

TITLE XXVI

CEMETERIES; BURIALS;

DEAD BODIES

CHAPTER 289

CEMETERIES

Section 289:1

289:1 Definitions. – In this chapter, unless the context clearly requires otherwise:

I. "Burial ground" means a private cemetery on private property and not available for use by the public.

II. "Burial space" means a lot in any cemetery as designed and intended for the interment of a human body or bodies, but presently not used for such purpose.

III. "Cemetery" means any cemetery owned, managed, or controlled by any municipality within this state or owned and managed by any cemetery corporation chartered by the state.

IV. "Cemetery association" means a cemetery corporation, the voting members of which are the owners of burial spaces in the cemetery owned and operated by the association.

V. "Cemetery corporation" means a corporation organized for the purpose of operating a cemetery.

VI. "Cemetery trustees" means town cemetery trustees elected pursuant to the provisions contained in this chapter.

VII. "Corporate officer" means the elected or appointed managing officer of a corporation established to operate a cemetery for public interment.

VIII. "Owner" means any person or persons owning or possessing the privilege, license, or right of interment in any burial space, as determined under RSA 290:24.

Source. 1994, 318:2, eff. Aug. 7, 1994. 2000, 95:1, eff. Apr. 27, 2000.

Section 289:2

289:2 Municipality to Provide. – Every municipality shall provide one or more suitable cemeteries for the interment of deceased persons within its boundaries, which shall be subject to such regulations as the municipality may establish. In the absence of regulations established by vote of the legislative body, the cemetery trustees may establish such

regulations pursuant to RSA 289:7, I(a). The operation and maintenance of all cemeteries owned and maintained by the municipality shall be in the charge of the cemetery trustees.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Section 289:3

289:3 Location. – All cemeteries and burial grounds shall be laid out in accordance with the following requirements:

I. No cemetery shall be laid out within 100 feet of any dwelling house, schoolhouse or school lot, store or other place of business without the consent of the owner of the same, nor within 50 feet of a known source of water or the right of way of any classification of state highway. Existing cemeteries which are not in compliance with the above set-back requirements may be enlarged, provided that no portion of the enlargement is located any closer to the above-listed buildings, water sources or highways than the existing cemetery, and provided further that no such enlargement shall be located within 50 feet of any classification of state highway.

II. Burials on private property, not in an established burial ground, shall comply with local zoning regulations. In the absence of such regulations, such burial sites shall comply with the requirements in paragraph I. The location of the burial site shall be recorded in the deed to the property upon transfer of the property to another person.

III. New construction, excavation, or building in the area of a known burial site or within the boundaries of an established burial ground or cemetery shall comply with local zoning regulations concerning burial sites, burial grounds or cemeteries, whether or not such burial site or burial ground was properly recorded in the deed to the property. In the absence of such regulations, no new construction, excavation, or building shall be conducted within 25 feet of a known burial site or within 25 feet of the boundaries of an established burial ground or cemetery, whether or not such burial site or burial ground was properly recorded in the deed to the property, except when such construction, excavation, or building is necessary for the construction of an essential service, as approved by the governing body of a municipality in concurrence with the cemetery trustees, or in the case of a state highway, by the commissioner of the department of transportation in concurrence with the cemetery trustees.

IV. Nothing in this section shall be construed to conflict with RSA 290, local ordinances, or cemetery rules concerning burials and disinterments of human remains.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Section 289:4

289:4 Maintenance. – Every municipality shall raise and appropriate sufficient funds, by taxation or otherwise, to provide for the suitable care and maintenance of the municipal public cemeteries within its boundaries which are not otherwise provided for, and to provide and maintain around all such cemeteries a good and sufficient fence, and to supply the fence with necessary gates. Every municipality may raise and appropriate annually a sufficient sum to provide for the suitable care and maintenance of deserted burial grounds and cemeteries which have been declared abandoned in accordance with RSA 289:19-21.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Section 289:5

289:5 Cemetery Records. – The corporate officer or designee of a cemetery corporation or town cemetery trustees charged with the responsibility of operation and administration of any cemetery under their control shall keep a record of every burial showing the date of burial and name of the person buried, when these particulars can be obtained, and the lot, plot, or part of such plot or lot, in which the burial was made. Such records shall also be kept of every private burial site within a municipality by the owner of the land containing the burial site, and a copy of the information shall be supplied to the cemetery trustees who will maintain the municipal records of such sites. A copy of such record, duly certified, shall be furnished to any person on demand and payment of a fee established in compliance with RSA 91-A:4. The location of each cemetery and private burial site may be annotated on the municipal tax map.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Cemetery Trustees

