

8A:3-13

LEGISLATIVE HISTORY CHECKLIST

(Cemetery companies--
certain--exempt from
application fee for
certificate of authority)

WASA 8A:3-13

LAWS OF 1980

CHAPTER 57

Bill No. S. 176

Sponsor(s) Foran

Date Introduced Pre-filed

Committee: Assembly Commerce, Industry and Professions

Senate Labor, Industry and Professions

Amended during passage XXX No

Date of Passage: Assembly June 26, 1980

Senate January 29, 1980

Date of approval July 1, 1980

Following statements are attached if available:

Sponsor statement Yes XX (Below)

Committee Statement: Assembly Yes XX

Senate Yes XX

Fiscal Note XXX No

Veto message XXX No

Message on signing Yes XX

Following were printed:

Reports XXX No

Hearings XXX No

Sponsor's statement:

This bill exempts certain cemetery companies which exist solely for the maintenance and preservation of the cemetery from the fee required for an application for a certificate of authority.

9/1/78

pf

Vertical stamp: RECEIVED... LEGISLATIVE... 1980

SENATE, No. 176

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1980 SESSION

By Senator FORAN

AN ACT concerning cemeteries and amending N. J. S. 8A:3-13.

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

1 1. N. J. S. 8A:3-13 is amended to read as follows:

2 (1) The charter of a cemetery company organized under Title 15
3 of the Revised Statutes, as provided for herein, shall state in that
4 section of the charter devoted to the purposes for which the ceme-
5 tery company is organized one or more of the following purposes:

6 a. The procuring and holding of lands to be used exclusively
7 for a cemetery or a place for the burial of the dead.

8-9 b. The interment or inurnment of human remains.

10 c. The procurement and operation of a crematory.

11 d. The procurement and operation of a mausoleum.

12 e. The procurement and operation of a columbarium.

13 f. The care and preservation of any of the lands or structures
14 specified in the foregoing stated purposes. The stated purposes
15 of the cemetery company shall be considered by the cemetery
16 board and may be used by them as a basis for their determination
17 as to whether a certificate of authority shall issue.

18 (2) Any cemetery company organized prior to the effective date
19 of this act shall, within 90 days from the effective date of this act,
20 apply to the New Jersey Cemetery Board for the issuance to it
21 of a certificate of authority, along with a fee of \$100.00 payable to
22 the New Jersey Cemetery Board. *However, no such fee shall be*
23 *required from any company which can demonstrate to the satis-*
24 *faction of the New Jersey Cemetery Board that it no longer has*
25 *cemetery land to sell and that it exists solely for the maintenace and*
26 *preservation of the cemetery.*

1 2. This act shall take effect immediately.

STATEMENT

This bill exempts certain cemetery companies which exist solely for the maintenance and preservation of the cemetery from the fee required for an application for a certificate of authority.

ASSEMBLY COMMERCE, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

SENATE, No. 176

STATE OF NEW JERSEY

DATED: JUNE 9, 1980

This bill would exempt from the \$100.00 application fee for a certificate of authority, any cemetery company, organized prior to the passage of the 1971 cemetery law, which can demonstrate to the New Jersey Cemetery Board that it no longer has cemetery land to sell and exists solely for the maintenance and preservation of the cemetery.

SENATE LABOR, INDUSTRY AND
PROFESSIONS COMMITTEE

STATEMENT TO

SENATE, No. 176

STATE OF NEW JERSEY

DATED: JANUARY 14, 1980

This bill would exempt from the \$100.00 application fee for a certificate of authority, any cemetery company which can demonstrate to the New Jersey Cemetery Board that it no longer has cemetery land to sell and exists solely for the maintenance and preservation of the cemetery.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

JULY 1, 1980

KATHRYN FORSYTH

Governor Brendan Byrne today signed the following bills:

S-176, sponsored by Senator Walter E. Foran (D-Hunterdon) which allows cemetary associations which no longer have any cemetary lands to sell and which exist solely for the maintenance and preservation of the cemetary to be exempt from \$100 fee charged by the State for a certificate of authority.

The Nixon Cemetary Association in Franklin Township, a group of civic-minded citizens organized to keep the grass cut in the abandoned cemetary, is affected by the legislation.

A-1845, sponsored by Assemblyman Michael Matthews (D-Atlantic) which directs the Division of Taxation to collect and administer the Atlantic City Luxury Tax.

S-1017, sponsored by Senator Bernard J. Dwyer (D-Middlesex) which amends three sections of the statutes covering court fees. Generally, the fees are doubled, though in some instances the increase is higher.

The fees affected are fees for:

- filing certain documents with the County Clerk as Deputy Clerk of the Superior Court. These are pleadings that were filed in the County Court before that court was merged with the Superior Court;
- services rendered by the County Clerk on matters filed in his office as County Clerk and as Deputy Clerk of the Superior Court;
- services rendered by the County Clerk as registrar on matters that are not court related.

These fees have not been raised since 1965.

