

# HOUSE BILL 491

C2

5lr0979

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By: ~~Delegates Morhaim, Aumann, Hettleman, Stein, and West~~ West, Cullison, Kelly, Pena-Melnyk, Pendergrass, and K. Young

Introduced and read first time: February 11, 2015

Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2015

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## CHAPTER \_\_\_\_\_

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; requiring  
10 the Office of Cemetery Oversight to consider certain information in determining  
11 whether to designate a certain cemetery as a conservation cemetery for certain  
12 purposes; defining a certain term; and generally relating to perpetual care trust fund  
13 requirements for conservation cemeteries.

14 BY repealing and reenacting, with amendments,  
15 Article – Business Regulation  
16 Section 5–101 and 5–603  
17 Annotated Code of Maryland  
18 (2010 Replacement Volume and 2014 Supplement)

19 BY adding to  
20 Article – Business Regulation  
21 Section 5–602.1  
22 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(2010 Replacement Volume and 2014 Supplement)

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

**Article – Business Regulation**

5–101.

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

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

(2) “Burial goods” includes:

(i) a casket;

(ii) a grave liner;

(iii) a memorial;

(iv) a monument;

(v) a scroll;

(vi) an urn;

(vii) a vase; and

(viii) a vault.

(c) “Burial goods business” means a business that provides burial goods.

(d) (1) “Cemetery” means land used or to be used for interment.

(2) “Cemetery” includes a structure used or to be used for interment.

**(E) “CONSERVATION CEMETERY” MEANS A CEMETERY THAT:**

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

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

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

2 (IV) ALLOWS ONLY MEMORIAL MARKERS AND HEADSTONES  
3 MADE OF NATURAL OR NATIVE MATERIALS THAT ARE NOT RAISED ABOVE THE  
4 GROUND AND DO NOT IMPEDE THE NATURAL LANDSCAPE; AND

5 (2) ~~(H)~~ IS DESIGNATED AS A CONSERVATION CEMETERY BY THE  
6 OFFICE;

7 ~~(H) IS CERTIFIED AS A CONSERVATION OR NATURAL CEMETERY~~  
8 ~~BY THE GREEN BURIAL COUNCIL OR AN EQUIVALENT ORGANIZATION; OR.~~

9 ~~(H) IS DESIGNATED AS A CONSERVATION CEMETERY BY THE~~  
10 ~~LOCAL JURISDICTION IN WHICH THE CEMETERY IS LOCATED.~~

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

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

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

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

19 (1) the establishment, improvement, care, preservation, or embellishment  
20 of a cemetery;

21 (2) interment; and

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

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

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

26 (i) the practice of funeral direction or the practice of mortuary  
27 science; or

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

- 1                            2.     obtaining vital statistics, signatures, and other  
 2 information necessary to complete a death certificate;
- 3                            3.     transportation of a body to the place of disposition; or
- 4                            4.     any other services regarding the disposition of a body that  
 5 are not directly related to cremation.

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

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

9                            (i)     the body of a deceased person; or

10                          (ii)    a part of a body or limb that has been removed from a living  
 11 person.

12                          (2)     “Human remains” includes the body or part of a body or limb in any  
 13 state of decomposition.

14            **[(l)] (M)**     “Interment” means all final disposition of human remains, including:

15                          (1)     earth burial;

16                          (2)     mausoleum entombment; and

17                          (3)     niche or columbarium interment.

18            **[(m)] (N)**     “Office” means the Office of Cemetery Oversight.

19            **[(n)] (O)**     “Permit” means a permit issued by the Director to allow a partnership,  
 20 limited liability company, or corporation to operate a business through which a registrant  
 21 may:

22                          (1)     engage in the operation of a cemetery or crematory; or

23                          (2)     provide burial goods.

24            **[(o)] (P)**     (1)     “Preneed goods” means burial goods that are sold before the  
 25 buyer’s death.

26                          (2)     “Preneed goods” does not include burial space.

27            **[(p)] (Q)**     “Provide burial goods” means a retail transaction:

1 (1) to erect, service, or inscribe burial memorials; or

2 (2) to sell burial goods.

3 [(q)] (R) “Registered cemeterian” means an individual registered to operate a  
4 cemetery as a sole proprietor or on behalf of a sole proprietor or of a permit holder.

5 [(r)] (S) “Registered crematory operator” means an individual registered to  
6 operate a crematory as a sole proprietor or on behalf of a sole proprietor or permit holder.

7 [(s)] (T) “Registered seller” means an individual registered to provide burial  
8 goods as a sole proprietor or on behalf of a sole proprietor or of a permit holder.

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

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

14 **5-602.1.**

15 **IN DETERMINING WHETHER TO DESIGNATE A CEMETERY AS A CONSERVATION**  
16 **CEMETERY FOR PURPOSES OF THIS SUBTITLE, THE OFFICE SHALL CONSIDER**  
17 **WHETHER THE PROPOSED CONSERVATION CEMETERY:**

18 **(1) IS CERTIFIED BY THE GREEN BURIAL COUNCIL OR AN**  
19 **EQUIVALENT ORGANIZATION; AND**

20 **(2) HAS BEEN PLACED IN A PERMANENT CONSERVATION EASEMENT**  
21 **WITH A QUALIFIED LAND TRUST.**

22 5-603.

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

24 (1) that is available for burial;

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

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

28 (b) (1) Each sole proprietor registered cemeterian, permit holder, or any other  
29 person subject to the registration or permit provisions of this title who sells or offers to sell

1 to the public a burial lot or burial right in a cemetery as to which perpetual care is stated  
2 or implied shall have a perpetual care trust fund.

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

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

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

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

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

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

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

19 [(2)] (II) \$25,000, if the developed land area of the cemetery is more than  
20 10 acres and the cemetery is a nonprofit cemetery which does not sell burial goods;

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

24 [(4)] (IV) \$50,000, if the developed land area of the cemetery is more than  
25 10 acres and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells burial  
26 goods.

27 (2) **EACH SOLE PROPRIETOR REGISTERED CEMETERIAN OR PERMIT**  
28 **HOLDER THAT OPERATES A CONSERVATION CEMETERY SHALL DEPOSIT INITIALLY**  
29 **IN THE PERPETUAL CARE TRUST FUND AT LEAST ~~\$10,000~~ \$15,000.**

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)] **PARAGRAPHS (4) AND (5)** of  
33 this subsection, within 30 days after the end of the month when the buyer of a right of

1 interment in a burial lot, above-ground crypt, or niche makes a final payment, the  
2 registered cemeterian, permit holder, or any other person subject to the trust requirements  
3 of this subtitle shall pay in cash to the trustee for deposit in the perpetual care trust fund:

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

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

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

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

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

20 **(I) AT LEAST ~~2%~~ 5% OF THE ACTUAL SELLING PRICE OF EACH**  
21 **RIGHT OF INTERMENT IN A BURIAL LOT; OR**

22 **(II) IF THE BURIAL LOT IS SOLD AT A DISCOUNT OR AT NO COST,**  
23 **AT LEAST ~~2%~~ 5% OF THE IMPUTED COST OF THE FAIR RETAIL VALUE.**

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

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

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

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

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

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

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

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

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

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

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.