CHAPTER 8

South Carolina Perpetual Care Cemetery Act

**SECTION 40‑8‑10.** Short title.

 This chapter may be cited as the “South Carolina Perpetual Care Cemetery Act”.

HISTORY: 2002 Act No. 322, Section 10A.

**SECTION 40‑8‑20.** Perpetual Care Cemetery Board; creation.

 For the purposes of administering this chapter, there is established a South Carolina Perpetual Care Cemetery Board with the power and duty to promulgate regulations, approved by the Director of the Department of Labor, Licensing and Regulation, to carry out this chapter as provided for by Section 40‑1‑10.

 Cemeteries, burial grounds, and any agreement or contract which has for a purpose the furnishing or delivering of a person, property, or merchandise of any nature in connection with the final disposition of a dead human body, must be subject to sufficient regulation by the State to ensure that sound business practices are followed by all entities subject to this chapter.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 1.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 3, 10.

**SECTION 40‑8‑30.** Definitions.

 As used in this chapter, unless otherwise stated or unless the context clearly indicates otherwise:

 (1) “Administrator” means the individual, appointed by the director, to whom the director has delegated authority to administer the programs of the South Carolina Perpetual Care Cemetery Board.

 (2) “Authorization to operate” or “operation authorization” means the approval to operate a cemetery, which has been granted by the South Carolina Perpetual Care Cemetery Board. This authorization is granted in the form of a license.

 (3) “Board” means the South Carolina Perpetual Care Cemetery Board.

 (4) “Cared‑for” means the physical appearance including, but not limited to, shrubs and trees pruned and trimmed, flower beds weeded, drives maintained, and lawns mowed when needed equivalent to once a week during grass growing season with ample rainfall.

 (5) “Cemetery” means a place used, dedicated, or designated for cemetery purposes including any one or combination of:

 (a) perpetual care cemeteries;

 (b) burial parks for earth interment;

 (c) mausoleums;

 (d) columbariums.

 (6) “Cemetery company” means a legal entity that owns or controls cemetery lands or property and conducts the business of a cemetery, including all cemeteries owned and operated by cemetery sales organizations or cemetery management organizations or any other entity.

 (7) “Columbarium” means a structure or building substantially exposed aboveground intended to be used for the interment of the cremated remains of a deceased person.

 (8) “Department” means the Department of Labor, Licensing and Regulation.

 (9) “Director” means the Director of the Department of Labor, Licensing and Regulation, or the director’s official designee.

 (10) “Grave space” means a space of ground in a cemetery intended to be used for the interment in the ground of the remains of a deceased person.

 (11) “Human remains” or “remains” means the body of a deceased person and includes the body in any stage of decomposition.

 (12) “Licensee” means a person granted an authorization to operate pursuant to this chapter and refers to a person holding a license granted pursuant to this chapter.

 (13) “Mausoleum” means a structure or building substantially exposed aboveground, intended to be used for the entombment of the remains of a deceased person.

 (14) “Memorial” means a bronze marker set approximately level with the turf for the purpose of identification, or interchanged to mean upright markers in garden sections which are plotted and specified for the use of upright markers. The term “marker” is interchanged with the term “memorial” in this chapter.

 (15) “Merchandise” means items used in connection with grave space, niches, mausoleum crypts, granite, memorials, grave liners, and vaults; however, merchandise shall expressly exclude caskets and cremation urns, burial clothing, facilities used for preparation, viewing, and automotive equipment and transportation. Items expressly excluded under the definition of merchandise in this provision must be governed by Chapter 7 of Title 32.

 (16) “Outer burial container” means the following:

 (a) Category I—Protective Outer Burial Container—An outer burial container (vault) in which a casket or similar burial device is placed for in‑ground interment and is designed and constructed to support the weight of the earth and standard cemetery maintenance equipment and to prevent the grave from collapsing while resisting the entrance of water or any other element found in the soil in which it is interred.

