



## 102ND GENERAL ASSEMBLY

### State of Illinois

### 2021 and 2022

### SB3207

Introduced 1/14/2022, by Sen. Antonio Muñoz

#### SYNOPSIS AS INTRODUCED:

760 ILCS 100/2	from Ch. 21, par. 64.2
760 ILCS 100/3	from Ch. 21, par. 64.3
760 ILCS 100/4	from Ch. 21, par. 64.4
760 ILCS 100/4.1 new	
760 ILCS 100/4.2 new	
760 ILCS 100/5	from Ch. 21, par. 64.5

Amends the Cemetery Care Act. Defines "average fair market value" and "total return percentage". Allows a cemetery authority to take distributions from its fund by net income distribution or total return distribution. Requires an application for implementation of the total return distribution method to be submitted at least 60 days before the effective date of the election to use total return. Provides that the total return percentage elected may be reduced but may not be increased unless additional application is made to the Comptroller with documentation demonstrating the rate of return of the care funds over the last 3 years to support an increase in the percentage. Allows a cemetery authority that has elected the total return distribution method to elect to reconvert to a net income distribution method by submitting written documentation to the Comptroller in support of the reconversion. Allows the Comptroller to take corrective measures and evaluate the care fund conditions and choose not to impose corrective measures under specified circumstances. Makes other changes.

LRB102 24204 LNS 33433 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Cemetery Care Act is amended by changing  
5 Sections 2, 3, 4, and 5 and by adding Sections 4.1 and 4.2 as  
6 follows:

7 (760 ILCS 100/2) (from Ch. 21, par. 64.2)

8 Sec. 2. Definitions. The following words, terms and  
9 phrases used in this Act, for the purpose of this Act, have the  
10 following meanings:

11 "Person" means any person, partnership, association,  
12 corporation, or other entity.

13 "Trustee" means any person authorized to hold funds under  
14 this Act.

15 "Comptroller" means the Comptroller of the State of  
16 Illinois.

17 "Care" means the maintenance of a cemetery and of the  
18 lots, graves, crypts, niches, family mausoleums, memorials,  
19 and markers therein; including: (i) the cutting and trimming  
20 of lawn, shrubs, and trees at reasonable intervals; (ii)  
21 keeping in repair the drains, water lines, roads, buildings,  
22 fences, and other structures, in keeping with a well  
23 maintained cemetery; (iii) maintenance of machinery, tools,

1 and equipment for such care; (iv) compensation of employees,  
2 payment of insurance premiums, and reasonable payments for  
3 employees pension and other benefits plans; and (v) to the  
4 extent surplus income from the care fund is available, the  
5 payment of overhead expenses necessary for such purposes and  
6 for maintaining necessary records of lot ownership, transfers,  
7 and burials.

8 "Care funds" as distinguished from receipts from annual  
9 charges or gifts for current or annual care, means any realty  
10 or personalty impressed with a trust by the terms of any gift,  
11 grant, contribution, payment, legacy, or pursuant to contract,  
12 accepted by any cemetery authority owning, operating,  
13 controlling or managing a privately operated cemetery, or by  
14 any trustee or licensee, agent or custodian for the same,  
15 under Section 3 of this Act, and the amounts set aside under  
16 Section 4 of this Act, and any income accumulated therefrom,  
17 where legally so directed by the terms of the transaction by  
18 which the principal was established.

19 "Cemetery" means any land or structure in this State  
20 dedicated to and used, or intended to be used, for the  
21 interment of human remains.

22 "Cemetery authority" means any person, firm, corporation,  
23 trustee, partnership, association or municipality owning,  
24 operating, controlling or managing a cemetery or holding lands  
25 for burial grounds or burial purposes in this State.

26 "Mausoleum crypt" means a space in a mausoleum used or

1 intended to be used, above or under ground, to entomb human  
2 remains.

