



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3268

Introduced 2/9/2010, by Sen. Emil Jones, III

SYNOPSIS AS INTRODUCED:

225 ILCS 411/10-21

225 ILCS 411/22-14

410 ILCS 18/11

410 ILCS 18/13

765 ILCS 835/.01

from Ch. 21, par. 14.01

Amends the Cemetery Oversight Act. In a provision concerning qualifications for licensure, provides that an applicant for licensure as a customer service employee must not have committed a violation of the Act or any rule adopted under the Act that renders the applicant unqualified for licensure (now, provision only applies to licensure as a cemetery manager). In a provision concerning the bond requirement, provides that if any paid officer of a cemetery association fails to maintain the bond or letter of credit, then all of the members of the board of trustees shall remain jointly and severally liable for damages and the paid officer who failed to maintain the bond or letter of credit shall be criminally liable. Amends the Crematory Regulation Act. In a provision concerning grounds for denial or discipline, replaces reference to "Comptroller" with "Department". Provides that after initial licensure, if any person comes to obtain at least 51% (now, 25%) of the ownership over the licensed crematory authority, then the crematory authority shall have to apply for a new license. Amends the Cemetery Protection Act. Defines "cemetery authority". Contains a nonacceleration clause.

LRB096 20483 ASK 36144 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning cemeteries.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Cemetery Oversight Act is amended by
5 changing Sections 10-21 and 22-14 as follows:

6 (225 ILCS 411/10-21)

7 (Section scheduled to be repealed on January 1, 2021)

8 Sec. 10-21. Qualifications for licensure.

9 (a) A cemetery authority shall apply for licensure on forms
10 prescribed by the Department and pay the required fee. An
11 applicant is qualified for licensure as a cemetery authority if
12 the applicant meets all of the following qualifications:

13 (1) The applicant is of good moral character and has
14 not committed any act or offense in any jurisdiction that
15 would constitute the basis for discipline under this Act.
16 In determining good moral character, the Department shall
17 take into consideration the following:

18 (A) the applicant's record of compliance with the
19 Code of Professional Conduct and Ethics, and whether
20 the applicant has been found to have engaged in any
21 unethical or dishonest practices in the cemetery
22 business;

23 (B) whether the applicant has been adjudicated,

1 civilly or criminally, to have committed fraud or to
2 have violated any law of any state involving unfair
3 trade or business practices, has been convicted of a
4 misdemeanor of which fraud is an essential element or
5 which involves any aspect of the cemetery business, or
6 has been convicted of any felony;

7 (C) whether the applicant has willfully violated
8 any provision of this Act or a predecessor law or any
9 regulations relating thereto;

10 (D) whether the applicant has been permanently or
11 temporarily suspended, enjoined, or barred by any
12 court of competent jurisdiction in any state from
13 engaging in or continuing any conduct or practice
14 involving any aspect of the cemetery or funeral
15 business; and

16 (E) whether the applicant has ever had any license
17 to practice any profession or occupation suspended,
18 denied, fined, or otherwise acted against or
19 disciplined by the applicable licensing authority.

20 If the applicant is a corporation, limited liability
21 company, partnership, or other entity permitted by law,
22 then each principal, owner, member, officer, and
23 shareholder holding 25% or more of corporate stock is to be
24 of good moral character. Good moral character is a
25 continuing requirement of licensure.

26 (2) The applicant provides evidence satisfactory to

1 the Department that the applicant has financial resources
2 sufficient to comply with the maintenance and
3 record-keeping provisions in Section 20-5 of this Act.
4 Maintaining sufficient financial resources is a continuing
5 requirement for licensure.

6 (3) The applicant has not, within the preceding 10
7 years, been convicted of or entered a plea of guilty or
8 nolo contendere to (i) a Class X felony or (ii) a felony,
9 an essential element of which was fraud or dishonesty under
10 the laws of this State, another state, the United States,
11 or a foreign jurisdiction. If the applicant is a
12 corporation, limited liability company, partnership, or
13 other entity permitted by law, then each principal, owner,
14 member, officer, and shareholder holding 25% or more of
15 corporate stock has not, within the preceding 10 years,
16 been convicted of or entered a plea of guilty or nolo
17 contendere to (i) a Class X felony or (ii) a felony, an
18 essential element of which was fraud or dishonesty under
19 the laws of this State, another state, the United States,
20 or a foreign jurisdiction.

