Title 45.
Chapter 27. (New)
Cemeteries
§§1-38 -
C.45:27-1
to 45:27-38
§40 - C.3B:10-21.1
§41 - C.45:7-95
§42 - Repealer
§43 - Note to all
sections

P.L. 2003, CHAPTER 261, ***approved January 14, 2004***
Senate, No. 1992 ***(First Reprint)***

AN ACT providing for the regulation of certain cemeteries and revising parts of the statutory law.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) This act shall be known and may be cited as the "New Jersey Cemetery Act, [1]**[**2002**]** 2003[1]."

2. (New section) The following definitions, unless the context indicates otherwise, apply to this act:

"Annual, endowed or special care" means care or maintenance of an individual interment space provided for by agreement between the cemetery and the owner of the space.

"Board" means the New Jersey Cemetery Board.

"Burial" means disposition of human remains by placing them in a grave or crypt, but does not include their temporary storage.

"Burial right" means a right for the burial of human remains in a particular grave or crypt created by contract between a person and a cemetery.

"Cemetery" means any land or place used or dedicated for use for burial of human remains or disposition of cremated human remains, and also includes a crematory [1]located on dedicated cemetery property[1].

"Cemetery company" means a person that owns [1], manages, operates[1] or controls a cemetery, [1]directly or indirectly,[1] but does not include a religious organization that owns a cemetery which restricts burials to members of that religion or their families unless the organization has obtained a certificate of authority for the cemetery.

"Columbarium" means a building or structure containing niches for placement of cremated human remains.

"Cremated human remains" means the recoverable bone fragments

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1] Senate SCM committee amendments adopted June 12, 2003.

and container residue resulting from the process of cremation.

"Cremation" means the process of reducing human remains to bone fragments through flame, heat and vaporization.

"Crematory" means a structure containing cremation chambers used to cremate human remains.

"Crypt" means an interment space in a mausoleum or other structure, above or below ground.

"Embellishment" means an item contributing to beauty, comfort or enhancement of a cemetery, but does not include a memorial [1]or a disposable, perishable or seasonal item[1].

"General maintenance charge" means a fee assessed against each interment space for the general upkeep of the cemetery.

"Grave" means a place for underground disposition of human remains or cremated human remains. A grave may include spaces for the disposition of human remains of more than one person, arranged by depth.

"Human remains" means a body, or part of a body, of a deceased human being.

"Interment" means the disposition of human remains by burial in a grave or crypt but does not mean the temporary storage of remains.

"Interment space" means a grave or crypt intended for the interment of human remains.

"Maintenance" means all activities of a cemetery company which further the care and upkeep of a cemetery, including cutting lawns, and preservation and repair of drains, water lines, roads, buildings, fences and other structures.

"Maintenance and preservation" means the care of the entire cemetery to the extent of the income of the Maintenance and Preservation Fund; it does not include providing specific care to individual graves or plots.

"Mausoleum" means a permanent building in a cemetery above or below ground, containing crypts to be used for burial.

"Memorial" means a marker [1]or monument[1] located at a grave containing the name of a deceased person or the family name of a deceased person, or an effigy or other representation of a deceased person buried in the grave. It does not include an embellishment.

"Niche" means a space in a columbarium or mausoleum for placement of cremated human remains.

"Path" means a course or way intended to provide pedestrian access to interment spaces.

"Person" includes an individual, corporation, partnership[1], association[1] or [1]any[1] other public or private entity.

"Plot" [1]or "lot"[1] means an area of cemetery ground containing two or more adjoining graves.

"Private mausoleum" means a mausoleum constructed by or for a plot owner and not owned by the cemetery.

"Public mausoleum" means a mausoleum, built in accordance with regulations of the Department of Community Affairs, owned by a [1]cemetery or[1] cemetery company with the intention of use of interment spaces in it by the general public. A mausoleum is distinguished from a single or multiple vault in that it is a single integrated structure [1]assembled on the premises[1]. It shall not consist of one or more vaults constructed off the cemetery premises and installed singly or in series at the cemetery premises.

"Roadway" means a course or way intended to provide vehicle access to interment spaces.

"Vault" means a prefabricated outer burial case [1][, opening at the top,] of any material, designed to be[1] installed in the ground to receive one or more burials [1], and not a part of a public or private mausoleum or any other structure[1].

3. (New section) a. The New Jersey Cemetery Board is continued and established within the Division of Consumer Affairs in the Department of Law and Public Safety.

b. The board shall consist of [1][nine] ten[1] members. Five members shall be persons who have served, for a period of at least five consecutive years immediately preceding appointment, as a member of the governing board or an official of a cemetery company. Two members shall be public members and shall have no interest directly or indirectly in any cemetery company or any allied industry. Each of these seven members shall be appointed by the Governor with the advice and consent of the Senate, to serve for the term of four years and until the appointment and qualification of a successor. Vacancies shall be filled in the same manner as original appointments but for the unexpired term only. One member shall be the Commissioner of Community Affairs or the commissioner's designee serving ex-officio [1], one member shall be the Attorney General or his designee serving ex-officio[1] and one member shall be the designee of the Commissioner of Health and Senior Services.

c. The Governor may remove any member of the board from office for cause upon notice and opportunity to be heard.

d. The members of the board shall elect a chair and other officers from among themselves. The board shall meet at least four times each year, at the call of its chair or at the written request of two members of the board directed to its chair. The chair shall fix the time and place for the meetings.

e. The Division of Consumer Affairs shall assign its employees to serve as staff for the board.