3 "Family burying ground" means a cemetery in which no lots  
4 are sold to the public and in which interments are restricted  
5 to a group of persons related to each other by blood or  
6 marriage.

7 "Fraternal cemetery" means a cemetery owned, operated,  
8 controlled, or managed by any fraternal organization or  
9 auxiliary organizations thereof, in which the sale of lots,  
10 graves, crypts or niches is restricted principally to its  
11 members.

12 "Grave" means a space of ground in a cemetery, used, or  
13 intended to be used, for burial.

14 "Investment Company Act of 1940" means Title 15, of the  
15 United States Code, Sections 80a-1 to 80a-51, inclusive, as  
16 amended.

17 "Investment Company" means any issuer (a) whose securities  
18 are purchasable only with care funds or trust funds, or both;  
19 and (b) which is an open and diversified management company as  
20 defined in and registered under the "Investment Company Act of  
21 1940"; and (c) which has entered into an agreement with the  
22 Comptroller containing such provisions as the Comptroller by  
23 regulation reasonably requires for the proper administration  
24 of this Act.

25 "Municipal cemetery" means a cemetery owned, operated,  
26 controlled or managed by any city, village, incorporated town,

1 township, county, or other municipal corporation, political  
2 subdivision, or instrumentality thereof authorized by law to  
3 own, operate, or manage a cemetery.

4 "Niche" means a space in a columbarium used or intended to  
5 be used, for inurnment of cremated human remains.

6 "Privately operated cemetery" means any entity that offers  
7 interment rights, entombment rights, or inurnment rights,  
8 other than a fraternal, municipal, State, federal or religious  
9 cemetery or a family burying ground.

10 "Religious cemetery" means a cemetery owned, operated,  
11 controlled, or managed by any recognized church, religious  
12 society, association or denomination, or by any cemetery  
13 authority or any corporation administering, or through which  
14 is administered, the temporalities of any recognized church,  
15 religious society, association or denomination.

16 "State or federal cemetery" means a cemetery owned,  
17 operated, controlled, or managed by any State or the federal  
18 government or any political subdivision or instrumentality  
19 thereof.

20 "Entombment right" means the right to place individual  
21 human remains or individual cremated human remains in a  
22 specific mausoleum crypt or lawn crypt selected by the  
23 consumer for use as a final resting place.

24 "Interment right" means the right to place individual  
25 human remains or cremated human remains in a specific  
26 underground location selected by the consumer for use as a

1 final resting place.

2 "Inurnment right" means the right to place individual  
3 cremated human remains in a specific niche selected by the  
4 consumer for use as a final resting place.

5 "Lawn crypt" means a permanent underground crypt usually  
6 constructed of reinforced concrete or similar material  
7 installed in multiple units for the entombment of human  
8 remains.

9 "Imputed value" means the retail price of comparable  
10 rights within the same or similar area of the cemetery.

11 "Average fair market value" means the average of the fair  
12 market values of assets held by the fund on the first day of  
13 the current fiscal year and the first day of each of the 2  
14 preceding fiscal years, or the average of the fair market  
15 value for the entire term of the fund if there are less than 2  
16 preceding years.

17 "Total return percentage" means the annual percentage  
18 selected by the fund's trustee or the cemetery authority, but  
19 no less than 3% and no more than 5% of the average fair market  
20 value of the fund.

21 (Source: P.A. 92-651, eff. 7-11-02.)

22 (760 ILCS 100/3) (from Ch. 21, par. 64.3)

23 Sec. 3. Gifts and contributions - Trust funds. Any  
24 cemetery authority is hereby authorized and empowered to  
25 accept any gift, grant, contribution, payment, legacy, or

1 pursuant to contract, any sum of money, funds, securities or  
2 property of any kind, or the income or avails thereof, and to  
3 establish a trust fund to hold the same in perpetuity for the  
4 care of its cemetery, or for the care of any lot, grave, crypt  
5 or niche in its cemetery; or for the special care of any lot,  
6 grave, crypt or niche or of any family mausoleum or memorial,  
7 marker, or monument in its cemetery.

