

ASSEMBLY, No. 4726

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED OCTOBER 11, 2022

Sponsored by:

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

SYNOPSIS

The “Family and Private Burial Grounds Preservation Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the preservation of family or private burial
2 grounds, supplementing Title 40 of the Revised Statutes, and
3 amending P.L.2003, c.261.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) Sections 1 through 14 of P.L. , c.
9 (C.) (pending before the Legislature as this bill) shall be
10 known and may be cited as the “Family and Private Burial Grounds
11 Preservation Act.”

12
13 2. (New section) As used in P.L. , c. (C.) (pending
14 before the Legislature as this bill):

15 “Burial objects” means any items or artifacts directly associated
16 with human burials, which items or artifacts were intentionally
17 deposited in an interment space as a part of a mortuary ritual at the
18 time of interment.

19 “Cemetery” means the same as that term is defined in section 2
20 of the “New Jersey Cemetery Act, 2003,” P.L.2003, c.261 (C.45:27-
21 2).

22 “Cemetery company” means a nonprofit corporation, a for-profit
23 corporation, partnership, association, or other private entity, or any
24 other individual or entity that directly or indirectly owns, manages,
25 operates or controls a cemetery, and which corporation, partnership,
26 association, entity, or individual has been authorized to manage or
27 operate the cemetery pursuant to a certificate of authority issued by
28 the New Jersey Cemetery Board pursuant to the “New Jersey
29 Cemetery Act, 2003,” P.L.2003, c.261 (C.45:27-1 et seq.).

30 “Department” means the Department of Environmental
31 Protection.

32 “Relative” means a family member, blood or marriage relation,
33 descendant, or individual in the line of ancestry of a person, and
34 includes the person’s parents, children, siblings, grandparents,
35 great-grandparents, grandchildren, great-grandchildren, aunts,
36 uncles, nieces, and nephews.

37 “Disturb” or “disturbance” means any activity that significantly
38 harms the character, condition, or physical integrity of a family or
39 private burial ground.

40 “Economic benefit” means: (a) savings gained, and that may be
41 realized, from avoided burial ground maintenance costs; (b)
42 investment returns earned, and that may be earned, on the amount
43 of avoided burial ground maintenance costs; (c) investment and
44 resale value gained, and that may be realized, from an increase in
45 the usability of land on which the burial ground is located, or from

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 an improvement of the aesthetics thereof; and (d) any other
2 financial benefit gained, and that may be realized, from a violation
3 of section 4 or 5 of P.L. , c. (C. or C.) (pending before
4 the Legislature as this bill).

5 “Family or private burial ground” or “burial ground” means a
6 cemetery into which the human skeletal remains of two or more
7 persons have been intentionally deposited, and the location of
8 which has been clearly identified through the intentional placement
9 of stone tablets, markers, or tombstones, fencing, memorial stones
10 or statues, or through some other obvious means, and which
11 cemetery (1) is not owned or operated by a government entity, by a
12 religious corporation or organization, or by a cemetery company
13 that has received authorization to operate pursuant to the provisions
14 of the “New Jersey Cemetery Act, 2003,” P.L.2003, c.261 (C.45:27-
15 1 et seq.), and (2) is located on a parcel of land that has never been
16 used for the purpose of public burials. “Family or private burial
17 ground” or “burial ground” shall not include a crematory, as defined
18 in section 2 of P.L.2003, c.261 (C.45:27-2).

19 “Human skeletal remains” or “remains” means a body, or part of
20 a body, of a deceased human being, or the recoverable human bone
21 fragments resulting from the process of cremation.

22 “Interment space” means a grave, or a tomb, crypt, or some other
23 similarly-purposed structure, whether originally situated below, on,
24 or above the surface of the ground, into which the human skeletal
25 remains of a deceased person have been intentionally deposited as a
26 part of death rites, rituals, or ceremonies.

27 “Maintenance and preservation” means all of the activities
28 undertaken to uphold or sustain the character, condition, and
29 physical integrity of a family or private burial ground, and includes
30 the ordinary care and upkeep of the burial ground.

31 “Permanent disinterment” means the dismantling of a family or
32 private burial ground and the permanent removal therefrom of all
33 human skeletal remains and burial objects, memorial structures and
34 markers, crypts or other moveable interment spaces contained
35 therein, and fences, railings, or other structures bounding the same,
36 which permanent removal has been authorized by the department
37 pursuant to section 5 or 8 of P.L. , c. (C. or C.)
38 (pending before the Legislature as this bill).

39

40 3. (New section) The Department of Environmental Protection
41 shall administer the provisions of P.L. , c. (C.) (pending
42 before the Legislature as this bill) and shall have general
43 supervision and regulatory authority, and jurisdiction, over all
44 family or private burial grounds in the State.

