1 2	State of Arkansas 93rd General Assembly	A Bill	
3	Regular Session, 2021		HOUSE BILL 1141
4			
5	By: Representative Vaught		
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7		For An Act To Be Entitled	
8	AN ACT TO	AMEND THE CEMETERY ACT FOR PERPETUALLY	•
9	MAINTAINE	ED CEMETERIES; AND FOR OTHER PURPOSES.	
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11			
12		Subtitle	
13	TO .	AMEND THE CEMETERY ACT FOR PERPETUALLY	
14	MAI	NTAINED CEMETERIES.	
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17	BE IT ENACTED BY THE	GENERAL ASSEMBLY OF THE STATE OF ARKANS	AS:
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19	SECTION 1. Ark	cansas 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 fo	ollows:	
22	(2) <u>(A)</u> '	'Cemetery" means any land or \underline{a} structure	in this state
23	dedicated to and used	d or intended to be used for interment o	f human remains.
24	<u>(B)</u>	It may be either "Cemetery" includes	a burial park for
25	earth interments, a m	nausoleum for vault or crypt interments,	or a combination
26	of one (1) or more tl	nereof burial parks or mausoleums;	
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28	SECTION 2. Ark	cansas Code § 20-17-1002, concerning the	definitions used
29	in the Cemetery Act i	for Perpetually Maintained Cemeteries, i	s amended to add
30	an additional subdivi	ision to read as follows:	
31	<u>(14) "Pı</u>	coperly maintained" means, with regard t	o a perpetual
32	care cemetery, provid	led care and maintenance services, inclu	ding without
33	<u>limitation:</u>		
34	<u>(A)</u>	Mowing the grass of the perpetual car	e cemetery;
35	<u>(B)</u>	Weed trimming around lots or grave sp	ace and fences or
36	property lines of the	narnatual care cometery.	

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.
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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 <u>described in subdivision (a)(1) of this</u>
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 <u>located</u> or <u>is</u> 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 The proposed method of establishing a permanent (E) 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 that all paid-in-full burial spaces will be released from the lien or 30 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 $\frac{\text{(L)}(4)}{\text{(4)}}$ 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 $\frac{(4)(5)}{(5)}$ 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.

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- (e) The board shall have authority to \underline{may} require \underline{any} \underline{a} cemetery company to submit additional information as \underline{it} the board may by rule or order prescribe.
- (e)(f) The board may for good cause waive all or part of an application requirement of this section if an applicant is a state, city, or municipal government, or \underline{a} nonprofit organization as defined by the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

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

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

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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 $\underline{\text{of}}$	
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 cas	
35	bond posted with a federally insured financial institution or other financial	

institution approved by the board equal to one hundred thirty percent (130%)

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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 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 copies of the application for an amendment to a permit under the Cemetery Act 32 for Perpetually Maintained Cemeteries, is amended to read as follows: 33 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.
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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) <u>.</u>
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;
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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).
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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	$\frac{(1)(A)}{(A)}$ A state or national bank or federal savings bank
26	with trust powers;
27	$\frac{(2)(B)(i)}{(B)(i)}$ 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 hand with corporate curety payable to the trust fund in a penal cum

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 $\frac{\text{may}}{\text{may}}$
6	<pre>have a direct or indirect financial interest in the perpetual care cemetery;</pre>
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	$\frac{(A)}{(a)}$ The funds deposited are federally
19	insured;
20	$\frac{(B)}{(b)}$ 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	$\frac{(C)}{(C)}$ 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.
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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 <u>permanent maintenance</u> fund fails to meet
35	the requirements of this section, then $\frac{it}{t}$ shall be the duty of the board $\frac{t}{t}$
36	may apply to the Pulaski County Circuit Court for an order to require the

- $1 \hspace{0.4cm} \quad \text{trustee of the } \underline{\text{permanent maintenance}} \hspace{0.1cm} \text{fund to file a proper report and to make}$
- 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.

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- 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.

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- 25 SECTION 12. Arkansas Code § 20-17-1025 is amended to read as follows:
- 26 20-17-1025. Protection of cemeteries Power to lend <u>- Insolvent</u>
- 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.

- (b) The board may take any legal action necessary against a cemetery company, receiver, or conservator to recover funds loaned by the board to or for the benefit of the cemetery, the cemetery company, receiver, or conservator for the payment of maintenance expenses or unpaid loans.
 - (c) Disbursement from the Insolvent Cemetery Loan Fund for loans to a receiver or conservator shall be made on a "first in, first out" basis as determined by the commissioner.
 - (d) The commissioner may accept donations to the board from any cemetery company, organization, or individual to fund loans under this section.
- (e) The board may waive payment or extend the payment period for a loan made to a receiver or conservator if the board determines that it is unlikely that the receiver or conservator has or will receive sufficient funds to repay the loan and that the funds were or are needed to maintain and operate the cemetery for the benefit of the lot owners and the general public.
 - (f) Any funds that accumulate in the Insolvent Cemetery Loan Fund in excess of one hundred eighty thousand dollars (\$180,000) may at the request of the board be transferred to the Insolvent Cemetery Grant Fund under the Insolvent Cemetery Grant Fund Act, § 20-17-1301 et seq.

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

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