4. (New section) a. The board shall administer the provisions of this act and shall have general supervision and regulation of, and jurisdiction and control over, all cemetery companies and their

property, property rights, equipment and facilities so far as may be necessary to carry out the provisions of this act.

b. The board shall adopt regulations to carry out the purposes of this act. Regulations shall be adopted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). This act and the regulations shall be enforced in accordance with P.L.1978, c.73 (C.45:1-14 et seq.) and the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

c. The board may adjust charges and fees as provided by section 2 of P.L.1974, c.46 (C.45:1-3.2) to defray the proper expenses of administration of this act.

d. Nothing in this act shall affect any of the powers regarding cemeteries heretofore exercised by the Attorney General.

e. Nothing in this act shall authorize the board to establish the prices at which graves or crypts may be sold or the charges made for services rendered by cemetery companies.

f. The board may institute an action in the Superior Court for injunctive or other relief or for appointment of a receiver to enforce this act or regulations established under it.

5. (New section) The Attorney General and the board shall be served with notice of any action or proceeding by or against [1][a cemetery or]1 a cemetery company and may intervene in the action or proceeding to protect the public interest.

6. (New section) A cemetery established after December 1, 1971 shall be owned or operated only by a governmental entity, a religious [1]corporation or[1] organization or by a cemetery company organized in accordance with this act.

7. (New section) a. A cemetery company organized in accordance with this act after December 1, 1971 shall not operate a cemetery unless the company is a nonprofit corporation organized and operated in compliance with Title 15A of the New Jersey Statutes and has been issued a certificate of authority to do so by the board.

b. The application for a certificate of authority by a cemetery company shall be made in writing under oath in the form established by the board. [1]Public notice of an application shall be provided in the agenda of the board for the first meeting of the board following receipt of the application. All applications shall be subject to public access.[1] The application shall contain the information that the board requires to determine:

(1) the necessity for the services the applicant seeks to provide, considering present or future public need and convenience, land or territorial qualifications; and

(2) the applicant’s fitness and ability to: perform proposed

services; conform to this act and to board requirements; and comply with health protection regulations of the New Jersey Department of Health and Senior Services, the New Jersey Department of Environmental Protection, or a local health authority.

c. The application fee and all other fees required pursuant to this act shall be set by the board by regulation. The application fee shall not be required from any company that existed before December 1, 1971, which no longer has cemetery land to sell, and exists solely for maintenance and preservation of the cemetery.

d. The board shall not act on an application for 60 days after receipt of an application [1], and shall only act after public notice of the application has been provided[1]. If the board receives a written objection to the application, it shall hold a hearing on notice to the objector and the applicant before it acts on the application.

e. A cemetery company organized prior to December 1, 1971 shall not continue to operate a cemetery unless the company has been issued a certificate of authority by the board. The board shall grant the company a certificate of authority preserving any rights and obligations of its charter subject to applicable law and regulations.

8. (New section). a. The charter or certificate of incorporation of a cemetery company organized after December 1, 1971 shall state in that section of the charter devoted to the purposes for which the cemetery company is organized one or more of the following purposes:

(1) The procuring and preservation of lands to be used exclusively as a cemetery.

(2) The disposition of human remains, including maintenance and operation of land and the construction of structures including crematories, mausoleums, columbariums and other places for human remains or cremated human remains.

b. The stated purposes of the cemetery company shall be considered by the board and may be used as a basis for its determination as to whether to issue a certificate of authority.

c. Except as provided by section 9 of this act, for a cemetery company to amend its charter or certificate of incorporation, it first shall have the amendment approved by the board.

d. A cemetery company shall not be dissolved or merged without the board's approval. The board shall not approve the action unless it finds that the company has complied with regulations and has made adequate provision for maintenance and preservation.

9. (New section) a. A cemetery company organized as a for-profit corporation may amend its charter or certificate of incorporation to operate as a nonprofit lot owner cemetery subject to the provisions of this act provided a plan for the conversion of its issued stock to

certificates of interest is first approved by a majority of its stockholders, and by a majority of the owners of interment spaces in attendance at and voting at a meeting called for that purpose. The stockholders shall be given 10 days notice of the meeting by mail and the owners of interment spaces shall be notified of the meeting by a notice published at least 10 days in advance of the meeting date in a newspaper qualified to publish legal notices and circulated in the county in which the cemetery is located. The notice shall set forth the purpose of the meeting.

b. Upon approval of its stockholders and the owners of interment spaces, the cemetery company shall file a certified copy of the amended charter with the board, and pay the filing fees. The cemetery company, at the same time, shall make any filing required by the Division of Commercial Recording in the Department of the Treasury.

10. (New section) a. In a cemetery company organized under this act, each owner of a grave, crypt or niche shall be a member of the cemetery company and shall have one vote for each grave, crypt or niche owned whenever voting by the members is required under the provisions of any law. Voting shall be subject to the following qualifications:

(1) If a grave, crypt or niche is owned by more than one person, then a majority of its owners shall decide among themselves who shall cast the vote.

(2) An owner shall not be entitled to vote unless all charges and assessments against the grave, crypt or niche have been paid.

(3) Proxy voting shall be permitted except that a proxy shall not be valid for more than three years after its date.

(4) Any person who owns certificates of interest or indebtedness shall have one vote for each $250 of the face amount of the certificates.

(5) A corporation, partnership or association that owns more than one grave, crypt or niche shall have one vote for each grave, crypt or niche owned, except that it shall not have more than 100 votes.

b. The directors or trustees of a cemetery company shall hold an annual meeting and report at each annual meeting on their activities and management and the condition of the property and affairs of the cemetery company. At least 20 days before the annual meeting a notice of the meeting shall be placed at some prominent place at the office of the cemetery company and shall be published in a newspaper having general circulation in the county in which the cemetery is located.

11. (New section) The charter of any cemetery association, incorporated pursuant to prior laws whose period of corporate existence has terminated by lapse of time, which has continued to

operate a cemetery in which burials have been made after corporate existence terminated, may be reinstated in perpetuity upon the recording in the office of the clerk of the county in which the certificate of incorporation of the association is recorded, of a certificate of extension of corporate existence, executed and acknowledged by five or more owners of lots in the cemetery of the cemetery company stating, under oath, that the cemetery company has been engaged in operating a cemetery and that burials have been made in the cemetery since the termination of its corporate existence and upon the recording of the certificate, the charter of the cemetery company shall be reinstated and the corporate existence of cemetery company shall be extended.

