

Business Regulation, Annotated Code of Maryland – Title 5

as of September 2016

§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) "Cremation" means the process of reducing human remains to bone fragments through intense heat and evaporation, including any mechanical or thermal process.
- (f) "Crematory" means a building, portion of a building, or structure that houses the necessary appliances and facilities for cremation.
- (g) "Director" means the Director of the Office of Cemetery Oversight.
- (h) "Engage in the operation of a cemetery" means owning, controlling, or managing a cemetery, including performing activities necessary for:
 - (1) the establishment, improvement, care, preservation, or embellishment of a cemetery;
 - (2) interment; and
 - (3) the providing of burial space or burial goods.
- (i) (1) "Engage in the operation of a crematory" means controlling or managing a crematory.
 - (2) "Engage in the operation of a crematory" does not include:
 - (i) the practice of funeral direction or the practice of mortuary science; or
 - (ii) 1. assistance in making decisions and filling out forms that are not directly related to cremation;
 - 2. obtaining vital statistics, signatures, and other information necessary to complete a death certificate;
 - 3. transportation of a body to the place of disposition; or
 - 4. any other services regarding the disposition of a body that are not directly related to cremation.
- (j) "Funeral establishment" means a building, structure, or premises from which the business of funeral directing or embalming is conducted.
- (k) (1) "Human remains" means:
 - (i) the body of a deceased person; or
 - (ii) a part of a body or limb that has been removed from a living person.
- (2) "Human remains" includes the body or part of a body or limb in any state of decomposition.
- (l) "Interment" means all final disposition of human remains, including:

- (1) earth burial;
 - (2) mausoleum entombment; and
 - (3) niche or columbarium interment.
- (m) "Office" means the Office of Cemetery Oversight.
- (n) "Permit" means a permit issued by the Director to allow a partnership, limited liability company, or corporation to operate a business through which a registrant may:
- (1) engage in the operation of a cemetery or crematory; or
 - (2) provide burial goods.
- (o) (1) "Preneed goods" means burial goods that are sold before the buyer's death.
- (2) "Preneed goods" does not include burial space.
- (p) "Provide burial goods" means a retail transaction:
- (1) to erect, service, or inscribe burial memorials; or
 - (2) to sell burial goods.
- (q) "Registered cemeterian" means an individual registered to operate a cemetery as a sole proprietor or on behalf of a sole proprietor or of a permit holder.
- (r) "Registered crematory operator" means an individual registered to operate a crematory as a sole proprietor or on behalf of a sole proprietor or permit holder.
- (s) "Registered seller" means an individual registered to provide burial goods as a sole proprietor or on behalf of a sole proprietor or of a permit holder.
- (t) "Registration" means a registration issued by the Director authorizing an individual to operate a cemetery, to operate a crematory, or to provide burial goods.
- (u) "Responsible party" means a sole proprietor or the individual designated by a partnership, limited liability company, or corporation to be responsible for the operations of a cemetery, crematory, or burial goods business.

§5-102.

- (a) The registration and permitting provisions of this title do not apply to:
- (1) a person that owns and operates a bona fide religious–nonprofit cemetery in this State;
 - (2) a cemetery owned by a not for profit organization created before 1900 by an act of the General Assembly;
 - (3) a county, city, or municipal corporation that owns and operates a cemetery in the State;
 - (4) a veterans' cemetery operated by the State; or
 - (5) a private family cemetery that does not conduct public sales.
- (b) This title does not apply to:
- (1) the operation of a funeral establishment, including the sale of burial goods in the ordinary course of the funeral establishment's business;
 - (2) the operation or ownership of a crematory in which a person who is licensed and regulated under Title 7 of the Health Occupations Article owns a greater percentage of the crematory than a registered cemeterian, registered seller, or holder of a permit for the operation of a cemetery or burial goods business;
 - (3) the operation or ownership of a crematory or incinerator at a licensed medical facility or educational institution;
 - (4) a licensed funeral director acting within the scope of the funeral director's license; or
 - (5) a mortician acting within the scope of the mortician's license.

§5-201.

- (a) There is an Office of Cemetery Oversight in the Department.
- (b) The Office exercises its rights, powers, and duties subject to the authority of the Secretary.
- (c) (1) The Secretary shall appoint an Advisory Council on Cemetery Operations.
 - (2) The Advisory Council consists of 12 members.
 - (3) Of the 12 members of the Advisory Council:
 - (i) three shall be registered cemeterians representing the for-profit cemetery industry;
 - (ii) one shall be a registered cemeterian representing a nonprofit cemetery;
 - (iii) one shall be a registered seller from a monument company;
 - (iv) one shall be a representative from a religious cemetery;
 - (v) one shall be a representative from a crematory; and
 - (vi) five shall be consumer members.
 - (4) The Advisory Council shall be convened at least four times a year to give advice to the Secretary and the Director.
 - (5) In addition to the required meetings, the Advisory Council may meet as necessary.
- (d) The term of a member is 3 years.

§5-202.

- (a) (1) The Secretary shall appoint a Director of the Office of Cemetery Oversight with the approval of the Governor.
 - (2) The Director serves at the pleasure of the Secretary.
- (b) The Director shall devote full time to the duties of the Office.
- (c) The Director is entitled to:
 - (1) compensation in accordance with the State budget; and
 - (2) reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.
- (d) The Director shall:
 - (1) administer and operate the Office; and
 - (2) be responsible to the Secretary.
- (e) In addition to any requirements of the State Ethics Law, the Director may not:
 - (1) hold any position or engage in another business that interferes or conflicts with the position of the Director;
 - (2) be a registered cemeterian or a registered seller;
 - (3) engage in any act for which a registration is required under this title; or
 - (4) in connection with any registered cemeterian, registered seller, permit holder, funeral director, funeral establishment, or related death care entity, directly or indirectly receive or become entitled to receive any fee, perquisite, or compensation.

§5-203.

The Director may employ a staff in accordance with the State budget.

§5-204.

- (a) (1) With the advice of the Advisory Council and after consultation with representatives of the cemetery industry, the Director shall adopt:

(i) rules and regulations to carry out this title; and
(ii) a code of ethics for engaging in the operation of a cemetery or crematory or providing burial goods.

(2) In conjunction with the State Board of Morticians and Funeral Directors, the Director shall:

- (i) establish a process for regulating crematories that provides for:
1. registration of crematory operators or issuance of permits for operating crematories, and renewal;
 2. applications, including certification of ownership and identification of individuals who will perform cremation;
 3. registration and permit fees;
 4. inspections and oversight;
 5. grounds for discipline and penalties; and
 6. complaints and hearings; and
- (ii) adopt regulations that are identical to regulations adopted by the State Board of Morticians and Funeral Directors to:
1. implement item (i) of this paragraph; and
 2. ensure public health and safety.

(b) Upon receipt of a written complaint, or at the discretion of the Director, the Director or the Director's designee may conduct an investigation and an inspection of the records and site of a registered cemeterian, registered crematory operator, registered seller, permit holder, or any other person subject to the registration or permit provisions of this title.

(c) The Director may hold hearings on any matter covered by this title.

(d) To enforce this title, the Director may:

- (1) administer oaths;
- (2) examine witnesses; and
- (3) receive evidence.

(e) (1) The Director may issue a subpoena for the attendance of a witness to testify or for the production of evidence in connection with any investigation or hearing conducted in accordance with this section.

(2) If a person fails to comply with a subpoena issued under this subsection, on petition of the Director, a circuit court may compel compliance with the subpoena.

(f) (1) The Director may sue in the name of the State to enforce any provision of this title by injunction.

(2) In seeking an injunction under this subsection, the Director is not required to:

- (i) post bond; or
- (ii) allege or prove either that:
 1. an adequate remedy at law does not exist; or
 2. substantial or irreparable damage would result from the continued violation

of the provision.

(3) The Director or staff may not be held personally liable for any action taken under this title in good faith and with reasonable grounds.

(g) The Director may issue a cease and desist order, if the Director finds a violation of this title.

(h) The Director may refer to the Office of the Attorney General:

- (1) a violation of this title for enforcement; and
- (2) an alleged unfair or deceptive trade practice under Title 13 of the Commercial Law Article.

(i) (1) For each fiscal year, the Director shall maintain a list of:

- (i) all registrants and permit holders;

(ii) all for-profit cemeteries and nonreligious-nonprofit cemeteries associated with a registrant or permit holder; and

(iii) all bona fide religious-nonprofit cemeteries, veterans' cemeteries, and local government-owned cemeteries that have filed a statement or report required under §§ 5-405, 5-606, and 5-710 of this title.

(2) All lists maintained by the Director shall be open to inspection by any person.

