

CHAPTER 523I

IOWA CEMETERY ACT

[P]
Former ch 523I repealed effective July 1, 2005;
2005 Acts, ch 128, §74

SUBCHAPTER I		523I.314A	Standards for interment spaces.
TITLE — DEFINITIONS — APPLICABILITY		523I.315	Unpaid care assessments and unoccupied interment spaces.
523I.101	Short title.	523I.316	Protection of cemeteries and burial sites.
523I.102	Definitions.	523I.317	Duty to provide public access.
523I.103	Applicability of chapter.		
SUBCHAPTER II		SUBCHAPTER IV	
ADMINISTRATION AND ENFORCEMENT		COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES	
523I.201	Administration.	523I.401	Neglected cemeteries.
523I.202	Investigations and subpoenas.	523I.402	Removal of remains.
523I.203	Cease and desist orders — injunctions.		
523I.204	Court action for failure to cooperate.		
523I.205	Prosecution for violations of law — civil penalties.		
523I.206	Cooperation with other agencies.	523I.501	Cemetery authorized.
523I.207	Rules, forms, and orders.	523I.502	Trust for cemetery.
523I.208	Date of filing — interpretive opinions.	523I.503	Authority to receive gifts and deposits for care — certificates.
523I.209	Misleading filings.	523I.504	Appointment of successor trustee.
523I.210	Misrepresentations of government approval.	523I.505	County auditor as trustee.
523I.211	Fraudulent practices.	523I.506	Commingling of care funds by governmental subdivisions.
523I.212	Receiverships.	523I.507	Investment of care funds by governmental subdivisions.
523I.213	Insurance division's enforcement fund.	523I.508	Management by governmental subdivisions.
523I.213A	Examinations — authority and scope.		
523I.213B	Venue.		
523I.214	Violations of law — referrals to the Iowa department of public health.		
SUBCHAPTER III		SUBCHAPTER VI	
CEMETERY MANAGEMENT		GENERAL PROVISIONS	
523I.301	Disclosure requirements — prices and fees.	523I.601	Settlement of estates — maintenance fund.
523I.302	Installation of outer burial containers.	523I.602	Management by trustee.
523I.303	Access by funeral directors.	523I.603	Owners of interment rights.
523I.304	Rulemaking and enforcement.	523I.604	Lien against cemetery property.
523I.305	Memorials and memorialization.	523I.605	Private care of graves.
523I.306	Commission or bonus unlawful.		
523I.307	Discrimination prohibited.		
523I.308	Speculation prohibited.		
523I.309	Interment, relocation, or disinterment of remains.		
523I.310	Sale of interment rights.		
523I.311	Records of interment rights and interment.		
523I.312	Disclosure requirements — interment agreements.		
523I.313	New cemeteries and gardens and cemetery registry.		
523I.314	New construction.		
SUBCHAPTER VII		SUBCHAPTER VIII	
LAWN CRYPTS		PERPETUAL CARE CEMETERIES — REQUIREMENTS	
		523I.701	Requirements for lawn crypts.
		523I.702	Request to install lawn crypts in fewer than ten units.
		523I.801	Applicability and conversion by nonperpetual care cemeteries.
		523I.802	Advertising.
		523I.803	Perpetual care registry.
		523I.804	Use of gift for special care.
		523I.805	Initial deposit.

523I.806	Irrevocable trust.	523I.811	Use of distributions from care fund.
523I.807	Care fund deposits.	523I.812	Suit by commissioner.
523I.808	Examination fee.	523I.813	Annual report by perpetual care cemeteries.
523I.809	Trust agreement provisions.	523I.814	Unified annual reports.
523I.810	Care funds.		

SUBCHAPTER I

TITLE — DEFINITIONS —
APPLICABILITY**523I.101 Short title.**

This chapter may be cited as the “*Iowa Cemetery Act*”.
2005 Acts, ch 128, §6

523I.102 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. “*Authorized to do business within this state*” means a person licensed, registered, or subject to regulation by an agency of the state of Iowa or who has filed a consent to service of process with the commissioner for purposes of this chapter.

2. “*Burial site*” means any area, except a cemetery, that is used to inter or scatter remains.

3. “*Capital gains*” means appreciation in the value of trust assets for which a market value may be determined with reasonable certainty after deduction of investment losses, taxes, expenses incurred in the sale of trust assets, any costs of the operation of the trust, examination expenses, and any audit expenses.

4. “*Care fund*” means funds set aside for the care of a perpetual care cemetery, including all of the following:

- a. Money or real or personal property impressed with a trust by the terms of this chapter.
- b. Contributions in the form of a gift, grant, or bequest.

c. Any accumulated income that the trustee of the fund or the cemetery allocates to principal.

5. “*Casket*” means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material and ornamented and lined with fabric.

6. “*Cemetery*” means any area that is or was open to use by the public in general or any segment thereof and is used or is intended to be used to inter or scatter remains. “*Cemetery*” does not include the following:

a. A private burial site where use is restricted to members of a family, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration.

b. A private burial site where use is restricted to a narrow segment of the public, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration.

c. A pioneer cemetery.

7. “*Columbarium*” means a structure, room, or space in a mausoleum or other building containing niches or recesses for disposition of cremated remains.

8. “*Commissioner*” means the commissioner of insurance.

9. “*Common business enterprise*” means a group of two or more business entities that share common ownership in excess of fifty percent.

10. “*Disinterment*” means to remove human remains from their place of final disposition.

11. “*Doing business in this state*” means issuing or performing wholly or in part any term of an interment rights agreement executed within the state of Iowa.

12. “*Financial institution*” means a state or federally insured bank, savings and loan association, credit union, trust department thereof, or a trust company that is authorized to do business within this state, that has been granted trust powers under the laws of this state

or the United States, and that holds funds under a trust agreement. “*Financial institution*” does not include a cemetery or any person employed by or directly involved with a cemetery.

13. “*Garden*” means an area within a cemetery established by the cemetery as a subdivision for organizational purposes, not for sale purposes.

14. “*Grave space*” means a space of ground in a cemetery that is used or intended to be used for an in-ground burial.

15. “*Gross selling price*” means the aggregate amount a purchaser is obligated to pay for interment rights, exclusive of finance charges.

16. “*Inactive cemetery*” means a cemetery that is not operating on a regular basis, is not offering to sell or provide interments or other services reasonably necessary for interment, and does not provide or permit reasonable ingress or egress for the purposes of visiting interment spaces.

17. “*Income*” means the return in money or property derived from the use of trust principal after deduction of investment losses, taxes, and expenses incurred in the sale of trust assets, any cost of the operation of the trust, examination expenses or fees, and any audit expenses. “*Income*” includes but is not limited to:

a. Rent of real or personal property, including sums received for cancellation or renewal of a lease and any royalties.

b. Interest on money lent, including sums received as consideration for prepayment of principal.

c. Cash dividends paid on corporate stock.

d. Interest paid on deposit funds or debt obligations.

e. Gain realized from the sale of trust assets.

18. “*Insolvent*” means the inability to pay debts as they become due in the usual course of business.

19. “*Interment rights*” means the rights to place remains in a specific location for use as a final resting place or memorial.

20. “*Interment rights agreement*” means an agreement to furnish memorials, memorialization, opening and closing services, or interment rights.

21. “*Interment space*” means a space used or intended to be used for the interment of remains including but not limited to a grave space, lawn crypt, mausoleum crypt, and niche.

22. “*Lawn crypt*” means a preplaced enclosed chamber, which is usually constructed of reinforced concrete and poured in place, or a precast unit installed in quantity, either side-by-side or at multiple depths, and covered by earth or sod.

23. “*Lot*” means an area in a cemetery containing more than one interment space which is uniquely identified by an alphabetical, numeric, or alphanumeric identification system.

24. “*Maintenance fund*” means funds set aside for the maintenance of a nonperpetual care cemetery, including all of the following:

a. Money or real or personal property impressed with a trust by the terms of this chapter.

b. Contributions in the form of a gift, grant, or bequest.

c. Any accumulated income that the trustee of the fund or the cemetery allocates to principal.

25. “*Mausoleum*” means an aboveground structure designed for the entombment of human remains.

26. “*Mausoleum crypt*” means a chamber in a mausoleum of sufficient size to contain casketed human remains.

27. “*Memorial*” means any product, including any foundation other than a mausoleum or columbarium, used for identifying an interment space or for commemoration of the life, deeds, or career of a decedent including but not limited to a monument, marker, niche plate, urn garden plaque, crypt plate, cenotaph, marker bench, and vase.

28. “*Memorial care*” means any care provided or to be provided for the general maintenance of memorials including foundation repair or replacement, resetting or straightening tipped memorials, repairing or replacing inadvertently damaged memorials, and any other care clearly specified in the purchase agreement.

29. “*Memorial dealer*” means any person offering or selling memorials retail to the public.

30. “*Memorialization*” means any permanent system designed to mark or record the name and other data pertaining to a decedent.

31. “*Merchandise*” means any personal property offered or sold for use in connection with the funeral, final disposition, memorialization, or interment of human remains, but which is exclusive of interment rights.

32. “*Neglected cemetery*” means a cemetery where there has been a failure to cut grass or weeds or care for graves, memorials or memorialization, walls, fences, driveways, and buildings, or for which proper records of interments have not been maintained.

33. “*Niche*” means a recess or space in a columbarium or mausoleum used for placement of cremated human remains.

34. “*Opening and closing services*” means one or more services necessarily or customarily provided in connection with the interment or entombment of human remains or a combination thereof.

35. “*Operating a cemetery*” means offering to sell or selling interment rights, or any service or merchandise necessarily or customarily provided for a funeral, or for the entombment or cremation of a dead human, or any combination thereof, including but not limited to opening and closing services, caskets, memorials, vaults, urns, and interment receptacles.

36. “*Outer burial container*” means any container which is designed for placement in the ground around a casket or an urn including but not limited to containers commonly known as burial vaults, urn vaults, grave boxes, grave liners, and lawn crypts.

37. “*Perpetual care cemetery*” includes all of the following:

a. Any cemetery that was organized or commenced business in this state on or after July 1, 1995.

b. Any cemetery that has established a care fund in compliance with section 523I.810.

c. Any cemetery that represents that it is a perpetual care cemetery in its interment rights agreement.

d. Any cemetery that represents in any other manner that the cemetery provides perpetual, permanent, or guaranteed care.

38. “*Person*” means an individual, firm, corporation, partnership, joint venture, limited liability company, association, trustee, government or governmental subdivision, agency, or other entity, or any combination thereof.

