

Senate Bill 147

By: Senators Williams of the 27th, Hill of the 32nd, Hufstetler of the 52nd, Ligon, Jr. of the 3rd, Jeffares of the 17th and others

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 14 of Title 10 of the Official Code of Georgia Annotated, relating to
2 cemetery and funeral services, so as to permit a cemetery or cemetery company to request
3 a trustee to distribute income earned by an irrevocable trust fund utilizing certain unitrust
4 distribution method provisions; to provide for a definition; to modify a cross-reference; to
5 provide for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 14 of Title 10 of the Official Code of Georgia Annotated, relating to cemetery and
9 funeral services, is amended by revising Code Section 10-14-6, relating to irrevocable trust
10 fund, as follows:

11 "10-14-6.

12 (a) As used in this Code section, the term 'income' means:

13 (1) The net income, including the collected dividends, interest, net realized gains, and
14 other income of the trust reduced by any expenses, including, but not limited to, taxes on
15 income, fees, commissions, and costs; or

16 (2) Four percent of the net fair market value of the trust assets, averaged over the lesser
17 of the three preceding years or the period during which the trust has been in existence.

18 ~~(a)~~(b)(1) Each cemetery or cemetery company required to be registered by this chapter
19 shall establish and maintain an irrevocable trust fund for each cemetery owned.

20 (2) For trust funds established on or after July 1, 2000, the initial deposit to said
21 irrevocable trust fund shall be the sum of \$10,000.00 and the deposit of said sum shall be
22 made before selling or contracting to sell any burial right. No such initial deposit shall
23 be required with respect to any cemetery for which there is an existing perpetual care
24 account on July 1, 2000. The trust fund shall apply to sales or contracts for sale of lots,
25 grave spaces, niches, mausoleums, columbaria, urns, or crypts in which perpetual care
26 has been promised or guaranteed.

27 (3) The initial corpus of the trust fund and all subsequent required deposits shall be
28 deposited in a state bank, state savings and loan institution, savings bank, national bank,
29 or federal savings and loan institution, whose deposits are insured by the Federal Deposit
30 Insurance Corporation or other governmental agency, or a state or federally chartered
31 credit union insured under 12 U.S.C. Section 1781 of the Federal Credit Union Act, or
32 other depository or trustee which is approved by the Secretary of State or which meets
33 the standards contained in the rules and regulations promulgated by the Secretary of
34 State.

35 (4) Each perpetual care trust fund established on or after July 1, 2000, shall be named
36 'The _____ Cemetery _____ Perpetual Care Trust Fund' with the first
37 blank being filled by the name of the cemetery and the second blank being filled by the
38 month and year of the establishment of such trust fund. If a cemetery has a perpetual care
39 trust fund existing on July 1, 2000, and the perpetual care trust fund agreement permits,
40 the cemetery may make additional deposits to such a trust fund on the condition that the
41 entire corpus of the trust fund, any income earned by the trust fund, and any subsequent
42 deposits to the trust fund are thereafter governed by the provisions of this chapter, the
43 'Georgia Cemetery and Funeral Services Act of 2000,' as it existed on July 1, 2000,
44 except for the amount of the initial deposit to the trust fund. If a cemetery owner or
45 company elects to establish a new perpetual care trust fund subject to the provisions of
46 this chapter, the 'Georgia Cemetery and Funeral Services Act of 2000,' as it existed on
47 July 1, 2000, any perpetual care trust fund which existed on July 1, 2000, is subject to the
48 provisions of law in effect on the date of its establishment, and deposits for sales
49 transacted on or after July 1, 2000, shall be deposited in the trust fund established on or
50 after July 1, 2000. If a cemetery existing on July 1, 2000, has an existing perpetual care
51 trust fund which complies with provisions of law in effect on the date of its
52 establishment, a new trust fund created in compliance with this chapter shall not require
53 an initial deposit.

