

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4

As Engrossed: H2/7/97

# A Bill

HOUSE BILL 1454

5 By: Representatives Ferrell, Ferguson, Terry Smith, and Thomas  
6  
7

## For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE CEMETERY ACT FOR  
10 PERPETUALLY MAINTAINED CEMETERIES; AND FOR OTHER  
11 PURPOSES."  
12

## Subtitle

13 "AN ACT TO AMEND VARIOUS SECTIONS OF THE  
14 CEMETERY ACT FOR PERPETUALLY MAINTAINED  
15 CEMETERIES."  
16  
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

20 SECTION 1. Arkansas Code 20-17-1002 is amended by adding a subsection  
21 to the end thereof to read as follows:

22 "(12) Secretary means the Arkansas Securities Commissioner."  
23

24 SECTION 2. Arkansas Code 20-17-1004(a) is amended to read as follows:

25 "(a) The Arkansas Cemetery Board is to consist of ~~eight (8)~~ seven (7)  
26 members selected as follows:

27 (1) The ~~Director of the Department of Health and the~~ Arkansas  
28 Securities Commissioner, or ~~their~~ his designated ~~deputies~~ deputy, shall be a  
29 voting ~~members~~ member of the board;

30 (2) Six (6) members shall be appointed by the Governor for terms  
31 of four (4) years.

32 (A) Four (4) of the six (6) members of the board appointed  
33 by the Governor shall be owners or operators of licensed cemeteries in this  
34 state, and these members shall be appointed from lists of five (5) names for  
35 each appointment to be made which are submitted to the Governor by the  
36 Arkansas Cemetery Association.

1 (B) One (1) member shall be appointed by the Governor and  
2 shall be a citizen of the State of Arkansas, of good character, and a  
3 qualified elector, but this person shall not have any interest in a cemetery  
4 or funeral home either within or without the State of Arkansas.

5 (C) One (1) member shall be sixty (60) years of age or  
6 older, appointed from the state at large, subject to the confirmation of the  
7 Senate, and shall represent the elderly. This member shall not be actively  
8 engaged in or retired from any profession or occupation which is regulated by  
9 the board."

10

11 SECTION 3. Arkansas Code 20-17-1006(6) and (7) are amended to read as  
12 follows:

13 "(6) Subpoena witnesses, books, and records in connection with alleged  
14 violations of this subchapter- , rules or orders of the board. The secretary  
15 of the board with the approval of the chairman or two board members may issue  
16 subpoenas. In case of contumacy by or refusal to obey a subpoena issued to  
17 any person, the Circuit Court of Pulaski County, upon application by the  
18 board, may issue to the person an order requiring him to appear before the  
19 board, or the person designated by the board. Failure to obey the order of  
20 the court may be punished by the court as a contempt of court;

21 (7) Require additional contributions to the permanent maintenance fund  
22 of the cemetery where provided for in this subchapter including, but not  
23 limited to, contributions not to exceed one three thousand dollars ~~(\$1,000)~~  
24 (\$3,000) whenever any cemetery company fails to properly care for and maintain  
25 or preserve the cemetery;"

26

27 SECTION 4. Arkansas Code 20-17-1008(b) is amended to read as follows:

28 "(b) Whenever it is proposed to locate a new cemetery or extend the  
29 boundaries of an existing cemetery under the provisions of this subchapter,  
30 then the cemetery company so proposing shall file an application for the  
31 issuance of a permit with the board.

32 (1) Such application shall describe accurately the location and  
33 boundaries of the proposed cemetery or addition.

