

2021 -- S 0260

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO HEALTH AND SAFETY -- CEMETERIES -- CEMETERY PERPETUAL
FUNDS REPORTING

Introduced By: Senators Miller, and Euer

Date Introduced: February 10, 2021

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-18-1, 23-18-8.1 and 23-18-9 of the General Laws in Chapter 23-
2 18 entitled "Cemeteries" are hereby amended to read as follows:

3 **23-18-1. Definitions.**

4 The following terms used in this chapter, unless the context indicates otherwise, have the
5 following meanings:

6 [\(1\) "Active cemetery" means a cemetery or graveyard which is actively being used for](#)
7 [burial of human remains or which is being maintained by the owners of the cemetery grounds.](#)

8 ~~(2)~~ [\(2\) "Agencies" mean town cemeteries, religious or ecclesiastical society cemeteries,](#)
9 [cemetery associations, or any person, firm, corporation, or unincorporated association previously](#)
10 [or hereafter engaged in the business of conducting a cemetery or operating a community](#)
11 [mausoleum or columbarium.](#)

12 [\(3\) "Annual report" means a document produced annually which describes the operation](#)
13 [and financial condition of a perpetual care fund trust and submitted to the attorney general.](#)

14 [\(4\) "Attorney general" means the attorney general of the state of Rhode Island including](#)
15 [the consumer protection unit.](#)

16 ~~(5)~~ [\(5\) "Columbarium" means a structure or room, or other space in a building or structure](#)
17 [of durable or lasting fireproof construction, containing niches, used, or intended to be used, to](#)
18 [contain cremated human remains.](#)

1 ~~(3)~~(6) "Community mausoleum" means a structure or building of durable or lasting
2 construction, used or intended to be used, for the permanent disposition in crypts or spaces therein
3 of the remains of deceased persons, provided the crypts or spaces and their use are available to or
4 may be obtained by individuals for a price in money or other form of security.

5 ~~(4)~~(7) "Crypt" means the chamber in a mausoleum of sufficient size to contain the remains
6 of a deceased person.

7 ~~(5)~~(8) "Historic cemetery" means any tract of land which has been for more than one
8 hundred (100) years used as a burial place, whether or not marked with an historic marker, including
9 but not limited to, ancient burial places known or suspected to contain the remains of one or more
10 American Indians.

11 ~~(6)~~(9) "Niche" means a recess in a columbarium or other structure, used, or intended to be
12 used, for the permanent disposition of the cremated remains of one or more deceased persons.

13 (10) "Perpetual care" means on going and continued maintenance of cemetery grounds,
14 graves, crypts and mausoleums to ensure cleanliness, safety and security.

15 (11) "Perpetual care fund" means a fund consisting of money, investments, stocks, bonds
16 held in a trust for the purpose of perpetual care pursuant to the provisions of this chapter.

17 Perpetual care funds are used for the general maintenance, care and management of the
18 cemetery grounds, monument features and community Mausoleums. For example, mowing and
19 lawn care during the growing season and the snow clearing and road treating during winter months,
20 would fall under perpetual care, as would upkeep of buildings, roads, paths, signage, monument
21 features and recordkeeping.

22 **23-18-8.1. Perpetual care funds.**

23 (a) All funds paid to or held by an agency for the purpose of funding the perpetual care of
24 cemetery lots, crypts, or niches shall be maintained in a separate perpetual care fund, and shall not
25 be commingled with any other funds of the agency; and

26 (b) Not less than ~~twenty percent (20%)~~ twenty-five percent (25%) of the sale price of a
27 cemetery lot, crypt, or niche sold with perpetual care shall be deposited by the agency in the
28 perpetual care fund trust within thirty (30) days of receipt of such funds;

29 (c) Perpetual care funds shall be used only for perpetual care;

30 (d) No portion of the perpetual care funds trust or interest or income of the perpetual care
31 funds trust may be used directly or indirectly for salaries or other payments to the officers, directors,
32 partners, members, or managers of the entity owning the cemetery.

33 **23-18-9. Penalty for violations.**

34 (a) Any person, member of a firm, or any officer or director of a corporation, failing to

1 comply with any of the provisions of this chapter, upon each and every conviction of any of the
2 provisions of this chapter, shall be fined not less than one hundred dollars (\$100) nor more than
3 five hundred dollars (\$500) or by imprisonment for not less than sixty (60) days nor more than six
4 (6) months, or by both fine and imprisonment.

5 (b) The superior court of this state has jurisdiction to prevent and restrain violations of this
6 chapter. The court may issue appropriate decrees upon consent and stipulation by the parties. The
7 court may also issue restraining orders. Under no circumstances is the state required to post bond
8 in any action under this section.

