

2015 Regular Session

HOUSE BILL NO. 592

BY REPRESENTATIVE RITCHIE

1 AN ACT

2 To amend and reenact R.S. 8:70, 73, 75(A) and (B), 78, 201, 403, 456(A), 461(A)
3 (introductory paragraph) and (2) and (B), 462, 466, 506(B), and 606(A) and to enact
4 R.S. 8:705.1, relative to cemetery authorities; to increase certain regulatory,
5 application, and examination fees established by the Louisiana Cemetery Board; to
6 authorize the board to impose certain fines; to provide for exempt certificates of
7 authority; to provide for fees relative to renewal of exempt certificates of authority;
8 to clarify provisions relative to corporate entities engaged in cemetery business; to
9 provide relative to required content of annual reports of trustees and cemetery
10 authorities; to provide for application requirements and fees relative to sales of
11 cemetery space, rights of use, or interment in cemetery structures and gardens; to
12 provide for exemptions; to provide for technical corrections; and to provide for
13 related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 8:70, 73, 75(A) and (B), 78, 201, 403, 456(A), 461(A) (introductory
16 paragraph) and (2) and (B), 462, 466, 506(B), and 606(A) are hereby amended and reenacted
17 and R.S. 8:705.1 is hereby enacted to read as follows:

18 §70. Application for certificate of authority

19 The initial application for a certificate of authority, including without
20 limitation an application for a new certificate required by R.S. 8:76, shall be made
21 in writing by a cemetery authority to the board on a form prescribed by the board,
22 accompanied by an application fee of ~~five hundred~~ set by the board not to exceed one
23 thousand dollars. Applications for renewal of a valid, subsisting, and unsuspended
24 certificate of authority shall be made in similar fashion, accompanied by the
25 regulatory charge provided for in this Title. All initial applications must show that

1 the cemetery authority owns or is actively operating a cemetery which is subject to
2 the provisions of this Title.

3 * * *

4 §73. Regulatory charges; rate

5 A. Every cemetery authority shall pay, for each cemetery operated by it, an
6 annual regulatory charge, as fixed by the board, of not more than five dollars for
7 each interment, entombment, and inurnment made during the preceding full calendar
8 year, but not less than ~~twenty-five~~ fifty dollars for each cemetery. Upon payment of
9 ~~said~~ the applicable charges and compliance with the other provisions hereof and the
10 rules and regulations of the board, the board shall issue a certificate of authority.

11 B. The board may increase the regulatory charge specified in Subsection A
12 of this Section to not more than ~~eleven~~ twenty dollars to cover no more than the
13 board's reasonable and ordinary expenses, including the cost of litigation.

14 * * *

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

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

22 B. If the board finds that one or more grounds exist for the discretionary
23 suspension or revocation of a certificate of authority issued ~~under~~ pursuant to the
24 provisions of this Chapter, it may, in lieu of or in addition to the ~~such~~ suspension or
25 revocation, impose a fine upon the certificate holder in an amount not to exceed one
26 thousand dollars for each non-willful violation and in an amount not to exceed ten
27 thousand dollars for each willful violation, plus cost of the court reporter and the
28 attorney fees of the board.

29 * * *

1 §78. Exemptions; exempt certificates of authority; renewal; fees

2 A. The provisions of ~~this Chapter~~ R.S. 8:70, 71, 72, 73 and 76 shall not apply
3 to family burial grounds, fraternal cemeteries, municipal cemeteries, community
4 cemeteries, state cemeteries, federal cemeteries, or religious cemeteries that do not
5 sell cemetery spaces, sell the right of use or interment in any cemetery space, or
6 charge a maintenance fee per cemetery space for an amount in excess of three
7 hundred dollars.

8 B. The provisions of ~~this Chapter~~ R.S. 8:70, 71, 72, 73 and 76 shall not apply
9 to community cemeteries owned and operated by nonprofit corporations in existence
10 prior to January 1, 2007, whose officers and directors serve on a voluntary basis
11 without compensation for their services.

12 C. The provisions of ~~this Chapter~~ R.S. 8:70, 71, 72, 73 and 76 shall not apply
13 to columbarium facilities owned and operated by churches for the interment of
14 human remains.

