



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5312

by Rep. Michael Unes

SYNOPSIS AS INTRODUCED:

760 ILCS 100/3	from Ch. 21, par. 64.3
760 ILCS 100/4	from Ch. 21, par. 64.4
760 ILCS 100/5	from Ch. 21, par. 64.5
760 ILCS 100/12	from Ch. 21, par. 64.12

Amends the Cemetery Care Act. Provides that a trustee of a nonprofit cemetery may convert a trust fund established under the Act to a total return trust in accordance with provisions of the Trusts and Trustees Act pertaining to total return trusts, provided that the distribution percentage of the total return trust does not exceed 5% of the trust. Makes corresponding changes throughout the Act. Effective immediately.

LRB098 14197 HEP 53079 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 3, 4, 5, and 12 as follows:

6 (760 ILCS 100/3) (from Ch. 21, par. 64.3)

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

17 The cemetery authority shall act as trustee of all amounts
18 received for care until they have been deposited into the trust
19 fund established under this Section. The cemetery authority may
20 continue to be the trustee of up to \$500,000 of care funds that
21 have been deposited into the trust fund, but the cemetery
22 authority must retain an independent trustee for any amount of
23 care funds held in trust in excess of that \$500,000. A cemetery

1 authority holding care funds in excess of \$500,000 on the
2 effective date of this amendatory Act of 1996 shall have 36
3 months to retain an independent trustee for the excess amounts
4 held in trust; any other cemetery authority must retain an
5 independent trustee for its care funds in excess of \$500,000 as
6 soon as may be practical.

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

16 The care funds authorized by this Section and provided for
17 in Section 4 of this Act shall be held intact and, unless
18 otherwise restricted by the terms of the gift, grant, legacy,
19 contribution, payment, contract or other payment, as to
20 investments made after June 11, 1951 the trustee of the care
21 funds of the cemetery authority, in acquiring, investing,
22 reinvesting, exchanging, retaining, selling and managing
23 property for any such trust, shall exercise the judgment and
24 care under the circumstances then prevailing, which persons of
25 prudence, discretion and intelligence exercise in the
26 management of their own affairs, not in regard to speculation

1 but in regard to the permanent disposition of their funds,
2 considering the probable income as well as the probable safety
3 of their capital. Within the limitations of the foregoing
4 standard, the trustee of the care funds of the cemetery
5 authority is authorized to acquire and retain every kind of
6 property, real, personal or mixed, and every kind of
7 investment, including specifically but without limiting the
8 generality of the foregoing, bonds, debentures and other
9 corporate obligations, preferred or common stocks and real
10 estate mortgages, which persons of prudence, discretion and
11 intelligence acquire or retain for their own account. Within
12 the limitations of the foregoing standard, the trustee is
13 authorized to retain property properly acquired, without
14 limitation as to time and without regard to its suitability for
15 original purchase. The care funds authorized by this Section
16 may be commingled with other trust funds received by such
17 cemetery authority for the care of its cemetery or for the care
18 or special care of any lot, grave, crypt, niche, private
19 mausoleum, memorial, marker, or monument in its cemetery,
20 whether received by gift, grant, legacy, contribution,
21 payment, contract or other conveyance heretofore or hereafter
22 made to such cemetery authority. Such care funds may be
23 invested with common trust funds as provided in The Common
24 Trust Fund Act. Unless the trust fund has been converted into a
25 total return trust, the ~~The~~ net income only from the investment
26 of such care funds shall be allocated and used for the purposes

1 specified in the transaction by which the principal was
2 established in the proportion that each contribution bears to
3 the entire sum invested.

4 A trustee of a cemetery operating as a nonprofit
5 organization exempt from taxation under Section 501(c)(3) of
6 the Internal Revenue Code of 1986 may convert a trust
7 established under this Act to a total return trust in
8 accordance with Section 5.3 of the Trusts and Trustees Act,
9 provided that the distribution percentage of the total return
10 trust does not exceed 5% of the trust.