 (b) Category II—Nonprotective Outer Burial Container—A nonsealing outer burial container (grave liner) in which a casket or similar burial device is placed for in‑ground interment and is designed and constructed to support the weight of the earth and standard cemetery maintenance equipment and to prevent the grave from collapsing.

 (17) “Perpetual care” means the maintenance and the reasonable administration of the cemetery grounds and buildings in keeping with a cemetery properly maintained using a care and maintenance trust fund. In the event that a cemetery offers perpetual care for some designated sections of its property but does not offer perpetual care to other designated sections, the cemetery must be considered a perpetual care cemetery for the purposes of this chapter.

 (18) “Person” means an individual, entity, corporation, partnership, joint venture, or association.

 (19) “Trust institution” means a state or national bank, state or federal savings and loan association, or trust company authorized to act in a fiduciary capacity in this State.

HISTORY: 2002 Act No. 322, Section 10A.

**SECTION 40‑8‑35.** Cemetery contract disclosure requirements.

 The cemetery contract must disclose to the consumer:

 (1) the type of outer burial container being purchased (a Category I, Protective Outer Burial Container, or a Category II, Nonprotective Outer Burial Container);

 (2) that the outer burial container either has a warranty or that it does not have a warranty; and

 (3) if the outer burial container purchased in advance of need is not available at the time of need, the cemetery shall make available to the purchaser or his representative an outer burial container of equal or greater value. The purchaser or his representative is entitled to approve any substitutions.

HISTORY: 2002 Act No. 322, Section 10A.

CROSS REFERENCES

Outer burial container, see S.C. Code of Regulations R. 21‑4.

Library References

Cemeteries 3, 16.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 2 to 3, 10, 27, 29.

**SECTION 40‑8‑40.** Licensure requirements, “Perpetual Care” and “No Perpetual Care” designations.

 No entity may engage in the business of operating a perpetual care cemetery company, except as authorized by this chapter, without first obtaining a license from the board. A license issued under this chapter is not transferable or assignable and a licensee may not develop or operate a perpetual care cemetery authorized by this chapter under a name or a location other than that contained in the license.

 No entity may hold itself out to be a perpetual care cemetery without an authorization to operate as such by the South Carolina Perpetual Care Cemetery Board.

 Those cemeteries which furnish perpetual care to some portions and no perpetual care to other portions shall identify the appropriate sections of the cemetery at application and shall designate each section by a sign on the premises. Portions designated “Perpetual Care” may not be changed to “No Perpetual Care” once the designation is made.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 1, 3.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 3, 10.

**SECTION 40‑8‑50.** Board membership.

 The board consists of seven members appointed by the Governor. Three appointed members must be public members who have no financial interest in and are not involved in the management of a cemetery or funeral‑related business, and four members must be owners or managers of cemeteries in this State who may be selected from nominees submitted by the South Carolina Cemetery Association. The Governor shall appoint members of the board in the manner provided in this section. Of the seven members, three of the initial board members must be appointed for a term of two years, two for a term of three years, and two for a term of four years. At the end of their respective terms, successors must be selected in the same manner and appointed for terms of four years and until their successors are appointed and qualify. Nominations for appointment for the four professional members must be received by the Governor from the South Carolina Cemetery Association. If the Governor does not approve the recommendations, the association shall provide the Governor with another list of nominees, and the Governor may select a nominee from the list provided or appoint another suitable candidate of his choice. The Governor may replace any board member at any time for cause. An appointment to fill a vacancy on the board is for the balance of the unexpired term in the manner of the original appointment.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 1.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 3, 10.

**SECTION 40‑8‑60.** Election of chairman and vice chairman; expense reimbursements; meetings.

 The board shall elect annually a chairman and vice chairman. Each member of the board shall receive the usual mileage, per diem, and subsistence as provided by law for members of state boards, committees, and commissions. All expenses of the board must be paid from fees received by the board.

 The board shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon written request of at least four members.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 1.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 3, 10.

