEMETERIAN, permit holder, OR OTHER CEMETERY
19 OWNER or any entity owned or under the control of a [registrant] REGISTERED
20 CEMETERIAN, permit holder, OR OTHER CEMETERY OWNER, or a spouse, child,
21 parent, or sibling of a [registrant] REGISTERED CEMETERIAN, PERMIT HOLDER, OR
22 OTHER CEMETERY OWNER is a party; or

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

24 (i) to any [registrant or] REGISTERED CEMETERIAN, permit
25 holder, OR OTHER CEMETERY OWNER or to any spouse, child, parent, or sibling of a
26 [registrant] REGISTERED CEMETERIAN, PERMIT HOLDER, OR OTHER CEMETERY
27 OWNER;

28 (ii) to or in any entity or business operations owned or under the
29 control of a [registrant] REGISTERED CEMETERIAN, permit holder, OR OTHER
30 CEMETERY OWNER, or a spouse, child, parent, or sibling of a [registrant]
31 REGISTERED CEMETERIAN, PERMIT HOLDER, OR OTHER CEMETERY OWNER;

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

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

1 [5-604.] 5-605.

2 (a) The terms of a trust to provide for perpetual care shall be designated in a
3 written agreement between the SOLE PROPRIETOR registered cemeterian, [or]
4 permit holder, OR OTHER CEMETERY OWNER and THE trustee.

5 (b) The terms of the trust agreement:

6 (1) shall conform to this subtitle; and

7 (2) may include provisions about:

8 (i) payment of income;

9 (ii) accumulation of income;

10 (iii) reinvestment of income;

11 (iv) administration of the trust fund; and

12 (v) powers of the trustee as to investments.

13 (c) (1) A trust agreement shall be irrevocable.

14 (2) However, a trust agreement may:

15 (i) give the SOLE PROPRIETOR registered cemeterian, [or] permit
16 holder, OR OTHER CEMETERY OWNER the right to remove the trustee and appoint
17 another qualified trustee; and

18 (ii) provide for the appointment of individuals as cotrustees and
19 successor cotrustees with a corporate trustee.

20 [5-605.] 5-606.

21 (a) (1) Each sole proprietor registered cemeterian, [or] permit holder, OR
22 OTHER CEMETERY OWNER subject to the trust requirements of this subtitle shall
23 keep detailed records of all sales of burial lots or burial rights in a cemetery and
24 money received.

25 (2) The records of each sole proprietor registered cemeterian, [or]
26 permit holder, OR OTHER CEMETERY OWNER and of each trustee appointed by the
27 sole proprietor registered cemeterian, [or] permit holder, OR OTHER CEMETERY
28 OWNER are subject to examination by:

29 (i) the Director;

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

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

3 (b) (1) Each sole proprietor registered cemeterian, [or] permit holder, OR
4 OTHER CEMETERY OWNER subject to the trust requirements of this subtitle shall
5 submit a report to the Director within 120 days after the close of each calendar or
6 other fiscal year chosen by the sole proprietor registered cemeterian, [or] permit
7 holder, OR OTHER CEMETERY OWNER.

8 (2) The report shall:

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

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

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

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

14 (v) include:

15 1. the name of the sole proprietor registered cemeterian, [or]
16 permit holder, OR OTHER CEMETERY OWNER;

17 2. each location of the sole proprietor registered cemeterian,
18 [or] permit holder, OR OTHER CEMETERY OWNER;

19 3. the amount of money in each perpetual care trust fund at
20 the beginning of the calendar or other fiscal year chosen by the sole proprietor
21 registered cemeterian, [or] permit holder, OR OTHER CEMETERY OWNER;

22 4. the amount of money that the sole proprietor registered
23 cemeterian, [or] permit holder, OR OTHER CEMETERY OWNER received during that
24 year that is subject to the trust requirements of this subtitle;

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

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

30 7. the name and address of each trustee.

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

1 (4) The Director may require a sole proprietor REGISTERED cemeterian,
2 [or] permit holder, OR OTHER CEMETERY OWNER to correct any underfunding,
3 including interest, due to the perpetual care trust fund.

4 (c) The Director may adopt regulations:

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

6 (2) for determining whether registered cemeterians, [and] permit
7 holders, AND OTHER PERSONS are complying with this subtitle.

8 [5-606.] 5-607.

9 (a) If the Director finds that a registered cemeterian, [or] permit holder, OR
10 OTHER PERSON subject to the trust requirements of this subtitle has violated this
11 subtitle or a regulation adopted under this subtitle, the Director may refer the matter
12 to:

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

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

15 (b) The Attorney General may sue for and a court may grant:

16 (1) injunctive or other equitable relief;

17 (2) imposition of a civil penalty not exceeding \$5,000; or

18 (3) both.