Section 289:6

289:6 Cemetery Trustees. –

I. Every municipality shall elect a board of cemetery trustees consisting of 3 members, unless a town at an annual or special town meeting votes that the board shall consist of 5 members. In the initial election of cemetery trustees, they shall be elected by ballot at an annual town meeting. One shall be elected for a one-year term, one for a 2-year term and one for a 3-year term. In towns with a board of 5 trustees the 2 additional trustees shall be appointed by the selectmen, one for one year and one for 2 years. Subsequent trustees shall be elected by ballot at the annual town meeting to replace those whose terms expire. The term of

each trustee shall be 3 years. Vacancies shall be filled by the selectmen for the remainder of the term. In cities the trustees shall be chosen and hold their office for such term as shall be provided by city ordinance. Trustees shall organize by electing one of their number chairperson and another bookkeeper, who shall keep the records and books of the trustees, and shall issue vouchers as necessary for funds to be expended. The chairperson and the bookkeeper may be the same member.

II. Any town that has the town manager form of government may vote to not have cemetery trustees by delegating all of the duties and responsibilities of cemetery trustees to the town manager, as specified in RSA 289. This option may be adopted by a vote of the town meeting. The warrant article question to be voted shall be: ""Shall we discontinue the board of cemetery trustees by delegating their duties and responsibilities to the town manager?" If the majority votes in the affirmative, then the discontinuance shall take effect 90 days after adoption.

II-a. (a) Any town, with a traditional town meeting form of government, may adopt by a vote of the town meeting to have the board of selectmen serve for the term of elected office as the cemetery trustees. The warrant article to be voted shall be:

""Shall we delegate the duties and responsibilities of the cemetery trustees to the board of selectmen?"

(b) If the majority vote in the affirmative then the delegation shall take effect 90 days after adoption and shall continue until rescinded by vote of the town meeting.

III. At any subsequent town meeting, the town may vote to reinstate the board of cemetery trustees. A new board of cemetery trustees shall be elected at the town meeting next following the vote to reinstate the board of cemetery trustees.

IV. Any town that has a municipal charter form of government may specify in its charter the procedure to be utilized for the election or appointment of cemetery trustees. Such procedure shall be adopted under the provisions of RSA 49-B.

Source. 1994, 318:2. 1995, 62:1, 2, eff. July 8, 1995.

Section 289:7

289:7 Powers and Duties. –

I. Except in those municipalities in which other provisions have been made by a general or special act of the legislature, all cemetery trustees in the state shall:

(a) Adopt bylaws and regulations for their transaction of business and

for the establishment and management of all municipal cemeteries within their responsibility.

(b) Prepare an annual budget indicating what support and maintenance of the municipal public cemeteries will be required out of public funds for submission to the appropriate agency of the municipality. A separate budget request shall be submitted for planning and establishment of a new public cemetery and for capital improvements or expansion of an existing public cemetery.

(c) Expend all moneys raised and appropriated by the municipality for cemetery purposes. Such funds shall be maintained in the general fund and paid in the same manner that funds of other municipal departments are paid.

(d) Expend income from all trust funds for cemetery purposes in accordance with the conditions of each donation or bequest accepted by the municipality. Such trust funds shall be held in the custody and under the management of the trustees of trust funds. The trust income shall be transferred to the cemetery trustees by the trustees of trust funds in response to vouchers executed by the cemetery trustees, if the requested funds are available. Such trust fund income shall not be commingled with the moneys raised and appropriated by the municipality.

(e) Prepare deeds of cemetery lots for the governing body to sign.

II. Cemetery trustees may appoint a cemetery custodian or sexton who shall not be a trustee and who shall be responsible to the cemetery trustees for supervising work done in the cemeteries.

Source. 1994, 318:2. 1995, 62:3, eff. July 8, 1995.