The bill also eliminates certain obsolete fees and establishes new fees for --indexing any recorded instrument in excess of 10 parties (20¢ for each additional party)

1. The following sum is hereby appropriated out of the General State Fund for the purpose herein specified:

CLAIM

DEPARTMENT OF TRANSPORTATION

61100. STATE HIGHWAY FACILITIES-STATE HIGHWAY CONSTRUCTION

Brookfield Construction Company, 521 Fifth avenue, New York, New York, c/o Herman V. Traub, Esquire, 295 Madison avenue, New York, New York 10017, for additional cost items incurred in the construction of Route 80, section 5-S, \$175,000.00.

2. This act shall take effect immediately.

Approved August 23, 1973.

CHAPTER 219

AN ACT concerning cemeteries and amending, supplementing, repealing, and revising various parts of the statutory law and making an appropriation therefor.

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

1. N. J. S. 8A:2-1 is amended to read as follows:

New Jersey Cemetery Board; establishment, membership, appointment, terms, vacancies, removal, compensation, officers, meetings, executive director, personnel, quorum, reports.

8A:2-1. a. There is hereby established in the Department of Banking a board which shall be known as the New Jersey Cemetery Board.

b. The New Jersey Cemetery Board shall consist of nine members, three of whom shall be ex-officio members, viz., the Attorney General, the Commissioner of Banking and the Commissioner of Health, or when so designated by them, their designees; five regular members, each of whom has served, for a period of at least 5 consecutive years immediately preceding his appointment, as a member of a board of managers, directors, trustees, general manager or superintendent of a cemetery company; and one public member who shall have no interest directly or indirectly in any

cemetery company or any allied industries. Each of the regular members and the public member shall be appointed by the Governor with the advice and consent of the Senate, to serve during the term of office and until the qualification and appointment of his successor.

c. The terms of the five regular members and one public member first appointed shall be arranged by the Governor so that two of such terms shall expire in 1 year, two in 2 years, and two in 3 years. Thereafter all appointments shall be for the term of 4 years. Vacancies shall be filled in the same manner as original appointments but for the unexpired term only.

d. Any member of the New Jersey Cemetery Board may be removed from office by the Governor for cause, upon notice and opportunity to be heard.

e. The members of the New Jersey Cemetery Board shall serve without compensation but shall be reimbursed for reasonable and necessary expenses incurred in the performance of their official duties.

f. The members of the board shall elect a chairman and secretary from among their own number. The board shall meet at least four times each year, at the call of its chairman or at the written request of two members of the board directed to its chairman. The chairman shall fix the time and place for such meetings.

g. The work of the New Jersey Cemetery Board shall be under the immediate supervision of an executive director who shall be appointed by the board for a term of 6 years. The board shall fix the compensation of the executive director within the limits of available appropriations.

The executive director shall not have any interest directly or indirectly in any cemetery company or in any individual, partnership or corporate entity which does business with or at any cemetery.

h. Subject to the approval of the Commissioner of Banking and the provisions of Title 11, Civil Service, the New Jersey Cemetery Board may appoint, employ or remove such assistants and employees as may be necessary to carry out the provisions of this act. The board shall be entitled to call upon its assistants and avail itself of the services of such employees of any State department or agency as it may require and as may be made available to it for such purpose.

i. Six members of the New Jersey Cemetery Board shall constitute a quorum to transact business of the board and all actions of the board shall require the affirmative vote of at least six members.

j. The New Jersey Cemetery Board shall make an annual detailed report to the Commissioner of Banking of the performance of its duties and the operations of the board and shall make such other reports to the Commissioner of Banking as the commissioner may require from time to time.

2. N. J. S. 8A:2-2 is amended to read as follows:

Board's powers.

8A:2-2. The New Jersey Cemetery Board shall have full power and authority to administer the provisions of this act and shall have general supervision and regulation of and jurisdiction and control over all cemetery companies and their property, property rights, equipment and facilities so far as may be necessary for the purpose of carrying out the provisions of this Title.

3. N. J. S. 8A:2-3 is amended to read as follows:

Notice of action or proceeding.

8A:2-3. In any action or proceeding affecting or instituted by any cemetery company the Attorney General and the New Jersey Cemetery Board shall be served with notice thereof in the same manner as any necessary party and shall take such steps in the action or proceeding as may be deemed necessary to protect the public interest.

4. N. J. S. 8A:3-2 is amended to read as follows:

Certificate of authority required.

8A:3-2. Before any cemetery company organized after the effective date of this act, subject to the provisions of this act, shall engage in any function or operation of a cemetery or crematory there shall be issued to the cemetery company operating such cemetery or crematory a certificate of authority to so operate. Such certificate shall be issued by the New Jersey Cemetery Board in accordance with this chapter.

5. N. J. S. 8A:3-3 is amended to read as follows:

Application for certificate of authority; contents.

