

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 18
Commerce Committee Substitute Adopted 5/12/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S18-PCS35470-RV-67

Short Title: Amend Cemetery Act.

(Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CEMETERY ACT BY REQUIRING PROOF OF A SUFFICIENT TRUST FUND OR SURETY BOND PRIOR TO APPROVING A CHANGE OF CONTROL OF A CEMETERY COMPANY, CHANGING THE INVESTMENTS OPTIONS FOR PERPETUAL CARE TRUST FUNDS, REQUIRING CEMETERY COMPANIES TO LIST THE COST OF OPENING AND CLOSING A GRAVE SPACE AS PART OF THE CONTRACT, PROHIBITING A CEMETERY COMPANY FROM REQUIRING A PURCHASER OF A GRAVE SPACE TO PURCHASE A VAULT FROM A PARTICULAR SELLER, INCREASING THE EXTENSION THAT MAY BE GIVEN TO A CEMETERY COMPANY FOR COMPLETION OF CONSTRUCTION OF MAUSOLEUMS, AND CREATING THE LEGISLATIVE STUDY COMMISSION ON THE NORTH CAROLINA CEMETERY ACT.

The General Assembly of North Carolina enacts:

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

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

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



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

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

4 "**§ 65-60.1. Trustees; qualifications; examination of records; enforcement.**

5 (a) The term "corporate trustee" as used in this Article shall mean ~~either a bank~~ a bank,
6 credit union, or trust company authorized to do business in North Carolina under the
7 supervision of the Commissioner of ~~Banks~~ Banks, Credit Union Administrator, or any other
8 corporate entity; provided that any corporate entity other than a ~~bank~~ bank, credit union, or
9 trust company which acts as trustee under this Article shall first be approved by the Cemetery
10 Commission and shall be subject to supervision by the Cemetery Commission as provided
11 herein.

12 (b) Any corporate entity, other than a ~~bank~~ bank, credit union, or trust company, which
13 desires to act as trustee for cemetery funds under this Article shall make application to the
14 Commission for approval. The Commission shall approve the trustee when it has become
15 satisfied that:

- 16 (1) The applicant employs and is directed by persons who are qualified by
17 character, experience, and financial responsibility to care for and invest the
18 funds of others.
- 19 (2) The applicant will perform its duties in a proper and legal manner and the
20 trust funds and interest of the public generally will not be jeopardized.
- 21 (3) The applicant will act as trustee for cemetery funds which will exceed five
22 hundred thousand dollars (\$500,000) in the aggregate.
- 23 (4) The applicant is authorized to do business in North Carolina and has
24 adequate facilities to perform its duties as trustee.

25 (c) Any trustee under this Article, other than a ~~bank~~ bank, credit union, or trust
26 company under the supervision of the Commissioner of Banks, shall maintain records relative
27 to cemetery trust funds as the Commission may by regulation prescribe. The records shall be
28 available at the trustee's place of business in North Carolina and shall be available at all
29 reasonable times for examination by a representative of the Commission. The records shall be
30 audited annually, within 90 days from the end of the trust fund's fiscal year, by an independent
31 certified public accountant, and a copy of the audit report shall be promptly forwarded to the
32 Commission.

33 (d) Whenever it appears that an officer, director, or employee of a trustee, other than a
34 ~~bank~~ bank, credit union, or trust company, is dishonest, incompetent, or reckless in the
35 management of a cemetery trust fund, the Commission may bring an action in the courts to
36 remove the trustee and to impound the property and business of the trustee as may be
37 reasonably necessary to protect the trust funds.

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

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

45 "**§ 65-64. Deposits to perpetual care fund.**

46 (a) Deposits to the care and maintenance trust fund must be made by the cemetery
47 company holding title to the subject cemetery lands on or before the last day of the calendar
48 month following the calendar month in which final payment is received as provided herein;
49 however the entire amount required to be deposited into the fund shall be paid within four years
50 from the date of any contract requiring ~~such~~ the payment regardless of whether all amounts
51 have been received by the cemetery company. If the cemetery company fails to make timely

1 deposit, the Commission may levy and collect a late filing fee of one dollar (\$1.00) per day for
2 each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. The
3 care and maintenance trust fund shall be invested and reinvested by the trustee in accordance
4 with G.S. 32-71. ~~the same manner as provided by law for the investment of other trust funds by~~
5 ~~the clerk of the superior court except that such investments may be made through means of a~~
6 ~~common trust fund as described in G.S. 36A-90; provided, further, that cemetery~~ Investments
7 may be made through means of a common trust fund as described in G.S. 53-163.5. Cemetery
8 trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be
9 invested and reinvested in accordance with ~~G.S. 36A-2.~~ G.S. 32-71. The fees and other
10 expenses of the trust fund shall be paid by the trustee from the net income thereof and may not
11 be paid from the corpus. To the extent that the ~~said~~ net income is not sufficient to pay ~~such~~ the
12 fees and other expenses, the ~~same~~ fees and other expenses shall be paid by the cemetery
13 company.

