

# SENATE BILL 282

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By: **Chair, Finance Committee**

Introduced and read first time: January 26, 2012

Assigned to: Finance

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## 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; requiring the Director of the Office of Cemetery Oversight to include  
12 certain information regarding the number of registrants and permit holders in a  
13 certain annual report; requiring the Director to provide a copy of certain annual  
14 reports to each member of the Advisory Council; requiring the Director, at  
15 certain times, to deliver to each member of the Advisory Council certain  
16 paperwork; requiring the Advisory Council to respond to issues raised in certain  
17 annual reports and develop a plan to study ongoing issues; authorizing a certain  
18 registration to be transferred under certain circumstances; requiring a certain  
19 annual report to include certain information on the number of inquiries received  
20 by the Office; requiring an applicant for a permit to submit certain  
21 documentation to the Director; requiring a certain disclosure to be made in a  
22 certain manner; requiring the Office to provide a report on the implementation  
23 of certain recommendations to certain committees of the General Assembly on  
24 or before a certain date; requiring the Advisory Council to develop a plan for  
25 consumer outreach, study recordkeeping practices for cemeteries in a certain  
26 manner, and develop a legislative proposal on recordkeeping practices;  
27 requiring the Director and the Advisory Council to develop certain orientation  
28 materials and study the issue of the increasing rate of cremations and its effect  
29 on the Office's finances; requiring the Director and a committee formed of  
30 members of the Advisory Council to update the Office newsletter and develop a  
31 certain plan for updating the newsletter; making stylistic and technical

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 changes; and generally relating to the Office of Cemetery Oversight and the  
2 operation of cemeteries and burial goods businesses in the State.

3 BY repealing and reenacting, with amendments,  
4 Article – Business Regulation  
5 Section 5–102(a), 5–201(c), 5–204(i) and (l), 5–305(b), 5–311(h), 5–404,  
6 5–602(a), 5–702(a), 5–801, and 5–1002  
7 Annotated Code of Maryland  
8 (2010 Replacement Volume and 2011 Supplement)

9 BY adding to  
10 Article – Business Regulation  
11 Section 5–204(m) and 5–204.1  
12 Annotated Code of Maryland  
13 (2010 Replacement Volume and 2011 Supplement)

14 BY repealing and reenacting, without amendments,  
15 Article – State Government  
16 Section 8–403(a)  
17 Annotated Code of Maryland  
18 (2009 Replacement Volume and 2011 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article – State Government  
21 Section 8–403(b)(10)  
22 Annotated Code of Maryland  
23 (2009 Replacement Volume and 2011 Supplement)

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

26 **Article – Business Regulation**

27 5–102.

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

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

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

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

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

1                   **(5) A PRIVATE FAMILY CEMETERY THAT DOES NOT CONDUCT**  
2 **PUBLIC SALES.**

3 5–201.

4           (c) (1) The Secretary shall appoint an Advisory Council on Cemetery  
5 Operations.

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

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

8                           (i) three shall be registered cemeterians representing the  
9 for-profit cemetery industry;

10                           (ii) one shall be a registered cemeterian representing a  
11 nonprofit cemetery;

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

13                           (iv) one shall be a representative from a religious cemetery;  
14 [~~and~~]

15                           **(V) ONE SHALL BE A REPRESENTATIVE FROM A**  
16 **CREMATORY; AND**

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

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

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

22 5–204.

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

24                           (i) all registrants and permit holders;

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

1 (iii) all bona fide religious–nonprofit cemeteries, veterans’  
2 cemeteries, and local government–owned cemeteries that have filed a statement or  
3 report required under §§ 5–405, 5–606, and 5–710 of this title.

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

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

11 (I) **THE TOTAL NUMBER OF REGISTRANTS AND PERMIT**  
12 **HOLDERS; AND**

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

15 (1) (1) Beginning with a report due on December 1, 2008, the Director  
16 shall conduct an inventory of all known burial sites in the State and shall update the  
17 inventory and report every 5 years to the General Assembly, in accordance with §  
18 2–1246 of the State Government Article, on the number of for–profit cemeteries,  
19 nonreligious–nonprofit cemeteries, bona fide religious–nonprofit cemeteries, veterans’  
20 cemeteries, and local government–owned cemeteries.

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

26 (3) Beginning with a report due on January 31, 2009, for fiscal year  
27 2008, the Director shall report annually to the General Assembly, in accordance with §  
28 2–1246 of the State Government Article, on the implementation of an action plan, if  
29 appropriate, to address any noncompliance issues identified by the assessment  
30 required under paragraph (2) of this subsection.

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

34 (M) **AT THE TIME OF APPOINTMENT OF NEW MEMBERS AND BEFORE**  
35 **REAPPOINTMENT OF EXISTING MEMBERS OF THE ADVISORY COUNCIL, THE**  
36 **DIRECTOR SHALL DELIVER TO EACH MEMBER THE PAPERWORK NECESSARY TO**

1 DISCLOSE ANY INTEREST OR EMPLOYMENT HELD BY THE MEMBER AT THE TIME  
2 OF APPOINTMENT AS REQUIRED BY THE MARYLAND PUBLIC ETHICS LAW.

