

HOUSE BILL 394

C2

2lr2107

By: **Chair, Health and Government Operations Committee**

Introduced and read first time: February 1, 2012

Assigned to: Health and Government Operations

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; exempting private family cemeteries that do
7 not conduct public sales from certain permitting and registration, perpetual
8 care, and preneed contract requirements of the Maryland Cemetery Act;
9 altering the membership of the Advisory Council on Cemetery Operations;
10 increasing the number of times the Advisory Council is required to convene each
11 year; authorizing the Director of the Office of Cemetery Oversight or the
12 Director's designee to confer with the Advisory Council or with individual
13 members of the Council on complaint processing and resolution; requiring the
14 Director to include certain information regarding the number of registrants and
15 permit holders in a certain annual report; requiring the Director to provide a
16 copy of certain annual reports to each member of the Advisory Council;
17 requiring the Director, at certain times, to deliver to each member of the
18 Advisory Council certain paperwork; requiring the Advisory Council to respond
19 to issues raised in certain annual reports and develop a plan to study ongoing
20 issues; authorizing a certain registration to be transferred under certain
21 circumstances; requiring a certain annual report to include certain information
22 on the number of inquiries received by the Office; requiring an applicant for a
23 permit to submit certain documentation to the Director; requiring a certain
24 disclosure to be made in a certain manner; repealing an exemption for certain
25 cemeteries from certain provisions of law relating to perpetual care
26 requirements; requiring the Office to provide a report on the implementation of
27 certain recommendations to certain committees of the General Assembly on or
28 before a certain date; requiring the Advisory Council to develop a plan for
29 consumer outreach, study record-keeping practices for cemeteries in a certain
30 manner, and develop a legislative proposal on record-keeping practices;
31 requiring the Director and the Advisory Council to develop certain orientation

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 materials and study the issue of the increasing rate of cremations and its effect
2 on the Office's finances; requiring the Director and a committee formed of
3 members of the Advisory Council to update the Office newsletter and develop a
4 certain plan for updating the newsletter; making stylistic and technical
5 changes; providing for a delayed effective date for certain provisions of this Act;
6 and generally relating to the Office of Cemetery Oversight and the operation of
7 cemeteries and burial goods businesses in the State.

8 BY repealing and reenacting, with amendments,

9 Article – Business Regulation

10 Section 5–102(a), 5–201(c), 5–204(b), (i), and (l), 5–305(b), 5–311(h), 5–404,
11 5–602(a), 5–603(b), 5–702(a), 5–801, and 5–1002

12 Annotated Code of Maryland

13 (2010 Replacement Volume and 2011 Supplement)

14 BY adding to

15 Article – Business Regulation

16 Section 5–204(m) and 5–204.1

17 Annotated Code of Maryland

18 (2010 Replacement Volume and 2011 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article – Business Regulation

21 Section 5–602(a)

22 Annotated Code of Maryland

23 (2010 Replacement Volume and 2011 Supplement)

24 (As enacted by Section 1 of this Act)

25 BY repealing and reenacting, without amendments,

26 Article – State Government

27 Section 8–403(a)

28 Annotated Code of Maryland

29 (2009 Replacement Volume and 2011 Supplement)

30 BY repealing and reenacting, with amendments,

31 Article – State Government

32 Section 8–403(b)(10)

33 Annotated Code of Maryland

34 (2009 Replacement Volume and 2011 Supplement)

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

37 **Article – Business Regulation**

38 5–102.

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

2 (1) a person that owns and operates a bona fide religious–nonprofit
3 cemetery in this State;

4 (2) a cemetery owned by a not for profit organization created before
5 1900 by an act of the General Assembly;

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

8 (4) a veterans’ cemetery operated by the State; **OR**

9 **(5) A PRIVATE FAMILY CEMETERY THAT DOES NOT CONDUCT**
10 **PUBLIC SALES.**

11 5–201.

12 (c) (1) The Secretary shall appoint an Advisory Council on Cemetery
13 Operations.

14 (2) The Advisory Council consists of [eleven] **12** members.

15 (3) Of the [eleven] **12** members of the **ADVISORY** Council:

16 (i) three shall be registered ceterierians representing the
17 for–profit cemetery industry;

18 (ii) one shall be a registered ceterierian representing a
19 nonprofit cemetery;

20 (iii) one shall be a registered seller from a monument company;

21 (iv) one shall be a representative from a religious cemetery;

22 [and]

23 **(V) ONE SHALL BE A REPRESENTATIVE FROM A**
24 **CREMATORY; AND**

25 **[(v)] (VI)** five shall be consumer members.

