

NORTH CAROLINA GENERAL ASSEMBLY
1967 SESSION

CHAPTER 1009
HOUSE BILL 545

1 AN ACT TO AMEND ARTICLE 7 OF CHAPTER 65 OF THE GENERAL STATUTES
2 RELATING TO PERPETUAL CARE CEMETERIES.

3
4 The General Assembly of North Carolina do enact:

5
6 **Section 1.** G.S. 65-18, as the same appears in the 1965 Replacement Volume 2C of
7 the General Statutes, is rewritten to read as follows:

8 "This Article shall apply to all public cemeteries which may hereafter be established, which
9 are privately owned and operated for private gain or profit notwithstanding whether such public
10 cemeteries advertise or offer perpetual care of grave space in connection therewith."

11 **Sec. 2.** G.S. 65-19(b) is amended by striking out the words and punctuation ", and
12 who advertise or offer perpetual care of grave space in connection therewith." and by adding a
13 period after the word "therein" in line 6 thereof.

14 **Sec. 3.** G.S. 65-22 is amended by striking out the words "five dollars" appearing in
15 line 5 thereof, and in lieu thereof substituting the words "ten dollars", and by adding at the end
16 thereof the words and punctuation ", except as provided in G.S. 65-27."

17 **Sec. 4.** G.S. 65-23 is amended by striking from the last paragraph thereof the word
18 and punctuation "development,".

19 **Sec. 5.** G.S. 65-23.1 is amended by striking from the next to the last sentence
20 thereof the word and punctuation "development,".

21 **Sec. 6.** G.S. 65-24 is amended by striking out the words "five dollars" appearing in
22 line 1 thereof and substituting in lieu thereof the words "ten dollars".

23 **Sec. 7.** G.S. 65-24 is amended by striking out the word and punctuation
24 "development," in the second sentence thereof.

25 **Sec. 8.** G.S. 65-25 is hereby repealed.

26 **Sec. 9.** G.S. 65-26 is rewritten to read as follows:

27 "(a) No corporation, association, partnership or individual shall, after the ratification of
28 this Article, be permitted to establish or operate a public cemetery for private gain or profit
29 without first having obtained a license therefor, as provided in this Article, and without
30 providing for the perpetual care of such cemetery in accordance with the terms of this Article.
31 Written application, duly verified under oath, must be filed with the North Carolina State Burial
32 Association Commissioner and include the following information:

33 "(1) The name and principal address of the person or persons, partnership,
34 association or corporation seeking to establish such cemetery.

35 "(2) The names and addresses of all individuals known or proposed to be
36 members of such partnership or association or officers or directors of such
37 corporation, or investors in the cemetery's financing.

38 "(3) The city or town, and the county in or near which the cemetery is to be
39 located, and a clear description of the location of such proposed cemetery.

40 "(4) A description, by metes and bounds, of the acreage tract of such proposed
41 cemetery, together with evidence, by title insurance policy or by certificate
42 of an attorney at law, certifying that the applicant is the owner in fee simple
43 of such tract of land, which must contain not less than 30 acres, and that the

1 title is free and clear of all encumbrances. In counties with a population of
2 less than 35,000 population according to the latest federal decennial census,
3 the tract need be only 15 acres.

4 "(5) A perpetual care trust fund agreement, with an initial deposit of not less than
5 fifteen thousand dollars (\$15,000.00) and with bank cashier's check or
6 certified check attached for such amount and payable to such trustee, with
7 said trust executed by applicant and accepted by the trustee, conditionally
8 only upon whether the application is approved.

9 "(6) Said application must also contain a plat of the cemetery showing the
10 number and location of all lots which may then be actually surveyed and
11 permanently staked for sale.

12 "(b) Upon receipt of said application and documents, the Commissioner shall set a date
13 for a hearing upon said application, to be held in the Commissioner's office or in the county of
14 the location of the proposed cemetery, as deemed for the public interest, in the Commissioners'
15 discretion. At least 30 days' written notice of said hearing shall be given to the applicant. Also,
16 notice of the time and place of said hearing shall be published on two successive weeks, the
17 second of said notices being published at least 10 days prior to said hearing, in a newspaper in
18 general circulation in the county in which said cemetery is proposed to be located. If there is no
19 newspaper in general circulation in the county in which it is proposed the cemetery be located,
20 notice of the time and place of said hearing shall be posted at the courthouse of the county of
21 the proposed location and one other public place in said county at least 20 days prior to the time
22 of said hearing. At such hearing opportunity to be heard shall be given to the applicant, to any
23 other cemetery and to any other persons as to whether applicant has complied with all
24 requirements of law. After such hearing if the Commissioner finds that the applicant has
25 complied with all requirements of law, he shall issue an order approving said application, and if
26 he finds such applicant has failed to comply with all requirements of law, he shall deny the
27 application. In either case he shall send notice thereof and his reasons, to the applicant and a
28 copy thereof to any other persons who may have filed written objection with the Commissioner
29 to the approval of said application. Within 10 days after the Commissioner's mailing such
30 notice of approval or non-approval of such application, the applicant or any other person
31 affected by the decision may file notice of appeal from the Commissioner's ruling, to the
32 Superior Court of the county in which the cemetery is to be located, said appeal notice to be
33 filed with the Commissioner and also with the Clerk of Superior Court of said county. Except
34 as herein otherwise provided, on any such appeal the judicial review of the Commissioner's
35 ruling shall be as provided in Article 33 of Chapter 143 of the General Statutes. If the
36 Commissioner's ruling is sustained by final court action in such judicial review, the costs of
37 such appeal shall be taxed against the person who may have taken such appeal. If no such
38 appeal is filed within such time, the Commissioner's order shall become final. If the final order
39 approves the application, then: (a) the applicant shall cause all the land acreage described in the
40 application to be dedicated permanently and irrevocably to cemetery purposes only (if not
41 already so dedicated) by proper instrument, in form approved by the Commissioner, and
42 registered in the land records of the county or counties where the land lies, and (b) when the
43 Commissioner has received satisfactory evidence that the applicant and the tract of land still
44 comply with the requirements of subparagraph (a)(4) including continued free and clear title,
45 then the license shall be issued and the cemetery may be opened, and said initial perpetual care
46 fund is to be in addition to the amount in dollars per grave space as required by law to be
47 deposited in such fund. Said perpetual care fund and all additions thereto shall be held and
48 invested as required under Section 65-23 and any other provisions of Chapter 65. If approval of
49 said application is not granted, the perpetual care trust document shall be promptly returned and
50 the fifteen thousand dollars (\$15,000.00) refunded to the applicant."