8A:3-3. The application for such certificate of authority by any cemetery company organized after the effective date of this act shall be made in writing to the cemetery board, be verified under oath and shall contain such information as the cemetery board by regulation shall require to enable the board, in its discretion to determine whether the issuance of the certificate is warranted. This information shall be directed to the fitness of the applicant;

its ability to properly perform the services proposed; its ability to conform to the provisions of this act and the requirements, rules and regulations of the cemetery board; its ability to comply with any pertinent regulation for the protection of health, promulgated by either the New Jersey Department of Health, New Jersey Department of Environmental Protection, the cemetery board, or local health authorities; the necessity for the services sought to be provided, taking into consideration such factors as the present or future public need and convenience, and any pertinent territorial qualifications.

6. N. J. S. 8A:3-14 is amended to read as follows:

Construction of mausoleums, vaults or crypts; permit; approval; limitations; penalty.

8A:3-14. a. No person shall build, construct or erect, wholly or partially above or below the surface of the ground, a public mausoleum, vault, crypt or other structure intended to hold or contain dead bodies, without obtaining a building permit from the building inspector of the municipality in which it is proposed to build or erect said structure. A denial or failure to issue said permit shall be reviewable in the Superior Court by a proceeding in lieu of prerogative writ. The provisions of this section shall have application to every cemetery company, religious corporation and religious society.

b. Full detailed plans and specifications of said structure shall be presented to the State Department of Environmental Protection for its examination and approval before the commencement of the erection thereof. Before approving the plans and specifications the State Department of Environmental Protection shall be satisfied that the mausoleum proposed to be constructed can be operated and maintained without constituting a hazard to public health or safety.

The approval of the plans and specifications by the State Department of Environmental Protection shall be evidenced by a certificate in writing, properly signed, which certificate with the detailed plans and specifications so approved shall, before work is begun on the structure, be filed in the office of the clerk of the county wherein the structure is to be erected and there remain as a public record.

c. The process of construction and erection of the structure shall be at all times under the supervision of the said building inspector, whose duty it shall be to see that the approved plans and specifications are complied with in every particular as to kind, quality,

character and quantity of all materials. No departure or deviation from the original plans and specifications shall be permitted, except upon the approval of the said State Department of Environmental Protection evidenced and filed in like manner and form as the approval of the original plans and specifications.

d. No structure erected under the provisions of this section shall be used for the purpose of interring or depositing therein any dead body until there shall have been obtained a certificate signed by the building inspector of the municipality in which the structure shall have been erected, which certificate shall show that the plans and specifications as filed have been complied with fully in every particular, nor until the certificate shall be filed with the clerk of the county wherein the structure is located.

e. No structure constructed or erected under the provisions of this section shall be used for the interment or depositing therein of a dead body until a trust fund shall have been established and set apart in accordance with the laws regulating trust funds in this State, of not less than 10% of the total cost of the structure. The interest on the trust fund, and the interest only, shall be used for the perpetuation of the structure. This provision shall not apply to private mausoleums or temporary receiving vaults.

f. This section shall not apply to a public mausoleum, vault, crypt or other structure intended to hold or contain dead bodies, constructed or erected or in the course of construction or erection prior to March 21, 1916.

g. Any officer, manager or director of a cemetery willfully failing to comply with the provisions of this section shall be personally liable therefore and shall be liable to a penalty of \$1,000.00.

7. N. J. S. 8A:3-15 is amended to read as follows:

Voting membership of cemetery companies.

8A:3-15. In the case of cemeteries other than those owned by shareholders, each owner of an interment space shall be considered a member of the cemetery company and shall have one vote for each grave, crypt or niche wherever voting by the members is required under the provisions of any law, subject to the following qualifications:

a. If any interment space is owned by more than one person, then a majority of the owners thereof shall decide among themselves who shall cast the vote represented by said ownership.

b. No interment space owner shall be entitled to vote unless all charges and assessments against the interment space of said owner have been paid.

c. Proxy voting shall be permitted except that no proxy shall be valid more than 3 years following the date of said proxy.

d. Any person owning certificates of indebtedness or certificates of interest shall have one vote for each \$250.00 value thereof.

e. An organization shall have one vote for each interment space owned, except that it shall not have more than 100 votes.

8. N. J. S. 8A:3-17 is amended to read as follows:

Annual meeting; report; notice.

8A:3-17. The managers, trustees or directors of a cemetery company shall at each annual meeting report as to their activities and management and also as to the condition of the property and affairs of the cemetery company. At least 20 days prior to the occurrence of such annual meeting a notice thereof shall be placed at some prominent place at the office of the cemetery company and shall be published in a newspaper having general circulation in the county in which such cemetery company operates a cemetery.

9. N. J. S. 8A:3-21 is amended to read as follows:

Participation in litigation.

8A:3-21. The Attorney General and the cemetery board shall be necessary and indispensable parties to any litigation involving or pertaining to a cemetery company.

10. N. J. S. 8A:4-4 is amended to read as follows:

Trust fund to be established by certain companies.