12. (New section) a. It is the public policy of this State that a primary obligation of each cemetery company shall be the creation of a fund for the permanent maintenance and preservation of the cemetery.

b. Every cemetery company shall establish an irrevocable trust fund, called the Maintenance and Preservation Fund, the income from which shall be expended for the maintenance and preservation of the cemetery.

c. A cemetery company shall make the deposits to the Maintenance and Preservation Fund required by this act and may make additional deposits.

d. The Maintenance and Preservation Fund shall be established in a State or federally regulated financial institution [1]having and maintaining a principal place of business within this State[1]. The fund shall be invested in accordance with the "Prudent Investor Act," P.L.1997, c.26 (C.3B:20-11.1 et seq.) and the income may be applied only to the maintenance of the cemetery.

e. For the purposes of this section, except as provided by regulations of the board, capital gains shall not be considered income, and shall be retained as principal.

f. [1][The board may allow a cemetery company to combine trust funds, and two or more cemetery companies to combine trust funds, if the board is satisfied that income and principal can be allocated proportionately among the combined funds.

g.][1] The board shall supervise the creation and operation of the Maintenance and Preservation Fund and may regulate its operation and use.

13. (New section) a. As a condition for the issuance of its certificate of authority to operate a cemetery, a cemetery company established after December 1, 1971 shall make an initial deposit of $75,000 to its Maintenance and Preservation Fund. A cemetery company that operates or seeks to operate only a crematory shall not

be required to make the $75,000 initial trust fund deposit.

b. A cemetery company established before December 1, 1971 shall transfer into the Maintenance and Preservation Fund any funds established for the maintenance and preservation of the cemetery and any additional amount set by the board.

c. A cemetery company shall collect and pay into the Maintenance and Preservation Fund the following fees and charges:

(1) on the initial sale by a cemetery company of each grave, 15% of the gross sales price;

(2) 10% of the initial sales price of a crypt or niche in a public mausoleum or columbarium;

(3) on bulk sales of graves, 15% of the current retail gross sale price of comparable graves;

(4) on bulk sales of crypts or niches, 10% of the current retail gross sale price of comparable crypts or niches;

(5) on transfer of a grave, 15% of the current gross sales price of equivalent graves, less any amounts previously paid to the Maintenance and Preservation Fund on sales of that grave;

(6) on transfer of a crypt or niche, 15% of the current gross sales price of equivalent crypts or niches, less any amounts previously paid to the Maintenance and Preservation Fund on sales of that crypt or niche;

(7) for each interment or for the placement of cremated human remains, 3% of the charge for the interment or placement or $20, whichever is more;

(8) for a foundation, [1]<u>base or installation,</u>[1] 10% of the charge for the foundation [1]<u>, base or installation,</u>[1] or $20, whichever is more.

For the purposes of paragraphs (5) and (6) of this subsection, "transfer" shall not include sales to the cemetery company or to the next of kin.

d. [1]**[**When a fee or charge is paid in installments, the cemetery shall deposit an appropriate percentage of the installments in the Maintenance and Preservation Fund.**]** <u>Monies required to be deposited into the Maintenance and Preservation Fund shall be paid to the fund on a monthly basis. Such deposits shall be made by the last day of the month following the month in which the monies were received. In the event of an installment sale of a grave, crypt or niche, the cemetery company may make the required deposit at the time the deed is issued or when the payments are received.</u>[1]

e. A cemetery company may make additional payments or accept contributions into the Maintenance and Preservation Fund.

14. (New section) a. A minimum of 10% of the gross contract price for construction and placement of any private mausoleum shall be deposited, before the structure is erected, with the cemetery company, in trust for the maintenance of the structure and the area on

which it is located.

b. A cemetery or cemetery company shall not begin to use a public mausoleum for the burial of human remains until it has established a Building Maintenance Fund, an irrevocable trust fund of not less than 10% of the total cost of the structure, walkways, architect fees, building permit fees, landscaping, installation of utility lines and internal furnishings. The income from the trust fund, and the income only, shall be used for the maintenance of the structure. This provision shall not apply to temporary receiving vaults.

c. Any person may create a trust fund to be held in perpetuity or for a time to be used for the care or embellishment of any grave or crypt, mausoleum or memorial. However, the trust fund shall be consistent with regulations of the cemetery and shall not be larger than necessary to achieve the trust's purposes. If a court finds that the trust fund is excessive, it may reduce it to a reasonable sum.

d. A cemetery company may receive funds for the care or embellishment of any grave or crypt, mausoleum or memorial. It shall maintain these funds separate from the Maintenance and Preservation Fund or any other trust fund required by this act. Each fund shall be administered as agreed between the grantor and the cemetery company. The income from each of these funds shall be used for the particular purpose of the fund.

e. The funds shall be established in a State or federally regulated financial institution [1]<u>having and maintaining a principal place of business within this State</u>[1] and shall be invested in accordance with the "Prudent Investor Act," P.L.1997, c.26 (C.3B:20-11.1 et seq.). The board may adopt regulations on the operation and use of trust funds. [1]**[**The board may allow a cemetery to combine trust funds, and two or more cemeteries to combine trust funds, if the board is satisfied that income and principal can be allocated proportionately among the combined funds.**]**[1] This subsection shall not apply to a religious organization that constructs a structure for the interment of human remains.

f. The cemetery company or other trustee of a fund required by this section may collect fees for the administration of the trust allowed by law and regulations of the board.

