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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973



ENROLLED

HOUSE BILL No. 815

(By Mr. Zakich)



PASSED April 13, 1973

In Effect ninty days from Passage



FILED IN THE OFFICE
EDGAR F. HEISHELL III
SECRETARY OF STATE
THIS DATE 5/2/73

815

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 815
(By MR. ZAKAIB)

[Passed April 13, 1973; in effect ninety days from passage.]

AN ACT to amend chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-a, relating to perpetual care of and permanent endowment care trust funds for cemeteries; relating to the establishment of permanent endowment care trust funds; providing objects and purposes; providing for funding of such trust funds; relating to trustee of such funds and to qualifications, powers and duties of such trustee; providing certain exemptions; relating to inconsistent provisions of code; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-a, to read as follows:

ARTICLE 5A. PERPETUAL CARE OF AND TRUST FUNDS FOR CEMETERIES.

§35-5A-1. Definitions.

1 The following words and phrases as used in this article,

2 unless a different meaning is clearly indicated by the context,
3 shall have the following meanings:

4 (a) "Person" means any corporation, company, partner-
5 ship, individual, association or other entity owning or operating
6 a cemetery for the disposition of human remains.

7 (b) "Perpetual care cemetery" means a cemetery which
8 advertises or represents to the public in any manner that it
9 provides perpetual care or maintenance for burial grounds,
10 mausoleums or columbaria and the fixtures attached thereto or
11 which sells or offers to sell any interment right which is to be
12 perpetually cared for or maintained.

13 (c) "Interment" means the disposition of human remains
14 by earth burial, entombment or inurnment.

15 (d) "Burial right" means the right of earth interment.

16 (e) "Entombment right" means the right of entombment in
17 a mausoleum.

18 (f) "Columbarium right" means the right of inurnment in
19 a columbarium for cremated remains.

20 (g) "Permanent endowment care fund" means a fund
21 held in an irrevocable trust separate and apart from all other
22 assets of the cemetery and dedicated for the exclusive use of
23 perpetual care and maintenance of such cemetery.

§35-5A-2. Objects and purposes.

1 No person shall operate or continue to operate a perpetual
2 care cemetery in West Virginia unless a permanent endowment
3 care fund has been established, maintained and administered
4 as required by this article. The income from the permanent
5 endowment care fund so established shall be used only as
6 permitted by this article.

§35-5A-3. Establishment of permanent endowment care funds.

1 No person desiring to organize, develop and operate a per-
2 petual care cemetery in West Virginia after the first day of
3 July, one thousand nine hundred seventy-three, shall offer to
4 sell or sell any burial lot, burial right, entombment right or
5 columbarium right in such cemetery, without first establishing
6 a permanent endowment trust fund, segregated from all other
7 assets, and placing therein a minimum of ten thousand dol-
8 lars in cash, or in bonds of the United States government or
9 of the state of West Virginia.

10 Whenever any such person has placed an additional ten
11 thousand dollars in the permanent endowment care fund out
12 of gross sales proceeds or from any other source, such person
13 after submitting satisfactory proof of this fact to its trustee
14 may withdraw the original sum of ten thousand dollars from
15 the permanent endowment care fund.

16 No person operating an established perpetual care cemetery
17 in West Virginia on or before the first day of July, one thou-
18 sand nine hundred seventy-three, shall continue to operate
19 such cemetery without creating a permanent endowment fund
20 and making regular deposits to such fund as required in sec-
21 tion four of this article and entrusting the administration of
22 such fund as required in section five of this article.

§35-5A-4. Additional funding of permanent endowment care funds.

1 No person shall operate or continue to operate any perpet-
2 ual care cemetery in the state of West Virginia after the first
3 day of July, one thousand nine hundred seventy-three, without
4 placing into a permanent endowment care fund ten dollars or
5 ten percent of the gross sales proceeds, whichever is greater,
6 received from the sale of any burial right or lot and not less
7 than five percent of the gross sales proceeds from the sale of
8 any entombment right or columbarium right. This sum shall
9 be placed in the permanent endowment care fund not later
10 than thirty days following the month in which the entire gross
11 sales proceeds are received.

§35-5A-5. Trustee of the permanent endowment care funds.

1 The trustee of the permanent endowment care fund shall
2 be a trust company or a banking institution with fiduciary
3 powers authorized and qualified to engage in the business
4 of a trust company under and subject to the provisions of
5 article four, chapter thirty-one-a of this code.

6 The trustee shall invest such permanent endowment care
7 funds for the purpose of providing an income to be used for the
8 maintenace, improvement and preservation of the grounds, lots,
9 buildings, equipment, records, statuary, and other real and
10 personal property of the cemetery, and shall acquire, invest,
11 reinvest, exchange, retain, sell and manage all property now
12 or hereafter coming into such trustee's care or control.

13 The trustee shall exercise the judgment and care under the
14 circumstances then prevailing, which men of prudence, dis-
15 cretion and intelligence, exercise in the management of their
16 own affairs, not in regard to speculation, but in regard to the
17 permanent disposition of their funds, considering the probable
18 income as well as the probable safety of their capital.

19 Within the limitations of the foregoing standard, any such
20 trustee is authorized to acquire and retain without any order
21 of any court, every kind of property, real, personal or mixed,
22 and every kind of investment, specifically including, but not
23 by way of limitation, bonds, debentures and other corporate
24 obligations, and stocks, preferred or common, which men of
25 prudence, discretion and intelligence acquire or retain for their
26 own account.

27 The trustee shall prepare an annual report of all of the
28 assets and investments of the permanent endowment care fund.
29 One copy shall be maintained at the office of the cemetery and
30 shall be available for inspection at reasonable times by owners
31 of interment rights in the cemetery.

32 The trustee shall pay over to the cemetery all income
33 derived from the permanent endowment care fund semi-
34 annually to be expended only for the maintenance, improve-
35 ment and preservation of the grounds, lot, buildings, equip-
36 ment, records, statuary and other real and personal property
37 of the cemetery.

§35-5A-6. Cemeteries exempted.

1 This article does not apply to any private or family ceme-
2 tery wherein lots or spaces are not offered for public sale or to
3 any cemetery which is owned and operated entirely and ex-
4 clusively by churches, religious societies, established fraternal
5 organizations, municipalities or other subdivisions of the state
6 or a national cemetery.

§35-5A-7. Inconsistent provisions.

1 The provisions and requirements of this article shall take
2 precedence over and shall supersede any other provisions of
3 this code which may be inconsistent therewith.

§35-5A-8. Penalties for violation.

1 Any person and any officer, director, agent or employee of

2 such person who violates or participates in the violation of
3 this article shall be guilty of a misdemeanor, and, upon con-
4 viction thereof, shall be fined not more than one thousand dol-
5 lars, or imprisoned in the county jail not more than one year,
6 or both fined and imprisoned.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Darrel Darby
Chairman Senate Committee

Clarence C. Chastain Jr.
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard W. Carson
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

H. J. Boothby Jr.
President of the Senate

Lewis F. Thomas
Speaker House of Delegates

The within *approved* this the *24th*
day of *April*, 1973.

Arch A. Phares Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 4/24/73

Time 2:34 p.m.