21 (4) The applicant submits his or her fingerprints in
22 accordance with subsection (c) of this Section.

23 (5) The applicant has complied with all other
24 requirements of this Act and the rules adopted for the
25 implementation of this Act.

26 (b) The cemetery manager and customer service employees of

1 a licensed cemetery authority shall apply for licensure as a
2 cemetery manager or customer service employee on forms
3 prescribed by the Department and pay the required fee. A person
4 is qualified for licensure as a cemetery manager or customer
5 service employee if he or she meets all of the following
6 requirements:

7 (1) Is at least 18 years of age.

8 (2) Is of good moral character. Good moral character is
9 a continuing requirement of licensure. In determining good
10 moral character, the Department shall take into
11 consideration the factors outlined in item (1) of
12 subsection (a) of this Section.

13 (3) Submits proof of successful completion of a high
14 school education or its equivalent as established by rule.

15 (4) Submits his or her fingerprints in accordance with
16 subsection (c) of this Section.

17 (5) Has not committed a violation of this Act or any
18 rules adopted under this Act that, in the opinion of the
19 Department, renders the applicant unqualified to be a
20 cemetery manager or customer service employee.

21 (6) Successfully passes the examination authorized by
22 the Department for cemetery manager or customer service
23 employee, whichever is applicable.

24 (7) Has not, within the preceding 10 years, been
25 convicted of or entered a plea of guilty or nolo contendere
26 to (i) a Class X felony or (ii) a felony, an essential

1 element of which was fraud or dishonesty under the laws of
2 this State, another state, the United States, or a foreign
3 jurisdiction.

4 (8) Can be reasonably expected to treat consumers
5 professionally, fairly, and ethically.

6 (9) Has complied with all other requirements of this
7 Act and the rules adopted for implementation of this Act.

8 (c) Each applicant for a cemetery authority, cemetery
9 manager, or customer service employee license shall have his or
10 her fingerprints submitted to the Department of State Police in
11 an electronic format that complies with the form and manner for
12 requesting and furnishing criminal history record information
13 that is prescribed by the Department of State Police. These
14 fingerprints shall be checked against the Department of State
15 Police and Federal Bureau of Investigation criminal history
16 record databases. The Department of State Police shall charge
17 applicants a fee for conducting the criminal history records
18 check, which shall be deposited in the State Police Services
19 Fund and shall not exceed the actual cost of the records check.
20 The Department of State Police shall furnish, pursuant to
21 positive identification, records of Illinois convictions to
22 the Department. The Department may require applicants to pay a
23 separate fingerprinting fee, either to the Department or
24 directly to a designated fingerprint vendor. The Department, in
25 its discretion, may allow an applicant who does not have
26 reasonable access to a designated fingerprint vendor to provide

1 his or her fingerprints in an alternative manner. The
2 Department, in its discretion, may also use other procedures in
3 performing or obtaining criminal background checks of
4 applicants. Instead of submitting his or her fingerprints, an
5 individual may submit proof that is satisfactory to the
6 Department that an equivalent security clearance has been
7 conducted. If the applicant for a cemetery authority license is
8 a corporation, limited liability company, partnership, or
9 other entity permitted by law, then each principal, owner,
10 member, officer, and shareholder holding 25% or more of
11 corporate stock shall have his or her fingerprints submitted in
12 accordance with this subsection (c).

13 (Source: P.A. 96-863, eff. 3-1-10.)

14 (225 ILCS 411/22-14)

15 (Section scheduled to be repealed on January 1, 2021)

16 Sec. 22-14. Rules; bond requirement.

17 (a) The board of trustees of the cemetery association may
18 make any and all rules and regulations for the management of
19 the association not inconsistent with this Article or this Act.

20 (b) If any paid officer ~~All members of the board of~~
21 ~~trustees~~ of a cemetery association fails ~~that fail~~ to maintain
22 the bond or letter of credit as required under this Act, then
23 all members of the board of trustees shall remain jointly and
24 severally liable for damages and the paid officer who failed to
25 maintain the bond or letter of credit ~~each~~ shall be guilty of a

1 Class A misdemeanor for the first offense and a Class 4 felony
2 for second and subsequent offenses.

3 (Source: P.A. 96-863, eff. 3-1-10.)

4 Section 10. The Crematory Regulation Act is amended by
5 changing Sections 11 and 13 as follows:

6 (410 ILCS 18/11)

7 (Text of Section before amendment by P.A. 96-863)

8 (Section scheduled to be repealed on January 1, 2021)

9 Sec. 11. Grounds for refusal of license or suspension or
10 revocation of license.

11 (a) In this Section, "applicant" means a person who has
12 applied for a license under this Act.

