

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 18

Short Title: Amend Cemetery Act.

(Public)

Sponsors: Senators Goss; Jacumin, Snow, Stevens, and Swindell.

Referred to: Commerce.

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CEMETERY ACT BY MODIFYING THE MEMBERSHIP OF THE CEMETERY COMMISSION, CHANGING THE INVESTMENTS OPTIONS FOR PERPETUAL CARE TRUST FUNDS, AND ELIMINATING THE ABILITY TO POST BONDS IN LIEU OF DEPOSITS TO TRUST ACCOUNTS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 65-50(a) reads as rewritten:

"(a) Membership. – The Cemetery Commission shall consist of nine members. The General Assembly shall appoint two members, one of whom shall be recommended by the President Pro Tempore of the Senate and one of whom shall be recommended by the Speaker of the House of Representatives. The General Assembly's appointments shall have no financial interest in or be involved in the management of a cemetery. The Governor shall appoint seven members as follows:

- (1) Two members who own or manage cemeteries in North Carolina.
- (2) ~~Three~~ Two members who are selected from six nominees submitted by the North Carolina Cemetery Association.
- (3) ~~Two~~ Three public members who have no financial interest in, and are not involved in management of, any cemetery or funeral related business."

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

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

(a) The term "corporate trustee" as used in this Article shall mean either a bank or trust company authorized to do business in North Carolina under the supervision of the Commissioner of Banks or any other corporate entity; provided that any corporate entity other than a bank or trust company which acts as trustee under this Article shall first be approved by the Cemetery Commission and shall be subject to supervision by the Cemetery Commission as provided herein.

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

- (1) The applicant employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others.
- (2) The applicant will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized.



1 (3) The applicant will act as trustee for cemetery funds which will exceed five  
2 hundred thousand dollars (\$500,000) in the aggregate.

3 (4) The applicant is authorized to do business in North Carolina and has  
4 adequate facilities to perform its duties as trustee.

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

12 (d) Whenever it appears that an officer, director, or employee of a trustee, other than a  
13 bank or trust company, is dishonest, incompetent, or reckless in the management of a cemetery  
14 trust fund, the Commission may bring an action in the courts to remove the trustee and to  
15 impound the property and business of the trustee as may be reasonably necessary to protect the  
16 trust funds.

17 (e) Any trustee shall invest and reinvest cemetery trust funds in the same manner as  
18 provided by law for the investment of trust funds by the clerk of the superior court; provided,  
19 however, that cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to  
20 G.S. 65-64(e) may be invested and reinvested in accordance with ~~G.S. 36A-2~~G.S. 32-71.

21 (f) This section does not apply to a trustee of a perpetual trust fund described in  
22 G.S. 65-64."

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

24 **"§ 65-64. Deposits to perpetual care fund.**

25 (a) Deposits to the care and maintenance trust fund must be made by the cemetery  
26 company holding title to the subject cemetery lands on or before the last day of the calendar  
27 month following the calendar month in which final payment is received as provided herein;  
28 however the entire amount required to be deposited into the fund shall be paid within four years  
29 from the date of any contract requiring ~~such the~~ payment regardless of whether all amounts  
30 have been received by the cemetery company. If the cemetery company fails to make timely  
31 deposit, the Commission may levy and collect a late filing fee of one dollar (\$1.00) per day for  
32 each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. All  
33 deposits shall be made in a bank located within and authorized to do business in the State. The  
34 care and maintenance trust fund shall be invested and reinvested by the trustee in certificates of  
35 deposit and money market funds. ~~the same manner as provided by law for the investment of~~  
36 ~~other trust funds by the clerk of the superior court except that such investments may be made~~  
37 ~~through means of a common trust fund as described in G.S. 36A-90; provided, further, that~~  
38 ~~cemetery Investments may be made through means of a common trust fund as described in~~  
39 G.S. 53-163.5. Cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to  
40 G.S. 65-64(e) may be invested and reinvested in accordance with ~~G.S. 36A-2~~G.S. 32-71. The  
41 fees and other expenses of the trust fund shall be paid by the trustee from the net income  
42 thereof and may not be paid from the corpus. To the extent that the ~~said~~ net income is not  
43 sufficient to pay ~~such the~~ fees and other expenses, the ~~same~~ fees and other expenses shall be  
44 paid by the cemetery company.

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

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

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

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

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

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

21 **"§ 65-66. Receipts from sale of personal property or services; trust account; penalties.**

22 (a) It shall be deemed contrary to public policy if any person or legal entity receives,  
23 holds, controls or manages funds or proceeds received from the sale of, or from a contract to  
24 sell, personal property or services which may be used in a cemetery in connection with the  
25 burial of or the commemoration of the memory of a deceased human being, where payments  
26 for the same are made either outright or on an installment basis prior to the demise of the  
27 person or persons so purchasing them or for whom they are so purchased, unless ~~such-the~~  
28 person or legal entity holds, controls or manages ~~said-the~~ funds, subject to the limitations and  
29 regulations prescribed in this section. This section shall apply to all cemetery companies or  
30 other legal entities that offer for sale or sell personal property or services which may be used in  
31 a cemetery in connection with the burial of, or the commemoration of the memory of, a  
32 deceased human being, but shall exclude persons holding a license under Article 13D of  
33 Chapter 90 of the General Statutes.

