

#### **4-86-105. Grave markers or headstones.**

When any person purchases a grave marker or grave headstone from any seller in this state, the seller shall advise the purchaser that if the deceased is a veteran of the armed forces of the United States, the purchaser may request that the word "VET" be inscribed in the upper left corner of the marker or stone.

#### **5-39-211. Cemeteries -- Mining and other unlawful entries.**

**(a)** It is unlawful for any corporation, company, or individual to:

**(1)** Mine, extract, or remove coal from under, beneath, or within the buffer zone for a cemetery, graveyard, or burying place in this state as specified in rules promulgated by the Arkansas Pollution Control and Ecology Commission under the Arkansas Surface Coal Mining and Reclamation Act of 1979, 15-58-101 et seq.;

**(2) (A)** Mine, extract, or remove any other mineral substance from under, beneath, or within twenty-five feet (25') of the boundary of any cemetery, graveyard, or burying place in this state.

**(B)** This subdivision (a)(2) does not apply to oil, gas, or any other hydrocarbon produced in a liquid or gaseous form; or

**(3)** Make, place, or drive any slope, pit, or entry of any kind into, under, through, or across any cemetery, graveyard, or other burying place in this state.

**(b)** Any corporation, company, or individual violating a provision of this section is guilty of a Class D felony.

#### **5-39-212. Cemeteries -- Access -- Debris -- Disturbance.**

**(a) (1)** It is unlawful for any person, firm, corporation, partnership, or association to construct any fence on any property in such a manner as to enclose any cemetery, graveyard, or burying place unless reasonable access by automobile to the cemetery is provided by gate or otherwise.

**(2)** As used in this subsection, "cemetery" is not intended to apply to any private family burial plot that:

**(A)** Contains fewer than six (6) commercial grave markers;

**(B)** Has not been used for a burial purpose for at least twenty-five (25) years; and

**(C)** Has not had an access road to the burial plot for at least thirty (30) years.

**(3)** Nothing in this section prohibits the placement of a fence around any cemetery for the purpose of defining a boundary or protection of a grave site, if any fence or gate is sufficiently maintained.

**(b) (1)** Any person, firm, corporation, partnership, or association violating any provision of this section is guilty of a violation and upon conviction shall be fined in any sum not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100).

**(2)** Every day that the violation exists is a separate offense.

**5-39-401. Destruction or removal of a cemetery or grave marker.**

**(a)** It is unlawful for any person, corporation, company, or other entity to destroy or carry away any cemetery marker or grave marker.

**(b)** Destruction or removal of a cemetery marker or grave marker is a Class C felony.

**5-60-101. Abuse of a corpse.**

**(a)** A person commits abuse of a corpse if, except as authorized by law, he or she knowingly:

**(1)** Disinters, removes, dissects, or mutilates a corpse; or

**(2)** Physically mistreats a corpse in a manner offensive to a person of reasonable sensibilities.

**(b)** Abuse of a corpse is a Class D felony.

**5-71-215. Defacing objects of public respect.**

**(a)** A person commits the offense of defacing objects of public respect if he or she purposely:

**(1)** Defaces, mars, or otherwise damages any public monument;

**(2)** Defaces, mars, or otherwise damages a work of art on display in any public place;

**(3)** Defaces, mars, desecrates, or otherwise damages any place of worship, cemetery, or burial monument; or

**(4)** Removes a broken or unbroken, commercial or rock, grave marker for any reason except for cleaning or repair by a family member, caretaker, or preservation organization.

**(b) (1) (A)** Except as provided in subdivision (b)(1)(B) of this section, defacing objects of public respect is a Class A misdemeanor if the value of repairing or replacing the damaged object does not exceed five hundred dollars (\$500).

**(B)** Defacing objects of public respect is a Class D felony if the value of repairing or replacing the damaged object does not exceed five hundred dollars (\$500) and if the object that is defaced, marred, desecrated, or otherwise damaged is a cemetery or burial monument.

**(2) (A)** Except as provided in subdivision (b)(2)(B) of this section, defacing objects of public respect is a Class D felony if the value of repairing or replacing the damaged object exceeds five hundred dollars (\$500), but does not exceed two thousand five hundred dollars (\$2,500).

**(B)** Defacing objects of public respect is a Class C felony if the value of repairing or replacing the damaged object exceeds five hundred dollars (\$500) but does not exceed two thousand five hundred dollars (\$2,500) and if the object that is defaced, marred, desecrated, or otherwise damaged is a cemetery or burial monument.

**(3) (A)** Except as provided in subdivision (b)(3)(B) of this section, defacing objects of public respect is a Class C felony if the value of repairing or replacing the damaged object exceeds two thousand five hundred dollars (\$2,500).

**(B)** Defacing objects of public respect is a Class B felony if the value of repairing or replacing the damaged object exceeds two thousand five hundred dollars (\$2,500) and if the object that is defaced, marred, desecrated, or otherwise damaged is a cemetery or burial monument.

#### **12-42-117. Voluntary labor.**

**(a)** Any of the prisoners in the county jails located in counties having a population of between twenty-four thousand five hundred (24,500) and twenty-five thousand five hundred (25,500) and between forty-seven thousand five hundred (47,500) and forty-seven thousand six hundred (47,600) inhabitants may be permitted to voluntarily work in any cemetery or on any other public project in those counties.

**(b)** The prisoners shall be allowed a credit on any fine owed of five dollars (\$5.00) for each day they perform such voluntary labor.

#### **13-4-302. Court records.**

All counties of the State of Arkansas shall maintain records for the county courts as follows, if they are currently being maintained:

**(1)** For circuit court, civil and criminal, domestic relations, juvenile, and probate records:

**(A)** Permanently maintain:

**(i)** Complete case files and written exhibits for all courts;

**(ii)** Case indices for all courts;

**(iii)** Case dockets for all courts;

**(iv)** Grand jury reports;

**(v)** Grand juror lists;

**(vi)** Petit jury lists in criminal cases;

**(vii)** Original records, documents, and transcripts relating to the summoning of jurors and jury selection for a petit jury in a criminal case; and

**(viii)** All probate records required to be maintained under 28-1-108;

**(B)** Maintain for ten (10) years, after audit by the Division of Legislative Audit:

**(i)** Records and reports of costs; and

**(ii)** Fees assessed and collected; and

**(C)** Maintain for three (3) years, after audit by the Division of Legislative Audit:

**(i)** Cancelled checks;

**(ii)** Bank statements; and

**(iii)** Petit jury lists in civil cases and original records, documents, and transcripts relating to the summoning of jurors and jury selection for a petit jury in a civil case;

**(2)** For county court records:

**(A)** Permanently maintain:

**(i)** County court record;

**(ii)** Cemetery permits;

**(iii)** Statement of receipt and expenditures; and

**(iv)** County improvement districts; and

**(B)** Maintain for ten (10) years, after audit by the Division of Legislative Audit:

**(i)** County court file;

**(ii)** County general claims docket;

**(iii)** County road claims docket;

**(iv)** Contracts for lease-purchase on rental payments;

**(v)** County school board financial reports;

**(vi)** Solid waste disposal revenue bonds; and

**(vii)** Allocation of state funds for solid waste disposal; and

**(3)** For quorum court records:

**(A)** Permanently maintain:

**(i)** Ordinance, appropriation ordinance, and resolution register;

**(ii)** Record of proceedings;

**(iii)** Codification of ordinances;

- (iv) Register of county advisory and administrative boards;
  - (v) Appointments to subordinate service districts; and
  - (vi) Quorum court minutes; and
- (B) Maintain for one (1) year the county treasurer's monthly financial report.

**13-6-301. Reservation of rights -- Legislative intent.**

(a) (1) The State of Arkansas reserves to itself the exclusive right and privilege of field archeology on sites owned or controlled by the state, its agencies, departments, and institutions, in order to protect and preserve archeological and scientific information, matter, and objects.

(2) All information and objects deriving from state lands shall be utilized solely for scientific or public educational purposes and shall remain the property of the state.

(b) (1) It is a declaration and statement of legislative intent that field archeology on privately owned lands should be discouraged except in accordance with both the provisions and spirit of this subchapter.

(2) Persons having knowledge of the location of archeological sites are encouraged to communicate the information to the Arkansas Archeological Survey.

**13-6-302. Definitions.**

As used in this subchapter:

(1) (A) (i) "Archeological site" means a location containing the physical remains of human life or human activities that are no less than one hundred (100) years old.

(ii) An archeological site may but need not contain pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, rock paintings, graves, and human skeletal remains.

(B) "Archeological site" includes all aboriginal mounds, forts, earthworks, village locations, burial grounds, historic or prehistoric ruins, mines, or caves that are or may be the source of a significant amount of artifacts;

**(2)** "Artifact" means a relic, specimen, or object of an historical, prehistorical, archeological, or anthropological nature that:

**(A)** May be found above or below the surface of the earth; and

**(B)** Has scientific or historic value as an object of antiquity, as an aboriginal relic, or as an archeological specimen; and

**(3)** "Field archeology" means the study of the traces of human culture at any land or water site by means of surveying, digging, sampling, excavating, or removing subsurface objects or going on an archeological site with that intent.

**13-6-304. Cooperation by state and local entities.**

**(a)** All state agencies, departments, institutions, and commissions, as well as all counties and municipalities, shall cooperate fully with the Arkansas Archeological Survey in the preservation, protection, excavation, and evaluation of artifacts and sites.

**(b)** To that end, where any site or artifacts may be found or discovered on property owned or controlled by the state or by any county or municipality, the agency, bureau, commission, governmental subdivision, or county or municipality, having control over or owning the property or preparing to excavate or perform work upon the property or currently performing work of any type upon the property is urged to notify the survey of the discovery and location of the site or artifacts.

**(c)** Any state or local entity shall cooperate to the fullest extent practicable with the survey to preserve and prevent the destruction of the site or artifacts and to allow the survey to assist in, and effect, the removal of artifacts by means designed to preserve and permit the study and evaluation of the artifacts.

**(d)** The provisions of this subchapter shall be made known to contractors by the state agencies doing the contracting.

**13-6-305. Reservation of state lands from sale.**

**(a) (1)** Upon written notice to the Commissioner of State Lands given by the Arkansas Archeological Survey, the Commissioner of State Lands shall reserve from

sale any state lands, including lands forfeited to the state for nonpayment of taxes, on which sites or artifacts are located or may be found, as designated by the survey.

**(2)** However, the reservation of lands from sale may be confined to the actual location of the site or artifacts.

**(b)** When sites or artifacts have been explored, excavated, or otherwise examined to the extent desired by the survey, the survey shall then file with the Commissioner of State Lands a statement releasing the lands and permitting the sale of the lands.

**13-6-306. State archeological landmarks -- Penalty for disturbing.**

**(a) (1)** An archeological site of significance to the scientific study or public representation of Arkansas' aboriginal past may be publicly designated by the Arkansas Archeological Survey as a state archeological landmark.

**(2)** However, no sites shall be so designated without the express written consent of the state agency having jurisdiction over the land in question or, if it is on privately owned land, of the owner thereof.

**(b)** When an archeological site has been designated as a state archeological landmark, excavation for the purpose of recovery or the recovery of one (1) or more artifacts from the state archeological landmark by a person other than the survey or its designated agent is a:

**(1)** Class D felony for the first offense and a Class C felony for a subsequent offense if the value of the artifacts excavated or recovered or the cost to restore or repair the damage to the archeological site is greater than one thousand dollars (\$1,000);  
or

**(2)** Class B misdemeanor for the first offense and a Class A misdemeanor for a subsequent offense if the value of the artifacts excavated or recovered or the cost to restore or repair the damage to the archeological site is one thousand dollars (\$1,000) or less.

**(c)** Once so designated, excavation for the purpose of recovery or the recovery of artifacts from such sites by persons other than the survey or its duly designated agents shall be a misdemeanor.

**13-6-307. Digging up or removing artifact without permission -- Penalty.**

**(a) (1)** It is unlawful for any person, natural or corporate, to knowingly dig up an artifact from the private land of the owner without first obtaining the owner's permission.

**(2)** A violation of subdivision (a)(1) of this section is a:

**(A)** Class D felony for the first offense and a Class C felony for a subsequent offense if the value of all artifacts dug up or the cost to restore or repair the owner's property is greater than one thousand dollars (\$1,000); or

**(B)** Class B misdemeanor for the first offense and a Class A misdemeanor for a subsequent offense if the value of all artifacts dug up or the cost to restore or repair the owner's property is one thousand dollars (\$1,000) or less.

**(b) (1)** It is unlawful for any person, natural or corporate, to knowingly remove an artifact from the private land of the owner without first obtaining the owner's permission.

**(2)** A violation of subdivision (b)(1) of this section is a Class C misdemeanor for the first offense and a Class B misdemeanor for a subsequent offense.

**13-6-308. Vandalism of archeological sites and artifacts -- Penalty.**

**(a)** In order that archeological sites and artifacts on state-owned or controlled land shall be protected for the benefit of the public, no person, natural or corporate, shall knowingly dig up and remove, write upon, carve upon, paint, deface, mutilate, destroy, or otherwise injure any artifact or archeological site.

**(b)** A violation of this section is a:

**(1)** Class D felony for the first offense and a Class C felony for a subsequent offense if the value of all artifacts dug up and removed or the cost to repair or restore the damage to the archeological site is greater than one thousand dollars (\$1,000); or

**(2)** Class B misdemeanor for the first offense and a Class A misdemeanor for a subsequent offense if the value of all artifacts dug up and removed or the cost to repair or restore the damage to the archeological site is one thousand dollars (\$1,000) or less.

### **13-6-215. Programs of Arkansas Archeological Society.**

The Arkansas Archeological Survey is authorized to assist and support the programs of the Arkansas Archeological Society to the extent that the purposes and aims of the two coincide.

### **13-6-216. Annual review and evaluation.**

The Arkansas Archeological Society is requested to annually review and evaluate the programs and activities of the Arkansas Archeological Survey and to provide written reports of the evaluation to the Director of the Arkansas Archeological Survey, each state-supported institution of higher learning, and any other interested institutions and agencies that may request the reports.

### **13-6-401. Legislative intent.**

**(a)** It is a declaration and statement of the General Assembly's intent that all human burials and human skeletal burial remains shall be accorded equal treatment and respect for human dignity without reference to their ethnic origins, cultural backgrounds, religious affiliations, or date of burial.

**(b)** The provisions of this subchapter shall apply to all human burials or human skeletal burial remains found on or in all public or private lands or waters of Arkansas.