39. “*Pioneer cemetery*” means a cemetery where there were twelve or fewer burials in the preceding fifty years.

40. “*Purchaser*” means a person who purchases memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof. A purchaser need not be a beneficiary of the interment rights agreement.

41. “*Relative*” means a great-grandparent, grandparent, father, mother, spouse, child, brother, sister, nephew, niece, uncle, aunt, first cousin, second cousin, third cousin, or grandchild connected to a person by either blood or affinity.

42. “*Religious cemetery*” means a cemetery that is owned, operated, or controlled by a recognized church or denomination, or a cemetery designated as such in the official Catholic directory on file with the insurance division or in a similar publication of a recognized church or denomination, or a cemetery that the commissioner determines is operating as a religious cemetery upon review of an application by the cemetery that includes a description of the cemetery’s affiliation with a recognized church or denomination, the extent to which the affiliate organization is responsible for the financial and contractual obligations of the cemetery, or the provision of the Internal Revenue Code, if any, that exempts the cemetery from the payment of federal income tax.

43. “*Relocation*” means the act of taking remains from the place of interment or the place where the remains are being held to another designated place.

44. “*Remains*” means the body of a deceased human or a body part, or limb that has been removed from a living human, including a body, body part, or limb in any stage of decomposition, or cremated remains.

45. “*Scattering services provider*” means a person in the business of scattering human cremated remains.

46. “*Seller*” means a person doing business within this state, including a person doing business within this state who advertises, sells, promotes, or offers to furnish memorials, memorialization, opening and closing services, scattering services, or interment rights, or a combination thereof, whether the transaction is completed or offered in person, through the mail, over the telephone, by the internet, or through any other means of commerce.

47. “*Special care*” means any care provided or to be provided that supplements or exceeds the requirements of this chapter in accordance with the specific directions of any donor of funds for such purposes.

48. “*Undeveloped space*” means a designated area or building within a cemetery that has been mapped and planned for future development but is not yet fully developed.

49. “*Veterans cemetery*” means a cemetery that is owned or operated by the state of Iowa or by the United States for the burial of veterans.

2005 Acts, ch 128, §7; 2006 Acts, ch 1117, §118; 2007 Acts, ch 175, §34, 35; 2008 Acts, ch 1123, §54; 2009 Acts, ch 132, §5

523I.103 Applicability of chapter.

1. This chapter applies to all of the following:

a. All cemeteries, except religious cemeteries that commenced business prior to July 1, 2005, and veterans cemeteries.

b. All persons advertising or offering memorials, memorialization, opening and closing services, scattering services at a cemetery, interment rights, or a combination thereof for sale.

c. Interments made in areas not dedicated as a cemetery, by a person other than the state archaeologist.

2. This chapter applies when a purchase agreement is executed within this state or an advertisement, promotion, or offer to furnish memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof is made or accepted within this state. An offer to furnish memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof is made within this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state through the mail, over the telephone, by the internet, or through any other means of commerce.

3. If a foreign person does not have a registered agent or agents in the state of Iowa, doing business within this state shall constitute the person’s appointment of the secretary of state of the state of Iowa to be the person’s true and lawful attorney upon whom may be served all lawful process of original notice in actions or proceedings arising or growing out of any contract or tort.

2005 Acts, ch 128, §8; 2006 Acts, ch 1010, §147; 2006 Acts, ch 1117, §119

SUBCHAPTER II

ADMINISTRATION AND ENFORCEMENT

523I.201 Administration.

1. This chapter shall be administered by the commissioner. The commissioner may employ officers, attorneys, accountants, and other employees as needed for administering this chapter.

2. It is unlawful for the commissioner or any administrative staff to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. This chapter does not authorize the commissioner or any staff member to disclose any such information except among themselves or to other cemetery and funeral administrators, regulatory authorities, or governmental agencies, or when necessary and appropriate in a proceeding or investigation under this chapter or as required by chapter 22. This chapter neither creates nor derogates any privileges that exist at common law or otherwise when

documentary or other evidence is sought under a subpoena directed to the commissioner or any administrative staff.

3. The commissioner shall submit an annual report to the general assembly's standing committees on government oversight by October 1 of each year reporting on the administration of this chapter. The report shall set forth any recommendations for changes in the law that the commissioner deems necessary or desirable to prevent abuses or evasions of this chapter or rules implementing this chapter or to rectify undesirable conditions in connection with the administration of this chapter or rules implementing this chapter.

2005 Acts, ch 128, §9; 2006 Acts, ch 1030, §64; 2006 Acts, ch 1117, §120; 2007 Acts, ch 175, §36, 37; 2008 Acts, ch 1123, §55; 2009 Acts, ch 86, §6

523I.202 Investigations and subpoenas.

1. The commissioner may, for the purpose of discovering a violation of this chapter or implementing rules or orders issued under this chapter, do any of the following:

a. Make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate this chapter, or implementing rules or orders issued under this chapter, or to aid in the enforcement of this chapter, or in the prescribing of rules and forms under this chapter.

b. Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner or attorney general determines, as to all the facts and circumstances concerning the matter being investigated.

c. Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the commissioner determines that it is necessary or appropriate in the public interest or for the protection of the public, the commissioner may share information with other administrators, regulatory authorities, or governmental agencies, or may publish information concerning a violation of this chapter, or implementing rules or orders issued under this chapter.

d. Investigate a cemetery and examine the books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records of the cemetery.

e. Administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records which the commissioner deems relevant or material to any investigation or proceeding under this chapter and implement rules, all of which may be enforced under chapter 17A.

f. Apply to the district court for an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, in cases where the person has refused to obey a subpoena issued by the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

2. The commissioner may issue and bring an action in district court to enforce subpoenas within this state at the request of an agency or administrator of another state, if the activity constituting an alleged violation for which the information is sought would be a violation of this chapter had the activity occurred in this state.

2005 Acts, ch 128, §10

523I.203 Cease and desist orders — injunctions.

If it appears to the commissioner that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter, or implementing rules or orders issued under this chapter, the commissioner or the attorney general may do any of the following:

1. Issue a summary order directed to the person that requires the person to cease and desist from engaging in such an act or practice. A person may request a hearing within thirty days of issuance of the summary order. If a hearing is not timely requested, the summary order shall become final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a

presiding officer following a request for hearing. Section 17A.18A is inapplicable to summary cease and desist orders issued under this section.

2. Bring an action in the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from engaging in conduct or practices deemed contrary to the public interest. In any proceeding for an injunction, the commissioner or attorney general may apply to the court for a subpoena to require the appearance of a defendant and the defendant's agents, employees, or associates and for the production of any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records germane to the hearing upon the petition for an injunction. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The commissioner or attorney general shall not be required to post a bond.

2005 Acts, ch 128, §11

523I.204 Court action for failure to cooperate.

1. If a person fails or refuses to file a statement or report or to produce any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records, or to obey a subpoena issued by the commissioner, the commissioner may refer the matter to the attorney general, who may apply to a district court to enforce compliance. The court may order any or all of the following:

a. Injunctive relief restricting or prohibiting the offer or sale of memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof.

b. Production of documents or records including but not limited to books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records.

c. Such other relief as may be required.

2. A court order issued pursuant to subsection 1 is effective until the person files the statement or report or produces the documents requested, or obeys the subpoena.

2005 Acts, ch 128, §12

523I.205 Prosecution for violations of law — civil penalties.

1. A violation of this chapter or rules adopted or orders issued under this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and penalties, apply to violations of this chapter.

2. If the commissioner believes that grounds exist for the criminal prosecution of persons subject to this chapter for violations of this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in the commissioner's possession, so that the attorney general or the county attorney may proceed with the matter as deemed appropriate. At the request of the attorney general, the county attorney shall appear and prosecute the action when brought in the county attorney's county.

3. A person who violates a provision of this chapter or rules adopted or orders issued under this chapter may be subject to civil penalties in addition to criminal penalties. The commissioner may impose, assess, and collect a civil penalty not exceeding ten thousand dollars for each violation. For the purposes of computing the amount of each civil penalty, each day of a continuing violation constitutes a separate violation. All civil penalties collected pursuant to this section shall be deposited as provided in section 505.7.

2005 Acts, ch 128, §13; 2009 Acts, ch 181, §101

[T] 2011 repeal of 2009 Acts, ch 181, §101, amendment to subsection 3 stricken pursuant to 2011 Acts, ch 127, §57, 89

[T] Section not amended; footnote revised

523I.206 Cooperation with other agencies.

1. The commissioner may cooperate with any governmental law enforcement or regulatory agency to encourage uniform interpretation and administration of this chapter

and effective enforcement of this chapter and effective regulation of the sale of memorials, memorialization, and cemeteries.

2. Cooperation with other agencies may include but is not limited to:
 - a. Making a joint examination or investigation.
 - b. Holding a joint administrative hearing.
 - c. Filing and prosecuting a joint civil or administrative proceeding.
 - d. Sharing and exchanging personnel.
 - e. Sharing and exchanging relevant information and documents.
 - f. Formulating, in accordance with chapter 17A, rules or proposed rules on matters such as statements of policy, regulatory standards, guidelines, and interpretive opinions.
- 2005 Acts, ch 128, §14

523I.207 Rules, forms, and orders.

1. Under chapter 17A, the commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary or appropriate for the protection of purchasers and the public and to administer the provisions of this chapter, its implementing rules, and orders issued under this chapter.

2. A rule, form, or order shall not be made, amended, or rescinded unless the commissioner finds that the action is necessary or appropriate to protect purchasers and the public and is consistent with the policies and provisions of this chapter, its implementing rules, and orders issued under this chapter.

3. A provision of this chapter imposing any liability does not apply to an act done or omitted in good faith in conformity with any rule, form, or order of the commissioner.

2005 Acts, ch 128, §15

523I.208 Date of filing — interpretive opinions.

1. A document is filed when it is received by the commissioner.

2. Requests for interpretive opinions may be granted in the commissioner's discretion.

2005 Acts, ch 128, §16

523I.209 Misleading filings.

It is unlawful for a person to make or cause to be made, in any document filed with the commissioner, or in any proceeding under this chapter, any statement of material fact which is, at the time and in the light of the circumstances under which it is made, false or misleading, or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

2005 Acts, ch 128, §17

523I.210 Misrepresentations of government approval.

It is unlawful for a seller under this chapter to represent or imply in any manner that the seller has been sponsored, recommended, or approved, or that the seller's abilities or qualifications have in any respect been passed upon by the commissioner.

2005 Acts, ch 128, §18

523I.211 Fraudulent practices.

