

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 18
PROPOSED COMMITTEE SUBSTITUTE S18-PCS35331-SU-22

Short Title: Amend Cemetery Act.

(Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE NORTH CAROLINA CEMETERY ACT BY REQUIRING
2 PROOF OF A SUFFICIENT TRUST FUND OR SURETY BOND PRIOR TO
3 APPROVING A CHANGE OF CONTROL OF A CEMETERY COMPANY, CHANGING
4 THE INVESTMENTS OPTIONS FOR PERPETUAL CARE TRUST FUNDS,
5 REQUIRING CEMETERY COMPANIES TO LIST THE COST OF OPENING AND
6 CLOSING A GRAVE SPACE AS PART OF THE CONTRACT, PROHIBITING A
7 CEMETERY COMPANY FROM REQUIRING A PURCHASER OF A GRAVE SPACE
8 TO PURCHASE A VAULT FROM A PARTICULAR SELLER, INCREASING THE
9 EXTENSION THAT MAY BE GIVEN TO A CEMETERY COMPANY FOR
10 COMPLETION OF CONSTRUCTION OF MAUSOLEUMS, ELIMINATING THE
11 ABILITY TO POST BONDS IN LIEU OF DEPOSITS TO TRUST ACCOUNTS, AND
12 CREATING THE LEGISLATIVE STUDY COMMISSION ON THE NORTH
13 CAROLINA CEMETERY ACT.
14

15 The General Assembly of North Carolina enacts:

16 **SECTION 1.** G.S. 65-59 reads as rewritten:

17 **"§ 65-59. Application for a change of control; filing fee.**

18 A person who proposes to acquire control of an existing cemetery company, whether by
19 purchasing the capital stock of the company, purchasing an owner's interest in the company, or
20 otherwise acting to effectively change the control of the company, shall first make application
21 on a form supplied by the Commission for a certificate of approval of the proposed change of
22 control. The application shall contain the name and address of each proposed new owner. The
23 Commission shall issue a certificate of approval only after it determines that the proposed new
24 owners are qualified by character, experience, and financial responsibility to control and
25 operate the cemetery company in a legal and proper manner, and that the interest of the public
26 generally will not be jeopardized by the proposed change in control. An application for
27 approval of a change of control must be completed and accompanied by a filing fee to be set by
28 the Commission in an amount not to exceed one thousand six hundred dollars (\$1,600). The
29 Commission shall not approve any change of control until the applicant has provided sufficient
30 evidence that any trust account required under G.S. 65-66(b) and G.S. 65-70(b) is maintained
31 and funded in the required amount. If the cemetery company posted a performance bond in lieu
32 of any trust account required under G.S. 65-66(b) and G.S. 65-70(b) prior to October 1, 2009,
33 then the Commission shall not approve any change of control until the applicant has provided
34 sufficient evidence that the performance bond is being appropriately maintained and in an



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1 amount sufficient to cover all payments made directly or indirectly by or on account of
2 purchasers who have not received the purchased property and services."

3 **SECTION 2.** G.S. 65-60.1(e) reads as rewritten:

4 "(e) Any trustee shall invest and reinvest cemetery trust funds in the same manner as
5 provided by law for the investment of trust funds by the clerk of the superior court; provided,
6 however, that this subsection does not apply to a perpetual trust fund described in G.S. 65-64 or
7 that cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to
8 G.S. 65-64(e)G.S. 65-64(e), which may be invested and reinvested in accordance with
9 G.S. 36A-2.G.S. 32-71."

10 **SECTION 3.** G.S. 65-64 reads as rewritten:

11 **"§ 65-64. Deposits to perpetual care fund.**

12 (a) Deposits to the care and maintenance trust fund must be made by the cemetery
13 company holding title to the subject cemetery lands on or before the last day of the calendar
14 month following the calendar month in which final payment is received as provided herein;
15 however the entire amount required to be deposited into the fund shall be paid within four years
16 from the date of any contract requiring ~~such the~~ payment regardless of whether all amounts
17 have been received by the cemetery company. If the cemetery company fails to make timely
18 deposit, the Commission may levy and collect a late filing fee of one dollar (\$1.00) per day for
19 each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. The
20 care and maintenance trust fund shall be invested and reinvested by the trustee in accordance
21 with G.S. 32-71. ~~the same manner as provided by law for the investment of other trust funds by~~
22 ~~the clerk of the superior court except that such investments may be made through means of a~~
23 ~~common trust fund as described in G.S. 36A-90; provided, further, that cemetery Investments~~
24 may be made through means of a common trust fund as described in G.S. 53-163.5. Cemetery
25 trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be
26 invested and reinvested in accordance with ~~G.S. 36A-2.G.S. 32-71.~~ The fees and other
27 expenses of the trust fund shall be paid by the trustee from the net income thereof and may not
28 be paid from the corpus. To the extent that the ~~said~~ net income is not sufficient to pay ~~such the~~
29 fees and other expenses, the ~~same fees and other expenses~~ shall be paid by the cemetery
30 company.

