

House File 836 - Enrolled

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HOUSE FILE 836

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1 3 AN ACT
1 4 RELATING TO CEMETERIES AND CEMETERY REGULATION, PROVIDING
1 5 ADMINISTRATION AND ENFORCEMENT PROCEDURES, ESTABLISHING
1 6 REQUIREMENTS FOR INTERMENT RIGHTS AGREEMENTS AND REPORTING,
1 7 ESTABLISHING AND APPROPRIATING FEES, AND PROVIDING
1 8 PENALTIES.
1 9

1 10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 11
1 12 Section 1. Section 331.325, subsections 2 and 3, Code
1 13 2005, are amended to read as follows:

1 14 2. Each county board of supervisors may adopt an ordinance
1 15 assuming jurisdiction and control of pioneer cemeteries in the
1 16 county. The board shall exercise the powers and duties of
1 17 township trustees relating to the maintenance and repair of
1 18 cemeteries in the county as provided in sections 359.28
1 19 through ~~359.41~~ 359.40 except that the board shall not certify
1 20 a tax levy pursuant to section 359.30 or 359.33 and except
1 21 that the maintenance and repair of all cemeteries under the
1 22 jurisdiction of the county including pioneer cemeteries shall
1 23 be paid from the county general fund. The maintenance and
1 24 improvement program for a pioneer cemetery may include
1 25 restoration and management of native prairie grasses and
1 26 wildflowers.

1 27 3. In lieu of management of the cemeteries, the board of
1 28 supervisors may create, by ordinance, a cemetery commission to
1 29 assume jurisdiction and management of the pioneer cemeteries
1 30 in the county. The ordinance shall delineate the number of
1 31 commissioners, the appointing authority, the term of office,
1 32 officers, employees, organizational matters, rules of
1 33 procedure, compensation and expenses, and other matters deemed
1 34 pertinent by the board. The board may delegate any power and
1 35 duties relating to cemeteries which may otherwise be exercised
2 1 by township trustees pursuant to sections 359.28 through
2 2 ~~359.41~~ 359.40 to the cemetery commission except the commission
2 3 shall not certify a tax levy pursuant to section 359.30 or
2 4 359.33 and except that the expenses of the cemetery commission
2 5 shall be paid from the county general fund.

2 6 Sec. 2. Section 331.502, subsection 34, Code 2005, is
2 7 amended to read as follows:

2 8 34. Serve as a trustee for funds of a cemetery association
2 9 as provided in ~~sections 566.12 and 566.13~~ section 523I.505.

2 10 Sec. 3. Section 523A.203, subsection 6, paragraph b, Code
2 11 2005, is amended to read as follows:

2 12 b. Use any funds required to be held in trust under this
2 13 chapter ~~or chapter 566A~~ to purchase an interest in any
2 14 contract or agreement to which a seller is a party.

2 15 Sec. 4. Section 523A.812, Code 2005, is amended to read as
2 16 follows:

2 17 523A.812 INSURANCE DIVISION REGULATORY FUND.

2 18 The insurance division may authorize the creation of a
2 19 special revenue fund in the state treasury, to be known as the
2 20 insurance division regulatory fund. The commissioner shall
2 21 allocate annually from the fees paid pursuant to section
2 22 523A.204, two dollars for each purchase agreement reported on
2 23 an establishment permit holder's annual report for deposit to
2 24 the regulatory fund. The remainder of the fees collected
2 25 pursuant to section 523A.204 shall be deposited into the
2 26 general fund of the state. The commissioner shall also
2 27 allocate annually the audit fees paid pursuant to section

2 28 523A.814 for deposit to the regulatory fund. The moneys in
2 29 the regulatory fund shall be retained in the fund. The moneys
2 30 are appropriated and, subject to authorization by the
2 31 commissioner, may be used to pay auditors, audit expenses,
2 32 investigative expenses, the expenses of mediation ordered by
2 33 the commissioner, consumer education expenses, the expenses of
2 34 a toll-free telephone line to receive consumer complaints, and
2 35 the expenses of receiverships established under section
3 1 523A.811. An annual allocation to the regulatory fund shall
3 2 not be imposed if the current balance of the fund exceeds two
3 3 hundred thousand dollars.

3 4 Sec. 5. NEW SECTION. 523A.814 AUDIT FEE.

3 5 In addition to the filing fee paid pursuant to section

3 6 523A.204, subsection 5, an establishment filing an annual
3 7 report shall pay an audit fee in the amount of five dollars
3 8 for each purchase agreement subject to a filing fee that is
3 9 sold between July 1, 2005, and December 31, 2007.

3 10 SUBCHAPTER 1

3 11 SHORT TITLE, DEFINITIONS, AND APPLICABILITY

3 12 Sec. 6. NEW SECTION. 523I.101 SHORT TITLE.

3 13 This chapter may be cited as the "Iowa Cemetery Act".

3 14 Sec. 7. NEW SECTION. 523I.102 DEFINITIONS.

3 15 For purposes of this chapter, unless the context otherwise
3 16 requires:

3 17 1. "Authorized to do business within this state" means a
3 18 person licensed, registered, or subject to regulation by an
3 19 agency of the state of Iowa or who has filed a consent to
3 20 service of process with the commissioner for purposes of this
3 21 chapter.

3 22 2. "Burial site" means any area, except a cemetery, that
3 23 is used to inter or scatter remains.

3 24 3. "Capital gains" means appreciation in the value of
3 25 trust assets for which a market value may be determined with
3 26 reasonable certainty after deduction of investment losses,
3 27 taxes, expenses incurred in the sale of trust assets, any
3 28 costs of the operation of the trust, and any annual audit
3 29 fees.

3 30 4. "Care fund" means funds set aside for the care of a
3 31 perpetual care cemetery, including all of the following:

3 32 a. Money or real or personal property impressed with a
3 33 trust by the terms of this chapter.

3 34 b. Contributions in the form of a gift, grant, or bequest.

3 35 c. Any accumulated income that the trustee of the fund or
4 1 the cemetery allocates to principal.

4 2 5. "Casket" means a rigid container which is designed for
4 3 the encasement of human remains and which is usually
4 4 constructed of wood, metal, fiberglass, plastic, or like
4 5 material and ornamented and lined with fabric.

4 6 6. "Cemetery" means any area that is or was open to use by
4 7 the public in general or any segment thereof and is used or is
4 8 intended to be used to inter or scatter remains. "Cemetery"
4 9 does not include the following:

4 10 a. A private burial site where use is restricted to
4 11 members of a family, if the interment rights are conveyed
4 12 without a monetary payment, fee, charge, or other valuable
4 13 form of compensation or consideration.

4 14 b. A private burial site where use is restricted to a
4 15 narrow segment of the public, if the interment rights are
4 16 conveyed without a monetary payment, fee, charge, or other
4 17 valuable form of compensation or consideration.

4 18 c. A pioneer cemetery.

4 19 7. "Columbarium" means a structure, room, or space in a
4 20 mausoleum or other building containing niches or recesses for
4 21 disposition of cremated remains.

4 22 8. "Commissioner" means the commissioner of insurance or
4 23 the deputy administrator authorized in section 523A.801 to the
4 24 extent the commissioner delegates functions to the deputy
4 25 administrator.

4 26 9. "Common business enterprise" means a group of two or
4 27 more business entities that share common ownership in excess
4 28 of fifty percent.

4 29 10. "Disinterment" means to remove human remains from
4 30 their place of final disposition.

4 31 11. "Doing business in this state" means issuing or
4 32 performing wholly or in part any term of an interment rights
4 33 agreement executed within the state of Iowa.

4 34 12. "Financial institution" means a state or federally
4 35 insured bank, savings and loan association, credit union,
5 1 trust department thereof, or a trust company that is
5 2 authorized to do business within this state, that has been
5 3 granted trust powers under the laws of this state or the
5 4 United States, and that holds funds under a trust agreement.
5 5 "Financial institution" does not include a cemetery or any

5 6 person employed by or directly involved with a cemetery.
5 7 13. "Garden" means an area within a cemetery established
5 8 by the cemetery as a subdivision for organizational purposes,
5 9 not for sale purposes.

5 10 14. "Grave space" means a space of ground in a cemetery
5 11 that is used or intended to be used for an in-ground burial.

5 12 15. "Gross selling price" means the aggregate amount a
5 13 purchaser is obligated to pay for interment rights, exclusive
5 14 of finance charges.

5 15 16. "Inactive cemetery" means a cemetery that is not
5 16 operating on a regular basis, is not offering to sell or

5 17 provide interments or other services reasonably necessary for
5 18 interment, and does not provide or permit reasonable ingress
5 19 or egress for the purposes of visiting interment spaces.
5 20 17. "Income" means the return in money or property derived
5 21 from the use of trust principal after deduction of investment
5 22 losses, taxes, and expenses incurred in the sale of trust
5 23 assets, any cost of the operation of the trust, and any annual
5 24 audit fees. "Income" includes but is not limited to:
5 25 a. Rent of real or personal property, including sums
5 26 received for cancellation or renewal of a lease and any
5 27 royalties.
5 28 b. Interest on money lent, including sums received as
5 29 consideration for prepayment of principal.
5 30 c. Cash dividends paid on corporate stock.
5 31 d. Interest paid on deposit funds or debt obligations.
5 32 e. Gain realized from the sale of trust assets.
5 33 18. "Insolvent" means the inability to pay debts as they
5 34 become due in the usual course of business.
5 35 19. "Interment rights" means the rights to place remains
6 1 in a specific location for use as a final resting place or
6 2 memorial.
6 3 20. "Interment rights agreement" means an agreement to
6 4 furnish memorials, memorialization, opening and closing
6 5 services, or interment rights.
6 6 21. "Interment space" means a space used or intended to be
6 7 used for the interment of remains including, but not limited
6 8 to, a grave space, lawn crypt, mausoleum crypt, and niche.
6 9 22. "Lawn crypt" means a preplaced enclosed chamber, which
6 10 is usually constructed of reinforced concrete and poured in
6 11 place, or a precast unit installed in quantity, either side=
6 12 by=side or at multiple depths, and covered by earth or sod.
6 13 23. "Lot" means an area in a cemetery containing more than
6 14 one interment space which is uniquely identified by an
6 15 alphabetical, numeric, or alphanumeric identification
6 16 system.
6 17 24. "Maintenance fund" means funds set aside for the
6 18 maintenance of a nonperpetual care cemetery, including all of
6 19 the following:
6 20 a. Money or real or personal property impressed with a
6 21 trust by the terms of this chapter.
6 22 b. Contributions in the form of a gift, grant or bequest.
6 23 c. Any accumulated income that the trustee of the fund or
6 24 the cemetery allocates to principal.
6 25 25. "Mausoleum" means an aboveground structure designed
6 26 for the entombment of human remains.
6 27 26. "Mausoleum crypt" means a chamber in a mausoleum of
6 28 sufficient size to contain casketed human remains.
6 29 27. "Memorial" means any product, including any foundation
6 30 other than a mausoleum or columbarium, used for identifying an
6 31 interment space or for commemoration of the life, deeds, or
6 32 career of a decedent including, but not limited to, a
6 33 monument, marker, niche plate, urn garden plaque, crypt plate,
6 34 cenotaph, marker bench, and vase.
6 35 28. "Memorial care" means any care provided or to be
7 1 provided for the general maintenance of memorials including
7 2 foundation repair or replacement, resetting or straightening
7 3 tipped memorials, repairing or replacing inadvertently damaged
7 4 memorials and any other care clearly specified in the purchase
7 5 agreement.
7 6 29. "Memorial dealer" means any person offering or selling
7 7 memorials retail to the public.
7 8 30. "Memorialization" means any permanent system designed
7 9 to mark or record the name and other data pertaining to a
7 10 decedent.
7 11 31. "Merchandise" means any personal property offered or
7 12 sold for use in connection with the funeral, final
7 13 disposition, memorialization, or interment of human remains,
7 14 but which is exclusive of interment rights.
7 15 32. "Neglected cemetery" means a cemetery where there has
7 16 been a failure to cut grass or weeds or care for graves,
7 17 memorials or memorialization, walls, fences, driveways, and
7 18 buildings, or for which proper records of interments have not
7 19 been maintained.
7 20 33. "Niche" means a recess or space in a columbarium or
7 21 mausoleum used for placement of cremated human remains.
7 22 34. "Opening and closing services" means one or more
7 23 services necessarily or customarily provided in connection
7 24 with the interment or entombment of human remains or a
7 25 combination thereof.
7 26 35. "Operating a cemetery" means offering to sell or
7 27 selling interment rights, or any service or merchandise

7 28 necessarily or customarily provided for a funeral, or for the
7 29 entombment or cremation of a dead human, or any combination
7 30 thereof, including but not limited to opening and closing
7 31 services, caskets, memorials, vaults, urns, and interment
7 32 receptacles.

7 33 36. "Outer burial container" means any container which is
7 34 designed for placement in the ground around a casket or an urn
7 35 including, but not limited to, containers commonly known as
8 1 burial vaults, urn vaults, grave boxes, grave liners, and lawn
8 2 crypts.