**SECTION 40‑8‑70.** Board power and duties.

 In addition to the powers and duties included in Sections 40‑1‑70 through 40‑1‑100, the board shall establish policies and procedures consistent with this chapter, shall have the full power to regulate the issuance of licenses, and shall discipline licensees in any manner permitted by this chapter or under the provisions of Sections 40‑1‑110 through 40‑1‑150.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 1.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 3, 10.

**SECTION 40‑8‑75.** Seal.

 The board shall have and use an official seal bearing the name of the board.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 1.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 3, 10.

**SECTION 40‑8‑80.** License fees.

 (A) The following fees must be assessed, collected, and adjusted on behalf of the board by the Department of Labor, Licensing and Regulation in accordance with this chapter and the provisions of Section 40‑1‑50(D):

 (1) a license fee of eight hundred fifty dollars, annually;

 (2) an application fee of two hundred fifty dollars.

 (B) Notwithstanding subsection (A), the fees for a cemetery in existence on the effective date of this chapter, which consists of ten acres or less of land are as follows:

 (1) a license fee of four hundred dollars, annually;

 (2) an application fee of two hundred fifty dollars.

 (C) The license period is from January first through December thirty‑first.

 (D) Failure to renew a license by the December thirty‑first renewal date renders the license invalid. The license may be reinstated upon receipt of an application postmarked not later than January thirty‑first. Delinquent renewal requests not postmarked on or before January thirty‑first require that a new application be submitted under the guidelines in effect for the current period.

 (E) All fees are nonrefundable.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 1, 3.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 3, 10.

Attorney General’s Opinions

Section 40‑8‑200 clearly exempts nonprofit cemeteries from the provisions of the Cemetery Act, which include the licensure fees imposed by section 40‑8‑80. S.C. Op.Atty.Gen. (Sept. 5, 2006) 2006 WL 2849790.

**SECTION 40‑8‑90.** Application to establish cemetery; license change application incident to purchase of existing cemetery.

 (A) A legal entity wishing to establish a cemetery shall file a written application for authority to do so with the board on forms prescribed and provided by the department.

 (1) Upon receipt of the application and a nonrefundable application fee, the board shall cause an investigation to be made to establish the following criteria for approval of the application:

 (a) creation of a legal entity to conduct a cemetery business and the proposed financial structure;

 (b) establishment and maintenance of an irrevocable care and maintenance trust fund agreement with a trust institution doing business in this State, with an initial deposit of not less than fifteen thousand dollars and a bank cashier’s or certified check attached for the amount and payable to the trustee with the trust executed by the applicant and accepted by the trustee, conditioned only upon the approval of the application;

 (c) presentation of a plat of the land to be used for a cemetery showing the county or municipality and the names of roads and access streets or ways;

 (d) designation by the legal entity, wishing to establish a cemetery, of a general manager who must be a person having had not less than two years’ experience in the cemetery business;

 (e) presentation of development plans sufficient to ensure the community that the cemetery shall provide adequate cemetery services and that the property is suitable for use as a cemetery.

 (2) The board, after receipt of the investigating report and within ninety days after receipt of the application, shall grant or refuse to grant the authority to organize a cemetery.

 (3) If the board intends to deny an application, it shall give written notice to the applicant of its intention to deny. The notice shall state a time and place for a hearing before the board and a summary statement of the reasons for the proposed denial. The notice of intent must be mailed by certified mail to the applicant at the address stated in the application at least fifteen days before the scheduled hearing date. Within thirty days of the hearing, the board must provide the applicant with its written decision regarding its intent to deny the application. An appeal from the board’s decision must be made in accordance with the Administrative Procedures Act.

 (4) If the board intends to grant the authority, it shall give written notice that the authority to organize a cemetery has been granted and that a license to operate must be issued upon the completion of the:

 (a) establishment of the irrevocable care and maintenance trust fund and receipt by the board of a certificate from the trust institution certifying receipt of the initial deposit required under this chapter;

 (b) development, ready for burial, of not less than two acres, certified by inspection of the board or its representative;

 (c) presentation of a description, by metes and bounds, of the acreage tract of the proposed cemetery, with evidence, by title insurance policy or certificate or certification by an attorney at law, that the applicant is the owner in fee simple of the tract of land which must contain not less than thirty acres, and may not mortgage, lease, or encumber it. In counties with a population of less than thirty‑five thousand inhabitants according to the latest official United States census, the tract needs to be only fifteen acres;

 (d) submission to the board, for its approval, a copy of the cemetery company’s policies and procedures as provided for in this chapter.

