

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4  
5 By: Senator J. Dismang

# A Bill

SENATE BILL 598

## For An Act To Be Entitled

8 AN ACT TO REVISE AND MAKE TECHNICAL CORRECTIONS TO  
9 THE CEMETERY ACT FOR PERPETUALLY MAINTAINED  
10 CEMETERIES; TO ENHANCE THE REGULATION OF CEMETERIES;  
11 TO PROVIDE FOR INFANT INTERMENT GARDENS; AND FOR  
12 OTHER PURPOSES.

## Subtitle

16 TO REVISE AND MAKE TECHNICAL CORRECTIONS  
17 TO THE CEMETERY ACT FOR PERPETUALLY  
18 MAINTAINED CEMETERIES; TO ENHANCE THE  
19 REGULATION OF CEMETERIES; AND TO PROVIDE  
20 FOR INFANT INTERMENT GARDENS.

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

25 SECTION 1. Arkansas Code § 20-17-1002 is amended to read as follows:

26 As used in this subchapter:

27 ~~(1) "Board" means the Arkansas Cemetery Board;~~

28 ~~(2)~~ (2) "Care and maintenance" means the continual maintenance of  
29 the cemetery grounds and graves in keeping with a properly maintained  
30 cemetery;

31 ~~(3)~~ (2) "Cemetery" means any land or structure in this state  
32 dedicated to and used or intended to be used for interment of human remains.  
33 It may be either a burial park for earth interments, a mausoleum for vault or  
34 crypt interments, or a combination of one (1) or more thereof;

35 ~~(4)~~ (3) "Cemetery company" means an individual, partnership,  
36 corporation, limited liability company, or association, now or hereafter



1 organized, owning or controlling cemetery lands or property and conducting  
 2 the business of a cemetery or making an application with the ~~board~~ Arkansas  
 3 Cemetery Board to own or control the lands or conduct the business;

4 ~~(5)~~(4) "Columbarium" means a structure or room or space in a  
 5 building or structure used or intended to be used for the interment of  
 6 cremated human remains;

7 ~~(6)~~(5) "Crypt" means a chamber of sufficient size to inter the  
 8 remains of a deceased person;

9 (6) "Infant interment garden" means a designated area in a  
 10 perpetual care cemetery for the interments of infants and children no more  
 11 than twenty-four (24) months of age;

12 (7) "Interment" means the lawful disposition of the remains of a  
 13 deceased person as provided by law;

14 (8) "Lawn crypt" means an ~~interment~~ interment space sometimes  
 15 referred to as a "belowground crypt", "westminister", or "turf top crypt" in  
 16 a preplaced chamber or burial vault either side-by-side or at multiple  
 17 depths, covered by earth and sod;

18 (9) "Lot or grave space" means a space of ground in a cemetery  
 19 used or intended to be used for interment therein;

20 (10) "Mausoleum" means a community-type structure or room or  
 21 space in a building or structure used or intended to be used for the  
 22 interment of human remains in crypts or niches;

23 (11) "Niche" means a space in a columbarium ~~which~~ that is used  
 24 or intended to be used for the interment of the cremated remains of one (1)  
 25 or more deceased persons;

26 (12) "Permit holder" means a cemetery company that holds a  
 27 permit issued by the board to own or operate a perpetual care cemetery; and

28 (13) "Perpetual care cemetery" means a cemetery for the benefit  
 29 of which a permanent maintenance fund has been established in accordance with  
 30 this subchapter.

31  
 32 SECTION 2. Arkansas Code § 20-17-1004(a)(2)(A), concerning the members  
 33 of the Arkansas Cemetery Board, is amended to read as follows:

34 (A) Four (4) of the six (6) members appointed by the  
 35 Governor shall be owners or operators of ~~licensed cemeteries~~ a licensed  
 36 perpetual care cemetery in this state, ~~and these members shall be appointed~~

1 ~~from lists of five (5) names for each appointment to be made which are~~  
2 ~~submitted to the Governor by the Arkansas Cemetery Association;~~

3  
4 SECTION 3. Arkansas Code § 20-17-1012, concerning transfer of  
5 ownership applications, is amended to read as follows:

6 20-17-1012. Permit – Transfer of Ownership.

