

**ACT No. 381**

2023 Regular Session

HOUSE BILL NO. 593

BY REPRESENTATIVE RISER

1 AN ACT

2 To amend and reenact R.S. 8:61(A), 64, 66.1, 66.2(A), 67, 69.2(C)(8), 71, 72(A), 75(A), (B),  
3 and (C), 454.1(A), 455, 458, 461(A), 463, 464(A)(3), 465(A)(introductory  
4 paragraph) and (D), 467, 506(A) and (C)(1)(a), to enact R.S. 8:79, 456(D), 505(C),  
5 506(D), and 512, and to repeal R.S. 37:21(B)(4), relative to cemeteries; to provide  
6 for officers of the Louisiana Cemetery Board; to provide for investigations by the  
7 board; to provide for cease and desist orders given by the board; to provide for rules  
8 and regulations the board may establish; to provide for certain board procedures for  
9 certificates of authority; to provide for certain board actions for violations; to provide  
10 for annual reports by cemeteries; to provide for the examination of cemetery care  
11 trust funds; to provide for examination of records and reports by the board; to limit  
12 certain disciplinary proceedings by the board; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 8:61(A), 64, 66.1, 66.2(A), 67, 69.2(C)(8), 71, 72(A), 75(A), (B), and  
15 (C), 454.1(A), 455, 458, 461(A), 463, 464(A)(3), 465(A)(introductory paragraph) and (D),  
16 467, 506(A) and (C)(1)(a) are hereby amended and reenacted and R.S. 8:79, 456(D), 505(C),  
17 506(D), and 512 are hereby enacted to read as follows:

18 §61. Cemetery board created; appointments; terms

19 A. The Louisiana Cemetery Board is hereby created and shall be placed  
20 within the office of the governor. The board shall consist of seven members

1 appointed by the governor. There shall be at least one member from each public  
 2 service commission district existing at the time of the appointments and two  
 3 members at large, who shall all be residents of Louisiana. Any change in the total  
 4 membership or district of the public service commission shall not affect the term of  
 5 any duly appointed member, but subsequent appointments shall be made so as to  
 6 conform with membership and districts of the commission existing at the time of the  
 7 subsequent appointments. The domicile of the board shall be in the parish of  
 8 Jefferson. A majority of the board members shall constitute a quorum for all  
 9 meetings. Unless provided otherwise in this Title, if a quorum is present when a vote  
 10 is taken, the affirmative vote of the majority of the members present is the act of the  
 11 board.

\* \* \*

§64. Officers; administrative director; employees

14 The board shall elect a chairperson, vice chairperson, and such other officers  
 15 as it shall determine, from among its members. Each officer shall serve until his  
 16 successor is elected and takes office. It may employ, fix the salaries, and, except as  
 17 provided in this Section, prescribe the duties of an administrative director and such  
 18 clerical, technical, and other employees as are necessary to carry out its duties. The  
 19 administrative director and other employees of the board shall not be prescribed any  
 20 discretionary duties or actions which are prescribed to the board pursuant to this  
 21 Title.

\* \* \*

§66.1. Investigations

24 A. ~~The board may, for~~ For purposes of discovering a violation of this  
 25 Chapter or implementing rules or orders issued pursuant to this Title, the board may  
 26 perform any of the following:

- 27 (1) Make such public or private investigations within or outside of this state
- 28 as the board deems necessary to determine whether any person has violated this
- 29 Title, or implement rules or orders issued pursuant to this Title, or to aid in the
- 30 enforcement of this Title, or in the prescribing of rules and forms under this Title.

1           (2) Take testimony concerning matters under its jurisdiction. The board,  
 2           through its presiding officer, may issue subpoenas to enforce the attendance of  
 3           witnesses, and administer oaths to witnesses.

4           (3) Appoint two or more of its members as the board deems necessary to  
 5           determine whether any person has violated this Title.

6           (4) Implement rules or orders that are issued pursuant to this Title.

7           (5) Call for an informal hearing to ascertain facts of an alleged violation of  
 8           any provision of this Title.

9           ~~(2)~~ (6) Require or permit any person to file a statement in writing, under  
 10          oath, by affidavit or by authentic act, as the board or attorney general determines, as  
 11          to all the facts and circumstances concerning the matter being investigated.

