



Funeral Consumers Alliance of Maryland and Environs

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

Committee: Senate Finance

Testimony on: SB 434 - "Cemeteries – Perpetual Care - Distribution from Perpetual Care Trust Fund"

Position: Oppose

Hearing date: March 1, 2019

The Funeral Consumers Alliance of Maryland & Environs strongly opposes HB 489 that would allow realized capital gains in a cemetery's perpetual care trust fund to no longer be deposited in the perpetual care trust fund as principal of that fund. Instead, the bill would allow realized capital gains to be considered net income of the perpetual care trust fund, all of which must be used to maintain, repair and renew the cemetery grounds and buildings, including columbaria and mausoleums and the property of the cemetery.

However, if a cemetery chooses to not take all net income (including realized capital gains) in regular distributions, the bill would allow the cemetery owner to take up to 5% of the principal of the fund every year.

Reducing the growth of principal in a cemetery's perpetual care trust fund may result in that fund not being large enough in the long term to generate sufficient income to pay for the perpetual care of the cemetery in the future when most all burial plots have been sold and there is little or no earnings being generated for the cemetery owners. A perpetual care trust fund needs to be able to generate enough income even in the future so the cemetery may continue as a beautiful, self-maintaining park in perpetuity and doesn't become neglected or abandoned, and a burden on taxpayers.

Maryland law clearly indicates in Business Regulation, Section 5-603 (g) that the perpetual care trust fund "shall be a single purpose trust fund," not be subject to judgment, garnishment or other seizure for use in bankruptcy or similar proceeding, and "shall be retained intact to provide for the future maintenance of the cemetery."

Clearly, existing law recognizes the importance of protecting the cemetery's perpetual care trust fund from invasion for any reason. How then can one reasonably justify allowing cemetery owners to take up to 5% of the principal of the fund every year? The bill says the Director of the Office of Cemetery Oversight may limit or prohibit future distributions 5 or 7 years from now if the investment returns and distribution practices have not resulted in sufficient protection of the perpetual care trust fund's principal. But by then, a cemetery's perpetual care trust fund may already have been severely depleted.

Also, this presupposes that the Office has sufficient staff and/or budget to monitor every cemetery's perpetual care trust fund to identify problems. "However, existing staff within the Office do not have the requisite expertise to make the financial calculations necessary to make those determinations. Given the relatively limited scope, the Office is likely to contract for necessary services instead of hiring an additional employee," said

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the Fiscal and Policy Note. That contractual support may cost as much as \$42,000 annually, according to the Department of Labor, Licensing and Regulation.

In summary, cemeteries are unique businesses because they have a very lengthy time horizon. Even after they have no product to sell, they need to be able to continue to operate. If they can't be self-maintaining in perpetuity, they may become neglected, abandoned and a burden on taxpayers. To quote the last line of the Fiscal and Policy Note, "The bill exposes these businesses (cemeteries) to additional risks of depleting the assets in their perpetual care trust funds."

SB 434 is a bad idea that is not deserving of your support. We urge an unfavorable report on it.

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FCAME is the volunteer-run, regional chapter of the non-profit Funeral Consumers Alliance (FCA), the oldest and largest consumer protection organization focused solely on guarding the rights (and wallets) of grieving consumers. FCA and its chapters take no money from the death care industry or government.