

MAR 19 2003  
Place On Calendar

HOUSE FILE 633  
BY COMMITTEE ON COMMERCE,  
REGULATION AND LABOR

(SUCCESSOR TO HSB 266)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to cemeteries and cemetery regulation;  
2 establishing requirements for interment rights agreements,  
3 reporting, and permits; establishing and appropriating fees;  
4 and providing administration and enforcement procedures and  
5 penalties.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 633

1 Section 1. Section 6A.4, subsection 4, Code 2003, is  
2 amended to read as follows:

3 4. CEMETERY ASSOCIATIONS CORPORATIONS. Upon any private  
4 cemetery ~~or-cemetery-association~~ corporation which is  
5 incorporated under the laws of this state relating to  
6 corporations not for pecuniary profit, and having its cemetery  
7 located outside the limits of a city, for the purpose of  
8 acquiring necessary grounds for cemetery use or reasonable  
9 additions thereto. The right granted in this subsection shall  
10 not be exercised until the board of supervisors, of the county  
11 in which the land sought to be condemned is located, has, on  
12 written application and hearing, on such reasonable notice to  
13 all interested parties as it may fix, found that the land,  
14 describing it, sought to be condemned, is necessary for  
15 cemetery purposes. The ~~association~~ cemetery corporation shall  
16 pay all costs attending such hearing.

17 Sec. 2. Section 6A.7, Code 2003, is amended to read as  
18 follows:

19 6A.7 CEMETERY LANDS.

20 No lands actually platted, used, and devoted to cemetery  
21 purposes shall be taken for any railway purpose without the  
22 consent of the ~~proper~~ cemetery corporation's officers or  
23 owners thereof.

24 Sec. 3. Section 359.28, Code 2003, is amended to read as  
25 follows:

26 359.28 CONDEMNATION.

27 The township trustees are hereby empowered to condemn, or  
28 purchase and pay for out of the general fund, or the specific  
29 fund voted for such purpose, and enter upon and take, any  
30 lands within the territorial limits of such township for the  
31 use of existing cemeteries, a community center or juvenile  
32 playgrounds, in the same manner as is now provided for cities.  
33 However, the board of supervisors or a cemetery commission  
34 appointed by the board of supervisors shall control and  
35 maintain pioneer cemeteries as defined in section 331.325.

1     Sec. 4. Section 359.29, Code 2003, is amended to read as  
2 follows:

3     359.29   GIFTS AND DONATIONS.

4     Civil townships are hereby authorized and empowered to  
5 receive by gift, devise, or bequest, money or property for the  
6 purpose of establishing and maintaining libraries, township  
7 halls, maintaining existing cemeteries, or for any other  
8 public purpose. All such gifts, devises, or bequests shall be  
9 effectual only when accepted by resolution of the board of  
10 trustees of such township.

11    Sec. 5. Section 427.1, subsection 6, Code 2003, is amended  
12 to read as follows:

13    6.   PROPERTY OF CEMETERY ~~ASSOCIATIONS~~ CORPORATIONS. Burial  
14 grounds, mausoleums, buildings and equipment owned and  
15 operated by cemetery ~~associations~~ corporations incorporated as  
16 a nonprofit corporation under chapter 504A and used  
17 exclusively for the maintenance and care of the cemeteries  
18 devoted to interment of human bodies and human remains. The  
19 exemption granted by this subsection shall not apply to any  
20 property used for the practice of mortuary science.

21    Sec. 6. Section 450.10, subsection 3, unnumbered paragraph  
22 1, Code 2003, is amended to read as follows:

23    When the property or any interest therein or income  
24 therefrom, taxable under the provisions of this chapter,  
25 passes in any manner to societies, institutions or  
26 associations incorporated or organized under the laws of any  
27 other state, territory, province or country than this state,  
28 for charitable, educational or religious purposes, or to  
29 cemetery ~~associations~~ corporations incorporated as a nonprofit  
30 corporation under chapter 504A, including humane societies not  
31 organized under the laws of this state, or to resident  
32 trustees for uses without this state, the rate of tax imposed  
33 shall be as follows:

34    Sec. 7. Section 459.102, subsection 9, Code 2003, is  
35 amended to read as follows:

1 9. "Cemetery" means a space held for the purpose of  
2 permanent burial, entombment, or interment of human remains  
3 that is owned or managed by a political subdivision or private  
4 entity, or a cemetery regulated pursuant to chapter 523I or  
5 566A. However, "cemetery" does not include a pioneer cemetery  
6 as defined in section 331.325.

7 Sec. 8. Section 523A.203, subsection 6, paragraph b, Code  
8 2003, is amended to read as follows:

9 b. Use any funds required to be held in trust under this  
10 chapter ~~or chapter-566A~~ to purchase an interest in any  
11 contract or agreement to which a seller is a party.

12 SUBCHAPTER 1

13 SHORT TITLE AND DEFINITIONS

14 Sec. 9. NEW SECTION. 523I.101 SHORT TITLE.

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

16 Sec. 10. NEW SECTION. 523I.102 DEFINITIONS.

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

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

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

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

32 4. "Care" means the maintenance of a cemetery's interment  
33 spaces, niches, and mausoleums.

34 5. "Care fund" means money or real or personal property  
35 impressed with a trust by the terms of this chapter, a gift,

1 grant, contribution, payment, legacy, or the terms of a  
2 contract accepted by the cemetery corporation or any trustee  
3 of the trust fund and any accumulated income allocated to  
4 principal.

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

9 7. "Cemetery" means an area dedicated to and used or  
10 intended to be used to inter or scatter remains.

11 8. "Cemetery corporation" means a corporation that  
12 operates one or more cemeteries.

13 9. "Columbarium" means a structure, room, or space in a  
14 mausoleum or other building containing niches or recesses for  
15 disposition of cremated remains.

16 10. "Commissioner" means the commissioner of insurance or  
17 the deputy administrator authorized in section 523A.801 to the  
18 extent the commissioner delegates functions to the deputy  
19 administrator.

20 11. "Common business enterprise" means a group of two or  
21 more business entities that share common ownership in excess  
22 of fifty percent.

23 12. "Credit sale" means a sale of goods, services, or an  
24 interest in land in which all of the following are applicable:

25 a. Credit is granted either under a seller credit card or  
26 by a seller who regularly engages as a seller in credit  
27 transactions of the same kind.

28 b. The buyer is a person other than an organization.

29 c. The goods, services, or interest in land are purchased  
30 primarily for a personal, family, or household purpose.

31 d. Either the debt is payable in installments or a finance  
32 charge is made.

33 e. For goods and services, the amount financed does not  
34 exceed twenty-five thousand dollars.

35 13. "Cremated remains" means the bone fragments that

1 remain after the cremation process is completed.

2 14. "Cremation" means the technical process using heat and  
3 flame that reduces human remains to bone fragments. The  
4 reduction takes place through heat and evaporation.

5 "Cremation" shall include the processing, and may include the  
6 pulverization, of the bone fragments.

7 15. "Disinterment" means to remove human remains from  
8 their place of final disposition.

9 16. "Doing business in this state" means issuing or  
10 performing wholly or in part any term of an interment rights  
11 agreement executed within the state of Iowa.

12 17. "Financial institution" means a state or federally  
13 insured bank, savings and loan association, credit union,  
14 trust department thereof, or a trust company that is  
15 authorized to do business within this state, that has been  
16 granted trust powers under the laws of this state or the  
17 United States, and that holds funds under a trust agreement.  
18 "Financial institution" does not include a cemetery, a  
19 cemetery corporation, or any person employed by or directly  
20 involved with a cemetery.

21 18. "Garden" means an area within a cemetery established  
22 by the cemetery as a subdivision for organizational purposes,  
23 not for sale purposes.

24 19. "Grave space" means a space of ground in a cemetery  
25 that is used or intended to be used for an in-ground burial.

26 20. "Gross selling price" means the aggregate amount a  
27 purchaser is obligated to pay for interment rights, exclusive  
28 of finance charges.

29 21. "Inactive cemetery" means a cemetery that is not  
30 operating on a regular basis, is not offering to sell or  
31 provide interments or other services reasonably necessary for  
32 interment, and does not provide or permit reasonable ingress  
33 or egress for the purposes of visiting interment spaces.

34 22. "Income" means the return in money or property derived  
35 from the use of trust principal after deduction of investment

1 losses, taxes, and expenses incurred in the sale of trust  
2 assets, any cost of the operation of the trust, and any annual  
3 audit fees. "Income" includes but is not limited to:

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

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

9 c. Cash dividends paid on corporate stock.

10 d. Interest paid on deposit funds or debt obligations.

11 e. Gain realized from the sale of trust assets.

12 23. "Insolvent" means the inability to pay debts as they  
13 become due in the usual course of business.

14 24. "Interment rights" means the rights to place remains  
15 in a specific location for use as a final resting place or  
16 memorial.

17 25. "Interment rights agreement" means an agreement to  
18 furnish memorials, memorialization, opening and closing  
19 services, or interment rights.

20 26. "Interment space" means a space used or intended to be  
21 used for the interment of remains including, but not limited  
22 to, a grave space, lawn crypt, mausoleum crypt, and niche.

23 27. "Lawn crypt" means a preplaced enclosed chamber, which  
24 is usually constructed of reinforced concrete and poured in  
25 place, or a precast unit installed in quantity, either side-  
26 by-side or at multiple depths, and covered by earth or sod.

27 28. "Lot" means an area in a cemetery containing more than  
28 one interment space which is uniquely identified by an  
29 alphabetical, numeric, or alphanumerical identification  
30 system.

31 29. "Maintenance funds" means any money and real or  
32 personal property held by a nonperpetual cemetery under the  
33 terms of this chapter, and any accumulated income allocated to  
34 principal.

35 30. "Mausoleum" means an aboveground structure designed

1 for the entombment of human remains.

2 31. "Mausoleum crypt" means a chamber in a mausoleum of  
3 sufficient size to contain casketed human remains.

4 32. "Memorial" means any product, including any foundation  
5 other than a mausoleum or columbarium, used for identifying an  
6 interment space or for commemoration of the life, deeds, or  
7 career of a decedent including, but not limited to, a  
8 monument, marker, niche plate, urn garden plaque, crypt plate,  
9 cenotaph, marker bench, and vase.

10 33. "Memorial care" means any care provided or to be  
11 provided for the general maintenance of memorials including  
12 foundation repair or replacement, resetting or straightening  
13 tipped memorials, repairing or replacing inadvertently damaged  
14 memorials and any other care clearly specified in the purchase  
15 agreement.

16 34. "Memorial dealer" means any person offering or selling  
17 memorials retail to the public.

18 35. "Memorialization" means any permanent system designed  
19 to mark or record the names and other data pertaining to a  
20 decedent.

21 36. "Merchandise" means any personal property offered or  
22 sold for use in connection with the funeral, final  
23 disposition, memorialization, or interment of human remains,  
24 but which is exclusive of interment rights.

25 37. "Neglected cemetery" means a cemetery where there has  
26 been a failure to cut grass or weeds or care for graves,  
27 memorials or memorialization, walls, fences, driveways, and  
28 buildings, or for which proper records of interments have not  
29 been maintained.

30 38. "Niche" means a recess or space in a columbarium or  
31 mausoleum used for placement of cremated human remains.

32 39. "Opening and closing services" means one or more  
33 services necessarily or customarily provided in connection  
34 with the interment or entombment of human remains or a  
35 combination thereof.

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

6 41. "Parent company" means a corporation that has a  
7 controlling interest in a cemetery corporation.

8 42. "Perpetual care cemetery" includes all of the  
9 following:

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

12 b. Any cemetery that has established a care fund in  
13 compliance with subchapter 12.

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

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

19 43. "Person" means an individual, firm, corporation,  
20 partnership, joint venture, limited liability company,  
21 association, trustee, government or governmental subdivision,  
22 agency, or other entity, or any combination thereof.

23 44. "Pioneer cemetery" means a cemetery where there were  
24 six or fewer burials in the preceding fifty years.

25 45. "Purchaser" means a person who purchases memorials,  
26 memorialization, opening and closing services, scattering  
27 services, interment rights, or a combination thereof. The  
28 purchaser need not be a beneficiary of the interment rights  
29 agreement.

30 46. "Religious cemetery" means a cemetery that is owned,  
31 operated, or controlled by a recognized church or  
32 denomination.

33 47. "Relocation" means the act of taking remains from the  
34 place of interment or the place where the remains are being  
35 held to another designated place.

1 48. "Remains" means the body of a deceased human or a body  
2 part, or limb that has been removed from a living human,  
3 including a body, body part, or limb in any stage of  
4 decomposition, or cremated remains.

5 49. "Scattering" means the disposition of cremated remains  
6 by lawful dispersion.

7 50. "Scattering services" means one or more services  
8 necessarily or customarily provided in connection with  
9 scattering human cremated remains.

10 51. "Scattering services provider" means a person in the  
11 business of scattering human cremated remains.

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

20 53. "Special care" means any care provided or to be  
21 provided that supplements or exceeds the requirements of this  
22 chapter in accordance with the specific directions of any  
23 donor of funds for such purposes.

24 54. "Undeveloped space" means a designated area or  
25 building within a cemetery that has been mapped and planned  
26 for future development but is not yet fully developed.

27 SUBCHAPTER 2

28 CEMETERY DEDICATION REQUIREMENTS AND PROCEDURES

29 Sec. 11. NEW SECTION. 523I.201 DEDICATION.

30 1. A person that dedicates property for a new cemetery on  
31 or after July 1, 2003, and a cemetery corporation that  
32 dedicates an additional garden on or after July 1, 2003,  
33 shall:

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

1 or plat of the property. Individual spaces do not need to be  
2 set forth visually. The map or plat must include narrative  
3 descriptions for each garden that allow individuals to  
4 determine the location of each interment space. The narrative  
5 descriptions must include appropriate compass directions, the  
6 size of interment spaces in each defined area, and a  
7 description of a progressive numbering system used to organize  
8 individual spaces in each defined area.

9     b. In the case of a mausoleum or a columbarium, make a map  
10 or plat of the property delineating sections or other  
11 divisions with descriptive names and numbers. Individual  
12 spaces do not need to be set forth visually. The map or plat  
13 must include narrative descriptions for each section or  
14 division that allow individuals to determine the location of  
15 each interment space. The narrative descriptions must include  
16 appropriate compass directions, the size of interment spaces  
17 in each defined area, and a description of a progressive  
18 numbering system used to organize individual spaces in each  
19 defined area.

20     c. File the map or plat with the commissioner, including a  
21 written certificate or declaration of dedication of the  
22 property delineated by the map or plat, dedicating the  
23 property to cemetery purposes. The certificate or declaration  
24 shall include all of the following:

25       (1) Provision of information on a form prescribed by the  
26 directors or officers of the cemetery corporation.

27       (2) The signature of two individuals authorized by the  
28 cemetery corporation for that purpose.

29       (3) Verification by a notary public.

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

34     3. A certificate or declaration of dedication may contain  
35 a provision permitting a cemetery corporation to resurvey and

1 change the shape and size of the property for which the  
2 associated map or plat is filed if that change does not  
3 disturb any interred remains. If a change is made, the  
4 cemetery corporation shall file an amended map or plat and  
5 shall indicate any change in a specific unique number assigned  
6 to an interment space.

7 4. A cemetery corporation is civilly liable to the state  
8 in an amount not to exceed one thousand dollars for each map  
9 or plat that fails to meet the requirements of this section.

10 5. A cemetery corporation shall not sell or convey  
11 interment rights in a section or garden until a map or plat  
12 and a certificate or declaration of dedication, if required by  
13 this section, is filed with the commissioner.

14 Sec. 12. NEW SECTION. 523I.202 EFFECT OF DEDICATION.

15 1. Property may be dedicated for use as a cemetery, and  
16 the dedication is permitted out of respect for the dead, to  
17 provide for the disposition of remains, and in fulfillment of  
18 a duty to and for the benefit of the public.

19 2. Dedication of property as a cemetery and a property  
20 owner's title to the exclusive interment rights are not  
21 affected by the dissolution of the corporation owning the  
22 cemetery, nonuse, alienation, encumbrance, or forced sale of  
23 the property.

24 3. Dedication of property as a cemetery may not be  
25 invalidated because of a violation of the law against  
26 perpetuities or the law against the suspension of the power of  
27 alienation of title to or use of property.

28 4. All property located on land dedicated as a cemetery,  
29 including a road, alley, or walk in the cemetery:

30 a. Is exempt from public improvements assessments, fees,  
31 and public taxation.

32 b. Shall not be sold on execution or applied in payment of  
33 debts due from individual owners.

34 5. If human remains are not interred in a garden, the  
35 dedication of that portion of the property as a cemetery may

1 be removed if notice is filed with the commissioner. Property  
2 dedicated as a cemetery shall continue to be used for cemetery  
3 purposes until the dedication is removed by filing notice with  
4 the commissioner, by court order, or until maintenance of the  
5 cemetery is enjoined or abated as a nuisance under section  
6 523I.804.

7 Sec. 13. NEW SECTION. 523I.203 REMOVAL OF DEDICATION.

8 A cemetery corporation may petition a district court of the  
9 county in which a cemetery is located to remove the dedication  
10 with respect to all or any portion of the cemetery if any of  
11 the following occurs:

12 1. All remains have been removed from that portion of the  
13 cemetery where the dedication is to be removed.

14 2. No interments were made in that portion of the cemetery  
15 where the dedication is to be removed and that portion of the  
16 cemetery is not used or necessary for interment purposes.

17 3. A court orders the removal of the dedication upon  
18 notice and proof deemed satisfactory by the court.

19 SUBCHAPTER 3

20 CEMETERY CORPORATIONS

21 Sec. 14. NEW SECTION. 523I.301 FORMATION OF CORPORATION  
22 TO MAINTAIN AND OPERATE A CEMETERY.

23 1. A person shall not operate as a cemetery except by  
24 means of a corporation.

25 2. A corporation may, if authorized to do so by its  
26 articles, establish, maintain, manage, improve, or operate a  
27 cemetery either for or without profit to its members or  
28 stockholders. A nonprofit cemetery corporation shall be  
29 organized pursuant to chapter 504A, the Iowa nonprofit  
30 corporation Act. A for-profit cemetery corporation shall be  
31 organized pursuant to chapter 490, the Iowa business  
32 corporation Act, or chapter 490A, the Iowa limited liability  
33 company Act.

34 3. The powers, privileges, and duties conferred and  
35 imposed upon any cemetery corporation doing business under

1 this chapter are hereby enlarged as each particular case may  
2 require to conform to the provisions of this chapter.

3 4. Unless otherwise limited by law, a cemetery corporation  
4 shall have the same powers granted to other corporations in  
5 general, including the right to enter into contracts secured  
6 by a mortgage, deed of trust, or other obligation upon the  
7 cemetery corporation's property.

8 Sec. 15. NEW SECTION. 523I.302 PROPERTY ACQUISITION BY  
9 CEMETERY CORPORATION.

10 1. A cemetery corporation may acquire by purchase,  
11 donation, or devise property consisting of land or other  
12 property in which remains may be interred under law.

13 2. A cemetery corporation that acquires property may  
14 record title to its property with the county recorder of the  
15 county in which the property is located if its president and  
16 secretary or other authorized delegate of the cemetery  
17 corporation sign and acknowledge a declaration executed by the  
18 cemetery corporation that describes the property and declares  
19 the cemetery corporation's intention to use the property or a  
20 part of the property for interment purposes.

21 3. Title recorded pursuant to subsection 2 constitutes  
22 constructive notice as of the date of filing that the property  
23 is intended to be used for interment.

24 4. A cemetery corporation may by condemnation acquire  
25 property in which remains may be interred when the acquisition  
26 of that property is for a public purpose.

27 Sec. 16. NEW SECTION. 523I.303 AUTHORITY OF CEMETERY  
28 CORPORATION.

29 A cemetery corporation may do any of the following:

30 1. Divide the cemetery into interment spaces and  
31 subdivisions for cemetery purposes.

32 2. Charge an assessment on cemetery property for the  
33 purpose of general improvement and maintenance.

34 3. Take any action that is necessary to carry out the  
35 cemetery's business purposes including those purposes that are

1 necessarily incidental to the final disposition of human  
2 remains, including any of the following:  
3 a. Convey property or other assets of the corporation.  
4 b. Borrow money.

5 SUBCHAPTER 4

6 INTERMENT RIGHTS

7 Sec. 17. NEW SECTION. 523I.401 SALE OF INTERMENT RIGHTS.

8 1. A cemetery corporation may sell and convey exclusive  
9 rights of interment in the cemetery under the following  
10 conditions:

11 a. The sale or conveyance is allowed by the rules of the  
12 cemetery and the restrictions in the certificate of interment  
13 rights or other instrument of conveyance.

14 b. The purchase price for the interment rights has been  
15 paid in full.

16 2. A certificate of interment rights or other instrument  
17 evidencing the conveyance of exclusive rights of interment by  
18 a cemetery corporation must be signed by the president or vice  
19 president and the secretary or other officers authorized by  
20 the cemetery corporation.

21 3. A conveyance of exclusive rights of interment must be  
22 filed and recorded in the cemetery corporation's office. Any  
23 transfer of the ownership of interment rights must be filed  
24 and recorded in the cemetery corporation's office. The  
25 cemetery corporation may charge a reasonable recording fee to  
26 record the transfer of interment rights.

27 4. The interment rights in an interment space that is  
28 conveyed by a certificate of ownership or other instrument  
29 shall not be divided without the consent of the cemetery  
30 corporation.

31 Sec. 18. NEW SECTION. 523I.402 INTERMENT RIGHTS.

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

1     2. The spouse of a person to whom exclusive rights of  
2 interment in an interment space are conveyed has a vested  
3 right of interment of the spouse's remains in the interment  
4 space while the spouse is married to the interment space owner  
5 or if the spouse is married to the interment space owner at  
6 the time of the owner's death.

7     Sec. 19. NEW SECTION. 523I.403 MULTIPLE OWNERS OF  
8 INTERMENT RIGHTS.

9     Two or more owners of interment rights may designate a  
10 person to represent the interment space and file notice of the  
11 designation of a representative with the cemetery corporation.  
12 If notice is not filed, the cemetery corporation may inter or  
13 permit an interment in the space at the request or direction  
14 of a registered co-owner of the interment space.

15     Sec. 20. NEW SECTION. 523I.404 RECORDS OF INTERMENT  
16 RIGHTS AND INTERMENT.

17     1. A cemetery corporation shall keep complete records  
18 identifying the owners of all interment rights sold by the  
19 cemetery corporation and historical information regarding any  
20 transfers of ownership. The records shall include all of the  
21 following:

22     a. The name and last known address of each owner or  
23 previous owner of interment rights.

24     b. The date of each purchase or transfer of interment  
25 rights.

26     c. A unique numeric or alphanumeric identifier that  
27 identifies the location of each interment space sold by the  
28 cemetery corporation.

29     2. A cemetery corporation shall keep a record of each  
30 interment in a cemetery. The records shall include all of the  
31 following:

32     a. The date the remains are interred.

33     b. The name, date of birth, and date of death of the  
34 decedent interred, if those facts can be conveniently  
35 obtained.

1 c. A unique numeric or alphanumeric identifier that  
2 identifies the location of the interment space where the  
3 remains are interred.

4 Sec. 21. NEW SECTION. 523I.405 ABANDONED INTERMENT  
5 SPACES.

6 1. REVERSION. The ownership or right in or to an  
7 unoccupied interment space shall, upon abandonment, revert to  
8 the cemetery corporation that owns the cemetery in which the  
9 space is located.

10 2. PRESUMPTION OF ABANDONMENT. Unpaid care assessments  
11 and fees for an unoccupied interment space not under perpetual  
12 care shall create a lien by the cemetery corporation against  
13 the applicable interment space. The continued failure of the  
14 owner to maintain or care for an unoccupied interment space  
15 not under perpetual care, for a period of ten years, or to pay  
16 a lien for care assessments or care fees that exceed the  
17 amount paid for the interment space, shall create the  
18 presumption that the interment space has been abandoned. An  
19 unused interment space under perpetual care in a lot which has  
20 not had a burial for seventy-five years shall create a  
21 presumption that the interment space has been abandoned.

22 3. NOTICE OF ABANDONMENT. Abandonment shall not be deemed  
23 complete pursuant to subsection 2 until the cemetery  
24 corporation gives notice declaring the interment space to be  
25 abandoned, to the owner of record or, if the owner of record  
26 is deceased or unknown, to the heirs of the owner of record.

27 4. SERVICE OF NOTICE. Notice of abandonment may be served  
28 personally on the owner of record or the owner of record's  
29 heirs, or may be served by mailing notice by certified mail to  
30 the owner of record, or the owner of record's heirs, at the  
31 last known address of the owner of record or owner of record's  
32 heirs. If the address of the owner of record or the owner of  
33 record's heirs cannot be ascertained, notice of such  
34 abandonment shall be given by one publication of the notice of  
35 abandonment in the official newspaper of the county in which

1 the cemetery is located.

2 5. OVERCOMING PRESUMPTION OF ABANDONMENT. If within one  
3 year from the time of serving notice the owner of record or  
4 the owner of record's heirs pay the past due annual care  
5 charges assessed against the interment space, the presumption  
6 of abandonment shall no longer exist and the owner of record  
7 or the owner of record's heirs may be required to make full  
8 payment for future perpetual care.

9 6. REVERSIONER'S RIGHT TO SELL. When the abandonment is  
10 deemed complete, the reversionary owner of the abandoned  
11 interment space, or a portion thereof, may sell and convey  
12 title to the interment space.

13 7. USE OF FUNDS. Any funds realized from the sale of an  
14 interment space not under perpetual care which has reverted to  
15 the reversionary owner shall be allocated to the care fund or  
16 to the fund paying the costs of cemetery operation.

17 8. ABANDONMENT -- PERPETUAL CARE PROVIDED BY WILL, COURT  
18 ORDER, CONTRACT, OR BY LAW. An unused interment space which  
19 has not had a burial for seventy-five years, but whose  
20 perpetual care has been provided for by will, court order,  
21 contract, or by law, shall not be sold by the reversionary  
22 owner until three years after the date notice was served on  
23 the owner of record or the owner of record's heirs of the  
24 presumed abandonment of the interment space.

25 SUBCHAPTER 5

26 INTERMENT RIGHTS AGREEMENTS

27 Sec. 22. NEW SECTION. 523I.501 STATEMENT BY PERPETUAL  
28 CARE CEMETERY.

29 1. A perpetual care cemetery shall include the following  
30 statement in the heading of each interment rights agreement:

31 "This cemetery is operated as a perpetual care cemetery,  
32 which means that a care fund for its maintenance has been  
33 established in conformity with the laws of the State of Iowa.  
34 At least twenty percent of the purchase price for interment  
35 rights must be placed in the care fund and the care fund's

1 income is used to maintain, repair, and care for the  
2 cemetery."

3 2. If the care fund contains less than twenty-five  
4 thousand dollars, the statement shall include a statement that  
5 the balance of the care fund is less than twenty-five thousand  
6 dollars or shall disclose the exact amount contained in the  
7 care fund on a date not more than twelve months prior to the  
8 date of execution of the interment rights agreement.

9 Sec. 23. NEW SECTION. 523I.502 STATEMENT BY NONPERPETUAL  
10 CARE CEMETERY.

11 1. A nonperpetual care cemetery shall include the  
12 following statement in the heading of each interment rights  
13 agreement:

14 "This cemetery is a nonperpetual care cemetery and has not  
15 established a perpetual trust fund for the cemetery's care."

16 2. A nonperpetual care cemetery shall not represent that  
17 the cemetery is a perpetual care cemetery or use any similar  
18 title, description, or term indicating that the cemetery  
19 provides guaranteed or permanent maintenance and care. If a  
20 nonperpetual care cemetery has a maintenance fund, trust fund,  
21 or trust funds, any statements about those funds must be  
22 factually accurate and explain any variances between the terms  
23 of the applicable trust and this chapter in regard to the  
24 twenty-five thousand dollar minimum corpus provision, any  
25 provisions regarding invasion of principal, and the amount of  
26 the purchase price placed in trust for each sale of interment  
27 rights.

28 Sec. 24. NEW SECTION. 523I.503 INTERMENT RIGHTS  
29 AGREEMENT REQUIREMENTS.

30 An agreement for interment rights shall be written in  
31 clear, understandable language and shall contain all of the  
32 following:

33 1. The name of the cemetery where the rights to interment  
34 are located, the name of the cemetery corporation selling  
35 interment rights or the name of a seller other than the

- 1 cemetery corporation, and the name of the purchaser.
- 2 2. The name and sales permit number of the salesperson.
- 3 3. A description of the interment rights to be provided
- 4 and the cost of merchandise or services to be provided.
- 5 4. The conditions under which substitutions will be
- 6 allowed.
- 7 5. The total purchase price and the terms under which the
- 8 purchase price is to be paid.
- 9 6. That the purchase of interment rights is an irrevocable
- 10 contract, except as otherwise specified in the cemetery
- 11 corporation's rules and regulations.
- 12 7. The amount or percentage of money to be placed in the
- 13 cemetery corporation's care fund or maintenance fund.
- 14 8. A statement explaining that the care fund or
- 15 maintenance fund is an irrevocable trust, that deposits cannot
- 16 be withdrawn even in the event of cancellation of the
- 17 agreement, and that the care fund or maintenance fund must be
- 18 used by the cemetery corporation for the care and maintenance
- 19 of the cemetery.
- 20 9. An explanation of any fees or expenses that may be
- 21 charged.
- 22 10. An explanation of whether the money to be placed in
- 23 the cemetery corporation's care fund or maintenance fund will
- 24 be deposited in trust upon payment in full or on an allocable
- 25 basis as payments are made.
- 26 11. An explanation of whether initial payments on
- 27 agreements for multiple items of merchandise or services, or
- 28 both, will be allocated first to the purchase of interment
- 29 rights. If such an allocation will be made, the agreement
- 30 shall provide for the immediate transfer of such interment
- 31 rights upon payment in full and prominently state that any
- 32 applicable trust deposits under chapter 523A will not be made
- 33 until the cemetery has received payment in full for the
- 34 interment rights. The transfer of interment rights in an
- 35 undeveloped space may be deferred until such space is ready

1 for burial.

2 12. A provision that if the transfer of an undeveloped  
3 interment space will be deferred as set forth in subsection  
4 11, there will be written acknowledgement when payment in full  
5 is made, specification of a reasonable time period for  
6 development of the space, a description of what happens in the  
7 event of the purchaser's death prior to development of the  
8 space, and immediate transfer of the interment rights when  
9 development of the space is complete.

10 13. Specification of the purchaser's right to cancel the  
11 agreement and liability for damages upon such cancellation, if  
12 any.

13 14. A statement that the insurance division exercises  
14 regulatory oversight over interment rights agreements set  
15 forth in twelve point bold-faced type, in substantially the  
16 following language: THIS AGREEMENT IS SUBJECT TO RULES  
17 ADMINISTERED BY THE IOWA INSURANCE DIVISION. YOU MAY CALL THE  
18 INSURANCE DIVISION AT (\_\_\_\_)\_\_\_\_\_. WRITTEN INQUIRIES OR  
19 COMPLAINTS SHOULD BE MAILED TO THE IOWA INSURANCE DIVISION,  
20 (STREET ADDRESS), (CITY), IOWA (ZIP CODE).

21 15. If the cemetery corporation offers opening and closing  
22 services, specification of whether opening and closing of  
23 interment spaces are included in the interment rights  
24 agreement, and, if not, the current prices for such opening  
25 and closing services and a statement that these prices are  
26 subject to change.

27 16. Signatures of the purchaser and the seller.  
28 A seller shall furnish the purchaser with a completed copy  
29 of the interment rights agreement at the time the agreement is  
30 signed.

31 SUBCHAPTER 6  
32 LAWN CRYPTS

33 Sec. 25. NEW SECTION. 523I.601 REQUIREMENTS FOR LAWN  
34 CRYPTS.

35 A lawn crypt shall not be installed unless all of the

1 following apply:

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

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

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

8 4. The outside top surface of the lawn crypt at the time  
9 of installation is at least one and one-half feet below the  
10 surface of the ground and is capable of withstanding the  
11 weight of the soil and sod above the top surface and the  
12 weight of machinery and equipment normally used in the  
13 maintenance of the cemetery.

14 5. Except as provided by section 523I.602, the lawn crypt  
15 is installed in multiple units of ten or more.

16 6. To the extent that any provision of section 135.11 or  
17 chapter 156 or any administrative rule adopted pursuant  
18 thereto is inconsistent with this section, the provisions of  
19 this section shall govern.

20 Sec. 26. NEW SECTION. 523I.602 REQUEST TO INSTALL LAWN  
21 CRYPT IN FEWER THAN TEN UNITS.

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

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

29 a. The owner's name and address.

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

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

32 d. A description of the interment spaces.

33 e. A statement that the lawn crypt meets the requirements  
34 of section 523I.601, including all of the following:

35 (1) A statement that the lawn crypt will be constructed of

1 concrete and reinforced steel or other comparable durable  
2 materials.

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

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

8 (4) A statement that the outside top surface of the lawn  
9 crypt at the time of installation will be at least one and  
10 one-half feet below the surface of the ground and be capable  
11 of withstanding the weight of the soil and sod above the top  
12 surface and the weight of machinery and equipment normally  
13 used in the maintenance of the cemetery.

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

16 g. The date on which the owner or owners signed the form.

17 3. To the extent that any provision of section 135.11 or  
18 chapter 156 or any administrative rule adopted pursuant  
19 thereto is inconsistent with this section, the provisions of  
20 this section shall govern.

21 Sec. 27. NEW SECTION. 523I.603 NEW CONSTRUCTION.

22 1. A person shall not offer to sell interment rights in a  
23 mausoleum or columbarium that will be built or completed in  
24 the future unless the person has submitted an application to  
25 sell such interment rights with the commissioner on a form  
26 prescribed by the commissioner and accompanied by a fee of one  
27 hundred dollars.

28 2. The application to sell interment rights in a mausoleum  
29 or columbarium must include the following information:

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

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

35 c. A copy of the proposed interment rights agreement to be

1 used, which shall include the following:

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

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

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

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

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

19 SUBCHAPTER 7

20 PERMIT REQUIREMENTS

21 Sec. 28. NEW SECTION. 523I.701 CEMETERY PERMITS.

22 1. A cemetery corporation shall not advertise, sell,  
23 promote, or offer to sell interment rights on or after July 1,  
24 2003, without a permit as provided for in this subchapter. If  
25 a cemetery corporation operates more than one cemetery, each  
26 cemetery must have a cemetery permit.

27 2. A filing fee shall not be required.

28 3. An application for a cemetery permit shall be filed on  
29 a form prescribed by the commissioner and include a copy of  
30 each interment rights agreement form used by the cemetery.

31 4. The application shall contain all of the following:

32 a. The name and address of the cemetery.

33 b. The name and address of the cemetery corporation.

34 c. The name and address of each owner, officer, or other  
35 official of the cemetery corporation, including, when

1 relevant, the chief executive officer and the members of the  
2 board of directors.

3 d. A description of any common business enterprise or  
4 parent company.

5 e. A list of the financial institutions used by the  
6 cemetery corporation on a regular basis.

7 f. The name and address of any trustee holding trust funds  
8 for the cemetery corporation, including the name and location  
9 of the applicable trust account.

10 5. The commissioner shall grant or deny an application for  
11 a cemetery permit within thirty days after receipt, but the  
12 commissioner's failure to act within that time period shall  
13 not be deemed approval of the application. If the  
14 commissioner does not grant the permit, the commissioner shall  
15 notify the person in writing of the reasons for denial.

16 6. A cemetery permit is valid for four years.

17 Sec. 29. NEW SECTION. 523I.702 SALES PERMITS.

18 1. A person shall not advertise, sell, promote, or offer  
19 to sell interment rights without a sales permit. A person  
20 holding a sales permit must be an employee or agent of a  
21 cemetery corporation holding a cemetery permit. This section  
22 shall not apply to a licensed funeral director who merely  
23 collects cash advance payments for interment rights, an agent  
24 or employee of a religious cemetery, or a cemetery owned or  
25 operated by a political subdivision of this state.

26 2. A person must have a sales permit for each cemetery  
27 corporation for which the person is employed or is an agent.

28 3. A cemetery corporation is liable for the acts of its  
29 employees and agents performed in advertising, selling,  
30 promoting, or offering to furnish interment rights.

31 4. An application for a sales permit shall be filed on a  
32 form prescribed by the commissioner.

33 5. The application shall contain all of the following:

34 a. The name and address of the person.

35 b. The name and address of the cemetery and, if different,

1 the cemetery corporation on whose behalf the person will be  
2 advertising, selling, promoting, or offering to furnish  
3 interment rights.

4 6. A permit holder shall inform the commissioner of  
5 changes in the information required to be provided by  
6 subsection 5 in the initial application or in an application  
7 for renewal within thirty days of the change.

8 7. An initial permit shall be accompanied by a five dollar  
9 filing fee and shall expire one year from the date the  
10 application is filed. The permit may be renewed for an  
11 additional four years by filing the form prescribed by the  
12 commissioner under this section, accompanied by a twenty  
13 dollar filing fee.

14 8. The commissioner shall grant or deny a permit  
15 application within thirty days after receipt, but the  
16 commissioner's failure to act within that time period shall  
17 not be deemed approval of the application. If the  
18 commissioner does not grant the permit, the commissioner shall  
19 notify the applicant in writing of the reasons for the denial.

20 9. The commissioner may, by rule, create or accept a  
21 multijurisdiction sales permit. If the sales permit is issued  
22 by another jurisdiction, the rules shall require the filing of  
23 an application or notice form and payment of the applicable  
24 filing fee of five dollars for each year. The application or  
25 notice form utilized and the effective dates and terms of the  
26 permit may vary from the provisions set forth in subsections  
27 4, 5, 6, and 7.

28 10. The commissioner may create and accept a joint sales  
29 permit for persons who are also required to hold a sales  
30 permit under section 523A.502. Notwithstanding subsection 7  
31 and section 523A.502, if a joint application is filed for both  
32 sales permits, the fee for an initial joint permit shall be  
33 five dollars and the fee for a renewed joint permit shall be  
34 twenty dollars.

35 Sec. 30. NEW SECTION. 523I.703 DENIAL -- SUSPENSION --

1 REVOCATION -- SURRENDER OF PERMITS.

2 1. The commissioner may, subject to chapter 17A, deny any  
3 permit application or immediately suspend or revoke a permit  
4 issued under this chapter for several reasons, including but  
5 not limited to:

6 a. Committing a fraudulent act, engaging in a fraudulent  
7 practice, or violating any provision of this chapter, or any  
8 implementing rule or order issued under this chapter.

9 b. Violating any other state or federal law applicable to  
10 the conduct of the applicant's or permit holder's business.

11 c. Insolvency or financial condition.

12 d. Engaging in a deceptive act or practice or  
13 misrepresenting or omitting a material fact regarding the sale  
14 of interment rights under this chapter.

15 e. Conviction of a criminal offense involving dishonesty  
16 or a false statement.

17 f. Inability to provide the interment rights which the  
18 applicant or permit holder purports to sell.

19 g. Selling the cemetery without filing a prior notice of  
20 the sale with the commissioner. A cemetery permit shall be  
21 revoked thirty days following such sale.

22 h. Allowing a person who is not an employee or agent of  
23 the applicant or permit holder to sell interment rights.

24 i. Inadequate care and maintenance of the cemetery,  
25 including but not limited to the following:

26 (1) Failure to adequately mow grass.

27 (2) Failure to adequately edge and trim bushes, trees, and  
28 memorials.

29 (3) Failure to keep walkways and sidewalks free of  
30 obstructions.

31 (4) Failure to adequately maintain the cemetery's  
32 equipment and fixtures.

33 2. The commissioner may, for good cause shown, suspend any  
34 permit for a period not exceeding thirty days, pending  
35 investigation.

1 3. Except as provided in subsection 2, a permit shall not  
2 be revoked or suspended except after notice and hearing under  
3 chapter 17A.

4 4. Any permit holder may surrender a permit by delivering  
5 to the commissioner written notice that the permit holder  
6 surrenders the permit, but the surrender shall not affect the  
7 permit holder's civil or criminal liability for acts committed  
8 before the surrender.

9 5. Denial, revocation, suspension, or surrender of a  
10 permit does not impair or affect the obligation of any  
11 preexisting lawful agreement between the permit holder and any  
12 person.

13 Sec. 31. NEW SECTION. 523I.704 ASSIGNMENTS AND TRANSFERS  
14 PROHIBITED.

15 Permits issued pursuant to this chapter are not assignable  
16 or transferable. This section does not apply to a religious  
17 cemetery if it remains a religious cemetery after the  
18 assignment or transfer of a permit.

19 Sec. 32. NEW SECTION. 523I.705 TRANSFER OF OWNERSHIP.

20 If an applicant or permit holder sells a cemetery, the  
21 applicant or holder of a cemetery permit for that cemetery  
22 shall notify the commissioner no later than thirty days after  
23 the sale of the cemetery.

24 SUBCHAPTER 8

25 GENERAL PROVISIONS

26 Sec. 33. NEW SECTION. 523I.801 LIEN AGAINST CEMETERY  
27 PROPERTY.

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

32 2. A mortgage, deed of trust, or other lien placed on  
33 dedicated cemetery property, or on cemetery property that is  
34 later dedicated with the consent of the holder of the lien,  
35 does not affect the dedication and is subject to the

1 dedication. A sale on foreclosure of the lien is subject to  
2 the dedication of the property for cemetery purposes.