12          ~~(3)~~ (7) Investigate a person subject to the jurisdiction of the board and  
 13          examine ~~the~~ his books, accounts, papers, correspondence, memoranda, purchase  
 14          agreements, files, or other documents or records: relevant or material to aid in the  
 15          enforcement of this Title.

16          ~~(4)~~ (8) Subpoena witnesses, compel their attendance, take evidence, and  
 17          require the production of any books, accounts, papers, correspondence, memoranda,  
 18          purchase agreements, files, or other documents or records which the board deems  
 19          relevant or material to any investigation or proceeding ~~under~~ pursuant to this Title.

20          ~~(5)~~ (9) Apply to a district court of competent jurisdiction for an order  
 21          requiring a person's appearance before the board ~~or attorney general, or a designee~~  
 22          ~~of either or both,~~ in cases where the person has refused to obey a subpoena issued by  
 23          the board ~~or attorney general.~~ The person may also be required to produce  
 24          documentary evidence ~~germane~~ relevant or material to the subject of the  
 25          investigation.

26          B. The board, by majority vote of its members, shall determine whether to  
 27          dismiss a complaint or call for a formal hearing.

28          C. If a formal hearing is called by the board, parties to the alleged violation  
 29          and complaint shall be present either voluntarily or by subpoena. A proper legal  
 30          record of the hearing shall be required in a manner legally accepted in judicial

1 proceedings. After hearing and reviewing the evidence presented, the board by a  
2 majority vote of its members, within a reasonable time, shall render a decision and  
3 issue its decision and orders to all parties.

4 D. The board shall determine whether to institute legal proceedings  
5 authorized by this Title and how to respond to any legal proceedings to which the  
6 board is a party, including all decisions regarding appeal and settlement. The board  
7 shall stay fully informed as to all pending investigations, formal hearings, and legal  
8 proceedings.

9 E.(1) The administrative director of the board shall submit a written report  
10 to the board addressing the following:

11 (a) Information that comes to the attention of the staff that may constitute  
12 a violation of this Title.

13 (b) Information that may be grounds for a complaint resulting in suspension,  
14 revocation, fine, or penalty.

15 (2) Such report shall be updated monthly until the matter is acted upon by  
16 the board as provided in Subsection B of this Section.

17 §66.2. Cease and desist orders

18 A. If it appears to the board ~~or to the attorney general~~ after conducting an  
19 investigation in accordance with R.S. 8:66.1 that a person has engaged in an act or  
20 practice constituting a violation of this Title, or the implementing of rules or orders  
21 issued in accordance with this Title, the board or the attorney general may issue a  
22 cease and desist order directed to the person that requires the person to cease and  
23 desist from engaging in such an act or practice. A person may request a hearing  
24 within thirty days of actual receipt of the cease and desist order, as evidenced by the  
25 date on the return service. If a hearing is not timely requested, the cease and desist  
26 order shall become final by operation of law. The order shall remain effective from  
27 the date of issuance until the date the order becomes final by operation of law or is  
28 overturned by a ~~hearing officer authorized to hear the matter~~ the board following a  
29 request for hearing.

30 \* \* \*

1 §67. Rules and regulations

2 The board may establish necessary rules and regulations for the  
3 administration and enforcement of this Title and prescribe the form of statements and  
4 reports provided for in this Title, but such rules and regulations shall not be in  
5 conflict with or contrary to any of the provisions of this Title or of the  
6 Administrative Procedure Act, R.S. 49:950 et seq. or applicable law.

7 \* \* \*

8 §69.2. Receiverships; procedure; powers, duties, and qualifications; disposition of  
9 cemetery

10 \* \* \*

11 C.

12 \* \* \*

13 (8) The receiver shall also have all of the powers granted to receivers under  
14 R.S. ~~12:151~~ 12:1-1432 et seq.

