

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1141

5 By: Representative Vaught
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE CEMETERY ACT FOR PERPETUALLY
9 MAINTAINED CEMETERIES; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO AMEND THE CEMETERY ACT FOR PERPETUALLY
12 MAINTAINED CEMETERIES.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 20-17-1002(2), concerning the definition of
20 "cemetery" under the Cemetery Act for Perpetually Maintained Cemeteries, is
21 amended to read as follows:

22 (2)(A) "Cemetery" means any land or a structure in this state
23 dedicated to and used or intended to be used for interment of human remains.

24 (B) ~~It may be either~~ "Cemetery" includes a burial park for
25 earth interments, a mausoleum for vault or crypt interments, or a combination
26 of one (1) or more ~~thereof~~ burial parks or mausoleums;
27

28 SECTION 2. Arkansas Code § 20-17-1002, concerning the definitions used
29 in the Cemetery Act for Perpetually Maintained Cemeteries, is amended to add
30 an additional subdivision to read as follows:

31 (14) "Properly maintained" means, with regard to a perpetual
32 care cemetery, provided care and maintenance services, including without
33 limitation:

34 (A) Mowing the grass of the perpetual care cemetery;

35 (B) Weed trimming around lots or grave space and fences or
36 property lines of the perpetual care cemetery;



1 (C) Emptying trash receptacles located at the perpetual
 2 care cemetery; and

3 (D) Removing excess dirt, tree limbs, leaves, trash, and
 4 other debris from the grounds of the perpetual care cemetery.

5
 6 SECTION 3. Arkansas Code § 20-17-1008 is amended to read as follows:
 7 20-17-1008. Permit – Application.

8 (a)(1) Before making application to the State Board of Embalmers,
 9 Funeral Directors, Cemeteries, and Burial Services for a permit to establish
 10 and operate a new cemetery or for the extension of the boundaries of an
 11 existing cemetery, the ~~person~~ cemetery company proposing to make application
 12 shall publish weekly for three (3) weeks in a newspaper of general
 13 circulation in the county in which the proposed cemetery is located a notice
 14 that an application will be filed with the board to establish or extend the
 15 boundaries of a cemetery in the county.

16 (2) The publication described in subdivision (a)(1) of this
 17 section shall contain a legal description of the land to be used as a
 18 cemetery and a statement that any individual or group of individuals desiring
 19 to protest the establishment or extension of the cemetery may do so by filing
 20 a statement in writing with the board.

21 (b)(1) Whenever it is proposed to locate a new cemetery or extend the
 22 boundaries of an existing cemetery under this subchapter, then the cemetery
 23 company so proposing shall file an application for the issuance of a permit
 24 with the board.

25 (2) The application shall describe accurately the location and
 26 boundaries of the proposed cemetery or ~~addition~~ extension.

27 (3) The application shall be accompanied by:

28 (A)(i) The recommendation of the mayor or governing
 29 official of the municipality if the cemetery is located or is to be located
 30 within the corporate limits of a municipality or the recommendation of the
 31 county judge of the county within which the cemetery is to be located if
 32 outside the corporate limits of a municipality.

33 (ii) The recommendation described in subdivision
 34 (b)(3)(A)(i) of this section shall:

35 (a) ~~state~~ State the need and desirability of
 36 the proposed cemetery or extension-; and

1 ~~(b) This recommendation shall be~~ Be in lieu of
 2 the application and permit required in § 20-17-903;

3 (B) A fee of:

4 (i) One thousand five hundred dollars (\$1,500) for
 5 filing an application for a new cemetery; or

6 (ii) Four hundred dollars (\$400) for filing an
 7 application to extend the boundaries of an existing cemetery;

8 (C) (i) A Except as provided in subdivision (b)(3)(C)(ii),
 9 a survey and map of the cemetery or extension reflecting at least ten (10)
 10 acres of land.