54 ~~(b)~~(c) Whenever any burial right, cemetery lot, grave space, niche, mausoleum,
55 columbarium, urn, or crypt wherein perpetual care or endowment care is promised or
56 contracted for or guaranteed is sold by any cemetery, the cemetery shall make deposits to
57 the trust fund that equal 15 percent of the sales price of the burial right or 7.5 percent of the
58 total sales price of any mausoleums, niches, columbaria, urns, or crypts, provided that the
59 minimum deposit for each burial right shall be \$50.00; provided, further, that on
60 July 1, 2003, and every three years thereafter, the amount of said minimum deposit shall
61 be adjusted by the rate of change in the Consumer Price Index as reported by the Bureau
62 of Labor Statistics of the United States Department of Labor. The Secretary of State shall
63 adopt such adjustment to the amount of said minimum deposit by rule. Deposits to the trust

64 fund shall be made not later than 30 days following the last day of the month in which
 65 payment therefor is made, or, in the case of a free space, the month in which the space is
 66 given. In the event any sale is made on an installment basis, not less than a pro rata share
 67 of the principal portion of each payment made and allocated to the lot, grave, space, niche,
 68 mausoleum, columbarium, urn, or crypt shall be allocated to the required trust fund deposit,
 69 provided that all deposits to the trust fund shall be completed within six years from the date
 70 of the signing of the perpetual care contract. The manner of any such allocation shall be
 71 clearly reflected on the books of the registrant.

72 ~~(c)~~(d) The initial \$10,000.00 corpus of the perpetual care trust fund shall not be counted
 73 as part of the required periodic deposits and shall be considered to be corpus or principal.

74 ~~(d)~~(e)(1) The income earned by the trust fund shall be retained by the trust fund. At such
 75 time as either:

76 ~~(1)~~(A) The cemetery owner is not licensed and has not been licensed for 90 or more
 77 consecutive days to sell burial rights;

78 ~~(2)~~(B) The cemetery is under the management of a receiver; or

79 ~~(3)~~(C) Less than 50 percent of available lots are unsold, 95 percent of the income from
 80 the trust fund shall be paid to the owner or receiver exclusively for covering the costs
 81 of care and maintenance of the cemetery, including reasonable administrative expenses
 82 incurred in connection therewith. The income of the trust fund shall be paid to the
 83 owner or receiver at intervals agreed upon by the recipient and the trustee, but in no
 84 case shall the income be paid more often than monthly.

85 (2) Subject to the limitations set forth in paragraph (1) of this subsection, a cemetery
 86 owner or receiver may request a trustee to distribute income following the unitrust
 87 distribution method provisions outlined in Code Section 53-12-362. The cemetery owner
 88 or receiver may select the unitrust distribution method by delivering written instructions
 89 to the trustee no later than 60 days prior to when the conversion shall take place. Such
 90 notification shall also be provided to the Secretary of State. The unitrust distribution
 91 method and the distribution rate selected shall remain in effect unless the cemetery or
 92 cemetery company notifies the trustee and the Secretary of State of its desire to effect a
 93 change.

94 (3) Disbursements from the trust in accordance with this subsection shall be made on a
 95 monthly, quarterly, semiannual, or annual basis, as agreed upon by the cemetery or
 96 cemetery company and the trustee.

97 (4) The Secretary of State may limit or prohibit any distribution based on the unitrust
 98 distribution method provisions in situations where investment returns and distribution
 99 practices have not resulted in sufficient protection of the perpetual care trust fund's trust
 100 principal based upon a three to five-year analysis.

101 ~~(e)~~(f) There shall be no withdrawals from the trust fund except pursuant to the provisions
102 of this chapter or by court order.