15. (New section) a. Every cemetery company, other than a municipality, shall file an annual report with the board within 120 days after the close of the cemetery company's fiscal year. The report shall be filed by the cemetery company in a form established by the board, showing the extent and sources of augmentation of the Maintenance and Preservation Fund, the manner of expenditure of the income of the fund during the preceding year, and a list of the securities in which the trust funds are invested. At the time of filing the Maintenance and Preservation Fund report, a cemetery company, other than a religious

corporation, shall pay a filing fee set by regulation. If the report filed is inadequate to apprise the board of the information it requires to administer the provisions of this act effectively, it shall request a supplemental report and it may order an investigation of the operations of the cemetery company. Officers and employees of a cemetery company shall exhibit the company's books, papers and securities to the board when requested and otherwise facilitate any examination of the company. Any officer or employee of a cemetery company may be required to testify under oath as to the conditions and affairs of the cemetery company.

b. Every cemetery [1]company[1] that contains a public mausoleum shall file an annual report in the form described in subsection a. of this section relating to its public mausoleum Building Maintenance Fund within 120 days after the end of the fiscal year.

c. If it appears to the board that the corpus of any trust fund is not being invested in accordance with the "Prudent Investor Act," P.L.1997, c.26 (C.3B:20-11.1 et seq.), the board may order the cemetery company to dispose of unauthorized securities immediately. If it appears that the Maintenance and Preservation Fund is not being maintained as required, the board may formulate a plan for the maintenance of the fund. Failure on the part of the cemetery company to implement the plan shall be a violation of this act.

d. The board, for good cause, may grant reasonable extensions for filing annual reports.

16. (New section) a. A cemetery company shall:

(1) adopt reasonable regulations for the use, management and protection of the cemetery and of all interment spaces in it; for regulating the dividing marks between graves; for prohibiting or regulating the erection of structures; for preventing unsightly monuments, effigies and structures within the cemetery, and for their removal;

(2) fix [1]reasonable[1] charges for interment spaces, niches, products and services offered by the cemetery company; and

(3) keep its books, records and accounts so as to reflect the conduct of its business.

b. A cemetery company may:

(1) prohibit the placement of memorials, effigies or structures on parts of the cemetery and adopt reasonable regulations relating to uniformity, class, composition, material, kinds and sizes of all markers, monuments and other structures within the cemetery provided that the regulations are not established to prevent competition;

(2) sell adornments, embellishments, sod and plantings for use in the cemetery;

(3) prevent the use of interment spaces or niches for purposes that violate the cemetery restrictions and regulations;

(4) regulate the conduct of persons and prevent improper assemblages in the cemetery;

(5) reserve to the cemetery the exclusive right to open and fill graves, furnish equipment, manufacture and install foundations, set and seal crypts and vaults, seal niches and install flush memorials;

(6) regulate or prevent the introduction of embellishments or plants within the cemetery;

(7) prevent the interment in any interment space of human remains not entitled to interment there;

(8) as provided in this act, make provisions for the removal at the cost of the lot owner of any memorial, effigy or structure when either placed in violation of cemetery company rules and regulations or when it becomes dangerous or unsightly; and

(9) to the extent allowed by the regulations of the board, prohibit the interment of human remains or the placement of any memorial when there are any outstanding charges against the interment space.

c. A cemetery company, and any person engaged in the management**,** operation or control of a cemetery owned by a cemetery company, [1]directly or indirectly,[1] is specifically prohibited from engaging, directly or indirectly, in any of the following activities:

(1) the manufacture or sale of memorials;

(2) the manufacture or sale of private mausoleums;

(3) the manufacture or sale of vaults, including vaults installed in a grave before [1]or after[1] sale and including vaults joined with each other in the ground; and

(4) the conduct of any funeral home or the business or profession of mortuary science; provided that crematoriums operated in conjunction with funeral homes prior to December 1, 1971 are excepted from the provisions of this paragraph (4).

17. (New section) a. A copy of a survey or map of land to be used for cemetery purposes shall be filed with the board. The filing shall constitute dedication of the land for cemetery purposes.

b. Before graves are sold, the part of the cemetery, including those graves, shall be surveyed and a map prepared showing the location of the graves with those roadways, paths and building areas as the cemetery company directs. A map of the land shall be kept at the office of the cemetery company. The map shall be made available for inspection by owners of interment spaces.

c. A cemetery company may amend a map to include areas not previously laid out or to change the layout of plots not sold. Existing roadways and walks to graves already sold shall not be abandoned but may be altered as long as similar access to existing interment spaces is not denied. Paths may be renovated or reduced in size if the minimum width specified by regulation is maintained. The amended map shall be filed with the board.

18. (New section) a. Before conducting any business with the public, a cemetery company shall file with the board the name and address of the cemetery company and a copy of its regulations and its charges for services. New and amended regulations and changes in charges for services shall be filed before they take effect. Each filing shall be accompanied by the filing fee set by regulation.

b. The rules, regulations and charges for services shall be suitably printed and shall be conspicuously posted by the cemetery company in each of its [1]public[1] offices and on cemetery grounds.

19. (New section) a. A cemetery company shall keep a record of every interment and placement of cremated human remains, which shall include the date, the name and age of the person, the cause of death when shown on the burial permit, the location of the burial or disposition, and the name and address of the funeral director.

b. A record shall be kept by a cemetery company of the owner of each interment space that has been conveyed by the cemetery company and of each transfer of an interment space to which the cemetery company has consented. A transfer of an interment space or a right of burial shall not be complete or effective until it is recorded on the books of the cemetery company and any fees required are paid.

c. The instrument of conveyance of a interment space shall include the actual amount paid for it and a description of the interment space sufficient to identify it, including its number as it appears on the cemetery map, and any other information required by regulation of the board. The instrument shall show the dimensions of the interment space.

d. A cemetery company that performs a cremation shall keep a record indicating the date and the recipient of the cremated remains.

20. (New section) a. Cemetery companies shall be exempt from the payment of any real estate taxes, rates and assessments or personal property taxes on lands and equipment dedicated to cemetery purposes. Cemetery companies shall be exempt from business taxes, sales taxes, income taxes, and inheritance taxes.

b. Land dedicated to cemetery purposes owned by any person shall be exempt from all taxes, rates or assessments.

c. Charges paid to a cemetery for an interment space shall be exempt from the payment of sales or use tax.

d. Trust funds, and the income from trust funds, held by a cemetery company shall be exempt from taxation and assessment, and sale, seizure or sale for collection of judgments against the cemetery company.

e. Land dedicated to cemetery purposes and structures, buildings, and equipment used for the maintenance of that land or the operation of a cemetery shall be exempt from sale for collection of judgments.