11 (ii) An existing cemetery that consists of less than
 12 ten (10) acres of land on or before January 1, 2021, is not required to have
 13 ten (10) acres of land but shall submit a survey and map of the cemetery or
 14 extension of the existing cemetery;

15 (D) A set of rules and regulations for the use, care,
 16 management, and protection of the cemetery;

17 (E) The proposed method of establishing a permanent
 18 maintenance fund;

19 (F) Proof of publication as ~~set forth~~ stated in subsection
 20 (a) of this section of the required notice of intention to apply with the
 21 board;

22 (G) A copy of a current title opinion by an Arkansas-
 23 licensed attorney or title insurance policy ~~which~~ that reflects that the
 24 applicant has or will have good and merchantable title to the land covered by
 25 the permit or extension;

26 (H) A notarized statement disclosing any current or future
 27 lien or mortgage on the land covered by the permit;

28 (I) A notarized statement from any current or future
 29 lienholder or mortgage holder on the land covered by the permit or extension
 30 that all paid-in-full burial spaces will be released from the lien or
 31 mortgage at least semi-annually;

32 (J) A copy of the perpetual care trust agreement if the
 33 application is for a new cemetery permit; and

34 (K) A current balance sheet of the applicant prepared by
 35 an independent certified public accountant in accordance with generally
 36 accepted accounting principles ~~which~~ that reflects that the applicant has a

1 minimum of twenty thousand dollars (\$20,000) net worth, ~~and,~~

2 ~~(L)(4)~~ (4) Any other evidence ~~which that~~ would tend to show a public
 3 need for the proposed cemetery or extension ~~may be included~~, such as a
 4 petition from landowners in the county who believe that a need exists for ~~any~~
 5 an additional cemetery or extension, may be included with the application.

6 ~~(4)(5)~~ (5) The burden of establishing public need shall be upon the
 7 applicant.

8 (c) ~~All applications~~ An application shall be made under oath and filed
 9 with the ~~Insurance Commissioner~~ board not less than twenty (20) days before
 10 the board meeting at which the application is to be considered.

11 (d)(1) The cemetery company applying for a permit shall designate an
 12 individual who is responsible for the application.

13 (2) The individual designated under subdivision (d)(1) of this
 14 section shall undergo and pass a state criminal background check conducted by
 15 the Identification Bureau of the Division of Arkansas State Police.

16 (3) The board may charge and collect a processing fee in the
 17 amount necessary to recover the cost imposed by the Identification Bureau of
 18 the Division of Arkansas State Police for the state criminal background
 19 check.

20 (e) The board ~~shall have authority to~~ may require ~~any a~~ a cemetery
 21 company to submit additional information as ~~it~~ the board may by rule or order
 22 prescribe.

23 ~~(e)(f)~~ (f) The board may for good cause waive all or part of an
 24 application requirement of this section if an applicant is a state, city, or
 25 municipal government, or a nonprofit organization as defined by the Internal
 26 Revenue Code, 26 U.S.C. § 501(c)(3).

27
 28 SECTION 4. Arkansas Code § 20-17-1011(a), concerning an application
 29 for an amendment to a cemetery permit under the Cemetery Act for Perpetually
 30 Maintained Cemeteries, is amended to read as follows:

31 (a) Whenever it is proposed that ~~any a~~ a cemetery subject to this
 32 subchapter amend its present permit, whether for construction of a structure
 33 such as a mausoleum or columbarium, reduction of boundaries of twenty percent
 34 (20%) or more, reduction or increase in percentage of gross sales proceeds to
 35 be placed in the permanent maintenance fund, or other amendment, then the
 36 cemetery company shall file an application for amendment of the permit.

