
By: **Chairman, Finance Committee**

Introduced and read first time: January 31, 2006

Assigned to: Finance

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, including information regarding perpetual care, and to update the
14 inventory periodically and to report, beginning on a certain date, to the General
15 Assembly on the number of certain types of cemeteries; requiring the Director,
16 beginning on a certain date, to annually assess the rate of compliance with
17 certain registration, permit, and reporting requirements in a certain manner;
18 requiring the Director to annually report to the General Assembly on the
19 implementation of a certain action plan; requiring the Director, on or before a
20 certain date each year, to report to the General Assembly on the nature of
21 certain complaints, the manner in which certain complaints are resolved, the
22 number of complaints against certain persons, and any disciplinary or
23 enforcement actions taken against certain persons; altering the scope of certain
24 limitations on burial land; specifying that a certain certificate of ownership,
25 under the seal of certain persons, has the same effect as a certain conveyance of
26 real property; altering certain requirements relating to perpetual care;
27 requiring certain persons to provide consumers of certain goods and services
28 with certain written disclosures, a copy of certain documents, and a certain price
29 list; continuing the Office in accordance with the provisions of the Maryland
30 Program Evaluation Act (Sunset Law) by extending to a certain date the
31 termination provisions relating to statutory and regulatory authority of the
32 Office; specifying that a preliminary evaluation is not required for the next full
33 evaluation of the Office; requiring that an evaluation of the Office, and the
34 statutes and regulations that relate to the Office, be performed on or before a
35 certain date; requiring the Office to provide status reports on the

1 implementation of certain recommendations to certain committees of the
2 General Assembly and the Department of Legislative Services on or before
3 certain dates; requiring the Advisory Council on Cemetery Operations to study
4 the issue of abandoned and neglected cemeteries in a certain manner and
5 develop a legislative proposal; defining a certain term; making certain
6 conforming, clarifying, and technical changes; and generally relating to the
7 Office of Cemetery Oversight and the operation of cemeteries and burial goods
8 businesses in the State.

9 BY repealing and reenacting, with amendments,
10 Article - Business Regulation
11 Section 5-102(a), 5-204, 5-311, 5-501, 5-502, 5-504, 5-601 through 5-608,
12 5-801, and 5-1002
13 Annotated Code of Maryland
14 (2004 Replacement Volume and 2005 Supplement)

15 BY adding to
16 Article - Business Regulation
17 Section 5-601
18 Annotated Code of Maryland
19 (2004 Replacement Volume and 2005 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article - State Government
22 Section 8-403(b)(11)
23 Annotated Code of Maryland
24 (2004 Replacement Volume and 2005 Supplement)

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

27 **Article - Business Regulation**

28 5-102.

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

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

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

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

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

1 5-204.

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

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

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

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

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

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

13 (1) administer oaths;

14 (2) examine witnesses; and

15 (3) receive evidence.

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

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

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

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

26 (i) post bond; or

27 (ii) allege or prove either that:

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

29 2. substantial or irreparable damage would result from the
30 continued violation of the provision.

31 (3) The Director or staff may not be held personally liable for any action
32 taken under this title in good faith and with reasonable grounds.

1 (g) The Director may issue a cease and desist order, if the Director finds a
2 violation of this title.

3 (h) The Director may refer to the Office of the Attorney General:

4 (1) a violation of this title for enforcement; and

5 (2) an alleged unfair or deceptive trade practice under Title 13 of the
6 Commercial Law Article.

7 (i) (1) [The] FOR EACH FISCAL YEAR, THE Director shall maintain a list of:

8 (I) all registrants and permit holders;

9 (II) ALL FOR PROFIT CEMETERIES AND NONRELIGIOUS-NONPROFIT
10 CEMETERIES ASSOCIATED WITH A REGISTRANT OR PERMIT HOLDER; AND

11 (III) ALL BONA FIDE RELIGIOUS-NONPROFIT CEMETERIES,
12 VETERANS' CEMETERIES, AND LOCAL GOVERNMENT-OWNED CEMETERIES THAT
13 HAVE FILED A STATEMENT OR REPORT REQUIRED UNDER §§ 5-405, 5-606, AND 5-710
14 OF THIS TITLE.

15 (2) ALL LISTS MAINTAINED BY THE DIRECTOR SHALL BE OPEN TO
16 INSPECTION BY ANY PERSON.

17 (j) (1) The Director shall distribute a copy of the Maryland Cemetery Act,
18 code of ethics, and applicable regulations to each applicant for registration or permit.

19 (2) Upon renewal of a registration or permit, the Director shall
20 distribute any amendments to the Maryland Cemetery Act, code of ethics, or
21 applicable rules and regulations that have occurred since the last application.

