

Statutory Laws

(Tennessee Code Annotated)

Title 46. Cemeteries

46-1-102. Definitions

As used in chapters 1 and 2 of this title, unless the context otherwise requires:

(1) "Cemetery" means any land or structure in this state dedicated to and used, or intended to be used, for interment of human remains;

(3) "Cemetery purposes" means any and all things requisite or necessary for or incident or convenient to the establishment, maintenance, management, operation, improvement and conduct of a cemetery, the preparation of the premises for interment and the interment of the human dead, and the care, preservation and embellishment of cemetery property;

46-2-105. Crimes and offenses

(a) No person shall willfully destroy, deface, or injure any monument, tomb, gravestone, or other structure placed in the cemetery, or any roadway, walk, fence or enclosure in or around the same, or injure any tree, plant or shrub therein, or hunt or shoot therein, play at any game or amusement therein, or loiter for lascivious or lewd purposes therein, or interfere, by words or actions, with any funeral procession or any religious exercises.

(b) A violation of this section is a Class E felony.

Chapter 4. Termination of Use of Land as Cemetery

46-4-101. Purpose

This chapter, which is enacted for the public welfare in the exercise of the police powers of the state of Tennessee, applies to any burial ground in the state of Tennessee, including any land owned or controlled by cemetery companies, which the court to which jurisdiction is given by this chapter finds, for any of the reasons hereinafter stated, is unsuitable for its use as such and as a resting place for the dead whose remains are buried therein, or the further use of which for such purposes the court finds, for any of such reasons, is inconsistent with due and proper reverence or respect for the memory of the dead or otherwise unsuitable for such purposes, the reasons being:

(1) The burial ground having been abandoned; or

(2) The burial ground being in a neglected or abandoned condition; or

(3) The existence of any conditions or activities about or near the burial ground which the court finds render the further use of same for the purposes aforementioned inconsistent with due and proper reverence or respect for the memory of the dead, or for any other reason unsuitable for such purposes.

46-4-102. Definition

"Interested persons," as used in this chapter, means any and all persons who have any right or easement or other right in, or incident or appurtenant to, a burial ground as such, including the surviving spouse and children, or if no surviving spouse or children, the nearest relative or relatives by consanguinity of any one

(1) or more deceased persons whose remains are buried in any burial ground.

46-4-103. Actions and proceedings

(a) Any interested person or persons, and/or any county in this state in which any such burial ground is situated, and/or any municipality in this state if any such burial ground is situated in such municipality or within one (1) mile of the lawful corporate limits thereof and not beyond the limits of the county in which

any part of any such municipality is situated and not within the lawful corporate limits of any other municipality in Tennessee, may bring or join in a suit in the chancery court of the county in which any such burial ground is situated, for the following purpose or purposes:

(1) To have the remains of all deceased persons buried in such ground removed therefrom and reburied in a suitable repository to be obtained for that purpose before their removal from such burial ground;

(2) To terminate the use of, and all rights and easements to use such ground as a burial ground, and all rights and easements incident or appurtenant to the ground as a burial ground; and

(3) Thereupon, to partition or sell for partition the ground if the court finds that it belongs to two (2) or more persons and if any one (1) or more of the owners thereof shall apply for such partition. The authority of all municipalities in the state of Tennessee is extended, for the sole purpose of bringing or joining in any such suit by any such municipality, but for no other purpose, to a distance of one (1) mile from the lawful corporate limits thereof but not beyond the limits of the county in which any part of any such municipality is situated and not so as to come within the lawful corporate limits of any other municipality of the state of Tennessee.

(b) In any such suit, all interested persons who are not complainants shall be made defendants, and the owner or owners of the land or of any right of reversion or other right or interest therein, if such owner or owners shall be or include other than the interested persons, shall also be made defendants. Interested persons who are minors or otherwise incompetent or under disability may become complainants by guardian or next friend. All known defendants who are minors or otherwise incompetent or under disability shall be represented by guardian ad litem. Nonresident and unknown defendants may be proceeded against by order of publication, and publication, in the manner provided by law.