15 \* \* \*

16 §71. Proof of applicant's compliance with law, rules and regulations; financial  
17 responsibility and reputation

18 The board, by a majority vote of its members, shall determine that the  
19 applicant and its officers, directors, owners, and managerial personnel are financially  
20 responsible, trustworthy, and have good personal and business reputations, in order  
21 that only cemeteries of permanent benefit to the community in which they are  
22 located will be established in this state. The board may require such proof as it  
23 deems advisable concerning the compliance by such applicant with all the laws,  
24 rules, regulations, ordinances, and orders applicable to it. If the board refuses to  
25 grant an applicant a certificate of authority, it shall inform the applicant in writing  
26 by registered or certified mail of the reasons therefor and the applicant shall be  
27 entitled to a hearing, if requested by the applicant in writing within thirty days of  
28 receipt of the denial. The hearing shall be conducted in accordance with the  
29 provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

1           §72. Certificates; regulatory charges; suspension; restoration; late charge;  
2                           requirement of certificate

3           A. The regulatory charges for a certificate of authority at all periods of the  
4           year are the same as provided in this Chapter. All regulatory charges shall be  
5           payable at the time of the filing of the application and prior to issuance of the  
6           certificate. All certificates issued by the board shall be valid unless suspended or  
7           revoked by a majority vote of the board. However, failure to pay the regulatory  
8           charge fixed by the board prior to the first day of February for any year shall effect  
9           the suspension of the certificate of authority, which may be restored upon payment  
10          of the prescribed charge, and an additional late charge of fifty percent of the amount  
11          of the prescribed regulatory charge or one hundred dollars, whichever is lesser.

12   \*       \*       \*

13          §75. Refusal to grant, revocation, or suspension of certificate; injunction; fines;  
14                           additional orders

15          A. For violation of any provision of this Title or the rules or regulations  
16          adopted and promulgated by the board in accordance with the Administrative  
17          Procedure Act, the board, by a majority of its members, may, ~~in addition to imposing~~  
18          impose fines, refuse to grant, revoke, or suspend a certificate of authority and may  
19          institute legal proceedings to enjoin any person from operating or conducting a  
20          cemetery business.

21          B. ~~If the board finds that one or more grounds exist for the discretionary~~  
22          ~~suspension or revocation of a certificate of authority issued pursuant to the~~  
23          ~~provisions of this Chapter, it may, in lieu of or in addition to the suspension or~~  
24          ~~revocation, impose a fine upon the certificate holder in an amount not to exceed one~~  
25          ~~thousand dollars for each non-willful violation and in an amount not to exceed ten~~  
26          ~~thousand dollars for each willful violation, plus cost of the court reporter and the~~  
27          ~~attorney fees of the board.~~ The board, by a majority vote of its members, may  
28          summarily suspend a certificate of authority issued pursuant to the provisions of this  
29          Chapter upon a finding by a majority of the board that emergency action is required  
30          to protect the health, welfare, or safety of the public prior to a formal hearing on the

1 matter. In the event of a summary suspension, a formal hearing shall be set within  
 2 twenty-one days of the effective date of the suspension.

3 C. If the board at a formal hearing finds that any natural or juridical person  
 4 has violated the provisions of this Title or the rules or regulations adopted and  
 5 promulgated by the authority vested in this Chapter, it may impose a fine upon that  
 6 natural or juridical person in an amount not to exceed one thousand dollars for each  
 7 non-willful violation and in an amount not to exceed ten thousand dollars for each  
 8 willful violation, plus cost of the court reporter and the attorney fees of the board.

9 \* \* \*

10 §79. Actions for violation of Title 8

11 No action or claim based on or arising out of a violation of this Title or any  
 12 rules or regulations of the board shall be brought unless a complaint is issued by the  
 13 board in accordance with R.S. 8:66.1 or legal proceedings are filed in a court of  
 14 competent jurisdiction and proper venue within the limitation provided in R.S. 37:21.  
 15 The provisions of this Section are remedial and apply to all causes of action without  
 16 regard to the date when the alleged act, omission, or neglect occurred.