7 (a) As used in this section, "controlling interest" means the direct  
8 or indirect power to direct the management and policies of a perpetual care  
9 cemetery or cemetery company by contract or otherwise, other than as an  
10 officer or employee of the perpetual care cemetery or cemetery company.

11 ~~(a)(1)(b)(1)(A) Whenever any~~ If a change is proposed in the  
12 controlling interest ~~or ownership~~ of ~~any a~~ a perpetual care cemetery or ~~any a~~  
13 cemetery company or ~~any an~~ an organization that, directly or indirectly, owns a  
14 controlling interest in the perpetual care cemetery or cemetery company, the  
15 cemetery company that holds the current permit and the individual or  
16 organization proposing to ~~obtain ownership or gain control~~ the controlling  
17 interest shall file an application for the issuance of a new permit with the  
18 Arkansas Cemetery Board.

19 (B) A controlling interest is presumed to exist if an  
20 individual or entity directly or indirectly:

21 (i) Owns or controls fifty-one percent (51%) or more  
22 of the aggregate number of the issued or outstanding ownership interest of a  
23 perpetual care cemetery or cemetery company; or

24 (ii) Holds proxies with the power to vote or voting  
25 rights to proxies representing fifty-one percent (51%) or more of the  
26 aggregate number of the issued or outstanding ownership interest of a  
27 perpetual care cemetery or cemetery company.

28 (2) The application shall be accompanied by:

29 (A) A fee of one thousand five hundred dollars (\$1,500);

30 (B) A statement of changes, if any, in the survey and map  
31 of the cemetery;

32 (C) A set of rules and regulations for the use, care,  
33 management, and protection of the cemetery;

34 (D) The proposed method of continuing the permanent  
35 maintenance fund ~~presently in existence~~ for the cemetery;

36 (E) A statement of the proposed transfer;

1 (F) A copy of a current title opinion by an Arkansas-  
2 licensed attorney or title insurance policy that reflects that the current  
3 permit holder has good and merchantable title to the land covered by the  
4 permit;

5 (G) A notarized statement from the seller and purchaser  
6 disclosing any current or future lien or mortgage on the land covered by the  
7 permit;

8 (H) A notarized statement from ~~any~~ each current or future  
9 lienholder or mortgage holder on the land covered by the permit that all  
10 paid-in-full burial spaces will be released from the lien or mortgage at  
11 least semiannually;

12 (I)(i) A current detailed accounting of all paid-in-full  
13 merchandise contracts or accounts of the permit holder ~~and seller~~ for which  
14 the merchandise has not been delivered to the purchaser or placed in  
15 inventory for the benefit of the purchaser.

16 (ii) ~~This~~ The accounting shall be on an individual  
17 contract or account basis and contain the name of the purchaser, the contract  
18 or account number, the date of the contract, the gross amount of the  
19 contract, a description of the merchandise purchased, the date the contract  
20 or account was paid in full, and the specific location where the merchandise  
21 is stored;

22 (J) A current notarized statement from the permit holder  
23 ~~and seller~~ that the application contains a complete and accurate accounting  
24 of all of his or her outstanding accounts receivable, discounted notes, and  
25 paid-in-full merchandise accounts or contracts for which the merchandise has  
26 not been delivered to the purchaser or placed in inventory for the benefit of  
27 the purchaser;

28 (K) A current notarized statement from the purchaser or  
29 organization gaining ~~control~~ a controlling interest that it will assume the  
30 responsibility and liability for ~~all~~ the accounts, notes, and contracts of  
31 the ~~seller that are~~ permit holder contained in the accountings and schedules  
32 ~~that are filed as a part of~~ with the application;

33 (L) The financial ~~statements~~ statement of the ~~applicant~~  
34 ~~and purchaser~~ required by ~~the rules~~ rule of the board which ~~reflect that the~~  
35 ~~applicant and~~ showing that the purchaser has a minimum net worth of twenty  
36 thousand dollars (\$20,000);

1 (M) A copy of the sales contract, transaction documents,  
2 or conveyance documents; and

3 ~~(M)(N)~~ Any additional information required by the board or  
4 the Securities Commissioner.

