

CHAPTER 2. LOUISIANA CEMETERY BOARD

§ 61. Cemetery board created; appointments; terms

A. The Louisiana Cemetery Board is hereby created and shall be placed within the office of the governor. The board shall consist of seven members appointed by the governor. There shall be at least one member from each public service commission district existing at the time of the appointments and two members at large, who shall all be residents of Louisiana. Any change in the total membership or district of the public service commission shall not affect the term of any duly appointed member, but subsequent appointments shall be made so as to conform with membership and districts of the commission existing at the time of the subsequent appointments. The domicile of the board shall be in the parish of Jefferson. A majority of the board members shall constitute a quorum for all meetings.

B. Of the seven original members, five shall be appointed by the governor, at least one member from each public service commission district existing at the time of the appointments, from a list of ten nominees to be submitted by the Louisiana Cemeteries Association, Inc., not later than thirty days after July 31, 1974. Of the seven original members, two members shall be appointed by the governor at large, and such at large members and their successors shall not have any direct or indirect interest in either the cemetery or funeral business. Of the seven original members, the terms of the two members appointed at large shall expire January 1, 1976, the terms of two shall expire January 1, 1977, and the terms of three shall expire January 1, 1978. Thereafter, appointments shall be for a four-year term, and in the case of a member who is selected from a particular public service commission district, the successor of said member shall be appointed from the same public service commission district from a list of two nominees to be submitted by the Louisiana Cemeteries Association, Inc. for each such successor to be appointed. The said list of nominees shall be furnished to the governor not later than October thirty-first of each calendar year prior to the expiration of the term of such members. Similarly, any vacancy on the board created through the resignation or death of an appointee from a particular public service commission district shall be filled by a successor from the same public service commission district whose name shall come from a list of two nominees to be furnished by the Louisiana Cemeteries Association, Inc., within thirty days after the creation of the vacancy. Similarly, any vacancy on the board created through the resignation or death of a member at large shall be filled by the governor within thirty days after the creation of the vacancy. Each appointment by the governor shall be submitted to the Senate for confirmation.

Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, §1; Acts 1991, No. 430, § 1; Acts 2001, No. 8, § 3, eff. July 1, 2001; Acts 2003, No. 774, § 2.

§ 62. Qualifications of members

Except for the two members at large to be appointed by the governor, the remaining members of the board shall be appointed only from persons who have had, immediately preceding their appointment, a minimum of five consecutive years experience in this state in the active administrative management of a cemetery authority and at the time of their appointment shall have the actual and full authority of a president, vice-president, secretary, treasurer, owner, director, officer or general manager of a cemetery corporation or of a general manager of any other form of cemetery authority, and they shall hold office only so long as they continue in such active, actual and authoritative capacity. The five-year consecutive period shall be exclusive of time spent in the armed services.

Acts 1974, No. 417, § 1. Amended by Acts 2001, No. 468, § 1.

§ 63. Compensation; expenses

The members of the board shall receive no compensation but shall receive necessary traveling and other expenses directly related to the performance of their duties.

Acts 1974, No. 417, § 1.

§64. Officers; administrative director; employees

The board shall elect a chairperson, vice chairperson, and such other officers as it shall determine, from among its members. Each officer shall serve until his successor is elected and takes office. It may employ, fix the salaries, and prescribe the duties of an administrative director and such clerical, technical, and other employees as are necessary to carry out its duties.

Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, § 1.

§ 65. Meetings

The board shall meet at least twice a year and may meet at such other times as it may designate. Meetings may be held at any place within this state.

Acts 1974, No. 417, § 1.

§ 66. Administration and enforcement of law

The board shall enforce and administer the provisions of this title.

Acts 1974, No. 417, § 1.

§ 66.1. Investigations

The board may, for purposes of discovering a violation of this Chapter or implementing rules or orders issued pursuant to this Title, perform any of the following:

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

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

(3) Investigate a person and examine the books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records.

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

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

Added by Acts 2010, No. 965, § 1.

§ 66.2. Cease and desist orders

A. If it appears to the board or to the attorney general that a person has engaged in an act or practice constituting a violation of this Title, or the implementing of rules or orders issued under this Title, the board or the attorney general may issue a cease and desist order directed to the person that requires the person to cease and desist from engaging in such an act or practice. A person may request a hearing within thirty days of actual receipt of the cease and desist order, as evidenced by the date on the return service. If a hearing is not timely requested, the cease and desist order shall become final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a hearing officer authorized to hear the matter following a request for hearing.