8 The cemetery authority shall act as trustee of all amounts  
9 received for care until they have been deposited into the  
10 trust fund established under this Section. The cemetery  
11 authority may continue to be the trustee of up to \$500,000 of  
12 care funds that have been deposited into the trust fund, but  
13 the cemetery authority must retain an independent trustee for  
14 any amount of care funds held in trust in excess of that  
15 \$500,000. A cemetery authority holding care funds in excess of  
16 \$500,000 on the effective date of this amendatory Act of 1996  
17 shall have 36 months to retain an independent trustee for the  
18 excess amounts held in trust; any other cemetery authority  
19 must retain an independent trustee for its care funds in  
20 excess of \$500,000 as soon as may be practical.

21 No gift, grant, legacy, payment or other contribution  
22 shall be invalid by reason of any indefiniteness or  
23 uncertainty as to the beneficiary designated in the instrument  
24 creating the gift, grant, legacy, payment or other  
25 contribution. If any gift, grant, legacy, payment or other  
26 contribution consists of non-income producing property, the

1 cemetery authority accepting it is authorized and empowered to  
2 sell such property and to invest the funds obtained in  
3 accordance with the provisions of the next succeeding  
4 paragraph.

5 The care funds authorized by this Section and provided for  
6 in Section 4 of this Act shall be held intact and, unless  
7 otherwise restricted by the terms of the gift, grant, legacy,  
8 contribution, payment, contract or other payment, as to  
9 investments made after June 11, 1951 the trustee of the care  
10 funds of the cemetery authority, in acquiring, investing,  
11 reinvesting, exchanging, retaining, selling and managing  
12 property for any such trust, shall exercise the judgment and  
13 care under the circumstances then prevailing, which persons of  
14 prudence, discretion and intelligence exercise in the  
15 management of their own affairs, not in regard to speculation  
16 but in regard to the permanent disposition of their funds,  
17 considering the probable income as well as the probable safety  
18 of their capital. Within the limitations of the foregoing  
19 standard, the trustee of the care funds of the cemetery  
20 authority is authorized to acquire and retain every kind of  
21 property, real, personal or mixed, and every kind of  
22 investment, including specifically but without limiting the  
23 generality of the foregoing, bonds, debentures and other  
24 corporate obligations, preferred or common stocks and real  
25 estate mortgages, which persons of prudence, discretion and  
26 intelligence acquire or retain for their own account. Within



1 the limitations of the foregoing standard, the trustee is  
2 authorized to retain property properly acquired, without  
3 limitation as to time and without regard to its suitability  
4 for original purchase. The care funds authorized by this  
5 Section may be commingled with other trust funds received by  
6 such cemetery authority for the care of its cemetery or for the  
7 care or special care of any lot, grave, crypt, niche, private  
8 mausoleum, memorial, marker, or monument in its cemetery,  
9 whether received by gift, grant, legacy, contribution,  
10 payment, contract or other conveyance heretofore or hereafter  
11 made to such cemetery authority. Such care funds may be  
12 invested with common trust funds as provided in the ~~The~~ Common  
13 Trust Fund Act. The ~~net~~ income only from the investment of such  
14 care funds shall be allocated and used for the purposes  
15 specified in the transaction by which the principal was  
16 established in the proportion that each contribution bears to  
17 the entire sum invested.

18 (Source: P.A. 89-615, eff. 8-9-96.)