8A:4-4. Each and every cemetery company organized before the effective date of this act which has obtained a certificate of authority to operate a cemetery from the board, shall within 1 month following the issuance of the certificate of authority, cause to be established a custodial trust fund in a banking institution authorized by law to maintain trust accounts and having and maintaining a place of business within this State, except that where the trust funds of the cemetery company do not exceed \$50,000.00, then the cemetery company need not establish a custodial trust fund in accordance with this section but shall otherwise be subject to all other provisions of this act as well as the laws of the State of New Jersey regarding trust funds. This fund shall be called the Maintenance and Preservation Fund and shall be augmented from time to time as set forth in this act, or as ordered by the cemetery board.

11. N. J. S. 8A:4-5 is amended to read as follows:

Fees and charges to be paid into Maintenance and Preservation Fund.

8A:4-5. The cemetery company shall collect and pay into the Maintenance and Preservation Fund the following fees and charges:

a. From the proceeds in the initial sale by a cemetery company a sum equal to a minimum of 15% of the gross sales price of the lot or grave or \$25.00 per grave, whichever is greater; provided, however, that no cemetery company shall be prevented from paying into the Maintenance and Preservation Fund an amount greater than 15% of the gross sales price of the lot or grave; on resale, except upon resale made to the cemetery company in accordance with the provisions of this act, a minimum of 15% of the gross sales price of the interment space;

b. From the proceeds at the time of interment a minimum of \$10.00 for each interment;

c. A minimum of \$0.05 per square inch of surface area of the base of a memorial;

d. From the proceeds at the time of the initial sale by a cemetery company a minimum of 10% of the sale price of crypts or niches in a public mausoleum or columbarium which shall be in addition to any other funds required by law; on resale, except upon resale made to the cemetery company in accordance with the provisions of this act, a minimum of 10% of the gross sale price of the interment space;

e. Resale for purposes of subparagraphs a. and d. above shall, except for transfers to heirs or next of kin which shall be at the price set forth in an affidavit executed by the vendor and vendee, mean the selling price for interment spaces in existence at the time of transfer as had been established by the cemetery company;

f. Where prior to the effective date of this act cemetery companies were under obligation by virtue of contracts or court judgments to contribute percentages of the proceeds of land sales to trust funds for maintenance and preservation, the charges required by section 8A:4-5 (a) shall be reduced by the extent of the contribution percentages required by such prior contracts or court judgments.

12. N. J. S. 8A:4-6 is amended to read as follows:

Transfer of funds by certain companies; collection and assessment of annual care and maintenance charges.

8A:4-6. Any cemetery company which operated as such prior to the effective date of this act and which in the course of said opera-

tion had established a fund or funds for the maintenance and preservation or for the perpetual care of the cemetery shall, upon the establishment of the Maintenance and Preservation Fund, as provided in this act, transfer to and commingle with said Maintenance and Preservation Fund all of the aforesaid funds previously accrued and held in trust, except that this section shall not apply to specially designated funds held in trust as provided in this act. Where prior to the effective date of this act a cemetery company has contracted for the payment of annual care and maintenance charges, it may continue to collect such annual care and maintenance charges in accordance with the terms of said contracts. The governing body of a cemetery company may assess a reasonable annual charge against each lot and grave which was sold without any provision for maintenance and preservation on the part of the cemetery company. Said annual charge shall not be effective until such time as the New Jersey Cemetery Board shall have approved the assessment of such a charge after having reviewed all relevant financial data submitted by the cemetery company and further being satisfied that such annual charge is needed to enable the cemetery company to continue to operate.

The annual charge so levied shall be a lien on the lots and graves and no interments may be made in or any memorials installed on any lot or grave while such charge remains unpaid and arrangements are made with the cemetery company for continuing care of the lot or grave in question, provided that no lien shall be effective for any interment certified by a county welfare board to be a welfare burial.

13. N. J. S. 8A:4-12 is amended to read as follows:

Annual report of cemetery company; contents, filing; examination of company by board; expenses of examination and administration.

8A:4-12. a. Every cemetery company shall file with the New Jersey Cemetery Board on a form established by the board, an annual report showing the extent of and sources of augmentation of the maintenance and preservation fund and the manner of employment by said cemetery company of the income of the maintenance and preservation fund during the preceding year, which report shall also contain a list of the securities in which said trust funds are invested. If the report so filed is deemed inadequate to properly apprise the New Jersey Cemetery Board of the information it requires to effectively administer the provisions of this act, it shall request a supplemental report and in its discretion conduct an investigation of the operations of the cemetery company.

Officials, managers and trustees or employees of every cemetery company shall exhibit its books, papers and securities to the board when required and otherwise facilitate any examination of said company. Any cemetery official or employee may be required to testify under oath as to the conditions and affairs of the cemetery company.

b. To defray the expenses of examination and administration, each cemetery company, except any religious corporation, shall, at the time of filing its accounting and report as to its maintenance and preservation fund, but not later than 120 days after the close of the cemetery company's fiscal year, pay to the cemetery board the sum of \$1.00 per interment in excess of 25 interments for the preceding fiscal year.

c. The annual report required by this section shall be filed by the cemetery company no later than 120 days after the close of the cemetery company's fiscal year.

