

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

A Bill

Act 1242 of 2001
HOUSE BILL 2228

5 By: Representative Hunt
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS SECTIONS OF THE CEMETERY ACT
10 FOR PERPETUALLY MAINTAINED CEMETERIES; AND FOR OTHER
11 PURPOSES.
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13
14

Subtitle

15 AN ACT TO AMEND VARIOUS SECTIONS OF THE
16 CEMETERY ACT FOR PERPETUALLY MAINTAINED
17 CEMETERIES.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code 20-17-1002 is amended to read as follows:
24 20-17-1002. Definitions.

25 As used in this subchapter, unless the context otherwise requires:

26 (1) "Board" means the Arkansas Cemetery Board;

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

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

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

1 business;

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

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

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

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

11 (9) "Mausoleum" means a community-type structure or room or space in a
12 building or structure used, or intended to be used, for the interment of
13 human remains in crypts or niches;

14 (10) "Niche" means a space in a columbarium which is used, or intended
15 to be used, for the interment of the cremated remains of one (1) or more
16 deceased persons;

17 (11) "Permit holder" means any cemetery company that holds a permit
18 issued by the board to own or operate a perpetual care cemetery;

19 ~~(11)(12)~~ "Perpetual care cemetery" means a cemetery for the benefit of
20 which a perpetual care fund has been established in accordance with the
21 provisions of this subchapter; and

22 ~~(12)(13)~~ "Secretary" means the Securities Commissioner.

23
24 SECTION 2. Arkansas Code 20-17-1006 is amended to read as follows:

25 20-17-1006. Arkansas Cemetery Board - Powers and duties.

26 The Arkansas Cemetery Board shall have the authority to:

27 (1) Conduct at any time and from time to time such reasonable
28 periodic, special, or other examination of any cemetery or cemetery company,
29 including, but not limited to, an examination of the physical condition or
30 appearance of the cemetery, the financial condition of the company and any
31 trust funds maintained by the company, and such other examinations as the
32 board or secretary deems necessary or appropriate in the public interest. The
33 examinations shall be made by members or representatives of the board or by a
34 certified public accountant or registered public accountant as authorized in
35 § 20-17-1007;

36 (2) Issue or amend permits to operate a cemetery in accordance with

1 the provisions of this subchapter;

2 (3) Suspend or revoke permits to operate a cemetery when any cemetery
3 fails to comply with the provisions of this subchapter, rules promulgated
4 pursuant to this subchapter, or any order of the board;

5 (4) Make rules, regulations, and forms to enforce the provisions of
6 this subchapter;

7 (5) Require every cemetery company to observe minimum accounting
8 principles and practices and make and keep such books and records in
9 accordance therewith for such period of time as the board may by rule
10 prescribe;

11 (6)(A) Subpoena witnesses, books, and records in connection with
12 alleged violations of this subchapter, or rules or orders of the board. The
13 secretary of the board with the approval of the chairman or two (2) board
14 members may issue subpoenas.

15 (B) In case of contumacy by or refusal to obey a subpoena issued
16 to any person, the Circuit Court of Pulaski County, upon application by the
17 board, may issue to the person an order requiring him to appear before the
18 board or the person designated by the board. Failure to obey the order of the
19 court may be punished by the court as a contempt of court;

20 (7) Require additional contributions to the permanent maintenance fund
21 of the cemetery where provided for in this subchapter, including, but not
22 limited to, contributions not to exceed three thousand dollars (\$3,000)
23 whenever any cemetery company fails to properly care for and maintain or
24 preserve the cemetery;

25 (8)(A) Apply to the Chancery Court of Pulaski County to enjoin any act
26 or practice and to enforce compliance with this subchapter or any rule or
27 regulation or order pursuant to this subchapter whenever it appears to the
28 board, upon sufficient grounds or evidence satisfactory to the board, that
29 any person has engaged in or is about to engage in any act or practice
30 constituting a violation of any provision of this subchapter or any rule or
31 regulation pursuant to it.