15 D. Notwithstanding the provisions of this Section, every cemetery authority
16 or person, hereinafter in this Subsection referred to as the "applicant", seeking to be
17 identified as a cemetery or columbarium facility that is exempt pursuant to the
18 provisions of this Section, shall provide the board such proof as the board deems
19 necessary to determine whether an applicant meets the qualifications for exemption.
20 If the board determines that an applicant is qualified for exemption, the applicant
21 shall apply for an exempt certificate of authority on a form prescribed by the board,
22 accompanied by an application fee of two hundred fifty dollars to cover the board's
23 reasonable and ordinary expenses associated with determining whether the applicant
24 is in compliance with applicable provisions of this Title.

25 E.(1) No later than April first and in three-year intervals thereafter, any
26 cemetery authority or person holding an exempt certificate of authority shall apply
27 for renewal of the certificate by submitting to the board such information as the
28 board deems necessary to determine if the cemetery authority or person continues
29 to meet the qualifications for exemption, in addition to a renewal fee of fifty dollars
30 to maintain the exemption previously granted.

1 (2) Failure to submit the required information or pay the prescribed renewal
 2 fee by April first of the respective renewal interval shall effect the suspension of the
 3 applicable exempt certificate of authority. The board shall assess a late charge of
 4 twenty-five dollars to any cemetery authority or person making the submission of
 5 information and payment of the prescribed fee after April first of the respective
 6 renewal interval.

7 (3) The board may reinstate a suspended exempt certificate of authority after
 8 April first of the respective renewal interval, if the cemetery authority or person
 9 submits to the board the required information, payment of the prescribed renewal fee,
 10 and the assessed late charge of twenty-five dollars.

11 F. At any time, if the board determines a cemetery authority or person no
 12 longer meets the qualifications to maintain an exempt certificate of authority, the
 13 cemetery authority or person shall begin the process of applying for a nonexempt
 14 certificate of authority, as required by this Chapter, within thirty days of receipt of
 15 written notice of the board's determination of nonexemption.

* * *

§201. Incorporation required

18 It is unlawful for any corporation, partnership, firm, trust, association, or
 19 individual to engage in or transact any of the businesses of a cemetery within this
 20 state except by means of a corporation authorized to operate a cemetery. ~~Such~~ The
 21 corporation shall ~~only~~ engage in the cemetery business in this state only if it has
 22 received a certificate of authority from the board pursuant to the provisions of
 23 Chapter 2 of this ~~title~~ Title. The provisions of this Section shall not apply to a family
 24 burial ground as defined in R.S. 8:1(22).

* * *

§403. Application fee; annual fee

27 The application shall be accompanied by an initial filing fee of ~~fifty two~~
 28 hundred fifty dollars for each cemetery sales organization and each cemetery
 29 management organization. An annual fee of a like amount shall be paid. If ninety
 30 percent or more of the applicant is owned by an existing cemetery authority

1 operating under the provisions of this Title, ~~then~~ the initial filing fee, as well as the
2 annual fee, shall be one-half of the sums set out herein.

3 * * *

4 §456. Annual ~~account~~ report by trustee; final accounting by trustee required

5 A.(1) Not later than sixty days after the receipt of the report required by R.S.
6 8:455, the trustee shall file with the board, with a copy to the clerk of the district
7 court for the parish in which the cemetery is located, an annual ~~account~~ report on a
8 form prescribed by the board ~~showing in detail~~ setting forth all of the following:

9 (a) All receipts and disbursements of cash, ~~and~~ all receipts and deliveries of
10 other trust property during the regular business year of ~~said~~ the cemetery authority,
11 and ~~shall set forth~~ a detailed list of all items of trust property in the trust at the end
12 of each ~~said~~ year.

13 (b) A statement showing the total amount of the endowment and perpetual
14 care trust funds invested in each of the investments authorized by law, and the
15 amount of cash on hand not invested.

16 (2) The report shall be verified by the president or vice president and one
17 other officer of the cemetery authority.

18 * * *

19 §461. Examination of endowment funds; expenses

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

23 * * *

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

26 * * *

27 B. The expense of the examination as provided herein shall not exceed ~~fifty~~
28 two hundred fifty dollars per day for each examiner engaged in the examination, but

1 when the examination requires more than two days, the cost shall be paid by the
2 cemetery authority in an amount not to exceed a total of five hundred dollars, unless
3 irregularities are found, in which case the cemetery authority shall pay the full cost
4 of the examination. The examination shall be privately conducted in the principal
5 office of the cemetery authority or trustee.

6 §462. Examination expense; effect of refusal to pay; disposition

7 If a cemetery authority refuses to pay examination expenses, the board ~~shall~~
8 may refuse it a certificate of authority and ~~shall~~ may revoke any existing certificate
9 of authority.