14. N. J. S. 8A:4-14 is amended to read as follows:

Authority to formulate plan to supplement Maintenance and Preservation Fund.

8A:4-14. If, as the result of any report required by this act, or investigation by the New Jersey Cemetery Board or otherwise, it shall appear that the Maintenance and Preservation Fund is not being maintained as herein provided, or is inadequate after applying the provisions of chapter 4 of this Title, the board may formulate a plan which will supplement the Maintenance and Preservation Fund. The effectuation of such a plan, when approved by the board, shall be deemed a mandate upon the cemetery company and its officials, and failure on their part to institute the recommended plan within 60 days following the presentation of said plan to the cemetery company by the board, shall be a violation of this act.

15. N. J. S. 8A:4-15 is amended to read as follows:

Sale of certain lands.

8A:4-15. A cemetery company may sell free from any dedication for cemetery purposes, subject to prior approval of the board, any land or interest in land which is not, in the judgment of the cemetery company, necessary or suitable for interment purposes, providing no interment has been made therein. As a further condition of any such sale, the deed of conveyance shall be required to include a perpetual prohibition on the use of the premises so conveyed for any of the purposes or uses in which cemetery companies are, by the terms of this act (N. J. S. 8A:5-3), specifically

prohibited from engaging. Not less than 15% of the proceeds of said sale shall be deposited in the maintenance and preservation fund.

16. N. J. S. 8A:5-1 is amended to read as follows:

Regulations; charges for services.

8A:5-1. The governing body of every cemetery company shall:

a. Make reasonable rules and regulations for the use, care, management and protection of the property of the cemetery company and of all lots, plots and parts thereof; for regulating the dividing marks between the lots, plots and parts thereof; for prohibiting or regulating the erection of structures upon such lots, plots or parts thereof; for preventing unsightly monuments, effigies and structures within the cemetery grounds, and for the removal thereof.

b. Fix and make reasonable charges for any acts and services rendered by the cemetery company in connection with the use, care, including endowed, annual and special care, management and protection of lots, plots and parts thereof.

17. N. J. S. 8A:5-4 is amended to read as follows:

Filing of rules, regulations and charges for services; amendments or additions; fee; statements of revenues and disbursements; keeping of records and accounts.

8A:5-4. a. The governing body of any cemetery company organized on or before the effective date of this act shall file in the office of the cemetery board the name and address of the cemetery company together with its rules, regulations and its charges for services within 90 days after the time this act takes effect. The directors of any cemetery company organized after the effective date of this act shall file in the office of the cemetery board the name and address of the cemetery company together with its rules, regulations, and its charges for services within 90 days after the date of the filing of the certificate of incorporation in the office of the Secretary of State.

b. The rules and regulations of a cemetery company may be amended or added to by the cemetery company by filing such proposed amendments or additions in the office of the cemetery board.

c. Any filing pursuant to paragraph b. above shall be accompanied by a filing fee of \$10.00 payable to the New Jersey Cemetery Board.

d. If any member of the public shall file a written complaint with the cemetery board concerning the operations or activities of any cemetery company, then the cemetery board may require of the cemetery company:

(1) A statement of the source and amount of all revenue and income. It shall not be necessary for the purposes of compliance with this paragraph that the sale of lots be reported on an individual sale basis.

(2) A detailed statement of all expenses and disbursements including deposits to trust funds. Except as otherwise specifically stated in this section, it shall not be necessary for the purposes of compliance with this paragraph to recite each such disbursement but total disbursements in specific categories shall be deemed to be sufficient compliance.

e. The board may, upon notice, by order in writing require any cemetery company:

(1) To keep its books, records and accounts so as to afford an intelligent understanding of the conduct of its business.

(2) To furnish periodically a detailed report of finances and operations in such form and containing such matters as the board may from time to time prescribe.

18. N. J. S. 8A:5-10 is amended to read as follows:

Property exempt from taxation or sale on execution; charges exempt from sales or use tax.

8A:5-10. Cemetery companies shall be exempt from the payment of any real estate taxes on lands dedicated for cemetery purposes, personal property taxes, business taxes, sales taxes, income taxes, and inheritance taxes. All annual maintenance and special care charges paid by the interment space owner to any cemetery shall be exempt from the payment of any sales or use tax.

The cemetery property of whatsoever nature of any cemetery company, and lands dedicated prior to or in accordance with this act shall be exempt from all taxes, rates or assessments, and shall not be liable to be sold on execution, or to be applied in payment of debts due from any owner or holder of interment spaces, and their heirs, devisees or assigns shall hold the same exempt from taxation so long as the same shall remain dedicated to cemetery purposes. The aforesaid exemptions shall apply also to all land, structures, buildings, and equipment used for the operation and maintenance of said lands so dedicated.