13 (b) The Comptroller may refuse to issue a license under
14 this Act, or may suspend or revoke a license issued under this
15 Act, on any of the following grounds:

16 (1) The applicant or licensee has made any
17 misrepresentation or false statement or concealed any
18 material fact in connection with a license application or
19 licensure under this Act.

20 (2) The applicant or licensee has been engaged in
21 business practices that work a fraud.

22 (3) The applicant or licensee has refused to give
23 information required under this Act to be disclosed to the
24 Comptroller.

1 (4) The applicant or licensee has conducted or is about
2 to conduct cremation business in a fraudulent manner.

3 (5) As to any individual listed in the license
4 application as required under Section 10, that individual
5 has conducted or is about to conduct any cremation business
6 on behalf of the applicant in a fraudulent manner or has
7 been convicted of any felony or misdemeanor an essential
8 element of which is fraud.

9 (6) The applicant or licensee has failed to make the
10 annual report required by this Act or to comply with a
11 final order, decision, or finding of the Comptroller made
12 under this Act.

13 (7) The applicant or licensee, including any member,
14 officer, or director of the applicant or licensee if the
15 applicant or licensee is a firm, partnership, association,
16 or corporation and including any shareholder holding more
17 than 25% of the corporate stock of the applicant or
18 licensee, has violated any provision of this Act or any
19 regulation or order made by the Comptroller under this Act.

20 (8) The Comptroller finds any fact or condition
21 existing that, if it had existed at the time of the
22 original application for a license under this Act, would
23 have warranted the Comptroller in refusing the issuance of
24 the license.

25 (Source: P.A. 92-675, eff. 7-1-03.)

1 (Text of Section after amendment by P.A. 96-863)

2 (Section scheduled to be repealed on January 1, 2021)

3 Sec. 11. Grounds for denial or discipline.

4 (a) In this Section, "applicant" means a person who has
5 applied for a license under this Act including those persons
6 whose names are listed on a license application in Section 10
7 of this Act.

8 (b) The Department may refuse to issue a license, place on
9 probation, reprimand, or take other disciplinary action that
10 the Department may deem appropriate, including imposing fines
11 not to exceed \$10,000 for each violation, with regard to any
12 license under this Act, or may suspend or revoke a license
13 issued under this Act, on any of the following grounds:

14 (1) The applicant or licensee has made any
15 misrepresentation or false statement or concealed any
16 material fact in furnishing information to the Department.

17 (2) The applicant or licensee has been engaged in
18 business practices that work a fraud.

19 (3) The applicant or licensee has refused to give
20 information required under this Act to be disclosed to the
21 Department or failing, within 30 days, to provide
22 information in response to a written request made by the
23 Department.

24 (4) Engaging in dishonorable, unethical, or
25 unprofessional conduct of a character likely to deceive,
26 defraud, or harm the public.

1 (5) As to any individual listed in the license
2 application as required under Section 10, that individual
3 has conducted or is about to conduct any cremation business
4 on behalf of the applicant in a fraudulent manner or has
5 been convicted of any felony or misdemeanor an essential
6 element of which is fraud.

7 (6) The applicant or licensee has failed to make the
8 annual report required by this Act or to comply with a
9 final order, decision, or finding of the Department made
10 under this Act.

11 (7) The applicant or licensee, including any member,
12 officer, or director of the applicant or licensee if the
13 applicant or licensee is a firm, partnership, association,
14 or corporation and including any shareholder holding more
15 than 25% of the corporate stock of the applicant or
16 licensee, has violated any provision of this Act or any
17 regulation or order made by the Department under this Act.

18 (8) The Department finds any fact or condition existing
19 that, if it had existed at the time of the original
20 application for a license under this Act, would have
21 warranted the Department ~~Comptroller~~ in refusing the
22 issuance of the license.

23 (9) Any violation of this Act or of the rules adopted
24 under this Act.

25 (10) Incompetence.

26 (11) Gross malpractice.

1 (12) Discipline by another state, District of
2 Columbia, territory, or foreign nation, if at least one of
3 the grounds for the discipline is the same or substantially
4 equivalent to those set forth in this Section.

5 (13) Directly or indirectly giving to or receiving from
6 any person, firm, corporation, partnership, or association
7 any fee, commission, rebate, or other form of compensation
8 for professional services not actually or personally
9 rendered.