26 (4) The Advisory Council shall be convened at least [once] **FOUR**
27 **TIMES** a year to give advice to the Secretary and the Director.

28 (5) In addition to the [annual meeting] **REQUIRED MEETINGS**, the
29 Advisory Council may meet as necessary.

1 5-204.

2 (b) (1) Upon receipt of a written complaint, or at the discretion of the
3 Director, the Director or the Director's designee may conduct an investigation and an
4 inspection of the records and site of a registered cemeterian, registered crematory
5 operator, registered seller, permit holder, or any other person subject to the
6 registration or permit provisions of this title.

7 (2) **THE DIRECTOR OR THE DIRECTOR'S DESIGNEE MAY CONFER**
8 **WITH THE ADVISORY COUNCIL OR WITH INDIVIDUAL MEMBERS OF THE**
9 **ADVISORY COUNCIL ON COMPLAINT PROCESSING AND RESOLUTION.**

10 (i) (1) For each fiscal year, the Director shall maintain a list of:

11 (i) all registrants and permit holders;

12 (ii) all for-profit cemeteries and nonreligious-nonprofit
13 cemeteries associated with a registrant or permit holder; and

14 (iii) all bona fide religious-nonprofit cemeteries, veterans'
15 cemeteries, and local government-owned cemeteries that have filed a statement or
16 report required under §§ 5-405, 5-606, and 5-710 of this title.

17 (2) All lists maintained by the Director shall be open to inspection by
18 any person.

19 (3) **BASED ON THE LIST MAINTAINED BY THE DIRECTOR UNDER**
20 **PARAGRAPH (1)(I) OF THIS SUBSECTION, THE DIRECTOR SHALL INCLUDE IN**
21 **THE ANNUAL REPORT TO THE GENERAL ASSEMBLY REQUIRED UNDER**
22 **SUBSECTION (L)(3) OF THIS SECTION THE FOLLOWING INFORMATION AS OF**
23 **JUNE 30 OF THE YEAR THAT IS THE SUBJECT OF THE REPORT:**

24 (I) **THE TOTAL NUMBER OF REGISTRANTS AND PERMIT**
25 **HOLDERS; AND**

26 (II) **THE NUMBER OF REGISTRANTS AND PERMIT HOLDERS**
27 **FOR EACH LICENSING CATEGORY.**

28 (l) (1) Beginning with a report due on December 1, 2008, the Director
29 shall conduct an inventory of all known burial sites in the State and shall update the
30 inventory and report every 5 years to the General Assembly, in accordance with §
31 2-1246 of the State Government Article, on the number of for-profit cemeteries,
32 nonreligious-nonprofit cemeteries, bona fide religious-nonprofit cemeteries, veterans'
33 cemeteries, and local government-owned cemeteries.

1 (2) Beginning December 1, 2008, the Director shall annually assess
2 the rate of compliance with the registration, permit, and reporting requirements of
3 this title by comparing the lists required under subsection (i)(1)(ii) and (iii) of this
4 section with the most recent inventory of all known burial sites conducted under
5 paragraph (1) of this subsection.

6 (3) Beginning with a report due on January 31, 2009, for fiscal year
7 2008, the Director shall report annually to the General Assembly, in accordance with §
8 2-1246 of the State Government Article, on the implementation of an action plan, if
9 appropriate, to address any noncompliance issues identified by the assessment
10 required under paragraph (2) of this subsection.

11 **(4) THE DIRECTOR SHALL PROVIDE A COPY OF THE ANNUAL**
12 **REPORT REQUIRED UNDER PARAGRAPH (3) OF THIS SUBSECTION TO EACH**
13 **MEMBER OF THE ADVISORY COUNCIL.**

14 **(M) AT THE TIME OF APPOINTMENT OF NEW MEMBERS AND BEFORE**
15 **REAPPOINTMENT OF EXISTING MEMBERS OF THE ADVISORY COUNCIL, THE**
16 **DIRECTOR SHALL DELIVER TO EACH MEMBER THE PAPERWORK NECESSARY TO**
17 **DISCLOSE ANY INTEREST OR EMPLOYMENT HELD BY THE MEMBER AT THE TIME**
18 **OF APPOINTMENT AS REQUIRED BY THE MARYLAND PUBLIC ETHICS LAW.**

19 **5-204.1.**

20 **THE ADVISORY COUNCIL SHALL RESPOND TO ISSUES RAISED BY THE**
21 **DIRECTOR IN THE ANNUAL REPORT REQUIRED UNDER § 5-204 OF THIS**
22 **SUBTITLE AND § 5-311 OF THIS TITLE AND DEVELOP A PLAN TO STUDY**
23 **ONGOING ISSUES DURING THE YEAR FOLLOWING THE ISSUANCE OF THE**
24 **REPORT.**