Income derived from cemetery property other than income required by law to be deposited in trust funds or used for a particular purpose may be taken and used for the payment of a judgment against a cemetery company. If a judgment against a cemetery company cannot be paid, a court may also order the issuance of bonds, notes or other evidences of indebtedness by the cemetery company. This subsection shall not apply to liens existing on land before it is dedicated to cemetery purposes.

f. A street or road shall not be laid through any land of a cemetery company that is actually in use for cemetery purposes without the consent of the cemetery company, unless otherwise provided by law.

g. When bankruptcy, receivership or other court proceeding necessitates the selling of cemetery company lands, the court shall require the purchaser to incorporate as a cemetery company.

h. A receiver or trustee of a cemetery company appointed by a court may issue bonds, notes or other evidence of indebtedness that include a provision allowing the holders to select the governing body of the cemetery company until they are paid.

21. (New section) a. Dedication of property to cemetery purposes pursuant to this act shall not be invalid as violating any law against perpetuities or the suspension of the power of alienation of title to use of property. It shall be expressly permitted in respect for the dead and as provision for the burial of human remains and as a duty to, and for the benefit of, the general welfare.

b. After property is dedicated to cemetery purposes by a cemetery company, neither the dedication nor the title of the interment space owner shall be affected by the dissolution of the cemetery company by nonuse on its part, by alienation of the property, by any encumbrances, by sale under execution, or otherwise except as provided in this act and by law.

22. (New section) a. If a decedent [1][leaves a signed directive concerning the disposition of his human remains or nominating a person to control the disposition of the human remains, disposition shall be in accordance with the directive. To be valid, a directive shall be separate from an agreement for the provision of funeral services or products. A signed directive can be revoked only by a later signed directive of the decedent.

If a signed directive has not been left by the decedent], in a will as defined in N.J.S.3B:1-2, appoints a person to control the funeral and disposition of the human remains, the funeral and disposition shall be in accordance with the instructions of the person so appointed. A person so appointed shall not have to be executor of the will. The funeral and disposition may occur prior to probate of the will, in accordance with N.J.S.3B:10-21. If the decedent has not left a will

appointing a person to control the funeral and disposition of the remains,[1] the right to control the [1]funeral and[1] disposition of the human remains shall be in the following order [1], unless other directions have been given by a court of competent jurisdiction[1]:

(1) The surviving spouse of the decedent.

(2) A majority of the surviving adult children of the decedent.

(3) The surviving parent or parents of the decedent.

(4) A majority of the brothers and sisters of the decedent.

(5) Other next of kin of the decedent according to the degree of consanguinity.

(6) If there are no known living relatives, a cemetery may rely on the written authorization of any other person acting on behalf of the decedent.

b. A cemetery may permit the disposition of human remains on the authorization of a funeral director handling arrangements for the decedent, or on the written authorization of a person who claims to be, and is believed to be, a person who has the right to control the disposition. The cemetery shall not be liable for disposition pursuant to this authorization unless it had reasonable notice that the person did not have the right to control the disposition.

c. A cemetery shall not bury human remains of more than one person in a grave unless:

(1) directions have been given for the burials in accordance with this section on behalf of all persons so buried; or

(2) the rights to be buried in the grave were sold by the cemetery with explicit provision allowing separate sales of rights to burial at different depths in the grave.

d. A person who signs an authorization for the [1]funeral and[1] disposition of human remains warrants the truth of the facts stated, the identity of the person whose remains are disposed and the authority to order the disposition. The person shall be liable for damages caused by a false statement or breach of warranty. A cemetery [1]or funeral director[1] shall not be liable for disposition in accordance with the authorization unless it had reasonable notice that the representations were untrue or that the person lacked the right to control the disposition.

e. An action against a cemetery company relating to the disposition of human remains left in its temporary custody may not be brought more than one year from the date of delivery of the remains to the cemetery company unless otherwise provided by a written contract.

23. (New section) a. Except as otherwise provided in this section, or pursuant to court order, human remains shall not be removed from an interment space unless:

(1) the surviving spouse, adult children and the owner of the interment space authorize removal in writing;

(2) removal is authorized by a State disinterment permit issued by the local board of health; and

(3) the cemetery finds that removal is feasible.

b. No disinterment permit is required:

(1) for the temporary removal or repositioning of vaulted human remains to allow for the deepening of an interment space within the same lot;

(2) for the transfer of temporarily stored remains from the place of temporary storage to the place of final interment within the same cemetery in accordance with applicable [1]**[**regulations**]** law[1];

(3) for the removal of cremated human remains. However, prior consent shall be obtained from the interment space owner and the person having the right to control the removal of the decedent's remains.

c. Human remains buried on property that is not part of a cemetery may be removed by the owner of the property provided that removal is in compliance with applicable [1]**[**health regulations**]** law[1] and the remains are then properly re-buried in a cemetery.

d. A person who signs an authorization for the disinterment of human remains warrants the truth of the facts stated and the authority to order the disinterment. The person shall be liable for damages caused by a false statement or breach of warranty. A cemetery [1]or funeral director[1] shall not be liable for disinterment in accordance with the authorization unless it had reasonable notice that the representations were untrue or that the person lacked the right to control the disinterment. An action against a cemetery company relating to the disinterment of human remains shall not be brought more than one year from the date of disinterment.