31 (b) When a municipal, church-owned or fraternal cemetery converts to a private
32 cemetery as defined in G.S. 65-48, then ~~said the~~ cemetery shall establish and maintain a care
33 and maintenance trust fund pursuant to this section; provided, however, the initial deposit for
34 establishment of this trust fund shall be an amount equal to fifty dollars (\$50.00) per space for
35 all spaces either previously sold or contracted for sale in ~~said the~~ cemetery at the time of
36 conversion or fifty thousand dollars (\$50,000), whichever sum is greater.

37 (c) Repealed by 1991 (Regular Session, 1992), c. 1007, s. 35.

38 (d) In each sales contract, reservation or agreement wherein burial rights are priced
39 separately, the purchase price of ~~said the~~ burial rights shall be the only item subject to care and
40 maintenance trust fund deposits; but if the burial rights are not priced separately therein, the full
41 amount of the contract, reservations or agreement shall be subject to care and maintenance trust
42 fund deposits as provided herein, unless the purchase price of ~~said the~~ burial rights can be
43 determined from the accounting records of the cemetery company.

44 (e) When the amount deposited in the perpetual care fund required by this Article of
45 any cemetery company shall amount to one hundred fifty thousand dollars (\$150,000), anything
46 in this Article to the contrary notwithstanding, the cemetery company may make all deposits
47 thereafter either into the original perpetual care trust fund or into a separate fund established as
48 an irrevocable trust, designated as Perpetual Care Trust Fund "A," and invested by the trustee,
49 in accordance with ~~G.S. 36A-2, as directed by the cemetery company.G.S. 32-71.~~ Funds in a
50 trust fund designated as Trust Fund "A" may not be invested in another cemetery company.

1 (f) For special endowments for a specific lot, grave, or a family mausoleum, memorial,
2 marker, or monument, the cemetery may set aside the full amounts received for this individual
3 special care in a separate trust or by a deposit to a savings account in a bank or savings and loan
4 association located within and authorized to do business in the State; provided, however, if the
5 licensee does not set up a separate trust or savings account for the special endowment the full
6 amount thereof shall be deposited in Perpetual Care Trust Fund 'A.'"

7 **SECTION 4.** G.S. 65-66 reads as rewritten:

8 "**§ 65-66. Receipts from sale of personal property or services; trust account; penalties.**

9 (a) It shall be deemed contrary to public policy if any person or legal entity receives,
10 holds, controls or manages funds or proceeds received from the sale of, or from a contract to
11 sell, personal property or services which may be used in a cemetery in connection with the
12 burial of or the commemoration of the memory of a deceased human being, where payments
13 for the same are made either outright or on an installment basis prior to the demise of the
14 person or persons so purchasing them or for whom they are so purchased, unless ~~such~~the
15 person or legal entity holds, controls or manages ~~said~~the funds, subject to the limitations and
16 regulations prescribed in this section. This section shall apply to all cemetery companies or
17 other legal entities that offer for sale or sell personal property or services which may be used in
18 a cemetery in connection with the burial of, or the commemoration of the memory of, a
19 deceased human being, but shall exclude persons holding a license under Article 13D of
20 Chapter 90 of the General Statutes.

