MISSISSIPPI LEGISLATURE REGULAR SESSION 2014

By: Representative Mims

To: Public Health and Human Services; Judiciary A

HOUSE BILL NO. 1237

AN ACT TO CREATE NEW SECTION 41-43-46, MISSISSIPPI CODE OF 1972, TO ESTABLISH A PROCEDURE FOR FOR-PROFIT CEMETERIES WITH BURIAL SPACES AND ENTOMBMENT RIGHTS THAT HAVE BEEN ABANDONED FOR A CERTAIN PERIOD OF TIME TO TERMINATE THE OWNER'S RIGHTS TO THE BURIAL SPACE OR ENTOMBMENT RIGHT; TO PROVIDE THAT IF A BURIAL SPACE OR ENTOMBMENT RIGHT ISSUED BY A CEMETERY HAS REMAINED UNUSED FOR A PERIOD OF AT LEAST NINETY-NINE YEARS FROM THE DATE OF SALE OR LAST RECORDED DESIGNATION OR TRANSFER AND HAS NO IMPROVEMENTS ON THE BURIAL SPACE OR ENTOMBMENT RIGHT, THE CURRENT OWNER OF THE CEMETERY MAY TERMINATE THE RIGHTS AND INTERESTS OF THE OWNER OF THE BURIAL SPACE OR ENTOMBMENT RIGHT; TO PROVIDE THAT IF THE CEMETERY OWNER DESIRES TO TERMINATE THE RIGHTS AND INTERESTS OF THE OWNER OF THE BURIAL SPACE OR ENTOMBMENT RIGHT AND DETERMINES THAT THE REQUIRED CONDITIONS HAVE BEEN MET, THE CEMETERY OWNER MUST FIRST SEND THE OWNER OF THE BURIAL SPACE OR ENTOMBMENT RIGHT A NOTICE OF THE INTENT TO TERMINATE AND DECLARE ABANDONED THE OWNER'S RIGHTS TO THE BURIAL SPACE OR ENTOMBMENT RIGHT BY CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED; TO PROVIDE THAT A PERSON WHO HAS RECEIVED A TERMINATION NOTICE MAY INFORM THE CEMETERY OWNER OF THEIR CONTINUED INTENT TO CLAIM THE BURIAL SPACE OR ENTOMBMENT RIGHT; TO PROVIDE THAT IF THE CEMETERY OWNER HAS BEEN INFORMED OF THAT INTENT, THE CEMETERY OWNER SHALL NOT TERMINATE THE RIGHTS AND INTERESTS OF THE OWNER OF THE BURIAL SPACE OR ENTOMBMENT RIGHT; TO PROVIDE THAT IF THE CEMETERY OWNER HAS NOT RECEIVED A RESPONSE FROM THE OWNER OF THE BURIAL SPACE OR ENTOMBMENT RIGHT WITHIN NINETY DAYS AFTER SENDING THE REQUIRED NOTICE, THE CEMETERY OWNER SHALL ADVERTISE IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY OF THE OWNER'S LAST KNOWN ADDRESS SEEKING THE OWNER'S CURRENT ADDRESS; TO PROVIDE THAT IF THE CEMETERY OWNER HAS NOT RECEIVED A RESPONSE REGARDING THE OWNER OF THE BURIAL SPACE OR ENTOMBMENT RIGHT WITHIN NINETY DAYS AFTER PLACING THE REQUIRED ADVERTISEMENT, THE OWNER'S RIGHTS AND INTERESTS IN THE BURIAL SPACE OR ENTOMBMENT RIGHT ARE TERMINATED, AND THE CEMETERY OWNER MAY SELL THE BURIAL SPACE OR ENTOMBMENT