19 (760 ILCS 100/4) (from Ch. 21, par. 64.4)

20 Sec. 4. Care funds; deposits; investments.

21 Whenever a cemetery authority owning, operating,  
22 controlling or managing a privately operated cemetery accepts  
23 care funds, either in connection with the sale or giving away  
24 at an imputed value of an interment right, entombment right or  
25 inurnment right, or in pursuance of a contract, or whenever,

1 as a condition precedent to the purchase or acceptance of an  
2 interment right, entombment right or inurnment right, such  
3 cemetery authority requires the establishment of a care fund  
4 or a deposit in an already existing care fund, then such  
5 cemetery authority shall execute and deliver to the person  
6 from whom received an instrument in writing which shall  
7 specifically state: (a) the nature and extent of the care to be  
8 furnished, and (b) that such care shall be furnished only in so  
9 far as the ~~net~~ income derived from the amount deposited in  
10 trust will permit ~~(the income from the amount so deposited,~~  
11 ~~less necessary expenditures of administering the trust, shall~~  
12 ~~be deemed the net income)~~, and (c) that not less than the  
13 following amounts will be set aside and deposited in trust:

14 1. For interment rights, \$1 per square foot of the  
15 space sold or 15% of the sales price or imputed value,  
16 whichever is the greater, with a minimum of \$25 for each  
17 individual interment right.

18 2. For entombment rights, not less than 10% of the  
19 sales price or imputed value with a minimum of \$25 for each  
20 individual entombment right.

21 3. For inurnment rights, not less than 10% of the  
22 sales price or imputed value with a minimum of \$15 for each  
23 individual inurnment right.

24 4. For any transfer of interment rights, entombment  
25 rights, or inurnment rights recorded in the records of the  
26 cemetery authority, excepting only transfers between

1 members of the immediate family of the transferor, a  
2 minimum of \$25 for each such right transferred. For the  
3 purposes of this paragraph "immediate family of the  
4 transferor" means the spouse, parents, grandparents,  
5 children, grandchildren, and siblings of the transferor.

6 5. Upon an interment, entombment, or inurnment in a  
7 grave, crypt, or niche in which rights of interment,  
8 entombment, or inurnment were originally acquired from a  
9 cemetery authority prior to January 1, 1948, a minimum of  
10 \$25 for each such right exercised.

11 6. For the special care of any lot, grave, crypt, or  
12 niche or of a family mausoleum, memorial, marker, or  
13 monument, the full amount received.

14 Such setting aside and deposit shall be made by such  
15 cemetery authority not later than 30 days after the close of  
16 the month in which the cemetery authority gave away for an  
17 imputed value or received the final payment on the purchase  
18 price of interment rights, entombment rights, or inurnment  
19 rights, or received the final payment for the general or  
20 special care of a lot, grave, crypt or niche or of a family  
21 mausoleum, memorial, marker or monument; and such amounts  
22 shall be held by the trustee of the care funds of such cemetery  
23 authority in trust in perpetuity for the specific purposes  
24 stated in said written instrument. For all care funds received  
25 by a cemetery authority, except for care funds received by a  
26 cemetery authority pursuant to a specific gift, grant,

1 contribution, payment, legacy, or contract that are subject to  
2 investment restrictions more restrictive than the investment  
3 provisions set forth in this Act, and except for care funds  
4 otherwise subject to a trust agreement executed by a person or  
5 persons responsible for transferring the specific gift, grant,  
6 contribution, payment, or legacy to the cemetery authority  
7 that contains investment restrictions more restrictive than  
8 the investment provisions set forth in this Act, the cemetery  
9 authority may, without the necessity of having to obtain prior  
10 approval from any court in this State, designate a new trustee  
11 in accordance with this Act and invest the care funds in  
12 accordance with this Section, notwithstanding any contrary  
13 limitation contained in the trust agreement.

14 Any such cemetery authority engaged in selling or giving  
15 away at an imputed value interment rights, entombment rights  
16 or inurnment rights, in conjunction with the selling or giving  
17 away at an imputed value any other merchandise or services not  
18 covered by this Act, shall be prohibited from increasing the  
19 sales price or imputed value of those items not requiring a  
20 care fund deposit under this Act with the purpose of  
21 allocating a lesser sales price or imputed value to items that  
22 require a care fund deposit.