Section 289:8

289:8 Enforcement. – Any person designated as a cemetery trustee failing to comply with the provisions of RSA 289:7 shall be guilty of a violation. Any other person who violates this chapter or any regulation established under the authority of this chapter shall be guilty of a violation.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Section 289:9

289:9 Use of Trust Funds. – Cemetery corporations and the trust fund trustees of municipalities may take and hold funds in trust, and may apply the income of the trust to the improvement, watering, or embellishment of the cemetery, or to the care, preservation, or embellishment of any lot or its appurtenances.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Section 289:10

289:10 Investments. – Cemetery corporations holding funds in trust as

provided in RSA 289:9 may establish, maintain, and operate common trust funds as provided in RSA 31:27-30.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Section 289:11

289:11 Accounting. – Whenever any cemetery corporation shall take and hold trust funds according to the provisions of RSA 289:9, such corporation shall keep in its books an account of all funds received and held by it in the same manner as required of municipalities, and the account of any such fund shall be open to inspection by any person having an interest in the proper administration of the trust.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Section 289:12

289:12 Reports. – A copy of the annual financial report of such corporations shall be filed with the attorney general, unless otherwise required by law to file such a report with any town, city, county, or state agency.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Section 289:13

289:13 Cemetery Association Termination. – Any cemetery laid out by an individual or corporation and located within the municipality, in which all lots have been sold and for the care of which trust funds are held by the municipality, may be deeded to the municipality with no implied financial liability to the municipality for the maintenance of the cemetery over and above the trust fund income, provided the municipality votes to accept such cemetery transfer. Municipalities may raise and appropriate additional funds for the care of such cemeteries. Upon the transfer of the title to the cemetery, the municipal cemetery trustees shall have the sole management responsibility for the cemetery.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Section 289:14

289:14 Right of Way to Private Burial Ground. – Any person wishing to have a temporary right of entry over private land in order to enter a private burial ground enclosure to which there is no public right of way may apply in writing to the selectmen of a town or the mayor of a city stating the reason for such request and the period of time for which such right is to be exercised. The applicant shall also notify in writing the owner or occupier of the land over which the right of way is desired. The selectmen or mayor, in the exercise of discretion and in consultation with the cemetery trustees, may issue a permit for such temporary right of entry designating the particular place where the land may be crossed. The

owner or occupier of the land may recommend the place of crossing which, if reasonable, shall be the place designated by the selectmen or mayor.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Section 289:15

289:15 Discontinuance. – Whenever there is a public necessity for the discontinuance of any municipal cemetery and the removal of the remains of persons buried in such cemetery, the cemetery may be discontinued by a 3/4 vote of the legal voters present and voting at any town meeting held for the purpose, or by 3/4 of each board of the city councils present and voting.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Section 289:16

289:16 Reinterment. – The governing body may, at the expense of the municipality, disinter all the remains of persons buried in such cemetery and reinter the same in the unoccupied part of another cemetery within the municipality, such reinterment to be in the place designated by the nearest surviving relatives of the deceased persons or, in the absence of such surviving relative, by the cemetery trustees. Such removal and reinterment shall be done prudently and with proper care and attention.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Section 289:17

289:17 Removal of Monuments. – The monuments, gravestones, and other appurtenances attached to the graves shall be carefully removed and properly set up at the place of reinterment with as little injury as the nature of the case will admit. In case of injury to any monument, gravestone, or appurtenance, the damages shall be assessed by the governing body in the same manner and with the same right of appeal as in the case of alteration of the grade of highways.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Abandoned Burial Spaces

Section 289:18

289:18 Forfeiture Procedures. –

I. Whenever a burial space or spaces in any cemetery subject to the provisions of this subdivision have remained unused for a period of 50 years, and the owner has not improved such space or spaces by causing a monument, gravestone, or other permanent appurtenance to be placed on the burial space, the person, corporate manager, or cemetery trustees having jurisdiction over such cemetery may institute proceedings for the

termination and forfeiture of the rights and interests of such owner. All purchase contracts for burial spaces executed after August 7, 1994, shall include a notice that this procedure may be invoked in the future.

II. Whenever such person, corporate manager, or board of trustees determines that the conditions stated in paragraph I have been met, then they may send to the owner a notice of the intent to terminate and forfeit the owner's rights, served on the owner personally by a competent person or sent by certified mail with return receipt requested to the owner's last known address.