34 (2) The application must be accompanied by:

35 (A) The recommendation of the mayor or governing official of  
36 the municipality if the cemetery is to be located within the corporate limits

1 of a municipality or the recommendation of the county judge of the county  
2 within which the cemetery is to be located if outside the corporate limits of  
3 a municipality;

4 (i) The recommendation shall state the need and  
5 desirability of the proposed cemetery or extension;

6 (ii) This recommendation shall be in lieu of the  
7 application and permit required in § 20-17-903;

8 (B) A fee as the board shall by rule prescribe;

9 (C) A survey and map of the cemetery or extension;

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

12 (E) The proposed method of establishing a permanent  
13 maintenance fund;

14 (F) Proof of publication as set forth in subsection (a) of  
15 this section of the required notice of intention to apply with the board;

16 (G) A copy of a current title opinion by an Arkansas  
17 licensed attorney or title insurance policy which reflects that the applicant  
18 has or will have good and merchantable title to the land covered by the permit  
19 or extension;

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

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

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

28 (K) A current balance sheet of the applicant prepared by an  
29 independent certified public accountant in accordance with generally accepted  
30 accounting principles which reflects the applicant has a minimum of \$20,000.00  
31 net worth;

32 (L) ~~If the application is for a proposed cemetery, any~~ Any  
33 other evidence which would tend to show a public need for the proposed  
34 cemetery or extension may be included, such as a petition from landowners in  
35 the county who believe that a need exists for any additional cemetery or  
36 extension; and

1                           (M) The burden of establishing public need shall be upon  
2 the ~~proposed~~ applicant."

3

4           SECTION 5. Arkansas Code 20-17-1010(c)(1) is amended to read as  
5 follows:

6           "(c)(1) If the application for a new cemetery is approved, the board  
7 shall issue ~~to the cemetery company~~ a permit- to the applicant only after the  
8 applicant has filed proof with the board that an initial principal deposit of  
9 at least five thousand dollars (\$5,000.00) has been made to the permanent  
10 maintenance fund. This initial five thousand dollars (\$5,000.00) can be used  
11 to meet the liability due the permanent maintenance fund for the first paid-in  
12 -full burial space sales sold by the permit holder."

13

14           SECTION 6. Arkansas Code 20-17-1011 is amended to read as follows:

15           "§ 20-17-1011. Permit - Amendment.

16           (a) Whenever it is proposed that any cemetery subject to the provisions  
17 of this subchapter amend its present permit, whether for construction of a  
18 mausoleum, reduction or increase in percentage of gross sales proceeds to be  
19 placed in the permanent maintenance fund, or other amendment, then the  
20 cemetery company shall file an application for amendment of the permit.

21           (b) The application shall be accompanied by:

22                   (1) A fee of one hundred dollars (\$100);

23                   (2) A statement of each proposed amendment;

24                   (3) Statements, documents, and other information necessary to  
25 provide justification for the amendment;

26                   (4) If the amendment is for construction of a mausoleum or  
27 similar structure, the application shall also include:

28                           (A) Plans and specifications of the structure;

29                           (B) A report of inspection of the plans by the Department  
30 of Health;

31                           (C) A copy of the ~~applicable~~ sales contracts, and  
32 conveyance documents, ~~and escrow agreement for sales proceeds prior to~~  
33 ~~completion of construction~~ proposed to be used;

34                           (D) A proposed contribution to the permanent maintenance  
35 fund;

36                           (E) A statement of whether the amount of the sales force

1 will be utilized and of how preconstruction sales and interments will be  
2 handled;

3 (F) The location of the proposed structure;

4 (G) The estimated completion date;

5 (H) Either of the following, when sales proceeds may be  
6 received by the cemetery company prior to completion of construction and  
7 payment in full of the structure:

8 (i) An executed escrow agreement approved by the  
9 board with a federally insured financial institution or other financial  
10 institution approved by the board which provides among other things that one  
11 hundred percent (100%) of the sales proceeds collected prior to the completion  
12 and payment in full of the structure will be placed into escrow; or

13 (ii)(a) An executed copy of the construction  
14 agreement for the structure which sets forth the total construction cost and  
15 the date the construction will be completed with either an executed  
16 irrevocable letter of credit from a federally insured financial institution or  
17 other financial institution approved by the board equal to one hundred twenty-  
18 five percent (125%) of the total cost of the structure, or a cash bond posted  
19 with a federally insured financial institution or other financial institution  
20 approved by the board equal to one hundred thirty percent (130%) of the total  
21 cost of the structure, or a construction performance bond payable to the board  
22 in the amount equal to the total cost of the structure as set forth in the  
23 construction agreement.