23 In the event any sale that would require a deposit to such  
24 cemetery authority's care fund is made by a cemetery authority  
25 on an installment basis, and the installment contract is  
26 factored, discounted, or sold to a third party, the cemetery

1 authority shall deposit the amount due to the care fund within  
2 30 days after the close of the month in which the installment  
3 contract was factored, discounted, or sold. If, subsequent to  
4 such deposit, the purchaser defaults on the contract such that  
5 no care fund deposit on that contract would have been  
6 required, the cemetery authority may apply the amount  
7 deposited as a credit against future required deposits.

8 The trust authorized by this Section shall be a single  
9 purpose trust fund. In the event of the seller's bankruptcy,  
10 insolvency, or assignment for the benefit of creditors, or an  
11 adverse judgment, the trust funds shall not be available to  
12 any creditor as assets of the cemetery authority or to pay any  
13 expenses of any bankruptcy or similar proceeding, but shall be  
14 retained intact to provide for the future maintenance of the  
15 cemetery. Except in an action by the Comptroller to revoke a  
16 license issued pursuant to this Act and for creation of a  
17 receivership as provided in this Act, the trust shall not be  
18 subject to judgment, execution, garnishment, attachment, or  
19 other seizure by process in bankruptcy or otherwise, nor to  
20 sale, pledge, mortgage, or other alienation, and shall not be  
21 assignable except as approved by the Comptroller. The changes  
22 made by this amendatory Act of the 91st General Assembly are  
23 intended to clarify existing law regarding the inability of  
24 licensees to pledge the trust.

25 (Source: P.A. 91-7, eff. 6-1-99.)

1 (760 ILCS 100/4.1 new)

2 Sec. 4.1. Distributions.

3 (a) As used in this Section:

4 "Net income" means all net interest and dividends, after  
5 fees and taxes taken from income. "Net income" does not  
6 include any capital gains from the investment of such care  
7 funds.

8 "Total return distribution" means the distribution of  
9 funds from the care fund based on the average fair market value  
10 of the fund assets multiplied by the total return percentage.

11 (b) A cemetery authority may take distributions from its  
12 fund either by:

13 (1) net income distribution; or

14 (2) total return distribution.

15 (c) If a cemetery authority takes distributions from its  
16 fund by total return distribution, the following apply:

17 (1) Fees and taxes may be paid from corpus.

18 (2) If the fees paid by the care fund exceed 2% of the  
19 fair market value at the end of a given year, the amount in  
20 excess shall be paid from the distributions.

21 (d) A cemetery authority may select a distribution method  
22 by delivering written instructions to the trustee of the fund  
23 no later than 30 days before the beginning of the calendar  
24 year. The distribution method and the distribution rate  
25 selected shall remain in effect unless the cemetery notifies  
26 the trustee of its desire to effect a change, application for

1 the change has been submitted to the Comptroller as required  
2 in Section 4.2, and copies of the documentation are submitted  
3 to the trustee. If the trustee does not receive written  
4 instructions from the cemetery authority informing the trustee  
5 of the method of calculating chosen, then the trustee shall  
6 calculate and distribute based on the net income distribution  
7 method. The trustee shall distribute income to the cemetery  
8 authority at least annually or in more frequent installments  
9 as agreed to by the trustee and cemetery authority.

10 (760 ILCS 100/4.2 new)

11 Sec. 4.2. Application for total return distribution and  
12 restrictions.

13 (a) An application for the implementation of the total  
14 return distribution method shall be submitted at least 60 days  
15 before the effective date of the election to receive total  
16 return distribution. The cemetery authority shall provide the  
17 Comptroller with all of the following:

18 (1) A written investment policy. The investment goals  
19 shall be to achieve principal growth through allowable  
20 investments for care fund trusts with a secondary goal of  
21 achieving current income.