III. When the owner receives the forfeiture notice, the owner may notify the cemetery management of continued intent to use the space, in which case this procedure shall be cancelled, or the owner may return the space to the cemetery and receive in compensation the same amount the owner paid for the space, less any portion of the original purchase price that was specified for inclusion in a perpetual care trust fund.

IV. If no response is received from the owner for 60 days, the cemetery management may advertise in a paper of local distribution for information regarding the present whereabouts of the owner. If information is forthcoming, the notification process shall be repeated using the new address information. If no information is received, the original purchase contract may be voided and the space sold to a new owner. Any owner contacting the cemetery management after the space has been resold shall be reimbursed the amount he originally paid, including the portion set aside for perpetual care.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Abandoned Burial Grounds

Section 289:19

289:19 Neglected Burial Ground. – Whenever a burial ground within the boundaries of the town has been neglected for a period of 20 years or more, the municipality may declare it abandoned for purposes of preservation, maintenance or restoration.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Section 289:20

289:20 Procedure. – To declare a burial ground abandoned:

I. The municipality shall place an advertisement in at least one newspaper having general distribution in the municipality and surrounding area. The advertisement shall state the intent of the municipality, identifying the burial ground by name, if known, and by names and dates of the oldest stones in the burial ground, with a request for any direct

descendent to contact the town selectmen's office, the town manager, or mayor, as applicable. If the burial ground contains no stones with legible inscriptions, the site may be identified by a detailed description of its location.

II. Not less than 60 days nor more than 90 days after the notice of the intent has been published, the notice shall be read at a regularly scheduled selectmen's meeting or in the case of a city, a city council meeting.

III. If any descendants were located and grant permission, or if no descendants were located, then, after a public hearing, the municipality may declare the burial ground abandoned by a majority vote of the selectmen or city councilmen present and voting.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Section 289:21

289:21 Rights and Responsibilities. – Any burial ground declared abandoned under these provisions shall become a municipal cemetery for management purposes and shall be managed by the cemetery trustees, who shall assume all the authorization and rights of natural lineal descendants.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Prohibited Conduct

Section 289:22

289:22 Stone Rubbings. – No person shall make gravestone rubbings in any municipal cemetery or burial ground without first obtaining the written permission of the town selectmen or the mayor of a city or designee. Before granting such permission, the selectmen or mayor will ascertain to the best of their ability that the person making the request knows the proper precautions to be taken and the proper materials to be used for this activity. The town selectmen or city mayor or their designee shall notify the cemetery trustees of the request and its disposition. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

Source. 1994, 318:2, eff. Aug. 7, 1994.

Section 289:23

289:23 Other Unauthorized Acts. – All other unauthorized conduct under RSA 635:6 and 635:7 regarding the abuse of cemeteries shall be penalized as provided in RSA 635:8.

Source. 1994, 318:2, eff. Aug. 7, 1994.

TITLE XXVI

CEMETERIES; BURIALS;

DEAD BODIES

CHAPTER 290

BURIALS AND DISINTERMENTS

Section 290:1

290:1 Death Records. – Whenever a person shall die, the physician attending at the last sickness shall complete and deliver to the funeral director, next-of-kin as defined in RSA 290:16, IV, or designated agent under RSA 290:17 or shall complete electronically and forward immediately to the division of vital records administration, a death record, duly signed, setting forth, as far as may be, the facts required by the department of state, division of vital records administration pursuant to RSA 5-C:63. The cause or causes of death shall be printed or typed on all records required to be furnished under this section. The funeral director, next-of-kin, or designated agent shall transmit electronically the record of death to the division of vital records administration.

Source. 1935, 95:1. RL 168:46. 1949, 98:4. RSA 290:1. 1955, 95:2. 1977, 530:3. 1983, 291:1. 1995, 310:181, eff. Nov. 1, 1995. 1997, 325:10, eff. Aug. 22, 1997. 1999, 62:1, eff. Jan. 1, 2000. 2002, 97:2, eff. July 2, 2002. 2003, 319:65, eff. July 1, 2003. 2005, 268:6, eff. Jan. 1, 2006.

Section 290:1-a

290:1-a Fetal Death Records. – Whenever a fetal death shall occur, the attending physician shall fill out a fetal death record. This will be solely a statistical report.

Source. 1977, 530:4, eff. Sept. 13, 1977. 1997, 325:10, eff. Aug. 22, 1997.

