

STATE OF TENNESSEE

PUBLIC CHAPTER NO. 356

SENATE BILL NO. 776

By Overbey, Ford

Substituted for: House Bill No. 1842

By Sargent, Odom

AN ACT to amend Tennessee Code Annotated, Title 46 and Title 68, relative to disinterment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 46, Part 1, is amended by adding the following language as a new section:

Section 46-1-112.

(a) When a cemetery operator has actual knowledge either of an incorrect interment or of an error in the assignment of an interment right, a cemetery operator shall have the right to correct such error pursuant to this section. For the purposes of this section, "interment" and "interment right" means the same as defined in § 46-1-102(13) and (14) respectively.

(b) When a cemetery operator has knowledge that the interment of human remains has occurred in the wrong burial location in the cemetery, the cemetery operator shall make all reasonable efforts to contact and to give notice to any known family or next of kin of the deceased person who has been incorrectly interred. If the cemetery operator reaches a family member or the next of kin, then the cemetery operator shall document the method of reaching that family member in writing and shall document the date, time and substance of the notice to the family member. If the cemetery operator cannot contact the next of kin, the cemetery operator shall make all reasonable efforts to give notice by certified mail, in advance of any corrective action, to any known family or next of kin at the last known address of such family and shall make all reasonable efforts to give notice by certified mail, in advance of any corrective action, to the owner of the burial plot in question. After the cemetery operator sends the certified mail, the cemetery operator shall wait five (5) business days before moving the person wrongfully interred.

(c) Immediately after contacting and notifying a family member or the next of kin or after waiting five (5) business days after mailing notice via certified mail to any known family or next of kin, the cemetery operator:

(1) May disinter the burial container wrongfully interred without a state or local permit;

(2) Shall identify the burial container; and

(3) Shall reinter the burial container in the proper burial space in the same cemetery.

(d) At the time specified for a disinterment and reinterment, the cemetery operator shall allow the nearest known next of kin, and if requested, the owner of such burial space, to witness the disinterment and reinterment.

(e) The cemetery operator shall bear all costs of the disinterment and reinterment.

(f) The cemetery operator shall notify the commissioner of the error, the interment in the wrong location and any evidence supporting such decision it was a wrongful interment, the steps taken pursuant to this section to remedy the wrongful interment including but not limited to the efforts to reach the next of kin and any other information so required by the department, within three (3) business days after reinterment.

(g) The cemetery operator shall also notify the Commissioner of Health, on a form prescribed by the commissioner, of the error, the interment in the wrongful location, the disinterment of the deceased person, and the steps taken pursuant to this section to remedy the wrongful interment including but not limited to the efforts to reach the next of kin pursuant to this section, within three (3) business days after the reinterment.

(h) When the cemetery operator follows the approved procedures set forth in this section for correcting a wrongful burial due to human error in recording ownership of an interment right, or due to human error in the burial, the cemetery company, its employees, and its board of directors or officers shall be held harmless and not liable for any damages directly related to the disinterment and reinterment of the deceased person who had been interred in the wrong burial location unless such cemetery company, its employees or its board of directors or officers acted intentionally or with malice in such wrongful interment. This hold harmless provision shall not extend to any action other than an action arising out of the disinterment and reinterment governed by this section.

SECTION 2. Tennessee Code Annotated, Section 68-4-110, is amended to designate the existing language as subsection (a) and adding the following as new subsection (b):

(b) The Department of Health may not require permits for the disinterment of a wrongfully buried decedent if such disinterment is pursuant to § 46-1-112 and the cemetery operator follows all procedures as set out in that section.

SECTION 3. Tennessee Code Annotated, Section 46-1-204(e)(4)(D)(i), is amended by deleting the language "July 1, 2005" and by substituting instead the language "July 1, 2009".

SECTION 4. Tennessee Code Annotated, Section 46-1-204(e)(4)(D)(ii), is amended by deleting the language "July 1, 2005" and by substituting instead the language "July 1, 2009".

SECTION 5. Tennessee Code Annotated, Section 46-1-215(a), is amended by adding a new subdivision as follows:

(8) The total of all expenditures of income from the improvement care trust fund.

SECTION 6. Tennessee Code Annotated, Section 46-1-102(12), is amended by deleting the existing language in its entirety and instead substituting the following language:

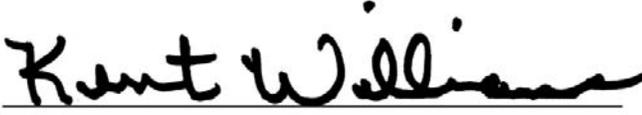
(12) "Improvement care" means the continual maintenance of the cemetery grounds and graves in keeping with a properly maintained cemetery, including the cutting of the grass, the raking and cleaning of cemetery plots at reasonable intervals, and the pruning of shrubs and trees; the memorial care of commodities; the procuring, maintaining and keeping in workable condition the machinery, tools and equipment needed for the shop and replacing the machinery, tools and equipment when necessary; keeping in repair and preserving the drains, water lines, roads, buildings, fences and other structures, including cemetery-owned statues and embellishments of general character applicable to the cemetery as a whole or a particular area; and the paying of insurance premiums and maintaining the necessary records of lot ownership, burials and other necessary information and making the records available to public authorities and interested persons;

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 21, 2009



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 5th day of June 2009



PHIL BREDESEN, GOVERNOR