

HOUSE BILL 949

C2

6lr1905
CF SB 897

By: **Delegate Kipke**

Introduced and read first time: February 10, 2016

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Cemeteries – Perpetual Care Trust Fund – Loan of Principal for Capital**
3 **Expenditures**

4 FOR the purpose of authorizing a certain percentage of the principal of a perpetual care
5 trust fund to be loaned to a certain person that established the perpetual care trust
6 fund to be used for certain capital expenditures; providing for the term and interest
7 rate of a certain loan; requiring a certain person to include a description of a certain
8 loan, including certain information, in a certain report submitted to the Director of
9 the Office of Cemetery Oversight; and generally relating to the loan of principal of a
10 perpetual care trust fund for capital expenditures.

11 BY repealing and reenacting, with amendments,
12 Article – Business Regulation
13 Section 5–603
14 Annotated Code of Maryland
15 (2015 Replacement Volume and 2015 Supplement)

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

18 **Article – Business Regulation**

19 5–603.

20 (a) In this section, “developed land area” means land in a cemetery:

21 (1) that is available for burial;

22 (2) where roads, paths, or buildings have been laid out or built; or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (3) where burial lots have been outlined on a plat or in a record or sales
2 brochure.

3 (b) (1) Each sole proprietor registered cemeterian, permit holder, or any other
4 person subject to the registration or permit provisions of this title who sells or offers to sell
5 to the public a burial lot or burial right in a cemetery as to which perpetual care is stated
6 or implied shall have a perpetual care trust fund.

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

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

12 (i) "The cemetery is a perpetual care cemetery."; or

13 (ii) "The cemetery is not a perpetual care cemetery."

14 (4) A cemetery created in the State after October 1, 2001, that is not
15 exempt under § 5–602 of this subtitle shall be required to establish a perpetual care trust
16 fund.

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

20 (1) \$10,000, if the developed land area of the cemetery is 10 acres or less
21 and the cemetery is a nonprofit cemetery which does not sell burial goods;

22 (2) \$25,000, if the developed land area of the cemetery is more than 10
23 acres and the cemetery is a nonprofit cemetery which does not sell burial goods;

24 (3) \$25,000, if the developed land area of the cemetery is 10 acres or less
25 and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells burial goods;
26 or

27 (4) \$50,000, if the developed land area of the cemetery is more than 10
28 acres and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells burial
29 goods.

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

32 (2) Except as provided in paragraph (4) of this subsection, within 30 days
33 after the end of the month when the buyer of a right of interment in a burial lot,
34 above-ground crypt, or niche makes a final payment, the registered cemeterian, permit

1 holder, or any other person subject to the trust requirements of this subtitle shall pay in
2 cash to the trustee for deposit in the perpetual care trust fund:

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

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

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

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

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

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

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

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

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

22 (f) Realized capital gains of a perpetual care trust fund are not income of the
23 perpetual care trust fund and shall be deposited in the perpetual care trust fund as
24 principal of the perpetual care trust fund.

25 **(G) (1) (I) A PERCENTAGE OF THE PRINCIPAL OF A PERPETUAL CARE**
26 **TRUST FUND, NOT EXCEEDING 2% OF THE VALUE OF THE PERPETUAL CARE TRUST**
27 **FUND FOR ANY SPECIFIC EXPENDITURE, MAY BE LOANED TO THE SOLE PROPRIETOR**
28 **REGISTERED CEMETERIAN WHO, OR PERMIT HOLDER OR OTHER PERSON THAT,**
29 **ESTABLISHED THE PERPETUAL CARE TRUST FUND TO BE USED FOR CAPITAL**
30 **EXPENDITURES FOR THE REPAIR OF MAUSOLEUM ROOFS AND ROADS.**

31 **(II) THE TERM OF A LOAN MADE UNDER THIS PARAGRAPH MAY**
32 **NOT EXCEED 5 YEARS.**

1 **(III) REPAYMENT OF A LOAN MADE UNDER THIS PARAGRAPH**
2 **SHALL BE WITH INTEREST AT AN EFFECTIVE RATE OF SIMPLE INTEREST OF 6% PER**
3 **ANNUM ON THE UNPAID BALANCE OF THE LOAN.**

4 **(2) A PERSON THAT RECEIVES A LOAN UNDER PARAGRAPH (1) OF**
5 **THIS SUBSECTION SHALL INCLUDE IN THE REPORT REQUIRED UNDER § 5-606 OF**
6 **THIS SUBTITLE A DESCRIPTION OF THE LOAN, INCLUDING THE AMOUNT, TERMS OF**
7 **THE LOAN, AND DESCRIPTION OF THE CAPITAL EXPENDITURES FOR WHICH THE**
8 **LOAN WAS MADE.**

9 **[(g)] (H) (1)** The perpetual care trust fund authorized by this subsection shall
10 be a single purpose trust fund.

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

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 sale,
21 pledge, mortgage, or other alienation and is not assignable.

22 **[(h)] (I)** 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 the
24 cemetery a copy of the most recent trust report filed with the Office under § 5-606 of this
25 subtitle and shall make the report available for inspection by an owner or a prospective
26 purchaser of a right of interment in a burial lot, above-ground crypt, or niche.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2016.