45 a. The department shall have the power to:

46 (1) apply for, accept, and receive grant or loan money from any
47 federal, State, or other public or private source, and solicit and
48 accept gifts, legacies, bequests, and endowments for, or in aid of,

- 1 the purposes of P.L. , c. (C.) (pending before the
2 Legislature as this bill);
- 3 (2) enter into any agreement or contract, execute any
4 instrument, and perform any act necessary, convenient, or desirable
5 to carry out any power expressly given in P.L. , c. (C.)
6 (pending before the Legislature as this bill);
- 7 (3) authorize and effectuate the permanent disinterment of
8 human skeletal remains or burial objects interred in a burial ground,
9 pursuant to the provisions of section 5 or 8 of P.L. , c. (C. or
10 C.) (pending before the Legislature as this bill);
- 11 (4) request assistance from, and avail itself of the services of,
12 the employees of any State, county, or municipal department, board,
13 commission, or agency as may be necessary to carry out any power
14 expressly given P.L. , c. (C.) (pending before the
15 Legislature as this bill);
- 16 (5) institute in an action in the Superior Court for injunctive or
17 other relief, as is necessary to enforce P.L. , c. (C.)
18 (pending before the Legislature as this bill) or the rules and
19 regulations adopted pursuant thereto; and
- 20 (6) in accordance with the “Administrative Procedure Act,”
21 P.L.1968, c.410 (C.52:14B-1 et seq.), adopt, amend, and repeal
22 rules and regulations and issue orders as may be necessary to carry
23 out the purposes of P.L. , c. (C.) (pending before the
24 Legislature as this bill).
- 25 b. The department shall have the duty to:
- 26 (1) formulate policies for the maintenance and preservation of
27 family or private burial grounds in the State;
- 28 (2) establish, maintain, and regularly update a written record
29 and map of all family or private burial grounds in the State, and
30 make the same information available for review by the public;
- 31 (3) prepare and distribute informational materials to advise the
32 public with respect to New Jersey’s family or private burial
33 grounds;
- 34 (4) timely review and respond to all proposals regarding
35 construction, excavation, or building activities anticipated to take
36 place on or near a family or private burial ground, or regarding the
37 municipal conversion of a burial ground; and
- 38 (5) submit biennially a report to the Governor, and pursuant to
39 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature,
40 describing the activities undertaken by the department during the
41 preceding two years in relation to P.L. , c. (C.) (pending
42 before the Legislature as this bill), accounting for any moneys
43 collected and used pursuant to P.L. , c. (C.) (pending before
44 the Legislature as this bill), and providing any recommendations or
45 requests it deems appropriate to further the purposes of P.L. , c.
46 (C.) (pending before the Legislature as this bill).

1 4. (New section) a. Except when approval is obtained from
2 the appropriate authority or authorities, as provided by P.L. , c.
3 (C.) (pending before the Legislature as this bill), it shall be
4 unlawful for any person to intentionally, willfully, or knowingly:

5 (1) disturb, destroy, mutilate, deface, or injure a family or
6 private burial ground or any human skeletal remains or burial
7 objects contained therein;

8 (2) tamper with an interment space, or expose through
9 excavation, disinter, or remove any human skeletal remains or
10 burial objects from a burial ground's interment spaces;

11 (3) destroy, mutilate, deface, injure, knock down, or remove any
12 ornamentation, or any tombstone, monument, stone marker, statue,
13 or other memorial structure in a family or private burial ground;

14 (4) destroy, mutilate, deface, injure, knock down, or remove any
15 fence, railing, or other structure that has been erected along the
16 boundary of a family or private burial ground; or

17 (5) allow any person, entity, or group access, or facilitate such
18 access, to a family or private burial ground for any of the purposes
19 identified in paragraphs (1) through (4) of this subsection.

20 b. The department shall ensure that any human skeletal remains
21 or burial objects that have been unlawfully disinterred in violation
22 of the provisions of subsection a. of this section are reinterred in
23 accordance with the provisions of section 9 of P.L. , c. (C.)
24 (pending before the Legislature as this bill).

25 c. This section shall not apply to a person or entity, or the
26 representative thereof, who destroys, injures, or removes a
27 tombstone, monument, stone marker, statue, or other memorial
28 structure, or a fence, railing, or other boundary marker in a family
29 or private burial ground for purposes that are consistent with the
30 maintenance and preservation of the burial ground as a burial
31 ground.

32

33 5. (New section) a. Any new construction, excavation, or
34 building in the area of a family or private burial ground shall
35 comply with local land use regulations concerning burial sites,
36 burial grounds, or cemeteries. In the absence of applicable local
37 regulations, no new construction, excavation, or building shall be
38 conducted within 15 feet of the boundaries of a family or private
39 burial ground, except when such construction, excavation, or
40 building is approved, in writing, by a relative of each person
41 interred in the burial ground, or when such construction,
42 excavation, or building is necessary:

43 (1) to protect or preserve the public health, as determined by the
44 governing body of the municipality, by the local board of health, or
45 by the Department of Health and Senior Services, or as ordered by
46 the Superior Court based on good cause shown;

47 (2) for the construction of a capital improvement or for
48 construction activities related to the provision of an essential public

1 service, as approved by the governing body of the municipality with
2 concurrence from the department;

3 (3) for the construction of a State highway, as approved by the
4 Commissioner of Transportation with concurrence from the
5 department; or

6 (4) for the construction, in accordance with the provisions of
7 subsection b. of this section, of a private sewer line connection to a
8 public sewer system, as approved by the governing body of the
9 municipality with concurrence from the department.

10 b. No new construction of a private sewer line connection to a
11 public sewer system shall be undertaken pursuant to the provisions
12 of subsection a. of this section unless:

13 (1) no other practicable alternative exists;

14 (2) the excavation or construction will take place at the
15 maximum possible distance from the burial ground;

16 (3) public notice is provided by the affected municipality in a
17 manner that allows at least two weeks for members of the public to
18 submit testimony prior to any approval, construction, excavation, or
19 building; and

20 (4) no construction or excavation equipment will be placed on
21 any part of the burial ground or within six feet thereof at any time
22 during the construction of the sewer connection.