8 3 37. "Perpetual care cemetery" includes all of the
8 4 following:
8 5 a. Any cemetery that was organized or commenced business
8 6 in this state on or after July 1, 1995.
8 7 b. Any cemetery that has established a care fund in
8 8 compliance with section 523I.810.
8 9 c. Any cemetery that represents that it is a perpetual
8 10 care cemetery in its interment rights agreement.
8 11 d. Any cemetery that represents in any other manner that
8 12 the cemetery provides perpetual, permanent, or guaranteed
8 13 care.

8 14 38. "Person" means an individual, firm, corporation,
8 15 partnership, joint venture, limited liability company,
8 16 association, trustee, government or governmental subdivision,
8 17 agency, or other entity, or any combination thereof.

8 18 39. "Pioneer cemetery" means a cemetery where there were
8 19 six or fewer burials in the preceding fifty years.

8 20 40. "Purchaser" means a person who purchases memorials,
8 21 memorialization, opening and closing services, scattering
8 22 services, interment rights, or a combination thereof. A
8 23 purchaser need not be a beneficiary of the interment rights
8 24 agreement.

8 25 41. "Relative" means a great-grandparent, grandparent,
8 26 father, mother, spouse, child, brother, sister, nephew, niece,
8 27 uncle, aunt, first cousin, second cousin, third cousin, or
8 28 grandchild connected to a person by either blood or affinity.

8 29 42. "Religious cemetery" means a cemetery that is owned,
8 30 operated, or controlled by a recognized church or
8 31 denomination, or a cemetery designated as such in the Official
8 32 Catholic Directory on file with the insurance division or in a
8 33 similar publication of a recognized church or denomination, or
8 34 a cemetery that the commissioner determines is operating as a
8 35 religious cemetery upon review of an application by the
9 1 cemetery that includes a description of the cemetery's
9 2 affiliation with a recognized church or denomination, the
9 3 extent to which the affiliate organization is responsible for
9 4 the financial and contractual obligations of the cemetery, or
9 5 the provision of the Internal Revenue Code, if any, that
9 6 exempts the cemetery from the payment of federal income tax.

9 7 43. "Relocation" means the act of taking remains from the
9 8 place of interment or the place where the remains are being
9 9 held to another designated place.

9 10 44. "Remains" means the body of a deceased human or a body
9 11 part, or limb that has been removed from a living human,
9 12 including a body, body part, or limb in any stage of
9 13 decomposition, or cremated remains.

9 14 45. "Scattering services provider" means a person in the
9 15 business of scattering human cremated remains.

9 16 46. "Seller" means a person doing business within this
9 17 state, including a person doing business within this state who
9 18 advertises, sells, promotes, or offers to furnish memorials,
9 19 memorialization, opening and closing services, scattering
9 20 services or interment rights, or a combination thereof,
9 21 whether the transaction is completed or offered in person,
9 22 through the mail, over the telephone, by the internet, or
9 23 through any other means of commerce.

9 24 47. "Special care" means any care provided or to be
9 25 provided that supplements or exceeds the requirements of this
9 26 chapter in accordance with the specific directions of any
9 27 donor of funds for such purposes.

9 28 48. "Undeveloped space" means a designated area or
9 29 building within a cemetery that has been mapped and planned
9 30 for future development but is not yet fully developed.

9 31 Sec. 8. NEW SECTION. 523I.103 APPLICABILITY OF CHAPTER.

9 32 1. This chapter applies to all of the following:
9 33 a. All cemeteries, except religious cemeteries that
9 34 commenced business prior to July 1, 2005.
9 35 b. All persons advertising or offering memorials,
10 1 memorialization, opening and closing services, scattering
10 2 services at a cemetery, interment rights, or a combination
10 3 thereof for sale.

10 4 c. Interments made in areas not dedicated as a cemetery,
10 5 by a person other than the state archaeologist.
10 6 2. This chapter applies when a purchase agreement is
10 7 executed within this state or an advertisement, promotion, or
10 8 offer to furnish memorials, memorialization, opening and
10 9 closing services, scattering services, interment rights, or a
10 10 combination thereof is made or accepted within this state. An
10 11 offer to furnish memorials, memorialization, opening and
10 12 closing services, scattering services, interment rights, or a
10 13 combination thereof is made within this state, whether or not
10 14 either party is then present in this state, when the offer
10 15 originates from this state or is directed by the offeror to
10 16 this state and received by the offeree in this state through
10 17 the mail, over the telephone, by the internet, or through any
10 18 other means of commerce.
10 19 3. If a foreign person does not have a registered agent or
10 20 agents in the state of Iowa, doing business within this state
10 21 shall constitute the person's appointment of the secretary of
10 22 state of the state of Iowa to be its true and lawful attorney
10 23 upon whom may be served all lawful process of original notice
10 24 in actions or proceedings arising or growing out of any
10 25 contract or tort.

10 26 SUBCHAPTER 2

10 27 ADMINISTRATION AND ENFORCEMENT

10 28 Sec. 9. NEW SECTION. 523I.201 ADMINISTRATION.

10 29 1. This chapter shall be administered by the commissioner.
10 30 The deputy administrator appointed pursuant to section
10 31 523A.801 shall be the principal operations officer responsible
10 32 to the commissioner for the routine administration of this
10 33 chapter and management of the administrative staff. In the
10 34 absence of the commissioner, whether because of vacancy in the
10 35 office due to absence, physical disability, or other cause,
11 1 the deputy administrator shall, for the time being, have and
11 2 exercise the authority conferred upon the commissioner. The
11 3 commissioner may by order from time to time delegate to the
11 4 deputy administrator any or all of the functions assigned to
11 5 the commissioner in this chapter. The deputy administrator
11 6 shall employ officers, attorneys, accountants, and other
11 7 employees as needed for administering this chapter.

11 8 2. It is unlawful for the commissioner or any
11 9 administrative staff to use for personal benefit any
11 10 information which is filed with or obtained by the
11 11 commissioner and which is not made public. This chapter does
11 12 not authorize the commissioner or any staff member to disclose
11 13 any such information except among themselves or to other
11 14 cemetery and funeral administrators, regulatory authorities,
11 15 or governmental agencies, or when necessary and appropriate in
11 16 a proceeding or investigation under this chapter or as
11 17 required by chapter 22. This chapter neither creates nor
11 18 derogates any privileges that exist at common law or otherwise
11 19 when documentary or other evidence is sought under a subpoena
11 20 directed to the commissioner or any administrative staff.

11 21 Sec. 10. NEW SECTION. 523I.202 INVESTIGATIONS AND 11 22 SUBPOENAS.

11 23 1. The commissioner may, for the purpose of discovering a
11 24 violation of this chapter, or implementing rules or orders
11 25 issued under this chapter do any of the following:

11 26 a. Make such public or private investigations within or
11 27 outside of this state as the commissioner deems necessary to
11 28 determine whether any person has violated or is about to
11 29 violate this chapter, or implementing rules or orders issued
11 30 under this chapter, or to aid in the enforcement of this
11 31 chapter, or in the prescribing of rules and forms under this
11 32 chapter.

11 33 b. Require or permit any person to file a statement in
11 34 writing, under oath or otherwise as the commissioner or
11 35 attorney general determines, as to all the facts and
12 1 circumstances concerning the matter being investigated.

12 2 c. Notwithstanding chapter 22, keep confidential the
12 3 information obtained in the course of an investigation.
12 4 However, if the commissioner determines that it is necessary
12 5 or appropriate in the public interest or for the protection of
12 6 the public, the commissioner may share information with other
12 7 administrators, regulatory authorities, or governmental
12 8 agencies, or may publish information concerning a violation of
12 9 this chapter, or implementing rules or orders issued under
12 10 this chapter.

12 11 d. Investigate a cemetery and examine the books, accounts,
12 12 papers, correspondence, memoranda, purchase agreements, files,
12 13 or other documents or records of the cemetery.

12 14 e. Administer oaths and affirmations, subpoena witnesses,

12 15 compel their attendance, take evidence, and require the
12 16 production of any books, accounts, papers, correspondence,
12 17 memoranda, purchase agreements, files, or other documents or
12 18 records which the commissioner deems relevant or material to
12 19 any investigation or proceeding under this chapter and
12 20 implement rules, all of which may be enforced under chapter
12 21 17A.

12 22 f. Apply to the district court for an order requiring a
12 23 person's appearance before the commissioner or attorney
12 24 general, or a designee of either or both, in cases where the
12 25 person has refused to obey a subpoena issued by the
12 26 commissioner or attorney general. The person may also be
12 27 required to produce documentary evidence germane to the
12 28 subject of the investigation. Failure to obey a court order
12 29 under this subsection constitutes contempt of court.

12 30 2. The commissioner may issue and bring an action in
12 31 district court to enforce subpoenas within this state at the
12 32 request of an agency or administrator of another state, if the
12 33 activity constituting an alleged violation for which the
12 34 information is sought would be a violation of this chapter had
12 35 the activity occurred in this state.

13 1 Sec. 11. NEW SECTION. 523I.203 CEASE AND DESIST ORDERS
13 2 == INJUNCTIONS.

13 3 If it appears to the commissioner that a person has engaged
13 4 or is about to engage in an act or practice constituting a
13 5 violation of this chapter, or implementing rules or orders
13 6 issued under this chapter, the commissioner or the attorney
13 7 general may do any of the following:

13 8 1. Issue a summary order directed to the person that
13 9 requires the person to cease and desist from engaging in such
13 10 an act or practice. A person may request a hearing within
13 11 thirty days of issuance of the summary order. If a hearing is
13 12 not timely requested, the summary order shall become final by
13 13 operation of law. The order shall remain effective from the
13 14 date of issuance until the date the order becomes final by
13 15 operation of law or is overturned by a presiding officer
13 16 following a request for hearing. Section 17A.18A is
13 17 inapplicable to summary cease and desist orders issued under
13 18 this section.

13 19 2. Bring an action in the district court in any county of
13 20 the state for an injunction to restrain a person subject to
13 21 this chapter and any agents, employees, or associates of the
13 22 person from engaging in conduct or practices deemed contrary
13 23 to the public interest. In any proceeding for an injunction,
13 24 the commissioner or attorney general may apply to the court
13 25 for a subpoena to require the appearance of a defendant and
13 26 the defendant's agents, employees, or associates and for the
13 27 production of any books, accounts, papers, correspondence,
13 28 memoranda, purchase agreements, files, or other documents or
13 29 records germane to the hearing upon the petition for an
13 30 injunction. Upon a proper showing, a permanent or temporary
13 31 injunction, restraining order, or writ of mandamus shall be
13 32 granted and a receiver may be appointed for the defendant or
13 33 the defendant's assets. The commissioner or attorney general
13 34 shall not be required to post a bond.

13 35 Sec. 12. NEW SECTION. 523I.204 COURT ACTION FOR FAILURE
14 1 TO COOPERATE.

14 2 1. If a person fails or refuses to file a statement or
14 3 report or to produce any books, accounts, papers,
14 4 correspondence, memoranda, purchase agreements, files, or
14 5 other documents or records, or to obey a subpoena issued by
14 6 the commissioner, the commissioner may refer the matter to the
14 7 attorney general, who may apply to a district court to enforce
14 8 compliance. The court may order any or all of the following:

14 9 a. Injunctive relief restricting or prohibiting the offer
14 10 or sale of memorials, memorialization, opening and closing
14 11 services, scattering services, interment rights, or a
14 12 combination thereof.

14 13 b. Production of documents or records including but not
14 14 limited to books, accounts, papers, correspondence, memoranda,
14 15 purchase agreements, files, or other documents or records.

14 16 c. Such other relief as may be required.

14 17 2. A court order issued pursuant to subsection 1 is
14 18 effective until the person files the statement or report or
14 19 produces the documents requested, or obeys the subpoena.

14 20 Sec. 13. NEW SECTION. 523I.205 PROSECUTION FOR
14 21 VIOLATIONS OF LAW == CIVIL PENALTIES.

14 22 1. A violation of this chapter or rules adopted or orders
14 23 issued under this chapter is a violation of section 714.16,
14 24 subsection 2, paragraph "a". The remedies and penalties
14 25 provided by section 714.16, including but not limited to

14 26 injunctive relief and penalties, apply to violations of this
14 27 chapter.

14 28 2. If the commissioner believes that grounds exist for the
14 29 criminal prosecution of persons subject to this chapter for
14 30 violations of this chapter or any other law of this state, the
14 31 commissioner may forward to the attorney general or the county
14 32 attorney the grounds for the belief, including all evidence in
14 33 the commissioner's possession, so that the attorney general or
14 34 the county attorney may proceed with the matter as deemed
14 35 appropriate. At the request of the attorney general, the
15 1 county attorney shall appear and prosecute the action when
15 2 brought in the county attorney's county.

15 3 3. A person who violates a provision of this chapter or
15 4 rules adopted or orders issued under this chapter may be
15 5 subject to civil penalties in addition to criminal penalties.
15 6 The commissioner may impose, assess, and collect a civil
15 7 penalty not exceeding ten thousand dollars for each violation.
15 8 For the purposes of computing the amount of each civil
15 9 penalty, each day of a continuing violation constitutes a
15 10 separate violation. All civil penalties collected pursuant to
15 11 this section shall be deposited in the general fund of the
15 12 state.

15 13 Sec. 14. NEW SECTION. 523I.206 COOPERATION WITH OTHER
15 14 AGENCIES.