3 Sec. 34. NEW SECTION. 523I.802 DEPTH OF GROUND BURIALS  
4 -- CRIMINAL PENALTY.

5 1. The outside top surface of a container holding human  
6 remains shall not be buried as follows:

7 a. Less than two feet below the surface of the ground if  
8 the container is biodegradable.

9 b. Less than one and one-half feet below the surface of  
10 the ground if the container is made of nonbiodegradable  
11 material.

12 2. The governing body of a political subdivision of this  
13 state may, because of subsurface soil conditions or other  
14 relevant considerations, allow, by ordinance, order, or rule,  
15 burials in that political subdivision at a depth shallower  
16 than that required by subsection 1.

17 3. This section does not apply to lawn crypts.

18 4. If the cemetery is in a floodplain or within one mile  
19 of a river, lake, or similar body of water and flooding is a  
20 significant risk, the surface level of the ground above the  
21 grave at its shallowest point shall be at least three feet  
22 from the top of the burial container.

23 5. A person who buries human remains in violation of this  
24 section or an ordinance or rule adopted pursuant to this  
25 section commits a simple misdemeanor.

26 6. To the extent that any provision of section 135.11 or  
27 chapter 156 or any administrative rule adopted pursuant  
28 thereto is inconsistent with this section, the provisions of  
29 this section shall apply.

30 Sec. 35. NEW SECTION. 523I.803 REMOVAL OF REMAINS FROM  
31 NEGLECTED CEMETERY.

32 1. If a neglected cemetery for which no care fund has been  
33 regularly and legally established is abated as a nuisance, the  
34 court abating the nuisance and enjoining its continuance or  
35 the governing body of the municipality in which the cemetery

1 is located may authorize the removal of all human remains,  
2 monuments, tombs, and other similar items from the cemetery to  
3 another religious cemetery of the same denomination, if  
4 applicable, or to a perpetual care cemetery in the same  
5 county.

6 2. If a county does not have a perpetual care cemetery  
7 that under its rules permits the interment of human remains  
8 that have been removed from another cemetery, the human  
9 remains, monuments, tombs, and other similar items may be  
10 removed to a nonperpetual care cemetery in the county that has  
11 provided for assessments for the cemetery's future care.

12 Sec. 36. NEW SECTION. 523I.804 NUISANCE -- ABATEMENT --  
13 INJUNCTION.

14 1. A district court of the county in which a cemetery is  
15 located may, by order, abate the cemetery as a nuisance and  
16 enjoin its continuance if the cemetery is either:

17 a. Maintained, located, or used in violation of this  
18 chapter.

19 b. Neglected so that it is offensive to the inhabitants of  
20 the surrounding area.

21 2. A proceeding for abatement may be brought by the county  
22 attorney, the attorney general, or the commissioner.

23 3. The court shall grant a permanent injunction against  
24 each person responsible for the nuisance if a cemetery  
25 nuisance exists or is threatened.

26 4. If a cemetery nuisance under subsection 1, paragraph  
27 "b", is located in a municipality, the governing body of the  
28 municipality may authorize the removal of all human remains,  
29 monuments, tombs, or other similar items from the cemetery to  
30 a perpetual care cemetery.

31 Sec. 37. NEW SECTION. 523I.805 RULEMAKING AND  
32 ENFORCEMENT.

33 1. A cemetery corporation may adopt, amend, and enforce  
34 rules for the use, care, control, management, restriction, and  
35 protection of the cemetery, as necessary for the proper

1 conduct of the business of the cemetery, including, but not  
2 limited to, the use, care, and transfer of any space or right  
3 of interment.

4 2. A cemetery corporation may restrict and limit the use  
5 of all property within the cemetery by rules that do all of  
6 the following:

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

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

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

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

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

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

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

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

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

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

1 request.

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

16 6. The cemetery corporation shall not approve any bylaw  
17 which unreasonably restricts competition, or which  
18 unreasonably increases the cost to the owner of interment  
19 rights in utilizing these rights.

20 Sec. 38. NEW SECTION. 523I.806 PROTECTION OF CEMETERIES  
21 AND BURIAL SITES.

22 1. EXISTENCE OF CEMETERY OR BURIAL SITE -- NOTIFICATION.  
23 If a governmental subdivision or agency is notified of the  
24 existence of a cemetery, or a marked burial site that is not  
25 located in a dedicated cemetery, within its jurisdiction and  
26 the cemetery or burial site is not otherwise provided for  
27 under this chapter, the governmental subdivision or agency  
28 shall, as soon as is practicable, notify the owner of the land  
29 upon which the cemetery or burial site is located of the  
30 cemetery's or burial site's existence and location. The  
31 notification shall include an explanation of the provisions of  
32 this section. If there is a basis to believe that interment  
33 may have occurred more than one hundred fifty years earlier,  
34 the governmental subdivision or agency shall also notify the  
35 state archaeologist.

1        2. DISTURBANCE OF INTERMENT SPACES -- PENALTY. A person  
2 who knowingly and without authorization damages, defaces,  
3 destroys, or otherwise disturbs an interment space commits  
4 criminal mischief in the third degree. Criminal mischief in  
5 the third degree is an aggravated misdemeanor.

6        3. DUTY TO PRESERVE AND PROTECT. A governmental  
7 subdivision or agency having a cemetery, or a burial site that  
8 is not located within a dedicated cemetery, within its  
9 jurisdiction, for which preservation is not otherwise  
10 provided, shall preserve and protect the cemetery or burial  
11 site as necessary to restore or maintain its physical  
12 integrity as a cemetery or burial site. The governmental  
13 subdivision or agency may enter into an agreement to delegate  
14 the responsibility for the preservation and protection of the  
15 cemetery or burial site to a person interested in historical  
16 preservation. A cemetery corporation shall be formed to  
17 operate the cemetery, if applicable.

18       4. CONFISCATION AND RETURN OF MEMORIALS. A law  
19 enforcement officer having reason to believe that a memorial  
20 or memorialization is in the possession of a person without  
21 authorization or right to possess the memorial or  
22 memorialization may take possession of the memorial or  
23 memorialization from that person and turn it over to the  
24 officer's law enforcement agency. If a law enforcement agency  
25 determines that a memorial or memorialization the agency has  
26 taken possession of rightfully belongs on an interment space,  
27 the agency shall return the memorial or memorialization to the  
28 interment space, or make arrangements with the person having  
29 jurisdiction over the interment space for its return.

30       5. INTERMENT SPACES LOCATED ON PRIVATE PROPERTY.

31       a. A person shall notify a governmental subdivision or  
32 agency if an interment of the person's ancestor exists on  
33 property owned by another person within the jurisdiction of  
34 the governmental subdivision or agency. The owner of the  
35 property shall be notified by the governmental subdivision or

1 agency that the interment exists and that the owner must  
2 permit the person reasonable ingress and egress for the  
3 purposes of visiting the interment space of the person's  
4 ancestor.

5 b. Pursuant to section 558.69, a declaration of value  
6 submitted to a county recorder pursuant to chapter 428A shall  
7 also include information concerning the existence of any known  
8 private interment space situated on the property.

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

20 Sec. 39. NEW SECTION. 523I.808 COMPLIANCE WITH IOWA  
21 CONSUMER CREDIT CODE.

22 A seller of credit sales agreements pursuant to this  
23 chapter shall comply with the requirements of chapter 537, and  
24 is subject to the remedies and penalties provided for in that  
25 chapter.

26 Sec. 40. NEW SECTION. 523I.809 DISCLOSURE REQUIREMENTS.

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

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

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

9 Sec. 41. NEW SECTION. 523I.810 INSTALLATION OF OUTER  
10 BURIAL CONTAINERS.

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

18 Sec. 42. NEW SECTION. 523I.811 ACCESS BY FUNERAL  
19 DIRECTORS.

20 A licensed funeral director shall not be denied access by a  
21 cemetery corporation to conduct a funeral for or to supervise  
22 interment or disinterment of human remains.

23 Sec. 43. NEW SECTION. 523I.812 COUNTY AUDITOR AS  
24 TRUSTEE.

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

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

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

35 4. The county auditor shall make a full report of the

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

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

8 Sec. 44. NEW SECTION. 523I.813 MEMORIALS AND  
9 MEMORIALIZATION.

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

19 2. CONFORMITY WITH CEMETERY CORPORATION RULES. A person  
20 selling a memorial shall review the rules of the cemetery  
21 corporation for the cemetery where the memorial is to be  
22 installed to ensure that the memorial will comply with those  
23 rules prior to ordering or manufacturing the memorial.

24 3. SPECIFICATIONS. Upon request, a cemetery corporation  
25 shall provide reasonable written specifications and  
26 instructions governing installation of memorials, which shall  
27 apply to all installations whether performed by the cemetery  
28 corporation or another person. The written specifications  
29 shall include provisions governing hours of installation or  
30 any other relevant administrative requirements of the  
31 cemetery. A copy of these specifications and instructions  
32 shall be provided upon request, without charge, to the owner  
33 of the interment space, next of kin, or a personal  
34 representative or agent of the owner, including the person  
35 installing the memorial. The person installing the memorial

1 shall comply with the cemetery corporation's written  
2 installation specifications and instructions. A cemetery  
3 corporation shall not adopt or enforce any rule prohibiting  
4 the installation of a memorial by a memorial dealer or  
5 independent third party, unless the rule is adopted and  
6 enforced uniformly for all memorials installed in the  
7 cemetery.

8 4. WRITTEN NOTICE. A memorial dealer or independent third  
9 party shall provide the cemetery corporation with at least  
10 seven days' prior written notice of intent to install a  
11 memorial at the cemetery, or such lesser notice as the  
12 cemetery corporation deems acceptable. The notice shall  
13 contain the full name, address, and relationship of the  
14 memorial's purchaser to the person interred in the interment  
15 space or the owner of the interment space, if different. The  
16 notice shall also contain the color, type, and size of the  
17 memorial, the material, the inscription, and the full name and  
18 interment date of the person interred in the interment space.

19 5. PREPARATION AND INSTALLATION.

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

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

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

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

35 e. The cemetery corporation shall, without charge, provide

1 information as described on the cemetery's map or plat  
2 necessary to locate the place where a memorial is to be  
3 installed and any other essential information the person  
4 installing the memorial needs to locate the proper interment  
5 space.

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

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

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

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

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

24 k. If the person who is installing a memorial damages any  
25 cemetery property, the person shall notify the cemetery  
26 corporation immediately. The person installing the memorial  
27 shall then repair the damage as soon as possible, upon  
28 approval by the cemetery corporation. The cemetery  
29 corporation may require a person installing a memorial to  
30 provide current proof of workers' compensation insurance as  
31 required by state law and current proof of liability  
32 insurance, sufficient to indemnify the cemetery corporation  
33 against claims resulting from installation of the memorial.  
34 Proof of liability insurance in an amount of one million  
35 dollars or more shall preclude the cemetery corporation from

1 requiring a person installing a memorial to obtain a  
2 performance bond.

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

7 6. INSPECTION. A cemetery corporation may inspect the  
8 installation site of a memorial at any time. If the cemetery  
9 corporation determines that cemetery corporation rules are not  
10 being followed during the installation, the cemetery  
11 corporation may order the installation to stop until the  
12 infraction is corrected. The cemetery corporation shall  
13 provide written notice to the installer within seven days if  
14 the cemetery corporation believes that any of the following  
15 have occurred:

16 a. The memorial has not been installed correctly.

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

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

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

33 8. FAULTY INSTALLATION. If a memorial sinks, tilts, or  
34 becomes misaligned within twelve months of its installation  
35 and the cemetery corporation believes the cause is faulty

1 installation, the cemetery corporation shall notify the person  
2 who installed the memorial in writing and the person who  
3 installed the memorial shall be responsible to correct the  
4 damage, unless the damage is caused by inadequate written  
5 specifications and instructions from the cemetery corporation  
6 or acts of the cemetery corporation and its agents or  
7 employees, including but not limited to running a backhoe over  
8 the memorial, carrying a vault or other heavy equipment over  
9 the memorial, or opening or closing an interment space  
10 adjacent to the memorial.

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

15 Sec. 45. NEW SECTION. 523I.814 INTERMENT, RELOCATION, OR  
16 DISINTERMENT OF REMAINS.

17 1. Unless a decedent has left directions in writing for  
18 the disposition of the decedent's remains as provided in  
19 subsection 2, the following persons, in the priority listed,  
20 shall have the right to control the interment, relocation, or  
21 disinterment of the decedent's remains within or from a  
22 cemetery:

23 a. The person designated in a written instrument signed by  
24 the decedent.

25 b. The surviving spouse of the decedent.

26 c. A surviving adult child of the decedent.

27 d. A surviving parent of the decedent.

28 e. A surviving adult sibling of the decedent.

29 f. Any adult person in the next degree of kinship in the  
30 order named by law to inherit the estate of the decedent under  
31 the rules of inheritance for intestate succession.

32 2. The written instrument referred to in subsection 1,  
33 paragraph "a", shall be in substantially the following form:

34 DIRECTIONS FOR DISPOSITION OF MY REMAINS

35 Name of person whose remains are to be disposed of as

1 directed (decedent):

2 Address:

3 Telephone Number:

4 Acceptance of Appointment: (signature of agent)

5 Date of Signature:

6 SUCCESSORS

7 If my agent dies, becomes legally disabled, resigns, or  
8 refuses to act, I hereby appoint the following persons (each  
9 to act alone and successively, in the order named) to serve as  
10 my agent (attorney-in-fact) to control the disposition of my  
11 remains as authorized by this document:

12 First Successor

13 Name:

14 Address:

15 Telephone Number:

16 Acceptance of Appointment: (signature of first successor)

17 Date of Signature:

18 Second Successor

19 Name:

20 Address:

21 Telephone Number:

22 Acceptance of Appointment: (signature of second successor)

23 Date of Signature:

24 DURATION

25 This appointment becomes effective upon my death.

26 PRIOR APPOINTMENTS REVOKED

27 I hereby revoke any prior appointment of any person to  
28 control the disposition of my remains.

29 RELIANCE

30 I hereby agree that any cemetery corporation, business  
31 operating a crematory or columbarium or both, funeral director  
32 or embalmer, or funeral establishment that receives a copy of  
33 this document may act under it. Any modification or  
34 revocation of this document is not effective as to any such  
35 party until that party receives actual notice of the

1 modification or revocation. No such party shall be liable  
2 because of reliance on a copy of this document.

3 **ASSUMPTION**

4 THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS  
5 APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND  
6 BY THE PROVISIONS OF, SECTION 523I.814. Signed this \_\_\_\_\_ day  
7 of \_\_\_\_\_, \_\_\_\_.

8 3. A written instrument referred to in subsection 1,  
9 paragraph "a", is legally sufficient if the wording of the  
10 instrument complies substantially with subsection 2, the  
11 instrument is properly completed, the instrument is signed by  
12 the decedent, the agent, and each successor agent, and the  
13 signature of the decedent is acknowledged. Such written  
14 instrument may be modified or revoked only by a subsequent  
15 written instrument that complies with the requirements of this  
16 subsection.

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

24 5. A person may provide written directions for the  
25 interment, relocation, or disinterment of the person's own  
26 remains in a will, prepaid funeral or cemetery contract, or  
27 written instrument signed and acknowledged by the person. The  
28 directions may govern the inscription to be placed on a grave  
29 marker attached to any interment space in which the decedent  
30 had the right of interment at the time of death and in which  
31 interment space the decedent is subsequently interred. The  
32 directions may be modified or revoked only by a subsequent  
33 writing signed and acknowledged by the person. A person other  
34 than a decedent who is entitled to control the interment,  
35 relocation, or disinterment of a decedent's remains under this

1 section shall faithfully carry out the directions of the  
2 decedent to the extent that the decedent's estate or the  
3 person controlling the interment, relocation, or disinterment  
4 is financially able to do so.

5 6. If the decedent's directions for the interment of the  
6 decedent's remains are in a will, the directions shall be  
7 carried out immediately without the necessity of probate. If  
8 a will is not probated or is declared invalid for testamentary  
9 purposes, the directions for the interment of the decedent's  
10 remains are valid to the extent that they have been acted upon  
11 in good faith.

12 7. A cemetery corporation shall not be liable for carrying  
13 out the written directions of a decedent or the directions of  
14 any person entitled to control the interment, relocation, or  
15 disinterment of the decedent's remains.

16 8. A dispute among any of the persons listed in subsection  
17 1 concerning their right to control the interment, relocation,  
18 or disinterment of a decedent's remains may be resolved by a  
19 court of competent jurisdiction. A cemetery corporation shall  
20 not be liable for refusing to accept the decedent's remains,  
21 relocate or disinter, inter or otherwise dispose of the  
22 decedent's remains, until the cemetery corporation receives a  
23 court order or other suitable confirmation that the dispute  
24 has been resolved or settled.

25 9. a. If good cause exists to relocate or disinter  
26 remains interred in a cemetery, the remains may be removed  
27 from the cemetery with the written consent of the cemetery  
28 corporation, the current interment rights owner and the person  
29 entitled by this section to control the interment, relocation,  
30 or disinterment of the decedent's remains.

31 b. If the consent required by this subsection cannot be  
32 obtained, the remains may be relocated by permission of the  
33 district court of the county in which the cemetery is located.  
34 Before the date of application to the court for permission to  
35 relocate remains under this subsection, notice must be given

1 to the cemetery corporation that operates the cemetery in  
2 which the remains are interred, each person whose consent is  
3 required for relocation of the remains under subsection 1, and  
4 any other person that the court requires to be served.

5 c. For the purposes of this subsection, personal notice  
6 must be given not later than the eleventh day before the date  
7 of application to the court for permission to relocate the  
8 remains, or notice by certified mail or restricted certified  
9 mail must be given not later than the sixteenth day before the  
10 date of application.

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

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

20 a. The date the remains are removed.

21 b. The name of the decedent and age at death if those  
22 facts can be conveniently obtained.

23 c. The place to which the remains are removed.

24 d. The name of the cemetery and the location of the  
25 interment space from which the remains are removed.

26 11. A cemetery corporation may disinter and relocate  
27 remains interred in the cemetery for the purpose of correcting  
28 an error made by the cemetery corporation. The cemetery  
29 corporation shall provide written notice to the commissioner  
30 and to the person by restricted certified mail describing who  
31 has the right to control the interment, relocation, or  
32 disinterment of the remains erroneously interred, at the  
33 person's last known address and sixty days prior to the  
34 disinterment. The notice shall include the location where the  
35 disinterment will occur and the location of the new interment

1 space. A cemetery corporation is not civilly or criminally  
2 liable for an erroneously made interment that is corrected in  
3 compliance with this subsection unless the error was the  
4 result of gross negligence or intentional misconduct.

5 12. To the extent that any provision of section 135.11 or  
6 chapter 156 or any administrative rule adopted pursuant  
7 thereto is inconsistent with this, the provisions of this  
8 section shall apply.

9 Sec. 46. NEW SECTION. 523I.815 FEE AND CARE ASSESSMENTS  
10 AND MAINTENANCE FUNDS AT NONPERPETUAL CARE CEMETERIES.

11 1. a. On or after July 1, 2003, a cemetery corporation  
12 that operates a nonperpetual care cemetery shall, prior to  
13 selling any interment rights, establish a maintenance fund to  
14 provide funding for the maintenance of the cemetery.  
15 Maintenance fund income shall be applied in the manner the  
16 directors of the cemetery corporation determine is in the best  
17 interests of the cemetery, provided that, maintenance fund  
18 income shall be used only for the care described in a  
19 resolution, bylaw, or other action or instrument establishing  
20 the maintenance fund, including the general care and  
21 maintenance of memorials, memorialization, and the cemetery.  
22 Maintenance fund income may be used for any of the following  
23 purposes:

24 (1) Cutting and trimming lawns, shrubs, and trees at  
25 reasonable intervals.

26 (2) Maintaining drains, water lines, roads, buildings,  
27 fences, and other structures.

28 (3) Maintaining machinery, tools, and equipment.

29 (4) Compensating maintenance employees, paying insurance  
30 premiums, and making payments to employees' pension and  
31 benefit plans.

32 (5) Paying overhead expenses incidental to such payments.

33 (6) Paying expenses necessary to maintain ownership,  
34 transfer, and interment records of the cemetery.

35 b. The cemetery corporation's maintenance fund shall be

1 established as a separate fund. The principal of the  
2 maintenance fund is intended to remain available perpetually  
3 as a funding source for the care of the cemetery. The  
4 principal of the maintenance fund shall not be reduced  
5 voluntarily and must remain inviolable, except as provided in  
6 this section. The cemetery corporation shall maintain the  
7 principal of the maintenance fund separate from all operating  
8 funds of the cemetery corporation.

9 c. A cemetery corporation shall be responsible for the  
10 deposit of all moneys required to be placed in the maintenance  
11 fund. These moneys shall be invested or deposited in a  
12 financial account or accounts, unless the cemetery is a  
13 religious cemetery or a cemetery owned or operated by a  
14 political subdivision of this state. The maintenance fund may  
15 receive and hold as a part of the maintenance fund or as an  
16 incident to the maintenance fund any property contributed to  
17 the maintenance fund. Moneys to be deposited in a maintenance  
18 funds shall be deposited at a financial institution no later  
19 than the fifteenth day after the close of the month when the  
20 cemetery corporation receives the final payment from the  
21 purchaser.

22 d. The maintenance fund and contributions to the  
23 maintenance fund are for charitable purposes. The care  
24 financed by the maintenance fund constitutes the discharge of  
25 a duty due by the cemetery corporation to persons interred and  
26 to be interred in the cemetery and for the benefit and  
27 protection of the public by preserving and keeping the  
28 cemetery from becoming a place of disorder, reproach, and  
29 desolation in the community in which the cemetery is located.

30 e. A contribution to a maintenance fund is not invalid  
31 because of the following:

32 (1) Indefiniteness or uncertainty as to the identity of  
33 the person designated as a beneficiary in the instrument  
34 establishing the maintenance fund.

35 (2) A violation of the law against perpetuities or the law

1 against the suspension of the power of alienation of title to  
2 or use of property.

3 2. A financial institution holding moneys in a maintenance  
4 fund for a cemetery corporation shall not do any of the  
5 following:

6 a. Be owned, under the control of, or affiliated with a  
7 cemetery corporation.

8 b. Use any funds required to be deposited pursuant to this  
9 chapter to purchase an interest in a contract or agreement in  
10 which the cemetery corporation is a party.

11 c. Otherwise invest moneys in a maintenance fund, directly  
12 or indirectly, in a cemetery corporation's business  
13 operations.

14 3. A cemetery corporation shall make reasonable investment  
15 decisions and properly oversee and manage moneys in a  
16 maintenance fund. A cemetery corporation shall use the  
17 judgment and care, under the circumstances then prevailing,  
18 that a person of prudence, discretion, and intelligence  
19 exercises in the management of the person's own affairs,  
20 without speculation in the permanent disposition of the  
21 person's own funds, to ensure the probable safety of the  
22 person's capital. The commissioner may take enforcement  
23 action against a cemetery corporation for a breach of  
24 fiduciary duty proven under this chapter.

25 4. Moneys deposited in a maintenance fund may be  
26 commingled for investment purposes if separate accounting of  
27 principal, interest, and income is maintained for each  
28 cemetery and each deposit includes a detailed listing of the  
29 amount deposited in trust for each purchaser. A cemetery  
30 corporation may establish a common maintenance fund for two or  
31 more cemeteries into which deposits required under this  
32 chapter are made, provided that separate records of principal  
33 and income are maintained for each cemetery for the benefit of  
34 which the common maintenance fund is established.

35 5. A cemetery corporation may appoint an independent

1 investment adviser to advise the financial institution about  
2 investment of the moneys in a maintenance fund.

3 6. Subject to agreement between the parties, a financial  
4 institution may receive a reasonable fee from the maintenance  
5 fund for services performed on behalf of the maintenance fund.  
6 The maintenance fund shall pay the operation costs and any  
7 annual audit fees.

8 7. All moneys required to be deposited by the cemetery  
9 corporation shall be deposited in the name of the maintenance  
10 fund, pursuant to the terms of a written agreement and the  
11 cemetery corporation shall invest, reinvest, exchange, retain,  
12 sell, and otherwise manage the maintenance fund for the  
13 benefit and protection of the cemetery.

14 8. This section does not prohibit a cemetery corporation  
15 from moving moneys in a maintenance fund from one financial  
16 institution to another.

17 9. A cemetery corporation that operates a nonperpetual  
18 care cemetery shall collect a care assessment equal to or  
19 greater than the lesser of fifty dollars or twenty percent of  
20 the gross selling price received by the cemetery corporation  
21 for the sale of interment rights. The cemetery corporation  
22 shall also collect a five dollar fee assessment from each  
23 purchaser of interment rights. The fee assessments collected  
24 by the cemetery corporation shall be submitted to the  
25 commissioner no later than April 1 of the calendar year  
26 following collection and shall be deposited in the insurance  
27 division's cemetery fund. The care assessments shall be  
28 deposited in the cemetery corporation's maintenance fund.

29 SUBCHAPTER 9

30 ACCESS TO CEMETERIES

31 Sec. 47. NEW SECTION. 523I.901 ACCESS TO INACTIVE  
32 CEMETERIES BY HISTORICAL COMMISSIONS AND CEMETERY PRESERVATION  
33 ASSOCIATIONS.

34 1. After reasonable written notice sent to a property  
35 owner at the property owner's last known address,

1 representatives of local historical commissions and  
2 associations dedicated to the preservation of cemeteries shall  
3 have an easement for ingress and egress for purposes of  
4 visiting a cemetery at reasonable times and in a reasonable  
5 manner and may enter upon the land of a private or family  
6 cemetery for the purpose of conducting official business.

7 2. Entry onto the property to visit a cemetery pursuant to  
8 subsection 1 shall not unreasonably interfere with the  
9 enjoyment of the property by the property owner. The property  
10 owner may specify a reasonable route which visitors to a  
11 cemetery pursuant to subsection 1 must use in all entries and  
12 exits from the property.

13 Sec. 48. NEW SECTION. 523I.902 ACCESS TO CEMETERIES BY  
14 INDIVIDUALS -- MAINTENANCE BY RELATIVES AND DESCENDANTS.

15 1. A person who wishes to visit a cemetery or private  
16 burial ground for which no public ingress or egress is  
17 available shall have the right to reasonable ingress and  
18 egress for the purpose of visiting a cemetery or private  
19 burial grounds. This right of access extends only to  
20 visitation during reasonable hours and only for purposes  
21 usually associated with cemetery visits.

22 2. Relatives and descendants of a person interred in a  
23 cemetery, or a designee, shall have an easement for ingress  
24 and egress for the purpose of visiting the cemetery at  
25 reasonable times and in a reasonable manner.

26 3. A property owner may specify a reasonable route which  
27 the visitors must use in all entries and exits from the  
28 property. If a cemetery is abandoned or otherwise not being  
29 maintained, relatives or descendants of a person interred in  
30 the cemetery may ask the property owner to provide for  
31 reasonable maintenance of the cemetery.

32 4. If a property owner fails to care for an occupied  
33 interment space within two weeks after a request by the  
34 relatives or decedents of a person interred in the interment  
35 space, the relatives and descendants of a person interred in

1 the interment space, or their designees, shall have the right  
2 to maintain the occupied interment space.

3 Sec. 49. NEW SECTION. 523I.903 ACCESS TO CEMETERIES FOR  
4 BURIALS AND THE USE OF MOTORIZED VEHICLES OR MAINTENANCE  
5 EQUIPMENT.

6 1. Upon reasonable written notice sent to a property owner  
7 at the property owner's last known address, a property owner  
8 shall not unreasonably interfere with access to a cemetery by  
9 anyone involved with or attending a memorial service or burial  
10 at the cemetery or involved with the installation of a  
11 memorial or memorialization. A property owner may specify a  
12 reasonable route which visitors must use in all entries and  
13 exits from the property.

14 2. The right of ingress and egress provided by this  
15 subchapter shall include access by motorized vehicles involved  
16 with funeral and burial processions. If notice to the  
17 landowner is provided by September 1 of the prior year, the  
18 right of ingress and egress provided by this subchapter shall  
19 include access by motorized vehicles and equipment necessary  
20 for repairs and maintenance. The landowner may specify a  
21 reasonable route which the visitors must use in all entries  
22 and exits from the property.

23 SUBCHAPTER 10

24 GOVERNMENTAL SUBDIVISIONS

25 Sec. 50. NEW SECTION. 523I.1001 CEMETERY AUTHORIZED.

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

31 Sec. 51. NEW SECTION. 523I.1002 TRUST FOR CEMETERY.

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

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

8        Sec. 52. NEW SECTION. 523I.1003 AUTHORITY TO RECEIVE  
9 GIFTS AND DEPOSITS FOR CARE -- CERTIFICATES.

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

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

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

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

25       a. The depositor's name.

26       b. The amount and purpose of the deposit.

27       c. The location, with as much specificity as possible, of  
28 the interment space to be maintained.

29       d. Other information required by the governmental  
30 subdivision.

31       5. An individual, association, foundation, or corporation  
32 that is interested in the maintenance of a neglected cemetery  
33 in a governmental subdivision's possession and control may  
34 donate funds to the cemetery's perpetual trust fund to  
35 beautify and maintain the entire cemetery or burial grounds

1 generally.

2 Sec. 53. NEW SECTION. 523I.1004 INVESTMENT OF CARE  
3 FUNDS.

4 Notwithstanding section 12B.10, a cemetery corporation  
5 owned by a governmental subdivision may invest and reinvest  
6 deposits under this subchapter as set forth in section  
7 523I.1203. The trustee of the trust funds has a fiduciary  
8 duty to make reasonable investment decisions and to properly  
9 oversee and manage the funds entrusted to the trust fund.

10 Sec. 54. NEW SECTION. 523I.1005 APPOINTMENT OF SUCCESSOR  
11 TRUSTEE.

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

19 Sec. 55. NEW SECTION. 523I.1006 PRIVATE CARE OF GRAVES.

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

26 SUBCHAPTER 11

27 COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES

28 Sec. 56. NEW SECTION. 523I.1101 NEGLECTED CEMETERIES.

29 The commissioner shall create a form that interested  
30 persons may use to report neglected cemeteries to the  
31 commissioner and the county board of supervisors. The board  
32 of supervisors of each county shall accept any neglected  
33 cemetery report forms filed with the board and submit copies  
34 of such report forms received during calendar years 2004,  
35 2005, and 2006 to the commissioner no later than March 1 of

1 the year following receipt. The commissioner shall prepare an  
2 annual summary of the report forms received, organized by  
3 county.

4 Sec. 57. NEW SECTION. 523I.1102 CONDEMNATION OF  
5 NEGLECTED CEMETERIES.

6 1. When a nonreligious cemetery within a county has been  
7 neglected in whole or in part by the owners, the county may  
8 acquire title to the cemetery by condemnation proceedings, to  
9 be instituted and conducted in the manner prescribed in the  
10 statutes providing for the exercise of the power of eminent  
11 domain by counties. A court with jurisdiction over such  
12 proceedings may, in its discretion, require the county to  
13 acquire the entire cemetery, in which event the county may use  
14 such part of the cemetery as may be necessary for its purposes  
15 and sell the residue. Upon a showing of good cause, the court  
16 may direct that, if possible, remains interred in the cemetery  
17 be removed to another cemetery.

18 2. In the event that the proceeds from the condemnation  
19 proceedings are insufficient to defray the costs of the suit  
20 and removal and reinterment of the remains, then any  
21 additional funds needed shall be paid by the county  
22 instituting the suit. After payment of proper costs, any  
23 residue of the proceeds shall be paid to the parties entitled  
24 thereto. If there are any unknown parties who are entitled to  
25 a portion of the proceeds, the county shall hold such amount  
26 in trust for those parties, without any accrual of interest or  
27 income. If any amount held in trust is not claimed within  
28 seven years from the date of condemnation or sale of the  
29 cemetery, or a portion thereof, title to the unclaimed funds  
30 shall pass pursuant to the statute of escheats.

31 Sec. 58. NEW SECTION. 523I.1103 REMOVAL OF REMAINS.

32 1. Upon a showing of good cause, a county cemetery  
33 commission may file suit in a district court in that county to  
34 have remains interred in a cemetery owned and operated by the  
35 commission removed to another cemetery. All persons in

1 interest, known or unknown, other than the plaintiffs, shall  
2 be made defendants to the suit. If any parties are unknown,  
3 notice may be given by publication. After hearing and a  
4 showing of good cause for the removal, the court may order the  
5 removal of the remains and the remains shall be properly  
6 interred in another cemetery, at the expense of the county.  
7 The removal and reinterment of the remains shall be done  
8 pursuant to a disinterment permit issued under section 144.34  
9 with due care and decency.

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

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

32 SUBCHAPTER 12

33 PERPETUAL CARE CEMETERIES

34 Sec. 59. NEW SECTION. 523I.1201 APPLICABILITY.

35 1. All cemeteries are designated as either "perpetual care

1 cemeteries" or "nonperpetual care cemeteries" for the purposes  
2 of this chapter.

3 2. A cemetery corporation organized or commencing business  
4 in this state on or after July 1, 1995, shall operate as a  
5 perpetual care cemetery and is subject to this subchapter.

6 3. A cemetery corporation that represents that it is  
7 offering perpetual care is subject to this subchapter.

8 4. A cemetery corporation that operates a nonperpetual  
9 care cemetery may elect to become a perpetual care cemetery by  
10 complying with the terms of section 523I.1202, if at all times  
11 subsequent to the date of the election, the cemetery  
12 corporation complies with the other requirements of this  
13 subchapter except section 523I.1203, subsection 1.

14 Sec. 60. NEW SECTION. 523I.1202 TRUST AGREEMENT --  
15 IRREVOCABLE TRUST.

16 1. A cemetery corporation operating as a perpetual care  
17 cemetery shall execute a trust instrument and establish an  
18 irrevocable trust fund to provide for the care and maintenance  
19 of the cemetery.

20 2. The trust agreement shall provide for the appointment  
21 of at least one trustee, with perpetual succession, in case  
22 the cemetery corporation is dissolved or ceases to be  
23 responsible for the cemetery's care and maintenance.

24 3. A cemetery corporation and the trustee or trustees of  
25 the trust fund may, by agreement, amend the instrument that  
26 established the fund to include any provision that is  
27 necessary to comply with the requirements of this chapter.

28 4. A cemetery corporation shall be responsible for the  
29 deposit of all moneys required to be placed in a trust fund.

30 5. The commissioner may require amendments to a trust  
31 agreement that is not in accord with the provisions of this  
32 chapter.

33 Sec. 61. NEW SECTION. 523I.1203 TRUST FUND REQUIREMENTS.

34 1. A religious cemetery or a cemetery owned or operated by  
35 a political subdivision of this state is not required to make

1 a minimum initial deposit in a trust fund. A cemetery  
2 corporation organized or commencing business in this state on  
3 or after July 1, 1995, shall not commence operations as a  
4 perpetual care cemetery unless the cemetery corporation has a  
5 trust fund of at least twenty-five thousand dollars in cash.

6 2. If an initial deposit is made by a cemetery corporation  
7 to satisfy subsection 1, the initial twenty-five thousand  
8 dollar deposit may be withdrawn by the cemetery corporation  
9 when the trust fund balance reaches one hundred thousand  
10 dollars. An affidavit shall be filed with the commissioner  
11 providing prior notice of the intended withdrawal of the  
12 initial deposit and attesting that the money has not  
13 previously been withdrawn. Upon a showing by the cemetery  
14 corporation that the initial deposit has not previously been  
15 withdrawn, the commissioner shall approve withdrawal of the  
16 money and the withdrawal shall take place within one year  
17 after the trust fund balance reaches one hundred thousand  
18 dollars.

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

30 4. A trust fund must be established at a financial  
31 institution, unless the cemetery is a religious cemetery or a  
32 cemetery owned or operated by a governmental subdivision of  
33 this state.

34 a. A financial institution may serve as a trustee if  
35 granted those powers under the laws of this state or of the

1 United States. A financial institution acting as a trustee of  
2 trust funds under this chapter shall invest the funds in  
3 accordance with applicable law.

4 b. A financial institution acting as a trustee of trust  
5 funds under this chapter has a fiduciary duty to make  
6 reasonable investment decisions and to properly oversee and  
7 manage the funds entrusted to the financial institution. A  
8 trustee shall use the judgment and care, under the  
9 circumstances then prevailing, that a person of prudence,  
10 discretion, and intelligence exercises in the management of  
11 the person's own affairs, without speculation, in the  
12 permanent disposition of a person's own funds to ensure the  
13 probable safety of the person's capital. The commissioner may  
14 take enforcement action against a financial institution in its  
15 capacity as trustee for a breach of fiduciary duty proven  
16 under this chapter.

17 c. Moneys deposited under a master trust agreement may be  
18 commingled by the financial institution for investment  
19 purposes if separate accounting of principal, interest, and  
20 income is maintained for each cemetery and each deposit  
21 includes a detailed listing of the amount deposited in trust  
22 for each purchaser. The trustors of two or more care funds  
23 may establish a common trust fund in which deposits required  
24 under this chapter are made, provided that separate records of  
25 principal and income are maintained for each perpetual care  
26 cemetery for the benefit of which the common trust fund is  
27 established.

28 d. Subject to a master trust agreement, the cemetery  
29 corporation may appoint an independent investment adviser to  
30 advise the financial institution about investment of the trust  
31 fund.

32 e. Subject to an agreement between the cemetery  
33 corporation and the financial institution, the financial  
34 institution may receive a reasonable fee from the trust fund  
35 for services rendered as trustee. The trust fund shall pay

1 the trust operation costs and any annual audit fees.

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

10 (1) Be owned, under the control of, or affiliated with a  
11 cemetery corporation.

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

15 (3) Otherwise invest trust funds, directly or indirectly,  
16 in a cemetery corporation's business operations.

17 5. Moneys shall be deposited in the trust fund no later  
18 than the fifteenth day after the close of the month when the  
19 cemetery corporation receives the final payment from a  
20 purchaser of interment rights in an amount equal to or greater  
21 than either of the following:

22 a. The greater of fifty dollars or twenty percent of the  
23 gross selling price received by the cemetery for the sale of  
24 interment rights.

25 b. The amount charged for the perpetual care and special  
26 care of a memorial or memorialization placed in the cemetery.  
27 A fee for memorial care shall be uniformly charged on every  
28 installation of a memorial in the cemetery based upon the size  
29 of the memorial, using the height and width of the memorial or  
30 the size of the ground surface area used for the memorial. A  
31 fee for special care of a memorial may be collected if the  
32 terms of the special care items and arrangements are clearly  
33 specified in the interment rights purchase agreement. A  
34 cemetery corporation's liability for acts of God and vandalism  
35 is limited to income available from the care fund.

1 6. All moneys required to be deposited in the trust fund  
2 by the cemetery corporation shall be deposited in the name of  
3 the trustee, as trustee, under the terms of a trust agreement  
4 and the trustee may invest, reinvest, exchange, retain, sell,  
5 and otherwise manage the trust for the benefit and protection  
6 of the cemetery.

7 7. This section does not prohibit a cemetery corporation  
8 from moving trust funds from one financial institution to  
9 another.

10 8. A trust fund may receive and hold as a part of the fund  
11 or as an incident to the fund any property contributed to the  
12 fund.

13 9. The trust fund and contributions to the trust fund are  
14 for charitable purposes. The care financed by the fund is for  
15 the following purposes:

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

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

24 10. A contribution to a trust fund is not invalid because  
25 of any of the following:

26 a. Indefiniteness or uncertainty as to the person  
27 designated as a beneficiary in the instrument establishing the  
28 fund.

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

32 Sec. 62. NEW SECTION. 523I.1204 PURPOSES OF CARE FUND.

33 1. The principal of a care fund is intended to remain  
34 available perpetually as a funding source for care of the  
35 cemetery. The principal of the fund shall not be reduced

1 voluntarily and shall remain inviolable, except as provided in  
2 this section. The trustee or trustees of the care fund shall  
3 maintain the principal of the care fund separate from all  
4 operating funds of the cemetery corporation.

5 2. In establishing a care fund, the cemetery corporation  
6 may adopt plans for the care of the cemetery and installed  
7 memorials and memorialization.

8 3. A cemetery corporation may, by resolution adopted by a  
9 vote of at least two-thirds of the members of its board at any  
10 authorized meeting of the board, authorize the withdrawal and  
11 use of not more than twenty percent of the principal of the  
12 care fund to acquire additional land for cemetery purposes, to  
13 repair a mausoleum or other building or structure intended for  
14 cemetery purposes, or to build, improve, or repair roads and  
15 walkways in the cemetery. The resolution shall establish a  
16 reasonable repayment schedule, not to exceed five years, and  
17 provide for interest in an amount comparable to the care  
18 fund's current rate of return on its investments. However,  
19 the care fund shall not be diminished below an amount equal to  
20 the greater of one hundred thousand dollars or five thousand  
21 dollars per acre of land in the cemetery. The resolution, and  
22 either a bond or proof of insurance to guarantee replenishment  
23 of the care fund, shall be filed with the commissioner thirty  
24 days prior to the withdrawal of funds.

