

HOUSE BILL 389

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2lr2429
CF 2lr1559

By: **Delegate Clagett**

Introduced and read first time: February 1, 2012

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation – Cemeteries – Forfeited Rights To Interment**

3 FOR the purpose of authorizing a certain cemetery to initiate proceedings for the
4 forfeiture of the right to interment under certain circumstances; requiring the
5 Office of Cemetery Oversight to review and approve all forfeiture proceedings;
6 requiring a cemetery that initiates proceedings for the forfeiture of the right to
7 interment to provide certain notice and to file certain information with the
8 Office; authorizing an owner or a family member of the owner of a right to
9 interment to suspend certain forfeiture proceedings in a certain manner;
10 establishing that an unused right to interment is forfeited within a certain
11 period of time under certain circumstances; granting certain remedies to the
12 owner or an individual entitled to use an interment that has been forfeited;
13 providing for the application of this Act; and generally relating to forfeiting
14 rights to interment in cemeteries.

15 BY repealing and reenacting, without amendments,
16 Article – Business Regulation
17 Section 5–101(a), (d), (g), (l), (m), (n), and (t)
18 Annotated Code of Maryland
19 (2010 Replacement Volume and 2011 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Business Regulation
22 Section 5–503
23 Annotated Code of Maryland
24 (2010 Replacement Volume and 2011 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

27 **Article – Business Regulation**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 5–101.

2 (a) In this title the following words have the meanings indicated.

3 (d) (1) “Cemetery” means land used or to be used for interment.

4 (2) “Cemetery” includes a structure used or to be used for interment.

5 (g) “Director” means the Director of the Office of Cemetery Oversight.

6 (l) “Interment” means all final disposition of human remains, including:

7 (1) earth burial;

8 (2) mausoleum entombment; and

9 (3) niche or columbarium interment.

10 (m) “Office” means the Office of Cemetery Oversight.

11 (n) “Permit” means a permit issued by the Director to allow a partnership,
12 limited liability company, or corporation to operate a business through which a
13 registrant may:

14 (1) engage in the operation of a cemetery or crematory; or

15 (2) provide burial goods.

16 (t) “Registration” means a registration issued by the Director authorizing an
17 individual to operate a cemetery, to operate a crematory, or to provide burial goods.

18 5–503.

19 (a) Each burial lot and each crypt sold or conveyed in a cemetery shall be
20 held by the owner only for the purpose of burial.

21 (b) The interest of an owner of a burial lot or crypt that is held for the burial
22 of the owner or others and not held as an investment is not:

23 (1) considered property;

24 (2) subject to attachment or execution for debt;

25 (3) subject to the insolvency laws of the State;

26 (4) to be inventoried in the estate of the owner; or

1 (5) subject to inheritance taxes.

2 (c) The interest of an owner of a burial lot or crypt that is held as an
3 investment and not held for the burial of the owner or others is:

4 (1) considered personal property;

5 (2) subject to attachment or execution for debt;

6 (3) subject to the insolvency laws of the State;

7 (4) to be inventoried in the estate of the owner; and

8 (5) subject to inheritance taxes.

9 (d) Subject to the rules of the cemetery owner and to the terms of any
10 contract made with the cemetery owner, the interest of an owner of a burial lot or
11 crypt:

12 (1) may be disposed of during the lifetime of the owner of the burial lot
13 or crypt with the consent of the cemetery owner;

14 (2) may be disposed of by specific reference in the will of the owner;
15 and

16 (3) otherwise passes to the heirs of the owner, as defined in § 1–101 of
17 the Estates and Trusts Article.

18 **(E) (1) THIS SUBSECTION APPLIES ONLY TO A RIGHT TO INTERMENT**
19 **IN A CEMETERY THAT HAS:**

20 **(I) A PERPETUAL CARE TRUST FUND; AND**

21 **(II) A PERMIT OR REGISTRATION FROM THE DIRECTOR.**

22 **(2) A CEMETERY SUBJECT TO THIS SUBSECTION MAY INITIATE**
23 **PROCEEDINGS FOR THE FORFEITURE OF THE RIGHT TO INTERMENT IN THE**
24 **CEMETERY IF:**

