

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 301
Committee Substitute Favorable 4/16/91

Short Title: Cemetery Act Amendments.

(Public)

Sponsors:

Referred to:

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~~ shall 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 (\$300.00).~~ In addition, each licensed cemetery shall pay to the Commission an inspection fee for each grave space, niche, or mausoleum crypt ~~deeded~~ sold and ~~preneed cemetery merchandise contract for vaults, belowground crypts, mausoleum crypts, 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~~ shall pay a fee for each vault, niche, belowground crypt, mausoleum crypt, memorial, or opening and closing of a grave space that is included in a preneed cemetery contract. The inspection fee shall for each grave space, niche, or mausoleum crypt is payable when the item is sold and may not exceed one dollar and fifty cents (\$1.50) per grave space, niche, and mausoleum crypt ~~deeded, and shall not exceed four dollars (\$4.00) per item in each preneed cemetery merchandise contract for vaults, belowground crypts, mausoleum crypts and memorials~~ two dollars (\$2.00). The fee for each of the listed items that are included in a preneed cemetery contract is payable when the contract is made and may not exceed five dollars (\$5.00)."

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

2 "(c) Upon receipt of the application and filing fee of ~~four hundred dollars (\$400.00),~~
3 eight hundred dollars (\$800.00), the Commission shall cause an investigation to be
4 made to establish the following criteria for approval of ~~such~~ the application:

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

25 Sec. 3. G.S. 65-53(2) reads as rewritten:

26 "(2) ~~Prior to the change of control of any cemetery company, an~~
27 ~~examination of the licensee's records may be required, and if so, the~~
28 ~~fees provided in subdivision (3) hereof would apply thereto. To~~
29 ~~examine a cemetery company's records when a person applies for a~~
30 change of control of the company."

31 Sec. 4. G.S. 65-59 reads as rewritten:

32 "**§ 65-59. Application for a change of control; filing fee.**

33 ~~In any case where a person, a group of persons, or a corporation~~ A person who
34 proposes to purchase or acquire control of an existing cemetery company either
35 company, whether by purchasing the outstanding capital stock of any cemetery
36 company, or the interest of the owner or owners, the company, purchasing an owner's
37 interest in the company, or otherwise act acting to effectively change the control of said
38 cemetery company, such person the company, shall first make application on a form
39 supplied by the Commission for a certificate of approval of such ~~the~~ proposed change of
40 control of said cemetery company. control. The application shall contain the name and
41 address of ~~the~~ each proposed new owners and ~~the~~ said owner. The Commission shall
42 issue ~~said~~ a certificate of approval only after it ~~has become satisfied~~ determines that the
43 proposed new owners are qualified by character, ~~experience~~ experience, and financial
44 responsibility to control and operate the ~~said~~ cemetery company in a legal and proper

1 manner, and that the interest of the public generally will not be jeopardized by the
2 proposed change in ownership and management. ~~Such control. An application for a~~
3 ~~purchase or approval of a change of control must be completed and accompanied by an~~
4 ~~initial a filing fee of one hundred dollars (\$100.00) to cover examination provided in~~
5 ~~G.S. 65-53(2) if required, and if records are in order, certificate of approval shall be~~
6 ~~issued. two hundred dollars (\$200.00)."~~

7 Sec. 5. G.S. 65-63 reads as rewritten:

8 **"§ 65-63. Requirements for perpetual care fund.**

9 ~~No such A cemetery shall hereafter company may not cause or permit advertising of a~~
10 ~~perpetual care fund in connection with the sale or offer for sale of its property unless the~~
11 ~~amount deposited in said funds shall be equal to not less than thirty five dollars (\$35.00) the~~
12 ~~fund is at least forty dollars (\$40.00) per grave space, niche, or mausoleum crypt sold,~~
13 ~~this sum to be deposited in perpetual care fund as provided in G.S. 65-61 except as provided in~~
14 ~~G.S. 65-64. sold. Nothing may prohibit an individual cemetery from requiring a~~
15 ~~perpetual care deposit for grave memorial markers to be deposited in the perpetual care~~
16 ~~fund so long as the same assessment is uniformly applied to all grave memorial markers~~
17 ~~installed in such the cemetery."~~

18 Sec. 6. G.S. 65-64(e) reads as rewritten:

19 "(e) When the amount deposited in the perpetual care fund required by this Article
20 of any cemetery heretofore or hereafter established ~~company~~ shall amount to one hundred
21 fifty thousand dollars (\$150,000), anything in this Article to the contrary
22 notwithstanding, the cemetery ~~company~~ may make all deposits thereafter either into the
23 original perpetual care trust fund or into a separate fund ~~which shall be established as an~~
24 ~~irrevocable trust and trust, designated as Perpetual Care Trust Fund 'A' 'A,' and invested~~
25 ~~by the trustee as directed by the cemetery, but company. Funds in a trust fund designated~~
26 ~~as Trust Fund 'A' may not be invested in another cemetery, and such deposits shall be not~~
27 ~~less than thirty five dollars (\$35.00) per grave space, niche, mausoleum crypt space. cemetery~~
28 ~~company and are subject to the requirements of funds deposited in the original perpetual~~
29 ~~care trust fund."~~

30 Sec. 7. G.S. 65-66(j) is repealed.

31 Sec. 8. G.S. 65-69(d) reads as rewritten:

32 "(d) The provisions of subsections (a) and (b) relating to a requirement for
33 minimum acreage shall not apply to those cemeteries licensed by the Commission on or
34 before July 1, 1967, which own or control a total of less than 30 acres of land; provided
35 that such cemeteries shall not dispose of any of such lands. A lien or other interest in
36 land acquired in violation of this section is void."

37 Sec. 9. G.S. 65-71 reads as rewritten:

38 **"§ 65-71. Penalties.**

39 (a) ~~A-Except as provided in this subsection, a person violating any provisions of~~
40 ~~this Article, or of any order or rule promulgated under the provisions thereof, this Article,~~
41 ~~or of any license issued by the Commission, shall be Commission is guilty of a~~
42 ~~misdemeanor and shall be fined and fined, imprisoned, or both, in the discretion of the~~
43 ~~court. Each failure to deposit funds in a trust fund in accordance with this Article is a~~
44 ~~separate offense. A person who has failed to deposit funds in a trust fund in accordance~~

1 with this Article and whose delinquent deposits equal or exceed twenty thousand dollars
2 (\$20,000) is guilty of a Class J felony.

3 (b) The officers and directors or persons occupying similar status or performing
4 similar functions of any cemetery company, cemetery sales organization, cemetery
5 management organization or cemetery broker, as defined in this Chapter, failing to
6 make required contributions to the care and maintenance trust fund and any other trust
7 fund ~~of or escrow account provided herein,~~ shall be ~~guilty of a misdemeanor,~~ liable for any
8 offense based on the failure and upon conviction thereof ~~for the offense~~ shall be
9 punished in the manner prescribed by law."

10 Sec. 10. G.S. 150B-38(a) reads as rewritten:

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

12 (1) Occupational licensing agencies;

13 (2) The State Banking Commission, the Commissioner of Banks, the
14 Savings Institutions Division of the Department of Economic and
15 Community Development, the Cemetery Commission of the
16 Department of Economic and Community Development, and the
17 Credit Union Division of the Department of Economic and
18 Community Development; and

19 (3) The Department of Insurance and the Commissioner of Insurance."

20 Sec. 11. This act becomes effective October 1, 1991. Section 10 of this act
21 applies to contested cases commenced on or after that date.