

SENATE BILL NO. 339

BY SENATORS THOMPSON, RISER AND WALSWORTH

1 AN ACT

2 To enact R.S. 8:69.2, relative to cemeteries placed into receivership; to provide for the
3 qualifications of a receiver; to provide for establishment of a receivership; to provide
4 for the administration and duties of a receivership; to provide for the termination of
5 a receivership; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 8:69.2 is hereby enacted to read as follows:

8 **§69.2. Receiverships; procedure; powers, duties, and qualifications; disposition**
9 **of cemetery**

10 **A. The Louisiana Cemetery Board shall notify the attorney general of**
11 **the potential need for the establishment of a receivership if the board finds that**
12 **a cemetery meets one or more of the following conditions:**

13 **(1) Is insolvent. For purposes of this Section, the term "insolvent" shall**
14 **mean any of the following:**

15 **(i) Having generally ceased to pay debts in the ordinary course of**
16 **business with the exception of debts in which there is a bona fide dispute.**

17 **(ii) Being unable to pay debts as they become due.**

18 **(iii) Being insolvent within the meaning of federal bankruptcy law.**

19 **(2) Has utilized trust funds for personal or business purposes in a**
20 **manner inconsistent with Chapter 7 or 8 of this Title and the rules and**
21 **regulations of the board.**

22 **(3) Has consistently failed to deliver paid-in-full merchandise to**
23 **consumers.**

24 **(4) Has had its certificate of authority revoked by the board.**

1 (5) Has a certificate of authority from the board that is in suspension,
2 conditional suspension, or has not been renewed or reinstated by the board once
3 it has lapsed.

4 (6) Has never obtained a certificate of authority from the board but
5 nonetheless is operating a cemetery.

6 (7) Has been found, pursuant to the on-site examinations and board
7 hearings authorized by this Title, to have repeatedly violated provisions of this
8 Title or the rules and regulations of the board.

9 (8) Has been found, pursuant to the on-site examinations and board
10 hearings authorized by this Title, to be operating in a manner that is harmful
11 to the health, safety, or welfare of the public.

12 (9) Has failed to properly maintain the maps and interment records as
13 required by this Title and the rules and regulations of the board.

14 (10) Has otherwise violated the provisions of this Title or the rules and
15 regulations of the board.

16 B.(1) When it appears to the attorney general that a cemetery has
17 engaged in or is engaging in a practice declared to be unlawful by this Title or
18 that any of the conditions set forth in Subsection A of this Section are met, the
19 attorney general may apply only after a reasonable attempt is made by the
20 board to force compliance to the district court for the jurisdiction in which the
21 cemetery is located for either of the following:

22 (a) An order appointing a receiver of the assets of the cemetery.

23 (b) An ex parte temporary restraining order to protect the assets and
24 records of the cemetery.

25 (2) The court, upon receipt of a petition for a temporary restraining
26 order which is verified by the attorney general, shall, after being satisfied that
27 the interests of the public require the issuance of a temporary restraining order
28 shall order that the cemetery assets, including but not limited to bank accounts,
29 be frozen and preserved or may issue an order requiring that certain documents
30 held by the cemetery owner be preserved, or both.

1 (3) The court, upon receipt of a petition for the appointment of a
2 receiver, shall conduct a hearing on whether or not to appoint a receiver within
3 twenty-four hours after service of the petition on the cemetery owner or
4 licensee. If the court finds that it is in the best interest of the public that a
5 receiver be appointed, the court shall direct that a copy of the order appointing
6 the receiver be served on the cemetery authority engaged in or engaging in a
7 practice declared to be unlawful under this Title by delivering the order to the
8 last address of the cemetery that is on file with the board and the secretary of
9 state.

10 (4) Upon the institution of a receivership by the court, the court shall
11 have the authority to impound the property and business of the cemetery,
12 including but not limited to maps, books, papers, documents, computers, and
13 records appertaining thereto or so much thereof as the court may deem
14 reasonably necessary to prevent further violation of this Title and so much
15 thereof as the court may deem necessary to return the cemetery to compliance
16 with this Title.

17 C.(1) A receiver appointed by the court shall take possession of the
18 assets of the cemetery and shall be vested with the authority to administer,
19 manage, and oversee all affairs of the cemetery.

20 (2) The appointed receiver shall not be required to post a bond for any
21 activities undertaken pursuant to this Title or the rules and regulations of the
22 board.

23 (3) The court may allow the receiver to file for protection under the
24 bankruptcy code.