21 (b) Any cemetery company or other entity entering into a contract for the sale of
22 personal property or services, to be used in a cemetery in connection with disposing of, or
23 commemorating the memory of a deceased human being wherein the use of the personal
24 property or the furnishing of services is not immediately requested or required, shall comply
25 with the following requirements and conditions:

26 (1) The cemetery company or other entity shall deposit an amount equal to sixty
27 percent (60%) of all proceeds received on ~~such~~the contracts into a trust
28 account, either in the form of an account governed by a trust agreement and
29 handled by a corporate trustee or in the form of a passbook savings account,
30 certificates of deposit for time certificates, ~~and/or~~ money-market
31 certificates with a licensed and insured bank or savings institution located in
32 the State of North Carolina until the amount deposited equals sixty percent
33 (60%) of the actual sale price of the property or services sold. ~~Such~~The
34 accounts ~~and/or~~ deposits or both shall be in the name of the cemetery
35 company or other entity in a form which will permit withdrawals only with
36 the participation and consent of the Cemetery Commission as required by
37 subdivision (4) of this subsection.

38 (2) All funds received on account of a contract for the sale of ~~such~~the personal
39 property or services, whether the funds be received directly from the
40 purchaser or from the sale or assignment of notes entered into by the
41 purchase or otherwise, shall be deposited into the trust account as required
42 by subdivision (1) of this ~~section~~subsection.

43 (3) All deposits required herein shall be made into the trust account so
44 established on or before the last day of the month following receipt of the
45 funds by the cemetery company or other entity.

46 (4) Withdrawals from a trust account may be made by the depositor, but only
47 with the written approval of the Commission or officer or employee of the
48 Commission authorized to act for the Commission. Withdrawals may be
49 made only upon delivery of the merchandise or services for which the funds
50 were deposited, cancellation of a contract, the presence of excess funds in
51 the trust account, or under other circumstances deemed appropriate by the

1 Commission. The Commission shall promulgate rules and regulations
2 governing withdrawals from trust accounts, including time and frequency of
3 withdrawals, payments that will be made with the withdrawals, notice to the
4 Commission prior to withdrawals, the number and identity of persons other
5 than the owner who are authorized by the owner to make withdrawals, the
6 officers and employees of the Commission authorized to approve
7 withdrawals, and any other matters necessary to implement the provisions of
8 this subdivision. Withdrawals will not be allowed if the amount remaining in
9 the trust account would fall below sixty percent (60%) of all proceeds
10 received on account of contracts for the sale of ~~such~~ the personal property or
11 services.

12 (5) If for any reason a cemetery company or other entity who has entered into a
13 contract for the sale of personal property or services cannot or does not
14 provide the personal property or perform the services called for by the
15 contract after request in writing to do so, the purchaser or his heirs or assigns
16 or duly authorized representative shall be entitled to receive the entire
17 amount paid on the contract and any income if any, earned thereon by the
18 trust account.

19 (6) Every year after September 1, 1975, the cemetery company, the trustee or
20 other entity shall within 75 days after the end of the calendar year, file a
21 financial report of the trust funds with the Commission, setting forth the
22 principal thereof, the investments and payments made, the income earned
23 and disbursed; provided, however, that the Commission may require the
24 cemetery, trustee, or other entity to make ~~such~~ the additional financial
25 reports as it may deem advisable.

26 (c) Whenever a contract for the sale of personal property ~~and/or~~ or services or both
27 allocates payments to apply to one item at a time under a specific schedule, the contract shall be
28 considered divisible. Title to each item of personal property or the right to each item of services
29 shall pass to the purchaser upon full payment for that item regardless of the remaining balance
30 on other items under the same contract.

31 (d) Any contract for the sale of personal property ~~and/or~~ or services or both shall state
32 separate costs for each item of personal property, for each act of installation required by the
33 contract, for opening and closing each grave space, and for each other item of services included
34 in the contract.

35 (e) All contracts for the sale of personal property ~~and/or~~ or services or both must be
36 printed in type size as required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and
37 regulations adopted pursuant to that act.

38 (f) In the event of prepayment, interest charged shall be no more than the interest
39 earned on the unpaid balance computed on a percent per month basis for each month or part of
40 a month up to the date of final payment. Any excess interest which has been paid by the
41 purchaser must be refunded to him, his assigns, or his representative within 30 days after the
42 final payment. No penalty or additional charge for prepayment may be required.

43 (g) In lieu of the deposits required under subsection (b) of this section, the cemetery
44 company or other entity may post with the Commission a good and sufficient performance
45 bond by surety company licensed to do business in North Carolina and in an amount sufficient
46 to cover all payments made directly or indirectly by or on account of purchasers who have not
47 received the purchased property and services. Money received from the sale or assignment of
48 notes entered into by the purchasers, or otherwise, shall be treated as payments made by the
49 purchasers.