51 **Sec. 10.** G.S. 65-27 is rewritten to read as follows:

1 "When the amount deposited in the perpetual care fund required by G.S. 25-23 of any
2 cemetery heretofore or hereafter established shall amount to one hundred thousand dollars
3 (\$100,000.00), anything in this Article to the contrary notwithstanding, the cemetery may make
4 all deposits thereafter either into the original Perpetual Care Trust Fund or into Fund 'A', as
5 described in Section 65-23.1 of this Article and invested as therein authorized, and said
6 deposits shall be not less than five dollars (\$5.00) per grave space."

7 **Sec. 11.** G.S. 65-28 is hereby repealed.

8 **Sec. 12.** G.S. 65-30 is amended by adding at the end thereof the following:

9 "All books and records of the cemetery shall be kept up to date and at the principal office of
10 the cemetery. The books and records of the cemetery which relate to its obligations for making
11 deposits into the Perpetual Care Fund or funds, and the condition of said trust funds and
12 investments, shall be made available to the Commissioner or his authorized representative,
13 during regular business hours.

14 "In the event any cemetery fails to maintain its books and records so as to reasonably,
15 accurately and completely reflect the deposits and also the condition of said trust funds as
16 referred to above, and fails to correct the same within 60 days after written demand by the
17 Commissioner for such correction, then the Commissioner is authorized in his discretion to
18 suspend said cemetery's license until such failure shall have been corrected."

19 **Sec. 13.** G.S. 65-31 is rewritten to read as follows:

20 "In addition to the penalties provided in G.S. 65-34, any cemetery, manager, owner,
21 employee or agent thereof who wilfully violates any of the provisions of this Article shall be
22 guilty of a misdemeanor and fined and imprisoned, or both, in the discretion of the court."

23 **Sec. 14.** G.S. 65-32 is amended by adding the following sentence at the end of said
24 Section.

25 "No cemetery, manager, owner, employee or agent thereof, shall sell, offer for sale,
26 advertise or do any overt act to sell grave space in a cemetery unless the cemetery shall have
27 first obtained a license from the Commissioner."

28 **Sec. 15.** The following new Section is adopted as G.S. 65-34.1:

29 "**G.S. 65-34.1. Legal Notice: Receiverships.** In the event the Commissioner is unable to have
30 legal notice or process served on any officer or general manager of a cemetery for the purpose
31 of a hearing or legal action, then the Commissioner may obtain service of notice or process
32 upon the Secretary of State, as provided under existing law, and shall have legal authority to
33 petition the Superior Court for a receivership for such cemetery to protect the interest of the
34 owners of burial rights in said cemetery and of all other persons having an interest in said
35 cemetery. The receiver shall have such authority and take such actions as the court may direct.

36 "This Section shall be in addition to all other penalties and remedies under this Chapter."

37 **Sec. 16.** G.S. 65-36 is rewritten to read as follows:

38 "In order to meet the expenses of the supervision of the cemeteries herein provided for, the
39 Burial Association Commissioner shall, annually, assess each cemetery operating under the
40 terms of this Article the sum of sixty dollars (\$60.00) plus an amount calculated in proportion
41 to the number of grave spaces sold (as defined in this Article 7) in the preceding year so that
42 the total assessments on all cemeteries, including the sixty dollar (\$60.00) basic assessment,
43 shall in the aggregate amount to twenty per centum (20%) of the total budget of the Burial
44 Association Commissioner as approved by the Director of the Budget and the Advisory Budget
45 Commission, not to exceed fourteen thousand dollars (\$14,000.00). Said amount shall be
46 deposited and commingled with all other funds coming into the hands of the Burial Association
47 Commissioner and he may use said sum of money derived from this Section in the discharge of
48 the duties delegated to him by the laws of North Carolina. The assessments provided for in this
49 Section shall be due and payable on the first day of July, 1967, and on the first day of July of
50 each and every year thereafter. If any cemetery shall fail or refuse to pay the said assessment to
51 the Burial Association Commissioner within 30 days after the making of said assessment, then

1 and in that event the said Burial Association Commissioner is hereby directed and empowered
2 to cancel the license of such cemetery."

3 **Sec. 17.** All laws and clauses of laws in conflict with this Act are hereby repealed.

4 **Sec. 18.** This Act shall be in full force and effect from and after its ratification.

5 In the General Assembly read three times and ratified, this the 29th day of June,
6 1967.