25 (4) The activities of the receiver shall not be limited or barred by the
26 imposition of any penalties or conditions previously imposed upon the cemetery
27 by the board.

28 (5) The receiver may pay the salaries and compensation that the receiver
29 deems necessary for the administration and management of the cemetery.

30 (6) The receiver shall have the authority to hire and fire employees of

1 the cemetery as he deems necessary in order to carry out all duties necessary for
2 the administration and management of the cemetery.

3 (7) The receiver may be reimbursed for his expenditures under this
4 Section from the assets of the cemetery as funds become available.

5 (8) The receiver shall also have all of the powers granted to receivers
6 under R.S. 12:151 et seq.

7 (9) The receiver shall hold or have the qualifications to hold, pursuant
8 to the qualifications identified in this Title and in the rules and regulations of
9 the board, a certificate of authority to operate a cemetery from the board. The
10 appointments shall be limited to one year with reappointment permissible. Any
11 person appointed under this Section shall be required to make an accounting
12 to and file a report with the court, the attorney general, and the board at least
13 once each ninety days.

14 (10) Compensation for such receivers shall be within the discretion of
15 the court but shall not include actual expenditures by the receiver. The receiver
16 shall be reimbursed for all actual receipts for expenditures as funds become
17 available and certainly no later than at the termination of the receivership.

18 (11) The board shall not be liable for any expenses or fees of the receiver.

19 D.(1) Upon restoration of the cemetery so that it complies with the
20 provisions of this Title and the rules and regulations of the board, the court
21 shall terminate the receivership.

22 (2) Upon good cause shown, the court may terminate the receivership
23 prior to compliance with the provisions of this Title and the rules and
24 regulations of the board to allow for the sale of the cemetery to a qualified
25 purchaser who has agreed to complete the requirements for compliance with
26 this Title and the rules and regulations of the board.

27 (3) If the owner of the cemetery cannot obtain a certificate of authority
28 to operate the cemetery from the board, the cemetery property and assets shall
29 be sold at a judicial sale pursuant to R.S. 9:3001 and R.S. 13:4341 et seq.

30 (4) The purchaser of the cemetery shall hold or be able to obtain,

1 pursuant to the qualifications identified in this Title and in the rules and
2 regulations of the board, a certificate of authority to operate a cemetery from
3 the board.

4 (5) This Section shall not prohibit the court from allowing the sale of the
5 cemetery to a municipal corporation.

6 (6) The receiver and his employees shall be prohibited from bidding on
7 or purchasing the cemetery at the judicial sale. This provision shall not apply
8 if the receiver is a governmental entity or a not-for-profit organization.

9 (7) In the order of sale of the cemetery, the court shall make a provision
10 for notice to creditors and the filing of claims against the receivership. Any
11 remaining funds held by the cemetery or funds realized through the sale of the
12 cemetery under this Section shall be used to satisfy, in the following order:

13 (a) The reimbursement and compensation of the receiver.

14 (b) The cemetery's consumers or beneficiaries of the consumers.

15 (c) The cemetery's creditors.

16 (8) Upon payment of the receiver, consumers or beneficiaries of the
17 consumers, and the creditors, the remaining funds acquired through the judicial
18 sale of the cemetery shall be disbursed in the following order:

19 (a) Forty percent of the amount remaining following the payments
20 required by Paragraph (7) of this Subsection shall be placed in the registry of
21 the court for a period of two years and shall be disbursed to cover any unfunded
22 liability, including but not limited to pre-need sales, that is not discovered
23 during the receiver's review of the cemetery's records.

24 (b) The remaining sixty percent shall be disbursed to the owner against
25 whom the receivership was instituted.

26 (c) Following the two year period required by Subparagraph (a) of this
27 Paragraph, funds remaining in the registry of the court may be released to the
28 owner against whom the receivership was instituted unless there is a reasonable
29 showing that outstanding unfunded liabilities continue to exist. Upon such a
30 showing, the court may order that the remaining funds stay in the court registry

1 until such a time as the unfunded liabilities are satisfied.

2 (9) The provisions of this Section shall not apply to a cemetery which is
3 located in an area which is under a gubernatorially declared disaster pursuant
4 to R.S. 29:724, so long as the executive order is in effect.

5 Section 2. This Act shall become effective upon signature by the governor or, if not
6 signed by the governor, upon expiration of the time for bills to become law without signature
7 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
8 vetoed by the governor and subsequently approved by the legislature, this Act shall become
9 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____