

HOUSE BILL 491

C2

5lr0979

By: **Delegates Morhaim, Aumann, Hettleman, Stein, and West**

Introduced and read first time: February 11, 2015

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Office of Cemetery Oversight – Conservation Cemeteries – Perpetual Care Trust**
3 **Fund Requirements**

4 FOR the purpose of reducing the minimum amount that a certain registered cemeterian or
5 permit holder that operates a conservation cemetery is required to deposit initially
6 into the perpetual care trust fund; reducing the percentage of the selling price of a
7 right of interment in a burial lot in a conservation cemetery that the registered
8 cemeterian or permit holder operating the conservation cemetery is required to pay
9 in cash to a certain trustee for deposit into the perpetual care trust fund; defining a
10 certain term; and generally relating to perpetual care trust fund requirements for
11 conservation cemeteries.

12 BY repealing and reenacting, with amendments,
13 Article – Business Regulation
14 Section 5–101 and 5–603
15 Annotated Code of Maryland
16 (2010 Replacement Volume and 2014 Supplement)

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

19 **Article – Business Regulation**

20 5–101.

21 (a) In this title the following words have the meanings indicated.

22 (b) (1) “Burial goods” means goods that are used in connection with burial.

23 (2) “Burial goods” includes:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (i) a casket;
- 2 (ii) a grave liner;
- 3 (iii) a memorial;
- 4 (iv) a monument;
- 5 (v) a scroll;
- 6 (vi) an urn;
- 7 (vii) a vase; and
- 8 (viii) a vault.

9 (c) "Burial goods business" means a business that provides burial goods.

10 (d) (1) "Cemetery" means land used or to be used for interment.

11 (2) "Cemetery" includes a structure used or to be used for interment.

12 **(E) "CONSERVATION CEMETERY" MEANS A CEMETERY THAT:**

13 **(1) (I) INTERS UNEMBALMED HUMAN REMAINS IN**
14 **BIODEGRADABLE MATERIALS OR BURIAL CONTAINERS IN THE GROUND;**

15 **(II) TAKES STEPS TO LIMIT ENVIRONMENTAL IMPACTS TO THE**
16 **LAND, AID IN THE CONSERVATION OF NATURAL RESOURCES, REDUCE CARBON**
17 **EMISSIONS, AND AID IN THE RESTORATION AND PRESERVATION OF THE EXISTING**
18 **HABITAT;**

19 **(III) DOES NOT USE GRAVE LINERS OR VAULTS; AND**

20 **(IV) ALLOWS ONLY MEMORIAL MARKERS AND HEADSTONES**
21 **MADE OF NATURAL OR NATIVE MATERIALS THAT ARE NOT RAISED ABOVE THE**
22 **GROUND AND DO NOT IMPEDE THE NATURAL LANDSCAPE; AND**

23 **(2) (I) IS DESIGNATED AS A CONSERVATION CEMETERY BY THE**
24 **OFFICE;**

25 **(II) IS CERTIFIED AS A CONSERVATION OR NATURAL CEMETERY**
26 **BY THE GREEN BURIAL COUNCIL OR AN EQUIVALENT ORGANIZATION; OR**

1 **(III) IS DESIGNATED AS A CONSERVATION CEMETERY BY THE**
2 **LOCAL JURISDICTION IN WHICH THE CEMETERY IS LOCATED.**

3 **[(e)] (F)** “Cremation” means the process of reducing human remains to bone
4 fragments through intense heat and evaporation, including any mechanical or thermal
5 process.

6 **[(f)] (G)** “Crematory” means a building, portion of a building, or structure that
7 houses the necessary appliances and facilities for cremation.

8 **[(g)] (H)** “Director” means the Director of the Office of Cemetery Oversight.

9 **[(h)] (I)** “Engage in the operation of a cemetery” means owning, controlling, or
10 managing a cemetery, including performing activities necessary for:

11 (1) the establishment, improvement, care, preservation, or embellishment
12 of a cemetery;

13 (2) interment; and

14 (3) the providing of burial space or burial goods.

15 **[(i)] (J)** (1) “Engage in the operation of a crematory” means controlling or
16 managing a crematory.

17 (2) “Engage in the operation of a crematory” does not include:

18 (i) the practice of funeral direction or the practice of mortuary
19 science; or

20 (ii) 1. assistance in making decisions and filling out forms that
21 are not directly related to cremation;

22 2. obtaining vital statistics, signatures, and other
23 information necessary to complete a death certificate;

24 3. transportation of a body to the place of disposition; or

25 4. any other services regarding the disposition of a body that
26 are not directly related to cremation.

