

CHAPTER 247.

[S. H. B. 206.]

GENERAL CEMETERY ACT.

AN ACT relating to and regulating cemeteries and the interment of dead human remains; repealing section 1 of an act entitled: "AN Act regulating burying grounds and places of sepulchre," passed January 27, 1857, Laws of 1856-7, page 28 (section 3758, Remington's Revised Statutes; section 576, Pierce's Code); and section 2788, chapter CCXVI (216), Code of Washington Territory 1881, as amended by section 1, chapter XII (12), Laws of 1901 (section 4193, Remington's Revised Statutes; section 1749, Pierce's Code); and sections 1, 2, 4 and 7, chapter XXXIII (33), Laws of 1899 (sections 3764, 3765, 3767 and 3771, Remington's Revised Statutes; sections 565, 566, 568 and 571, Pierce's Code); and sections 1, 2 and 3, chapter CXLVII (147), Laws of 1901 (sections 3761 and 3762, Remington's Revised Statutes; sections 572, 573 and 574, Pierce's Code); and section 1, chapter 118, Laws of 1905 (section 3770, Remington's Revised Statutes; section 579, Pierce's Code); and providing penalties for violation thereof.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. This act shall be known as the "General Cemetery Act." Short title.

SEC. 2. "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition and cremated remains. Definitions.

SEC. 3. "Cremated remains" means human remains after creniation in a crematory.

SEC. 4. "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

- (a) A burial park, for earth interments.
- (b) A mausoleum, for crypt or vault interments.
- (c) A columbarium, for permanent cinerary interments.

Definitions.

SEC. 5. "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes.

SEC. 6. "Mausoleum" means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.

SEC. 7. "Crematory" means a building or structure containing one or more retorts for the reduction of bodies of deceased persons to cremated remains.

SEC. 8. "Columbarium" means a structure, room, or other space in a building or structure containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated, for cemetery purposes.

SEC. 9. "Crematory and columbarium" means a building or structure containing both a crematory and columbarium.

SEC. 10. "Interment" means the disposition of human remains by cremation and inurnment, entombment, or burial in a place used, or intended to be used, and dedicated, for cemetery purposes.

SEC. 11. "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory.

SEC. 12. "Inurnment" means placing cremated remains in an urn or vault and placing it in a niche.

SEC. 13. "Entombment" means the placement of human remains in a crypt or vault.

SEC. 14. "Burial" means the placement of human remains in a grave.

SEC. 15. "Grave" means a space of ground in a burial park, used or intended to be used, for burial.

SEC. 16. "Crypt" or "vault" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains.

SEC. 17. "Niche" means a space in a columbarium or urn garden used, or intended to be used, for inurnment of cremated human remains.

SEC. 18. "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

SEC. 19. "Cemetery authority" includes cemetery corporation, association, corporation sole, or other person owning or controlling cemetery lands or property.

SEC. 20. "Cemetery corporation," "cemetery association," or "cemetery corporation or association" mean any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole.

SEC. 21. "Cemetery business," "cemetery businesses," and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property.

SEC. 22. "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

SEC. 23. "Lot," "plot," or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

SEC. 24. "Plot owner," "owner," or "lot proprietor" means any person in whose name an interment plot stands of record as owner, in the office of a cemetery authority.

Penalty for unlawful removal.

SEC. 25. Every person who removes any part of any human remains from any place where it has been interred, or from any place where it is deposited while awaiting interment, with intent to sell it, or to dissect it, without authority of law, or from malice or wantonness, shall be punished by imprisonment in the state penitentiary for not more than five (5) years, or by a fine of not more than one thousand dollars (\$1,000), or by both.

Penalty for unlawful disinterment.

SEC. 26. Every person who mutilates, disinters, or removes from the place of interment any human remains without authority of law, shall be punished by imprisonment in the state penitentiary for not more than three (3) years, or by a fine of not more than one thousand dollars (\$1,000), or by both.

Penalty for attachment for debt.

SEC. 27. Every person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand, or upon any pretended lien or charge, is guilty of a gross misdemeanor.

Penalty for unlawful disposition.

SEC. 28. Every person who permanently deposits or disposes of any human remains, except as otherwise provided by law, in any place, except in a cemetery or a building dedicated exclusively for religious purposes, is guilty of a misdemeanor.

Succession of right of disposition.

SEC. 29. The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in, and the duty of interment and the liability for the reasonable cost of interment of such remains devolves upon the following in the order named:

- (a) The surviving spouse.
- (b) The surviving children of the decedent.
- (c) The surviving parents of the decedent.

Liability for cost.

The liability for the reasonable cost of interment devolves jointly and severally upon all kin of the decedent hereinbefore mentioned in the same degree of kindred and upon the estate of the decedent.

SEC. 30. Any person signing any authorization for the interment or cremation of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred or cremated, and his authority to order interments or cremation. He is personally liable for all damage occasioned by or resulting from breach of such warranty.

Warranty of authority.

Liability for breach.

SEC. 31. The cemetery authority may inter or cremate any remains upon the receipt of a written authorization of a person representing himself to be a person who has acquired the right to control the disposition of the remains. A cemetery authority is not liable for interring or cremating pursuant to such authorization, unless it has actual notice that such representation is untrue.

Authority to inter or cremate.

