

2016 Regular Session

HOUSE BILL NO. 292

BY REPRESENTATIVE HALL

CEMETERIES: Regulates the operation of abandoned cemeteries

1 AN ACT

2 To enact Chapter 6-A of Title 8 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 8:411 through 417, relative to abandoned cemeteries; to provide for
4 definitions; to provide for an abandoned cemetery sales and management license
5 application procedure; to provide for fees; to authorize licensees; to regulate the
6 operation of abandoned cemeteries; to enumerate certain powers of the Louisiana
7 Cemetery Board; to regulate the use of prison labor; to provide for limited liability;
8 to provide for effectiveness; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 6-A of Title 8 of the Louisiana Revised Statutes of 1950,
11 comprised of R.S. 8:411 through 417, is hereby enacted to read as follows:

12 CHAPTER 6-A. ABANDONED CEMETERIES

13 §411. Definitions

14 As used in this Chapter, the following terms have the meanings hereinafter
15 ascribed to them:

16 (1) "Abandoned cemetery" means any cemetery for which the board, in its
17 discretion, determines it is impossible or impractical to identify or locate the current
18 owner based upon its findings including but not limited to a presentation of title
19 history by the applicant for an abandoned cemetery sales and management license.

1 (2) "Abandoned cemetery sales and management license" means any license
2 issued by the board pursuant to the provisions of this Chapter.

3 (3) "Board" means the Louisiana Cemetery Board.

4 (4) "Licensee" means any person who has been issued an abandoned
5 cemetery sales and management license by the board.

6 §412. Application for license; qualifications; fees

7 A. The board may charge an application fee for an abandoned cemetery sales
8 and management license in the amount of two hundred fifty dollars and an annual
9 license renewal fee in the amount of two hundred fifty dollars.

10 B. An abandoned cemetery sales and management license shall be issued
11 only to a nonprofit juridical person, and the officers and directors of such entities
12 shall serve voluntarily and without compensation for their services.

13 (1) Any excess funds realized by a licensee shall be deposited into a trust
14 account, and the funds of the account may be used only for the maintenance and
15 upkeep of the cemetery and the cemetery records.

16 (2) Nothing herein shall restrict a licensee from paying necessary expenses
17 and maintenance costs to contractors.

18 C. Nonprofit juridical persons whose officers, directors, or members have
19 ancestors within an abandoned cemetery and who meet the qualifications to obtain
20 a cemetery management organization or cemetery sales organization license pursuant
21 to R.S. 8:402 may apply to the board, pursuant to this Chapter, for an abandoned
22 cemetery sales and management license.

23 §413. Licensee authority; restrictions

24 A. A licensee shall have exclusive authority to operate the cemetery,
25 regardless of any other person who subsequently applies for licensure to operate the
26 same cemetery, for as long as his abandoned cemetery sales and management license
27 is valid.

28 B. A licensee may do any of the following relative to the cemetery subject
29 to the license:

1 (1) Sell grave spaces, openings, and closings in the cemetery.

2 (2) Make and enforce written rules and regulations for the operation and
3 maintenance of the cemetery.

4 C.(1) A licensee is expressly prohibited from selling merchandise in any
5 manner that would either require monies to be deposited into a trust fund as required
6 by the provisions of Chapter 8 of this Title or otherwise necessitate adherence to any
7 provision of Chapter 8 of this Title.

8 (2) Any merchandise or service sold by a licensee shall be delivered or
9 performed within one hundred twenty days of entering into the applicable contract
10 with the consumer.

11 §414. Additional powers of the board

12 The board may do any of the following:

13 (1) Refuse issuance of an abandoned cemetery sales and management license
14 if the board finds that ownership of the abandoned cemetery is in dispute.

15 (2) Revoke or suspend an abandoned cemetery sales and management
16 license if the board finds:

17 (a) The existence of credible evidence of an ownership dispute for the
18 cemetery subject to the license.

19 (b) A licensee has violated any provision of this Title or any applicable rule
20 or regulation promulgated by the board.

21 (3) Summarily suspend an abandoned cemetery sales and management
22 license, pursuant to R.S. 49:961, when the board finds that public health, safety, or
23 welfare imperatively requires emergency action.

24 (4) Impose upon a licensee certain retroactive recordkeeping or record
25 creation requirements, including but not limited to the creation of known interment
26 logs, plats, and maps, and any other documentation reasonably necessary for the
27 cemetery subject to the license to be operated in compliance with the provisions of
28 this Title.

1 §415. Labor by prisoners permitted

2 A. For the purpose of abating any public health or safety risks, the state or
3 any local political subdivision may use prison labor, subject to the provisions of R.S.
4 15:708, to clean and maintain abandoned cemeteries.

5 B.(1) The state or any local political subdivision shall obtain the consent of
6 a licensee prior to using prison labor to perform any work on a cemetery that is
7 subject to an abandoned cemetery sales and management license.

8 (2) In the event that a licensee consents to the use of prison labor on the
9 abandoned cemetery subject to his license, the licensee shall reimburse the
10 appropriate prison any cost incurred by use of the prison labor.

11 C. The cost of any use of prison labor on an abandoned cemetery shall be
12 reimbursed to the appropriate prison by the requesting governmental entity except
13 as provided for in Paragraph (B)(2) of this Section.

14 §416. Liability

15 A. A licensee shall adhere to all provisions of this Title that would otherwise
16 be applicable to an actual owner of the cemetery.

17 B.(1) Any liability that results from the unlawful act or inadequate
18 management of a prior owner or operator of a cemetery shall be strictly limited to the
19 prior owner or operator.

20 (2) No cause or right of action shall be enforceable against a licensee for any
21 unlawful action or inadequate management of a prior owner or operator of the
22 cemetery.

23 C. Nothing in this Section is intended to relieve a licensee from his own
24 independent liability.

25 §417. Scope

26 No provision within this Chapter shall supercede any other provisions of this
27 Title to the contrary.

28 Section 2. This Act shall become effective on January 1, 2017.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 292 Original

2016 Regular Session

Hall

Abstract: Authorizes and regulates certain persons licensed to operate abandoned cemeteries.

Proposed law enumerates definitions for the purposes of proposed law in order to provide for clarification.

Proposed 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. Proposed 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. Proposed 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 present law relative to licensure as a cemetery sales organization or a cemetery management organization. Proposed law adds that nothing within proposed law restricts a licensee from paying necessary expenses and maintenance costs to contractors.

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

Proposed 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.

Proposed 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.

Proposed 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 present law relative to merchandise trust funds or otherwise necessitate adherence to any provision of present law relative to merchandise trust funds. Proposed 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.

Proposed 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

- present 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 present 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 recordkeeping 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 present law relative to cemeteries.

Proposed law allows the state or any local political subdivision to use prison labor, subject to the provisions of present law (R.S. 15:708), to clean and maintain abandoned cemeteries. Proposed 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. Proposed 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, proposed 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 proposed law.

Proposed law requires a licensee to adhere to all provisions of present law relative to cemeteries that would otherwise be applicable to an actual owner of the cemetery. Proposed 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. Proposed 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. Proposed law further clarifies that no provision of proposed law is intended to relieve a licensee from his own independent liability.

Proposed law indicates that no provision of proposed law shall supercede any other provisions of present law relative to cemeteries to the contrary.

Effective January 1, 2017.

(Adds R.S. 8:411-417)