(3) Based on the list maintained by the Director under paragraph (1)(i) of this subsection, the Director shall include in the annual report to the General Assembly required under subsection (l)(3) of this section the following information as of June 30 of the year that is the subject of the report:

(i) the total number of registrants and permit holders; and

(ii) the number of registrants and permit holders for each licensing category.

(j) (1) The Director shall distribute a copy of the Maryland Cemetery Act, code of ethics, and applicable regulations to each applicant for registration or permit.

(2) Upon renewal of a registration or permit, the Director shall distribute any amendments to the Maryland Cemetery Act, code of ethics, or applicable rules and regulations that have occurred since the last application.

(k) In conjunction with the State Board of Morticians and the Division of Consumer Protection of the Office of the Attorney General, the Director shall publish a consumer information pamphlet that describes:

(1) the rights of consumers in the purchase of funeral, cemetery, and crematory goods and services; and

(2) any other information that the Director considers reasonably necessary to aid consumers.

(l) (1) Beginning with a report due on December 1, 2008, the Director shall conduct an inventory of all known burial sites in the State and shall update the inventory and report every 5 years to the General Assembly, in accordance with § 2-1246 of the State Government Article, on the number of for-profit cemeteries, nonreligious-nonprofit cemeteries, bona fide religious-nonprofit cemeteries, veterans' cemeteries, and local government-owned cemeteries.

(2) Beginning December 1, 2008, the Director shall annually assess the rate of compliance with the registration, permit, and reporting requirements of this title by comparing the lists required under subsection (i)(1)(ii) and (iii) of this section with the most recent inventory of all known burial sites conducted under paragraph (1) of this subsection.

(3) Beginning with a report due on January 31, 2009, for fiscal year 2008, the Director shall report annually to the General Assembly, in accordance with § 2-1246 of the State Government Article, on the implementation of an action plan, if appropriate, to address any noncompliance issues identified by the assessment required under paragraph (2) of this subsection.

(4) The Director shall provide a copy of the annual report required under paragraph (3) of this subsection to each member of the Advisory Council.

(m) At the time of appointment of new members and before reappointment of existing members of the Advisory Council, the Director shall deliver to each member the paperwork necessary to disclose any interest or employment held by the member at the time of appointment as required by the Maryland Public Ethics Law.

§5-204.1.

The Advisory Council shall respond to issues raised by the Director in the annual report required under § 5-204 of this subtitle and § 5-311 of this title and develop a plan to study ongoing issues during the year following the issuance of the report.

§5-205.

(a) There is a Cemetery Oversight Fund.

(b) (1) (i) By regulation, the Director shall establish reasonable fees and a fee schedule for the issuance and renewal of registrations and permits.

(ii) The Director may not assess a crematory a per-occurrence cremation fee.

(2) In establishing the fees, the Director shall consider the size of the business, whether the business is for-profit or designated as tax exempt under § 501(c) of the Internal Revenue Code, the volume of business conducted, and the type of services provided, including the percentage of preneed contracts written.

(c) The fees charged shall be set so as to approximate the direct and indirect cost of maintaining the Office.

(d) The Director shall pay all funds collected under this title to the Comptroller who shall distribute the fees to the Cemetery Oversight Fund.

(e) (1) The Fund shall be used to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the Office.

(2) The Fund is a continuing nonlapsing fund, not subject to § 7-302 of the State Finance and Procurement Article.

(3) Any unspent portions of the Fund may not revert or be transferred to the General Fund of the State, but shall remain in the Fund to be used for the purposes specified in this title.

(4) No other State money may be used to support the Fund.

(f) (1) The Director shall administer the Fund.

(2) Moneys in the Fund may be expended for any lawful purpose authorized under the provisions of this title.

(g) The Legislative Auditor shall audit the accounts and transactions of the Fund as provided in § 2-1220 of the State Government Article.

§5-206.

A person shall have the immunity from liability described under § 5-720 of the Courts and Judicial Proceedings Article for giving information to the Director or otherwise participating in the activities of the Office.

§5-301.

An individual shall register with the Office before:

(1) engaging in the operation of a cemetery or crematory in this State; or

(2) providing burial goods in this State.

§5-302.

(a) In order to register, an applicant shall meet the requirements of this section.

(b) The applicant must be at least 18 years old.

(c) The applicant must be of good character and reputation.

(d) The applicant must be affiliated with a cemetery, crematory, or burial goods business operated by a registrant or permit holder.

(e) The cemetery, crematory, or burial goods business with which the applicant is affiliated must be financially stable in accordance with § 5-304 of this subtitle.

§5-303.

- (a) An applicant shall register by:
 - (1) submitting to the Director an application on the form that the Director provides; and
 - (2) paying a nonrefundable application fee set by the Director.
- (b) The application shall state:
 - (1) the name, date of birth, and residential address of the applicant;
 - (2) the name and fixed address of the affiliated cemetery, crematory, or burial goods business;
 - (3) whether the cemetery, crematory, or burial goods business with which the applicant is affiliated is owned or controlled by a sole proprietor, partnership, limited liability company, or corporation;
 - (4) if the applicant is designated as the responsible party, the name and residential address of each employee who sells burial space, goods, or services to the public for the business while engaging in the operation of a cemetery, crematory, or burial goods business; and
 - (5) any other reasonable information that the Director determines is necessary to carry out this title.

§5-304.

- (a) Each applicant designated as the responsible party shall demonstrate the financial stability of the business with which the applicant is affiliated by providing the Director with a financial statement or other reports required under subsection (e) of this section with the application for registration.
- (b) If the business is a cemetery that sells burial goods and is an existing business, the financial statement shall:
 - (1) be on the form that the Director requires;
 - (2) contain a statement by a certified public accountant retained by the business, detailing the assets and liabilities of the cemetery for the last fiscal year; and
 - (3) contain a review by the certified public accountant as to the financial stability of the cemetery.
- (c) If the business is an existing cemetery that does not sell burial goods or an existing burial goods business not affiliated with a cemetery, the applicant shall:
 - (1) complete a form that the Director requires; and
 - (2) satisfy criteria that the Director adopts under subsection (e) of this section.
- (d) If the business is a new business, the applicant shall:
 - (1) complete a form that the Director requires; and
 - (2) satisfy criteria that the Director adopts under subsection (e) of this section.
- (e) (1) The Director shall make a determination of the financial stability of each applicant based on criteria that the Director adopts for each class of business.
 - (2) The Director shall adopt separate criteria to determine the financial stability of applicants that are new businesses or existing businesses.
 - (3) The Director shall require that all financial statements of a new cemetery submitted under subsection (d) of this section be prepared by a certified public accountant retained by the business.

§5-305.

- (a) The Director shall issue a registration to an applicant who meets the requirements of this title.
- (b) A registration issued by the Director under this title:
 - (1) may not be transferred from one individual to another; but
 - (2) may be transferred for the same individual from one cemetery to another.

§5-306.

(a) While a registration is in effect, it authorizes the registrant to engage in the operation of a cemetery, crematory, or burial goods business.

(b) This title does not limit the right of a person to practice funeral direction or mortuary science, or operate a crematory, if the person is licensed or otherwise authorized under Title 7 of the Health Occupations Article.

§5-307.

(a) Unless a registration or permit is renewed as provided in this section, the registration or permit expires on the second anniversary of its effective date.

(b) At least 90 days before a registration or permit expires, the Director shall mail to the registrant or permit holder, at the last known address of the registrant or permit holder:

(1) a renewal application form; and

(2) a notice that states:

(i) the date on which the current registration or permit expires;

(ii) the date by which the Director must receive the renewal application for the renewal to be issued and mailed before the registration or permit expires; and

(iii) the amount of the renewal fee.

(c) Before a registration or permit expires, the registrant or permit holder periodically may renew it for an additional 2-year term, if the registrant or permit holder:

(1) is otherwise entitled to be registered or to receive a permit;

(2) meets the qualifications set forth for an original registration or permit;

(3) pays the renewal fee set by the Director; and

(4) submits to the Director a renewal application on the form that the Director provides.

(d) The Director shall renew the registration or permit of each registrant or permit holder who meets the requirements of this section.

§5-308.

Within 1 week after the effective date of the change, the applicant designated as the responsible party or the registered responsible party shall submit to the Director an application form that shows a change in the:

(1) cemetery, crematory, or burial goods business with which a registrant is affiliated;

(2) individual designated as the responsible party;

(3) employees of the business who engage in the sale of burial space, goods, or services or cremation to the public;

(4) officers, directors, members, or agents of the permit holder; or

(5) name or address of the registrant or permit holder.

§5-309.