SEC. 32. No action shall lie against any cemetery authority relating to the remains of any person which have been left in its possession for a period of two (2) years, unless a written contract has been entered into with the cemetery authority for their care or unless permanent internment has been made. Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No licensed funeral director shall be liable in damages for any cremated human remains after the remains have been deposited with a cemetery in the State of Washington.

Limitation of right of action.

SEC. 33. The remains of a deceased person may be removed from a plot in a cemetery with the consent of the cemetery authority and the written consent of one (1) of the following in the order named:

Succession of consent to remove.

- (a) The surviving spouse.
- (b) The surviving children of the decedent.
- (c) The surviving parents of the decedent.
- (d) The surviving brothers or sisters of the decedent.

Court may give consent.

If the required consent cannot be obtained, permission by the Superior Court of the county where the cemetery is situated is sufficient: *Provided*, That the permission shall not violate the terms of a written contract or the rules and regulations of the cemetery authority.

Limitation.

Service of notice of removal.

SEC. 34. Notice of application to the court for such permission shall be given, at least ten (10) days prior thereto, personally, or at least fifteen (15) days prior thereto if by mail, to the cemetery authority and to the persons not consenting, and to every other person on whom service of notice may be required by the court.

Exceptions.

SEC. 35. Sections 33 and 34 of this act do not apply to or prohibit the removal of any remains from one plot to another in the same cemetery or the removal of remains by a cemetery authority from a plot for which the purchase price is past due and unpaid, to some other suitable place; nor do they apply to the disinterment of remains upon order of court or coroner.

Penalties.

SEC. 36. Every person is guilty of a gross misdemeanor who unlawfully or without right wilfully does any of the following:

Damaging cemetery property.

(a) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes, any tomb, plot, monument, memorial or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any enclosure for the protection of a cemetery or any property in a cemetery.

(b) Destroys, cuts, breaks, removes or injures any building, statuary, ornamentation, tree, shrub, flower or plant within the limits of a cemetery.

Obstructing funeral.

(c) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a cemetery or funeral establishment, or engaged in a funeral service, or an interment.

SEC. 37. Any person violating any provision of section 36 of this act is liable, in a civil action by and in the name of the cemetery authority, to pay all damages occasioned by his unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed.

Liability
for civil
damages.

SEC. 38. The provisions of section 36 of this act do not apply to the removal or unavoidable breakage or injury, by a cemetery authority, of any thing placed in or upon any portion of its cemetery in violation of any of the rules or regulations of the cemetery authority, nor to the removal of anything placed in the cemetery by or with the consent of the cemetery authority which has become in a wrecked, unsightly or dilapidated condition.

Exceptions.

SEC. 39. The person in charge of any premises on which interments or cremations are made shall keep a record of all remains interred or cremated on the premises under his charge, in each case stating the name of each deceased person, date of cremation or interment, and name and address of the funeral director.

Record of
interments
and crema-
tions.

SEC. 40. A record shall be kept of the ownership of all plots in the cemetery which have been conveyed by the cemetery authority and of all transfers of plots in the cemetery. No transfer of any plot, heretofore or hereafter made, or any right of interment, shall be complete or effective until recorded on the books of the cemetery authority.

Record
of plot
ownership.

SEC. 41. The records shall be open to inspection during the customary office hours of the cemetery.

SEC. 42. It is unlawful for any corporation, co-partnership, firm, trust, association, or individual to engage in or transact any of the businesses of a cemetery within this state except by means of a corporation duly organized for that purpose.

Incorporation re-
quired.

Who may
operate
cemetery.

SEC. 43. Any private corporation authorized by its articles so to do, may establish, maintain, manage, improve, or operate a cemetery, and conduct any or all of the businesses of a cemetery, either for or without profit to its members or stockholders. A non-profit cemetery corporation may be organized in the manner provided in sections 3872 to 3883, inclusive, Remington's Revised Statutes. A profit corporation may be organized in the manner provided in the General Corporation Laws of the State of Washington.

Prior or-
ganizations
excepted.

SEC. 44. The provisions of this act do not affect the corporate existence or rights or powers of any cemetery organized under any law then existing prior to the effective date of this act, and as to such cemeteries and their rights, powers specified in their charters or articles of incorporation, the laws under which the corporation was organized and existed and under which such rights and powers become fixed or vested are applicable.

Powers
enlarged
to conform.

SEC. 45. The powers, privileges and duties conferred and imposed upon any corporation, firm, co-partnership, association, trust, or individual, existing and doing business under the laws of this state, are hereby enlarged as each particular case may require to conform to the provisions of this act.

Authority to
make or
revise rules
for:

SEC. 46. A cemetery authority may make, adopt, amend, add to, revise, or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery and for the other purposes specified in sections 47 to 55, inclusive, of this act.

Limiting use.

SEC. 47. It may restrict and limit the use of all property within its cemetery.

Uniformity.

SEC. 48. It may regulate the uniformity, class, and kind of all markers, monuments, and other structures within the cemetery and its subdivisions.

SEC. 49. It may regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the cemetery.

Restrict portions.

SEC. 50. It may regulate or prevent the introduction or care of plants or shrubs within the cemetery.

Regulate shrubbery.

SEC. 51. It may prevent interment in any part of the cemetery of human remains not entitled to interment and prevent the use of interment plots for purposes violative of its restrictions or rules and regulations.

Maintain own regulations.

