



Funeral Consumers Alliance of Maryland and Environs

Protecting a consumer's right to a meaningful, dignified, and affordable funeral.

House Health and Government Operations Committee of the Maryland General Assembly

Testimony on: HB 5 “Cemeteries – Perpetual Care – Distribution From Perpetual Care Trust Fund”

Position: Oppose

Hearing Date: January 21, 2021

The Funeral Consumers Alliance of Maryland and Environs strongly opposes HB 5. It would remove protections of cemetery perpetual care trust funds in current law and expose cemeteries to greater risk of depleting their perpetual care trust fund's assets.

The cemetery business is different from others. It receives money from consumers often many years, if not decades, before the products and services paid for in advance will need to be provided for the purchaser. At least 10% of the price of each right to interment in a burial plot goes into the principal of a cemetery's perpetual care trust fund. Currently, a cemetery can only take an annual distribution of interest and dividends of the trust fund to be used for current and future repair and maintenance of cemetery grounds and buildings; the principal of the fund cannot be touched. Any capital gains earned from investments of the principal must remain so the principal can continue to grow over time and keep pace with inflation.

This bill would eliminate the requirement that realized capital gains be retained in the trust fund. Not only that, it would require that any taxes or fees on those gains be paid out of the principal of the trust fund. Even more problematic is that the bill would allow a cemetery owner to take annual distributions of up to 4% of the fair market value of the fund averaged over the preceding 3 years. During periods of high financial asset valuation, this could result in drawdown of principal to the point that when financial assets decline again in value, the trust fund would be severely depleted.

Currently there is around \$90 million total in the perpetual care trust funds of the 85 licensed cemeteries in the state. HB 5 says the Director of the Office of Cemetery Oversight (OCO) may limit or prohibit a cemetery's proposed distribution based on a review of the prior 5 to 7 years of performance of a perpetual care trust fund. However, OCO lacks the requisite staff and expertise to make the substantive financial analysis necessary to determine the health of up to 85 cemeteries' perpetual care trust funds. Such analysis is needed to determine whether further distributions from a cemetery's perpetual care trust fund's principal should be allowed.

Maryland law clearly states that a cemetery perpetual care trust fund “shall be a single purpose trust fund”, and “shall be retained intact to provide for the future maintenance of the cemetery” so it doesn't become neglected or abandoned, and a burden on taxpayers. Why is SCI seeking to allow the principal in cemetery perpetual care trust funds to be invaded? They tell us it's to enable the trust fund's income to be increased. There's another reason why they want Maryland's cemetery law weakened that they don't talk about. If this bill is passed, the company's profits would increase. Despite \$3.4 billion in annual revenue from their 1900 funeral homes and cemeteries in the U.S. and Canada, SCI still feels the need to raid the perpetual care trust funds at the cemeteries they own.

In summary, let me quote the last line of the Fiscal and Policy Note on HB 5. “The bill exposes these businesses to additional risks of depleting assets in their perpetual care trust funds.” We totally agree with that assessment and urge an unfavorable report on this bill.

Brian Ditzler, FCAME Vice President, bditzler@gmail.com