15 15 1. The commissioner may cooperate with any governmental
15 16 law enforcement or regulatory agency to encourage uniform
15 17 interpretation and administration of this chapter and
15 18 effective enforcement of this chapter and effective regulation
15 19 of the sale of memorials, memorialization, and cemeteries.

15 20 2. Cooperation with other agencies may include but is not
15 21 limited to:

- 15 22 a. Making a joint examination or investigation.
- 15 23 b. Holding a joint administrative hearing.
- 15 24 c. Filing and prosecuting a joint civil or administrative
15 25 proceeding.
- 15 26 d. Sharing and exchanging personnel.
- 15 27 e. Sharing and exchanging relevant information and
15 28 documents.

15 29 f. Formulating, in accordance with chapter 17A, rules or
15 30 proposed rules on matters such as statements of policy,
15 31 regulatory standards, guidelines, and interpretive opinions.

15 32 Sec. 15. NEW SECTION. 523I.207 RULES, FORMS, AND ORDERS.

15 33 1. Under chapter 17A, the commissioner may from time to
15 34 time make, amend, and rescind such rules, forms, and orders as
15 35 are necessary or appropriate for the protection of purchasers
16 1 and the public and to administer the provisions of this
16 2 chapter, its implementing rules, and orders issued under this
16 3 chapter.

16 4 2. A rule, form, or order shall not be made, amended, or
16 5 rescinded unless the commissioner finds that the action is
16 6 necessary or appropriate to protect purchasers and the public
16 7 and is consistent with the policies and provisions of this
16 8 chapter, its implementing rules, and orders issued under this
16 9 chapter.

16 10 3. A provision of this chapter imposing any liability does
16 11 not apply to an act done or omitted in good faith in
16 12 conformity with any rule, form, or order of the commissioner.

16 13 Sec. 16. NEW SECTION. 523I.208 DATE OF FILING ==
16 14 INTERPRETIVE OPINIONS.

16 15 1. A document is filed when it is received by the
16 16 commissioner.

16 17 2. Requests for interpretive opinions may be granted in
16 18 the commissioner's discretion.

16 19 Sec. 17. NEW SECTION. 523I.209 MISLEADING FILINGS.

16 20 It is unlawful for a person to make or cause to be made, in
16 21 any document filed with the commissioner, or in any proceeding
16 22 under this chapter, any statement of material fact which is,
16 23 at the time and in the light of the circumstances under which
16 24 it is made, false or misleading, or, in connection with such
16 25 statement, to omit to state a material fact necessary in order
16 26 to make the statements made, in the light of the circumstances
16 27 under which they are made, not misleading.

16 28 Sec. 18. NEW SECTION. 523I.210 MISREPRESENTATIONS OF
16 29 GOVERNMENT APPROVAL.

16 30 It is unlawful for a seller under this chapter to represent
16 31 or imply in any manner that the seller has been sponsored,
16 32 recommended, or approved, or that the seller's abilities or
16 33 qualifications have in any respect been passed upon by the
16 34 commissioner.

16 35 Sec. 19. NEW SECTION. 523I.211 FRAUDULENT PRACTICES.

17 1 A person who commits any of the following acts commits a

17 2 fraudulent practice which is punishable as provided in chapter
17 3 714:

17 4 1. Knowingly fails to comply with any requirement of this
17 5 chapter.

17 6 2. Knowingly makes, causes to be made, or subscribes to a
17 7 false statement or representation in a report or other
17 8 document required under this chapter, or implementing rules or
17 9 orders, or renders such a report or document misleading
17 10 through the deliberate omission of information properly
17 11 belonging in the report or document.

17 12 3. Conspires to defraud in connection with the sale of
17 13 memorials, memorialization, opening and closing services,
17 14 scattering services, interment rights, or a combination
17 15 thereof under this chapter.

17 16 4. Fails to deposit funds under this chapter or withdraws
17 17 funds in a manner inconsistent with this chapter.

17 18 5. Knowingly sells memorials, memorialization, opening and
17 19 closing services, scattering services, interment rights, or a
17 20 combination thereof without the permits required under this
17 21 chapter.

17 22 6. Deliberately misrepresents or omits a material fact
17 23 relative to the sale of memorials, memorialization, opening
17 24 and closing services, scattering services, interment rights,
17 25 or a combination thereof.

17 26 Sec. 20. NEW SECTION. 523I.212 RECEIVERSHIPS.

17 27 1. The commissioner shall notify the attorney general of
17 28 the potential need for establishment of a receivership if the
17 29 commissioner finds that a cemetery subject to this chapter
17 30 meets one or more of the following conditions:

17 31 a. Is insolvent.

17 32 b. Has utilized trust funds for personal or business
17 33 purposes in a manner inconsistent with this chapter.

17 34 c. The amount held in trust in a maintenance fund or care
17 35 fund is less than the amount required by this chapter.

18 1 2. The commissioner or attorney general may apply to the
18 2 district court in any county of the state for the
18 3 establishment of a receivership. Upon proof that any of the
18 4 conditions described in this section have occurred, the court
18 5 may grant a receivership.

18 6 Sec. 21. NEW SECTION. 523I.213 INSURANCE DIVISION'S
18 7 ENFORCEMENT FUND.

18 8 A special revenue fund in the state treasury, to be known
18 9 as the insurance division's enforcement fund, is created under
18 10 the authority of the commissioner. The commissioner shall
18 11 allocate annually from the audit fees paid pursuant to section
18 12 523I.808, an amount not exceeding fifty thousand dollars, for
18 13 deposit to the insurance division's enforcement fund. The
18 14 moneys in the enforcement fund shall be retained in the fund.
18 15 The moneys are appropriated and, subject to authorization by
18 16 the commissioner, shall be used to pay auditors, audit
18 17 expenses, investigative expenses, the expenses of consumer
18 18 education, compliance, and education programs for filers and
18 19 other regulated persons, and educational or compliance program
18 20 materials, the expenses of a toll-free telephone line for
18 21 consumer complaints, and the expenses of receiverships of
18 22 perpetual care cemeteries established under section 523I.212.

18 23 Sec. 22. NEW SECTION. 523I.214 VIOLATIONS OF LAW ==
18 24 REFERRALS TO THE DEPARTMENT OF PUBLIC HEALTH.

18 25 If the commissioner discovers a violation of a provision of
18 26 this chapter or any other state law or rule concerning the
18 27 disposal or transportation of human remains, the commissioner
18 28 shall forward all evidence in the possession of the
18 29 commissioner concerning such a violation to the department of
18 30 public health for such proceedings as the department of public
18 31 health deems appropriate.

18 32 SUBCHAPTER 3
18 33 CEMETERY MANAGEMENT

18 34 Sec. 23. NEW SECTION. 523I.301 DISCLOSURE REQUIREMENTS
18 35 == PRICES AND FEES.

19 1 1. A cemetery shall disclose, prior to the sale of
19 2 interment rights, whether opening and closing of the interment
19 3 space is included in the purchase of the interment rights. If
19 4 opening and closing services are not included in the sale and
19 5 the cemetery offers opening and closing services, the cemetery
19 6 must disclose that the price for this service is subject to
19 7 change and disclose the current prices for opening and closing
19 8 services provided by the cemetery.

19 9 2. The cemetery shall fully disclose all fees required for
19 10 interment, entombment, or inurnment of human remains.

19 11 3. A person owning interment rights may sell those rights
19 12 to third parties. The cemetery shall fully disclose, in the

19 13 cemetery's rules, any requirements necessary to transfer title
19 14 of interment rights to a third party.

19 15 Sec. 24. NEW SECTION. 523I.302 INSTALLATION OF OUTER
19 16 BURIAL CONTAINERS.

19 17 A cemetery shall provide services necessary for the
19 18 installation of outer burial containers or other similar
19 19 merchandise sold by the cemetery. This section shall not
19 20 require the cemetery to provide for opening and closing of
19 21 interment or entombment space, unless an agreement executed by
19 22 the cemetery expressly provides otherwise.

19 23 Sec. 25. NEW SECTION. 523I.303 ACCESS BY FUNERAL
19 24 DIRECTORS.

19 25 A cemetery shall not deny access to a licensed funeral
19 26 director who is conducting funeral services or supervising the
19 27 interment or disinterment of human remains.

19 28 Sec. 26. NEW SECTION. 523I.304 RULEMAKING AND
19 29 ENFORCEMENT.

19 30 1. A cemetery may adopt, amend, and enforce rules for the
19 31 use, care, control, management, restriction, and protection of
19 32 the cemetery, as necessary for the proper conduct of the
19 33 business of the cemetery, including, but not limited to, the
19 34 use, care, and transfer of any interment space or right of
19 35 interment.

20 1 2. A cemetery may restrict and limit the use of all
20 2 property within the cemetery by rules that do, but are not
20 3 limited to doing, all of the following:

20 4 a. Prohibit the placement of memorials or memorialization,
20 5 buildings, or other types of structures within any portion of
20 6 the cemetery.

20 7 b. Regulate the uniformity, class, and kind of memorials
20 8 and memorialization and structures within the cemetery.

20 9 c. Regulate the scattering or placement of cremated
20 10 remains within the cemetery.

20 11 d. Prohibit or regulate the placement of nonhuman remains
20 12 within the cemetery.

20 13 e. Prohibit or regulate the introduction or care of trees,
20 14 shrubs, and other types of plants within the cemetery.

20 15 f. Regulate the right of third parties to open, prepare
20 16 for interment, and close interment spaces.

20 17 g. Prohibit interment in any part of the cemetery not
20 18 designated as an interment space.

20 19 h. Prevent the use of space for any purpose inconsistent
20 20 with the use of the property as a cemetery.

20 21 3. A cemetery shall not adopt or enforce a rule that
20 22 prohibits interment because of the race, color, or national
20 23 origin of a decedent. A provision of a contract or a
20 24 certificate of ownership or other instrument conveying
20 25 interment rights that prohibits interment in a cemetery
20 26 because of the race, color, or national origin of a decedent
20 27 is void.

20 28 4. A cemetery's rules shall be plainly printed or
20 29 typewritten and maintained for inspection in the office of the
20 30 cemetery or, if the cemetery does not have an office, in
20 31 another suitable place within the cemetery. The cemetery's
20 32 rules shall be provided to owners of interment spaces upon
20 33 request.

20 34 5. A cemetery's rules shall specify the cemetery's
20 35 obligations in the event that interment spaces, memorials, or
21 1 memorialization are damaged or defaced by acts of vandalism.
21 2 The rules may specify a multiyear restoration of an interment
21 3 space, or a memorial or memorialization when the damage is
21 4 extensive or when money available from the cemetery's trust
21 5 fund is inadequate to complete repairs immediately. The owner
21 6 of an interment space, or a memorial or memorialization that
21 7 has been damaged or defaced shall be notified by the cemetery
21 8 by restricted certified mail at the owner's last known address
21 9 within sixty days of the discovery of the damage or
21 10 defacement. The rules shall specify whether the owner is
21 11 liable, in whole or in part, for the cost to repair or replace
21 12 an interment space or a damaged or defaced memorial or
21 13 memorialization.

21 14 6. The cemetery shall not approve any rule which
21 15 unreasonably restricts competition, or which unreasonably
21 16 increases the cost to the owner of interment rights in
21 17 exercising these rights.

21 18 Sec. 27. NEW SECTION. 523I.305 MEMORIALS AND
21 19 MEMORIALIZATION.

21 20 1. AUTHORIZATION. A cemetery is entitled to determine
21 21 whether a person requesting installation of a memorial is
21 22 authorized to do so, to the extent that this can be determined
21 23 from the records of the cemetery, as is consistent with the

21 24 cemetery's rules. The owner of an interment space or the
21 25 owner's agent may authorize a memorial dealer or independent
21 26 third party to perform all necessary work related to
21 27 preparation and installation of a memorial.

21 28 2. CONFORMITY WITH CEMETERY RULES. A person selling a
21 29 memorial shall review the rules of the cemetery where the
21 30 memorial is to be installed to ensure that the memorial will
21 31 comply with those rules prior to ordering or manufacturing the
21 32 memorial.

21 33 3. SPECIFICATIONS. Upon request, a cemetery shall provide
21 34 reasonable written specifications and instructions governing
21 35 installation of memorials, which shall apply to all
22 1 installations whether performed by the cemetery or another
22 2 person. The written specifications shall include provisions
22 3 governing hours of installation or any other relevant
22 4 administrative requirements of the cemetery. A copy of these
22 5 specifications and instructions shall be provided upon
22 6 request, without charge, to the owner of the interment space,
22 7 next of kin, or a personal representative or agent of the
22 8 owner, including the person installing the memorial. The
22 9 person installing the memorial shall comply with the
22 10 cemetery's written installation specifications and
22 11 instructions. A cemetery shall not adopt or enforce any rule
22 12 prohibiting the installation of a memorial by a memorial
22 13 dealer or independent third party, unless the rule is adopted
22 14 and enforced uniformly for all memorials installed in the
22 15 cemetery.