B. The board or attorney general shall not be required to post a bond.

Added by Acts 2010, No. 965, § 1.

§ 67. Rules and regulations

The board may establish necessary rules and regulations for the administration and enforcement of this title and prescribe the form of statements and reports provided for herein, but such rules and regulations shall not be in conflict with or contrary to any of the provisions of this title or of R.S. 49:951, et seq.

Acts 1974, No. 417, § 1.

§ 68. Hearings

In conducting hearings or other proceedings as authorized hereunder, the board shall comply with and have all authority granted to it under the provisions of R.S. 49:951, et seq.

Acts 1974, No. 417, § 1.

§ 69. Actions to enforce law; attorney general; special counsel

The attorney general shall represent the board in all matters pertaining to the administration or enforcement of this Title, or both, except in those matters in which the board has employed special counsel. The board shall fix the compensation of such special counsel.

Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, § 1.

§ 69.1. Service of pleadings upon board

Upon commencement of any action wherein a person or cemetery authority is alleged to be operating or conducting a cemetery business is named defendant ¹ the plaintiff's attorney shall mail a copy of the petition to the board within ten days of filing the action.

Added by Acts 1980, No. 428, § 1.

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

A. The Louisiana Cemetery Board shall notify the attorney general of the potential need for the establishment of a receivership if the board finds that a cemetery meets one or more of the following conditions:

(1) Is insolvent. For purposes of this Section, the term "insolvent" shall mean any of the following:

(i) Having generally ceased to pay debts in the ordinary course of business with the exception of debts in which there is a bona fide dispute.

(ii) Being unable to pay debts as they become due.

(iii) Being insolvent within the meaning of federal bankruptcy law.

(2) Has utilized trust funds for personal or business purposes in a manner inconsistent with Chapter 7 or 8 of this Title and the rules and regulations of the board.

(3) Has consistently failed to deliver paid-in-full merchandise to consumers.

(4) Has had its certificate of authority revoked by the board.

(5) Has a certificate of authority from the board that is in suspension, conditional suspension, or has not been renewed or reinstated by the board once it has lapsed.

(6) Has never obtained a certificate of authority from the board but nonetheless is operating a cemetery.

(7) Has been found, pursuant to the on-site examinations and board hearings authorized by this Title, to have repeatedly violated provisions of this Title or the rules and regulations of the board.

(8) Has been found, pursuant to the on-site examinations and board hearings authorized by this Title, to be operating in a manner that is harmful to the health, safety, or welfare of the public.

(9) Has failed to properly maintain the maps and interment records as required by this Title and the

¹ The language of this section appears as in the enrolled Act.

rules and regulations of the board.

(10) Has otherwise violated the provisions of this Title or the rules and regulations of the Board.

B.(1) When it appears to the attorney general that a cemetery has engaged in or is engaging in a practice declared to be unlawful by this Title or that any of the conditions set forth in Subsection A of this Section are met, the attorney general may apply only after a reasonable attempt is made by the board to force compliance to the district court for the jurisdiction in which the cemetery is located for either of the following:

(a) An order appointing a receiver of the assets of the cemetery.

(b) An ex parte temporary restraining order to protect the assets and records of the cemetery.

(2) The court, upon receipt of a petition for a temporary restraining order which is verified by the attorney general, shall, after being satisfied that the interests of the public require the issuance of a temporary restraining order shall order that the cemetery assets, including but not limited to bank accounts, be frozen and preserved or may issue an order requiring that certain documents held by the cemetery owner be preserved, or both.

(3) The court, upon receipts of a petition for the appointment of a receiver, shall conduct a hearing on whether or not to appoint a receiver within twenty-four hours after service of the petition on the cemetery owner or licensee. If the court finds that it is in the best interest of the public that a receiver be appointed, the court shall direct that a copy of the order appointing the receiver be served on the cemetery authority engaged in or engaging in a practice declared to be unlawful under this Title by delivering the order to the last address of the cemetery that is on file with the board and the secretary of state.

(4) Upon the institution of a receivership by the court, the court shall have the authority to impound the property and business of the cemetery, including but not limited to maps, books, papers, documents, computers, and records appertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violation of this Title and so much thereof as the court may deem necessary to return the cemetery to compliance with this Title.

C.(1) A receiver appointed by the court shall take possession of the assets of the cemetery and shall be vested with the authority to administer, manage, and oversee all affairs of the cemetery.

