

SENATE BILL 741

C2

7lr1103

By: **Senators Middleton, Astle, Della, Edwards, Exum, Garagiola, Kelley, Kittleman, Klausmeier, and Pugh**

Introduced and read first time: February 9, 2007

Assigned to: Rules

Re-referred to: Finance, February 16, 2007

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 15, 2007

CHAPTER _____

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

27 BY renumbering

28 Article – Business Regulation

29 Section 5–603, 5–605, 5–606, and 5–607, respectively

30 to be Section 5–604, 5–606, 5–607, and 5–608, respectively

31 Annotated Code of Maryland

32 (2004 Replacement Volume and 2006 Supplement)

33 BY repealing and reenacting, with amendments,

34 Article – Business Regulation

35 Section 5–102(a), 5–204, 5–205, 5–311, 5–501, 5–502, 5–504, 5–601, 5–602,
 36 5–604, 5–608, and 5–1002

37 Annotated Code of Maryland

38 (2004 Replacement Volume and 2006 Supplement)

39 BY adding to

40 Article – Business Regulation

1 Section 5–601
2 Annotated Code of Maryland
3 (2004 Replacement Volume and 2006 Supplement)

4 BY repealing and reenacting, without amendments,
5 Article – State Government
6 Section 8–403(a)
7 Annotated Code of Maryland
8 (2004 Replacement Volume and 2006 Supplement)

9 BY repealing and reenacting, with amendments,
10 Article – State Government
11 Section 8–403(b)(11)
12 Annotated Code of Maryland
13 (2004 Replacement Volume and 2006 Supplement)

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

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

20 **Article – Business Regulation**

21 5–102.

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

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

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

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

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

30 5–204.

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

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

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

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

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

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

12 (1) administer oaths;

13 (2) examine witnesses; and

14 (3) receive evidence.

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

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

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

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

25 (i) post bond; or

26 (ii) allege or prove either that:

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

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

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

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

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

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

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

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

13 **(I) all registrants and permit holders;**

14 **(II) ALL FOR-PROFIT CEMETERIES AND**
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**
20 **5-710 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.

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

4 (1) the rights of consumers in the purchase of funeral and cemetery
5 goods and services; and

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

8 (L) (1) **BEGINNING WITH A REPORT DUE ON DECEMBER 1, 2008, THE**
9 **DIRECTOR SHALL CONDUCT AN INVENTORY OF ALL KNOWN BURIAL SITES IN**
10 **THE STATE AND SHALL UPDATE THE INVENTORY AND REPORT EVERY 5 YEARS**
11 **TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE**
12 **GOVERNMENT ARTICLE, ON THE NUMBER OF FOR-PROFIT CEMETERIES,**
13 **NONRELIGIOUS-NONPROFIT CEMETERIES, BONA FIDE RELIGIOUS-NONPROFIT**
14 **CEMETERIES, VETERANS' CEMETERIES, AND LOCAL GOVERNMENT-OWNED**
15 **CEMETERIES.**

16 (2) **BEGINNING DECEMBER 1, 2008, THE DIRECTOR SHALL**
17 **ANNUALLY ASSESS THE RATE OF COMPLIANCE WITH THE REGISTRATION,**
18 **PERMIT, AND REPORTING REQUIREMENTS OF THIS TITLE BY COMPARING THE**
19 **LISTS REQUIRED UNDER SUBSECTION (I)(1)(II) AND (III) OF THIS SECTION WITH**
20 **THE MOST RECENT INVENTORY OF ALL KNOWN BURIAL SITES CONDUCTED**
21 **UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

22 (3) **BEGINNING WITH A REPORT DUE ON JANUARY 31, 2009, FOR**
23 **FISCAL YEAR 2008, THE DIRECTOR SHALL REPORT ANNUALLY TO THE**
24 **GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE**
25 **GOVERNMENT ARTICLE, ON THE IMPLEMENTATION OF AN ACTION PLAN, IF**
26 **APPROPRIATE, TO ADDRESS ANY NONCOMPLIANCE ISSUES IDENTIFIED BY THE**
27 **ASSESSMENT REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION.**

28 5-205.

29 [(a) There is a Cemetery Oversight Fund.]

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

1 (2) In establishing the fees, the Director shall consider the size of the
2 business, whether the business is for-profit or designated as tax exempt under §
3 501(c) of the Internal Revenue Code, the volume of business conducted, and the type of
4 services provided, including the percentage of preneed contracts written.

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

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

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

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

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

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

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

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

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

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

24 5-311.

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

28 (b) A complaint shall:

- 1 (1) be in writing;
- 2 (2) state specifically the facts on which the complaint is based; and
- 3 (3) be made under oath by the person who submits the complaint.

4 (c) (1) The Director **OR THE DIRECTOR'S DESIGNEE** shall review each
5 complaint and shall attempt to negotiate a settlement of the complaint between the
6 complainant and the registrant, permit holder, or any other person subject to the
7 registration or permit provisions of this title.