A person who commits any of the following acts commits a fraudulent practice which is punishable as provided in chapter 714:

1. Knowingly fails to comply with any requirement of this chapter.
2. Knowingly makes, causes to be made, or subscribes to a false statement or representation in a report or other document required under this chapter, or implementing rules or orders, or renders such a report or document misleading through the deliberate omission of information properly belonging in the report or document.
3. Conspires to defraud in connection with the sale of memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof under this chapter.

4. Fails to deposit funds under this chapter or withdraws funds in a manner inconsistent with this chapter.

5. Knowingly sells memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof without the permits required under this chapter.

6. Deliberately misrepresents or omits a material fact relative to the sale of memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof.

2005 Acts, ch 128, §19

523I.212 Receiverships.

1. The commissioner shall notify the attorney general of the potential need for establishment of a receivership if the commissioner finds that a cemetery subject to this chapter meets one or more of the following conditions:

a. Is insolvent.

b. Has utilized trust funds for personal or business purposes in a manner inconsistent with this chapter.

c. The amount held in trust in a maintenance fund or care fund is less than the amount required by this chapter.

d. A receivership has been established for a seller subject to chapter 523A who owns or operates a cemetery that is subject to this chapter.

2. The commissioner or attorney general may apply to the district court in any county of the state for the establishment of a receivership. Upon proof that any of the conditions described in this section have occurred, the court may grant a receivership. The commissioner may request that the insurance division be named as a receiver or that the court appoint a third party as a receiver. If the division is appointed as a receiver, the division shall not be subject to the requirements concerning an oath and surety bond contained in section 680.3.

3. In addition to the powers granted to receivers under chapter 680, a receiver appointed under this section shall be granted all powers necessary to locate and to temporarily preserve and protect perpetual care trust funds, consumer and business assets, interment records, records of consumer purchases of interment rights, and records of consumer purchases of funeral services and funeral or cemetery merchandise as defined in chapter 523A. The receiver shall also be granted such powers as are necessary in the course of the receivership to temporarily preserve and protect a cemetery or burial site and to temporarily restore or sustain cemetery operations, including interments, as operating funds or trust funds become available.

4. The commissioner may petition the court to terminate a receivership at any time and to enter such orders as are necessary to transfer the duty to preserve and protect the physical integrity of the cemetery or burial site, the interment records, and other records documenting consumer purchases of interment rights to the applicable governmental subdivision, as provided in section 523I.316, subsection 3. The court shall grant the petition if following the first one hundred twenty days of the receivership such duty to preserve and protect cannot be reasonably assumed by a private entity, association, or by other means.

2005 Acts, ch 128, §20; 2007 Acts, ch 175, §38 – 40

523I.213 Insurance division's enforcement fund.

A special revenue fund in the state treasury, to be known as the insurance division's enforcement fund, is created under the authority of the commissioner. The commissioner shall allocate annually from the examination fees paid pursuant to section 523I.808, an amount not exceeding fifty thousand dollars, for deposit to the insurance division's enforcement fund. The moneys in the enforcement fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, shall be used to pay examiners, examination expenses, investigative expenses, the expenses of consumer education, compliance, and education programs for filers and other regulated persons, and educational or compliance program materials, the expenses of a toll-free telephone line

for consumer complaints, and the expenses of receiverships of perpetual care cemeteries established under section 523I.212.

2005 Acts, ch 128, §21; 2007 Acts, ch 175, §41

523I.213A Examinations — authority and scope.

1. The commissioner or the commissioner's designee may conduct an examination under this chapter of any cemetery as often as the commissioner deems appropriate. If a cemetery has a trust arrangement, the commissioner shall conduct an examination not less than once every five years.

2. A cemetery shall reimburse the division for the expense of conducting the examination unless the commissioner waives this requirement or the seller has previously provided to the commissioner a certified copy of an audit conducted by an independent certified public accountant verifying compliance with this chapter for each year in question and the examination conducted by the commissioner does not disclose that the seller has not complied with this chapter for the years in question. The expense of an examination involving multiple cemeteries or other persons shall be prorated among them upon any reasonable basis as determined by the commissioner.

3. For purposes of completing an examination pursuant to this chapter, the commissioner may examine or investigate any person, or the business of any person, if the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the cemetery.

4. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee may appoint one or more examiners to perform the examination and instruct them as to the scope of the examination.

5. A cemetery or person from whom information is sought, and its officers, directors, and agents shall provide to the examiners appointed under subsection 4, timely, convenient, and free access at their offices, at all reasonable hours, to all books, records, accounts, papers, documents, and all electronic or other recordings related to the property, assets, business, and affairs of the cemetery being examined and shall facilitate the examination as much as possible. If a cemetery, by its officers, directors, employees, or agents, refuses to submit to an examination as provided in this chapter, the commissioner shall immediately report the refusal to the attorney general, who shall then immediately apply to district court for the appointment of a receiver to administer the final affairs of the cemetery.

6. This section shall not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory actions pursuant to this chapter. Findings of fact and conclusions made pursuant to an examination are deemed to be prima facie evidence in any legal or regulatory action.

7. Notwithstanding chapter 22, the commissioner shall not make information obtained in the course of an examination public, except when a duty under this chapter requires the commissioner to take action against a cemetery or to cooperate with another law enforcement agency, or when the commissioner is called as a witness in a civil or criminal proceeding.

2007 Acts, ch 175, §42; 2010 Acts, ch 1121, §29; 2011 Acts, ch 70, §47

[T] Subsection 1 amended

523I.213B Venue.

All actions relating to the enforcement of this chapter shall be governed by the laws of the state of Iowa. Venue of any action relating to enforcement of this chapter may be in a court of competent jurisdiction in Polk county, at the discretion of the commissioner.

2007 Acts, ch 175, §43

523I.214 Violations of law — referrals to the Iowa department of public health.

If the commissioner discovers a violation of a provision of this chapter or any other state law or rule concerning the disposal or transportation of human remains, the commissioner shall forward all evidence in the possession of the commissioner concerning such a violation to

the Iowa department of public health for such proceedings as the Iowa department of public health deems appropriate.

2005 Acts, ch 128, §22

SUBCHAPTER III CEMETERY MANAGEMENT

523I.301 Disclosure requirements — prices and fees.

1. A cemetery shall disclose, prior to the sale of interment rights, whether opening and closing of the interment space is included in the purchase of the interment rights. If opening and closing services are not included in the sale and the cemetery offers opening and closing services, the cemetery must disclose that the price for this service is subject to change and disclose the current prices for opening and closing services provided by the cemetery.

2. The cemetery shall fully disclose all fees required for interment, entombment, or inurnment of human remains.

3. A person owning interment rights may sell those rights to third parties. The cemetery shall fully disclose, in the cemetery's rules, any requirements necessary to transfer title of interment rights to a third party.

2005 Acts, ch 128, §23

523I.302 Installation of outer burial containers.

A cemetery shall provide services necessary for the installation of outer burial containers or other similar merchandise sold by the cemetery. This section shall not require the cemetery to provide for opening and closing of interment or entombment space, unless an agreement executed by the cemetery expressly provides otherwise.

2005 Acts, ch 128, §24

523I.303 Access by funeral directors.

A cemetery shall not deny access to a licensed funeral director who is conducting funeral services or supervising the interment or disinterment of human remains.

2005 Acts, ch 128, §25

523I.304 Rulemaking and enforcement.

1. A cemetery may adopt, amend, and enforce rules for the use, care, control, management, restriction, and protection of the cemetery, as necessary for the proper conduct of the business of the cemetery, including, but not limited to, the use, care, and transfer of any interment space or right of interment.

2. A cemetery may restrict and limit the use of all property within the cemetery by rules that do, but are not limited to doing, all of the following:

a. Prohibit the placement of memorials or memorialization, buildings, or other types of structures within any portion of the cemetery.

b. Regulate the uniformity, class, and kind of memorials and memorialization and structures within the cemetery.

c. Regulate the scattering or placement of cremated remains within the cemetery.

d. Prohibit or regulate the placement of nonhuman remains within the cemetery.

e. Prohibit or regulate the introduction or care of trees, shrubs, and other types of plants within the cemetery.

f. Regulate the right of third parties to open, prepare for interment, and close interment spaces.

g. Prohibit interment in any part of the cemetery not designated as an interment space.

h. Prevent the use of space for any purpose inconsistent with the use of the property as a cemetery.

3. A cemetery shall not adopt or enforce a rule that prohibits interment because of the race, color, or national origin of a decedent. A provision of a contract or a certificate of

ownership or other instrument conveying interment rights that prohibits interment in a cemetery because of the race, color, or national origin of a decedent is void.

4. A cemetery's rules shall be plainly printed or typewritten and maintained for inspection in the office of the cemetery or, if the cemetery does not have an office, in another suitable place within the cemetery. The cemetery's rules shall be provided to owners of interment spaces upon request.

5. A cemetery's rules shall specify the cemetery's obligations in the event that interment spaces, memorials, or memorialization are damaged or defaced by acts of vandalism. The rules may specify a multiyear restoration of an interment space, or a memorial or memorialization when the damage is extensive or when money available from the cemetery's trust fund is inadequate to complete repairs immediately. The owner of an interment space, or a memorial or memorialization that has been damaged or defaced shall be notified by the cemetery by restricted certified mail at the owner's last known address within sixty days of the discovery of the damage or defacement. The rules shall specify whether the owner is liable, in whole or in part, for the cost to repair or replace an interment space or a damaged or defaced memorial or memorialization.

6. The cemetery shall not approve any rule which unreasonably restricts competition, or which unreasonably increases the cost to the owner of interment rights in exercising these rights.

7. A cemetery owned and controlled by a governmental subdivision shall adopt and enforce a rule allowing any veteran who is a landowner or who lives within the governmental subdivision to purchase an interment space and to be interred within the cemetery. For the purposes of this section, "veteran" means the same as defined in section 35.1.

2005 Acts, ch 128, §26; 2007 Acts, ch 175, §44; 2009 Acts, ch 164, §5, 7

523I.305 Memorials and memorialization.

1. *Authorization.* A cemetery is entitled to determine whether a person requesting installation of a memorial is authorized to do so, to the extent that this can be determined from the records of the cemetery, as is consistent with the cemetery's rules. The owner of an interment space or the owner's agent may authorize a memorial dealer or independent third party to perform all necessary work related to preparation and installation of a memorial.

2. *Conformity with cemetery rules.* A person selling a memorial shall review the rules of the cemetery where the memorial is to be installed to ensure that the memorial will comply with those rules prior to ordering or manufacturing the memorial.

