

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

# A Bill

HOUSE BILL 1141

By: Representative Vaught

## For An Act To Be Entitled

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

### Subtitle

TO AMEND THE CEMETERY ACT FOR PERPETUALLY  
MAINTAINED CEMETERIES.

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

SECTION 1. Arkansas Code § 20-17-1002(2), concerning the definition of "cemetery" under the Cemetery Act for Perpetually Maintained Cemeteries, is amended to read as follows:

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

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

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

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

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

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



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

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

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

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

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

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

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

(3) The application shall be accompanied by:

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

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

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

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

(B) A fee of:

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

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

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

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

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

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

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

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

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

(I) A notarized statement from any current or future 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 mortgage at least semi-annually;

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

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

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

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

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

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

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

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

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

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

~~(e)(f)~~ (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 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.

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

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

- (A) Plans and specifications of the structure;
- (B) A report of the inspection of the plans by the Department of Health;
- (C) A copy of the sales contracts and conveyance documents proposed to be used;
- (D) A proposed contribution to the permanent maintenance fund;
- (E) A statement of whether the amount of the sales force will be utilized and of how preconstruction sales and interments will be handled;
- (F) The location of the proposed structure;
- (G) The estimated completion date;
- (H) Either of the following, when sales proceeds may be received by the cemetery company before completion of construction and payment in full of the structure:
  - (i) An executed escrow agreement approved by the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services with a federally insured financial institution or other financial institution approved by the board ~~which~~ that provides among other things that one hundred percent (100%) of the sales proceeds collected before the completion of construction and payment in full of the structure will be placed into escrow; or
  - (ii)(a) An executed copy of the construction agreement for the structure ~~which sets forth~~ that states the total construction cost and the date the construction will be completed with either an executed irrevocable letter of credit from a federally insured financial institution or other financial institution approved by the board equal to one hundred twenty-five percent (125%) of the total cost of the structure, a cash bond posted with a federally insured financial institution or other financial institution approved by the board equal to one hundred thirty percent (130%)

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

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

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

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

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

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

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

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

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 for Perpetually Maintained Cemeteries, is amended to read as follows:

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

the application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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