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H.25

Introduced by Representatives Yantachka of Charlotte, McCullough of
Williston, Lippert of Hinesburg, Townsend of South
Burlington, and Zagar of Barnard

Referred to Committee on

Date:

Subject: Health; cemeteries; natural burial grounds

Statement of purpose of bill as introduced: This bill proposes to enable a
landowner to designate his or her property for use as a natural burial ground.

An act relating to natural burial grounds

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 18 V.S.A. chapter 107 is amended to read:~~

~~CHAPTER 107. DEATHS, BURIALS, AUTOPSIES~~

~~* * *~~

~~§ 5214. DUTIES OF SEXTON; NO BURIAL OR REMOVAL WITHOUT
PERMIT~~

~~A sexton or other person having the care of a cemetery, natural burial
ground as defined in chapter 121 of this title, tomb, or receiving vault shall not
receive or permit the burial or entombment of a dead body, or the remains
thereof, in the cemetery, natural burial ground, or tomb of which he or she has~~

1 ~~charge, or the removal of a body therefrom, until there is delivered to him or~~
2 her a certificate of permission issued in accordance with the provisions of this
3 chapter.

4 § 5215. BURIAL RETURNS

5 A sexton or other person having charge of a cemetery, natural burial ground
6 as defined in chapter 121 of this title, tomb, or receiving vault, during the first
7 week of each month, shall deliver to the clerk of the town in which ~~such~~ the
8 cemetery, natural burial ground, tomb, or vault is located the burial-transit and
9 removal permits, properly certified, which he or she received during the
10 preceding month.

11 * * *

12 Sec. 2. 18 V.S.A. chapter 121 is amended to read:

13 CHAPTER 121. CEMETERIES

14 * * *

15 § 5302. DEFINITIONS

16 ~~For the purposes of this chapter and unless otherwise required by the~~
17 ~~context~~ As used in this chapter:

18 (1) "Agencies" ~~mean~~ means town cemeteries, religious or ecclesiastical
19 society cemeteries, cemetery associations, and any person, firm, corporation,
20 or unincorporated association ~~heretofore~~ engaged in the business or use of a
21 cemetery; or natural burial ground.

1 ~~(2) "Cemetery" means any plot of ground used, or intended to be used,~~
2 for the burial or disposition permanently of the remains of the human dead in a
3 grave, a mausoleum, a columbarium, a vault, or ~~other~~ another receptacle;

4 (3) "Cemetery association" means any corporation now or hereafter
5 organized which is or shall be authorized by its articles to conduct the business
6 of a cemetery;

7 (4) "Columbarium" means a structure or room or ~~other~~ another space in
8 a building or structure of durable and lasting fireproof construction, containing
9 niches, used, or intended to be used, to contain cremated human remains;

10 (5) "Community mausoleum" means a structure or building of durable
11 and lasting construction, used or intended to be used, for the permanent
12 disposition in crypts or spaces ~~therein~~ within the crypts of the remains of
13 deceased persons, provided ~~such~~ the crypts or spaces and their use ~~for the~~
14 ~~purposes aforesaid~~, are available to or may be obtained by individuals or the
15 public for a price in money or its equivalent;

16 (6) "Cremated remains" means remains of a deceased person after
17 incineration in a crematory;

18 (7) "Cremation" means the reducing of the remains of deceased persons,
19 by the use of retorts, to cremated remains and the disposal ~~thereof~~ of the
20 remains in a columbarium, niche, mausoleum, grave, or in any other manner
21 not contrary to law;

1 ~~(8) "Crematory" means a building or structure containing one or more~~
2 ~~retorts; used or intended to be used; for the reducing of the bodies of deceased~~
3 ~~persons to cremated remains;.~~

4 (9) "Crypt" means the chamber in a mausoleum of sufficient size to
5 contain the remains of deceased persons;.

6 (10) "Natural burial ground" means land designated for the burial of
7 unembalmed human remains, including cremated remains, in a manner that
8 permits the remains to decompose in the earth.

9 (11) "Niche" means a recess in a columbarium; used; or intended to be
10 used; for the permanent disposition of the cremated remains of one or more
11 deceased persons; and.