RIGHT TO A NEW OWNER; TO PROVIDE THAT IF THE OWNER OF A BURIAL SPACE OR ENTOMBMENT RIGHT CONTACTS THE CEMETERY OWNER AFTER THE RIGHTS AND INTERESTS IN THE BURIAL SPACE OR ENTOMBMENT RIGHT ARE TERMINATED, THE OWNER OF THE BURIAL SPACE OR ENTOMBMENT RIGHT IS ENTITLED TO CERTAIN REMEDIES; TO PROVIDE THAT PERSONS WHO VIOLATE THE PROVISIONS OF THIS ACT ARE SUBJECT TO CERTAIN PENALTIES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. The following shall be codified as Section 41-43-46, Mississippi Code of 1972:

41-43-46. (1) If a burial space or entombment right issued by the current or previous owners or operators of a for-profit cemetery that is regulated under the Cemetery Law, Section 41-43-31 et seq.:

(a) Has remained unused for a period of at least ninety-nine (99) years from the date of sale or last recorded designation or transfer; and

(b) Has no improvements on the burial space or entombment right, including the placement of a monument, memorial, or other permanent appurtenance;

the person or entity who currently owns or operates the cemetery may terminate the rights and interests of the owner of the burial space or entombment right in accordance with the requirements of this section and any regulations promulgated by the Secretary of State's Office.

(2) (a) If the person or entity who currently owns or operates the cemetery:

(i) Desires to terminate the rights and interests of the owner of the burial space or entombment right; and

(ii) Determines that the conditions specified in subsection (1) of this section have been met;

the person or entity must send the owner a notice of the intent to terminate and declare abandoned the owner's rights to the burial space or entombment right.

(b) The notice required under paragraph (a) of this subsection must be sent by certified mail with return receipt requested to the owner's last known address.

(3) A person who has received a termination notice under subsection (2) of this section may inform the entity who owns or operates the cemetery of their continued intent to claim the burial space or entombment right. If the person or entity who owns or operates the cemetery has been informed of that intent, the person or entity who owns or operates the cemetery shall not terminate the rights and interests of the owner of the burial space or entombment right.

(4) (a) If the person or entity who owns or operates the cemetery has not received a response from the owner of the burial space or entombment right within ninety (90) days after sending the notice required by subsection (2) of this section, the person or entity who owns or operates the cemetery shall advertise for three (3) consecutive weeks in a newspaper of general circulation in the county of the owner's last known address seeking the owner's current address.

(b) If a new address for the owner of the burial space or entombment right is obtained after the advertising required in paragraph (a) of this subsection, the notice requirement under subsection (2) of this section must be repeated.

(c) If the person or entity who owns or operates the cemetery has not received a response regarding the owner of the burial space or entombment right within ninety (90) days after the date of the last advertisement required in subsection (a) of this subsection, the owner's rights and interests in the burial space or entombment right are terminated. After the rights and interests in a burial space or entombment right are terminated under this section, the person or entity who owns or operates the cemetery may sell the burial space or entombment right to a new owner.

(d) If the owner of a burial space or entombment right contacts the person or entity who owns or operates the cemetery after the owner's rights and interests in the burial space or entombment right are terminated under this section, the owner is entitled to select one (1) of the following remedies:

(i) The original burial space or entombment right, if it has not been resold.

(ii) If the person or entity who owns or operates the cemetery has resold the burial space or entombment right, reimbursement for the amount for which the burial space or entombment right was resold less the following:

1. The costs paid by the person or entity who owns and operates the cemetery in providing notice and advertising required under this section, along with any sales costs.

2. The amount sent to perpetual care trust, which amount should equal what is required in Section 41-43-37(1).

(5) The actions taken under this section are subject to recordkeeping requirements in such a manner that the Secretary of State's examiners can comply with all required steps.

(6) A person who:

(a) Knowingly terminates an owner's rights and interests in a burial space or entombment right;

(b) Knows or should have known the identity of the owner; and

(c) Fails to give the owner notice as required under this section;

is subject to the penalties set forth in Section 41-43-53.

(7) The provisions of this section apply only to for-profit cemeteries, and do not apply to not-for-profit cemeteries.

SECTION 2. This act shall take effect and be in force from and after July 1, 2014.