

RÉSUMÉ DIGEST

ACT 413 (HB 292)

2016 Regular Session

Hall

New law authorizes and regulates certain persons licensed to operate abandoned cemeteries. Provides definitions and procedures.

New law requires that an abandoned cemetery sales and management license be issued only to a nonprofit juridical person, and the officers and directors of the entity shall serve voluntarily and without compensation for their services. New law also requires that any excess funds realized by a licensee shall be deposited into an account, and the funds of the account may be used only for the maintenance and upkeep of the cemetery and the cemetery records. New law also allows nonprofit juridical persons whose officers, directors, or members have ancestors within an abandoned cemetery to apply for an abandoned cemetery sales and management license if they meet the qualifications required by existing law relative to licensure as a cemetery sales organization or a cemetery management organization. New law adds that nothing within new law restricts a licensee from paying necessary expenses and maintenance costs to contractors.

New law allows the Louisiana Cemetery Bd. (board) to charge an application fee in the amount of \$250, and new law allows the board to charge an annual license renewal fee in the amount of \$250.

New law requires that, prior to the issuance of any license issued pursuant to new law, the board shall consult with the division of archaeology of the office of cultural development within the Dept. of Culture, Recreation and Tourism (division) regarding the reasonableness of the operation of any abandoned cemetery. New law authorizes the division to impose reasonable conditions and limitations on any license issued by the board relative to a particular abandoned cemetery. New law also provides that the division shall have a cause of action for specific performance against any licensee who violates the provisions of new law.

New law states that a licensee shall have exclusive authority to operate the cemetery, regardless of any other person who subsequently applies for a license to operate the same abandoned cemetery, for as long as its abandoned cemetery sales and management license is valid.

New law authorizes licensees to do the following:

- (1) Sell grave spaces, openings, and closings in the cemetery.
- (2) Make and enforce written rules and regulations for the operation and maintenance of the cemetery.

New law prohibits licensees from selling merchandise in any manner that would either require monies to be deposited into a trust fund as required by the provisions of existing law relative to merchandise trust funds or otherwise necessitate adherence to any provision of existing law relative to merchandise trust funds. New law requires that any merchandise or service sold by a licensee shall be delivered or performed within 120 days of entering into the applicable contract with the consumer.

New law prohibits the licensee from destroying or removing any original grave markers from the premises of the cemetery without the permission that is required to be obtained pursuant to existing law (R.S. 8:659). New law clarifies that nothing in new law shall prohibit the licensee from removing trash or other common waste or debris from the cemetery premises.

New law empowers the board to do the following:

- (1) Refuse issuance of an abandoned cemetery sales and management license if the board finds that ownership of the abandoned cemetery is in dispute.
- (2) Revoke or suspend an abandoned cemetery sales and management license if the board finds either the existence of credible evidence of an ownership dispute for the cemetery subject to the license or that a licensee has violated any provision of

existing law relative to cemeteries or any other applicable rule or regulation promulgated by the board.

- (3) Summarily suspend an abandoned cemetery sales and management license, pursuant to existing law (R.S. 49:961), when the board finds that public health, safety, or welfare imperatively requires emergency action.
- (4) Impose upon a licensee certain retroactive record-keeping or record creation requirements, including but not limited to the creation of known interment logs, plats, and maps, and any other documentation reasonably necessary for the cemetery subject to the license to be operated in compliance with the provisions of existing law relative to cemeteries.

New law allows the state or any local political subdivision to use prison labor, subject to the provisions of existing law (R.S. 15:708) and subject to a consultation with the division, to clean and maintain abandoned cemeteries. New law requires the state or any local political subdivision to obtain the consent of a licensee prior to using prison labor to perform any work on a cemetery that is subject to an abandoned cemetery sales and management license. New law provides that, in the event a licensee consents to the use of prison labor on the abandoned cemetery subject to his license, the licensee shall reimburse the appropriate prison any cost incurred by use of the prison labor. Further, new law specifies that the cost of any use of prison labor on an abandoned cemetery shall be reimbursed to the appropriate prison by the requesting governmental entity except as provided for in new law.

New law requires a licensee to adhere to all provisions of existing law relative to cemeteries that would otherwise be applicable to an actual owner of the cemetery. New law clarifies that any liability that results from the unlawful act or inadequate management of a prior owner or operator of a cemetery shall be strictly limited to the prior owner or operator. New law also states that no cause or right of action shall be enforceable against a licensee for any unlawful action or inadequate management of a prior owner or operator of the cemetery. New law further clarifies that no provision of new law is intended to relieve a licensee from his own independent liability.

New law specifies that, in the event of an inadvertent discovery of an unknown or unmarked grave by a licensee, the licensee shall document the existence of the grave and close the grave. However, he shall neither disturb any human remains therein nor reuse the grave without the authority of those individuals identified in existing law (R.S. 8:659).

New law indicates that no provision of new law shall supercede any other provisions of existing law relative to cemeteries to the contrary.

Effective January 1, 2017.

(Adds R.S. 8:411- 418)