17 \* \* \*

18 §454.1. Administration of trust funds; maintenance; exemption from seizure

19 A. The principal of the trust fund shall remain permanently intact and only  
 20 the income therefrom shall be expended. The income shall be used solely for the  
 21 care of those portions of the cemetery in which interment spaces have been sold with  
 22 a provision for perpetual or endowed care, including the expenses necessary to carry  
 23 out the purposes and administration of the trust. It is the intent of this Section that  
 24 the net income of the fund shall be paid to the cemetery authority and used  
 25 exclusively ~~used solely~~ for the care of interment spaces sold with a provision for  
 26 perpetual or endowed care and for the care of other portions of the cemetery  
 27 immediately surrounding the spaces as may be necessary to preserve the beauty and  
 28 dignity of the spaces sold. The fund or its income shall never be used for the  
 29 development, improvement, or embellishment of unsold portions of the cemetery so  
 30 as to relieve the cemetery authority of the ordinary cost incurred in preparing such

1 property for sale. All funds held in trust for perpetual care purposes shall be  
2 administered by the trustee in accordance with this Chapter and the Louisiana Trust  
3 Code.

4 \* \* \*

5 §455. Annual report by cemeteries

6 All cemeteries subject to the provisions of this Chapter shall file with the  
7 trustee, as defined in this Chapter, not later than ninety days after the close of the  
8 business year, a report setting forth the volume and the gross selling price of sales  
9 upon which a deposit with the trustee is required by this Chapter. For the purposes  
10 of this Chapter, the business year is any consecutive twelve-month period determined  
11 by the cemetery authority and designated in the report. The cemetery authority may  
12 change its business year by filing an interim report for a period less than twelve  
13 months. The board shall be notified of such change within thirty days of the  
14 effective date of the change.

15 §456. Annual report by trustee; final accounting by trustee required

16 \* \* \*

17 D. The annual report by the trustee shall be for the same period as the report  
18 received from the cemetery authority report pursuant to R.S. 8:455.

19 \* \* \*

20 §458. Prohibited acts; injunctions

21 No person or cemetery authority shall offer for sale or sell any interment  
22 space in any cemetery with a provision for perpetual or endowed care, or in any  
23 manner represent, advertise, or hold out to the public that the cemetery, or any  
24 portion thereof, is entitled to perpetual or endowed care, unless such person or  
25 authority has complied with the provisions of this Chapter. The board, by a majority  
26 vote of its members, may institute legal proceedings to enjoin any person or  
27 cemetery authority from violating the provisions of this Section.

28 \* \* \*



1 §461. Examination of endowment funds; expenses

2 A. The board shall examine the endowment care funds of each cemetery  
3 authority governed by the provisions of this Title, including those organized before  
4 and after August 1, 1962, at the following time or times:

5 (1) ~~Whenever it deems necessary but at least once~~ Once every three years.

6 (2) Whenever the board determines there is good cause to believe that a  
7 violation of this Chapter has occurred.

8 ~~(2)~~ (3) Whenever the cemetery authority or trustee in charge of endowment  
9 or perpetual care funds fails to file the reports required by this Chapter.

10 ~~(3)~~ (4) Whenever the board is requested by verified petition signed by  
11 twenty-five individual interment space owners, alleging that the endowment or  
12 perpetual care funds are not in compliance with this title, in which case the  
13 examination shall be at the expense of the petitioners.

14 \* \* \*

15 §463. Powers, duties, records, concerning examination of funds

16 In making such examination, the board shall:

17 ~~(1)~~ A. Have ~~free~~ reasonable access to the books and records relating to the  
18 endowment or perpetual care funds, their collection and investment, and the number  
19 of interment spaces under endowment or perpetual care. Such books and records  
20 shall be made available for examination in the principal office of the cemetery  
21 authority or trustee located within the state of Louisiana; Any request for access to  
22 books and records, which the trustee or cemetery authority objects to as being  
23 unreasonable, irrelevant, arbitrary, or capricious, shall be produced only after the  
24 objections are ruled upon by the board after notice and hearing.

25 ~~(2)~~ B. Inspect and examine the endowment or perpetual care funds to  
26 determine their condition and the existence of the investments; ~~and,~~

27 ~~(3)~~ C. Ascertain if the cemetery authority has complied with all laws  
28 applicable to endowment or perpetual care funds.

1 §464. Action required when authority fails to deposit minimum endowment or  
2 perpetual funds

3 A.

4 \* \* \*

5 (3) Notwithstanding any other provisions of law, if the board fails to prove  
6 that the cemetery authority or other responsible party is not in compliance with the  
7 requirements of this Section or the alleged violation is de minimis, then the board  
8 shall not recover any costs, fees, or any expenses incurred by it and shall be  
9 responsible for paying all reasonable costs, legal and accounting fees, or expenses  
10 incurred by the cemetery authority or responsible party who was accused of not  
11 being in compliance.

