

SUMMARY OF THE CEMETERY OVERSIGHT ACT **(HB 1188 — P.A. 96-863)**

The Cemetery Oversight Act (P.A. 96-863) is a 213-page document that was signed into law on January 18, 2010. This new law makes *more than 60 separate references* to rulemaking for the administration and implementation of this Act -- meaning that a lot of details (like the licensing fee amount and required insurance levels) must still be developed. Below is a concise, but not exhaustive, summary of the new Cemetery Oversight Act.

Full Exemptions. The following types of cemeteries are exempt from the new law:

- (i) family burial grounds;
- (ii) inactive cemeteries (those that have performed no burials in the last 10 years and do not maintain care funds); and
- (iii) small cemeteries (those that are less than 2 acres and do not maintain care funds).

The new law also exempts cemeteries owned by the City of Chicago near the O'Hare modernization site.

Partial Exemptions. Religious cemeteries, government cemeteries, and relatively inactive cemeteries (cemeteries with fewer than 25 burials per year/ for each of the 2 preceding years. that do not maintain care funds) are "partially exempt." These cemeteries do not have to become licensed but must adhere to the following new regulations:

1. possible investigation and mediation by the Illinois Department of Financial and Professional Regulation ("DFPR");
2. the new duty of care, or adequate maintenance;
3. the obligation to maintain a map or plat;
4. the burial record requirement;
5. whistleblower protections for their employees;
6. the obligation to make entries into the database;
7. the obligation to maintain an index of burials;
8. the obligation to enforce traffic controls;
9. the obligation to provide customers with a contract;
10. a prohibition on requiring cash-only payments;
11. the requirement to comply with consumer protections; and
12. the requirement to post signs that advertise the DFPR consumer complaint phone number.

Licensure. The new law requires non-exempt cemetery authorities, together with their cemetery managers and customer service employees, to become licensed by DFPR. Independent contractors who perform the duties of a cemetery manager or customer service employee must be licensed as well. Basically, anyone who has a supervisory role or significantly interacts with consumers will have to be licensed.

Qualifications for Licensure. The new law establishes the qualifications for licensure as a cemetery authority, cemetery manager, and customer service employee. For example, a cemetery manager or customer service employee must be 18 years old, comply with the code of professional conduct and ethics, submit to a criminal background check (including fingerprint review), and successfully pass an examination. In order to remain licensed, managers and customer service employees must complete continuing education requirements.

Employees of Licensed Cemeteries. The new law does not require unlicensed employees to formally register with DFPR, but they must fill out a “Worker’s Statement” that is given to the cemetery and DFPR. Independent contractors hired to perform work that is typically within the purview of a cemetery employee must also fill out a “Worker’s Statement.” Employees are not obligated to carry a registration card while working.

Fees. DFPR may impose fees *as established by rule* for the administration and enforcement of this Act, including original licensure, renewal, investigation, and mediation. DFPR shall take into consideration the various types of cemeteries, and their financial capability, when determining the licensing fee structure.

New Insurance Requirements. The new law provides that, as a requirement for licensure as a cemetery authority, a non-exempt cemetery authority must provide proof of a fidelity bond, letter of credit, or self insurance. In addition, every non-exempt cemetery authority must also provide proof of liability insurance coverage. DFPR will determine the amount of coverage needed *by rule*.

Annual Reporting. The new law provides that non-exempt cemetery authorities shall provide an annual report to DFPR. The information to be included in the report, and the manner in which the report is to be submitted, is to be *established by rule*.

Duty of Care for Licensed and Partially Exempt Cemeteries. The new law requires cemeteries to “reasonably maintain” their properties. “Reasonable maintenance” includes, but is not limited to, the laying of ground cover as soon as practicable following burial, the removal of trash and debris from the cemetery, and the repair of drains, roads, and fences. DFPR shall adopt *rules* to provide greater detail as to what constitutes the reasonable maintenance standard.