SEC. 52. It may regulate the conduct of persons and prevent improper assemblages in the cemetery.

Prevent improper assemblage.

SEC. 53. It may make and enforce rules and regulations for all other purposes deemed necessary by the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises, and the principles, plans, and ideals on which the cemetery is conducted.

Make rules for conduct.

SEC. 54. The rules and regulations made pursuant to section 46 of this act shall be plainly printed or typewritten and maintained subject to inspection in the office of the cemetery authority or in such place or places within the cemetery as the cemetery authority may prescribe.

Copies of rules available.

SEC. 55. The sexton, superintendent or other person in charge of a cemetery, and such other persons as the cemetery authority designates have the authority of a police officer for the purpose of maintaining order, enforcing the rules and regulations of the cemetery association, the laws of the state, and the ordinances of the city or county, within the cemetery over which he has charge, and within such radius as may be necessary to protect the cemetery property.

Police power of persons in charge.

SEC. 56. No crematory shall hereafter be constructed or established unless the crematory is of

Crematory.

Crematories
must be
fireproof.

fireproof construction and there is in connection therewith a fireproof columbarium, a fireproof mausoleum, a fireproof room for temporary care of cremated remains or a burial park amply equipped at all times for the interment of remains of bodies cremated at the crematory. Nothing herein contained shall prevent existing crematories from being repaired, altered, or reconstructed. Nothing in this act shall prohibit the cremation of human remains in existing crematories, nor the temporary storage of cremated remains.

Existing
crematories
excepted.

Record of
consumed
casket.

SEC. 57. No crematory shall hereafter cremate the remains of any human body without making a permanent signed record of the color, shape and outside covering of the casket consumed with such body, said record to be open to inspection of any person lawfully entitled thereto.

Penalty.

SEC. 58. Each person violating any provision of section 57 of this act shall be guilty of a misdemeanor and each violation shall constitute a separate offense.

Corporate
powers.

SEC. 59. Unless otherwise limited by the law under which created cemetery authorities shall in the conduct of their business have the same powers granted by law to corporations in general, including the right to contract such pecuniary obligations within the limitation of general law as may be required, and may secure them by mortgage, deed of trust, or otherwise upon their property.

Liens sub-
ordinate to
purposes of
dedication.

SEC. 60. All mortgages, deeds of trust and other liens of any nature, hereafter contracted, placed or incurred upon property which has been and was at the time of the creation or placing of the lien, dedicated as a cemetery pursuant to this part, or upon property which is afterwards, with the consent of the owner of any mortgage, trust deed or lien, dedicated to cemetery purposes pursuant to this part, shall not affect or defeat the dedication, but the

mortgage, deed of trust, or other lien is subject and subordinate to such dedication and any and all sales made upon foreclosure are subject and subordinate to the dedication for cemetery purposes.

Liens subordinate.

SEC. 61. Cemetery authorities may take by purchase, donation or devise, property consisting of lands, mausoleums, crematories, and columbariums, or other property within which the interment of the dead may be authorized by law.

Property rights.

SEC. 62. Every cemetery authority, from time to time as its property may be required for cemetery purposes, shall:

Maps of properties.

(a) In case of land, survey and subdivide it into sections, blocks, plots, avenues, walks, or other subdivisions; make a good and substantial map or plat showing the sections, plots, avenues, walks or other subdivisions, with descriptive names or numbers.

(b) In case of a mausoleum, or columbarium, it shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevation, and other divisions, with descriptive names or numbers.

SEC. 63. The cemetery authority shall file the map or plat in the office of the recorder of the county in which all or a portion of the property is situated. The cemetery authority shall also file for record in the county recorder's office a written declaration of dedication of the property delineated on the plat or map, dedicating the property exclusively to cemetery purposes.

Filing of plat and dedication.

SEC. 64. Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes and thereafter the property shall be held, occupied, and used exclusively for a cemetery and for cemetery purposes.

Dedication complete on filing.

Alteration of property.

SEC. 65. Any part or subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as such change does not disturb the interred remains of any deceased person.

Constructive notice.

SEC. 66. The filed map or plat and the recorded declaration are constructive notice to all persons of the dedication of the property to cemetery purposes.

Dedication perpetual.

SEC. 67. After property is dedicated to cemetery purposes pursuant to sections 61 to 66, inclusive, of this act, neither the dedication, nor the title of a plot owner, shall be affected by the dissolution of the cemetery authority, by nonuser on its part, by alienation of the property, by any incumbrances, by sale under execution, or otherwise except as provided in this act.

Perpetuities permitted.

SEC. 68. Dedication to cemetery purposes pursuant to this act is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property, but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to, and for the benefit of, the general public.

Closed to public thoroughfare.

SEC. 69. After dedication pursuant to this act, and as long as the property remains dedicated to cemetery purposes, no railroad, street, road, alley, pipe line, pole line, or other public thoroughfare or utility shall be laid out, through, over, or across any part of it without the consent of the cemetery authority owning and operating it, or of not less than two-thirds (2/3) of the owners of interment plots.

Authority may sell plots.

SEC. 70. After filing the map or plat and recording the declaration of dedication, a cemetery authority may sell and convey plots subject to such rules and regulations as may be then in effect or there-

after adopted by the cemetery authority, and subject to such other and further limitations, conditions and restrictions as may be inserted in or made a part of the declaration of dedication by reference, or included in the instrument of conveyance of such plot.