5 (3) The board may for good cause waive all or part of an  
6 application requirement if the purchaser of a perpetual care cemetery is a  
7 state, city, or municipal government or a nonprofit organization as defined  
8 by § 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

9 ~~(b)(4)~~ Each ~~vendor or the transferor~~ permit holder of an  
10 interest in the cemetery company ~~or interest therein shall remain~~ is liable  
11 for any funds and transactions up to the date of the sale or transfer.

12 (c)(1) ~~Prior to~~ Before the sale or transfer, the ~~vendor or the~~  
13 ~~transferor~~ permit holder shall notify the board of the proposed sale or  
14 transfer and shall submit to the board, under oath, any document or record  
15 the board may require in order to demonstrate that the ~~vendor or transferor~~  
16 permit holder is not indebted to the permanent maintenance fund.

17 (2) After the transfer of ownership or ~~control, the vendor or~~  
18 ~~transferor~~ a controlling interest, the permit holder shall present to the  
19 board proof ~~of currency in~~ that payments into the permanent maintenance fund  
20 are current.

21 (3) The board may ~~additionally~~ require ~~the presentation of~~ proof  
22 of the ~~continued current~~ status of the permanent maintenance fund by the  
23 ~~vendee or transferee~~ purchaser for ~~such a~~ reasonable period of time as ~~the~~  
24 ~~board may determine to be~~ necessary in the public interest.

25 (4) The board ~~is further authorized to~~ may recover from ~~that~~  
26 ~~vendor or transferor~~ the permit holder or ~~vendee or transferee,~~ purchaser  
27 for the benefit of the permanent maintenance fund;

28 (A) ~~all~~ All sums that the ~~vendor or transferor~~ permit  
29 holder or ~~vendee or transferee~~ purchaser has not properly accounted for and  
30 paid into the trust fund; and

31 (B) ~~together with reasonable~~ Reasonable expenses incurred  
32 by the board ~~by bringing this~~ if suit is filed or other collection action is  
33 taken.

34 (d) ~~The~~ A cemetery company that has been issued a permit to operate a  
35 cemetery under this subchapter ~~shall remain~~ remains liable for the  
36 ~~maintenance and care~~ care and maintenance of the cemetery and all amounts ~~due~~

1 owed to the permanent maintenance fund until a new permit is issued to the  
2 vendee or transferee purchaser.

3 (e) ~~No~~ A new permit shall not be issued to the ~~vendee or transferee~~  
4 purchaser of any cemetery until ~~that vendee or transferee~~ the purchaser  
5 complies with this subchapter and the board orders a new permit to be issued  
6 to the ~~vendee or transferee~~ purchaser.

7 (f) ~~Any vendor or transferor~~ A permit holder or ~~vendee or transferee~~  
8 purchaser ~~who~~ that violates this section ~~shall be~~ is guilty of a violation  
9 and upon conviction shall be fined not less than one hundred dollars (\$100)  
10 nor more than five hundred dollars (\$500) for the violation.

11  
12 SECTION 4. Arkansas Code § 20-17-1013(d)(2), concerning permanent  
13 maintenance funds, is amended to read as follows:

14 (2)(A) The agreement may provide that the cemetery company may  
15 change the trustee of its trust fund ~~so long as~~ by amending the agreement if:

16 (i) ~~the~~ The successor trustee ~~is in accordance with~~  
17 meets the requirements of § 20-17-1014; and

18 (ii) ~~the present~~ The trustee and successor trustee  
19 are parties to the amendment of the agreement.

20 (B) The trustee and successor trustee shall send the board  
21 notification of a change in trustee under subdivision (d)(2)(A) of this  
22 section within ten (10) calendar days after the change.

23  
24 SECTION 5. Arkansas Code § 20-17-1014.

25 20-17-1014. Permanent Maintenance Fund Trustees.

26 (a) ~~Each cemetery company subject to this subchapter shall establish~~  
27 ~~or transfer the permanent maintenance fund, the income from which can~~ The net  
28 income from the permanent maintenance fund shall only be used for general  
29 maintenance, administration, and preservation of the perpetual care  
30 cemetery.