12 §465. Order requiring reinvestment in compliance with law; actions for preservation  
13 and protection

14 A. All funds held in trust for perpetual care purposes shall be administered  
15 by the trustee in compliance with this Chapter and the Louisiana Trust Code with  
16 such skill and care as a ~~man~~ person of ordinary prudence, discretion, and intelligence  
17 would exercise in the management of his own affairs, not in regard to speculation but  
18 in regard to the permanent disposition of his funds, considering the probable income  
19 as well as the probable safety of his capital, subject to the following restrictions:

20 \* \* \*

21 D. Whenever the board, ~~has reason to believe that~~ by a vote of the majority  
22 of its members, has determined that due to a violation of this Chapter, endowment  
23 or perpetual care funds are in danger of being lost or dissipated during the time  
24 required for notice and hearing, it may immediately apply to the district court of the  
25 parish in which the cemetery is located for any order which appears necessary for the  
26 preservation and protection of endowment or perpetual care funds, including but not  
27 limited to immediate substitution of trustees. Notwithstanding any other provisions  
28 of law, if the board fails to prove that due to a violation of this Chapter, endowment  
29 or perpetual care funds were in danger of being lost or dissipated, it shall be  
30 responsible for paying all reasonable costs, legal and accounting fees, and expenses

1 incurred by the cemetery authority or responsible party who was accused of not  
2 being in compliance.

3 \* \* \*

4 §467. Examination of reports

5 The board shall examine the reports filed with it as to their compliance with  
6 the requirements of the law. Any formal hearing, court proceeding, or other cause  
7 of action against a cemetery authority or trustee based on any report filed by it shall  
8 be commenced within the limitations of R.S. 37:21.

9 \* \* \*

10 §505. Annual reports by trustee; final accounting by trustee required

11 \* \* \*

12 C. For purposes of this Chapter, the business year is any consecutive twelve-  
13 month period determined by the cemetery authority as designated in the report. The  
14 cemetery authority may change its business year by filing the report for a period less  
15 than twelve months. The board shall be notified of such change within thirty days  
16 of the effective date of the change.

17 \* \* \*

18 §506. Examination by board; expenses

19 A. The board may examine the relevant business books and records  
20 identified in Subsection C of this Section of any cemetery authority or other entity  
21 that is engaged in making contracts for the sale of personal property or services as  
22 contemplated in this Chapter at the following time or times:

23 (1) ~~Whenever it deems necessary but at least once~~ Once every three years.

24 (2) Whenever the board determines there is a good cause to believe that a  
25 violation of this Chapter has occurred.

26 (2) (3) Whenever the cemetery authority, other entity, or trustee in charge  
27 of merchandise trust funds fails to file the reports required by this Chapter.

28 (3) (4) Whenever the board is requested by verified petition signed by  
29 twenty-five individuals purchasing personal property or services alleging that the

1 cemetery authority or other entity is not in compliance with this Chapter, in which  
2 case the examination shall be at the expense of the petitioners.

3 \* \* \*

4 C. In making such examination, the board shall:

5 (1)(a) Have ~~free~~ reasonable access to the books and records relating to the  
6 merchandise trust funds, their collection and investment, and individual contracts for  
7 the sale of personal property or services as described in this Chapter.

8 \* \* \*

9 D. Any requests for access to books and records, which the trustee, cemetery  
10 authority, or other entity objects to as being unreasonable, irrelevant, arbitrary, or  
11 capricious, shall be produced only after the objections are ruled upon by the board  
12 after notice and hearing.

13 \* \* \*

14 §512. Examination of reports

15 The board shall examine the reports filed with it as to their compliance with  
16 the requirements of the law. Any formal hearing, court proceeding, or other cause of  
17 action against a cemetery authority or trustee based on any report filed by it shall be  
18 commenced within the limitations of R.S. 37:21.

19 Section 2. R.S. 37:21(B)(4) is hereby repealed in its entirety.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_