46-4-104. Judgments and decrees; removal and reinterment

Such removal and reinterment, and other relief described in Sec. 46-4-103, including partition or sale for partition if prayed for and if the court finds the conditions for partition exist as provided in Sec. 46-4-103, shall be granted, authorized, decreed and ordered by the court upon the court finding, upon the hearing of the cause upon the entire record, including the pleadings and proof, that any one (1) or more of the reasons specified in Sec. 46-4-101 exist, and that, due to the same, the burial ground is unsuitable for use as a burial ground and as a resting place for the dead whose remains are buried therein, or that the further use thereof for those purposes is inconsistent with due and proper reverence or respect for the memory of the dead, or for any other reason unsuitable for those purposes; but the removal and reinterment and such other relief shall be granted, authorized, ordered and decreed only upon it being shown to the satisfaction of the court that definite arrangements have been made, or before the removal will be made, for reinterment of all of the remains in a place found by the court to be suitable for such reinterment; that for such purpose there have been obtained, or before the removal there will be obtained, either the fee simple title to the place of reinterment or adequate permanent right and easement to use the same for such reinterment, and adequate permanent right and easement of access thereto for visitation; that the removal and reinterment of all the remains will be done with due care and decency, and that suitable memorial or memorials will be erected at the place of reinterment.

Chapter 8. Family Burial Grounds Protection.

Effective date May 8, 1996.

46-8-101. Short title

This chapter shall be known and may be cited as the "Family Burial Grounds Protection Act." This chapter is intended to provide notice to buyers of property with known burial grounds and gravesites. It does not remove any protection to those sites under existing laws.

46-8-102. Definitions

As used in this part, unless the context otherwise requires:

(1) "Crypt" has the same meaning as used in §46-1-102(8);

- (2) "Gravesite" means a space of ground used for lawful interment of a deceased person; and
- (3) "Human remains" or "remains" has the same meaning as used in §46-1-102(10).

46-8-103. Duty to protect graves or crypt -- Disturbances prohibited -- Transfer of remains.

(a) A deed for real property which indicates the presence of a gravesite or crypt containing human remains on the property conveyed obligates the immediate and future buyer(s) of the property to protect such gravesite or crypt from disturbance. The owner of real property has the responsibility for taking appropriate action, prior to conveying such property, to ensure that the deed reflects the presence of the gravesite or crypt on such property.

(b) Real property which has a deed that reflects the presence of human remains on the property is protected from disturbance or development as follows:

- (1) A gravesite may not be disturbed in the area of ten feet (10") surrounding the perimeter of the gravesite; and
- (2) A crypt may not be disturbed in the area of five feet (5') surrounding the perimeter of the crypt.

(c) The owner of real property which has a deed that reflects the presence of human remains on the property has the option of transferring the remains, at the owner's expense, pursuant to the procedure for termination of use as a cemetery in chapter 4 of this title. Upon complete transfer of all human remains from such property which are properly described on the deed, the buyer has the right to the use of the area previously containing the remains as is consistent for the remainder of the property.

Title 39. Criminal Offenses

Chapter 17. Offenses Against Public Health, Safety and Welfare

Part 3 -- Disorderly Conduct and Riots

39-17-311. Desecration; honored places or flags

(a) A person commits an offense who intentionally desecrates:

- (1) A place of worship or burial; or
- (2) A state or national flag.

(b) A violation of this section is a Class A misdemeanor.

39-17-312. Corpses; abuse

(a) A person commits an offense who, without legal privilege, knowingly:

- (1) Physically mistreats a corpse in a manner offensive to the sensibilities of an ordinary person;
- (2) Disinters a corpse that has been buried or otherwise interred; or
- (3) Disposes of a corpse in a manner known to be in violation of law.