Each registrant and permit holder shall display the registration or permit conspicuously at the business address of the registrant or permit holder.

§5-310.

(a) Subject to the hearing provisions of § 5–312 of this subtitle, the Director may deny a registration or permit to an applicant, reprimand a person subject to the registration or permit provisions of this title, or suspend or revoke a registration or permit if an applicant, registrant, or permit holder, or an agent, employee, officer, director, or partner of the applicant, registrant, or permit holder:

- (1) fraudulently or deceptively obtains or attempts to obtain a registration or permit;
- (2) fraudulently or deceptively uses a registration or permit;
- (3) under the laws of the United States or of any state, is convicted of a:
 - (i) felony; or
 - (ii) misdemeanor that is directly related to the fitness and qualifications of the applicant, registrant, or permit holder to own or operate a cemetery or crematory or provide burial goods;
- (4) fails to provide or misrepresents any information required to be provided under this title;
- (5) violates this title;
- (6) violates the code of ethics adopted by the Director;
- (7) violates a regulation adopted under this title;
- (8) fails to provide reasonable and adequate supervision of the operation of the cemetery or crematory or the provision of burial goods by agents, employees, officers, directors, or partners affiliated with a cemetery, crematory, or burial goods business;
- (9) refuses to allow an inspection required by this title;
- (10) fails to comply with an order of the Director;
- (11) fails to comply with any terms of settlement under a binding arbitration agreement;
- (12) is found guilty by a court in this State of violating an unfair or deceptive trade practices provision under Title 13 of the Commercial Law Article; or
- (13) fails to comply with § 5–513 of the Health – General Article.

(b) (1) If a person is charged with a violation of this title that could result in suspension or revocation of a registration or permit, the Director may seek an immediate restraining order in a circuit court in this State to prohibit the person from engaging in the operation of any cemetery, crematory, or burial goods business.

- (2) The restraining order is in effect until:
 - (i) the court lifts the order; or
 - (ii) the charges are adjudicated or dismissed.

(c) If a person is charged with a violation of this title that could result in suspension or revocation of a registration or permit, the Director may petition a court to:

- (1) appoint a receiver or trustee to take charge of the assets and operate the business of the person in the event that the registration or permit is suspended or revoked; and
- (2) take any actions as are appropriate to protect the public interest.

(d) Instead of or in addition to reprimanding a person, or suspending or revoking a registration or permit, the Director may impose a civil penalty:

- (1) not to exceed \$5,000 for each violation of this title or an order of the Director under this title; and
- (2) not to exceed \$500 for each day a violation continues past the time set for its correction.

(e) To determine the amount of the penalty imposed under this subsection, the Director shall consider:

- (1) the seriousness of the violation;
- (2) the harm caused by the violation;
- (3) the good faith efforts of the person; and
- (4) any history of previous violations by the person.

(f) Any civil penalties collected under this section shall be paid into the General Fund of the State.

(g) The Director shall consider the following facts in the granting, denial, renewal, suspension, or revocation of a registration or permit or the reprimand of a registrant or permit holder when an applicant, registrant, or permit holder, or an agent, employee, officer, director, or partner of an applicant, registrant, or permit holder is convicted of a felony or misdemeanor described in subsection (a)(3) of this section:

- (1) the nature of the crime;
- (2) the relationship of the crime to the activities authorized by this title;
- (3) with respect to a felony, the relevance of the conviction to the fitness and qualifications of the applicant, registrant, or permit holder, or agent, employee, officer, director, or partner to operate a cemetery or provide burial goods;
- (4) the length of time since the conviction; and
- (5) the behavior and activities of the applicant, registrant, or permit holder, or any agent, employee, officer, director, or partner before and after the conviction.

§5-311.

(a) Subject to the provisions of this section, the Director or the Director's designee shall commence proceedings on a complaint made by any person to the Director.

(b) A complaint shall:

- (1) be in writing;
- (2) state specifically the facts on which the complaint is based; and
- (3) be made under oath by the person who submits the complaint.

(c) (1) The Director or the Director's designee shall review each complaint and shall attempt to negotiate a settlement of the complaint between the complainant and the registrant, permit holder, or any other person subject to the registration or permit provisions of this title.

(2) Notwithstanding § 5-102 of this title, the Director or the Director's designee may receive and attempt to negotiate a settlement to resolve complaints concerning persons required to file statements under § 5-405 of this title and in connection with the operation of a cemetery or crematory or the sale of preneed goods.

(3) The Director may not take any actions described in subsection (d)(1) and (2) of this section for complaints involving persons exempt under § 5-102 of this title.

(d) If the Director or the Director's designee is unable to negotiate a settlement of the complaint, the Director may:

- (1) at the request of either party, refer the complaint to the Office of the Attorney General or the Office of Administrative Hearings for binding arbitration, if both parties agree to binding arbitration;
- (2) initiate an investigation; or
- (3) dismiss the complaint.

(e) If, after investigation, the Director determines that there is a reasonable basis to believe that there are grounds for disciplinary action under § 5-310 of this subtitle, the Director shall provide the person against whom the action is contemplated notice and an opportunity for a hearing under § 5-312 of this subtitle.

(f) (1) If, after investigation, the Director determines that there is not a reasonable basis to believe that there are grounds for disciplinary action, the Director shall dismiss the complaint.

(2) Any party aggrieved by the dismissal may take a judicial appeal in accordance with the provisions of Title 10 of the State Government Article.

(g) Once a complaint has been referred for binding arbitration, the registrant, permit holder, or any other person subject to the registration or permit provisions of this title shall comply with the terms of the settlement.

(h) (1) The Director shall adopt guidelines that establish a schedule for the prompt and timely processing and resolution of each complaint made to the Director.

(2) Beginning December 31, 1998, and on or before December 31 of each year thereafter, the Director shall report, subject to § 2-1246 of the State Government Article, to the General Assembly on:

(i) the number of complaints resolved within the schedule adopted under paragraph (1) of this subsection;

(ii) the number of complaints and the number of inquiries received under subsection (c)(2) of this section by the type of registrant, permit holder, or exemption from the registration and permit requirements of this title;

(iii) the number of complaints and the number of inquiries received under subsection (c)(2) of this section by persons subject to, but not in compliance with, the registration and permit requirements of this title;

(iv) the nature of complaints and inquiries received under subsection (c)(2) of this section, including whether complaints are related to the illegal recycling of graves;

(v) the type of purchase, focus of dissatisfaction, and type of resolution for both complaints and inquiries;

(vi) whether complaints reported under item (i) of this paragraph were resolved through negotiation, binding arbitration, or another method; and

(vii) any disciplinary or enforcement actions taken against a registrant, permit holder, or a person subject to, but not in compliance with, the registration and permit requirements of this title.

(3) The Director shall provide a copy of the annual report required under paragraph (2) of this subsection to each member of the Advisory Council.

§5-312.

(a) (1) Except as otherwise provided in § 10-226 of the State Government Article, before the Director takes a final action under this subtitle, the Director shall provide the person against whom the action is contemplated notice of the Director's proposed action and the opportunity to request a hearing before the Director.

(2) A person shall file a request for a hearing not later than 30 days after the date the notice provided under paragraph (1) of this subsection is mailed.

(b) The Director shall provide notice and conduct the hearing in accordance with Title 10, Subtitle 2 of the State Government Article.

(c) The Director may administer oaths in connection with a proceeding under this section.

(d) The hearing notice provided to the person under subsection (a)(1) of this section shall be sent by certified mail to the last known address of the person at least 10 days before the hearing.

(e) If a hearing is not requested within the time period specified under subsection (a)(2) of this section or if the person fails to appear for the hearing after requesting a hearing, the proposed action of the Director shall be affirmed.

(f) The person may be represented at the hearing by counsel.

(g) (1) The Director may issue subpoenas in connection with a proceeding under this section.

(2) If a person fails to comply with a subpoena issued under this subsection, on petition of the Director, a circuit court may compel compliance with the subpoena.

(h) If, after a hearing, the proposed action by the Director is upheld, the appellant shall pay the hearing costs, as specified by the Office in its regulations.

§5-401.

(a) Subject to the provisions of this section, a registered cemeterian, registered crematory operator, or registered seller may engage in the operation of a cemetery, crematory, or burial goods business as a sole proprietor or through:

- (1) a corporation as an officer, director, employee, or agent of the corporation;
- (2) a limited liability company as a member, employee, or agent of the limited liability company;

or

- (3) a partnership as a partner, employee, or agent of the partnership.

(b) Subject to the provisions of this title, a corporation, limited liability company, or partnership may engage in the operation of a cemetery, crematory, or burial goods business through a registered cemeterian, registered crematory operator, or registered seller.