22 16 4. WRITTEN NOTICE. A memorial dealer or independent third
22 17 party shall provide the cemetery with at least seven business
22 18 days' prior written notice of intent to install a memorial at
22 19 the cemetery, or such lesser notice as the cemetery deems
22 20 acceptable. The notice shall contain the full name, address,
22 21 and relationship of the memorial's purchaser to the person
22 22 interred in the interment space or the owner of the interment
22 23 space, if different. The notice shall also contain the color,
22 24 type, and size of the memorial, the material, the inscription,
22 25 and the full name and interment date of the person interred in
22 26 the interment space.

22 27 5. PREPARATION AND INSTALLATION.

22 28 a. A person installing a memorial shall be responsible to
22 29 the cemetery for any damage caused to the cemetery grounds,
22 30 including roadways, other than normal use during installation
22 31 of the memorial.

22 32 b. Installation work shall cease during any nearby funeral
22 33 procession or committal service.

22 34 c. Installation work shall be done during the cemetery's
22 35 normal weekday hours or at such other times as may be arranged
23 1 with the cemetery.

23 2 d. A memorial must comply with the cemetery's rules. In
23 3 the event of noncompliance, the person installing a memorial
23 4 is responsible for removal of the memorial and shall pay any
23 5 reasonable expenses incurred by the cemetery in connection
23 6 with the memorial's removal.

23 7 e. The cemetery shall, without charge, provide information
23 8 as described on the cemetery's map or plat necessary to locate
23 9 the place where a memorial is to be installed and any other
23 10 essential information the person installing the memorial needs
23 11 to locate the proper interment space.

23 12 f. A person installing a memorial shall follow the
23 13 cemetery's instructions regarding the positioning of the
23 14 memorial.

23 15 g. During the excavation, all sod and dirt shall be
23 16 carefully removed with no sod or dirt left on the interment
23 17 space except the amount needed to fill the space between the
23 18 memorial and the adjacent lawn.

23 19 h. A person installing a memorial shall carefully fill in
23 20 any areas around the memorial with topsoil or sand, in
23 21 accordance with the cemetery's written instructions.

23 22 i. A person installing a memorial shall remove all
23 23 equipment and any debris which has accumulated during
23 24 installation of the memorial.

23 25 j. A person installing a memorial shall check to see if
23 26 any adjacent memorials have become soiled or dirty during
23 27 installation of the memorial and, if so, clean the adjacent
23 28 memorials.

23 29 k. If the person who is installing a memorial damages any
23 30 cemetery property, the person shall notify the cemetery
23 31 immediately. The person installing the memorial shall then
23 32 repair the damage as soon as possible, upon approval by the
23 33 cemetery. The cemetery may require a person installing a
23 34 memorial to provide current proof of workers' compensation

23 35 insurance as required by state law and current proof of
24 1 liability insurance, sufficient to indemnify the cemetery
24 2 against claims resulting from installation of the memorial.
24 3 Proof of liability insurance in an amount of one million
24 4 dollars or more shall preclude the cemetery from requiring a
24 5 person installing a memorial to obtain a performance bond.
24 6 1. If a cemetery has an office, a person installing a
24 7 memorial shall immediately leave notice at the cemetery office
24 8 when the memorial has been installed and all work related to
24 9 the installation is complete.

24 10 6. INSPECTION. A cemetery may inspect the installation
24 11 site of a memorial at any time. If the cemetery determines
24 12 that cemetery rules are not being followed during the
24 13 installation, the cemetery may order the installation to stop
24 14 until the infraction is corrected. The cemetery shall provide
24 15 written notice to the installer as soon as possible if the
24 16 cemetery believes that any of the following have occurred:
24 17 a. The memorial has not been installed correctly.
24 18 b. The person installing the memorial has damaged property
24 19 at the cemetery.
24 20 c. Other cemetery requirements for installation have not
24 21 been met, such as removal of debris or equipment.

24 22 7. LOCATION AND SERVICE CHARGE. A cemetery may charge a
24 23 reasonable service charge for allowing the installation of a
24 24 memorial purchased or obtained from and installed by a person
24 25 other than the cemetery or its agents. This service charge
24 26 shall be based on the cemetery's actual labor costs, including
24 27 fringe benefits, of those employees whose normal duty is to
24 28 inspect the installation of memorials, in accordance with
24 29 generally accepted accounting practices. General
24 30 administrative and overhead costs and any other functions not
24 31 related to actual inspection time shall be excluded from the
24 32 service charge.

24 33 8. FAULTY INSTALLATION. If a memorial sinks, tilts, or
24 34 becomes misaligned within twelve months of its installation
24 35 and the cemetery believes the cause is faulty installation,
25 1 the cemetery shall notify the person who installed the
25 2 memorial in writing and the person who installed the memorial
25 3 shall be responsible to correct the damage, unless the damage
25 4 is caused by inadequate written specifications and
25 5 instructions from the cemetery or acts of the cemetery and its
25 6 agents or employees, including but not limited to running a
25 7 backhoe over the memorial, carrying a vault or other heavy
25 8 equipment over the memorial, or opening or closing an
25 9 interment space adjacent to the memorial.

25 10 9. PERPETUAL CARE. A cemetery may require contributions
25 11 from the purchaser of a memorial for perpetual care, if a
25 12 perpetual care fund deposit is uniformly charged on every
25 13 memorial installed in the cemetery.

25 14 Sec. 28. NEW SECTION. 523I.306 COMMISSION OR BONUS
25 15 UNLAWFUL.

25 16 It shall be unlawful for any organization subject to the
25 17 provisions of this chapter to pay or offer to pay to, or for
25 18 any person, firm, or corporation to receive directly or
25 19 indirectly a commission or bonus or rebate or other thing of
25 20 value, for or in connection with the sale of any interment
25 21 space, lot, or part thereof, in any cemetery. The provisions
25 22 of this section shall not apply to a person regularly employed
25 23 and supervised by such organization or to a person, firm,
25 24 corporation, or other entity licensed under chapter 523A that
25 25 contracts with the cemetery to sell interment spaces or lots.
25 26 The conduct of any person, firm, corporation, or other entity
25 27 described in this section is the direct responsibility of the
25 28 cemetery.

25 29 Sec. 29. NEW SECTION. 523I.307 DISCRIMINATION
25 30 PROHIBITED.

25 31 It shall be unlawful for any organization subject to the
25 32 provisions of this chapter to deny the privilege of interment
25 33 of the remains of any deceased person in any cemetery solely
25 34 because of the race, color, or national origin of such
25 35 deceased person. Any contract, agreement, deed, covenant,
26 1 restriction, or charter provision at any time entered into, or
26 2 bylaw, rule, or regulation adopted or put in force, either
26 3 subsequent or prior to July 4, 1953, authorizing, permitting,
26 4 or requiring any organization subject to the provisions of
26 5 this chapter to deny such privilege of interment because of
26 6 race, color, or national origin of such deceased person is
26 7 hereby declared to be null and void and in conflict with the
26 8 public policy of this state. An organization subject to the
26 9 provisions of this chapter or any director, officer, agent,
26 10 employee, or trustee thereof, shall not be liable for damages

26 11 or other relief, or be subjected to any action in any court of
26 12 competent jurisdiction for refusing to commit any act unlawful
26 13 under this chapter.

26 14 Sec. 30. NEW SECTION. 523I.308 SPECULATION PROHIBITED.

26 15 A cemetery or any person representing a cemetery in a sales
26 16 capacity shall not advertise or represent, in connection with
26 17 the sale or attempted sale of any interment space, that the
26 18 same is or will be a desirable speculative investment for
26 19 resale purposes.

26 20 Sec. 31. NEW SECTION. 523I.309 INTERMENT, RELOCATION, OR
26 21 DISINTERMENT OF REMAINS.

26 22 1. Any available member of the following classes of
26 23 persons, in the priority listed, shall have the right to
26 24 control the interment, relocation, or disinterment of a
26 25 decedent's remains within or from a cemetery:

26 26 a. The attorney in fact of the decedent pursuant to a
26 27 durable power of attorney for health care.

26 28 b. The surviving spouse of the decedent.

26 29 c. The decedent's surviving adult children. If there is
26 30 more than one surviving adult child, any adult child who can
26 31 confirm, in writing, that all other adult children have been
26 32 notified of the proposed interment, relocation, or
26 33 disinterment may authorize the interment, relocation, or
26 34 disinterment, unless the cemetery receives an objection to
26 35 such action from another adult child of the decedent.

27 1 d. A surviving parent of the decedent.

27 2 e. A surviving adult sibling of the decedent.

27 3 f. A surviving grandparent of the decedent.

27 4 g. The legal guardian of the decedent at the time of the
27 5 decedent's death.

27 6 2. A person who represents that the person knows the
27 7 identity of a decedent and, in order to procure the interment,
27 8 relocation, or disinterment of the decedent's remains, signs
27 9 an order or statement, other than a death certificate, that
27 10 warrants the identity of the decedent is liable for all
27 11 damages that result, directly or indirectly, from that
27 12 representation.

27 13 3. A person may provide written directions for the
27 14 interment, relocation, or disinterment of the person's own
27 15 remains in a prepaid funeral or cemetery contract, or written
27 16 instrument signed and acknowledged by the person. The
27 17 directions may govern the inscription to be placed on a grave
27 18 marker attached to any interment space in which the decedent
27 19 had the right of interment at the time of death and in which
27 20 interment space the decedent is subsequently interred. The
27 21 directions may be modified or revoked only by a subsequent
27 22 writing signed and acknowledged by the person. A person other
27 23 than a decedent who is entitled to control the interment,
27 24 relocation, or disinterment of a decedent's remains under this
27 25 section shall faithfully carry out the directions of the
27 26 decedent to the extent that the decedent's estate or the
27 27 person controlling the interment, relocation, or disinterment
27 28 is financially able to do so.

27 29 4. A cemetery shall not be liable for carrying out the
27 30 written directions of a decedent or the directions of any
27 31 person entitled to control the interment, relocation, or
27 32 disinterment of the decedent's remains.

27 33 5. In the event of a dispute concerning the right to
27 34 control the interment, relocation, or disinterment of a
27 35 decedent's remains, the dispute may be resolved by a court of
28 1 competent jurisdiction. A cemetery shall not be liable for
28 2 refusing to accept the decedent's remains, relocate or
28 3 disinter, inter or otherwise dispose of the decedent's
28 4 remains, until the cemetery receives a court order or other
28 5 suitable confirmation that the dispute has been resolved or
28 6 settled.

28 7 6. a. If good cause exists to relocate or disinter
28 8 remains interred in a cemetery, the remains may be removed
28 9 from the cemetery pursuant to a disinterment permit as
28 10 required under section 144.34, with the written consent of the
28 11 cemetery, the current interment rights owner and the person
28 12 entitled by this section to control the interment, relocation,
28 13 or disinterment of the decedent's remains.

28 14 b. If the consent required by this subsection cannot be
28 15 obtained, the remains may be relocated by permission of the
28 16 district court of the county in which the cemetery is located.
28 17 Before the date of application to the court for permission to
28 18 relocate remains under this subsection, notice must be given
28 19 to the cemetery in which the remains are interred, each person
28 20 whose consent is required for relocation of the remains under
28 21 subsection 1, and any other person that the court requires to

28 22 be served.

28 23 c. For the purposes of this subsection, personal notice
28 24 must be given not later than the eleventh day before the date
28 25 of application to the court for permission to relocate or
28 26 disinter the remains, or notice by certified mail or
28 27 restricted certified mail must be given not later than the
28 28 sixteenth day before the date of application.

28 29 d. This subsection does not apply to the removal of
28 30 remains from one interment space to another interment space in
28 31 the same cemetery to correct an error, or relocation of the
28 32 remains by the cemetery from an interment space for which the
28 33 purchase price is past due and unpaid, to another suitable
28 34 interment space.

28 35 7. A person who removes remains from a cemetery shall keep
29 1 a record of the removal, and provide a copy to the cemetery,
29 2 that includes all of the following:

29 3 a. The date the remains are removed.

29 4 b. The name of the decedent and age at death if those
29 5 facts can be conveniently obtained.

29 6 c. The place to which the remains are removed.

29 7 d. The name of the cemetery and the location of the
29 8 interment space from which the remains are removed.

29 9 8. A cemetery may disinter and relocate remains interred
29 10 in the cemetery for the purpose of correcting an error made by
29 11 the cemetery after obtaining a disinterment permit as required
29 12 by section 144.34. The cemetery shall provide written notice
29 13 describing the error to the commissioner and to the person who
29 14 has the right to control the interment, relocation, or
29 15 disinterment of the remains erroneously interred, by
29 16 restricted certified mail at the person's last known address
29 17 and sixty days prior to the disinterment. The notice shall
29 18 include the location where the disinterment will occur and the
29 19 location of the new interment space. A cemetery is not
29 20 civilly or criminally liable for an erroneously made interment
29 21 that is corrected in compliance with this subsection unless
29 22 the error was the result of gross negligence or intentional
29 23 misconduct.

29 24 9. Relocations and disinterments of human remains shall be
29 25 done in compliance with sections 144.32 and 144.34.

29 26 Sec. 32. NEW SECTION. 523I.310 SALE OF INTERMENT RIGHTS.

29 27 1. For sales or transfers of interment rights made on or
29 28 after July 1, 2005, a cemetery shall issue a certificate of
29 29 interment rights or other instrument evidencing the conveyance
29 30 of exclusive rights of interment upon payment in full of the
29 31 purchase price.