25 Sec. 63. NEW SECTION. 523I.1205 USE OF CARE FUND INCOME  
26 AND CAPITAL GAINS.

27 1. Care fund income may be used in a manner determined by  
28 the directors of the cemetery corporation to be in the best  
29 interests of the cemetery, provided that care fund income  
30 shall be used only for care that is described in a resolution,  
31 bylaw, or other action or instrument establishing the fund,  
32 including the general care and maintenance of memorials,  
33 memorialization, and the cemetery. Fund income may be used  
34 for any of the following purposes:

35 a. Cutting and trimming lawns, shrubs, and trees at

1 reasonable intervals.

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

4 c. Maintaining machinery, tools, and equipment.

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

8 e. Paying overhead expenses incidental to such purposes.

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

11 2. A cemetery corporation may, by amending the cemetery  
12 corporation trust agreement, elect to withdraw capital gains  
13 from the care fund, subject to the following conditions:

14 a. The amount of principal in the care fund shall be  
15 adjusted annually by allocating income or capital gains as  
16 necessary to adjust the principal of the care fund for  
17 inflation, based on the consumer price index as set by the  
18 commissioner and the amount of principal in the care fund at  
19 the beginning of the prior year. The amount of principal in  
20 the care fund shall also be adjusted by adding the amount of  
21 the deposits received during the prior year, as required by  
22 section 523I.1203, subsection 5.

23 b. For purposes of this section, "adjusted basis" means  
24 the total of the market value of the care fund on the date of  
25 the conversion, the aggregate amount of the inflation  
26 adjustments required by this section, and the aggregate amount  
27 of deposits received as required by section 523I.1203,  
28 subsection 5, since the date of the conversion.

29 c. If the adjusted basis of the care fund is more than the  
30 market value of the care fund at the end of the prior year,  
31 the cemetery corporation shall not withdraw capital gains. If  
32 the adjusted basis of the care fund is less than the market  
33 value of the care fund at the end of the prior year, an amount  
34 equal to fifty percent of the excess may be withdrawn and used  
35 for the cemetery's care.

1     Sec. 64. NEW SECTION. 523I.1206 SUIT BY OWNERS OR  
2 COMMISSIONER.

3     1. If the directors of a cemetery corporation do not care  
4 for and maintain the cemetery, the district court of the  
5 county in which the cemetery is located may do the following:

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

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

11    2. Grant relief on a petition for relief filed pursuant to  
12 this section by the commissioner or by at least five owners of  
13 interment rights in the cemetery.

14    Sec. 65. NEW SECTION. 523I.1207 ADVERTISING.

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

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

26    Sec. 66. NEW SECTION. 523I.1208 PERPETUAL CARE REGISTRY.

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

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

34    Sec. 67. NEW SECTION. 523I.1209 USE OF GIFT FOR SPECIAL  
35 CARE.

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

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

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

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

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

14 Sec. 68. NEW SECTION. 523I.1210 GOVERNMENTAL  
15 SUBDIVISIONS.

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

21 Sec. 69. NEW SECTION. 523I.1211 ANNUAL REPORT BY  
22 PERPETUAL CARE CEMETERIES.

23 1. A cemetery corporation that operates a perpetual care  
24 cemetery corporation shall file a written report at the end of  
25 each fiscal year of the cemetery that includes the following:

26 a. The name and address of the cemetery.

27 b. The name and address of the cemetery corporation.

28 c. An affidavit that the cemetery is in compliance with  
29 this chapter.

30 d. Copies of all sales agreement forms used by the  
31 cemetery.

32 e. The amount of the principal of the cemetery  
33 corporation's care funds at the end of the fiscal year.

34 f. The number of interments made and interment spaces sold  
35 during the fiscal year.



1     2. Knowingly makes, causes to be made, or subscribes to a  
2 false statement or representation in a report or other  
3 document required under this chapter, implementing rules, or  
4 orders, or renders such a report or document misleading  
5 through the deliberate omission of information properly  
6 belonging in the report or document.

7     3. Conspires to defraud in connection with the sale of  
8 memorials, memorialization, opening and closing services,  
9 scattering services, interment rights, or a combination  
10 thereof under this chapter.

11    4. Fails to deposit funds under section 523I.815 or  
12 section 523I.1203 or withdraws funds in a manner inconsistent  
13 with this chapter.

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

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

#### 22                                   SUBCHAPTER 14

#### 23                                   ADMINISTRATION AND ENFORCEMENT

#### 24    Sec. 74. NEW SECTION. 523I.1401 ADMINISTRATION.

25    1. This chapter shall be administered by the commissioner.  
26 The deputy administrator appointed pursuant to section 502.601  
27 shall be the principal operations officer responsible to the  
28 commissioner for the routine administration of this chapter  
29 and management of the administrative staff. In the absence of  
30 the commissioner, whether because of vacancy in the office due  
31 to absence, physical disability, or other cause, the deputy  
32 administrator shall, for the time being, have and exercise the  
33 authority conferred upon the commissioner. The commissioner  
34 may by order from time to time delegate to the deputy  
35 administrator any or all of the functions assigned to the

1 commissioner in this chapter. The deputy administrator shall  
2 employ officers, attorneys, accountants, and other employees  
3 as needed for administering this chapter.

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

17 Sec. 75. NEW SECTION. 523I.1402 SCOPE.

18 1. This chapter applies to cemeteries, to any person  
19 advertising or offering memorials, memorialization, opening  
20 and closing services, scattering services at a cemetery,  
21 interment rights, or a combination thereof for sale, and to  
22 interments made in areas not dedicated as a cemetery by a  
23 person other than the state archaeologist.

24 2. This chapter applies when a purchase agreement is  
25 executed within this state or an advertisement, promotion, or  
26 offer to furnish memorials, memorialization, opening and  
27 closing services, scattering services, interment rights, or a  
28 combination thereof is made or accepted within this state. An  
29 offer to furnish memorials, memorialization, opening and  
30 closing services, scattering services, interment rights, or a  
31 combination thereof is made within this state, whether or not  
32 either party is then present in this state, when the offer  
33 originates from this state or is directed by the offeror to  
34 this state and received by the offeree in this state through  
35 the mail, over the telephone, by the internet, or through any

1 other means of commerce.

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

9 Sec. 76. NEW SECTION. 523I.1403 INVESTIGATIONS AND  
10 SUBPOENAS.

11 1. The commissioner may, for the purpose of discovering  
12 violations of this chapter, or implementing rules or orders  
13 issued under this chapter:

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

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

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

33 d. Investigate the cemetery corporation and examine the  
34 books, accounts, papers, correspondence, memoranda, purchase  
35 agreements, files, or other documents or records used by every

1 applicant and permit holder under this chapter.

2 e. Administer oaths and affirmations, subpoena witnesses,  
3 compel their attendance, take evidence, and require the  
4 production of any books, accounts, papers, correspondence,  
5 memoranda, purchase agreements, files, or other documents or  
6 records which the commissioner deems relevant or material to  
7 any investigation or proceeding under this chapter and  
8 implement rules, all of which may be enforced under chapter  
9 17A.

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

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

24 Sec. 77. NEW SECTION. 523I.1404 MEDIATION.

25 1. The commissioner may order a cemetery corporation to  
26 participate in mediation in any dispute regarding a purchase  
27 agreement. Mediation performed under this section shall be  
28 conducted by a mediator appointed by the commissioner and  
29 shall comply with the provisions of chapter 679C.

30 2. Mediation of disputes pursuant to subsection 1 shall  
31 include attendance at a mediation session with a mediator and  
32 the parties to the dispute, listening to the mediator's  
33 explanation of the mediation process by the mediator,  
34 presentation of each party's view of the dispute, and  
35 listening to the response by the other party. Participation

1 in mediation does not require that the parties reach a  
2 mediation agreement.

3 3. Parties to the mediation shall have the right to advice  
4 and presence of counsel at all times. The parties to the  
5 mediation shall present any mediation agreement reached  
6 through the mediation to the commissioner. If a mediation  
7 agreement is not reached, the mediator shall file a report  
8 with the commissioner. The costs of the mediation shall be  
9 approved by the commissioner and shall be borne by the  
10 insurance division's cemetery fund created pursuant to section  
11 523I.1413.

12 Sec. 78. NEW SECTION. 523I.1405 CEASE AND DESIST ORDERS  
13 -- INJUNCTIONS.

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

19 1. Issue a summary order directed to the person that  
20 requires the person to cease and desist from engaging in such  
21 act or practice. A person may request a hearing within thirty  
22 days of issuance of the summary order. If a hearing is not  
23 timely requested, the summary order shall become final by  
24 operation of law. The order shall remain effective from the  
25 date of issuance until the date the order becomes final by  
26 operation of law or is overturned by a presiding officer  
27 following a request for hearing. Section 17A.18A is  
28 inapplicable to summary cease and desist orders issued under  
29 this section.

30 2. Bring an action in the district court in any county of  
31 the state for an injunction to restrain a person subject to  
32 this chapter and any agents, employees, or associates of the  
33 person from engaging in conduct or practices deemed contrary  
34 to the public interest. In any proceeding for an injunction,  
35 the commissioner or attorney general may apply to the court

1 for a subpoena to require the appearance of a defendant and  
2 the defendant's agents, employees, or associates and for the  
3 production of any books, accounts, papers, correspondence,  
4 memoranda, purchase agreements, files, or other documents or  
5 records germane to the hearing upon the petition for an  
6 injunction. Upon a proper showing, a permanent or temporary  
7 injunction, restraining order, or writ of mandamus shall be  
8 granted and a receiver may be appointed for the defendant or  
9 the defendant's assets. The commissioner or attorney general  
10 shall not be required to post a bond.

11 Sec. 79. NEW SECTION. 523I.1406 COURT ACTION FOR FAILURE  
12 TO COOPERATE.

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

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

24 b. Revocation or suspension of a permit issued under this  
25 chapter.

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

29 d. Such other relief as may be required.

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

33 Sec. 80. NEW SECTION. 523I.1407 PROSECUTION FOR  
34 VIOLATIONS OF LAW.

35 1. A violation of this chapter or rules adopted or orders

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

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

16 Sec. 81. NEW SECTION. 523I.1408 COOPERATION WITH OTHER  
17 AGENCIES.

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

23 2. Cooperation with other agencies may include but is not  
24 limited to:

25 a. Making a joint examination or investigation.

26 b. Holding a joint administrative hearing.

27 c. Filing and prosecuting a joint civil or administrative  
28 proceeding.

29 d. Sharing and exchanging personnel.

30 e. Sharing and exchanging relevant information and  
31 documents.

32 f. Formulating, in accordance with chapter 17A, rules or  
33 proposed rules on matters such as statements of policy,  
34 regulatory standards, guidelines, and interpretive opinions.

35 Sec. 82. NEW SECTION. 523I.1409 RULES, FORMS, AND

## 1 ORDERS.

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

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

14 3. A provision of this chapter imposing any liability does  
15 not apply to an act done or omitted in good faith in  
16 conformity with any rule, form, or order of the commissioner,  
17 notwithstanding that the rule, form, or order may later be  
18 amended or rescinded or be determined by judicial or other  
19 authority to be invalid for any reason.

20 Sec. 83. NEW SECTION. 523I.1410 DATE OF FILING --

## 21 INTERPRETIVE OPINIONS.

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

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

26 Sec. 84. NEW SECTION. 523I.1411 RECEIVERSHIPS.

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

31 a. Is insolvent.

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

34 c. The amount of care funds currently held in trust for  
35 perpetual care is less than the amount required by this

1 chapter.

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

7 Sec. 85. NEW SECTION. 523I.1412 LIQUIDATION PROCEDURES.

8 1. GROUNDS FOR LIQUIDATION. The commissioner may petition  
9 the district court for an order directing the commissioner to  
10 liquidate a cemetery corporation on any of the following  
11 grounds:

12 a. The cemetery corporation did not deposit funds pursuant  
13 to subchapter 12 or withdrew funds in a manner inconsistent  
14 with this chapter and is insolvent.

15 b. The cemetery corporation did not deposit funds pursuant  
16 to subchapter 12 or withdrew funds in a manner inconsistent  
17 with this chapter and the condition of the cemetery  
18 corporation is such that further transaction of business would  
19 be hazardous, financially or otherwise, to purchasers or the  
20 public.

21 2. LIQUIDATION ORDER.

22 a. An order to liquidate the business of a cemetery  
23 corporation shall appoint the commissioner as liquidator and  
24 shall direct the liquidator to immediately take possession of  
25 the assets of the cemetery corporation and to administer them  
26 under the general supervision of the court. The liquidator is  
27 vested with the title to the property, contracts, rights of  
28 action, and the books and records of the cemetery corporation,  
29 wherever located, that is ordered liquidated as of the entry  
30 of the final order of liquidation. The filing or recording of  
31 the order with the clerk of court and the recorder of deeds of  
32 the county in which the principal office or place of business  
33 of the cemetery corporation is located, or, in the case of  
34 real estate with the recorder of deeds of the county where the  
35 property is located, constitutes the same notice as a deed,

1 bill of sale, or other evidence of title duly filed or  
2 recorded with the recorder of deeds.

3 b. Upon issuance of an order, the rights and liabilities  
4 of a cemetery corporation and of the cemetery corporation's  
5 creditors, purchasers, owners, and other persons interested in  
6 the cemetery corporation's estate shall become fixed as of the  
7 date of the entry of the order of liquidation, except as  
8 provided in subsection 14.

9 c. At the time of petitioning for an order of liquidation,  
10 or at any time after the time of petitioning, the  
11 commissioner, after making appropriate findings of a cemetery  
12 corporation's insolvency, may petition the court for a  
13 declaration of insolvency. After providing notice and hearing  
14 as it deems proper, the court may make the declaration.

15 d. An order issued under this section shall require  
16 accounting to the court by the liquidator. Accountings, at a  
17 minimum, must include all funds received or disbursed by the  
18 liquidator during the current period. An accounting shall be  
19 filed within one year of the liquidation order and at such  
20 other times as the court may require.

21 e. Within five days after the initiation of an appeal of  
22 an order of liquidation, which order has not been stayed, the  
23 commissioner shall present for the court's approval a plan for  
24 the continued performance of the cemetery corporation's  
25 obligations during the pendency of an appeal. The plan shall  
26 provide for the continued performance of interment rights  
27 agreements in the normal course of events, notwithstanding the  
28 grounds alleged in support of the order of liquidation  
29 including the ground of insolvency. If the defendant cemetery  
30 corporation's financial condition, in the judgment of the  
31 commissioner, will not support the full performance of all  
32 obligations during the appeal pendency period, the plan may  
33 prefer the claims of certain purchasers and claimants over  
34 creditors and interested parties as well as other purchasers  
35 and claimants, as the commissioner finds to be fair and

1 equitable, considering the relative circumstances of such  
2 purchasers and claimants. The court shall examine the plan  
3 submitted by the commissioner and if it finds the plan to be  
4 in the best interests of the parties, the court shall approve  
5 the plan. An action shall not lie against the commissioner or  
6 any of the commissioner's deputies, agents, clerks,  
7 assistants, or attorneys by any party based on preference in  
8 an appeal pendency plan approved by the court.

9 3. POWERS OF LIQUIDATOR.

10 a. The liquidator may do any of the following:

11 (1) Appoint a special deputy to act for the liquidator  
12 under this chapter, and determine the special deputy's  
13 reasonable compensation. The special deputy shall have all  
14 the powers of the liquidator granted by this section. The  
15 special deputy shall serve at the pleasure of the liquidator.

16 (2) Hire employees and agents, legal counsel, accountants,  
17 appraisers, consultants, and other personnel as the  
18 commissioner may deem necessary to assist in the liquidation.

19 (3) With the approval of the court, fix reasonable  
20 compensation of employees and agents, legal counsel,  
21 accountants, appraisers, and consultants.

22 (4) Pay reasonable compensation to persons appointed and  
23 defray from the funds or assets of the cemetery corporation  
24 all expenses of taking possession of, conserving, conducting,  
25 liquidating, disposing of, or otherwise dealing with the  
26 business and property of the cemetery corporation. If the  
27 property of the cemetery corporation does not contain  
28 sufficient cash or liquid assets to defray the costs incurred,  
29 the commissioner may advance the costs so incurred out of the  
30 insurance division's cemetery fund. Amounts so advanced for  
31 expenses of administration shall be repaid to the insurance  
32 division's cemetery fund for the use of the division out of  
33 the first available moneys of the cemetery corporation.

34 (5) Hold hearings, subpoena witnesses, and compel their  
35 attendance, administer oaths, examine a person under oath, and

1 compel a person to subscribe to the person's testimony after  
2 it has been correctly reduced to writing, and in connection to  
3 the proceedings require the production of books, accounts,  
4 papers, correspondence, memoranda, purchase agreements, files,  
5 or other documents or records which the liquidator deems  
6 relevant to the inquiry.

7 (6) Collect debts and moneys due and claims belonging to  
8 the cemetery corporation, wherever located. Pursuant to this  
9 subparagraph, the liquidator may do any of the following:

10 (a) Institute timely action in other jurisdictions to  
11 forestall garnishment and attachment proceedings against  
12 debts.

13 (b) Perform acts as are necessary or expedient to collect,  
14 conserve, or protect its assets or property, including the  
15 power to sell, compound, compromise, or assign debts for  
16 purposes of collection upon terms and conditions as the  
17 liquidator deems best.

18 (c) Pursue any creditor's remedies available to enforce  
19 claims.

20 (7) Conduct public and private sales of the property of  
21 the cemetery corporation.

22 (8) Use assets of the cemetery corporation under a  
23 liquidation order to transfer obligations of purchase  
24 agreements to a solvent cemetery corporation, if the transfer  
25 can be accomplished without prejudice to the applicable  
26 priorities under subsection 18.

27 (9) Acquire, hypothecate, encumber, lease, improve, sell,  
28 transfer, abandon, or otherwise dispose of or deal with  
29 property of the cemetery corporation at its market value or  
30 upon terms and conditions as are fair and reasonable. The  
31 liquidator shall also have power to execute, acknowledge, and  
32 deliver deeds, assignments, releases, and other instruments  
33 necessary to effectuate a sale of property or other  
34 transaction in connection with the liquidation.

35 (10) Borrow money on the security of the cemetery

1 corporation's assets or without security and execute and  
2 deliver documents necessary to that transaction for the  
3 purpose of facilitating the liquidation. Money borrowed  
4 pursuant to this subparagraph shall be repaid as an  
5 administrative expense and shall have priority over any other  
6 class 1 claims under the priority of distribution established  
7 in subsection 18.

8 (11) Enter into contracts as necessary to carry out the  
9 order to liquidate and affirm or disavow contracts to which  
10 the cemetery corporation is a party.

11 (12) Continue to prosecute and to institute in the name of  
12 the cemetery corporation or in the liquidator's own name any  
13 and all suits and other legal proceedings, in this state or  
14 elsewhere, and to abandon the prosecution of claims the  
15 liquidator deems unprofitable to pursue further.

16 (13) Prosecute an action on behalf of the creditors,  
17 purchasers, or owners against an officer of the cemetery  
18 corporation or any other person.

19 (14) Remove records and property of the cemetery  
20 corporation to the offices of the commissioner or to other  
21 places as may be convenient for the purposes of efficient and  
22 orderly execution of the liquidation.

23 (15) Deposit in one or more banks in this state sums as  
24 are required for meeting current administration expenses and  
25 distributions.

26 (16) Unless the court orders otherwise, invest funds not  
27 currently needed.

28 (17) File necessary documents for recording in the office  
29 of the recorder of deeds or record office in this state or  
30 elsewhere where property of the cemetery corporation is  
31 located.

32 (18) Assert defenses available to the cemetery corporation  
33 against third persons, including statutes of limitations,  
34 statutes of fraud, and the defense of usury. A waiver of a  
35 defense by the cemetery corporation after a petition in

1 liquidation has been filed shall not bind the liquidator.

2 (19) Exercise and enforce the rights, remedies, and powers  
3 of a creditor, purchaser, or owner, including the power to  
4 avoid transfer or lien that may be given by the general law  
5 and that is not included within subsections 7 through 9.

6 (20) Intervene in a proceeding wherever instituted that  
7 might lead to the appointment of a receiver or trustee, and  
8 act as the receiver or trustee whenever the appointment is  
9 offered.

10 (21) Exercise powers now held or later conferred upon  
11 receivers by the laws of this state which are not inconsistent  
12 with this chapter.

13 b. This subsection does not limit the liquidator or  
14 exclude the liquidator from exercising a power not listed in  
15 paragraph "a" that may be necessary or appropriate to  
16 accomplish the purposes of this chapter.

17 4. NOTICE TO CREDITORS AND OTHERS.

18 a. Unless the court otherwise directs, the liquidator  
19 shall give notice of the liquidation order as soon as possible  
20 by doing both of the following:

21 (1) Mailing notice, by first-class mail, to all persons  
22 known or reasonably expected to have claims against the  
23 cemetery corporation, including purchasers, at their last  
24 known address as indicated by the records of the cemetery  
25 corporation.

26 (2) Publication of notice in a newspaper of general  
27 circulation in the county in which the cemetery corporation  
28 has its principal place of business and in other locations as  
29 the liquidator deems appropriate.

30 b. Notice to potential claimants under paragraph "a" shall  
31 require claimants to file with the liquidator their claims  
32 together with proofs of the claim under subsection 13 on or  
33 before a date the liquidator shall specify in the notice.  
34 Claimants shall keep the liquidator informed of their changes  
35 of address, if any.

1 c. If notice is given pursuant to this subsection, the  
2 distribution of assets of the cemetery corporation under this  
3 chapter shall be conclusive with respect to claimants, whether  
4 or not a claimant actually received notice.

5 5. ACTIONS BY AND AGAINST LIQUIDATOR.

6 a. After issuance of an order appointing a liquidator of a  
7 cemetery corporation, an action at law or equity shall not be  
8 brought against the cemetery corporation within this state or  
9 elsewhere, and existing actions shall not be maintained or  
10 further presented after issuance of the order. Whenever in  
11 the liquidator's judgment, protection of the estate of the  
12 cemetery corporation necessitates intervention in an action  
13 against the cemetery corporation that is pending outside this  
14 state, the liquidator may intervene in the action. The  
15 liquidator may defend, at the expense of the estate of the  
16 cemetery corporation, an action in which the liquidator  
17 intervenes under this section.

18 b. Within two years or such additional time as applicable  
19 law may permit, the liquidator, after the issuance of an order  
20 for liquidation, may institute an action or proceeding on  
21 behalf of the estate of the cemetery corporation upon any  
22 cause of action against which the period of limitation fixed  
23 by applicable law has not expired at the time of the filing of  
24 the petition upon which the order is entered. If a period of  
25 limitation is fixed by agreement for instituting a suit or  
26 proceeding upon a claim, or for filing a claim, proof of  
27 claim, proof of loss, demand, notice, or the like, or if in a  
28 proceeding, judicial or otherwise, a period of limitation is  
29 fixed in the proceeding or pursuant to applicable law for  
30 taking an action, filing a claim or pleading, or doing an act,  
31 and if the period has not expired at the date of the filing of  
32 the petition, the liquidator may, for the benefit of the  
33 estate, take any action or do any act, required of or  
34 permitted to the cemetery corporation, within a period of one  
35 hundred eighty days subsequent to the entry of an order for

1 liquidation, or within a further period as is shown to the  
2 satisfaction of the court not to be unfairly prejudicial to  
3 the other party.

4 c. A statute of limitations or defense of laches shall not  
5 run with respect to an action against a cemetery corporation  
6 between the filing of a petition for liquidation against the  
7 cemetery corporation and the denial of the petition. An  
8 action against the cemetery corporation that might have been  
9 commenced when the petition was filed may be commenced for at  
10 least sixty days after the petition is denied.

11 6. COLLECTION AND LIST OF ASSETS.

12 a. As soon as practicable after the liquidation order but  
13 not later than one hundred twenty days after such order, the  
14 liquidator shall prepare in duplicate a list of the cemetery  
15 corporation's assets. The list shall be amended or  
16 supplemented as the liquidator may determine. One copy shall  
17 be filed in the office of the clerk of court, and one copy  
18 shall be retained for the liquidator's files. Amendments and  
19 supplements shall be similarly filed.

20 b. The liquidator shall reduce the assets to a degree of  
21 liquidity that is consistent with the effective execution of  
22 the liquidation.

23 c. A submission of a proposal to the court for  
24 distribution of assets in accordance with subsection 11  
25 fulfills the requirements of paragraph "a".

26 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.

27 a. A transfer made and an obligation incurred by a  
28 cemetery corporation within one year prior to the filing of a  
29 successful petition for liquidation under this chapter is  
30 fraudulent as to then existing and future creditors if made or  
31 incurred without fair consideration, or with actual intent to  
32 hinder, delay, or defraud either existing or future creditors.  
33 A fraudulent transfer made or an obligation incurred by a  
34 cemetery corporation ordered to be liquidated under this  
35 chapter may be avoided by the liquidator, except as to a

1 person who in good faith is a purchaser, lienor, or obligee  
2 for a present fair equivalent value. A purchaser, lienor, or  
3 obligee, who in good faith has given consideration that is  
4 less than the present fair equivalent value for such transfer,  
5 lien, or obligation may retain the transfer, lien, or  
6 obligation as security for repayment. The court may, on due  
7 notice, order any such transfer, lien, or obligation to be  
8 preserved for the benefit of the cemetery corporation and in  
9 that event, the receiver shall succeed to and may enforce the  
10 rights of the purchaser, lienor, or obligee.

11 b. (1) A transfer of property other than real property is  
12 made when it becomes perfected so that a subsequent lien  
13 obtainable by legal or equitable proceedings on a simple  
14 contract could not become superior to the rights of the  
15 transferee under subsection 9, paragraph "c".

16 (2) A transfer of real property is made when it becomes  
17 perfected so that a subsequent bona fide purchaser from the  
18 cemetery corporation could not obtain rights superior to the  
19 rights of the transferee.

20 (3) A transfer that creates an equitable lien is not  
21 perfected if there are available means by which a legal lien  
22 could be perfected.

23 (4) A transfer not perfected prior to the filing of a  
24 petition for liquidation is deemed to be made immediately  
25 before the filing of the successful petition.

26 (5) This subsection applies whether or not there are or  
27 were creditors who might have obtained a lien or persons who  
28 might have become bona fide purchasers.

29 8. FRAUDULENT TRANSFER AFTER PETITION.

30 a. After a petition for liquidation has been filed, a  
31 transfer of real property of the cemetery corporation made to  
32 a person acting in good faith is valid against the liquidator  
33 if made for a present fair equivalent value. If the transfer  
34 is not made for a present fair equivalent value, the transfer  
35 is valid to the extent of the present consideration actually

1 paid for which amount the transferee shall have a lien on the  
2 property transferred. The commencement of a proceeding in  
3 liquidation is constructive notice upon the recording of a  
4 copy of the petition for or order of liquidation with the  
5 recording of deeds in the county where any real property in  
6 question is located. The exercise by a court of the United  
7 States or a state or jurisdiction to authorize a judicial sale  
8 of real property of the cemetery corporation within a county  
9 in a state shall not be impaired by the pendency of a  
10 proceeding unless the copy is recorded in the county prior to  
11 the consummation of the judicial sale.

12 b. After a petition for liquidation has been filed and  
13 before either the liquidator takes possession of the property  
14 of the cemetery corporation or an order of liquidation is  
15 granted:

16 (1) A transfer of the property, other than real property,  
17 of the cemetery corporation made to a person acting in good  
18 faith is valid against the liquidator if made for a present  
19 fair equivalent value. If the transfer was not made for a  
20 present fair equivalent value, then the transfer is valid to  
21 the extent of the present consideration actually paid for  
22 which amount the transferee shall have a lien on the property  
23 transferred.

24 (2) If acting in good faith, a person indebted to the  
25 cemetery corporation or holding property of the cemetery  
26 corporation may pay the debt or deliver the property, or any  
27 part of the property, to the cemetery corporation or upon the  
28 cemetery corporation's order as if the petition were not  
29 pending.

30 (3) A person having actual knowledge of the pending  
31 liquidation is not acting in good faith.

32 (4) A person asserting the validity of a transfer under  
33 this subsection has the burden of proof. Except as provided  
34 in this subsection, a transfer by or on behalf of the cemetery  
35 corporation after the date of the petition for liquidation by

1 any person other than the liquidator is not valid against the  
2 liquidator.

3 c. A person receiving any property from the cemetery  
4 corporation or any benefit of the property of the cemetery  
5 corporation which is a fraudulent transfer under paragraph "a"  
6 is personally liable for the property or benefit and shall  
7 account to the liquidator.

8 d. This chapter does not impair the negotiability of  
9 currency or negotiable instruments.

10 9. VOIDABLE PREFERENCES AND LIENS.

11 a. (1) A preference is a transfer of the property of a  
12 cemetery corporation to or for the benefit of a creditor for  
13 an antecedent debt made or suffered by the cemetery  
14 corporation within one year before the filing of a successful  
15 petition for liquidation under this chapter, the effect of  
16 which transfer may be to enable the creditor to obtain a  
17 greater percentage of this debt than another creditor of the  
18 same class would receive. If a liquidation order is entered  
19 while the cemetery corporation is already subject to a  
20 receivership, then the transfers are preferences if made or  
21 suffered within one year before the filing of the successful  
22 petition for the receivership, or within two years before the  
23 filing of the successful petition for liquidation, whichever  
24 time is shorter.

25 (2) A preference may be avoided by the liquidator if any  
26 of the following exist:

27 (a) The cemetery corporation was insolvent at the time of  
28 the transfer.

29 (b) The transfer was made within four months before the  
30 filing of the petition.

31 (c) At the time the transfer was made, the creditor  
32 receiving the transfer or to be benefited by the transfer or  
33 the creditor's agent acting with reference to the transfer had  
34 reasonable cause to believe that the cemetery corporation was  
35 insolvent or was about to become insolvent.

1 (d) The creditor receiving the transfer was an officer, or  
2 an employee, attorney, or other person who was in fact in a  
3 position of comparable influence in the cemetery corporation  
4 to an officer whether or not the person held the position of  
5 an officer, owner, or other person, firm, corporation,  
6 association, or aggregation of persons with whom the cemetery  
7 corporation did not deal at arm's length.

8 (3) Where the preference is voidable, the liquidator may  
9 recover the property. If the property has been converted, the  
10 liquidator may recover its value from a person who has  
11 received or converted the property. However, if a bona fide  
12 purchaser or lienor has given less than the present fair  
13 equivalent value, the purchaser or lienor shall have a lien  
14 upon the property to the extent of the consideration actually  
15 given. Where a preference by way of lien or security interest  
16 is voidable, the court may on due notice order the lien or  
17 security interest to be preserved for the benefit of the  
18 estate, in which event the lien or title shall pass to the  
19 liquidator.

20 b. (1) A transfer of property other than real property is  
21 made when it becomes perfected so that a subsequent lien  
22 obtainable by legal or equitable proceedings on a simple  
23 contract could not become superior to the rights of the  
24 transferee.

25 (2) A transfer of real property is made when it becomes  
26 perfected so that a subsequent bona fide purchaser from the  
27 cemetery corporation could not obtain rights superior to the  
28 rights of the transferee.

29 (3) A transfer which creates an equitable lien is not  
30 perfected if there are available means by which a legal lien  
31 could be created.

32 (4) A transfer not perfected prior to the filing of a  
33 petition for liquidation is deemed to be made immediately  
34 before the filing of the successful petition.

35 (5) This subsection applies whether or not there are or

1 were creditors who might have obtained liens or persons who  
2 might have become bona fide purchasers.

3 c. (1) A lien obtainable by legal or equitable  
4 proceedings upon a simple contract is one arising in the  
5 ordinary course of the proceedings upon the entry or docketing  
6 of a judgment or decree, or upon attachment, garnishment,  
7 execution, or like process, whether before, upon, or after  
8 judgment or decree and whether before or upon levy. It does  
9 not include liens which under applicable law are given a  
10 special priority over other liens which are prior in time.

11 (2) A lien obtainable by legal or equitable proceedings  
12 may become superior to the rights of a transferee, or a  
13 purchaser may obtain rights superior to the rights of a  
14 transferee within the meaning of paragraph "b", if such  
15 consequences follow only from the lien or purchase itself, or  
16 from the lien or purchase followed by a step wholly within the  
17 control of the respective lienholder or purchaser, with or  
18 without the aid of ministerial action by public officials.  
19 However, a lien does not become superior and a purchase does  
20 not create superior rights for the purpose of paragraph "b"  
21 through an act subsequent to the obtaining of a lien or  
22 subsequent to a purchase which requires the agreement or  
23 concurrence of any third party or which requires further  
24 judicial action or ruling.

25 d. A transfer of property for or on account of a new and  
26 contemporaneous consideration, which is under paragraph "b",  
27 made or suffered after the transfer because of delay in  
28 perfecting it, does not become a transfer for or on account of  
29 an antecedent debt if any acts required by the applicable law  
30 to be performed in order to perfect the transfer as against  
31 liens or a bona fide purchaser's rights are performed within  
32 twenty-one days or any period expressly allowed by the law,  
33 whichever is less. A transfer to secure a future loan, if a  
34 loan is actually made, or a transfer which becomes security  
35 for a future loan, shall have the same effect as a transfer

1 for or on account of a new and contemporaneous consideration.

2 e. If a lien which is voidable under paragraph "a",  
3 subparagraph (2), has been dissolved by the furnishing of a  
4 bond or other obligation, the surety of which has been  
5 indemnified directly or indirectly by the transfer or the  
6 creation of a lien upon property of a cemetery corporation  
7 before the filing of a petition under this chapter which  
8 results in the liquidation order, the indemnifying transfer or  
9 lien is also voidable.

10 f. The property affected by a lien voidable under  
11 paragraphs "a" and "e" is discharged from the lien. The  
12 property and any of the indemnifying property transferred to  
13 or for the benefit of a surety shall pass to the liquidator.  
14 However, the court may on due notice order a lien to be  
15 preserved for the benefit of the estate and the court may  
16 direct that the conveyance be executed to evidence the title  
17 of the liquidator.

18 g. The court shall have summary jurisdiction of a  
19 proceeding by a liquidator to hear and determine the rights of  
20 the parties under this section. Reasonable notice of hearing  
21 in the proceeding shall be given to all parties in interest,  
22 including the obligee of a releasing bond or other like  
23 obligation. Where an order is entered for the recovery of  
24 indemnifying property in kind or for the avoidance of an  
25 indemnifying lien, upon application of any party in interest,  
26 the court shall in the same proceeding ascertain the value of  
27 the property or lien. If the value is less than the amount  
28 for which the property is indemnified or less than the amount  
29 of the lien, the transferee or lienholder may elect to retain  
30 the property or lien upon payment of its value, as ascertained  
31 by the court, to the liquidator within the time as fixed by  
32 the court.

33 h. The liability of a surety under a releasing bond or  
34 other like obligation is discharged to the extent of the value  
35 of the indemnifying property recovered or the indemnifying

1 lien nullified and avoided by the liquidator. Where the  
2 property is retained under paragraph "g", the liability of the  
3 surety is discharged to the extent of the amount paid to the  
4 liquidator.

5 i. If a creditor has been preferred for property which  
6 becomes a part of the cemetery corporation's estate, and  
7 afterward in good faith gives the cemetery corporation further  
8 credit without security of any kind, the amount of the new  
9 credit remaining unpaid at the time of the petition may be set  
10 off against the preference which would otherwise be  
11 recoverable from the creditor.

12 j. If within four months before the filing of a successful  
13 petition for liquidation under this chapter, or at any time in  
14 contemplation of a proceeding to liquidate, a cemetery  
15 corporation, directly or indirectly, pays money or transfers  
16 property to an attorney for services rendered or to be  
17 rendered, the transaction may be examined by the court on its  
18 own motion or shall be examined by the court on petition of  
19 the liquidator. The payment or transfer shall be held valid  
20 only to the extent of a reasonable amount to be determined by  
21 the court. The excess may be recovered by the liquidator for  
22 the benefit of the estate. However, where the attorney is in  
23 a position of influence in a cemetery corporation of an  
24 affiliate, payment of any money or the transfer of any  
25 property to the attorney for services rendered or to be  
26 rendered shall be governed by the provisions of paragraph "a",  
27 subparagraph (2), subparagraph subdivision (d).

28 k. (1) An officer, manager, employee, shareholder,  
29 subscriber, attorney, or other person acting on behalf of the  
30 cemetery corporation who knowingly participates in giving any  
31 preference when the person has reasonable cause to believe the  
32 cemetery corporation is or is about to become insolvent at the  
33 time of the preference is personally liable to the liquidator  
34 for the amount of the preference. There is an inference that  
35 reasonable cause exists if the transfer was made within four

1 months before the date of filing of the successful petition  
2 for liquidation.

3 (2) A person receiving property from the cemetery  
4 corporation or the benefit of the property of the cemetery  
5 corporation as a preference voidable under paragraph "a" is  
6 personally liable for the property and shall account to the  
7 liquidator.

8 (3) This subsection shall not prejudice any other claim by  
9 the liquidator against any person.

10 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.

11 a. A claim of a creditor who has received or acquired a  
12 preference, lien, conveyance, transfer, assignment, or  
13 encumbrance, voidable under this chapter, shall not be allowed  
14 unless the creditor surrenders the preference, lien,  
15 conveyance, transfer, assignment, or encumbrance. If the  
16 avoidance is effected by a proceeding in which a final  
17 judgment has been entered, the claim shall not be allowed  
18 unless the money is paid or the property is delivered to the  
19 liquidator within thirty days from the date of the entering of  
20 the final judgment. However, the court having jurisdiction  
21 over the liquidation may allow further time if there is an  
22 appeal or other continuation of the proceeding.

23 b. A claim allowable under paragraph "a" by reason of a  
24 voluntary or involuntary avoidance, preference, lien,  
25 conveyance, transfer, assignment, or encumbrance may be filed  
26 as an excused late filing under subsection 12, if filed within  
27 thirty days from the date of the avoidance or within the  
28 further time allowed by the court under paragraph "a".

29 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.

30 a. From time to time as assets become available, the  
31 liquidator shall make application to the court for approval of  
32 a proposal to disburse assets out of marshaled assets.

33 b. The proposal shall at least include provisions for all  
34 of the following:

35 (1) Reserving amounts for the payment of all the

1 following:

2 (a) Expenses of administration.

3 (b) To the extent of the value of the security held, the  
4 payment of claims of secured creditors.

5 (c) Claims falling within the priorities established in  
6 subsection 18, paragraphs "a" and "b".

7 (2) Disbursement of the assets marshaled to date and  
8 subsequent disbursement of assets as they become available.

9 c. Action on the application may be taken by the court  
10 provided that the liquidator's proposal complies with  
11 paragraph "b".

12 12. FILING PROOFS OF CLAIMS.

13 a. Proof of all claims shall be filed with the liquidator  
14 in the form required by subsection 13 on or before the last  
15 day for filing specified in the notice required under  
16 subsection 4.

17 b. The liquidator may permit a claimant making a late  
18 filing to share in distributions, whether past or future, as  
19 if the claimant were not late, to the extent that the payment  
20 will not prejudice the orderly administration of the  
21 liquidation under any of the following circumstances:

22 (1) The existence of the claim was not known to the  
23 claimant and the claimant filed the claim as promptly as  
24 reasonably possible after learning of it.

25 (2) A transfer to a creditor was avoided under subsections  
26 7 through 9, or was voluntarily surrendered under subsection  
27 10, and the filing satisfies the conditions of subsection 10.

28 (3) The valuation under subsection 17 of security held by  
29 a secured creditor shows a deficiency, which is filed within  
30 thirty days after the valuation.

31 c. The liquidator may consider any claim filed late and  
32 permit the claimant to receive distributions which are  
33 subsequently declared on any claims of the same or lower  
34 priority if the payment does not prejudice the orderly  
35 administration of the liquidation. The late-filing claimant

1 shall receive at each distribution the same percentage of the  
2 amount allowed on the claim as is then being paid to claimants  
3 of any lower priority. This shall continue until the claim  
4 has been paid in full.

5 13. PROOF OF CLAIM.

6 a. Proof of claim shall consist of a statement signed by  
7 the claimant that includes all of the following that are  
8 applicable:

9 (1) The particulars of the claim, including the  
10 consideration given for it.

11 (2) The identity and amount of the security on the claim.

12 (3) The payments, if any, made on the debt.

13 (4) A statement that the sum claimed is justly owing and  
14 that there is no setoff, counterclaim, or defense to the  
15 claim.

16 (5) Any right of priority of payment or other specific  
17 right asserted by the claimant.

18 (6) A copy of the written instrument which is the  
19 foundation of the claim.

20 (7) The name and address of the claimant and the attorney  
21 who represents the claimant, if any.

22 b. A claim need not be considered or allowed if it does  
23 not contain all the information identified in paragraph "a"  
24 which is applicable. The liquidator may require that a  
25 prescribed form be used and may require that other information  
26 and documents be included.

27 c. At any time the liquidator may request the claimant to  
28 present information or evidence supplementary to that required  
29 under paragraph "a", and may take testimony under oath,  
30 require production of affidavits or depositions, or otherwise  
31 obtain additional information or evidence.

32 d. A judgment or order against a cemetery corporation  
33 entered after the date of filing of a successful petition for  
34 liquidation, or a judgment or order against the cemetery  
35 corporation entered at any time by default or by collusion

1 need not be considered as evidence of liability or of the  
2 amount of damages. A judgment or order against a cemetery  
3 corporation before the filing of the petition need not be  
4 considered as evidence of liability or of the amount of  
5 damages.

6 14. SPECIAL CLAIMS.

