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By: **Chairman, Finance Committee**

Introduced and read first time: January 31, 2006

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 1, 2006

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CHAPTER \_\_\_\_\_

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~~ nonreligious-nonprofit cemeteries associated  
 8 with a registrant or permit holder for each fiscal year; requiring the Director to  
 9 maintain a list of all bona fide religious-nonprofit cemeteries, veterans'  
 10 cemeteries, and local government-owned cemeteries that have filed a certain  
 11 statement or report; requiring that all lists maintained by the Director be open  
 12 to inspection by any person; requiring the Director to conduct an inventory of all  
 13 known burial sites in the State, including information regarding perpetual care,  
 14 and to update the inventory periodically and to report, beginning on a certain  
 15 date, to the General Assembly on the number of certain types of cemeteries;  
 16 requiring the Director, beginning on a certain date, to annually assess the rate  
 17 of compliance with certain registration, permit, and reporting requirements in a  
 18 certain manner; requiring the Director to annually report to the General  
 19 Assembly on the implementation of a certain action plan; requiring the Director,  
 20 on or before a certain date each year, to report to the General Assembly on the  
 21 nature of certain complaints, the manner in which certain complaints are  
 22 resolved, the number of complaints against certain persons, and any  
 23 disciplinary or enforcement actions taken against certain persons; altering the  
 24 scope of certain limitations on burial land; specifying that a certain certificate of  
 25 ownership, under the seal of certain persons, has the same effect as a certain  
 26 conveyance of real property; altering certain requirements relating to perpetual  
 27 care; requiring certain persons to provide consumers of certain goods and  
 28 services with certain written disclosures, a copy of certain documents, and a

1 certain price list; continuing the Office in accordance with the provisions of the  
2 Maryland Program Evaluation Act (Sunset Law) by extending to a certain date  
3 the termination provisions relating to statutory and regulatory authority of the  
4 Office; specifying that a preliminary evaluation is not required for the next full  
5 evaluation of the Office; requiring that an evaluation of the Office, and the  
6 statutes and regulations that relate to the Office, be performed on or before a  
7 certain date; requiring the Office to provide status reports on the  
8 implementation of certain recommendations to certain committees of the  
9 General Assembly and the Department of Legislative Services on or before  
10 certain dates; requiring the Advisory Council on Cemetery Operations to study  
11 the issue of abandoned and neglected cemeteries in a certain manner and  
12 develop a legislative proposal; defining ~~a certain term~~ certain terms; making  
13 certain conforming, clarifying, and technical changes; and generally relating to  
14 the Office of Cemetery Oversight and the operation of cemeteries and burial  
15 goods businesses in the State.

16 BY repealing and reenacting, with amendments,  
17 Article - Business Regulation  
18 Section 5-102(a), 5-204, 5-311, 5-501, 5-502, 5-504, 5-601 through 5-608,  
19 5-801, and 5-1002  
20 Annotated Code of Maryland  
21 (2004 Replacement Volume and 2005 Supplement)

22 BY adding to  
23 Article - Business Regulation  
24 Section 5-601  
25 Annotated Code of Maryland  
26 (2004 Replacement Volume and 2005 Supplement)

27 BY repealing and reenacting, with amendments,  
28 Article - State Government  
29 Section 8-403(b)(11)  
30 Annotated Code of Maryland  
31 (2004 Replacement Volume and 2005 Supplement)

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

34 **Article - Business Regulation**

35 5-102.

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

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

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

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

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

6 5-204.

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

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

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

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

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

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

18 (1) administer oaths;

19 (2) examine witnesses; and

20 (3) receive evidence.

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

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

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

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

31 (i) post bond; or

32 (ii) allege or prove either that:

- 1                                   1.       an adequate remedy at law does not exist; or
- 2                                   2.       substantial or irreparable damage would result from the
- 3 continued violation of the provision.

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

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

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

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

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

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

13                               (I)       all registrants and permit holders;

14                               (II)       ALL FOR PROFIT CEMETERIES AND ~~NONRELIGIOUS-NONPROFIT~~  
15 NONRELIGIOUS-NONPROFIT CEMETERIES ASSOCIATED WITH A REGISTRANT OR  
16 PERMIT HOLDER; AND

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

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

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

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

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

31                               (1)       the rights of consumers in the purchase of funeral and cemetery  
32 goods and services; and

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

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

6 (I) THE NUMBER OF FOR PROFIT CEMETERIES,  
7 NONRELIGIOUS-NONPROFIT CEMETERIES, BONA FIDE RELIGIOUS-NONPROFIT  
8 CEMETERIES, VETERANS' CEMETERIES, AND LOCAL GOVERNMENT-OWNED  
9 CEMETERIES; AND

