



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4436

Introduced 2/3/2020, by Rep. Fred Crespo

SYNOPSIS AS INTRODUCED:

760 ILCS 100/2	from Ch. 21, par. 64.2
760 ILCS 100/3	from Ch. 21, par. 64.3

Amends the Cemetery Care Act. Provides that the net income of a cemetery authority does not include any capital gains from the investment of any gift, grant, contribution, payment, legacy, or sum of money, funds, securities, or property of any kind given to it for the care of its cemetery or any lot, grave, crypt, or niche in its cemetery or the special care of any lot, grave, crypt, or niche or family mausoleum or memorial, marker, or monument in its cemetery. Effective immediately.

LRB101 15876 LNS 66017 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 2 and 3 as follows:

6 (760 ILCS 100/2) (from Ch. 21, par. 64.2)

7 Sec. 2. Definitions. The following words, terms and phrases
8 used in this Act, for the purpose of this Act, have the
9 following meanings:

10 "Person" means any person, partnership, association,
11 corporation, or other entity.

12 "Trustee" means any person authorized to hold funds under
13 this Act.

14 "Capital gains" means a profit that results from a
15 disposition of a capital asset, such as stock, bonds, or real
16 estate, where the amount realized on the disposition exceeds
17 the purchase price.

18 "Comptroller" means the Comptroller of the State of
19 Illinois.

20 "Care" means the maintenance of a cemetery and of the lots,
21 graves, crypts, niches, family mausoleums, memorials, and
22 markers therein; including: (i) the cutting and trimming of
23 lawn, shrubs, and trees at reasonable intervals; (ii) keeping

1 in repair the drains, water lines, roads, buildings, fences,
2 and other structures, in keeping with a well maintained
3 cemetery; (iii) maintenance of machinery, tools, and equipment
4 for such care; (iv) compensation of employees, payment of
5 insurance premiums, and reasonable payments for employees
6 pension and other benefits plans; and (v) to the extent surplus
7 income from the care fund is available, the payment of overhead
8 expenses necessary for such purposes and for maintaining
9 necessary records of lot ownership, transfers, and burials.

10 "Care funds" as distinguished from receipts from annual
11 charges or gifts for current or annual care, means any realty
12 or personalty impressed with a trust by the terms of any gift,
13 grant, contribution, payment, legacy, or pursuant to contract,
14 accepted by any cemetery authority owning, operating,
15 controlling or managing a privately operated cemetery, or by
16 any trustee or licensee, agent or custodian for the same, under
17 Section 3 of this Act, and the amounts set aside under Section
18 4 of this Act, and any income accumulated therefrom, where
19 legally so directed by the terms of the transaction by which
20 the principal was established.

21 "Cemetery" means any land or structure in this State
22 dedicated to and used, or intended to be used, for the
23 interment of human remains.

24 "Cemetery authority" means any person, firm, corporation,
25 trustee, partnership, association or municipality owning,
26 operating, controlling or managing a cemetery or holding lands

1 for burial grounds or burial purposes in this State.

2 "Mausoleum crypt" means a space in a mausoleum used or
3 intended to be used, above or under ground, to entomb human
4 remains.

5 "Family burying ground" means a cemetery in which no lots
6 are sold to the public and in which interments are restricted
7 to a group of persons related to each other by blood or
8 marriage.

9 "Fraternal cemetery" means a cemetery owned, operated,
10 controlled, or managed by any fraternal organization or
11 auxiliary organizations thereof, in which the sale of lots,
12 graves, crypts or niches is restricted principally to its
13 members.

14 "Grave" means a space of ground in a cemetery, used, or
15 intended to be used, for burial.

16 "Investment Company Act of 1940" means Title 15, of the
17 United States Code, Sections 80a-1 to 80a-51, inclusive, as
18 amended.

19 "Investment Company" means any issuer (a) whose securities
20 are purchasable only with care funds or trust funds, or both;
21 and (b) which is an open and diversified management company as
22 defined in and registered under the "Investment Company Act of
23 1940"; and (c) which has entered into an agreement with the
24 Comptroller containing such provisions as the Comptroller by
25 regulation reasonably requires for the proper administration
26 of this Act.

1 "Municipal cemetery" means a cemetery owned, operated,
2 controlled or managed by any city, village, incorporated town,
3 township, county, or other municipal corporation, political
4 subdivision, or instrumentality thereof authorized by law to
5 own, operate, or manage a cemetery.

6 "Niche" means a space in a columbarium used or intended to
7 be used, for inurnment of cremated human remains.

8 "Principal" means an original sum invested and any capital
9 gains.

10 "Privately operated cemetery" means any entity that offers
11 interment rights, entombment rights, or inurnment rights,
12 other than a fraternal, municipal, State, federal or religious
13 cemetery or a family burying ground.

14 "Religious cemetery" means a cemetery owned, operated,
15 controlled, or managed by any recognized church, religious
16 society, association or denomination, or by any cemetery
17 authority or any corporation administering, or through which is
18 administered, the temporalities of any recognized church,
19 religious society, association or denomination.