 (B) If a person proposes to purchase or acquire control of an existing cemetery either by purchasing the outstanding capital stock of any cemetery company or the interest of the owner and thereby to change the control of the cemetery company, the person shall make application on a form prescribed and provided by the board for a license change. The application shall contain the name and address of the proposed new owner. The application for a license change must be accompanied by an initial application fee.

 (C) The provisions of subsection (A)(4)(c) relating to the minimum acreage do not apply when the governing body of a municipality which is within fifteen miles of the corporate limits of the City of Charlotte, North Carolina, and in which the cemetery is to be located passes an ordinance authorizing a cemetery with less than thirty acres of land when a license establishes an irrevocable trust with a trust corpus of at least fifteen thousand dollars and five acres of land, and the dedication of fifteen percent of all future sales to deposit in the trust on a quarterly basis.

HISTORY: 2002 Act No. 322, Section 10A.

CROSS REFERENCES

Correct documentation required for cemetery application, see S.C. Code of Regulations R. 21‑6.

Death of cemetery owner, see S.C. Code of Regulations R. 21‑8.

General manager requirements, see S.C. Code of Regulations R. 21‑5.

Library References

Cemeteries 1 to 3, 5.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 11.

**SECTION 40‑8‑100.** Records; adoption and notification of use, care, management, and merchandise installation policies; service fees.

 (A) A record must be kept of every lot owner and every burial in the cemetery showing the date of purchase, date of burial, name of the person buried and of the lot owner, and space in which the burial was made. Sales, trust funds, accounting records, and other records of the licensee must be available at the licensee’s principal place of business at reasonable times during regular business hours for examination by the department. In addition, the owner of a perpetual care cemetery shall have the records of the care and maintenance fund examined annually by a licensed public accountant and shall submit a copy of the report to the board or its designee.

 (B) A record must be kept of each written complaint received, action taken, and disposition of the complaint. These records must be available for examination by the chairman or other authorized representative of the board.

 (C) The owner of a cemetery shall adopt and enforce policies and procedures for the use, care, control, management, restriction, and protection of the cemetery and its parts and subdivisions, the use of property within a cemetery, the introduction and care of plants or shrubs within the grounds, the conduct of persons and prevention of improper assemblages, and other purposes considered necessary by the owner of the cemetery for the proper conduct of the business of the cemetery and the protection of the premises and the principles on which the cemetery was organized. The owner may amend or abolish the policies and procedures pursuant to subsection (H). The regulations must be printed or typewritten plainly, posted conspicuously, and maintained, subject to inspection by the board or its designee, at the usual place for transacting the regular business of the cemetery. The owner must also include in this posting a statement explaining that it is acceptable to purchase memorials and merchandise from vendors other than the cemetery if the items meet the reasonable policies and procedures established for those items by the cemetery. However, a cemetery licensed under this chapter may not adopt policies or procedures in conflict with this chapter or in derogation of the contract rights of lot owners.

 (D) The owner of a cemetery shall establish reasonable policies and procedures regarding the type material, design, composition, finish, specifications, and installation of merchandise to be used in the cemetery. However, a policy or procedure may not be promulgated which:

 (1) requires the owner or purchaser of a lot to purchase a monument or marker or the actual installation of a monument or marker from the cemetery company;

 (2) restricts the right of the owner or purchaser of a lot to purchase a monument or marker or the actual installation of a monument from the vendor of his choice;

 (3) charges the owner or purchaser of a lot a fee for purchasing a monument or marker or the actual installation of a monument from a vendor or charges a vendor a fee for delivering or installing the monument;

 (4) discriminates against an owner or a purchaser of a lot who has purchased a monument or services related to installation of a monument from a vendor.