23 c. If the disbanding of a burial ground is deemed by the
24 department to be necessary and appropriate for the purposes of
25 facilitating construction, excavation, or building activities that have
26 been approved pursuant to this section, or if such action is
27 approved, in writing, by a relative of each person interred in the
28 burial ground, the department may authorize the permanent
29 disinterment of the human skeletal remains and burial objects
30 contained within the burial ground and their reinterment in another
31 cemetery.

32 d. A person who provides written relative approval, as
33 provided by this section, for any construction, excavation, or
34 building activities occurring on or near a burial ground, or for the
35 permanent disinterment of human skeletal remains or burial objects
36 contained in a burial ground, warrants the truth of the facts stated
37 and the authority to authorize such activity. Any person who
38 falsifies information in violation of this subsection shall be liable,
39 in addition to any other penalties authorized by P.L. , c.
40 (C.) (pending before the Legislature as this bill), for damages
41 caused by a false statement.

42

43 6. (New section) a. The owner of real property containing a
44 family or private burial ground shall notify the department of the
45 existence thereof within 120 days after the effective date of P.L. ,
46 c. (C.) (pending before the Legislature as this bill). The
47 notice shall include, as indicated on tombstones or memorial
48 plaques, or as otherwise known and substantiated by the property

1 owner, the names, birthdates, and deathdates of the persons interred
2 in the burial ground.

3 b. (1) The department shall determine, based on an evaluation
4 of the information contained in a notice that is submitted in
5 accordance with subsection a. of this section, or through any other
6 reasonable inquiry or investigation, whether a family or private
7 burial ground qualifies as a “historic cemetery,” as that term is
8 defined in section 3 of P.L.1983, c.294 (C.40:10B-3).

9 (2) The department or its authorized representatives may
10 conduct excavation activities in a burial ground if necessary to
11 make the determination required by this subsection. The
12 department and its authorized representatives shall disturb the burial
13 ground as little as possible, and shall remedy, to the greatest extent
14 possible, any disturbance that is caused during the entity’s
15 exploration and excavation of the area. Any human skeletal
16 remains or burial objects that are unearthed as a result of excavation
17 activities authorized by this paragraph shall be reinterred in
18 accordance with the provisions of section 9 of P.L. , c. (C.)
19 (pending before the Legislature as this bill), as soon as is
20 reasonably possible after a determination has been made by the
21 department pursuant to this subsection.

22 (3) The owner of property on which a family or private burial
23 ground is located shall provide a reasonable means of ingress and
24 egress over his or her private land to the burial ground, as is
25 necessary to facilitate the work of the department pursuant to this
26 subsection.

27 (4) Within 30 days after a determination is made by the
28 department pursuant to this subsection, the department shall: (a)
29 submit to the owner of the real property on which the burial ground
30 is located, a disclosure statement describing the evidence, if any,
31 that was recovered at the location, and providing a notation as to the
32 department’s conclusion regarding the status and nature of the
33 burial ground as a historic cemetery; and (b) notify the governing
34 body of the municipality in which the burial ground is located of the
35 presence of the burial ground therein and its status as a historic
36 cemetery. The department’s notice to the municipality shall include
37 a legal description of the land on which the burial ground is located,
38 and shall identify the approximate location and size of the burial
39 ground thereon, and the number of interment spaces contained
40 therein.

41
42 7. (New section) a. The owner of real property containing a
43 family or private burial ground shall take appropriate action, prior
44 to conveyance of the property, to ensure that the deed accurately
45 reflects the presence the burial ground thereon.

46 b. The owner of real property containing a family or private
47 burial ground shall not permit any new interments in the burial
48 ground.

- 1 8. (New section) a. The owner of real property containing a
2 family or private burial ground may apply to the governing body of
3 the municipality to take possession of the burial ground, and may
4 convey to the municipality the person's interest therein.
- 5 b. Whenever the owner of real property containing a burial
6 ground has neglected to care for the burial ground, so that in the
7 opinion of the department or the local board of health, the burial
8 ground has become a detriment to the public health or safety, or a
9 public nuisance, the department or the local board of health, as the
10 case may be, may apply to the governing body of the municipality
11 to take possession of the burial ground pursuant to the "Eminent
12 Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.).
- 13 c. If a conveyance or acquisition made pursuant to this section
14 would cause a burial ground to be inaccessible from any public
15 way, the conveyance or acquisition shall be made subject to an
16 easement over the property owner's private land, for the benefit of
17 the spouse and relatives of any person interred in the burial ground,
18 and for the use of any person or entity authorized by the
19 municipality to conduct maintenance and preservation activities at
20 the burial ground. The easement may be used only for persons to
21 walk in a direct route from the public way nearest the burial ground
22 to the burial ground at reasonable hours.
- 23 d. A burial ground that is conveyed to, or acquired by, a
24 municipality pursuant to this section shall be maintained and
25 preserved as a burial ground, and shall not be converted to serve
26 any other purposes, except in the case that conversion is approved,
27 in writing, by a relative of each of the persons interred in the burial
28 ground, or is necessary for any of the purposes listed in section 5 of
29 P.L. , c. (C.) (pending before the Legislature as this bill),
30 and is approved by the proper authorities, as provided in that
31 section. In the event that a municipality receives the approvals
32 necessary for a burial ground's conversion under this subsection,
33 the department shall authorize the permanent disinterment of human
34 skeletal remains and burial objects in the burial ground and their
35 reinterment in another cemetery, in accordance with the provisions
36 of section 9 of P.L. , c. (C.) (pending before the Legislature
37 as this bill).
- 38 e. A person who provides written relative approval, as
39 provided by this section, for the municipal conversion of a burial
40 ground, warrants the truth of the facts stated and the authority to
41 authorize such activity. Any person who falsifies information in
42 violation of this subsection shall be liable, in addition to any other
43 penalties authorized by P.L. , c. (C.) (pending before the
44 Legislature as this bill), for damages caused by a false statement.
- 45 f. No new interments shall be permitted in any burial ground
46 that has been conveyed to, or acquired by, a municipality pursuant
47 to this section.