20 "State or federal cemetery" means a cemetery owned,
21 operated, controlled, or managed by any State or the federal
22 government or any political subdivision or instrumentality
23 thereof.

24 "Entombment right" means the right to place individual
25 human remains or individual cremated human remains in a
26 specific mausoleum crypt or lawn crypt selected by the consumer

1 for use as a final resting place.

2 "Interment right" means the right to place individual human
3 remains or cremated human remains in a specific underground
4 location selected by the consumer for use as a final resting
5 place.

6 "Inurnment right" means the right to place individual
7 cremated human remains in a specific niche selected by the
8 consumer for use as a final resting place.

9 "Lawn crypt" means a permanent underground crypt usually
10 constructed of reinforced concrete or similar material
11 installed in multiple units for the entombment of human
12 remains.

13 "Imputed value" means the retail price of comparable rights
14 within the same or similar area of the cemetery.

15 (Source: P.A. 92-651, eff. 7-11-02.)

16 (760 ILCS 100/3) (from Ch. 21, par. 64.3)

17 Sec. 3. Gifts and contributions - Trust funds. Any cemetery
18 authority is hereby authorized and empowered to accept any
19 gift, grant, contribution, payment, legacy, or pursuant to
20 contract, any sum of money, funds, securities or property of
21 any kind, or the income or avails thereof, and to establish a
22 trust fund to hold the same in perpetuity for the care of its
23 cemetery, or for the care of any lot, grave, crypt or niche in
24 its cemetery; or for the special care of any lot, grave, crypt
25 or niche or of any family mausoleum or memorial, marker, or

1 monument in its cemetery.

2 The cemetery authority shall act as trustee of all amounts
3 received for care until they have been deposited into the trust
4 fund established under this Section. The cemetery authority may
5 continue to be the trustee of up to \$500,000 of care funds that
6 have been deposited into the trust fund, but the cemetery
7 authority must retain an independent trustee for any amount of
8 care funds held in trust in excess of that \$500,000. A cemetery
9 authority holding care funds in excess of \$500,000 on the
10 effective date of this amendatory Act of 1996 shall have 36
11 months to retain an independent trustee for the excess amounts
12 held in trust; any other cemetery authority must retain an
13 independent trustee for its care funds in excess of \$500,000 as
14 soon as may be practical.

15 No gift, grant, legacy, payment or other contribution shall
16 be invalid by reason of any indefiniteness or uncertainty as to
17 the beneficiary designated in the instrument creating the gift,
18 grant, legacy, payment or other contribution. If any gift,
19 grant, legacy, payment or other contribution consists of
20 non-income producing property, the cemetery authority
21 accepting it is authorized and empowered to sell such property
22 and to invest the funds obtained in accordance with the
23 provisions of the next succeeding paragraph.

24 The care funds authorized by this Section and provided for
25 in Section 4 of this Act shall be held intact and, unless
26 otherwise restricted by the terms of the gift, grant, legacy,

1 contribution, payment, contract or other payment, as to
2 investments made after June 11, 1951 the trustee of the care
3 funds of the cemetery authority, in acquiring, investing,
4 reinvesting, exchanging, retaining, selling and managing
5 property for any such trust, shall exercise the judgment and
6 care under the circumstances then prevailing, which persons of
7 prudence, discretion and intelligence exercise in the
8 management of their own affairs, not in regard to speculation
9 but in regard to the permanent disposition of their funds,
10 considering the probable income as well as the probable safety
11 of their capital. Within the limitations of the foregoing
12 standard, the trustee of the care funds of the cemetery
13 authority is authorized to acquire and retain every kind of
14 property, real, personal or mixed, and every kind of
15 investment, including specifically but without limiting the
16 generality of the foregoing, bonds, debentures and other
17 corporate obligations, preferred or common stocks and real
18 estate mortgages, which persons of prudence, discretion and
19 intelligence acquire or retain for their own account. Within
20 the limitations of the foregoing standard, the trustee is
21 authorized to retain property properly acquired, without
22 limitation as to time and without regard to its suitability for
23 original purchase. The care funds authorized by this Section
24 may be commingled with other trust funds received by such
25 cemetery authority for the care of its cemetery or for the care
26 or special care of any lot, grave, crypt, niche, private

1 mausoleum, memorial, marker, or monument in its cemetery,
2 whether received by gift, grant, legacy, contribution,
3 payment, contract or other conveyance heretofore or hereafter
4 made to such cemetery authority. Such care funds may be
5 invested with common trust funds as provided in The Common
6 Trust Fund Act. The net income only from the investment of such
7 care funds shall be allocated and used for the purposes
8 specified in the transaction by which the principal was
9 established in the proportion that each contribution bears to
10 the entire sum invested. Net income does not include any
11 capital gains from the investment of such care funds.

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

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.