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

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

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

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

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

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

41 "**§ 65-66. Receipts from sale of personal property or services; trust account; penalties.**

42 (a) It shall be deemed contrary to public policy if any person or legal entity receives,
43 holds, controls or manages funds or proceeds received from the sale of, or from a contract to
44 sell, personal property or services which may be used in a cemetery in connection with the
45 burial of or the commemoration of the memory of a deceased human being, where payments
46 for the same are made either outright or on an installment basis prior to the demise of the
47 person or persons so purchasing them or for whom they are so purchased, unless ~~such~~ the
48 person or legal entity holds, controls or manages ~~said~~ the funds, subject to the limitations and
49 regulations prescribed in this section. This section shall apply to all cemetery companies or
50 other legal entities that offer for sale or sell personal property or services which may be used in
51 a cemetery in connection with the burial of, or the commemoration of the memory of, a

1 deceased human being, but shall exclude persons holding a license under Article 13D of
2 Chapter 90 of the General Statutes.

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

8 (1) The cemetery company or other entity shall deposit an amount equal to sixty
9 percent (60%) of all proceeds received on ~~such-the~~ contracts into a trust
10 account, either in the form of an account governed by a trust agreement and
11 handled by a corporate trustee or in the form of a passbook savings account,
12 certificates of deposit for time certificates, ~~and/or~~ money-market
13 certificates with a licensed and insured ~~bank-bank, credit union,~~ or savings
14 institution located in the State of North Carolina until the amount deposited
15 equals sixty percent (60%) of the actual sale price of the property or services
16 sold. ~~Such-The~~ accounts ~~and/or~~ or deposits or both shall be in the name of
17 the cemetery company or other entity in a form which will permit
18 withdrawals only with the participation and consent of the Cemetery
19 Commission as required by subdivision (4) of this subsection.

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

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

28 (4) Withdrawals from a trust account may be made by the depositor, but only
29 with the written approval of the Commission or officer or employee of the
30 Commission authorized to act for the Commission. Withdrawals may be
31 made only upon delivery of the merchandise or services for which the funds
32 were deposited, cancellation of a contract, the presence of excess funds in
33 the trust account, or under other circumstances deemed appropriate by the
34 Commission. The Commission shall promulgate rules and regulations
35 governing withdrawals from trust accounts, including time and frequency of
36 withdrawals, payments that will be made with the withdrawals, notice to the
37 Commission prior to withdrawals, the number and identity of persons other
38 than the owner who are authorized by the owner to make withdrawals, the
39 officers and employees of the Commission authorized to approve
40 withdrawals, and any other matters necessary to implement the provisions of
41 this subdivision. Withdrawals will not be allowed if the amount remaining in
42 the trust account would fall below sixty percent (60%) of all proceeds
43 received on account of contracts for the sale of ~~such-the~~ personal property or
44 services.

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

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

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

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

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

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

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

32 (h) The Commission shall have the power and is required from time to time as it may
33 deem necessary to examine the business of any cemetery company or other entity writing
34 contracts for the sale of the property or services as herein contemplated. The written report of
35 ~~such~~the examination shall be filed in the office of the Commission. Any person or entity being
36 examined shall produce the records of the company needed for ~~such~~the examination.

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

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

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

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

47 (m) Within 30 days following the execution of a contract for the sale of personal
48 property or performance of services, a purchaser may cancel his contract by giving written
49 notice to the seller. The seller may cancel the contract, upon default by purchaser, by giving
50 written notice to the purchaser. Within 30 days of notice of cancellation, the cemetery company
51 or other entity shall refund to purchaser the principal amount on deposit in the trust account for

1 his benefit on any undelivered merchandise or services. This amount (no other obligations
2 owed the purchaser by the seller) shall constitute the purchaser's entire entitlements under the
3 contract. The seller may not terminate the contract without complying with this subsection.