(b) A violation of this section is a Class E felony.

Title 68. Health, Safety and Environmental Protection

Chapter 3. Vital Records

Part 5 -- Deaths

68-3-508. Disinterment; reinterment

(a) Authorization for disinterment and reinterment in cases of movement of cemeteries or parts of cemeteries or for reuniting families shall be required prior to disinterment of a dead body or fetus.

(b) Such authorization shall be issued by the state registrar to a licensed funeral director or person acting as such, upon proper application.

68-4-110. Disinterment; rules and regulations

The department of health is empowered to prepare suitable regulations governing the disinterment of dead bodies for the protection of public health.

Case Laws

(Tennessee Supreme Court Decisions)

Walter Hines v. State 149 SW 1058-1060 (1911)

Case argued and determined in the Supreme Court of Tennessee for the Middle Division. Nashville, December Term, 1911.

* Cemeteries. Land devoted and used as a burial ground is held in trust for that purpose by the owner and his successors in title.

Where the owner of land definitely appropriated and devoted a small part thereof as a private family burial ground, and it has been used as such, the land cannot be conveyed or devised so as to interfere with such use, because such owner, his grantees, devisees, and heirs hold the title in trust for the benefit of those entitled to a right or easement of burial in it, who also have the right to visit the cemetery for the purpose of repairing, beautifying, and protecting the graves and grounds, and, for these purposes, they have a right of ingress and egress from the nearest public road, to be exercised at reasonable times and in a reasonable manner.

* Cemeteries. Land... Descendants of landowner devoting land to family burial ground are entitled to burial therein.

Where the owner of the land definitely appropriated and devoted a small part thereof as a private family burial ground, and it has been used as such, the right of burial extends to all the descendants of the owner, and they may exercise it when the necessity arises.

* Cemeteries. Land... Descendants... Purchaser takes land subject to burial rights in a lot devoted to private family burial ground, though there be no express reservation.

Where a small part of a tract of land has been devoted to a private family burial use by the owner, those thereafter purchasing the land take it subject to the aforesaid burial rights, without any express reservation in the deed or will under which they take; for such reservation is implied, and purchasers are charged with notice of the fact that the particular lot has been dedicated to burial purposes, and of the rights of descendants and relatives of those there buried. Burial lots, whether public or private, are not the subject of trade and commerce, and it is always presumed that they are not included in the sale of land which surrounds them.

* Cemeteries. Land... Descendants... Purchaser... Burial ground rights are not barred by statutes of limitations so long as graves are marked by monuments, gravestones, or otherwise.

The right to use a private burial ground as such is not barred by the statute of limitations, so long as it is kept inclosed [sic]; or, if uninclosed [sic], so long as the monuments and gravestones marking the graves are there, or other attention is given to the graves, so as to show and perpetuate the sacred object and purpose to which the land has been devoted; for possession by the living is not required, in such case, to prevent the acquirement of title by the adverse possession of the owner of the fee, so long as the dead are there buried, their graves are marked, and any acts are done tending to preserve their memory and mark their last resting place.

* Cemeteries. Desecration of private burial ground and graves therein, and wrongful obstruction of way thereto, are misdemeanors.

The desecration of a private burial ground, and graves therein, and the wrongful obstruction of the easement of a right of way from the public road thereto, as against those entitled to use it, are misdemeanors, subject to punishment under the statutes applicable to offenses of that character.

It is the responsibility of law enforcement personnel with jurisdiction over the location of the cemetery to enforce these laws.

If you are aware of any violations, you should immediately contact local law enforcement authorities for action. If law enforcement personnel do not handle the situation to your satisfaction, you should contact the state's chief archaeologist in care of the Department of Environmental Conservation in Nashville.

For an interpretation of any Tennessee legal matters, and to receive the most up-to-date laws, please contact an attorney licensed to practice in this state.

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