29 32 2. The interment rights in an interment space that is
29 33 conveyed by a certificate of ownership or other instrument
29 34 shall not be divided without the consent of the cemetery.

29 35 3. A conveyance of exclusive rights of interment shall be
30 1 filed and recorded in the cemetery office. Any transfer of
30 2 the ownership of interment rights shall be filed and recorded
30 3 in the cemetery office. The cemetery may charge a reasonable
30 4 recording fee to record the transfer of interment rights.

30 5 Sec. 33. NEW SECTION. 523I.311 RECORDS OF INTERMENT
30 6 RIGHTS AND INTERMENT.

30 7 1. For sales or transfers of interment rights made on or
30 8 after July 1, 2005, a cemetery shall keep complete records
30 9 identifying the owners of all interment rights sold by the
30 10 cemetery and historical information regarding any transfers of
30 11 ownership. The records shall include all of the following:

30 12 a. The name and last known address of each owner or
30 13 previous owner of interment rights.

30 14 b. The date of each purchase or transfer of interment
30 15 rights.

30 16 c. A unique numeric or alphanumeric identifier that
30 17 identifies the location of each interment space sold by the
30 18 cemetery.

30 19 2. For interments made on or after July 1, 2005, a
30 20 cemetery shall keep a record of each interment in a cemetery.
30 21 The records shall include all of the following:

30 22 a. The date the remains are interred.

30 23 b. The name, date of birth, and date of death of the
30 24 decedent interred, if those facts can be conveniently
30 25 obtained.

30 26 c. A unique numeric or alphanumeric identifier that
30 27 identifies the location of the interment space where the
30 28 remains are interred.

30 29 Sec. 34. NEW SECTION. 523I.312 DISCLOSURE REQUIREMENTS
30 30 == INTERMENT AGREEMENTS.

30 31 1. Each nonperpetual care cemetery shall have printed or
30 32 stamped at the head of all of its contracts, deeds,

30 33 statements, letterheads, and advertising material, the legend:
30 34 "This is a nonperpetual care cemetery", and shall not sell any
30 35 lot or interment space in the cemetery unless the purchaser of
31 1 the interment space is informed that the cemetery is a
31 2 nonperpetual care cemetery.
31 3 2. An agreement for interment rights under this chapter
31 4 shall be written in clear, understandable language and do all
31 5 of the following:
31 6 a. Identify the seller and purchaser.
31 7 b. Identify the salesperson.
31 8 c. Specify the interment rights to be provided and the
31 9 cost of each item.
31 10 d. State clearly the conditions on which substitution will
31 11 be allowed.
31 12 e. Set forth the total purchase price and the terms under
31 13 which it is to be paid.
31 14 f. State clearly whether the agreement is revocable or
31 15 irrevocable, and if revocable, which parties have the
31 16 authority to revoke the agreement.
31 17 g. State the amount or percentage of money to be placed in
31 18 the cemetery's care or maintenance fund.
31 19 h. If the cemetery has a care fund, set forth an
31 20 explanation that the care fund is an irrevocable trust, that
31 21 deposits cannot be withdrawn even in the event of
31 22 cancellation, and that the trust's income shall be used by the
31 23 cemetery for its care.
31 24 i. Set forth an explanation of any fees or expenses that
31 25 may be charged.
31 26 j. Set forth an explanation of whether amounts for
31 27 perpetual care will be deposited in trust upon payment in full
31 28 or on an allocable basis as payments are made.
31 29 k. Set forth an explanation of whether initial payments on
31 30 agreements for multiple items of funeral and cemetery
31 31 merchandise or services, or both, will be allocated first to
31 32 the purchase of an interment space. If such an allocation is
31 33 to be made, the agreement shall provide for the immediate
31 34 transfer of such interment rights upon payment in full and
31 35 prominently state that any applicable trust deposits under
32 1 chapter 523A will not be made until the cemetery has received
32 2 payment in full for the interment rights. The transfer of an
32 3 undeveloped interment space may be deferred until the
32 4 interment space is ready for interment.
32 5 l. If the transfer of an undeveloped interment space will
32 6 be deferred until the interment space is ready for interment
32 7 as permitted in paragraph "k", the agreement shall provide for
32 8 some form of written acknowledgement upon payment in full,
32 9 specify a reasonable time period for development of the
32 10 interment space, describe what happens in the event of a death
32 11 prior to development of the interment space, and provide for
32 12 the immediate transfer of the interment rights when
32 13 development of the interment space is complete.
32 14 m. Specify the purchaser's right to cancel and the damages
32 15 payable for cancellation, if any.
32 16 n. State the name and address of the commissioner.
32 17 Sec. 35. NEW SECTION. 523I.313 NEW CEMETERIES AND
32 18 GARDENS AND CEMETERY REGISTRY.
32 19 1. A person that dedicates property for a new cemetery on
32 20 or after July 1, 2005, and a cemetery that dedicates an
32 21 additional garden on or after July 1, 2005, shall:
32 22 a. In the case of land, survey and subdivide the property
32 23 into gardens with descriptive names or numbers and make a map
32 24 or plat of the cemetery or garden.
32 25 b. In the case of a mausoleum or a columbarium, make a map
32 26 or plat of the property delineating sections or other
32 27 divisions with descriptive names and numbers.
32 28 c. File the map or plat with the commissioner, including a
32 29 written certificate or declaration of dedication of the
32 30 property delineated by the map or plat, dedicating the
32 31 property for cemetery purposes.
32 32 2. A map or plat and a certificate or declaration of
32 33 dedication that is filed pursuant to this section dedicates
32 34 the property for cemetery purposes and constitutes
32 35 constructive notice of that dedication.
33 1 3. The commissioner shall maintain a registry of perpetual
33 2 care and nonperpetual care cemeteries, to the extent that
33 3 information is available. A cemetery selling interment rights
33 4 on or after July 1, 2005, shall file a written notice with the
33 5 commissioner that includes the legal description of the
33 6 property with boundary lines of the land, the name of the
33 7 cemetery, the status of the cemetery as either perpetual care
33 8 or nonperpetual care, the status of the cemetery as either

33 9 religious or nonreligious, and the cemetery's ownership in a
33 10 form approved by the commissioner. A cemetery shall notify
33 11 the commissioner of any changes in this information within
33 12 sixty days of the change.

33 13 Sec. 36. NEW SECTION. 523I.314 NEW CONSTRUCTION.

33 14 1. A person shall not offer to sell interment rights in a
33 15 mausoleum or columbarium that will be built or completed in
33 16 the future unless the person has notified the commissioner of
33 17 the offer to sell on a form prescribed by the commissioner.

33 18 2. The notice of an offer to sell interment rights in such
33 19 a mausoleum or columbarium shall include the following
33 20 information:

33 21 a. A description of the new facility or the proposed
33 22 expansion, including a description of the interment rights to
33 23 be offered to prospective purchasers.

33 24 b. A statement of the financial resources available for
33 25 the project.

33 26 c. A copy of the proposed interment rights agreement to be
33 27 used, which shall include the following:

33 28 (1) That purchase payments will be held in trust in
33 29 accordance with the requirements of chapter 523A until
33 30 construction of the mausoleum or columbarium is complete.

33 31 (2) That the purchaser may request a refund of the
33 32 purchase amount, if construction does not begin within five
33 33 years of the purchaser's first payment.

33 34 (3) That the new facility will operate as a perpetual care
33 35 cemetery in compliance with this chapter, even if the facility
34 1 is located at a nonperpetual care cemetery.

34 2 (4) That the purchaser will receive an ownership
34 3 certificate upon payment in full or, if later, when
34 4 construction is complete.

34 5 3. Unless financing has been secured that is adequate in
34 6 amount and terms to complete the facility proposed, new
34 7 construction of a mausoleum or columbarium shall not begin
34 8 until the notice required by this section has been approved by
34 9 the commissioner.

34 10 Sec. 37. NEW SECTION. 523I.315 UNPAID CARE ASSESSMENTS
34 11 AND UNOCCUPIED INTERMENT SPACES.

34 12 1. FORECLOSURE == UNPAID ASSESSMENTS. Unpaid care
34 13 assessments for an unoccupied interment space not under
34 14 perpetual care shall create a lien by the cemetery against the
34 15 applicable interment space. The cemetery may, following
34 16 notice, foreclose on the interment space if the amount of the
34 17 lien exceeds the amount paid for the interment space. If the
34 18 lien is not paid within one year from the date that notice of
34 19 foreclosure is served on the owner of record or the owner of
34 20 record's heirs, the ownership in or right to the unoccupied
34 21 interment space shall revert to the cemetery that owns the
34 22 cemetery in which the unoccupied interment space is located.

34 23 2. ABANDONMENT == QUIET TITLE ACTION. A cemetery may file
34 24 an action to quiet title to determine whether an interment
34 25 space has been abandoned if the interment space is unoccupied
34 26 and has not been occupied in the preceding seventy-five years.
34 27 An action to quiet title shall commence when the cemetery
34 28 serves notice on the owner of record or the owner of record's
34 29 heirs declaring that the interment space is considered to be
34 30 abandoned. If the owner of record or the owner of record's
34 31 heirs do not respond within three years from the date that
34 32 notice is served, the abandonment is considered to be
34 33 complete. The ownership in or right to an abandoned interment
34 34 space shall revert to the cemetery in which the abandoned
34 35 interment space is located and the cemetery may sell and
35 1 convey title to the interment space.

35 2 3. SERVICE OF NOTICE. Notice under this section shall be
35 3 served personally on the owner of record or the owner of
35 4 record's heirs, or may be served by mailing notice by
35 5 certified mail to the owner of record or to the owner of
35 6 record's heirs at the last known address. If the address of
35 7 the owner of record or the owner of record's heirs cannot be
35 8 ascertained, notice of abandonment shall be given by one
35 9 publication of the notice in the official newspaper of the
35 10 county in which the cemetery is located.

35 11 Sec. 38. NEW SECTION. 523I.316 PROTECTION OF CEMETERIES
35 12 AND BURIAL SITES.

35 13 1. EXISTENCE OF CEMETERY OR BURIAL SITE == NOTIFICATION.
35 14 If a governmental subdivision is notified of the existence of
35 15 a cemetery, or a marked burial site that is not located in a
35 16 dedicated cemetery, within its jurisdiction and the cemetery
35 17 or burial site is not otherwise provided for under this
35 18 chapter, the governmental subdivision shall, as soon as is
35 19 practicable, notify the owner of the land upon which the

35 20 cemetery or burial site is located of the cemetery's or burial
35 21 site's existence and location. The notification shall include
35 22 an explanation of the provisions of this section. If there is
35 23 a basis to believe that interment may have occurred more than
35 24 one hundred fifty years earlier, the governmental subdivision
35 25 shall also notify the state archaeologist.

35 26 2. DISTURBANCE OF INTERMENT SPACES == PENALTY. A person
35 27 who knowingly and without authorization damages, defaces,
35 28 destroys, or otherwise disturbs an interment space commits
35 29 criminal mischief in the third degree. Criminal mischief in
35 30 the third degree is an aggravated misdemeanor.

35 31 3. DUTY TO PRESERVE AND PROTECT. A governmental
35 32 subdivision having a cemetery, or a burial site that is not
35 33 located within a dedicated cemetery, within its jurisdiction,
35 34 for which preservation is not otherwise provided, shall
35 35 preserve and protect the cemetery or burial site as necessary
36 1 to restore or maintain its physical integrity as a cemetery or
36 2 burial site. The governmental subdivision may enter into an
36 3 agreement to delegate the responsibility for the preservation
36 4 and protection of the cemetery or burial site to a private
36 5 organization interested in historical preservation.

36 6 4. CONFISCATION AND RETURN OF MEMORIALS. A law
36 7 enforcement officer having reason to believe that a memorial
36 8 or memorialization is in the possession of a person without
36 9 authorization or right to possess the memorial or
36 10 memorialization may take possession of the memorial or
36 11 memorialization from that person and turn it over to the
36 12 officer's law enforcement agency. If a law enforcement agency
36 13 determines that a memorial or memorialization the agency has
36 14 taken possession of rightfully belongs on an interment space,
36 15 the agency shall return the memorial or memorialization to the
36 16 interment space, or make arrangements with the person having
36 17 jurisdiction over the interment space for its return.

36 18 5. BURIAL SITES LOCATED ON PRIVATE PROPERTY. If a person
36 19 notifies a governmental subdivision that a burial site of the
36 20 person's relative is located on property owned by another
36 21 person within the jurisdiction of the governmental
36 22 subdivision, the governmental subdivision shall notify the
36 23 property owner of the location of the burial site and that the
36 24 property owner is required to permit the person reasonable
36 25 ingress and egress for the purposes of visiting the burial
36 26 site of the person's relative.

36 27 6. DISCOVERY OF HUMAN REMAINS. Any person discovering
36 28 human remains shall notify the county or state medical
36 29 examiner or a city, county, or state law enforcement agency as
36 30 soon as is reasonably possible unless the person knows or has
36 31 good reason to believe that such notice has already been given
36 32 or the discovery occurs in a cemetery. If there is reason to
36 33 believe that interment may have occurred more than one hundred
36 34 fifty years earlier, the governmental subdivision notified
36 35 shall also notify the state archaeologist. A person who does
37 1 not provide notice required pursuant to this subsection
37 2 commits a serious misdemeanor.

