

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 301

Short Title: Cemetery Act Amendments.

(Public)

Sponsors: Representatives Beard; Bowman, Hurley, Lilley, and Warner.

Referred to: Finance.

March 25, 1991

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CEMETERY ACT AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 65-54 reads as rewritten:

"§ 65-54. Annual budget of Commission; collection of funds.

The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from yearly fees and from any other sources provided in this Article. On or before July 1 of each year, each licensed cemetery will pay a license fee to be set by the Commission in an amount not to exceed three hundred dollars (\$300.00) per year; and in addition, an inspection fee for each grave space, niche, mausoleum crypt deeded and preneed cemetery merchandise contract for vaults, belowground crypts, mausoleum crypts, opening and closing of graves, and memorials to be set by the Commission each year in order to defray the expenses of the Commission as set forth in the budget. Such additional fee shall not exceed ~~one dollar and fifty cents (\$1.50)~~ two dollars (\$2.00) per grave space, niche, and mausoleum crypt deeded, or opening and closing of graves, and shall not exceed ~~four dollars (\$4.00)~~ five dollars (\$5.00) per item in each preneed cemetery merchandise contract for vaults, belowground crypts, mausoleum crypts and memorials."

Sec. 2. G.S. 65-55(c) reads as rewritten:

"§ 65-55. License; cemetery company.

(c) Upon receipt of the application and filing fee of ~~four hundred dollars (\$400.00)~~ five thousand dollars (\$5,000), the Commission shall cause an investigation to be made to establish the following criteria for approval of such application:

- 1 (1) The creation of a legal entity to conduct cemetery business, and the
2 proposed financial structure.
- 3 (2) A perpetual care trust fund agreement, with an initial deposit of not
4 less than ~~thirty thousand dollars (\$30,000)~~ fifty thousand dollars
5 (\$50,000) and with bank cashier's check or certified check attached for
6 such amount and payable to such trustee, with said trust executed by
7 applicant and accepted by the trustee, conditioned only upon whether
8 the application is approved.
- 9 (3) A plat of the land to be used for a cemetery, showing county, city
10 and/or township, and names of roads and access streets or ways.
- 11 (4) Designation by the legal entity wishing to establish a cemetery of a
12 general manager who shall be a person of good moral character,
13 having had no less than one year's experience in cemeteries.
- 14 (5) Development plans sufficient to insure the community that the
15 cemetery will provide adequate cemetery services, and the property is
16 suitable for use as a cemetery."

17 Sec. 3. G.S. 64-59 reads as rewritten:

18 **"§ 65-59. Application for a change of control; filing fee.**

19 In any case where a person, a group of persons, or a corporation proposes to
20 purchase or acquire control of an existing cemetery company either by purchasing the
21 outstanding capital stock of any cemetery company, or the interest of the owner or
22 owners, or otherwise act to effectively change the control of said cemetery company,
23 such person shall first make application on a form supplied by the Commission for a
24 certificate of approval of such proposed change of control of said cemetery company.
25 The application shall contain the name and address of the proposed new owners and the
26 said Commission shall issue said certificate of approval only after it has become
27 satisfied that the proposed new owners are qualified by character, experience and
28 financial responsibility to control and operate the said cemetery in a legal and proper
29 manner, and that the interest of the public generally will not be jeopardized by the
30 proposed change in ownership and management. Such application for a purchase or
31 change of control must be completed and accompanied by an initial filing fee of ~~one~~
32 ~~hundred dollars (\$100.00)~~ one thousand five hundred dollars (\$1,500) to cover
33 examination provided in G.S. 65-53(2) if required, and if records are in order, certificate
34 of approval shall be issued."

35 Sec. 4. G.S. 65-63 reads as rewritten:

36 **"§ 65-63. Requirements for perpetual care fund.**

37 No such cemetery shall hereafter cause or permit advertising of a perpetual care fund
38 in connection with the sale or offer for sale of its property unless the amount deposited
39 in said funds shall be equal to not less than ~~thirty-five dollars (\$35.00)~~ forty dollars
40 (\$40.00) per grave space, niche, or mausoleum crypt sold, this sum to be deposited in
41 perpetual care fund as provided in G.S. 65-61 except as provided in G.S. 65-64.
42 Nothing may prohibit an individual cemetery from requiring a perpetual care deposit for
43 grave memorial markers to be deposited in the perpetual care fund so long as the same

1 assessment is uniformly applied to all grave memorial markers installed in such
2 cemetery.

3 Sec. 5. G.S. 65-64(e) reads as rewritten:

4 **"§ 65-64. Deposits to perpetual care fund.**

5 (e) When the amount deposited in the perpetual care fund required by this Article
6 of any cemetery heretofore or hereafter established shall amount to one hundred fifty
7 thousand dollars (\$150,000), anything in this Article to the contrary notwithstanding,
8 the cemetery may make all deposits thereafter either into the original perpetual care
9 trust fund or into a separate fund which shall be an irrevocable trust and designated as
10 Perpetual Care Trust Fund 'A' and invested by trustee as directed by the cemetery, but
11 may not be invested in another cemetery, and such deposits shall be not less than ~~thirty-~~
12 ~~five dollars (\$35.00)~~ forty dollars (\$40.00) per grave space, niche, mausoleum crypt
13 space."

14 Sec. 6. G.S. 65-66(j) reads as rewritten:

15 "(j) Any cemetery company or other entity, as defined in this section, failing to
16 make contributions required by subsection (b) of this section shall be guilty of a
17 misdemeanor punishable as provided in G.S. 14-3, except that any cemetery company
18 or other entity, as defined in this section, that has failed to make contributions required
19 by subsection (b) of this section that total twenty thousand dollars (\$20,000) or more
20 shall be guilty of a Class J felony, and each violation of this section shall constitute a
21 separate offense."

22 Sec. 7. G.S. 65-69(a) reads as rewritten:

23 "(a) Each licensee shall set aside a minimum of 30 acres of land for use by said
24 licensee as a cemetery, and shall not sell, mortgage, lease or encumber the same. It
25 shall be considered contrary to the public policy of this State for any lien or
26 encumbrance to be placed on any land used as a cemetery licensed under the provisions
27 of this Article, and any lien or encumbrance that is purported to be placed on that land
28 shall be considered void ab initio."

29 Sec. 8. G.S. 65-71(a) reads as rewritten:

30 "(a) A person violating any provisions of this Article, or order or rule promulgated
31 under the provisions thereof, or of any license issued by the Commission, shall be guilty
32 of a misdemeanor and fined and imprisoned, or both, in the discretion of the ~~court.~~ court,
33 except that any person violating any provision of this Article, or any order or rule
34 promulgated under the provisions of this Article, regarding the deposit of monies into
35 trust funds, who is delinquent in the required deposits by an amount of twenty thousand
36 dollars (\$20,000) or more, shall be guilty of a Class J felony."

37 Sec. 9. G.S. 150B-38(a) reads as rewritten:

38 "(a) The provisions of this Article shall apply to the following agencies:

- 39 (1) Occupational licensing agencies;
- 40 (2) The State Banking Commission, the Commissioner of Banks, the
41 Savings Institutions Division of the Department of Economic and
42 Community Development, the Cemetery Commission of the
43 Department of Economic and Community Development, and the

1 Credit Union Division of the Department of Economic and
2 Community Development; and
3 (3) The Department of Insurance and the Commissioner of Insurance."
4 Sec. 10. This act becomes effective October 1, 1991.