### **13-6-402. Definitions.**

As used in this subchapter:

**(1)** "Artifacts" means arrowheads, other bone and stone tools, pottery, pottery fragments, china, metal objects or other material objects made by Native American settlers, or other residents of Arkansas, which were left or lost in or on the ground, except those items which were placed in direct association with human skeletal burial remains or burial furniture as defined in this subchapter;

**(2)** "Burial furniture" means any items which were placed with human remains at the time of burial or in apparent intentional association with the burial and would include burial markers, items of personal adornment, casket and casket hardware, stone and bone tools, pottery vessels, or other similar objects or materials;

**(3)** "Burial grounds" means any place where human skeletal remains are or have been buried;

**(4)** "Desecration" means the intentional, willful, or knowing removal or disturbance of human skeletal burial remains or burial furniture which was placed with a buried human body, or treating such human skeletal burial remains in an irreverent and contemptuous manner; and

**(5)** "Human skeletal burial remains" means the calcified portion of a human body which remains after the flesh has decomposed.

**13-6-403. State plan for the conservation of archeological resources in Arkansas.**

(a) The public has a right to the knowledge to be derived and gained from the scientific study of human skeletal burial remains and burial furniture.

(b) Therefore, when justified by "A State Plan for the Conservation of Archeological Resources in Arkansas" as promulgated by the State Archeologist and the State Historic Preservation Officer, the investigation, excavation, removal, and analysis of human skeletal burial remains and burial furniture is authorized and, if done, must be carried out with the consent of the landowner and consultation with the appropriate tribe, if identifiable, and under the direction of archeologists employed by the state or the United States Government or by archeologists meeting the United States Department of Interior's professional qualifications standards found in the current Code of Federal Regulations.

**13-6-404. Conveyance of exhumed remains.**

(a) (1) If human skeletal burial remains are exhumed for relocation, then at the request of a direct descendant, that of a specific church, or that of a Native American tribal group recognized by the United States Government who can provide written or scientific documentation of such descent, or of direct church or tribal affiliation with the human skeletal burial remains, the human skeletal burial remains will be conveyed to such an individual or entity.

(2) If human skeletal remains are conveyed to an individual or entity under subdivision (a)(1) of this section, burial furniture exhumed with the human skeletal remains shall be conveyed to the individual or entity.

(b) By consultation with the groups mentioned in subsection (a) of this section, scientific studies may be undertaken.

**13-6-405. Unclaimed remains.**

(a) If human skeletal burial remains are not claimed as set forth in § 13-6-404, the Arkansas Archeological Survey or a state-supported museum, or a museum accredited by the American Association of Museums, may serve as a depository for such skeletal remains as are required for scientific purposes.

(b) If not otherwise claimed as provided in this subchapter, skeletal burial remains and burial furniture shall be disposed of in accordance with existing laws, rules, and regulations for disposing of human remains.

**13-6-406. Trade or collection of remains.**

(a) Anyone who knowingly buys, sells, or barter human skeletal burial remains or their associated burial furniture is committing a Class D felony for the first offense and a Class C felony on the second and subsequent offenses.

(b) Artifacts as defined in this subchapter and private collections legally acquired prior to July 15, 1991, are exempted from this section.

**(c)** Nothing in this subchapter prohibits the collecting of such artifacts by landowners or others who do so with the landowner's permission.

**13-6-407. Display of remains.**

Anyone who knowingly displays human skeletal burial remains for profit or to aid and abet a commercial enterprise is committing a Class C felony with each day of display being a separate offense.

**13-6-408. Desecration of burial grounds and burial furniture.**

**(a)** Anyone who intentionally or knowingly desecrates or permits desecration of a burial ground and associated burial furniture is committing on the first offense a Class D felony and on the second or subsequent offenses a Class C felony.

**(b)** The presence in the ground of grave markers, caskets, or casket hardware creates a rebuttable presumption that these are burial furniture and of the existence or presence of a human burial ground.

**(c)** Exempted from this section is disturbance of human skeletal burial remains or burial furniture by landowners or agricultural tenants as a consequence of agricultural activity or any other activity unless the landowner or agricultural tenant knowingly desecrates or knowingly allows desecration of a cemetery or burial site.

**13-6-409. Proof of violations.**

The mere possession of items defined in § 13-6-402 does not create a presumption of a violation of this subchapter, but the duty shall remain upon the state to prove any violation of this subchapter.

**14-14-802. Providing of services generally.**

**(a)** A county government, acting through the county quorum court, shall provide, through ordinance, for the following necessary services for its citizens:

**(1)** The administration of justice through the several courts of record of the county;

**(2)** Law enforcement protection services and the custody of persons accused or convicted of crimes;

**(3)** Real and personal property tax administration, including assessments, collection, and custody of tax proceeds;

**(4)** Court and public records management, as provided by law, including registration, recording, and custody of public records; and

**(5)** All other services prescribed by state law for performance by each of the elected county officers or departments of county government.

**(b) (1)** A county government, acting through the quorum court, may provide through ordinance for the establishment of any service or performance of any function not expressly prohibited by the Arkansas Constitution or by law.

**(2)** These legislative services and functions include, but are not limited to, the following services and facilities:

**(A)** Agricultural services, including:

**(i)** Extension services, including agricultural, home economic, and community development;

**(ii)** Fairs and livestock shows and sales services;

**(iii)** Livestock inspection and protection services;

**(iv)** Market and marketing services;

**(v)** Rodent, predator, and vertebrate control services; and

**(vi)** Weed and insect control services;

**(B)** Community and rural development services, including:

**(i)** Economic development services;

**(ii)** Housing services;

**(iii)** Open spaces;

**(iv)** Planning, zoning, and subdivision control services;

**(v)** Urban and rural development, rehabilitation, and redevelopment services;  
and

**(vi)** Watercourse, drainage, irrigation, and flood control services;

**(C)** Community services, including:

**(i)** Animal control services;

**(ii)** Cemetery, burial, and memorial services;

**(iii)** Consumer education and protection services;

**(iv)** Exhibition and show services;

**(v)** Libraries, museums, civic center auditoriums, and historical, cultural, or natural site services;

**(vi)** Park and recreation services; and

**(vii)** Public camping services;

**(D)** Emergency services, including:

- (i) Ambulance services;
  - (ii) Civil defense services;
  - (iii) Fire prevention and protection services; and
  - (iv) Juvenile attention services;
- (E) Human services, including:
- (i) Air and water pollution control services;
  - (ii) Child care, youth, and senior citizen services;
  - (iii) Public health and hospital services;
  - (iv) Public nursing and extended care services; and
  - (v) Social and rehabilitative services;
- (F) Solid waste services, including:
- (i) Recycling services; and
  - (ii) Solid waste collection and disposal services;
- (G) Transportation services, including:
- (i) Roads, bridges, airports, and aviation services;
  - (ii) Ferries, wharves, docks, and other marine services;
  - (iii) Parking services; and
  - (iv) Public transportation services;
- (H) Water, sewer, and other utility services, including:
- (i) Sanitary and storm sewers and sewage treatment services; and
  - (ii) Water supply and distribution services;
- (I) Other services related to county affairs.

**14-14-803. Providing of facilities.**

The power of county government to provide services includes the power to provide necessary and convenient facilities to support the services.

**14-14-812. Cemetery access roads.**

(a) A "cemetery", as used in this section, means any burying place for the dead, a burial plot, a graveyard, or any land, public or private, dedicated and used for the

interment of human remains which includes at least six (6) grave markers.

**(b) (1)** The county judges of the several county governments in Arkansas shall be authorized to improve and maintain any roads across public or private lands used or to be used for access to a cemetery.

**(2)** The cemetery access roads shall be constructed to a standard and nature to permit their use by automobiles.

**14-271-109. Notice to One Call Center -- Exceptions.**

**(a)** Compliance with notice requirements of § 14-271-112 is not required for:

**(1)** The moving of earth by tools manipulated only by human or animal power;

**(2)** Any form of cultivation for agricultural purposes, digging for postholes on private property, farm ponds, land clearing, or other normal agricultural purposes which are not on a right-of-way of an operator;

**(3)** Work by a public agency or its contractors on a preengineered project;

**(4)** The opening of a grave in a cemetery; or

**(5)** Routine road work and general maintenance as performed in the right-of-way by state or county maintenance departments, but excluding any work or maintenance involving change of grade or clearing or widening drainage ditches.

**(b) (1)** Compliance with notice requirements of § 14-271-112 is not required of persons responsible for repair or restoration of service, or to ameliorate an imminent danger to life, health, property, or public safety.

**(2)** However, those persons shall give, as soon as practicable, oral notice of the emergency excavation or demolition to the One Call Center and request emergency assistance from the One Call Center in locating and providing immediate protection to its underground facilities.

**(3)** An imminent danger to life, health, property, or public safety exists whenever there is a substantial likelihood that loss of life, health, or property will result before the procedures under § 14-271-112 can be fully complied with.

**16-66-207. Exemption -- Family or public graveyards.**

**(a)** The clerk and recorder of deeds of the proper county, when any description of the metes and bounds of a family graveyard or public burial place shall be filed in his or her office, shall make a record of the description in the record of deeds, which shall be sufficient to exempt the land or burial place, not only from taxation, but also from execution.

**(b)** Not more than five (5) acres shall be so exempted under this section.

**17-44-104. Theft notification.**

**(a)** Any person may notify scrap metal recyclers of nonferrous metal of a known or

presumed theft of nonferrous metal products setting forth any information concerning the theft as might be available to that person, including without limitation:

- (1) The approximate quantity and size of the nonferrous metal products stolen;
- (2) The geographical area from which the nonferrous metal products were reported missing or presumed stolen; and
- (3) Any specific distinguishing marks on or in the nonferrous metal products or other method of identifying the nonferrous metal products.

(b) If notice of a known or presumed theft of nonferrous metal products is given to a scrap metal recycler under subsection (a) of this section and within ninety (90) days after the notice nonferrous metal products meeting the description in the notice are purchased by the scrap metal recycler or offered for sale to the scrap metal recycler, then the scrap metal recycler shall notify the local police or sheriff's department that the nonferrous metal products were purchased by or offered for sale to the scrap metal recycler.

(c) This section does not apply to transactions that involve only beverage containers.

#### **18-15-408. Cemeteries and graves.**

(a) (1) An operating authority of a municipal waterworks system shall file a notice of intent to condemn in the circuit court of the county where a cemetery or graves are situated if the operating authority determines that:

(A) Land occupied by the cemetery or by the graves will be flooded by an impounding lake;

(B) The water level of the lake will affect the graves underground;

(C) The lake may be contaminated by the graves; or

(D) The lands will be useful for waterworks purposes.

(2) The notice of intent to condemn shall set out the:

(A) Commonly known name of the cemetery, if any;

(B) Descriptions of the quarter sections of land upon which the cemetery or graves are situated;

(C) Description of a proposed new location of the cemetery or graves; and

(D) Name of the owner of the existing cemetery, if known.

(3) The notice shall take the place of the application to condemn which would be otherwise required under this subchapter.

(4) Service of process upon the owner, if known, shall be as specified in this

subchapter. Service upon all other interested parties shall be as follows:

**(A)** The notice shall be published one (1) time a week for four (4) consecutive weeks in some newspaper having a general circulation throughout the state in order to give the widest publicity to the municipality's intention;

**(B)** In addition, a printed copy of the notice shall be posted in three (3) conspicuous public places in the cemetery or immediately surrounding the graves;

**(C)** The notice shall be posted within three (3) days of filing the notice with the court; and

**(D)** The municipality shall, by affidavit filed with the court, give proof of posting of the notice.

**(5) (A)** Before filing the notice with the court, the municipality shall be required to select a tract of land at least equal in size to the cemetery to be condemned and shall describe the tract in the notice.

**(B)** The municipality shall be required to file with its notice a statement from the Department of Health approving the proposed new location.

**(6)** After the notice of intent has been published for four (4) weeks, as required by this section, the circuit court sitting without a jury shall determine if the proposed new location is suitable, and, if the court so finds, it shall enter an order to that effect. The owner of the cemetery or of the lands where the existing cemetery is located and the next of kin of any person buried in the cemetery or in the graves shall be entitled to appear in the proceeding and object to the proposed location and suggest other locations.

**(b) (1)** Thereafter, the municipality may file an application under the provisions of this subchapter for condemnation of the site so approved by the court, within a radius of four (4) miles of the existing cemetery.

**(2)** It is declared that the acquisition of the site shall be for public purposes and that the site may be condemned by the operating authority of a municipal waterworks system.

**(c) (1)** After judgment has been entered vesting title to the new site in the applicant, as set out in § 18-15-404, the court shall enter an order in the proceedings mentioned in subsection (a) of this section, vesting title to the new cemetery site in the persons owning the lands of the cemetery or graves to be relocated and vesting title in the municipality to the lands where the old cemetery or graves are located.

**(2)** The order vesting title to the new cemetery site in the owners of the old cemetery or grave sites shall be the compensation and damages to which the owners of the old sites are entitled.

**(d) (1)** Thereafter, the municipality, at its own expense, shall be required to remove all bodies, tombstones, and markers from the site of the original graves and to reinter the bodies in the new site, properly resetting tombstones and markers, if any, at the new site.

**(2)** The court may require the municipality to deposit with the clerk of the court a sum found by the court to be sufficient to ensure the performance of the obligation by the municipality.

**(3)** However, any surviving spouse or next of kin of a person whose grave is to be relocated may demand, prior to removal from the old grave site, that the municipality pay the expense of removing the body of the decedent to a cemetery selected by the surviving spouse or next of kin, the municipality paying the reasonable cost of the removal and reinterment.

**(e)** If the old cemetery site was fenced, the municipality shall be required to install a fence of similar type around the new cemetery site and shall be required to construct within the cemetery such hard-surfaced roads as may be necessary to give access to grave sites. The roads shall be of at least equal quality with the roads in the original cemetery site.

**18-15-301. Municipal corporations -- Power to condemn generally.**

**(a)** The right and power of eminent domain is conferred upon municipal corporations to enter upon, take, and condemn private property for the construction of wharves, levees, parks, squares, market places, or other lawful purposes.

**(b) (1)** For waterworks systems, it shall be no objection to the exercise of power that the property to be condemned is located in a different county from the municipal corporation.

**(2)** In addition, for electric transmission systems and electric distribution systems, it shall be no objection to the exercise of power that the property to be condemned is located outside the corporate limits of the municipal corporation or in a county other than the one wherein the municipal corporation is located.