37 3 SUBCHAPTER 4

37 4 COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES

37 5 Sec. 39. NEW SECTION. 523I.401 NEGLECTED CEMETERIES.

37 6 The commissioner shall create a form that interested
37 7 persons may use to report neglected cemeteries to the
37 8 commissioner. The commissioner shall catalog and review the
37 9 neglected cemetery reports received on or before December 31,
37 10 2007, conduct site visits as warranted to determine the nature
37 11 or extent of any neglect, and publish a report of findings on
37 12 or before December 31, 2008.

37 13 Sec. 40. NEW SECTION. 523I.402 REMOVAL OF REMAINS.

37 14 1. Upon a showing of good cause, a county cemetery
37 15 commission may file suit in the district court in that county
37 16 to have remains interred in a cemetery owned and operated by
37 17 the commission removed to another cemetery. All persons in
37 18 interest, known or unknown, other than the plaintiffs, shall
37 19 be made defendants to the suit. If any parties are unknown,
37 20 notice may be given by publication. After hearing and a
37 21 showing of good cause for the removal, the court may order the
37 22 removal of the remains and the remains shall be properly
37 23 interred in another cemetery, at the expense of the county.
37 24 The removal and reinterment of the remains shall be done
37 25 pursuant to a disinterment permit issued under section 144.34
37 26 with due care and decency. In deciding whether to order the
37 27 removal of interred remains, a court shall consider present or
37 28 future access to the cemetery, the historical significance of
37 29 the cemetery, and the wishes of the parties concerned if they
37 30 are brought to the court's attention, including the desire of

37 31 any beneficiaries to reserve their rights to waive a
37 32 reservation of rights in favor of removal, and shall exercise
37 33 the court's sound discretion in granting or refusing the
37 34 removal of interred remains.

37 35 2. Any heir at law or descendent of a deceased person
38 1 interred in a neglected cemetery may file suit in the district
38 2 court in the county where the cemetery is located, to have the
38 3 deceased person's remains interred in the cemetery removed to
38 4 another cemetery. The owner of the land, any beneficiaries of
38 5 any reservation of rights, and any other persons in interest,
38 6 known or unknown, other than the plaintiffs shall be made
38 7 defendants. If any parties are unknown, notice may be given
38 8 by publication. After hearing and upon a showing of good
38 9 cause, the court may order removal and the proper interment of
38 10 the remains in another cemetery, at the expense of the
38 11 petitioner. The removal and reinterment shall be done with
38 12 due care and decency.

38 13 SUBCHAPTER 5

38 14 GOVERNMENTAL SUBDIVISIONS

38 15 Sec. 41. NEW SECTION. 523I.501 CEMETERY AUTHORIZED.

38 16 The governing body of a governmental subdivision may
38 17 purchase, establish, operate, enclose, improve, or regulate a
38 18 cemetery. A cemetery owned or operated by a governmental
38 19 subdivision may sell interment rights subject to the
38 20 provisions of this chapter.

38 21 Sec. 42. NEW SECTION. 523I.502 TRUST FOR CEMETERY.

38 22 1. A governmental subdivision that owns or operates a
38 23 cemetery or has control of cemetery property may act as a
38 24 permanent trustee for the perpetual maintenance of interment
38 25 spaces in the cemetery.

38 26 2. To act as a trustee, a majority of the governmental
38 27 subdivision's governing body must adopt an ordinance or
38 28 resolution stating the governmental subdivision's willingness
38 29 and intention to act as a trustee for the perpetual
38 30 maintenance of cemetery property. When the ordinance or
38 31 resolution is adopted and the trust is accepted, the trust is
38 32 perpetual.

38 33 Sec. 43. NEW SECTION. 523I.503 AUTHORITY TO RECEIVE
38 34 GIFTS AND DEPOSITS FOR CARE == CERTIFICATES.

38 35 1. A governmental subdivision that is a trustee for the
39 1 perpetual maintenance of a cemetery may adopt reasonable rules
39 2 governing the receipt of a gift or grant from any source.

39 3 2. A governmental subdivision that is a trustee for a
39 4 person shall accept the amount the governmental subdivision
39 5 requires for permanent maintenance of an interment space on
39 6 behalf of that person or a decedent.

39 7 3. A governmental subdivision's acceptance of a deposit
39 8 for permanent maintenance of an interment space constitutes a
39 9 perpetual trust for the designated interment space.

39 10 4. Upon acceptance of a deposit, a governmental
39 11 subdivision's secretary, clerk, or mayor shall issue a
39 12 certificate in the name of the governmental subdivision to the
39 13 trustee or depositor. The certificate shall state all of the
39 14 following:

- 39 15 a. The depositor's name.
- 39 16 b. The amount and purpose of the deposit.
- 39 17 c. The location, with as much specificity as possible, of
39 18 the interment space to be maintained.
- 39 19 d. Other information required by the governmental
39 20 subdivision.

39 21 5. An individual, association, foundation, or corporation
39 22 that is interested in the maintenance of a neglected cemetery
39 23 in a governmental subdivision's possession and control may
39 24 donate funds to the cemetery's perpetual trust fund to
39 25 beautify and maintain the entire cemetery or burial grounds
39 26 generally.

39 27 Sec. 44. NEW SECTION. 523I.504 APPOINTMENT OF SUCCESSOR
39 28 TRUSTEE.

39 29 A district judge of a county in which a cemetery is located
39 30 shall appoint a suitable successor or trustee to faithfully
39 31 execute a trust in accordance with this subchapter if a
39 32 governmental subdivision renounces a trust assumed under this
39 33 subchapter, fails to act as its trustee, a vacancy occurs, or
39 34 the appointment of a successor or trustee is otherwise
39 35 necessary.

40 1 Sec. 45. NEW SECTION. 523I.505 COUNTY AUDITOR AS
40 2 TRUSTEE.

40 3 1. In the absence of a trustee for care funds, unless
40 4 otherwise provided by law, the care funds shall be placed in
40 5 the hands of the county auditor, who shall provide a receipt
40 6 for, loan, and make annual reports of the care funds.

40 7 2. The county auditor shall not be required to post a
40 8 bond.

40 9 3. The county auditor shall serve without compensation,
40 10 but may, out of the income received, pay all proper items of
40 11 expense incurred in the performance of the auditor's duties as
40 12 trustee, if any.

40 13 4. The county auditor shall make a full report of the
40 14 trustee's actions and trust funds annually in January. The
40 15 net proceeds for care funds received by the county auditor as
40 16 trustee shall be apportioned and credited to each of any
40 17 separate care funds assigned to the auditor.

40 18 5. The county auditor shall turn over the accrued income
40 19 from each care fund annually to the person having control of
40 20 the cemetery.

40 21 Sec. 46. NEW SECTION. 523I.506 COMMINGLING OF CARE FUNDS
40 22 BY GOVERNMENTAL SUBDIVISIONS.

40 23 A governmental subdivision subject to this section may
40 24 commingle care funds for more than one cemetery for the
40 25 purposes of investment and administration and may file a
40 26 single report, if each cemetery is appropriately identified
40 27 and separate records are maintained for each cemetery.

40 28 Sec. 47. NEW SECTION. 523I.507 INVESTMENT OF CARE FUNDS
40 29 BY GOVERNMENTAL SUBDIVISIONS.

40 30 Notwithstanding section 12B.10, a perpetual care cemetery
40 31 owned by a governmental subdivision may invest and reinvest
40 32 deposits pursuant to the requirements of this chapter. The
40 33 trustee shall use the judgment and care under the
40 34 circumstances then prevailing that persons of prudence,
40 35 discretion, and intelligence exercise in the management of
41 1 their own affairs, not in regard to speculation but in regard
41 2 to the permanent disposition of their funds, considering the
41 3 probable income as well as the probable safety of their
41 4 capital. The trustee of the trust funds has a fiduciary duty
41 5 to make reasonable investment decisions and to properly
41 6 oversee and manage the funds entrusted to the trust fund.

41 7 Sec. 48. NEW SECTION. 523I.508 MANAGEMENT BY
41 8 GOVERNMENTAL SUBDIVISIONS.

41 9 1. POLITICAL SUBDIVISIONS AS TRUSTEES. Counties, cities,
41 10 irrespective of their form of government, boards of trustees
41 11 of cities to whom the management of municipal cemeteries has
41 12 been transferred by ordinance, and civil townships wholly
41 13 outside of any city, are trustees in perpetuity, and are
41 14 required to accept, receive, and expend all moneys and
41 15 property donated or left to them by bequest for perpetual
41 16 care, and that portion of interment space sales or permanent
41 17 charges made against interment spaces which has been set aside
41 18 in a perpetual care fund for which there is no other acting
41 19 trustee, shall be used in caring for the property of the donor
41 20 or lot owner who by purchase or otherwise has provided for the
41 21 perpetual care of an interment space in any cemetery, or in
41 22 accordance with the terms of the donation, bequest, or
41 23 agreement for sale and purchase of an interment space, and the
41 24 money or property thus received shall be used for no other
41 25 purpose.

41 26 2. AUTHORITY TO INVEST FUNDS == CURRENT CARE CHARGE
41 27 PAYMENTS. The board of supervisors, mayor and council, or
41 28 other elected governmental body, as the case may be, may
41 29 receive and invest all moneys and property, donated or
41 30 bequeathed, and that portion of cemetery lot sales and
41 31 permanent charges made against cemetery lots which have been
41 32 set aside in a perpetual care fund, and in so investing, shall
41 33 use the judgment and care under the circumstances then
41 34 prevailing that persons of prudence, discretion, and
41 35 intelligence exercise in the management of their own affairs
42 1 not in regard to speculation but in regard to the permanent
42 2 disposition of their funds, considering the probable income as
42 3 well as the probable safety of their capital. The trustee of
42 4 the trust funds has a fiduciary duty to make reasonable
42 5 investment decisions and to properly oversee and manage the
42 6 funds entrusted to the trust fund. The income from the
42 7 investment shall be used in caring for the property of the
42 8 donor in any cemetery, or as provided in the terms of the gift
42 9 or donations or agreement for sale and purchase of a cemetery
42 10 lot.

42 11 All current care charge payments received shall be
42 12 allocated to the perpetual care fund or to the fund paying the
42 13 costs of cemetery operations. Care charge payments received
42 14 one year or more after the date they were incurred shall be
42 15 used to fund the cost of operating the cemetery. Care charge
42 16 payments received one year or more in advance of their due
42 17 date shall be deposited in the perpetual care fund. Interest

42 18 from the perpetual care fund shall be used for the maintenance
42 19 of both occupied and unoccupied lots or spaces. Any remaining
42 20 interest may be used for costs of access roads and paths,
42 21 fencing, and general maintenance of the cemetery. Lots under
42 22 perpetual care shall be maintained in accordance with the
42 23 cemetery covenants of sale.

42 24 3. RESOLUTION OF ACCEPTANCE == INTEREST. Before any part
42 25 of the principal may be invested or used, the county, city,
42 26 board of trustees of a city to whom the management of a
42 27 municipal cemetery has been transferred by ordinance, or civil
42 28 township shall, by resolution, accept the moneys described in
42 29 subsection 1 and, by resolution, shall provide for the payment
42 30 of interest annually to the appropriate fund, or to the
42 31 cemetery, or the person in charge of the cemetery, to be used
42 32 in caring for or maintaining the individual property of the
42 33 donor in the cemetery, or interment spaces which have been
42 34 sold if provision was made for perpetual care, all in
42 35 accordance with the terms of the donation or bequest, or the
43 1 terms of the sale or purchase of an interment space.

43 2 If there is no person in charge of the cemetery, the income
43 3 from the fund shall be expended under the direction of the
43 4 board of supervisors, city council, board of trustees, or
43 5 civil township trustees, as the case may be, in accordance
43 6 with the terms of the donation or bequest, or the terms of the
43 7 sale or purchase of an interment space.

43 8 4. DELEGATES TO CONVENTIONS. A township having one or
43 9 more cemeteries under its control may designate, not to exceed
43 10 two, officials from each cemetery as delegates to attend
43 11 meetings of cemetery officials, and certain expenses,
43 12 including association dues, not to exceed twenty-five dollars,
43 13 of the delegates may be paid out of the cemetery fund of the
43 14 township.

43 15 5. SUBSCRIBING TO PUBLICATIONS. The cemetery officials of
43 16 every township having a cemetery under its control may
43 17 subscribe to one or more publications devoted exclusively to
43 18 cemetery management, and the subscriptions may be paid out of
43 19 the cemetery fund of the township.

43 20 SUBCHAPTER 6
43 21 GENERAL PROVISIONS

43 22 Sec. 49. NEW SECTION. 523I.601 SETTLEMENT OF ESTATES ==
43 23 MAINTENANCE FUND.

43 24 The court in which the estate of a deceased person is
43 25 administered, before final distribution, may allow and set
43 26 apart from the estate a sum sufficient to provide an income
43 27 adequate to pay for the perpetual care and upkeep of the
43 28 interment spaces upon which the body of the deceased is
43 29 buried, except where perpetual care has otherwise been
43 30 provided for. The sum so allowed and set apart shall be paid
43 31 to a trustee as provided by this chapter.