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

12 (2) BEGINNING DECEMBER 1, 2007, THE DIRECTOR SHALL ANNUALLY  
13 ASSESS THE RATE OF COMPLIANCE WITH THE REGISTRATION, PERMIT, AND  
14 REPORTING REQUIREMENTS OF THIS TITLE BY COMPARING THE LISTS REQUIRED  
15 UNDER SUBSECTION (I)(1)(II) AND (III) OF THIS SECTION WITH THE MOST RECENT  
16 INVENTORY OF ALL KNOWN BURIAL SITES CONDUCTED UNDER PARAGRAPH (1) OF  
17 THIS SUBSECTION.

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

24 5-311.

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

28 (b) A complaint shall:

29 (1) be in writing;

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

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

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

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

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

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

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

9           (2)     initiate an investigation; or

10          (3)     dismiss the complaint.

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

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

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

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

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

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

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

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

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

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

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

7 (VI) ANY DISCIPLINARY OR ENFORCEMENT ACTIONS TAKEN  
8 AGAINST A REGISTRANT, PERMIT HOLDER, OR A PERSON SUBJECT TO, BUT NOT IN  
9 COMPLIANCE WITH, THE REGISTRATION AND PERMIT REQUIREMENTS OF THIS  
10 TITLE.

11 5-501.

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

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

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

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

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

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

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

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

30 5-502.

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

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

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

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

3 5-504.

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

8 5-601.

9 (A) IN THIS SUBTITLE, THE FOLLOWING WORDS HAVE THE MEANINGS  
10 INDICATED.

11 (B) (1) "PERPETUAL CARE":

12 ~~(1)~~ MEANS THE MAINTENANCE, INCLUDING THE CUTTING OF GRASS  
13 ABUTTING MEMORIALS OR MONUMENTS, ADMINISTRATION, SUPERVISION, AND  
14 EMBELLISHMENT OF A CEMETERY AND ITS GROUNDS, ROADS, AND PATHS; ~~AND.~~

15 (2) "PERPETUAL CARE" INCLUDES THE REPAIR AND RENEWAL OF  
16 BUILDINGS, INCLUDING COLUMBARIA AND MAUSOLEUMS, AND THE PROPERTY OF  
17 THE CEMETERY.

18 (C) "CEMETERY OWNER" MEANS A PERSON WHO OWNS, OPERATES, OR  
19 DEVELOPS A CEMETERY.

20 [5-601.] 5-602.

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

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

23 (2) is owned and operated by:

24 (i) a county;

25 (ii) a municipal corporation;

26 (iii) a church;

27 (iv) a synagogue;

28 (v) a religious organization;

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

31 (vii) a State veterans agency.



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

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

- 5 (1) the appointment of a successor trustee or cotrustee;
- 6 (2) deposits into the fund after July 1, 1973; and
- 7 (3) the withdrawal from the fund of income on deposits made after July  
8 1, 1973.

9 [5-602.] 5-603.

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

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

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

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

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

- 24 (i) "The cemetery is a perpetual care cemetery."; or
- 25 (ii) "The cemetery is not a perpetual care cemetery."

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

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

- 33 (1) \$10,000, if the developed land area of the cemetery is 10 acres or less  
34 and the cemetery is a nonprofit cemetery which does not sell burial goods;

1 (2) \$25,000, if the developed land area of the cemetery is more than 10  
2 acres and the cemetery is a nonprofit cemetery which does not sell burial goods;

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

6 (4) \$50,000, if the developed land area of the cemetery is more than 10  
7 acres and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells  
8 burial goods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (g) A sole proprietor registered cemeterian, [or] permit holder, OR OTHER  
14 CEMETERY OWNER shall maintain in the office of the cemetery a copy of the most  
15 recent trust report filed with the [office of the cemetery] OFFICE under [§ 5-605] §  
16 5-606 of this subtitle and shall make the report available for inspection by an owner or  
17 a prospective purchaser of a right of interment in a burial lot, above-ground crypt, or  
18 niche.

19 [5-603.] 5-604.