19 [5-607.] 5-608.

20 A registered cemeterian, [or] permit holder, OR OTHER PERSON may not sell or
21 offer to sell to a member of the public a burial lot or burial right in a cemetery and
22 represent to the public in any way, express or implied, that the cemetery or the burial
23 lot or burial right in the cemetery will have perpetual care unless the sole proprietor
24 registered cemeterian, [or] permit holder, OR OTHER CEMETERY OWNER has
25 provided adequately for that perpetual care.

26 [5-608.] 5-609.

27 (a) A person may not establish or operate a public or private cemetery or allow
28 a public or private cemetery to be operated in violation of this subtitle.

29 (b) A person who violates this section is guilty of a misdemeanor and, on
30 conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1
31 year or both.

32 (c) If a sole proprietor registered cemeterian, [or] a permit holder, OR OTHER
33 CEMETERY OWNER violates this subtitle, [the sole proprietor registered cemeterian,
34 the permit holder, or the responsible party] THAT PERSON is guilty of a misdemeanor

1 and, on conviction, is subject to a fine not exceeding \$1,000 or imprisonment not
2 exceeding 1 year or both.

3 5-801.

4 (a) [At the time of entering into a contract with a consumer for the sale of
5 burial goods or services, registrants and permit holders] A REGISTRANT, PERMIT
6 HOLDER, OR ANY OTHER PERSON THAT ENTERS INTO A CONTRACT FOR THE SALE OF
7 BURIAL GOODS OR SERVICES WITH A CONSUMER, AT THE TIME OF ENTERING INTO
8 THE CONTRACT, shall make the following written disclosures:

9 (1) the itemized cost for each service performed under the contract;

10 (2) a list of services incidental to burial that are not covered by the
11 contract;

12 (3) a statement regarding the cemetery's policy on the use of
13 independent monument companies; and

14 (4) the name, address, and telephone number for the State Office of
15 Cemetery Oversight.

16 (b) The disclosures shall be conspicuously incorporated in the contract in
17 12-point type.

18 (c) The disclosure must be signed and dated by the consumer.

19 (d) The consumer must be provided with a copy of the contract at the time of
20 purchasing the burial goods or services.

21 (e) The disclosure shall occur:

22 (1) not later than the first scheduled face-to-face contact with the
23 purchaser or party representing the purchaser; or

24 (2) if no face-to-face contact occurs, at the time of the execution of the
25 contract by the purchaser or party representing the purchaser.

26 (f) The Director may by regulation prescribe the form and wording of the
27 disclosure.

28 (g) If the purchase by the consumer includes a cemetery plot, the [registered
29 cemeterian or permit holder] REGISTRANT, PERMIT HOLDER, OR ANY OTHER PERSON
30 THAT ENTERS INTO A CONTRACT FOR THE SALE OF BURIAL GOODS OR SERVICES
31 shall provide the consumer with a copy of a location survey, performed by a licensed
32 land surveyor, which indicates the location of the purchased plot within the cemetery,
33 or by any other means approved by the Director.

34 (h) [Registrants and permit holders] A REGISTRANT, PERMIT HOLDER, OR
35 ANY OTHER PERSON THAT ENTERS INTO A CONTRACT FOR THE SALE OF BURIAL

1 SECTION 5. AND BE IT FURTHER ENACTED, That the Advisory Council on
2 Cemetery Operations shall study the issue of abandoned and neglected cemeteries.
3 The Advisory Council shall assess the success of the efforts of other states in
4 maintaining abandoned and neglected cemeteries and develop a model for addressing
5 the issue of abandoned and neglected cemeteries in Maryland. The model shall: (1)
6 define and identify abandoned or neglected cemeteries in the State; (2) determine the
7 most appropriate role for State and local government in overseeing the maintenance
8 of abandoned and neglected cemeteries; (3) determine whether a formal inmate
9 cemetery cleanup work program should be established with the Department of Public
10 Safety and Correctional Services; (4) if a formal cemetery cleanup program is
11 established, determine how the inmate program will be administered; (5) determine
12 how State and local governments will play a role in funding a formal effort to
13 maintain abandoned and neglected cemeteries; (6) identify additional private and
14 governmental funding sources and incentive programs for the maintenance of
15 abandoned and neglected cemeteries; and (7) define and identify historic cemeteries
16 to acquire private and governmental funding. The Advisory Council shall also assess
17 methods for identifying and working with cemeteries in the State that are insolvent
18 or that are facing insolvency in the near future to ensure that regulatory oversight is
19 maintained and shall consider whether a formal category for inactive cemeteries
20 would be appropriate. Based on its study, the Advisory Council shall develop a
21 legislative proposal for introduction no later than the 2009 Legislative Session.

22 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 July 1, 2006.