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

- 39 (1) The cemetery company or other entity shall deposit an amount equal to sixty  
40 percent (60%) of all proceeds received on ~~such-the~~ contracts into a trust  
41 account, either in the form of an account governed by a trust agreement and  
42 handled by a corporate trustee or in the form of a passbook savings account,  
43 certificates of deposit for time certificates, ~~and/or~~ money-market  
44 certificates or both with a licensed and insured bank or savings institution  
45 located in the State of North Carolina until the amount deposited equals sixty  
46 percent (60%) of the actual sale price of the property or services sold. ~~Such~~  
47 The accounts and/or or deposits or both shall be in the name of the cemetery  
48 company or other entity in a form which will permit withdrawals only with  
49 the participation and consent of the Cemetery Commission as required by  
50 subdivision (4) of this subsection.

- 1 (2) All funds received on account of a contract for the sale of ~~such~~the personal  
2 property or services, whether the funds be received directly from the  
3 purchaser or from the sale or assignment of notes entered into by the  
4 purchase or otherwise, shall be deposited into the trust account as required  
5 by subdivision (1) of this ~~section~~subsection.
- 6 (3) All deposits required herein shall be made into the trust account so  
7 established on or before the last day of the month following receipt of the  
8 funds by the cemetery company or other entity.
- 9 (4) Withdrawals from a trust account may be made by the depositor, but only  
10 with the written approval of the Commission or officer or employee of the  
11 Commission authorized to act for the Commission. Withdrawals may be  
12 made only upon delivery of the merchandise or services for which the funds  
13 were deposited, cancellation of a contract, the presence of excess funds in  
14 the trust account, or under other circumstances deemed appropriate by the  
15 Commission. The Commission shall promulgate rules and regulations  
16 governing withdrawals from trust accounts, including time and frequency of  
17 withdrawals, payments that will be made with the withdrawals, notice to the  
18 Commission prior to withdrawals, the number and identity of persons other  
19 than the owner who are authorized by the owner to make withdrawals, the  
20 officers and employees of the Commission authorized to approve  
21 withdrawals, and any other matters necessary to implement the provisions of  
22 this subdivision. Withdrawals will not be allowed if the amount remaining in  
23 the trust account would fall below sixty percent (60%) of all proceeds  
24 received on account of contracts for the sale of ~~such~~the personal property or  
25 services.
- 26 (5) If for any reason a cemetery company or other entity who has entered into a  
27 contract for the sale of personal property or services cannot or does not  
28 provide the personal property or perform the services called for by the  
29 contract after request in writing to do so, the purchaser or his heirs or assigns  
30 or duly authorized representative shall be entitled to receive the entire  
31 amount paid on the contract and any income if any, earned thereon by the  
32 trust account.
- 33 (6) Every year after September 1, 1975, the cemetery company, the trustee or  
34 other entity shall within 75 days after the end of the calendar year, file a  
35 financial report of the trust funds with the Commission, setting forth the  
36 principal thereof, the investments and payments made, the income earned  
37 and disbursed; provided, however, that the Commission may require the  
38 cemetery, trustee, or other entity to make ~~such~~the additional financial  
39 reports as it may deem advisable.
- 40 (c) Whenever a contract for the sale of personal property ~~and/or~~or services or both  
41 allocates payments to apply to one item at a time under a specific schedule, the contract shall be  
42 considered divisible. Title to each item of personal property or the right to each item of services  
43 shall pass to the purchaser upon full payment for that item regardless of the remaining balance  
44 on other items under the same contract.
- 45 (d) Any contract for the sale of personal property ~~and/or~~or services or both shall state  
46 separate costs for each item of personal property, for each act of installation required by the  
47 contract, and for each other item of services included in the contract.
- 48 (e) All contracts for the sale of personal property ~~and/or~~or services or both must be  
49 printed in type size as required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and  
50 regulations adopted pursuant to that act.

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

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

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

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

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

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

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

28 (m) Within 30 days following the execution of a contract for the sale of personal  
29 property or performance of services, a purchaser may cancel his contract by giving written  
30 notice to the seller. The seller may cancel the contract, upon default by purchaser, by giving  
31 written notice to the purchaser. Within 30 days of notice of cancellation, the cemetery company  
32 or other entity shall refund to purchaser the principal amount on deposit in the trust account for  
33 his benefit on any undelivered merchandise or services. This amount (no other obligations  
34 owed the purchaser by the seller) shall constitute the purchaser's entire entitlements under the  
35 contract. The seller may not terminate the contract without complying with this subsection."

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

37 **"§ 65-70. Construction of mausoleums and belowground crypts; trust fund for receipts**  
38 **from sale of preconstruction crypts; compliance requirements.**

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

46 (b) A cemetery company which plans to offer for sale space in a section of a  
47 mausoleum or bank of underground crypts prior to its construction shall establish a  
48 preconstruction trust account. The trust account shall be administered and operated in the same  
49 manner as the merchandise trust account provided for in G.S. 65-66 and shall be exclusive of  
50 the merchandise trust account or ~~such~~the other trust accounts or funds that may be required by  
51 law. The personal representative of any purchaser of ~~such~~the space who dies before

1 completion of construction shall be entitled to a refund of all moneys paid for ~~such~~the space  
2 including any income earned thereon.

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

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

15 Cost per unit divided by contract sales price = percentage

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

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

23 (e) If a mausoleum section or bank of underground crypts is not completed within the  
24 time limits set out in this section the corporate trustee, if any, shall contract for and cause ~~said~~  
25 the project to be completed and paid therefor from the trust account funds deposited to the  
26 project's account paying any balance, less cost and expenses, to the cemetery company. In the  
27 event there is no corporate trustee, the Commission shall appoint a committee to serve as  
28 trustees to contract for and cause ~~said~~the project to be completed and paid therefor from the  
29 trust account funds deposited to the project's account paying any balance, less cost and  
30 expenses, to the cemetery company.

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

34 **SECTION 6.** This act becomes effective July 1, 2010, and applies to appointments  
35 and investments made on or after that date.