**(3)** A municipal corporation shall have the power of eminent domain for its electric transmission system and electric distribution system, outside of its corporate limits without annexation of such territory, regardless of whether the territory has been allocated to an electric public utility or electric cooperative corporation, pursuant to a certificate of convenience and necessity or other authority from the Arkansas Public Service Commission, as long as the electric transmission system or electric distribution system being constructed by the municipal corporation is only for the purpose of serving customers of the municipal corporation and not for the purpose of serving electric public utility customers or electric cooperative customers at retail inside the territory allocated to an electric public utility or electric cooperative corporation pursuant to a certificate of convenience and necessity or other authority from the Arkansas Public Service Commission.

**(4) (A)** Before a municipal corporation exercises the power of eminent domain under this section, the municipal corporation shall provide written notice to any electric public utility or electric cooperative corporation that has received a certificate of convenience and necessity or other authority from the Arkansas Public Service Commission to serve retail customers in any area in which the power of eminent domain is to be exercised.

**(B) (i)** The municipal corporation shall also file a copy of the written notice

required under subdivision (b)(4)(A) with the Arkansas Public Service Commission.

**(ii)** The notice shall contain information regarding the facilities to be constructed by the municipal corporation in conjunction with the exercise of eminent domain, including without limitation routing, size, and voltage, in sufficient detail to reasonably allow the electric public utility or electric cooperative corporation to fully evaluate the impact of the facilities on public safety, reliability of the system of the electric public utility or electric distribution cooperative, or future system expansion plans of the electric public utility or electric cooperative corporation.

**(C) (i)** A municipal corporation shall not exercise the power of eminent domain under this section without obtaining a certificate of convenience and necessity from the Arkansas Public Service Commission if the electric public utility or electric cooperative corporation notifies the municipal corporation in writing within forty-five (45) days of its receipt of such notice that the exercise of the power of eminent domain would specifically endanger public safety, negatively impact reliability, or conflict with future construction plans of the electric public utility or electric cooperative corporation.

**(ii) (a)** The written notice shall be in sufficient detail to reasonably allow the municipal corporation to fully evaluate the problems identified.

**(b)** In such event, the municipal corporation may seek from the Arkansas Public Service Commission, in accordance with law, a certificate of convenience and necessity and exercise the power of eminent domain as may be required by the municipal corporation.

**(c) (1)** It shall be no objection to the exercise of power that the property to be condemned is a cemetery, if the purpose for which the cemetery is being taken is for an impounding lake for a supply of water or to supplement a supply of water for the waterworks system of the municipality, including land occupied by the cemetery adjacent to the impounding lake taken to prevent pollution of the supply or for an impounding dam to create the impounding lake.

**(2)** The power of a municipality to condemn a cemetery for those purposes shall extend to all cemeteries except those owned by the United States of America, the State of Arkansas, a county of the State of Arkansas, or a municipality of the State of Arkansas.

**(d) (1)** In case of water pipelines, electric transmission facilities, or electric distribution facilities, a right-of-way or easement therefor may be condemned, and rights-of-way and easements for the pipelines, electric transmission facilities, or electric distribution facilities may be condemned along and under railroad rights-of-way, if the ordinary use of the railroad rights-of-way are not obstructed thereby.

**(2)** The water pipelines, electric transmission facilities, or electric distribution facilities may be constructed and maintained across and under lands and waters of the state, but the ordinary use of the lands and waters shall not be unduly obstructed thereby.

**(3) (A)** The water pipelines, electric transmission facilities, or electric distribution facilities may be constructed and maintained under, across, and along public highways, roads, streets, and alleys, but the ordinary use of the public highways,

roads, streets, and alleys shall not be unduly obstructed thereby.

**(B)** At its own expense, the municipality constructing the water pipelines, electric transmission facilities, or electric distribution facilities shall properly backfill the trench in which the pipeline, electric transmission lines, or electric distribution lines are laid and shall restore any sidewalks, curbs, gutters, pavements, or surfacing cut or damaged by the construction or maintenance.

**(e)** As used in this section:

**(1)** "Electric distribution system", "electric distribution facilities", and "electric distribution lines" mean electric utility properties and facilities necessary for distributing electricity below sixty-nine kilovolts (69 kV) phase-to-phase to a municipal corporation's retail customers within its corporate limits or within any other area served by the municipal corporation pursuant to any grant of authority by the Arkansas Public Service Commission or any other contiguous municipal corporation pursuant to a franchise agreement or other grant of authority for retail electric service;

**(2)** "Electric transmission system or systems", "electric transmission facilities", and "electric transmission lines" mean electric utility properties and facilities necessary for transmitting electricity at sixty-nine kilovolts (69 kV) phase-to-phase or higher and not for service to a directly tapped, retail, end-use customer or customers or any wholesale customer or customers except municipal corporations. Any electric utility properties and facilities necessary for transmitting electricity at sixty-nine kilovolts (69 kV) phase-to-phase or higher constructed on lands acquired in whole or in part by the municipal corporation utilizing the power of eminent domain granted in this section may be connected only with the following defined entities for the life of the properties and facilities and no others:

**(A)** The municipal corporation's electric generation or transmission or distribution system;

**(B)** Any electric utility or an independent transmission system operator, independent transmission company, independent regional transmission group, or other independent transmission entity operating transmission facilities in this state; and

**(C)** The electric generation or transmission or distribution system owned by other municipal corporations owning an electric system;

**(3)** "Municipal corporations" includes consolidated municipal utility improvement districts owning an electric system; and

**(4)** "Or other lawful purposes" includes a waterworks system, an electric transmission system, or an electric distribution system in its entirety or any integral part thereof or any extension, addition, betterment, or improvement to an existing waterworks system, an electric transmission system, or an electric distribution system owned or operated by a municipal corporation.

**18-15-302. Municipal corporations -- Power to condemn -- Compensation for condemnation -- Taking cemetery land.**

(a) There shall be included in the award of compensation and damages for taking land occupied by a cemetery the reasonable cost of a new site of at least equal size. The new site shall be approved by the State Board of Health and also by the circuit court in which the condemnation proceedings are instituted.

(b) (1) The order and judgment condemning a cemetery shall require the municipality, at its own expense, to remove all bodies, tombstones, and markers from the site of the original cemetery, to reinter the bodies in the new site, and to properly reset the tombstones and markers in the new site.

(2) The court may require the municipality to deposit into the registry of the court a sum found by the court to be sufficient to ensure the performance of the obligation by the municipality.

(3) Nothing contained in this section shall prevent a surviving spouse or next of kin of a person buried in the cemetery from removing the body to another cemetery selected by him or her, the municipality paying the reasonable cost thereof, provided that the cost under this section, if demanded by the next of kin, shall not be less than the amount paid by the municipality for the same service when bodies are removed to a cemetery selected by the municipality.

(c) If any power, oil, gas, or any other public utility facilities shall be flooded by such an impounding lake, the lines may be likewise condemned, and the award of compensation and damages shall include the reasonable cost of relocating the power, oil, gas, or other public utility facility.

(d) If any portion of any county road will be flooded by an impounding lake, the municipality shall pay to the county the cost of relocating that portion of road.

#### **18-15-1401. Right of eminent domain to take land for burial purposes.**

(a) All cities of the first class and cities of the second class and incorporated towns, cemetery or burial associations, and persons owning land used for public burial purposes in the State of Arkansas are given and granted the right of eminent domain to condemn, take, and use land for public burial purposes.

(b) Power of eminent domain granted by this section may also be used to acquire land for the burial of veterans of the United States armed forces and their dependents, and the land may be transferred to the Department of Veterans Affairs, any other agency of the federal government, or to any other entity for use as a cemetery for veterans of the United States armed forces and their dependents.

(c) All entities granted the power of eminent domain under this section may accept donations from individuals or other legal entities for the purpose of compensating landowners for property acquired by eminent domain.

(d) The right of eminent domain granted by this section shall be exercised as provided in this subchapter.

#### **18-15-1402. Consent of two-thirds of members or owners required.**

No property shall be condemned and taken for public burial purposes by any city of

the first class or city of the second class or incorporated town, cemetery or burial association, or persons owning land used for public burial purposes without the concurrence in the bylaws, resolutions, or ordinances directing the same of two-thirds (2/3) of the whole number of members elected to the council of the city or town, or without the consent of two-thirds (2/3) of the members of the cemetery or burial association, and persons owning land used for public burial purposes.

**18-15-1403. Application.**

(a) When it shall be deemed necessary by the city or town, cemetery or burial association, or persons owning land used for public burial purposes to take private property for burial purposes, an application in writing shall be made to the circuit court of the proper county or the judge thereof in vacation, describing as correctly as may be, the property to be taken and the name of the owner of the land proposed to be condemned and taken.

(b) (1) Notice of the time and place of the application shall be given, either personally in the ordinary manner of serving process on the owner of the property or by publishing a copy of the application with a statement of the time and place at which it is to be made for three (3) weeks next preceding the time of application in some newspaper of general circulation in the county.

(2) The personal service as provided for in this section shall be made at least ten (10) days before the time of application when the owner is a resident of the county where the property is situated.

(3) The publishing of the notice of application in some newspaper of general circulation in the county where the property is situated shall be legal notice to the owner of the property when the owner is not a resident of the county where the property is situated.

**18-15-1404. Setting of time for inquiry.**

If it shall appear to the court or judge that notice has been served ten (10) days before the time of application, or has been published, and that the notice is reasonably specific and certain, then the court or judge shall set a time for the inquiry into the assessment of compensation by a jury before the court or judge.

**18-15-1405. Summoning of jury for inquiry.**

(a) A jury shall be summoned for the purpose of making the inquiry in the same manner that petit jurors are summoned in the circuit court for other purposes when the circuit court is regularly in session. If the hearing is before the judge out of term time, then the jury shall be summoned on order of the judge by the sheriff of the county.

(b) The inquiry and assessment shall be made at the time appointed unless for good cause it is continued to another day to be specified.

**18-15-1406. Determination of compensation -- Dispute.**

(a) The jury shall hear the evidence and determine the amount of compensation to be paid to the owners of the property so condemned.

**(b) (1)** In case of dispute as to the ownership, title, or interest of the property condemned, the amount of compensation determined by the jury may be paid into the court by the city or town, cemetery or burial association, or persons owning land used for public burial purposes.

**(2)** The right to the funds so paid in may be determined between the parties making claim thereto and the city or town, cemetery or burial association, or persons owning land used for public burial purposes may proceed to actually take the property after the payment into court as provided in this section.

**18-15-1407. Costs.**

The cost of the condemnation proceedings provided for in this subchapter shall be paid by the city or town, cemetery or burial association, or persons owning land used for public burial purposes instituting the condemnation proceeding, except costs of review or appeal or any other proceeding taken by the owner of the property after the assessment of compensation is made by the jury as provided for in this subchapter.

**18-15-1408. Public property.**

**(a)** If a cemetery located on land of a private landowner has been open to public use for a period of at least fifty (50) years, then the cemetery shall be deemed to be public property unless:

**(1)** The property has been enclosed by the landowner for at least one (1) year prior to an order of the quorum court providing for the care and management of the cemetery as provided for under subsection (b) of this section; or

**(2)** The cemetery has been operated by the landowner for at least one (1) year prior to an order of the quorum court providing for the care and management of the cemetery as provided for under subsection (b) of this section.

**(b) (1)** If, upon the petition of any person, the quorum court determines that a cemetery is public property under this section, the quorum court may issue an order providing for the management and care of the cemetery. The county may manage and care for the cemetery or may enter into an agreement allowing a nonprofit association or corporation to provide for the management and care of the cemetery.

**(2)** Upon issuing an order for the management and care of the public property, the quorum court shall notify the landowner of its order, based on the quorum court's finding that the property has become public property, and shall include a copy of the provisions of this section. The notice shall be by certified mail.

**(3)** No person or his or her heirs shall have, sue, or maintain any action or suit, either in law or equity, for any cemetery lands more than six (6) months after the person receives the notice required under this section.

**(c)** The rights of the public to cemetery property under this section shall be in the nature of an adverse possession. No additional conditions for adverse possession shall be imposed in addition to those provided by this section.

**18-48-601. Perfection of lien.**

A person furnishing or placing in a cemetery or burial ground, a monument, gravestone, enclosure, or other structure has a lien thereon for the agreed price thereof, or the part remaining unpaid, with interest from the time the amount was due, upon filing with the superintendent or person in charge of the cemetery or burial ground a notice of lien as provided in this subchapter.

**18-48-602. Notice of lien.**

(a) (1) The notice may be filed at any time after the completion of the work, but must be filed within one (1) year after the agreed price for furnishing or placing the monument, gravestone, enclosure, or other structure becomes due.

(2) The notice shall:

(A) State that the lienor has a lien on the monument, gravestone, enclosure, or structure for the purchase price thereof, or some unpaid part of the purchase price, with interest, specifying the amount agreed to be paid and the amount unpaid;

(B) Provide a description of the monument, gravestone, enclosure, or other structure;

(C) Provide the location of the plot upon which the monument, gravestone, enclosure, or other structure stands; and

(D) Provide the names of the persons with whom the agreement for the purchase and erection of the structure, or for the performance of labor, was made.

(b) The notice shall be signed and verified by the lienor.

(c) The lienor shall, within ten (10) days after the filing of the notice, serve a copy, personally or by mail, upon the person with whom the agreement for the purchase and erection of the monument, gravestone, or any other structure, or for the performance of labor thereon, was made and upon the owner of the lot upon which the monument, gravestone, or other structure is erected, if the name and residence of the owner can, with reasonable diligence, be ascertained.

**18-48-603. Action to enforce lien.**

(a) After the service of the notice, an action to recover the amount of the debt and to enforce a lien therefor may be maintained by the lienor against the person with whom the agreement was made for the purchase and erection of the monument, gravestone, enclosure, or other structure, or for the performance of labor thereon.

(b) If the lienor succeeds in establishing the lien, the judgment recovered may authorize removal of the monument, gravestone, enclosure, or other structure from the burial ground or cemetery to satisfy the amount of the judgment.

**18-48-604. Restrictions on persons in charge of cemeteries.**

(a) The superintendent, or other person in charge of a cemetery or burial ground, shall not permit the removal, alteration, or inscription of a monument, gravestone,

enclosure, or other structure against which a lien exists after the notice of the lien has been filed and served as prescribed in this subchapter, except pursuant to the terms of a judgment recovered in an action brought to enforce the lien.