24. (New section) a. A cemetery company may remove any authorized memorial, embellishment or impediment for safety reasons. Before removal, the cemetery company shall take photographs of the memorial and its condition and shall retain them in its permanent records. Within 30 days after removal, the cemetery company shall notify the interment space owner in writing of the removal at the address on file with the cemetery company. The notice shall include a provision advising that, within six months of the notice, the interment space owner may apply to the board for appropriate relief.

b. A cemetery company may remove any memorial, embellishment or impediment that was placed in violation of the regulations of the cemetery. The cemetery may recover the cost of the removal.

c. Upon removal of a memorial, embellishment or impediment, the cemetery company shall store it in a reasonably secure manner. If after one year, the interment space owner has not taken possession of the memorial, embellishment or impediment, the cemetery may dispose of it. The cemetery company shall notify the board in writing 90 days

prior to disposal.

d. A cemetery company may not renovate a section or area of the cemetery necessitating the removal of memorials from an interment space without board approval. The board may require specific actions or procedures by the cemetery company for the proposed renovation. The cemetery company shall notify the interment space owner of the proposed renovations 30 days before the action. Publication in a local newspaper circulating in the county in which the interment space is located and posting on the grounds shall be considered sufficient notice. Repairs or improvements done at the request of the interment space owner do not constitute renovation work which requires board approval.

e. Site work necessary to repair or restore any part of a cemetery as an emergency response to vandalism, damage by weather conditions or other acts of God shall not constitute planned renovation work.

f. Memorials may be temporarily removed from interment spaces in order to provide access for equipment and personnel to perform openings and general debris clean-up. Memorials shall be reinstalled promptly.

25. (New section) a. A cemetery shall not be established or enlarged in any municipality without first obtaining the consent of the municipality by resolution.

b. No more than five cemeteries may be established in any one municipality, and not more than 3% of the area of any municipality shall be devoted to cemetery purposes.

c. A cemetery shall not be established or expanded to exceed 250 acres at any one location.

d. The governing body of a municipality, by resolution, may waive the limitations of subsection b. or c. of this section if it finds that there is a public need for additional cemetery lands and that it is in the public interest to waive them.

e. A cemetery company shall not dedicate additional land to cemetery purposes without board approval.

26. (New section) If the board approves, a cemetery company may issue certificates with a fixed face value and a specified interest rate to pay for land acquired for cemetery purposes, for the initial improvements to that land, and for subsequent capital improvements. The board shall review the dollar amount and terms of the certificates so as to assure the financial soundness of the cemetery company.

27. (New section) a. A public mausoleum shall not be constructed without obtaining a permit from the construction official of the municipality in which it is to be constructed. Failure to issue a permit is reviewable by the appropriate construction board of appeals

established pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

b. Construction shall not begin until detailed plans and specifications of the structure have been approved by the State Department of Community Affairs and the certificate of approval is filed in the office of the municipal enforcing agency where the structure is to be constructed. The State Department of Community Affairs shall not grant a certificate of approval unless it is satisfied that the proposed structure can be operated without constituting a hazard to public health or safety.

c. Construction of the structure shall be under the supervision of the municipal construction official, who shall see that the approved plans and specifications are complied with. No departure from the original plans and specifications shall be permitted unless an amended certificate of approval is granted and filed with the construction official of the municipality where the mausoleum is to be constructed.

d. A structure constructed under the provisions of this section shall not be used for burial until the construction official of the municipality has issued a certificate indicating that the plans and specifications as filed have been complied with fully and the Building Maintenance Fund for the structure has been established.

e. The Department of Community Affairs shall adopt regulations concerning the construction of [1]public[1] mausoleums [1], which shall conform with the definition of public mausoleum as defined by this act[1]. The regulations shall be the standards adopted in the subcodes of the Uniform Construction Code, or other national model codes or standards, but the commissioner may adopt additional standards if, after a public hearing, the commissioner finds that they are necessary to protect the public interest. A municipality may enact zoning ordinances which provide for reasonable height and setback requirements in keeping with standards established for property immediately abutting a cemetery, but any other ordinance regulating the construction of mausoleums shall be of no effect.

f. Private mausoleums shall be constructed in accordance with applicable industry construction code standards and regulations of the cemetery.

28. (New section) a. When a cemetery transfers an interment space or niche and records the transfer, the person or persons to whom it was transferred become the owner of the interment space or niche. The conveyance issued by a cemetery shall indicate whether the cemetery company is transferring title to the interment space or niche or only a right of burial in it. The conveyance may:

(1) provide that the owner take title subject to existing and future reasonable regulations of the cemetery; and

(2) contain other reasonable restrictions on use or transfer

consistent with this act.

b. Except as limited by subsection c. of this section, the owner of an interment space or an interest in one in a cemetery may transfer the space or interest to any person or to the cemetery company. Transfers may be made on agreed conditions, provided the conditions are recorded in the office of the cemetery company. The cemetery company shall record a cemetery transfer in its records when a document of transfer is presented to the cemetery company and any other requirements imposed by law or regulations of the cemetery company are met. The transfer shall be effective on recordation by the cemetery company.

c. After human remains have been buried in a grave or crypt, that grave or crypt shall not be transferred except as follows:

(1) Ownership of the grave or crypt may by transferred by will if it is identified specifically in the will rather than by a residuary clause or by general reference to real property. Otherwise, on the death of the owner, ownership shall descend in the order listed below:

(a) to the surviving spouse and the owner's children, if any, per stirpes, as equal tenants in common;

(b) if there is no surviving spouse, to the children per stirpes as equal tenants in common;

(c) if there is no surviving spouse nor surviving children, then to the owner's parents as equal tenants in common;

(d) if there is no surviving spouse, children or parents, then to the owner's siblings as equal tenants in common;

(e) if there is no surviving spouse, children, parents or siblings, then ownership in the grave or crypt shall pass to the owner's next of kin as tenants in common pursuant to the laws of intestacy;

(f) Notwithstanding subparagraphs (a) through (e) of this paragraph (1), if an owner dies leaving a surviving spouse, but having surviving children from a prior marriage or relationship, those children and the surviving spouse shall be owners of the grave or crypt as tenants in common.

(2) If the grave or crypt is owned by more than one person, one owner's share may be transferred to another owner.

(3) Ownership of the grave or crypt may be transferred to any heir at law of the person buried in the space.