SEC. 71. All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the cemetery authority, or as provided by law.

Plots indivisible.

SEC. 72. All conveyances made by a cemetery authority shall be signed by such officer or officers as are authorized by the cemetery authority.

SEC. 73. It shall be unlawful for any person, firm or corporation to sell or offer to sell a cemetery plot upon the promise, representation or inducement of resale at a financial profit. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense.

Unlawful sale.

Penalty.

SEC. 74. It shall be unlawful for a cemetery authority to pay or offer to pay to any person, firm or corporation, directly or indirectly, a commission or bonus or rebate or other thing of value for the sale of a plot or services. This shall not apply to a person regularly employed by the cemetery authority for such purpose. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense.

Bonuses, rebates unlawful.

Exception.

Penalty.

SEC. 75. Every person who pays or causes to be paid or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in section 74, any commission or bonus or rebate, or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any crematory or cemetery, is guilty of a misdemeanor and each violation shall constitute a separate offense.

Unlawful to offer bonuses or rebates.

Penalty.

Use exclusive
until
removed
by court.

SEC. 76. Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the Superior Court of the county in which the property is situated, in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the Court:

Proof re-
quired for
removal.

(a) That no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed.

(b) That the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

Notice by
publication.

SEC. 77. The notice of hearing provided in section 76 shall be given by publication once a week for at least three (3) consecutive weeks in a newspaper of general circulation in the county where said cemetery is located, and the posting of copies of the notice in three (3) conspicuous places on that portion of the property from which the dedication is to be removed. Said notice shall:

Contents
of notice.

(a) Describe the portion of the cemetery property sought to be removed from dedication.

(b) State that all remains have been removed or that no interments have been made in the portion of the cemetery property sought to be removed from dedication.

(c) Specify the time and place of the hearing.

Abandon-
ment.

SEC. 78. The ownership of or right in or to unoccupied cemetery space in this state shall, upon abandonment, be subject to forfeiture and sale by the person, association, corporation or municipality having ownership or management of the cemetery containing such unoccupied cemetery space, for the purpose of providing for perpetual care. The con-

tinued failure by an owner to maintain or care for an unoccupied cemetery lot, unoccupied part of lot, unoccupied lots or parts of lots for a period of five (5) years shall create and establish a presumption that the same has been abandoned.

SEC. 79. Before such five (5) year period shall commence to run, the owner or manager of the cemetery shall place upon and during such five (5) year period shall maintain upon such unoccupied cemetery space a suitable notice, setting forth the date the notice is placed thereon and stating that such unoccupied space is subject to forfeiture and sale by the owner or manager of the cemetery to provide for perpetual care, if the owner of such unoccupied space fails during the next five (5) years following the date of the notice to maintain or care for the same or unless the owner of such unoccupied space contracts for the perpetual care of the same: *Provided, however,* That such a notice cannot be placed on the unoccupied space in any cemetery lot until twenty (20) years have elapsed since the last interment in any such lot of a member of the immediate family of the record owner. Members of the immediate family shall be construed to include surviving spouse, children, parents, and brothers and sisters.

Abandonment procedure.

Maintaining of notice.

Contents.

Limitation.

SEC. 80. After such five (5) year period, the owner or manager of the cemetery may file in the office of the county clerk for the county in which the cemetery is located a verified petition, setting forth its ownership or management of the cemetery, the facts relating to the continued failure by the owner for a period of five (5) consecutive years to maintain or care for such cemetery lot, part of lot, lots or parts of lots and such facts relating to the ownership thereof as petitioner may have, and asking for an order of the Superior Court for such

Petition to state facts.

county, adjudging the lot, part of lot, lots or parts of lots to have been abandoned.

Court to
fix time of
hearing.

At the time of filing such petition, the owner or manager of the cemetery shall apply for and the Superior Court for such county shall fix a time for the hearing of the petition not less than sixty (60) days nor more than ninety (90) days from the time of the application. Not less than sixty (60) days before the time fixed for the hearing of the petition, notice of the hearing and the nature and object of the same shall be given to the owner of such unoccupied space, as herein provided.

Service
of notice.

SEC. 81. The notice may be served personally upon the owner, or may be given by the mailing of the notice by registered mail to the owner to his last known address and by publishing the notice three (3) times in a legal newspaper published in the county in which the cemetery is located, and if there be no legal newspaper in the county, then in a legal newspaper published in an adjoining county, and if there be no legal newspaper in an adjoining county, then in a legal newspaper published at the capital of the state. In the event that the whereabouts of the owner is unknown, or if the owner be unknown, then the notice may be given to such owner, unknown owner or unknown claimant, and all other persons or parties claiming any right, title or interest therein, by publishing the notice three (3) times in a legal newspaper as aforesaid. The affidavit of the owner or manager of the cemetery involved to the effect that such owner or claimant is unknown to him and that he exercised diligence in attempting to locate such unknown parties shall, if filed in the proceeding, be conclusive to that effect.

Owner may
answer.