43 32 Sec. 50. NEW SECTION. 523I.602 MANAGEMENT BY TRUSTEE.

43 33 1. TRUSTEE APPOINTED == TRUST FUNDS. The owners of, or
43 34 any party interested in, a cemetery may, by petition presented
43 35 to the district court of the county where the cemetery is
44 1 situated, have a trustee appointed with authority to receive
44 2 any and all moneys or property that may be donated for and on
44 3 account of the cemetery and to invest, manage, and control the
44 4 moneys or property under the direction of the court. However,
44 5 the trustee shall not be authorized to receive any gift,
44 6 except with the understanding that the principal sum is to be
44 7 a permanent fund, and only the net proceeds therefrom shall be
44 8 used in carrying out the purpose of the trust created, and all
44 9 such funds shall be exempt from taxation.

44 10 2. REQUISITES OF PETITION. The petition shall state the
44 11 amount proposed to be placed in such trust fund, the manner of
44 12 investment thereof, and the provisions made for the
44 13 disposition of any surplus income not required for the care
44 14 and upkeep of the property described in such petition.

44 15 3. APPROVAL OF COURT == SURPLUS FUND. Such provisions
44 16 shall be subject to the approval of the court and when so
44 17 approved the trust fund and the trustee thereof shall, at all
44 18 times, be subject to the orders and control of the court and
44 19 such surplus arising from the trust fund shall not be used
44 20 except for charitable, eleemosynary, or public purposes under
44 21 the direction of the court.

44 22 4. RECEIPT == CEMETERY RECORD. Every such trustee shall
44 23 execute and deliver to the donor a receipt showing the amount
44 24 of money or other property received, and the use to be made of
44 25 the net proceeds from the same, duly attested by the clerk of
44 26 the court granting letters of trusteeship, and a copy thereof,
44 27 signed by the trustee and so attested, shall be filed with and
44 28 recorded by the clerk in a book to be known as the cemetery

44 29 record, in which shall be recorded all reports and other
44 30 papers, including orders made by the court relative to
44 31 cemetery matters.

44 32 5. INVESTMENTS. Any such trustee may receive and invest
44 33 all moneys and property, so donated or bequeathed, and that
44 34 portion of cemetery lot sales and permanent charges made
44 35 against interment spaces which has been set aside in a
45 1 perpetual care fund, in such authorized investments and in the
45 2 manner prescribed in section 636.23.

45 3 6. BOND == APPROVAL == OATH. Every such trustee before
45 4 entering upon the discharge of the trustee's duties or at any
45 5 time thereafter when required by the court shall give a bond
45 6 in an amount as may be required by the court, approved by the
45 7 clerk, and conditioned for the faithful discharge of the
45 8 trustee's duties, and take and subscribe an oath the same in
45 9 substance as the condition of the bond, which bond and oath
45 10 must be filed with the clerk.

45 11 7. CLERK == DUTY OF. At the time of filing each bond and
45 12 oath the clerk shall at once advise the court as to the amount
45 13 of the principal fund in the hands of such trustee, the amount
45 14 of the bond filed, and whether it is good and sufficient for
45 15 the amount given.

45 16 8. COMPENSATION == COSTS. Such trustee shall serve
45 17 without compensation, but may, out of the income received, pay
45 18 all proper items of expense incurred in the performance of the
45 19 trustee's duties, including cost of the bond, if any.

45 20 9. ANNUAL REPORT. Such trustee shall make a full report
45 21 of the trustee's doings in the month of January following
45 22 appointment and in January of each successive year. In each
45 23 report the trustee shall apportion the net proceeds received
45 24 from the sum total of the permanent funds assigned to the
45 25 trustee in trust.

45 26 10. REMOVAL == VACANCY FILLED. Any such trustee may be
45 27 removed by the court at any time for cause, and in the event
45 28 of removal or death, the court shall appoint a new trustee and
45 29 require the new trustee's predecessor or the predecessor's
45 30 personal representative to make a full accounting.

45 31 Sec. 51. NEW SECTION. 523I.603 OWNERS OF INTERMENT
45 32 RIGHTS.

45 33 1. An interment space in which exclusive rights of
45 34 interment are conveyed is presumed to be the separate property
45 35 of the person named as grantee in the certificate of interment
46 1 rights or other instrument of conveyance.

46 2 2. Two or more owners of interment rights may designate a
46 3 person to represent the interment space and file notice of the
46 4 designation of a representative with the cemetery. If notice
46 5 is not filed, the cemetery may inter or permit an interment in
46 6 the interment space at the request or direction of a
46 7 registered co-owner of the interment space.

46 8 Sec. 52. NEW SECTION. 523I.604 LIEN AGAINST CEMETERY
46 9 PROPERTY.

46 10 1. A cemetery, by contract, may incur indebtedness as
46 11 necessary to conduct its business and may secure the
46 12 indebtedness by mortgage, deed of trust, or other lien against
46 13 its property.

46 14 2. A mortgage, deed of trust, or other lien placed on
46 15 dedicated cemetery property, or on cemetery property that is
46 16 later dedicated with the consent of the holder of the lien,
46 17 does not affect the dedication and is subject to the
46 18 dedication. A sale on foreclosure of the lien is subject to
46 19 the dedication of the property for cemetery purposes.

46 20 Sec. 53. NEW SECTION. 523I.605 PRIVATE CARE OF GRAVES.

46 21 This subchapter does not affect the right of a person who
46 22 has an interest in an interment space, or who is a relative of
46 23 a decedent interred in a cemetery, to beautify or maintain an
46 24 interment space individually or at the person's own expense in
46 25 accordance with reasonable rules established by the cemetery.

46 26 SUBCHAPTER 7
46 27 LAWN CRYPTS

46 28 Sec. 54. NEW SECTION. 523I.701 REQUIREMENTS FOR LAWN
46 29 CRYPTS.

46 30 A lawn crypt shall not be installed unless all of the
46 31 following apply:

46 32 1. The lawn crypt is constructed of concrete and
46 33 reinforced steel or other comparable durable material.

46 34 2. The lawn crypt is installed on not less than six inches
46 35 of rock, gravel, or other drainage material.

47 1 3. The lawn crypt provides a method to drain water out of
47 2 the lawn crypt.

47 3 4. The lawn crypt is capable of withstanding the weight of
47 4 the soil and sod above the top surface and the weight of

47 5 machinery and equipment normally used in the maintenance of
47 6 the cemetery.
47 7 5. Except as provided by section 523I.702, the lawn crypt
47 8 is installed in multiple units of ten or more.
47 9 6. The lawn crypt shall be installed in compliance with
47 10 any applicable law or rule adopted by the department of public
47 11 health.

47 12 Sec. 55. NEW SECTION. 523I.702 REQUEST TO INSTALL LAWN
47 13 CRYPTS IN FEWER THAN TEN UNITS.

47 14 1. A lawn crypt may be installed in fewer than ten units
47 15 if it is installed in an interment space pursuant to a written
47 16 request to the commissioner signed by the owner or owners of
47 17 the interment space.

47 18 2. The written request shall be filed on a form prescribed
47 19 by the commissioner and shall contain substantially all of the
47 20 following information:

47 21 a. The owner's name and address.
47 22 b. The name of the cemetery and the owner of the cemetery.
47 23 c. The number of lawn crypt units to be installed.
47 24 d. A description of the interment spaces.
47 25 e. A statement that the lawn crypt meets the requirements
47 26 of section 523I.701, including all of the following:

47 27 (1) A statement that the lawn crypt will be constructed of
47 28 concrete and reinforced steel or other comparable durable
47 29 materials.

47 30 (2) A statement that the lawn crypt will be installed on
47 31 not less than six inches of rock, gravel, or other drainage
47 32 material.

47 33 (3) A statement that the lawn crypt will provide a method
47 34 to drain water out of the lawn crypt.

47 35 (4) A statement that the outside top surface of the lawn
48 1 crypt at the time of installation will be capable of
48 2 withstanding the weight of the soil and sod above the top
48 3 surface and the weight of machinery and equipment normally
48 4 used in the maintenance of the cemetery.

48 5 f. A statement that the space in which the lawn crypt is
48 6 to be installed is located in a garden.

48 7 g. The date on which a representative of the cemetery
48 8 signed the form.

48 9 SUBCHAPTER 8

48 10 PERPETUAL CARE CEMETERIES == REQUIREMENTS

48 11 Sec. 56. NEW SECTION. 523I.801 APPLICABILITY AND
48 12 CONVERSION BY NONPERPETUAL CARE CEMETERIES.

48 13 1. All cemeteries are designated as either "perpetual care
48 14 cemeteries" or "nonperpetual care cemeteries" for the purposes
48 15 of this chapter. A cemetery that represents that it is
48 16 offering perpetual care on or after July 1, 2005, is subject
48 17 to this subchapter.

48 18 2. A cemetery that operates a nonperpetual care cemetery
48 19 may elect to become a perpetual care cemetery if at all times
48 20 subsequent to the date of the election, the cemetery complies
48 21 with the other requirements of this subchapter except section
48 22 523I.805.

48 23 Sec. 57. NEW SECTION. 523I.802 ADVERTISING.

48 24 1. A cemetery shall not advertise, represent, guarantee,
48 25 promise, or contract to provide or offer perpetual care or use
48 26 terms or phrases like permanent care, permanent maintenance,
48 27 care forever, continuous care, eternal care, or everlasting
48 28 care to imply that a certain level of care and financial
48 29 security will be furnished or is guaranteed except in
48 30 compliance with the provisions of this subchapter.

48 31 2. A cemetery or person advertising or selling interment
48 32 rights shall not represent that the purchase of the interment
48 33 rights is or will be a desirable speculative investment for
48 34 resale purposes.

48 35 Sec. 58. NEW SECTION. 523I.803 PERPETUAL CARE REGISTRY.

49 1 1. A cemetery that operates a perpetual care cemetery
49 2 shall maintain a registry of individuals who have purchased
49 3 interment rights in the cemetery subject to the care fund
49 4 requirements of this subchapter.

49 5 2. The registry shall include the amount deposited in
49 6 trust for each interment rights agreement entered into on or
49 7 after July 1, 1995.

49 8 Sec. 59. NEW SECTION. 523I.804 USE OF GIFT FOR SPECIAL
49 9 CARE.

49 10 A trustee may accept and hold money or property transferred
49 11 to the trustee in trust for the purpose of applying the
49 12 principal or income of the money or property transferred for a
49 13 purpose consistent with the purpose of a perpetual care
49 14 cemetery, including the following:

49 15 1. Improvement or embellishment of any part of the

49 16 cemetery.

49 17 2. Erection, renewal, repair, or preservation of a
49 18 monument, fence, building, or other structure in the cemetery.

49 19 3. Planting or cultivation of plants in or around the
49 20 cemetery.

49 21 4. Special care of or embellishment of an interment space,
49 22 section, or building in the cemetery.

49 23 Sec. 60. NEW SECTION. 523I.805 INITIAL DEPOSIT.

49 24 1. A cemetery owned or operated by a political subdivision
49 25 of this state is not required to make a minimum initial
49 26 deposit in a care fund. Any other cemetery commencing
49 27 business in this state on or after July 1, 2005, shall not
49 28 sell interment spaces unless the cemetery has a care fund of
49 29 at least twenty-five thousand dollars in cash.

49 30 2. If an initial deposit is made by a cemetery to satisfy
49 31 subsection 1, the initial twenty-five thousand dollar deposit
49 32 may be withdrawn by the cemetery when the care fund balance
49 33 reaches one hundred thousand dollars. An affidavit shall be
49 34 filed with the commissioner providing prior notice of the
49 35 intended withdrawal of the initial deposit and attesting that
50 1 the money has not previously been withdrawn. Upon a showing
50 2 by the cemetery that the initial deposit has not previously
50 3 been withdrawn, the commissioner shall approve withdrawal of
50 4 the money and the withdrawal shall take place within one year
50 5 after the care fund balance reaches one hundred thousand
50 6 dollars.

50 7 Sec. 61. NEW SECTION. 523I.806 IRREVOCABLE TRUST.

50 8 1. A perpetual care cemetery shall establish a care fund
50 9 as an irrevocable trust to provide for the care of the
50 10 cemetery, which shall provide for the appointment of a
50 11 trustee, with perpetual succession.

50 12 2. The care fund shall be administered under the
50 13 jurisdiction of the district court of the county where the
50 14 cemetery is located. Notwithstanding chapter 633, annual
50 15 reports shall not be required unless specifically required by
50 16 the district court. Reports shall be filed with the court
50 17 when necessary to receive approval of appointments of
50 18 trustees, trust agreements and amendments, changes in fees or
50 19 expenses, and other matters within the court's jurisdiction.
50 20 A court having jurisdiction over a care fund shall have full
50 21 jurisdiction to approve the appointment of trustees, the
50 22 amount of surety bond required, if any, and investment of
50 23 funds.

50 24 Sec. 62. NEW SECTION. 523I.807 CARE FUND DEPOSITS.