7 a. A claim may be allowed even if contingent, if it is  
8 filed pursuant to subsection 12. The claim may be allowed and  
9 the claimant may participate in all distributions declared  
10 after it is filed to the extent that it does not prejudice the  
11 orderly administration of the liquidation.

12 b. Claims that are due except for the passage of time  
13 shall be treated as absolute claims are treated. However, the  
14 claims may be discounted at the legal rate of interest.

15 c. Claims made under employment contracts by directors,  
16 principal officers, or persons in fact performing similar  
17 functions or having similar powers are limited to payment for  
18 services rendered prior to the issuance of an order of  
19 liquidation under subsection 2.

20 15. DISPUTED CLAIMS.

21 a. If a claim is denied in whole or in part by the  
22 liquidator, written notice of the determination shall be given  
23 to the claimant or the claimant's attorney by first-class mail  
24 at the address shown in the proof of claim. Within sixty days  
25 from the mailing of the notice, the claimant may file  
26 objections with the liquidator. Unless a filing is made, the  
27 claimant shall not further object to the determination.

28 b. If objections are filed with the liquidator and the  
29 liquidator does not alter the denial of the claim as a result  
30 of the objections, the liquidator shall ask the court for a  
31 hearing as soon as practicable and give notice of the hearing  
32 by first-class mail to the claimant or the claimant's attorney  
33 and to any other persons directly affected. The notice shall  
34 be given not less than ten nor more than thirty days before  
35 the date of hearing. The matter shall be heard by the court

1 or by a court-appointed referee. The referee shall submit  
2 findings of fact along with a recommendation.

3 16. CLAIMS OF OTHER PERSON. If a creditor, whose claim  
4 against a cemetery corporation is secured in whole or in part  
5 by the undertaking of another person, fails to prove and file  
6 that claim, then the other person may do so in the creditor's  
7 name and shall be subrogated to the rights of the creditor,  
8 whether the claim has been filed by the creditor or by the  
9 other person in the creditor's name to the extent that the  
10 other person discharges the undertaking. However, in the  
11 absence of an agreement with the creditor to the contrary, the  
12 other person is not entitled to any distribution until the  
13 amount paid to the creditor on the undertaking plus the  
14 distributions paid on the claim from the cemetery  
15 corporation's estate to the creditor equal the amount of the  
16 entire claim of the creditor. An excess received by the  
17 creditor shall be held by the creditor in trust for the other  
18 person.

19 17. SECURED CREDITOR'S CLAIMS.

20 a. The value of the security held by a secured creditor  
21 shall be determined in one of the following ways, as the court  
22 may direct:

23 (1) By converting the security into money according to the  
24 terms of the agreement pursuant to which the security was  
25 delivered to the creditors.

26 (2) By agreement, arbitration, compromise, or litigation  
27 between the creditor and the liquidator.

28 b. The determination shall be under the supervision and  
29 control of the court with due regard for the recommendation of  
30 the liquidator. The amount so determined shall be credited  
31 upon the secured claim. A deficiency shall be treated as an  
32 unsecured claim. If the claimant surrenders the security to  
33 the liquidator, the entire claim shall be allowed as if  
34 unsecured.

35 18. PRIORITY OF DISTRIBUTION. The priority of

1 distribution of claims from the cemetery corporation's estate  
2 shall be in accordance with the order in which each class of  
3 claims is set forth. Claims in each class shall be paid in  
4 full or adequate funds retained for the payment before the  
5 members of the next class receive any payment. Subclasses  
6 shall not be established within a class. The order of  
7 distribution of claims is as follows:

8 a. CLASS 1. The costs and expenses of administration,  
9 including but not limited to the following:

10 (1) Actual and necessary costs of preserving or recovering  
11 assets of the cemetery corporation.

12 (2) Compensation for all authorized services rendered in  
13 the liquidation.

14 (3) Necessary filing fees.

15 (4) Fees and mileage payable to witnesses.

16 (5) Authorized reasonable attorney fees and other  
17 professional services rendered in the liquidation.

18 b. CLASS 2. Reasonable compensation to employees for  
19 services performed to the extent that they do not exceed two  
20 months of monetary compensation and represent payment for  
21 services performed within one year before the filing of the  
22 petition for liquidation. Officers and directors are not  
23 entitled to the benefit of this priority. The priority is in  
24 lieu of any other similar priority which may be authorized by  
25 law as to wages or compensation of employees.

26 c. CLASS 3. Claims under purchase agreements.

27 d. CLASS 4. Claims of general creditors.

28 e. CLASS 5. Claims of the federal or of any state or  
29 local government. Claims, including those of a governmental  
30 body for a penalty or forfeiture, are allowed in this class  
31 only to the extent of the pecuniary loss sustained from the  
32 act, transaction, or proceeding out of which the penalty or  
33 forfeiture arose, with reasonable and actual costs incurred.  
34 The remainder of such claims shall be postponed to the class  
35 of claims under paragraph "g".

1 f. CLASS 6. Claims filed late or any other claims other  
2 than claims under paragraph "g".

3 g. CLASS 7. The claims of shareholders or other owners.

4 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.

5 a. The liquidator shall review claims duly filed in the  
6 liquidation and shall make further investigation as necessary.  
7 The liquidator may compound, compromise, or in any other  
8 manner negotiate the amount for which claims will be  
9 recommended to the court except where the liquidator is  
10 required by law to accept claims as settled by a person or  
11 organization. Unresolved disputes shall be determined under  
12 subsection 15. As soon as practicable, the liquidator shall  
13 present to the court a report of the claims against the  
14 cemetery corporation with the liquidator's recommendations.  
15 The report shall include the name and address of each claimant  
16 and the amount of the claim finally recommended.

17 b. The court may approve, disapprove, or modify the report  
18 on claims by the liquidator. Reports not modified by the  
19 court within sixty days following submission by the liquidator  
20 shall be treated by the liquidator as allowed claims, subject  
21 to later modification or to rulings made by the court pursuant  
22 to subsection 15. A claim under a policy of insurance shall  
23 not be allowed for an amount in excess of the applicable  
24 policy limits.

25 20. DISTRIBUTION OF ASSETS. Under the direction of the  
26 court, the liquidator shall pay distributions in a manner that  
27 will ensure the proper recognition of priorities and a  
28 reasonable balance between the expeditious completion of the  
29 liquidation and the protection of unliquidated and  
30 undetermined claims, including third-party claims.  
31 Distribution of assets in kind may be made at valuations set  
32 by agreement between the liquidator and the creditor and  
33 approved by the court.

34 21. UNCLAIMED AND WITHHELD FUNDS.

35 a. Unclaimed funds subject to distribution remaining in

1 the liquidator's hands when the liquidator is ready to apply  
2 to the court for discharge, including the amount distributable  
3 to a creditor, owner, or other person who is unknown or cannot  
4 be found, shall be deposited with the treasurer of state, and  
5 shall be paid without interest, except as provided in  
6 subsection 18, to the person entitled or to the person's legal  
7 representative upon proof satisfactory to the treasurer of  
8 state of the right to the funds. Any amount on deposit not  
9 claimed within six years from the discharge of the liquidator  
10 is deemed to have been abandoned and shall become the property  
11 of the state without formal escheat proceedings and be  
12 transferred to the insurance division's cemetery fund.

13 b. Funds withheld under subsection 14 and not distributed  
14 shall upon discharge of the liquidator be deposited with the  
15 treasurer of state and paid pursuant to subsection 18. Sums  
16 remaining which under subsection 18 would revert to the  
17 undistributed assets of the cemetery corporation shall be  
18 transferred to the insurance division's cemetery fund and  
19 become the property of the state as provided under paragraph  
20 "a", unless the commissioner in the commissioner's discretion  
21 petitions the court to reopen the liquidation pursuant to  
22 subsection 23.

23 c. Notwithstanding any other provision of this chapter,  
24 funds as identified in paragraph "a", with the approval of the  
25 court, shall be made available to the commissioner for use in  
26 the detection and prevention of future insolvencies. The  
27 commissioner shall hold these funds in the insurance  
28 division's cemetery fund and shall pay without interest,  
29 except as provided in subsection 18, to the person entitled to  
30 the funds or to the person's legal representative upon proof  
31 satisfactory to the commissioner of the person's right to the  
32 funds. The funds shall be held by the commissioner for a  
33 period of two years at which time the rights and duties to the  
34 unclaimed funds shall vest in the commissioner.

35 22. TERMINATION OF PROCEEDINGS.

1 a. When all assets justifying the expense of collection  
2 and distribution have been collected and distributed under  
3 this chapter, the liquidator shall apply to the court for  
4 discharge. The court may grant the discharge and make any  
5 other orders, including an order to transfer remaining funds  
6 that are uneconomical to distribute, as appropriate.

7 b. Any other person may apply to the court at any time for  
8 an order under paragraph "a". If the application is denied,  
9 the applicant shall pay the costs and expenses of the  
10 liquidator in resisting the application, including a  
11 reasonable attorney fee.

12 23. REOPENING LIQUIDATION. At any time after the  
13 liquidation proceeding has been terminated and the liquidator  
14 discharged, the commissioner or other interested party may  
15 petition the court to reopen the proceedings for good cause,  
16 including the discovery of additional assets. The court shall  
17 order the proceeding reopened if it is satisfied that there is  
18 justification for the reopening.

19 24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF  
20 LIQUIDATION. If it appears to the commissioner that the  
21 records of a cemetery corporation in the process of  
22 liquidation or completely liquidated are no longer useful, the  
23 commissioner may recommend to the court and the court shall  
24 direct what records shall be retained for future reference and  
25 what records shall be destroyed.

26 25. EXTERNAL AUDIT OF LIQUIDATOR'S BOOKS. The court may  
27 order audits to be made of the books of the commissioner  
28 relating to a liquidation established under this chapter, and  
29 a report of each audit shall be filed with the commissioner  
30 and with the court. The books, records, and other documents  
31 of the liquidation shall be made available to the auditor at  
32 any time without notice. The expense of an audit shall be  
33 considered a cost of administration of the liquidation.

34 26. APPLICABILITY. This section shall not apply to a  
35 religious cemetery or a cemetery owned or operated by a

1 governmental subdivision of this state.

2 Sec. 86. NEW SECTION. 523I.1413 INSURANCE DIVISION'S  
3 CEMETERY FUND.

4 A special revenue fund in the state treasury, to be known  
5 as the insurance division's cemetery fund, is created under  
6 the authority of the commissioner of insurance. The  
7 commissioner shall allocate annually from the fees paid  
8 pursuant to section 523I.1211, four dollars for each sale of  
9 interment rights reported by a cemetery corporation on the  
10 cemetery corporation's annual report, for deposit to the  
11 insurance division's cemetery fund. The commissioner shall  
12 also deposit four dollars into the insurance division's  
13 cemetery fund for each care assessment submitted, as provided  
14 in section 523I.815. The moneys in the cemetery fund shall be  
15 retained in the fund. The moneys are appropriated and,  
16 subject to authorization by the commissioner, shall be used to  
17 pay auditors, audit expenses, investigative expenses, the  
18 expenses of mediation ordered by the commissioner, consumer  
19 education expenses, the expenses of a toll-free telephone line  
20 for consumer complaints, and the expenses of receiverships  
21 established under section 523I.1411. The commissioner shall  
22 not make an annual allocation to the cemetery fund if the  
23 current balance of the fund exceeds two hundred thousand  
24 dollars.

25 Sec. 87. Sections 359.37, 359.40, and 359.41, Code 2003,  
26 are repealed.

27 Sec. 88. Chapters 523I, 566 and 566A, Code 2003, are  
28 repealed.

29

#### EXPLANATION

30 This bill repeals Code chapter 523I concerning cemeteries,  
31 Code chapter 566 concerning cemetery management, and Code  
32 chapter 566A concerning cemetery regulation and creates a new  
33 Code chapter 523I concerning cemeteries, cemetery regulation,  
34 and administration and enforcement procedures relating to  
35 cemeteries.

1 The bill contains a procedure to dedicate new cemeteries or  
2 subdivisions of cemeteries with a public filing with the  
3 insurance division.

4 The bill requires all persons currently operating as  
5 cemeteries to form a corporation to own and operate the  
6 cemetery property and prohibits unincorporated cemetery  
7 associations.

8 The bill establishes requirements for recording ownership  
9 of interment rights at each cemetery location rather than just  
10 with the county recorder. The bill requires cemeteries to  
11 maintain complete interment records that identify the owners  
12 of all interment rights sold by the cemetery corporation and  
13 contain historical information concerning any changes of  
14 ownership of interment rights. The bill sets forth  
15 requirements for interment rights agreements.

16 The bill sets forth requirements for lawn crypts and their  
17 installation. The bill sets forth requirements for the depth  
18 of ground burials.

19 The bill requires a public filing with the insurance  
20 division before the construction of new mausoleums and  
21 columbariums. The bill sets forth procedures governing the  
22 installation of memorials and memorialization by third  
23 parties.

24 The bill requires all cemetery corporations that sell  
25 interment rights to have a cemetery permit issued by the  
26 insurance division. The bill requires all sales personnel of  
27 cemetery corporations to have a sales permit issued by the  
28 insurance division, with the exception of employees or agents  
29 of a religious cemetery or a political subdivision that  
30 operates a cemetery.

31 The bill requires cemetery corporations to make disclosures  
32 to a buyer of interment rights when grave opening and closing  
33 fees are not included in the agreement. The bill authorizes a  
34 cemetery corporation to accept written instructions of a  
35 decedent concerning interment, relocation, or disinterment of

1 remains. The bill contains provisions for making a  
2 determination of who has the right to control interment,  
3 relocation, or disinterment of remains.

4 The bill contains a procedure for the removal of remains  
5 from a neglected cemetery. The bill provides a procedure for  
6 obtaining access to inactive cemeteries. The bill provides a  
7 procedure for reporting neglected cemeteries to the insurance  
8 division and to the appropriate board of supervisors.

9 The bill increases the penalty for disturbing an interment  
10 site from a simple misdemeanor to an aggravated misdemeanor.  
11 A simple misdemeanor is punishable by confinement for no more  
12 than 30 days or a fine of at least \$50 but not more than \$500  
13 or by both. An aggravated misdemeanor is punishable by  
14 confinement for no more than two years and a fine of at least  
15 \$500 but not more than \$5,000.

16 The bill requires a nonperpetual care cemetery to create a  
17 maintenance fund to pay for the upkeep of the cemetery  
18 property and to deposit at least \$50 into the maintenance fund  
19 for each sale along with a \$5 fee assessment to be deposited  
20 in the insurance division's cemetery fund.

21 The bill authorizes governmental subdivisions to commingle  
22 care funds for the purposes of investment and administration.  
23 The bill authorizes governmental subdivisions that operate  
24 cemeteries to invest their maintenance and care funds in the  
25 same manner as other cemetery corporations notwithstanding  
26 Code section 12B.10.

27 The bill authorizes civil lawsuits brought by owners of  
28 interment spaces or the insurance division against a cemetery  
29 corporation that fails to use care funds to maintain the  
30 cemetery property. The bill also creates a procedure that  
31 allows the insurance division to order mediation of a  
32 complaint paid for with funds from the insurance division's  
33 cemetery fund.

34 The bill defines certain acts committed in violation of  
35 Code chapter 523I as fraudulent practices.

1 The bill provides for the establishment of a receivership  
2 and for liquidation of a cemetery corporation under certain  
3 circumstances.

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HOUSE FILE 633

**H-1157**

1 Amend the amendment, H-1150, to House File 633 as  
2 follows:

3 1. Page 1, line 34, by striking the figure "31"  
4 and inserting the following: "29".

**By** RAECKER of Polk

**H-1157** FILED MARCH 25, 2003  
ADOPTED 3/25/03

H-1150

- 1 Amend House File 633 as follows:
- 2 1. By striking page 4, line 35 through page 5,  
3 line 6.
- 4 2. Page 9, by striking lines 5 through 9.
- 5 3. Page 21, by striking lines 8 through 10 and  
6 inserting the following:
- 7 "4. The lawn crypt is capable of withstanding  
8 the".
- 9 4. Page 21, by striking lines 16 through 19 and  
10 inserting the following:
- 11 "6. The lawn crypt shall be installed in  
12 compliance with any applicable law or rule adopted by  
13 the department of public health."
- 14 5. Page 22, lines 9 and 10, by striking the words  
15 "at least one and one-half feet below the surface of  
16 the ground and be".
- 17 6. Page 22, by striking lines 17 through 20.
- 18 7. Page 28, by striking lines 3 through 29.
- 19 8. Page 40, by striking lines 30 through 32 and  
20 inserting the following:
- 21 "I hereby agree that any cemetery corporation that  
22 receives a copy of".
- 23 9. Page 42, line 27, by inserting before the word  
24 "with" the following: "pursuant to a disinterment  
25 permit as required under section 144.34,".
- 26 10. Page 43, line 28, by inserting after the word  
27 "corporation" the following: "after obtaining a  
28 disinterment permit as required by section 144.34".
- 29 11. Page 44, by striking lines 5 through 8 and  
30 inserting the following:
- 31 "12. Relocations and disinterments of human  
32 remains shall be done in compliance with sections  
33 144.32 and 144.34."
- 34 12. By striking page 47, line 31 through page 49,  
35 line 22.
- 36 13. Page 96, by inserting after line 24 the  
37 following:
- 38 "Sec. \_\_\_\_ . NEW SECTION. 523I.1414 VIOLATIONS OF  
39 LAW -- REFERRALS TO THE DEPARTMENT OF PUBLIC HEALTH.  
40 If the commissioner discovers a violation of a  
41 provision of this chapter or any other state law or  
42 rule concerning the disposal or transportation of  
43 human remains, the commissioner shall forward all  
44 evidence in the possession of the commissioner  
45 concerning such a violation to the department of  
46 public health for such proceedings as the department  
47 of public health deems appropriate."
- 48 14. By renumbering as necessary.

By RAECKER of Polk

H-1150 FILED MARCH 24, 2003

Adopted 3/25/03

HOUSE FILE 633  
BY COMMITTEE ON COMMERCE,  
REGULATION AND LABOR

(SUCCESSOR TO HSB 266)

(As Amended and Passed by the House March 25, 2003)

Passed House, Date Passed 3/25/03 Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to cemeteries and cemetery regulation;  
2 establishing requirements for interment rights agreements,  
3 reporting, and permits; establishing and appropriating fees;  
4 and providing administration and enforcement procedures and  
5 penalties.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

7  
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House Amendments \_\_\_\_\_  
Deleted Language \*

HF 633

1 Section 1. Section 6A.4, subsection 4, Code 2003, is  
2 amended to read as follows:

3 4. CEMETERY ASSOCIATIONS CORPORATIONS. Upon any private  
4 cemetery ~~or-cemetery-association~~ corporation which is  
5 incorporated under the laws of this state relating to  
6 corporations not for pecuniary profit, and having its cemetery  
7 located outside the limits of a city, for the purpose of  
8 acquiring necessary grounds for cemetery use or reasonable  
9 additions thereto. The right granted in this subsection shall  
10 not be exercised until the board of supervisors, of the county  
11 in which the land sought to be condemned is located, has, on  
12 written application and hearing, on such reasonable notice to  
13 all interested parties as it may fix, found that the land,  
14 describing it, sought to be condemned, is necessary for  
15 cemetery purposes. The ~~association~~ cemetery corporation shall  
16 pay all costs attending such hearing.

17 Sec. 2. Section 6A.7, Code 2003, is amended to read as  
18 follows:

19 6A.7 CEMETERY LANDS.

20 No lands actually platted, used, and devoted to cemetery  
21 purposes shall be taken for any railway purpose without the  
22 consent of the ~~proper~~ cemetery corporation's officers or  
23 owners thereof.

24 Sec. 3. Section 359.28, Code 2003, is amended to read as  
25 follows:

26 359.28 CONDEMNATION.

27 The township trustees are hereby empowered to condemn, or  
28 purchase and pay for out of the general fund, or the specific  
29 fund voted for such purpose, and enter upon and take, any  
30 lands within the territorial limits of such township for the  
31 use of existing cemeteries, a community center or juvenile  
32 playgrounds, in the same manner as is now provided for cities.  
33 However, the board of supervisors or a cemetery commission  
34 appointed by the board of supervisors shall control and  
35 maintain pioneer cemeteries as defined in section 331.325.

1     Sec. 4. Section 359.29, Code 2003, is amended to read as  
2 follows:

3     359.29   GIFTS AND DONATIONS.

4     Civil townships are hereby authorized and empowered to  
5 receive by gift, devise, or bequest, money or property for the  
6 purpose of establishing and maintaining libraries, township  
7 halls, maintaining existing cemeteries, or for any other  
8 public purpose. All such gifts, devises, or bequests shall be  
9 effectual only when accepted by resolution of the board of  
10 trustees of such township.

11    Sec. 5. Section 427.1, subsection 6, Code 2003, is amended  
12 to read as follows:

13    6.   PROPERTY OF CEMETERY ASSOCIATIONS CORPORATIONS. Burial  
14 grounds, mausoleums, buildings and equipment owned and  
15 operated by cemetery associations corporations incorporated as  
16 a nonprofit corporation under chapter 504A and used  
17 exclusively for the maintenance and care of the cemeteries  
18 devoted to interment of human bodies and human remains. The  
19 exemption granted by this subsection shall not apply to any  
20 property used for the practice of mortuary science.

21    Sec. 6. Section 450.10, subsection 3, unnumbered paragraph  
22 1, Code 2003, is amended to read as follows:

23    When the property or any interest therein or income  
24 therefrom, taxable under the provisions of this chapter,  
25 passes in any manner to societies, institutions or  
26 associations incorporated or organized under the laws of any  
27 other state, territory, province or country than this state,  
28 for charitable, educational or religious purposes, or to  
29 cemetery associations corporations incorporated as a nonprofit  
30 corporation under chapter 504A, including humane societies not  
31 organized under the laws of this state, or to resident  
32 trustees for uses without this state, the rate of tax imposed  
33 shall be as follows:

34    Sec. 7. Section 459.102, subsection 9, Code 2003, is  
35 amended to read as follows:

1 9. "Cemetery" means a space held for the purpose of  
2 permanent burial, entombment, or interment of human remains  
3 that is owned or managed by a political subdivision or private  
4 entity, or a cemetery regulated pursuant to chapter 523I or  
5 566A. However, "cemetery" does not include a pioneer cemetery  
6 as defined in section 331.325.

7 Sec. 8. Section 523A.203, subsection 6, paragraph b, Code  
8 2003, is amended to read as follows:

9 b. Use any funds required to be held in trust under this  
10 chapter ~~or chapter-566A~~ to purchase an interest in any  
11 contract or agreement to which a seller is a party.

12 SUBCHAPTER 1

13 SHORT TITLE AND DEFINITIONS

14 Sec. 9. NEW SECTION. 523I.101 SHORT TITLE.

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

16 Sec. 10. NEW SECTION. 523I.102 DEFINITIONS.

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

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

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

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

32 4. "Care" means the maintenance of a cemetery's interment  
33 spaces, niches, and mausoleums.

34 5. "Care fund" means money or real or personal property  
35 impressed with a trust by the terms of this chapter, a gift,

1 grant, contribution, payment, legacy, or the terms of a  
2 contract accepted by the cemetery corporation or any trustee  
3 of the trust fund and any accumulated income allocated to  
4 principal.

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

9 7. "Cemetery" means an area dedicated to and used or  
10 intended to be used to inter or scatter remains.

11 8. "Cemetery corporation" means a corporation that  
12 operates one or more cemeteries.

13 9. "Columbarium" means a structure, room, or space in a  
14 mausoleum or other building containing niches or recesses for  
15 disposition of cremated remains.

16 10. "Commissioner" means the commissioner of insurance or  
17 the deputy administrator authorized in section 523A.801 to the  
18 extent the commissioner delegates functions to the deputy  
19 administrator.

20 11. "Common business enterprise" means a group of two or  
21 more business entities that share common ownership in excess  
22 of fifty percent.

23 12. "Credit sale" means a sale of goods, services, or an  
24 interest in land in which all of the following are applicable:

25 a. Credit is granted either under a seller credit card or  
26 by a seller who regularly engages as a seller in credit  
27 transactions of the same kind.

28 b. The buyer is a person other than an organization.

29 c. The goods, services, or interest in land are purchased  
30 primarily for a personal, family, or household purpose.

31 d. Either the debt is payable in installments or a finance  
32 charge is made.

33 e. For goods and services, the amount financed does not  
34 exceed twenty-five thousand dollars.

\* 35 13. "Disinterment" means to remove human remains from

1 their place of final disposition.

2 14. "Doing business in this state" means issuing or  
3 performing wholly or in part any term of an interment rights  
4 agreement executed within the state of Iowa.

5 15. "Financial institution" means a state or federally  
6 insured bank, savings and loan association, credit union,  
7 trust department thereof, or a trust company that is  
8 authorized to do business within this state, that has been  
9 granted trust powers under the laws of this state or the  
10 United States, and that holds funds under a trust agreement.  
11 "Financial institution" does not include a cemetery, a  
12 cemetery corporation, or any person employed by or directly  
13 involved with a cemetery.

14 16. "Garden" means an area within a cemetery established  
15 by the cemetery as a subdivision for organizational purposes,  
16 not for sale purposes.

17 17. "Grave space" means a space of ground in a cemetery  
18 that is used or intended to be used for an in-ground burial.

19 18. "Gross selling price" means the aggregate amount a  
20 purchaser is obligated to pay for interment rights, exclusive  
21 of finance charges.

22 19. "Inactive cemetery" means a cemetery that is not  
23 operating on a regular basis, is not offering to sell or  
24 provide interments or other services reasonably necessary for  
25 interment, and does not provide or permit reasonable ingress  
26 or egress for the purposes of visiting interment spaces.

27 20. "Income" means the return in money or property derived  
28 from the use of trust principal after deduction of investment  
29 losses, taxes, and expenses incurred in the sale of trust  
30 assets, any cost of the operation of the trust, and any annual  
31 audit fees. "Income" includes but is not limited to:

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

35 b. Interest on money lent, including sums received as

1 consideration for prepayment of principal.

2 c. Cash dividends paid on corporate stock.

3 d. Interest paid on deposit funds or debt obligations.

4 e. Gain realized from the sale of trust assets.

5 21. "Insolvent" means the inability to pay debts as they  
6 become due in the usual course of business.

7 22. "Interment rights" means the rights to place remains  
8 in a specific location for use as a final resting place or  
9 memorial.

10 23. "Interment rights agreement" means an agreement to  
11 furnish memorials, memorialization, opening and closing  
12 services, or interment rights.

13 24. "Interment space" means a space used or intended to be  
14 used for the interment of remains including, but not limited  
15 to, a grave space, lawn crypt, mausoleum crypt, and niche.

16 25. "Lawn crypt" means a preplaced enclosed chamber, which  
17 is usually constructed of reinforced concrete and poured in  
18 place, or a precast unit installed in quantity, either side-  
19 by-side or at multiple depths, and covered by earth or sod.

20 26. "Lot" means an area in a cemetery containing more than  
21 one interment space which is uniquely identified by an  
22 alphabetical, numeric, or alphanumeric identification  
23 system.

24 27. "Maintenance funds" means any money and real or  
25 personal property held by a nonperpetual cemetery under the  
26 terms of this chapter, and any accumulated income allocated to  
27 principal.

28 28. "Mausoleum" means an aboveground structure designed  
29 for the entombment of human remains.

30 29. "Mausoleum crypt" means a chamber in a mausoleum of  
31 sufficient size to contain casketed human remains.

32 30. "Memorial" means any product, including any foundation  
33 other than a mausoleum or columbarium, used for identifying an  
34 interment space or for commemoration of the life, deeds, or  
35 career of a decedent including, but not limited to, a

1 monument, marker, niche plate, urn garden plaque, crypt plate,  
2 cenotaph, marker bench, and vase.

3 31. "Memorial care" means any care provided or to be  
4 provided for the general maintenance of memorials including  
5 foundation repair or replacement, resetting or straightening  
6 tipped memorials, repairing or replacing inadvertently damaged  
7 memorials and any other care clearly specified in the purchase  
8 agreement.

9 32. "Memorial dealer" means any person offering or selling  
10 memorials retail to the public.

11 33. "Memorialization" means any permanent system designed  
12 to mark or record the names and other data pertaining to a  
13 decedent.

14 34. "Merchandise" means any personal property offered or  
15 sold for use in connection with the funeral, final  
16 disposition, memorialization, or interment of human remains,  
17 but which is exclusive of interment rights.

18 35. "Neglected cemetery" means a cemetery where there has  
19 been a failure to cut grass or weeds or care for graves,  
20 memorials or memorialization, walls, fences, driveways, and  
21 buildings, or for which proper records of interments have not  
22 been maintained.

23 36. "Niche" means a recess or space in a columbarium or  
24 mausoleum used for placement of cremated human remains.

25 37. "Opening and closing services" means one or more  
26 services necessarily or customarily provided in connection  
27 with the interment or entombment of human remains or a  
28 combination thereof.

29 38. "Outer burial container" means any container which is  
30 designed for placement in the ground around a casket or an urn  
31 including, but not limited to, containers commonly known as  
32 burial vaults, urn vaults, grave boxes, grave liners, and lawn  
33 crypts.

34 39. "Parent company" means a corporation that has a  
35 controlling interest in a cemetery corporation.

1 40. "Perpetual care cemetery" includes all of the  
2 following:

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

5 b. Any cemetery that has established a care fund in  
6 compliance with subchapter 12.

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

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

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

16 42. "Pioneer cemetery" means a cemetery where there were  
17 six or fewer burials in the preceding fifty years.

18 43. "Purchaser" means a person who purchases memorials,  
19 memorialization, opening and closing services, scattering  
20 services, interment rights, or a combination thereof. The  
21 purchaser need not be a beneficiary of the interment rights  
22 agreement.

23 44. "Religious cemetery" means a cemetery that is owned,  
24 operated, or controlled by a recognized church or  
25 denomination.

26 45. "Relocation" means the act of taking remains from the  
27 place of interment or the place where the remains are being  
28 held to another designated place.

29 46. "Remains" means the body of a deceased human or a body  
30 part, or limb that has been removed from a living human,  
31 including a body, body part, or limb in any stage of  
32 decomposition, or cremated remains.

\* 33 47. "Scattering services provider" means a person in the  
34 business of scattering human cremated remains.

35 48. "Seller" means a person doing business within this

1 state, including a person doing business within this state who  
2 advertises, sells, promotes, or offers to furnish memorials,  
3 memorialization, opening and closing services, scattering  
4 services or interment rights, or a combination thereof,  
5 whether the transaction is completed or offered in person,  
6 through the mail, over the telephone, by the internet, or  
7 through any other means of commerce.

8 49. "Special care" means any care provided or to be  
9 provided that supplements or exceeds the requirements of this  
10 chapter in accordance with the specific directions of any  
11 donor of funds for such purposes.

12 50. "Undeveloped space" means a designated area or  
13 building within a cemetery that has been mapped and planned  
14 for future development but is not yet fully developed.

15 SUBCHAPTER 2

16 CEMETERY DEDICATION REQUIREMENTS AND PROCEDURES

17 Sec. 11. NEW SECTION. 523I.201 DEDICATION.

18 1. A person that dedicates property for a new cemetery on  
19 or after July 1, 2003, and a cemetery corporation that  
20 dedicates an additional garden on or after July 1, 2003,  
21 shall:

22 a. In the case of land, survey and subdivide the property  
23 into gardens with descriptive names or numbers and make a map  
24 or plat of the property. Individual spaces do not need to be  
25 set forth visually. The map or plat must include narrative  
26 descriptions for each garden that allow individuals to  
27 determine the location of each interment space. The narrative  
28 descriptions must include appropriate compass directions, the  
29 size of interment spaces in each defined area, and a  
30 description of a progressive numbering system used to organize  
31 individual spaces in each defined area.

32 b. In the case of a mausoleum or a columbarium, make a map  
33 or plat of the property delineating sections or other  
34 divisions with descriptive names and numbers. Individual  
35 spaces do not need to be set forth visually. The map or plat

1 must include narrative descriptions for each section or  
2 division that allow individuals to determine the location of  
3 each interment space. The narrative descriptions must include  
4 appropriate compass directions, the size of interment spaces  
5 in each defined area, and a description of a progressive  
6 numbering system used to organize individual spaces in each  
7 defined area.

8 c. File the map or plat with the commissioner, including a  
9 written certificate or declaration of dedication of the  
10 property delineated by the map or plat, dedicating the  
11 property to cemetery purposes. The certificate or declaration  
12 shall include all of the following:

13 (1) Provision of information on a form prescribed by the  
14 directors or officers of the cemetery corporation.

15 (2) The signature of two individuals authorized by the  
16 cemetery corporation for that purpose.

17 (3) Verification by a notary public.

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

22 3. A certificate or declaration of dedication may contain  
23 a provision permitting a cemetery corporation to resurvey and  
24 change the shape and size of the property for which the  
25 associated map or plat is filed if that change does not  
26 disturb any interred remains. If a change is made, the  
27 cemetery corporation shall file an amended map or plat and  
28 shall indicate any change in a specific unique number assigned  
29 to an interment space.

30 4. A cemetery corporation is civilly liable to the state  
31 in an amount not to exceed one thousand dollars for each map  
32 or plat that fails to meet the requirements of this section.

33 5. A cemetery corporation shall not sell or convey  
34 interment rights in a section or garden until a map or plat  
35 and a certificate or declaration of dedication, if required by

1 this section, is filed with the commissioner.

2 Sec. 12. NEW SECTION. 523I.202 EFFECT OF DEDICATION.

3 1. Property may be dedicated for use as a cemetery, and  
4 the dedication is permitted out of respect for the dead, to  
5 provide for the disposition of remains, and in fulfillment of  
6 a duty to and for the benefit of the public.

7 2. Dedication of property as a cemetery and a property  
8 owner's title to the exclusive interment rights are not  
9 affected by the dissolution of the corporation owning the  
10 cemetery, nonuse, alienation, encumbrance, or forced sale of  
11 the property.

12 3. Dedication of property as a cemetery may not be  
13 invalidated because of a violation of the law against  
14 perpetuities or the law against the suspension of the power of  
15 alienation of title to or use of property.

16 4. All property located on land dedicated as a cemetery,  
17 including a road, alley, or walk in the cemetery:

18 a. Is exempt from public improvements assessments, fees,  
19 and public taxation.

20 b. Shall not be sold on execution or applied in payment of  
21 debts due from individual owners.

22 5. If human remains are not interred in a garden, the  
23 dedication of that portion of the property as a cemetery may  
24 be removed if notice is filed with the commissioner. Property  
25 dedicated as a cemetery shall continue to be used for cemetery  
26 purposes until the dedication is removed by filing notice with  
27 the commissioner, by court order, or until maintenance of the  
28 cemetery is enjoined or abated as a nuisance under section  
29 523I.804.

30 Sec. 13. NEW SECTION. 523I.203 REMOVAL OF DEDICATION.

31 A cemetery corporation may petition a district court of the  
32 county in which a cemetery is located to remove the dedication  
33 with respect to all or any portion of the cemetery if any of  
34 the following occurs:

35 1. All remains have been removed from that portion of the

1 cemetery where the dedication is to be removed.

2 2. No interments were made in that portion of the cemetery  
3 where the dedication is to be removed and that portion of the  
4 cemetery is not used or necessary for interment purposes.

5 3. A court orders the removal of the dedication upon  
6 notice and proof deemed satisfactory by the court.

7 SUBCHAPTER 3

8 CEMETERY CORPORATIONS

9 Sec. 14. NEW SECTION. 523I.301 FORMATION OF CORPORATION  
10 TO MAINTAIN AND OPERATE A CEMETERY.

11 1. A person shall not operate as a cemetery except by  
12 means of a corporation.

13 2. A corporation may, if authorized to do so by its  
14 articles, establish, maintain, manage, improve, or operate a  
15 cemetery either for or without profit to its members or  
16 stockholders. A nonprofit cemetery corporation shall be  
17 organized pursuant to chapter 504A, the Iowa nonprofit  
18 corporation Act. A for-profit cemetery corporation shall be  
19 organized pursuant to chapter 490, the Iowa business  
20 corporation Act, or chapter 490A, the Iowa limited liability  
21 company Act.

22 3. The powers, privileges, and duties conferred and  
23 imposed upon any cemetery corporation doing business under  
24 this chapter are hereby enlarged as each particular case may  
25 require to conform to the provisions of this chapter.

26 4. Unless otherwise limited by law, a cemetery corporation  
27 shall have the same powers granted to other corporations in  
28 general, including the right to enter into contracts secured  
29 by a mortgage, deed of trust, or other obligation upon the  
30 cemetery corporation's property.

31 Sec. 15. NEW SECTION. 523I.302 PROPERTY ACQUISITION BY  
32 CEMETERY CORPORATION.

33 1. A cemetery corporation may acquire by purchase,  
34 donation, or devise property consisting of land or other  
35 property in which remains may be interred under law.

1 2. A cemetery corporation that acquires property may  
2 record title to its property with the county recorder of the  
3 county in which the property is located if its president and  
4 secretary or other authorized delegate of the cemetery  
5 corporation sign and acknowledge a declaration executed by the  
6 cemetery corporation that describes the property and declares  
7 the cemetery corporation's intention to use the property or a  
8 part of the property for interment purposes.

9 3. Title recorded pursuant to subsection 2 constitutes  
10 constructive notice as of the date of filing that the property  
11 is intended to be used for interment.

12 4. A cemetery corporation may by condemnation acquire  
13 property in which remains may be interred when the acquisition  
14 of that property is for a public purpose.

15 Sec. 16. NEW SECTION. 523I.303 AUTHORITY OF CEMETERY  
16 CORPORATION.

17 A cemetery corporation may do any of the following:

18 1. Divide the cemetery into interment spaces and  
19 subdivisions for cemetery purposes.

20 2. Charge an assessment on cemetery property for the  
21 purpose of general improvement and maintenance.

22 3. Take any action that is necessary to carry out the  
23 cemetery's business purposes including those purposes that are  
24 necessarily incidental to the final disposition of human  
25 remains, including any of the following:

26 a. Convey property or other assets of the corporation.

27 b. Borrow money.

28 SUBCHAPTER 4  
29 INTERMENT RIGHTS

30 Sec. 17. NEW SECTION. 523I.401 SALE OF INTERMENT RIGHTS.

31 1. A cemetery corporation may sell and convey exclusive  
32 rights of interment in the cemetery under the following  
33 conditions:

34 a. The sale or conveyance is allowed by the rules of the  
35 cemetery and the restrictions in the certificate of interment

1 rights or other instrument of conveyance.

2 b. The purchase price for the interment rights has been  
3 paid in full.

4 2. A certificate of interment rights or other instrument  
5 evidencing the conveyance of exclusive rights of interment by  
6 a cemetery corporation must be signed by the president or vice  
7 president and the secretary or other officers authorized by  
8 the cemetery corporation.

9 3. A conveyance of exclusive rights of interment must be  
10 filed and recorded in the cemetery corporation's office. Any  
11 transfer of the ownership of interment rights must be filed  
12 and recorded in the cemetery corporation's office. The  
13 cemetery corporation may charge a reasonable recording fee to  
14 record the transfer of interment rights.

15 4. The interment rights in an interment space that is  
16 conveyed by a certificate of ownership or other instrument  
17 shall not be divided without the consent of the cemetery  
18 corporation.

19 Sec. 18. NEW SECTION. 523I.402 INTERMENT RIGHTS.

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

24 2. The spouse of a person to whom exclusive rights of  
25 interment in an interment space are conveyed has a vested  
26 right of interment of the spouse's remains in the interment  
27 space while the spouse is married to the interment space owner  
28 or if the spouse is married to the interment space owner at  
29 the time of the owner's death.

30 Sec. 19. NEW SECTION. 523I.403 MULTIPLE OWNERS OF  
31 INTERMENT RIGHTS.

32 Two or more owners of interment rights may designate a  
33 person to represent the interment space and file notice of the  
34 designation of a representative with the cemetery corporation.  
35 If notice is not filed, the cemetery corporation may inter or

1 permit an interment in the space at the request or direction  
2 of a registered co-owner of the interment space.

3 Sec. 20. NEW SECTION. 523I.404 RECORDS OF INTERMENT  
4 RIGHTS AND INTERMENT.

5 1. A cemetery corporation shall keep complete records  
6 identifying the owners of all interment rights sold by the  
7 cemetery corporation and historical information regarding any  
8 transfers of ownership. The records shall include all of the  
9 following:

10 a. The name and last known address of each owner or  
11 previous owner of interment rights.

12 b. The date of each purchase or transfer of interment  
13 rights.

14 c. A unique numeric or alphanumeric identifier that  
15 identifies the location of each interment space sold by the  
16 cemetery corporation.

17 2. A cemetery corporation shall keep a record of each  
18 interment in a cemetery. The records shall include all of the  
19 following:

20 a. The date the remains are interred.

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

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

27 Sec. 21. NEW SECTION. 523I.405 ABANDONED INTERMENT  
28 SPACES.

29 1. REVERSION. The ownership or right in or to an  
30 unoccupied interment space shall, upon abandonment, revert to  
31 the cemetery corporation that owns the cemetery in which the  
32 space is located.

33 2. PRESUMPTION OF ABANDONMENT. Unpaid care assessments  
34 and fees for an unoccupied interment space not under perpetual  
35 care shall create a lien by the cemetery corporation against

1 the applicable interment space. The continued failure of the  
2 owner to maintain or care for an unoccupied interment space  
3 not under perpetual care, for a period of ten years, or to pay  
4 a lien for care assessments or care fees that exceed the  
5 amount paid for the interment space, shall create the  
6 presumption that the interment space has been abandoned. An  
7 unused interment space under perpetual care in a lot which has  
8 not had a burial for seventy-five years shall create a  
9 presumption that the interment space has been abandoned.

