

A BILL FOR

AN ACT concerning civil law.

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

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

(760 ILCS 100/2 [🔗](#)) (from Ch. 21, par. 64.2)

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

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

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

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

"Care" means the maintenance of a cemetery and of the lots, graves, crypts, niches, family mausoleums, memorials, and markers therein; including: (i) the cutting and trimming of lawn, shrubs, and trees at reasonable intervals; (ii) keeping in repair the drains, water lines, roads, buildings, fences, and other structures, in keeping with a well maintained cemetery; (iii) maintenance of machinery, tools, and equipment for such care; (iv) compensation of employees, payment of insurance premiums, and reasonable payments for employees pension and other benefits plans; and (v) to the extent surplus income from the care fund is available, the payment of overhead expenses necessary for such purposes and for maintaining necessary records of lot ownership, transfers, and burials.

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

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

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

"Mausoleum crypt" means a space in a mausoleum used or intended to be used, above or under ground, to entomb human remains.

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

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

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

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

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

"Municipal cemetery" means a cemetery owned, operated, controlled or managed by any city, village, incorporated town, township, county, or other municipal corporation, political subdivision, or instrumentality thereof authorized by law to own, operate, or manage a cemetery.

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

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

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

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

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

"Interment right" means the right to place individual human remains or cremated human remains in a specific underground location selected by the consumer for use as a final resting place.

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

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

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

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

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

"Net income" means:

a) "ordinary income" means all net interest and dividends, after fees and taxes taken from income. "Ordinary income" does not include any capital gains from the investment of such care funds, or

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

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

(760 ILCS 100/3 [§](#)) (from Ch. 21, par. 64.3)

Sec. 3. Gifts and contributions - Trust funds. Any cemetery authority is hereby authorized and empowered to accept any gift, grant, contribution, payment, legacy, or pursuant to contract, any sum of money, funds, securities or property of any kind, or the income or avails thereof, and to establish a trust fund to hold the same in perpetuity for the care of its cemetery, or for the care of any lot, grave, crypt or niche in its cemetery; or for the special care of any lot, grave, crypt or niche or of any family mausoleum or memorial, marker, or monument in its cemetery.

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

No gift, grant, legacy, payment or other contribution shall be invalid by reason of any indefiniteness or uncertainty as to the beneficiary designated in the instrument creating the gift, grant, legacy, payment or other contribution. If any gift, grant, legacy, payment or other contribution consists of non-income producing property, the cemetery authority accepting it is authorized and empowered to sell such property and to invest the funds obtained in accordance with the provisions of the next succeeding paragraph.

The care funds authorized by this Section and provided for in Section 4 of this Act shall be held intact and, unless otherwise restricted by the terms of the gift, grant, legacy, contribution, payment, contract or other payment, as to investments made after June 11, 1951 the trustee of the care funds of the cemetery authority, in acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for any such trust, shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, the trustee of the care funds of the cemetery authority is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, including specifically but without limiting the generality of the foregoing, bonds, debentures and other corporate obligations, preferred or common stocks and real estate mortgages, which persons of prudence, discretion and intelligence acquire or retain for their own account. Within the limitations of the foregoing standard, the trustee is authorized to retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase. The care funds authorized by this Section may be commingled with other trust funds received by such cemetery authority for the care of its cemetery or for the care or special care of any lot, grave, crypt, niche, private mausoleum, memorial, marker, or monument in its cemetery, whether received by gift, grant, legacy, contribution, payment, contract or other conveyance heretofore or hereafter made to such cemetery authority. Such care funds may be invested with common trust funds as provided in ~~the~~ [The Common Trust Fund Act](#). The net income only from the investment of such care funds shall be allocated and used for the purposes specified in the transaction by which the principal was established in the proportion that each contribution bears to the entire sum invested.