27 **[(j)] (K)** “Funeral establishment” means a building, structure, or premises from
28 which the business of funeral directing or embalming is conducted.

29 **[(k)] (L)** (1) “Human remains” means:

- 1 (i) the body of a deceased person; or
2 (ii) a part of a body or limb that has been removed from a living
3 person.

4 (2) "Human remains" includes the body or part of a body or limb in any
5 state of decomposition.

6 **[(l)] (M)** "Interment" means all final disposition of human remains, including:

- 7 (1) earth burial;
8 (2) mausoleum entombment; and
9 (3) niche or columbarium interment.

10 **[(m)] (N)** "Office" means the Office of Cemetery Oversight.

11 **[(n)] (O)** "Permit" means a permit issued by the Director to allow a partnership,
12 limited liability company, or corporation to operate a business through which a registrant
13 may:

- 14 (1) engage in the operation of a cemetery or crematory; or
15 (2) provide burial goods.

16 **[(o)] (P)** (1) "Preneed goods" means burial goods that are sold before the
17 buyer's death.

18 (2) "Preneed goods" does not include burial space.

19 **[(p)] (Q)** "Provide burial goods" means a retail transaction:

- 20 (1) to erect, service, or inscribe burial memorials; or
21 (2) to sell burial goods.

22 **[(q)] (R)** "Registered cemeterian" means an individual registered to operate a
23 cemetery as a sole proprietor or on behalf of a sole proprietor or of a permit holder.

24 **[(r)] (S)** "Registered crematory operator" means an individual registered to
25 operate a crematory as a sole proprietor or on behalf of a sole proprietor or permit holder.

26 **[(s)] (T)** "Registered seller" means an individual registered to provide burial
27 goods as a sole proprietor or on behalf of a sole proprietor or of a permit holder.

1 [(t)] (U) “Registration” means a registration issued by the Director authorizing
2 an individual to operate a cemetery, to operate a crematory, or to provide burial goods.

3 [(u)] (V) “Responsible party” means a sole proprietor or the individual
4 designated by a partnership, limited liability company, or corporation to be responsible for
5 the operations of a cemetery, crematory, or burial goods business.

6 5–603.

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

8 (1) that is available for burial;

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

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

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

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

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

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

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

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

26 (c) (1) [Each] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
27 **SUBSECTION, EACH** sole proprietor registered cemeterian, permit holder, or any other
28 person subject to the trust requirements of this subtitle initially shall deposit in the
29 perpetual care trust fund at least:

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

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

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

6 **[(4)] (IV)** \$50,000, if the developed land area of the cemetery is more than
7 10 acres and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells burial
8 goods.

9 **(2) EACH SOLE PROPRIETOR REGISTERED CEMETERIAN OR PERMIT**
10 **HOLDER THAT OPERATES A CONSERVATION CEMETERY SHALL DEPOSIT INITIALLY**
11 **IN THE PERPETUAL CARE TRUST FUND AT LEAST \$10,000.**

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

14 (2) Except as provided in **[paragraph (4)] PARAGRAPHS (4) AND (5)** of
15 this subsection, within 30 days after the end of the month when the buyer of a right of
16 interment in a burial lot, above-ground crypt, or niche makes a final payment, the
17 registered cemeterian, permit holder, or any other person subject to the trust requirements
18 of this subtitle shall pay in cash to the trustee for deposit in the perpetual care trust fund:

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

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

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

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

30 **(5) WITHIN 30 DAYS AFTER THE END OF THE MONTH WHEN THE**
31 **BUYER OF A RIGHT OF INTERMENT IN A BURIAL LOT IN A CONSERVATION CEMETERY**
32 **MAKES A FINAL PAYMENT, THE REGISTERED CEMETERIAN OR PERMIT HOLDER THAT**
33 **OPERATES THE CONSERVATION CEMETERY SHALL PAY IN CASH TO THE TRUSTEE**
34 **FOR DEPOSIT IN THE PERPETUAL CARE TRUST FUND:**

1 **(I) AT LEAST 2% OF THE ACTUAL SELLING PRICE OF EACH**
2 **RIGHT OF INTERMENT IN A BURIAL LOT; OR**

3 **(II) IF THE BURIAL LOT IS SOLD AT A DISCOUNT OR AT NO COST,**
4 **AT LEAST 2% OF THE IMPUTED COST OF THE FAIR RETAIL VALUE.**

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

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

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

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

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

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

16 (g) (1) The perpetual care trust fund authorized by this subsection shall be a
17 single purpose trust fund.

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

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2015.