22 (k) In conjunction with the State Board of Morticians and the Division of
23 Consumer Protection of the Office of the Attorney General, the Director shall publish
24 a consumer information pamphlet that describes:

25 (1) the rights of consumers in the purchase of funeral and cemetery
26 goods and services; and

27 (2) any other information that the Director considers reasonably
28 necessary to aid consumers.

29 (L) (1) BEGINNING WITH A REPORT DUE ON DECEMBER 1, 2007, THE
30 DIRECTOR SHALL CONDUCT AN INVENTORY OF ALL KNOWN BURIAL SITES IN THE
31 STATE AND SHALL UPDATE THE INVENTORY AND REPORT EVERY 5 YEARS TO THE
32 GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT
33 ARTICLE, ON:

34 (I) THE NUMBER OF FOR PROFIT CEMETERIES,
35 NONRELIGIOUS-NONPROFIT CEMETERIES, BONA FIDE RELIGIOUS-NONPROFIT

1 CEMETERIES, VETERANS' CEMETERIES, AND LOCAL GOVERNMENT-OWNED
2 CEMETERIES; AND

3 (II) WHICH OF THE CEMETERIES IDENTIFIED IN ITEM (I) OF THIS
4 PARAGRAPH OFFER PERPETUAL CARE.

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

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

17 5-311.

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

21 (b) A complaint shall:

22 (1) be in writing;

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

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

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

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

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

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

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

4 (2) initiate an investigation; or

5 (3) dismiss the complaint.

6 (e) If, after investigation, the Director determines that there is a reasonable
7 basis to believe that there are grounds for disciplinary action under § 5-310 of this
8 subtitle, the Director shall provide the person against whom the action is
9 contemplated notice and an opportunity for a hearing under § 5-312 of this subtitle.

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

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

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

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

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

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

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

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

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

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

1 (VI) ANY DISCIPLINARY OR ENFORCEMENT ACTIONS TAKEN
2 AGAINST A REGISTRANT, PERMIT HOLDER, OR A PERSON SUBJECT TO, BUT NOT IN
3 COMPLIANCE WITH, THE REGISTRATION AND PERMIT REQUIREMENTS OF THIS
4 TITLE.

5 5-501.

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

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

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

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

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

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

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

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

24 5-502.

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

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

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

30 (2) the site of a future public road that, when the cemetery is formed, is
31 shown on a plat made by authority of the State, a county, or a municipal corporation.

32 5-504.

33 A certificate, under seal of a SOLE PROPRIETOR registered cemeterian, [or]
34 permit holder, OR OTHER CEMETERY OWNER, of ownership of a burial lot or crypt has

1 the same effect as a conveyance of real property that is executed, acknowledged, and
2 recorded as required by law.

3 5-601.

4 IN THIS SUBTITLE, "PERPETUAL CARE":

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

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

10 [5-601.] 5-602.

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

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

13 (2) is owned and operated by:

14 (i) a county;

15 (ii) a municipal corporation;

16 (iii) a church;

17 (iv) a synagogue;

18 (v) a religious organization;

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

21 (vii) a State veterans agency.

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

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

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

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

28 (3) the withdrawal from the fund of income on deposits made after July
29 1, 1973.

1 [5-602.] 5-603.

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

3 (1) that is available for burial;

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

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

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

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

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

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

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

18 (4) A SOLE PROPRIETOR REGISTERED CEMETERIAN, PERMIT HOLDER,
19 OR OTHER CEMETERY OWNER SHALL ESTABLISH A PERPETUAL CARE TRUST FUND
20 FOR EACH cemetery created in the State after October 1, 2001, that is not exempt
21 under [§ 5-601] § 5-602 of this subtitle shall be required to establish a perpetual care
22 trust fund.

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

25 (1) \$10,000, if the developed land area of the cemetery is 10 acres or less
26 and the cemetery is a nonprofit cemetery which does not sell burial goods;

27 (2) \$25,000, if the developed land area of the cemetery is more than 10
28 acres and the cemetery is a nonprofit cemetery which does not sell burial goods;

29 (3) \$25,000, if the developed land area of the cemetery is 10 acres or less
30 and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells burial
31 goods; or

32 (4) \$50,000, if the developed land area of the cemetery is more than 10
33 acres and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells
34 burial goods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (g) A sole proprietor registered cemeterian, [or] permit holder, OR OTHER
5 CEMETERY OWNER shall maintain in the office of the cemetery a copy of the most
6 recent trust report filed with the [office of the cemetery] OFFICE under [§ 5-605] §
7 5-606 of this subtitle and shall make the report available for inspection by an owner or
8 a prospective purchaser of a right of interment in a burial lot, above-ground crypt, or
9 niche.

10 [5-603.] 5-604.