 (E) Subsection (D) does not prohibit the cemetery from charging the owner or purchaser of a lot a reasonable fee for services actually performed by the cemetery relating to the installation, care, and maintenance of a monument or marker including, but not limited to, the survey, recording, and supervision of the installation of the monument or marker, whether or not it is purchased from a cemetery or an outside vendor.

 (F) These policies and procedures must be posted conspicuously and maintained, subject to inspection by the department, at the usual place for transacting the regular business of the cemetery. A cemetery owner may not prevent the use of merchandise purchased by a lot owner or his representative, agent, heirs, or assigns from any source if the merchandise meets cemetery regulations.

 (G) When an internment right is sold, the cemetery must provide a written listing of the current charges associated with all merchandise, memorials, and services that are then required by the cemetery. The cemetery also shall provide a list of cemetery services for which there may be a later charge. When a monument, marker, or memorial is sold by a cemetery company, the cemetery shall provide on the sales contract an itemized statement of the fees charged for installation, care, and maintenance of the monument, marker, or memorial. Fees charged for installation, care, and maintenance of a monument, marker, or memorial must be shown on the statement as charges separate from its price, and the statement shall disclose the amount of fees to be placed in trust by the cemetery company. The board shall promulgate regulations for the disclosure of fees and services.

 (H) Policies and procedures established, amended, or abolished by a cemetery pursuant to this section must be submitted to the board for its approval.

HISTORY: 2002 Act No. 322, Section 10A.

CROSS REFERENCES

Disclosures, see S.C. Code of Regulations R. 21‑3.

“Examined” defined, see S.C. Code of Regulations R. 21‑1.

“Licensed public accountant” defined, see S.C. Code of Regulations R. 21‑1.

Policies and procedures, vendors, see S.C. Code of Regulations R. 21‑9.

“Principal place of business” defined, see S.C. Code of Regulations R. 21‑1.

Records retention, see S.C. Code of Regulations R. 21‑7.

Library References

Cemeteries 1, 3.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 3, 10.

**SECTION 40‑8‑110.** Care and maintenance trust funds; merchandise accounts; financial reports; penalties.

 (A) A cemetery company is not permitted to establish a perpetual care cemetery or to operate an already‑established perpetual care cemetery without providing for the future care and maintenance of the cemetery, for which a trust fund must be established to be known as “The Care and Maintenance Trust Fund of (name of licensee)”. If a perpetual care cemetery company refuses or otherwise fails to provide or maintain an adequate care and maintenance trust fund in accordance with the provisions of this chapter, the board, after thirty days, shall enforce compliance. The trust fund agreement shall contain the name, location, and address of both the licensee and the trustee, showing the date of the trust agreement and the deposit in the trust of the required funds. No person shall transfer the corpus of the care and maintenance trust fund without first obtaining written consent from the board.

 (B) At the time of making a sale or receiving the initial deposit on the sale of grave space, niche, or mausoleum crypt, the cemetery company shall deliver to the person to whom the sale is made, or who makes the deposit, an instrument in writing which shall specifically state that the net income of the care and maintenance trust fund must be used solely for the care and maintenance of the cemetery, for reasonable costs of administering the care and maintenance, and for reasonable costs of administering the trust fund. This information must be included in the sales contract.

 (C) A perpetual care cemetery shall deposit into the care and maintenance fund not less than forty dollars or a minimum of ten percent of the sale price, whichever is greater, per grave space and niche, and one hundred dollars per mausoleum crypt sold or a minimum of five percent of the sales price, whichever is greater. Also, for a memorial or grave marker for installation in a cemetery where perpetual care is promised or guaranteed, the cemetery shall transmit to the care and maintenance trust fund an amount equal to a minimum of eight cents per square inch of the memorial’s or the marker’s base. All deposits must be made within sixty days upon receipt of final payment.

 (D) Within ninety days after the end of the calendar or fiscal year of the cemetery company, the trustee shall furnish adequate financial reports with respect to the care and maintenance trust fund on forms prescribed and provided by the board. The board shall require the trustee to make any additional financial reports the board considers advisable.