31 (b) A cemetery company shall establish a permanent maintenance fund  
32 with or transfer the permanent maintenance fund to:

33 (1) A state or national bank with trust powers; ~~or~~

34 (2) Three (3) trustees, ~~only one (1) of whom may have any direct~~  
35 ~~or indirect financial or pecuniary interest in the cemetery, provided all~~  
36 if:

1                   (A) All trustees who that make disbursements from the  
 2 trust fund ~~shall furnish~~ deposit with the Arkansas Cemetery Board a fidelity  
 3 bond with corporate surety ~~thereon,~~ payable to the trust fund, in a penal sum  
 4 not less than one hundred percent (100%) of the value of the trust fund  
 5 principal at the beginning of each calendar year. ~~This bond shall be~~  
 6 ~~deposited with the Arkansas Cemetery Board; or and~~

7                   (B) No more than one (1) of the trustees has a direct or  
 8 indirect financial interest in the perpetual care cemetery; or

9                   (3) An individual trustee, ~~who in~~ that on behalf of the cemetery  
 10 company, ~~shall deposit designated~~ deposits all permanent maintenance funds  
 11 directly into a savings account or certificate of deposit in a state or  
 12 national bank or savings and loan association in this state not less than  
 13 forty-five (45) days after collection, ~~provided if:~~

14                   (A) ~~All~~ The funds ~~so~~ deposited are federally insured;

15                   (B) The funds are restricted ~~so that~~ to prevent the  
 16 principal amount of the funds ~~cannot be~~ from being withdrawn without the  
 17 written approval of, and on a form approved by, the Securities Commissioner;  
 18 and

19                   (C) Not less than ~~one (1) time a year,~~ interest one (1)  
 20 time per year the net income from the funds may be withdrawn by the  
 21 individual trustee ~~in~~ on behalf of the cemetery company for purposes  
 22 permitted by this subchapter.

23  
 24                   SECTION 6. Arkansas Code § 20-17-1015(a), concerning the annual report  
 25 for the permanent maintenance fund, is amended to read as follows:

26                   (a)(1) Within ~~sixty (60)~~ seventy-five (75) days after the end of each  
 27 calendar year, the Arkansas Cemetery Board shall require the trustee of the  
 28 permanent maintenance fund to file, under oath, a detailed annual report of  
 29 the condition of the fund, ~~setting forth,~~

30                   (2) The annual report shall include:

31                   (A) A description of the assets of the fund,;

32                   (B) a description of ~~any property upon which any~~  
 33 ~~security constitutes~~ cemetery property encumbered by a lien and the amount of  
 34 the lien;

35                   (C) ~~the~~ The cost of ~~acquisition of the~~ acquiring each  
 36 asset;





1 ~~conviction~~ pleading guilty or nolo contendere to or being found guilty of a  
 2 violation of subsection (a) of this section shall be punished by a fine of  
 3 not more than ~~six thousand dollars (\$6,000)~~ ten thousand dollars (\$10,000) or  
 4 by imprisonment in the state penitentiary for not more than six (6) years, or  
 5 by both fine and imprisonment.

6 (c)(1)(A) If it appears to the board that a person has engaged in or is  
 7 about to engage in a violation of subsection (a)(1) of this section, the  
 8 board may summarily order the person to cease and desist from the act or  
 9 practice.

10 (B) Upon the entry of the order under subdivision (c)(1)(A)  
 11 of this section, the board shall promptly notify the person that the order  
 12 has been entered and state the reasons for the order.

13 (2)(A) The person ordered to cease and desist may contest the  
 14 cease and desist order by delivering a written request for a hearing to the  
 15 board within thirty (30) days from the date that notice of the order is sent  
 16 by the board to the last known address of the person by first class mail,  
 17 postage prepaid.

18 (B) The board shall schedule a hearing to be held within a  
 19 reasonable amount of time after the Securities Commissioner receives a timely  
 20 written request for hearing.

21 (C) If no hearing is requested and none is ordered by the  
 22 board, the order will remain in effect until it is modified or vacated by the  
 23 board.

24 (D) After notice and an opportunity for a hearing, the  
 25 board may:

26 (i) Affirm, modify, or vacate the cease and desist  
 27 order under subdivision (c)(1)(A) of this section; and

28 (ii) For a violation of this subchapter, by order  
 29 levy a fine not to exceed:

30 (a) Ten thousand dollars (\$10,000) for each  
 31 violation; or

32 (b) An amount equal to the total amount of  
 33 money received in connection with each violation.