1 9. (New section) a. Except as provided by subsection b. of
2 this section, the department shall take appropriate action to ensure
3 that any human skeletal remains or burial objects either lawfully or
4 unlawfully recovered or disinterred from a family or private burial
5 ground are reinterred, as soon as is reasonably possible after their
6 recovery or disinterment, in the same interment space in the burial
7 ground from which they were taken. If the interment space of
8 origin is unknown, the human skeletal remains or burial objects
9 may be reinterred in any empty interment space contained within
10 the same burial ground from which they were removed.

11 b. (1) When permanent disinterment is authorized by the
12 department pursuant to section 5 or 8 of P.L. , c.
13 (C. or C.) (pending before the Legislature as this bill), the
14 department shall take appropriate action to ensure that any human
15 skeletal remains or burial objects recovered from the burial ground
16 pursuant to that authorization are reinterred, as soon as is
17 reasonably possible after their disinterment, in a cemetery that is
18 owned or operated by a cemetery company, a religious corporation
19 or organization, or a government entity. The department may enter
20 into a contract with any cemetery company, religious corporation or
21 organization, or government entity owning or controlling a
22 cemetery, or with any other person, to remove the human skeletal
23 remains or burial objects interred in the burial ground and reinter
24 the same in the designated new resting place; to remove from the
25 burial ground any tombs, headstones, memorial stones or statues, or
26 other markers or structures and replace them in the new resting
27 place; and to provide for the proper maintenance and preservation
28 of the new resting place.

29 (2) In determining an appropriate location for the reinterment of
30 human skeletal remains or burial objects pursuant to this subsection,
31 the department shall endeavor to comply with all reasonable
32 requests made by relatives of the person whose remains or burial
33 objects are being reinterred.

34 (3) The department shall maintain complete and accurate
35 records identifying the cemetery in which human skeletal remains
36 or burial objects are reinterred pursuant to this subsection, and the
37 identity, if known, of the persons whose remains or burial objects
38 have been reinterred in the new cemetery location.

39

40 10. (New section) a. A person who violates the provisions of
41 P.L. , c. (C.) (pending before the Legislature as this bill)
42 shall be guilty of:

43 (1) a criminal offense, as provided by N.J.S.2C:17-3 (criminal
44 mischief; tampering with grave site), N.J.S.2C:20-2 (general theft
45 crimes; theft of human remains), section 1 of P.L.2007, c.321
46 (C.2C:20-2.3) (theft of headstones or flags from grave sites),
47 section 1 of P.L.2002, c.127 (C.2C:22-1) (disturbance or
48 desecration of human remains), or section 2 of P.L.1981, c.282

1 (C.2C:33-11) (exposure to threat of violence through defacement of
2 private cemetery property), as applicable; or
3 (2) a disorderly persons offense, if none of the penalty
4 provisions identified in paragraph (1) of this subsection is
5 applicable to the violative conduct that forms the basis for the
6 current conviction; or
7 (3) a crime of the fourth degree, if: (a) none of the penalty
8 provisions identified in paragraph (1) of this subsection is
9 applicable to the violative conduct that forms the basis for the
10 current conviction, and (b) the offender has previously been
11 convicted of an offense under this subsection.

12 b. Notwithstanding the provisions of N.J.S.2C:43-3 to the
13 contrary:
14 (1) a person who is convicted of a disorderly persons offense
15 under paragraph (2) of subsection a. of this section shall be subject
16 to a fine of up to \$25,000; and
17 (2) a person who is convicted of a crime of the fourth degree
18 under paragraph (3) of subsection a. of this section shall be subject
19 to a fine of no less than \$25,000, nor more than \$100,000, and a
20 sentence of imprisonment, the term of which shall be determined by
21 a court in accordance with the provisions of N.J.S.2C:43-6. A
22 sentence of imprisonment that is imposed pursuant to this paragraph
23 may be suspended only when the court is clearly convinced that
24 imprisonment would result in manifest injustice.

25 c. (1) In addition to any other penalties authorized by law, a
26 person who violates the provisions of section 4 or 5 of P.L. , c.
27 (C. or C.) (pending before the Legislature as this bill),
28 with the specific intent to attain an economic benefit, as defined in
29 section 2 of P.L. , c. (C.) (pending before the Legislature as
30 this bill), shall be guilty of a crime of the fourth degree.