 (E) The care and maintenance trust fund must be invested and reinvested by the trustee in the same manner as provided by law for the investment of other trust funds. The fees and other expenses of the trust fund may be paid from the corpus. To the extent that the net income is not sufficient to pay the fees and other expenses, they must be paid by the cemetery company.

 (F)(1) Upon payment in full, a licensee receiving funds from the sale of merchandise for use in a cemetery in connection with the burial or commemoration of a deceased human being when the use of contracted merchandise is not requested or required immediately shall store or warehouse the contracted merchandise, or bond or deposit the funds in a merchandise account with a financial institution licensed to do business in this State. Notwithstanding any other provision of law, all funds deposited in the merchandise account must be held for the benefit of the purchaser of the merchandise. Any such merchandise account must be subject to Section 40‑8‑110(G).

 The cemetery company shall maintain a record of each deposit into the account, identify the name of the purchaser, the amount of the actual costs to the seller, and the amount of money to be deposited, and maintain a copy of the contract for the merchandise. This section does not prohibit the licensee from commingling the deposits in a fund of this kind to manage and invest the funds.

 (2) When a memorial, a mausoleum crypt, or other merchandise is sold in advance of need and not installed, delivered, or bonded until a later date, one hundred percent of the actual cost to the seller at the time of deposit must be placed in a merchandise account within sixty days after completion of the contract with interest to accrue and must not be withdrawn without the consent of the purchaser until the time of delivery or construction.

 (3) The funds must be held in a merchandise account as to principal and income earned and must remain intact, until delivery of the merchandise is made by the cemetery company or other entity; however, any service fees charged by the administering financial institution may be deducted from the income. Upon delivery of the merchandise, the cemetery company or other entity shall certify these facts. Upon this certification, the amount of money on deposit to the credit of that particular contract, including principal and income, must be paid to the cemetery company or other entity.

 (4) After payment in full and before delivery of merchandise, a purchaser may make written demand for a refund of the amount deposited in the merchandise account to the credit of the purchaser, and within ninety days of receipt of the written demand, the licensee shall deliver the merchandise or refund to the purchaser the amount on deposit to his credit. Upon the refund or delivery of merchandise, the cemetery company is relieved from further liability for this merchandise.

 (G) The licensee, annually and within ninety days after the end of the calendar year, shall file a financial report, signed by a licensed accountant, of the merchandise account fund with the board on forms provided by the board setting forth the principal, investments, and payments made and the income earned and disbursed. The board may require the licensee to make additional financial reports the board considers advisable.

 (H) The board may cause the examination of the business of a cemetery company or other entity writing contracts for the sale of the property or services described in this section. The written report of the examination must be filed in this office of the board. A person or an entity being examined shall produce the records of the company needed for the examination.

 (I) A provision of a contract for the sale of merchandise described in this section which provides that the purchaser or beneficiary may waive this section is void.

 (J) Cemetery owners shall have a full and complete schedule of charges for services provided by the cemetery plainly printed or typewritten, posted conspicuously, and maintained, subject to inspection and copying, at the usual place for transacting the regular business of the cemetery.

 (K) A cemetery company or other entity failing to make required contributions to a care and maintenance trust fund or to a merchandise account fund is guilty of a misdemeanor and, upon conviction, must be punished pursuant to Section 40‑8‑190.

 (L) If a report is not received within the required time, the board may levy and collect a penalty of not less than twenty‑five dollars a day or more than one hundred dollars a day for each day of delinquency.

HISTORY: 2002 Act No. 322, Section 10A.

CROSS REFERENCES

Care and maintenance trust funds, see S.C. Code of Regulations R. 21‑11.

Withdrawals from merchandise fund, see S.C. Code of Regulations R. 21‑19.

Library References

Cemeteries 1, 3.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 3, 10.

**SECTION 40‑8‑120.** Land requirements; conveyance and use of excess contiguous lands; transfer to municipality.

 (A) A licensee shall set aside a minimum of thirty acres of land for use as a cemetery, except as may otherwise be provided in this chapter, and may not mortgage, lease, or encumber it.

