

GREEN SHEET REDIGEST

HB 292

2016 Regular Session

Hall

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

**CEMETERIES: Regulates the operation of abandoned cemeteries**

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DIGEST

Proposed law authorizes and regulates certain persons licensed to operate abandoned cemeteries. Provides definitions and procedures.

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.

### Summary of Amendments Adopted by Senate

#### Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the engrossed bill

1. Revised definition of "abandoned cemetery" to include providing of title information.