

## CHAPTER 5:03

### BURIAL AND CREMATION ACT

*Acts 49/1962, 77/1963, 44/1964, 27/1968, 16/1972, 12/1973 (s.270), 8/1988, 18/1989(s 6), 13/1994, 6/2000, 22/2001 (s. 4), 23/2004 (s. 282); R.G.N.s 574/1962, 153/1963, 432/1963, 801/1963, 214/1964, 374/1972; S.I. 465/1982.*

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**AN ACT to make provision for the burial of deceased persons and still-born children; to require medical practitioners to make reports in connection with certain deaths; to enable persons to establish crematoria and to provide for the regulation of the burning of human bodies; and to provide for other matters connected with or incidental to the foregoing.**

[Date of commencement: 30th November, 1963.]

##### PART I

###### PRELIMINARY

###### **1 Short title**

This Act may be cited as the Burial and Cremation Act [*Chapter 5:03*].

###### **2 Interpretation**

In this Act—

“body” means the body of a deceased person or a still-born child and includes any part or remains of such body but does not include any part of the body of a deceased person removed from his body during his lifetime in the course of a surgical operation by a registered medical practitioner;

- “burial” means burial in earth, interment or any other form of sepulture of a body;
- “burial order” means an order given under this Act authorizing the burial of a body;
- “cremation authority” means a person authorized to be a cremation authority in terms of section *eleven*;
- “crematorium” means any place, site, building or structure used for the burning of bodies and includes everything ancillary or incidental thereto;
- “informant” means any person who is responsible for giving notice of a death or still-birth in terms of section 11, 20 or 22 of the Births and Deaths Registration Act [*Chapter 5:02*];
- “Minister” means the Minister of Home Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- “registered medical practitioner” means a person registered as a medical practitioner in terms of the Health Professions Act [*Chapter 27:19*];

[Definition as amended by section 151 of Act 6 of 2000.]

“registrar” means a person appointed as registrar, deputy registrar or assistant registrar in terms of the Births and Deaths Registration Act [*Chapter 5:02*];

“urban area” means any area—

- (a) under the jurisdiction of a municipal council, town council or local board; or
- (b) within a town ward of a rural district council; or
- (c) which is from time to time declared by the Minister, by notice in a statutory instrument, to be an urban area for the purposes of this Act.

## PART II

### BURIAL

#### **3 No burial to take place without burial order in certain places**

(1) Subject to section *four*, no person shall bury any body or conduct any funeral or religious service in connection with any burial without a burial order.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### **4 Where no burial order is required**

(1) No burial order shall be required for any burial where—

- (a) the immediate burial of the body of a person who has died from an infectious disease is ordered by any authority under any enactment relating to public health; or
- (b) a burial order could not be reasonably obtained within forty-eight hours of the death or still-birth; or
- (c) the deceased died or the birth of a still-born child occurred, as the case may be, in such area or areas as the Minister may, by notice in a statutory instrument, declare to be exempt from section *three*.

(2) Any person who buries any body or conducts any funeral or religious service in connection with the burial of any body for which no burial order is required in terms of paragraph (a) or (b) of subsection (1) and for which no burial order has been issued shall, within fourteen days after the burial, give notice thereof to the registrar of the district from which such body has been brought for burial or within which such burial or funeral or religious service has been conducted.

(3) On receipt of a notice in terms of subsection (2) the registrar may issue an order approving of the burial if he is satisfied that the death was the result of natural causes.

(4) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### **5 Burial order issued by registrar**

A registrar shall, at the request of the informant, furnish to him free of charge a burial order in the following circumstances—

(a) in the case of a death—

- (i) on receipt in terms of the Births and Deaths Registration Act [*Chapter 5:02*] of notice of the death and a certificate of a medical practitioner stating that to the best of his knowledge and belief the death was the result of natural causes; or
- (ii) after inquiry in terms of section 23 of the Births and Deaths Registration Act [*Chapter 5:02*] if the registrar is satisfied that the death was the result of natural causes;

(b) in the case of a still-birth, on receipt in terms of the Births and Deaths Registration Act [*Chapter 5:02*] of notice of the still-birth and a certificate or declaration in terms of subsection (4) of section 11 of that Act.

## **6 Magistrate or Registrar-General of Births and Deaths to issue burial orders in other cases**

Where a registrar is not authorized in terms of section *five* to issue a burial order, the duty to furnish a burial order is imposed on a magistrate or, if a magistrate is not available, the Registrar-General of Births and Deaths, who shall, if satisfied that the post-mortem examination of a body is completed or unnecessary, at the request of the person undertaking the burial, issue a burial order free of charge.

## **7 Medical practitioner to report certain deaths to magistrate**

(1) If a medical practitioner who attended a deceased person during his last illness is not satisfied that death was the result of natural causes he shall immediately report the fact to the nearest magistrate.