12 ~~(11)(12) "Temporary receiving vault" means a vault; or crypt; in a~~
13 ~~structure of durable and lasting construction; used or intended to be used for~~
14 ~~the temporary deposit therein of the remains of a deceased person for a period~~
15 ~~of time not exceeding one year of the remains of a deceased person.~~

16 § 5303. POLICY DECLARED

17 The object, purposes, and activities of a cemetery or natural burial ground
18 shall be restricted to those acts only that are necessary to enable it to
19 accomplish the purposes for which it is created. It shall not be conducted for
20 the purpose of private gain either directly or indirectly to any of the members
21 of the agencies engaged in such its business or use. ~~Lawfully organized~~

1 ~~cemeteries may be conducted and operated by those agencies now engaged in~~
2 ~~their conduct and operation, by churches, by religious and ecclesiastical~~
3 ~~societies, by cemetery associations incorporated as hereinafter provided, and~~
4 ~~by no others. However, this chapter is not intended to apply to any agency~~
5 ~~organized, existing, and operating the business of a cemetery prior to June 1,~~
6 ~~1933, under any existing law, nor to affect any vested rights acquired~~
7 ~~thereunder. Insofar, however, as the provisions of this chapter do not violate~~
8 ~~any vested rights, so acquired, it shall apply to all such agencies.~~

9 * * *

10 § 5305. RIGHT TO MAKE RULES AND REGULATIONS

11 The right of an agency engaged in the business of a cemetery, natural burial
12 ground, community mausoleum, or columbarium to make rules and regulations
13 for ~~the~~ its use, care, management, and protection thereof is hereby affirmed,
14 and ~~such~~ the agencies may by rule or regulation determine who may be buried
15 or deposited therein.

16 § 5306. PERPETUAL CARE FUNDS

17 (a) An agency engaged in the cemetery business shall have the right to
18 acquire by gift, devise, or otherwise, land and property of every name and
19 nature and to set aside surplus funds, to be held in trust as a perpetual care
20 fund, the income thereof to be used according to the directions of the trust,
21 where such directions are given, and where no specific directions are given, or,

1 ~~where given, and the purpose is incapable of performance, or there is a surplus~~
2 of income after the directions of the trust have been fully complied with and
3 performed, to use the same for the purpose of building, repairing, maintaining,
4 adorning, and beautifying buildings or parts thereof, fences, graves, vaults,
5 mausoleums, monuments, walks, cemetery lots, grounds, drives, or avenues, as
6 the interests of the lot owners and cemetery shall appear.

7 (b) ~~The~~ With the exception of natural burial grounds, the duty upon all
8 agencies organized to establish a perpetual care fund according to the ~~terms~~
9 ~~hereinafter set forth~~ provisions of this chapter is hereby imposed.

10 * * *

11 § 5310. PLATS

12 (a) An agency engaged in any business of a cemetery, community
13 mausoleum, or columbarium shall cause to be made a plat of its grounds,
14 showing the part ~~thereof~~ of its grounds improved or in use, and that part held
15 for future cemetery use. The plat of the improved part shall show the land laid
16 out in sections, lots, driveways, walks, and paths, sections to be designated by
17 symbols, and the lots shall be numbered. All additions to such improved areas,
18 and all new cemetery grounds hereafter established, shall be platted in the
19 manner provided above. It is further provided that in case of a community
20 mausoleum or columbarium, every agency shall cause to be made a plat
21 ~~thereof on~~ which shall be set forth the sections, halls, rooms, corridors,

1 ~~elevators, or other subdivisions thereof with their descriptive names and~~
2 numbers. The agency making ~~such~~ the plat shall file the same for record in the
3 office of the town clerk of the town in which the cemetery, community
4 mausoleum, or columbarium is located.

5 (b) Natural burial grounds may be platted at the agency's discretion in
6 accordance with the provisions of this chapter. However, sales of interment
7 rights in a natural burial ground shall not be prohibited due to the lack of a plat
8 or plat recording.

