

HOUSE BILL 966

C2

7lr3047
CF SB 741

By: **Delegate Davis**

Introduced and read first time: February 9, 2007

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 continuing the Office of Cemetery Oversight in accordance with
4 the provisions of the Maryland Program Evaluation Act (Sunset Law) by
5 extending to a certain date the termination provisions relating to statutory and
6 regulatory authority of the Office; specifying that a preliminary evaluation is
7 not required for the next full evaluation of the Office; requiring that an
8 evaluation of the Office, and the statutes and regulations that relate to the
9 Office, be performed on or before a certain date; authorizing a designee of the
10 Director of the Office to conduct a certain investigation and inspection,
11 commence proceedings on a complaint, and review a complaint and attempt to
12 negotiate a settlement of a complaint; requiring the Director to maintain a list
13 of all for-profit and nonreligious–nonprofit cemeteries associated with a
14 registrant or permit holder for each fiscal year; requiring the Director to
15 maintain a list of all bona fide religious–nonprofit cemeteries, veterans’
16 cemeteries, and local government–owned cemeteries that have filed a certain
17 statement or report; requiring that all lists maintained by the Director be open
18 to inspection by any person; requiring the Director to conduct an inventory of all
19 known burial sites in the State and to update the inventory periodically and to
20 report, beginning on a certain date, to the General Assembly on the number of
21 certain types of cemeteries; requiring the Director, beginning on a certain date,
22 to annually assess the rate of compliance with certain registration, permit, and
23 reporting requirements in a certain manner; requiring the Director to report
24 annually to the General Assembly on the implementation of a certain action
25 plan; repealing the Cemetery Oversight Fund; requiring the Office to pay all
26 money collected under the Maryland Cemetery Act into the General Fund of the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 State; requiring the Director, on or before a certain date each year, to report to
2 the General Assembly on the nature of certain complaints, the manner in which
3 certain complaints are resolved, the number of complaints against certain
4 persons, and any disciplinary or enforcement actions taken against certain
5 persons; altering the scope of certain limitations on burial land; specifying that
6 a certain certificate of ownership, under seal of certain persons, has the same
7 effect as a certain conveyance of real property; repealing an exemption for
8 certain cemeteries from certain provisions of law relating to perpetual care
9 requirements; altering certain requirements relating to perpetual care;
10 requiring that any moneys remaining in the Cemetery Oversight Fund after a
11 certain date revert to the General Fund of the State; requiring the Office to
12 provide status reports on the implementation of certain recommendations to
13 certain committees of the General Assembly and the Department of Legislative
14 Services on or before certain dates; requiring the Advisory Council on Cemetery
15 Operations to study the issue of abandoned and neglected cemeteries in a
16 certain manner and develop a legislative proposal; defining a certain term;
17 making certain conforming, clarifying, and technical changes; and generally
18 relating to the Office of Cemetery Oversight and the operation of cemeteries and
19 burial goods businesses in the State.

20 BY renumbering

21 Article – Business Regulation
22 Section 5–603, 5–605, 5–606, and 5–607, respectively
23 to be Section 5–604, 5–606, 5–607, and 5–608, respectively
24 Annotated Code of Maryland
25 (2004 Replacement Volume and 2006 Supplement)

26 BY repealing and reenacting, with amendments,

27 Article – Business Regulation
28 Section 5–102(a), 5–204, 5–205, 5–311, 5–501, 5–502, 5–504, 5–601, 5–602,
29 5–604, 5–608, and 5–1002
30 Annotated Code of Maryland
31 (2004 Replacement Volume and 2006 Supplement)

32 BY adding to

33 Article – Business Regulation
34 Section 5–601
35 Annotated Code of Maryland
36 (2004 Replacement Volume and 2006 Supplement)

37 BY repealing and reenacting, without amendments,

38 Article – State Government
39 Section 8–403(a)

Annotated Code of Maryland (2004 Replacement Volume and 2006 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 8–403(b)(11)
Annotated Code of Maryland
(2004 Replacement Volume and 2006 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 5-603, 5-605, 5-606, and 5-607, respectively, of Article – Business Regulation of the Annotated Code of Maryland be renumbered to be Section(s) 5-604, 5-606, 5-607, and 5-608, respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Business Regulation

5-102.

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

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

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

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

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

5-204.

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

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

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

3 (b) Upon receipt of a written complaint, or at the discretion of the Director,
4 the Director **OR THE DIRECTOR'S DESIGNEE** may conduct an investigation and an
5 inspection of the records and site of a registered cemeterian, registered seller, permit
6 holder, or any other person subject to the registration or permit provisions of this title.

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

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

9 (1) administer oaths;

10 (2) examine witnesses; and

11 (3) receive evidence.

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

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

22 (i) post bond; or

23 (ii) allege or prove either that:

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

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

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.

9 (I) all registrants and permit holders;

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

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

27 (1) the rights of consumers in the purchase of funeral and cemetery
28 goods and services; and

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

23 5-205.

24 (a) There is a Cemetery Oversight Fund.]

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

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

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

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

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

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

16 **(B) THE DIRECTOR SHALL PAY ALL FUNDS COLLECTED UNDER THIS**
17 **TITLE INTO THE GENERAL FUND OF THE STATE.**

18 5-311.

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

22 (b) A complaint shall:

23 (1) be in writing;

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

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

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

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

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

17 (2) initiate an investigation; or

18 (3) dismiss the complaint.

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

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

28 (g) Once a complaint has been referred for binding arbitration, the
29 registrant, permit holder, or any other person subject to the registration or permit
30 provisions of this title shall comply with the terms of the settlement.

