

# MAINE STATE LEGISLATURE

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# E I G H T Y - E I G H T H L E G I S L A T U R E

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Legislative Document

No. 698

S. P. 363

In Senate, February 16, 1937.

Referred to Committee on Public Health and 500 copies ordered printed.  
Sent down for concurrence.

ROYDEN V. BROWN, Secretary.

Presented by Senator MacKinnon of Oxford.

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## S T A T E O F M A I N E

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
THIRTY-SEVEN

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**AN ACT** Relating to the Incorporating of Cemeteries, and the Operation  
of Burying Grounds, Burial Structures, and the Disposal of Dead  
Human Bodies.

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Be it enacted by the People of the State of Maine, as follows:

**Sec. 1. R. S., c. 56, § 8, amended.** Section 8 of chapter 56 of the revised statutes is hereby amended so as to read as follows:

**‘Sec. 8. Purposes.** 3 or more persons may associate themselves together by written articles of agreement, for the purpose of forming a corporation with 1 or more classes of stock either with or without par value to carry on any lawful business anywhere, including corporations for manufacturing, mechanical, mining, or quarrying business; and also corporations whose purpose is the carriage of passengers or freight, or both, upon the high seas, or from port or ports in this state to a foreign port or ports, or to a port or ports in other states, or the carriage of freight or passengers, or both, upon any waters where such corporation may navigate; and excepting corporations for banking, insurance, **the ownership, maintenance or operation of a cemetery or cemeteries**, the constructions and operation of railroads or aiding the constructions thereof, and the business

of savings banks, trust companies, loan and building associations, or corporations intended to derive profit from the loan of money except as a reasonable incident to the transaction of other corporate business or where necessary to prevent corporate funds from being unproductive, and safe deposit companies, including the renting of safes in burglar-proof and fire-proof vaults; but corporations may also be formed hereunder to exercise the following corporate purposes in other states and jurisdictions, namely: the construction and operation of railroads or aiding in the construction thereof, telegraph or telephone companies, and gas or electrical companies, and in all such cases, the articles of agreement and certificate of organization shall state that such business is to be carried on only in states and jurisdictions when and where permissible under the laws thereof, and such corporations heretofore organized for the transaction of such business in other states or jurisdictions, if otherwise legally organized and now existing, are hereby declared to be corporations under the laws of this state.

Nothing herein shall be construed to prevent the organization of agricultural credit corporations organized to carry out the provisions of the federal farm loan act, enacted by the sixty-seventh congress of the United States, chapter 252, and acts amendatory thereof and additional thereto and which become such corporations under the provisions of said federal farm loan act. Such agricultural credit corporations shall not be deemed banking corporations or institutions.'

**Sec. 2. R. S., c. 24, § 1, amended.** Section 1 of chapter 24 of the revised statutes is hereby amended so as to read as follows:

**'Sec. 1. Incorporation.** Persons of lawful age may (incorporate) **organize themselves into a non-profit-sharing corporation** for the purpose of purchasing land for a burying-ground **and for the purpose of owning, maintaining and operating a cemetery or cemeteries**, as provided in sections 1 and 2 of chapter 70, and may proceed in the manner and, **except as herein restricted**, with the powers provided in section 3 of said chapter.'

**Sec. 3. R. S., c. 24, § 20, amended.** Section 20 of chapter 24 of the revised statutes is hereby amended so as to read as follows:

**'Sec. 20. Incorporation of public cemeteries; exemption from attachment and taxation.** Any 7 or more persons may be incorporated, **not for profit**, in the manner provided in sections 1 and 2 of chapter 70, for the purpose of owning, managing, and protecting lands and their appurtenances appropriated for public cemeteries; and the property of such cor-

porations and the shares of stock therein are exempt from attachment and taxation.'

**Sec. 4. R. S., c. 70, § 1, amended.** Section 1 of chapter 70 of the revised statutes is hereby amended so as to read as follows:

**'Sec. 1. Organization.** When 7 or more persons desire to be incorporated as proprietors of a social, military, literary, scientific, or county law library; as a Masonic lodge or chapter of any order or degree; as a Masonic association consisting of members of different orders or degrees; as a lodge of the Independent Order of Odd Fellows; as a lodge of the Knights of Pythias; as a tribe of the Improved Order of Red Men; as a division of the Sons of Temperance; as a tent of the Rechabites; as a grange of Patrons of Husbandry; as a Council of the Sovereigns of Industry; as a lodge of the Benevolent and Protective Order of Elks; as a Grand Army Post; as an American Legion Post, as a Council of the Boy Scouts of America, as a relief or benefit association for mutual assistance; **as a cemetery association;** as a monument or memorial association; as a society; to promote temperance; as a village improvement society; as an association for the promotion of good municipal government; as a chamber of commerce or board of trade; as a yacht club; or for the purpose of preserving and maintaining a family homestead and the rights of descendants and of members of the family therein; or for any literary, scientific, musical charitable, educational, social, military, agricultural, moral, religious, or benevolent purpose; they may apply in writing to any justice of the peace in the county, who may issue his warrant, directed to one of said applicants, requiring him to call a meeting thereof at such time and place as the justice may appoint.'