10 3. NOTICE OF ABANDONMENT. Abandonment shall not be deemed  
11 complete pursuant to subsection 2 until the cemetery  
12 corporation gives notice declaring the interment space to be  
13 abandoned, to the owner of record or, if the owner of record  
14 is deceased or unknown, to the heirs of the owner of record.

15 4. SERVICE OF NOTICE. Notice of abandonment may be served  
16 personally on the owner of record or the owner of record's  
17 heirs, or may be served by mailing notice by certified mail to  
18 the owner of record, or the owner of record's heirs, at the  
19 last known address of the owner of record or owner of record's  
20 heirs. If the address of the owner of record or the owner of  
21 record's heirs cannot be ascertained, notice of such  
22 abandonment shall be given by one publication of the notice of  
23 abandonment in the official newspaper of the county in which  
24 the cemetery is located.

25 5. OVERCOMING PRESUMPTION OF ABANDONMENT. If within one  
26 year from the time of serving notice the owner of record or  
27 the owner of record's heirs pay the past due annual care  
28 charges assessed against the interment space, the presumption  
29 of abandonment shall no longer exist and the owner of record  
30 or the owner of record's heirs may be required to make full  
31 payment for future perpetual care.

32 6. REVERSIONER'S RIGHT TO SELL. When the abandonment is  
33 deemed complete, the reversionary owner of the abandoned  
34 interment space, or a portion thereof, may sell and convey  
35 title to the interment space.

1 7. USE OF FUNDS. Any funds realized from the sale of an  
2 interment space not under perpetual care which has reverted to  
3 the reversionary owner shall be allocated to the care fund or  
4 to the fund paying the costs of cemetery operation.

5 8. ABANDONMENT -- PERPETUAL CARE PROVIDED BY WILL, COURT  
6 ORDER, CONTRACT, OR BY LAW. An unused interment space which  
7 has not had a burial for seventy-five years, but whose  
8 perpetual care has been provided for by will, court order,  
9 contract, or by law, shall not be sold by the reversionary  
10 owner until three years after the date notice was served on  
11 the owner of record or the owner of record's heirs of the  
12 presumed abandonment of the interment space.

13 SUBCHAPTER 5

14 INTERMENT RIGHTS AGREEMENTS

15 Sec. 22. NEW SECTION. 523I.501 STATEMENT BY PERPETUAL  
16 CARE CEMETERY.

17 1. A perpetual care cemetery shall include the following  
18 statement in the heading of each interment rights agreement:  
19 "This cemetery is operated as a perpetual care cemetery,  
20 which means that a care fund for its maintenance has been  
21 established in conformity with the laws of the State of Iowa.  
22 At least twenty percent of the purchase price for interment  
23 rights must be placed in the care fund and the care fund's  
24 income is used to maintain, repair, and care for the  
25 cemetery."

26 2. If the care fund contains less than twenty-five  
27 thousand dollars, the statement shall include a statement that  
28 the balance of the care fund is less than twenty-five thousand  
29 dollars or shall disclose the exact amount contained in the  
30 care fund on a date not more than twelve months prior to the  
31 date of execution of the interment rights agreement.

32 Sec. 23. NEW SECTION. 523I.502 STATEMENT BY NONPERPETUAL  
33 CARE CEMETERY.

34 1. A nonperpetual care cemetery shall include the  
35 following statement in the heading of each interment rights

1 agreement:

2 "This cemetery is a nonperpetual care cemetery and has not  
3 established a perpetual trust fund for the cemetery's care."

4 2. A nonperpetual care cemetery shall not represent that  
5 the cemetery is a perpetual care cemetery or use any similar  
6 title, description, or term indicating that the cemetery  
7 provides guaranteed or permanent maintenance and care. If a  
8 nonperpetual care cemetery has a maintenance fund, trust fund,  
9 or trust funds, any statements about those funds must be  
10 factually accurate and explain any variances between the terms  
11 of the applicable trust and this chapter in regard to the  
12 twenty-five thousand dollar minimum corpus provision, any  
13 provisions regarding invasion of principal, and the amount of  
14 the purchase price placed in trust for each sale of interment  
15 rights.

16 Sec. 24. NEW SECTION. 523I.503 INTERMENT RIGHTS  
17 AGREEMENT REQUIREMENTS.

18 An agreement for interment rights shall be written in  
19 clear, understandable language and shall contain all of the  
20 following:

21 1. The name of the cemetery where the rights to interment  
22 are located, the name of the cemetery corporation selling  
23 interment rights or the name of a seller other than the  
24 cemetery corporation, and the name of the purchaser.

25 2. The name and sales permit number of the salesperson.

26 3. A description of the interment rights to be provided  
27 and the cost of merchandise or services to be provided.

28 4. The conditions under which substitutions will be  
29 allowed.

30 5. The total purchase price and the terms under which the  
31 purchase price is to be paid.

32 6. That the purchase of interment rights is an irrevocable  
33 contract, except as otherwise specified in the cemetery  
34 corporation's rules and regulations.

35 7. The amount or percentage of money to be placed in the

1 cemetery corporation's care fund or maintenance fund.

2 8. A statement explaining that the care fund or  
3 maintenance fund is an irrevocable trust, that deposits cannot  
4 be withdrawn even in the event of cancellation of the  
5 agreement, and that the care fund or maintenance fund must be  
6 used by the cemetery corporation for the care and maintenance  
7 of the cemetery.

8 9. An explanation of any fees or expenses that may be  
9 charged.

10 10. An explanation of whether the money to be placed in  
11 the cemetery corporation's care fund or maintenance fund will  
12 be deposited in trust upon payment in full or on an allocable  
13 basis as payments are made.

14 11. An explanation of whether initial payments on  
15 agreements for multiple items of merchandise or services, or  
16 both, will be allocated first to the purchase of interment  
17 rights. If such an allocation will be made, the agreement  
18 shall provide for the immediate transfer of such interment  
19 rights upon payment in full and prominently state that any  
20 applicable trust deposits under chapter 523A will not be made  
21 until the cemetery has received payment in full for the  
22 interment rights. The transfer of interment rights in an  
23 undeveloped space may be deferred until such space is ready  
24 for burial.

25 12. A provision that if the transfer of an undeveloped  
26 interment space will be deferred as set forth in subsection  
27 11, there will be written acknowledgement when payment in full  
28 is made, specification of a reasonable time period for  
29 development of the space, a description of what happens in the  
30 event of the purchaser's death prior to development of the  
31 space, and immediate transfer of the interment rights when  
32 development of the space is complete.

33 13. Specification of the purchaser's right to cancel the  
34 agreement and liability for damages upon such cancellation, if  
35 any.

1 14. A statement that the insurance division exercises  
2 regulatory oversight over interment rights agreements set  
3 forth in twelve point bold-faced type, in substantially the  
4 following language: THIS AGREEMENT IS SUBJECT TO RULES  
5 ADMINISTERED BY THE IOWA INSURANCE DIVISION. YOU MAY CALL THE  
6 INSURANCE DIVISION AT (\_\_\_\_)\_\_\_\_\_. WRITTEN INQUIRIES OR  
7 COMPLAINTS SHOULD BE MAILED TO THE IOWA INSURANCE DIVISION,  
8 (STREET ADDRESS), (CITY), IOWA (ZIP CODE).

9 15. If the cemetery corporation offers opening and closing  
10 services, specification of whether opening and closing of  
11 interment spaces are included in the interment rights  
12 agreement, and, if not, the current prices for such opening  
13 and closing services and a statement that these prices are  
14 subject to change.

15 16. Signatures of the purchaser and the seller.

16 A seller shall furnish the purchaser with a completed copy  
17 of the interment rights agreement at the time the agreement is  
18 signed.

19 SUBCHAPTER 6

20 LAWN CRYPTS

21 Sec. 25. NEW SECTION. 523I.601 REQUIREMENTS FOR LAWN  
22 CRYPTS.

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

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

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

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

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

35 5. Except as provided by section 523I.602, the lawn crypt

1 is installed in multiple units of ten or more.

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

5 Sec. 26. NEW SECTION. 523I.602 REQUEST TO INSTALL LAWN  
6 CRYPT IN FEWER THAN TEN UNITS.

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

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

14 a. The owner's name and address.

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

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

17 d. A description of the interment spaces.

18 e. A statement that the lawn crypt meets the requirements  
19 of section 523I.601, including all of the following:

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

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

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

28 (4) A statement that the outside top surface of the lawn  
\* 29 crypt at the time of installation will be capable of  
30 withstanding the weight of the soil and sod above the top  
31 surface and the weight of machinery and equipment normally  
32 used in the maintenance of the cemetery.

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

35 g. The date on which the owner or owners signed the form.

\*1     Sec. 27. NEW SECTION. 523I.603 NEW CONSTRUCTION.

2     1. A person shall not offer to sell interment rights in a  
3 mausoleum or columbarium that will be built or completed in  
4 the future unless the person has submitted an application to  
5 sell such interment rights with the commissioner on a form  
6 prescribed by the commissioner and accompanied by a fee of one  
7 hundred dollars.

8     2. The application to sell interment rights in a mausoleum  
9 or columbarium must include the following information:

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

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

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

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

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

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

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

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

34                                   SUBCHAPTER 7

35                                   PERMIT REQUIREMENTS

1     Sec. 28. NEW SECTION. 523I.701 CEMETERY PERMITS.

2     1. A cemetery corporation shall not advertise, sell,  
3 promote, or offer to sell interment rights on or after July 1,  
4 2003, without a permit as provided for in this subchapter. If  
5 a cemetery corporation operates more than one cemetery, each  
6 cemetery must have a cemetery permit.

7     2. A filing fee shall not be required.

8     3. An application for a cemetery permit shall be filed on  
9 a form prescribed by the commissioner and include a copy of  
10 each interment rights agreement form used by the cemetery.

11    4. The application shall contain all of the following:

12    a. The name and address of the cemetery.

13    b. The name and address of the cemetery corporation.

14    c. The name and address of each owner, officer, or other  
15 official of the cemetery corporation, including, when  
16 relevant, the chief executive officer and the members of the  
17 board of directors.

18    d. A description of any common business enterprise or  
19 parent company.

20    e. A list of the financial institutions used by the  
21 cemetery corporation on a regular basis.

22    f. The name and address of any trustee holding trust funds  
23 for the cemetery corporation, including the name and location  
24 of the applicable trust account.

25    5. The commissioner shall grant or deny an application for  
26 a cemetery permit within thirty days after receipt, but the  
27 commissioner's failure to act within that time period shall  
28 not be deemed approval of the application. If the  
29 commissioner does not grant the permit, the commissioner shall  
30 notify the person in writing of the reasons for denial.

31    6. A cemetery permit is valid for four years.

32     Sec. 29. NEW SECTION. 523I.702 SALES PERMITS.

33    1. A person shall not advertise, sell, promote, or offer  
34 to sell interment rights without a sales permit. A person  
35 holding a sales permit must be an employee or agent of a

1 cemetery corporation holding a cemetery permit. This section  
2 shall not apply to a licensed funeral director who merely  
3 collects cash advance payments for interment rights, an agent  
4 or employee of a religious cemetery, or a cemetery owned or  
5 operated by a political subdivision of this state.

6 2. A person must have a sales permit for each cemetery  
7 corporation for which the person is employed or is an agent.

8 3. A cemetery corporation is liable for the acts of its  
9 employees and agents performed in advertising, selling,  
10 promoting, or offering to furnish interment rights.

11 4. An application for a sales permit shall be filed on a  
12 form prescribed by the commissioner.

13 5. The application shall contain all of the following:

14 a. The name and address of the person.

15 b. The name and address of the cemetery and, if different,  
16 the cemetery corporation on whose behalf the person will be  
17 advertising, selling, promoting, or offering to furnish  
18 interment rights.

19 6. A permit holder shall inform the commissioner of  
20 changes in the information required to be provided by  
21 subsection 5 in the initial application or in an application  
22 for renewal within thirty days of the change.

23 7. An initial permit shall be accompanied by a five dollar  
24 filing fee and shall expire one year from the date the  
25 application is filed. The permit may be renewed for an  
26 additional four years by filing the form prescribed by the  
27 commissioner under this section, accompanied by a twenty  
28 dollar filing fee.

29 8. The commissioner shall grant or deny a permit  
30 application within thirty days after receipt, but the  
31 commissioner's failure to act within that time period shall  
32 not be deemed approval of the application. If the  
33 commissioner does not grant the permit, the commissioner shall  
34 notify the applicant in writing of the reasons for the denial.

35 9. The commissioner may, by rule, create or accept a

1 multijurisdiction sales permit. If the sales permit is issued  
2 by another jurisdiction, the rules shall require the filing of  
3 an application or notice form and payment of the applicable  
4 filing fee of five dollars for each year. The application or  
5 notice form utilized and the effective dates and terms of the  
6 permit may vary from the provisions set forth in subsections  
7 4, 5, 6, and 7.

8 10. The commissioner may create and accept a joint sales  
9 permit for persons who are also required to hold a sales  
10 permit under section 523A.502. Notwithstanding subsection 7  
11 and section 523A.502, if a joint application is filed for both  
12 sales permits, the fee for an initial joint permit shall be  
13 five dollars and the fee for a renewed joint permit shall be  
14 twenty dollars.

15 Sec. 30. NEW SECTION. 523I.703 DENIAL -- SUSPENSION --  
16 REVOCATION -- SURRENDER OF PERMITS.

17 1. The commissioner may, subject to chapter 17A, deny any  
18 permit application or immediately suspend or revoke a permit  
19 issued under this chapter for several reasons, including but  
20 not limited to:

21 a. Committing a fraudulent act, engaging in a fraudulent  
22 practice, or violating any provision of this chapter, or any  
23 implementing rule or order issued under this chapter.

24 b. Violating any other state or federal law applicable to  
25 the conduct of the applicant's or permit holder's business.

26 c. Insolvency or financial condition.

27 d. Engaging in a deceptive act or practice or  
28 misrepresenting or omitting a material fact regarding the sale  
29 of interment rights under this chapter.

30 e. Conviction of a criminal offense involving dishonesty  
31 or a false statement.

32 f. Inability to provide the interment rights which the  
33 applicant or permit holder purports to sell.

34 g. Selling the cemetery without filing a prior notice of  
35 the sale with the commissioner. A cemetery permit shall be

1 revoked thirty days following such sale.

2 h. Allowing a person who is not an employee or agent of  
3 the applicant or permit holder to sell interment rights.

4 i. Inadequate care and maintenance of the cemetery,  
5 including but not limited to the following:

6 (1) Failure to adequately mow grass.

7 (2) Failure to adequately edge and trim bushes, trees, and  
8 memorials.

9 (3) Failure to keep walkways and sidewalks free of  
10 obstructions.

11 (4) Failure to adequately maintain the cemetery's  
12 equipment and fixtures.

13 2. The commissioner may, for good cause shown, suspend any  
14 permit for a period not exceeding thirty days, pending  
15 investigation.

16 3. Except as provided in subsection 2, a permit shall not  
17 be revoked or suspended except after notice and hearing under  
18 chapter 17A.

19 4. Any permit holder may surrender a permit by delivering  
20 to the commissioner written notice that the permit holder  
21 surrenders the permit, but the surrender shall not affect the  
22 permit holder's civil or criminal liability for acts committed  
23 before the surrender.

24 5. Denial, revocation, suspension, or surrender of a  
25 permit does not impair or affect the obligation of any  
26 preexisting lawful agreement between the permit holder and any  
27 person.

28 Sec. 31. NEW SECTION. 523I.704 ASSIGNMENTS AND TRANSFERS  
29 PROHIBITED.

30 Permits issued pursuant to this chapter are not assignable  
31 or transferable. This section does not apply to a religious  
32 cemetery if it remains a religious cemetery after the  
33 assignment or transfer of a permit.

34 Sec. 32. NEW SECTION. 523I.705 TRANSFER OF OWNERSHIP.

35 If an applicant or permit holder sells a cemetery, the

1 applicant or holder of a cemetery permit for that cemetery  
2 shall notify the commissioner no later than thirty days after  
3 the sale of the cemetery.

4 SUBCHAPTER 8

5 GENERAL PROVISIONS

6 Sec. 33. NEW SECTION. 523I.801 LIEN AGAINST CEMETERY  
7 PROPERTY.

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

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

\* 18 Sec. 34. NEW SECTION. 523I.803 REMOVAL OF REMAINS FROM  
19 NEGLECTED CEMETERY.

20 1. If a neglected cemetery for which no care fund has been  
21 regularly and legally established is abated as a nuisance, the  
22 court abating the nuisance and enjoining its continuance or  
23 the governing body of the municipality in which the cemetery  
24 is located may authorize the removal of all human remains,  
25 monuments, tombs, and other similar items from the cemetery to  
26 another religious cemetery of the same denomination, if  
27 applicable, or to a perpetual care cemetery in the same  
28 county.

29 2. If a county does not have a perpetual care cemetery  
30 that under its rules permits the interment of human remains  
31 that have been removed from another cemetery, the human  
32 remains, monuments, tombs, and other similar items may be  
33 removed to a nonperpetual care cemetery in the county that has  
34 provided for assessments for the cemetery's future care.

35 Sec. 35. NEW SECTION. 523I.804 NUISANCE -- ABATEMENT --

1 INJUNCTION.

2 1. A district court of the county in which a cemetery is  
3 located may, by order, abate the cemetery as a nuisance and  
4 enjoin its continuance if the cemetery is either:

5 a. Maintained, located, or used in violation of this  
6 chapter.

7 b. Neglected so that it is offensive to the inhabitants of  
8 the surrounding area.

9 2. A proceeding for abatement may be brought by the county  
10 attorney, the attorney general, or the commissioner.

11 3. The court shall grant a permanent injunction against  
12 each person responsible for the nuisance if a cemetery  
13 nuisance exists or is threatened.

14 4. If a cemetery nuisance under subsection 1, paragraph  
15 "b", is located in a municipality, the governing body of the  
16 municipality may authorize the removal of all human remains,  
17 monuments, tombs, or other similar items from the cemetery to  
18 a perpetual care cemetery.

19 Sec. 36. NEW SECTION. 523I.805 RULEMAKING AND  
20 ENFORCEMENT.

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

27 2. A cemetery corporation may restrict and limit the use  
28 of all property within the cemetery by rules that do all of  
29 the following:

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

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

35 c. Regulate the scattering or placement of cremated

1 remains within the cemetery.

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

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

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

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

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

12 3. A cemetery corporation shall not adopt or enforce a  
13 rule that prohibits interment because of the race, color, or  
14 national origin of a decedent. A provision of a contract or a  
15 certificate of ownership or other instrument conveying  
16 interment rights that prohibits interment in a cemetery  
17 because of the race, color, or national origin of a decedent  
18 is void.

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

25 5. A cemetery corporation's rules shall specify the  
26 cemetery corporation's obligations in the event that memorials  
27 or memorialization are damaged or defaced by acts of  
28 vandalism. The rules may specify a multiyear restoration of a  
29 memorial or memorialization when the damage is extensive or  
30 when money available from the cemetery's trust fund is  
31 inadequate to complete repairs immediately. The owner of a  
32 memorial or memorialization that has been damaged or defaced  
33 shall be notified by the cemetery corporation by restricted  
34 certified mail at the owner's last known address within sixty  
35 days of the discovery of the damage or defacement. The rules

1 shall specify whether the owner is liable, in whole or in  
2 part, for the cost to repair or replace a damaged or defaced  
3 memorial or memorialization.

4 6. The cemetery corporation shall not approve any bylaw  
5 which unreasonably restricts competition, or which  
6 unreasonably increases the cost to the owner of interment  
7 rights in utilizing these rights.

8 Sec. 37. NEW SECTION. 523I.806 PROTECTION OF CEMETERIES  
9 AND BURIAL SITES.

10 1. EXISTENCE OF CEMETERY OR BURIAL SITE -- NOTIFICATION.

11 If a governmental subdivision or agency is notified of the  
12 existence of a cemetery, or a marked burial site that is not  
13 located in a dedicated cemetery, within its jurisdiction and  
14 the cemetery or burial site is not otherwise provided for  
15 under this chapter, the governmental subdivision or agency  
16 shall, as soon as is practicable, notify the owner of the land  
17 upon which the cemetery or burial site is located of the  
18 cemetery's or burial site's existence and location. The  
19 notification shall include an explanation of the provisions of  
20 this section. If there is a basis to believe that interment  
21 may have occurred more than one hundred fifty years earlier,  
22 the governmental subdivision or agency shall also notify the  
23 state archaeologist.

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

29 3. DUTY TO PRESERVE AND PROTECT. A governmental  
30 subdivision or agency having a cemetery, or a burial site that  
31 is not located within a dedicated cemetery, within its  
32 jurisdiction, for which preservation is not otherwise  
33 provided, shall preserve and protect the cemetery or burial  
34 site as necessary to restore or maintain its physical  
35 integrity as a cemetery or burial site. The governmental

1 subdivision or agency may enter into an agreement to delegate  
2 the responsibility for the preservation and protection of the  
3 cemetery or burial site to a person interested in historical  
4 preservation. A cemetery corporation shall be formed to  
5 operate the cemetery, if applicable.

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

18 5. INTERMENT SPACES LOCATED ON PRIVATE PROPERTY.

19 a. A person shall notify a governmental subdivision or  
20 agency if an interment of the person's ancestor exists on  
21 property owned by another person within the jurisdiction of  
22 the governmental subdivision or agency. The owner of the  
23 property shall be notified by the governmental subdivision or  
24 agency that the interment exists and that the owner must  
25 permit the person reasonable ingress and egress for the  
26 purposes of visiting the interment space of the person's  
27 ancestor.

28 b. Pursuant to section 558.69, a declaration of value  
29 submitted to a county recorder pursuant to chapter 428A shall  
30 also include information concerning the existence of any known  
31 private interment space situated on the property.

32 6. DISCOVERY OF HUMAN REMAINS. Any person discovering  
33 human remains shall notify the county or state medical  
34 examiner or a city, county, or state law enforcement agency as  
35 soon as is reasonably possible unless the person knows or has

1 good reason to believe that such notice has already been given  
2 or the discovery occurs in a cemetery. If there is reason to  
3 believe that interment may have occurred more than one hundred  
4 fifty years earlier, the governmental subdivision or agency  
5 notified shall also notify the state archaeologist. A person  
6 who does not provide notice required pursuant to this  
7 subsection commits a serious misdemeanor.

8 Sec. 38. NEW SECTION. 523I.808 COMPLIANCE WITH IOWA  
9 CONSUMER CREDIT CODE.

10 A seller of credit sales agreements pursuant to this  
11 chapter shall comply with the requirements of chapter 537, and  
12 is subject to the remedies and penalties provided for in that  
13 chapter.

14 Sec. 39. NEW SECTION. 523I.809 DISCLOSURE REQUIREMENTS.

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

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

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

32 Sec. 40. NEW SECTION. 523I.810 INSTALLATION OF OUTER  
33 BURIAL CONTAINERS.

34 A cemetery corporation shall provide services necessary for  
35 the installation of outer burial containers or other similar

1 merchandise sold by the cemetery corporation. This section  
2 shall not require the cemetery corporation to provide for  
3 opening and closing of interment or entombment space, unless  
4 an agreement executed by the cemetery corporation expressly  
5 provides otherwise.

6 Sec. 41. NEW SECTION. 523I.811 ACCESS BY FUNERAL  
7 DIRECTORS.

8 A licensed funeral director shall not be denied access by a  
9 cemetery corporation to conduct a funeral for or to supervise  
10 interment or disinterment of human remains.

11 Sec. 42. NEW SECTION. 523I.812 COUNTY AUDITOR AS  
12 TRUSTEE.

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

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

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

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

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

31 Sec. 43. NEW SECTION. 523I.813 MEMORIALS AND  
32 MEMORIALIZATION.

33 1. AUTHORIZATION. A cemetery corporation is entitled to  
34 determine whether that a person requesting installation of a  
35 memorial is authorized to do so, to the extent that this can

1 be determined from the records of the cemetery corporation, as  
2 is consistent with the cemetery corporation's rules. The  
3 owner of an interment space or the owner's agent may authorize  
4 a memorial dealer or independent third party to perform all  
5 necessary work related to preparation and installation of a  
6 memorial.

7 2. CONFORMITY WITH CEMETERY CORPORATION RULES. A person  
8 selling a memorial shall review the rules of the cemetery  
9 corporation for the cemetery where the memorial is to be  
10 installed to ensure that the memorial will comply with those  
11 rules prior to ordering or manufacturing the memorial.

12 3. SPECIFICATIONS. Upon request, a cemetery corporation  
13 shall provide reasonable written specifications and  
14 instructions governing installation of memorials, which shall  
15 apply to all installations whether performed by the cemetery  
16 corporation or another person. The written specifications  
17 shall include provisions governing hours of installation or  
18 any other relevant administrative requirements of the  
19 cemetery. A copy of these specifications and instructions  
20 shall be provided upon request, without charge, to the owner  
21 of the interment space, next of kin, or a personal  
22 representative or agent of the owner, including the person  
23 installing the memorial. The person installing the memorial  
24 shall comply with the cemetery corporation's written  
25 installation specifications and instructions. A cemetery  
26 corporation shall not adopt or enforce any rule prohibiting  
27 the installation of a memorial by a memorial dealer or  
28 independent third party, unless the rule is adopted and  
29 enforced uniformly for all memorials installed in the  
30 cemetery.

31 4. WRITTEN NOTICE. A memorial dealer or independent third  
32 party shall provide the cemetery corporation with at least  
33 seven days' prior written notice of intent to install a  
34 memorial at the cemetery, or such lesser notice as the  
35 cemetery corporation deems acceptable. The notice shall

1 contain the full name, address, and relationship of the  
2 memorial's purchaser to the person interred in the interment  
3 space or the owner of the interment space, if different. The  
4 notice shall also contain the color, type, and size of the  
5 memorial, the material, the inscription, and the full name and  
6 interment date of the person interred in the interment space.

7 5. PREPARATION AND INSTALLATION.

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

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

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

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

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

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

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

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

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

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

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

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

30 6. INSPECTION. A cemetery corporation may inspect the  
31 installation site of a memorial at any time. If the cemetery  
32 corporation determines that cemetery corporation rules are not  
33 being followed during the installation, the cemetery  
34 corporation may order the installation to stop until the  
35 infraction is corrected. The cemetery corporation shall

1 provide written notice to the installer within seven days if  
2 the cemetery corporation believes that any of the following  
3 have occurred:

- 4 a. The memorial has not been installed correctly.
- 5 b. The person installing the memorial has damaged property  
6 at the cemetery.
- 7 c. Other cemetery corporation requirements for  
8 installation have not been met, such as removal of debris or  
9 equipment.

10 7. LOCATION AND SERVICE CHARGE. A cemetery corporation  
11 may charge a reasonable service charge for allowing the  
12 installation of a memorial purchased or obtained from and  
13 installed by a person other than the cemetery corporation or  
14 its agents. This service charge shall be based on the  
15 cemetery corporation's actual labor costs, including fringe  
16 benefits, of those employees whose normal duty is to inspect  
17 the installation of memorials, in accordance with generally  
18 accepted accounting practices. General administrative and  
19 overhead costs and any other functions not related to actual  
20 inspection time shall be excluded from the service charge.

21 8. FAULTY INSTALLATION. If a memorial sinks, tilts, or  
22 becomes misaligned within twelve months of its installation  
23 and the cemetery corporation believes the cause is faulty  
24 installation, the cemetery corporation shall notify the person  
25 who installed the memorial in writing and the person who  
26 installed the memorial shall be responsible to correct the  
27 damage, unless the damage is caused by inadequate written  
28 specifications and instructions from the cemetery corporation  
29 or acts of the cemetery corporation and its agents or  
30 employees, including but not limited to running a backhoe over  
31 the memorial, carrying a vault or other heavy equipment over  
32 the memorial, or opening or closing an interment space  
33 adjacent to the memorial.

34 9. PERPETUAL CARE. A cemetery corporation may require  
35 contributions from the purchaser of a memorial for perpetual

1 care, if a perpetual care fund deposit is uniformly charged on  
2 every memorial installed in the cemetery.

3 Sec. 44. NEW SECTION. 523I.814 INTERMENT, RELOCATION, OR  
4 DISINTERMENT OF REMAINS.

5 1. Unless a decedent has left directions in writing for  
6 the disposition of the decedent's remains as provided in  
7 subsection 2, the following persons, in the priority listed,  
8 shall have the right to control the interment, relocation, or  
9 disinterment of the decedent's remains within or from a  
10 cemetery:

11 a. The person designated in a written instrument signed by  
12 the decedent.

13 b. The surviving spouse of the decedent.

14 c. A surviving adult child of the decedent.

15 d. A surviving parent of the decedent.

16 e. A surviving adult sibling of the decedent.

17 f. Any adult person in the next degree of kinship in the  
18 order named by law to inherit the estate of the decedent under  
19 the rules of inheritance for intestate succession.

20 2. The written instrument referred to in subsection 1,  
21 paragraph "a", shall be in substantially the following form:

22 DIRECTIONS FOR DISPOSITION OF MY REMAINS

23 Name of person whose remains are to be disposed of as  
24 directed (decedent):

25 Address:

26 Telephone Number:

27 Acceptance of Appointment: (signature of agent)

28 Date of Signature:

29 SUCCESSORS

30 If my agent dies, becomes legally disabled, resigns, or  
31 refuses to act, I hereby appoint the following persons (each  
32 to act alone and successively, in the order named) to serve as  
33 my agent (attorney-in-fact) to control the disposition of my  
34 remains as authorized by this document:

35 First Successor

1 Name:

2 Address:

3 Telephone Number:

4 Acceptance of Appointment: (signature of first successor)

5 Date of Signature:

6 Second Successor

7 Name:

8 Address:

9 Telephone Number:

10 Acceptance of Appointment: (signature of second successor)

11 Date of Signature:

12 DURATION

13 This appointment becomes effective upon my death.

14 PRIOR APPOINTMENTS REVOKED

15 I hereby revoke any prior appointment of any person to  
16 control the disposition of my remains.

17 RELIANCE

18 I hereby agree that any cemetery corporation that receives  
19 a copy of this document may act under it. Any modification or  
20 revocation of this document is not effective as to any such  
21 party until that party receives actual notice of the  
22 modification or revocation. No such party shall be liable  
23 because of reliance on a copy of this document.

24 ASSUMPTION

25 THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS  
26 APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND  
27 BY THE PROVISIONS OF, SECTION 523I.814. Signed this \_\_\_\_ day  
28 of \_\_\_\_\_, \_\_\_\_.

29 3. A written instrument referred to in subsection 1,  
30 paragraph "a", is legally sufficient if the wording of the  
31 instrument complies substantially with subsection 2, the  
32 instrument is properly completed, the instrument is signed by  
33 the decedent, the agent, and each successor agent, and the  
34 signature of the decedent is acknowledged. Such written  
35 instrument may be modified or revoked only by a subsequent

1 written instrument that complies with the requirements of this  
2 subsection.

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

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

26 6. If the decedent's directions for the interment of the  
27 decedent's remains are in a will, the directions shall be  
28 carried out immediately without the necessity of probate. If  
29 a will is not probated or is declared invalid for testamentary  
30 purposes, the directions for the interment of the decedent's  
31 remains are valid to the extent that they have been acted upon  
32 in good faith.

33 7. A cemetery corporation shall not be liable for carrying  
34 out the written directions of a decedent or the directions of  
35 any person entitled to control the interment, relocation, or

1 disinterment of the decedent's remains.

2 8. A dispute among any of the persons listed in subsection  
3 1 concerning their right to control the interment, relocation,  
4 or disinterment of a decedent's remains may be resolved by a  
5 court of competent jurisdiction. A cemetery corporation shall  
6 not be liable for refusing to accept the decedent's remains,  
7 relocate or disinter, inter or otherwise dispose of the  
8 decedent's remains, until the cemetery corporation receives a  
9 court order or other suitable confirmation that the dispute  
10 has been resolved or settled.

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

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

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

33 d. This subsection does not apply to the removal of  
34 remains from one interment space to another interment space in  
35 the same cemetery to correct an error, or relocation of the

1 remains by the cemetery from an interment space for which the  
2 purchase price is past due and unpaid, to another suitable  
3 interment space.

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

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

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

29 12. Relocations and disinterments of human remains shall  
30 be done in compliance with sections 144.32 and 144.34.

31 Sec. 45. NEW SECTION. 523I.815 FEE AND CARE ASSESSMENTS  
32 AND MAINTENANCE FUNDS AT NONPERPETUAL CARE CEMETERIES.

33 1. a. On or after July 1, 2003, a cemetery corporation  
34 that operates a nonperpetual care cemetery shall, prior to  
35 selling any interment rights, establish a maintenance fund to

1 provide funding for the maintenance of the cemetery.

2 Maintenance fund income shall be applied in the manner the  
3 directors of the cemetery corporation determine is in the best  
4 interests of the cemetery, provided that, maintenance fund  
5 income shall be used only for the care described in a  
6 resolution, bylaw, or other action or instrument establishing  
7 the maintenance fund, including the general care and  
8 maintenance of memorials, memorialization, and the cemetery.

9 Maintenance fund income may be used for any of the following  
10 purposes:

11 (1) Cutting and trimming lawns, shrubs, and trees at  
12 reasonable intervals.

13 (2) Maintaining drains, water lines, roads, buildings,  
14 fences, and other structures.

15 (3) Maintaining machinery, tools, and equipment.

16 (4) Compensating maintenance employees, paying insurance  
17 premiums, and making payments to employees' pension and  
18 benefit plans.

19 (5) Paying overhead expenses incidental to such payments.

20 (6) Paying expenses necessary to maintain ownership,  
21 transfer, and interment records of the cemetery.

22 b. The cemetery corporation's maintenance fund shall be  
23 established as a separate fund. The principal of the  
24 maintenance fund is intended to remain available perpetually  
25 as a funding source for the care of the cemetery. The  
26 principal of the maintenance fund shall not be reduced  
27 voluntarily and must remain inviolable, except as provided in  
28 this section. The cemetery corporation shall maintain the  
29 principal of the maintenance fund separate from all operating  
30 funds of the cemetery corporation.

31 c. A cemetery corporation shall be responsible for the  
32 deposit of all moneys required to be placed in the maintenance  
33 fund. These moneys shall be invested or deposited in a  
34 financial account or accounts, unless the cemetery is a  
35 religious cemetery or a cemetery owned or operated by a

1 political subdivision of this state. The maintenance fund may  
2 receive and hold as a part of the maintenance fund or as an  
3 incident to the maintenance fund any property contributed to  
4 the maintenance fund. Moneys to be deposited in a maintenance  
5 funds shall be deposited at a financial institution no later  
6 than the fifteenth day after the close of the month when the  
7 cemetery corporation receives the final payment from the  
8 purchaser.

9 d. The maintenance fund and contributions to the  
10 maintenance fund are for charitable purposes. The care  
11 financed by the maintenance fund constitutes the discharge of  
12 a duty due by the cemetery corporation to persons interred and  
13 to be interred in the cemetery and for the benefit and  
14 protection of the public by preserving and keeping the  
15 cemetery from becoming a place of disorder, reproach, and  
16 desolation in the community in which the cemetery is located.

17 e. A contribution to a maintenance fund is not invalid  
18 because of the following:

19 (1) Indefiniteness or uncertainty as to the identity of  
20 the person designated as a beneficiary in the instrument  
21 establishing the maintenance fund.

22 (2) A violation of the law against perpetuities or the law  
23 against the suspension of the power of alienation of title to  
24 or use of property.

25 2. A financial institution holding moneys in a maintenance  
26 fund for a cemetery corporation shall not do any of the  
27 following:

28 a. Be owned, under the control of, or affiliated with a  
29 cemetery corporation.

30 b. Use any funds required to be deposited pursuant to this  
31 chapter to purchase an interest in a contract or agreement in  
32 which the cemetery corporation is a party.

33 c. Otherwise invest moneys in a maintenance fund, directly  
34 or indirectly, in a cemetery corporation's business  
35 operations.

1 3. A cemetery corporation shall make reasonable investment  
2 decisions and properly oversee and manage moneys in a  
3 maintenance fund. A cemetery corporation shall use the  
4 judgment and care, under the circumstances then prevailing,  
5 that a person of prudence, discretion, and intelligence  
6 exercises in the management of the person's own affairs,  
7 without speculation in the permanent disposition of the  
8 person's own funds, to ensure the probable safety of the  
9 person's capital. The commissioner may take enforcement  
10 action against a cemetery corporation for a breach of  
11 fiduciary duty proven under this chapter.

12 4. Moneys deposited in a maintenance fund may be  
13 commingled for investment purposes if separate accounting of  
14 principal, interest, and income is maintained for each  
15 cemetery and each deposit includes a detailed listing of the  
16 amount deposited in trust for each purchaser. A cemetery  
17 corporation may establish a common maintenance fund for two or  
18 more cemeteries into which deposits required under this  
19 chapter are made, provided that separate records of principal  
20 and income are maintained for each cemetery for the benefit of  
21 which the common maintenance fund is established.

22 5. A cemetery corporation may appoint an independent  
23 investment adviser to advise the financial institution about  
24 investment of the moneys in a maintenance fund.

25 6. Subject to agreement between the parties, a financial  
26 institution may receive a reasonable fee from the maintenance  
27 fund for services performed on behalf of the maintenance fund.  
28 The maintenance fund shall pay the operation costs and any  
29 annual audit fees.

30 7. All moneys required to be deposited by the cemetery  
31 corporation shall be deposited in the name of the maintenance  
32 fund, pursuant to the terms of a written agreement and the  
33 cemetery corporation shall invest, reinvest, exchange, retain,  
34 sell, and otherwise manage the maintenance fund for the  
35 benefit and protection of the cemetery.

1 8. This section does not prohibit a cemetery corporation  
2 from moving moneys in a maintenance fund from one financial  
3 institution to another.

4 9. A cemetery corporation that operates a nonperpetual  
5 care cemetery shall collect a care assessment equal to or  
6 greater than the lesser of fifty dollars or twenty percent of  
7 the gross selling price received by the cemetery corporation  
8 for the sale of interment rights. The cemetery corporation  
9 shall also collect a five dollar fee assessment from each  
10 purchaser of interment rights. The fee assessments collected  
11 by the cemetery corporation shall be submitted to the  
12 commissioner no later than April 1 of the calendar year  
13 following collection and shall be deposited in the insurance  
14 division's cemetery fund. The care assessments shall be  
15 deposited in the cemetery corporation's maintenance fund.

\*16

SUBCHAPTER 9

GOVERNMENTAL SUBDIVISIONS

17  
18 Sec. 46. NEW SECTION. 523I.1001 CEMETERY AUTHORIZED.

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

24 Sec. 47. NEW SECTION. 523I.1002 TRUST FOR CEMETERY.

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

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

1     Sec. 48. NEW SECTION. 523I.1003 AUTHORITY TO RECEIVE  
2 GIFTS AND DEPOSITS FOR CARE -- CERTIFICATES.

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

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

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

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

18    a. The depositor's name.

19    b. The amount and purpose of the deposit.

20    c. The location, with as much specificity as possible, of  
21 the interment space to be maintained.

22    d. Other information required by the governmental  
23 subdivision.

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

30    Sec. 49. NEW SECTION. 523I.1004 INVESTMENT OF CARE  
31 FUNDS.

32    Notwithstanding section 12B.10, a cemetery corporation  
33 owned by a governmental subdivision may invest and reinvest  
34 deposits under this subchapter as set forth in section  
35 523I.1203. The trustee of the trust funds has a fiduciary

1 duty to make reasonable investment decisions and to properly  
2 oversee and manage the funds entrusted to the trust fund.

3 Sec. 50. NEW SECTION. 523I.1005 APPOINTMENT OF SUCCESSOR  
4 TRUSTEE.

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

12 Sec. 51. NEW SECTION. 523I.1006 PRIVATE CARE OF GRAVES.

13 This subchapter does not affect the right of a person who  
14 has an interest in an interment space, or who is related to a  
15 decedent interred in a cemetery, to beautify or maintain an  
16 interment space individually or at the person's own expense in  
17 accordance with reasonable rules established by the  
18 governmental subdivision.

19 SUBCHAPTER 10

20 COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES

21 Sec. 52. NEW SECTION. 523I.1101 NEGLECTED CEMETERIES.

22 The commissioner shall create a form that interested  
23 persons may use to report neglected cemeteries to the  
24 commissioner and the county board of supervisors. The board  
25 of supervisors of each county shall accept any neglected  
26 cemetery report forms filed with the board and submit copies  
27 of such report forms received during calendar years 2004,  
28 2005, and 2006 to the commissioner no later than March 1 of  
29 the year following receipt. The commissioner shall prepare an  
30 annual summary of the report forms received, organized by  
31 county.

32 Sec. 53. NEW SECTION. 523I.1102 CONDEMNATION OF  
33 NEGLECTED CEMETERIES.

34 1. When a nonreligious cemetery within a county has been  
35 neglected in whole or in part by the owners, the county may

1 acquire title to the cemetery by condemnation proceedings, to  
2 be instituted and conducted in the manner prescribed in the  
3 statutes providing for the exercise of the power of eminent  
4 domain by counties. A court with jurisdiction over such  
5 proceedings may, in its discretion, require the county to  
6 acquire the entire cemetery, in which event the county may use  
7 such part of the cemetery as may be necessary for its purposes  
8 and sell the residue. Upon a showing of good cause, the court  
9 may direct that, if possible, remains interred in the cemetery  
10 be removed to another cemetery.