**(b)** No officer of a cemetery association, or other person connected with a cemetery or burial ground, shall hinder or obstruct the removal in a proper manner of any monument, gravestone, enclosure, or other structure pursuant to the terms of the judgment.

**20-17-101. Death -- Legal definition.**

**(a)** An individual is dead who has sustained either:

**(1)** Irreversible cessation of circulatory and respiratory functions; or

**(2)** Irreversible cessation of all functions of the entire brain, including the brain stem.

**(b)** A determination of death shall be made in accordance with accepted medical standards.

**20-17-102. Arkansas Final Disposition Rights Act of 2009.**

**(a) (1)** This section may be cited as the "Arkansas Final Disposition Rights Act of 2009".

**(2)** As used in this section:

**(A)** "DD Form 93" means a United States Department of Defense Record of Emergency Data or its successor form;

**(B)** "Died while serving" means the death of a person in a capacity when the secretary of the military service has the authority to provide for the recovery, care, and disposition of the remains of the person as provided under 10 U.S.C. § 1481(a)(1)-(8) as in effect on January 1, 2011; and

**(C)** "Final disposition" means the burial, interment, cremation, removal from Arkansas, or other authorized disposition of a dead body or fetus.

**(b) (1) (A)** Except as provided under subdivision (b)(2) of this section, an individual of sound mind and eighteen (18) or more years of age may execute at any time a declaration specifying the final disposition of his or her bodily remains at his or her death, provided the disposition is in accordance with existing laws, rules, and practices for disposing of human remains.

**(B)** The declaration of final disposition executed under this section shall be signed by the declarant or another at the declarant's direction and shall be witnessed by two (2) individuals.

**(C)** Additional consent of any other person is not required if the declaration of final disposition contains a disposition authorized under this section and is otherwise valid under this section.

**(2)** Notwithstanding any other declaration made under this section or any other law, if the decedent died while serving in any branch of the armed forces of the United States, the National Guard, or a reserve component of the armed forces, the decisions regarding the final disposition for the decedent shall be made by the person authorized to direct disposition on the DD Form 93 completed by the decedent prior to death.

**(c)** Except as provided under subdivision (b)(2) of this section, a person having possession, charge, or control of the declarant's human remains following the death of a person who has executed a declaration of final disposition shall not knowingly dispose of the body in a manner inconsistent with the declaration.

**(d) (1)** The right to control the disposition of the remains of a deceased person, the location, manner, and conditions of disposition, and arrangements for funeral goods and services to be provided vests in the following in the order named, provided such person is eighteen (18) years of age or older and is of sound mind:

**(A)** First, if the decedent died while serving in any branch of the armed forces of the United States, the National Guard, or a reserve component of the armed forces, the decisions regarding the final disposition for the decedent shall be made by the person authorized to direct disposition on the DD Form 93 completed by the decedent prior to death;

**(B)** Second, a person appointed by the decedent in the decedent's declaration of final disposition executed before his or her death, in accordance with this section;

**(C)** Third, the surviving spouse;

**(D)** Fourth, the sole surviving child of the decedent or if there is more than one (1) child of the decedent, the majority of the surviving children;

**(E) (i)** Fifth, the surviving parent or parents of the decedent.

**(ii)** If one (1) of the surviving parents is absent, the remaining parent shall be vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving parent;

**(F)** Sixth, the surviving brother or sister of the decedent or if there is more than one (1) sibling of the decedent, the majority of the surviving siblings;

**(G)** Seventh, the surviving grandparent of the decedent or if there is more than one (1) surviving grandparent, the majority of the grandparents;

**(H)** Eighth, the surviving grandchild of the decedent or if there is more than one (1) surviving grandchild, the majority of the grandchildren;

**(I)** Ninth, the guardian of the person of the decedent at the time of the decedent's death, if one had been appointed;

**(J) (i)** Tenth, the person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent.

**(ii)** If there is more than one (1) person of the same degree, any person of that degree may exercise the right of disposition;

**(K)** Eleventh, any representative of state government or a political subdivision thereof that has the statutory obligation to provide for the disposition of the remains of the decedent, including but not limited to any entity authorized to take possession of the remains under § 20-17-701 et seq.; and

**(L)** In the absence of any person under this subsection, any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including without limitation the personal representative of the decedent's estate or the funeral director with custody of the body, after attesting in writing that a good faith effort has been made to no avail to contact the individuals under this subsection.

**(2) (A)** Within each class, less than the majority of the class shall be vested with the rights of this section if they have used reasonable efforts to notify all other members of the class of their instructions and are not aware of any opposition to those instructions on the part of more than one-half (1/2) of all surviving children.

**(B)** In this subdivision, "class" means surviving children, siblings, grandparents, or grandchildren, where applicable.

**(e) (1)** A person entitled under this section to the right of disposition shall forfeit that right, with the right passing to the next qualifying person as listed in this section, in the following circumstances:

**(A) (i)** Any person charged with murder under § 5-10-101, § 5-10-102, or § 5-10-103, or manslaughter under § 5-10-104, in connection with the decedent's death, and whose charges are known to the funeral director.

**(ii)** If the charges against such person are terminated by an acquittal, dismissal, or nolle prosequi, the right of disposition is returned to the person;

**(B)** Any person who does not exercise his or her right of disposition within two (2) days of notification of the death of the decedent or within five (5) days of the decedent's death, whichever is earlier;

**(C)** Any person who possesses the right of disposition, but who is unwilling to assume the liability for the costs of such arrangements and disposition if sufficient resources are not available in the decedent's estate to pay such costs at the time the costs become due and payable;

**(D) (i)** When the person entitled to the right of disposition and the decedent were estranged at the time of death.

**(ii) (a)** As used in this section, "estranged" means a physical and emotional separation from the decedent at the time of death which has existed for a period of time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

**(b)** This shall also include the filing of a complaint for divorce by either party

that remains pending at the time of the decedent's death or the separation by living apart of the decedent and spouse for a period of more than ninety (90) days preceding the decedent's death; and

**(E)** Where the Department of Human Services has custody of the decedent and a person authorized under subsection (d)(1) of this section has not claimed the right to possession of the decedent's remains within forty-eight (48) hours following the decedent's death.

**(2)** If there is a dispute between those sharing the right of disposition as to the decisions regarding the decedent's remains, the circuit court for the county where the decedent resided may award the right of disposition to the person it determines to be the most fit and appropriate to carry out the right of disposition. The following provisions shall apply to the court's determination under this section:

**(A)** If the persons holding the right of disposition are two (2) or more persons with the same relationship to the decedent and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of the persons or a funeral director with custody of the remains may file a petition asking the circuit court to make a determination in the matter;

**(B)** In making a determination under this subdivision (e)(2), the circuit court shall consider the following:

**(i)** The reasonableness and practicality of the proposed funeral arrangements and disposition;

**(ii)** The degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;

**(iii)** The desires of the person or persons who are ready, able, and willing to pay the cost of the funeral arrangements and disposition;

**(iv)** The convenience and needs of other families and friends wishing to pay respects;

**(v)** The desires of the decedent; and

**(vi)** The degree to which the funeral arrangements would allow maximum participation by all wishing to pay respect;

**(C) (i)** In the event of a dispute regarding the right of disposition, a funeral director is not liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the funeral director receives a court order or other written agreement signed by the parties in the disagreement that decides the final disposition of the remains.

**(ii)** If the funeral director retains the remains for final disposition while the parties are in disagreement, the funeral director may embalm or refrigerate and shelter the body, or both, in order to preserve it while awaiting the final decision of the circuit court and may add the cost of embalming and refrigeration and sheltering to the final disposition costs.

**(iii)** If a funeral director brings an action under this section or is made a party to an action concerning the right of disposition of the decedent's remains, either individually or as an agent of any entity, the funeral director may add the legal fees and court costs associated with a petition under this section to the cost of final disposition.

**(iv)** This section may not be construed to require or to impose a duty upon a funeral director or bring an action under this section.

**(v)** A funeral director may not be held criminally or civilly liable for choosing not to bring an action under this section; and

**(D) (i)** Except to the degree it may be considered by the circuit court under this subdivision (e)(2), the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and final disposition does not give that person a greater right to the right of disposition than the person would otherwise have.

**(ii)** The personal representative of the estate of the decedent does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the person would otherwise have.

**(f) (1)** Any person signing a funeral service agreement, cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of, and the party's authority to order such disposition.

**(2)** A funeral establishment, cemetery, or crematory shall have the right to rely on such funeral service contract or authorization and shall have the authority to carry out the instructions of the person or persons whom the funeral home, cemetery, or crematory reasonably believes holds the right of disposition.

**(3)** Employees of funeral homes, cemeteries, or crematories shall have no responsibility to contact or to independently investigate the existence of any next-of-kin or relative of the decedent.

**(4)** If there is more than one (1) person in a class who are equal in priority and the funeral home, cemetery, or crematory employee has no knowledge of any objection by other members of such class, that employee shall be entitled to rely on and act according to the instructions of the first such person in the class to make funeral and disposition arrangements, provided that no other person in such class provides written notice of his or her objections to that employee.

**(g)** A funeral director shall have complete authority to control the final disposition and to proceed under this section to recover reasonable charges for the final disposition when the following applies:

**(1)** If after a good faith effort has been made with no success to contact the individuals listed under subdivision (d)(1) of this section, the funeral director has no knowledge that any of the persons described in subdivision (d)(1) of this section exist or if none of the persons so described can be found after reasonable inquiry or contacted by reasonable means; and

**(2) (A)** No person or entity has assumed responsibility for disposition of the remains within five (5) days of the decedent's death or within twenty-four (24) hours after receiving written notice of the facts, whichever is longer, but in no event longer than seven (7) days after the date of the decedent's death.

**(B)** Written notice may be delivered by hand, United States Postal Service, facsimile transmission, or other reliable means of electronic transmission.

**(h) (1)** Crematory operators shall not be liable for civil damages for cremating human remains if a declaration of final disposition indicating that the declarant wished to be cremated has been executed under this section.

**(2)** Crematory operators shall not be liable for civil damages for failing to cremate human remains if:

**(A)** The declarant executed a declaration of final disposition indicating that he or she did not wish to be cremated; or

**(B)** The crematory operator knows that there is a dispute as to the validity of the declaration of final disposition.

**(i)** If a decedent did not execute a declaration of final disposition, the person having lawful possession, charge, or control of the decedent's human remains has the right to dispose of the remains in any manner that is consistent with existing laws, rules, and practices for disposing of human remains, including the right to have the remains cremated.

**(j)** A funeral home shall not be liable for any damages for carrying out the disposition of a decedent's human remains in any lawful manner that is consistent with a decedent's declaration of final disposition.

**(k) (1)** In the event that a person claiming the right of disposition directs the cremation of the remains of a decedent or in the event that a funeral director assumes responsibility for the disposition of the remains of a decedent under this section and proceeds to cremate the remains of the decedent, and thereafter no person or entity identified in (d)(1) of this section claims custody of the cremated remains for a period of ninety (90) days following the cremation, the funeral director may dispose of the cremated remains of the decedent.

**(2)** A funeral home, cemetery, crematory, or an employee who disposes of the remains of a decedent under the terms of this section shall not be subject to criminal or civil liability or subject to disciplinary action for such actions.

**(l)** A funeral home, cemetery, crematory, or an employee who relies in good faith upon the instruction of an individual claiming the right of disposition shall not be subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with the instruction.

**(m)** Nothing in this section shall be construed to affect, repeal, or replace the provisions and procedures set forth in the Revised Arkansas Anatomical Gift Act, § 20-17-1201 et seq.

### **20-17-103. Notification of death.**

Within thirty (30) calendar days after a death certificate is filed pursuant to § 20-18-601, the Division of Vital Records of the Division of Health of the Department of Health and Human Services shall provide notification of the death to the county and circuit court clerks in the county where the deceased was a resident.

### **20-17-1001. Title.**

This subchapter may be cited as the "Cemetery Act for Perpetually Maintained Cemeteries".

### **20-17-1002. Definitions.**

As used in this subchapter:

**(1)** "Board" means the Arkansas Cemetery Board;

**(2)** "Care and maintenance" means the continual maintenance of the cemetery grounds and graves in keeping with a properly maintained cemetery;

**(3)** "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of human remains. It may be either a burial park for earth interments, a mausoleum for vault or crypt interments, or a combination of one (1) or more thereof;

**(4)** "Cemetery company" means an individual, partnership, corporation, limited liability company, or association, now or hereafter organized, owning or controlling cemetery lands or property and conducting the business of a cemetery or making an application with the Arkansas Cemetery Board to own or control the lands or conduct the business;

**(5)** "Columbarium" means a structure or room or space in a building or structure used or intended to be used for the interment of cremated human remains;

**(6)** "Crypt" means a chamber of sufficient size to inter the remains of a deceased person;

**(7)** "Infant interment garden" means a designated area in a perpetual care cemetery for the interments of infants and children no more than twenty-four (24) months of age;

**(8)** "Interment" means the lawful disposition of the remains of a deceased person as provided by law;

**(9)** "Lawn crypt" means an interment space sometimes referred to as a "belowground crypt", "westminister", or "turf top crypt" in a preplaced chamber or burial vault either side-by-side or at multiple depths, covered by earth and sod;

**(10)** "Lot or grave space" means a space of ground in a cemetery used or intended to be used for interment therein;

**(11)** "Mausoleum" means a community-type structure or room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches;

**(12)** "Niche" means a space in a columbarium that is used or intended to be used for the interment of the cremated remains of one (1) or more deceased persons;

**(13)** "Permit holder" means a cemetery company that holds a permit issued by the board to own or operate a perpetual care cemetery; and

**(14)** "Perpetual care cemetery" means a cemetery for the benefit of which a permanent maintenance fund has been established in accordance with this subchapter.

### **20-17-1003. Application of subchapter -- Exceptions.**

**(a)** This subchapter applies to all cemeteries and burial grounds located in the State of Arkansas unless the cemetery is owned and operated by:

**(1)** A church or similar religious organization;

**(2)** A municipality or county government;

**(3)** A family, exclusively for its own family use; or

**(4)** A community nonprofit association in which no person is entitled to receive pecuniary profit other than the bookkeeper and maintenance crew.

**(b)** Persons who do not and have never received more than two thousand dollars (\$2,000) gross proceeds in any one (1) year from the sale of parcels of realty to be used as human burial sites are exempt from this subchapter.