Section 290:1-b

290:1-b Pronouncement of Death by Registered Nurses. – If an anticipated death occurs in a hospital, a nursing home, a private home served by a home health care provider licensed under RSA 151, or a hospice, the registered nurse attending at the last sickness may pronounce the person dead and release the body to the funeral director, next-of-kin as defined in RSA 290:16, IV, or designated agent after certifying the fact of death and completing the death record by hand or other approved

electronic process. If a contagious disease is known to be present at the time of death, that fact shall be indicated on the death record in accordance with RSA 5-C:62.

Source. 1986, 26:1. 1989, 10:1. 1995, 310:181, eff. Nov. 1, 1995. 1997, 325:10, eff. Aug. 22, 1997. 1999, 62:2, eff. Oct. 10, 2000. 2003, 319:66, eff. July 1, 2003. 2005, 268:7, eff. Jan. 1, 2006.

Section 290:2

290:2 Death out of State. – [Repealed 1977, 530:7, eff. Sept. 13, 1977.]

Section 290:2-a

290:2-a Release of Body. – No dead body of a human being shall be removed from a hospital, a nursing home, a private home served by a home health care provider licensed under RSA 151, or a hospice without a pronouncement of death certified by hand or other approved electronic process by a physician or a registered nurse in accordance with RSA 290:1-b, including the time and date of death. Whenever a contagious disease is involved, the death record shall so state before the body shall be released from the facility.

Source. 1986, 22:1. 1989, 10:2, eff. June 3, 1989. 1997, 325:11, eff. Aug. 22, 1997.

Section 290:3

290:3 Burial Permits, Obtaining. – It shall be the duty of the funeral director, next-of-kin as defined in RSA 290:16, IV, or designated agent under RSA 290:17 to add to the death record the date and place of burial, and having certified the same by hand or other approved electronic process, to forward it to the division of vital records administration or as otherwise directed by the registrar of vital records, and to obtain a permit for burial from the division of vital records administration in accordance with RSA 5-C:67. In case of a contagious or infectious disease the record shall be completed and transmitted immediately.

Source. 1935, 95:1. RL 168:49. 1949, 98:5. RSA 290:3. 1977, 530:5. 1992, 66:7. 1995, 310:181, 182, eff. Nov. 1, 1995. 1997, 325:12, eff. Aug. 22, 1997. 1999, 62:3, eff. Jan. 1, 2000. 2003, 319:67, eff. July 1, 2003. 2005, 268:8, eff. Jan. 1, 2006.

Section 290:3-a

290:3-a Burial Permit for a Fetus. – Whenever it shall be determined that a dead fetus will be disposed of by means of burial or cremation, the burial permit will be issued in accordance with the rules and regulations of the department of health and human services.

Source. 1977, 530:6. 1995, 310:181, eff. Nov. 1, 1995.

Section 290:3-b

290:3-b Emergency Burial Permit. – The division of vital records administration, department of state, may issue an emergency burial permit in an emergency as defined by RSA 5-C:70.

Source. 1986, 22:2. 1992, 66:8. 1995, 310:181, 182, eff. Nov. 1, 1995. 1997, 325:13, eff. Aug. 22, 1997. 2003, 319:68, eff. July 1, 2003. 2005, 268:9, eff. Jan. 1, 2006.

Section 290:4

290:4 Duplicates. – [Repealed 1997, 325:22, VII, eff. Aug. 22, 1997.]

Section 290:4-a

290:4-a Record of Interment Date. – In any case in which the town where the death occurred and the town of residence or burial is different, the burial permit shall indicate the actual date of interment where the dead body is stored in a tomb or vault prior to burial.

Source. 1977, 324:6, eff. Aug. 27, 1977.