Maps, Plats, and Burial Records (Licensed and Partially Exempt Cemeteries). The new law requires cemeteries to maintain cemetery maps. DFPR can order cemetery owners to obtain a new plat map if: (i) a human body is missing, displaced, or dismembered and the cemetery map contains serious discrepancies; or (ii) the cemetery authority is expanding or altering the cemetery grounds. The map or plat must be open to public inspection. The new law also requires cemeteries to maintain burial records that include information such as the deceased’s name, age, date of burial, and a parcel identification number.

Database (Licensed and Partially Exempt Cemeteries). The new law requires DFPR to create and maintain a burial database. Within 10 business days of a burial, a cemetery manager must send DFPR the burial record for entry into the database. The database provider must maintain an electronic backup of the information. The information in the database is exempt from the Freedom of Information Act because of the risk of identity theft of deceased persons.

Investigation / Enforcement (Licensed Cemeteries). The new law gives DFPR broad enforcement powers to investigate all cemetery-related activity. It may examine and audit a cemetery owner's records, care funds, or other aspects of cemetery operation that it deems appropriate. Penalties for violating the Act (*e.g.*, failure to reasonably maintain the property, failure to prepare a plat) include reprimands, revocations, suspensions, or fines not to exceed \$10,000.

Contractual Obligations During Interment. The new law provides that funeral directors and ceterierians shall not interfere with the contractual services during the burial/interment that each party is contractually obligated to provide.

Consumer Bill of Rights. The new law creates a "Consumer Bill of Rights" that both non-exempt and partially exempt cemeteries must adhere to. The "Consumer Bill of Rights" provides minimum contractual standards that must be disclosed to all consumers purchasing cemetery merchandise and services. The new law provides that those found in violation of the "Consumer Bill of Rights" may be subject to penalties.

Cemetery Associations. The new law provides that volunteer trustees of non-exempt cemetery associations (those with more than 25 interments annually or those with care funds) are now "jointly and severally liable" for cemetery obligations, and may be subject to criminal penalties (Class A misdemeanor for first offense and Class 4 felony for second and subsequent offenses), if the cemetery association ever fails to obtain or lapses the newly required bonds/letters of credit.

Mediation (Partially Exempt Cemeteries). Partially exempt cemeteries must undergo mediation with DFPR to resolve various consumer complaints.

Whistleblower Protections (Licensed and Partially Exempt Cemeteries). The new law prohibits retaliatory action by employers against employees.

Compensation for Family Members. The Crime Victims Compensation Act currently provides compensation to the victims of violent crimes and their family members. The new law expands current law to allow the relatives of a deceased person whose body is dismembered or whose remains are desecrated to be compensated for re-burial costs and psychological care.

Creation of Special Funds; Assistance to Abandoned or Neglected Cemeteries. The new law creates two funds: the Cemetery Oversight Licensing and Disciplinary Fund, and the Cemetery Relief Fund. The first consists of the fees, penalties, and fines collected by DFPR. The second consists of 3% of the amount in the Cemetery Oversight Licensing and Disciplinary Fund, which will be used to provide grants to units of local government and not-for-profit organizations to clean up abandoned or neglected cemeteries.

Traffic Controls. Cemetery authorities and funeral homes shall use “reasonable best efforts” to ensure funeral processions entering and exiting the cemetery grounds do not obstruct street traffic for over 10 minutes. Violations are business offense punishable by a fine up to \$500.

Customer Service Employees at Funeral Homes. The new law requires “customer service employees” at funeral homes to have the same licensing as those at cemeteries.

Repeals Unnecessary Eminent Domain Powers. Under current law, a cemetery association has the power of eminent domain; the new law repeals that power.

Regulatory Consolidation. The new law provides that DFPR—rather than the Comptroller—will regulate persons who perform cremations.

Consolidates Laws. The provisions of the Cemetery Care Act and the Cemetery Associations Act are incorporated into the Cemetery Oversight Act.