(c) (1) A registered cemeterian who engages in the operation of a cemetery through a corporation, limited liability company, or partnership under this title is subject to all of the provisions of this title that relate to engaging in the operation of a cemetery.

(2) A registered crematory operator who engages in the operation of a crematory through a corporation, limited liability company, or partnership under this title is subject to all of the provisions of this title that relate to engaging in the operation of a crematory.

(3) A registered seller who engages in the operation of a burial goods business through a corporation, limited liability company, or partnership under this title is subject to all of the provisions of this title that relate to providing burial goods services.

(d) (1) A corporation, limited liability company, or partnership that engages in the operation of a cemetery, crematory, or burial goods business under this title is not, by its compliance with this title, relieved of any responsibility that the corporation, limited liability company, or partnership may have for an act or an omission by its officer, director, member, partner, employee, or agent.

(2) An individual who engages in the operation of a cemetery, crematory, or burial goods business through a corporation, limited liability company, or partnership is not, by reason of the individual's employment or other relationship with the corporation, limited liability company, or partnership, relieved of any individual responsibility that the individual may have regarding that practice.

§5-402.

A corporation, limited liability company, or partnership shall obtain a permit issued by the Director, before the corporation, limited liability company, or partnership may engage in the operation of a cemetery, crematory, or burial goods business in the State.

§5-403.

To qualify for a permit, a corporation, limited liability company, or partnership shall:

- (1) designate a separate registered cemeterian, registered crematory operator, or registered seller as the responsible party for the operations of each affiliated cemetery, crematory, or burial goods business;
- (2) provide the name and business address of each affiliated cemetery, crematory, or burial goods business;
- (3) provide a list of the officers, directors, members, partners, agents, and employees of the entity applying for the permit; and
- (4) comply with §§ 5-303(b)(4) and 5-304 of this title.

§5-404.

An applicant for a permit shall submit to the Director:

- (1) an application on the form that the Director provides;
- (2) an application fee as set by the Director; and
- (3) documentation verifying the number of sales contracts subject to the sales contract fee entered into within the business's last 2 fiscal years.

§5-405.

Except for a cemetery in which no burials have taken place within the previous 5 years, a cemetery that is exempt under § 5-102 of this title from the registration and permitting requirements of this title shall file with the Office, once every 2 years, a statement that includes:

- (1) the name and address of the cemetery;
- (2) the name and address of the organization that owns and operates the cemetery; and
- (3) the name and address of the individual who is responsible for the oversight of the cemetery.

§5-501.

(a) Except as otherwise provided in this section, a person may not buy, hold, or use, for burial:

- (1) more than 100 acres in the State; or
- (2) any land within the limits of a municipal corporation in the State, unless authorized to do so by the municipal corporation.

(b) (1) In the Spauldings Election District of Prince George's County, a person may buy, hold, or use, for burial, up to 125 acres in 1 tract.

(2) In the Laurel Election District of Prince George's County, a person that operated a cemetery on or before June 1, 1955, may buy, hold, or use, for burial, up to 200 acres in 1 tract.

(3) In the Kent Election District of Prince George's County, a person may buy, hold, or use, for burial, up to 150 acres in 1 tract.

(c) In Frederick County, a person may buy, hold, or use, for burial, up to 150 acres in 1 tract.

(d) In Baltimore County, a person may buy, hold, or use, for burial, up to 200 acres in 1 tract.

§5-502.

(a) An alley, canal, road, or other public thoroughfare may not be opened through property of a cemetery if that property is used or to be used for burial.

(b) This section does not authorize a registered cemeterian, permit holder, or other person to obstruct:

- (1) a public road in use when the cemetery is formed; or
- (2) the site of a future public road that, when the cemetery is formed, is shown on a plat made by authority of the State, a county, or a municipal corporation.

§5-503.

(a) Each burial lot and each crypt sold or conveyed in a cemetery shall be held by the owner only for the purpose of burial.

(b) The interest of an owner of a burial lot or crypt that is held for the burial of the owner or others and not held as an investment is not:

- (1) considered property;

- (2) subject to attachment or execution for debt;
- (3) subject to the insolvency laws of the State;
- (4) to be inventoried in the estate of the owner; or
- (5) subject to inheritance taxes.

(c) The interest of an owner of a burial lot or crypt that is held as an investment and not held for the burial of the owner or others is:

- (1) considered personal property;
- (2) subject to attachment or execution for debt;
- (3) subject to the insolvency laws of the State;
- (4) to be inventoried in the estate of the owner; and
- (5) subject to inheritance taxes.

(d) Subject to the rules of the cemetery owner and to the terms of any contract made with the cemetery owner, the interest of an owner of a burial lot or crypt:

- (1) may be disposed of during the lifetime of the owner of the burial lot or crypt with the consent of the cemetery owner;
- (2) may be disposed of by specific reference in the will of the owner; and
- (3) otherwise passes to the heirs of the owner, as defined in § 1-101 of the Estates and Trusts

Article.

§5-504.

A certificate, under seal of a sole proprietor registered cemeterian, permit holder, or other cemetery owner, of ownership of a burial lot or crypt has the same effect as a conveyance of real property that is executed, acknowledged, and recorded as required by law.

§5-505.

(a) An action may be brought in accordance with the Maryland Rules and a court may pass a judgment for sale of a burial ground for another purpose if:

- (1) the ground has been dedicated and used for burial;
- (2) burial lots have been sold in the burial ground and deeds executed or certificates issued to buyers of the lots;
- (3) the ground has ceased to be used for burial; and
- (4) it is desirable to dispose of the burial ground for another purpose.

(b) If the court is satisfied that it is expedient or would be in the interest of the parties to sell the burial ground, the court:

- (1) may pass a judgment for the sale of the burial ground on the terms and notice the court sets;
- (2) shall order that as much of the proceeds of the sale as necessary be used to pay the expenses of removing any human remains in the burial ground, buying burial lots in another burial ground, and reburying the remains; and
- (3) shall distribute the remaining proceeds of the sale among the parties according to their interests.

(c) A judgment for the sale of a burial ground passes to the buyer of the burial ground the title to the burial ground free of the claims of:

- (1) the owners of the burial ground; and
- (2) the holders of burial lots.

§5–506.

(a) An action may be brought in accordance with the Maryland Rules and a court may pass a judgment for sale of a burial ground in Baltimore City for another purpose if:

- (1) the ground has been dedicated and used for burial;
- (2) burial lots have been sold in the burial ground and deeds executed or other written instruments issued to buyers of the lots without provision being made for perpetual care of the lots; and
- (3) more than 75% of the area of the burial ground:
 - (i) has been abandoned; or
 - (ii) is harmful to the public health, safety, or welfare.

(b) The action may be brought by:

- (1) a person with a property right in the burial ground; or
- (2) a governmental unit with an interest in ending the conditions that are harmful to the public health, safety, or welfare.

(c) If the court is satisfied that more than 75% of the area of a burial ground has been abandoned or is harmful to the public health, safety, or welfare, the court:

- (1) may pass a judgment for the sale of the entire burial ground on the terms and notice the court sets; and
- (2) may appoint a trustee to sell the burial ground.

(d) The trustee shall distribute the sale proceeds:

- (1) first, to pay the expenses of removing any human remains, that, with reasonable care, can be definitely located in the burial ground, buying burial lots in another burial ground, and reburying the remains;
- (2) second, to pay expenses of removing any markers that are in good condition from the old lots and relocating the markers on new lots;
- (3) third, to pay the expenses of ending conditions that are harmful to the public health, safety, or welfare, unless the contract of sale of the burial ground provides for abatement of those conditions within a reasonable period of time after the sale is completed;
- (4) fourth, to pay the costs of necessary legal proceedings, including court costs, trustee's commissions, and legal fees;
- (5) fifth, to pay in full any taxes; and
- (6) finally, to pay the balance of the proceeds to the person who, immediately before the sale, had record title to the burial ground in its entirety according to the land records of Baltimore City.

(e) A judgment for the sale of a burial ground or a deed or other conveyancing instrument executed by a trustee under this section passes to the buyer of the burial ground the title to the burial ground free of:

- (1) the claims of the owners of the burial ground;
- (2) the claims of the holders of burial lots; and
- (3) the intended or actual use or dedication of the land in the burial ground for burial.

§5–601.

In this subtitle, "perpetual care":

- (1) means the maintenance, including the cutting of grass abutting memorials or monuments, administration, supervision, and embellishment of a cemetery and its grounds, roads, and paths; and
- (2) includes the repair and renewal of buildings, including columbaria and mausoleums, and the property of the cemetery.