25 **5-305.**

26 (b) A registration issued by the Director under this title [is not transferable]:

27 **(1) MAY NOT BE TRANSFERRED FROM ONE INDIVIDUAL TO**
28 **ANOTHER; BUT**

29 **(2) MAY BE TRANSFERRED FOR THE SAME INDIVIDUAL FROM ONE**
30 **CEMETERY TO ANOTHER.**

31 **5-311.**

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

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

4 (i) the number of complaints resolved within the schedule
5 adopted under paragraph (1) of this subsection;

6 (ii) the number of complaints **AND THE NUMBER OF**
7 **INQUIRIES** received under subsection (c)(2) of this section by the type of registrant,
8 permit holder, or exemption from the registration and permit requirements of this
9 title;

10 (iii) the number of complaints **AND THE NUMBER OF**
11 **INQUIRIES** received under subsection (c)(2) of this section by persons subject to, but
12 not in compliance with, the registration and permit requirements of this title;

13 (iv) the nature of complaints **AND INQUIRIES** received under
14 subsection (c)(2) of this section, including whether complaints are related to the illegal
15 recycling of graves;

16 **(V) THE TYPE OF PURCHASE, FOCUS OF DISSATISFACTION,**
17 **AND TYPE OF RESOLUTION FOR BOTH COMPLAINTS AND INQUIRIES;**

18 [(v)] **(VI)** whether complaints reported under item (i) of this
19 paragraph were resolved through negotiation, binding arbitration, or another method;
20 and

21 [(vi)] **(VII)** any disciplinary or enforcement actions taken against
22 a registrant, permit holder, or a person subject to, but not in compliance with, the
23 registration and permit requirements of this title.

24 **(3) THE DIRECTOR SHALL PROVIDE A COPY OF THE ANNUAL**
25 **REPORT REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION TO EACH**
26 **MEMBER OF THE ADVISORY COUNCIL.**

27 5-404.

28 An applicant for a permit shall submit to the Director:

29 (1) an application on the form that the Director provides; [and]

30 (2) an application fee as set by the Director; **AND**

1 **(3) DOCUMENTATION SHOWING THE NUMBER OF SALES**
2 **CONTRACTS SUBJECT TO THE SALES CONTRACT FEE ENTERED INTO WITHIN THE**
3 **BUSINESS'S LAST 2 FISCAL YEARS.**

4 5-602.

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

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

7 (2) is owned and operated by:

8 (i) a county;

9 (ii) a municipal corporation;

10 (iii) a church;

11 (iv) a synagogue;

12 (v) a religious organization;

13 (vi) a not for profit organization created before 1900 by an act of
14 the General Assembly; [or]

15 **(VII) A FAMILY AND DOES NOT CONDUCT PUBLIC SALES; OR**

16 [[vii]] **(VIII) a State veterans agency.**

17 5-702.

18 (a) This subtitle does not apply to:

19 (1) the sale of burial space; [or]

20 (2) a preneed contract made by an individual in connection with
21 practicing funeral direction or practicing mortuary science, as those practices are
22 defined in and regulated by the Health Occupations Article; **OR**

23 **(3) THE PRENEED SALE OF BURIAL GOODS OR SERVICES BY A**
24 **PRIVATE FAMILY CEMETERY THAT DOES NOT CONDUCT PUBLIC SALES OF**
25 **BURIAL GOODS OR SERVICES.**

26 5-801.

1 (a) At the time of entering into a contract with a consumer for the sale of
2 burial goods or services, registrants, permit holders, or any other person subject to the
3 provisions of this title shall make the following written disclosures:

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

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

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

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

11 (b) **(1)** The disclosures **REQUIRED UNDER SUBSECTION (A)(1), (2), AND**
12 **(3) OF THIS SECTION** shall be conspicuously incorporated in the contract in 12-point
13 type.

14 **(2) THE DISCLOSURE REQUIRED UNDER SUBSECTION (A)(4) OF**
15 **THIS SECTION SHALL BE ON A FORM SEPARATE FROM THE CONTRACT AND MUST**
16 **BE SEPARATELY SIGNED AND DATED BY THE CONSUMER.**

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

18 (d) The consumer must be provided with a copy of the contract **AND A COPY**
19 **OF THE FORM REQUIRED UNDER SUBSECTION (B)(2) OF THIS SECTION** at the
20 time of purchasing the burial goods or services.

21 (e) The disclosure shall occur:

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

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

26 (f) The Director [may], by regulation, **MAY** prescribe the form and wording
27 of the disclosure.