103 ~~(f)~~(g)(1) The assets of a trust fund shall be invested and reinvested subject to all the
104 terms, conditions, limitations, and restrictions imposed by the laws of the State of
105 Georgia upon executors and trustees regarding the making and depositing of investments
106 with trust moneys pursuant to former Code Sections 53-8-1 through 53-8-4 as such
107 existed on December 31, 1997, if applicable; Code Section 53-8-1; or Code
108 Section 53-12-340. Subject to said terms, conditions, limitations, and restrictions, the
109 trustee of the perpetual care trust fund shall have full power to hold, purchase, sell,
110 assign, transfer, reinvest, and dispose of any of the securities and investments in which
111 any of the assets of said fund are invested, including proceeds of investments.

112 (2) Any state bank, national bank, or other financial institution authorized to act in a
113 fiduciary capacity in this state, which presently or in the future serves as a fiduciary or
114 cofiduciary of the trust fund of a perpetual care cemetery, may invest part or all of such
115 trust fund held by it for investment in interests or participation in one or more common
116 trust funds established by that state bank, national bank, or other financial institution for
117 collective investment, if such investment is not expressly prohibited by the instrument,
118 judgment, decree, or order creating the fiduciary relationship and if, in the case of
119 cofiduciaries the trust institution procures the consent of its cofiduciary or cofiduciaries
120 to such investment, and notwithstanding the fact that such common trust funds are not
121 invested and reinvested subject to all the terms, conditions, limitations, and restrictions
122 imposed by the laws of the State of Georgia upon executors and trustees in the making
123 and disposing of their investments.

124 (3) Notwithstanding any other provision of this subsection, the Secretary of State shall
125 establish rules and regulations for investments of a trust fund established on or after
126 July 1, 2000, or otherwise governed by this chapter, the 'Georgia Cemetery and Funeral
127 Services Act of 2000,' as it existed on July 1, 2000, as necessary to preserve the corpus
128 and income of such a fund and for determining what restrictions are necessary for such
129 purpose.

130 (4) At any time, in the event that the perpetual care trust fund contains an amount less
131 than the amount required by this Code section, the cemetery owner shall, within 15 days
132 after the earlier of becoming aware of such fact or having been so notified by the
133 Secretary of State, deposit into the perpetual care trust fund an amount equal to such
134 shortfall. In the event that the Secretary of State and the cemetery owner disagree
135 regarding the amount of such shortfall, no penalty shall be imposed upon the cemetery
136 owner for any failure to comply with this paragraph unless such failure occurs after notice
137 and opportunity for a hearing as provided in Code Section 10-14-23.

138 ~~(g)~~(h) Moneys of the perpetual care trust fund shall not be invested in or loaned to any
 139 business venture controlled by the cemetery owner, a person who owns a controlling
 140 interest of a cemetery owner that is not a natural person, or an affiliate of any of these
 141 persons or entities.

142 ~~(h)~~(i) The trustee shall furnish yearly to the Secretary of State a financial report in a form
 143 designated by the Secretary of State with respect to the perpetual care trust fund.

144 ~~(i)~~(j) Upon a finding by a court of competent jurisdiction of failure to deposit or maintain
 145 funds in the trust account as required by this chapter or of fraud, theft, or misconduct by
 146 the owners of the cemetery or the officers or directors of a cemetery company which has
 147 wasted or depleted such funds, the cemetery owners or the officers or directors of a
 148 cemetery company may be held jointly and severally liable for any deficiencies in the trust
 149 account as required in this chapter."

150 **SECTION 2.**

151 Said chapter is further amended by revising paragraph (5) of subsection (a) of Code
 152 Section 10-14-11, relating to stop order suspending or revoking registration, denial or refusal
 153 of application for registration, and penalties, as follows:

154 "(5) The trustee for the perpetual care trust fund or the escrow agent for the preneed
 155 escrow account has failed to file financial reports required by subsection ~~(h)~~ (i) of Code
 156 Section 10-14-6 or subsection (g) of Code Section 10-14-29;"

157 **SECTION 3.**

158 All laws and parts of laws in conflict with this Act are repealed.