31 (2) Notwithstanding the provisions of N.J.S.2C:43-3 and
32 N.J.S.2C:43-6 to the contrary, a person convicted under this
33 subsection shall be subject to a sentence of imprisonment of not less
34 than one year, nor more than five years, and a fine of not less than
35 \$100,000, nor more than \$10,000,000. The fine imposed pursuant
36 to this paragraph shall be consistent with, and based upon, the value
37 of the economic benefit attained by the offender as a result of the
38 violation.

39 d. If a violation of P.L. , c. (C.) (pending before the
40 Legislature as this bill) is of a continuing nature, each day during
41 which the violation continues shall constitute an additional,
42 separate, and distinct offense.

43 e. Any penalty amounts that are collected from criminal
44 prosecutions initiated in accordance with this section shall be
45 deposited into the Family and Private Burial Grounds Preservation
46 Fund, established pursuant to section 14 of P.L. , c. (C.)
47 (pending before the Legislature as this bill).

1 f. The fact that a criminal prosecution for a violation of P.L. ,
2 c. (C.) (pending before the Legislature as this bill) is not
3 instituted or, where instituted, terminates without a conviction, shall
4 not preclude the filing of a civil action pursuant to the provisions of
5 section 11 or 13 of P.L. , c. (C. or C.) (pending before
6 the Legislature as this bill). A final judgment rendered in favor of
7 the State in any criminal proceeding brought pursuant to this section
8 shall stop the defendant from denying the same conduct in a civil
9 action that is brought pursuant to P.L. , c. (C.) (pending
10 before the Legislature as this bill).

11

12 11. (New section) a. Any person who violates the provisions of
13 section 4 or 5 of P.L. , c. (C. or C.) (pending before the
14 Legislature as this bill), or any rule or regulation adopted pursuant
15 thereto, shall, in addition to any other penalties provided by law, be
16 subject upon order of a court to a civil penalty of not more than
17 \$100,000 for a first offense and not more than \$200,000 for any
18 subsequent offense. A civil penalty imposed pursuant to this
19 subsection shall be collected with costs, in the name of the
20 commissioner, in a summary proceeding initiated pursuant to the
21 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A-58-10
22 et seq.). The Superior Court and the municipal courts shall have
23 jurisdiction over proceedings for the enforcement of penalties
24 provided by this subsection.

25 b. In addition to any penalties, costs, or interest charges that
26 may be imposed pursuant to this section, the court may assess
27 against a violator, the value of any economic benefit accruing
28 thereto from the violation.

29 c. Any moneys that are collected from a defendant pursuant to
30 this section shall be deposited into the Family and Private Burial
31 Grounds Preservation Fund, established pursuant to section 14 of
32 P.L. , c. (C.) (pending before the Legislature as this bill).

33

34 12. (New section) a. Except as provided by subsection b. of
35 this section, a person may be held liable for actions taken by the
36 person's agent or authorized representative in violation of P.L. , c.
37 (C.) (pending before the Legislature as this bill) if a court finds
38 that the person: (1) knew or reasonably should have known that
39 the person's agent or authorized representative was, or would be,
40 taking action in violation of the provisions of P.L. , c. (C.)
41 (pending before the Legislature as this bill), and (2) facilitated,
42 promoted, or otherwise acquiesced to the offensive action.

43 b. A person may be held liable under subsection c. of section
44 10 of P.L. , c. (C.) (pending before the Legislature as this
45 bill), for actions taken by the person's agent or authorized
46 representative in violation of section 4 or 5 of P.L. , c. (C. or
47 C.) (pending before the Legislature as this bill), if a court finds
48 that the person: (1) knew that the person's agent or authorized

1 representative was, or would be, taking action in violation of the
2 provisions of section 4 or 5 of P.L. , c. (C. or C.)
3 (pending before the Legislature as this bill) and (2) with the
4 specific intent to attain an economic benefit, as defined in section 2
5 of P.L. , c. (C. or C.) (pending before the Legislature as
6 this bill), facilitated, promoted, or otherwise acquiesced to the
7 offensive action.

8 c. As used in this section, “acquiescence” shall include silence
9 or inaction in the face of an apparent violation of P.L. , c.
10 (C. or C.) (pending before the Legislature as this bill).

11

12 13. (New section) a. (1) The relative of any person interred in
13 a burial ground that is the subject of a violation of section 4 or 5 of
14 P.L. , c. (C. or C.) (pending before the Legislature as
15 this bill), may bring a civil action for damages against the person
16 alleged to have committed the violation. A relative seeking
17 damages pursuant to this section shall establish, by a preponderance
18 of the evidence, that the alleged offender took action, in violation of
19 the provisions of section 4 or 5 of P.L. , c. (C. or C.)
20 (pending before the Legislature as this bill) which caused damage
21 or harm to the human skeletal remains, burial objects, or interment
22 space or adornments thereon, of any of the relative’s relations. The
23 Attorney General, as *parens patriae*, may initiate a cause of action
24 against a person who violates section 4 or 5 of P.L. , c.
25 (C. or C.) (pending before the Legislature as this bill) on
26 behalf of any relatives who have sustained injury as provided in this
27 paragraph.

