

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

HOUSE BILL 2055

By: Representative Dismang

For An Act To Be Entitled

AN ACT TO AMEND THE CEMETERY ACT FOR PERPETUALLY
MAINTAINED CEMETERIES, § 20-17-1001 ET SEQ.; AND
FOR OTHER PURPOSES.

Subtitle

TO AMEND THE CEMETERY ACT FOR
PERPETUALLY MAINTAINED CEMETERIES, § 20-
17-1001 ET SEQ.

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

SECTION 1. Arkansas Code § 20-17-1002(4), concerning the definition of "cemetery company" is amended to read as follows:

(4) "Cemetery company" means an individual, partnership, corporation, limited liability company, or association, now or hereafter organized, owning or controlling cemetery lands or property and conducting the business of a cemetery or making an application with the board to own or control the lands or conduct the business;

SECTION 2. Arkansas Code § 20-17-1002(12), concerning the definition of "perpetual care cemetery", is amended to read as follows:

(12) "Perpetual care cemetery" means a cemetery for the benefit of which a ~~perpetual care fund~~ permanent maintenance fund has been established in accordance with this subchapter; and

SECTION 3. Arkansas Code § 20-17-1004(b), concerning alternate and disqualified board members, is amended to read as follows:



(b)(1) The Governor shall appoint one (1) alternate member for the same term and having the same qualifications as a regular member. This member shall substitute for any regular member when a conflict of interest disqualifies a regular member.

(2) ~~Whenever~~ If a matter comes before the board involving a cemetery in which ~~any~~ a member has a financial interest, then the member ~~shall be~~ is disqualified from participating in the discussion or vote on the matter, and the alternate member shall substitute for the disqualified member ~~in that instance only.~~

(3) The alternative member shall substitute for an absent member if necessary to constitute a quorum under § 20-17-1005(c).

SECTION 4. Arkansas Code § 20-17-1007(a)(2), concerning the number of examiners from the Securities Department that may examine a cemetery company, is amended to read as follows:

(2) However, all examinations shall be conducted by ~~a single examiner~~ at least one (1) examiner or board member, and the examinations shall be conducted only pursuant to an order of the board.

SECTION 5. Arkansas Code § 20-17-1009 is amended to read as follows:
20-17-1009. Permit – Investigation by ~~Division of Health of the~~ Department of Health and Human Services.

(a) Upon ~~receipt~~ submission of an application to the Arkansas Cemetery Board for the issuance of a permit for a new cemetery or for an extension of the boundaries of an existing cemetery, the ~~Arkansas Cemetery Board shall cause applicant shall request that the Division of Health of the Department of Health and Human Services~~ Department of Health ~~to make an investigation of~~ investigate the proposed cemetery location or extension, ~~with respect to a sanitary viewpoint~~ to determine if the proposed new or expanded location will be sanitary.

(b) In making the investigation, the ~~division~~ department shall take into consideration the proximity of the proposed cemetery, or extension, to human habitation, the nature of the soil, the drainage of the ground, the danger of pollution of springs or streams of water, and ~~such~~ any other conditions ~~as would bear upon the situation~~ concerning whether the proposed new or expanded location will be sanitary.

1 (c)(1) ~~Having completed this~~ After completing the investigation, the
 2 ~~division~~ department shall promptly submit in writing its approval or
 3 disapproval of the proposed new or expanded location from a sanitary
 4 standpoint to the board.

5 (2) If the ~~division~~ department disapproves the proposed cemetery
 6 location or extension, further action on the application shall be suspended
 7 until the applicant acquires a location which meets with the approval of the
 8 ~~division~~ department or until other action, as necessary, is taken.

9 (d) The cemetery shall pay the ~~division~~ department any fee required by
 10 law.