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

11 **SECTION 5.** G.S. 65-70 reads as rewritten:

12 **"§ 65-70. Construction of mausoleums and belowground crypts; trust fund for receipts**
13 **from sale of preconstruction crypts; compliance requirements.**

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

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

29 (c) Before a sale, contract for sale, reservation for sale or agreement for sale in the first
30 mausoleum section or bank of underground crypts in each cemetery may be made the funds
31 (one hundred twenty percent (120%) of construction cost) to be deposited to the
32 preconstruction trust account shall be computed as to ~~said the~~ section or bank of crypts and
33 ~~such the~~ trust account payments must be made on or before the last day of the calendar month
34 following receipt by the cemetery company or its agent of each payment. The trust account
35 portion of each ~~such~~ payment shall be computed by dividing the cost of the project plus twenty
36 percent (20%) of ~~said the~~ cost, as computed by a licensed contractor, engineer or architect by
37 the number of crypts in the section or bank of crypts to ascertain the cost per unit. The unit cost
38 shall be divided by the contract sales price of each unit to obtain a percentage which shall be
39 multiplied by the amount of each payment. The formula shall be computed as follows:

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

41 Cost per unit divided by contract sales price = percentage

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

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

49 (e) If a mausoleum section or bank of underground crypts is not completed within the
50 time limits set out in this section the corporate trustee, if any, shall contract for and cause ~~said~~
51 the project to be completed and paid therefor from the trust account funds deposited to the

1 project's account paying any balance, less cost and expenses, to the cemetery company. In the
2 event there is no corporate trustee, the Commission shall appoint a committee to serve as
3 trustees to contract for and cause ~~said~~ the project to be completed and paid therefor from the
4 trust account funds deposited to the project's account paying any balance, less cost and
5 expenses, to the cemetery company.

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

9 **SECTION 6.** G.S. 90-210.60(2) reads as rewritten:

10 "(2) "Financial institution" means a ~~bank, bank, credit union,~~ trust company,
11 savings bank, or savings and loan association authorized by law to do
12 business in this State;"

13 **SECTION 7.(a)** There is created the Legislative Study Commission on the North
14 Carolina Cemetery Act to study issues related to the regulation of cemeteries under the Act.

15 **SECTION 7.(b)** The Commission shall consist of 10 members as follows:

- 16 (1) Five members appointed by the Speaker of the House of Representatives. At
17 least one of the appointees shall represent the interests of consumers and
18 shall have no vested interest in the death care industry. At least one of the
19 appointees shall be a person who resides in Western North Carolina.
20 (2) Five members appointed by the President Pro Tempore of the Senate. At
21 least one of the appointees shall represent the interests of consumers and
22 shall have no vested interest in the death care industry. At least one of the
23 appointees shall be a person who resides in Eastern North Carolina.

24 **SECTION 7.(c)** The President Pro Tempore of the Senate shall designate one
25 senator as cochair and the Speaker of the House of Representatives shall designate one
26 representative as cochair. Vacancies on the Commission shall be filled by the same appointing
27 authority that made the initial appointment.

28 **SECTION 7.(d)** The Commission shall study the following issues relating to the
29 North Carolina Cemetery Act:

- 30 (1) Membership of the Cemetery Commission.
31 (2) Powers and duties of the Cemetery Commission, including:
32 a. The Commission's authority to investigate and address consumer
33 complaints.
34 b. The Commission's authority and responsibilities with regard to
35 approval of a proposed change of control pursuant to G.S. 65-59.
36 (3) Qualifications of trustees for cemetery funds.
37 (4) Security of trust accounts maintained by cemetery companies.
38 (5) Adequacy of trust accounts maintained by cemetery companies, the
39 adequacy of bonds posted in lieu thereof, and whether there should be any
40 additional options in lieu of maintaining trust accounts.
41 (6) Bond requirements.
42 (7) Qualified bond companies.
43 (8) Ways to ensure proper maintenance and funding of trust accounts and
44 performance bonds as a condition for approval of a change of control under
45 G.S. 65-59.
46 (9) Protection for consumers who die before final payment is collected on a
47 preneed contract.
48 (10) Establishment of a consumer recovery fund to protect consumers from
49 cemetery insolvency and/or fraud.
50 (11) Establishing trust accounts in the names of individual consumers.
51 (12) Any other matters the Commission deems appropriate.

1 **SECTION 7.(e)** The Executive Director of the Cemetery Commission and the
2 Executive Director of the N.C. Board of Funeral Service shall assist the Commission in its
3 work. The Commission, while in the discharge of its official duties, may exercise all powers
4 provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission
5 may meet at any time upon the joint call of the cochairs. The Commission may meet in the
6 Legislative Building or the Legislative Office Building.

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

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

16 **SECTION 7.(f)** The Commission shall report the results of its study and its
17 recommendations to the 2011 General Assembly upon its convening, and the Commission shall
18 terminate upon the filing of its report.

19 **SECTION 8.** Sections 1 through 6 of this act become effective October 1, 2010.
20 The remainder of this act is effective when it becomes law.