3. *Specifications.* Upon request, a cemetery shall provide reasonable written specifications and instructions governing installation of memorials, which shall apply to all installations whether performed by the cemetery or another person. The written specifications shall include provisions governing hours of installation or any other relevant administrative requirements of the cemetery. A copy of these specifications and instructions shall be provided upon request, without charge, to the owner of the interment space, next of kin, or a personal representative or agent of the owner, including the person installing the memorial. The person installing the memorial shall comply with the cemetery's written installation specifications and instructions. In order to verify that a memorial is installed on the proper interment space in accordance with cemetery rules and regulations, the cemetery shall mark the place on the interment space where the memorial is to be installed and shall inspect the installation when completed. This subsection shall not be construed to require that a cemetery lay out or engineer an interment space for the installation of a memorial. A cemetery shall not adopt or enforce any rule prohibiting the installation of a memorial by a memorial dealer or independent third party, unless the rule is applicable to all memorials from whatever source obtained and enforced uniformly for all memorials installed in the cemetery.

4. *Written notice.* A memorial dealer or independent third party shall provide the cemetery with at least seven business days' prior written notice of intent to install a memorial at the cemetery, or such lesser notice as the cemetery deems acceptable. The notice shall contain the full name, address, and relationship of the memorial's purchaser to the person interred in the interment space or the owner of the interment space, if different. The notice

shall also contain the color, type, and size of the memorial, the material, the inscription, and the full name and interment date of the person interred in the interment space.

5. *Preparation and installation.*

a. A person installing a memorial shall be responsible to the cemetery for any damage caused to the cemetery grounds, including roadways, other than normal use during installation of the memorial.

b. Installation work shall cease during any nearby funeral procession or committal service.

c. Installation work shall be done during the cemetery's normal weekday hours or at such other times as may be arranged with the cemetery.

d. A memorial must comply with the cemetery's rules. In the event of noncompliance, the person installing a memorial is responsible for removal of the memorial and shall pay any reasonable expenses incurred by the cemetery in connection with the memorial's removal.

e. The cemetery shall, without charge, provide information as described on the cemetery's map or plat necessary to locate the place where a memorial is to be installed and any other essential information the person installing the memorial needs to locate the proper interment space.

f. A person installing a memorial shall follow the cemetery's instructions regarding the positioning of the memorial.

g. During the excavation, all sod and dirt shall be carefully removed with no sod or dirt left on the interment space except the amount needed to fill the space between the memorial and the adjacent lawn.

h. A person installing a memorial shall carefully fill in any areas around the memorial with topsoil or sand, in accordance with the cemetery's written instructions.

i. A person installing a memorial shall remove all equipment and any debris which has accumulated during installation of the memorial.

j. A person installing a memorial shall check to see if any adjacent memorials have become soiled or dirty during installation of the memorial and, if so, clean the adjacent memorials.

k. If the person who is installing a memorial damages any cemetery property, the person shall notify the cemetery immediately. The person installing the memorial shall then repair the damage as soon as possible, upon approval by the cemetery. The cemetery may require a person installing a memorial to provide current proof of workers' compensation insurance as required by state law and current proof of liability insurance, sufficient to indemnify the cemetery against claims resulting from installation of the memorial. Proof of liability insurance in an amount of one million dollars or more shall preclude the cemetery from requiring a person installing a memorial to obtain a performance bond.

l. If a cemetery has an office, a person installing a memorial shall immediately leave notice at the cemetery office when the memorial has been installed and all work related to the installation is complete.

6. *Inspection.* A cemetery may inspect the installation site of a memorial at any time. If the cemetery determines that cemetery rules are not being followed during the installation, the cemetery may order the installation to stop until the infraction is corrected. The cemetery shall provide written notice to the installer as soon as possible if the cemetery believes that any of the following have occurred:

a. The memorial has not been installed correctly.

b. The person installing the memorial has damaged property at the cemetery.

c. Other cemetery requirements for installation have not been met, such as removal of debris or equipment.

7. *Location and service charge.* A cemetery may charge a reasonable service charge for allowing the installation of a memorial purchased or obtained from and installed by a person other than the cemetery or its agents. This service charge shall be based on the cemetery's actual labor costs, including fringe benefits, of those employees whose normal duty is to inspect the installation of memorials, in accordance with generally accepted accounting practices. General administrative and overhead costs and any other functions not related to actual inspection time shall be excluded from the service charge.

8. *Faulty installation.* If a memorial sinks, tilts, or becomes misaligned within twelve

months of its installation and the cemetery believes the cause is faulty installation, the cemetery shall notify the person who installed the memorial in writing and the person who installed the memorial shall be responsible to correct the damage, unless the damage is caused by inadequate written specifications and instructions from the cemetery or acts of the cemetery and its agents or employees, including but not limited to running a backhoe over the memorial, carrying a vault or other heavy equipment over the memorial, or opening or closing an interment space adjacent to the memorial.

9. *Perpetual care.* A cemetery may require contributions from the purchaser of a memorial for perpetual care, if a perpetual care fund deposit is uniformly charged on every memorial installed in the cemetery.

2005 Acts, ch 128, §27; 2007 Acts, ch 175, §45

523I.306 Commission or bonus unlawful.

It shall be unlawful for any organization subject to the provisions of this chapter to pay or offer to pay to, or for any person, firm, or corporation to receive directly or indirectly, a commission or bonus or rebate or other thing of value, for or in connection with the sale of any interment space, lot, or part thereof, in any cemetery. The provisions of this section shall not apply to a person regularly employed and supervised by such organization or to a person, firm, corporation, or other entity licensed under chapter 523A that contracts with the cemetery to sell interment spaces or lots. The conduct of any person, firm, corporation, or other entity described in this section is the direct responsibility of the cemetery.

2005 Acts, ch 128, §28

523I.307 Discrimination prohibited.

It shall be unlawful for any organization subject to the provisions of this chapter to deny the privilege of interment of the remains of any deceased person in any cemetery solely because of the race, color, or national origin of such deceased person. Any contract, agreement, deed, covenant, restriction, or charter provision at any time entered into, or bylaw, rule, or regulation adopted or put in force, either subsequent or prior to July 4, 1953, authorizing, permitting, or requiring any organization subject to the provisions of this chapter to deny such privilege of interment because of race, color, or national origin of such deceased person is hereby declared to be null and void and in conflict with the public policy of this state. An organization subject to the provisions of this chapter or any director, officer, agent, employee, or trustee thereof, shall not be liable for damages or other relief, or be subjected to any action in any court of competent jurisdiction for refusing to commit any act unlawful under this chapter.

2005 Acts, ch 128, §29

523I.308 Speculation prohibited.

A cemetery or any person representing a cemetery in a sales capacity shall not advertise or represent, in connection with the sale or attempted sale of any interment space, that the same is or will be a desirable speculative investment for resale purposes.

2005 Acts, ch 128, §30

[P] Similar provision, see §523I.802

523I.309 Interment, relocation, or disinterment of remains.

1. A person authorized to control the deceased person's remains under section 144C.5 shall have the right to control the interment, relocation, or disinterment of a decedent's remains within or from a cemetery.

2. A person who represents that the person knows the identity of a decedent and, in order to procure the interment, relocation, or disinterment of the decedent's remains, signs an order or statement, other than a death certificate, that warrants the identity of the decedent is liable for all damages that result, directly or indirectly, from that representation.

3. In the event of a dispute concerning the right to control the interment, relocation, or disinterment of a decedent's remains, the dispute may be resolved by a court of competent jurisdiction. A cemetery or entity maintaining a columbarium shall not be liable for refusing

to accept the decedent's remains, relocate or disinter, inter or otherwise dispose of the decedent's remains, until the cemetery or entity maintaining a columbarium receives a court order or other suitable confirmation that the dispute has been resolved or settled.

4. a. If good cause exists to relocate or disinter remains interred in a cemetery, the remains may be removed from the cemetery pursuant to a disinterment permit as required under section 144.34, with the written consent of the cemetery, the current interment rights owner, and the person entitled to control the interment, relocation, or disinterment of the decedent's remains under section 144C.5.

b. If the consent required pursuant to paragraph "a" is not refused but cannot otherwise be obtained, the remains may be relocated or disinterred by permission of the district court of the county in which the cemetery is located upon a finding by the court that clear and convincing evidence of good cause exists to relocate or disinter the remains. Before the date of application to the court for permission to relocate or disinter remains under this subsection, notice must be given to the cemetery in which the remains are interred, each person whose consent is required for relocation or disinterment of the remains under paragraph "a", and any other person that the court requires to be served.

c. For the purposes of this subsection, personal notice must be given not later than the eleventh day before the date of hearing on an application to the court for permission to relocate or disinter the remains, or notice by certified mail or restricted certified mail must be given not later than the sixteenth day before the date of hearing.

d. This subsection does not apply to the removal of remains from one interment space to another interment space in the same cemetery to correct an error, or relocation of the remains by the cemetery from an interment space for which the purchase price is past due and unpaid, to another suitable interment space.

5. A person who removes remains from a cemetery shall keep a record of the removal, and provide a copy to the cemetery, that includes all of the following:

- a. The date the remains are removed.
- b. The name of the decedent and age at death if those facts can be conveniently obtained.
- c. The place to which the remains are removed.
- d. The name of the cemetery and the location of the interment space from which the remains are removed.

6. A cemetery may disinter and relocate remains interred in the cemetery for the purpose of correcting an error made by the cemetery after obtaining a disinterment permit as required by section 144.34. The cemetery shall provide written notice describing the error to the commissioner and to the person who has the right to control the interment, relocation, or disinterment of the remains erroneously interred, by restricted certified mail at the person's last known address and sixty days prior to the disinterment. The notice shall include the location where the disinterment will occur and the location of the new interment space. A cemetery is not civilly or criminally liable for an erroneously made interment that is corrected in compliance with this subsection unless the error was the result of gross negligence or intentional misconduct.

7. Relocations and disinterments of human remains shall be done in compliance with sections 144.32 and 144.34. Relocations of human remains held in a columbarium shall be in compliance with the laws regulating the entity maintaining the columbarium.

2005 Acts, ch 128, §31; 2006 Acts, ch 1117, §121; 2008 Acts, ch 1051, §21, 22

523I.310 Sale of interment rights.

1. For sales or transfers of interment rights made on or after July 1, 2005, a cemetery shall issue a certificate of interment rights or other instrument evidencing the conveyance of exclusive rights of interment upon payment in full of the purchase price.