 (B) The fee simple title in any land owned by the licensee as a cemetery, which lands are contiguous, adjoining, or adjacent to the minimum acreage described in subsection (A), may be sold, conveyed, or disposed of by the licensee for use by the new owner for purposes other than as a cemetery if no bodies have been previously interred and if any title, interest, or burial right which may have been sold or contracted to be sold in this land are reconveyed to the licensee before the consummation of any conveyance.

 (C) A licensee may convey and transfer to a municipality or county its real and personal property, together with monies deposited with the trustee, if the municipality or county accepts responsibility for maintenance and prior written approval of the board is obtained.

 (D) The provisions of subsections (A) and (B) relating to a requirement for minimum acreage do not apply to those cemeteries in existence before the effective date of this chapter. If a cemetery owns or controls a total of less than the minimum acreage, this cemetery may not dispose of any of the lands.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 10.1, 12, 13.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 16 to 18.

**SECTION 40‑8‑130.** Mausoleum and below ground crypt construction deadlines; burial vault placement; coastal and lowland exception.

 (A)(1) A cemetery company is required to start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sale, reservations for sales, or agreements for sales are being made within thirty‑six months after the date of the first sale or refund the money. The construction of the mausoleum section or bank of belowground crypts must be completed within sixty months after the date of the first sale. Extensions for completion, not to exceed one year, may be granted by the board for good reasons shown.

 (2) After construction has begun on the mausoleum section or bank of belowground crypts, the cemetery company shall certify the progress and expenditures and is entitled to withdraw funds from the mausoleum account to meet construction expenditures.

 (3) If the mausoleum section or bank of belowground crypts is not completed within the time limits set out in this section, the board shall contract for and cause the project to be completed and paid for from the funds deposited to the project and the cemetery company must be liable for any shortage.

 (4) In lieu of the payments to the mausoleum account the cemetery company may deliver to the board a performance bond in an amount and by surety companies acceptable to the board.

 (B)(1) Burial vaults must be at least ten inches below the earth’s surface. As used in this section, “burial vaults” includes caskets, grave liners, or other outer burial containers. It does not include markers, monuments, or crypts constructed in a mausoleum or columbarium.

 (2) This section does not apply to cemeteries located in the coastal and lowland areas which are subject to tidal or surface flooding or have a high‑level water table, except that where the water table is two feet or less from the surface, cemeteries not subject to tidal or surface flooding may place vaults level with the ground.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 15, 16.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 20 to 24, 27, 29.

**SECTION 40‑8‑140.** Cemetery signs.

 All cemeteries in this State shall display a sign at each entrance containing letters not less than six inches in height stating “Perpetual Care” or “Endowment Care” or “No Perpetual Care” or “No Endowment Care” depending upon which method of operation the cemetery is using.

 Those cemeteries which furnish perpetual care to some portions and no perpetual care to other portions shall display these signs on the appropriate sections of the cemetery to which the sign applies. Portions designated “Perpetual Care” cannot be changed to “No Perpetual Care” once the designation is made.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 3.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 2 to 3, 10.

**SECTION 40‑8‑150.** Disciplinary action; grounds.

 In addition to grounds for disciplinary actions as set forth in Section 40‑1‑110, the board shall take disciplinary action against a licensee who:

 (1) fails to pay the required fees;

 (2) fails to make required reports;

 (3) fails to remit to the care and maintenance trust fund or merchandise trust fund the required amounts;

 (4) knowingly makes a false statement intended to influence or persuade;

 (5) knowingly and continually makes flagrant misrepresentations or knowingly condones false promises by its cemetery agents or salesmen;

 (6) wilfully violates this chapter or regulations promulgated by the board;

 (7) acts in a fraudulent manner, whether of the same or a different character than specified in this section;

 (8) fails to make required contributions to the care and maintenance trust fund or any other funds required to be established and maintained by this chapter.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 1, 3.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 3, 10.