11 2. In the event that the proceeds from the condemnation  
12 proceedings are insufficient to defray the costs of the suit  
13 and removal and reinterment of the remains, then any  
14 additional funds needed shall be paid by the county  
15 instituting the suit. After payment of proper costs, any  
16 residue of the proceeds shall be paid to the parties entitled  
17 thereto. If there are any unknown parties who are entitled to  
18 a portion of the proceeds, the county shall hold such amount  
19 in trust for those parties, without any accrual of interest or  
20 income. If any amount held in trust is not claimed within  
21 seven years from the date of condemnation or sale of the  
22 cemetery, or a portion thereof, title to the unclaimed funds  
23 shall pass pursuant to the statute of escheats.

24 Sec. 54. NEW SECTION. 523I.1103 REMOVAL OF REMAINS.

25 1. Upon a showing of good cause, a county cemetery  
26 commission may file suit in a district court in that county to  
27 have remains interred in a cemetery owned and operated by the  
28 commission removed to another cemetery. All persons in  
29 interest, known or unknown, other than the plaintiffs, shall  
30 be made defendants to the suit. If any parties are unknown,  
31 notice may be given by publication. After hearing and a  
32 showing of good cause for the removal, the court may order the  
33 removal of the remains and the remains shall be properly  
34 interred in another cemetery, at the expense of the county.  
35 The removal and reinterment of the remains shall be done

1 pursuant to a disinterment permit issued under section 144.34  
2 with due care and decency.

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

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

25 SUBCHAPTER 11

26 PERPETUAL CARE CEMETERIES

27 Sec. 55. NEW SECTION. 523I.1201 APPLICABILITY.

28 1. All cemeteries are designated as either "perpetual care  
29 cemeteries" or "nonperpetual care cemeteries" for the purposes  
30 of this chapter.

31 2. A cemetery corporation organized or commencing business  
32 in this state on or after July 1, 1995, shall operate as a  
33 perpetual care cemetery and is subject to this subchapter.

34 3. A cemetery corporation that represents that it is  
35 offering perpetual care is subject to this subchapter.

1 4. A cemetery corporation that operates a nonperpetual  
2 care cemetery may elect to become a perpetual care cemetery by  
3 complying with the terms of section 523I.1202, if at all times  
4 subsequent to the date of the election, the cemetery  
5 corporation complies with the other requirements of this  
6 subchapter except section 523I.1203, subsection 1.

7 Sec. 56. NEW SECTION. 523I.1202 TRUST AGREEMENT --  
8 IRREVOCABLE TRUST.

9 1. A cemetery corporation operating as a perpetual care  
10 cemetery shall execute a trust instrument and establish an  
11 irrevocable trust fund to provide for the care and maintenance  
12 of the cemetery.

13 2. The trust agreement shall provide for the appointment  
14 of at least one trustee, with perpetual succession, in case  
15 the cemetery corporation is dissolved or ceases to be  
16 responsible for the cemetery's care and maintenance.

17 3. A cemetery corporation and the trustee or trustees of  
18 the trust fund may, by agreement, amend the instrument that  
19 established the fund to include any provision that is  
20 necessary to comply with the requirements of this chapter.

21 4. A cemetery corporation shall be responsible for the  
22 deposit of all moneys required to be placed in a trust fund.

23 5. The commissioner may require amendments to a trust  
24 agreement that is not in accord with the provisions of this  
25 chapter.

26 Sec. 57. NEW SECTION. 523I.1203 TRUST FUND REQUIREMENTS.

27 1. A religious cemetery or a cemetery owned or operated by  
28 a political subdivision of this state is not required to make  
29 a minimum initial deposit in a trust fund. A cemetery  
30 corporation organized or commencing business in this state on  
31 or after July 1, 1995, shall not commence operations as a  
32 perpetual care cemetery unless the cemetery corporation has a  
33 trust fund of at least twenty-five thousand dollars in cash.

34 2. If an initial deposit is made by a cemetery corporation  
35 to satisfy subsection 1, the initial twenty-five thousand

1 dollar deposit may be withdrawn by the cemetery corporation  
2 when the trust fund balance reaches one hundred thousand  
3 dollars. An affidavit shall be filed with the commissioner  
4 providing prior notice of the intended withdrawal of the  
5 initial deposit and attesting that the money has not  
6 previously been withdrawn. Upon a showing by the cemetery  
7 corporation that the initial deposit has not previously been  
8 withdrawn, the commissioner shall approve withdrawal of the  
9 money and the withdrawal shall take place within one year  
10 after the trust fund balance reaches one hundred thousand  
11 dollars.

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

23 4. A trust fund must be established at a financial  
24 institution, unless the cemetery is a religious cemetery or a  
25 cemetery owned or operated by a governmental subdivision of  
26 this state.

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

32 b. A financial institution acting as a trustee of trust  
33 funds under this chapter has a fiduciary duty to make  
34 reasonable investment decisions and to properly oversee and  
35 manage the funds entrusted to the financial institution. A

1 trustee shall use the judgment and care, under the  
2 circumstances then prevailing, that a person of prudence,  
3 discretion, and intelligence exercises in the management of  
4 the person's own affairs, without speculation, in the  
5 permanent disposition of a person's own funds to ensure the  
6 probable safety of the person's capital. The commissioner may  
7 take enforcement action against a financial institution in its  
8 capacity as trustee for a breach of fiduciary duty proven  
9 under this chapter.

10 c. Moneys deposited under a master trust agreement may be  
11 commingled by the financial institution for investment  
12 purposes if separate accounting of principal, interest, and  
13 income is maintained for each cemetery and each deposit  
14 includes a detailed listing of the amount deposited in trust  
15 for each purchaser. The trustors of two or more care funds  
16 may establish a common trust fund in which deposits required  
17 under this chapter are made, provided that separate records of  
18 principal and income are maintained for each perpetual care  
19 cemetery for the benefit of which the common trust fund is  
20 established.

21 d. Subject to a master trust agreement, the cemetery  
22 corporation may appoint an independent investment adviser to  
23 advise the financial institution about investment of the trust  
24 fund.

25 e. Subject to an agreement between the cemetery  
26 corporation and the financial institution, the financial  
27 institution may receive a reasonable fee from the trust fund  
28 for services rendered as trustee. The trust fund shall pay  
29 the trust operation costs and any annual audit fees.

30 f. If the amount of the trust funds exceeds two hundred  
31 thousand dollars, the cemetery corporation or any officer,  
32 director, agent, employee, or affiliate of the cemetery  
33 corporation shall not serve as trustee unless the cemetery is  
34 a religious cemetery or a cemetery owned or operated by a  
35 governmental subdivision of this state. A financial

1 institution holding trust funds shall not do any of the  
2 following:

3 (1) Be owned, under the control of, or affiliated with a  
4 cemetery corporation.

5 (2) Use any funds required to be held in trust under this  
6 chapter to purchase an interest in a contract or agreement in  
7 which the cemetery corporation is a party.

8 (3) Otherwise invest trust funds, directly or indirectly,  
9 in a cemetery corporation's business operations.

10 5. Moneys shall be deposited in the trust fund no later  
11 than the fifteenth day after the close of the month when the  
12 cemetery corporation receives the final payment from a  
13 purchaser of interment rights in an amount equal to or greater  
14 than either of the following:

15 a. The greater of fifty dollars or twenty percent of the  
16 gross selling price received by the cemetery for the sale of  
17 interment rights.

18 b. The amount charged for the perpetual care and special  
19 care of a memorial or memorialization placed in the cemetery.  
20 A fee for memorial care shall be uniformly charged on every  
21 installation of a memorial in the cemetery based upon the size  
22 of the memorial, using the height and width of the memorial or  
23 the size of the ground surface area used for the memorial. A  
24 fee for special care of a memorial may be collected if the  
25 terms of the special care items and arrangements are clearly  
26 specified in the interment rights purchase agreement. A  
27 cemetery corporation's liability for acts of God and vandalism  
28 is limited to income available from the care fund.

29 6. All moneys required to be deposited in the trust fund  
30 by the cemetery corporation shall be deposited in the name of  
31 the trustee, as trustee, under the terms of a trust agreement  
32 and the trustee may invest, reinvest, exchange, retain, sell,  
33 and otherwise manage the trust for the benefit and protection  
34 of the cemetery.

35 7. This section does not prohibit a cemetery corporation

1 from moving trust funds from one financial institution to  
2 another.

3 8. A trust fund may receive and hold as a part of the fund  
4 or as an incident to the fund any property contributed to the  
5 fund.

6 9. The trust fund and contributions to the trust fund are  
7 for charitable purposes. The care financed by the fund is for  
8 the following purposes:

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

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

17 10. A contribution to a trust fund is not invalid because  
18 of any of the following:

19 a. Indefiniteness or uncertainty as to the person  
20 designated as a beneficiary in the instrument establishing the  
21 fund.

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

25 Sec. 58. NEW SECTION. 523I.1204 PURPOSES OF CARE FUND.

26 1. The principal of a care fund is intended to remain  
27 available perpetually as a funding source for care of the  
28 cemetery. The principal of the fund shall not be reduced  
29 voluntarily and shall remain inviolable, except as provided in  
30 this section. The trustee or trustees of the care fund shall  
31 maintain the principal of the care fund separate from all  
32 operating funds of the cemetery corporation.

33 2. In establishing a care fund, the cemetery corporation  
34 may adopt plans for the care of the cemetery and installed  
35 memorials and memorialization.

1     3. A cemetery corporation may, by resolution adopted by a  
2 vote of at least two-thirds of the members of its board at any  
3 authorized meeting of the board, authorize the withdrawal and  
4 use of not more than twenty percent of the principal of the  
5 care fund to acquire additional land for cemetery purposes, to  
6 repair a mausoleum or other building or structure intended for  
7 cemetery purposes, or to build, improve, or repair roads and  
8 walkways in the cemetery. The resolution shall establish a  
9 reasonable repayment schedule, not to exceed five years, and  
10 provide for interest in an amount comparable to the care  
11 fund's current rate of return on its investments. However,  
12 the care fund shall not be diminished below an amount equal to  
13 the greater of one hundred thousand dollars or five thousand  
14 dollars per acre of land in the cemetery. The resolution, and  
15 either a bond or proof of insurance to guarantee replenishment  
16 of the care fund, shall be filed with the commissioner thirty  
17 days prior to the withdrawal of funds.

18     Sec. 59. NEW SECTION. 523I.1205 USE OF CARE FUND INCOME  
19 AND CAPITAL GAINS.

20     1. Care fund income may be used in a manner determined by  
21 the directors of the cemetery corporation to be in the best  
22 interests of the cemetery, provided that care fund income  
23 shall be used only for care that is described in a resolution,  
24 bylaw, or other action or instrument establishing the fund,  
25 including the general care and maintenance of memorials,  
26 memorialization, and the cemetery. Fund income may be used  
27 for any of the following purposes:

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

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

32     c. Maintaining machinery, tools, and equipment.

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

1 e. Paying overhead expenses incidental to such purposes.

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

4 2. A cemetery corporation may, by amending the cemetery  
5 corporation trust agreement, elect to withdraw capital gains  
6 from the care fund, subject to the following conditions:

7 a. The amount of principal in the care fund shall be  
8 adjusted annually by allocating income or capital gains as  
9 necessary to adjust the principal of the care fund for  
10 inflation, based on the consumer price index as set by the  
11 commissioner and the amount of principal in the care fund at  
12 the beginning of the prior year. The amount of principal in  
13 the care fund shall also be adjusted by adding the amount of  
14 the deposits received during the prior year, as required by  
15 section 523I.1203, subsection 5.

16 b. For purposes of this section, "adjusted basis" means  
17 the total of the market value of the care fund on the date of  
18 the conversion, the aggregate amount of the inflation  
19 adjustments required by this section, and the aggregate amount  
20 of deposits received as required by section 523I.1203,  
21 subsection 5, since the date of the conversion.

22 c. If the adjusted basis of the care fund is more than the  
23 market value of the care fund at the end of the prior year,  
24 the cemetery corporation shall not withdraw capital gains. If  
25 the adjusted basis of the care fund is less than the market  
26 value of the care fund at the end of the prior year, an amount  
27 equal to fifty percent of the excess may be withdrawn and used  
28 for the cemetery's care.

29 Sec. 60. NEW SECTION. 523I.1206 SUIT BY OWNERS OR  
30 COMMISSIONER.

31 1. If the directors of a cemetery corporation do not care  
32 for and maintain the cemetery, the district court of the  
33 county in which the cemetery is located may do the following:

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

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

4 2. Grant relief on a petition for relief filed pursuant to  
5 this section by the commissioner or by at least five owners of  
6 interment rights in the cemetery.

7 Sec. 61. NEW SECTION. 523I.1207 ADVERTISING.

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

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

19 Sec. 62. NEW SECTION. 523I.1208 PERPETUAL CARE REGISTRY.

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

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

27 Sec. 63. NEW SECTION. 523I.1209 USE OF GIFT FOR SPECIAL  
28 CARE.

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

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

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

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

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

7     Sec. 64.   NEW SECTION.   523I.1210   GOVERNMENTAL  
8 SUBDIVISIONS.

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

14     Sec. 65.   NEW SECTION.   523I.1211   ANNUAL REPORT BY  
15 PERPETUAL CARE CEMETERIES.

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

- 19     a.   The name and address of the cemetery.
- 20     b.   The name and address of the cemetery corporation.
- 21     c.   An affidavit that the cemetery is in compliance with  
22 this chapter.
- 23     d.   Copies of all sales agreement forms used by the  
24 cemetery.
- 25     e.   The amount of the principal of the cemetery  
26 corporation's care funds at the end of the fiscal year.
- 27     f.   The number of interments made and interment spaces sold  
28 during the fiscal year.

29     2.   The report and a five-dollar filing fee for each  
30 certificate of interment rights issued during the fiscal year  
31 of the cemetery shall be filed with the commissioner within  
32 four months following the end of the cemetery corporation's  
33 fiscal year in the form required by the commissioner. The  
34 filing fee may be charged directly to the purchaser of the  
35 interment rights.



1 memorials, memorialization, opening and closing services,  
2 scattering services, interment rights, or a combination  
3 thereof under this chapter.

4 4. Fails to deposit funds under section 523I.815 or  
5 section 523I.1203 or withdraws funds in a manner inconsistent  
6 with this chapter.

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

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

15 SUBCHAPTER 13

16 ADMINISTRATION AND ENFORCEMENT

17 Sec. 70. NEW SECTION. 523I.1401 ADMINISTRATION.

18 1. This chapter shall be administered by the commissioner.  
19 The deputy administrator appointed pursuant to section 502.601  
20 shall be the principal operations officer responsible to the  
21 commissioner for the routine administration of this chapter  
22 and management of the administrative staff. In the absence of  
23 the commissioner, whether because of vacancy in the office due  
24 to absence, physical disability, or other cause, the deputy  
25 administrator shall, for the time being, have and exercise the  
26 authority conferred upon the commissioner. The commissioner  
27 may by order from time to time delegate to the deputy  
28 administrator any or all of the functions assigned to the  
29 commissioner in this chapter. The deputy administrator shall  
30 employ officers, attorneys, accountants, and other employees  
31 as needed for administering this chapter.

32 2. It is unlawful for the commissioner or any  
33 administrative staff to use for personal benefit any  
34 information which is filed with or obtained by the  
35 commissioner and which is not made public. This chapter does

1 not authorize the commissioner or any staff member to disclose  
2 any such information except among themselves or to other  
3 cemetery and funeral administrators, regulatory authorities,  
4 or governmental agencies, or when necessary and appropriate in  
5 a proceeding or investigation under this chapter or as  
6 required by chapter 22. This chapter neither creates nor  
7 derogates any privileges that exist at common law or otherwise  
8 when documentary or other evidence is sought under a subpoena  
9 directed to the commissioner or any administrative staff.

10 Sec. 71. NEW SECTION. 523I.1402 SCOPE.

11 1. This chapter applies to cemeteries, to any person  
12 advertising or offering memorials, memorialization, opening  
13 and closing services, scattering services at a cemetery,  
14 interment rights, or a combination thereof for sale, and to  
15 interments made in areas not dedicated as a cemetery by a  
16 person other than the state archaeologist.

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

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

1 contract or tort.

2 Sec. 72. NEW SECTION. 523I.1403 INVESTIGATIONS AND  
3 SUBPOENAS.

4 1. The commissioner may, for the purpose of discovering  
5 violations of this chapter, or implementing rules or orders  
6 issued under this chapter:

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

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

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

26 d. Investigate the cemetery corporation and examine the  
27 books, accounts, papers, correspondence, memoranda, purchase  
28 agreements, files, or other documents or records used by every  
29 applicant and permit holder under this chapter.

30 e. Administer oaths and affirmations, subpoena witnesses,  
31 compel their attendance, take evidence, and require the  
32 production of any books, accounts, papers, correspondence,  
33 memoranda, purchase agreements, files, or other documents or  
34 records which the commissioner deems relevant or material to  
35 any investigation or proceeding under this chapter and

1 implement rules, all of which may be enforced under chapter  
2 17A.

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

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

17 Sec. 73. NEW SECTION. 523I.1404 MEDIATION.

18 1. The commissioner may order a cemetery corporation to  
19 participate in mediation in any dispute regarding a purchase  
20 agreement. Mediation performed under this section shall be  
21 conducted by a mediator appointed by the commissioner and  
22 shall comply with the provisions of chapter 679C.

23 2. Mediation of disputes pursuant to subsection 1 shall  
24 include attendance at a mediation session with a mediator and  
25 the parties to the dispute, listening to the mediator's  
26 explanation of the mediation process by the mediator,  
27 presentation of each party's view of the dispute, and  
28 listening to the response by the other party. Participation  
29 in mediation does not require that the parties reach a  
30 mediation agreement.

31 3. Parties to the mediation shall have the right to advice  
32 and presence of counsel at all times. The parties to the  
33 mediation shall present any mediation agreement reached  
34 through the mediation to the commissioner. If a mediation  
35 agreement is not reached, the mediator shall file a report

1 with the commissioner. The costs of the mediation shall be  
2 approved by the commissioner and shall be borne by the  
3 insurance division's cemetery fund created pursuant to section  
4 523I.1413.

5 Sec. 74. NEW SECTION. 523I.1405 CEASE AND DESIST ORDERS  
6 -- INJUNCTIONS.

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

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

23 2. Bring an action in the district court in any county of  
24 the state for an injunction to restrain a person subject to  
25 this chapter and any agents, employees, or associates of the  
26 person from engaging in conduct or practices deemed contrary  
27 to the public interest. In any proceeding for an injunction,  
28 the commissioner or attorney general may apply to the court  
29 for a subpoena to require the appearance of a defendant and  
30 the defendant's agents, employees, or associates and for the  
31 production of any books, accounts, papers, correspondence,  
32 memoranda, purchase agreements, files, or other documents or  
33 records germane to the hearing upon the petition for an  
34 injunction. Upon a proper showing, a permanent or temporary  
35 injunction, restraining order, or writ of mandamus shall be

1 granted and a receiver may be appointed for the defendant or  
2 the defendant's assets. The commissioner or attorney general  
3 shall not be required to post a bond.

4 Sec. 75. NEW SECTION. 523I.1406 COURT ACTION FOR FAILURE  
5 TO COOPERATE.

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

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

17 b. Revocation or suspension of a permit issued under this  
18 chapter.

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

22 d. Such other relief as may be required.

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

26 Sec. 76. NEW SECTION. 523I.1407 PROSECUTION FOR  
27 VIOLATIONS OF LAW.

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

34 2. If the commissioner believes that grounds exist for the  
35 criminal prosecution of persons subject to this chapter for

1 violations of this chapter or any other law of this state, the  
2 commissioner may forward to the attorney general or the county  
3 attorney the grounds for the belief, including all evidence in  
4 the commissioner's possession, so that the attorney general or  
5 the county attorney may proceed with the matter as deemed  
6 appropriate. At the request of the attorney general, the  
7 county attorney shall appear and prosecute the action when  
8 brought in the county attorney's county.

9     Sec. 77. NEW SECTION. 523I.1408 COOPERATION WITH OTHER  
10 AGENCIES.

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

16     2. Cooperation with other agencies may include but is not  
17 limited to:

18     a. Making a joint examination or investigation.

19     b. Holding a joint administrative hearing.

20     c. Filing and prosecuting a joint civil or administrative  
21 proceeding.

22     d. Sharing and exchanging personnel.

23     e. Sharing and exchanging relevant information and  
24 documents.

25     f. Formulating, in accordance with chapter 17A, rules or  
26 proposed rules on matters such as statements of policy,  
27 regulatory standards, guidelines, and interpretive opinions.

28     Sec. 78. NEW SECTION. 523I.1409 RULES, FORMS, AND  
29 ORDERS.

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

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

7 3. A provision of this chapter imposing any liability does  
8 not apply to an act done or omitted in good faith in  
9 conformity with any rule, form, or order of the commissioner,  
10 notwithstanding that the rule, form, or order may later be  
11 amended or rescinded or be determined by judicial or other  
12 authority to be invalid for any reason.

13 Sec. 79. NEW SECTION. 523I.1410 DATE OF FILING --  
14 INTERPRETIVE OPINIONS.

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

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

19 Sec. 80. NEW SECTION. 523I.1411 RECEIVERSHIPS.

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

24 a. Is insolvent.

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

27 c. The amount of care funds currently held in trust for  
28 perpetual care is less than the amount required by this  
29 chapter.

30 2. The commissioner or attorney general may apply to the  
31 district court in any county of the state for the  
32 establishment of a receivership. Upon proof that any of the  
33 conditions described in this section have occurred, the court  
34 may grant a receivership.

35 Sec. 81. NEW SECTION. 523I.1412 LIQUIDATION PROCEDURES.

1 1. GROUNDS FOR LIQUIDATION. The commissioner may petition  
2 the district court for an order directing the commissioner to  
3 liquidate a cemetery corporation on any of the following  
4 grounds:

5 a. The cemetery corporation did not deposit funds pursuant  
6 to subchapter 12 or withdrew funds in a manner inconsistent  
7 with this chapter and is insolvent.

8 b. The cemetery corporation did not deposit funds pursuant  
9 to subchapter 12 or withdrew funds in a manner inconsistent  
10 with this chapter and the condition of the cemetery  
11 corporation is such that further transaction of business would  
12 be hazardous, financially or otherwise, to purchasers or the  
13 public.

14 2. LIQUIDATION ORDER.

15 a. An order to liquidate the business of a cemetery  
16 corporation shall appoint the commissioner as liquidator and  
17 shall direct the liquidator to immediately take possession of  
18 the assets of the cemetery corporation and to administer them  
19 under the general supervision of the court. The liquidator is  
20 vested with the title to the property, contracts, rights of  
21 action, and the books and records of the cemetery corporation,  
22 wherever located, that is ordered liquidated as of the entry  
23 of the final order of liquidation. The filing or recording of  
24 the order with the clerk of court and the recorder of deeds of  
25 the county in which the principal office or place of business  
26 of the cemetery corporation is located, or, in the case of  
27 real estate with the recorder of deeds of the county where the  
28 property is located, constitutes the same notice as a deed,  
29 bill of sale, or other evidence of title duly filed or  
30 recorded with the recorder of deeds.

31 b. Upon issuance of an order, the rights and liabilities  
32 of a cemetery corporation and of the cemetery corporation's  
33 creditors, purchasers, owners, and other persons interested in  
34 the cemetery corporation's estate shall become fixed as of the  
35 date of the entry of the order of liquidation, except as

1 provided in subsection 14.

2 c. At the time of petitioning for an order of liquidation,  
3 or at any time after the time of petitioning, the  
4 commissioner, after making appropriate findings of a cemetery  
5 corporation's insolvency, may petition the court for a  
6 declaration of insolvency. After providing notice and hearing  
7 as it deems proper, the court may make the declaration.

8 d. An order issued under this section shall require  
9 accounting to the court by the liquidator. Accountings, at a  
10 minimum, must include all funds received or disbursed by the  
11 liquidator during the current period. An accounting shall be  
12 filed within one year of the liquidation order and at such  
13 other times as the court may require.

14 e. Within five days after the initiation of an appeal of  
15 an order of liquidation, which order has not been stayed, the  
16 commissioner shall present for the court's approval a plan for  
17 the continued performance of the cemetery corporation's  
18 obligations during the pendency of an appeal. The plan shall  
19 provide for the continued performance of interment rights  
20 agreements in the normal course of events, notwithstanding the  
21 grounds alleged in support of the order of liquidation  
22 including the ground of insolvency. If the defendant cemetery  
23 corporation's financial condition, in the judgment of the  
24 commissioner, will not support the full performance of all  
25 obligations during the appeal pendency period, the plan may  
26 prefer the claims of certain purchasers and claimants over  
27 creditors and interested parties as well as other purchasers  
28 and claimants, as the commissioner finds to be fair and  
29 equitable, considering the relative circumstances of such  
30 purchasers and claimants. The court shall examine the plan  
31 submitted by the commissioner and if it finds the plan to be  
32 in the best interests of the parties, the court shall approve  
33 the plan. An action shall not lie against the commissioner or  
34 any of the commissioner's deputies, agents, clerks,  
35 assistants, or attorneys by any party based on preference in

1 an appeal pendency plan approved by the court.

2 3. POWERS OF LIQUIDATOR.

3 a. The liquidator may do any of the following:

4 (1) Appoint a special deputy to act for the liquidator  
5 under this chapter, and determine the special deputy's  
6 reasonable compensation. The special deputy shall have all  
7 the powers of the liquidator granted by this section. The  
8 special deputy shall serve at the pleasure of the liquidator.

9 (2) Hire employees and agents, legal counsel, accountants,  
10 appraisers, consultants, and other personnel as the  
11 commissioner may deem necessary to assist in the liquidation.

12 (3) With the approval of the court, fix reasonable  
13 compensation of employees and agents, legal counsel,  
14 accountants, appraisers, and consultants.

15 (4) Pay reasonable compensation to persons appointed and  
16 defray from the funds or assets of the cemetery corporation  
17 all expenses of taking possession of, conserving, conducting,  
18 liquidating, disposing of, or otherwise dealing with the  
19 business and property of the cemetery corporation. If the  
20 property of the cemetery corporation does not contain  
21 sufficient cash or liquid assets to defray the costs incurred,  
22 the commissioner may advance the costs so incurred out of the  
23 insurance division's cemetery fund. Amounts so advanced for  
24 expenses of administration shall be repaid to the insurance  
25 division's cemetery fund for the use of the division out of  
26 the first available moneys of the cemetery corporation.

27 (5) Hold hearings, subpoena witnesses, and compel their  
28 attendance, administer oaths, examine a person under oath, and  
29 compel a person to subscribe to the person's testimony after  
30 it has been correctly reduced to writing, and in connection to  
31 the proceedings require the production of books, accounts,  
32 papers, correspondence, memoranda, purchase agreements, files,  
33 or other documents or records which the liquidator deems  
34 relevant to the inquiry.

35 (6) Collect debts and moneys due and claims belonging to

1 the cemetery corporation, wherever located. Pursuant to this  
2 subparagraph, the liquidator may do any of the following:

3 (a) Institute timely action in other jurisdictions to  
4 forestall garnishment and attachment proceedings against  
5 debts.

6 (b) Perform acts as are necessary or expedient to collect,  
7 conserve, or protect its assets or property, including the  
8 power to sell, compound, compromise, or assign debts for  
9 purposes of collection upon terms and conditions as the  
10 liquidator deems best.

11 (c) Pursue any creditor's remedies available to enforce  
12 claims.

13 (7) Conduct public and private sales of the property of  
14 the cemetery corporation.

15 (8) Use assets of the cemetery corporation under a  
16 liquidation order to transfer obligations of purchase  
17 agreements to a solvent cemetery corporation, if the transfer  
18 can be accomplished without prejudice to the applicable  
19 priorities under subsection 18.

20 (9) Acquire, hypothecate, encumber, lease, improve, sell,  
21 transfer, abandon, or otherwise dispose of or deal with  
22 property of the cemetery corporation at its market value or  
23 upon terms and conditions as are fair and reasonable. The  
24 liquidator shall also have power to execute, acknowledge, and  
25 deliver deeds, assignments, releases, and other instruments  
26 necessary to effectuate a sale of property or other  
27 transaction in connection with the liquidation.

28 (10) Borrow money on the security of the cemetery  
29 corporation's assets or without security and execute and  
30 deliver documents necessary to that transaction for the  
31 purpose of facilitating the liquidation. Money borrowed  
32 pursuant to this subparagraph shall be repaid as an  
33 administrative expense and shall have priority over any other  
34 class 1 claims under the priority of distribution established  
35 in subsection 18.

1 (11) Enter into contracts as necessary to carry out the  
2 order to liquidate and affirm or disavow contracts to which  
3 the cemetery corporation is a party.

4 (12) Continue to prosecute and to institute in the name of  
5 the cemetery corporation or in the liquidator's own name any  
6 and all suits and other legal proceedings, in this state or  
7 elsewhere, and to abandon the prosecution of claims the  
8 liquidator deems unprofitable to pursue further.

9 (13) Prosecute an action on behalf of the creditors,  
10 purchasers, or owners against an officer of the cemetery  
11 corporation or any other person.

12 (14) Remove records and property of the cemetery  
13 corporation to the offices of the commissioner or to other  
14 places as may be convenient for the purposes of efficient and  
15 orderly execution of the liquidation.

16 (15) Deposit in one or more banks in this state sums as  
17 are required for meeting current administration expenses and  
18 distributions.

19 (16) Unless the court orders otherwise, invest funds not  
20 currently needed.

21 (17) File necessary documents for recording in the office  
22 of the recorder of deeds or record office in this state or  
23 elsewhere where property of the cemetery corporation is  
24 located.

25 (18) Assert defenses available to the cemetery corporation  
26 against third persons, including statutes of limitations,  
27 statutes of fraud, and the defense of usury. A waiver of a  
28 defense by the cemetery corporation after a petition in  
29 liquidation has been filed shall not bind the liquidator.

30 (19) Exercise and enforce the rights, remedies, and powers  
31 of a creditor, purchaser, or owner, including the power to  
32 avoid transfer or lien that may be given by the general law  
33 and that is not included within subsections 7 through 9.

34 (20) Intervene in a proceeding wherever instituted that  
35 might lead to the appointment of a receiver or trustee, and

1 act as the receiver or trustee whenever the appointment is  
2 offered.

3 (21) Exercise powers now held or later conferred upon  
4 receivers by the laws of this state which are not inconsistent  
5 with this chapter.

6 b. This subsection does not limit the liquidator or  
7 exclude the liquidator from exercising a power not listed in  
8 paragraph "a" that may be necessary or appropriate to  
9 accomplish the purposes of this chapter.

10 4. NOTICE TO CREDITORS AND OTHERS.

11 a. Unless the court otherwise directs, the liquidator  
12 shall give notice of the liquidation order as soon as possible  
13 by doing both of the following:

14 (1) Mailing notice, by first-class mail, to all persons  
15 known or reasonably expected to have claims against the  
16 cemetery corporation, including purchasers, at their last  
17 known address as indicated by the records of the cemetery  
18 corporation.

19 (2) Publication of notice in a newspaper of general  
20 circulation in the county in which the cemetery corporation  
21 has its principal place of business and in other locations as  
22 the liquidator deems appropriate.

23 b. Notice to potential claimants under paragraph "a" shall  
24 require claimants to file with the liquidator their claims  
25 together with proofs of the claim under subsection 13 on or  
26 before a date the liquidator shall specify in the notice.  
27 Claimants shall keep the liquidator informed of their changes  
28 of address, if any.

29 c. If notice is given pursuant to this subsection, the  
30 distribution of assets of the cemetery corporation under this  
31 chapter shall be conclusive with respect to claimants, whether  
32 or not a claimant actually received notice.

33 5. ACTIONS BY AND AGAINST LIQUIDATOR.

34 a. After issuance of an order appointing a liquidator of a  
35 cemetery corporation, an action at law or equity shall not be

1 brought against the cemetery corporation within this state or  
2 elsewhere, and existing actions shall not be maintained or  
3 further presented after issuance of the order. Whenever in  
4 the liquidator's judgment, protection of the estate of the  
5 cemetery corporation necessitates intervention in an action  
6 against the cemetery corporation that is pending outside this  
7 state, the liquidator may intervene in the action. The  
8 liquidator may defend, at the expense of the estate of the  
9 cemetery corporation, an action in which the liquidator  
10 intervenes under this section.

11     b. Within two years or such additional time as applicable  
12 law may permit, the liquidator, after the issuance of an order  
13 for liquidation, may institute an action or proceeding on  
14 behalf of the estate of the cemetery corporation upon any  
15 cause of action against which the period of limitation fixed  
16 by applicable law has not expired at the time of the filing of  
17 the petition upon which the order is entered. If a period of  
18 limitation is fixed by agreement for instituting a suit or  
19 proceeding upon a claim, or for filing a claim, proof of  
20 claim, proof of loss, demand, notice, or the like, or if in a  
21 proceeding, judicial or otherwise, a period of limitation is  
22 fixed in the proceeding or pursuant to applicable law for  
23 taking an action, filing a claim or pleading, or doing an act,  
24 and if the period has not expired at the date of the filing of  
25 the petition, the liquidator may, for the benefit of the  
26 estate, take any action or do any act, required of or  
27 permitted to the cemetery corporation, within a period of one  
28 hundred eighty days subsequent to the entry of an order for  
29 liquidation, or within a further period as is shown to the  
30 satisfaction of the court not to be unfairly prejudicial to  
31 the other party.

32     c. A statute of limitations or defense of laches shall not  
33 run with respect to an action against a cemetery corporation  
34 between the filing of a petition for liquidation against the  
35 cemetery corporation and the denial of the petition. An

1 action against the cemetery corporation that might have been  
2 commenced when the petition was filed may be commenced for at  
3 least sixty days after the petition is denied.

4 6. COLLECTION AND LIST OF ASSETS.

5 a. As soon as practicable after the liquidation order but  
6 not later than one hundred twenty days after such order, the  
7 liquidator shall prepare in duplicate a list of the cemetery  
8 corporation's assets. The list shall be amended or  
9 supplemented as the liquidator may determine. One copy shall  
10 be filed in the office of the clerk of court, and one copy  
11 shall be retained for the liquidator's files. Amendments and  
12 supplements shall be similarly filed.

13 b. The liquidator shall reduce the assets to a degree of  
14 liquidity that is consistent with the effective execution of  
15 the liquidation.

16 c. A submission of a proposal to the court for  
17 distribution of assets in accordance with subsection 11  
18 fulfills the requirements of paragraph "a".

19 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.

20 a. A transfer made and an obligation incurred by a  
21 cemetery corporation within one year prior to the filing of a  
22 successful petition for liquidation under this chapter is  
23 fraudulent as to then existing and future creditors if made or  
24 incurred without fair consideration, or with actual intent to  
25 hinder, delay, or defraud either existing or future creditors.  
26 A fraudulent transfer made or an obligation incurred by a  
27 cemetery corporation ordered to be liquidated under this  
28 chapter may be avoided by the liquidator, except as to a  
29 person who in good faith is a purchaser, lienor, or obligee  
30 for a present fair equivalent value. A purchaser, lienor, or  
31 obligee, who in good faith has given consideration that is  
32 less than the present fair equivalent value for such transfer,  
33 lien, or obligation may retain the transfer, lien, or  
34 obligation as security for repayment. The court may, on due  
35 notice, order any such transfer, lien, or obligation to be

1 preserved for the benefit of the cemetery corporation and in  
2 that event, the receiver shall succeed to and may enforce the  
3 rights of the purchaser, lienor, or obligee.

4 b. (1) A transfer of property other than real property is  
5 made when it becomes perfected so that a subsequent lien  
6 obtainable by legal or equitable proceedings on a simple  
7 contract could not become superior to the rights of the  
8 transferee under subsection 9, paragraph "c".

9 (2) A transfer of real property is made when it becomes  
10 perfected so that a subsequent bona fide purchaser from the  
11 cemetery corporation could not obtain rights superior to the  
12 rights of the transferee.

13 (3) A transfer that creates an equitable lien is not  
14 perfected if there are available means by which a legal lien  
15 could be perfected.

16 (4) A transfer not perfected prior to the filing of a  
17 petition for liquidation is deemed to be made immediately  
18 before the filing of the successful petition.

19 (5) This subsection applies whether or not there are or  
20 were creditors who might have obtained a lien or persons who  
21 might have become bona fide purchasers.

22 8. FRAUDULENT TRANSFER AFTER PETITION.

23 a. After a petition for liquidation has been filed, a  
24 transfer of real property of the cemetery corporation made to  
25 a person acting in good faith is valid against the liquidator  
26 if made for a present fair equivalent value. If the transfer  
27 is not made for a present fair equivalent value, the transfer  
28 is valid to the extent of the present consideration actually  
29 paid for which amount the transferee shall have a lien on the  
30 property transferred. The commencement of a proceeding in  
31 liquidation is constructive notice upon the recording of a  
32 copy of the petition for or order of liquidation with the  
33 recording of deeds in the county where any real property in  
34 question is located. The exercise by a court of the United  
35 States or a state or jurisdiction to authorize a judicial sale

1 of real property of the cemetery corporation within a county  
2 in a state shall not be impaired by the pendency of a  
3 proceeding unless the copy is recorded in the county prior to  
4 the consummation of the judicial sale.

5 b. After a petition for liquidation has been filed and  
6 before either the liquidator takes possession of the property  
7 of the cemetery corporation or an order of liquidation is  
8 granted:

9 (1) A transfer of the property, other than real property,  
10 of the cemetery corporation made to a person acting in good  
11 faith is valid against the liquidator if made for a present  
12 fair equivalent value. If the transfer was not made for a  
13 present fair equivalent value, then the transfer is valid to  
14 the extent of the present consideration actually paid for  
15 which amount the transferee shall have a lien on the property  
16 transferred.

17 (2) If acting in good faith, a person indebted to the  
18 cemetery corporation or holding property of the cemetery  
19 corporation may pay the debt or deliver the property, or any  
20 part of the property, to the cemetery corporation or upon the  
21 cemetery corporation's order as if the petition were not  
22 pending.

23 (3) A person having actual knowledge of the pending  
24 liquidation is not acting in good faith.

25 (4) A person asserting the validity of a transfer under  
26 this subsection has the burden of proof. Except as provided  
27 in this subsection, a transfer by or on behalf of the cemetery  
28 corporation after the date of the petition for liquidation by  
29 any person other than the liquidator is not valid against the  
30 liquidator.

31 c. A person receiving any property from the cemetery  
32 corporation or any benefit of the property of the cemetery  
33 corporation which is a fraudulent transfer under paragraph "a"  
34 is personally liable for the property or benefit and shall  
35 account to the liquidator.

1 d. This chapter does not impair the negotiability of  
2 currency or negotiable instruments.

3 9. VOIDABLE PREFERENCES AND LIENS.

4 a. (1) A preference is a transfer of the property of a  
5 cemetery corporation to or for the benefit of a creditor for  
6 an antecedent debt made or suffered by the cemetery  
7 corporation within one year before the filing of a successful  
8 petition for liquidation under this chapter, the effect of  
9 which transfer may be to enable the creditor to obtain a  
10 greater percentage of this debt than another creditor of the  
11 same class would receive. If a liquidation order is entered  
12 while the cemetery corporation is already subject to a  
13 receivership, then the transfers are preferences if made or  
14 suffered within one year before the filing of the successful  
15 petition for the receivership, or within two years before the  
16 filing of the successful petition for liquidation, whichever  
17 time is shorter.

18 (2) A preference may be avoided by the liquidator if any  
19 of the following exist:

20 (a) The cemetery corporation was insolvent at the time of  
21 the transfer.

22 (b) The transfer was made within four months before the  
23 filing of the petition.

24 (c) At the time the transfer was made, the creditor  
25 receiving the transfer or to be benefited by the transfer or  
26 the creditor's agent acting with reference to the transfer had  
27 reasonable cause to believe that the cemetery corporation was  
28 insolvent or was about to become insolvent.

29 (d) The creditor receiving the transfer was an officer, or  
30 an employee, attorney, or other person who was in fact in a  
31 position of comparable influence in the cemetery corporation  
32 to an officer whether or not the person held the position of  
33 an officer, owner, or other person, firm, corporation,  
34 association, or aggregation of persons with whom the cemetery  
35 corporation did not deal at arm's length.

1 (3) Where the preference is voidable, the liquidator may  
2 recover the property. If the property has been converted, the  
3 liquidator may recover its value from a person who has  
4 received or converted the property. However, if a bona fide  
5 purchaser or lienor has given less than the present fair  
6 equivalent value, the purchaser or lienor shall have a lien  
7 upon the property to the extent of the consideration actually  
8 given. Where a preference by way of lien or security interest  
9 is voidable, the court may on due notice order the lien or  
10 security interest to be preserved for the benefit of the  
11 estate, in which event the lien or title shall pass to the  
12 liquidator.

13 b. (1) A transfer of property other than real property is  
14 made when it becomes perfected so that a subsequent lien  
15 obtainable by legal or equitable proceedings on a simple  
16 contract could not become superior to the rights of the  
17 transferee.