(4) The owner may convey the grave or crypt in trust to a bank or trust company or to the cemetery company for the benefit of the owner of the grave or crypt and the protection of the human remains already buried in it, pursuant to the terms of the deed of trust. Acceptance of the conveyance in trust by the cemetery company shall require a majority vote of its governing board.

(5) If additional burials are permitted to be made in the grave or crypt, the grave or crypt may be transferred to allow for those burials.

d. A cemetery company shall maintain records of transfers of

ownership of interment spaces. Records shall be kept in the manner specified by the board in its regulations. Records shall be indexed both by the number of each interment space and by the name of each owner.

29. (New section) a. When there are two or more owners of an interment space:

(1) each individual owner's interest may be transferred only by that owner or that owner's authorized representative;

(2) each individual owner has a right of interment in the space.

b. When there are two or more owners of an interment space, they may designate one or more of the co-owners to represent them by filing written notice of the designation with the cemetery company. If such a notice has been filed, the cemetery company shall follow the direction of the representative as to interment in the space, and in regard to memorials, embellishments and care for the interment space. In the absence of that notice the cemetery company may rely on the direction of any co-owner as to burial, memorials, embellishments or care and shall not be liable to any person for doing so.

30. (New section) a. A cemetery company may adopt reasonable regulations on interment. In the absence of regulation, the cemetery company shall allow human remains of the following persons to be interred in an available interment space:

(1) a deceased person who at the time of death was an owner of the interment space;

(2) the spouse of the deceased person who owned the interment space at the time of death; and

(3) any other person authorized by a written directive of the designated owner of the interment space as provided in subsection b. of section 29 of this act, or if there is no designated owner, by the written directive of any owner.

b. The right of a person to be interred in an interment space may be waived in writing. The right terminates if the person is interred elsewhere.

c. If more persons have a right to be interred in an interment space than may be interred there, any person with a right to interment in the interment space may be interred in it even though that will make the interment space unavailable to others.

d. A person who signs an authorization for the disposition of human remains warrants the truth of the facts stated, the identity of the human remains and the authority to order the disposition. The person shall be liable for damages caused by a false statement or breach of warranty. A cemetery [1]or funeral director [1]shall not be liable for disposition in accordance with the authorization unless it had reasonable notice that the representations were untrue or that the person lacked the right to control the disposition. An action against

a cemetery company relating to the disposition of human remains left in its temporary custody shall not be brought more than one year from the date of delivery of the remains to the cemetery company unless otherwise provided by a written contract.

31. (New section) a. Owners of interment spaces, or other interested persons, may maintain their own interment spaces, or provide for maintenance by an independent contractor provided that the maintenance is subject to the supervision of the management of the cemetery company to insure compliance with the rules and regulations of the cemetery.

b. The cemetery company may not charge for maintenance by others. The cemetery company may impose a reasonable fee for actual supervision of maintenance if the fee has been filed with the board.

32. (New section) a. Except as provided in subsection b. of this section, a person shall not purchase an interment space for the sole purpose of resale, and a cemetery company shall not sell an interment space to a person whom it reasonably should know is purchasing an interment space for the purpose of resale. The board may adopt regulations to enforce this subsection.

b. A membership or religious corporation or unincorporated association or society may purchase interment spaces in bulk for the purpose of resale, transfer or assignment of interment rights provided that:

(1) if the purchase is for 17 interment spaces or more, it has received approval from the board to do so;

(2) it sells, gives or assigns the interment spaces only to its members and the interment spaces are intended for the use of its members and their families;

(3) at the time it sells, gives or assigns an interment space, it provides notification to the cemetery company for recording;

(4) it designates in writing to the cemetery company an agent with authority to consent to burials in interment spaces owned by it; and

(5) it makes the payments to the Maintenance and Preservation Fund required by section 13 of this act.

c. If the corporation, association or society fails to meet its obligations under subsection b. of this section, the cemetery company may reclaim the unoccupied interment spaces owned by it in the manner and with the restrictions set by the board.

33. (New section) a. A cemetery company may reclaim a grave or crypt if:

(1) the cemetery company sold the grave or crypt before December 1, 1971;

(2) no provision has been made for the adequate maintenance of the grave or crypt;

(3) no burial has been made in the grave or crypt; and

(4) no burial has been made for 30 years in the plot that includes the grave or crypt.

For the purposes of this section, “adequate maintenance” has been provided if the grave or crypt was sold with perpetual care, endowed care, or a similar level of care, or if the owner of the grave or crypt has made other provision for that care.

b. To reclaim a grave or crypt, a cemetery company shall:

(1) make a diligent effort to locate the owners and notify them that they may prevent the cemetery from reclaiming the grave or crypt by sending a written objection to the cemetery company within 30 days;

(2) if the cemetery company cannot locate the owners, publish a notice in a newspaper circulating in the county in which the grave or crypt is located, directed to the owners as registered in the cemetery company's records, containing the names of each deceased person buried in the plot that includes the grave or crypt and date of each burial, where such information is ascertainable. The notice shall advise that if the owners do not send a written objection within 30 days the grave or crypt will be subject to resale.

c. If written objection has not been filed with the cemetery within 30 days after notice or publication, the cemetery may sell the grave or crypt. The sales price less sales commissions and expenses of sale, but in no event less than three-fourths of the gross sales price, shall be deposited in the Maintenance and Preservation Fund.

d. At any time, a person proving ownership of a grave or crypt reclaimed and sold in accordance with this section may either agree to take a comparable grave or crypt in the cemetery or may make application to the board for an order directing the cemetery company to reimburse the owner the proceeds of the sale that were deposited into the Maintenance and Preservation Fund.