**SECTION 40‑8‑160.** Dissemination of order finding basis for disciplinary action; fine.

 Upon a determination by the board that one or more of the grounds for disciplining a licensee exist, as provided for in Sections 40‑8‑150 and 40‑1‑110, the board may, in addition to the actions provided for in Section 40‑1‑120, impose a fine not to exceed ten thousand dollars. All final orders which are made public must be mailed to local and state professional associations, all firms and facilities with which the respondent is associated, states where the person has a license known to the board, and to any other source to which the board wishes to furnish this information.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 1, 3.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 3, 10.

**SECTION 40‑8‑170.** Voluntary surrender of license.

 A licensee who is under investigation for any of the grounds provided for in Section 40‑8‑150 for which the board may take disciplinary action may voluntarily surrender his license to the board in accordance with the provisions of Section 40‑1‑150.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 1, 3.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 3, 10.

**SECTION 40‑8‑180.** Appeal.

 A person aggrieved by any action of the board may seek review of the decision in accordance with the provisions of Section 40‑1‑160.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 1, 3.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 3, 10.

**SECTION 40‑8‑190.** Punishment and fines for violation of chapter.

 A person who operates a cemetery in this State in violation of this chapter or who knowingly submits false information to the board for the purpose of obtaining a license is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred fifty dollars or more than ten thousand dollars or imprisoned not less than thirty days or more than twelve months, or both.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 22.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 33 to 34.

**SECTION 40‑8‑200.** Certain cemeteries excepted from provisions of chapter.

 The provisions of this chapter do not apply to governmental cemeteries, nonprofit cemeteries, church cemeteries, nature preserve cemeteries, or family burial grounds.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 1, 3.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 3, 10.

Attorney General’s Opinions

Section 40‑8‑200 clearly exempts nonprofit cemeteries from the provisions of the Cemetery Act, which include the licensure fees imposed by section 40‑8‑80. S.C. Op.Atty.Gen. (Sept. 5, 2006) 2006 WL 2849790.

**SECTION 40‑8‑210.** Licensing of existing cemeteries.

 (A) A perpetual care cemetery licensed by the South Carolina Cemetery Board and operating in good standing on June 30, 1990, may continue to operate and must be granted a license by the South Carolina Perpetual Care Cemetery Board.

 (B) A perpetual care cemetery established between July 1, 1990, and the effective date of this chapter may continue to operate and must be granted a license by the South Carolina Perpetual Care Cemetery Board, provided an Irrevocable Care and Maintenance Trust Fund Agreement with a trust institution doing business in this State has been properly entered into by the perpetual care cemetery, and a copy of the same is on file with the board.

 (C) Effective January 1, 2003, all perpetual care cemeteries must be operated in accordance with the provisions of this chapter.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 3.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 2 to 3, 10.

**SECTION 40‑8‑220.** Disclosure of conditions for free burial rights; basic maintenance requirements; religious code isolation designations.

 (A) A cemetery company which offers free burial rights to a person or group of persons, at the time of the offer, clearly shall state all conditions upon which the offer is made.

 (B) Cemeteries must be maintained to present a cared‑for appearance including, but not limited to, shrubs and trees pruned and trimmed, flower beds weeded, drives maintained, and lawns mowed when needed equivalent to once a week during grass growing season with ample rainfall.

 (C) Cemetery companies may provide by their bylaws, regulations, contracts, or deeds the designations of parts of cemeteries for the specific use of persons whose religious code requires isolation.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 15 to 18.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 20 to 29.

**SECTION 40‑8‑230.** Severability.

 If any provision of this chapter or the application of this chapter to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: 2002 Act No. 322, Section 10A.

**SECTION 40‑8‑240.** Application of chapter to new public cemeteries.

 Except as provided in Section 40‑8‑200, no person including a cemetery company is permitted to establish a new public cemetery unless it is a perpetual care cemetery that meets all requirements of this chapter.

HISTORY: 2002 Act No. 322, Section 10A.

Library References

Cemeteries 1, 3.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 1 to 3, 10.