§5-602.

- (a) This subtitle does not apply to a cemetery that:
- (1) has less than 1 acre available for burial; or
 - (2) is owned and operated by:
 - (i) a county;
 - (ii) a municipal corporation;
 - (iii) a church;
 - (iv) a synagogue;
 - (v) a religious organization;
 - (vi) a not for profit organization created before 1900 by an act of the General Assembly;
 - (vii) a family and does not conduct public sales; or
 - (viii) a State veterans agency.
- (b) This subtitle does not apply to the sale of a below-ground earth-covered chamber.
- (c) This subtitle does not amend a trust agreement covering a perpetual care fund that existed on or before July 1, 1973, except as to:
- (1) the appointment of a successor trustee or cotrustee;
 - (2) deposits into the fund after July 1, 1973; and
 - (3) the withdrawal from the fund of income on deposits made after July 1, 1973.

§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 from the perpetual care trust fund:

(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.

(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) 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) 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.

§5-604.

(a) A trustee appointed under this subtitle must be:

(1) a national banking association;

(2) a bank, as defined in the Maryland Uniform Fiduciaries Act;

(3) a savings bank insured by a unit of the federal government;

(4) a savings and loan association insured by a unit of the federal government; or
(5) a person who annually provides, with the trust report, the proof of a fidelity bond that meets the requirements of subsection (b) of this section from a recognized bonding institution authorized to do business in the State in an amount equal to the trust fund.

(b) The fidelity bond provided under subsection (a)(5) of this section shall be:

(1) for the benefit of the trust account of the cemetery or its burial space owners or both;
(2) conditioned such that the applicant shall comply with all Maryland laws and regulations relating to trust accounts; and
(3) subject to the approval of the Director.

(c) A trustee may not use any perpetual care trust funds required to be held in trust in accordance with this subtitle to:

(1) purchase an interest in any contract or agreement to which the registrant, permit holder, or any other person subject to the trust requirements of this subtitle, or any entity owned or under the control of a registrant, permit holder, or any other person subject to the trust requirements of this subtitle, or a spouse, child, parent, or sibling of a registrant or any other person subject to the trust requirements of this subtitle is a party; or

(2) make any loan or direct or indirect investment of any kind:
(i) to any registrant, permit holder, or any other person subject to the trust requirements of this subtitle or to any spouse, child, parent, or sibling of a registrant or any other person subject to the trust requirements of this subtitle;

(ii) to or in any entity or business operations owned or under the control of a registrant, permit holder, or any other person subject to the trust requirements of this subtitle, or a spouse, child, parent, or sibling of a registrant or any other person subject to the trust requirements of this subtitle;

(iii) on or in any real property of a cemetery, or the buildings or structures appurtenant to the property; or

(iv) in any permanent improvements of a cemetery or its facilities.

§5-605.

(a) The terms of a trust to provide for perpetual care shall be designated in a written agreement between the registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle and trustee.

(b) The terms of the trust agreement:

(1) shall conform to this subtitle; and

(2) may include provisions about:

(i) payment of income;

(ii) accumulation of income;

(iii) reinvestment of income;

(iv) administration of the trust fund; and

(v) powers of the trustee as to investments.

(c) (1) A trust agreement shall be irrevocable.

(2) However, a trust agreement may:

(i) give the registered cemeterian, permit holder, or other person subject to the trust requirements of this subtitle the right to remove the trustee and appoint another qualified trustee; and

(ii) provide for the appointment of individuals as cotrustees and successor cotrustees with a corporate trustee.

§5-606.

(a) (1) Each sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle shall keep detailed records of all sales of burial lots or burial rights in a cemetery and money received.

(2) The records of each sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle and of each trustee appointed by the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle are subject to examination by:

- (i) the Director;
- (ii) the Attorney General or an authorized representative of the Attorney General; and
- (iii) the State's Attorney for the county where the cemetery owner does business or

where the cemetery is located.

(b) (1) Each sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle shall submit a report to the Director within 120 days after the close of each calendar or other fiscal year chosen by the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle.

(2) The report shall:

(i) be on the form that the Director requires;

(ii) be certified as to correctness by a certified public accountant retained by the cemetery;

(iii) be accompanied by a trustee's annual summary statement of assets for the reporting period that includes:

1. the amount of money in the perpetual care trust fund at the beginning of the reporting period;

2. an investment portfolio summary describing the asset and the market value for each investment class;

3. a transaction summary of the perpetual care trust fund containing:

A. trust account earnings, including interest, dividends, and realized gains or losses;

B. money deposited;

C. total receipts;

D. administrative expenses;

E. disbursements of income for cemetery care, maintenance, administration, and embellishment;

F. other disbursements; and

G. total disbursements; and

4. the amount of money in the perpetual care trust fund at the end of the reporting period;

(iv) be accompanied by a fee of \$25; and

(v) include:

1. the name of the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle;

2. each location of the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle;

3. the amount of money in each perpetual care trust fund at the beginning of the calendar or other fiscal year chosen by the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle;

4. the amount of money that the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle received during that year that is subject to the trust requirements of this subtitle;

5. the amount of money actually deposited into each perpetual care trust fund in that year;

6. the amount of money spent during that year to provide care, maintenance, administration, and embellishment of each cemetery, except for money used for the care of monuments and memorials; and

7. the name and address of each trustee.

(3) If the Director determines, after a review of the report and annual summary statement of assets required by this subsection, that additional documentation is required, a sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle shall provide the additional documentation to the Director.

(4) A sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle who stops selling burial lots or burial rights in a cemetery as to which perpetual care is stated or implied shall notify the Director in the required report for the year in which sales stop.

(5) The Director may require a sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle to correct any underfunding, including interest, due to the perpetual care trust fund.

(c) The Director may adopt regulations:

(1) to administer subsection (b) of this section; and

(2) for determining whether registered cemeterians, permit holders, or any other person subject to the trust requirements of this subtitle are complying with this subtitle.

§5-607.

(a) If the Director finds that a registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle has violated this subtitle or a regulation adopted under this subtitle, the Director may refer the matter to:

(1) the Attorney General for civil enforcement; or

(2) the appropriate State's Attorney for criminal prosecution.

(b) The Attorney General may sue for and a court may grant:

(1) injunctive or other equitable relief;

(2) imposition of a civil penalty not exceeding \$5,000; or

(3) both.

§5-608.

A registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle may not sell or offer to sell to a member of the public a burial lot or burial right in a cemetery and represent to the public in any way, express or implied, that the cemetery or the burial lot or burial right in the cemetery will have perpetual care unless the sole proprietor registered cemeterian, permit holder, or any other person subject to the trust requirements of this subtitle has provided adequately for that perpetual care.

§5-609.

Except as provided in § 5-602 of this subtitle, a sole proprietor registered cemeterian, permit holder, or any other person subject to the permit or registration requirements of this title may not establish, operate, or allow a cemetery to be operated in violation of this subtitle.

§5-610.

(a) Except as otherwise provided in subsection (c) of this section, a sole proprietor registered cemeterian, permit holder, or any other person subject to the permit or registration requirements of this title who violates this subtitle is guilty of a misdemeanor and, on conviction, is subject to:

- (1) for a first violation, a fine not exceeding \$5,000 or imprisonment not exceeding 1 year or both;
- (2) for a second violation, a fine not exceeding \$10,000 or imprisonment not exceeding 2 years

or both; and

(3) for a third or subsequent violation, a fine not exceeding \$20,000 or imprisonment not exceeding 3 years or both.

(b) Except as otherwise provided in subsection (c) of this section, if a corporation violates this subtitle, each officer responsible for the violation is guilty of a misdemeanor and, on conviction, is subject to:

- (1) for a first violation, a fine not exceeding \$5,000 or imprisonment not exceeding 1 year or both;
- (2) for a second violation, a fine not exceeding \$10,000 or imprisonment not exceeding 2 years

or both; and

(3) for a third or subsequent violation, a fine not exceeding \$20,000 or imprisonment not exceeding 3 years or both.

(c) A person who willfully misappropriates or intentionally and fraudulently converts perpetual care trust funds in excess of \$100 to that person's own use is guilty of a felony and, on conviction, is subject to a fine not exceeding \$25,000 or imprisonment not exceeding 10 years or both.

§5-701.

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

(b) (1) "Burial space" means land or space in a structure used or to be used for burial.

(2) "Burial space" includes a burial right in the land or space.

(c) "Buyer" means a person who buys preneed goods or preneed services.

(d) "Preneed burial contract" means a written instrument under which preneed goods or preneed services are to be sold and delivered or performed.

(e) (1) "Preneed services" means services that are sold:

(i) before the buyer's death; and

(ii) in connection with burial or cremation.