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

12 (760 ILCS 100/4) (from Ch. 21, par. 64.4)

13 Sec. 4. Care funds; deposits; investments. Whenever a
14 cemetery authority owning, operating, controlling or managing
15 a privately operated cemetery accepts care funds, either in
16 connection with the sale or giving away at an imputed value of
17 an interment right, entombment right or inurnment right, or in
18 pursuance of a contract, or whenever, as a condition precedent
19 to the purchase or acceptance of an interment right, entombment
20 right or inurnment right, such cemetery authority requires the
21 establishment of a care fund or a deposit in an already
22 existing care fund, then such cemetery authority shall execute
23 and deliver to the person from whom received an instrument in
24 writing which shall specifically state: (a) the nature and
25 extent of the care to be furnished, and (b) that such care

1 shall be furnished only in so far as the amount deposited in
2 trust will allow, as governed by the terms of the trust ~~net~~
3 ~~income derived from the amount deposited in trust will permit~~
4 ~~(the income from the amount so deposited, less necessary~~
5 ~~expenditures of administering the trust, shall be deemed the~~
6 ~~net income)~~, and (c) that not less than the following amounts
7 will be set aside and deposited in trust:

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

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

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

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

26 5. Upon an interment, entombment, or inurnment in a

1 grave, crypt, or niche in which rights of interment,
2 entombment, or inurnment were originally acquired from a
3 cemetery authority prior to January 1, 1948, a minimum of
4 \$25 for each such right exercised.

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

8 Such setting aside and deposit shall be made by such
9 cemetery authority not later than 30 days after the close of
10 the month in which the cemetery authority gave away for an
11 imputed value or received the final payment on the purchase
12 price of interment rights, entombment rights, or inurnment
13 rights, or received the final payment for the general or
14 special care of a lot, grave, crypt or niche or of a family
15 mausoleum, memorial, marker or monument; and such amounts shall
16 be held by the trustee of the care funds of such cemetery
17 authority in trust in perpetuity for the specific purposes
18 stated in said written instrument. For all care funds received
19 by a cemetery authority, except for care funds received by a
20 cemetery authority pursuant to a specific gift, grant,
21 contribution, payment, legacy, or contract that are subject to
22 investment restrictions more restrictive than the investment
23 provisions set forth in this Act, and except for care funds
24 otherwise subject to a trust agreement executed by a person or
25 persons responsible for transferring the specific gift, grant,
26 contribution, payment, or legacy to the cemetery authority that

1 contains investment restrictions more restrictive than the
2 investment provisions set forth in this Act, the cemetery
3 authority may, without the necessity of having to obtain prior
4 approval from any court in this State, designate a new trustee
5 in accordance with this Act and invest the care funds in
6 accordance with this Section, notwithstanding any contrary
7 limitation contained in the trust agreement.

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

17 In the event any sale that would require a deposit to such
18 cemetery authority's care fund is made by a cemetery authority
19 on an installment basis, and the installment contract is
20 factored, discounted, or sold to a third party, the cemetery
21 authority shall deposit the amount due to the care fund within
22 30 days after the close of the month in which the installment
23 contract was factored, discounted, or sold. If, subsequent to
24 such deposit, the purchaser defaults on the contract such that
25 no care fund deposit on that contract would have been required,
26 the cemetery authority may apply the amount deposited as a

1 credit against future required deposits.