28 (2) In a case where vicarious liability is established pursuant to
29 section 12 of P.L. , c. (C.) (pending before the Legislature
30 as this bill), a relative may bring civil action for damages, in
31 accordance with the provisions of this subsection, against either the
32 agent who took offensive action in violation of the provisions of
33 P.L. , c. (C.) (pending before the Legislature as this bill), or
34 the person who facilitated, encouraged, promoted, requested,
35 authorized, or otherwise acquiesced to, the agent’s taking of such
36 offensive action.

37 (3) Upon proof, by a preponderance of the evidence, of a
38 defendant’s violation of section 4 or 5 of P.L. ,
39 c. (C. or C.) (pending before the Legislature as this bill)
40 and of resulting damages to a relative as provided in paragraph (1)
41 of this subsection, the defendant shall be liable to the relative for:

42 (a) civil damages in an amount of three times the value of all
43 costs incurred by the relative to remedy the effects of the violation,
44 which costs may include, but are not limited to, costs incurred for:
45 (i) restoration, to the maximum extent practicable and feasible, of
46 the injured interment space of any of the relative’s relations; (ii)
47 replacement, renovation, removal, or relocation of a tombstone,
48 monument, stone marker, statute, or other memorial structure used

1 in association with the interment space of any of the relative's
2 relations; (iii) removal, relocation, and reinterment of the human
3 skeletal remains and burial objects of any of the relative's relations;
4 (iv) clean-up of the injured interment space of any of the relative's
5 relations, and removal therefrom of objects or other evidence
6 associated with, or used to facilitate, the violation of P.L. , c.
7 (C.) (pending before the Legislature as this bill); and (v)
8 restoration, as necessary and appropriate, of the land and
9 adornments in the burial ground, which surround and complement
10 the injured interment space of any of the relative's relations;

11 (b) damages for emotional distress suffered by the relative as a
12 direct result of the violation of section 4 or 5 of P.L. , c.
13 (C. or C.) (pending before the Legislature as this bill), and

14 (c) reimbursement for any costs incurred by the relative for
15 attorneys' fees, court costs, or other out-of-pocket expenses related
16 to the litigation, except that in the case that a cause of action is
17 initiated by the Attorney General, as *parens patriae*, such costs,
18 including the costs of investigation, shall be awarded to the State.

19 b. The cause of action authorized by this section shall be in
20 addition to and not in lieu of any other action, injunctive relief, or
21 any other remedy available at law, except that an award entered
22 pursuant to this section shall be reduced by the amount of any
23 restitution, if any, that has been awarded for the same injury
24 following criminal conviction or juvenile adjudication pursuant to
25 section 10 of P.L. , c. (C.) (pending before the Legislature
26 as this bill).

27
28 14. (New section) a. The department shall establish and
29 manage a fund, to be known as the Family and Private Burial
30 Grounds Preservation Fund, and shall expend moneys in the fund as
31 is reasonably necessary to effectuate the purposes of this act.

32 b. The moneys to be deposited in the Family and Private Burial
33 Grounds Preservation Fund shall include:

34 (1) Any penalty moneys collected by the department pursuant to
35 sections 10 and 11 of P.L. , c. (C. and C.) (pending
36 before the Legislature as this bill);

37 (2) Any moneys appropriated and allocated to the department by
38 the Legislature for purposes consistent with P.L. , c. (C.)
39 (pending before the Legislature as this bill);

40 (3) Any gifts, legacies, bequests, or endowments received by the
41 department for, or in aid of, purposes consistent with P.L. ,
42 c. (C.) (pending before the Legislature as this bill);

43 (4) Any grant or loan moneys awarded to the department by a
44 federal, State, or other public or private source for purposes
45 consistent with P.L. , c. (C.) (pending before the
46 Legislature as this bill);

47 (5) Any interest accrued on moneys contained in the fund; and

1 (6) Any dividends or returns received from investment of the
2 moneys in the fund.

3

4 15. Section 23 of P.L.2003, c.261 (C.45:27-23) is amended to
5 read as follows:

6 23. a. Except as otherwise provided in this section, or pursuant
7 to court order, human remains shall not be removed from an
8 interment space unless:

9 (1) the surviving spouse, adult children and the owner of the
10 interment space authorize removal in writing;

11 (2) removal is authorized by a State disinterment permit issued
12 by the local board of health; and

13 (3) the cemetery finds that removal is feasible.

14 b. No disinterment permit is required:

15 (1) for the temporary removal or repositioning of vaulted human
16 remains to allow for the deepening of an interment space within the
17 same lot;

18 (2) for the transfer of temporarily stored remains from the place
19 of temporary storage to the place of final interment within the same
20 cemetery in accordance with applicable law;

21 (3) for the removal of cremated human remains. However, prior
22 consent shall be obtained from the interment space owner and the
23 person having the right to control the removal of the decedent's
24 remains.

25 c. Human remains buried on property that is not part of a
26 cemetery may be removed by the owner of the property provided
27 that removal is in compliance with applicable law and the remains
28 are then properly re-buried in a cemetery.

29 d. A person who signs an authorization for the disinterment of
30 human remains warrants the truth of the facts stated and the
31 authority to order the disinterment. The person shall be liable for
32 damages caused by a false statement or breach of warranty. A
33 cemetery or funeral director shall not be liable for disinterment in
34 accordance with the authorization unless it had reasonable notice
35 that the representations were untrue or that the person lacked the
36 right to control the disinterment. An action against a cemetery
37 company relating to the disinterment of human remains shall not be
38 brought more than one year from the date of disinterment.