28 (g) If the purchase by the consumer includes a cemetery plot, the registered
29 cemetarian, permit holder, or any other person subject to the provisions of this title
30 shall provide the consumer with a copy of a location survey, performed by a licensed
31 land surveyor, which indicates the location of the purchased plot within the cemetery,
32 or by any other means approved by the Director.

1 (h) Registrants, permit holders, or any other person subject to the provisions
2 of this title shall provide each buyer or prospective buyer with a general price list for
3 the buyer or prospective buyer to keep which shall include:

4 (1) specific prices for:

5 (i) ground opening and closing;

6 (ii) extra depth interment;

7 (iii) interment of cremated remains; and

8 (iv) mausoleum entombment; and

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

10 5–1002.

11 Subject to the evaluation and reestablishment provisions of the Maryland
12 Program Evaluation Act, the Office of Cemetery Oversight, the provisions in this title
13 relating to the Office, and all regulations adopted by the Office shall terminate and be
14 of no effect after July 1, [2013] **2023**.

15 Article – State Government

16 8–403.

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

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

25 (10) Cemetery Oversight, Office of (§ 5–201 of the Business Regulation
26 Article: July 1, [2012] **2022**);

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

29 Article – Business Regulation

30 5–602.

- 1 (a) This subtitle does not apply to a cemetery that:
- 2 (1) has less than 1 acre available for burial; or
- 3 (2) is owned and operated by:
- 4 (i) [a county;
- 5 (ii) a municipal corporation;
- 6 (iii) a church;
- 7 (iv) a synagogue;
- 8 (v) a religious organization;
- 9 (vi) a not for profit organization created before 1900 by an act of
10 the General Assembly;
- 11 (vii)] a family and does not conduct public sales; or
- 12 [(viii)] **(II)** a State veterans agency.

13 5-603.

14 (b) (1) [Each sole proprietor registered cemeterian, permit holder, or any
15 other person subject to the registration or permit provisions of this title who sells or
16 offers to sell to the public a burial lot or burial right in] **EXCEPT FOR A CEMETERY**
17 **THAT IS EXEMPT UNDER § 5-602 OF THIS SUBTITLE**, 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 cemetery created in the State after October 1, 2001, that is not
27 exempt under § 5-602 of this subtitle shall be required to establish a perpetual care
28 trust fund.]

1 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before October 1,
2 2013, the Office of Cemetery Oversight shall report to the Senate Finance Committee
3 and the House Health and Government Operations Committee, in accordance with §
4 2–1246 of the State Government Article, on the implementation status of nonstatutory
5 recommendations of the Department of Legislative Services contained in the sunset
6 evaluation report dated October 2011.

7 SECTION 4. AND BE IT FURTHER ENACTED, That the Advisory Council on
8 Cemetery Operations shall:

9 (1) develop a plan to improve consumer outreach, including an
10 approach to disseminating the consumer information pamphlet to key locations
11 around the State, such as nursing homes, churches, the offices of estate lawyers,
12 consumer protection agencies of every county, and other locations;

13 (2) study record–keeping practices for cemeteries in relation both to
14 best practices and for disaster preparedness, including pandemics and natural
15 disasters, with the intention of developing legislation to address this issue;

16 (3) develop a legislative proposal on record–keeping practices for
17 introduction no later than the 2014 regular session of the General Assembly; and

18 (4) in developing the proposal under item (3) of this section, determine
19 the categories of cemeteries to which any record–keeping requirements developed
20 should be applied and consider the possibility of phasing in requirements to limit the
21 economic impact on cemeteries.

22 SECTION 5. AND BE IT FURTHER ENACTED, That the Director of the Office
23 of Cemetery Oversight and the Advisory Council on Cemetery Operations shall:

24 (1) collaborate on the development of orientation materials for new
25 members appointed to the Advisory Council, which shall include information on the
26 requirements of the Public Ethics Laws applicable to Advisory Council members; and

27 (2) study the issue of the increasing rate of cremations within the
28 death care industry, including whether the rate of cremations will continue to rise at
29 the same rate and the possible effect this trend may have on the Office’s finances.

30 SECTION 6. AND BE IT FURTHER ENACTED, That the Director of the Office
31 of Cemetery Oversight and a committee formed of members of the Advisory Council on
32 Cemetery Operations shall update the Office newsletter and develop a plan to ensure
33 that the newsletter continues to be updated on a regular basis.

34 SECTION 7. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
35 take effect July 1, 2013.

1 SECTION 8. AND BE IT FURTHER ENACTED, That, except as provided in
2 Section 7 of this Act, this Act shall take effect July 1, 2012.