10 * * *

11 §466. Annual report of cemetery authority; ~~contents, verification, certification~~
12 contents; fees

13 A. Each cemetery authority that has sold interment space subject to
14 endowment or perpetual care, including those cemetery authorities organized before
15 and after August 1, 1962, shall file with the board annually, on or before the thirtieth
16 day of June, a written report ~~in form~~ on a form prescribed by the board setting forth
17 all of the following:

18 ~~(1) The amount collected for and deposited in the endowment or perpetual~~
19 ~~care fund from the inception of the board to the thirty-first day of December of the~~
20 ~~preceding year; and,~~

21 ~~(2) A statement showing the total amount of the endowment and/or perpetual~~
22 ~~care funds invested in each of the investments authorized by law and the amount of~~
23 ~~cash on hand not invested, which statement shall show the actual financial condition~~
24 ~~of the funds.~~

25 (1) The number of contracts written in the reporting period for the sale of
26 interment spaces or interment rights.

27 (2) The amount of gross sales or receipts from contracts of sales of all
28 interment spaces or interment rights and the amount of any discounts.

29 (3) The amount of gross sales or receipts from perpetual care contracts, if
30 any, sold separately from interment spaces or interment rights.

1 (4) The fair market value of interment spaces or interment rights provided
2 without charge.

3 (5) The amount of deposits due the endowment or perpetual care trust fund
4 for the reporting period and the dates the funds were deposited with the trustee.

5 B. The report shall be verified by the president or vice president and one
6 other officer of the cemetery authority and shall be certified by the accountant or
7 auditor preparing the same.

8 C. The cemetery authority shall pay to the board a report filing fee of not
9 more than five dollars for each contract subject to endowment or perpetual care
10 entered into in the annual report period, as specified in Subsection A of this Section.
11 Report filing fees shall be due and payable at the time of filing the report and shall
12 be used to cover the board's reasonable and ordinary expenses. Failure to pay report
13 filing fees within six months after the close of the business year shall result in a late
14 charge assessed by the board to the cemetery authority in the amount of one hundred
15 dollars.

16 * * *

17 §506. Examination by board; expenses

18 * * *

19 B. The expense of the examination as provided herein shall not exceed ~~fifty~~
20 two hundred fifty dollars per day for each examiner engaged in the examination, but
21 when the examination requires more than two days, the cost shall be paid by the
22 cemetery authority or other entity in an amount not to exceed a total of five hundred
23 dollars, unless irregularities are found, in which case the cemetery authority or other
24 entity shall pay the full cost of the examination.

25 * * *

26 §606. Commencement and completion requirements; application form; application
27 fee

28 A.(1) Prior to the first sale of a cemetery space or the right of use or
29 interment in any cemetery space in a structure which has not yet been constructed,
30 the cemetery authority shall submit to the board all of the following:

~~(1)(a)~~ A copy of the preliminary plans.

~~(2)(b)~~ A map or plat delineating the sections, blocks, plots, avenues, walks, halls, rooms, corridors, elevations, or other subdivisions, with descriptive name or numbers.

~~(3)(c)~~ A copy of all sales promotion material.

~~(4)(d)~~ A copy of the pre-construction sales contract.

(2) The cemetery authority shall submit the information required in this Subsection on an application form prescribed by the board, accompanied by an application fee of two hundred fifty dollars to cover the board's reasonable and ordinary expenses associated with determining compliance with applicable provisions of this Title.

* * *

§705.1. Commencement requirements; application form; application fee

A.(1) Prior to the first sale of a cemetery space or the right of use or interment in any cemetery space in a garden which has not yet been developed, the cemetery authority shall submit to the board all of the following:

(a) A copy of the preliminary plans.

(b) A map or plat delineating the sections, blocks, plots, or other subdivisions with descriptive names or numbers.

(c) A copy of all sales promotion material.

(d) A copy of the pre-construction sales contract.

(2) The cemetery authority shall submit the information required in this Subsection on an application form prescribed by the board, accompanied by an application fee of two hundred fifty dollars to cover the board's reasonable and ordinary expenses associated with determining compliance with the applicable provisions of this Title.

Section 2. (A) This Section and all provisions as amended and reenacted and enacted by Section 1 of this Act, except R.S. 8:78(E), shall become effective on August 1, 2015.

1 (B) The provisions of R.S. 8:78(E) as enacted by Section 1 of this Act shall become
2 effective on January 1, 2016.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____