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

21 (1) a national banking association;

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

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

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

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

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

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

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

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

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

3 (1) purchase an interest in any contract or agreement to which the  
4 ~~{registrant or} REGISTERED CEMETERIAN, permit holder, OR OTHER CEMETERY~~  
5 ~~OWNER or any entity owned or under the control of a {registrant} REGISTERED~~  
6 ~~CEMETERIAN, permit holder, OR OTHER CEMETERY OWNER, or a spouse, child,~~  
7 ~~parent, or sibling of a {registrant} REGISTERED CEMETERIAN, PERMIT HOLDER, OR~~  
8 ~~OTHER CEMETERY OWNER is a party; or~~

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

10 (i) to any ~~{registrant or} REGISTERED CEMETERIAN, permit~~  
11 ~~holder, OR OTHER CEMETERY OWNER or to any spouse, child, parent, or sibling of a~~  
12 ~~{registrant} REGISTERED CEMETERIAN, PERMIT HOLDER, OR OTHER CEMETERY~~  
13 ~~OWNER;~~

14 (ii) to or in any entity or business operations owned or under the  
15 control of a ~~{registrant} REGISTERED CEMETERIAN, permit holder, OR OTHER~~  
16 ~~CEMETERY OWNER, or a spouse, child, parent, or sibling of a {registrant}~~  
17 ~~REGISTERED CEMETERIAN, PERMIT HOLDER, OR OTHER CEMETERY OWNER;~~

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

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

20 [5-604.] 5-605.

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

24 (b) The terms of the trust agreement:

25 (1) shall conform to this subtitle; and

26 (2) may include provisions about:

27 (i) payment of income;

28 (ii) accumulation of income;

29 (iii) reinvestment of income;

30 (iv) administration of the trust fund; and

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

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

33 (2) However, a trust agreement may:

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

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

6 [5-605.] 5-606.

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

11 (2) The records of each sole proprietor registered cemeterian, [or]  
12 permit holder, OR OTHER CEMETERY OWNER and of each trustee appointed by the  
13 sole proprietor registered cemeterian, [or] permit holder, OR OTHER CEMETERY  
14 OWNER are subject to examination by:

15 (i) the Director;

16 (ii) the Attorney General or an authorized representative of the  
17 Attorney General; and

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

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

25 (2) The report shall:

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

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

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

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

31 (v) include:

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

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



1 [5-607.] 5-608.

2 A registered cemeterian, [or] permit holder, OR OTHER ~~PERSON~~ CEMETERY  
3 OWNER may not sell or offer to sell to a member of the public a burial lot or burial  
4 right in a cemetery and represent to the public in any way, express or implied, that  
5 the cemetery or the burial lot or burial right in the cemetery will have perpetual care  
6 unless the sole proprietor registered cemeterian, [or] permit holder, OR OTHER  
7 CEMETERY OWNER has provided adequately for that perpetual care.

8 [5-608.] 5-609.

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

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

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

19 5-801.

20 (a) [At the time of entering into a contract with a consumer for the sale of  
21 burial goods or services, registrants and permit holders] A REGISTRANT, PERMIT  
22 HOLDER, OR ANY OTHER PERSON SUBJECT TO THE PROVISIONS OF THIS TITLE THAT  
23 ENTERS INTO A CONTRACT FOR THE SALE OF BURIAL GOODS OR SERVICES WITH A  
24 CONSUMER, AT THE TIME OF ENTERING INTO THE CONTRACT, shall make the  
25 following written disclosures:

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

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

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

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

33 (b) The disclosures shall be conspicuously incorporated in the contract in  
34 12-point type.

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

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

3 (e) The disclosure shall occur:

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

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

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

10 (g) If the purchase by the consumer includes a cemetery plot, the [registered  
11 cemeterian or permit holder] REGISTRANT, PERMIT HOLDER, OR ANY OTHER PERSON  
12 SUBJECT TO THE PROVISIONS OF THIS TITLE THAT ENTERS INTO A CONTRACT FOR  
13 THE SALE OF BURIAL GOODS OR SERVICES shall provide the consumer with a copy of  
14 a location survey, performed by a licensed land surveyor, which indicates the location  
15 of the purchased plot within the cemetery, or by any other means approved by the  
16 Director.

17 (h) [Registrants and permit holders] A REGISTRANT, PERMIT HOLDER, OR  
18 ANY OTHER PERSON SUBJECT TO THE PROVISIONS OF THIS TITLE THAT ENTERS  
19 INTO A CONTRACT FOR THE SALE OF BURIAL GOODS OR SERVICES shall provide each  
20 buyer or prospective buyer with a general price list for the buyer or prospective buyer  
21 to keep which shall include:

22 (1) specific prices for:

23 (i) ground opening and closing;

24 (ii) extra depth interment;

25 (iii) interment of cremated remains; and

26 (iv) mausoleum entombment; and

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

28 5-1002.

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



1

**Article - State Government**

2 8-403.

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

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

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

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

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

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