(2) "Preneed services" includes opening and closing a grave.

(f) "Seller" means a registered cemeterian, registered crematory operator, registered seller, or any other person who sells preneed goods or preneed services.

(g) "Specific funds" means money that is identified to a specific preneed burial contract.

(h) "Trust account" means a preneed trust account.

§5-702.

- (a) This subtitle does not apply to:
- (1) the sale of burial space;
 - (2) a preneed contract made by an individual in connection with practicing funeral direction or practicing mortuary science, as those practices are defined in and regulated by the Health Occupations Article; or
 - (3) the preneed sale of burial goods or services by a private family cemetery that does not conduct public sales of burial goods or services.
- (b) This subtitle does not allow a person, directly or indirectly, through an agent or otherwise, to practice funeral direction or practice mortuary science, unless the person is licensed to practice funeral direction or practice mortuary science under the Health Occupations Article.
- (c) A preneed burial contract made under this subtitle is not an insurance contract and does not involve the business of insurance.
- (d) This subtitle does not require a cemetery to accept goods, perform services, or allow services to be performed if the goods or services are contrary to:
- (1) the law concerning burial; or
 - (2) the rules of the cemetery concerning the quality and kind of goods or services that may be used in connection with burial in the cemetery.
- (e) (1) A preneed burial contract made in accordance with § 5-704 of this subtitle may be funded by a life insurance policy or an annuity contract if:
- (i) the owner or operator of the cemetery is not the owner of or beneficiary under the life insurance policy or annuity contract;
 - (ii) an assignment of benefits to the owner or operator of the cemetery may be revoked at any time by the owner of the life insurance policy or annuity contract;
 - (iii) subject to item (iv) of this paragraph, the owner or operator of the cemetery agrees to accept the benefits payable under the life insurance policy or annuity contract as payment in full for the services and merchandise agreed on in the preneed burial contract; and
 - (iv) any benefits payable under the life insurance policy or annuity contract in excess of the amount necessary to pay the total price, as determined at the time of death of the insured, of the services and merchandise agreed on in the preneed burial contract are paid to the beneficiary under the life insurance policy or annuity contract.
- (2) A preneed burial contract that is funded by a life insurance policy or an annuity contract shall terminate if the assignment of benefits to the owner or operator of a cemetery is revoked by the owner of the life insurance policy or annuity contract.
- (3) (i) The offer, sale, or assignment of a life insurance policy or annuity contract to fund a preneed burial contract is not subject to this subtitle.
- (ii) A preneed burial contract funded by a life insurance policy or an annuity contract is not subject to § 5-705, § 5-706, § 5-707, § 5-708, or § 5-709 of this subtitle.

§5-703.

This subtitle applies only to preneed burial contracts made on or after October 1, 1984.

§5-704.

- (a) A preneed burial contract shall contain:
- (1) the name of the buyer;
 - (2) the name of the seller;

(3) the name of each individual, other than the buyer, as to whom the preneed goods or preneed services are to be furnished;

(4) a description of the preneed goods or preneed services; and

(5) the amount of the buyer's financial obligation.

(b) (1) A preneed burial contract shall be dated and executed in duplicate by the buyer and seller.

(2) The seller shall give the buyer a duplicate original of the preneed burial contract.

(c) (1) A preneed burial contract may provide for delivery of identified preneed goods by providing for the seller to:

(i) transfer physical possession of the preneed goods to the buyer or designee of the buyer;

(ii) attach the preneed goods to a designated burial space;

(iii) pay for and suitably store the preneed goods until needed, at a cemetery or other location of the seller, if the preneed goods are marked with the name of the buyer and the sale is supported by a verifiable record; or

(iv) have the supplier of the preneed goods:

1. cause title to be transferred to the buyer or designee of the buyer; and

2. agree in writing to ship the preneed goods at the direction of the buyer or

designee of the buyer.

(2) If a preneed burial contract does not provide for the manner of delivery of preneed goods, compliance with paragraph (1)(i) or (ii) of this subsection is delivery in accordance with this subtitle.

(d) Notwithstanding any provision in a preneed burial contract, identified preneed services are not considered to have been performed until performance actually occurs.

(e) (1) Except as otherwise provided in this subsection, a preneed burial contract may not provide for interest or a finance charge.

(2) A cemetery that makes a preneed burial contract may impose interest or a finance charge on preneed goods delivered before death or preneed services performed before death.

(3) If a cemetery imposes interest or a finance charge as permitted in paragraph (2) of this subsection, the interest or finance charge shall be at a fixed rate or sum not greater than allowed by the provisions of Title 12 of the Commercial Law Article.

(4) A registered cemeterian or permit holder may sell a preneed burial contract to a commercial lending institution at the financing terms in the contract if the preneed burial contract signed by the original buyer of the preneed goods or preneed services contains the following language in 12-point or larger type:

"Notice to consumers: This contract of sale may be sold to a commercial lending institution. After the sale, the commercial lending institution may impose interest or a finance charge on the remaining balance due".

(f) A provision of a preneed burial contract that purports to waive any provision of this subtitle is void.

§5-705.

(a) (1) Except as provided in subsection (b) of this section, a seller shall put in trust the second 50% of the total preneed burial contract price as the seller receives payments from the buyer.

(2) Within 30 days after receipt of the last payment, the seller shall deposit an additional amount to make the balance in the trust account equal to 55% of the total contract price.

(b) A seller shall put in trust an amount from the payment that is equal to 80% of the selling price of any casket or casket vault sold under the preneed burial contract.

(c) This section does not apply to:

(1) a preneed burial contract under which all preneed goods and preneed services, other than dates, scrolls, and other additions that represent not more than 10% of the total contract price, must be delivered or performed within 120 days after receipt of 50% of the total contract price; or

(2) money that a seller receives for preneed goods or preneed services to be delivered or performed within 120 days after receipt of any payment on account of the sale, if the buyer's obligation for these preneed goods or preneed services is separately itemized.

§5-706.

(a) Each trust account shall be:

- (1) titled "preneed trust account"; and
- (2) established by the seller in the seller's name.

(b) A trustee appointed under this subtitle must be:

- (1) a national banking association, as defined in the Financial Institutions Article;
- (2) a banking institution, as defined in the Financial Institutions Article;
- (3) any other financial institution allowed by law to engage in the trust business; or
- (4) a person who provides a fidelity bond from a recognized bonding institution in an amount

equal to the trust fund and inuring to the benefit of the trust account of the cemetery or burial goods business, or the preneed buyers, or both.

(c) A seller may:

- (1) commingle money from 2 or more preneed burial contracts; and
- (2) establish more than 1 trust account.

(d) (1) A trust account established under this subtitle shall be a single purpose trust.

(2) Money in the trust account is not available to a creditor as an asset of the seller.

(e) Money in the trust account may be withdrawn only on the combined signatures of:

- (1) 2 officers of a corporate seller; or
- (2) at least 2 individuals authorized to withdraw money for an unincorporated seller.

§5-707.

(a) In this section, "seller's account" means:

(1) the total of specific funds deposited from all preneed burial contracts of a seller commingled in a single fund; and

(2) any income derived from investing the money in the fund.

(b) Trust accounts shall be administered as this subtitle provides.

(c) (1) Except as otherwise provided in this subtitle, a trustee appointed under this subtitle is subject to the law that is generally applicable to trustees.

(2) If a trustee appointed under this subtitle is not located in the State, the agreement between the seller and the trustee expressly shall incorporate this subtitle.

(d) A trustee:

- (1) may rely on all certifications made under or required by this subtitle; and
- (2) is not liable to any person for that reliance.

(e) (1) Except as otherwise provided in this subtitle, a trustee may invest money of a trust account in any security that is a lawful investment for a fiduciary, including a time deposit or certificate of deposit issued by the trustee.

(2) Except as otherwise provided in this subtitle, to ensure that money in the trust account is adequate, the trust income, including any realized capital gains, shall:

- (i) remain in the trust account;
- (ii) be reinvested and compounded; and
- (iii) be disbursed only for payment of appropriate trustee's fees, commissions, prorated proportional shares of total realized capital gains attributable to specific funds, and other costs of the trust account.