34 (3) The board may apply to the Pulaski County Circuit Court to  
 35 temporarily or permanently enjoin an act or practice that violates subsection  
 36 (a)(1) of this section and to enforce compliance with this chapter:

1                   (A) After an order is issued under subdivision (c)(1) or  
 2 (c)(2) of this section; or

3                   (B) Without issuing an order under subdivision (c)(1) or  
 4 (c)(2) of this section.

5                   (4) Upon a proper showing, a permanent or temporary injunction,  
 6 restraining order, or writ of mandamus shall be granted.

7                   (5) The board is not required to post a bond to obtain the relief  
 8 provided by this section.

9  
 10           SECTION 9. Arkansas Code § 20-17-1019, concerning the conveyance of  
 11 cemetery property, is amended to read as follows:

12           (a)(1) An instrument ~~of conveyance or deed for burial lots, plots, or~~  
 13 ~~parts thereof~~ conveying all or part of a burial lot or burial plot shall be  
 14 issued to the purchaser upon ~~complete~~ full payment of the purchase price of  
 15 the burial lot or burial plot.

16           (2) The cemetery company shall not use an instrument to convey a  
 17 burial lot or burial plot unless the form of the instrument has been provided  
 18 to the Arkansas Cemetery Board.

19           (b) Only the cemetery company or its agents may sell or convey all or  
 20 part of lots, grave spaces, crypts, or niches, ~~or parts thereof~~, except that:

21                   (1) The owner of ~~any~~ all or part of a lot, grave space, niche,  
 22 or crypt, ~~or part thereof~~ may sell his or her interest in a lot, grave space,  
 23 crypt, or niche ~~or part thereof~~ if:

24                           (A) ~~he or she first has~~ The lot, grave space, crypt, or  
 25 niche is first offered ~~its transfer~~ in writing to the cemetery company at the  
 26 purchase price then being charged by the cemetery company for similar lots;  
 27 and

28                           (B) ~~if the~~ The cemetery company ~~refused~~ refuses the offer  
 29 within thirty (30) days after the offer is made; ~~or~~ and

30                   (2) An owner may convey or devise to the cemetery company his or  
 31 her ~~right and title~~ interest in ~~and to any~~ a lot, grave space, niche, or  
 32 crypt, ~~or part thereof~~.

33           (c) The secretary or other responsible officer of the cemetery company  
 34 shall file and record in its books all instruments of transfer.

35           (d) The instrument of conveyance shall be signed by the persons having  
 36 proper authority.

1 (e) ~~Any~~ A mortgage or lien on ~~the~~ cemetery land granted by a permit  
2 holder shall not encumber any burial space that has been sold ~~prior to the~~  
3 before granting ~~of~~ the mortgage or ~~creation of the~~ lien.

4 (f)(1) To ensure that all burial spaces remain unencumbered, the  
5 permit holder shall file with the ~~Arkansas Cemetery Board~~ board before  
6 ~~execution of any~~ executing a mortgage or ~~creation of any~~ creating a lien a  
7 notarized statement reflecting the specific description of the land to be  
8 affected by the mortgage or lien and a waiver or release by the proposed  
9 mortgagee or lienholder of any claim or right to any burial space for which  
10 an instrument of conveyance or deed has been or may be executed.

11 (2) The failure of a permit holder to comply with the  
12 requirements of this subsection ~~shall be~~ is grounds for the board to require  
13 an additional contribution to the permanent maintenance fund of the cemetery  
14 in an amount not exceeding one thousand dollars (\$1,000) for each burial  
15 space encumbered.

16  
17 SECTION 10. Arkansas Code § 20-17-1022, concerning records required to  
18 be maintained by a cemetery company, is amended to add an additional  
19 subsection to read as follows:

20 (c) A cemetery company shall maintain records of its interments that  
21 shall include without limitation:

- 22 (1) The name of the interred or entombed;
- 23 (2) The date of interment or entombment; and
- 24 (3) The location of interment or entombment.

25  
26 SECTION 11. Arkansas Code § 20-17-1023(a), concerning the annual  
27 report of the condition of a cemetery company, is amended to read as follows:

28 (a)(1) Within ~~sixty (60)~~ seventy-five (75) days after the end of the  
29 calendar year, ~~each~~ a cemetery company shall file with the Arkansas Cemetery  
30 Board a report, ~~under oath,~~ of its condition.