10 (14) A finding by the Department that the licensee,
11 after having its license placed on probationary status, has
12 violated the terms of probation.

13 (15) Willfully making or filing false records or
14 reports, including, but not limited to, false records filed
15 with State agencies or departments.

16 (16) Gross, willful, or continued overcharging for
17 professional services, including filing false statements
18 for collection of fees for which services are not rendered.

19 (17) Practicing under a false or, except as provided by
20 law, an assumed name.

21 (18) Cheating on or attempting to subvert this Act's
22 licensing application process.

23 (Source: P.A. 96-863, eff. 3-1-12.)

24 (410 ILCS 18/13)

25 (Text of Section before amendment by P.A. 96-863)

1 (Section scheduled to be repealed on January 1, 2021)

2 Sec. 13. License; display; transfer; duration.

3 (a) Every license issued under this Act must state the
4 number of the license, the business name and address of the
5 licensee's principal place of business, and the licensee's
6 parent company, if any. The license must be conspicuously
7 posted in the place of business operating under the license.

8 (b) No license is transferable or assignable without the
9 express written consent of the Comptroller. A transfer of more
10 than 50% of the ownership of any business licensed under this
11 Act shall be deemed to be an attempted assignment of the
12 license originally issued to the licensee for whom consent of
13 the Comptroller is required.

14 (c) Every license issued under this Act shall remain in
15 force until it has been surrendered, suspended, or revoked in
16 accordance with this Act. Upon the request of an interested
17 person or on the Comptroller's own motion, the Comptroller may
18 issue a new license to a licensee whose license has been
19 revoked under this Act if no factor or condition then exists
20 which would have warranted the Comptroller in originally
21 refusing the issuance of the license.

22 (Source: P.A. 92-675, eff. 7-1-03.)

23 (Text of Section after amendment by P.A. 96-863)

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1 (a) Every license issued under this Act must state the
2 number of the license, the business name and address of the
3 licensee's principal place of business, and the licensee's
4 parent company, if any. The license must be conspicuously
5 posted in the place of business operating under the license.

6 (b) After initial licensure, if any person comes to obtain
7 at least 51% ~~25%~~ of the ownership over the licensed crematory
8 authority, then the crematory authority shall have to apply for
9 a new license and receive licensure in the required time as set
10 out by rule.

11 (c) Every license issued under this Act shall remain in
12 force until it has been surrendered, suspended, or revoked in
13 accordance with this Act. Upon the request of an interested
14 person or on the Department's own motion, the Department may
15 issue a new license to a licensee whose license has been
16 revoked under this Act if no factor or condition then exists
17 which would have warranted the Department in originally
18 refusing the issuance of the license.

19 (Source: P.A. 96-863, eff. 3-1-12.)

20 Section 15. The Cemetery Protection Act is amended by
21 changing Section .01 as follows:

22 (765 ILCS 835/.01) (from Ch. 21, par. 14.01)

23 Sec. .01. For the purposes of this Act, the term:

24 "Cemetery authority" means an individual or legal entity

1 that owns or controls cemetery lands or property.

2 "Cemetery manager" means an individual who is engaged in,
3 or holding himself or herself out as engaged in, those
4 activities involved in or incidental to supervising the
5 following: the maintenance, operation, development, or
6 improvement of a cemetery licensed under this Act; the
7 interment of human remains; or the care, preservation, and
8 embellishment of cemetery property. This definition also
9 includes, without limitation, an individual that is an
10 independent contractor or individuals employed or contracted
11 by an independent contractor who is engaged in, or holding
12 himself or herself out as engaged in, those activities involved
13 in or incidental to supervising the following: the maintenance,
14 operation, development, or improvement of a cemetery licensed
15 under this Act; the interment of human remains; or the care,
16 preservation, and embellishment of cemetery property.

17 "Community mausoleum" means a mausoleum owned and operated
18 by a cemetery authority that contains multiple entombment
19 rights sold to the public.

20 (Source: P.A. 96-863, eff. 3-1-10.)

21 Section 95. No acceleration or delay. Where this Act makes
22 changes in a statute that is represented in this Act by text
23 that is not yet or no longer in effect (for example, a Section
24 represented by multiple versions), the use of that text does
25 not accelerate or delay the taking effect of (i) the changes

1 made by this Act or (ii) provisions derived from any other
2 Public Act.