SEC. 82. Thereupon, such owner or claimant may appear and make answer to the allegations of

said petition, and in case of his failure so to do prior to the day fixed for hearing, his default shall be entered and it shall then be the duty of the Superior Court for such county to immediately enter an order adjudging such unoccupied space to have been abandoned and subject to sale at the expiration of one (1) year by the person, association, corporation or municipality having ownership or management of the cemetery containing the same. In the event the owner or claimant shall appear and file his answer prior to the day fixed for the hearing, the presumption of abandonment shall no longer exist, and on the day fixed for the hearing of said petition or on any subsequent day to which the hearing of the cause is adjourned, the allegations and proof of the parties shall be presented to the court and if the court shall determine therefrom that there has been a continued failure to maintain or care for such unoccupied space for a period of five (5) consecutive years preceding the filing of said petition, an order shall be entered accordingly adjudging such unoccupied space to have been abandoned and subject to sale at the expiration of one (1) year by the person, association, corporation or municipality having ownership of the cemetery containing the same. Upon any adjudication of abandonment, the Court shall fix such sum as it shall deem reasonable as an attorney's fee for petitioner's attorney for each lot, part of lot, lots or parts of lots adjudged to have been abandoned in such proceedings.

Failure to appear default.

Order in default.

Appearance ends presumption of abandonment.

Presentation of proof.

Order in accord with findings.

Attorney's fee.

SEC. 83. If at any time prior to the adjudication of abandonment, as in this act provided, the owner of an unoccupied lot, part of lot, lots or parts of lots shall contract with the owner or manager of the cemetery in which the same is located for the perpetual care of the same, no further proceedings with respect to the same shall be had hereunder, and the

Proceedings cancelled on contract for care.

Court shall dismiss the proceedings as to the unoccupied cemetery space of such owner.

Vacation
after ad-
judication.

SEC. 84. If at any time within one (1) year after the adjudication of abandonment, as in this act provided, the former owner of unoccupied cemetery space, which has been adjudged abandoned, shall contract for the perpetual care of the same, and reimburse the owner or manager of the cemetery for the expenses with respect to the filing of the petition, entry or order, payment of reasonable attorney's fees as herein provided, and the giving of any notice provided for in this act, then the unoccupied space shall not be sold as hereinafter provided and the order adjudging the same to have been abandoned shall be vacated as to the same upon petition of such former owner.

Sale after
adjudication.

SEC. 85. One (1) year after the entry of the order adjudging such lot, part of lot, lots or parts of lots to have been abandoned, the owner or manager of the cemetery in which the same is located shall have the power to sell the same, in whole or in part, at public or private sale, and convey by deed good, clear and sufficient title thereto.

Disposition
of sale funds.

SEC. 86. Not more than twenty per cent (20%) of the funds realized from the sale of such abandoned space shall be used to defray the expenses with respect to the filing of the petition, entry of order, payment of reasonable attorney's fees, as herein provided, the giving of any notice provided for in this act, and the improving of the same in such manner as may be required to place it in condition for care, and the balance, not to be less than eighty per cent (80%) of the funds realized from the sale of the same, shall be placed immediately in a trust fund or shall be immediately transferred to a non-profit corporation, association or organization to be used exclusively for the perpetual care and maintenance of the cemetery.

SEC. 87. In any one petition for abandonment, a petitioner may, irrespective of diversity of ownership, include in any such petition as many lots or parts of lots as come within the provisions of this act. The petition for abandonment shall be entitled: "In the Matter of the Abandonment, Forfeiture and Sale of Unoccupied and Uncared for Space located in Cemetery."

Petition not limited.

SEC. 88. All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance.

Plots sold separate property.

SEC. 89. The spouse of an owner of any plot containing more than one (1) interment space has a vested right of interment of his remains in the plot and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains in the plot if more than one (1) interment space is unoccupied at the time the person becomes the spouse of the owner.

Vested right of spouse.

SEC. 90. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of a vested right of interment, except that a final decree of divorce between them terminates the vested right of interment unless otherwise provided in the decree.

Right maintained.

Exception.

SEC. 91. If no interment is made in an interment plot which has been transferred by deed or certificate of ownership to an individual owner, or if all remains previously interred are lawfully removed, upon the death of the owner, unless he has disposed of the plot either in his will by specific devise or by a written declaration filed and recorded in the office of the cemetery authority, the plot descends to the heirs at law of the owner subject to the rights of interment of the decedent and his surviving spouse.

Succession upon death of owner.

Exempt from inheritance taxes.

SEC. 92. Cemetery property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes.

Authorization to permit use.

SEC. 93. An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot pursuant to sections 88 to 91, inclusive, of this act, is complete authorization to the cemetery authority to permit the use of the unoccupied portions of the plot by the person entitled to the use of it.

Joint tenants.

SEC. 94. In a conveyance to two (2) or more persons as joint tenants each joint tenant has a vested right of interment in the plot conveyed.

Succession of title of joint tenant.

SEC. 95. Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the remains of the deceased joint tenant.

Authorization in case of joint tenant.

SEC. 96. An affidavit by any person having knowledge of the facts setting forth the fact of the death of one (1) joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the cemetery authority operating the cemetery in which the plot is located, is complete authorization to the cemetery authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest.

Representation in co-ownership.

SEC. 97. When there are several owners of a plot, or of rights of interment in it, they may designate one (1) or more persons to represent the plot and file written notice of designation with the cemetery authority. In the absence of such notice or of written objection to its so doing, the cemetery authority is not liable to any owner for interring

or permitting an interment in the plot upon the request or direction of any co-owner of the plot.