34. (New section) a. A cemetery may lease or transfer any land or interest in land dedicated to cemetery purposes if:

(1) it has not conveyed any part of the land as graves;

(2) it determines that the land or the interest in the land to be transferred is not necessary or not suitable for burial purposes or it determines that the land to be leased will not be necessary for burial purposes during the term of the lease; and

(3) the land is owned by a cemetery company and the board approves the transaction as made in good faith and for fair consideration.

b. The cemetery may transfer land in which any person has acquired a right of burial, if:

(1) the cemetery either refunds to the person who has the right of burial the amount paid for the right or conveys to the person who has the right of burial substantially similar graves in the cemetery; and

(2) the land is owned by a cemetery company and the board

approves the transaction as made in good faith and for fair consideration.

c. A cemetery may transfer land in which human remains have been buried only if the cemetery:

(1) receives consent from the owner of each grave in which human remains have been buried or an order from the Superior Court to remove the human remains;

(2) removes the human remains and reburies them in substantially similar graves in the cemetery or in another cemetery and assumes the responsibility and expense for removal and reburial;

(3) removes any property of the owner from the grave and gives it to the owner; and

(4) if owned by a cemetery company, obtains the written consent of the board.

d. The Superior Court shall not approve the removal of human remains from lands to be transferred unless notice and an opportunity to be heard in opposition has been given to the owners of all affected graves. If the owner of a grave is not known or cannot be located, the court may order notice by publication.

e. The deed of conveyance for any transfer of cemetery land under this section shall include a [1]**[**25-year**]** perpetual[1] prohibition on any use of the land [1], directly or indirectly, for any of the purposes or uses[1] which cemetery companies are specifically prohibited from engaging in by this act. Any lease of cemetery land under this section shall prohibit any use of the land [1], directly or indirectly, for any of the purposes or uses[1] which cemetery companies are specifically prohibited from engaging in by this act. The board shall order not less than 15% of the proceeds of the sale or lease deposited in the Maintenance and Preservation Fund.

f. If the transfer of land results from condemnation, the responsibility and expense for removal and reburial shall be borne by the condemnor, not by the cemetery.

35. (New section) a. A license from the board is required for any natural person to be compensated to act as a cemetery salesperson for interment spaces in cemeteries operated by cemetery companies or for goods or services provided by cemetery companies.

(1) Each salesperson license shall state the name and address of each cemetery company with which the salesperson is associated.

(2) A salesperson shall produce the license for inspection when requested during sales activities, and shall retain possession of the license until it expires or is canceled, revoked or suspended.

(3) A copy of the license shall be posted by the cemetery company in each of its offices.

b. No municipality of this State shall require a licensed salesperson to obtain a municipal license to sell interment spaces or cemetery goods or services.

c. The following may sell cemetery property without a cemetery salesperson license:

(1) The owner of an interest in an interment space, or a person acting for the owner, making an occasional sale of the interment space;

(2) An officer, manager or employee of a cemetery company engaging in sales activities whose primary responsibility is other than sales activities; or

(3) A receiver, trustee in bankruptcy or other person acting under court order for a trustee selling under a deed of trust.

36. (New section) A cemetery salesperson license shall be issued or renewed for a period established by the board by regulation.

37. (New section) a. An applicant for a cemetery salesperson license shall file a written application on the form prescribed by the board. The application fee prescribed by the board by regulation shall accompany the application.

b. The board shall investigate the qualifications of each applicant for a cemetery salesperson license and shall issue a salesperson license if:

(1) the board finds that the applicant is 18 years or older, of good moral character, and has not been convicted of a crime which would allow the board to deny the application pursuant to the P.L.1968, c.282 (C.2A:168A-1 et seq.);

(2) the application complies with the regulations;

(3) the applicant paid the license fee prescribed by regulation; and

(4) the applicant is not barred from making cemetery sales by other employment.

c. The board, upon receipt of a completed application form and appropriate fees, and prior to receipt of the criminal history background check, may issue a temporary license valid for 60 days which the board may extend for additional periods not exceeding 30 days each.

38. (New section) The board may institute an action in the name of the State in the Superior Court for the appointment of a receiver, injunctive or other relief to protect the public interest, or to prohibit the violation of this act or the orders, rules or regulations of the board. Relief shall not be limited or barred by the imposition of any penalties imposed by the board. The receivership shall be discharged as soon as the condition which caused the suspension has been corrected.

39. Section 1 of P.L.1974, c.46 (C.45:1-3.1) is amended to read as follows:

1. The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of

Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the New Jersey Cemetery Board and the State Board of Social Work Examiners.

(cf: P.L.1995, c.366, s.22)

[1]40. (New section) Prior to probate, a decedent's appointment of a person in a will to control the funeral and disposition of human remains may be carried out in accordance with section 22 of P.L. , c. (C.)(now before the Legislature as this bill). If known to them, a person named executor in a will shall notify such a person of their appointment and advise them of what financial means are available to carry out the funeral and disposition arrangements.[1]

[1]41. (New section) A funeral director may permit the funeral, disinterment or disposition of human remains on the written authorization of a person who claims to be, and is believed to be, a person who has the right to control the funeral, disinterment or disposition as provided by sections 22 and 23 of P.L. , c. (C.) (now before the Legislature as this bill). A cemetery or funeral director shall not be liable for the funeral, disinterment or disposition pursuant to this authorization unless it had reasonable notice that the person did not have the right to control the funeral, disinterment or disposition. If there are no known living relatives, a funeral director may rely on the written authorization of any person acting in good faith on behalf of the decedent.

A person who signs an authorization for the funeral, disinterment or disposition of human remains warrants the truth of the facts stated, the identity of the person whose remains are disposed, and the authority to order the funeral, disinterment or disposition. A cemetery or funeral director shall not be liable for the funeral, disinterment or disposition in accordance with the authorization unless it had reasonable notice that the representations were untrue or that the person lacked the right to control the funeral, disinterment or disposition.[1]

¹[40.] 42.¹ N.J.S.8A:1-1 et seq., section 2 of P.L.1979, c.255 (C.8A:3-14.1) and P.L.2001, c.439 (C.8A:3-14.2) are repealed.

¹[41.] 43.¹ This act shall take effect on the 90th day following enactment.

Enacts "New Jersey Cemetery Act, 2002."