2. The interment rights in an interment space that is conveyed by a certificate of ownership or other instrument shall not be divided without the consent of the cemetery.

3. A conveyance of exclusive rights of interment shall be filed and recorded in the cemetery office. Any transfer of the ownership of interment rights shall be filed and recorded

in the cemetery office. The cemetery may charge a reasonable recording fee to record the transfer of interment rights.

2005 Acts, ch 128, §32

523I.311 Records of interment rights and interment.

1. For sales or transfers of interment rights made on or after July 1, 2005, a cemetery shall keep complete records identifying the owners of all interment rights sold by the cemetery and historical information regarding any transfers of ownership. The records shall include all of the following:

- a. The name and last known address of each owner or previous owner of interment rights.
- b. The date of each purchase or transfer of interment rights.
- c. A unique numeric or alphanumeric identifier that identifies the location of each interment space sold by the cemetery.

2. For interments made on or after July 1, 2005, a cemetery shall keep a record of each interment in a cemetery. The records shall include all of the following:

- a. The date the remains are interred.
- b. The name, date of birth, and date of death of the decedent interred, if those facts can be conveniently obtained.
- c. A unique numeric or alphanumeric identifier that identifies the location of the interment space where the remains are interred.

2005 Acts, ch 128, §33

523I.312 Disclosure requirements — interment agreements.

1. Each nonperpetual care cemetery shall have printed or stamped at the head of all of its contracts, deeds, statements, letterheads, and advertising material, the legend: “This is a nonperpetual care cemetery”, and shall not sell any lot or interment space in the cemetery unless the purchaser of the interment space is informed that the cemetery is a nonperpetual care cemetery.

2. An agreement for interment rights under this chapter shall be written in clear, understandable language and do all of the following:

- a. Identify the seller and purchaser.
- b. Identify the salesperson.
- c. Specify the interment rights to be provided and the cost of each item.
- d. State clearly the conditions on which substitution will be allowed.
- e. Set forth the total purchase price and the terms under which it is to be paid.
- f. State clearly whether the agreement is revocable or irrevocable, and if revocable, which parties have the authority to revoke the agreement.
- g. State the amount or percentage of money to be placed in the cemetery’s care or maintenance fund.
- h. If the cemetery has a care fund, set forth an explanation that the care fund is an irrevocable trust, that deposits cannot be withdrawn even in the event of cancellation, and that the trust’s income shall be used by the cemetery for its care.
- i. Set forth an explanation of any fees or expenses that may be charged.
- j. Set forth an explanation of whether amounts for perpetual care will be deposited in trust upon payment in full or on an allocable basis as payments are made.
- k. Set forth an explanation of whether initial payments on agreements for multiple items of funeral and cemetery merchandise or services, or both, will be allocated first to the purchase of an interment space. If such an allocation is to be made, the agreement shall provide for the immediate transfer of such interment rights upon payment in full and prominently state that any applicable trust deposits under chapter 523A will not be made until the cemetery has received payment in full for the interment rights. The transfer of an undeveloped interment space may be deferred until the interment space is ready for interment.

l. If the transfer of an undeveloped interment space will be deferred until the interment space is ready for interment as permitted in paragraph “k”, the agreement shall provide for some form of written acknowledgement upon payment in full, specify a reasonable time

period for development of the interment space, describe what happens in the event of a death prior to development of the interment space, and provide for the immediate transfer of the interment rights when development of the interment space is complete.

m. Specify the purchaser's right to cancel and the damages payable for cancellation, if any.

n. Include an explanation of regulatory oversight by the insurance division in twelve point boldface type, in substantially the following language:

THIS AGREEMENT IS SUBJECT TO RULES ADMINISTERED BY THE IOWA INSURANCE DIVISION. YOU MAY CALL THE INSURANCE DIVISION WITH INQUIRIES OR COMPLAINTS AT (515)281-5705. WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO: IOWA SECURITIES AND REGULATED INDUSTRIES BUREAU, 330 MAPLE STREET, DES MOINES, IOWA 50319.

2005 Acts, ch 128, §34; 2006 Acts, ch 1117, §122; 2010 Acts, ch 1121, §30

523I.313 New cemeteries and gardens and cemetery registry.

1. A person that dedicates property for a new cemetery on or after July 1, 2005, and a cemetery that dedicates an additional garden on or after July 1, 2005, shall:

a. In the case of land, survey and subdivide the property into gardens with descriptive names or numbers and make a map or plat of the cemetery or garden.

b. In the case of a mausoleum or a columbarium, make a map or plat of the property delineating sections or other divisions with descriptive names and numbers.

c. File the map or plat with the commissioner, including a written certificate or declaration of dedication of the property delineated by the map or plat, dedicating the property for cemetery purposes.

2. A map or plat and a certificate or declaration of dedication that is filed pursuant to this section dedicates the property for cemetery purposes and constitutes constructive notice of that dedication.

3. The commissioner shall maintain a registry of perpetual care and nonperpetual care cemeteries, to the extent that information is available. A cemetery selling interment rights on or after July 1, 2005, shall file a written notice with the commissioner that includes the legal description of the property with boundary lines of the land, the name of the cemetery, the status of the cemetery as either perpetual care or nonperpetual care, the status of the cemetery as either religious or nonreligious, and the cemetery's ownership in a form approved by the commissioner. A cemetery shall notify the commissioner of any changes in this information within sixty days of the change.

2005 Acts, ch 128, §35

523I.314 New construction.

1. A person shall not offer to sell interment rights in a mausoleum or columbarium that will be built or completed in the future unless the person has notified the commissioner of the offer to sell on a form prescribed by the commissioner.

2. The notice of an offer to sell interment rights in such a mausoleum or columbarium shall include the following information:

a. A description of the new facility or the proposed expansion, including a description of the interment rights to be offered to prospective purchasers.

b. A statement of the financial resources available for the project.

c. A copy of the proposed interment rights agreement to be used, which shall include the following:

(1) That purchase payments will be held in trust in accordance with the requirements of chapter 523A until construction of the mausoleum or columbarium is complete.

(2) That the purchaser may request a refund of the purchase amount, if construction does not begin within five years of the purchaser's first payment.

(3) That the new facility will operate as a perpetual care cemetery in compliance with this chapter, even if the facility is located at a nonperpetual care cemetery.

(4) That the purchaser will receive an ownership certificate upon payment in full or, if later, when construction is complete.

3. Unless financing has been secured that is adequate in amount and terms to complete the facility proposed, new construction of a mausoleum or columbarium shall not begin until the notice required by this section has been approved by the commissioner.

2005 Acts, ch 128, §36

523I.314A Standards for interment spaces.

1. A standard interment space for full body interment developed on or after July 1, 2007, shall measure at least forty inches in width and ninety-six inches in length.

2. Prior to the sale of interment rights in an undeveloped area of a cemetery, internal reference markers shall be installed and maintained no more than one hundred feet apart. The internal reference markers shall be established with reference to survey markers that are no more than two hundred feet apart, have been set by a surveyor and mapper, and have been documented in a land survey. Both the map and the land survey shall be maintained by the cemetery and made available upon request to the commissioner and to members of the public.

2007 Acts, ch 175, §46

523I.315 Unpaid care assessments and unoccupied interment spaces.

1. *Foreclosure — unpaid assessments.* Unpaid care assessments for an unoccupied interment space not under perpetual care shall create a lien by the cemetery against the applicable interment space. The cemetery may, following notice, foreclose on the interment space if the amount of the lien exceeds the amount paid for the interment space. If the lien is not paid within one year from the date that notice of foreclosure is served on the owner of record or the owner of record's heirs, the ownership in or right to the unoccupied interment space shall revert to the cemetery that owns the cemetery in which the unoccupied interment space is located.

2. *Abandonment — quiet title action.* A cemetery may file an action to quiet title to determine whether an interment space has been abandoned if the interment space is unoccupied and has not been occupied in the preceding seventy-five years. An action to quiet title shall commence when the cemetery serves notice on the owner of record or the owner of record's heirs declaring that the interment space is considered to be abandoned. If the owner of record or the owner of record's heirs do not respond within three years from the date that notice is served, the abandonment is considered to be complete. The ownership in or right to an abandoned interment space shall revert to the cemetery in which the abandoned interment space is located and the cemetery may sell and convey title to the interment space.

3. *Service of notice.* Notice under this section shall be served personally on the owner of record or the owner of record's heirs, or may be served by mailing notice by certified mail to the owner of record or to the owner of record's heirs at the last known address. If the address of the owner of record or the owner of record's heirs cannot be ascertained, notice of abandonment shall be given by one publication of the notice in the official newspaper of the county in which the cemetery is located.

2005 Acts, ch 128, §37

523I.316 Protection of cemeteries and burial sites.

1. *Existence of cemetery or burial site — notification.* If a governmental subdivision is notified of the existence of a cemetery, or a marked burial site that is not located in a dedicated cemetery, within its jurisdiction and the cemetery or burial site is not otherwise provided for under this chapter, the governmental subdivision shall, as soon as is practicable, notify the owner of the land upon which the cemetery or burial site is located of the cemetery's or burial site's existence and location. The notification shall include an explanation of the provisions of this section. If there is a basis to believe that interment may have occurred more than one hundred fifty years earlier, the governmental subdivision shall also notify the state archaeologist.

2. *Disturbance of interment spaces — penalty.* A person who knowingly and without

authorization damages, defaces, destroys, or otherwise disturbs an interment space commits criminal mischief in the third degree. Criminal mischief in the third degree is an aggravated misdemeanor.

3. *Duty to preserve and protect.*

a. A governmental subdivision having a cemetery, or a burial site that is not located within a dedicated cemetery, within its jurisdiction, for which preservation is not otherwise provided, shall preserve and protect the cemetery or burial site as necessary to restore or maintain its physical integrity as a cemetery or burial site. The governmental subdivision may enter into a written agreement to delegate the responsibility for the preservation and protection of the cemetery or burial site to the owner of the property on which the cemetery or burial site is located or to a public or private organization interested in historical preservation. The governmental subdivision shall not enter into an agreement with a public or private organization to preserve and protect the cemetery or burial site unless the property owner has been offered the opportunity to enter into such an agreement and has declined to do so.

b. A governmental subdivision is authorized to expend public funds, in any manner authorized by law, in connection with such a cemetery or burial site.

c. If a governmental subdivision proposes to enter into an agreement with a public or private organization pursuant to this subsection to preserve and protect a cemetery or burial site that is located on property owned by another person within the jurisdiction of the governmental subdivision, the proposed agreement shall be written, and the governmental subdivision shall provide written notice by ordinary mail of the proposed agreement to the property owner at least fourteen days prior to the date of the meeting at which such proposed agreement will be authorized. The notice shall include the location of the cemetery or burial site and a copy of the proposed agreement, and explain that the property owner is required to permit members of the public or private organization reasonable ingress and egress for the purposes of preserving and protecting the cemetery or burial site pursuant to the proposed agreement. The notice shall also include the date, time, and place of the meeting and a statement that the property owner has a right to attend the meeting and to comment regarding the proposed agreement.

d. Subject to chapter 670, a governmental subdivision that enters into an agreement with a public or private organization pursuant to this subsection is liable for any personal injury or property damage that occurs in connection with the preservation or protection of the cemetery or burial site or access to the cemetery or burial site by the governmental subdivision or the public or private organization.