[Sec. 3.1.](#)

[For the purposes of collective investment and administration, a trustee may apply to the Comptroller to establish a master trust fund in which deposits are made pursuant to the provisions of this Act. The operation of the master trust fund shall be subject to the provisions of](#)

this Act and rules and regulations applicable to this Act. The master trust fund shall be subject to the following requirements:

- (a) it shall include only cemetery authorities located in the state of Illinois that have given written consent to participate in a master trust fund;
- (b) it must be administered by an independent trustee;
- (c) the trustee of a master trust fund shall maintain separate records of principal and income for each participant in the master trust fund;
- (d) the income and associated expenses of the master trust fund shall be divided among the participants in the master trust fund based on the proportion that each participant contributes to the balance of the master trust fund;
- (e) the trustee shall make accounting records of the trust, including a report that will include itemized separate accounting for each participant in the master trust fund, available for review and audit upon request by the Comptroller.

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

(760 ILCS 100/4 [↗](#)) (from Ch. 21, par. 64.4)

Sec. 4. Care funds; deposits; investments.

Whenever a cemetery authority owning, operating, controlling or managing a privately operated cemetery accepts care funds, either in connection with the sale or giving away at an imputed value of an interment right, entombment right or inurnment right, or in pursuance of a contract, or whenever, as a condition precedent to the purchase or acceptance of an interment right, entombment right or inurnment right, such cemetery authority requires the establishment of a care fund or a deposit in an already existing care fund, then such cemetery authority shall execute and deliver to the person from whom received an instrument in writing which shall specifically state: (a) the nature and extent of the care to be furnished, and (b) that such care shall be furnished only in so far as the net income derived from the amount deposited in trust will permit ~~(the income from the amount so deposited, less necessary expenditures of administering the trust, shall be deemed the net income)~~, and (c) that not less than the following amounts will be set aside and deposited in trust:

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

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

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

4. For any transfer of interment rights, entombment rights, or inurnment rights recorded in the records of the cemetery authority, excepting only transfers between members of the immediate family of the transferor, a minimum of \$25 for each such right transferred. For the purposes of this paragraph "immediate family of the transferor" means the spouse, parents, grandparents, children, grandchildren, and siblings of the transferor.

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

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

Such setting aside and deposit shall be made by such cemetery authority not later than 30 days after the close of the month in which the cemetery authority gave away for an imputed value or received the final payment on the purchase price of interment rights, entombment rights, or inurnment rights, or received the final payment for the general or special care of a lot, grave, crypt or niche or of a family mausoleum, memorial, marker or monument; and such amounts shall be held by the trustee of the care funds of such cemetery authority in trust in perpetuity for the specific purposes stated in said written instrument. For all care funds received by a cemetery authority, except for care funds received by a cemetery authority pursuant to a specific gift, grant, contribution, payment, legacy, or contract that are subject to investment restrictions more restrictive than the investment provisions set forth in this Act, and except for care funds otherwise subject to a trust agreement executed by a person or persons responsible for transferring the specific gift, grant, contribution, payment, or legacy to the cemetery authority that contains investment restrictions more restrictive than the investment provisions set forth in this Act, the cemetery authority may, without the necessity of having to obtain prior approval from any court in this State, designate a new trustee in accordance with this Act and invest the care funds in accordance with this Section, notwithstanding any contrary limitation contained in the trust agreement.

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

In the event any sale that would require a deposit to such cemetery authority's care fund is made by a cemetery authority on an installment basis, and the installment contract is factored, discounted, or sold to a third party, the cemetery authority shall deposit the amount due to the care fund within 30 days after the close of the month in which the installment contract was factored, discounted, or sold. If, subsequent to such deposit, the purchaser defaults on the contract such that no care fund deposit on that contract would have been required, the cemetery authority may apply the amount deposited as a credit against future required deposits.

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

[\(760 ILCS 100/4.1 new\)](#)

Sec. 4.1. Distributions.

(a) A cemetery authority may take distributions from its fund either by distributing:

(1) ~~net-ordinary~~ income; or

(2) total return distribution.