50 25 1. To continue to operate as a perpetual care cemetery, a
50 26 cemetery shall set aside and deposit in the care fund an
50 27 amount equal to or greater than fifty dollars or twenty
50 28 percent of the gross selling price received by the cemetery
50 29 for each sale of interment rights, whichever is more.

50 30 2. A cemetery may require a contribution to the care fund
50 31 for perpetual care of a memorial or memorialization placed in
50 32 the cemetery. A cemetery may establish a separate care fund
50 33 for this purpose. The contributions shall be nonrefundable
50 34 and shall not be withdrawn from the trust fund once deposited.
50 35 The amount charged shall be uniformly charged on every

51 1 installation of a memorial, based on the height and width of
51 2 the memorial or the size of the ground surface area used for
51 3 the memorial. A fee for special care of a memorial may be
51 4 collected if the terms of the special care items and
51 5 arrangements are clearly specified in the interment rights
51 6 agreement. Except as otherwise provided in an interment
51 7 rights agreement, a cemetery is not liable for repair or
51 8 maintenance of memorials or vandalism. A cemetery may use
51 9 income from a care fund to repair or replace memorials or
51 10 interment spaces damaged by vandalism or acts of God.

51 11 3. Moneys shall be deposited in the care fund no later
51 12 than the fifteenth day after the close of the month when the
51 13 cemetery receives the final payment from a purchaser of
51 14 interment rights.

51 15 Sec. 63. NEW SECTION. 523I.808 AUDIT FEE.

51 16 An audit fee shall be submitted with the cemetery's annual
51 17 report in an amount equal to five dollars for each certificate
51 18 of interment rights issued during the fiscal year covered by
51 19 the report. The cemetery may charge the audit fee directly to
51 20 the purchaser of the interment rights.

51 21 Sec. 64. NEW SECTION. 523I.809 TRUST AGREEMENT
51 22 PROVISIONS.

51 23 1. A trust agreement shall provide for the appointment of
51 24 at least one trustee, with perpetual succession, in case the
51 25 cemetery is dissolved or ceases to be responsible for the
51 26 cemetery's care.

51 27 2. A cemetery and the trustee or trustees of the care fund
51 28 may, by agreement, amend the instrument that established the
51 29 fund to include any provision that is necessary to comply with
51 30 the requirements of this chapter.

51 31 3. A cemetery is responsible for the deposit of all moneys
51 32 required to be placed in a care fund.

51 33 4. The commissioner may require the amending of a trust
51 34 agreement that is not in accord with the provisions of this
51 35 chapter.

52 1 Sec. 65. NEW SECTION. 523I.810 CARE FUNDS.

52 2 1. A trustee of a care fund shall use the judgment and
52 3 care under the circumstances then prevailing that persons of
52 4 prudence, discretion, and intelligence exercise in the
52 5 management of their own affairs, not in regard to speculation
52 6 but in regard to the permanent disposition of their funds,
52 7 considering the probable income as well as the probable safety
52 8 of their capital. The trustee of a care fund has a fiduciary
52 9 duty to make reasonable investment decisions and to properly
52 10 oversee and manage the funds entrusted to the care fund.

52 11 a. A financial institution may serve as a trustee if
52 12 granted those powers under the laws of this state or of the
52 13 United States. A financial institution acting as a trustee of
52 14 a care fund under this chapter shall invest the funds in
52 15 accordance with applicable law.

52 16 b. A financial institution acting as a trustee of a care
52 17 fund under this chapter has a fiduciary duty to make
52 18 reasonable investment decisions and to properly oversee and
52 19 manage the funds entrusted to the financial institution. The
52 20 commissioner may take enforcement action against a financial
52 21 institution in its capacity as trustee for a breach of
52 22 fiduciary duty under this chapter.

52 23 c. Care fund moneys may be deposited pursuant to a master
52 24 trust agreement, if each care fund is treated as a separate
52 25 beneficiary of the trust and each care fund is separable. The
52 26 master trust shall maintain a separate accounting of principal
52 27 and income for each care fund. Moneys deposited under a
52 28 master trust agreement may be commingled by the financial
52 29 institution for investment purposes.

52 30 d. Subject to a master trust agreement, the cemetery may
52 31 appoint an independent investment advisor to advise the
52 32 financial institution about investment of the care fund.

52 33 e. Subject to an agreement between the cemetery and the
52 34 financial institution, the financial institution may receive a
52 35 reasonable fee from the care fund for services rendered as
53 1 trustee.

53 2 f. If the amount of a care fund exceeds two hundred
53 3 thousand dollars, the cemetery or any officer, director,
53 4 agent, employee, or affiliate of the cemetery shall not serve
53 5 as trustee unless the cemetery is a cemetery owned or operated
53 6 by a governmental subdivision of this state. A financial
53 7 institution holding care funds shall not do any of the
53 8 following:

53 9 (1) Be owned, under the control of, or affiliated with the
53 10 cemetery.

53 11 (2) Use any funds required to be held in trust under this
53 12 chapter to purchase an interest in a contract or agreement to
53 13 which the cemetery is a party.

53 14 (3) Otherwise invest care funds, directly or indirectly,
53 15 in the cemetery's business operations.

53 16 2. All moneys required to be deposited in the care fund
53 17 shall be deposited in the name of the trustee, as trustee,
53 18 under the terms of a trust agreement and the trustee may
53 19 invest, reinvest, exchange, retain, sell, and otherwise manage
53 20 the care fund trust for the benefit and protection of the
53 21 cemetery.

53 22 3. This section does not prohibit a cemetery from moving
53 23 care funds from one financial institution to another.

53 24 4. A care fund may receive and hold as part of the care
53 25 fund or as an incident to the care fund any property
53 26 contributed to the care fund.

53 27 5. A contribution to a care fund is considered to be for
53 28 charitable purposes if the care financed by the care fund is
53 29 for the following purposes:

53 30 a. The discharge of a duty due from the cemetery to
53 31 persons interred and to be interred in the cemetery.

53 32 b. The benefit and protection of the public by preserving
53 33 and keeping the cemetery in a dignified condition so that the
53 34 cemetery does not become a nuisance or a place of disorder,
53 35 reproach, and desolation in the community in which the
54 1 cemetery is located.

54 2 6. A contribution to a care fund is not invalid because of

54 3 the following:

54 4 a. Indefiniteness or uncertainty as to the person
54 5 designated as a beneficiary in the instrument establishing the
54 6 care fund.

54 7 b. A violation of the law against perpetuities or the law
54 8 against the suspension of the power of alienation of title to
54 9 or use of property.

54 10 7. A care fund shall pay the fund's operation costs and
54 11 any annual audit fees. The principal of a care fund is
54 12 intended to remain available perpetually as a funding source
54 13 for care of the cemetery. The principal of a care fund shall
54 14 not be reduced voluntarily and shall remain inviolable, except
54 15 as provided in this section. The trustee or trustees of a
54 16 care fund shall maintain the principal of the care fund
54 17 separate from all operating funds of the cemetery.

54 18 8. In establishing a care fund, the cemetery may adopt
54 19 plans for the care of the cemetery and installed memorials and
54 20 memorialization.

54 21 9. A cemetery may, by resolution adopted by a vote of at
54 22 least two-thirds of the members of its board at any authorized
54 23 meeting of the board, authorize the withdrawal and use of not
54 24 more than twenty percent of the principal of the care fund to
54 25 acquire additional land for cemetery purposes, to repair a
54 26 mausoleum or other building or structure intended for cemetery
54 27 purposes, or to build, improve, or repair roads and walkways
54 28 in the cemetery. The resolution shall establish a reasonable
54 29 repayment schedule, not to exceed five years, and provide for
54 30 interest in an amount comparable to the care fund's current
54 31 rate of return on its investments. However, the care fund
54 32 shall not be diminished below an amount equal to the greater
54 33 of twenty-five thousand dollars or five thousand dollars per
54 34 acre of land in the cemetery. The resolution, and either a
54 35 bond or proof of insurance to guarantee replenishment of the
55 1 care fund, shall be filed with the commissioner thirty days
55 2 prior to the withdrawal of funds.

55 3 Sec. 66. NEW SECTION. 523I.811 USE OF DISTRIBUTIONS FROM
55 4 CARE FUND.

55 5 1. Care fund distributions may be used in any manner
55 6 determined to be in the best interests of the cemetery if
55 7 authorized by a resolution, bylaw, or other action or
55 8 instrument establishing the care fund, including but not
55 9 limited to the general care of memorials, memorialization, and
55 10 any of the following:

55 11 a. Cutting and trimming lawns, shrubs, and trees at
55 12 reasonable intervals.

55 13 b. Maintaining drains, water lines, roads, buildings,
55 14 fences, and other structures.

55 15 c. Maintaining machinery, tools, and equipment.

55 16 d. Compensating maintenance employees, paying insurance
55 17 premiums, and making payments to employees' pension and
55 18 benefit plans.

55 19 e. Paying overhead expenses incidental to such purposes.

55 20 f. Paying expenses necessary to maintain ownership,
55 21 transfer, and interment records of the cemetery.

55 22 2. The commissioner may, by rule, establish terms and
55 23 conditions under which a cemetery may withdraw capital gains
55 24 from the care fund.

55 25 Sec. 67. NEW SECTION. 523I.812 SUIT BY COMMISSIONER.

55 26 1. If the person or persons in control of a cemetery do
55 27 not care for and maintain the cemetery, the district court of
55 28 the county in which the cemetery is located may do the
55 29 following:

55 30 a. By injunction compel the cemetery to expend the net
55 31 income of the care fund as required by this chapter.

55 32 b. Appoint a receiver to take charge of the care fund and
55 33 expend the net income of the care fund as required by this
55 34 chapter.

55 35 c. Grant relief on a petition for relief filed pursuant to
56 1 this section by the commissioner.

56 2 2. Inadequate care and maintenance of a cemetery includes
56 3 but is not limited to the following:

56 4 a. Failure to adequately mow grass.

56 5 b. Failure to adequately edge and trim bushes, trees, and
56 6 memorials.

56 7 c. Failure to keep walkways and sidewalks free of
56 8 obstructions.

56 9 d. Failure to adequately maintain the cemetery's equipment
56 10 and fixtures.

56 11 This subsection is not intended to prevent the
56 12 establishment of a cemetery as a nature park or preserve.

56 13 Sec. 68. NEW SECTION. 523I.813 ANNUAL REPORT BY

56 14 PERPETUAL CARE CEMETERIES.

56 15 1. A perpetual care cemetery shall file a written report
56 16 at the end of each fiscal year of the cemetery that includes
56 17 all of the following:

56 18 a. The name and address of the cemetery.

56 19 b. The name and address of the corporation that owns the
56 20 cemetery, if any.

56 21 c. A description of any common business enterprise or
56 22 parent company that owns the cemetery, if any.

56 23 d. The name and address of any owner, officer, or other
56 24 official of the cemetery, including, when relevant, the chief
56 25 executive officer and the members of the board of directors.

56 26 e. The name and address of any trustee holding trust funds
56 27 for the cemetery, including the name and location of the
56 28 applicable trust account.

56 29 f. An affidavit that the cemetery is in compliance with
56 30 this chapter.

56 31 g. Copies of all sales agreement forms used by the
56 32 cemetery.

56 33 h. The amount of the principal of the cemetery's care
56 34 funds or maintenance funds, if any, at the end of the fiscal
56 35 year.

57 1 2. The report shall be filed with the commissioner within
57 2 four months following the end of the cemetery's fiscal year in
57 3 the form required by the commissioner.

57 4 Sec. 69. NEW SECTION. 523I.814 UNIFIED ANNUAL REPORTS.

57 5 The commissioner shall permit the filing of a unified
57 6 report in the event of commonly owned or affiliated cemeteries
57 7 if each cemetery is separately identified and separate records
57 8 are maintained for each cemetery.

57 9 Sec. 70. Section 602.8102, subsection 81, Code 2005, is
57 10 amended to read as follows:

57 11 81. Carry out duties relating to cemeteries as provided in
57 12 ~~sections 566.4, 566.7, and 566.8~~ section 523I.602.

57 13 Sec. 71. Section 602.8104, subsection 2, paragraph h, Code
57 14 2005, is amended to read as follows:

57 15 h. A cemetery record as provided in section ~~566.4~~
57 16 523I.602.

57 17 Sec. 72. Section 636.23, subsection 14, Code 2005, is
57 18 amended to read as follows:

57 19 14. LIMITATION AS TO COURT-APPROVED INVESTMENTS. This
57 20 section does not prohibit investment of such funds in a
57 21 savings account or time certificate of deposit of a bank or
57 22 savings and loan association, located within the city or its
57 23 county of this state and when first approved by the court.
57 24 However, a city that is the trustee of a cemetery as provided
57 25 in section ~~566.14~~ 523I.508 may invest perpetual care funds in
57 26 a savings account or certificates of deposit at a bank or
57 27 savings and loan association, located in this state without
57 28 court approval.

57 29 Sec. 73. Section 359.41, Code 2005, is repealed.

57 30 Sec. 74. Chapters 523I, 566, and 566A, Code 2005, are
57 31 repealed.

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CHRISTOPHER C. RANTS
Speaker of the House

JOHN P. KIBBIE
President of the Senate

MARGARET THOMSON
Chief Clerk of the House

Approved _____, 2005

THOMAS J. VILSACK
Governor