39 e. This section shall not apply to the removal of human remains
40 from an interment space that is located in a "family or private burial
41 ground" as defined in section 2 of P.L. , c. (C.) (pending
42 before the Legislature as this bill), which removal shall, instead,
43 comply with the provisions of the "Family and Private Burial
44 Grounds Preservation Act," P.L. , c. (C.) (pending before
45 the Legislature as this bill).

46 (cf: P.L.2003, c.261, s.23)

1 16. Section 25 of P.L.2003, c.261 (C.45:27-25) is amended to
2 read as follows:

3 25. a. A cemetery shall not be established or enlarged in any
4 municipality without first obtaining the consent of the municipality
5 by resolution.

6 b. No more than five cemeteries may be established in any one
7 municipality, and not more than 3% of the area of any municipality
8 shall be devoted to cemetery purposes. This subsection shall not
9 apply to a “family or private burial ground” as defined in section 2
10 of P.L. , c. (C.) (pending before the Legislature as this
11 bill).

12 c. A cemetery shall not be established or expanded to exceed
13 250 acres at any one location.

14 d. The governing body of a municipality, by resolution, may
15 waive the limitations of subsection b. or c. of this section if it finds
16 that there is a public need for additional cemetery lands and that it
17 is in the public interest to waive them.

18 e. A cemetery company shall not dedicate additional land to
19 cemetery purposes without board approval.

20 (cf: P.L.2003, c.261, s.25)

21

22 17. This act shall take effect immediately.

23

24

25

STATEMENT

26

27 This bill, sections 1 through 14 of which would be known as the
28 “Family and Private Burial Grounds Preservation Act,” would
29 provide the legal protection necessary to prevent the disturbance
30 and destruction of burial grounds in the State that have been
31 established and used exclusively by private persons or families. For
32 ease of practical application, the bill would define “family or
33 private burial ground” (burial ground) to mean, in particular, a
34 cemetery that (1) contains the remains of two or more persons; (2)
35 is clearly identified through the intentional placement of stone
36 tablets, markers, or tombstones, fencing, memorial stones or
37 statutes, or through some other obvious means; (3) is not owned or
38 operated by a government entity, by a religious corporation or
39 organization, or by a cemetery company that has received
40 authorization to operate pursuant to the provisions of the “New
41 Jersey Cemetery Act of 2003;” and (4) is not located on land that
42 has ever been used for the purpose of public burials.

43 The bill would authorize the Department of Environmental
44 Protection (DEP) to administer and enforce its provisions, and it
45 would grant the DEP general supervisory and regulatory authority,
46 and jurisdiction, over all family and private burial grounds in the
47 State.

1 The bill would make it unlawful, in particular, for any person to
2 intentionally, willfully, or knowingly: (1) disturb, destroy, mutilate,
3 deface, or injure a family or private burial ground or any human
4 skeletal remains or burial objects contained therein; (2) tamper with
5 an interment space, or expose through excavation, disinter, or
6 remove any human skeletal remains or burial objects contained in a
7 burial ground's interment spaces; (3) destroy, mutilate, deface,
8 injure, knock down, or remove any ornamentation, or any
9 tombstone, monument, stone marker, statue, or other memorial
10 structure in a burial ground; (4) destroy, mutilate, deface, injure,
11 knock down, or remove any fence, railing, or other structure that
12 has been erected along the boundary of a burial ground; or (5) allow
13 any person, entity, or group access, or facilitate such access, to a
14 burial ground for any of the above-listed purposes.

15 In addition, the bill would require any new construction,
16 excavation, or building in the area of a burial ground to comply
17 with local land use regulations concerning burial sites, burial
18 grounds, or cemeteries. The bill would specify, moreover, that in
19 the absence of applicable local regulations, no new construction,
20 excavation, or building may be conducted within 15 feet of the
21 boundaries of a burial ground, except when such activity is
22 approved, in writing, by a relative of each person interred in the
23 burial ground, or is determined to be necessary for: (1) the
24 protection of public health; (2) the construction of capital
25 improvements or the provision of essential public services; (3) the
26 construction of a State highway; or (4) the construction, in
27 accordance with specified limitations, of a private sewer line
28 connection to a public sewer system.

29 Pursuant to the bill's provisions, a person who owns property on
30 which a burial ground is located would be required to report the
31 existence of the burial ground to the DEP within 120 days after the
32 bill's effective date, and also to record the existence of the burial
33 ground in the deed to the property. The bill, however, would allow
34 a property owner to apply to the municipality to take possession of
35 any burial ground on the property, and to convey to the
36 municipality, the property owner's interest therein. In addition, if
37 the DEP or the local board of health concludes that a burial ground
38 has been neglected by a property owner to the point that it has
39 become a public hazard or nuisance, the department or the local
40 board of health, as the case may be, would be authorized to apply to
41 the municipality to take possession of the burial ground pursuant to
42 the "Eminent Domain Act of 1971."

43 A municipality that has acquired a burial ground would be
44 authorized to convert the burial ground to serve another purpose
45 only if such conversion is approved, in writing, by a living relative
46 of each person interred therein, or is determined to be necessary for
47 one of the reasons listed above, for which construction, excavation,
48 or building activities may be authorized.