3 **5-204.1.**

4 THE ADVISORY COUNCIL SHALL RESPOND TO ISSUES RAISED BY THE  
5 DIRECTOR IN THE ANNUAL REPORT REQUIRED UNDER § 5-204 OF THIS  
6 SUBTITLE AND § 5-311 OF THIS TITLE AND DEVELOP A PLAN TO STUDY  
7 ONGOING ISSUES DURING THE YEAR FOLLOWING THE ISSUANCE OF THE  
8 REPORT.

9 **5-305.**

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

11 (1) MAY NOT BE TRANSFERRED FROM ONE INDIVIDUAL TO  
12 ANOTHER; BUT

13 (2) MAY BE TRANSFERRED FOR THE SAME INDIVIDUAL FROM ONE  
14 CEMETERY TO ANOTHER.

15 **5-311.**

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

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

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

24 (ii) the number of complaints AND THE NUMBER OF  
25 INQUIRIES received under subsection (c)(2) of this section by the type of registrant,  
26 permit holder, or exemption from the registration and permit requirements of this  
27 title;

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

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

4 (v) **THE TYPE OF PURCHASE, FOCUS OF DISSATISFACTION,**  
 5 **AND TYPE OF RESOLUTION FOR BOTH COMPLAINTS AND INQUIRIES;**

6 [(v)] (vi) whether complaints reported under item (i) of this  
 7 paragraph were resolved through negotiation, binding arbitration, or another method;  
 8 and

9 [(vi)] (vii) any disciplinary or enforcement actions taken against  
 10 a registrant, permit holder, or a person subject to, but not in compliance with, the  
 11 registration and permit requirements of this title.

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

15 5-404.

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

- 17 (1) an application on the form that the Director provides; [and]  
 18 (2) an application fee as set by the Director; **AND**

19 (3) **DOCUMENTATION SHOWING THE NUMBER OF SALES**  
 20 **CONTRACTS SUBJECT TO THE SALES CONTRACT FEE ENTERED INTO WITHIN THE**  
 21 **BUSINESS' LAST TWO FISCAL YEARS.**

22 5-602.

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

- 24 (1) has less than 1 acre available for burial; or  
 25 (2) is owned and operated by:  
 26 (i) a county;  
 27 (ii) a municipal corporation;  
 28 (iii) a church;  
 29 (iv) a synagogue;

1 (v) a religious organization;

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

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

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

6 5-702.

7 (a) This subtitle does not apply to:

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

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

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

15 5-801.

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

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

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

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

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

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

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

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

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

8           (e) The disclosure shall occur:

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

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

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

15           (g) If the purchase by the consumer includes a cemetery plot, the registered  
16 cemeterian, permit holder, or any other person subject to the provisions of this title  
17 shall provide the consumer with a copy of a location survey, performed by a licensed  
18 land surveyor, which indicates the location of the purchased plot within the cemetery,  
19 or by any other means approved by the Director.

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

23               (1) specific prices for:

24                   (i) ground opening and closing;

25                   (ii) extra depth interment;

26                   (iii) interment of cremated remains; and

27                   (iv) mausoleum entombment; and

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

29 5-1002.



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

5 **Article – State Government**

6 8–403.

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

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

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

17 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1,  
18 2013, the Office of Cemetery Oversight shall report to the Senate Finance Committee  
19 and the House Health and Government Operations Committee, in accordance with §  
20 2–1246 of the State Government Article, on the implementation status of nonstatutory  
21 recommendations of the Department of Legislative Services contained in the sunset  
22 evaluation report dated October 2011.

23 SECTION 3. AND BE IT FURTHER ENACTED, That the Advisory Council on  
24 Cemetery Operations shall:

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

29 (2) study recordkeeping practices for cemeteries in relation both to  
30 best practices and for disaster preparedness, including pandemics and natural  
31 disasters, with the intention of developing legislation to address this issue;

32 (3) develop a legislative proposal on recordkeeping practices for  
33 introduction no later than the 2014 regular session of the General Assembly; and

34 (4) in developing the proposal under item (3) of this section, determine  
35 the categories of cemeteries to which any recordkeeping requirements developed

1 should be applied and consider the possibility of phasing in requirements to limit the  
2 economic impact on cemeteries.

3 SECTION 4. AND BE IT FURTHER ENACTED, That the Director of the Office  
4 of Cemetery Oversight and the Advisory Council on Cemetery Operations shall:

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

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

11 SECTION 5. AND BE IT FURTHER ENACTED, That the Director of the Office  
12 of Cemetery Oversight and a committee formed of members of the Advisory Council on  
13 Cemetery Operations shall update the Office newsletter and develop a plan to ensure  
14 that the newsletter continues to be updated on a regular basis.

15 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 July 1, 2012.