

SENATE BILL 434

C2

9lr1809
CF HB 489

By: **Senator Klausmeier**

Introduced and read first time: February 1, 2019

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Cemeteries – Perpetual Care – Distribution From Perpetual Care Trust Fund**

3 FOR the purpose of requiring a distribution from a certain trust fund to be used for certain
4 purposes; repealing a requirement that certain capital gains of a perpetual care trust
5 fund be deposited into the trust fund in a certain manner; permitting a certain
6 cemetery to select a certain method of distribution from a certain perpetual care trust
7 fund; requiring the cemetery to notify a certain trustee if the cemetery selects a
8 certain method of distribution from the perpetual care trust fund; requiring the
9 trustee to distribute certain income from the perpetual care trust fund if the
10 cemetery does not select a method of distribution from the trust fund; prohibiting
11 the trustee from reducing a distribution under certain circumstances; requiring the
12 trustee to adopt a certain investment policy under certain circumstances; requiring
13 the trustee to use a certain method of distribution from the perpetual care trust fund
14 if the fair market value of the trust fund exceeds a certain sum, but requiring the
15 trustee to use a different method of distribution if the fair market value of the
16 perpetual care trust fund does not exceed a certain sum; permitting the Director of
17 the Office of Cemetery Oversight to limit or prohibit a certain distribution under
18 certain circumstances; requiring the trustee to pay certain taxes from the principal
19 of the trust fund; defining a certain term; and generally relating to investment of
20 cemetery perpetual care trust funds.

21 BY repealing and reenacting, with amendments,
22 Article – Business Regulation
23 Section 5–603
24 Annotated Code of Maryland
25 (2015 Replacement Volume and 2018 Supplement)

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

28 **Article – Business Regulation**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 5-603.

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

3 (1) that is available for burial;

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

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

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

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

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

16 (i) “The cemetery is a perpetual care cemetery.”; or

17 (ii) “The cemetery is not a perpetual care cemetery.”

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

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

24 (1) \$10,000, if the developed land area of the cemetery is 10 acres or less
25 and the cemetery is a nonprofit cemetery which does not sell burial goods;

26 (2) \$25,000, if the developed land area of the cemetery is more than 10
27 acres and the cemetery is a nonprofit cemetery which does not sell burial goods;

28 (3) \$25,000, if the developed land area of the cemetery is 10 acres or less
29 and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells burial goods;
30 or

1 (4) \$50,000, if the developed land area of the cemetery is more than 10
2 acres and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells burial
3 goods.

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

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

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

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

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

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

22 (e) **[The income] A DISTRIBUTION** from the perpetual care trust fund **MADE**
23 **UNDER SUBSECTION (F) OF THIS SECTION:**

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

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

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

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

31 (f) Realized capital gains of a perpetual care trust fund are not income of the
32 perpetual care trust fund and shall be deposited in the perpetual care trust fund as
33 principal of the perpetual care trust fund.]

1 **(F) (1) IN THIS SUBSECTION, "NET INCOME" MAY, AT THE DISCRETION OF**
2 **THE CEMETERY, INCLUDE REALIZED CAPITAL GAINS.**

3 **(2) A CEMETERY THAT IS SUBJECT TO THIS SECTION MAY SELECT AS**
4 **THE METHOD OF DISTRIBUTION FROM THE PERPETUAL CARE TRUST FUND EITHER:**

5 **(I) ALL NET INCOME TO BE DISTRIBUTED ON A MONTHLY,**
6 **QUARTERLY, SEMIANNUAL, OR ANNUAL BASIS; OR**

7 **(II) AN AMOUNT NOT EXCEEDING 5% OF THE AVERAGE OF THE**
8 **END-OF-YEAR FAIR MARKET VALUE OF THE PERPETUAL CARE TRUST FUND FOR**
9 **THE PRECEDING 3 CALENDAR YEARS, TO BE DISTRIBUTED ON A MONTHLY,**
10 **QUARTERLY, SEMIANNUAL, OR ANNUAL BASIS.**

11 **(3) (I) IF A CEMETERY THAT IS SUBJECT TO THIS SECTION**
12 **SELECTS A METHOD OF DISTRIBUTION DESCRIBED IN PARAGRAPH (2) OF THIS**
13 **SUBSECTION:**

14 **1. THE CEMETERY SHALL NOTIFY THE TRUSTEE IN**
15 **WRITING AT LEAST 30 DAYS BEFORE THE DATE THE METHOD OF DISTRIBUTION WILL**
16 **TAKE EFFECT; AND**

17 **2. THE METHOD OF DISTRIBUTION SHALL REMAIN IN**
18 **EFFECT UNTIL THE CEMETERY NOTIFIES THE TRUSTEE IN WRITING THAT THE**
19 **CEMETERY HAS SELECTED A DIFFERENT METHOD OF DISTRIBUTION.**