For the purposes of this paragraph, “liable” means liability for every civil wrong which results in wrongful death or injury to a person or injury to property or injury to personal or property rights and includes but is not restricted to actions based upon negligence; error or omission; nuisance; breach of duty, whether statutory or other duty; or denial or impairment of any right under any constitutional provision, statute, or rule of law.

e. A property owner who is required to permit members of a public or private organization reasonable ingress and egress for the purpose of preserving or protecting a cemetery or burial site on that owner’s property and who acts in good faith and in a reasonable manner pursuant to this subsection is not liable for any personal injury or property damage that occurs in connection with the preservation or protection of the cemetery or burial site or access to the cemetery or burial site.

f. For the purposes of this subsection, reasonable ingress and egress to a cemetery or burial site shall include the following:

(1) A member of a public or private organization that has entered into a written agreement with the governmental subdivision who desires to visit such a cemetery or burial site shall give the property owner at least ten days’ written notice of the intended visit.

(2) If the property owner cannot provide reasonable access to the cemetery or burial site on the desired date, the property owner shall provide reasonable alternative dates when the property owner can provide access to the member.

(3) A property owner is not required to make any improvements to that person’s property to satisfy the requirement to provide reasonable access to a cemetery or burial site pursuant to this subsection.

4. *Confiscation and return of memorials.* A law enforcement officer having reason to believe that a memorial or memorialization is in the possession of a person without authorization or right to possess the memorial or memorialization may take possession of the memorial or memorialization from that person and turn it over to the officer's law enforcement agency. If a law enforcement agency determines that a memorial or memorialization the agency has taken possession of rightfully belongs on an interment space, the agency shall return the memorial or memorialization to the interment space, or make arrangements with the person having jurisdiction over the interment space for its return.

5. *Burial sites located on private property.* If a person notifies a governmental subdivision that a burial site of the person's relative is located on property owned by another person within the jurisdiction of the governmental subdivision, the governmental subdivision shall notify the property owner of the location of the burial site and that the property owner is required to permit the person reasonable ingress and egress for the purposes of visiting the burial site of the person's relative.

6. *Discovery of human remains.* Any person discovering human remains shall notify the county or state medical examiner or a city, county, or state law enforcement agency as soon as is reasonably possible unless the person knows or has good reason to believe that such notice has already been given or the discovery occurs in a cemetery. If there is reason to believe that interment may have occurred more than one hundred fifty years earlier, the governmental subdivision notified shall also notify the state archaeologist. A person who does not provide notice required pursuant to this subsection commits a serious misdemeanor.

7. *Adverse possession.* A cemetery or a pioneer cemetery is exempt from seizure, appropriation, or acquisition of title under any claim of adverse possession, unless it is shown that all remains in the cemetery or pioneer cemetery have been disinterred and removed to another location.

2005 Acts, ch 128, §38; 2006 Acts, ch 1117, §123; 2009 Acts, ch 179, §144

523I.317 Duty to provide public access.

A cemetery shall provide or permit public access to the cemetery, at reasonable times and subject to reasonable regulations, so that owners of interment rights and other members of the public have reasonable ingress and egress to the cemetery.

2006 Acts, ch 1117, §124

SUBCHAPTER IV

COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES

523I.401 Neglected cemeteries.

The commissioner shall create a form that interested persons may use to report neglected cemeteries to the commissioner. The commissioner shall catalog and review the neglected cemetery reports received on or before December 31, 2007, conduct site visits as warranted to determine the nature or extent of any neglect, and publish a report of findings on or before December 31, 2008.

2005 Acts, ch 128, §39

523I.402 Removal of remains.

1. Upon a showing of good cause, a county cemetery commission may file suit in the district court in that county to have remains interred in a cemetery owned and operated by the commission removed to another cemetery. All persons in interest, known or unknown, other than the plaintiffs, shall be made defendants to the suit. If any parties are unknown, notice may be given by publication. After hearing and a showing of good cause for the removal, the court may order the removal of the remains and the remains shall be properly interred in another cemetery, at the expense of the county. The removal and reinterment of the remains shall be done pursuant to a disinterment permit issued under section 144.34 with due care

and decency. In deciding whether to order the removal of interred remains, a court shall consider present or future access to the cemetery, the historical significance of the cemetery, and the wishes of the parties concerned if they are brought to the court's attention, including the desire of any beneficiaries to reserve their rights to waive a reservation of rights in favor of removal, and shall exercise the court's sound discretion in granting or refusing the removal of interred remains.

2. Any heir at law or descendent of a deceased person interred in a neglected cemetery may file suit in the district court in the county where the cemetery is located to have the deceased person's remains interred in the cemetery removed to another cemetery. The owner of the land, any beneficiaries of any reservation of rights, and any other persons in interest, known or unknown, other than the plaintiffs shall be made defendants. If any parties are unknown, notice may be given by publication. After hearing and upon a showing of good cause, the court may order removal and the proper interment of the remains in another cemetery, at the expense of the petitioner. The removal and reinterment shall be done with due care and decency.

2005 Acts, ch 128, §40

SUBCHAPTER V GOVERNMENTAL SUBDIVISIONS

523I.501 Cemetery authorized.

The governing body of a governmental subdivision may purchase, establish, operate, enclose, improve, or regulate a cemetery. A cemetery owned or operated by a governmental subdivision may sell interment rights subject to the provisions of this chapter.

2005 Acts, ch 128, §41

523I.502 Trust for cemetery.

1. A governmental subdivision that owns or operates a cemetery or has control of cemetery property may act as a permanent trustee for the perpetual maintenance of interment spaces in the cemetery.

2. To act as a trustee, a majority of the governmental subdivision's governing body must adopt an ordinance or resolution stating the governmental subdivision's willingness and intention to act as a trustee for the perpetual maintenance of cemetery property. When the ordinance or resolution is adopted and the trust is accepted, the trust is perpetual.

2005 Acts, ch 128, §42

523I.503 Authority to receive gifts and deposits for care — certificates.

1. A governmental subdivision that is a trustee for the perpetual maintenance of a cemetery may adopt reasonable rules governing the receipt of a gift or grant from any source.

2. A governmental subdivision that is a trustee for a person shall accept the amount the governmental subdivision requires for permanent maintenance of an interment space on behalf of that person or a decedent.

3. A governmental subdivision's acceptance of a deposit for permanent maintenance of an interment space constitutes a perpetual trust for the designated interment space.

4. Upon acceptance of a deposit, a governmental subdivision's secretary, clerk, or mayor shall issue a certificate in the name of the governmental subdivision to the trustee or depositor. The certificate shall state all of the following:

- a. The depositor's name.
- b. The amount and purpose of the deposit.
- c. The location, with as much specificity as possible, of the interment space to be maintained.
- d. Other information required by the governmental subdivision.

5. An individual, association, foundation, or corporation that is interested in the maintenance of a neglected cemetery in a governmental subdivision's possession and control

may donate funds to the cemetery's perpetual trust fund to beautify and maintain the entire cemetery or burial grounds generally.

2005 Acts, ch 128, §43

523I.504 Appointment of successor trustee.

A district judge of a county in which a cemetery is located shall appoint a suitable successor or trustee to faithfully execute a trust in accordance with this subchapter if a governmental subdivision renounces a trust assumed under this subchapter, fails to act as its trustee, a vacancy occurs, or the appointment of a successor or trustee is otherwise necessary.

2005 Acts, ch 128, §44

523I.505 County auditor as trustee.

1. In the absence of a trustee for care funds, unless otherwise provided by law, the care funds shall be placed in the hands of the county auditor, who shall provide a receipt for, loan, and make annual reports of the care funds.

2. The county auditor shall not be required to post a bond.

3. The county auditor shall serve without compensation, but may, out of the income received, pay all proper items of expense incurred in the performance of the auditor's duties as trustee, if any.

4. The county auditor shall make a full report of the trustee's actions and trust funds annually in January. The net proceeds for care funds received by the county auditor as trustee shall be apportioned and credited to each of any separate care funds assigned to the auditor.

5. The county auditor shall turn over the accrued income from each care fund annually to the person having control of the cemetery.

2005 Acts, ch 128, §45

523I.506 Commingling of care funds by governmental subdivisions.

A governmental subdivision subject to this section may commingle care funds for more than one cemetery for the purposes of investment and administration and may file a single report, if each cemetery is appropriately identified and separate records are maintained for each cemetery.

2005 Acts, ch 128, §46

523I.507 Investment of care funds by governmental subdivisions.

Notwithstanding section 12B.10, a perpetual care cemetery owned by a governmental subdivision may invest and reinvest deposits pursuant to the requirements of this chapter. The trustee shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The trustee of the trust funds has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to the trust fund.

2005 Acts, ch 128, §47

523I.508 Management by governmental subdivisions.

1. *Political subdivisions as trustees.* Counties, cities, irrespective of their form of government, boards of trustees of cities to whom the management of municipal cemeteries has been transferred by ordinance, and civil townships wholly outside of any city, are trustees in perpetuity, and are required to accept, receive, and expend all moneys and property donated or left to them by bequest for perpetual care, and that portion of interment space sales or permanent charges made against interment spaces which has been set aside in a perpetual care fund for which there is no other acting trustee, shall be used in caring for the property of the donor or lot owner who by purchase or otherwise has provided for the perpetual care of an interment space in any cemetery, or in accordance with the terms of the donation, bequest, or agreement for sale and purchase of an interment space, and the money or property thus received shall be used for no other purpose.

2. *Authority to invest funds — current care charge payments.* The board of supervisors, mayor and council, or other elected governmental body, as the case may be, may receive and invest all moneys and property, donated or bequeathed, and that portion of cemetery lot sales and permanent charges made against cemetery lots which have been set aside in a perpetual care fund, and in so investing, shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The trustee of the trust funds has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to the trust fund. The income from the investment shall be used in caring for the property of the donor in any cemetery, or as provided in the terms of the gift or donations or agreement for sale and purchase of a cemetery lot.