(2) The appointed receiver shall not be required to post a bond for any activities undertaken pursuant to this Title or the rules and regulations of the board.

(3) The court may allow the receiver to file for protection under the bankruptcy code.

(4) The activities of the receiver shall not be limited or barred by the imposition of any penalties or conditions previously imposed upon the cemetery by the board.

(5) The receiver may pay the salaries and compensation that the receiver deems necessary for the administration and management of the cemetery.

(6) The receiver shall have the authority to hire and fire employees of the cemetery as he deems necessary in order to carry out all duties necessary for the administration and management of the cemetery.

(7) The receiver may be reimbursed for his expenditures under this Section from the assets of the cemetery as funds become available.

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

(9) The receiver shall hold or have the qualifications to hold, pursuant to the qualification identified in this Title and in the rules and regulations of the board, a certificate of authority to operate a cemetery from the board. The appointments shall be limited to one year with reappointment permissible. Any person appointed under this Section shall be required to make an accounting to and file a report with the court, the attorney general, and the board at least once each ninety days.

(10) Compensation for such receivers shall be within the discretion of the court but shall not include actual expenditures by the receiver. The receiver shall be reimbursed for all actual receipts for expenditures as funds become available and certainly no later than at the termination of the receivership.

(11) The board shall not be liable for any expenses or fees of the receiver.

D.(1) Upon restoration of the cemetery so that it complies with the provisions of this Title and the rules and regulations of the board, the court shall terminate the receivership.

(2) Upon good cause shown, the court may terminate the receivership prior to compliance with the provisions of this Title and the rules and regulations of the board to allow for the sale of the cemetery to a qualified purchaser who has agreed to complete the requirements for compliance with this Title and the rules and regulations of the board.

(3) If the owner of the cemetery cannot obtain a certificate of authority to operate the cemetery from the board, the cemetery property and assets shall be sold at a judicial sale pursuant to R.S. 9:3001 and R.S. 13:4341 et seq.

(4) The purchaser of the cemetery shall hold or be able to obtain, pursuant to the qualifications identified in this Title and in the rules and regulations of the board, a certificate of authority to operate a cemetery from the board.

(5) This Section shall not prohibit the court from allowing the sale of the cemetery to a municipal corporation.

(6) The receiver and his employees shall be prohibited from bidding on or purchasing the cemetery at the judicial sale. This provision shall not apply if the receiver is a governmental entity or a not-for-profit organization.

(7) In the order of sale of the cemetery, the court shall make a provision for notice to creditors and the filing of claims against the receivership. Any remaining funds held by the cemetery or funds realized through the sale of the cemetery under this Section shall be used to satisfy, in the following order:

(a) The reimbursement and compensation of the receiver.

(b) The cemetery's consumers or beneficiaries of the consumers.

(c) The cemetery's creditors.

(8) Upon payment of the receiver, consumers or beneficiaries of the consumers, and the creditors, the remaining funds acquired through the judicial sale of the cemetery shall be disbursed in the following order:

(a) Forty percent of the amount remaining following the payments required by Paragraph (7) of this Subsection shall be placed in the registry of the court for a period of two years and shall be disbursed to cover any unfunded liability, including but not limited to pre-need sales, that is not discovered during the receiver's review of the cemetery's records.

(b) The remaining sixty percent shall be disbursed to the owner against whom the receivership was instituted.

(c) Following the two year period required by Subparagraph (a) of this Paragraph, funds remaining in the registry of the court may be released to the owner against whom the receivership was instituted unless there is a reasonable showing that outstanding unfunded liabilities continue to exist. Upon such a showing, the court may order that the remaining funds stay in the court registry until such a time as the unfunded liabilities are satisfied.

(9) The provisions of this Section shall not apply to a cemetery which is located in an area which is under a gubernatorial declared disaster pursuant to R.S. 29:724, so long as the executive order is in effect.

Acts 2008, No. 541, § 1.

§ 70. Application for certificate of authority

The initial application for a certificate of authority, including without limitation an application for a new certificate required by R.S. 8:76, shall be made in writing by a cemetery authority to the board on a form prescribed by the board, accompanied by an application fee set by the board not to exceed one thousand dollars. Applications for renewal of a valid, subsisting, and unsuspended certificate of authority shall be made in similar fashion, accompanied by the regulatory charge provided for in this Title. All initial applications must show that the cemetery authority owns or is actively operating a cemetery which is subject to the provisions of this Title.