**(c)** All cemeteries that advertise or operate all or a part thereof as perpetual care or permanent maintenance cemeteries shall be subject to this subchapter regardless of the organization of the person or group owning and operating the cemetery or burial grounds.

### **20-17-1004. Arkansas Cemetery Board -- Creation -- Members.**

**(a)** The Arkansas Cemetery Board is to consist of seven (7) members selected as follows:

**(1)** The Securities Commissioner or his or her designated deputy shall be a voting member of the board;

**(2)** Six (6) members shall be appointed by the Governor for terms of four (4) years, as follows:

**(A)** Four (4) of the six (6) members appointed by the Governor shall be owners or operators of a licensed perpetual care cemetery in this state;

**(B)** One (1) member shall be appointed by the Governor and shall be a citizen of the State of Arkansas, of good character, and a qualified elector, but this person

shall not have any interest in a cemetery or funeral home either within or without the State of Arkansas; and

**(C)** One (1) member shall be sixty (60) years of age or older, appointed from the state at large, subject to the confirmation of the Senate, and shall represent the elderly. This member shall not be actively engaged in or retired from any profession or occupation which is regulated by the board.

**(b) (1)** The Governor shall appoint one (1) alternate member for the same term and having the same qualifications as a regular member. This member shall substitute for any regular member when a conflict of interest disqualifies a regular member.

**(2)** If a matter comes before the board involving a cemetery in which a member has a financial interest, then the member is disqualified from participating in the discussion or vote on the matter, and the alternate member shall substitute for the disqualified member.

**(3)** The alternative member shall substitute for an absent member if necessary to constitute a quorum under § 20-17-1005(c).

**(c)** Vacancies on the board due to death, resignation, or other cause of any appointed member shall be filled by appointment of the Governor for the unexpired portion of the term in the same manner as was required for the initial appointment.

**(d)** Members shall serve without pay or other compensation for their services except that members may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

#### **20-17-1005. Arkansas Cemetery Board -- Proceedings.**

**(a)** Any action taken by the Arkansas Cemetery Board shall be by the majority vote of the board members who are present at the meeting when the action is taken.

**(b)** The cemeterian member of the board with the greatest seniority on the board shall be chair of the board, but if the person declines the chairship, then the cemeterian with the next highest seniority on the board shall be chair.

**(c)** Four (4) members of the board shall constitute a quorum.

**(d)** The board shall meet subject to call of the chair or upon written demand of any two (2) members.

**(e)** Any order by the board under this subchapter shall be subject to review by the Pulaski County Circuit Court or by the circuit court of the county in which any part of the cemetery lies, provided that an application for review of the order is made within thirty (30) days of the date of the order.

#### **20-17-1006. Arkansas Cemetery Board -- Powers and duties.**

The Arkansas Cemetery Board shall have the authority to:

**(1)** Conduct at any time and from time to time such reasonable periodic, special,

or other examination of any cemetery or cemetery company, including, but not limited to, an examination of the physical condition or appearance of the cemetery, the financial condition of the company and any trust funds maintained by the company, and such other examinations as the board or Securities Commissioner deems necessary or appropriate in the public interest. The examinations shall be made by members or representatives of the board or by a certified public accountant or registered public accountant as authorized in § 20-17-1007;

**(2)** Issue or amend permits to operate a cemetery in accordance with this subchapter;

**(3)** Suspend or revoke permits to operate a cemetery when any cemetery fails to comply with this subchapter, rules promulgated pursuant to this subchapter, or any order of the board;

**(4)** Make rules, regulations, and forms to enforce this subchapter;

**(5)** Require every cemetery company to observe minimum accounting principles and practices and make and keep such books and records in accordance therewith for such period of time as the board may by rule prescribe;

**(6) (A)** Subpoena witnesses, books, and records in connection with alleged violations of this subchapter or rules or orders of the board. With the approval of the chair of the board or two (2) board members, the Securities Commissioner may issue subpoenas.

**(B)** In case of contumacy or refusal to obey a subpoena issued to any person, the Pulaski County Circuit Court, upon application by the board, may issue to the person an order requiring him or her to appear before the board or the person designated by the board. Failure to obey the order of the court may be punished by the court as a contempt of court;

**(7)** Require additional contributions to the permanent maintenance fund of the cemetery where provided for in this subchapter, including, but not limited to, contributions not to exceed three thousand dollars (\$3,000) whenever any cemetery company fails to properly care for and maintain or preserve the cemetery;

**(8) (A)** Apply to the Pulaski County Circuit Court to enjoin any act or practice and to enforce compliance with this subchapter or any rule, regulation, or order pursuant to this subchapter whenever it appears to the board, upon sufficient grounds or evidence satisfactory to the board, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this subchapter or any rule or regulation pursuant to this subchapter.

**(B)** The court may not require the board to post a bond;

**(9)** Apply to the circuit court of the county in which the cemetery is located for appointment of a receiver or conservator of the cemetery corporation or its permanent maintenance fund when it appears to the board that a cemetery corporation is insolvent or that the cemetery corporation, its officers, directors, agents, or the trustees of its permanent maintenance fund have violated this subchapter and the rules promulgated under this subchapter or have failed to comply with any board order;

**(10)** By rule increase the amount of a deposit required by § 20-17-1016 if the board determines that a greater sum is necessary to assure that the permanent maintenance fund will earn sufficient income to provide for the care and maintenance of the cemetery; and

**(11) (A)** Purchase insolvent, licensed perpetual care cemeteries that have been in court-ordered receivership or conservatorship for at least five (5) years.

**(B)** If the taking of legal possession of the cemetery requires the payment of consideration, any payment made by the board shall not exceed one thousand dollars (\$1,000).

**20-17-1007. Examination of cemetery.**

**(a) (1) (A)** Each cemetery company examined in accordance with § 20-17-1006 shall pay to the Arkansas Cemetery Board a fee for each examination as the board shall prescribe by rule.

**(B)** In addition, the cemetery company shall pay to the board the amount of expenses and stipends paid by the board to any board member examining the physical condition or appearance of a cemetery when the examination is ordered by the board on its own motion or on request of an interested individual.

**(2)** However, all examinations shall be conducted by at least one (1) examiner or board member, and the examinations shall be conducted only pursuant to an order of the board.

**(b) (1)** In lieu of any financial examination which the board shall be authorized to make, the board may accept the audit of an independent certified public accountant, provided that the Securities Commissioner has notified the cemetery company that the audit would be accepted and that the cemetery company has notified the commissioner in writing that an audit would be prepared.

**(2)** The costs of the audit shall be borne by the cemetery company, and the scope of the audit shall be at least equal to the scope of the examination required by the board.

**20-17-1008. Permit -- Application.**

**(a) (1)** Prior to making application to the Arkansas Cemetery Board for a permit to establish and operate a new cemetery or for the extension of the boundaries of an existing cemetery, the person proposing to make application shall cause to be published weekly for three (3) weeks in a newspaper of general circulation in the county in which the proposed cemetery is located a notice that an application will be filed with the board to establish or extend the boundaries of a cemetery in the county.

**(2)** The publication shall contain a legal description of the land to be used as a cemetery and a statement that any individual or group of individuals desiring to protest the establishment or extension of the cemetery may do so by filing a statement in writing with the board.

**(b) (1)** Whenever it is proposed to locate a new cemetery or extend the boundaries of an existing cemetery under this subchapter, then the cemetery company so proposing shall file an application for the issuance of a permit with the board.

**(2)** The application shall describe accurately the location and boundaries of the proposed cemetery or addition.

**(3)** The application shall be accompanied by:

**(A)** The recommendation of the mayor or governing official of the municipality if the cemetery is to be located within the corporate limits of a municipality or the recommendation of the county judge of the county within which the cemetery is to be located if outside the corporate limits of a municipality. The recommendation shall state the need and desirability of the proposed cemetery or extension. This recommendation shall be in lieu of the application and permit required in § 20-17-903;

**(B)** A fee of:

**(i)** One thousand five hundred dollars (\$1,500) for filing an application for a new cemetery; or

**(ii)** Four hundred dollars (\$400) for filing an application to extend the boundaries of an existing cemetery;

**(C)** A survey and map of the cemetery or extension;

**(D)** A set of rules and regulations for the use, care, management, and protection of the cemetery;

**(E)** The proposed method of establishing a permanent maintenance fund;

**(F)** Proof of publication as set forth in subsection (a) of this section of the required notice of intention to apply with the board;

**(G)** A copy of a current title opinion by an Arkansas-licensed attorney or title insurance policy which reflects that the applicant has or will have good and merchantable title to the land covered by the permit or extension;

**(H)** A notarized statement disclosing any current or future lien or mortgage on the land covered by the permit;

**(I)** A notarized statement from any current or future lienholder or mortgage holder on the land covered by the permit or extension that all paid-in-full burial spaces will be released from the lien or mortgage at least semi-annually;

**(J)** A copy of the perpetual care trust agreement if the application is for a new cemetery permit;

**(K)** A current balance sheet of the applicant prepared by an independent certified public accountant in accordance with generally accepted accounting principles which reflects that the applicant has a minimum of twenty thousand dollars (\$20,000) net worth; and

(L) Any other evidence which would tend to show a public need for the proposed cemetery or extension may be included, such as a petition from landowners in the county who believe that a need exists for any additional cemetery or extension.

(4) The burden of establishing public need shall be upon the applicant.

(c) All applications shall be made under oath and filed with the Securities Commissioner not less than twenty (20) days prior to the board meeting at which the application is to be considered.

(d) The board shall have authority to require any cemetery company to submit additional information as it may by rule or order prescribe.

**20-17-1009. Permit -- Investigation by Department of Health.**

(a) Upon submission of an application to the Arkansas Cemetery Board for the issuance of a permit for a new cemetery or for an extension of the boundaries of an existing cemetery, the applicant shall request that the Department of Health investigate the proposed cemetery location or extension to determine if the proposed new or expanded location will be sanitary.

(b) In making the investigation, the department shall take into consideration the proximity of the proposed cemetery or extension to human habitation, the nature of the soil, the drainage of the ground, the danger of pollution of springs or streams of water, and any other conditions concerning whether the proposed new or expanded location will be sanitary.

(c) (1) After completing the investigation, the department shall promptly submit in writing its approval or disapproval of the proposed new or expanded location from a sanitary standpoint to the board.

(2) If the department disapproves the proposed cemetery location or extension, further action on the application shall be suspended until the applicant acquires a location which meets with the approval of the department or until other action, as necessary, is taken.

(d) The cemetery shall pay the department any fee required by law.

**20-17-1010. Permit -- Investigation and issuance by the Arkansas Cemetery Board.**

(a) If the cemetery company has fully complied with this subchapter and if the Department of Health approves the location of the new cemetery or the extension of the boundaries of an existing cemetery, then the application shall be submitted to the Arkansas Cemetery Board for investigation and for approval or disapproval.

(b) Immediately upon the submission of each application, the board shall make such investigation as shall enable it to determine the fitness of the cemetery company, the need for the cemetery, and all other questions bearing directly or indirectly upon the need or desirability from the public standpoint of the proposed cemetery or extension.

**(c) (1)** If the application for a new cemetery is approved, the board shall issue a permit to the applicant only after the applicant has filed proof with the board that an initial principal deposit of at least five thousand dollars (\$5,000) has been made to the permanent maintenance fund. This initial five thousand dollars (\$5,000) can be used to meet the liability due the permanent maintenance fund for the first paid-in-full burial space sales sold by the permit holder.

**(2)** The permit shall be filed in the court of the county in which the cemetery is located and with the department.

**20-17-1011. Permit -- Amendment.**

**(a)** Whenever it is proposed that any cemetery subject to this subchapter amend its present permit, whether for construction of a mausoleum, reduction of boundaries, reduction or increase in percentage of gross sales proceeds to be placed in the permanent maintenance fund, or other amendment, then the cemetery company shall file an application for amendment of the permit.

**(b)** The application shall be accompanied by:

**(1)** A fee of four hundred dollars (\$400);

**(2)** A statement of each proposed amendment;

**(3)** Statements, documents, and other information necessary to provide justification for the amendment;

**(4)** If the amendment is for construction of a mausoleum or similar structure, the application shall also include:

**(A)** Plans and specifications of the structure;

**(B)** A report of the inspection of the plans by the Department of Health;

**(C)** A copy of the sales contracts and conveyance documents proposed to be used;

**(D)** A proposed contribution to the permanent maintenance fund;

**(E)** A statement of whether the amount of the sales force will be utilized and of how preconstruction sales and interments will be handled;

**(F)** The location of the proposed structure;

**(G)** The estimated completion date;

**(H)** Either of the following, when sales proceeds may be received by the cemetery company prior to completion of construction and payment in full of the structure:

**(i)** An executed escrow agreement approved by the Arkansas Cemetery Board with a federally insured financial institution or other financial institution approved by the board which provides among other things that one hundred percent (100%) of

the sales proceeds collected prior to the completion and payment in full of the structure will be placed into escrow; or

**(ii) (a)** An executed copy of the construction agreement for the structure which sets forth the total construction cost and the date the construction will be completed with either an executed irrevocable letter of credit from a federally insured financial institution or other financial institution approved by the board equal to one hundred twenty-five percent (125%) of the total cost of the structure, a cash bond posted with a federally insured financial institution or other financial institution approved by the board equal to one hundred thirty percent (130%) of the total cost of the structure, or a construction performance bond payable to the board in the amount equal to the total cost of the structure as set forth in the construction agreement.

**(b)** All letters of credit and bonds, and their issuers, shall be approved by the board. The letter of credit shall state that the funds provided shall be paid to the board for the purpose of completing the construction of the structure or paying in full the completed structure if not done prior to the completion date set forth in the construction agreement. The construction performance bond shall state that the insurer shall advance the funds necessary to complete the construction of the structure or pay for the completed structure, if not done prior to the date set forth in the construction agreement. The cash bond shall provide that the financial institution shall pay the cash proceeds of the bond upon order of the board. The letters of credit or construction bonds shall state that if the structure is not completed and paid for in full within the maximum time provided for construction under this section, such letters of credit and bonds shall be used to complete and pay for the structure;

**(I)** Certification of an estimated start date for construction to take place no later than thirty-six (36) months after the date of the permit and further certifying completion within five (5) years after the date of the permit unless extended for good cause by the board; and

**(J)** Other information necessary to show that construction will be done in a good and workmanlike manner and be fireproof; and

**(5)** Other information as the board may by rule or order require.

**(c)** Eight (8) complete copies of the application for the amendment of the permit shall be filed with the Securities Commissioner at least twenty (20) calendar days prior to the meeting at which the board will consider the application.

