

SENATE BILL 1339
By Burchett

AN ACT to amend Tennessee Code Annotated, Section
46-2-302, relative to cemetery companies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 46-2-302(e)(1)(B), is amended by deleting the subdivision in its entirety, and by substituting instead the following language:

(B)

(1) "Net earnings" for purposes of this section, means one or the other of the following, but not both:

(i) All net income excluding capital gains (net income is calculated as collected dividends, interest and other income reduced by taxes on income and fees); or

(ii) An amount not exceeding five percent (5%) of the fair market value of the trust as of the last day of the trust fiscal year immediately preceding the distribution year. If this calculation is chosen, the following apply:

(a) **Pro-rata:** The disbursements are to be made pro-rata during the year for instance one quarter every three (3) months or one-twelfth (1/12) each month.

(b) **Fees:** The amount is not reduced by taxes or fees unless the fees exceed two and one-half percent (2.5%). In that case, fees in excess of two and one-half percent (2.5%) reduce the amount of the disbursement.

(2)

(i) **Election:** the cemetery owner may select which method of calculation is desired for any given fiscal year. This shall be done by written instructions delivered to the trustee of the fund no later than the last day of the preceding fiscal year. However, if the other method of calculation than the one chosen would result in higher disbursements, the cemetery owner may deliver written instructions to the trustee at least sixty (60) days before the end of the given fiscal year to change to that method of calculation.

(ii) **Default:** Absent receiving such written elections, the trustee may continue to calculate and disburse funds as has been done in prior fiscal years. In the absence of any such election or history, the default calculation shall be the first, namely, all net income excluding capital gains.

(iii) **Transition:** This method of calculation shall be available for each improvement care trust fund beginning with the first day of the fiscal year during which this legislation is enacted so long as the sixty (60) day notice requirement is still fulfilled. Moreover, let the time this new legislation becomes effective be T , let the principal market value of the trust at time T be $MV(T)$. Let C be the total of contributions made to the principal of the trust from T until the present. In order to withdraw five percent (5%) of the trust, the current market value after the withdrawal must be greater than $.8 \times [MV(T)+C]$.

(iv) **Requirements:** In order to receive distributions, whether of income or calculated on the five percent (5%), the cemetery owner must:

(a) Be current on payment of the annual registration fee as evidenced by a copy of the certificate of registration provided to the trustee; and,

(b) Be current on required deposits to the care fund as evidenced by a certification provided to the trustee by the cemetery owner or be making payment on any arrearages through special arrangements with the state department of commerce and insurance, burial services division as evidenced by a certification provided to the trustee by the burial services division.

SECTION 2. This act shall take effect July 1, 2005, the public welfare requiring it.