

## LAWS REGARDING CEMETERIES IN TENNESSEE

### Tennessee Code Annotated

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## **Title 46 – Cemeteries**

### **46-4-101 - Grounds affected - Facts that justify termination of use.**

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, that the court to which jurisdiction is given by this chapter finds, for any of the reasons stated in this chapter, is unsuitable for its use as such and as a resting place for the dead whose remains are buried in the burial ground, or the further use of which for those 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 those purposes, the reasons being:

- (1)** The burial ground is abandoned; or
- (2)** The burial ground is in a neglected or abandoned condition; or
- (3)** The existence of any conditions or activities about or near the burial ground that the court finds render the further use of the burial ground for the purposes mentioned in this section that are inconsistent with due and proper reverence or respect for the memory of the dead, or for any other reason unsuitable for those purposes.

[Acts 1949, ch. 15, § 1; C. Supp. 1950, §§ 3936.1, 5379.1 (Williams, § 9720.1); modified; T.C.A. (orig. ed.), § 46-401.]

### **46-4-102 - "Interested persons" defined.**

As used in this chapter, unless the context otherwise requires, "interested persons" 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.

[Acts 1949, ch. 15, § 2; C. Supp. 1950, § 5379.2 (Williams, § 9720.2); T.C.A. (orig. ed.), § 46-402.]

## **46-4-103 - Suits for termination of use of land, removal and reinterment and for disposal of land- Municipal authority extended.**

- (a)** Any interested person or persons, and/or any county in this state in which a burial ground is situated, and/or any municipality in this state if the burial ground is situated in the municipality or within one (1) mile of the lawful corporate limits of the municipality and not beyond the limits of the county in which any part of the 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 the burial ground is situated, for the following purpose or purposes:
- (1)** To have the remains of all deceased persons buried in the burial ground removed from the burial ground and reburied in a suitable repository to be obtained for that purpose before their removal from the burial ground;
  - (2)** To terminate the use of, and all rights and easements to use, the 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 applies for partition. The authority of all municipalities in the state of Tennessee is extended, for the sole purpose of bringing or joining in the suit by the municipality, but for no other purpose, to a distance of one (1) mile from the lawful corporate limits of the municipality but not beyond the limits of the county in which any part of the 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 the 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 in the land, if the 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.
- (c)**
- (1)** At least thirty (30) days prior to any hearing on a suit initiated pursuant to this section, the complainant shall file notice with the Tennessee historical commission. The notice

shall include the approximate age of the burial ground and either:

**(A)** The name of the complainant, the location of the burial ground, and, if discernable, the name of any person interred at the burial ground; or

**(B)** An exact copy of the complaint filed in the chancery court.

**(2)** The Tennessee historical commission shall post filed notices on its website. Notices shall be posted in chronological order by county and updated at least monthly. The Tennessee historical commission may archive notices annually.

**(3)** Notwithstanding subdivisions (c)(1) and (2), any notice concerning the removal of Native American Indian human remains shall be filed according to title 11, chapter 6, and must not be posted on the website of the commission.

[Acts 1949, ch. 15, § 3; mod. C. Supp. 1950, § 5379.3 (Williams, § 9720.3); T.C.A. (orig. ed.), § 46-403; Acts 2018, ch. 1032, § 1.]

## **46-4-104 - Granting of relief- Provisions for reinterment.**

Such removal and reinterment, and other relief described in § 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 § 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 § 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 reinterment; that for that 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 place of reinterment for reinterment, and adequate permanent right and easement of access to the place of reinterment 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.

[Acts 1949, ch. 15, § 4; C. Supp. 1950, § 5379.4 (Williams, § 9720.4); T.C.A. (orig. ed.), § 46-404.]

## 46-8-101 - Short title- Legislative intent.

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 law.

[Acts 1996, ch. 921, § 1.]

## 46-8-102 - Definitions.

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

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

[Acts 1996, ch. 921, § 2.]

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

- (a) A deed for real property that indicates the presence of a gravesite or crypt containing human remains on the property conveyed obligates the immediate and future buyer or buyers of the property to protect the gravesite or crypt from disturbance. The owner of real property has the responsibility for taking appropriate action, prior to conveying the property, to ensure that the deed reflects the presence of the gravesite or crypt on the property.
- (b) Real property that 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 that 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. However, prior to filing any action in chancery court to transfer the remains located in a gravesite or crypt, the proponent of the action shall first publish a notice in a newspaper of general circulation

within the county in which the gravesite or crypt is located. The notice shall include the name of the proponent of the action, the location of the property where the remains are located and any name that can be discerned from the site of any person there interred. Upon complete transfer of all human remains from the property that 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.

[Acts 1996, ch. 921, § 3; 2008, ch. 1147, § 1.]

## Title 39 - Criminal Offenses

### 39-17-311 - Desecration of venerated object.

- (a) A person commits an offense who intentionally desecrates:
  - (1) A place of worship or burial; or
  - (2) A state or national flag.
- (b)
  - (1) A violation of subdivision (a)(1) is a Class E felony.
  - (2) A violation of subdivision (a)(2) is a Class A misdemeanor.

[Acts 1989, ch. 591, § 1; 2017, ch. 432, § 1.]

### 39-17-312 - Abuse of corpse.

- (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 person commits an offense who, without legal authority or privilege, knowingly offers to sell, sells, offers to purchase or purchases previously buried human skeletal remains. Any remains seized in violation of this subsection (b) shall be confiscated and subject to disposition as provided for in §§ 11-6-104 and 11-6-119.
- (c) A violation of this section is a Class E felony.

[Acts 1989, ch. 591, § 1; 2006, ch. 896, § 1.]