SEC. 98. Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner and the owner dies without making disposition of the plot either in his will by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, the plot thereby becomes inalienable and shall be held as the family plot of the owner.

Interment makes plot inalienable.

SEC. 99. In a family plot one (1) grave, niche or crypt may be used for the owner's interment; one (1) for the owner's surviving spouse, if any, who by law has a vested right of interment in it; and in those remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot.

Rights in family plot.

SEC. 100. If no parents or child survives, the right of interment goes in the order of death first, to the spouse of any child of the record owner, and second, in the order of death to the next heirs at law of the owner or the spouse of any heir at law.

Succession if no kin survives.

SEC. 101. Any surviving spouse, parent, child, or heir having a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of the deceased owner; and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot.

Waiver of right.

SEC. 102. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom vested.

Waiver of vested right.

SEC. 103. No vested right of interment gives to any person the right to have his remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred, nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules and regulations of the cemetery in which the interment space is located.

Restricted plots.

SEC. 104. A cemetery authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments shall be restricted to the persons designated in the conveyance or devise.

Operation of perpetual care funds.

SEC. 105. Every cemetery authority which now or hereafter maintains a cemetery may place its cemetery under perpetual care and establish, maintain, and operate an irreducible perpetual care fund. Perpetual care and special care funds may be commingled for investment and the income therefrom shall be divided between the perpetual care and special care funds in the proportion that each fund contributed to the principal sum invested. The funds may be held in the name of the cemetery authority or its directors or in the name of the trustees appointed by the cemetery authority.

Principal irreducible.

SEC. 106. The principal of all funds for perpetual care shall forever remain irreducible and inviolable and shall be maintained separate and distinct from all other funds.

Income used for care.

SEC. 107. The principal of all funds for perpetual care shall be invested, from time to time re-invested, and kept invested and the income earned shall be used solely for the general care, maintenance, and embellishment of the cemetery, and shall be applied in such manner as the cemetery author-

ity may from time to time determine to be for the best interest of the cemetery.

SEC. 108. The cemetery authority may from time to time adopt plans for the general care, maintenance, and embellishment of its cemetery, and charge and collect from all subsequent purchasers of plots such reasonable sum as, in the judgment of the cemetery authority, will aggregate a fund, the reasonable income from which will perpetually provide care, maintenance and embellishment.

Plans for care.

Revenue for fund.

SEC. 109. Upon payment of the purchase price and the amount fixed as a proportionate contribution for perpetual care, there may be included in the deed of conveyance or by separate instrument an agreement perpetually to care, in accordance with the plan adopted, for the cemetery and its appurtenances to the proportionate extent the income received by the cemetery authority from the contribution will permit.

Agreement for perpetual care.

SEC. 110. Upon the application of an owner of any plot, and upon the payment by him of the amount fixed as a reasonable and proportionate contribution for perpetual care, a cemetery authority may enter into an agreement with him for the care of his plot and its appurtenances.

SEC. 111. The cemetery authority may appoint a board of trustees of not less than three (3) in number as trustees for its perpetual care fund. The members of the board of trustees shall hold office subject to the direction of the cemetery authority.

Trustees for fund.

SEC. 112. The directors of a cemetery authority, if any, may be the trustees of its perpetual care fund. When the fund is in the care of the directors as a board of trustees the secretary of the cemetery authority shall act as its secretary and keep a true record of all of its proceedings. The invest-

Directors may be trustees.

ments of the perpetual care fund may be held in the name of the cemetery authority.

Bank or trust company may be trustee.

SEC. 113. In lieu of the appointment of a board of trustees of its perpetual care fund, any cemetery authority may appoint as sole trustee of its perpetual care fund any bank or trust company qualified to engage in the trust business, and said bank or trust company shall be authorized to receive and accept said fund, including any accumulated perpetual care fund in existence at the time of its appointment.

Compensation limited.

SEC. 114. No sum in excess of five per cent (5%) of the income derived from the fund in any year shall be paid as compensation to the board of trustees for its services as trustee.

Reports of financial condition.

SEC. 115. The cemetery authority or the persons in whose names the funds are held shall, annually, and within ninety (90) days after the end of the calendar or fiscal year of the cemetery authority, make and file with it a true and correct written report, verified on oath by an officer of the cemetery authority or by the oath of one or more of the trustees, showing the actual financial condition of the funds.

Authority may hold property for fund.

SEC. 116. A cemetery authority which has established a perpetual care fund may take, receive, and hold as a part of or incident to the fund any property, real, personal or mixed, bequeathed, devised, granted, given or otherwise contributed to it for its perpetual care fund.

Charitable purpose declared.

SEC. 117. The perpetual care fund and all payments or contributions to it are hereby expressly permitted as and for charitable and eleemosynary purposes. Perpetual care is a provision for the discharge of a duty from the persons contributing to the persons interred and to be interred in the cemetery and a provision for the benefit and protection of

the public by preserving and keeping cemeteries from becoming unkept and places of reproach and desolation in the communities in which they are situated. No payment, gift, grant, bequest, or other contribution for general perpetual care is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust, nor is the fund or any contribution to it invalid as violating any law against perpetuities, or the suspension of the power of alienation of title to property.

SEC. 118. A perpetual care cemetery is one which shall hereafter deposit in its perpetual care fund not less than the following amounts for plots sold or disposed of:

Perpetual
care
cemetery
defined.