Section 290:5

290:5 Burial Permit Required. – No interment of the dead body of a human being, nor disposition of the body in a tomb or vault, shall be made without a permit, and only in accordance with it. No disinterment, except as otherwise provided in this chapter, of the dead body of a human being shall be made without a permit from the department of state, countersigned by the local health officer, and only in accordance with such permit. Before a disinterment permit is granted, the surviving spouse, parents, and children, who are 18 years of age or older, of the deceased human being shall be given written notice by certified mail of the disinterment request and shall be afforded 10 days from the written notice to object to the disinterment before the permit is issued. Such disinterment permit shall not be required for removal of such dead body from a tomb or vault for the purpose of burial, for reinterment of dead bodies after discontinuance of a public cemetery, as provided in RSA 289:15 and 289:16, if a body is to be removed within the geographic boundaries of the same cemetery, nor in a case where an autopsy has been ordered by a county attorney or the attorney general. No person shall assist in, assent to, or allow an interment or disinterment to be made until a permit has been obtained under this section. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

Source. 1935, 95:1. RL 168:51. 1943, 157:1. RSA 290:5. 1983, 291:1. 1986, 22:3. 1994, 318:3. 1995, 310:181, eff. Nov. 1, 1995. 2005, 147:1, eff. Jan. 1, 2006. 2006, 141:12, eff. July 21, 2006.

Section 290:6

290:6 Return. – It shall be the duty of every funeral director, next-of-kin as defined in RSA 290:16, IV, or designated agent under RSA 290:17, or other person having charge of a burial place, who shall receive the permit, to complete it and forward it to the town clerk within 6 days after the burial.

Source. 1935, 95:1. RL 168:52. 1997, 325:14, eff. Aug. 22, 1997. 1999, 62:4, eff. Jan. 1, 2000.

Section 290:7

290:7 In Cities. – [Repealed 1997, 325:22, VIII, eff. Aug. 22, 1997.]

Section 290:8

290:8 Prerequisites. – No such permit shall be issued until there has been delivered to the division of vital records administration a death record completed in accordance with RSA 290:1.

Source. 1935, 95:1. RL 168:54. RSA 290:8. 1955, 95:1. 1979, 66:1, eff. June 17, 1979. 1997, 325:15, eff. Aug. 22, 1997. 2003, 319:69, eff. July 1, 2003.

Section 290:9

290:9 Sub-Registrars. – [Repealed 1997, 325:22, IX, eff. Aug. 22, 1997.]

Section 290:10

290:10 Record of Death. – The record of death upon which the permit is issued shall be forwarded to the town clerk within 6 days after it is received.

Source. 1935, 95:1. RL 168:56.

Section 290:11

290:11 Release; Transfer of Body; Liability Limited. –

I. No dead body of a human being may be released or transferred from any residence, hospital, or other facility to any person other than a funeral director or designee, or to the next-of-kin as defined in RSA 290:16, IV, or designated agent under RSA 290:17 who shall be responsible for the completion of forms as required by RSA 290:12.

II. The body of any deceased person may be transferred to another town for preparation or for burial or cremation only under the direction of a funeral director, next-of-kin, or designated agent; provided that death was not sudden, or the result of violence, and provided that such body shall be returned to the town in which death occurred within 36 hours, or a permit for permanent removal, as required by this chapter, has been secured within that time.

III. Any person or institution releasing a body pursuant to this chapter shall be held harmless against and shall not be liable for, any harm, loss, cost, injury, damage, or claim of any kind whatsoever incurred by any party in connection with the release of the body.

Source. 1935, 95:1. RL 168:43. RSA 290:11. 1986, 22:4, eff. June 17, 1986. 1999, 62:5, eff. Jan. 1, 2000.

Section 290:12

290:12 By Whom. – Such transfer shall be made under the direction of a funeral director, next-of-kin as defined in RSA 290:16, IV, or designated agent under RSA 290:17, and the funeral director, funeral director's representative, next-of-kin, or designated agent shall leave with the institution from which or the person from whom such body is received, on forms supplied by the department of health and human services, the name of the funeral director, next-of-kin, or designated agent, the name of the person making the transfer, such person's address, the funeral director's license number or the address of the next-of-kin, or designated agent, and the date and hour such body was delivered.

Source. 1935, 95:1. RL 168:44. RSA 290:12. 1983, 291:1. 1995, 310:181, eff. Nov. 1, 1995. 1999, 62:6, eff. Jan. 1, 2000.

Section 290:13

290:13 To Another Town. – Any body for which a burial or removal permit has been secured, in accordance with the provisions of this chapter, may be taken through or into another town for funeral services without additional permits.

Source. 1935, 95:1. RL 168:45.

Section 290:14

290:14 Penalty. – Any person who shall violate any of the provisions of RSA 290 shall be guilty of a misdemeanor.