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

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

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

(c) A cemetery authority may select a distribution method by delivering written instructions to the trustee of the fund no later than 30 days before the beginning of the calendar year. The distribution method and the distribution rate selected shall remain in effect unless the cemetery notifies the trustee of its desire to effect a change, application for the change has been submitted to the Comptroller as required in Section 4.2, and copies of the documentation are submitted to the trustee. If the trustee does not receive written instructions from the cemetery authority informing the trustee of the method of calculating chosen, then the trustee shall calculate and distribute based on the ~~net-ordinary~~ income distribution method. The trustee shall distribute income to the cemetery authority at least annually or in more frequent installments as agreed to by the trustee and cemetery authority.

[\(760 ILCS 100/4.2 new\)](#)

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

(a) An application for the implementation of the total return distribution method shall be submitted to the Comptroller at least 60-120 days before the effective date of the election to receive total return distribution. In addition to submitting payment of a reasonable application fee, The-the cemetery authority shall provide the Comptroller with all of the following:

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

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

(3) A written distribution policy establishing the total return percentage and initial estimated average fair market value, using the most recent month-end balances as the estimate for the current year, signed by the cemetery authority or trustee, along with supporting documentation and additional information as may be required by the rules adopted under this Act.

(b) The application shall be considered approved unless the cemetery authority or trustee is notified otherwise by the Comptroller within 30-90 days of receipt. The notification shall contain details of the information needed to remedy any deficiencies in the application.

(c) 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.

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

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

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

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

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

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

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

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

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

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

(760 ILCS 100/5 [↗](#)) (from Ch. 21, par. 64.5)

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

(760 ILCS 100/14) (from Ch. 21, par. 64.14)

Sec. 14. The Comptroller may at any time investigate the cemetery business of every licensee with respect to its care funds. The Comptroller shall examine at least annually every licensee who holds-has \$250,000 or more in care funds. For that purpose, the Comptroller shall have free access to the office and places of business and to such records of all licensees and of all trustees of the care funds of all licensees as shall relate to the acceptance, use and investment of care funds.

(760 ILCS 100/15a) (from Ch. 21, par. 64.15a)

Sec. 15a. Where any cemetery authority owning, operating, controlling or managing a privately operated cemetery or any trustee for the same has accepted care funds within the

meaning of this Act, and is considered abandoned or seeks dissolution ~~dissolution is sought by such cemetery authority~~ in any manner, by resolution of such cemetery authority, or the trustees thereof, notice shall be given to the Comptroller of such intention to dissolve, and proper disposition shall be made of the care funds so held for the general benefit of such lot owners by or for the benefit of such cemetery authority, as provided by law, or in accordance with the trust provisions of any gift, grant, contribution, payment, legacy or pursuant to any contract whereby such funds were created. The Comptroller represented by the Attorney General may apply to the circuit court for the appointment of a receiver, trustee, successor in trust, or for directions of such court as to the proper disposition to be made of such care funds, to the end that the uses and purposes for which such trust or care funds were created may be accomplished. Where no such receiver is available, the circuit court may order a willing local municipality, township, county, or city to take over the cemetery. Any existing deed or care funds may be conveyed or transferred to the unit of local government. If there is no party available to convey the deed or transfer the care funds, then a judicial deed and court order may be obtained in the county in which the cemetery is located, and such deed or other writing, if it relates to land, shall promptly after its execution by a judge or the sheriff, be recorded in the recorder's office of the county wherein the land is situated. Any cemetery taken over by a local municipality township, county, or city shall be considered a municipal cemetery for the purposes of this Act.

(Source: P.A. 87-747; 88-477.)

~~-(760 ILCS 100/25)-~~

~~—Sec. 25. Use of care funds. When a township or multi-township cemetery district takes over a cemetery or cemetery authority, the care fund and care fund expenditures continue to be subject to the provisions of this Act, and the township or multi-township cemetery district must continue to use the care fund exclusively for the care and maintenance of the cemetery in accordance with this Act.—~~

~~(Source: P.A. 91-181, eff. 1-1-00.)~~