22 (2) A care fund trust agreement that clearly shows the  
23 selection of the total return distribution method.

24 (3) A written distribution policy establishing the  
25 total return percentage and initial estimated average fair

1 market value, using the most recent month-end balances as  
2 the estimate for the current year, signed by the cemetery  
3 authority or trustee, along with supporting documentation  
4 and additional information as may be required by the rules  
5 adopted under this Act.

6 (b) The application shall be considered approved unless  
7 the cemetery authority or trustee is notified otherwise by the  
8 Comptroller within 30 days of receipt. The notification shall  
9 contain details of the information needed to remedy any  
10 deficiencies in the application.

11 (c) The total return percentage elected may be reduced but  
12 may not be increased unless additional application is made to  
13 the Comptroller with documentation demonstrating the rate of  
14 return of the care funds over the last 3 years to support an  
15 increase in the percentage.

16 (d) A cemetery authority that has elected the total return  
17 distribution method may elect to reconvert to a net income  
18 distribution method by submitting written documentation to the  
19 Comptroller in support of the reconversion, including a copy  
20 of the trust agreement, notification on the proposed effective  
21 date of the reconversion, and any additional information  
22 required by the Comptroller.

23 (e) The Comptroller may take corrective measures,  
24 including reducing the total return percentage or requiring a  
25 distribution of only net income for a year under one or more of  
26 the following circumstances:



1           (1) if the average fair market value of the care fund  
2           from one 3-year period to the previous 3-year period  
3           declines by 10% or more;

4           (2) if the fair market value of the fund at the  
5           beginning of a fiscal year is less than 80% of the fair  
6           market value of the fund on the first day of the fiscal  
7           year when the care fund started making distributions based  
8           on the total return distribution method;

9           (3) if there is an uncorrected care fund deficiency as  
10           determined by the Comptroller's review of the annual  
11           report; or

12           (4) if the Comptroller determines that the trustee is  
13           not able to demonstrate sufficient knowledge and expertise  
14           regarding the effective implementation of distributing  
15           income for the maintenance of the cemetery using the total  
16           return distribution method.

17           (f) The Comptroller may evaluate the care fund conditions  
18           and choose not to impose corrective measures if the  
19           Comptroller finds that:

20           (1) the reasons are due to unusual or temporary  
21           factors not within the control of the cemetery authority  
22           or the trustee and that could not have been reasonably  
23           anticipated;

24           (2) the current investment policy of the fund is  
25           reasonably designed to protect the fund from further  
26           declines in fair market value; or

1           (3) the exception appears to be both necessary and  
2           appropriate for the continued protections of the care  
3           fund.

4           (760 ILCS 100/5) (from Ch. 21, par. 64.5)

5           Sec. 5. Advertising. No cemetery authority, nor any agent,  
6           servant, or employee of it, nor any other person, shall  
7           advertise, represent, guarantee, promise, or contract that  
8           perpetual care, permanent care, perpetual or permanent  
9           maintenance, care forever, continuous care, eternal care,  
10          everlasting care, or any similar or equivalent care, or care  
11          for any number of years of any cemetery or of any lot, grave,  
12          crypt or niche, or of any family mausoleum, memorial, marker,  
13          or monument, will be furnished: Provided, however, that any  
14          cemetery authority may advertise, represent, guarantee,  
15          promise or contract that care will be furnished from the ~~net~~  
16          income only derived from funds held in trust as provided in  
17          Sections ~~Section~~ 3 and 4 of this Act; and may advertise,  
18          represent, guarantee, promise or contract that care will be  
19          given any lot, grave, crypt, or niche, or any family  
20          mausoleum, memorial, marker, or monument for any definite  
21          number of years, such care to be furnished under a contract  
22          providing that the principal of the amount paid under the  
23          contract shall be used to furnish the care and further  
24          providing specifically the care to be given and the number of  
25          years for which it is to be given.

1 (Source: Laws 1947, p. 338.)