9 * * *

10 § 5313. RECORDS; BURIAL RECORDS OPEN TO PUBLIC

11 An agency engaged in the business of a cemetery, natural burial ground,
12 community mausoleum, or columbarium shall provide and maintain a suitable
13 place of deposit for the records and files of ~~such~~ the cemetery, natural burial
14 ground, community mausoleum, or columbarium, ~~of such character as in a~~
15 manner that will safely keep and preserve ~~such~~ the records and files from loss
16 and destruction, and it shall make and file proper records in such place. The
17 record of burials, interments, and cremations shall at all reasonable times be
18 open to the public.

19 * * *

1 ~~§ 5317. TAX EXEMPTIONS~~

2 Except as otherwise provided in this chapter, all cemetery lands, buildings,
3 and property, and the proceeds thereof, as defined in this chapter, which have
4 been platted and devoted to or held exclusively for cemetery or natural burial
5 ground purposes, including donations or gifts and held in trust or otherwise,
6 and all other funds held for the improvement, maintenance, repair, and
7 ornamentation of such cemetery, together with the income therefrom and all
8 other revenues and income shall be exempt from taxation.

9 * * *

10 § 5319. DISPOSITION OF REMAINS OF DEAD

11 (a) The permanent disposition of ~~the~~ human remains ~~of the human dead~~
12 shall be by interment in the earth or deposit in a chamber, vault, or tomb
13 formed wholly or partly above the surface of the ground of a cemetery
14 conducted and maintained pursuant to the laws of the ~~state~~, State, by burial on
15 land designated by the agency as a natural burial ground and recorded in the
16 land records pursuant to section 5323 of this chapter, ~~or~~ by deposit in a crypt of
17 a mausoleum or by cremation. However, this shall not be construed to prevent
18 a private individual from setting aside a portion of his or her premises owned
19 in fee by him or her, and using the ~~same~~ premises as a burial space for the
20 members of his or her immediate family, so long as his or her use for such

1 ~~purpose is not in violation of the health laws and regulations of the state State~~
2 and the town in which such the land is situated.

3 * * *

4 § 5323. NATURAL BURIAL GROUND DESIGNATION AND

5 OPERATION

6 (a) A landowner establishing a natural burial ground shall designate that
7 natural burial ground by recording a document on the land records of the town
8 in which the natural burial ground is located that depicts and describes the
9 location and borders of the natural burial ground.

10 (b) The designation shall remain with the property in perpetuity.

11 (c) A person shall not construct improvements on property designated as a
12 natural burial ground, except for improvements that are educational or
13 devotional in nature and are approved by the landowner establishing the
14 designation or his or her successor in interest.

15 (d) A deed transferring rights in property designated as a natural burial
16 ground shall state that the designation remain with the property in perpetuity
17 and set forth the prohibition in subsection (c) of this section.

18 (e) A landowner or other person shall establish a nonprofit corporation for
19 operating the business or use of a designated natural burial ground pursuant to
20 Title 11B.

21 * * *

1 ~~§ 5364. FENCES; PENALTY~~

2 ~~When Except with regard to a natural burial ground, when the selectmen or~~
3 ~~cemetery commissioners neglect to keep in repair the fence around a public~~
4 ~~burial ground, the town may be prosecuted for such neglect and fined not more~~
5 ~~than \$400.00. The fine shall be expended in repairing the fences around such~~
6 ~~burial grounds under the direction of a commissioner appointed by the court.~~

7 § 5365. DAMAGES FOR WANT OF FENCE; LIABILITY

8 When a person or estate is damaged by cattle, horses, sheep, or swine
9 breaking into a public burial ground other than a natural burial ground and
10 injuring a grave, headstone, monument, shrubbery, or flowers, for want of a
11 legal fence around ~~such~~ the burial ground, ~~such~~ the person or estate may
12 recover of the town double the amount of damages, in a civil action.

13 § 5366. NOT LIABLE UNTIL NOTIFIED

14 A town shall not be charged for ~~not keeping~~ failing to keep in repair the
15 fence around a burial ground other than a natural burial ground, or be liable for
16 damage done, unless the selectmen, or cemetery commissioners, as the case
17 may be, had notice in writing 20 days previous that the fence was out of repair.