1
2 SECTION 5. Arkansas Code § 20-17-1011(b)(4), concerning the
3 application requirements for an amendment to a permit under the Cemetery Act
4 for Perpetually Maintained Cemeteries, is amended to read as follows:

5 (4) If the amendment is for construction of a mausoleum,
6 columbarium, or similar structure, the application shall ~~also~~ include:

7 (A) Plans and specifications of the structure;

8 (B) A report of the inspection of the plans by the
9 Department of Health;

10 (C) A copy of the sales contracts and conveyance documents
11 proposed to be used;

12 (D) A proposed contribution to the permanent maintenance
13 fund;

14 (E) A statement of whether the amount of the sales force
15 will be utilized and of how preconstruction sales and interments will be
16 handled;

17 (F) The location of the proposed structure;

18 (G) The estimated completion date;

19 (H) Either of the following, when sales proceeds may be
20 received by the cemetery company before completion of construction and
21 payment in full of the structure:

22 (i) An executed escrow agreement approved by the
23 State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services
24 with a federally insured financial institution or other financial institution
25 approved by the board ~~which that~~ provides among other things that one hundred
26 percent (100%) of the sales proceeds collected before the completion of
27 construction and payment in full of the structure will be placed into escrow;
28 or

29 (ii)(a) An executed copy of the construction
30 agreement for the structure ~~which sets forth that states~~ the total
31 construction cost and the date the construction will be completed with either
32 an executed irrevocable letter of credit from a federally insured financial
33 institution or other financial institution approved by the board equal to one
34 hundred twenty-five percent (125%) of the total cost of the structure, a cash
35 bond posted with a federally insured financial institution or other financial
36 institution approved by the board equal to one hundred thirty percent (130%)

1 of the total cost of the structure, or a construction performance bond
 2 payable to the board in the amount equal to the total cost of the structure
 3 as ~~set forth~~ stated in the construction agreement.

4 (b)(1) All letters of credit and bonds, and
 5 their issuers, shall be approved by the board.

6 (2) ~~The A~~ letter of credit under this
 7 subdivision (b)(4)(H)(ii)(b) shall state that the funds provided shall be
 8 paid to the board for the purpose of completing the construction of the
 9 structure or paying in full the completed structure if not done before the
 10 completion date ~~set forth~~ stated in the construction agreement.

11 (3) ~~The A~~ construction performance bond
 12 under this subdivision (b)(4)(H)(ii)(b) shall state that the insurer shall
 13 advance the funds necessary to complete the construction of the structure or
 14 pay for the completed structure, if not done before the date ~~set forth~~ stated
 15 in the construction agreement.

16 (4) ~~The A~~ cash bond under this
 17 subdivision (b)(4)(H)(ii)(b) shall provide that the financial institution
 18 shall pay the cash proceeds of the bond upon order of the board.

19 (5) ~~The letters~~ Letters of credit or
 20 construction bonds shall state that if the structure is not completed and
 21 paid for in full within the maximum time provided for construction under this
 22 section, ~~such the~~ the letters of credit and or construction bonds shall be used
 23 to complete and pay for the structure;

24 (I) Certification of an estimated start date for
 25 construction to take place no later than thirty-six (36) months after the
 26 date of the permit and further certifying completion within five (5) years
 27 after the date of the permit unless extended for good cause by the board; and

28 (J) Other information necessary to show that construction
 29 will be done in a good and workmanlike manner and be fireproof; and

30
 31 SECTION 6. Arkansas Code § 20-17-1011(c), concerning the number of
 32 copies of the application for an amendment to a permit under the Cemetery Act
 33 for Perpetually Maintained Cemeteries, is amended to read as follows:

34 (c) ~~Nine (9) complete copies of the~~ The application for the amendment
 35 of the permit shall be filed with the ~~Insurance Commissioner~~ board at least
 36 twenty (20) calendar days before the meeting at which the board will consider

1 the application.

2
3 SECTION 7. Arkansas Code § 20-17-1012(b)(2)(A), concerning the
4 application for transfer of ownership of a permit under the Cemetery Act for
5 Perpetually Maintained Cemeteries, is amended to read as follows:

6 (A)(i) A fee of one thousand five hundred dollars
7 (\$1,500).