19. N. J. S. 8A:5-20 is amended to read as follows:

Removal of interred remains.

8A:5-20. Remains interred in an interment space in a cemetery may be removed therefrom, with the consent of the cemetery company and a written consent of the owner or one of the owners of

the interment space and of the surviving spouse and children, if of full age.

C. 8A:5-23 Removal of unsightly monumentation; conditions.

20. a. The interment space owner, or owners or other interested party in any cemetery controlled, owned or operated by a cemetery company in this State shall be notified by the cemetery management prior to the removal of any unsightly monument, railing, box or other form of monumentation from the said interment space. The cemetery management shall notify the interment space owner in writing and shall secure the written consent of the said owner or owners. In the event the cemetery fails to secure such written authorization, the cemetery may then make application to the cemetery board for written consent to such removal. The board, if satisfied from the evidence presented that the monumentation is unsightly, may give written authority to the cemetery for the removal of such unsightly monumentation. Any evidence presented to the board shall contain photographic evidence of the monumentation sought to be removed. Prior to the board giving any written authority to remove an unsightly monumentation, it may require of the cemetery publication of notice of said action of removal in such manner as it may determine. Any such authority given by the board shall contain directions to the cemetery as the board deems necessary for continued monumentation of the interment space. Any interment space owner or other person whose interests are affected by any such application by a cemetery shall be afforded an opportunity to appear before the board in opposition to such application before any such authority is given by the board.

b. The cemetery management of any cemetery in this State may remove any dangerous monumentation in the cemetery subject to the conditions hereinafter set forth. Prior to any such removal the cemetery shall take photographs of the monumentation and its condition and shall retain same in the permanent records of the cemetery. Any such removal by the cemetery shall be placed on the interment space. The cemetery shall immediately notify the interment space owner, or owners or interested parties in writing as to such removal. If after a period of 6 months, the interment space owner, or owners or interested parties have not communicated with the cemetery, the cemetery may make application to the board for such relief as the board deems appropriate to protect the public interest regarding the removal of the monumentation from the interment space. Any interment space owner, or owners, or other interested parties who may claim that such a removal was

not necessary may make application to the board to review the action of the cemetery. The board, after having reviewed all of the evidence, may order such relief as it deems appropriate if it finds that such removal was unnecessary.

C. 8A:5-24 Approval for general renovation of grave areas; conditions.

21. No cemetery company shall engage in any general renovation of grave areas without the prior approval of the cemetery board in writing. The board before granting such consent may conduct a hearing and in its determination shall take into consideration the interests of the cemetery, grave owners and the general public. Before the board shall grant any consent to a renovation, the cemetery shall furnish evidence to the board as to the notification to the grave owners or other interested parties of the proposed renovation. The board may, prior to considering any such application, require notice by publication in the manner deemed to provide the maximum notice to grave owners or other interested parties. Any grave owner or other interested party may appear in opposition to any such application for such a renovation.

22. N. J. S. 8A:6-1 is amended to read as follows:

Authority to take and hold lands.

8A:6-1. A cemetery company heretofore or hereafter incorporated, may take by gift, purchase or devise and hold, lands not to exceed 250 acres in extent at any one location.

23. N. J. S. 8A:6-2 is amended to read as follows:

Exchange or lease of lands; exception.

8A:6-2. A cemetery company may exchange its lands for other lands provided no body has been interred therein. A cemetery company may lease for a term of years such parts of its lands as have not been laid out into burial plots or lots and use the proceeds of such lease to pay its debts and liabilities and to improve its cemetery. Any lease entered into pursuant to this section shall be acknowledged or proved in the office of the county recording officer and the lands and property the subject of such lease shall not be entitled to the tax and other exemptions set forth in 8A:5-10. A cemetery company shall not lease any of its lands directly or indirectly to any person or entity in any business in which a cemetery company is specifically prohibited from engaging in accordance with the terms of 8A:5-3 of this act.

24. N. J. S. 8A:6-6 is amended to read as follows:

Number of cemeteries in municipality; limitations.

8A:6-6. No more than five cemeteries shall be located or placed in any one municipality in any county of this State, except that, in any municipality of this State where the capacity of an existing cemetery is exhausted, so that no further interment spaces can be purchased, an additional cemetery may be created or placed at a distance of not less than 3 miles from any other existing cemetery in such municipality, subject to all laws or provisions thereof governing and regulating cemeteries in this State.

Not more than 3% of the area of any municipality shall be devoted to cemetery purposes.

However upon application the governing body of any municipality may by resolution waive any of the aforementioned limitations as to the number of cemeteries in the municipality or percentage of land use for cemeteries when, in its opinion, there is a public need for additional cemetery lands and that it is in the public interest to so waive any of the aforementioned limitations.

Nothing contained in this section shall prevent any cemetery company incorporated and in operation prior to the effective date hereof, and which owns lands in which interments have been made, and which obtains a certificate of authority as provided in this act from continuing to maintain and conduct its cemetery in any municipality of this State.