18 (2) A transfer of real property is made when it becomes  
19 perfected so that a subsequent bona fide purchaser from the  
20 cemetery corporation could not obtain rights superior to the  
21 rights of the transferee.

22 (3) A transfer which creates an equitable lien is not  
23 perfected if there are available means by which a legal lien  
24 could be created.

25 (4) A transfer not perfected prior to the filing of a  
26 petition for liquidation is deemed to be made immediately  
27 before the filing of the successful petition.

28 (5) This subsection applies whether or not there are or  
29 were creditors who might have obtained liens or persons who  
30 might have become bona fide purchasers.

31 c. (1) A lien obtainable by legal or equitable  
32 proceedings upon a simple contract is one arising in the  
33 ordinary course of the proceedings upon the entry or docketing  
34 of a judgment or decree, or upon attachment, garnishment,  
35 execution, or like process, whether before, upon, or after

1 judgment or decree and whether before or upon levy. It does  
2 not include liens which under applicable law are given a  
3 special priority over other liens which are prior in time.

4 (2) A lien obtainable by legal or equitable proceedings  
5 may become superior to the rights of a transferee, or a  
6 purchaser may obtain rights superior to the rights of a  
7 transferee within the meaning of paragraph "b", if such  
8 consequences follow only from the lien or purchase itself, or  
9 from the lien or purchase followed by a step wholly within the  
10 control of the respective lienholder or purchaser, with or  
11 without the aid of ministerial action by public officials.  
12 However, a lien does not become superior and a purchase does  
13 not create superior rights for the purpose of paragraph "b"  
14 through an act subsequent to the obtaining of a lien or  
15 subsequent to a purchase which requires the agreement or  
16 concurrence of any third party or which requires further  
17 judicial action or ruling.

18 d. A transfer of property for or on account of a new and  
19 contemporaneous consideration, which is under paragraph "b",  
20 made or suffered after the transfer because of delay in  
21 perfecting it, does not become a transfer for or on account of  
22 an antecedent debt if any acts required by the applicable law  
23 to be performed in order to perfect the transfer as against  
24 liens or a bona fide purchaser's rights are performed within  
25 twenty-one days or any period expressly allowed by the law,  
26 whichever is less. A transfer to secure a future loan, if a  
27 loan is actually made, or a transfer which becomes security  
28 for a future loan, shall have the same effect as a transfer  
29 for or on account of a new and contemporaneous consideration.

30 e. If a lien which is voidable under paragraph "a",  
31 subparagraph (2), has been dissolved by the furnishing of a  
32 bond or other obligation, the surety of which has been  
33 indemnified directly or indirectly by the transfer or the  
34 creation of a lien upon property of a cemetery corporation  
35 before the filing of a petition under this chapter which

1 results in the liquidation order, the indemnifying transfer or  
2 lien is also voidable.

3 f. The property affected by a lien voidable under  
4 paragraphs "a" and "e" is discharged from the lien. The  
5 property and any of the indemnifying property transferred to  
6 or for the benefit of a surety shall pass to the liquidator.  
7 However, the court may on due notice order a lien to be  
8 preserved for the benefit of the estate and the court may  
9 direct that the conveyance be executed to evidence the title  
10 of the liquidator.

11 g. The court shall have summary jurisdiction of a  
12 proceeding by a liquidator to hear and determine the rights of  
13 the parties under this section. Reasonable notice of hearing  
14 in the proceeding shall be given to all parties in interest,  
15 including the obligee of a releasing bond or other like  
16 obligation. Where an order is entered for the recovery of  
17 indemnifying property in kind or for the avoidance of an  
18 indemnifying lien, upon application of any party in interest,  
19 the court shall in the same proceeding ascertain the value of  
20 the property or lien. If the value is less than the amount  
21 for which the property is indemnified or less than the amount  
22 of the lien, the transferee or lienholder may elect to retain  
23 the property or lien upon payment of its value, as ascertained  
24 by the court, to the liquidator within the time as fixed by  
25 the court.

26 h. The liability of a surety under a releasing bond or  
27 other like obligation is discharged to the extent of the value  
28 of the indemnifying property recovered or the indemnifying  
29 lien nullified and avoided by the liquidator. Where the  
30 property is retained under paragraph "g", the liability of the  
31 surety is discharged to the extent of the amount paid to the  
32 liquidator.

33 i. If a creditor has been preferred for property which  
34 becomes a part of the cemetery corporation's estate, and  
35 afterward in good faith gives the cemetery corporation further

1 credit without security of any kind, the amount of the new  
2 credit remaining unpaid at the time of the petition may be set  
3 off against the preference which would otherwise be  
4 recoverable from the creditor.

5 j. If within four months before the filing of a successful  
6 petition for liquidation under this chapter, or at any time in  
7 contemplation of a proceeding to liquidate, a cemetery  
8 corporation, directly or indirectly, pays money or transfers  
9 property to an attorney for services rendered or to be  
10 rendered, the transaction may be examined by the court on its  
11 own motion or shall be examined by the court on petition of  
12 the liquidator. The payment or transfer shall be held valid  
13 only to the extent of a reasonable amount to be determined by  
14 the court. The excess may be recovered by the liquidator for  
15 the benefit of the estate. However, where the attorney is in  
16 a position of influence in a cemetery corporation of an  
17 affiliate, payment of any money or the transfer of any  
18 property to the attorney for services rendered or to be  
19 rendered shall be governed by the provisions of paragraph "a",  
20 subparagraph (2), subparagraph subdivision (d).

21 k. (1) An officer, manager, employee, shareholder,  
22 subscriber, attorney, or other person acting on behalf of the  
23 cemetery corporation who knowingly participates in giving any  
24 preference when the person has reasonable cause to believe the  
25 cemetery corporation is or is about to become insolvent at the  
26 time of the preference is personally liable to the liquidator  
27 for the amount of the preference. There is an inference that  
28 reasonable cause exists if the transfer was made within four  
29 months before the date of filing of the successful petition  
30 for liquidation.

31 (2) A person receiving property from the cemetery  
32 corporation or the benefit of the property of the cemetery  
33 corporation as a preference voidable under paragraph "a" is  
34 personally liable for the property and shall account to the  
35 liquidator.

1 (3) This subsection shall not prejudice any other claim by  
2 the liquidator against any person.

3 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.

4 a. A claim of a creditor who has received or acquired a  
5 preference, lien, conveyance, transfer, assignment, or  
6 encumbrance, voidable under this chapter, shall not be allowed  
7 unless the creditor surrenders the preference, lien,  
8 conveyance, transfer, assignment, or encumbrance. If the  
9 avoidance is effected by a proceeding in which a final  
10 judgment has been entered, the claim shall not be allowed  
11 unless the money is paid or the property is delivered to the  
12 liquidator within thirty days from the date of the entering of  
13 the final judgment. However, the court having jurisdiction  
14 over the liquidation may allow further time if there is an  
15 appeal or other continuation of the proceeding.

16 b. A claim allowable under paragraph "a" by reason of a  
17 voluntary or involuntary avoidance, preference, lien,  
18 conveyance, transfer, assignment, or encumbrance may be filed  
19 as an excused late filing under subsection 12, if filed within  
20 thirty days from the date of the avoidance or within the  
21 further time allowed by the court under paragraph "a".

22 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.

23 a. From time to time as assets become available, the  
24 liquidator shall make application to the court for approval of  
25 a proposal to disburse assets out of marshaled assets.

26 b. The proposal shall at least include provisions for all  
27 of the following:

28 (1) Reserving amounts for the payment of all the  
29 following:

30 (a) Expenses of administration.

31 (b) To the extent of the value of the security held, the  
32 payment of claims of secured creditors.

33 (c) Claims falling within the priorities established in  
34 subsection 18, paragraphs "a" and "b".

35 (2) Disbursement of the assets marshaled to date and

1 subsequent disbursement of assets as they become available.

2 c. Action on the application may be taken by the court  
3 provided that the liquidator's proposal complies with  
4 paragraph "b".

5 12. FILING PROOFS OF CLAIMS.

6 a. Proof of all claims shall be filed with the liquidator  
7 in the form required by subsection 13 on or before the last  
8 day for filing specified in the notice required under  
9 subsection 4.

10 b. The liquidator may permit a claimant making a late  
11 filing to share in distributions, whether past or future, as  
12 if the claimant were not late, to the extent that the payment  
13 will not prejudice the orderly administration of the  
14 liquidation under any of the following circumstances:

15 (1) The existence of the claim was not known to the  
16 claimant and the claimant filed the claim as promptly as  
17 reasonably possible after learning of it.

18 (2) A transfer to a creditor was avoided under subsections  
19 7 through 9, or was voluntarily surrendered under subsection  
20 10, and the filing satisfies the conditions of subsection 10.

21 (3) The valuation under subsection 17 of security held by  
22 a secured creditor shows a deficiency, which is filed within  
23 thirty days after the valuation.

24 c. The liquidator may consider any claim filed late and  
25 permit the claimant to receive distributions which are  
26 subsequently declared on any claims of the same or lower  
27 priority if the payment does not prejudice the orderly  
28 administration of the liquidation. The late-filing claimant  
29 shall receive at each distribution the same percentage of the  
30 amount allowed on the claim as is then being paid to claimants  
31 of any lower priority. This shall continue until the claim  
32 has been paid in full.

33 13. PROOF OF CLAIM.

34 a. Proof of claim shall consist of a statement signed by  
35 the claimant that includes all of the following that are

1 applicable:

2 (1) The particulars of the claim, including the  
3 consideration given for it.

4 (2) The identity and amount of the security on the claim.

5 (3) The payments, if any, made on the debt.

6 (4) A statement that the sum claimed is justly owing and  
7 that there is no setoff, counterclaim, or defense to the  
8 claim.

9 (5) Any right of priority of payment or other specific  
10 right asserted by the claimant.

11 (6) A copy of the written instrument which is the  
12 foundation of the claim.

13 (7) The name and address of the claimant and the attorney  
14 who represents the claimant, if any.

15 b. A claim need not be considered or allowed if it does  
16 not contain all the information identified in paragraph "a"  
17 which is applicable. The liquidator may require that a  
18 prescribed form be used and may require that other information  
19 and documents be included.

20 c. At any time the liquidator may request the claimant to  
21 present information or evidence supplementary to that required  
22 under paragraph "a", and may take testimony under oath,  
23 require production of affidavits or depositions, or otherwise  
24 obtain additional information or evidence.

25 d. A judgment or order against a cemetery corporation  
26 entered after the date of filing of a successful petition for  
27 liquidation, or a judgment or order against the cemetery  
28 corporation entered at any time by default or by collusion  
29 need not be considered as evidence of liability or of the  
30 amount of damages. A judgment or order against a cemetery  
31 corporation before the filing of the petition need not be  
32 considered as evidence of liability or of the amount of  
33 damages.

34 14. SPECIAL CLAIMS.

35 a. A claim may be allowed even if contingent, if it is

1 filed pursuant to subsection 12. The claim may be allowed and  
2 the claimant may participate in all distributions declared  
3 after it is filed to the extent that it does not prejudice the  
4 orderly administration of the liquidation.

5 b. Claims that are due except for the passage of time  
6 shall be treated as absolute claims are treated. However, the  
7 claims may be discounted at the legal rate of interest.

8 c. Claims made under employment contracts by directors,  
9 principal officers, or persons in fact performing similar  
10 functions or having similar powers are limited to payment for  
11 services rendered prior to the issuance of an order of  
12 liquidation under subsection 2.

13 15. DISPUTED CLAIMS.

14 a. If a claim is denied in whole or in part by the  
15 liquidator, written notice of the determination shall be given  
16 to the claimant or the claimant's attorney by first-class mail  
17 at the address shown in the proof of claim. Within sixty days  
18 from the mailing of the notice, the claimant may file  
19 objections with the liquidator. Unless a filing is made, the  
20 claimant shall not further object to the determination.

21 b. If objections are filed with the liquidator and the  
22 liquidator does not alter the denial of the claim as a result  
23 of the objections, the liquidator shall ask the court for a  
24 hearing as soon as practicable and give notice of the hearing  
25 by first-class mail to the claimant or the claimant's attorney  
26 and to any other persons directly affected. The notice shall  
27 be given not less than ten nor more than thirty days before  
28 the date of hearing. The matter shall be heard by the court  
29 or by a court-appointed referee. The referee shall submit  
30 findings of fact along with a recommendation.

31 16. CLAIMS OF OTHER PERSON. If a creditor, whose claim  
32 against a cemetery corporation is secured in whole or in part  
33 by the undertaking of another person, fails to prove and file  
34 that claim, then the other person may do so in the creditor's  
35 name and shall be subrogated to the rights of the creditor,

1 whether the claim has been filed by the creditor or by the  
2 other person in the creditor's name to the extent that the  
3 other person discharges the undertaking. However, in the  
4 absence of an agreement with the creditor to the contrary, the  
5 other person is not entitled to any distribution until the  
6 amount paid to the creditor on the undertaking plus the  
7 distributions paid on the claim from the cemetery  
8 corporation's estate to the creditor equal the amount of the  
9 entire claim of the creditor. An excess received by the  
10 creditor shall be held by the creditor in trust for the other  
11 person.

12 17. SECURED CREDITOR'S CLAIMS.

13 a. The value of the security held by a secured creditor  
14 shall be determined in one of the following ways, as the court  
15 may direct:

16 (1) By converting the security into money according to the  
17 terms of the agreement pursuant to which the security was  
18 delivered to the creditors.

19 (2) By agreement, arbitration, compromise, or litigation  
20 between the creditor and the liquidator.

21 b. The determination shall be under the supervision and  
22 control of the court with due regard for the recommendation of  
23 the liquidator. The amount so determined shall be credited  
24 upon the secured claim. A deficiency shall be treated as an  
25 unsecured claim. If the claimant surrenders the security to  
26 the liquidator, the entire claim shall be allowed as if  
27 unsecured.

28 18. PRIORITY OF DISTRIBUTION. The priority of  
29 distribution of claims from the cemetery corporation's estate  
30 shall be in accordance with the order in which each class of  
31 claims is set forth. Claims in each class shall be paid in  
32 full or adequate funds retained for the payment before the  
33 members of the next class receive any payment. Subclasses  
34 shall not be established within a class. The order of  
35 distribution of claims is as follows:

- 1 a. CLASS 1. The costs and expenses of administration,  
2 including but not limited to the following:
- 3 (1) Actual and necessary costs of preserving or recovering  
4 assets of the cemetery corporation.
- 5 (2) Compensation for all authorized services rendered in  
6 the liquidation.
- 7 (3) Necessary filing fees.
- 8 (4) Fees and mileage payable to witnesses.
- 9 (5) Authorized reasonable attorney fees and other  
10 professional services rendered in the liquidation.
- 11 b. CLASS 2. Reasonable compensation to employees for  
12 services performed to the extent that they do not exceed two  
13 months of monetary compensation and represent payment for  
14 services performed within one year before the filing of the  
15 petition for liquidation. Officers and directors are not  
16 entitled to the benefit of this priority. The priority is in  
17 lieu of any other similar priority which may be authorized by  
18 law as to wages or compensation of employees.
- 19 c. CLASS 3. Claims under purchase agreements.
- 20 d. CLASS 4. Claims of general creditors.
- 21 e. CLASS 5. Claims of the federal or of any state or  
22 local government. Claims, including those of a governmental  
23 body for a penalty or forfeiture, are allowed in this class  
24 only to the extent of the pecuniary loss sustained from the  
25 act, transaction, or proceeding out of which the penalty or  
26 forfeiture arose, with reasonable and actual costs incurred.  
27 The remainder of such claims shall be postponed to the class  
28 of claims under paragraph "g".
- 29 f. CLASS 6. Claims filed late or any other claims other  
30 than claims under paragraph "g".
- 31 g. CLASS 7. The claims of shareholders or other owners.
- 32 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.
- 33 a. The liquidator shall review claims duly filed in the  
34 liquidation and shall make further investigation as necessary.  
35 The liquidator may compound, compromise, or in any other

1 manner negotiate the amount for which claims will be  
2 recommended to the court except where the liquidator is  
3 required by law to accept claims as settled by a person or  
4 organization. Unresolved disputes shall be determined under  
5 subsection 15. As soon as practicable, the liquidator shall  
6 present to the court a report of the claims against the  
7 cemetery corporation with the liquidator's recommendations.  
8 The report shall include the name and address of each claimant  
9 and the amount of the claim finally recommended.

10 b. The court may approve, disapprove, or modify the report  
11 on claims by the liquidator. Reports not modified by the  
12 court within sixty days following submission by the liquidator  
13 shall be treated by the liquidator as allowed claims, subject  
14 to later modification or to rulings made by the court pursuant  
15 to subsection 15. A claim under a policy of insurance shall  
16 not be allowed for an amount in excess of the applicable  
17 policy limits.

18 20. DISTRIBUTION OF ASSETS. Under the direction of the  
19 court, the liquidator shall pay distributions in a manner that  
20 will ensure the proper recognition of priorities and a  
21 reasonable balance between the expeditious completion of the  
22 liquidation and the protection of unliquidated and  
23 undetermined claims, including third-party claims.  
24 Distribution of assets in kind may be made at valuations set  
25 by agreement between the liquidator and the creditor and  
26 approved by the court.

27 21. UNCLAIMED AND WITHHELD FUNDS.

28 a. Unclaimed funds subject to distribution remaining in  
29 the liquidator's hands when the liquidator is ready to apply  
30 to the court for discharge, including the amount distributable  
31 to a creditor, owner, or other person who is unknown or cannot  
32 be found, shall be deposited with the treasurer of state, and  
33 shall be paid without interest, except as provided in  
34 subsection 18, to the person entitled or to the person's legal  
35 representative upon proof satisfactory to the treasurer of

1 state of the right to the funds. Any amount on deposit not  
2 claimed within six years from the discharge of the liquidator  
3 is deemed to have been abandoned and shall become the property  
4 of the state without formal escheat proceedings and be  
5 transferred to the insurance division's cemetery fund.

6 b. Funds withheld under subsection 14 and not distributed  
7 shall upon discharge of the liquidator be deposited with the  
8 treasurer of state and paid pursuant to subsection 18. Sums  
9 remaining which under subsection 18 would revert to the  
10 undistributed assets of the cemetery corporation shall be  
11 transferred to the insurance division's cemetery fund and  
12 become the property of the state as provided under paragraph  
13 "a", unless the commissioner in the commissioner's discretion  
14 petitions the court to reopen the liquidation pursuant to  
15 subsection 23.

16 c. Notwithstanding any other provision of this chapter,  
17 funds as identified in paragraph "a", with the approval of the  
18 court, shall be made available to the commissioner for use in  
19 the detection and prevention of future insolvencies. The  
20 commissioner shall hold these funds in the insurance  
21 division's cemetery fund and shall pay without interest,  
22 except as provided in subsection 18, to the person entitled to  
23 the funds or to the person's legal representative upon proof  
24 satisfactory to the commissioner of the person's right to the  
25 funds. The funds shall be held by the commissioner for a  
26 period of two years at which time the rights and duties to the  
27 unclaimed funds shall vest in the commissioner.

28 22. TERMINATION OF PROCEEDINGS.

29 a. When all assets justifying the expense of collection  
30 and distribution have been collected and distributed under  
31 this chapter, the liquidator shall apply to the court for  
32 discharge. The court may grant the discharge and make any  
33 other orders, including an order to transfer remaining funds  
34 that are uneconomical to distribute, as appropriate.

35 b. Any other person may apply to the court at any time for

1 an order under paragraph "a". If the application is denied,  
2 the applicant shall pay the costs and expenses of the  
3 liquidator in resisting the application, including a  
4 reasonable attorney fee.

5 23. REOPENING LIQUIDATION. At any time after the  
6 liquidation proceeding has been terminated and the liquidator  
7 discharged, the commissioner or other interested party may  
8 petition the court to reopen the proceedings for good cause,  
9 including the discovery of additional assets. The court shall  
10 order the proceeding reopened if it is satisfied that there is  
11 justification for the reopening.

12 24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF  
13 LIQUIDATION. If it appears to the commissioner that the  
14 records of a cemetery corporation in the process of  
15 liquidation or completely liquidated are no longer useful, the  
16 commissioner may recommend to the court and the court shall  
17 direct what records shall be retained for future reference and  
18 what records shall be destroyed.

19 25. EXTERNAL AUDIT OF LIQUIDATOR'S BOOKS. The court may  
20 order audits to be made of the books of the commissioner  
21 relating to a liquidation established under this chapter, and  
22 a report of each audit shall be filed with the commissioner  
23 and with the court. The books, records, and other documents  
24 of the liquidation shall be made available to the auditor at  
25 any time without notice. The expense of an audit shall be  
26 considered a cost of administration of the liquidation.

27 26. APPLICABILITY. This section shall not apply to a  
28 religious cemetery or a cemetery owned or operated by a  
29 governmental subdivision of this state.

30 Sec. 82. NEW SECTION. 523I.1413 INSURANCE DIVISION'S  
31 CEMETERY FUND.

32 A special revenue fund in the state treasury, to be known  
33 as the insurance division's cemetery fund, is created under  
34 the authority of the commissioner of insurance. The  
35 commissioner shall allocate annually from the fees paid

1 pursuant to section 523I.1211, four dollars for each sale of  
2 interment rights reported by a cemetery corporation on the  
3 cemetery corporation's annual report, for deposit to the  
4 insurance division's cemetery fund. The commissioner shall  
5 also deposit four dollars into the insurance division's  
6 cemetery fund for each care assessment submitted, as provided  
7 in section 523I.815. The moneys in the cemetery fund shall be  
8 retained in the fund. The moneys are appropriated and,  
9 subject to authorization by the commissioner, shall be used to  
10 pay auditors, audit expenses, investigative expenses, the  
11 expenses of mediation ordered by the commissioner, consumer  
12 education expenses, the expenses of a toll-free telephone line  
13 for consumer complaints, and the expenses of receiverships  
14 established under section 523I.1411. The commissioner shall  
15 not make an annual allocation to the cemetery fund if the  
16 current balance of the fund exceeds two hundred thousand  
17 dollars.

18 Sec. 83. NEW SECTION. 523I.1414 VIOLATIONS OF LAW --  
19 REFERRALS TO THE DEPARTMENT OF PUBLIC HEALTH.

20 If the commissioner discovers a violation of a provision of  
21 this chapter or any other state law or rule concerning the  
22 disposal or transportation of human remains, the commissioner  
23 shall forward all evidence in the possession of the  
24 commissioner concerning such a violation to the department of  
25 public health for such proceedings as the department of public  
26 health deems appropriate.

27 Sec. 84. Sections 359.37, 359.40, and 359.41, Code 2003,  
28 are repealed.

29 Sec. 85. Chapters 523I, 566 and 566A, Code 2003, are  
30 repealed.

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T. Taylor

Succ SF **0633** ed By **HSB 266**  
COMMERCE, REGULATION & LABOR  
SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED DEPARTMENT OF  
COMMERCE/INSURANCE DIVISION  
BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to cemeteries and cemetery regulation;  
2 establishing requirements for interment rights agreements,  
3 reporting, and permits; establishing and appropriating fees;  
4 and providing administration and enforcement procedures and  
5 penalties.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 6A.4, subsection 4, Code 2003, is  
2 amended to read as follows:

3 4. CEMETERY ASSOCIATIONS CORPORATIONS. Upon any private  
4 cemetery or-cemetery-association corporation which is  
5 incorporated under the laws of this state relating to  
6 corporations not for pecuniary profit, and having its cemetery  
7 located outside the limits of a city, for the purpose of  
8 acquiring necessary grounds for cemetery use or reasonable  
9 additions thereto. The right granted in this subsection shall  
10 not be exercised until the board of supervisors, of the county  
11 in which the land sought to be condemned is located, has, on  
12 written application and hearing, on such reasonable notice to  
13 all interested parties as it may fix, found that the land,  
14 describing it, sought to be condemned, is necessary for  
15 cemetery purposes. The association cemetery corporation shall  
16 pay all costs attending such hearing.

17 Sec. 2. Section 6A.7, Code 2003, is amended to read as  
18 follows:

19 6A.7 CEMETERY LANDS.

20 No lands actually platted, used, and devoted to cemetery  
21 purposes shall be taken for any railway purpose without the  
22 consent of the proper cemetery corporation's officers or  
23 owners thereof.

24 Sec. 3. Section 359.28, Code 2003, is amended to read as  
25 follows:

26 359.28 CONDEMNATION.

27 The township trustees are hereby empowered to condemn, or  
28 purchase and pay for out of the general fund, or the specific  
29 fund voted for such purpose, and enter upon and take, any  
30 lands within the territorial limits of such township for the  
31 use of existing cemeteries, a community center or juvenile  
32 playgrounds, in the same manner as is now provided for cities.  
33 However, the board of supervisors or a cemetery commission  
34 appointed by the board of supervisors shall control and  
35 maintain pioneer cemeteries as defined in section 331.325.

1 Sec. 4. Section 359.29, Code 2003, is amended to read as  
2 follows:

3 359.29 GIFTS AND DONATIONS.

4 Civil townships are hereby authorized and empowered to  
5 receive by gift, devise, or bequest, money or property for the  
6 purpose of establishing and maintaining libraries, township  
7 halls, maintaining existing cemeteries, or for any other  
8 public purpose. All such gifts, devises, or bequests shall be  
9 effectual only when accepted by resolution of the board of  
10 trustees of such township.

11 Sec. 5. Section 427.1, subsection 6, Code 2003, is amended  
12 to read as follows:

13 6. PROPERTY OF CEMETERY ~~ASSOCIATIONS~~ CORPORATIONS. Burial  
14 grounds, mausoleums, buildings and equipment owned and  
15 operated by cemetery ~~associations~~ corporations incorporated as  
16 a nonprofit corporation under chapter 504A and used  
17 exclusively for the maintenance and care of the cemeteries  
18 devoted to interment of human bodies and human remains. The  
19 exemption granted by this subsection shall not apply to any  
20 property used for the practice of mortuary science.

21 Sec. 6. Section 450.10, subsection 3, unnumbered paragraph  
22 1, Code 2003, is amended to read as follows:

23 When the property or any interest therein or income  
24 therefrom, taxable under the provisions of this chapter,  
25 passes in any manner to societies, institutions or  
26 associations incorporated or organized under the laws of any  
27 other state, territory, province or country than this state,  
28 for charitable, educational or religious purposes, or to  
29 cemetery ~~associations~~ corporations incorporated as a nonprofit  
30 corporation under chapter 504A, including humane societies not  
31 organized under the laws of this state, or to resident  
32 trustees for uses without this state, the rate of tax imposed  
33 shall be as follows:

34 Sec. 7. Section 459.102, subsection 9, Code 2003, is  
35 amended to read as follows:

1 9. "Cemetery" means a space held for the purpose of  
2 permanent burial, entombment, or interment of human remains  
3 that is owned or managed by a political subdivision or private  
4 entity, or a cemetery regulated pursuant to chapter 523I or  
5 566A. However, "cemetery" does not include a pioneer cemetery  
6 as defined in section 331.325.

7 Sec. 8. Section 523A.203, subsection 6, paragraph b, Code  
8 2003, is amended to read as follows:

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

12 SUBCHAPTER 1

13 SHORT TITLE AND DEFINITIONS

14 Sec. 9. NEW SECTION. 523I.101 SHORT TITLE.

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

16 Sec. 10. NEW SECTION. 523I.102 DEFINITIONS.

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

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

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

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

32 4. "Care" means the maintenance of a cemetery's interment  
33 spaces, niches, and mausoleums.

34 5. "Care fund" means money or real or personal property  
35 impressed with a trust by the terms of this chapter, a gift,

1 grant, contribution, payment, legacy, or the terms of a  
2 contract accepted by the cemetery corporation or any trustee  
3 of the trust fund and any accumulated income allocated to  
4 principal.

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

9 7. "Cemetery" means an area dedicated to and used or  
10 intended to be used to inter or scatter remains.

11 8. "Cemetery corporation" means a corporation that  
12 operates one or more cemeteries.

13 9. "Columbarium" means a structure, room, or space in a  
14 mausoleum or other building containing niches or recesses for  
15 disposition of cremated remains.

16 10. "Commissioner" means the commissioner of insurance or  
17 the deputy administrator authorized in section 523A.801 to the  
18 extent the commissioner delegates functions to the deputy  
19 administrator.

20 11. "Common business enterprise" means a group of two or  
21 more business entities that share common ownership in excess  
22 of fifty percent.

23 12. "Credit sale" means a sale of goods, services, or an  
24 interest in land in which all of the following are applicable:

25 a. Credit is granted either under a seller credit card or  
26 by a seller who regularly engages as a seller in credit  
27 transactions of the same kind.

28 b. The buyer is a person other than an organization.

29 c. The goods, services, or interest in land are purchased  
30 primarily for a personal, family, or household purpose.

31 d. Either the debt is payable in installments or a finance  
32 charge is made.

33 e. For goods and services, the amount financed does not  
34 exceed twenty-five thousand dollars.

35 13. "Cremated remains" means the bone fragments that

1 remain after the cremation process is completed.

2 14. "Cremation" means the technical process using heat and  
3 flame that reduces human remains to bone fragments. The  
4 reduction takes place through heat and evaporation.

5 "Cremation" shall include the processing, and may include the  
6 pulverization, of the bone fragments.

7 15. "Disinterment" means to remove human remains from  
8 their place of final disposition.

9 16. "Doing business in this state" means issuing or  
10 performing wholly or in part any term of an interment rights  
11 agreement executed within the state of Iowa.

12 17. "Financial institution" means a state or federally  
13 insured bank, savings and loan association, credit union,  
14 trust department thereof, or a trust company that is  
15 authorized to do business within this state, that has been  
16 granted trust powers under the laws of this state or the  
17 United States, and that holds funds under a trust agreement.  
18 "Financial institution" does not include a cemetery, a  
19 cemetery corporation, or any person employed by or directly  
20 involved with a cemetery.

21 18. "Garden" means an area within a cemetery established  
22 by the cemetery as a subdivision for organizational purposes,  
23 not for sale purposes.

24 19. "Grave space" means a space of ground in a cemetery  
25 that is used or intended to be used for an in-ground burial.

26 20. "Gross selling price" means the aggregate amount a  
27 purchaser is obligated to pay for interment rights, exclusive  
28 of finance charges.

29 21. "Inactive cemetery" means a cemetery that is not  
30 operating on a regular basis, is not offering to sell or  
31 provide interments or other services reasonably necessary for  
32 interment, and does not provide or permit reasonable ingress  
33 or egress for the purposes of visiting interment spaces.

34 22. "Income" means the return in money or property derived  
35 from the use of trust principal after deduction of investment

- 1 losses, taxes, and expenses incurred in the sale of trust  
2 assets, any cost of the operation of the trust, and any annual  
3 audit fees. "Income" includes but is not limited to:
- 4 a. Rent of real or personal property, including sums  
5 received for cancellation or renewal of a lease and any  
6 royalties.
  - 7 b. Interest on money lent, including sums received as  
8 consideration for prepayment of principal.
  - 9 c. Cash dividends paid on corporate stock.
  - 10 d. Interest paid on deposit funds or debt obligations.
  - 11 e. Gain realized from the sale of trust assets.
- 12 23. "Insolvent" means the inability to pay debts as they  
13 become due in the usual course of business.
- 14 24. "Interment rights" means the rights to place remains  
15 in a specific location for use as a final resting place or  
16 memorial.
- 17 25. "Interment rights agreement" means an agreement to  
18 furnish memorials, memorialization, opening and closing  
19 services, or interment rights.
- 20 26. "Interment space" means a space used or intended to be  
21 used for the interment of remains including, but not limited  
22 to, a grave space, lawn crypt, mausoleum crypt, and niche.
- 23 27. "Lawn crypt" means a preplaced enclosed chamber, which  
24 is usually constructed of reinforced concrete and poured in  
25 place, or a precast unit installed in quantity, either side-  
26 by-side or at multiple depths, and covered by earth or sod.
- 27 28. "Lot" means an area in a cemetery containing more than  
28 one interment space which is uniquely identified by an  
29 alphabetical, numeric, or alphanumeric identification  
30 system.
- 31 29. "Maintenance funds" means any money and real or  
32 personal property held by a nonperpetual cemetery under the  
33 terms of this chapter, and any accumulated income allocated to  
34 principal.
- 35 30. "Mausoleum" means an aboveground structure designed

1 for the entombment of human remains.

2 31. "Mausoleum crypt" means a chamber in a mausoleum of  
3 sufficient size to contain casketed human remains.

4 32. "Memorial" means any product, including any foundation  
5 other than a mausoleum or columbarium, used for identifying an  
6 interment space or for commemoration of the life, deeds, or  
7 career of a decedent including, but not limited to, a  
8 monument, marker, niche plate, urn garden plaque, crypt plate,  
9 cenotaph, marker bench, and vase.

10 33. "Memorial care" means any care provided or to be  
11 provided for the general maintenance of memorials including  
12 foundation repair or replacement, resetting or straightening  
13 tipped memorials, repairing or replacing inadvertently damaged  
14 memorials and any other care clearly specified in the purchase  
15 agreement.

16 34. "Memorial dealer" means any person offering or selling  
17 memorials retail to the public.

18 35. "Memorialization" means any permanent system designed  
19 to mark or record the names and other data pertaining to a  
20 decedent.

21 36. "Merchandise" means any personal property offered or  
22 sold for use in connection with the funeral, final  
23 disposition, memorialization, or interment of human remains,  
24 but which is exclusive of interment rights.

25 37. "Neglected cemetery" means a cemetery where there has  
26 been a failure to cut grass or weeds or care for graves,  
27 memorials or memorialization, walls, fences, driveways, and  
28 buildings, or for which proper records of interments have not  
29 been maintained.

30 38. "Niche" means a recess or space in a columbarium or  
31 mausoleum used for placement of cremated human remains.

32 39. "Opening and closing services" means one or more  
33 services necessarily or customarily provided in connection  
34 with the interment or entombment of human remains or a  
35 combination thereof.

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

6 41. "Parent company" means a corporation that has a  
7 controlling interest in a cemetery corporation.

8 42. "Perpetual care cemetery" includes all of the  
9 following:

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

12 b. Any cemetery that has established a care fund in  
13 compliance with subchapter 12.

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

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

19 43. "Person" means an individual, firm, corporation,  
20 partnership, joint venture, limited liability company,  
21 association, trustee, government or governmental subdivision,  
22 agency, or other entity, or any combination thereof.

23 44. "Pioneer cemetery" means a cemetery where there were  
24 six or fewer burials in the preceding fifty years.

25 45. "Purchaser" means a person who purchases memorials,  
26 memorialization, opening and closing services, scattering  
27 services, interment rights, or a combination thereof. The  
28 purchaser need not be a beneficiary of the interment rights  
29 agreement.

30 46. "Religious cemetery" means a cemetery that is owned,  
31 operated, or controlled by a recognized church or  
32 denomination.

33 47. "Relocation" means the act of taking remains from the  
34 place of interment or the place where the remains are being  
35 held to another designated place.

1 48. "Remains" means the body of a deceased human or a body  
2 part, or limb that has been removed from a living human,  
3 including a body, body part, or limb in any stage of  
4 decomposition, or cremated remains.

5 49. "Scattering" means the disposition of cremated remains  
6 by lawful dispersion.

7 50. "Scattering services" means one or more services  
8 necessarily or customarily provided in connection with  
9 scattering human cremated remains.

10 51. "Scattering services provider" means a person in the  
11 business of scattering human cremated remains.

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

20 53. "Special care" means any care provided or to be  
21 provided that supplements or exceeds the requirements of this  
22 chapter in accordance with the specific directions of any  
23 donor of funds for such purposes.

24 54. "Undeveloped space" means a designated area or  
25 building within a cemetery that has been mapped and planned  
26 for future development but is not yet fully developed.

27 SUBCHAPTER 2

28 CEMETERY DEDICATION REQUIREMENTS AND PROCEDURES

29 Sec. 11. NEW SECTION. 523I.201 DEDICATION.

30 1. A person that dedicates property for a new cemetery on  
31 or after July 1, 2003, and a cemetery corporation that  
32 dedicates an additional garden on or after July 1, 2003,  
33 shall:

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

1 or plat of the property. Individual spaces do not need to be  
2 set forth visually. The map or plat must include narrative  
3 descriptions for each garden that allow individuals to  
4 determine the location of each interment space. The narrative  
5 descriptions must include appropriate compass directions, the  
6 size of interment spaces in each defined area, and a  
7 description of a progressive numbering system used to organize  
8 individual spaces in each defined area.

9     b. In the case of a mausoleum or a columbarium, make a map  
10 or plat of the property delineating sections or other  
11 divisions with descriptive names and numbers. Individual  
12 spaces do not need to be set forth visually. The map or plat  
13 must include narrative descriptions for each section or  
14 division that allow individuals to determine the location of  
15 each interment space. The narrative descriptions must include  
16 appropriate compass directions, the size of interment spaces  
17 in each defined area, and a description of a progressive  
18 numbering system used to organize individual spaces in each  
19 defined area.

20     c. File the map or plat with the commissioner, including a  
21 written certificate or declaration of dedication of the  
22 property delineated by the map or plat, dedicating the  
23 property to cemetery purposes. The certificate or declaration  
24 shall include all of the following:

25       (1) Provision of information on a form prescribed by the  
26 directors or officers of the cemetery corporation.

27       (2) The signature of two individuals authorized by the  
28 cemetery corporation for that purpose.

29       (3) Verification by a notary public.

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

34     3. A certificate or declaration of dedication may contain  
35 a provision permitting a cemetery corporation to resurvey and

1 change the shape and size of the property for which the  
2 associated map or plat is filed if that change does not  
3 disturb any interred remains. If a change is made, the  
4 cemetery corporation shall file an amended map or plat and  
5 shall indicate any change in a specific unique number assigned  
6 to an interment space.

7 4. A cemetery corporation is civilly liable to the state  
8 in an amount not to exceed one thousand dollars for each map  
9 or plat that fails to meet the requirements of this section.

10 5. A cemetery corporation shall not sell or convey  
11 interment rights in a section or garden until a map or plat  
12 and a certificate or declaration of dedication, if required by  
13 this section, is filed with the commissioner.

14 Sec. 12. NEW SECTION. 523I.202 EFFECT OF DEDICATION.

15 1. Property may be dedicated for use as a cemetery, and  
16 the dedication is permitted out of respect for the dead, to  
17 provide for the disposition of remains, and in fulfillment of  
18 a duty to and for the benefit of the public.

19 2. Dedication of property as a cemetery and a property  
20 owner's title to the exclusive interment rights are not  
21 affected by the dissolution of the corporation owning the  
22 cemetery, nonuse, alienation, encumbrance, or forced sale of  
23 the property.

24 3. Dedication of property as a cemetery may not be  
25 invalidated because of a violation of the law against  
26 perpetuities or the law against the suspension of the power of  
27 alienation of title to or use of property.

28 4. All property located on land dedicated as a cemetery,  
29 including a road, alley, or walk in the cemetery:

30 a. Is exempt from public improvements assessments, fees,  
31 and public taxation.

32 b. Shall not be sold on execution or applied in payment of  
33 debts due from individual owners.

34 5. If human remains are not interred in a garden, the  
35 dedication of that portion of the property as a cemetery may

1 be removed if notice is filed with the commissioner. Property  
2 dedicated as a cemetery shall continue to be used for cemetery  
3 purposes until the dedication is removed by filing notice with  
4 the commissioner, by court order, or until maintenance of the  
5 cemetery is enjoined or abated as a nuisance under section  
6 523I.804.

7 Sec. 13. NEW SECTION. 523I.203 REMOVAL OF DEDICATION.

8 A cemetery corporation may petition a district court of the  
9 county in which a cemetery is located to remove the dedication  
10 with respect to all or any portion of the cemetery if any of  
11 the following occurs:

12 1. All remains have been removed from that portion of the  
13 cemetery where the dedication is to be removed.

14 2. No interments were made in that portion of the cemetery  
15 where the dedication is to be removed and that portion of the  
16 cemetery is not used or necessary for interment purposes.

17 3. A court orders the removal of the dedication upon  
18 notice and proof deemed satisfactory by the court.

19

SUBCHAPTER 3

20

CEMETERY CORPORATIONS

21 Sec. 14. NEW SECTION. 523I.301 FORMATION OF CORPORATION  
22 TO MAINTAIN AND OPERATE A CEMETERY.

23 1. A person shall not operate as a cemetery except by  
24 means of a corporation.

25 2. A corporation may, if authorized to do so by its  
26 articles, establish, maintain, manage, improve, or operate a  
27 cemetery either for or without profit to its members or  
28 stockholders. A nonprofit cemetery corporation shall be  
29 organized pursuant to chapter 504A, the Iowa nonprofit  
30 corporation Act. A for-profit cemetery corporation shall be  
31 organized pursuant to chapter 490, the Iowa business  
32 corporation Act, or chapter 490A, the Iowa limited liability  
33 company Act.

34 3. The powers, privileges, and duties conferred and  
35 imposed upon any cemetery corporation doing business under

1 this chapter are hereby enlarged as each particular case may  
2 require to conform to the provisions of this chapter.

3 4. Unless otherwise limited by law, a cemetery corporation  
4 shall have the same powers granted to other corporations in  
5 general, including the right to enter into contracts secured  
6 by a mortgage, deed of trust, or other obligation upon the  
7 cemetery corporation's property.

8 Sec. 15. NEW SECTION. 523I.302 PROPERTY ACQUISITION BY  
9 CEMETERY CORPORATION.

10 1. A cemetery corporation may acquire by purchase,  
11 donation, or devise property consisting of land or other  
12 property in which remains may be interred under law.