- (a) ten per cent (10%) of the gross sales price with a minimum of five dollars (\$5) for each grave;
- (b) five dollars (\$5) for each niche;
- (c) Fifteen dollars (\$15) for each crypt.

The deposit shall be made not later than the twentieth (20th) day of the month following the final payment on the purchase price of the plot.

SEC. 119. A non-perpetual care cemetery is one that does not deposit in a perpetual care fund the minimum specified in section 118.

Non-per-
petual care
cemetery.

SEC. 120. A cemetery which otherwise complies with section 118 may be designated a perpetual care cemetery even though it contains a small section which may be sold without perpetual care, if the section is separately set off from the remainder of the cemetery and if signs are kept prominently placed around the section designating the same as a "non-perpetual care section" in lettering equivalent to a minimum of forty-eight (48) point black type. There shall be printed or stamped at the head of all contracts, and certificates of ownership or deeds referring to plots in the section the phrase "non-

Non-per-
petual care
section
permitted.

perpetual care" in lettering equivalent to a minimum of ten (10) point number two (2) black type.

Designation of perpetual care cemetery.

SEC. 121. Each perpetual care cemetery shall post in a conspicuous place in the office or offices where sales are conducted and in a conspicuous place at or near the entrance of the cemetery or its administration building and readily accessible to the public, a legible sign with the following phrase: "This is a perpetual care property."

Report on file at office.

SEC. 122. Each perpetual care cemetery shall file in its principal office a written report which shall be available to any plot owner and which shall contain:

Contents.

- (a) amount of principal of the perpetual care fund;
- (b) total amount invested in bonds, securities or other investments authorized by law and the total amount of cash on hand not invested which shall actually show the financial condition of the trust.

Designation of non-perpetual care cemetery.

SEC. 123. Each non-perpetual care cemetery shall post in a conspicuous place in the office or offices where sales are conducted and in a conspicuous place at or near the entrance of the cemetery or its administration building and readily accessible to the public, a legible sign with the following phrase: "This is not a perpetual care property." This phrase likewise shall be printed or stamped at the head of all contracts, certificates of ownership or deeds.

Reports revised annually.

SEC. 124. All the information appearing on the report filed in the cemetery office shall be revised annually and verified by the president and secretary, or two (2) officers authorized by the cemetery authority.

Penalty for violation or false statement.

SEC. 125. Any person, partnership, corporation, association, or his or its agents or representatives who shall violate any of the provisions of sections 118 to 124, inclusive, or make any false statement

appearing on said sign, contract, agreement, receipt, statement, literature or other publication shall be guilty of a misdemeanor.

SEC. 126. Perpetual care funds shall not be used for any purpose other than to provide through income only for the perpetual care stipulated in the resolution, by-law, or other action or instrument by which the fund was established.

Use of funds limited.

SEC. 127. The funds shall be invested and re-invested and kept invested by the trustee in the securities authorized by sections 2 to 16, inclusive, chapter 41, Laws of 1941, relating to the investment of trust funds, or as hereafter amended: *Provided*, That where the instrument, by law or charter creating the trust so provides, the trustee may invest the funds in the same manner as a corporation doing a trust business in accordance with sections 13 and 14 of said statute. Any investment of funds which was a legal investment at the time the same was made shall be considered as and remain a legal investment.

Investment of funds.

SEC. 128. The cemetery authority may borrow from the perpetual care fund or the trustee thereof only for the purpose of liquidating existing mortgage or lien indebtedness against the real and personal property of the cemetery authority or to improve its real property to make it available for interment purposes or for the construction or improvement of mausoleum, columbarium or crematory property or for the purpose of making payment and completing title to additional real property to be used for interment purposes.

Purposes for which authority may borrow from fund.

No such loan may be made from the perpetual care fund or the trustee thereof unless such loan is evidenced by a note and secured by a first mortgage upon all of the real and personal property of the cemetery authority used for interment purposes.

Security for such loan.

Limitation
of loan.

Such loan shall not exceed twenty per cent (20%) of the appraised net value of the real property to be mortgaged as appraised by disinterested, impartial appraisers, nor shall any such loan be made after sixty per cent (60%) of the interment area of the cemetery has been sold.

Period of
loan.

Such loans shall be made for a period not in excess of ten (10) years and shall provide for a yearly reduction in principal of not less than five per cent (5%) thereof during each and every year of the term of the mortgage and shall bear interest at the current rate then existing in the locality where such mortgage is made, such interest to be paid semi-annually.

Purposes
for which
property
may be held.

SEC. 129. A cemetery authority which has established perpetual care may also take and hold any property bequeathed, granted, or given to it in trust to apply the principal, or proceeds, or income to either or all of the following purposes:

(a) improvement or embellishment of all or any part of the cemetery or any lot in it;

(b) erection, renewal, repair, or preservation of any monument, fence, building, or other structure in the cemetery;

(c) planting or cultivation of trees, shrubs, or plants in or around any part of the cemetery;

(d) special care or ornamenting of any part of any plot, section, or building in the cemetery;

(e) any purpose or use not inconsistent with the purpose for which the cemetery was established or is maintained.

Charitable
purpose
declared.