All current care charge payments received shall be allocated to the perpetual care fund or to the fund paying the costs of cemetery operations. Care charge payments received one year or more after the date they were incurred shall be used to fund the cost of operating the cemetery. Care charge payments received one year or more in advance of their due date shall be deposited in the perpetual care fund. Interest from the perpetual care fund shall be used for the maintenance of both occupied and unoccupied lots or spaces. Any remaining interest may be used for costs of access roads and paths, fencing, and general maintenance of the cemetery. Lots under perpetual care shall be maintained in accordance with the cemetery covenants of sale.

3. *Resolution of acceptance — interest.* Before any part of the principal may be invested or used, the county, city, board of trustees of a city to whom the management of a municipal cemetery has been transferred by ordinance, or civil township shall, by resolution, accept the moneys described in subsection 1 and, by resolution, shall provide for the payment of interest annually to the appropriate fund, or to the cemetery, or the person in charge of the cemetery, to be used in caring for or maintaining the individual property of the donor in the cemetery, or interment spaces which have been sold if provision was made for perpetual care, all in accordance with the terms of the donation or bequest, or the terms of the sale or purchase of an interment space.

If there is no person in charge of the cemetery, the income from the fund shall be expended under the direction of the board of supervisors, city council, board of trustees, or civil township trustees, as the case may be, in accordance with the terms of the donation or bequest, or the terms of the sale or purchase of an interment space.

4. *Delegates to conventions.* A township having one or more cemeteries under its control may designate up to two officials from each cemetery as delegates to attend meetings of cemetery officials, and certain expenses of the delegates not exceeding twenty-five dollars for each delegate, including association dues, may be paid out of the cemetery fund of the township.

5. *Subscribing to publications.* The cemetery officials of every township having a cemetery under its control may subscribe to one or more publications devoted exclusively to cemetery management, and the subscriptions may be paid out of the cemetery fund of the township.

2005 Acts, ch 128, §48; 2006 Acts, ch 1117, §125

SUBCHAPTER VI

GENERAL PROVISIONS

523I.601 Settlement of estates — maintenance fund.

The court in which the estate of a deceased person is administered, before final distribution, may allow and set apart from the estate a sum sufficient to provide an income adequate to pay for the perpetual care and upkeep of the interment space in which the body of the deceased

is buried, except where perpetual care has otherwise been provided for. The sum so allowed and set apart shall be paid to a trustee as provided by this chapter.

2005 Acts, ch 128, §49; 2006 Acts, ch 1010, §148

523I.602 Management by trustee.

1. *Trustee appointed — trust funds.* The owners of, or any party interested in, a cemetery may, by petition presented to the district court of the county where the cemetery is situated, have a trustee appointed with authority to receive any and all moneys or property that may be donated for and on account of the cemetery and to invest, manage, and control the moneys or property under the direction of the court. However, the trustee shall not be authorized to receive any gift, except with the understanding that the principal sum is to be a permanent fund, and only the net proceeds therefrom shall be used in carrying out the purpose of the trust created, and all such funds shall be exempt from taxation.

2. *Requisites of petition.* The petition shall state the amount proposed to be placed in such trust fund, the manner of investment thereof, and the provisions made for the disposition of any surplus income not required for the care and upkeep of the property described in such petition.

3. *Approval of court — surplus fund.* Such provisions shall be subject to the approval of the court and when so approved the trust fund and the trustee thereof shall, at all times, be subject to the orders and control of the court and such surplus arising from the trust fund shall not be used except for charitable, eleemosynary, or public purposes under the direction of the court.

4. *Receipt — record.* Every such trustee shall execute and deliver to the donor a receipt showing the amount of money or other property received, and the use to be made of the net proceeds from the same, duly attested by the clerk of the court granting letters of trusteeship, and the trustee shall keep a signed and attested copy of the receipt.

5. *Investments.* Any such trustee may receive and invest all moneys and property, so donated or bequeathed, and that portion of cemetery lot sales and permanent charges made against interment spaces which has been set aside in a perpetual care fund, in such authorized investments and in the manner prescribed in section 636.23.

6. *Bond — approval — oath.* Every such trustee before entering upon the discharge of the trustee's duties or at any time thereafter when required by the court shall give a bond in an amount as may be required by the court, approved by the clerk, and conditioned for the faithful discharge of the trustee's duties, and take and subscribe an oath the same in substance as the condition of the bond, which bond and oath must be filed with the clerk.

7. *Clerk — duty of.* At the time of filing each bond and oath the clerk shall at once advise the court as to the amount of the principal fund in the hands of such trustee, the amount of the bond filed, and whether it is good and sufficient for the amount given.

8. *Compensation — costs.* Such trustee shall serve without compensation, but may, out of the income received, pay all proper items of expense incurred in the performance of the trustee's duties, including cost of the bond, if any.

9. *Annual report.* Such trustee shall make a full report of the trustee's doings in the month of January following appointment and in January of each successive year. In each report the trustee shall apportion the net proceeds received from the sum total of the permanent funds assigned to the trustee in trust.

10. *Removal — vacancy filled.* Any such trustee may be removed by the court at any time for cause, and in the event of removal or death, the court shall appoint a new trustee and require the new trustee's predecessor or the predecessor's personal representative to make a full accounting.

2005 Acts, ch 128, §50; 2009 Acts, ch 21, §8

523I.603 Owners of interment rights.

1. An interment space in which exclusive rights of interment are conveyed is presumed to be the separate property of the person named as grantee in the certificate of interment rights or other instrument of conveyance.

2. Two or more owners of interment rights may designate a person to represent the

interment space and file notice of the designation of a representative with the cemetery. If notice is not filed, the cemetery may inter or permit an interment in the interment space at the request or direction of a registered co-owner of the interment space.

2005 Acts, ch 128, §51

523I.604 Lien against cemetery property.

1. A cemetery, by contract, may incur indebtedness as necessary to conduct its business and may secure the indebtedness by mortgage, deed of trust, or other lien against its property.

2. A mortgage, deed of trust, or other lien placed on dedicated cemetery property, or on cemetery property that is later dedicated with the consent of the holder of the lien, does not affect the dedication and is subject to the dedication. A sale on foreclosure of the lien is subject to the dedication of the property for cemetery purposes.

2005 Acts, ch 128, §52

523I.605 Private care of graves.

This subchapter does not affect the right of a person who has an interest in an interment space, or who is a relative of a decedent interred in a cemetery, to beautify or maintain an interment space individually or at the person's own expense in accordance with reasonable rules established by the cemetery.

2005 Acts, ch 128, §53

SUBCHAPTER VII

LAWN CRYPTS

523I.701 Requirements for lawn crypts.

A lawn crypt shall not be installed unless all of the following apply:

1. The lawn crypt is constructed of concrete and reinforced steel or other comparable durable material.

2. The lawn crypt is installed on not less than six inches of rock, gravel, or other drainage material.

3. The lawn crypt provides a method to drain water out of the lawn crypt.

4. The lawn crypt is capable of withstanding the weight of the soil and sod above the top surface and the weight of machinery and equipment normally used in the maintenance of the cemetery.

5. Except as provided by section 523I.702, the lawn crypt is installed in multiple units of ten or more.

6. The lawn crypt shall be installed in compliance with any applicable law or rule adopted by the Iowa department of public health.

2005 Acts, ch 128, §54

523I.702 Request to install lawn crypts in fewer than ten units.

1. A lawn crypt may be installed in fewer than ten units if it is installed in an interment space pursuant to a written request to the commissioner signed by the owner or owners of the interment space.

2. The written request shall be filed on a form prescribed by the commissioner and shall contain substantially all of the following information:

a. The owner's name and address.

b. The name of the cemetery and the owner of the cemetery.

c. The number of lawn crypt units to be installed.

d. A description of the interment spaces.

e. A statement that the lawn crypt meets the requirements of section 523I.701, including all of the following:

(1) A statement that the lawn crypt will be constructed of concrete and reinforced steel or other comparable durable materials.

(2) A statement that the lawn crypt will be installed on not less than six inches of rock, gravel, or other drainage material.

(3) A statement that the lawn crypt will provide a method to drain water out of the lawn crypt.

(4) A statement that the outside top surface of the lawn crypt at the time of installation will be capable of withstanding the weight of the soil and sod above the top surface and the weight of machinery and equipment normally used in the maintenance of the cemetery.

f. A statement that the space in which the lawn crypt is to be installed is located in a garden.

g. The date on which a representative of the cemetery signed the form.

2005 Acts, ch 128, §55

SUBCHAPTER VIII

PERPETUAL CARE CEMETERIES

— REQUIREMENTS

523I.801 Applicability and conversion by nonperpetual care cemeteries.

1. All cemeteries are designated as either “perpetual care cemeteries” or “nonperpetual care cemeteries” for the purposes of this chapter. A cemetery that represents that it is offering perpetual care on or after July 1, 2005, is subject to this subchapter.

2. A cemetery that operates a nonperpetual care cemetery may elect to become a perpetual care cemetery if at all times subsequent to the date of the election, the cemetery complies with the other requirements of this subchapter except section 523I.805.

2005 Acts, ch 128, §56

523I.802 Advertising.

1. A cemetery shall not advertise, represent, guarantee, promise, or contract to provide or offer perpetual care or use terms or phrases like permanent care, permanent maintenance, care forever, continuous care, eternal care, or everlasting care to imply that a certain level of care and financial security will be furnished or is guaranteed except in compliance with the provisions of this subchapter.

2. A cemetery or person advertising or selling interment rights shall not represent that the purchase of the interment rights is or will be a desirable speculative investment for resale purposes.

2005 Acts, ch 128, §57

[P] Similar provision, see §523I.308

523I.803 Perpetual care registry.

1. A cemetery that operates a perpetual care cemetery shall maintain a registry of individuals who have purchased interment rights in the cemetery subject to the care fund requirements of this subchapter.

2. The registry shall include the amount deposited in trust for each interment rights agreement entered into on or after July 1, 1995.

2005 Acts, ch 128, §58

523I.804 Use of gift for special care.

A trustee may accept and hold money or property transferred to the trustee in trust for the purpose of applying the principal or income of the money or property transferred for a purpose consistent with the purpose of a perpetual care cemetery, including the following:

1. Improvement or embellishment of any part of the cemetery.

2. Erection, renewal, repair, or preservation of a monument, fence, building, or other structure in the cemetery.

3. Planting or cultivation of plants in or around the cemetery.

4. Special care of or embellishment of an interment space, section, or building in the cemetery.

2005 Acts, ch 128, §59

523I.805 Initial deposit.