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

12 (1) a national banking association;

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

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

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

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

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

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

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

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

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

29 (1) purchase an interest in any contract or agreement to which the
30 [registrant or] REGISTERED CEMETERIAN, permit holder, OR OTHER CEMETERY
31 OWNER or any entity owned or under the control of a [registrant] REGISTERED
32 CEMETERIAN, permit holder, OR OTHER CEMETERY OWNER, or a spouse, child,
33 parent, or sibling of a [registrant] REGISTERED CEMETERIAN, PERMIT HOLDER, OR
34 OTHER CEMETERY OWNER is a party; or

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

1 (i) to any [registrant or] REGISTERED CEMETERIAN, permit
2 holder, OR OTHER CEMETERY OWNER or to any spouse, child, parent, or sibling of a
3 [registrant] REGISTERED CEMETERIAN, PERMIT HOLDER, OR OTHER CEMETERY
4 OWNER;

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

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

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

11 [5-604.] 5-605.

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

15 (b) The terms of the trust agreement:

16 (1) shall conform to this subtitle; and

17 (2) may include provisions about:

18 (i) payment of income;

19 (ii) accumulation of income;

20 (iii) reinvestment of income;

21 (iv) administration of the trust fund; and

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

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

24 (2) However, a trust agreement may:

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

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

30 [5-605.] 5-606.

31 (a) (1) Each sole proprietor registered cemeterian, [or] permit holder, OR
32 OTHER CEMETERY OWNER subject to the trust requirements of this subtitle shall

1 keep detailed records of all sales of burial lots or burial rights in a cemetery and
2 money received.

3 (2) The records of each sole proprietor registered cemeterian, [or]
4 permit holder, OR OTHER CEMETERY OWNER and of each trustee appointed by the
5 sole proprietor registered cemeterian, [or] permit holder, OR OTHER CEMETERY
6 OWNER are subject to examination by:

7 (i) the Director;

8 (ii) the Attorney General or an authorized representative of the
9 Attorney General; and

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

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

17 (2) The report shall:

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

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

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

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

23 (v) include:

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

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

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

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

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

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

4 7. the name and address of each trustee.

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

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

12 (c) The Director may adopt regulations:

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

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

16 [5-606.] 5-607.

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

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

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

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

24 (1) injunctive or other equitable relief;

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

26 (3) both.

27 [5-607.] 5-608.

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

1 [5-608.] 5-609.

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

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

7 (c) If a sole proprietor registered cemeterian, [or] a permit holder, OR OTHER
8 CEMETERY OWNER violates this subtitle, [the sole proprietor registered cemeterian,
9 the permit holder, or the responsible party] THAT PERSON is guilty of a misdemeanor
10 and, on conviction, is subject to a fine not exceeding \$1,000 or imprisonment not
11 exceeding 1 year or both.

12 5-801.

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

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

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

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

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

25 (b) The disclosures shall be conspicuously incorporated in the contract in
26 12-point type.

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

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

30 (e) The disclosure shall occur:

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

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

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

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

9 (h) [Registrants and permit holders] A REGISTRANT, PERMIT HOLDER, OR
10 ANY OTHER PERSON THAT ENTERS INTO A CONTRACT FOR THE SALE OF BURIAL
11 GOODS OR SERVICES shall provide each buyer or prospective buyer with a general
12 price list for the buyer or prospective buyer to keep which shall include:

13 (1) specific prices for:

14 (i) ground opening and closing;

15 (ii) extra depth interment;

16 (iii) interment of cremated remains; and

17 (iv) mausoleum entombment; and

18 (2) general price ranges for burial space or burial goods.

19 5-1002.

20 Subject to the evaluation and reestablishment provisions of the Maryland
21 Program Evaluation Act, the Office of Cemetery Oversight, the provisions in this title
22 relating to the Office, and all regulations adopted by the Office shall terminate and be
23 of no effect after July 1, [2007] 2012.

24 **Article - State Government**

25 8-403.

26 (b) Except as otherwise provided in subsection (a) of this section, on or before
27 the evaluation date for the following governmental activities or units, an evaluation
28 shall be made of the following governmental activities or units and the statutes and
29 regulations that relate to the governmental activities or units:

30 (11) Cemetery Oversight, Office of (§ 5-201 of the Business Regulation
31 Article: July 1, [2006] 2011);

32 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions of § 8-404
33 of the State Government Article of the Annotated Code of Maryland requiring a
34 preliminary evaluation do not apply to the Office of Cemetery Oversight prior to the
35 evaluation required on or before July 1, 2011.

1 SECTION 3. AND BE IT FURTHER ENACTED, That the Office of Cemetery
2 Oversight shall provide status reports to the Senate Finance Committee, House
3 Economic Matters Committee, and Department of Legislative Services on or before
4 October 1, 2007, October 1, 2008, and October 1, 2009, in accordance with § 2-1246 of
5 the State Government Article of the Annotated Code of Maryland, on the
6 implementation of the recommendations of the Department of Legislative Services
7 contained in the sunset evaluation report dated October 2005.

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

29 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 July 1, 2006.