25 **(I) THE INTERMENT RIGHT HAS NOT BEEN USED;**

26 **(II) IT HAS BEEN AT LEAST 50 YEARS SINCE THE LAST**
27 **INSTRUCTION AS TO USE WAS RECEIVED BY THE CEMETERY FROM THE OWNER**
28 **OR A MEMBER OF THE FAMILY OF THE OWNER;**

1 **(III) IT HAS BEEN AT LEAST 50 YEARS SINCE THE LAST**
2 **BURIAL OCCURRED ON THE FAMILY BURIAL LOT; AND**

3 **(IV) A BURIAL MEMORIAL HAS NOT BEEN ERECTED OR**
4 **INSCRIBED ON THE BURIAL LOT.**

5 **(3) A CEMETERY THAT INITIATES FORFEITURE PROCEEDINGS**
6 **UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL:**

7 **(I) REQUEST A REVIEW AND APPROVAL OF THE**
8 **FORFEITURE PROCEEDINGS FROM THE OFFICE; AND**

9 **(II) AFTER THE OFFICE HAS REVIEWED AND APPROVED THE**
10 **FORFEITURE PROCEEDINGS:**

11 **1. SEND BY CERTIFIED MAIL, RETURN RECEIPT**
12 **REQUESTED, TO THE OWNER OR, IF THE OWNER IS DECEASED, TO ALL KNOWN**
13 **MEMBERS OF THE FAMILY OF THE OWNER, NOTICE OF INTENT TO TERMINATE**
14 **THE RIGHT TO USE THE IDENTIFIED INTERMENT SPACE;**

15 **2. SEND BY FIRST-CLASS MAIL TO THE OWNER OR, IF**
16 **THE OWNER IS DECEASED, TO ALL KNOWN MEMBERS OF THE FAMILY OF THE**
17 **OWNER, NOTICE OF INTENT TO TERMINATE THE RIGHT TO USE THE IDENTIFIED**
18 **INTERMENT SPACE;**

19 **3. PLACE IN A NEWSPAPER OF GENERAL**
20 **CIRCULATION IN THE COUNTY IN WHICH THE CEMETERY IS LOCATED ON THE**
21 **SAME DAY FOR 2 CONSECUTIVE WEEKS AN ADVERTISEMENT THAT NOTIFIES BY**
22 **NAME AND ADDRESS THE OWNER OF THE RIGHT TO INTERMENT THAT WILL BE**
23 **DECLARED FORFEITED;**

24 **4. POST IN A CONSPICUOUS PLACE IN THE OFFICE**
25 **AND ON THE OFFICE'S WEB SITE, IF ANY, A NOTICE THAT THE CEMETERY**
26 **INTENDS TO TERMINATE THE RIGHT TO USE THE IDENTIFIED INTERMENT**
27 **SPACE; AND**

28 **5. IF THE ADDRESS OF THE OWNER OR, IF THE**
29 **OWNER IS DECEASED, THE ADDRESSES OF ALL KNOWN MEMBERS OF THE**
30 **FAMILY OF THE OWNER, ARE NOT KNOWN OR READILY AVAILABLE, CONDUCT AN**
31 **INTERNET SEARCH USING COMMERCIAL SEARCH ENGINES OF ONLINE FAMILY**
32 **HISTORIES AND GENEALOGICAL RECORDS AND INFORMATION TO OBTAIN A**
33 **CONTACT ADDRESS.**

1 **(4) THE OFFICE SHALL:**

2 **(I) REVIEW AND APPROVE ALL FORFEITURE PROCEEDINGS**
3 **BEFORE ANY NOTICE IS SENT BY A CEMETERY UNDER PARAGRAPH (3) OF THIS**
4 **SUBSECTION; AND**

5 **(II) IF THE OFFICE APPROVES OF THE FORFEITURE**
6 **PROCEEDINGS UNDER ITEM (I) OF THIS PARAGRAPH, POST IN A CONSPICUOUS**
7 **PLACE IN THE OFFICE AND ON THE OFFICE'S WEB SITE A NOTICE THAT THE**
8 **CEMETERY INTENDS TO TERMINATE THE RIGHT TO USE THE IDENTIFIED**
9 **INTERMENT SPACE.**

10 **(5) (I) A CEMETERY THAT HAS GIVEN NOTICE OF FORFEITURE**
11 **PROCEEDINGS UNDER PARAGRAPH (3) OF THIS SUBSECTION SHALL FILE WITH**
12 **THE OFFICE IN PERSON OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED:**