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

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

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

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

20 (2) initiate an investigation; or

21 (3) dismiss the complaint.

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

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

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

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

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

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

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

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

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

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

22 (V) **WHETHER COMPLAINTS REPORTED UNDER ITEM (I) OF**
23 **THIS PARAGRAPH WERE RESOLVED THROUGH NEGOTIATION, BINDING**
24 **ARBITRATION, OR ANOTHER METHOD; AND**

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

29 5-501.

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

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

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

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

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

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

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

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

19 5-502.

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

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

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

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

28 5-504.

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

5 **5-601.**

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

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

11 **(2) INCLUDES THE REPAIR AND RENEWAL OF BUILDINGS,**
 12 **INCLUDING COLUMBARIA AND MAUSOLEUMS, AND THE PROPERTY OF THE**
 13 **CEMETERY.**

14 **[5-601.] 5-602.**

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

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

17 (2) is owned and operated by~~†~~:

18 (i) a county;

19 (ii) a municipal corporation;

20 (iii) a church;

21 (iv) a synagogue;

22 (v) a religious organization;

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

25 (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
8 July 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
14 sales brochure.

15 (b) (1) Each sole proprietor registered cemeterian, permit holder, or any
16 other person subject to the registration or permit provisions of this title who sells or
17 offers to sell to the public a burial lot or burial right in a cemetery as to which
18 perpetual care is stated or implied shall have a 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~~
27 ~~HOLDER, OR OTHER CEMETERY OWNER SHALL ESTABLISH A PERPETUAL CARE~~

1 ~~TRUST FUND FOR EACH~~ cemetery created in the State after October 1, 2001, that is
2 not exempt under ~~§ 5-601~~ **§ 5-602** of this subtitle shall be required to establish a
3 perpetual care trust fund ~~§ 5-102(A) OF THIS TITLE.~~

4 (c) Each sole proprietor registered cemeterian, permit holder, or any other
5 person subject to the trust requirements of this subtitle initially shall deposit in the
6 perpetual care trust fund at least:

7 (1) \$10,000, if the developed land area of the cemetery is 10 acres or
8 less and the cemetery is a nonprofit cemetery which does not sell burial goods;

9 (2) \$25,000, if the developed land area of the cemetery is more than 10
10 acres and the cemetery is a nonprofit cemetery which does not sell burial goods;

11 (3) \$25,000, if the developed land area of the cemetery is 10 acres or
12 less and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells
13 burial goods; or

14 (4) \$50,000, if the developed land area of the cemetery is more than 10
15 acres and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells
16 burial goods.

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

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

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

26 (ii) if the burial space is sold at a discount or at no cost, at least
27 10% of the imputed cost of the fair retail value.

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

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

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

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

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

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

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

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

15 (2) In the event of the bankruptcy or insolvency of, or assignment for
16 the benefit of creditors by, or an adverse judgment against the sole proprietor
17 registered cemeterian, permit holder, or any other person subject to the trust
18 requirements of this subtitle, the perpetual care trust funds may not be made
19 available to any creditor as assets of the sole proprietor registered cemeterian, permit
20 holder, or any other person subject to the trust requirements of this subtitle or as
21 payment for any expenses of any bankruptcy or similar proceedings, but shall be
22 retained intact to provide for the future maintenance of the cemetery.

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

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

32 [5-604.] **5-605.**

1 (a) The terms of a trust to provide for perpetual care shall be designated in a
2 written agreement between the registered cemeterian, permit holder, or any other
3 person subject to the trust requirements of this subtitle and trustee.

4 (b) The terms of the trust agreement:

5 (1) shall conform to this subtitle; and

6 (2) may include provisions about:

7 (i) payment of income;

8 (ii) accumulation of income;

9 (iii) reinvestment of income;

10 (iv) administration of the trust fund; and

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

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

13 (2) However, a trust agreement may:

14 (i) give the registered cemeterian [or], permit holder, **OR**
15 **OTHER PERSON SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE** the
16 right to remove the trustee and appoint another qualified trustee; and

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

19 **[5-608.] 5-609.**

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

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

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

6 5-1002.

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

11 Article - State Government

12 8-403.

13 (a) On or before December 15 of the 2nd year before the evaluation date of a
14 governmental activity or unit, the Legislative Policy Committee, based on a
15 preliminary evaluation, may waive as unnecessary the evaluation required under this
16 section.

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

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

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

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

30 SECTION 5. AND BE IT FURTHER ENACTED, That the Office of Cemetery
31 Oversight shall provide status reports to the Senate Finance Committee, the House
32 Economic Matters Committee, and the Department of Legislative Services on or before

1 October 1, 2008, October 1, 2009, and October 1, 2010, in accordance with § 2-1246 of
2 the State Government Article of the Annotated Code of Maryland, on the
3 implementation of the recommendations of the Department of Legislative Services
4 contained in the update to the sunset evaluation report dated January 2007.

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

29 SECTION 7. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 ~~June 1, 2007~~ July 1, 2007.