

# HOUSE BILL 243

C2

0lr1331  
CF SB 483

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By: ~~Delegates Krebs, Bagnall, Charles, Cullison, Kelly, Kerr, Kipke, R. Lewis, and Saab~~ Saab, Bhandari, Chisholm, Hill, Johnson, Morgan, Pena-Melnyk, Pendergrass, Reilly, Szeliga, and K. Young

Introduced and read first time: January 17, 2020

Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 18, 2020

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

1 AN ACT concerning

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

3 FOR the purpose of requiring a distribution from a certain trust fund to be used for certain  
4 purposes; repealing a requirement that certain capital gains of a perpetual care trust  
5 fund be deposited into the perpetual care trust fund in a certain manner; permitting  
6 a certain cemetery to select a certain method of distribution from a certain perpetual  
7 care trust fund; requiring the cemetery to submit a certain statement to the Director  
8 of the Office of Cemetery Oversight if the cemetery selects a certain method of  
9 distribution from the perpetual care trust fund; requiring the cemetery to notify a  
10 certain trustee and the Director ~~of the Office of Cemetery Oversight~~ in a certain  
11 manner if the cemetery selects a certain method of distribution from the perpetual  
12 care trust fund; providing that the cemetery's method of distribution is contingent  
13 on the approval of the Director; requiring the Director to approve or disapprove a  
14 certain method of distribution in a certain manner; requiring the trustee to  
15 distribute certain income from the perpetual care trust fund if the cemetery does not  
16 select a method of distribution from the perpetual care trust fund; requiring the  
17 trustee to submit a certain annual statement to the Director under certain  
18 circumstances; prohibiting the trustee from reducing a distribution under certain  
19 circumstances; requiring the trustee to adopt a certain investment policy under  
20 certain circumstances; requiring the trustee to use a certain method of distribution  
21 from the perpetual care trust fund if the fair market value of the perpetual care trust  
22 fund exceeds a certain sum, but requiring the trustee to use a different method of  
23 distribution if the fair market value of the perpetual care trust fund does not exceed

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

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



a certain sum; permitting the Director to limit or prohibit a certain distribution under certain circumstances; requiring the trustee to pay certain taxes from the principal of the perpetual care trust fund; defining a certain term; requiring the Director to make a certain report to certain committees of the General Assembly on or before a certain date; and generally relating to investment of cemetery perpetual care trust funds.

BY repealing and reenacting, with amendments,  
Article – Business Regulation  
Section 5–603  
Annotated Code of Maryland  
(2015 Replacement Volume and 2019 Supplement)

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

### **Article – Business Regulation**

5–603.

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

(1) that is available for burial;

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

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

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

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

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

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

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

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

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

7           (1) \$10,000, if the developed land area of the cemetery is 10 acres or less  
8 and the cemetery is a nonprofit cemetery which does not sell burial goods;

9           (2) \$25,000, if the developed land area of the cemetery is more than 10  
10 acres and the cemetery is a nonprofit cemetery which does not sell burial goods;

11           (3) \$25,000, if the developed land area of the cemetery is 10 acres or less  
12 and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells burial goods;  
13 or

14           (4) \$50,000, if the developed land area of the cemetery is more than 10  
15 acres and the cemetery is a for-profit cemetery or a nonprofit cemetery which sells burial  
16 goods.

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

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

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

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

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

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

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

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

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

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

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

[(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.]

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

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

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

**(II) AN AMOUNT NOT EXCEEDING ~~5%~~ 4% OF THE AVERAGE OF THE END-OF-YEAR FAIR MARKET VALUE OF THE PERPETUAL CARE TRUST FUND FOR THE PRECEDING 3 CALENDAR YEARS, TO BE DISTRIBUTED ON A MONTHLY, QUARTERLY, SEMIANNUAL, OR ANNUAL BASIS.**

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

**1. THE TRUSTEE SHALL SUBMIT TO THE DIRECTOR A STATEMENT ATTESTING THAT THE CEMETERY’S SELECTION OF THE METHOD OF DISTRIBUTION DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION IS NOT REASONABLY EXPECTED TO RESULT IN INSUFFICIENT PROTECTION OF THE PERPETUAL CARE TRUST FUND’S PRINCIPAL;**

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

~~2.~~ 3. THE NOTIFICATION UNDER ITEM 1 OF THIS SUBPARAGRAPH SHALL INCLUDE A COPY OF THE INVESTMENT POLICY STATEMENT FOR THE TRUST AND THE PLANNED INITIAL DISTRIBUTION AMOUNT;

~~3.~~ 4. THE CEMETERY SHALL NOTIFY THE TRUSTEE IN WRITING AT LEAST ~~30~~ 60 DAYS BEFORE THE DATE THE METHOD OF DISTRIBUTION WILL TAKE EFFECT; AND

~~4.~~ 5. THE METHOD OF DISTRIBUTION SHALL REMAIN IN EFFECT UNTIL THE CEMETERY NOTIFIES THE TRUSTEE AND THE DIRECTOR IN WRITING THAT THE CEMETERY HAS SELECTED A DIFFERENT METHOD OF DISTRIBUTION.

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

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

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

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

(I) SHALL SUBMIT ANNUALLY TO THE DIRECTOR A STATEMENT ATTESTING THAT THE CEMETERY'S SELECTION OF THE METHOD OF DISTRIBUTION DESCRIBED IN PARAGRAPH (2)(II) OF THIS SUBSECTION IS NOT REASONABLY EXPECTED TO RESULT IN INSUFFICIENT PROTECTION OF THE PERPETUAL CARE TRUST FUND'S PRINCIPAL;

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

~~(III)~~ (III) SHALL ADOPT AN INVESTMENT POLICY THAT SUPPORTS THE GROWTH OF THE PERPETUAL CARE TRUST FUND; AND

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

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

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

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

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

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

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

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

~~[(g)]~~ (H) (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

1 subtitle, the perpetual care trust funds may not be made available to any creditor as assets  
2 of the sole proprietor registered cemeterian, permit holder, or any other person subject to  
3 the trust requirements of this subtitle or as payment for any expenses of any bankruptcy  
4 or similar proceedings, but shall be retained intact to provide for the future maintenance  
5 of the cemetery.

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

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

14 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1,  
15 2027, the Director of the Office of Cemetery Oversight shall report to the Senate Finance  
16 Committee and the House Health and Government Operations Committee, in accordance  
17 with § 2–1257 of the State Government Article, on:

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

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

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

26 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
27 October 1, 2020.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.