

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Representative Bisbee**

A Bill

ACT 464 OF 1995
HOUSE BILL 1483

For An Act To Be Entitled

"AN ACT TO PROVIDE FOR THE RECLAMATION AND SUBSEQUENT SALE
OF ABANDONED CEMETERY LOTS; AND FOR OTHER PURPOSES."

Subtitle

"TO PROVIDE FOR THE RECLAMATION AND
SUBSEQUENT SALE OF ABANDONED CEMETERY
LOTS"

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

SECTION 1. (a) As used in this act, "lot" means any lot, or portion of a lot, in a cemetery owned by a county or municipality, which has not been used for the interment of human remains and for which no provision for perpetual care was made at the time the lot was sold or at any time subsequent to the time the lot was sold.

(b) The governing body of any county or municipality or other officials having control over a cemetery may maintain in the circuit court in the county within which the cemetery is located a proceeding for the termination and forfeiture of the rights and interests of an owner of any lot or lots in the cemetery whenever the present owner of the lot is unknown to the governing body of the county or municipality or other officials and a period of at least seventy-five (75) years has passed since any portion of the lot has been used for interment purposes.

(c) (1) The proceeding shall be commenced by the filing of a verified petition with the clerk of the circuit court.

(2) The petition shall:

(A) Identify the lot or lots.

(B) State that the portion of the lot to be reclaimed has not been used for the interment of human remains, and that a core or sound

1 test has been conducted to determine that the portion contains no remains.

2 (C) State that the present owner of the lot is unknown to
3 the governing body of the county or municipality or other officials having
4 control over the cemetery.

5 (D) State that a period of at least seventy-five (75) years
6 has passed since any portion of the lot was used for interment purposes.

7 (E) Request that the court issue an order declaring the lot
8 abandoned and further declaring all of the rights and interests of the owner
9 terminated and forfeited.

10 (3) The petition shall be accompanied by an affidavit by the
11 governing body of the county or municipality or other officials that a
12 diligent search to locate the present owner of the lot has been made but that
13 the owner has not been located.

14 (d) Upon the filing of the petition and affidavit, the clerk of the
15 circuit court shall fix a time for a hearing on the petition not less than
16 thirty (30) days nor more than ninety (90) days after the date of the filing.

17 (e) (1) The governing body of the county or municipality or other
18 officials shall give notice of the hearing by posting copies of the notice in
19 three (3) conspicuous places in the cemetery which is owned or operated by the
20 governing body or other officials and by mailing a copy of the notice by
21 registered mail to the last known owner of the lot. A notice of the hearing
22 shall be published once each week for three (3) successive weeks in some
23 newspaper of general circulation in the county within which the cemetery is
24 located, the first publication being made not less than thirty (30) days
25 before the date of hearing.

26 (2) The notice shall identify the lot and shall state:

27 (A) The name and address of the last known owner of the
28 lot.

29 (B) That a hearing will be held to determine whether or not
30 the present owner of the lot shall have his right and interest terminated and
31 forfeited by a declaration of abandonment of the lot.

32 (C) The time and place of the hearing.

33 (f) In the event that upon the hearing the court determines from the
34 evidence presented that the present owner of the lot is unknown, that the
35 governing body or other officials have made a diligent search to locate the

1 present owner, that a period of seventy-five (75) years or more has passed
2 since any portion of the lot has been used for human interment, and that a
3 core or sound test has been conducted to determine that the lot contains no
4 remains, then a decree shall be entered adjudicating the lot, lots, or parts
5 thereof to have been abandoned, and further ordering the subsequent
6 termination and forfeiture of all rights and interest of the owner.

7 (g) The court shall dismiss the proceeding if it determines any of the
8 following from the evidence which is presented:

9 (1) That any of the material facts stated in the petition are not
10 true.

11 (2) The identity of the present owner of the lot is known.

12 (3) That the governing body or other official has not made a
13 diligent search to locate the present owner.

14 (h)(1) Upon order of the court declaring the lot to be abandoned, the
15 full title to the lot shall revert to the cemetery.

16 (2) The order of the court shall not become final until one (1)
17 year after the date on which it is entered. During that time, any person may
18 petition the court to reopen the proceeding and the court, after notice to the
19 governing body or other officials, may reopen the proceeding and may hear and
20 consider any additional evidence regarding the ownership of the lot, and may
21 modify or amend the order which it made or, if the court makes any of the
22 determinations mentioned by subsection (g), it shall dismiss the proceeding.

23 (i)(1) The governing body or other officials shall, within thirty (30)
24 days after the date on which the court order is entered, publish notice of the
25 order once in a newspaper of general circulation in the county in which the
26 cemetery is located and by mailing a copy of the order by registered mail to
27 the last known owner of the lot, or to the last known owner of the right of
28 interment in the lot.

29 (2) The notice which is mailed and published shall identify the
30 lot which is covered by the order and shall state:

31 (A) The name and address of the last known owner of the
32 lot.

33 (B) That the court has ordered that the lot is to be
34 declared abandoned and that the court has further ordered that the rights and
35 interests of the owner are to be subsequently terminated and forfeited.

1 (C) The date upon which the order of the court will become
2 final.

3 (j) The lot shall be deemed abandoned and the rights and interest of
4 the present owner shall be terminated and forfeited as of the date upon which
5 the order of the court becomes final. Thereafter, the cemetery shall be the
6 owner of the lot and may resell or otherwise recover it.

7 (k) The proceeds derived from any sale of a lot, ownership of which is
8 obtained as provided in this act, shall be used as follows:

9 (1) First, to reimburse the petitioner for the costs of suit and
10 necessary expenses, including attorney_s fees, incurred by the petitioner in
11 the proceeding.

12 (2) Then, of the remainder of the proceeds:

13 (A) Not less than seventy-five percent (75%) shall be held
14 in trust and shall be used only for expenses of administration, maintenance,
15 restoration, preservation, and other improvements of the cemetery; and

16 (B) Any amounts remaining thereafter shall be used for
17 immediate improvements and maintenance of the cemetery.

18 (1) In no event shall any existing monument, retaining wall, fence,
19 bench, or other ornamentation be altered or removed by petitioner or his agent
20 or employee or by any subsequent owner of a lot reclaimed and sold as provided
21 herein.

22

23 SECTION 2. All provisions of this act of a general and permanent nature
24 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
25 Revision Commission shall incorporate the same in the Code.

26

27 SECTION 3. If any provision of this act or the application thereof to
28 any person or circumstance is held invalid, such invalidity shall not affect
29 other provisions or applications of the act which can be given effect without
30 the invalid provision or application, and to this end the provisions of this
31 act are declared to be severable.

32

33 SECTION 4. All laws and parts of laws in conflict with this act are
34 hereby repealed.

35

1

APPROVED: 2-27-95

2