32 (B) The court may not require the board to post a bond;

33 (9) Apply to the chancery court of the county in which the cemetery is
34 located for appointment of a receiver or conservator of the cemetery
35 corporation or its permanent maintenance fund when it appears to the board
36 that a cemetery corporation is insolvent or that the cemetery corporation,

1 its officers, directors, agents, or the trustees of its permanent maintenance
2 fund have violated this subchapter and the rules promulgated under it or have
3 failed to comply with any board order; and

4 (10) Increase, in accordance with regulations adopted by the board,
5 the percentage of the gross proceeds of the sale of any grave space, crypt,
6 niche, or similar entombment required to be deposited into the permanent
7 maintenance fund of the cemetery in accordance with § 20-17-1016 whenever it
8 is determined that the principal of the permanent maintenance fund is or will
9 be insufficient to generate enough income to operate and maintain the
10 cemetery.

11
12 SECTION 3. Arkansas Code 20-17-1012(a)(1), concerning transfer of
13 ownership of cemetery permit, is amended to read as follows:

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

21
22 SECTION 4. Arkansas Code 20-17-1019, concerning conveyance of
23 cemetery lots, is amended by adding the following additional subsections:

24 (e) Any mortgage or lien on the cemetery land by a permit holder shall
25 not encumber any burial space that has been sold prior to the granting of the
26 mortgage or creation of the lien.

27 (f)(1) To ensure that all burial spaces remain unencumbered, the
28 permit holder shall file with the board before execution of any mortgage or
29 creation of any lien, a notarized statement reflecting the specific
30 description of the land to be affected by the mortgagee or lien, and a waiver
31 or release by the proposed mortgagee or lienholder of any claim or right to
32 any burial space for which an instrument of conveyance or deed has been or
33 may be executed.

34 (2) The failure of a permit holder to comply with the
35 requirements of this subsection (f) shall be grounds for the board to require
36 an additional contribution to the permanent maintenance fund of the cemetery

1 in an amount not exceeding one thousand dollars (\$1,000) for each burial
2 space encumbered.

3
4 SECTION 5. Arkansas Code 20-17-1025 is amended to read as follows:

5 20-17-1025. Protection of cemeteries - Power to lend.

6 (a) On August 1, ~~1997~~ 2001, the Arkansas Cemetery Board shall
7 segregate ~~one hundred thirty thousand dollars (\$130,000)~~ one hundred eighty
8 thousand dollars (\$180,000) within its general operating fund to be
9 administered by the secretary of the board and only used to loan a court-
10 appointed receiver or conservator the funds necessary to assure that a
11 cemetery will be properly maintained and will continue to be a going concern,
12 including the funds necessary to pay any reasonable surety bond premium which
13 is required to be posted by the court.

14 (b) The board may take any legal action necessary against a cemetery
15 company, receiver, or conservator to recover any funds loaned by the board to
16 or for the benefit of the cemetery, the cemetery company, receiver, or
17 conservator for the payment of maintenance expenses or unpaid loans.

18 (c) Disbursement from such funds for loans to a receiver or
19 conservator shall be made on a "first in, first out" basis as determined by
20 the secretary of the board.

21 (d) Donations to the board to fund such loans may be accepted by the
22 secretary from any cemetery company, organization, or individual.

23 (e) The board may waive payment or extend the payment period for any
24 loan made to a receiver or conservator if the board determines that it is
25 unlikely that the receiver or conservator has or will receive sufficient
26 funds to repay the loan, and that the funds were or are needed to maintain
27 and operate the cemetery for the benefit of the lot owners and the general
28 public.

29
30 SECTION 6. Arkansas Code Title 20, Chapter 17, Subchapter 10 is
31 amended by adding the following additional section:

32 20-17-1026. Annual permit fee.

33 (a) On March 1 of each year, each permit holder shall pay to the board
34 a permit renewal fee in the amount of one hundred dollars (\$100).

35 (b) All annual permit fees shall be classified as general funds of the
36 board and shall be used to make loans to receivers and conservators as

1 provided in §20-17-1025.

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APPROVED: 4/2/2001