31 (2) The report shall ~~contain at least the following information~~  
32 include without limitation:

- 33 ~~(1)(A)~~ (A) The name and contact information of:
  - 34 (i) the The cemetery company, ~~;~~
  - 35 (ii) the ~~location of the cemetery, the name of the~~
- 36 The person in charge of the records of the cemetery company, ~~;~~ and

1                   ~~(iii) the phone number of the company~~ Each person  
2 with authority to sign conveyance documents;

3                   ~~(2)(B)~~ The amount of sales and date of final payment of  
4 cemetery lots, graves, spaces, mausoleums, columbaria, crypts, lawn crypts,  
5 or niches for which payment has been made in full and ~~certificates or deeds~~  
6 ~~of conveyance~~ instruments of conveyance have been issued during the preceding  
7 calendar year;

8                   ~~(3)(C)~~ The amounts paid into the permanent maintenance  
9 fund;

10                   ~~(D) and the~~ The income received from the fund during the  
11 preceding calendar ~~or fiscal year, including;~~

12                   ~~(E) the~~ The total amount ~~due owed to~~ the fund ~~whether paid~~  
13 ~~in or not;~~

14                   ~~(F) the~~ The amounts ~~due owed to~~ the fund at the date of  
15 the report; ~~and~~

16                   ~~(G) the~~ The amount expended for care and maintenance of  
17 the cemetery;

18                   ~~(4)(H)~~ The names and addresses of the owners of the  
19 cemetery company or the officers and directors of the company and stating any  
20 change of control ~~which~~ that has occurred during the past ~~fiscal or~~ calendar  
21 year, the date of incorporation, and ~~listing~~ the resident agent and resident  
22 agent's office if the cemetery company is a corporation; and

23                   ~~(I) Such~~ Any other information ~~as the board may by rule or~~  
24 ~~order require~~ requires.

25  
26                   SECTION 12. Arkansas Code § 20-17-1023(b)(2), concerning the annual  
27 report of the condition of the cemetery company, is amended to read as  
28 follows:

29                   (2)(A) A fee of seven dollars (\$7.00) for each burial sale  
30 contract entered into ~~after July 1, 2005,~~ during the preceding calendar year  
31 by the cemetery company regardless of the number of spaces sold under the  
32 contract regarding plots lots, grave spaces, mausoleums, columbaria, crypts,  
33 lawn crypts, and niches.

34                   ~~(B)(i) The first payment of fees under subdivision~~  
35 ~~(b)(2)(A) of this section shall be due on or before March 1, 2006, and shall~~  
36 ~~be based on the number of contract sales entered into during the period of~~

1 ~~July 1, 2005, through December 31, 2005.~~

2 ~~(ii) Subsequent annual reports shall be based upon~~  
3 ~~contract sales entered into for the previous calendar year. The burial sale~~  
4 ~~contract fee under subdivision (b)(2)(A) of this section is not required for~~  
5 ~~a burial sale contract of an interment in an infant interment garden that~~  
6 ~~complies with § 20-17-1030.~~

7  
8 SECTION 13. Arkansas Code Title 20, Chapter 17, Subchapter 10 is  
9 amended to add an additional section to read as follows:

10 20-17-1030. Infant interment gardens.

11 (a) A cemetery company may maintain an infant interment garden if:

12 (1) The cemetery company provides the Arkansas Cemetery Board a  
13 letter of intent to establish an infant interment garden and a map of the  
14 location for the infant interment garden;

15 (2) The infant interment garden is made available to the public  
16 and to existing families and property owners of the permitted cemetery on a  
17 non-discriminatory basis;

18 (3) No charge is made to the family, next of kin, or any agency  
19 for the space, interment, and opening and closing services;

20 (4) The infant interment garden complies with the rules and  
21 regulations of the cemetery on file with the board; and

22 (5) The conveyance and recordkeeping requirements of § 20-17-  
23 1019 and § 20-17-1022 are satisfied for each interment in the infant  
24 interment garden.

25 (b) An infant interment garden that complies with this section is not  
26 subject to the deposit requirements of § 20-17-1016.

27  
28  
29 **APPROVED: 03/23/2011**