8 (ii) However, the fee described in subdivision
9 (b)(2)(A)(i) of this section shall not be required if the individual or
10 entity described in subdivision (b)(1)(B)(i) or subdivision (b)(1)(B)(ii) of
11 this section is the heir to the estate of the individual who previously held
12 the controlling interest in the permit;

13
14 SECTION 8. Arkansas Code § 20-17-1013(a)(1)(B), concerning the
15 preservation of the permanent maintenance fund under the Cemetery Act for
16 Perpetually Maintained Cemeteries, is amended to read as follows:

17 (B) The principal of the permanent maintenance fund shall
18 be preserved except for withdrawals allowed under § 20-17-1014(b)(3)(B).

19
20 SECTION 9. Arkansas Code § 20-17-1014(b), concerning permanent
21 maintenance fund trustees under the Cemetery Act for Perpetually Maintained
22 Cemeteries, is amended to read as follows:

23 (b)(1) A cemetery company shall establish a permanent maintenance fund
24 with or transfer the permanent maintenance fund to:

25 ~~(1)(A)~~ A state or national bank or federal savings bank
26 with trust powers;

27 ~~(2)(B)(i)~~ Three (3) trustees, ~~if+.~~

28 ~~(A)(ii)~~ All trustees that If the cemetery company
29 has a permanent maintenance fund with three (3) trustees as described in
30 subdivision (b)(1)(B)(i) of this section, the trustees shall:

31 (a) Designate one (1) of the three (3)
32 trustees to make disbursements from the trust fund; and

33 (b) The disbursing trustee described in
34 subdivision (b)(1)(B)(ii)(a) of this section shall deposit with the State
35 Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services a
36 fidelity bond with corporate surety payable to the trust fund in a penal sum

1 not less than ~~one hundred percent (100%)~~ eighty percent (80%) of the value of
 2 the trust fund principal at the beginning of each calendar year; ~~and.~~

3 ~~(C)(iii)~~ No If a cemetery company has a permanent
 4 maintenance fund with three (3) trustees as described in subdivision
 5 (b)(1)(B)(i) of this section, no more than one (1) of the trustees ~~has~~ may
 6 have a direct or indirect financial interest in the perpetual care cemetery;
 7 ~~or~~

8 ~~(3)(C)~~ An individual trustee:

9 (i) Shall deposit with the board a fidelity bond
 10 with corporate surety payable to the trust fund in a penal sum not less than
 11 eighty percent (80%) of the value of the trust fund principal at the
 12 beginning of each calendar year; and

13 ~~(ii) that on~~ On behalf of the cemetery company shall
 14 ~~deposits~~ deposit all permanent maintenance funds directly into a savings
 15 account or certificate of deposit in a state or national bank or savings and
 16 loan association in this state not less than forty-five (45) days after
 17 collection if:

18 ~~(A)(a)~~ The funds deposited are federally
 19 insured;

20 ~~(B)(b)~~ The funds are restricted to prevent the
 21 principal amount of the funds from being withdrawn without the written
 22 approval of and on a form approved by the ~~Insurance Commissioner~~ board; and

23 ~~(C)(c)~~ Not less than one (1) time per year the
 24 net income from the funds may be withdrawn by the individual trustee on
 25 behalf of the cemetery company for purposes permitted by this subchapter.

26 (2) If a permanent maintenance fund of a cemetery contains less
 27 than ten thousand dollars (\$10,000), a bond is not required when a cemetery
 28 has designated trustees under subdivision (b)(2) or subdivision (b)(3) of
 29 this section.

30
 31 SECTION 10. Arkansas Code § 20-17-1015(c), concerning permanent
 32 maintenance fund reporting requirements under the Cemetery Act for
 33 Perpetually Maintained Cemeteries, is amended to read as follows:

34 (c)(1) If the trustee of the permanent maintenance fund fails to meet
 35 the requirements of this section, then ~~it shall be the duty of~~ the board ~~to~~
 36 may apply to the Pulaski County Circuit Court for an order to require the

1 trustee of the permanent maintenance fund to file a proper report and to make
 2 any additional contributions due to the failure to timely file the annual
 3 report.