SEC. 130. The sums paid in or contributed to the fund authorized by this act are hereby expressly permitted as and for a charitable and eleemosynary purpose. Such contributions are a provision for the discharge of a duty due from the persons contributing to the person or persons interred

or to be interred in the cemetery and likewise a provision for the benefit and protection of the public by preserving, beautifying, and keeping cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are situated. No payment, gift, grant, bequest, or other contribution for such purpose is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the fund, nor is the fund or any contribution to it invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

SEC. 131. No director or officer of the cemetery authority or trustee of the perpetual care or special care funds shall borrow any perpetual care or special care funds of the corporation for himself, directly or indirectly, except as provided in section 128.

Limitation
on loaning
funds.

SEC. 132. The office of any director or officer who acts or permits action contrary to this act immediately thereupon becomes vacant.

SEC. 133. Every director or officer authorizing or consenting to a loan, and the person who receives a loan, in violation of this article are severally guilty of a misdemeanor.

Penalty.

SEC. 134. Sections 135 to 145, inclusive, apply to all buildings, mausoleums and columbariums used or intended to be used for the interment of the remains of fifteen (15) or more persons whether erected under or above the surface of the earth where any portion of the building is exposed to view or, when interment is completed, is less than three (3) feet below the surface of the earth and covered by earth.

SEC. 135. A building not erected for, or which is not used as, a place of interment of human remains

Conversions
subject to
act.

which is converted or altered for such use is subject to this act.

Perma-
nency.

SEC. 136. No building or structure intended to be used for the interment of human remains shall be constructed, and a building not used for the interment of human remains shall not be altered for use or used for interment purposes, unless constructed of such material and workmanship as will insure its durability and permanence as dictated and determined at the time by modern mausoleum construction and engineering science.

Fireproof
construction.

SEC. 137. All mausoleums or columbariums hereafter constructed shall be of class "A" fireproof construction.

Local ordi-
nances
govern.

SEC. 138. If the proposed site is within the jurisdiction of a city having ordinances and specifications governing class "A" construction, the provisions of the local ordinances and specifications shall not be violated.

Penalty for
violation.

SEC. 139. Every person who violates any provision of this act is guilty of a misdemeanor, and in addition is liable for all costs, expenses, and disbursements paid or incurred by a person prosecuting the case.

Penalty for
violation.

SEC. 140. Every owner or operator of a mausoleum or columbarium erected in violation of this act is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) or by imprisonment in a county jail for not less than one (1) month nor more than six (6) months, or by both; and, in addition is liable for all costs, expenses and disbursements paid or incurred in prosecuting the case.

Court to
fix costs.

SEC. 141. The costs, expenses and disbursements shall be fixed by the court having jurisdiction of the case.

SEC. 142. The penalties of this act shall not apply as to any building which, at the time of construction was constructed in compliance with the laws then existing, if its use is not in violation of the laws for the protection of public health.

Existing structures excepted.

SEC. 143. Cities and counties are authorized to enact ordinances regulating or prohibiting the establishment of new cemeteries or the extension of existing ones and to give power to local planning commissions to pass upon and make recommendations to local legislative bodies concerning the establishment or extension of cemeteries.

May regulate or prohibit.

SEC. 144. It shall be unlawful for any person, firm, or corporation to establish or maintain any cemetery or to extend the boundaries of any existing cemetery in this state without a permit first having been applied for and permission obtained in accordance with the city and county ordinance and other zoning or statutory provisions governing the same.

Zoning statutes govern.

SEC. 145. Every person, firm or corporation who is the owner or operator of a cemetery established in violation of this act is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) or by imprisonment in a county jail for not less than one (1) month nor more than six (6) months, or by both; and, in addition is liable for all costs, expenses and disbursements paid or incurred in prosecuting the case.

Penalty for violation.

SEC. 146. The provisions of sections 42 to 45, inclusive, sections 62 to 77, inclusive and sections 88 to 133, inclusive, relating to private cemeteries, do not apply to any of the following:

Exceptions from certain sections.

(a) Any religious corporation, church, religious society or denomination, a corporation sole admin-

istering temporalities of any church or religious society or denomination, or any cemetery organized, controlled, and operated by any of them;

(b) Any county, town or city cemetery.

Saving
clause.

SEC. 147. If any section, subdivision, sentence or clause of this act shall be held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this act.

Repeals.

SEC. 148. Section 1 of an act entitled: "An Act regulating burying grounds and places of sepulchre," passed January 27, 1857, Laws of 1856-7, page 28 (section 3758, Remington's Revised Statutes; section 576, Pierce's Code); and section 2788, chapter CCXVI (216), Code of Washington Territory 1881, as amended by section 1, chapter XII (12), Laws of 1901 (section 4193, Remington's Revised Statutes; section 1749, Pierce's Code); and sections 1, 2, 4 and 7, chapter XXXIII (33), Laws of 1899 (sections 3764, 3765, 3767 and 3771, Remington's Revised Statutes; sections 565, 566, 568 and 571, Pierce's Code); and sections 1, 2 and 3, chapter CXLVII (147), Laws of 1901 (sections 3761 and 3762, Remington's Revised Statutes; sections 572, 573 and 574, Pierce's Code); and section 1, chapter 118, Laws of 1905 (section 3770, Remington's Revised Statutes; section 579, Pierce's Code), are hereby repealed.

Passed the House February 25, 1943.

Passed the Senate March 8, 1943.

Approved by the Governor March 22, 1943.