9 (c) The attorney general is authorized to apply to the superior court for an order temporarily
10 or permanently restraining and enjoining any agency from operating in violation of any provision
11 of this chapter. The attorney general may institute proceedings as provided in subsection (b) of this
12 section.

13 (d) Nothing in this chapter shall be construed to nullify or impair any right that a buyer or
14 his or her agent or kin, may have against the agency at common law, by statute, or otherwise. The
15 provisions of this chapter shall not be exclusive and shall not relieve the seller, the assigns, or
16 contracts from compliance with all other applicable provisions of law.

17 SECTION 2. Chapter 23-18 of the General Laws entitled "Cemeteries" is hereby amended
18 by adding thereto the following sections:

19 **23-18-8.4. Annual report.**

20 (a) The fiscal agent for any person or entity maintaining a perpetual care fund shall file a
21 report by March 31, annually ("annual report") for the previous calendar year with the attorney
22 general consumer protection unit and with the municipal clerk of the municipality where the
23 cemetery is located. An annual filing fee of fifty dollars (\$50.00) shall be submitted for each report.
24 Upon application to and approval by the attorney general, the filing date may be extended to
25 correspond to fiscal year reporting utilized by a person or entity maintaining a perpetual care fund.

26 (b) The attorney general shall provide the annual report form so there is consistency in
27 reporting, and the form at a minimum shall include, but not be limited to, information showing
28 financial transactions, a statement of fund net assets, a statement of changes in fund net assets, a
29 valuation balance sheet as prepared by an actuary on a schedule in accordance with generally
30 accepted accounting principles, and other information as deemed necessary for a proper
31 interpretation of the condition of the fund.

32 (c)The annual report shall also include:

33 (1) The total amount invested in bonds, securities, mortgages and other investments;

34 (2) The total amount of cash on hand not invested at the close of the previous calendar or

1 fiscal year:

2 (3) The income earned by investments in the preceding calendar or fiscal year;

3 (4) The amounts of such income expended for maintenance in the preceding calendar or
4 fiscal year;

5 (5) The amount paid into the fund in the preceding calendar or fiscal year; and

6 (6) Such other items as the attorney general may from time to time require to show
7 accurately the complete financial condition of the trust on the date of the statement.

8 (d) All of the information appearing on the statement must be verified by an owner or
9 officer of the agency, and the agency shall maintain a copy of the statement in the business office
10 of the agency or entity.

11 (e) The attorney general may require, as often as the attorney general deems necessary, the
12 agency to make under oath a detailed report of the condition and assets of any perpetual endowment
13 care fund trust.

14 (b) Upon receipt of a written request for a copy of any annual report filed with the attorney
15 general pursuant to the provisions of subsection (a) of this section, the director, officer or person
16 responsible for maintenance of the perpetual care fund trust shall provide a copy of the requested
17 annual report within ten (10) business days of receiving the request. A reasonable charge may be
18 collected for providing the copy of the annual report not to exceed fifty cents (\$0.50) per page.

19 (c) Failure to timely file an annual report with the attorney general or to provide a requested
20 copy pursuant to the provisions of this section shall be punishable pursuant to the provisions of §
21 23-18-9. Every thirty (30) day period in which a person fails to submit a required annual report
22 after the due date or fails to provide a copy of an annual report upon receiving a request in
23 compliance with subsection (b) of this section, shall constitute a separate offense.

24 (d) The attorney general may adopt regulations to administer this section.

25 **23-18-16. Severability.**

26 If any provisions of this chapter or any rule or regulation made pursuant to this chapter, or
27 the application of this chapter to any person or circumstances, is held invalid by any court of
28 competent jurisdiction, the remainder of the chapter, rule, or regulation and the application of such
29 provision to other persons or circumstances shall not be affected by that invalidity. The invalidity
30 of any section or sections or parts of any section of this chapter shall not affect the validity of the
31 remainder of the chapter.

32 SECTION 3. This act shall take effect on January 1, 2022.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY -- CEMETERIES -- CEMETERY PERPETUAL
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1 This act would require that twenty-five percent (25%) of the price of every cemetery lot be
2 deposited in a perpetual care fund. An annual report on the finances of the perpetual care fund
3 would be filed with the attorney general. A written request for a copy of the annual report would
4 require compliance within ten (10) business days. Failure to file the annual report or to provide a
5 timely copy upon request would be punishable by a fine of not less than one hundred dollars (\$100)
6 nor more than five hundred dollars (\$500) or by imprisonment for not less than sixty (60) days nor
7 more than six (6) months, or both. Each thirty (30) day period of non-compliance would constitute
8 a separate offense.

9 This act would take effect on January 1, 2022.

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