18 * * *

19 § 5369. REMOVAL

20 ~~When it is impracticable to preserve a burial ground in proper condition,~~
21 ~~and the removal of the remains of the dead therein is required, the selectmen,~~

1 ~~in their discretion, may cause such remains to be removed and interred in a~~
2 ~~more suitable public burial ground. [Repealed.]~~

3 * * *

4 § 5371. TOWN OR CITY TO FURNISH HEADSTONE

5 In case of the burial of a person not having a known estate, and not having a
6 suitable marker or headstone erected at his or her grave within three years from
7 the date of ~~such~~ his or her burial, the selectmen of the town or the aldermen of
8 a city, as the case may be, wherein ~~such~~ the person is buried, except where the
9 person is buried in a natural burial ground, shall cause to be erected at ~~such~~ the
10 person's grave, at the expense of such town or city, a suitable marker or
11 headstone with the inscription thereon of the name of the deceased and dates of
12 his or her birth and death, if the same are known.

13 * * *

14 § 5431. CEMETERY ASSOCIATIONS; CORPORATIONS

15 Every cemetery or natural burial ground established after June 1, 1933,
16 which is not owned and operated by a town or by a religious or ecclesiastical
17 society shall be established, owned, and operated by a corporation as
18 hereinafter prescribed.

19 * * *

1 ~~§ 5436. PERPETUAL CARE FUND~~

2 A cemetery association, established prior to June 1, 1933, may create a
3 perpetual care fund out of surplus money on hand or which has been given to it
4 by will, deed, or otherwise. A cemetery association established after ~~such~~ this
5 date for a business or use other than a natural burial ground, shall create such a
6 perpetual care fund by applying thereto from the initial proceeds received from
7 the sale of lots or burial spaces a sum which shall be equivalent to and not less
8 than 20 percent of the sale price of each lot or burial space so sold, and ~~such~~
9 the association may at any time increase the same by the addition of surplus
10 money or property received by it by will, deed, or otherwise.

11 * * *

12 § 5531. DISPOSAL OF LOT BY WILL; DESCENT; BURIAL RIGHTS OF
13 HUSBAND AND WIFE

14 (a) The owner of a cemetery lot or other interment right may dispose of
15 ~~same~~ it by will to any one of his or her relatives who may survive him or her,
16 or to any agency owning and conducting the cemetery in which the lot is
17 situated, in trust, for the use and benefit of any person or persons designated in
18 ~~such~~ the will. When no express disposition or other mention is made in a will
19 of a cemetery lot or interment right owned by the testator at his or her decease,
20 and ~~wherein~~ where he or she or any member of his or her family is buried, the
21 ownership of the lot shall not pass from his or her lawful heirs by any residuary

1 ~~or other general clause of the will, but shall descend to his or her heirs, as if he~~
2 or she had died intestate.

3 * * *

4 § 5532. ESCHEAT OF CEMETERY LOTS—DEFINITION

5 ~~For the purposes of As used in sections 5532-5537 of this title, the term~~
6 “agency” shall mean town cemeteries, natural burial grounds, religious, or
7 ecclesiastical society cemeteries, and any person, firm, corporation, or
8 unincorporated association engaged in the business of a cemetery.

9 * * *

10 Sec. 3. EFFECTIVE DATE

11 ~~This act shall take effect on July 1, 2015.~~

Sec. 1. 18 V.S.A. § 5302 is amended to read:

§ 5302. DEFINITIONS

~~For the purposes of As used in this chapter and unless otherwise required~~
by the context:

* * *

(10) “Ecological land management practices” means utilization of land
stewardship decision-making processes that account for the best available
understanding of ecosystem functions and biological diversity;

(11) “Natural burial ground” means a cemetery maintained using
ecological land management practices and without the use of vaults for the

burial of unembalmed human remains or human remains embalmed using nontoxic embalming fluids and that rest in either no burial container or in a nontoxic, nonhazardous, plant-derived burial container or shroud;

(12) “Niche” means a recess in a columbarium, used, or intended to be used, for the permanent disposition of the cremated remains of one or more deceased persons;

~~(11)~~(13) “Temporary receiving vault” means a vault, or crypt, in a structure of durable and lasting construction, used or intended to be used for the temporary deposit ~~therein~~ of the remains of a deceased person for a period of time not exceeding one year of the remains of a deceased person.