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

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

20 (760 ILCS 100/5) (from Ch. 21, par. 64.5)

21 Sec. 5. No cemetery authority, nor any agent, servant, or
22 employee of it, nor any other person, shall advertise,
23 represent, guarantee, promise, or contract that perpetual
24 care, permanent care, perpetual or permanent maintenance, care
25 forever, continuous care, eternal care, everlasting care, or

1 any similar or equivalent care, or care for any number of years
2 of any cemetery or of any lot, grave, crypt or niche, or of any
3 family mausoleum, memorial, marker, or monument, will be
4 furnished: Provided, however, that any cemetery authority may
5 advertise, represent, guarantee, promise or contract that care
6 will be furnished ~~from the net income only derived~~ from funds
7 held in trust as provided in Section 3 of this Act; and may
8 advertise, represent, guarantee, promise or contract that care
9 will be given any lot, grave, crypt, or niche, or any family
10 mausoleum, memorial, marker, or monument for any definite
11 number of years, such care to be furnished under a contract
12 providing that the principal of the amount paid under the
13 contract shall be used to furnish the care and further
14 providing specifically the care to be given and the number of
15 years for which it is to be given.

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

17 (760 ILCS 100/12) (from Ch. 21, par. 64.12)

18 Sec. 12. Annual reports. Every licensee shall prepare a
19 written report as of the end of the preceding calendar year or
20 fiscal year, as the case may be, showing:

21 (a) The amount of the principal of the care funds held in
22 trust by the trustee of the care funds at the beginning of such
23 year and in addition thereto all moneys or property received
24 during such year (1) under and by virtue of the sale of a lot,
25 grave, crypt or niche; (2) under or by virtue of the terms of

1 the contract authorized by the provisions of Section 3 of this
2 Act; (3) under or by virtue of any gift, grant, legacy, payment
3 or other contribution made either prior to or subsequent to the
4 effective date of this Act, and (4) under or by virtue of any
5 contract or conveyance made either prior to or subsequent to
6 the effective date of this Act;

7 (b) The securities in which such care funds are invested
8 and the cash on hand as of the date of the report;

9 (c) The income received from such care funds during the
10 preceding calendar year, or fiscal year, as the case may be;

11 (d) The expenditures made from said income, or, in the case
12 of a total return trust, the total distributions made during
13 the preceding calendar year, or fiscal year, as the case may
14 be; and

15 (e) The number of interments made during the preceding
16 calendar year, or fiscal year, as the case may be.

17 Where any of the care funds of a licensee are held by an
18 independent trustee, the report filed by the licensee shall
19 contain a certificate signed by the trustee of the care funds
20 of such licensee certifying to the truthfulness of the
21 statements in the report as to (1) the total amount of
22 principal of the care funds held by the trustee, (2) the
23 securities in which such care funds are invested and the cash
24 on hand as of the date of the report and (3) the income
25 received from such care funds during the preceding calendar
26 year, or fiscal year, as the case may be.

1 Such report shall be filed by such licensee on or before
2 March 15 of each calendar year, in the office of the
3 Comptroller. If the fiscal year of such licensee is other than
4 on a calendar year basis, then such licensee shall file the
5 report required by this Section within 2 1/2 months of the end
6 of its fiscal year. The Comptroller shall for good cause shown
7 grant an extension for the filing of the annual report upon the
8 written request of the licensee. Such extension shall not
9 exceed 60 days. If a licensee fails to submit an annual report
10 to the Comptroller within the time specified in this Section,
11 the Comptroller shall impose upon the licensee a penalty of \$5
12 for each and every day the licensee remains delinquent in
13 submitting the annual report. The Comptroller may abate all or
14 part of the \$5 daily penalty for good cause shown.

15 Such report shall be made under oath and shall be in the
16 form furnished by the Comptroller. Each report shall be
17 accompanied by a check or money order in the amount of \$10,
18 payable to: Comptroller, State of Illinois.

19 If any annual report shows that the amount of the care
20 funds held in trust at the end of the preceding calendar year
21 or fiscal year, as the case may be, has increased in amount
22 over that shown by the next preceding report, then the fidelity
23 bond theretofore filed shall be increased to the amount
24 required by Section 9 of this Act. Such increased fidelity bond
25 shall accompany the report and no report shall be accepted by
26 the Comptroller unless accompanied by such bond, except where

1 the filing of a bond is excused by Section 18 of this Act.

2 (Source: P.A. 92-419, eff. 1-1-02.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.