

Chapter 241

(House Bill 5)

AN ACT concerning

Cemeteries – Perpetual Care – Distribution From Perpetual Care Trust Fund

FOR the purpose of requiring a distribution from a certain trust fund to be used for certain purposes; clarifying that a cemetery owner may not use a distribution from a certain trust fund for certain purposes; permitting a certain cemetery to select a certain method of distribution from a certain perpetual care trust fund; requiring the cemetery to submit a certain statement to the Director of the Office of Cemetery Oversight if the cemetery selects a certain method of distribution from the perpetual care trust fund; requiring the cemetery to notify a certain trustee and the Director in a certain manner if the cemetery selects a certain method of distribution from the perpetual care trust fund; providing that the cemetery's method of distribution is contingent on the approval of the Director; requiring the Director to approve or disapprove a certain method of distribution in a certain manner; requiring the trustee to distribute certain income from the perpetual care trust fund if the cemetery does not select a method of distribution from the perpetual care trust fund; requiring the trustee to submit a certain annual statement to the Director under certain circumstances; prohibiting the trustee from reducing a distribution under certain circumstances; requiring the trustee to adopt a certain investment policy under certain circumstances; requiring the trustee to use a certain method of distribution from the perpetual care trust fund if the fair market value of the perpetual care trust fund exceeds a certain sum, but requiring the trustee to use a different method of distribution if the fair market value of the perpetual care trust fund does not exceed a certain sum; permitting the Director to limit or prohibit a certain distribution under certain circumstances; requiring the trustee to pay certain taxes from the principal of the perpetual care trust fund; defining a certain term; requiring the Director to make a certain report to certain committees of the General Assembly on or before a certain date; and generally relating to investment of cemetery perpetual care trust funds.

BY repealing and reenacting, with amendments,
Article – Business Regulation
Section 5–603
Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

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

Article – Business Regulation

5–603.

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

(1) that is available for burial;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) the repair and renewal of buildings, including columbaria and mausoleums, and the property of the cemetery; **[and]**

(2) may not be used to care for memorials or monuments; **AND**

(3) MAY NOT BE USED BY THE OWNER OF A CEMETERY FOR ANY PURPOSE NOT DESCRIBED IN ITEM (1) OF THIS SUBSECTION.

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

(G) (1) IN THIS SUBSECTION, “NET INCOME” INCLUDES INTEREST AND DIVIDENDS.

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

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

(II) AN AMOUNT NOT EXCEEDING 4% OF THE AVERAGE OF THE END-OF-YEAR FAIR MARKET VALUE OF THE PERPETUAL CARE TRUST FUND FOR THE PRECEDING 3 CALENDAR YEARS, TO BE DISTRIBUTED ON A MONTHLY, QUARTERLY, SEMIANNUAL, OR ANNUAL BASIS.

(3) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, IF A CEMETERY THAT IS SUBJECT TO THIS SECTION SELECTS A METHOD OF DISTRIBUTION DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION:

1. THE TRUSTEE SHALL SUBMIT TO THE DIRECTOR A STATEMENT ATTESTING THAT THE CEMETERY’S SELECTION OF THE METHOD OF DISTRIBUTION DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION IS REASONABLY EXPECTED TO RESULT IN SUFFICIENT PROTECTION OF THE PERPETUAL CARE TRUST FUND’S PRINCIPAL;

2. THE CEMETERY SHALL NOTIFY THE DIRECTOR IN WRITING AT LEAST 60 DAYS BEFORE THE DATE THE METHOD OF DISTRIBUTION WILL TAKE EFFECT;

3. THE NOTIFICATION UNDER ITEM 1 OF THIS SUBPARAGRAPH SHALL INCLUDE A COPY OF THE INVESTMENT POLICY STATEMENT FOR THE TRUST AND THE PLANNED INITIAL DISTRIBUTION AMOUNT;

4. THE CEMETERY SHALL NOTIFY THE TRUSTEE IN WRITING AT LEAST 60 DAYS BEFORE THE DATE THE METHOD OF DISTRIBUTION WILL TAKE EFFECT; AND

5. THE METHOD OF DISTRIBUTION SHALL REMAIN IN EFFECT UNTIL THE CEMETERY NOTIFIES THE TRUSTEE AND THE DIRECTOR IN

WRITING THAT THE CEMETERY HAS SELECTED A DIFFERENT METHOD OF DISTRIBUTION.

(II) 1. A CEMETERY'S SELECTION OF A METHOD OF DISTRIBUTION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IS CONTINGENT ON APPROVAL OF THE DIRECTOR MADE IN ACCORDANCE WITH SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH.

2. WITHIN 30 DAYS AFTER RECEIVING NOTICE UNDER SUBPARAGRAPH (I)1 OF THIS PARAGRAPH, THE DIRECTOR SHALL, IN A WRITTEN NOTICE PROVIDED TO THE CEMETERY, APPROVE OR DISAPPROVE THE PROPOSED DISTRIBUTION METHOD.

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

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

(I) SHALL SUBMIT ANNUALLY TO THE DIRECTOR A STATEMENT ATTESTING THAT THE CEMETERY'S SELECTION OF THE METHOD OF DISTRIBUTION DESCRIBED IN PARAGRAPH (2)(II) OF THIS SUBSECTION IS REASONABLY EXPECTED TO RESULT IN SUFFICIENT PROTECTION OF THE PERPETUAL CARE TRUST FUND'S PRINCIPAL;

(II) MAY NOT REDUCE THE AMOUNT OF THE DISTRIBUTION BY ANY TAXES OR FEES;

(III) SHALL ADOPT AN INVESTMENT POLICY THAT:

1. PROVIDES FOR A BALANCED PORTFOLIO, INCLUDING A REASONABLE AMOUNT OF FIXED-INCOME SECURITIES; AND

2. SUPPORTS THE GROWTH OF THE PERPETUAL CARE TRUST FUND; AND

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

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

B. THE TOTAL CONTRIBUTIONS MADE TO THE PRINCIPAL OF THE PERPETUAL CARE TRUST FUND FROM THE END OF THE PRECEDING CALENDAR YEAR; OR

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

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

(I) BASED ON A REVIEW SUBMITTED BY THE TRUSTEE OF THE PRIOR 5 TO 7 YEARS OF PERFORMANCE OF THE PERPETUAL CARE TRUST FUND OR, IF LESS THAN 5 YEARS HAVE ELAPSED SINCE THE DATE OF SELECTION OF THE INVESTMENT METHOD, A REVIEW SUBMITTED BY THE TRUSTEE OF THE PERFORMANCE OF THE PERPETUAL CARE TRUST FUND SINCE THE DATE OF SELECTION, INVESTMENT RETURNS AND DISTRIBUTION PRACTICES HAVE NOT RESULTED IN SUFFICIENT PROTECTION OF THE PERPETUAL CARE TRUST FUND'S PRINCIPAL; OR

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

(H) THE TRUSTEE SHALL PAY CAPITAL GAINS TAXES FROM THE PRINCIPAL OF THE PERPETUAL CARE TRUST FUND.

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1, 2027, the Director of the Office of Cemetery Oversight shall report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2–1257 of the State Government Article, on:

(1) the number of cemeteries that have selected the method of distribution described in § 5–603(g)(2)(ii) of the Business Regulation Article, as enacted by Section 1 of this Act;

(2) the annual performance of the perpetual care trust fund of each cemetery that has made a selection described under item (1) of this section beginning on the date the selection was made; and

(3) recommendations, if any, for legislation related to perpetual care trust funds.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.

Approved by the Governor, May 18, 2021.