

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 686
SENATE BILL 715

AN ACT TO AMEND ARTICLE 9, CHAPTER 65 OF THE GENERAL STATUTES
RELATING TO CEMETERIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 65-47, as the same appears in the 1975 Supplement to Volume 2C, is hereby amended by adding the following subsection at the end thereof:

"(c) The provisions of this Article shall not apply to persons licensed under G.S. 65-36.1 through G.S. 65-36.8 when performing services or selling items for which a license is required under G.S. 65-36.1 through G.S. 65-36.8."

Sec. 2. G.S. 65-48(4), as the same appears in the 1975 Supplement to Volume 2C of the General Statutes is hereby rewritten to read as follows:

"(4) 'Cemetery broker' means a legal entity engaged in the business of arranging sales of cemetery products between legal entities and which sale does not involve a cemetery company, but does not mean funeral establishments or funeral directors operating under G.S. 90-210.25, when dealing between legal entities wherein one such entity shall be members of the family of a deceased person or other persons authorized by law to arrange for the burial and funeral of such deceased human being. The North Carolina Cemetery Act shall not apply to any cemetery broker selling less than five grave spaces per year."

Sec. 3. G.S. 65-48(7), as the same appears in the 1975 Supplement to Volume 2C of the General Statutes, is hereby rewritten to read as follows:

"(7) 'Cemetery sales organization' means any legal entity contracting with a cemetery which is exempt or not exempt under this Article to conduct sales of cemetery products, but does not mean individual salesmen or sales managers employed by and contracting directly with cemetery companies operating under this Article, nor does it mean funeral establishments or funeral directors operating under licenses authorized by G.S. 90-210.25 when dealing directly with a cemetery company and with members of the family of a deceased person or other persons authorized by law to arrange for the burial and funeral of such deceased human being."

Sec. 4. G.S. 65-53(3) is hereby rewritten to read as follows:

"(3) Investigate, upon its own initiative or upon a verified complaint in writing, the actions of any person engaged in the business or acting in the capacity of a licensee under this Article. The license of a licensee may be revoked or suspended for a period not exceeding two years, or until compliance with a lawful order imposed in the final order of suspension, or both, where the licensee in performing or attempting to perform any of the acts specified in this Article has been guilty of:

- a. failing to pay the fees required herein;
- b. failing to make any reports required by this Article;

- c. failing to remit to the care and maintenance trust fund, merchandise trust fund, or preconstruction trust fund the required amounts;
- d. making any substantial misrepresentation;
- e. making any false statement of a character likely to influence or persuade;
- f. a continued and flagrant course of misrepresentation or making of false promises through cemetery agents or salesmen;
- g. violating any provision of this Article or rule promulgated by the commission; or
- h. any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing."

Sec. 5. G.S. 65-53(5), as the same appears in the 1975 Supplement to Volume 2C of the General Statutes, is hereby amended by striking out the word "licensed" immediately following the words "in the court of the county in which the" in line 2 and immediately preceding the words "place of business" in line 3.

Sec. 6. G.S. 65-53(5), as the same appears in the 1975 Supplement to Volume 2C of the General Statutes, is hereby amended by striking out the last sentence which reads, "The commission may institute proceedings against the cemetery or its officers, whereafter an examination, pursuant to this Article, a shortage in the care and maintenance trust fund is discovered, to recover said shortage." and substituting in lieu thereof the sentence, "The commission may institute proceedings against the cemetery or its officers, whereafter an examination, pursuant to this Article, a shortage in the care and maintenance trust fund, merchandise trust fund or mausoleum and belowground crypts preconstruction trust fund is discovered, to recover said shortage."

Sec. 7. G.S. 65-54, as the same appears in the 1975 Supplement to Volume 2C, is hereby rewritten to read as follows:

"§ 65-54. Annual budget of commission; collection of funds for operation. — The commission shall prepare an annual budget and shall collect the sums of money required for this budget from yearly fees and any other source provided in this Article. On or before July 1 of each year, each licensed cemetery will pay a license fee of one hundred dollars (\$100.00) per year; and in addition, a fee for each grave space, niche, mausoleum crypt deeded, and preneed cemetery merchandise contract for vaults, preconstructed belowground crypts, preconstructed mausoleum crypts, and memorials to be set by the commission each year in order to defray the expenses of the commission as set forth in the budget. Said additional fees shall not exceed seventy-five cents (75¢) per grave space, niche, and mausoleum crypt deeded, and three dollars (\$3.00) per item in each preneed cemetery merchandise contract for vaults, preconstructed belowground crypts, preconstructed mausoleum crypts and memorials."

Sec. 8. G.S. 65-55(d), as the same appears in the 1975 Supplement to Volume 2C, is hereby rewritten to read as follows:

"(d) The commission, after receipt of the investigation report, shall grant or refuse to grant the authority to organize a cemetery based upon the criteria set forth in G.S. 65-55(c)."

Sec. 9. G.S. 65-57(c), as the same appears in the 1975 Supplement to Volume 2C, is hereby amended by adding the following sentence at the end thereof:

"On or before July 1 of each year, each licensed cemetery sales organization, cemetery management organization, or cemetery broker shall pay a license renewal fee of one hundred dollars (\$100.00) per year."