24 (b) All letters of credit and bonds, and their  
25 issuers, must be approved by the board. The letter of credit shall state that  
26 the funds provided shall be paid to the board for the purpose of completing  
27 the construction of the structure or paying in full the completed structure if  
28 not done prior to the completion date set forth in the construction agreement.

29 The construction performance bond shall state that the insurer shall advance  
30 the funds necessary to complete the construction of the structure or pay for  
31 the completed structure, if not done prior to the date set forth in the  
32 construction agreement. The cash bond shall provide that the financial  
33 institution shall pay the cash proceeds of the bond upon order of the board.

34 The letters of credit or construction bonds shall state that if the structure  
35 is not completed and paid for in full within the maximum time provided for  
36 construction hereunder, such letters of credit and bonds shall be used to

1 complete and pay for the structure.

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

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

8 (5) Other information as the board may by rule or order require.

9 (c) Eight complete copies of the application for the amendment of the  
10 permit must be filed with the secretary at least twenty (20) calendar days  
11 prior to the meeting at which the board will consider the application."

12

13 SECTION 7. Arkansas Code 20-17-1012(a) is amended to read as follows:

14 ~~§(a)(1) When it is proposed that any cemetery company subject to the~~  
15 ~~provisions of this subchapter is to be sold or the ownership otherwise~~  
16 ~~transferred, or a controlling interest in the company is sold or so~~  
17 ~~transferred, the cemetery company to whom the current permit is issued or the~~  
18 ~~cemetery company proposing to purchase~~ Whenever any change is proposed in the  
19 controlling interest or ownership of any cemetery company or any organization  
20 which, directly or indirectly, owns a controlling interest in the cemetery  
21 company, the cemetery company which holds the current permit and the  
22 individual or organization proposing to obtain ownership or gain control shall  
23 file an application for the issuance of a new permit with the board.

24 (2) The application must be accompanied by:

25 (A) A fee of one hundred dollars (\$100);

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

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

30 (E) A statement of the proposed transfer; ~~and~~

31 (F) A copy of a current title opinion by an Arkansas  
32 licensed attorney or title insurance policy which reflects that the current  
33 permit holder has good and merchantable title to the land covered by the  
34 permit;

35 (G) A notarized statement from the seller and purchaser  
36 disclosing any current or future lien or mortgage on the land covered by the

1 permit;

2                               (H) A notarized statement from any current or future  
3 lienholder or mortgage holder on the land covered by the permit that all paid-  
4 in-full burial spaces will be released from the lien or mortgage at least  
5 semi-annually;

6                               (I) A current detailed accounting of all paid-in-full  
7 merchandise contracts or accounts of the permit holder/seller for which the  
8 merchandise has not been delivered to the purchaser or placed in inventory for  
9 the benefit of the purchaser. This accounting shall be on an individual  
10 contract or account basis and contain the name of the purchaser, the contract  
11 or account number, the date of the contract, the gross amount of the  
12 contract, a description of the merchandise purchased, the date the contract or  
13 account was paid-in-full, and the specific location where the merchandise is  
14 stored;

15                               (J) A current notarized statement from the permit holder/  
16 seller that the application contains a complete and accurate accounting of all  
17 his outstanding accounts receivable, discounted notes and paid-in-full  
18 merchandise accounts or contracts for which the merchandise has not been  
19 delivered to the purchaser or placed in inventory for the benefit of the  
20 purchaser;

21                               (K) A current notarized statement from the purchaser or  
22 organization gaining control that it will assume the responsibility and  
23 liability for all the accounts, notes and contracts of the seller which are  
24 contained in the accountings and schedules which are filed as a part of the  
25 application;

26                               (L) The financial statements of the applicant/purchaser  
27 required by the rules which reflect the applicant/purchaser has a minimum net  
28 worth of \$20,000.00; and

29                               ~~(F)~~ (M) Any additional information required by the board or  
30 the secretary of the board."