1. A cemetery owned or operated by a political subdivision of this state is not required to make a minimum initial deposit in a care fund. Any other cemetery commencing business in this state on or after July 1, 2005, shall not sell interment spaces unless the cemetery has a care fund of at least twenty-five thousand dollars in cash.

2. If an initial deposit is made by a cemetery to satisfy subsection 1, the initial twenty-five thousand dollar deposit may be withdrawn by the cemetery when the care fund balance reaches one hundred thousand dollars. An affidavit shall be filed with the commissioner providing prior notice of the intended withdrawal of the initial deposit and attesting that the money has not previously been withdrawn. Upon a showing by the cemetery that the initial deposit has not previously been withdrawn, the commissioner shall approve withdrawal of the money and the withdrawal shall take place within one year after the care fund balance reaches one hundred thousand dollars.

2005 Acts, ch 128, §60

523I.806 Irrevocable trust.

1. A perpetual care cemetery shall establish a care fund as an irrevocable trust to provide for the care of the cemetery, which shall provide for the appointment of a trustee, with perpetual succession.

2. The care fund shall be administered under the jurisdiction of the district court of the county where the cemetery is located. Notwithstanding chapter 633A, annual reports shall not be required unless specifically required by the district court. Reports shall be filed with the court when necessary to receive approval of appointments of trustees, trust agreements and amendments, changes in fees or expenses, and other matters within the court's jurisdiction. A court having jurisdiction over a care fund shall have full jurisdiction to approve the appointment of trustees, the amount of surety bond required, if any, and investment of funds.

2005 Acts, ch 128, §61; 2006 Acts, ch 1030, §65

523I.807 Care fund deposits.

1. To continue to operate as a perpetual care cemetery, a cemetery shall set aside and deposit in the care fund an amount equal to or greater than fifty dollars or twenty percent of the gross selling price received by the cemetery for each sale of interment rights, whichever is more.

2. A cemetery may require a contribution to the care fund for perpetual care of a memorial or memorialization placed in the cemetery. A cemetery may establish a separate care fund for this purpose. The contributions shall be nonrefundable and shall not be withdrawn from the trust fund once deposited. The amount charged shall be uniformly charged on every installation of a memorial, based on the height and width of the memorial or the size of the ground surface area used for the memorial. A fee for special care of a memorial may be collected if the terms of the special care items and arrangements are clearly specified in the interment rights agreement. Except as otherwise provided in an interment rights agreement, a cemetery is not liable for repair or maintenance of memorials or vandalism. A cemetery may use income from a care fund to repair or replace memorials or interment spaces damaged by vandalism or acts of God.

3. Moneys shall be deposited in the care fund no later than the fifteenth day after the close of the month when the cemetery receives the final payment from a purchaser of interment rights.

2005 Acts, ch 128, §62

523I.808 Examination fee.

An examination fee shall be submitted with the cemetery's annual report in an amount equal to five dollars for each certificate of interment rights issued during the fiscal year covered by the report. The cemetery may charge the examination fee directly to the purchaser of the interment rights.

2005 Acts, ch 128, §63; 2007 Acts, ch 175, §47

523I.809 Trust agreement provisions.

1. A trust agreement shall provide for the appointment of at least one trustee, with perpetual succession, in case the cemetery is dissolved or ceases to be responsible for the cemetery's care.

2. A cemetery and the trustee or trustees of the care fund may, by agreement, amend the instrument that established the fund to include any provision that is necessary to comply with the requirements of this chapter.

3. A cemetery is responsible for the deposit of all moneys required to be placed in a care fund.

4. The commissioner may require the amending of a trust agreement that is not in accord with the provisions of this chapter.

2005 Acts, ch 128, §64

523I.810 Care funds.

1. A trustee of a care fund shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The trustee of a care fund has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to the care fund.

a. A financial institution may serve as a trustee if granted those powers under the laws of this state or of the United States. A financial institution acting as a trustee of a care fund under this chapter shall invest the funds in accordance with applicable law.

b. A financial institution acting as a trustee of a care fund under this chapter has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to the financial institution. The commissioner may take enforcement action against a financial institution in its capacity as trustee for a breach of fiduciary duty under this chapter.

c. Care fund moneys may be deposited pursuant to a master trust agreement, if each care fund is treated as a separate beneficiary of the trust and each care fund is separable. The master trust shall maintain a separate accounting of principal and income for each care fund. Moneys deposited under a master trust agreement may be commingled by the financial institution for investment purposes.

d. Subject to a master trust agreement, the cemetery may appoint an independent investment advisor to advise the financial institution about investment of the care fund.

e. Subject to an agreement between the cemetery and the financial institution, the financial institution may receive a reasonable fee from the care fund for services rendered as trustee.

f. If the amount of a care fund exceeds two hundred thousand dollars, the cemetery or any officer, director, agent, employee, or affiliate of the cemetery shall not serve as trustee unless the cemetery is a cemetery owned or operated by a governmental subdivision of this state. A financial institution holding care funds shall not do any of the following:

- (1) Be owned, under the control of, or affiliated with the cemetery.
- (2) Use any funds required to be held in trust under this chapter to purchase an interest in a contract or agreement to which the cemetery is a party.
- (3) Otherwise invest care funds, directly or indirectly, in the cemetery's business operations.

2. All moneys required to be deposited in the care fund shall be deposited in the name of the trustee, as trustee, under the terms of a trust agreement and the trustee may invest,

reinvest, exchange, retain, sell, and otherwise manage the care fund trust for the benefit and protection of the cemetery.

3. This section does not prohibit a cemetery from moving care funds from one financial institution to another.

4. A care fund may receive and hold as part of the care fund or as an incident to the care fund any property contributed to the care fund.

5. A contribution to a care fund is considered to be for charitable purposes if the care financed by the care fund is for the following purposes:

a. The discharge of a duty due from the cemetery to persons interred and to be interred in the cemetery.

b. The benefit and protection of the public by preserving and keeping the cemetery in a dignified condition so that the cemetery does not become a nuisance or a place of disorder, reproach, and desolation in the community in which the cemetery is located.

6. A contribution to a care fund is not invalid because of the following:

a. Indefiniteness or uncertainty as to the person designated as a beneficiary in the instrument establishing the care fund.

b. A violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

7. A care fund shall pay the fund's operation costs and any annual audit fees. The principal of a care fund is intended to remain available perpetually as a funding source for care of the cemetery. The principal of a care fund shall not be reduced voluntarily and shall remain inviolable, except as provided in this section. The trustee or trustees of a care fund shall maintain the principal of the care fund separate from all operating funds of the cemetery.

8. In establishing a care fund, the cemetery may adopt plans for the care of the cemetery and installed memorials and memorialization.

9. A cemetery may, by resolution adopted by a vote of at least two-thirds of the members of its board at any authorized meeting of the board, authorize the withdrawal and use of not more than twenty percent of the principal of the care fund to acquire additional land for cemetery purposes, to repair a mausoleum or other building or structure intended for cemetery purposes, to build, improve, or repair roads and walkways in the cemetery, or to purchase recordkeeping software used to maintain ownership records or interment records. The resolution shall establish a reasonable repayment schedule, not to exceed five years, and provide for interest in an amount comparable to the care fund's current rate of return on its investments. However, the care fund shall not be diminished below an amount equal to the greater of twenty-five thousand dollars or five thousand dollars per acre of land in the cemetery. The resolution, and either a bond or proof of insurance to guarantee replenishment of the care fund, shall be filed with the commissioner thirty days prior to the withdrawal of funds.

2005 Acts, ch 128, §65; 2007 Acts, ch 175, §48

523I.811 Use of distributions from care fund.

1. Care fund distributions may be used in any manner determined to be in the best interests of the cemetery if authorized by a resolution, bylaw, or other action or instrument establishing the care fund, including but not limited to the general care of memorials, memorialization, and any of the following:

a. Cutting and trimming lawns, shrubs, and trees at reasonable intervals.

b. Maintaining drains, water lines, roads, buildings, fences, and other structures.

c. Maintaining machinery, tools, and equipment.

d. Compensating maintenance employees, paying insurance premiums, and making payments to employees' pension and benefit plans.

e. Paying overhead expenses incidental to such purposes.

f. Paying expenses necessary to maintain ownership, transfer, and interment records of the cemetery.

2. The commissioner may, by rule, establish terms and conditions under which a cemetery may withdraw capital gains from the care fund.

2005 Acts, ch 128, §66

523I.812 Suit by commissioner.

1. If the person or persons in control of a cemetery do not care for and maintain the cemetery, the district court of the county in which the cemetery is located may do the following:

a. By injunction compel the cemetery to expend the net income of the care fund as required by this chapter.

b. Appoint a receiver to take charge of the care fund and expend the net income of the care fund as required by this chapter.

c. Grant relief on a petition for relief filed pursuant to this section by the commissioner.

2. Inadequate care and maintenance of a cemetery includes but is not limited to the following:

a. Failure to adequately mow grass.

b. Failure to adequately edge and trim bushes, trees, and memorials.

c. Failure to keep walkways and sidewalks free of obstructions.

d. Failure to adequately maintain the cemetery's equipment and fixtures.

This subsection is not intended to prevent the establishment of a cemetery as a nature park or preserve.

2005 Acts, ch 128, §67

523I.813 Annual report by perpetual care cemeteries.

1. A perpetual care cemetery shall file an annual report at the end of each fiscal year of the cemetery.

2. The report shall be filed with the commissioner within four months following the end of the cemetery's fiscal year in the form required by the commissioner.

3. The commissioner shall levy an administrative penalty in the amount of up to five hundred dollars against a cemetery that fails to file the annual report when due, payable to the state for deposit as provided in section 505.7. However, the commissioner may waive the administrative penalty upon a showing of good cause or financial hardship.

2005 Acts, ch 128, §68; 2007 Acts, ch 175, §49, 50; 2009 Acts, ch 181, §102; 2010 Acts, ch 1121, §31

[T] 2011 repeal of 2009 Acts, ch 181, §102, amendment to subsection 3 stricken pursuant to 2011 Acts, ch 127, §57, 89

[T] Section not amended; footnote revised

523I.814 Unified annual reports.

The commissioner shall permit the filing of a unified report in the event of commonly owned or affiliated cemeteries if each cemetery is separately identified and separate records are maintained for each cemetery.

2005 Acts, ch 128, §69