

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 418, 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 inadvertent discovery of unknown graves; to provide for effectiveness;
9 and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 6-A of Title 8 of the Louisiana Revised Statutes of 1950,
12 comprised of R.S. 8:411 through 418, is hereby enacted to read as follows:

13 CHAPTER 6-A. ABANDONED CEMETERIES

14 §411. Definitions

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

17 (1) "Abandoned cemetery" means any cemetery for which the board, in its
18 discretion, determines it is impossible or impractical to identify or locate the current
19 owner based upon its findings including but not limited to a presentation of title
20 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) "Division" means the division of archaeology of the office of cultural
5 development within the Department of Culture, Recreation and Tourism.

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

8 §412. Application for license; qualifications; fees

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

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

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

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

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

25 D.(1) Prior to the issuance of any license issued pursuant to this Chapter, the
26 board shall consult with the division regarding the reasonableness of the operation
27 of any abandoned cemetery.

28 (2) The division may impose reasonable conditions and limitations on any
29 license issued by the board relative to a particular abandoned cemetery.

1 (3) The division shall have a cause of action for specific performance against
2 any licensee who violates the provisions of this Subsection.

3 §413. Licensee authority; restrictions

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

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

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

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

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

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

20 D.(1) The licensee is prohibited from destroying or removing any original
21 grave markers from the premises of the cemetery without the permission that is
22 required to be obtained pursuant to R.S. 8:659.

23 (2) Nothing in this Subsection shall prohibit the licensee from removing
24 trash or other common waste or debris from the cemetery premises.

25 §414. Additional powers of the board

26 The board may do any of the following:

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

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

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

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

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

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

15 §415. Labor by prisoners permitted

16 A. For the purpose of abating any public health or safety risks, the state or
17 any local political subdivision may, after consultation with the division, use prison
18 labor, subject to the provisions of R.S. 15:708, to clean and maintain abandoned
19 cemeteries.

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

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

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

1 §416. Liability2 A. A licensee shall adhere to all provisions of this Title that would otherwise
3 be applicable to an actual owner of the cemetery.4 B.(1) Any liability that results from the unlawful act or inadequate
5 management of a prior owner or operator of a cemetery shall be strictly limited to the
6 prior owner or operator.7 (2) No cause or right of action shall be enforceable against a licensee for any
8 unlawful action or inadequate management of a prior owner or operator of the
9 cemetery.10 C. Nothing in this Section is intended to relieve a licensee from his own
11 independent liability.12 §417. Inadvertent discovery13 In the event of an inadvertent discovery of an unknown or unmarked grave
14 by a licensee, the licensee shall document the existence of the grave and close the
15 grave, but he shall neither disturb any human remains therein nor reuse the grave
16 without the authority of those individuals identified in R.S. 8:659.17 §418. Scope18 No provision within this Chapter shall supercede any other provisions of this
19 Title to the contrary.

20 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 Engrossed

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. (board) 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 requires that, prior to the issuance of any license issued pursuant to proposed 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. Proposed law authorizes the division to impose reasonable conditions and limitations on any license issued by the board relative to a particular abandoned cemetery. Proposed law also provides that the division shall have a cause of action for specific performance against any licensee who violates the provisions of proposed law.

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 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 present law (R.S. 8:659). Proposed law clarifies that nothing in proposed law shall prohibit the licensee from removing trash or other common waste or debris from the cemetery premises.

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) and subject to a consultation with the division, 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 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 present law (R.S. 8:659).

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. 8:411-418)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Make technical amendments.
2. Define the term "Division" to mean the division of archaeology of the office of cultural development within the Dept. of Culture, Recreation and Tourism.
3. Clarify the authority of the division by requiring the board to consult with the division before operating an abandoned cemetery, allowing the division to impose reasonable conditions on any license issued by the board, and gives the

division a cause of action for specific performance against any licensee who violates those reasonable conditions.

4. Prohibit the licensee from destroying or removing grave markers without acquiring permission as required by present law (R.S. 8:659).
5. Require the board to consult with the division before use of prison labor in an abandoned cemetery.
6. Require certain procedures imposed by proposed law to be adhered to in the event of an inadvertent discovery of an unknown or unmarked grave.