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

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

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

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

19 (v) WHETHER COMPLAINTS REPORTED UNDER ITEM (i) OF
20 THIS PARAGRAPH WERE RESOLVED THROUGH NEGOTIATION, BINDING
21 ARBITRATION, OR ANOTHER METHOD; AND

22 (VI) ANY DISCIPLINARY OR ENFORCEMENT ACTIONS TAKEN
23 AGAINST A REGISTRANT, PERMIT HOLDER, OR A PERSON SUBJECT TO, BUT NOT
24 IN COMPLIANCE WITH, THE REGISTRATION AND PERMIT REQUIREMENTS OF
25 THIS TITLE.

26 5-501.

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

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

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

3 (b) (1) In the Spaulding 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.

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:

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

25 5-504.

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

1 **5-601.**

2 **IN THIS SUBTITLE, “PERPETUAL CARE”:**

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

7 **(2) INCLUDES THE REPAIR AND RENEWAL OF BUILDINGS,**
8 **INCLUDING COLUMBARIA AND MAUSOLEUMS, AND THE PROPERTY OF THE**
9 **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
20 the 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:

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

5 [5-602.] 5-603.

20 (i) "The cemetery is a perpetual care cemetery."; or
21 (ii) "The cemetery is not a perpetual care cemetery."

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

4 (1) \$10,000, if the developed land area of the cemetery is 10 acres or
5 less and the cemetery is a nonprofit cemetery which does not sell burial goods;

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

(2) Except as provided in paragraph (4) of this subsection, within 30 days after the end of the month when the buyer of a right of interment in a burial lot, above-ground crypt, or niche makes a final payment, the registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle shall pay in cash to the trustee for deposit in the perpetual care trust fund:

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

23 (ii) if the burial space is sold at a discount or at no cost, at least
24 10% of the imputed cost of the fair retail value.

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

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

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

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

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

22 (g) A sole proprietor registered cemeterian, permit holder, or any other
23 person subject to the trust requirements of this subtitle shall maintain in the [office of
24 the cemetery] **OFFICE** a copy of the most recent trust report filed with the [office of
25 the cemetery] **OFFICE** under [§ 5-605] **§ 5-606** of this subtitle and shall make the
26 report available for inspection by an owner or a prospective purchaser of a right of
27 interment in a burial lot, above-ground crypt, or niche.

28 [5-604.] 5-605.

(b) The terms of the trust agreement:

(1) shall conform to this subtitle; and

(2) may include provisions about:

(i) payment of income;

(ii) accumulation of income;

(iii) reinvestment of income;

(iv) administration of the trust fund; and

(v) powers of the trustee as to investments.

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

(2) However, a trust agreement may:

(i) give the registered cemetery [or], permit holder, OR

12 **OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE** the
13 right to remove the trustee and appoint another qualified trustee; and

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

16 [5-608.] 5-609.

22 (c) If a sole proprietor registered cemeterian [or], a permit holder, OR ANY
23 **OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE**
24 violates this subtitle, [the sole proprietor registered cemeterian, the permit holder, or
25 the responsible party] **THAT PERSON** is guilty of a misdemeanor and, on conviction, is
26 subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

1 5-1002.

2 Subject to the evaluation and reestablishment provisions of the Maryland
3 Program Evaluation Act, the Office of Cemetery Oversight, the provisions in this title
4 relating to the Office, and all regulations adopted by the Office shall terminate and be
5 of no effect after July 1, [2007] **2013**.

Article – State Government

7 8-403.

16 (11) Cemetery Oversight, Office of (§ 5-201 of the Business Regulation
17 Article: July 1, [2006] **2012**);

18 SECTION 3. AND BE IT FURTHER ENACTED, That any moneys remaining
19 in the Cemetery Oversight Fund after June 30, 2007, shall revert to the General Fund
20 of the State.

21 SECTION 4. AND BE IT FURTHER ENACTED, That the provisions of § 8-404
22 of the State Government Article of the Annotated Code of Maryland requiring a
23 preliminary evaluation do not apply to the Office of Cemetery Oversight prior to the
24 evaluation required on or before July 1, 2012.

25 SECTION 5. AND BE IT FURTHER ENACTED, That the Office of Cemetery
26 Oversight shall provide status reports to the Senate Finance Committee, the House
27 Economic Matters Committee, and the Department of Legislative Services on or before
28 October 1, 2008, October 1, 2009, and October 1, 2010, in accordance with § 2-1246 of
29 the State Government Article of the Annotated Code of Maryland, on the
30 implementation of the recommendations of the Department of Legislative Services
31 contained in the update to the sunset evaluation report dated January 2007.

1 SECTION 6. 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 of
8 abandoned and neglected cemeteries; (3) determine whether a formal inmate cemetery
9 cleanup work program should be established with the Department of Public Safety
10 and Correctional Services; (4) if a formal inmate cemetery cleanup program is
11 established, determine how the program will be administered; (5) determine how State
12 and local governments will play a role in funding a formal effort to maintain
13 abandoned and neglected cemeteries; (6) identify additional private and governmental
14 funding sources and incentive programs for the maintenance of abandoned and
15 neglected cemeteries; and (7) define and identify historic cemeteries to acquire private
16 and governmental funding. The Advisory Council shall obtain input from the
17 Maryland Association of Counties and the Maryland Municipal League before
18 completion of a model if the model includes creation of local cemetery oversight
19 councils. The Advisory Council shall also assess methods for identifying and working
20 with cemeteries in the State that are insolvent or that are facing insolvency in the
21 near future to ensure that regulatory oversight is maintained and shall consider
22 whether a formal category for inactive cemeteries would be appropriate. Based on its
23 study, the Advisory Council shall develop a legislative proposal for introduction no
24 later than the 2009 Legislative Session.

25 SECTION 7. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 June 1, 2007.