C. 8A:6-1.1 Application of provisions.

25. The provisions of N. J. S. 8A:6-1, 8A:6-5 and 8A:6-6 shall have application to every cemetery company, religious corporation and religious society.

26. N. J. S. 8A:7-1 is amended to read as follows:

Transfer of ownership of interment spaces.

8A:7-1. All interment spaces shall become, upon the transfer thereof in whole or in part, the sole and separate property of the person or persons named in the conveyance or certificate as transferee, his heirs, devisees and assigns. Any such conveyance or certificate of transfer issued by a cemetery company may contain a provision that the owner or owners take title subject to the rules and regulations of the cemetery company then existing and those reasonable rules and regulations that may thereafter be adopted by the cemetery company and also any other reasonable valid restrictions upon use or transfer not inconsistent with the provisions of this law.

27. N. J. S. 8A:7-3 is amended to read as follows:

Owner's right to transfer interment space; authorization required.

8A:7-3. The owner of an interment space or an interest therein in a cemetery owned by a cemetery company may, subject to the provisions of this act, transfer and convey the same or part thereof to any person or to the cemetery company having charge of the cemetery in which the interment space is situated. Before any such transfer or conveyance is made, the board of managers, directors or trustees shall authorize the same by a vote of at least three-fifths of the board at a regularly called meeting. Consent to such transfer shall not be unreasonably withheld by the cemetery company.

C. 8A:7-3.1 Maintenance of graves; condition.

28. Any grave owner, owners or interested parties shall have the right to maintain their own grave, or graves, or provide for the same service by an outside contractor without any financial obligation to the cemetery company for doing so; provided, however, that any such service rendered by the grave owner or outside contractor shall be subject to the supervision of the cemetery management to insure compliance with the rules and regulations of the cemetery.

29. N. J. S. 8A:8-3 is amended to read as follows:

Consents required for removal of bodies and sale of lands; action by court.

8A:8-3. The directors of any cemetery owning lands in which burials have been made may remove the bodies buried therein and sell such lands, or any part thereof. Before making such removal and sale the corporation shall obtain the consents in writing of the living owner or owners of the interment spaces and permits for burials in such lands, and the consents in writing of the living lineal descendants and widow or widower, if any, of the person or persons buried in such lands, or the part thereof sold. In addition to the foregoing, the corporation or society shall obtain the consent of the cemetery board in writing.

If the consents required cannot be obtained because the persons from whom they are required to be obtained cannot, upon diligent inquiry, be found, the corporation or society may apply to the Superior Court for an order for the sale thereof. The application shall show the name of the applying corporation, the location of the land sought to be sold, the names of all known persons owning plots or lots and permits for burials in such lands, and a description and map of the lands sought to be sold.

Upon proof of the facts set forth in the application, the Superior Court may make an order setting forth the nature of the application and the names of all owners of interment spaces and permits for burials in the lands sought to be sold who have not consented in writing to the sale, requiring them to show cause, at a time to be fixed by the court, why such lands should not be sold. A notice of such order shall be published in a newspaper designated by such court, for 4 successive weeks, or as the court shall direct.

At the time fixed in the order and notice, or upon such adjournment day as the Superior Court may fix, no objections in writing being made thereto or filed with such court previous thereto by the lineal descendants or widow or widower of the persons buried in such lands, such court may make an order authorizing the sale of the lands and the removal of any bodies buried therein.

30. N. J. S. 8A:10-1 is amended to read as follows:

Enforcement of act; penalties.

8A:10-1. a. The cemetery board shall have power to enforce this act, and any person violating any of its provisions or any order of the board shall forfeit and pay to the board a penalty of not less than \$25.00 nor more than \$500.00 for the first offense; not less than \$50.00 nor more than \$1,000.00 for the second offense; and not less than \$100.00 nor more than \$1,500.00 for the third and each subsequent offense.

b. In the event the offending person does not pay any penalty within the time fixed by the board, the penalty shall be sued for and recovered by and in the name of the New Jersey Cemetery Board.

31. N. J. S. 8A:10-2 is amended to read as follows:

Collection and enforcement of penalties.

8A:10-2. Any penalty imposed because of the violation of any of the provisions of this act, shall be collected and enforced by summary proceedings in a civil action pursuant to the penalty enforcement law (N. J. S. 2A:58-1 et seq.). Process shall issue at the suit of the board as plaintiff, and shall be either in the nature of a summons or warrant. If judgment be rendered for the plaintiff, the court shall cause any defendant, who refuses or neglects to pay forthwith the amount of the judgment rendered against him and all the costs and charges incident thereto, to be committed to the county jail for a period of not less than 10 and not exceeding 100 days.

32. N. J. S. 8A:10-4 is amended to read as follows:

Authority to refuse to grant or renew, or suspend or revoke license; notice and hearing.