1 The bill would allow the department to authorize the total
2 dismantling of a burial ground and the permanent disinterment and
3 reinterment in another cemetery of the human skeletal remains and
4 burial objects contained therein, only if such action: (1) is deemed
5 by the department to be necessary and appropriate for the purposes
6 of facilitating an approved municipal conversion of a burial ground,
7 or an approved construction, excavation, or building activity taking
8 place on or near a burial ground, or (2) is otherwise approved, in
9 writing, by a living relative of each person interred in the burial
10 ground. Any person who gives such written relative approval –
11 whether for the municipal conversion of a burial ground, for
12 construction, excavation, or building activities taking place on or
13 near a burial ground, or for the permanent disinterment of human
14 skeletal remains or burial objects in a burial ground – would be
15 liable, in addition to any other applicable penalties, for damages
16 caused by a false statement.

17 The bill would require any human skeletal remains or burial
18 objects that are either lawfully or unlawfully recovered from a
19 burial ground to be reinterred, as soon as is reasonably possible, in
20 the same burial ground from which they were taken, except in the
21 case that permanent disinterment has been authorized by the
22 department. In such a case, the bill would require any disinterred
23 human skeletal remains or burial objects to be reinterred in a
24 cemetery that is owned or operated by a cemetery company,
25 religious corporation or organization, or government entity.

26 Failure to comply with any of the bill's provisions would subject
27 a violator to both criminal and civil liability. In particular, a person
28 who violates the bill's provisions would be guilty of:

29 (1) a criminal offense, ranging from a crime of the fourth degree
30 to a crime of the second degree, as provided by N.J.S.2C:17-3
31 (criminal mischief; tampering with grave site), N.J.S.2C:20-2
32 (general theft; theft of human remains), section 1 of P.L.2007, c.321
33 (C.2C:20-2.3) (theft of headstones or flags from grave sites),
34 section 1 of P.L.2002, c.127 (C.2C:22-1) (disturbance or
35 desecration of human remains), or section 2 of P.L.1981, c.282
36 (C.2C:33-11) (exposure to threat of violence through defacement of
37 private cemetery property), as applicable; or

38 (2) a disorderly persons offense, subject to a fine of up to
39 \$25,000, if none of the penalty provisions identified in paragraph
40 (1) is applicable to the violative conduct; or

41 (3) a crime of the fourth degree, subject to imprisonment and a
42 fine of no less than \$25,000 nor more than \$100,000, if: (a) none of
43 the penalty provisions identified in paragraph (1) is applicable to
44 the violative conduct, and (b) the offender has previously been
45 convicted of violating the bill's provisions. A court would be
46 authorized to suspend a sentence of imprisonment imposed for such
47 an offense only if the court determines that imprisonment would
48 result in manifest injustice.

1 A person who violates the provisions of section 4 or 5 of this bill
2 with the specific intent to attain an economic benefit therefrom,
3 would additionally be guilty of a crime of the fourth degree, and
4 would be subject to a sentence of imprisonment of not less than one
5 year, nor more than five years, and a fine of not less than \$100,000,
6 nor more than \$10,000,000, which fine must be consistent with, and
7 based upon, the value of the economic benefit attained by the
8 offender as a result of the violation. “Economic benefit” would be
9 defined to include, among other things, the investment and resale
10 value gained, and that may be realized, from an increase in the
11 usability of land on which the burial ground is located, or from an
12 improvement of the aesthetics thereof, which results from a
13 violation under the bill.

14 In addition to the criminal penalties provided by the bill and any
15 other penalties provided by law, a person who desecrates or
16 destroys a burial ground or the human remains or objects therein,
17 would be subject, under the bill’s provisions, to a civil penalty of up
18 to \$100,000 for a first offense, and up to \$200,000 for a second or
19 subsequent offense. The bill would authorize a court, moreover, to
20 hold a person vicariously liable, in certain circumstances, for
21 offensive conduct that is engaged in by the person’s agent or
22 authorized representative.

23 Finally, the bill would authorize any aggrieved relative of a
24 person interred in a compromised burial ground to file a civil action
25 for damages against the person responsible for causing the harm to
26 the interment spaces or remains of the relative’s relations. A
27 prevailing relative in such a case would be entitled to the receipt of
28 damages amounting to three times the value of all costs incurred by
29 the relative to remedy the effects of violation. In addition, the
30 prevailing relative would be entitled to damages for emotional
31 distress and reimbursement for out-of-pocket litigation expenses.

32 By providing for the imposition of significant civil and criminal
33 penalties, the granting of civil damage awards, and the finding of
34 vicarious liability, the bill endeavors to create a system of
35 deterrence that will effectively protect family and private burial
36 grounds against encroachment or destruction by corporate actors or
37 big business interests who may receive a substantial net benefit
38 from destruction thereof, and who, therefore, may not be dissuaded
39 from violations of the bill absent the existence of such substantial
40 penalties.

41 With the exception of awards for civil damages, any civil or
42 criminal penalties that are collected in accordance with the bill’s
43 provisions would be deposited in the “Family and Private Burial
44 Grounds Preservation Fund,” which would be established and
45 maintained by the department pursuant to the bill’s provisions. The
46 bill would also require the deposit into the Fund of any additional
47 moneys that are appropriated or allocated to, or otherwise received
48 by, the department for the bill’s purposes.