Sec. 10. G.S. 65-57(e), as the same appears in the 1975 Supplement to Volume 2C, is hereby rewritten to read as follows:

"(e) The commission, after receipt of the investigation report, shall grant or refuse to grant the authority to organize the organization applied for after it determines that the applicant

possesses good character and general fitness or, in the case of a business association, employs and is directed by personnel of good character and general fitness."

Sec. 11. G.S. 65-58(c), as the same appears in the 1975 Supplement to Volume 2C of the General Statutes, is hereby amended to correct a misspelled word by deleting the word "sent" in line 4 and substituting in lieu thereof the word "set".

Sec. 12. G.S. 65-58, as the same appears in the 1975 Supplement to Volume 2C, is hereby amended by striking out G.S. 65-58(g) which reads, "The provisions of this Article 9 shall not apply to persons holding a certificate under G.S. 65-36.1 through G.S. 65-36.8".

Sec. 13. The first sentence of G.S. 65-61, as the same appears in the 1975 Supplement to Volume 2C, of the General Statutes, is hereby rewritten to read as follows:

"No cemetery company shall be permitted to establish, or operate if already established, a cemetery unless provision is made for the future care and maintenance of such cemetery by establishing a trust fund and designating a corporate trustee to administer said fund in accordance with a written trust agreement."

Sec. 14. G.S. 65-64, as the same appears in the 1975 Supplement to Volume 2C, is hereby rewritten to read as follows:

"§ 65-64. Deposits to perpetual care fund. — (a) Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands not later than 10 days following the close of the calendar month in which final payment is received as provided herein; however the entire amount required to be deposited into the fund shall be paid within four years from the date of any contract requiring such payment regardless of whether all amounts have been received by the cemetery company. If the cemetery company fails to make timely deposit, the commission may levy and collect a penalty of one dollar (\$1.00) per day for each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. The care and maintenance trust fund shall be invested and reinvested by the trustee in the same manner as provided by law for the investment of other trust funds by the clerk of the superior court except that such investments may be made through means of a common trust fund as described in G.S. 36-47. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the said net income is not sufficient to pay such fees and other expenses, the same shall be paid by the cemetery company.

(b) When a municipal, church-owned or fraternal cemetery converts to a private cemetery as defined in G.S. 65-48, then said cemetery shall establish and maintain a care and maintenance trust fund pursuant to this section; provided, however, the initial deposit for establishment of this trust fund shall be an amount equal to ten dollars (\$10.00) per space for all spaces either previously sold or contracted for sale in said cemetery at the time of conversion or twenty-five thousand dollars (\$25,000), whichever sum is greater.

(c) Each cemetery hereinafter established shall create a care and maintenance trust fund depositing therein an initial deposit of not less than fifteen thousand dollars (\$15,000) and submit proof thereof to the commission prior to offering for sale any burial rights in grave spaces, niches or crypts.

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

(e) When the amount deposited in the perpetual care fund required by this Article of any cemetery heretofore or hereafter established shall amount to one hundred fifty thousand dollars (\$150,000), anything in this Article to the contrary notwithstanding, the cemetery may make all deposits thereafter either into the original perpetual care trust fund or into a separate

fund which shall be an irrevocable trust and designated as Perpetual Care Trust Fund 'A' and invested by trustee as directed by the cemetery, but may not be invested in another cemetery, and said deposits shall be not less than twenty dollars (\$20.00) per grave space and niche and forty dollars (\$40.00) per mausoleum crypt space.

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

Sec. 15. Article 9, Chapter 65 of the General Statutes is hereby amended by adding a new section immediately following G.S. 65-60, and immediately preceding G.S. 65-61, to be numbered G.S. 65-60.1, and to read as follows:

"§ 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.
- (3) The applicant will act as trustee for cemetery funds which will exceed five hundred thousand dollars (\$500,000) in the aggregate.
- (4) The applicant is authorized to do business in North Carolina and has adequate facilities to perform its duties as trustee.

(c) Any trustee under this Article, other than a bank or trust company under the supervision of the Commissioner of Banks, shall maintain records relative to cemetery trust funds as the commission may by regulation prescribe. The records shall be available at the trustee's place of business in North Carolina and shall be audited annually by the State Auditor and shall be available at all reasonable times for examination by a representative of the commission.

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

(e) Any trustee shall invest and reinvest cemetery trust funds in the same manner as provided by law for the investment of trust funds by the clerk of the superior court."

Sec. 16. G.S. 65-70(b), as the same appears in the 1975 Supplement to Volume 2C, is hereby rewritten to read as follows:

"(b) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust fund. The trust fund shall be administered and operated in the same manner as the merchandise trust fund provided for in G.S. 65-66 and shall be exclusive of the merchandise trust fund or such other trust funds that may be required by law. The personal

representative of any purchaser of such space who dies before completion of construction shall be entitled to a refund of all monies paid for such space including any income earned thereon."

Sec. 17. G.S. 65-70(d), as the same appears in the 1975 Supplement to Volume 2C, is hereby rewritten to read as follows:

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

Sec. 18. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 23rd day of June, 1977.