(2) Any medical practitioner who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## **8 .....**

[Section repealed by section 4 of act 23 of 2004]

## **9 Burial by State in certain circumstances**

(1) If at any time a registrar is satisfied that the persons responsible for burying a deceased person's body have failed or refused to bury it within a reasonable time after the deceased person's death, he may issue a burial order to a member of the Public Service designated by the Minister, and that member of the Public Service may thereafter take such steps as are necessary to secure the burial of the body concerned.

(2) The Minister may, by action in a competent court, recover any costs incurred in connection with a burial under subsection (1) from any person whose responsibility it was to bury the body concerned.

(3) Subsection (1) shall not operate to—

- (a) limit any power vested in the State, a local authority or any other person to bury or secure the burial of any body; or
- (b) relieve any person who has unlawfully failed or refused to bury a body from liability to prosecution for an offence under section *eight*.

## **10 .....**

[Section repealed by section 4 of Act 22 of 2001]

## **11 Regulations**

(1) The Minister may make regulations—

- (a) prescribing the forms, certificates or notices to be used in connection with any burial;
- (b) prohibiting or regulating the bringing into and removal from Zimbabwe of bodies; (c) generally, for the better carrying out of the objects and purposes of this Part.

(2) Regulations made in terms of subsection (1) may provide penalties for contraventions thereof, but no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## **PART III**

### **CREMATION**

## **12 Bodies to be burned in or at crematoria**

(1) Unless authorized by the Minister, no person shall burn any body in or at any place other than a crematorium.

(2) The Minister may at any time withdraw any authority granted in terms of subsection (1).

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## **13 Cremation authority**

(1) For the purposes of this section—

“local authority” means—

- (a) a municipal council;
- (b) such other body established by or in terms of any enactment as the Minister may declare, by notice in a statutory instrument, to be a local authority for the purposes of this section.

(2) The Minister may authorize any person to be a cremation authority.

(3) The Minister may at any time withdraw any authority granted in terms of subsection (2).

(4) A cremation authority may, subject to this Act—

- (a) provide and maintain a crematorium and do all things essential, ancillary or incidental thereto;

- (b) conduct the burning of bodies in or at a crematorium provided and maintained by it;
- (c) in the case of a cremation authority which is a local authority, make by-laws in accordance with the enactment by or in terms of which it was established providing for the proper management and conduct of a crematorium established by it or for any other matter which, in its opinion, is necessary or convenient to be provided for in connection therewith.

#### **14 Crematoria to be approved by Minister**

(1) No body shall be burned in or at a crematorium unless the crematorium and the situation, site and facilities thereof have been approved by the Minister, after consultation with the Minister responsible for health.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### **15 Sites of crematoria**

No crematorium shall be situated—

- (a) nearer to any dwelling-house than two hundred metres, except with the consent in writing of the owner, lessee and occupier of such dwelling-house; or
- (b) within fifty metres of any public road.

#### **16 Regulations**

(1) The Minister may make regulations—

- (a) as to the establishment, maintenance and inspection of crematoria;
- (b) prescribing in what cases and under what conditions the burning of any body may take place;
- (c) directing the disposition or interment of any ashes resulting from the burning of any body;
- (d) prescribing the forms of the notices, certificates and declarations to be given or made before the burning of any body may take place;
- (e) requiring the keeping of registers by cremation authorities and prescribing the form of such registers.
- (f) prohibiting or regulating the bringing into or removal from Zimbabwe of the ashes resulting from the burning of any body;
- (g) generally, for the better carrying out of the objects and purposes of this Part.

(2) Regulations made in terms of subsection (1) may provide penalties for contraventions thereof, but no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### **17 Offences and penalties**

(1) If any person—

- (a)

[Paragraph repealed by section 4 of Act 22 of 2001]

(b) knowingly carries out or procures or takes part in the burning of any body except in accordance with this

Part; he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment

[Paragraph amended by section 4 of Act 22 of 2001]

(2) If any person wilfully makes any false declaration or representation or signs any false certificate, with a view to procuring the burning of any body, he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Paragraph amended by section 4 of Act 22 of 2001]

(3) If any person, with intent to conceal the commission or impede the prosecution of any offence, procures or attempts to procure the cremation of any body, or with such intent makes any declaration or gives any certificate under this Part, he shall be guilty of an offence and liable to imprisonment for a period not exceeding five years.

#### **18 Fees**

A cremation authority may demand and recover payment of any such charges or fees for the burning of bodies in or at any crematorium provided by it as may be authorized by any tariff approved by the Minister and such charges or fees and any other expenses properly incurred in or in connection with the cremation of a deceased person shall be deemed to be part of the funeral expenses of the deceased.

#### **19 Inquests and nuisances**

Nothing in this Part shall be deemed to interfere with the jurisdiction of any magistrate under the Inquests Act [Chapter 7:07] or to authorize a cremation authority to create or permit a nuisance.