(f) A trustee may not use any preneed trust funds required to be held in trust in accordance with this subtitle to:

(1) purchase an interest in any contract or agreement to which the registrant, the permit holder, or any other person subject to the trust requirements of this subtitle, or any entity owned or under the control of a registrant, a permit holder, or any other person subject to the trust requirements of this subtitle, or a spouse, child, parent, or sibling of a registrant or any other person subject to the trust requirements of this subtitle is a party; or

(2) make any loan or direct or indirect investment of any kind:

- (i) to any registrant, permit holder, or any other person subject to the trust requirements of this subtitle or to any spouse, child, parent, or sibling of a registrant or any other person subject to the trust requirements of this subtitle;

(ii) to or in any entity or business operations owned or under the control of a registrant, a permit holder, or any other person subject to the trust requirements of this subtitle, or a spouse, child, parent, or sibling of a registrant or any other person subject to the trust requirements of this subtitle;

(iii) on or in any real property of a cemetery or a crematory or the buildings or structures appurtenant to the property; or

(iv) in any permanent improvements of a cemetery, a crematory, the facilities of a cemetery or crematory, or the buildings or structures appurtenant to a cemetery or crematory.

(g) (1) A seller, on written notice to the trustee and in accordance with the agreement between them, may transfer the seller's account to another trustee.

(2) A trustee, on written notice to the seller and in accordance with the agreement between them, may transfer the seller's account to another trustee.

§5-708.

(a) The trustee may not disburse specific funds until preneed goods are delivered or preneed services are performed as provided in the preneed burial contract or in this subtitle.

(b) On performance of a preneed burial contract:

(1) the seller shall certify to the trustee:

(i) delivery of the preneed goods or performance of the preneed services; and

(ii) the amount of specific funds in the trust account; and

(2) the trustee shall then pay to the seller the specific funds, accrued interest on the specific funds, and a prorated proportional share of total realized capital gains attributable to the specific funds.

(c) (1) In a seller's records, the seller may itemize preneed goods or preneed services to which the trust requirements of this subtitle apply and the consideration paid or to be paid for each item.

(2) If a seller itemizes in accordance with paragraph (1) of this subsection, on performance of that part of a preneed burial contract identified for itemized preneed goods or preneed services:

(i) the seller shall certify to the trustee:

1. delivery of the preneed goods or performance of the preneed services; and

2. the amount of the specific funds identified in the seller's records for those preneed goods or preneed services; and

(ii) the trustee shall then pay to the seller those specific funds, accrued interest on the specific funds, and a prorated proportional share of total realized capital gains attributable to the specific funds.

(d) (1) If a preneed burial contract provides, for 2 or more individuals, preneed goods or preneed services to which the trust requirements of this subtitle apply, a seller may designate in the seller's records the consideration paid for each individual.

(2) On performance of that part of the preneed burial contract identified to a particular individual:

(i) the seller shall certify to the trustee:

1. delivery of the preneed goods or performance of the preneed services; and
2. the amount of the specific funds applicable to that part of the preneed

burial contract; and

(ii) the trustee shall then pay to the seller those specific funds, accrued interest on the specific funds, and a prorated proportional share of total realized capital gains attributable to the specific funds.

§5-709.

(a) (1) A buyer may cancel a preneed burial contract as to preneed goods not delivered or preneed services not performed if the buyer:

(i) permanently moves more than 75 miles from the cemetery specified in the preneed burial contract; and

(ii) gives to the seller written notice, under oath, of the move and includes the buyer's new permanent address.

(2) In that event:

(i) the seller shall certify to the trustee:

1. the cancellation of the preneed burial contract;
2. the amount of the remaining specific funds applicable to the preneed burial contract; and
3. the name and address of the buyer; and

(ii) the trustee shall then pay to the buyer the remaining specific funds, accrued interest on the specific funds, and a prorated proportional share of total realized capital gains attributable to the specific funds.

(b) (1) Notwithstanding subsection (a) of this section, by written notice, a buyer may cancel the purchase of a casket or casket vault under a preneed burial contract at any time prior to the time the buyer needs the casket or casket vault for burial.

(2) In that event:

(i) the seller shall certify to the trustee:

1. the cancellation of the purchase of the casket or casket vault under the preneed burial contract;
2. the amount of the specific funds applicable to the casket or casket vault under the preneed burial contract; and
3. the name and address of the buyer;

(ii) the trustee shall pay to the buyer the specific funds, interest accrued on the specific funds, and a prorated proportional share of total realized capital gains attributable to the specific funds; and

(iii) in addition to the refund paid by the trustee, the seller shall pay to the buyer an amount of money necessary to provide the buyer with a refund of 100% of the money paid for the casket or casket vault under the preneed burial contract.

(c) If a buyer fails to provide written notice of cancellation and defaults on a preneed burial contract and, as a result, the seller terminates the preneed burial contract:

(1) the seller shall certify to the trustee:

- (i) the default and termination of the preneed burial contract;
- (ii) the amount of the specific funds; and
- (iii) the reasonable expenses of the seller; and

(2) the trustee shall then pay:

(i) to the buyer, those specific funds, accrued interest on the specific funds, and a prorated proportional share of total realized capital gains attributable to the specific funds, less the reasonable expenses of the seller; and

(ii) to the seller, the reasonable expenses of the seller.

(d) If specific funds on deposit in a trust account have been dormant for at least 50 years since the date of the last deposit or disbursement and the seller cannot locate the buyer:

(1) the seller shall certify to the trustee:

- (i) that the trust account is dormant and the buyer cannot be located; and
- (ii) the amount of the specific funds; and

(2) the trustee shall then pay to the seller those specific funds, accrued interest on the specific funds, and a prorated proportional share of total realized capital gains attributable to the specific funds.

§5-710.

(a) (1) Each seller shall keep detailed records of all preneed burial contracts and specific funds.

(2) The records of each seller and of each trustee appointed by the seller are subject to examination by:

- (i) the Director;
- (ii) the Attorney General or an authorized representative of the Attorney General; and
- (iii) the State's Attorney for the county where the seller does business.

(b) (1) Each seller subject to the trust requirements of this subtitle shall submit a report to the Director within 150 days after the close of each calendar or other fiscal year chosen by the seller.

(2) The report shall:

- (i) be on the form that the Director requires;
- (ii) be certified by a certified public accountant retained by the seller;
- (iii) be accompanied by a trustee's annual summary statement of assets from the trustee for the reporting period which includes:

1. the amount of money in the preneed trust fund at the beginning of the reporting period;

2. an investment portfolio summary describing the asset and the market value for each investment class;

3. a transaction summary of the preneed trust fund containing:

- A. trust account earnings;
- B. money deposited;
- C. total receipts;
- D. administrative expenses;
- E. withdrawals from the trust account for canceled contracts;
- F. withdrawals from the trust account for delivery of merchandise for use or storage, and for services performed, including the principal and earnings;

- G. other disbursements; and
- H. total disbursements; and
- 4. the amount of money in the preneed trust fund at the end of the reporting

period;

(iv) be accompanied by a fee of \$25; and

(v) include:

- 1. the name of the seller;
 - 2. each location of the seller;
 - 3. the amount of money that the seller received during that year that is
- subject to the trust requirements of this subtitle;
- 4. the amount of money actually deposited into trust accounts in that year;
 - 5. the amount of money required to be disbursed from the trust accounts in
- that year;
- 6. the amount of money actually disbursed from the trust accounts in that
- year; and
- 7. the name and address of the trustee.

(3) If the Director determines, after a review of the report and annual summary statement of assets required by this subsection, that additional documentation is required, a seller subject to the trust requirements of this subtitle shall provide the additional documentation to the Director.

(4) (i) A seller of preneed goods or preneed services that sells its business, files a petition in bankruptcy, or ceases to operate shall provide written notice within 15 days:

1. to the Director, detailing the changes and the arrangements the seller has made for carrying out the preneed burial contracts and the disbursement of any moneys held in an escrow or trust account; and

2. to each buyer of a preneed burial contract, advising the buyer of the buyer's options under State law in regard to the preneed contract.

(ii) Nothing in this paragraph exempts a seller of preneed goods or services that sells its business, files a petition in bankruptcy, or ceases to operate from filing the annual report required under this section.

(c) A seller of a preneed burial contract shall provide each buyer or prospective buyer with a general price list for the buyer or prospective buyer to keep which shall include:

(1) specific prices for:

- (i) ground opening and closing;
- (ii) extra depth interment;
- (iii) interment of cremated remains; and
- (iv) mausoleum entombment; and

(2) general price ranges for burial space or preneed goods.

(d) A seller of a preneed burial contract shall disclose to the buyer:

(1) all goods and services that are reasonably expected to be required at the time of need that are not included in the preneed burial contract;

(2) the buyer's cancellation and refund rights under § 5-709 of this subtitle;

(3) the person responsible for installation of the goods sold and any warranties for the goods sold; and

(4) if the preneed contract provides for goods or services to be delivered or performed before death:

- (i) that interest or finance charges may be imposed;

(ii) that interest or finance charges are not allowed on other preneed burial contracts that do not provide for goods or services to be delivered or performed before death;

(iii) the manner of delivery of goods including where the goods are stored; and

(iv) the buyer's remedy if delivered goods are damaged or destroyed.