**Sec. 5. Cemeteries, how established.** Every cemetery hereafter established shall be owned, maintained or operated only by (1) a municipality, or other political subdivision of the state, (2) a church, (3) a religious or charitable society, or (4) by a cemetery association incorporated as provided in section 2 of this act. Every such cemetery shall be located in accordance with statutes already in force and effect, and only after consent for such location has been obtained from the municipality, or other political subdivision, where the same is proposed to be located, as well as from the department of public health; and no cemetery, community mausoleum, crematory or columbarium hereafter established shall be maintained or operated for the purpose of private profit or gain, either directly or indirectly, to any director, officer or member of the cemetery association or other agency owning, maintaining or operating the same, or of any holding company or development company employed to develop, build and

dispose of the same. A cemetery lawfully established prior to the passage of this act may continue to be owned, maintained and operated under the form of organization adopted therefor.

Sec. 6. Sale of cemetery lots, regulated. The sale of cemetery lots and plots, or the sale of crypts in a community mausoleum or niches in a columbarium, for speculative or financial investment purposes, or the conveyance of any portion of a cemetery already dedicated to burial purposes as security for debt, is hereby prohibited, and every such conveyance, whether made by a person, or by a cemetery association, or company or association owning and operating a community mausoleum, crematory or columbarium, or by any holding, development or subsidiary company, shall be void and of no effect. Whoever makes or attempts to make a sale or conveyance contrary to the provisions of this section shall be guilty of a misdemeanor and punishable as provided in section 20 of this act.

Sec. 7. Proceeds of sales of lots, how applied. The proceeds of the sales of lots and plots in a cemetery shall be applied solely to the management, superintendence, improvement and maintenance of the cemetery and the avenues, paths and structures situated therein, for the purchase of additional cemetery land, and for the accumulation of a permanent care and improvement fund. If any indebtedness of a fixed amount is incurred in the purchase of lands for such cemetery, or in making any improvement there, a sum not exceeding 50% of the gross receipts from the sale of burial lots and plots may be applied to the liquidation of such indebtedness. All moneys received from the sale of personal property and surplus real estate of a cemetery shall be applied first to the liquidation of any fixed indebtedness incurred by it on account of the purchase or improvement of the lands dedicated to cemetery purposes, and any residue remaining after the liquidation of such indebtedness shall be deposited in the permanent care and improvement fund of the cemetery.

Sec. 8. Limitation of location of mausoleum. Every community mausoleum, other than a structure containing crypts erected or controlled by a church or a religious society and used only as a repository for the remains of the clergy or dignitaries of such church or religious society, and every crematory, columbarium or other structure intended to dispose of or hold or contain the bodies or remains of the dead, shall be located only within the limits of a cemetery containing not less than 20 acres, which shall have been in existence and actually used for burial purposes for a period of at least 5 years immediately preceding the time of the erection thereof.

**Sec. 9. R. S., c. 24, § 22, amended.** Section 22 of chapter 24 of the revised statutes is hereby amended so as to read as follows:

**'Sec. 22. Plans for burial structures must be presented to state bureau of health for approval.** Before any person, firm, or such community or corporation, shall build, construct, or erect, any mausoleum, vault, or other burial structure, entirely above ground, or partly above and partly by excavation, with the intention and purpose that when so built, constructed, and erected the same may contain 20 or more deceased human bodies for permanent interment, such person, firm, or corporation, shall present all plans for such construction to the state bureau of health, and shall obtain the written approval of such plans, by said department, before proceeding with the construction and erection of said mausoleum, vault, or other burial structure.'

**Sec. 10. R. S., c. 24, § 23, amended.** Section 23 of chapter 24 of the revised statutes is hereby amended so as to read as follows:

**'Sec. 23. Crypts or catacombs, so constructed as to be readily examined.** Such community mausoleum, or other burial structure, shall be constructed of such materials and workmanship as will insure its durability and permanence as well as the safety, convenience, comfort and health of the community in which it is located, as dictated and determined at the time by modern mausoleum construction and engineering science, and all crypts or catacombs placed in a mausoleum, vault, or other burial structure, as described in the preceding section, shall be so constructed that all parts thereof may be readily examined by the state bureau of health, or any other health officer, and such crypts or catacombs, when used for the permanent interment of a deceased body, or bodies, shall be so hermetically sealed that no offensive odor or effluvia may escape therefrom.'