13 **1. A RETURN RECEIPT FROM A NOTICE SENT UNDER**
14 **PARAGRAPH (3) OF THIS SUBSECTION; OR**

15 **2. AN AFFIDAVIT STATING THAT:**

16 **A. THE CEMETERY HAS COMPLIED WITH THE**
17 **REQUIREMENTS OF PARAGRAPH (3) OF THIS SUBSECTION; OR**

18 **B. THE ADDRESS OF THE OWNER OR, IF THE OWNER**
19 **IS DECEASED, THE ADDRESSES OF ALL KNOWN MEMBERS OF THE FAMILY OF**
20 **THE OWNER ARE NOT REASONABLY AVAILABLE.**

21 **(II) A RIGHT TO INTERMENT MAY NOT BE FORFEITED**
22 **UNLESS THE CEMETERY COMPLIES WITH THE FILING REQUIREMENT OF THIS**
23 **PARAGRAPH.**

24 **(6) (I) THE OWNER OR A MEMBER OF THE FAMILY OF THE**
25 **OWNER OF A RIGHT TO INTERMENT MAY SUSPEND A FORFEITURE PROCEEDING**
26 **UNDER THIS SUBSECTION BY NOTIFYING THE CEMETERY IN WRITING OF THE**
27 **INTENT TO USE THE INTERMENT SPACE.**

28 **(II) A WRITTEN RESPONSE TO THE CEMETERY BY THE**
29 **OWNER OR A MEMBER OF THE FAMILY OF THE OWNER TERMINATES A**
30 **FORFEITURE PROCEEDING UNDER THIS SUBSECTION FOR AT LEAST 50 YEARS.**

1 **(III) IF A CEMETERY RECEIVES A RESPONSE UNDER THIS**
2 **PARAGRAPH, THE CEMETERY SHALL IMMEDIATELY FORWARD A COPY OF THE**
3 **RESPONSE TO THE OFFICE.**

4 **(7) AN UNUSED RIGHT TO INTERMENT IS FORFEITED TO THE**
5 **CEMETERY THAT INITIATED PROCEEDINGS UNDER PARAGRAPH (2) OF THIS**
6 **SUBSECTION IF NO RESPONSE IS RECEIVED BY THE CEMETERY WITHIN 120**
7 **DAYS AFTER NOTICE IS GIVEN UNDER PARAGRAPH (3) OF THIS SUBSECTION.**

8 **(8) IF THE OWNER OF A RIGHT TO INTERMENT OR AN INDIVIDUAL**
9 **ENTITLED TO USE A RIGHT TO INTERMENT THAT HAS BEEN FORFEITED UNDER**
10 **THIS SUBSECTION DEMANDS THE RIGHT TO USE THE INTERMENT SPACE AND**
11 **THE INTERMENT SPACE IS NO LONGER AVAILABLE, THE CEMETERY SHALL**
12 **PROVIDE TO THE OWNER OR INDIVIDUAL THE CHOICE OF:**

13 **(I) THE ORIGINAL INTERMENT SPACE, IF THE SPACE HAS**
14 **NOT BEEN RESOLD;**

15 **(II) A REPLACEMENT RIGHT TO INTERMENT COMPARABLE**
16 **IN VALUE AND LOCATION TO THE FORFEITED RIGHT TO INTERMENT, IF**
17 **AVAILABLE, AND AT NO CHARGE; OR**

18 **(III) A REFUND OF THE AMOUNT FOR WHICH THE RIGHT TO**
19 **INTERMENT WAS RESOLD MINUS:**

20 **1. THE COSTS OF PROVIDING NOTICE AND**
21 **ADVERTISING UNDER THIS SUBSECTION, INCLUDING 10% FOR ADVERTISING**
22 **AND INTERNET EXPENSES; AND**

23 **2. THE DOCUMENTED SALES COMMISSION COSTS**
24 **INCURRED IN THE RESALE OF THE RIGHT TO INTERMENT, NOT EXCEEDING 25%.**

25 **(9) A RIGHT TO INTERMENT FORFEITED UNDER THIS**
26 **SUBSECTION IS SUBJECT TO ALL APPLICABLE REQUIREMENTS FOR PERPETUAL**
27 **CARE WHEN IT IS RESOLD.**

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2012.