(e) The Director may require a seller to correct any underfunding, including interest, due to the preneed trust account.

(f) The Director may adopt regulations:

(1) to administer this section; and

(2) for determining whether sellers are complying with this subtitle.

§5-711.

(a) If the Director finds that a seller has violated this subtitle or a regulation adopted under this subtitle, the Director may refer the matter to:

(1) the Attorney General for civil enforcement; or

(2) the appropriate State's Attorney for criminal prosecution.

(b) The Attorney General may sue for and a court may grant:

(1) injunctive or other equitable relief;

(2) imposition of a civil penalty not exceeding \$5,000; or

(3) both.

§5-712.

(a) A seller may not fail to deposit, as required by this subtitle, money received under or in connection with a preneed burial contract.

(b) (1) Except as otherwise provided in subsection (c) of this section, a person who violates this section is guilty of a misdemeanor and, on conviction, is subject to:

(i) for a first violation, a fine not exceeding \$10,000 or imprisonment not exceeding 1 year or both;

(ii) for a second violation, a fine not exceeding \$15,000 or imprisonment not exceeding 2 years or both; and

(iii) for a third or subsequent violation, a fine not exceeding \$20,000 or imprisonment not exceeding 3 years or both.

(2) Except as otherwise provided in subsection (c) of this section, if a corporation violates this section, each officer responsible for the violation is guilty of a misdemeanor and, on conviction, is subject to:

(i) for a first violation, a fine not exceeding \$10,000 or imprisonment not exceeding 1 year or both;

(ii) for a second violation, a fine not exceeding \$15,000 or imprisonment not exceeding 2 years or both; and

(iii) for a third or subsequent violation, a fine not exceeding \$20,000 or imprisonment not exceeding 3 years or both.

(c) A person who willfully misappropriates or intentionally and fraudulently converts preneed trust funds in excess of \$100 to that person's own use is guilty of a felony and, on conviction, is subject to a fine not exceeding \$25,000 or imprisonment not exceeding 10 years or both.

§5-801.

(a) At the time of entering into a contract with a consumer for the sale of burial goods or services, registrants, permit holders, or any other person subject to the provisions of this title shall make the following written disclosures:

- (1) the itemized cost for each service performed under the contract;
- (2) a list of services incidental to burial that are not covered by the contract;
- (3) a statement regarding the cemetery's policy on the use of independent monument companies; and
- (4) the name, address, and telephone number for the State Office of Cemetery Oversight.

(b) (1) The disclosures required under subsection (a)(1), (2), and (3) of this section shall be conspicuously incorporated in the contract in 12-point type.

(2) The disclosure required under subsection (a)(4) of this section shall be on a form separate from the contract and must be separately signed and dated by the consumer.

(c) The disclosure must be signed and dated by the consumer.

(d) The consumer must be provided with a copy of the contract and a copy of the form required under subsection (b)(2) of this section at the time of purchasing the burial goods or services.

(e) The disclosure shall occur:

(1) not later than the first scheduled face-to-face contact with the purchaser or party representing the purchaser; or

(2) if no face-to-face contact occurs, at the time of the execution of the contract by the purchaser or party representing the purchaser.

(f) The Director, by regulation, may prescribe the form and wording of the disclosure.

(g) If the purchase by the consumer includes a cemetery plot, the registered cemeterian, permit holder, or any other person subject to the provisions of this title shall provide the consumer with a copy of a location survey, performed by a licensed land surveyor, which indicates the location of the purchased plot within the cemetery, or by any other means approved by the Director.

(h) Registrants, permit holders, or any other person subject to the provisions of this title shall provide each buyer or prospective buyer with a general price list for the buyer or prospective buyer to keep which shall include:

- (1) specific prices for:
 - (i) ground opening and closing;
 - (ii) extra depth interment;
 - (iii) interment of cremated remains; and
 - (iv) mausoleum entombment; and
- (2) general price ranges for burial space or burial goods.

§5-802.

(a) Within 1,000 yards of Druid Hill Park:

- (1) a cemetery corporation may not allow burial or establish or maintain a cemetery; and
- (2) a person may not participate in any way in a burial in a cemetery of a cemetery corporation.

(b) A person may not cause a funeral procession to or from a cemetery of a cemetery corporation to pass through Druid Hill Park without the written permission of the Department of Recreation and Parks.

(c) A person who violates this section is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$100 or imprisonment not exceeding 10 days or both.

§5–803.

(a) (1) In this section the following words have the meanings indicated.

(2) “Eligible dependent” means a veteran’s spouse, a veteran’s unmarried child under the age of 21 years, or a veteran’s unmarried adult child who before the age of 21 became permanently incapable of self-support because of physical or mental disability.

(3) (i) “Identifying information” means data required by a veterans service organization to verify the eligibility of a veteran or an eligible dependent for burial in a national or state veterans cemetery.

(ii) “Identifying information” includes name, service number, Social Security number, date of birth, date of death, place of birth, and copy of the death certificate.

(4) “Veteran” has the meaning stated in § 9–901 of the State Government Article.

(5) “Veterans service organization” means an association or other entity organized for the benefit of veterans that has been recognized by the U.S. Department of Veterans Affairs or chartered by Congress and any employee or representative of the association or entity.

(b) If a licensed funeral establishment or a crematory is in possession of cremated human remains that have been unclaimed for 90 days or more, the licensed funeral establishment or holder of the permit for the business of operating a crematory shall provide identifying information of the unclaimed cremains to a veterans service organization in order for the veterans service organization to determine if the unclaimed cremains are those of a veteran or an eligible dependent.

(c) Within 45 days after receipt of the information required by subsection (b) of this section, the veterans service organization shall notify the licensed funeral establishment or permit holder:

(1) whether the cremains are those of a veteran or an eligible dependent; and

(2) if so, whether the veteran or eligible dependent is eligible for burial in a veterans cemetery.

(d) If the unclaimed cremains are those of a veteran or an eligible dependent, the licensed funeral establishment or permit holder may transfer the cremains to a veterans service organization for the purpose of disposition of the cremains.

§5–901.

(a) Except as otherwise provided in this title, an individual may not engage in cemetery operations, attempt to engage in cemetery operations, or provide or offer to provide burial space, goods, and services unless the individual is authorized as a registrant.

(b) Except as otherwise provided in this title, an individual may not engage in a burial goods business or attempt to provide burial goods unless the individual is authorized as a registrant.

(c) Except as otherwise provided in this title, an individual may not engage in the operation of a crematory, attempt to engage in the operation of a crematory, or provide or offer to provide cremation services unless the individual is authorized as a registrant.

§5–902.

Except for a registered cemeterian, registered crematory operator, or registered seller who operates a business as a sole proprietor or a registrant employed by a sole proprietor, a person may not engage in the operation of a cemetery, crematory, or burial goods business unless:

(1) the business is a corporation, limited liability company, or partnership; and

(2) the corporation, limited liability company, or partnership holds a permit issued under this title.

§5-903.

Unless a person is authorized as a registrant, a person may not represent to the public, by use of a title, including cemeterian, registered cemeterian, crematory operator, registered crematory operator, burial goods seller, or registered seller, by description of services, methods, or procedures, or otherwise, that the person is authorized to engage in the operation of a cemetery or crematory or provide burial goods.

§5-904.

A person who violates this subtitle is guilty of a misdemeanor and, on conviction, is subject to:

- (1) for a first violation, a fine not exceeding \$5,000 or imprisonment not exceeding 1 year or both;
- (2) for a second violation, a fine not exceeding \$10,000 or imprisonment not exceeding 2 years or both; and
- (3) for a third or subsequent violation, a fine not exceeding \$15,000 or imprisonment not exceeding 3 years or both.

§5-905.

(a) If the Director finds that a person has violated this subtitle or a regulation adopted under this subtitle, the Director may refer the matter to:

- (1) the Attorney General for civil enforcement; or
- (2) the appropriate State's Attorney for criminal prosecution.

(b) The Attorney General may sue for and a court may grant:

- (1) injunctive or other equitable relief;
- (2) imposition of a civil penalty not exceeding \$5,000; or
- (3) both.

§5-1001.

This title may be cited as the "Maryland Cemetery Act".

§5-1002.

Subject to the evaluation and reestablishment provisions of the Maryland Program Evaluation Act, the Office of Cemetery Oversight, the provisions in this title relating to the Office, and all regulations adopted by the Office shall terminate and be of no effect after July 1, 2023.