**20-17-1012. Permit -- Transfer of ownership.**

**(a)** As used in this section, "controlling interest" means the direct or indirect power to direct the management and policies of a perpetual care cemetery or cemetery company by contract or otherwise, other than as an officer or employee of the perpetual care cemetery or cemetery company.

**(b) (1) (A)** If a change is proposed in the controlling interest of a perpetual care cemetery or a cemetery company or an organization that, directly or indirectly owns a controlling interest in the perpetual care cemetery or cemetery company, the cemetery company that holds the current permit and the individual or organization proposing to gain the controlling interest shall file an application for the issuance of a

new permit with the Arkansas Cemetery Board.

**(B)** A controlling interest is presumed to exist if an individual or entity directly or indirectly:

**(i)** Owns or controls fifty-one percent (51%) or more of the aggregate number of the issued or outstanding ownership interest of a perpetual care cemetery or cemetery company; or

**(ii)** Holds proxies with the power to vote or voting rights to proxies representing fifty-one percent (51%) or more of the aggregate number of the issued or outstanding ownership interest of a perpetual care cemetery or cemetery company.

**(2)** The application shall be accompanied by:

**(A)** A fee of one thousand five hundred dollars (\$1,500);

**(B)** A statement of changes, if any, in the survey and map of the cemetery;

**(C)** A set of rules and regulations for the use, care, management, and protection of the cemetery;

**(D)** The proposed method of continuing the permanent maintenance fund for the cemetery;

**(E)** A statement of the proposed transfer;

**(F)** A copy of a current title opinion by an Arkansas-licensed attorney or title insurance policy that reflects that the current permit holder has good and merchantable title to the land covered by the permit;

**(G)** A notarized statement from the seller and purchaser disclosing any current or future lien or mortgage on the land covered by the permit;

**(H)** A notarized statement from each current or future lienholder or mortgage holder on the land covered by the permit that all paid-in-full burial spaces will be released from the lien or mortgage at least semiannually;

**(I) (i)** A current detailed accounting of all paid-in-full merchandise contracts or accounts of the permit holder for which the merchandise has not been delivered to the purchaser or placed in inventory for the benefit of the purchaser.

**(ii)** The accounting shall be on an individual contract or account basis and contain the name of the purchaser, the contract or account number, the date of the contract, the gross amount of the contract, a description of the merchandise purchased, the date the contract or account was paid in full, and the specific location where the merchandise is stored;

**(J)** A current notarized statement from the permit holder that the application contains a complete and accurate accounting of all of his or her outstanding accounts receivable, discounted notes, and paid-in-full merchandise accounts or contracts for which the merchandise has not been delivered to the purchaser or placed in

inventory for the benefit of the purchaser;

**(K)** A current notarized statement from the purchaser or organization gaining a controlling interest that it will assume the responsibility and liability for the accounts, notes, and contracts of the permit holder contained in the accountings and schedules filed with the application;

**(L)** The financial statement of the purchaser required by rule of the board showing that the purchaser has a minimum net worth of twenty thousand dollars (\$20,000);

**(M)** A copy of the sales contract, transaction documents, or conveyance documents; and

**(N)** Any additional information required by the board or the Securities Commissioner.

**(3)** The board may for good cause waive all or part of an application requirement if the purchaser of a perpetual care cemetery is a state, city, or municipal government or a nonprofit organization as defined by § 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

**(4)** Each permit holder of an interest in the cemetery company is liable for any funds and transactions up to the date of the sale or transfer.

**(c) (1)** Before the sale or transfer, the permit holder shall notify the board of the proposed sale or transfer and shall submit to the board, under oath, any document or record the board may require in order to demonstrate that the permit holder is not indebted to the permanent maintenance fund.

**(2)** After the transfer of ownership or a controlling interest, the permit holder shall present to the board proof that payments into the permanent maintenance fund are current.

**(3)** The board may require proof of the status of the permanent maintenance fund by the purchaser for a reasonable period of time as necessary in the public interest.

**(4)** The board may recover from the permit holder or purchaser for the benefit of the permanent maintenance fund:

**(A)** All sums that the permit holder or purchaser has not properly accounted for and paid into the trust fund; and

**(B)** Reasonable expenses incurred by the board if suit is filed or other collection action is taken.

**(d)** A cemetery company that has been issued a permit to operate a cemetery under this subchapter remains liable for the care and maintenance of the cemetery and all amounts owed to the permanent maintenance fund until a new permit is issued to the purchaser.

**(e)** A new permit shall not be issued to the purchaser of any cemetery until the purchaser complies with this subchapter and the board orders a new permit to be

issued to the purchaser.

**(f)** A permit holder or purchaser that violates this section is guilty of a violation and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for the violation.

**20-17-1013. Permanent maintenance fund generally.**

**(a) (1)** The permanent maintenance fund is declared to be a trust fund for the purpose of administration, care, and maintenance of the cemetery, including lots, graves, spaces, crypts, niches, burial rights, or otherwise.

**(2)** The net income from the fund shall be paid to and be exclusively used and expended by the owners, managers, or officers and directors of the cemetery company for the care and maintenance of the cemetery and for no other purpose.

**(3)** The principal of the fund shall be invested and remain invested in such securities and funds as are permitted by the laws of Arkansas for the investment of policy reserves of life insurance companies as set forth in § 23-60-101 et seq. and in the common trust funds of state or national banks.

**(4)** However, any permanent maintenance fund having assets of more than two hundred fifty thousand dollars (\$250,000) may invest not more than fifty percent (50%) of its assets in nonassessable common stocks which are listed on a national securities exchange, preferred stocks meeting the requirements of § 23-63-815, and investment trust securities meeting the requirements of § 23-63-820, and the diversification restrictions of § 23-63-805 shall not apply to investments in investment trust securities.

**(5)** In investing these funds, the trustee shall exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence exercise in management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income and capital appreciation as well as the probable safety of their capital.

**(b)** The permanent maintenance fund is authorized by this subchapter, and all sums paid into it or contributed to it shall be deemed to be for charitable and eleemosynary purposes.

**(c)** No rule against perpetuities shall be applicable to funds as mentioned in this section.

**(d) (1)** The trust fund shall be established by executing a written trust agreement approved by the Arkansas Cemetery Board.

**(2) (A)** The agreement may provide that the cemetery company may change the trustee of its trust fund by amending the agreement if:

**(i)** The successor trustee meets the requirements of § 20-17-1014; and

**(ii)** The trustee and successor trustee are parties to the amendment of the agreement.

**(B)** The trustee and successor trustee shall send the board notification of a change in trustee under subdivision (d)(2)(A) of this section within ten (10) calendar days after the change.

**(e)** At a minimum, the trustee shall maintain the following:

**(1)** A general ledger and general journal or comparable books of entry showing all receipts, disbursements, assets, liabilities, and income of the trust fund;

**(2)** Documents supporting and verifying each asset of the trust fund; and

**(3)** A trust agreement.

**(f)** In establishing a permanent maintenance fund, the cemetery company may from time to time adopt plans for the general care and maintenance of its cemetery.

#### **20-17-1014. Permanent Maintenance Fund Trustees.**

**(a)** The net income from the permanent maintenance fund shall only be used for general maintenance, administration, and preservation of the perpetual care cemetery.

**(b)** A cemetery company shall establish a permanent maintenance fund with or transfer the permanent maintenance fund to:

**(1)** A state or national bank or federal savings bank with trust powers;

**(2)** Three (3) trustees, if:

**(A)** All trustees that make disbursements from the trust fund deposit with the Arkansas Cemetery Board a fidelity bond with corporate surety payable to the trust fund in a penal sum not less than one hundred percent (100%) of the value of the trust fund principal at the beginning of each calendar year; and

**(B)** No more than one (1) of the trustees has a direct or indirect financial interest in the perpetual care cemetery; or

**(3)** An individual trustee that on behalf of the cemetery company deposits all permanent maintenance funds directly into a savings account or certificate of deposit in a state or national bank or savings and loan association in this state not less than forty-five (45) days after collection if:

**(A)** The funds deposited are federally insured;

**(B)** The funds are restricted to prevent the principal amount of the funds from being withdrawn without the written approval of and on a form approved by the Securities Commissioner; and

**(C)** Not less than one (1) time per year the net income from the funds may be withdrawn by the individual trustee on behalf of the cemetery company for purposes permitted by this subchapter.

**20-17-1015. Permanent maintenance fund -- Annual report.**

**(a) (1)** Within seventy-five (75) days after the end of each calendar year, the Arkansas Cemetery Board shall require the trustee of the permanent maintenance fund to file under oath a detailed annual report of the condition of the fund.

**(2)** The annual report shall include:

**(A)** A description of the assets of the fund;

**(B)** A description of cemetery property encumbered by a lien and the amount of the lien;

**(C)** The cost of acquiring each asset;

**(D)** The market value of the asset at the time of its acquisition, its current market value, and the status of any default;

**(E)** A statement that:

**(i)** The fund is not encumbered by debt; and

**(ii)** None of the assets of the fund constitute loans to:

**(a)** The cemetery company for which the trust fund is established; or

**(b)** An officer or director of the cemetery company; and

**(F)** Any other information the trustee or the board deems pertinent.

**(b)** The report shall show the amounts of principal and undistributed income of the fund at the beginning of the period, the amounts deposited by the cemetery company into the fund during the period, the income earned and disbursements made during the period, the details of any investment or reinvestment during the period, and the balances of principal and income at the end of the period being reported on.

**(c) (1)** If the trustee of the fund fails to meet the requirements of this section, then it shall be the duty of the board to apply to the Pulaski County Circuit Court for an order to require the trustee of the fund to file a proper report and to make any additional contributions due to the failure to timely file the annual report.

**(2)** If funds have been misappropriated by the trustee or are not being handled as required by law, then the board shall apply to the circuit court in the county in which the cemetery is located to have a receiver or conservator appointed by the court to take custody of the trust funds for the benefit of the cestui que trust. The receiver or conservator is vested with full power to file such suits against the defaulting trustee as may be necessary to require a full accounting and restoration of the trust funds and to turn the residue over to another trustee as the cemetery shall select, in conformity with this subchapter, as the new trustee of the permanent maintenance fund.

**(3)** Failure by the trustee to make a timely filing of the annual report required by

subsection (a) of this section shall be grounds for the trustee to pay an additional contribution to the permanent maintenance fund of fifty dollars (\$50.00) per day until the report is filed with the board.

**20-17-1016. Permanent maintenance fund -- Required deposits.**

**(a)** Unless a greater amount is established by rule of the Arkansas Cemetery Board under § 20-17-1006(10), a cemetery company shall deposit into its permanent maintenance fund a sum not less than:

**(1)** Twenty percent (20%) of the gross proceeds from the sale of a lot or grave space in its cemetery; and

**(2)** Five percent (5%) of the gross proceeds from the sale of a mausoleum crypt, lawn crypt, niche, or other similar entombment in its cemetery.

**(b) (1)** The deposit shall be made by the cemetery company not later than forty-five (45) days after the final payment has been made.

**(2)** However, any cemetery company making sales on installment sales contracts shall deposit the required percentage in accordance with the following:

**(A)** If the cemetery company receives installment payments directly and if adequate records are maintained as to the full amount of sale, the receipts received, and the balance due, then the cemetery company shall deposit the required percentage of gross proceeds of sale into the permanent maintenance fund not later than the forty-fifth day after the final payment is made, or the cemetery company may deposit the required percentage of each amount received not later than the forty-fifth day after each installment payment by the purchaser; and

**(B) (i)** If the cemetery company elects to discount the installment sales contracts at a bank or other financial institution and receive a discounted value immediately in cash, the required percentage of the gross sales price shall be placed in a separate restricted escrow account at the time that the contract is discounted.

**(ii)** The amount so placed in escrow shall not be withdrawn until the lot purchaser defaults on or fully satisfies his or her contract obligations.

**(iii)** This restricted escrow account may be used by the bank or other financial institution as a part of its required reserve and may be used as recourse if the lot purchaser defaults on the contract.

**(iv)** Upon default, the required percentage of the gross sales price which was placed in this escrow account may be withdrawn and used by the cemetery company.

**(v)** Once final payment has been made, the required percentage of the gross sales price that was placed in an escrow account shall be withdrawn and placed into the permanent maintenance fund within five (5) business days.

**(vi)** If the cemetery corporation enters into an agreement with the bank or other financial institution, which in the Securities Commissioner's determination adequately provides for the safeguards set forth in subdivision (b)(2)(A) of this

section, then that subdivision shall not be applicable to the cemetery corporation.

**(3)** If a cemetery company gives away a grave space or sells a grave space for a price less than the current market price, the gross sales proceeds received for a similar grave space in the immediately adjacent or similar location in the cemetery in a recent arms-length transaction shall be used as the basis to make the required permanent maintenance fund contribution for the gift or reduced price sale.

**(c) (1)** If the cemetery company fails to make the required deposits in accordance with this section or if the moneys placed in escrow are not deposited as required by this subchapter, then the cemetery company shall be liable for and the board may collect as an additional contribution to the permanent maintenance fund ten dollars (\$10.00) per day but in no instance in amounts to exceed five thousand dollars (\$5,000) or the actual cost of the contract property or cemetery lots, whichever is greater, for the period of the failure.

**(2)** Upon the refusal of the cemetery company to pay the board the penalty, the board may institute suit to recover the contribution and costs and such other relief as the state in its judgment deems proper and necessary.

#### **20-17-1017. Permanent maintenance fund -- Voluntary contributions.**

The permanent maintenance fund may also receive, take, and hold therefor and as part thereof or as incident thereto any real, personal, or mixed property bequeathed, devised, granted, given, or otherwise contributed to it.

#### **20-17-1018. Violations, criminal penalties, and remedies.**

**(a)** In addition to the civil provisions of this subchapter, it shall be unlawful for any person to:

**(1)** Advertise or operate all or part of a cemetery as a perpetual care cemetery or permanent maintenance cemetery without holding a valid permit issued by the Arkansas Cemetery Board; or

**(2)** Fail to place the required contributions into the permanent maintenance fund or to remove any principal of the permanent maintenance fund from trust.