Acts 1974, No. 417, § 1. Amended by Acts 1992, No. 105, § 1. Amended by Acts 2003, No. 704, § 1. Amended by Acts 2015, No. 222, § 1.

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

The board shall determine that the applicant and its officers, directors, owners, and managerial personnel are financially responsible, trustworthy, and have good personal and business reputations, in order that only cemeteries of permanent benefit to the community in which they are located will be

established in this state. The board may require such proof as it deems advisable concerning the compliance by such applicant with all the laws, rules, regulations, ordinances, and orders applicable to it. If the board refuses to grant an applicant a certificate of authority, it shall inform the applicant in writing by registered or certified mail of the reasons therefor and the applicant shall be entitled to a hearing, if requested by the applicant in writing within thirty days of receipt of the denial. The hearing shall be conducted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:951, et seq.

Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, § 1.

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

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

B. No person shall engage in the operation of or conduct a cemetery business, including but not limited to the sale of cemetery merchandise, lots, or other interment spaces, without a valid subsisting and unsuspended certificate of authority.

Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, § 1. Amended by Acts 1997, No. 921, § 1.

§ 73. Regulatory charges; rate

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

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

Acts 1974, No. 417, § 1. Amended by Acts 1992, No. 105, § 1. Amended by Acts 2003, No. 704, § 1 Amended by Acts 2015, No. 222, § 1.

§ 74. Sale or interment; certificate of authority; penalty

It shall be a misdemeanor for any person to operate or conduct a cemetery business without a valid, subsisting, and unsuspended certificate of authority. Each sale, interment, or other act constituting the operation or conduct of a cemetery business shall be a separate violation, and for each violation there shall be a fine of not less than one hundred dollars nor more than five hundred dollars or imprisonment for not

less than thirty days nor more than six months, or both.

Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, § 1.

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

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

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

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

D. The board may grant not more than thirty days from the date of the order for the payment of any fine.

E. The board may apply to a district court of the parish in which the cemetery is located for, and such court shall have the authority to issue such additional orders as may be necessary to protect the health, welfare, or safety of the public.

Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, § 1. Amended by Acts 2001, No. 468, § 1. Amended by Acts 2014, No. 67, § 1. Amended by Acts 2015, No. 222, § 1.

§ 76. Sale or transfer of cemetery authority; application for new certificate of authority; compliance required; late charge

A. Within thirty days after the sale or transfer of ownership or control of a cemetery or cemetery authority, the transferor must return its certificate of authority to the board. The transferee must file an application, within thirty days, after the sale or transfer of ownership or control of a cemetery authority, and meet all the requirements of this Chapter. The application for a certificate of authority shall be accompanied by the prescribed regulatory charge.

B. Transferees which fail to file an application for a certificate of authority at the time required herein shall, in addition to the prescribed regulatory charge, pay an additional late charge of fifty percent of the prescribed regulatory charge or one hundred dollars whichever is lesser.

C. (1) Upon the filing of a completed application, the transferee may operate the business until its

application is acted upon by the board. The board shall issue a certificate of authority to the transferee upon the transferee's compliance with all of the provisions and requirements of this Chapter.

(2) If the board refuses to grant the transferee a new certificate of authority, it shall inform the transferee in writing by registered or certified mail of the reasons therefor and the transferee shall be entitled to a hearing if requested within thirty days of receipt of the denial. The hearing shall be conducted in accordance with the provisions of the Administrative Procedure Act.

Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, § 1. Amended by Acts 1997, No. 921, § 1. Amended by Acts 2006, No. 609, § 1.

§ 77. Cemetery fund

All monies received by the board shall be held by the treasurer of the board and shall be used to pay for services, machinery, equipment and supplies, travel and living expenses where necessary, and such other expenses as may be reasonably required in the orderly and efficient operation of the functions of the board.

Acts 1974, No. 417, § 1.

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

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

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

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

D. Notwithstanding the provisions of this Section, every cemetery authority or person, hereinafter in this Subsection referred to as the "applicant", seeking to be identified as a cemetery or columbarium facility that is exempt pursuant to the provisions of this Section, shall provide the board such proof as the board deems necessary to determine whether an applicant meets the qualifications for exemption. If the board determines that an applicant is qualified for exemption, the applicant shall apply for an exempt certificate of authority on a 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 whether the applicant is in compliance with applicable provisions of this Title.

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

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

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

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

Acts 1974, No. 417, § 1. Amended by Acts 1997, No. 921, § 1. Amended by Acts 2006, No. 669, § 1. Amended by Acts 2015, No. 222, § 1.