4 (2)(A) If trust funds have been misappropriated by the trustee
 5 or are not being handled as required by law, then the board shall apply to
 6 the circuit court in the county in which the cemetery is located to have a
 7 receiver or conservator appointed by the court to take custody of the trust
 8 funds for the benefit of the cestui que trust.

9 (B) The receiver or conservator is vested with full power
 10 to file such suits against the defaulting trustee as may be necessary to
 11 require a full accounting and restoration of the trust funds and to turn the
 12 residue over to another trustee as the cemetery shall select, in conformity
 13 with this subchapter, as the new trustee of the permanent maintenance fund.

14 (3) If the trustee does not timely file the annual report
 15 required by subsection (a) of this section, the board may require the trustee
 16 to pay an additional contribution to the permanent maintenance fund of no
 17 more than fifty dollars (\$50.00) per day until the report is filed with the
 18 board.

19
 20 SECTION 11. Arkansas Code § 20-17-1020 is amended to read as follows:
 21 20-17-1020. Unlawful act.

22 It ~~shall be~~ is unlawful for ~~any a~~ cemetery company to bury or inter a
 23 body in any driveway, roadway, path, alley, or walk.

24
 25 SECTION 12. Arkansas Code § 20-17-1025 is amended to read as follows:
 26 20-17-1025. Protection of cemeteries – Power to lend – Insolvent
 27 Cemetery Loan Fund.

28 (a) ~~On August 1, 2001, the~~ The State Board of Embalmers, Funeral
 29 Directors, Cemeteries, and Burial Services ~~shall segregate~~ shall maintain a
 30 segregated one hundred eighty thousand dollars (\$180,000) fund within its
 31 general operating fund to be known as the Insolvent Cemetery Loan Fund, which
 32 shall be administered by the Insurance Commissioner and only used to lend a
 33 court-appointed receiver or conservator the funds necessary to assure that a
 34 cemetery will be properly maintained and will continue to be a going concern,
 35 including the funds necessary to pay a reasonable surety bond premium that is
 36 required to be posted by the court.

1 (b) The board may take any legal action necessary against a cemetery
 2 company, receiver, or conservator to recover funds loaned by the board to or
 3 for the benefit of the cemetery, ~~the~~ cemetery company, receiver, or
 4 conservator for the payment of maintenance expenses or unpaid loans.

5 (c) Disbursement from the Insolvent Cemetery Loan Fund for loans to a
 6 receiver or conservator shall be made on a "first in, first out" basis as
 7 determined by the commissioner.

8 (d) The commissioner may accept donations to the board from any
 9 cemetery company, organization, or individual to fund loans under this
 10 section.

11 (e) The board may waive payment or extend the payment period for a
 12 loan made to a receiver or conservator if the board determines that it is
 13 unlikely that the receiver or conservator has or will receive sufficient
 14 funds to repay the loan and that the funds were or are needed to maintain and
 15 operate the cemetery for the benefit of the lot owners and the general
 16 public.

17 (f) Any funds that accumulate in the Insolvent Cemetery Loan Fund in
 18 excess of one hundred eighty thousand dollars (\$180,000) may at the request
 19 of the board be transferred to the Insolvent Cemetery Grant Fund under the
 20 Insolvent Cemetery Grant Fund Act, § 20-17-1301 et seq.

21
 22 SECTION 13. Arkansas Code § 20-17-1026(a), concerning the annual
 23 permit fee under the Cemetery Act for Perpetually Maintained Cemeteries, is
 24 amended to read as follows:

25 (a) ~~By March 1~~ Within seventy-five (75) days after the end of each the
 26 calendar year, each permit holder shall pay to the State Board of Embalmers,
 27 Funeral Directors, Cemeteries, and Burial Services a permit renewal fee in
 28 the amount of one hundred dollars (\$100).

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 31 **APPROVED: 4/15/21**
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