**(b)** Any person who knowingly violates subsection (a) of this section shall be guilty of a felony and upon pleading guilty or nolo contendere to or being found guilty of a violation of subsection (a) of this section shall be punished by a fine of not more than ten thousand dollars (\$10,000) or by imprisonment in the state penitentiary for not more than six (6) years, or by both fine and imprisonment.

**(c) (1) (A)** If it appears to the board that a person has engaged in or is about to engage in a violation of subdivision (a)(1) of this section, the board may summarily order the person to cease and desist from the act or practice.

**(B)** Upon the entry of the order under subdivision (c)(1)(A) of this section, the board shall promptly notify the person that the order has been entered and state the reasons for the order.

**(2) (A)** The person ordered to cease and desist may contest the cease and desist

order by delivering a written request for a hearing to the board within thirty (30) days from the date that notice of the order is sent by the board to the last known address of the person by first class mail, postage prepaid.

**(B)** The board shall schedule a hearing to be held within a reasonable amount of time after the Securities Commissioner receives a timely written request for hearing.

**(C)** If no hearing is requested and none is ordered by the board, the order will remain in effect until it is modified or vacated by the board.

**(D)** After notice and an opportunity for a hearing, the board may:

**(i)** Affirm, modify, or vacate the cease and desist order under subdivision (c)(1)(A) of this section; and

**(ii)** For a violation of this subchapter, by order levy a fine not to exceed:

**(a)** Ten thousand dollars (\$10,000) for each violation; or

**(b)** An amount equal to the total amount of money received in connection with each violation.

**(3)** The board may apply to the Pulaski County Circuit Court to temporarily or permanently enjoin an act or practice that violates subdivision (a)(1) of this section and to enforce compliance with this chapter:

**(A)** After an order is issued under subdivision (c)(1) or (c)(2) of this section; or

**(B)** Without issuing an order under subdivision (c)(1) or (c)(2) of this section.

**(4)** Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted.

**(5)** The board is not required to post a bond to obtain the relief provided by this section.

#### **20-17-1019. Conveyance of lots.**

**(a) (1)** An instrument conveying all or part of a burial lot or burial plot shall be issued to the purchaser upon full payment of the purchase price of the burial lot or burial plot.

**(2)** The cemetery company shall not use an instrument to convey a burial lot or burial plot unless the form of the instrument has been provided to the Arkansas Cemetery Board.

**(b)** Only the cemetery company or its agents may sell or convey all or part of lots, grave spaces, crypts, or niches except that:

**(1)** The owner of all or part of a lot, grave space, niche, or crypt may sell his or her interest in a lot, grave space, crypt, or niche if:

**(A)** The lot, grave space, crypt, or niche is first offered in writing to the

cemetery company at the purchase price then being charged by the cemetery company for similar lots; and

**(B)** The cemetery company refuses the offer within thirty (30) days after the offer is made; and

**(2)** An owner may convey or devise to the cemetery company his or her interest in a lot, grave space, niche, or crypt.

**(c)** The secretary or other responsible officer of the cemetery company shall file and record in its books all instruments of transfer.

**(d)** The instrument of conveyance shall be signed by the persons having proper authority.

**(e)** A mortgage or lien on cemetery land granted by a permit holder shall not encumber any burial space that has been sold before granting the mortgage or lien.

**(f) (1)** To ensure that all burial spaces remain unencumbered, the permit holder shall file with the board before executing a mortgage or creating a lien a notarized statement reflecting the specific description of the land to be affected by the mortgage or lien and a waiver or release by the proposed mortgagee or lienholder of any claim or right to any burial space for which an instrument of conveyance or deed has been or may be executed.

**(2)** The failure of a permit holder to comply with the requirements of this subsection is grounds for the board to require an additional contribution to the permanent maintenance fund of the cemetery in an amount not exceeding one thousand dollars (\$1,000) for each burial space encumbered.

**20-17-1020. Unlawful act.**

It shall be unlawful for any cemetery company to bury or inter a body in any path, alley, or walk.

**20-17-1021. Disposition of contributions and fees.**

**(a)** All contributions imposed under this subchapter shall be:

**(1)** Deposited into the respective permanent maintenance fund of the cemetery company upon which the contribution is imposed; and

**(2)** Paid within forty-five (45) days of imposition.

**(b)** All fees imposed under this subchapter shall be paid to the Arkansas Cemetery Board.

**20-17-1022. Records required.**

**(a)** All cemetery companies shall make and keep accounts and records which shall indicate that they have made the required contributions to the permanent maintenance fund. The burden is upon the cemetery company to maintain the accounts and records.

**(b)** Unless otherwise approved by the Arkansas Cemetery Board, all sales contracts and deeds issued by the cemetery company shall be numbered prior to when they are executed by the cemetery company and shall contain those items that the board by rule or order prescribes.

**(c)** A cemetery company shall maintain records of its interments that shall include without limitation:

- (1)** The name of the interred or entombed;
- (2)** The date of interment or entombment; and
- (3)** The location of interment or entombment.

**20-17-1023. Annual report of condition of cemetery company.**

**(a) (1)** Within seventy-five (75) days after the end of the calendar year, a cemetery company shall file with the Arkansas Cemetery Board a report under oath of its condition.

**(2)** The report shall include without limitation:

**(A)** The name and contact information of:

- (i)** The cemetery company;
- (ii)** The person in charge of the records of the cemetery company; and
- (iii)** Each person with authority to sign conveyance documents;

**(B)** The amount of sales and date of final payment of cemetery lots, graves, spaces, mausoleums, columbaria, crypts, lawn crypts, or niches for which payment has been made in full and instruments of conveyance have been issued during the preceding calendar year;

**(C)** The amounts paid into the permanent maintenance fund;

**(D)** The income received from the fund during the preceding calendar year;

**(E)** The total amount owed to the fund;

**(F)** The amounts owed to the fund at the date of the report;

**(G)** The amount expended for care and maintenance of the cemetery;

**(H)** The names and addresses of the owners of the cemetery company or the officers and directors of the company and stating any change of control that has occurred during the past calendar year, the date of incorporation, and the resident agent and resident agent's office if the cemetery company is a corporation; and

**(I)** Any other information the board requires.

**(b)** The report shall be accompanied by:

**(1)** A filing fee of three hundred twenty-five dollars (\$325); and

**(2) (A)** A fee of seven dollars (\$7.00) for each burial sale contract entered into during the preceding calendar year by the cemetery company regardless of the number of spaces sold under the contract regarding lots, grave spaces, mausoleums, columbaria, crypts, lawn crypts, and niches.

**(B)** The burial sale contract fee under subdivision (b)(2)(A) of this section is not required for a burial sale contract of an interment in an infant interment garden that complies with § 20-17-1030.

**(c) (1)** Failure by the cemetery company to make a timely filing of its annual report shall be grounds for an additional contribution to the permanent maintenance fund of fifty dollars (\$50.00) per day until the report is filed with the board.

**(2)** If the cemetery company refuses to pay the contribution or fees, the board shall institute suit to recover the penalty and fee and costs and such other relief as the state in its judgment deems proper.

**(3)** If the cemetery company shall fail to meet the requirements of this section, then the board shall apply to the Pulaski County Circuit Court for the proper order to require a report.

**(d)** The beginning and ending dates of the report shall coincide with the dates of the report of the trustee required in § 20-17-1015.

**(e)** Upon receipt of a properly completed annual report from the trustee and the cemetery company, the board shall issue to the cemetery company an annual operating permit which shall be prominently displayed at the main entrance to the cemetery.

**20-17-1025. Protection of cemeteries -- Power to lend.**

**(a)** On August 1, 2001, the Arkansas Cemetery Board shall segregate one hundred eighty thousand dollars (\$180,000) within its general operating fund to be known as the insolvent cemetery loan fund administered by the Securities Commissioner and only used to lend a court-appointed receiver or conservator the funds necessary to assure that a cemetery will be properly maintained and will continue to be a going concern, including the funds necessary to pay a reasonable surety bond premium that is required to be posted by the court.

**(b)** The board may take any legal action necessary against a cemetery company, receiver, or conservator to recover funds loaned by the board to or for the benefit of the cemetery, the cemetery company, receiver, or conservator for the payment of maintenance expenses or unpaid loans.

**(c)** Disbursement from the insolvent cemetery loan fund for loans to a receiver or conservator shall be made on a "first in, first out" basis as determined by the commissioner.

**(d)** The commissioner may accept donations to the board from any cemetery

company, organization, or individual to fund loans under this section.

**(e)** The board may waive payment or extend the payment period for a loan made to a receiver or conservator if the board determines that it is unlikely that the receiver or conservator has or will receive sufficient funds to repay the loan and that the funds were or are needed to maintain and operate the cemetery for the benefit of the lot owners and the general public.

**(f)** Any funds that accumulate in the insolvent cemetery loan fund in excess of one hundred eighty thousand dollars (\$180,000) may at the request of the board be transferred to the insolvent cemetery grant fund under § 20-17-1301 et seq.

**20-17-1026. Annual permit fee.**

**(a)** By March 1 of each year, each permit holder shall pay to the Arkansas Cemetery Board a permit renewal fee in the amount of one hundred dollars (\$100).

**(b)** All annual permit fees shall be classified as general funds of the board and shall be used to make loans to receivers and conservators as provided in § 20-17-1025.

**20-17-1027. Duties of State Securities Department.**

**(a)** The State Securities Department shall assist the Arkansas Cemetery Board in the performance of its duties.

**(b)** Assistance under subsection (a) of this section shall include, but is not limited to:

**(1)** Receiving and disseminating filings, questions, and requests on behalf of the board to the members of the board in advance of each meeting;

**(2)** Reviewing all filings, questions, and requests on behalf of the board and offering its opinion on the resolution of the matter;

**(3)** Issuing written responses regarding complaints received by the board;

**(4)** Scheduling all meetings in conjunction with the Chair of the Arkansas Cemetery Board;

**(5)** Providing appropriate legal notices for all scheduled meetings;

**(6)** Establishing a site where meetings of the board may be held;

**(7)** Scheduling the services of a court reporter for all meetings of the board;

**(8)** Providing legal representation and assistance through the legal staff of the department to the board in matters pertaining to this subchapter;

**(9)** Acting as a liaison between the board and any court involved in the administration of any perpetual care cemetery placed in receivership;

**(10)** Performing inspections at cemeteries for which complaints have been received by the board;

(11) Performing special audits as necessary;

(12) Scheduling regular audits of perpetual care cemeteries;

(13) Administering the annual perpetual care reporting for all perpetual care cemeteries; and

(14) Assisting in the formulation of legislation on behalf of the board.

**20-17-1028. Contracts with municipality or county where a cemetery is located.**

(a) (1) The Arkansas Cemetery Board may contract with the municipality or county where a cemetery is located for the care and maintenance and the operation of the cemetery.

(2) Services relating to the care and maintenance and the operation of the cemetery include without limitation:

(A) The sale and conveyance of lots;

(B) The opening and closing of graves;

(C) The preparation of financial reports and legal documents;

(D) The maintenance of driveways;

(E) The removal of trash and debris;

(F) The cutting of grass;

(G) The planting and care of trees, shrubs, and flowers; and

(H) The necessary improvements to streets, avenues, walks, or other public grounds of the cemetery.

(3) The municipal or county government may subcontract with qualified persons to provide services under this section.

(b) (1) If the board contracts with a municipality or county under this section, the municipality or county, in addition to complying with any applicable statute, shall file with the board in March of each year a financial report showing all moneys received and expended during the preceding year, including without limitation:

(A) The date of receipt of all moneys;

(B) The source from which the moneys were received;

(C) All moneys paid out;

(D) The date the moneys were paid out;

(E) The person to whom the moneys were paid out; and

(F) The purpose of the payment.

(2) At the end of each calendar year, the municipality or county shall review the fiscal position of the cemetery and direct any excess moneys to the permanent maintenance fund.

(c) For the purposes of this section, a municipality or county may accept funds from public and private entities and direct the funds to:

(1) General maintenance and improvement; or

(2) The permanent maintenance fund.

(d) The state, a city, or a county shall be immune from liability in contract or in tort for actions taken to implement this section.

**20-17-1029. Cemetery advisory boards -- Membership -- Organization -- Authority.**

(a) The Governor may create a cemetery advisory board for any cemetery purchased under § 20-17-1006 to assist the state and the municipality or county where the cemetery is located in achieving the efficient management, operation, maintenance, and preservation of the cemetery.

(b) (1) A cemetery advisory board shall be composed of seven (7) members appointed by the Governor as follows:

(A) Three (3) members shall be owners of lots in the cemetery or have demonstrated an interest in the preservation of the cemetery;

(B) Three (3) members shall be owners or operators of a licensed cemetery or funeral home in this state; and

(C) One (1) member shall be a person actively engaged, by profession or as a volunteer, in activities promoting the historic preservation of cemeteries in the local community.

(2) (A) The terms of the members shall be for three (3) years.

(B) Members shall serve until their successors are appointed and qualified.

(C) The initial members shall draw lots so that three (3) members serve a term of one (1) year, two (2) members serve a term of two (2) years, and two (2) members serve a term of three (3) years.

(D) (i) Vacancies for any unexpired term of a member shall be filled in the same manner as the original appointment of the vacating member.

(ii) An appointee to fill a vacancy shall serve for the unexpired term and is eligible for reappointment.

(3) Members shall biennially elect a chair, a vice chair, and a secretary from the membership, whose duties shall be those customarily exercised by the officers or specifically designated by the cemetery advisory board.

(4) No member shall be liable for any damages unless it is made to appear that he or she has acted with corrupt and malicious intent.

(5) Members shall serve without compensation.

(6) A cemetery advisory board shall meet as often as it deems necessary for the purpose of carrying out its duties under this section.

(c) A cemetery advisory board may:

(1) Establish itself as a section 501(c)(3) corporation under the Internal Revenue Code of 1986, as it existed on January 1, 2007;

(2) Raise private funds for the benefit of the cemetery general fund and the permanent maintenance fund;

(3) Recruit volunteers; and

(4) (A) Advise the Arkansas Cemetery Board and the municipality or county where the cemetery is located concerning long-term goals and plans for efficient cemetery operation and beautification.

(B) No policy of a cemetery advisory board relating to long-term goals and plans for efficient cemetery operation and beautification shall be adopted unless the municipality or county where the cemetery is located approves the policy.