11
 12 SECTION 6. Arkansas Code § 20-17-1010(a), concerning the investigation
 13 and approval of a cemetery company's permit application, is amended to read
 14 as follows:

15 (a) If the cemetery company has fully complied with this subchapter
 16 and if the ~~Division of Health of the Department of Health and Human Services~~
 17 Department of Health approves the location of the new cemetery or the
 18 extension of the boundaries of an existing cemetery, then the application
 19 shall be submitted to the Arkansas Cemetery Board for investigation and for
 20 approval or disapproval.

21
 22 SECTION 7. Arkansas Code § 20-17-1011(a), concerning the amendment of
 23 a cemetery company's permit, is amended to read as follows:

24 (a) Whenever it is proposed that any cemetery subject to this
 25 subchapter amend its present permit, whether for construction of a mausoleum,
 26 reduction of boundaries, reduction or increase in percentage of gross sales
 27 proceeds to be placed in the permanent maintenance fund, or other amendment,
 28 then the cemetery company shall file an application for amendment of the
 29 permit.

30
 31 SECTION 8. Arkansas Code § 20-17-1011(b)(4)(B), concerning the
 32 requirements of an application for the construction of a mausoleum or similar
 33 structure, is amended to read as follows:

34 (B) A report of the inspection of the plans by the
 35 ~~Division of Health of the Department of Health and Human Services~~ Department
 36 of Health;

SECTION 9. Arkansas Code § 20-17-1021 is amended to read as follows:
20-17-1021. Disposition of contributions and fees.

(a) All contributions imposed ~~pursuant to~~ under this subchapter shall be:

(1) ~~deposited~~ Deposited into the respective permanent maintenance fund of the cemetery company upon which the contribution is imposed; and

(2) Paid within forty-five (45) days of imposition.

(b) All fees imposed ~~pursuant to~~ under this subchapter shall be paid to the Arkansas Cemetery Board.

SECTION 10. Arkansas Code § 20-17-1024 is repealed.

~~20-17-1024. Preexisting cemeteries.~~

~~(a) All cemetery companies in existence at the time of the passage of this act shall be permitted to continue operation under their present permits except that those cemetery companies which are subject to this subchapter and have not been filing annual reports with the Arkansas Cemetery Board shall, by January 1, 1978, file the following information and shall be subject to the jurisdiction of the board:~~

~~(1) The name of the owner and operator of the cemetery and a statement of the form of business organization, that is, corporation, nonprofit corporation, partnership, etc., along with a copy of the article, bylaws, or applicable organization documents;~~

~~(2) The location and legal description of the cemetery, including a survey and map of the cemetery delineating the lots, plots, pathways, etc.;~~

~~(3) The rules and regulations for the use, care, management, and protection of the cemetery, including a list of lot prices and all charges and assessments made by the cemetery company;~~

~~(4) Details concerning the permanent maintenance trust fund including a copy of the trust agreement, the name of the trustee, the report of the trustee, etc.;~~

~~(5) A copy of the present permit and proof of registration with the Division of Health of the Department of Health and Human Services;~~

~~(6) A fee as the board by rule shall prescribe;~~

~~(7) A copy of the deed to the present cemetery company conveying land used as a cemetery and copies of any encumbrances, mortgages, etc., or a statement that there are none;~~

~~(8) The name and address of any officers, directors, managers, the degrees of ownership of each, and a statement concerning subsidiaries and affiliates or the organization controlling the cemetery company;~~

~~(9) A statement as to whether there are any mausoleums or similar structures; and~~

~~(10) Any additional information necessary to make the filing complete.~~

~~(b) Failure to file the information shall result in the suspension or revocation of the permit, and the cemetery shall be considered not to be a registered cemetery. Until a new permit to operate a cemetery is obtained, all burials or sales shall be unlawful and the person operating the cemetery or allowing the burials shall be subject to the penalties and remedies set forth in §§ 20-17-1006, 20-17-1012(f), and 20-17-1018.~~

SECTION 11. Arkansas Code § 20-17-1027(b)(14), concerning the duties of the State Securities Department, is amended to read as follows:

(14) Assisting in the formulation of legislation on behalf of the ~~cemetery industry and the board.~~