**Sec. 11. Powers of department of health and welfare.** The department of health and welfare shall have supervisory control over the erection of any such community mausoleum and shall enforce compliance with the approved plans and specifications therefor. Said department shall appoint an inspector, experienced in modern mausoleum construction and engineering science, to supervise the erection of any such mausoleum and said department shall determine the reasonable amount of compensation of said inspector, which compensation shall be paid by the cemetery association or other agency erecting such community mausoleum. No departure from the original plans and specifications shall be permitted, except upon approval of the said department of public health evidenced in like manner and form as the approval of the original plans and specifications.

Sec. 12. Completion necessary. No community mausoleum, crypt or structure erected as aforesaid shall be used for the purpose of depositing therein the remains of any dead body until the same, or a component section thereof, is fully completed, and the permanent care and improvement fund required by section 15 has been provided.

Sec. 13. May be sold when. No crypt in a community mausoleum shall be sold or offered for sale before said structure, or a component section thereof is fully completed.

Sec. 14. If menace, court may order removal of bodies. Whenever any mausoleum, vault, crypt or other structure containing 1 or more dead human bodies shall, in the opinion of the bureau of public health, become a menace to public health, and the owner thereof fails to remedy or remove the same to the satisfaction of the said department, any court of competent jurisdiction may order the owner of said structure to remove the dead body or bodies for interment in some suitable cemetery at the expense of such owner. If such owner cannot be found, such removal and interment shall be at the expense of the cemetery association in the cemetery in which such mausoleum, vault, crypt or other structure is situated.

Sec. 15. Fund for maintenance. Every cemetery association, or other agency, establishing, maintaining and operating a community mausoleum shall create and establish a permanent care and improvement fund, distinct and separate from the permanent care and improvement fund of its cemetery, the income whereof shall be devoted to the care, maintenance and improvement of such community mausoleum. Such permanent care and improvement fund shall be created by applying to such fund at least 30% of the proceeds received, in full or in installments, from the sales of crypts in such mausoleum.

Sec. 16. Custodian. The treasurer of the cemetery in which such community mausoleum is situated shall be the custodian of the permanent care and improvement fund established therefor as aforesaid and every such fund shall be held, administered and invested in the manner provided by law for funds in savings banks of the state.

Sec. 17. May be considered nuisance. Any cemetery, community mausoleum or columbarium established, maintained or operated in violation of or contrary to provisions of this chapter is declared to be a nuisance which may be abated or enjoined as such at the suit of any taxpayer of the state.

Sec. 18. Permanent disposition of dead bodies. Except as otherwise provided by law, or in case of a dead body being rightfully carried through

or removed from the state for the purpose of burial or disposition elsewhere, every dead body of a human being dying within the state, and the remains of any body after dissection therein, shall be decently buried, entombed in a mausoleum, vault or tomb or cremated within a reasonable time after death. The permanent disposition of such bodies or remains shall be by interment in the earth, or deposit in a chamber, vault or tomb, of a cemetery owned, maintained and operated in accordance with the laws of this state, by deposit in a crypt of a mausoleum, or by cremation. The remains of a human body after cremation may be deposited in a niche of a columbarium or a crypt of a mausoleum, buried, or disposed of in any manner not contrary to law. No deposit of the bodies or remains of the human dead shall be made in a single chamber, vault or tomb partly above and partly below the natural surface of the ground unless the part thereof below such surface is of a permanent character, constructed of materials capable of withstanding extreme climatic conditions, waterproof and air tight, and capable of being sealed permanently to prevent all escape of effluvia, and unless the part thereof above the natural surface of the ground is constructed of natural stone of a standard not less than that required by the United State government for monuments erected in national cemeteries, of durability sufficient to withstand all conditions of weather.

Sec. 19. R. S., c. 24, § 24, repealed. Section 24 of chapter 24 of the revised statutes is hereby repealed.

Sec. 20. Whoever fails to comply with or violates the provisions of this chapter in respect to the establishment, maintenance or operation of a cemetery, community mausoleum, crematory or columbarium, or to the disposal of dead human bodies, shall, unless another penalty is provided under this chapter, be punished by a fine of not less than \$100 nor more than \$500 or by imprisonment for not more than 6 months, or by both such fine and imprisonment.

Sec. 21. Restricting clause. The provisions of this act shall not be construed as affecting any vested rights of any cemetery association or other agency owning, maintaining and operating a cemetery or crematory immediately prior to its effective date. In so far, however, as said provisions do not violate any such vested rights they shall, except as otherwise provided therein, apply to all such cemetery associations or other agencies.