#### **20-17-1030. Infant interment gardens.**

(a) A cemetery company may maintain an infant interment garden if:

(1) The cemetery company provides the Arkansas Cemetery Board a letter of intent to establish an infant interment garden and a map of the location for the infant interment garden;

(2) The infant interment garden is made available to the public and to existing families and property owners of the permitted cemetery on a non-discriminatory basis;

(3) No charge is made to the family, next of kin, or any agency for the space, interment, and opening and closing services;

(4) The infant interment garden complies with the rules and regulations of the cemetery on file with the board; and

(5) The conveyance and recordkeeping requirements of § 20-17-1019 and § 20-17-1022 are satisfied for each interment in the infant interment garden.

(b) An infant interment garden that complies with this section is not subject to the deposit requirements of § 20-17-1016.

### **20-17-1101. Purpose of district.**

The purpose of the district shall be the building and maintaining of a cemetery or cemeteries for the use and benefit of the property holders within the district, and it is realized that the cemetery would be a benefit to all the real property located in the district.

### **20-17-1102. Petition generally.**

**(a)** Upon the petition of a majority in value of the owners of real property in any designated area, it shall be the duty of the county court to lay off into an improvement district the territory described in the petition and to name three (3) commissioners of the district who are resident property holders in the district.

**(b) (1)** The petition for and the court order creating the district shall designate the maximum amount that may be expended for labor, materials, and personal services in any year in maintaining the grounds and facilities of the cemetery.

**(2)** The purpose for which the district is to be formed shall be stated in the petition, and the judgment establishing the district shall give it a name which shall be descriptive of the purpose. It shall also receive a number to prevent its being confused with other districts for similar purposes.

### **20-17-1103. Petition -- Notice and hearing.**

**(a) (1)** It shall be the duty of the county clerk to give notice of the filing of the petition, describing the territory to be affected and calling upon all persons who wish to be heard upon the question of the establishment of the district to appear before the county court on a day to be fixed in the notice.

**(2)** The notice shall be published one (1) time a week for two (2) consecutive weeks in some newspaper published and having a bona fide circulation in the county where the lands affected are situated.

**(3)** This notice may be in the following form:

[Click here to view form](#)

**(b)** Any number of identical petitions may be circulated and identical petitions with identical names may be filed at any time until the county court acts.

**(c) (1)** On the day named in the notice it shall be the duty of the county court to meet to hear the petition and to determine whether those signing the petition constitute a majority in value.

**(2)** If the county court determines that a majority in value have petitioned for the improvement, it shall enter its judgment laying off the district as defined in the petition and appointing the commissioners.

**(3)** If it finds that a majority has not signed the petition, it shall enter its order denying the petition.

**(d)** Any petitioner or any opponents of the petition may appeal from the judgment of the county court creating or refusing to create the district, but the appeal must be taken and perfected within thirty (30) days. If no appeal is taken within that time, the judgment creating the district shall be final and conclusive upon all persons.

**20-17-1104. Board of commissioners -- Appointment.**

**(a)** The board of commissioners shall be resident property holders in the district and shall be citizens of integrity and good business ability.

**(b) (1)** The commissioners shall be appointed to serve for terms of one (1), two (2), and three (3) years, respectively. The length of the term of each commissioner shall be stated in the order of the county court making the appointment.

**(2)** As the terms of the commissioners expire, the county court shall appoint successors to hold office for a term of three (3) years.

**(c) (1)** The county court may reappoint a commissioner whose term is expiring.

**(2)** In case of a vacancy on the board of commissioners after the commissioners have organized, the county court shall appoint some resident property holder as his or her successor, who shall qualify in like manner and within a like time.

**(d)** The commissioners shall serve without compensation.

**20-17-1105. Board of commissioners -- Powers and duties.**

**(a)** The commissioners may take charge of, purchase, and provide a site or grounds and additions thereto, to provide and maintain streets, aisles, outside fences, drainage, and other necessary facilities, and to employ a caretaker or caretakers for the cutting of grass and the planting and care of trees, shrubs, and flowers.

**(b)** The commissioners shall establish lots, plots, or burial spaces within the space provided for a cemetery and issue permits for the interment of deceased persons therein.

**20-17-1106. Board of commissioners -- Proceedings -- Officers -- Employees -- Selection of depository.**

**(a) (1)** Within thirty (30) days after their appointment, the commissioners shall take and file their oaths of office with the county clerk, in which they shall swear to support the Constitution of the United States and the Constitution of the State of Arkansas, to faithfully discharge their duties as commissioners, and that they will not be interested, directly or indirectly, in any contract let by the board.

**(2)** Any commissioner failing to file the oath within the period shall be deemed to have declined the office, and the county court shall appoint some resident property holder as his or her successor who shall qualify in like manner within a like time.

**(b)** The board shall organize by electing one (1) of its members chair, and it shall select a secretary.

(c) It may also employ such agents, servants, attorneys, and engineers as it deems best and fix their compensation.

(d) Each district shall be a body corporate with power to sue and be sued, and it shall have a corporate seal.

(e) The board shall also select some solvent bank or trust company as the depository of its funds, exacting of the depository a bond in an amount equal to the amount of money likely to come into its hands.

**20-17-1107. Board of commissioners -- Liability.**

No member of the board of commissioners shall be liable for any damages unless it shall be made to appear that he or she had acted with a corrupt and malicious intent.

**20-17-1108. Formation of plans -- Assessors and assessments generally.**

(a) Upon the qualification of the commissioners, they shall form plans for the improvements they intend to make and the property and equipment they intend to purchase.

(b) (1) The commissioners shall thereupon appoint three (3) assessors to assess the annual benefits which will accrue to the real property within the district from making the improvements upon and the operation of the cemetery and shall fix their compensation.

(2) The assessors shall take an oath that they will well and truly assess all annual benefits that will accrue to the landowners of the district by the making of the proposed improvement, and by the acquisition and operation of the cemetery.

(c) The assessors shall thereupon proceed to assess the annual benefits to the lands within the district, shall inscribe in a book each tract of land, and shall extend opposite each tract of land, the amount of annual benefits that will accrue each year to the land by reason of the improvement.

(d) (1) In case of any reassessment, the reassessment shall be advertised and equalized in the same manner as is provided in this section for making the original assessment.

(2) The owners of all property whose assessment has been raised shall have the right to be heard and to appeal from the decision of the assessors, as in the original assessment.

(e) The assessors shall place opposite each tract the name of the supposed owner, as shown by the last county assessment, but a mistake in the name shall not void the assessment, and the assessors shall correct errors which occur in the county assessment list.

(f) The commissioners shall have the authority to fill any vacancy in the position of assessor, and the assessors shall hold their offices at the pleasure of the board.

**20-17-1109. Assessment -- Notice and hearings.**

(a) The assessment shall be filed with the county clerk of the county, and the secretary of the board shall thereupon give notice of its filing by publication one (1) time a week for two (2) weeks in a newspaper published and having a bona fide circulation in the county. This notice may be in the following form

(b) (1) (A) On the day named by the notice, it shall be the duty of the assessors to meet at the place named as a board of assessors, to hear all complaints against the assessment, and to equalize and adjust the assessment.

(B) If the board is unable to hear all complaints between the hours designated, it shall adjourn over from day to day until all parties have been heard.

(2) The board's determination shall be final, unless suit is brought in the circuit court within thirty (30) days to review it.

**20-17-1110. Assessment -- Annual reassessment.**

(a) The commissioners shall one (1) time a year order the assessors to reassess the annual benefits of the district, provided there have been improvements made or improvements destroyed or removed from one (1) or more tracts of land in the district making it necessary to have the annual benefits revised.

(b) Whereupon, it shall be the duty of the assessors to reassess the benefits of the district, and the annual benefits assessed may be raised or lowered as conditions of the property change. However, the annual benefits extended against any piece of property shall not be increased from the annual benefits originally extended unless improvements are made to the land that will be benefited by the operation of the cemetery.

**20-17-1111. Assessment -- Order -- Lien.**

(a) The board of commissioners of the district shall at the time that the annual benefit assessment is equalized or at any time thereafter enter upon its records an order, which shall have all the force of a judgment, provided that there shall be assessed upon the real property of the district and collected annually the annual benefit assessment set opposite each tract of land described. The annual benefit is to be paid by the owner of the real property in the district, payable as provided in the order.

(b) (1) The uncollected annual benefit assessment as extended shall be a lien upon the real property in the district against which it is extended from the time the same is levied, shall be entitled to preference over all demands, executions, encumbrances, or liens whensoever created, and shall continue until the assessment with any penalty and costs that may accrue thereon shall have been paid.

(2) Notice of the amount due shall be given to each landowner, if he or she fails to pay his or her assessment on or before the third Monday in April by mail at his or her last known address.

(3) (A) The remedy against the annual benefit assessment shall be by suit in equity, and the suit shall be brought within thirty (30) days from the time that the

notice is mailed.

**(B)** On the appeal, the presumption shall be in favor of the legality of the annual benefit assessment.

**20-17-1112. Assessment -- Filing and collection.**

**(a)** The original assessment record or any reassessment record shall be filed with the county clerk, whose duty it shall be to extend the annual benefit assessment annually upon the tax books of the county until the district is dissolved.

**(b)** It shall then be the duty of the collector to collect each year the annual benefit assessment extended upon the book along with the other taxes, and the taxes shall be paid over by the collector to the depository of the district at the same time that he or she pays over the county funds.

**(c) (1) (A) (i)** If there is any change in the annual benefits assessed, a certified copy of the revised assessment shall be filed with the county clerk who shall extend the revised assessment annually upon the tax books until a new assessment is made, which shall be extended upon the tax books in a similar manner.

**(ii)** The power to reassess and extend the assessment upon the tax books shall be a continuing power as long as the district continues to exist.

**(B)** It shall be the duty of the county collector to collect the taxes so extended.

**(2)** In lieu of filing the reassessment, the assessors may make the changes in the assessments in red ink on the assessment already on file, or the assessment record may contain many columns, at the head of which the year shall be designated, and in the column the new annual benefits may be shown in red ink, which will indicate any increase or decrease in the original annual benefits extended. When the change is made, a red ink line shall be drawn through the figures showing the original annual benefits extended.

**20-17-1113. Assessment -- Time for payment -- Failure to pay -- Redemption.**

**(a) (1)** All annual benefits extended and levied under this subchapter shall be payable between the third Monday in February and the third Monday in April of each year.

**(2)** If any annual benefit assessments levied by the board under this subchapter are not paid at maturity, the collector shall not embrace the assessments in the taxes for which he or she shall sell the lands, but he or she shall report the delinquencies to the board of commissioners of the district who shall add to the amount of the annual benefit assessment a penalty of ten percent (10%).

**(b)** The board of commissioners shall enforce the collection by equitable proceedings in the circuit court of the county in the manner provided by §§ 14-121-426 -- 14-121-432.

**(c)** However, the owner of property sold for taxes thereunder shall have the right to

redeem it at any time within two (2) years from the time when his or her lands have been stricken off by the commissioner making the sale.

**20-17-1114. Expenditures -- Public proceedings and transactions -- Filing of report.**

(a) The depository shall pay out no money except under the order of the board of commissioners and upon a voucher check signed by at least two (2) of the commissioners. Every voucher check shall state upon its face to whom payable, the amount, and the purpose for which it is used. All voucher checks shall be dated and shall be numbered consecutively in a record to be kept by the board of the number and amount of each.

(b) All proceedings and transactions of the board shall be a matter of public record and shall be open to the inspection of the public.

(c) The board of commissioners shall file with the county clerk in January of each year a certified itemized report showing all moneys received, the date of receipt, and the source from which received, all moneys paid out, the date paid, to whom paid, and for what purpose, during the preceding year, together with an itemized list of all delinquent taxes, showing the owner, a description of the property, the years for which the tax is delinquent, and the amount of total delinquency.

**20-17-1115. Issuance of notes.**

(a) In order to acquire equipment and to do the work, the board may issue the negotiable notes of the district signed by the members of the board and bearing a rate of interest not exceeding six percent (6%) per annum and may pledge and mortgage a portion of future annual benefit assessments as collected for the payment thereof.

(b) Any petitions for the creation of a district and the court order creating the district shall limit the total amount of notes that may be outstanding at any one (1) time in excess of ten thousand dollars (\$10,000).

(c) The district shall have no authority to issue bonds.

**20-17-1116. Dissolution.**

(a) The district shall not cease to exist upon the completion of the improvement, but it shall continue to exist for the purpose of operating and maintaining the cemetery until such time as the owners of a majority in value of the real property within the district petition the county court for dissolution of the district.

(b) Publication of the petition for dissolution, as provided for in creating the district, shall be made, and if the county court finds that a majority in value of the real property in the district has petitioned for the dissolution of the district, the district shall be dissolved.

(c) Parties for or against the dissolution shall have the same right of appeal as in the creation of the district.

**20-17-1117. Certain suits in public interest.**

(a) All cases involving the validity of the districts or the annual benefit assessments and all suits to foreclose the lien of annual benefit assessments shall be deemed matters of public interest, and they shall be advanced and disposed of at the earliest possible moment.

(b) All appeals therefrom shall be taken and perfected within thirty (30) days.

**20-17-1118. Fee of collector and county clerk.**

In collecting annual benefit assessments in any district created under this subchapter, the collector of taxes in any county shall deduct one percent (1%) of the annual benefit assessments or taxes so collected, and retain one-half of one percent (0.5%) as the fee of the collector for collecting the assessments or taxes and pay over the remaining one-half of one percent (0.5%) of the assessments or taxes collected to the county clerk of the county as the fee of the county clerk for extending on the assessment records of the county the annual benefit assessments or taxes.

**20-81-112. State veterans' cemetery system.**

(a) The Department of Veterans' Affairs is authorized to establish and maintain an Arkansas state veterans' cemetery system to serve the veterans, spouses, and eligible dependents of the veterans of Arkansas.

(b) The department is authorized to employ staff to operate this cemetery system as it deems appropriate and as may be authorized by biennial appropriation.

(c) The department shall:

(1) Promulgate appropriate guidelines for determining eligibility for burial;

(2) Establish accounts as are necessary to the orderly administration of the cemetery system;

(3) Develop plans and programs which will provide for initial establishment of sites to meet the greatest need and provide for their orderly expansion; and

(4) Make applications to federal agencies such as the United States Department of Veterans Affairs and receive federal funding as is available to establish and operate this cemetery system.

**22-7-201. National cemeteries.**

The jurisdiction of this state within and over all lands purchased by the United States on which national cemeteries may be established within the limits of this state is ceded to the United States so far as the permanent enclosures of such national cemeteries may extend and no further.