31

32               SECTION 8. Arkansas Code 20-17-1015(c) is amended to read as follows:

33               "(c)(1) If the trustee of the fund fails to meet the requirements of  
34 this section, then it shall be the duty of the board to apply to the Chancery  
35 Court of Pulaski County for an proper order to require a report of the trustee  
36 of the fund to file a proper report and to make any additional contributions

1 due to the failure to timely file the annual report.

2 (2) If funds have been misappropriated by the trustee or are not  
3 being handled as required by law, then the board shall apply to the chancery  
4 court in the county in which the cemetery is located to have a receiver or  
5 conservator appointed by the court to take custody of the trust funds for the  
6 benefit of the cestui que trust. The receiver or conservator is vested with  
7 full power to file such suits against the defaulting trustee as may be  
8 necessary to require a full accounting and restoration of the trust funds and  
9 turn the residue over to another trustee as the cemetery shall select, in  
10 conformity with this subchapter, as new trustee of the permanent maintenance  
11 fund.

12 (3) Failure by the trustee to make a timely filing of the annual  
13 report required by subsection (a) shall be grounds for the trustee to pay an  
14 additional contribution to the permanent maintenance fund of fifty dollars  
15 (\$50.00) per day until the report is filed with the board."

16  
17 SECTION 9. Arkansas Code 20-17-1016(b) is amended by adding a  
18 subdivision at the end thereof to read as follows:

19 "(3) If a cemetery company gives away a grave space or sells a grave  
20 space for a price less than the current market price, the gross sales proceeds  
21 received for a similar grave space in the immediately adjacent or similar  
22 location in the cemetery in a recent arms-length transaction shall be used as  
23 the basis to make the required permanent maintenance fund contribution for  
24 such gift or reduced price sale."

25  
26 SECTION 10. Arkansas Code 20-17-1018 is amended to read as follows:  
27 "§ 20-17-1018. Permanent maintenance fund - Penalties.

28 (a) In addition to the civil provisions of this subchapter, it shall be  
29 unlawful for any person to:

30 (1) advertise or operate all or part of a cemetery as a perpetual  
31 care or permanent maintenance cemetery without holding a valid permit issued  
32 by the board; or

33 (2) fail to place the required ~~gross proceeds of sale~~  
34 contributions into the permanent maintenance fund or to remove any principal  
35 of the permanent maintenance fund, ~~or any part thereof,~~ from trust.

36 (b) Any person who is in willful violation of subsection (a) shall be



1 guilty of a felony and upon conviction shall be punished by a fine of not more  
2 than ~~five~~ six thousand dollars (~~\$5,000~~) (\$6,000) or by imprisonment in the  
3 state penitentiary for not more than ~~five~~ six (~~5~~) (6) years, or by both fine  
4 and imprisonment."

5

6 SECTION 11. Subchapter 10 of Chapter 17, Title 20 of the Arkansas Code  
7 is amended by adding a new section at the end thereof to read as follows:

8 "20-17-1025. Protection of Cemeteries - Power to Lend.

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

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

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

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

25

26 SECTION 12. All provisions of this act of a general and permanent  
27 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
28 Code Revision Commission shall incorporate the same in the Code.

29

30 SECTION 13. If any provision of this act or the application thereof to  
31 any person or circumstance is held invalid, such invalidity shall not affect  
32 other provisions or applications of the act which can be given effect without  
33 the invalid provision or application, and to this end the provisions of this  
34 act are declared to be severable.

35

36 SECTION 14. All laws and parts of laws in conflict with this act are

1 hereby repealed.

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*/s/Rep. Ferrell, et al*

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