Source. 1935, 95:1. RL 168:58. RSA 290:14. 1973, 528:187, eff. at 11:59 P.M., Oct. 31, 1973.

Section 290:15

290:15 Order for Disinterment. – A justice, upon complaint made on oath by any person that he has reasonable ground for suspecting that a deceased person who has been interred came to his death by some unlawful means, may issue his warrant, requiring that the body shall be disinterred and examined, and may summon and examine witnesses in relation to the truth of such complaint.

Source. RS 222:14. CS 237:14. GS 237:7. GL 255:7. PS 251:7. PL 365:7. RL 424:7.

Custody of Remains of Deceased Persons

Section 290:16

290:16 Definitions. – In this subdivision:

I. "At-need funeral arrangements" means funeral arrangements made after death.

II. "Custody and control" means the right to make all decisions, consistent with applicable laws, regarding the handling of a dead body, including but not limited to possession, at-need funeral arrangements, final disposition, and disinterment.

III. "Estranged" means living in separate residences and having a relationship characterized by hostility or indifference.

IV. "Next-of-kin" means a person having the following relationship to the subject, in the following order of priority:

- (a) The spouse.
- (b) An adult son or daughter.
- (c) A parent.
- (d) An adult brother or sister.
- (e) An adult grandchild.
- (f) An adult niece or nephew who is the child of a brother or sister.
- (g) A maternal grandparent.
- (h) A paternal grandparent.
- (i) An adult aunt or uncle.
- (j) An adult first cousin.
- (k) Any other adult relative in descending order of blood relationship.

V. "Subject" means the person whose remains are placed in the custody and control of another person pursuant to this section.

Source. 1996, 283:18, eff. Jan. 1, 1997.

Section 290:17

290:17 Custody and Control Generally. – The custody and control of the remains of deceased residents of this state are governed by the following provisions:

I. If the subject has designated a person to have custody and control in a written and signed document, custody and control belong to that person. The person designated by the subject shall be entitled to no compensation or reimbursement of expenses related to the custody and control of the subject's body.

II. If the subject has not left a written signed document designating a person to have custody and control, or if the person designated by the subject refuses custody and control, custody and control belong to the

next of kin.

III. If the next of kin is 2 or more persons with the same relationship to the subject, the majority of the next of kin have custody and control. If the next of kin cannot, by majority vote, make a decision regarding the subject's remains, the court shall make the decision upon petition under RSA 290:19, IV.

Source. 1996, 283:18, eff. Jan. 1, 1997. 1999, 62:10, eff. Jan. 1, 2000.

Section 290:18

290:18 Estranged Spouse. – Notwithstanding RSA 290:17, if the surviving spouse and the subject were estranged at the time of death, the spouse shall not have custody and control of the subject's remains. In this case, custody and control belong to the next of kin following the spouse.

Source. 1996, 283:18, eff. Jan. 1, 1997.

Section 290:19

290:19 Court Determination. – Notwithstanding other provisions of this subdivision, the court of probate for the residence of the deceased may award custody and control to the person determined by the court most fit and appropriate to carry out the responsibilities of custody and control, and may make decisions regarding the subject's remains if those having custody and control cannot agree. The following provisions apply to court determinations under this section:

I. Before the subject's death, the subject or subject's legal representative may file a petition regarding custody and control of the subject's remains.

II. A relative of the subject may file such a petition.

III. A person who claims and establishes through evidence that person has or had a closer personal relationship to the subject than the next of kin may file a petition, if that person lived with the subject and was not in the employ of the subject or the subject's family.

IV. If the next of kin is 2 or more persons with the same relationship to the subject, and the next of kin cannot, by majority vote, make a decision regarding the subject's remains, 2 or more persons who have custody or control or a funeral director may file a petition asking the court to make a determination in the matter. The court shall consider the following in making its determination:

(a) The reasonableness and practicality of the proposed arrangement.

(b) The degree of the personal relationship between the subject and each of the 2 or more persons with custody and control.

(c) The desires of the person or persons who are ready, able and willing to pay the costs of the arrangements.

(d) The convenience and needs of other family and friends wishing to

pay respects.

(e) The expressed written desires of the subject.

(f) The degree to which the arrangements would allow maximum participation by all wishing to pay respect.

Source. 1996, 283:18, eff. Jan. 1, 1997.