50 (h) The Commission shall have the power and is required from time to time as it may
51 deem necessary to examine the business of any cemetery company or other entity writing

1 contracts for the sale of the property or services as herein contemplated. The written report of
2 ~~such-the~~ examination shall be filed in the office of the Commission. Any person or entity being
3 examined shall produce the records of the company needed for ~~such-the~~ examination.

4 (i) Any provision of any contract for the sale of the personal property or the
5 performance of services herein contemplated under which the purchaser or beneficiary waives
6 any of the provisions of this section shall be void.

7 (j) Repealed by Session Laws 1991, c. 653, s. 7.

8 (k) Nothing in this section shall apply to persons or legal entities holding licenses under
9 Article 13D of Chapter 90 of the General Statutes when engaging in activities for which a
10 license is required under that Article.

11 (l) If any report is not received within the time stipulated by the Commission or herein,
12 the Commission may levy and collect a late filing fee of twenty-five dollars (\$25.00) per month
13 for each month of delinquency.

14 (m) Within 30 days following the execution of a contract for the sale of personal
15 property or performance of services, a purchaser may cancel his contract by giving written
16 notice to the seller. The seller may cancel the contract, upon default by purchaser, by giving
17 written notice to the purchaser. Within 30 days of notice of cancellation, the cemetery company
18 or other entity shall refund to purchaser the principal amount on deposit in the trust account for
19 his benefit on any undelivered merchandise or services. This amount (no other obligations
20 owed the purchaser by the seller) shall constitute the purchaser's entire entitlements under the
21 contract. The seller may not terminate the contract without complying with this subsection.

22 (n) A cemetery company shall not require the purchaser or consumer of a grave space,
23 mausoleum, or mausoleum section to purchase a vault from the cemetery company or from any
24 other particular seller of vaults as a condition to the purchase or use of a grave space,
25 mausoleum, or mausoleum section but may require that a casket be enclosed within a vault. A
26 cemetery company may charge a reasonable fee not to exceed twenty dollars (\$20.00) for
27 delivery of vaults or inspection of vaults that are purchased from a person other than the
28 cemetery company."

29 **SECTION 5.** G.S. 65-66(g) is repealed.

30 **SECTION 6.** G.S. 65-70 reads as rewritten:

31 **"§ 65-70. Construction of mausoleums and belowground crypts; trust fund for receipts**
32 **from sale of preconstruction crypts; compliance requirements.**

33 (a) A cemetery company shall be required to start construction of that section of a
34 mausoleum or bank of belowground crypts in which sales, contracts for sale, reservations for
35 sales or agreements for sales are being made, within 48 months after the date of the first ~~such~~
36 sale. The construction of ~~such-the~~ mausoleum section or bank of belowground crypts shall be
37 completed within five years after the date of the first sale made; provided, however, extensions
38 for completion, not to exceed ~~one year,~~ three years, may be granted by the Commission for good
39 reasons shown.

40 (b) A cemetery company which plans to offer for sale space in a section of a
41 mausoleum or bank of underground crypts prior to its construction shall establish a
42 preconstruction trust account. The trust account shall be administered and operated in the same
43 manner as the merchandise trust account provided for in G.S. 65-66 and shall be exclusive of
44 the merchandise trust account or ~~such-the~~ other trust accounts or funds that may be required by
45 law. The personal representative of any purchaser of ~~such-the~~ space who dies before
46 completion of construction shall be entitled to a refund of all moneys paid for ~~such-the~~ space
47 including any income earned thereon.

48 (c) Before a sale, contract for sale, reservation for sale or agreement for sale in the first
49 mausoleum section or bank of underground crypts in each cemetery may be made the funds
50 (one hundred twenty percent (120%) of construction cost) to be deposited to the
51 preconstruction trust account shall be computed as to ~~said-the~~ section or bank of crypts and

1 ~~such~~the trust account payments must be made on or before the last day of the calendar month
2 following receipt by the cemetery company or its agent of each payment. The trust account
3 portion of each ~~such~~ payment shall be computed by dividing the cost of the project plus twenty
4 percent (20%) of ~~said~~the cost, as computed by a licensed contractor, engineer or architect by
5 the number of crypts in the section or bank of crypts to ascertain the cost per unit. The unit cost
6 shall be divided by the contract sales price of each unit to obtain a percentage which shall be
7 multiplied by the amount of each payment. The formula shall be computed as follows:

8 Cost plus twenty percent (20%) divided by number of crypts = cost per unit

9 Cost per unit divided by contract sales price = percentage

10 Percentage x payment received = deposit required to preconstruction trust account.

11 (d) The cemetery company shall be entitled to withdraw the funds from ~~said~~the
12 preconstruction trust account only after the Commission has become satisfied that construction
13 has been completed; provided, however, that during construction of the mausoleum or bank of
14 belowground crypts the Commission may, in its discretion, authorize a specific percentage of
15 the funds to be withdrawn when it appears that at least an equivalent percentage of construction
16 has been completed.

17 (e) If a mausoleum section or bank of underground crypts is not completed within the
18 time limits set out in this section the corporate trustee, if any, shall contract for and cause ~~said~~
19 the project to be completed and paid therefor from the trust account funds deposited to the
20 project's account paying any balance, less cost and expenses, to the cemetery company. In the
21 event there is no corporate trustee, the Commission shall appoint a committee to serve as
22 trustees to contract for and cause ~~said~~the project to be completed and paid therefor from the
23 trust account funds deposited to the project's account paying any balance, less cost and
24 expenses, to the cemetery company.

25 (f) In lieu of the payments outlined hereunder to the preconstruction trust account the
26 cemetery company may deliver to the Commission a good and sufficient completion or
27 performance bond in an amount and by surety companies acceptable to the Commission."

28 **SECTION 7.** G.S. 65-70(f) is repealed.

29 **SECTION 8.(a)** There is created the Legislative Study Commission on the North
30 Carolina Cemetery Act to study issues related to the regulation of cemeteries under the Act.

31 **SECTION 8.(b)** The Commission shall consist of 10 members as follows:

32 (1) Five members appointed by the Speaker of the House of Representatives.

33 (2) Five members appointed by the President Pro Tempore of the Senate.

34 **SECTION 8.(c)** The President Pro Tempore of the Senate shall designate one
35 Senator as cochair and the Speaker of the House of Representatives shall designate one
36 Representative as cochair. Vacancies on the Commission shall be filled by the same appointing
37 authority that made the initial appointment.

38 **SECTION 8.(d)** The Commission shall study the following issues relating to the
39 North Carolina Cemetery Act:

40 (1) The membership of the Cemetery Commission.

41 (2) The powers and duties of the Cemetery Commission, including the
42 Commission's authority to investigate and address consumer complaints.

43 (3) Qualifications of trustees for cemetery funds.

44 (4) Security of trust accounts maintained by cemetery companies.

45 (5) Adequacy of trust accounts cemetery companies are required to keep for sale
46 of preneed merchandise and services and preconstruction and whether there
47 should be any options in lieu of maintaining trust accounts.

48 (6) Protection for consumers who die before final payment is collected on a
49 preneed contract.

50 (7) Any other matters the Commission deems appropriate.

1 **SECTION 8.(e)** The Commission, while in the discharge of its official duties, may
2 exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.
3 The Commission may meet at any time upon the joint call of the cochairs. The Commission
4 may meet in the Legislative Building or the Legislative Office Building.

5 The Legislative Services Commission, through the Legislative Services Officer,
6 shall assign professional staff to assist the Commission in its work. The Senate's and the House
7 of Representatives' Directors of Legislative Assistants shall assign clerical staff to the
8 Commission, and the expenses relating to the clerical employees shall be borne by the
9 Commission. The Commission may contract for professional, clerical, or consultant services as
10 provided by G.S. 120-32.02. If the Commission hires a consultant, the consultant shall not be a
11 State employee or a person currently under contract with the State to provide services.

12 All State departments and agencies and local governments and their subdivisions
13 shall furnish the Commission with any information in their possession or available to them.

14 **SECTION 8.(f)** The Commission shall report the results of its study and its
15 recommendations to the 2010 Regular Session of the 2009 General Assembly upon its
16 convening, and the Commission shall terminate upon the filing of its report.

17 **SECTION 9.** Sections 1 through 7 of this act become effective October 1, 2009.
18 Sections 5 and 7 of this act apply to receipts from sales of personal property or services and
19 receipts from sale of preconstruction crypts that occur on or after that date. The remainder of
20 this act is effective when it becomes law.