20 **(II) IF A CEMETERY THAT IS SUBJECT TO THIS SECTION DOES**
21 **NOT SELECT A METHOD OF DISTRIBUTION DESCRIBED IN PARAGRAPH (2) OF THIS**
22 **SUBSECTION, THE TRUSTEE SHALL DISTRIBUTE TO THE CEMETERY, ON A MONTHLY**
23 **BASIS, ALL NET INCOME OF THE PERPETUAL CARE TRUST FUND.**

24 **(4) IF A CEMETERY THAT IS SUBJECT TO THIS SECTION SELECTS THE**
25 **METHOD OF DISTRIBUTION DESCRIBED IN PARAGRAPH (2)(II) OF THIS SUBSECTION,**
26 **THE TRUSTEE:**

27 **(I) MAY NOT REDUCE THE AMOUNT OF THE DISTRIBUTION BY**
28 **ANY TAXES OR FEES;**

29 **(II) SHALL ADOPT AN INVESTMENT POLICY THAT SUPPORTS**
30 **THE GROWTH OF THE PERPETUAL CARE TRUST FUND; AND**

1 **(III) 1. SHALL USE THE METHOD OF DISTRIBUTION**
2 **SELECTED BY THE CEMETERY IF THE FAIR MARKET VALUE OF THE PERPETUAL CARE**
3 **TRUST FUND EXCEEDS THE SUM OF:**

4 **A. 80% OF THE AVERAGE OF THE END-OF-YEAR FAIR**
5 **MARKET VALUE OF THE PERPETUAL CARE TRUST FUND FOR THE PRECEDING 3**
6 **CALENDAR YEARS; AND**

7 **B. THE TOTAL CONTRIBUTIONS MADE TO THE PRINCIPAL**
8 **OF THE PERPETUAL CARE TRUST FUND FROM THE DATE THE METHOD OF**
9 **DISTRIBUTION TOOK EFFECT TO THE END OF THE PRECEDING CALENDAR YEAR; OR**

10 **2. SHALL DISTRIBUTE TO THE CEMETERY ON A**
11 **MONTHLY BASIS FOR THE REMAINDER OF THE CALENDAR YEAR ALL NET INCOME OF**
12 **THE PERPETUAL CARE TRUST FUND, IF THE FAIR MARKET VALUE OF THE**
13 **PERPETUAL CARE TRUST FUND DOES NOT EXCEED THE SUM CALCULATED UNDER**
14 **ITEM 1 OF THIS ITEM.**

15 **(5) THE DIRECTOR MAY LIMIT OR PROHIBIT A DISTRIBUTION MADE**
16 **UNDER PARAGRAPH (2)(II) OF THIS SUBSECTION IF THE DIRECTOR BELIEVES THAT:**

17 **(I) BASED ON A 5- TO 7-YEAR ANALYSIS, INVESTMENT**
18 **RETURNS AND DISTRIBUTION PRACTICES HAVE NOT RESULTED IN SUFFICIENT**
19 **PROTECTION OF THE PERPETUAL CARE TRUST FUND'S PRINCIPAL; OR**

20 **(II) THE TRUSTEE DOES NOT HAVE SUFFICIENT KNOWLEDGE**
21 **AND EXPERTISE TO ADMINISTER THE PERPETUAL CARE TRUST FUND IN A MANNER**
22 **THAT SUPPORTS THE GROWTH OF THE PERPETUAL CARE TRUST FUND.**

23 **(G) THE TRUSTEE SHALL PAY CAPITAL GAINS TAXES FROM THE PRINCIPAL**
24 **OF THE PERPETUAL CARE TRUST FUND.**

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

27 **(2) In the event of the bankruptcy or insolvency of, or assignment for the**
28 **benefit of creditors by, or an adverse judgment against the sole proprietor registered**
29 **cemeterian, permit holder, or any other person subject to the trust requirements of this**
30 **subtitle, the perpetual care trust funds may not be made available to any creditor as assets**
31 **of the sole proprietor registered cemeterian, permit holder, or any other person subject to**
32 **the trust requirements of this subtitle or as payment for any expenses of any bankruptcy**
33 **or similar proceedings, but shall be retained intact to provide for the future maintenance**
34 **of the cemetery.**

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

4 **[(h)] (I)** A sole proprietor registered cemeterian, permit holder, or any other
5 person subject to the trust requirements of this subtitle shall maintain in the office of the
6 cemetery a copy of the most recent trust report filed with the Office under § 5–606 of this
7 subtitle and shall make the report available for inspection by an owner or a prospective
8 purchaser of a right of interment in a burial lot, above–ground crypt, or niche.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2019.