Sec. 2. 18 V.S.A. § 5319 is amended to read:

§ 5319. DISPOSITION OF REMAINS OF DEAD

(a) The permanent disposition of ~~the~~ human remains ~~of the human dead~~ shall be by interment in the earth or deposit in a chamber, vault, or tomb formed wholly or partly above the surface of the ground of a cemetery conducted and maintained pursuant to the laws of the ~~state~~, State, or by deposit in a crypt of a mausoleum or by cremation. However, this shall not be construed to prevent a private individual from setting aside a portion of his or her premises owned in fee by him or her, and using the ~~same~~ premises as a burial space for the members of his or her immediate family, so long as his or

her use for such purpose is not in violation of the health laws and regulations of the ~~state~~ State and the town in which ~~such~~ the land is situated.

(b)(1) ~~No interment~~ Interment of any human body in the earth shall not be made unless the distance from the bottom of the outside coffin shall be at least five feet below the natural surface of the ground, excepting only infants under four years of age, whose bodies shall be so interred that the bottom of the outside coffin enclosing them shall be at least three and one-half feet below the natural surface of the ground.

(2) The burial boundaries of a new or expanded cemetery shall be located:

(A) not less than 200 feet up gradient of a drilled bedrock well or a drilled well in a confined aquifer that is part of an exempt or permitted potable water supply or a transient noncommunity public water system source;

(B) not less than 500 feet up gradient from any other groundwater source that is part of an exempt or permitted potable water supply or a transient noncommunity public water system;

(C) not less than 150 feet cross or down gradient from any groundwater source that is part of an exempt or permitted potable water supply or transient noncommunity public water system;

(D) outside zone one or two of the source protection area for an existing or permitted public community water system;

(E) outside the source protection area for an existing or permitted nontransient, noncommunity public water system;

(F) outside a river corridor as defined in 10 V.S.A. § 1422 and delineated by the Agency of Natural Resources; and

(G) outside a flood hazard area as defined in 10 V.S.A. §752, and delineated by the Federal Emergency Management Agency, National Flood Insurance Program.

* * *

Sec. 3. 18 V.S.A. § 5323 is added to read:

§ 5323. NATURAL BURIAL GROUNDS; EXEMPTIONS

(a) A natural burial ground shall not be subject to the following provisions of this chapter:

(1) section 5310 of this title with regard to the method of platting so as to allow the use of nonstandard methods of locating human remains, such as mapping or an electronic locating device;

(2) section 5362 of this title;

(3) section 5364 of this title, to the extent that selectboard members or cemetery commissioners need not maintain or repair a fence around a public natural burial ground so long as the perimeter of the natural burial ground is marked in a less obtrusive manner, such as by survey markers; and

(4) section 5371, unless the regulations governing a particular natural burial ground require a marker on a person's grave, in which case the selectboard members of the town or the aldermen of a city where the person is buried shall cause to be erected on the person's grave a marker in keeping with the regulations of that natural burial ground.

(b)(1) A person shall not construct improvements on property used as a natural burial ground, except for improvements that serve as a winter storage facility or that are either educational or devotional in nature and maintain the character of the land.

(2) A deed transferring rights in property used as a natural burial ground shall set forth the prohibition in subdivision (1) of this subsection.

Sec. 4. PUBLIC HEALTH; RULEMAKING

The Commissioner of Health shall adopt rules pursuant to 3 V.S.A. chapter 25 enabling the Commissioner to govern the disposition of human remains in a natural burial ground when the deceased person had a disease or condition considered a Public Health Emergency of International Concern or when a burial poses a potential "public health hazard" as defined by 18 V.S.A. § 2.

**Sec. 5. RETROACTIVE CREATION OF NATURAL BURIAL GROUND;
PROHIBITED**

Notwithstanding any other provision of law, a natural burial ground as defined in 18 V.S.A. § 5302 shall not be established prior to the passage of this act.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2015.