Section 290:20

290:20 Wishes of Subject. – If the subject has left written and signed instructions regarding funeral arrangements and disposal of the subject's remains, the person having custody and control shall abide by those wishes to the extent that the subject paid for those arrangements in advance or left resources for the purpose of carrying out those wishes.

Source. 1996, 283:18, eff. Jan. 1, 1997.

Section 290:21

290:21 Effect of Payment by Others. – Except to the degree it must be considered by the court under RSA 290:19, IV, the fact that a person other than the subject has paid or agreed to pay for all or part of arrangements does not give that person a greater right to custody and control than that person would otherwise have.

Source. 1996, 283:18, eff. Jan. 1, 1997.

Section 290:22

290:22 Authority of Personal Representative. – The personal representative of the estate of the subject does not, by virtue of being the personal representative, have a greater right to custody and control than the person would otherwise have.

Source. 1996, 283:18, eff. Jan. 1, 1997.

Section 290:23

290:23 Immunity. – A party who, in good faith, acts upon the instructions of the party having custody and control is not liable for having carried out those instructions.

Source. 1996, 283:18, eff. Jan. 1, 1997.

Ownership of Cemetery Plots or Burial Spaces

Section 290:24

290:24 Ownership of Cemetery Plots or Burial Spaces. – The ownership of a cemetery plot or burial space, as defined under RSA 289:1, II, shall be governed by the following provisions:

I. If the deceased has designated a person to assume ownership of the cemetery lot or burial space in a written and signed document, ownership

passes to that person, subject to the regulations established under RSA 289:2.

II. If the deceased has not designated a person to assume ownership of the cemetery lot or burial space in a written and signed document, ownership shall be determined under the provisions of RSA 561:1 and RSA 289:2.

III. Notwithstanding other provisions of this subdivision, when the ownership of a cemetery plot or burial space is unclear or in dispute, the court of probate for the residence of the deceased may, upon receipt of a petition filed by the next of kin or other interested party, render a determination regarding ownership of the cemetery plot or burial space in compliance with applicable law, including any regulations established by the municipality or cemetery trustees under RSA 289:2.

Source. 2000, 95:2, eff. April 27, 2000. 2001, 9:1, eff. Jan. 1, 2002.

TITLE LXII

CRIMINAL CODE

CHAPTER 635

UNAUTHORIZED ENTRIES

Cemeteries, Burial Grounds, Gravestones

Section 635:6

635:6 Interference With Cemetery or Burial Ground. –

I. No person, without the written authorization of the owner of a burial plot, or the lineal descendant of the deceased, if such owner or lineal descendant is known, or the written authorization of the governing board of the municipality in which the burial plot lies, if the owner or lineal descendant is unknown, shall:

(a) Purposely or knowingly destroy, mutilate, injure or remove any tomb, monument, gravestone, marker, or other structure, or any portion or fragment thereof, placed or designed for a memorial of the dead, or any fence, railing, gate, curb, or plot delineator or other enclosure for the burial of the dead.

(b) Purposely or knowingly disturb the contents of any tomb or grave in any cemetery or burial ground.

II. The governing board of the municipality in which the burial plot lies shall not grant approval for the removal or disturbance of a tomb, monument, gravestone, marker, or plot delineator without first giving 30 days' notice, along with a report of the full circumstances, to the division of historical resources, that such approval has been requested. The governing board of the municipality shall maintain a record of the date, circumstances, and disposition of the request for removal or disturbance.

Source. 1987, 107:1, eff. May 6, 1987.

Section 635:7

635:7 Unlawful Possession or Sale of Gravestones and Gravesite

Items. – No person shall possess or sell, offer for sale or attempt to sell, or transfer or dispose of any monument, gravestone, marker, or other structure, or any portion or fragment thereof, placed or designed for a memorial of the dead, or any fence, railing, gate, plot delineator, or curb, knowing or having reasonable cause to know that it has been unlawfully removed from a cemetery or burial ground.

Source. 1987, 107:1, eff. May 6, 1987.

Section 635:8

635:8 Penalties. – Any person who is convicted of an offense under RSA 635:6 or 635:7 shall be guilty of a class B felony, and shall be ordered by the court to make restitution for damages resulting from the offense and for replacement of removed items.

Source. 1987, 107:1, eff. May 6, 1987.