8A:10-4. After notice of hearing as hereinafter provided, the board may refuse to grant or renew, or may suspend or revoke any license or certificate of authority if it determines that the applicant for or holder of such license or certificate of authority has been guilty of any of the following acts or omissions:

a. Fraud and deception in applying for a license or its renewal or in applying for a certificate of authority or in the passing of an examination provided for in this act;

b. Conviction in a court of competent jurisdiction of a high misdemeanor;

c. False or fraudulent advertising or willfully advertising in any manner which is deceptive, misleading, improbable or unethical or which is calculated to deceive the public with respect to either merchandise or services, including the offering of free services;

d. Any conduct which is of a character likely to deceive or defraud the public;

e. Engaged in fraudulent business activities; and

f. The willful, deliberate and persistent failure or refusal to comply with the terms of this act or the orders, rules or regulations of the New Jersey Cemetery Board;

g. In addition the board may refuse to grant or renew or may suspend the license of a cemetery salesman for:

(1) Chronic and persistent inebriety, or the habitual use of narcotics;

(2) Conviction of a crime involving moral turpitude; or where any licensee or applicant for a license has pleaded nolo contendere or non vult to any indictment, allegation or complaint, alleging the commission of a crime involving moral turpitude. The record of conviction or the entry of such a plea in any court of this State or any other state, or in any of the courts of the United States shall be sufficient warrant for the revocation or suspension of a license.

The board may, after hearing, upon notice, by order in writing, require any cemetery company:

a. To comply with the laws of the State, rules and regulations of the board, and any municipal ordinance relating thereto, and to conform to the duties imposed upon it thereby or by the provi-

sions of its own charter, whether obtained under general or special law of this State.

b. The board may when issuing certain of its orders of an emergent nature dispense with the notice and hearing provisions required above when it determines that it is in the interest of the public health, safety and welfare to do so and the subject matter of the order does not permit the holding of such a hearing upon notice. Any such order issued by the board pursuant to this subparagraph shall also contain a notice to the cemetery company providing that said cemetery company upon notice to the board in writing may have a hearing scheduled within 5 days of receipt of said notice to the board regarding the subject matter of the said order. The board shall then conduct such hearing in accordance with the provisions of this Title and upon conclusion thereof may modify its previous order or order such further relief as is necessary to enforce the provisions of this Title.

c. In addition to the foregoing, where a complaint has been brought against a cemetery company or a practice or procedure of the cemetery company is brought into question, the board may schedule a conference upon notice in writing to the cemetery company if the board determines that the matter may be resolved at such a conference. If the conference does not result in a resolution of the complaint or questioned practice or procedure, a hearing may then be scheduled by the board in accordance with the provisions of this Title.

33. N. J. S. 8A:10-6 is amended to read as follows:

Powers of board members; authority to apply for court order; penalty for non-compliance.

8A:10-6. a. The executive director, the chairman, any member of the New Jersey Cemetery Board or any person designated by the cemetery board or the Commissioner of Banking may administer oaths and affirmations and shall have power to issue subpoenas, to compel the attendance of any person, or the production of any books or papers necessary or incidental to any hearing before the board. Such subpoena may be served and the same witness fees paid as in cases in the County or Superior Court, as allowed by law.

b. In the event any person who has been duly served with a subpoena by the board fails or refuses to attend and testify and answer proper questions or to produce books, records, documents, papers, or other physical exhibits pursuant to the command of

said subpoena, the board is authorized to apply to the Superior Court for an order compelling compliance with the subpoena or order of the board. Failure to obey the subpoena or the order of the court in reference thereto shall, in addition to any other action that may properly be taken by the courts, carry a penalty of \$100.00 to be collected by the board as provided in chapter 9 of this act.

34. N. J. S. 8A:10-7 is amended to read as follows:

Action by board for appointment of receiver, injunctive or other relief.

8A:10-7. The board may, when deemed necessary to protect the public interest, institute an action in the name of the State on the relation of the board in the Superior Court for the appointment of a receiver, injunctive or other relief as may be necessary to protect the public interest, or to prohibit the violation of this act or the orders, rules or regulations of the board. The relief authorized by this paragraph shall not be limited or barred by the imposition of any penalties imposed by the board under chapter 10 or any other provision of this act. The receivership shall be discharged as soon as the condition which caused the suspension has been corrected.

Repealer.

35. N. J. S. 8A:8-2 is repealed.

36. There is hereby appropriated from the General State Fund to the Department of Banking for the use of the cemetery board the sum of \$25,000.00 to carry out the provisions of Title 8A, which sum shall be in addition to the fees and revenues appropriated and the expenditure thereof subject to the same conditions as provided for in section 8A:12-5.

37. Section 2 of P. L. 1954, c. 219 (C. 2A:95-3) is amended to read as follows:

C. 2A:95-3 Sale of grave marker for use as scrap metal.

2. It shall be unlawful to buy or receive for use as junk or scrap metal any grave marker, emblem, or metallic memorial marker except upon written authorization of the owner of the interment space or the organization whose name is shown on the marker or emblem.

38. This act shall take effect immediately.

Approved September 10, 1973.