13 2. A cemetery corporation that acquires property may  
14 record title to its property with the county recorder of the  
15 county in which the property is located if its president and  
16 secretary or other authorized delegate of the cemetery  
17 corporation sign and acknowledge a declaration executed by the  
18 cemetery corporation that describes the property and declares  
19 the cemetery corporation's intention to use the property or a  
20 part of the property for interment purposes.

21 3. Title recorded pursuant to subsection 2 constitutes  
22 constructive notice as of the date of filing that the property  
23 is intended to be used for interment.

24 4. A cemetery corporation may by condemnation acquire  
25 property in which remains may be interred when the acquisition  
26 of that property is for a public purpose.

27 Sec. 16. NEW SECTION. 523I.303 AUTHORITY OF CEMETERY  
28 CORPORATION.

29 A cemetery corporation may do any of the following:

30 1. Divide the cemetery into interment spaces and  
31 subdivisions for cemetery purposes.

32 2. Charge an assessment on cemetery property for the  
33 purpose of general improvement and maintenance.

34 3. Take any action that is necessary to carry out the  
35 cemetery's business purposes including those purposes that are

1 necessarily incidental to the final disposition of human  
2 remains, including any of the following:

- 3 a. Convey property or other assets of the corporation.
- 4 b. Borrow money.

5 SUBCHAPTER 4

6 INTERMENT RIGHTS

7 Sec. 17. NEW SECTION. 523I.401 SALE OF INTERMENT RIGHTS.

8 1. A cemetery corporation may sell and convey exclusive  
9 rights of interment in the cemetery under the following  
10 conditions:

11 a. The sale or conveyance is allowed by the rules of the  
12 cemetery and the restrictions in the certificate of interment  
13 rights or other instrument of conveyance.

14 b. The purchase price for the interment rights has been  
15 paid in full.

16 2. A certificate of interment rights or other instrument  
17 evidencing the conveyance of exclusive rights of interment by  
18 a cemetery corporation must be signed by the president or vice  
19 president and the secretary or other officers authorized by  
20 the cemetery corporation.

21 3. A conveyance of exclusive rights of interment must be  
22 filed and recorded in the cemetery corporation's office. Any  
23 transfer of the ownership of interment rights must be filed  
24 and recorded in the cemetery corporation's office. The  
25 cemetery corporation may charge a reasonable recording fee to  
26 record the transfer of interment rights.

27 4. The interment rights in an interment space that is  
28 conveyed by a certificate of ownership or other instrument  
29 shall not be divided without the consent of the cemetery  
30 corporation.

31 Sec. 18. NEW SECTION. 523I.402 INTERMENT RIGHTS.

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

1 2. The spouse of a person to whom exclusive rights of  
2 interment in an interment space are conveyed has a vested  
3 right of interment of the spouse's remains in the interment  
4 space while the spouse is married to the interment space owner  
5 or if the spouse is married to the interment space owner at  
6 the time of the owner's death.

7 Sec. 19. NEW SECTION. 523I.403 MULTIPLE OWNERS OF  
8 INTERMENT RIGHTS.

9 Two or more owners of interment rights may designate a  
10 person to represent the interment space and file notice of the  
11 designation of a representative with the cemetery corporation.  
12 If notice is not filed, the cemetery corporation may inter or  
13 permit an interment in the space at the request or direction  
14 of a registered co-owner of the interment space.

15 Sec. 20. NEW SECTION. 523I.404 RECORDS OF INTERMENT  
16 RIGHTS AND INTERMENT.

17 1. A cemetery corporation shall keep complete records  
18 identifying the owners of all interment rights sold by the  
19 cemetery corporation and historical information regarding any  
20 transfers of ownership. The records shall include all of the  
21 following:

22 a. The name and last known address of each owner or  
23 previous owner of interment rights.

24 b. The date of each purchase or transfer of interment  
25 rights.

26 c. A unique numeric or alphanumeric identifier that  
27 identifies the location of each interment space sold by the  
28 cemetery corporation.

29 2. A cemetery corporation shall keep a record of each  
30 interment in a cemetery. The records shall include all of the  
31 following:

32 a. The date the remains are interred.

33 b. The name, date of birth, and date of death of the  
34 decedent interred, if those facts can be conveniently  
35 obtained.

1 c. A unique numeric or alphanumeric identifier that  
2 identifies the location of the interment space where the  
3 remains are interred.

4 Sec. 21. NEW SECTION. 523I.405 ABANDONED INTERMENT  
5 SPACES.

6 1. REVERSION. The ownership or right in or to an  
7 unoccupied interment space shall, upon abandonment, revert to  
8 the cemetery corporation that owns the cemetery in which the  
9 space is located.

10 2. PRESUMPTION OF ABANDONMENT. Unpaid care assessments  
11 and fees for an unoccupied interment space not under perpetual  
12 care shall create a lien by the cemetery corporation against  
13 the applicable interment space. The continued failure of the  
14 owner to maintain or care for an unoccupied interment space  
15 not under perpetual care, for a period of ten years, or to pay  
16 a lien for care assessments or care fees that exceed the  
17 amount paid for the interment space, shall create the  
18 presumption that the interment space has been abandoned. An  
19 unused interment space under perpetual care in a lot which has  
20 not had a burial for seventy-five years shall create a  
21 presumption that the interment space has been abandoned.

22 3. NOTICE OF ABANDONMENT. Abandonment shall not be deemed  
23 complete pursuant to subsection 2 until the cemetery  
24 corporation gives notice declaring the interment space to be  
25 abandoned, to the owner of record or, if the owner of record  
26 is deceased or unknown, to the heirs of the owner of record.

27 4. SERVICE OF NOTICE. Notice of abandonment may be served  
28 personally on the owner of record or the owner of record's  
29 heirs, or may be served by mailing notice by certified mail to  
30 the owner of record, or the owner of record's heirs, at the  
31 last known address of the owner of record or owner of record's  
32 heirs. If the address of the owner of record or the owner of  
33 record's heirs cannot be ascertained, notice of such  
34 abandonment shall be given by one publication of the notice of  
35 abandonment in the official newspaper of the county in which

1 the cemetery is located.

2 5. OVERCOMING PRESUMPTION OF ABANDONMENT. If within one  
3 year from the time of serving notice the owner of record or  
4 the owner of record's heirs pay the past due annual care  
5 charges assessed against the interment space, the presumption  
6 of abandonment shall no longer exist and the owner of record  
7 or the owner of record's heirs may be required to make full  
8 payment for future perpetual care.

9 6. REVERSIONER'S RIGHT TO SELL. When the abandonment is  
10 deemed complete, the reversionary owner of the abandoned  
11 interment space, or a portion thereof, may sell and convey  
12 title to the interment space.

13 7. USE OF FUNDS. Any funds realized from the sale of an  
14 interment space not under perpetual care which has reverted to  
15 the reversionary owner shall be allocated to the care fund or  
16 to the fund paying the costs of cemetery operation.

17 8. ABANDONMENT -- PERPETUAL CARE PROVIDED BY WILL, COURT  
18 ORDER, CONTRACT, OR BY LAW. An unused interment space which  
19 has not had a burial for seventy-five years, but whose  
20 perpetual care has been provided for by will, court order,  
21 contract, or by law, shall not be sold by the reversionary  
22 owner until three years after the date notice was served on  
23 the owner of record or the owner of record's heirs of the  
24 presumed abandonment of the interment space.

25 SUBCHAPTER 5

26 INTERMENT RIGHTS AGREEMENTS

27 Sec. 22. NEW SECTION. 523I.501 STATEMENT BY PERPETUAL  
28 CARE CEMETERY.

29 1. A perpetual care cemetery shall include the following  
30 statement in the heading of each interment rights agreement:

31 "This cemetery is operated as a perpetual care cemetery,  
32 which means that a care fund for its maintenance has been  
33 established in conformity with the laws of the State of Iowa.  
34 At least twenty percent of the purchase price for interment  
35 rights must be placed in the care fund and the care fund's

1 income is used to maintain, repair, and care for the  
2 cemetery."

3 2. If the care fund contains less than twenty-five  
4 thousand dollars, the statement shall include a statement that  
5 the balance of the care fund is less than twenty-five thousand  
6 dollars or shall disclose the exact amount contained in the  
7 care fund on a date not more than twelve months prior to the  
8 date of execution of the interment rights agreement.

9 Sec. 23. NEW SECTION. 523I.502 STATEMENT BY NONPERPETUAL  
10 CARE CEMETERY.

11 1. A nonperpetual care cemetery shall include the  
12 following statement in the heading of each interment rights  
13 agreement:

14 "This cemetery is a nonperpetual care cemetery and has not  
15 established a perpetual trust fund for the cemetery's care."

16 2. A nonperpetual care cemetery shall not represent that  
17 the cemetery is a perpetual care cemetery or use any similar  
18 title, description, or term indicating that the cemetery  
19 provides guaranteed or permanent maintenance and care. If a  
20 nonperpetual care cemetery has a maintenance fund, trust fund,  
21 or trust funds, any statements about those funds must be  
22 factually accurate and explain any variances between the terms  
23 of the applicable trust and this chapter in regard to the  
24 twenty-five thousand dollar minimum corpus provision, any  
25 provisions regarding invasion of principal, and the amount of  
26 the purchase price placed in trust for each sale of interment  
27 rights.

28 Sec. 24. NEW SECTION. 523I.503 INTERMENT RIGHTS  
29 AGREEMENT REQUIREMENTS.

30 An agreement for interment rights shall be written in  
31 clear, understandable language and shall contain all of the  
32 following:

33 1. The name of the cemetery where the rights to interment  
34 are located, the name of the cemetery corporation selling  
35 interment rights or the name of a seller other than the

1 cemetery corporation, and the name of the purchaser.

2 2. The name and sales permit number of the salesperson.

3 3. A description of the interment rights to be provided  
4 and the cost of merchandise or services to be provided.

5 4. The conditions under which substitutions will be  
6 allowed.

7 5. The total purchase price and the terms under which the  
8 purchase price is to be paid.

9 6. That the purchase of interment rights is an irrevocable  
10 contract, except as otherwise specified in the cemetery  
11 corporation's rules and regulations.

12 7. The amount or percentage of money to be placed in the  
13 cemetery corporation's care fund or maintenance fund.

14 8. A statement explaining that the care fund or  
15 maintenance fund is an irrevocable trust, that deposits cannot  
16 be withdrawn even in the event of cancellation of the  
17 agreement, and that the care fund or maintenance fund must be  
18 used by the cemetery corporation for the care and maintenance  
19 of the cemetery.

20 9. An explanation of any fees or expenses that may be  
21 charged.

22 10. An explanation of whether the money to be placed in  
23 the cemetery corporation's care fund or maintenance fund will  
24 be deposited in trust upon payment in full or on an allocable  
25 basis as payments are made.

26 11. An explanation of whether initial payments on  
27 agreements for multiple items of merchandise or services, or  
28 both, will be allocated first to the purchase of interment  
29 rights. If such an allocation will be made, the agreement  
30 shall provide for the immediate transfer of such interment  
31 rights upon payment in full and prominently state that any  
32 applicable trust deposits under chapter 523A will not be made  
33 until the cemetery has received payment in full for the  
34 interment rights. The transfer of interment rights in an  
35 undeveloped space may be deferred until such space is ready

1 for burial.

2 12. A provision that if the transfer of an undeveloped  
3 interment space will be deferred as set forth in subsection  
4 11, there will be written acknowledgement when payment in full  
5 is made, specification of a reasonable time period for  
6 development of the space, a description of what happens in the  
7 event of the purchaser's death prior to development of the  
8 space, and immediate transfer of the interment rights when  
9 development of the space is complete.

10 13. Specification of the purchaser's right to cancel the  
11 agreement and liability for damages upon such cancellation, if  
12 any.

13 14. A statement that the insurance division exercises  
14 regulatory oversight over interment rights agreements set  
15 forth in twelve point bold-faced type, in substantially the  
16 following language: THIS AGREEMENT IS SUBJECT TO RULES  
17 ADMINISTERED BY THE IOWA INSURANCE DIVISION. YOU MAY CALL THE  
18 INSURANCE DIVISION AT (\_\_\_\_)\_\_\_\_\_. WRITTEN INQUIRIES OR  
19 COMPLAINTS SHOULD BE MAILED TO THE IOWA INSURANCE DIVISION,  
20 (STREET ADDRESS), (CITY), IOWA (ZIP CODE).

21 15. If the cemetery corporation offers opening and closing  
22 services, specification of whether opening and closing of  
23 interment spaces are included in the interment rights  
24 agreement, and, if not, the current prices for such opening  
25 and closing services and a statement that these prices are  
26 subject to change.

27 16. Signatures of the purchaser and the seller.

28 A seller shall furnish the purchaser with a completed copy  
29 of the interment rights agreement at the time the agreement is  
30 signed.

31 SUBCHAPTER 6

32 LAWN CRYPTS

33 Sec. 25. NEW SECTION. 523I.601 REQUIREMENTS FOR LAWN  
34 CRYPTS.

35 A lawn crypt shall not be installed unless all of the

1 following apply:

- 2 1. The lawn crypt is constructed of concrete and  
3 reinforced steel or other comparable durable material.
- 4 2. The lawn crypt is installed on not less than six inches  
5 of rock, gravel, or other drainage material.
- 6 3. The lawn crypt provides a method to drain water out of  
7 the lawn crypt.
- 8 4. The outside top surface of the lawn crypt at the time  
9 of installation is at least one and one-half feet below the  
10 surface of the ground and is capable of withstanding the  
11 weight of the soil and sod above the top surface and the  
12 weight of machinery and equipment normally used in the  
13 maintenance of the cemetery.
- 14 5. Except as provided by section 523I.602, the lawn crypt  
15 is installed in multiple units of ten or more.
- 16 6. To the extent that any provision of section 135.11 or  
17 chapter 156 or any administrative rule adopted pursuant  
18 thereto is inconsistent with this section, the provisions of  
19 this section shall govern.

20 Sec. 26. NEW SECTION. 523I.602 REQUEST TO INSTALL LAWN  
21 CRYPT IN FEWER THAN TEN UNITS.

- 22 1. A lawn crypt may be installed in fewer than ten units  
23 if it is installed in an interment space pursuant to a written  
24 request to the commissioner signed by the owner or owners of  
25 the interment space.
- 26 2. The written request shall be filed on a form prescribed  
27 by the commissioner and shall contain substantially all of the  
28 following information:
  - 29 a. The owner's name and address.
  - 30 b. The name of the cemetery and the owner of the cemetery.
  - 31 c. The number of lawn crypt units to be installed.
  - 32 d. A description of the interment spaces.
  - 33 e. A statement that the lawn crypt meets the requirements  
34 of section 523I.601, including all of the following:
    - 35 (1) A statement that the lawn crypt will be constructed of

1 concrete and reinforced steel or other comparable durable  
2 materials.

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

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

8 (4) A statement that the outside top surface of the lawn  
9 crypt at the time of installation will be at least one and  
10 one-half feet below the surface of the ground and be capable  
11 of withstanding the weight of the soil and sod above the top  
12 surface and the weight of machinery and equipment normally  
13 used in the maintenance of the cemetery.

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

16 g. The date on which the owner or owners signed the form.

17 3. To the extent that any provision of section 135.11 or  
18 chapter 156 or any administrative rule adopted pursuant  
19 thereto is inconsistent with this section, the provisions of  
20 this section shall govern.

21 Sec. 27. NEW SECTION. 523I.603 NEW CONSTRUCTION.

22 1. A person shall not offer to sell interment rights in a  
23 mausoleum or columbarium that will be built or completed in  
24 the future unless the person has submitted an application to  
25 sell such interment rights with the commissioner on a form  
26 prescribed by the commissioner and accompanied by a fee of one  
27 hundred dollars.

28 2. The application to sell interment rights in a mausoleum  
29 or columbarium must include the following information:

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

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

35 c. A copy of the proposed interment rights agreement to be

1 used, which shall include the following:

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

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

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

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

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

19 SUBCHAPTER 7

20 PERMIT REQUIREMENTS

21 Sec. 28. NEW SECTION. 523I.701 CEMETERY PERMITS.

22 1. A cemetery corporation shall not advertise, sell,  
23 promote, or offer to sell interment rights on or after July 1,  
24 2003, without a permit as provided for in this subchapter. If  
25 a cemetery corporation operates more than one cemetery, each  
26 cemetery must have a cemetery permit.

27 2. A filing fee shall not be required.

28 3. An application for a cemetery permit shall be filed on  
29 a form prescribed by the commissioner and include a copy of  
30 each interment rights agreement form used by the cemetery.

31 4. The application shall contain all of the following:

32 a. The name and address of the cemetery.

33 b. The name and address of the cemetery corporation.

34 c. The name and address of each owner, officer, or other  
35 official of the cemetery corporation, including, when

1 relevant, the chief executive officer and the members of the  
2 board of directors.

3 d. A description of any common business enterprise or  
4 parent company.

5 e. A list of the financial institutions used by the  
6 cemetery corporation on a regular basis.

7 f. The name and address of any trustee holding trust funds  
8 for the cemetery corporation, including the name and location  
9 of the applicable trust account.

10 5. The commissioner shall grant or deny an application for  
11 a cemetery permit within thirty days after receipt, but the  
12 commissioner's failure to act within that time period shall  
13 not be deemed approval of the application. If the  
14 commissioner does not grant the permit, the commissioner shall  
15 notify the person in writing of the reasons for denial.

16 6. A cemetery permit is valid for four years.

17 Sec. 29. NEW SECTION. 523I.702 SALES PERMITS.

18 1. A person shall not advertise, sell, promote, or offer  
19 to sell interment rights without a sales permit. A person  
20 holding a sales permit must be an employee or agent of a  
21 cemetery corporation holding a cemetery permit. This section  
22 shall not apply to a licensed funeral director who merely  
23 collects cash advance payments for interment rights, an agent  
24 or employee of a religious cemetery, or a cemetery owned or  
25 operated by a political subdivision of this state.

26 2. A person must have a sales permit for each cemetery  
27 corporation for which the person is employed or is an agent.

28 3. A cemetery corporation is liable for the acts of its  
29 employees and agents performed in advertising, selling,  
30 promoting, or offering to furnish interment rights.

31 4. An application for a sales permit shall be filed on a  
32 form prescribed by the commissioner.

33 5. The application shall contain all of the following:

34 a. The name and address of the person.

35 b. The name and address of the cemetery and, if different,

1 the cemetery corporation on whose behalf the person will be  
2 advertising, selling, promoting, or offering to furnish  
3 interment rights.

4 6. A permit holder shall inform the commissioner of  
5 changes in the information required to be provided by  
6 subsection 5 in the initial application or in an application  
7 for renewal within thirty days of the change.

8 7. An initial permit shall be accompanied by a five dollar  
9 filing fee and shall expire one year from the date the  
10 application is filed. The permit may be renewed for an  
11 additional four years by filing the form prescribed by the  
12 commissioner under this section, accompanied by a twenty  
13 dollar filing fee.

14 8. The commissioner shall grant or deny a permit  
15 application within thirty days after receipt, but the  
16 commissioner's failure to act within that time period shall  
17 not be deemed approval of the application. If the  
18 commissioner does not grant the permit, the commissioner shall  
19 notify the applicant in writing of the reasons for the denial.

20 9. The commissioner may, by rule, create or accept a  
21 multijurisdiction sales permit. If the sales permit is issued  
22 by another jurisdiction, the rules shall require the filing of  
23 an application or notice form and payment of the applicable  
24 filing fee of five dollars for each year. The application or  
25 notice form utilized and the effective dates and terms of the  
26 permit may vary from the provisions set forth in subsections  
27 4, 5, 6, and 7.

28 10. The commissioner may create and accept a joint sales  
29 permit for persons who are also required to hold a sales  
30 permit under section 523A.502. Notwithstanding subsection 7  
31 and section 523A.502, if a joint application is filed for both  
32 sales permits, the fee for an initial joint permit shall be  
33 five dollars and the fee for a renewed joint permit shall be  
34 twenty dollars.

35 Sec. 30. NEW SECTION. 523I.703 DENIAL -- SUSPENSION --

1 REVOCATION -- SURRENDER OF PERMITS.

2 1. The commissioner may, subject to chapter 17A, deny any  
3 permit application or immediately suspend or revoke a permit  
4 issued under this chapter for several reasons, including but  
5 not limited to:

6 a. Committing a fraudulent act, engaging in a fraudulent  
7 practice, or violating any provision of this chapter, or any  
8 implementing rule or order issued under this chapter.

9 b. Violating any other state or federal law applicable to  
10 the conduct of the applicant's or permit holder's business.

11 c. Insolvency or financial condition.

12 d. Engaging in a deceptive act or practice or  
13 misrepresenting or omitting a material fact regarding the sale  
14 of interment rights under this chapter.

15 e. Conviction of a criminal offense involving dishonesty  
16 or a false statement.

17 f. Inability to provide the interment rights which the  
18 applicant or permit holder purports to sell.

19 g. Selling the cemetery without filing a prior notice of  
20 the sale with the commissioner. A cemetery permit shall be  
21 revoked thirty days following such sale.

22 h. Allowing a person who is not an employee or agent of  
23 the applicant or permit holder to sell interment rights.

24 i. Inadequate care and maintenance of the cemetery,  
25 including but not limited to the following:

26 (1) Failure to adequately mow grass.

27 (2) Failure to adequately edge and trim bushes, trees, and  
28 memorials.

29 (3) Failure to keep walkways and sidewalks free of  
30 obstructions.

31 (4) Failure to adequately maintain the cemetery's  
32 equipment and fixtures.

33 2. The commissioner may, for good cause shown, suspend any  
34 permit for a period not exceeding thirty days, pending  
35 investigation.

1 3. Except as provided in subsection 2, a permit shall not  
2 be revoked or suspended except after notice and hearing under  
3 chapter 17A.

4 4. Any permit holder may surrender a permit by delivering  
5 to the commissioner written notice that the permit holder  
6 surrenders the permit, but the surrender shall not affect the  
7 permit holder's civil or criminal liability for acts committed  
8 before the surrender.

9 5. Denial, revocation, suspension, or surrender of a  
10 permit does not impair or affect the obligation of any  
11 preexisting lawful agreement between the permit holder and any  
12 person.

13 Sec. 31. NEW SECTION. 523I.704 ASSIGNMENTS AND TRANSFERS  
14 PROHIBITED.

15 Permits issued pursuant to this chapter are not assignable  
16 or transferable. This section does not apply to a religious  
17 cemetery if it remains a religious cemetery after the  
18 assignment or transfer of a permit.

19 Sec. 32. NEW SECTION. 523I.705 TRANSFER OF OWNERSHIP.

20 If an applicant or permit holder sells a cemetery, the  
21 applicant or holder of a cemetery permit for that cemetery  
22 shall notify the commissioner no later than thirty days after  
23 the sale of the cemetery.

24 SUBCHAPTER 8

25 GENERAL PROVISIONS

26 Sec. 33. NEW SECTION. 523I.801 LIEN AGAINST CEMETERY  
27 PROPERTY.

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

32 2. A mortgage, deed of trust, or other lien placed on  
33 dedicated cemetery property, or on cemetery property that is  
34 later dedicated with the consent of the holder of the lien,  
35 does not affect the dedication and is subject to the

1 dedication. A sale on foreclosure of the lien is subject to  
2 the dedication of the property for cemetery purposes.

3 Sec. 34. NEW SECTION. 523I.802 DEPTH OF GROUND BURIALS  
4 -- CRIMINAL PENALTY.

5 1. The outside top surface of a container holding human  
6 remains shall not be buried as follows:

7 a. Less than two feet below the surface of the ground if  
8 the container is biodegradable.

9 b. Less than one and one-half feet below the surface of  
10 the ground if the container is made of nonbiodegradable  
11 material.

12 2. The governing body of a political subdivision of this  
13 state may, because of subsurface soil conditions or other  
14 relevant considerations, allow, by ordinance, order, or rule,  
15 burials in that political subdivision at a depth shallower  
16 than that required by subsection 1.

17 3. This section does not apply to lawn crypts.

18 4. If the cemetery is in a floodplain or within one mile  
19 of a river, lake, or similar body of water and flooding is a  
20 significant risk, the surface level of the ground above the  
21 grave at its shallowest point shall be at least three feet  
22 from the top of the burial container.

23 5. A person who buries human remains in violation of this  
24 section or an ordinance or rule adopted pursuant to this  
25 section commits a simple misdemeanor.

26 6. To the extent that any provision of section 135.11 or  
27 chapter 156 or any administrative rule adopted pursuant  
28 thereto is inconsistent with this section, the provisions of  
29 this section shall apply.

30 Sec. 35. NEW SECTION. 523I.803 REMOVAL OF REMAINS FROM  
31 NEGLECTED CEMETERY.

32 1. If a neglected cemetery for which no care fund has been  
33 regularly and legally established is abated as a nuisance, the  
34 court abating the nuisance and enjoining its continuance or  
35 the governing body of the municipality in which the cemetery

1 is located may authorize the removal of all human remains,  
2 monuments, tombs, and other similar items from the cemetery to  
3 another religious cemetery of the same denomination, if  
4 applicable, or to a perpetual care cemetery in the same  
5 county.

6 2. If a county does not have a perpetual care cemetery  
7 that under its rules permits the interment of human remains  
8 that have been removed from another cemetery, the human  
9 remains, monuments, tombs, and other similar items may be  
10 removed to a nonperpetual care cemetery in the county that has  
11 provided for assessments for the cemetery's future care.

12 Sec. 36. NEW SECTION. 523I.804 NUISANCE -- ABATEMENT --  
13 INJUNCTION.

14 1. A district court of the county in which a cemetery is  
15 located may, by order, abate the cemetery as a nuisance and  
16 enjoin its continuance if the cemetery is either:

17 a. Maintained, located, or used in violation of this  
18 chapter.

19 b. Neglected so that it is offensive to the inhabitants of  
20 the surrounding area.

21 2. A proceeding for abatement may be brought by the county  
22 attorney, the attorney general, or the commissioner.

23 3. The court shall grant a permanent injunction against  
24 each person responsible for the nuisance if a cemetery  
25 nuisance exists or is threatened.

26 4. If a cemetery nuisance under subsection 1, paragraph  
27 "b", is located in a municipality, the governing body of the  
28 municipality may authorize the removal of all human remains,  
29 monuments, tombs, or other similar items from the cemetery to  
30 a perpetual care cemetery.

31 Sec. 37. NEW SECTION. 523I.805 RULEMAKING AND  
32 ENFORCEMENT.

33 1. A cemetery corporation may adopt, amend, and enforce  
34 rules for the use, care, control, management, restriction, and  
35 protection of the cemetery, as necessary for the proper

1 conduct of the business of the cemetery, including, but not  
2 limited to, the use, care, and transfer of any space or right  
3 of interment.

4 2. A cemetery corporation may restrict and limit the use  
5 of all property within the cemetery by rules that do all of  
6 the following:

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

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

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

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

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

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

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

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

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

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

1 request.

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

16 6. The cemetery corporation shall not approve any bylaw  
17 which unreasonably restricts competition, or which  
18 unreasonably increases the cost to the owner of interment  
19 rights in utilizing these rights.

20 Sec. 38. NEW SECTION. 523I.806 PROTECTION OF CEMETERIES  
21 AND BURIAL SITES.

22 1. EXISTENCE OF CEMETERY OR BURIAL SITE -- NOTIFICATION.  
23 If a governmental subdivision or agency is notified of the  
24 existence of a cemetery, or a marked burial site that is not  
25 located in a dedicated cemetery, within its jurisdiction and  
26 the cemetery or burial site is not otherwise provided for  
27 under this chapter, the governmental subdivision or agency  
28 shall, as soon as is practicable, notify the owner of the land  
29 upon which the cemetery or burial site is located of the  
30 cemetery's or burial site's existence and location. The  
31 notification shall include an explanation of the provisions of  
32 this section. If there is a basis to believe that interment  
33 may have occurred more than one hundred fifty years earlier,  
34 the governmental subdivision or agency shall also notify the  
35 state archeologist.

1        2.    DISTURBANCE OF INTERMENT SPACES -- PENALTY.    A person  
2 who knowingly and without authorization damages, defaces,  
3 destroys, or otherwise disturbs an interment space commits  
4 criminal mischief in the third degree.    Criminal mischief in  
5 the third degree is an aggravated misdemeanor.

6        3.    DUTY TO PRESERVE AND PROTECT.    A governmental  
7 subdivision or agency having a cemetery, or a burial site that  
8 is not located within a dedicated cemetery, within its  
9 jurisdiction, for which preservation is not otherwise  
10 provided, shall preserve and protect the cemetery or burial  
11 site as necessary to restore or maintain its physical  
12 integrity as a cemetery or burial site.    The governmental  
13 subdivision or agency may enter into an agreement to delegate  
14 the responsibility for the preservation and protection of the  
15 cemetery or burial site to a person interested in historical  
16 preservation.    A cemetery corporation shall be formed to  
17 operate the cemetery, if applicable.

18       4.    CONFISCATION AND RETURN OF MEMORIALS.    A law  
19 enforcement officer having reason to believe that a memorial  
20 or memorialization is in the possession of a person without  
21 authorization or right to possess the memorial or  
22 memorialization may take possession of the memorial or  
23 memorialization from that person and turn it over to the  
24 officer's law enforcement agency.    If a law enforcement agency  
25 determines that a memorial or memorialization the agency has  
26 taken possession of rightfully belongs on an interment space,  
27 the agency shall return the memorial or memorialization to the  
28 interment space, or make arrangements with the person having  
29 jurisdiction over the interment space for its return.

30       5.    INTERMENT SPACES LOCATED ON PRIVATE PROPERTY.

31       a.    A person shall notify a governmental subdivision or  
32 agency if an interment of the person's ancestor exists on  
33 property owned by another person within the jurisdiction of  
34 the governmental subdivision or agency.    The owner of the  
35 property shall be notified by the governmental subdivision or

1 agency that the interment exists and that the owner must  
2 permit the person reasonable ingress and egress for the  
3 purposes of visiting the interment space of the person's  
4 ancestor.

5 b. Pursuant to section 558.69, a declaration of value  
6 submitted to a county recorder pursuant to chapter 428A shall  
7 also include information concerning the existence of any known  
8 private interment space situated on the property.

9 6. DISCOVERY OF HUMAN REMAINS. Any person discovering  
10 human remains shall notify the county or state medical  
11 examiner or a city, county, or state law enforcement agency as  
12 soon as is reasonably possible unless the person knows or has  
13 good reason to believe that such notice has already been given  
14 or the discovery occurs in a cemetery. If there is reason to  
15 believe that interment may have occurred more than one hundred  
16 fifty years earlier, the governmental subdivision or agency  
17 notified shall also notify the state archeologist. A person  
18 who does not provide notice required pursuant to this  
19 subsection commits a serious misdemeanor.

20 Sec. 39. NEW SECTION. 523I.808 COMPLIANCE WITH IOWA  
21 CONSUMER CREDIT CODE.

22 A seller of credit sales agreements pursuant to this  
23 chapter shall comply with the requirements of chapter 537, and  
24 is subject to the remedies and penalties provided for in that  
25 chapter.

26 Sec. 40. NEW SECTION. 523I.809 DISCLOSURE REQUIREMENTS.

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

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

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

9 Sec. 41. NEW SECTION. 523I.810 INSTALLATION OF OUTER  
10 BURIAL CONTAINERS.

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

18 Sec. 42. NEW SECTION. 523I.811 ACCESS BY FUNERAL  
19 DIRECTORS.

20 A licensed funeral director shall not be denied access by a  
21 cemetery corporation to conduct a funeral for or to supervise  
22 interment or disinterment of human remains.

23 Sec. 43. NEW SECTION. 523I.812 COUNTY AUDITOR AS  
24 TRUSTEE.

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

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

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

35 4. The county auditor shall make a full report of the

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

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

8 Sec. 44. NEW SECTION. 523I.813 MEMORIALS AND  
9 MEMORIALIZATION.

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

19 2. CONFORMITY WITH CEMETERY CORPORATION RULES. A person  
20 selling a memorial shall review the rules of the cemetery  
21 corporation for the cemetery where the memorial is to be  
22 installed to ensure that the memorial will comply with those  
23 rules prior to ordering or manufacturing the memorial.

24 3. SPECIFICATIONS. Upon request, a cemetery corporation  
25 shall provide reasonable written specifications and  
26 instructions governing installation of memorials, which shall  
27 apply to all installations whether performed by the cemetery  
28 corporation or another person. The written specifications  
29 shall include provisions governing hours of installation or  
30 any other relevant administrative requirements of the  
31 cemetery. A copy of these specifications and instructions  
32 shall be provided upon request, without charge, to the owner  
33 of the interment space, next of kin, or a personal  
34 representative or agent of the owner, including the person  
35 installing the memorial. The person installing the memorial

1 shall comply with the cemetery corporation's written  
2 installation specifications and instructions. A cemetery  
3 corporation shall not adopt or enforce any rule prohibiting  
4 the installation of a memorial by a memorial dealer or  
5 independent third party, unless the rule is adopted and  
6 enforced uniformly for all memorials installed in the  
7 cemetery.

8 4. WRITTEN NOTICE. A memorial dealer or independent third  
9 party shall provide the cemetery corporation with at least  
10 seven days' prior written notice of intent to install a  
11 memorial at the cemetery, or such lesser notice as the  
12 cemetery corporation deems acceptable. The notice shall  
13 contain the full name, address, and relationship of the  
14 memorial's purchaser to the person interred in the interment  
15 space or the owner of the interment space, if different. The  
16 notice shall also contain the color, type, and size of the  
17 memorial, the material, the inscription, and the full name and  
18 interment date of the person interred in the interment space.

19 5. PREPARATION AND INSTALLATION.

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

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

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

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

35 e. The cemetery corporation shall, without charge, provide

1 information as described on the cemetery's map or plat  
2 necessary to locate the place where a memorial is to be  
3 installed and any other essential information the person  
4 installing the memorial needs to locate the proper interment  
5 space.

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

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

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

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

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

24 k. If the person who is installing a memorial damages any  
25 cemetery property, the person shall notify the cemetery  
26 corporation immediately. The person installing the memorial  
27 shall then repair the damage as soon as possible, upon  
28 approval by the cemetery corporation. The cemetery  
29 corporation may require a person installing a memorial to  
30 provide current proof of workers' compensation insurance as  
31 required by state law and current proof of liability  
32 insurance, sufficient to indemnify the cemetery corporation  
33 against claims resulting from installation of the memorial.  
34 Proof of liability insurance in an amount of one million  
35 dollars or more shall preclude the cemetery corporation from

1 requiring a person installing a memorial to obtain a  
2 performance bond.

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

7 6. INSPECTION. A cemetery corporation may inspect the  
8 installation site of a memorial at any time. If the cemetery  
9 corporation determines that cemetery corporation rules are not  
10 being followed during the installation, the cemetery  
11 corporation may order the installation to stop until the  
12 infraction is corrected. The cemetery corporation shall  
13 provide written notice to the installer within seven days if  
14 the cemetery corporation believes that any of the following  
15 have occurred:

16 a. The memorial has not been installed correctly.

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

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

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

33 8. FAULTY INSTALLATION. If a memorial sinks, tilts, or  
34 becomes misaligned within twelve months of its installation  
35 and the cemetery corporation believes the cause is faulty

1 installation, the cemetery corporation shall notify the person  
2 who installed the memorial in writing and the person who  
3 installed the memorial shall be responsible to correct the  
4 damage, unless the damage is caused by inadequate written  
5 specifications and instructions from the cemetery corporation  
6 or acts of the cemetery corporation and its agents or  
7 employees, including but not limited to running a backhoe over  
8 the memorial, carrying a vault or other heavy equipment over  
9 the memorial, or opening or closing an interment space  
10 adjacent to the memorial.

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

15 Sec. 45. NEW SECTION. 5231.814 INTERMENT, RELOCATION, OR  
16 DISINTERMENT OF REMAINS.

17 1. Unless a decedent has left directions in writing for  
18 the disposition of the decedent's remains as provided in  
19 subsection 2, the following persons, in the priority listed,  
20 shall have the right to control the interment, relocation, or  
21 disinterment of the decedent's remains within or from a  
22 cemetery:

23 a. The person designated in a written instrument signed by  
24 the decedent.

25 b. The surviving spouse of the decedent.

26 c. A surviving adult child of the decedent.

27 d. A surviving parent of the decedent.

28 e. A surviving adult sibling of the decedent.

29 f. Any adult person in the next degree of kinship in the  
30 order named by law to inherit the estate of the decedent under  
31 the rules of inheritance for intestate succession.

32 2. The written instrument referred to in subsection 1,  
33 paragraph "a", shall be in substantially the following form:

34 DIRECTIONS FOR DISPOSITION OF MY REMAINS  
35 Name of person whose remains are to be disposed of as

1 directed (decedent):

2 Address:

3 Telephone Number:

4 Acceptance of Appointment: (signature of agent)

5 Date of Signature:

6 SUCCESSORS

7 If my agent dies, becomes legally disabled, resigns, or  
8 refuses to act, I hereby appoint the following persons (each  
9 to act alone and successively, in the order named) to serve as  
10 my agent (attorney-in-fact) to control the disposition of my  
11 remains as authorized by this document:

12 First Successor

13 Name:

14 Address:

15 Telephone Number:

16 Acceptance of Appointment: (signature of first successor)

17 Date of Signature:

18 Second Successor

19 Name:

20 Address:

21 Telephone Number:

22 Acceptance of Appointment: (signature of second successor)

23 Date of Signature:

24 DURATION

25 This appointment becomes effective upon my death.

26 PRIOR APPOINTMENTS REVOKED

27 I hereby revoke any prior appointment of any person to  
28 control the disposition of my remains.

29 RELIANCE

30 I hereby agree that any cemetery corporation, business  
31 operating a crematory or columbarium or both, funeral director  
32 or embalmer, or funeral establishment that receives a copy of  
33 this document may act under it. Any modification or  
34 revocation of this document is not effective as to any such  
35 party until that party receives actual notice of the

S.F. \_\_\_\_\_ H.F. \_\_\_\_\_

1 modification or revocation. No such party shall be liable  
2 because of reliance on a copy of this document.

3 ASSUMPTION

4 THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS  
5 APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND  
6 BY THE PROVISIONS OF, SECTION 523I.814. Signed this \_\_\_\_\_ day  
7 of \_\_\_\_\_, \_\_\_\_.

8 3. A written instrument referred to in subsection 1,  
9 paragraph "a", is legally sufficient if the wording of the  
10 instrument complies substantially with subsection 2, the  
11 instrument is properly completed, the instrument is signed by  
12 the decedent, the agent, and each successor agent, and the  
13 signature of the decedent is acknowledged. Such written  
14 instrument may be modified or revoked only by a subsequent  
15 written instrument that complies with the requirements of this  
16 subsection.

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

24 5. A person may provide written directions for the  
25 interment, relocation, or disinterment of the person's own  
26 remains in a will, prepaid funeral or cemetery contract, or  
27 written instrument signed and acknowledged by the person. The  
28 directions may govern the inscription to be placed on a grave  
29 marker attached to any interment space in which the decedent  
30 had the right of interment at the time of death and in which  
31 interment space the decedent is subsequently interred. The  
32 directions may be modified or revoked only by a subsequent  
33 writing signed and acknowledged by the person. A person other  
34 than a decedent who is entitled to control the interment,  
35 relocation, or disinterment of a decedent's remains under this

1 section shall faithfully carry out the directions of the  
2 decedent to the extent that the decedent's estate or the  
3 person controlling the interment, relocation, or disinterment  
4 is financially able to do so.

5 6. If the decedent's directions for the interment of the  
6 decedent's remains are in a will, the directions shall be  
7 carried out immediately without the necessity of probate. If  
8 a will is not probated or is declared invalid for testamentary  
9 purposes, the directions for the interment of the decedent's  
10 remains are valid to the extent that they have been acted upon  
11 in good faith.

12 7. A cemetery corporation shall not be liable for carrying  
13 out the written directions of a decedent or the directions of  
14 any person entitled to control the interment, relocation, or  
15 disinterment of the decedent's remains.

16 8. A dispute among any of the persons listed in subsection  
17 1 concerning their right to control the interment, relocation,  
18 or disinterment of a decedent's remains may be resolved by a  
19 court of competent jurisdiction. A cemetery corporation shall  
20 not be liable for refusing to accept the decedent's remains,  
21 relocate or disinter, inter or otherwise dispose of the  
22 decedent's remains, until the cemetery corporation receives a  
23 court order or other suitable confirmation that the dispute  
24 has been resolved or settled.

25 9. a. If good cause exists to relocate or disinter  
26 remains interred in a cemetery, the remains may be removed  
27 from the cemetery with the written consent of the cemetery  
28 corporation, the current interment rights owner and the person  
29 entitled by this section to control the interment, relocation,  
30 or disinterment of the decedent's remains.

31 b. If the consent required by this subsection cannot be  
32 obtained, the remains may be relocated by permission of the  
33 district court of the county in which the cemetery is located.  
34 Before the date of application to the court for permission to  
35 relocate remains under this subsection, notice must be given

1 to the cemetery corporation that operates the cemetery in  
2 which the remains are interred, each person whose consent is  
3 required for relocation of the remains under subsection 1, and  
4 any other person that the court requires to be served.

5 c. For the purposes of this subsection, personal notice  
6 must be given not later than the eleventh day before the date  
7 of application to the court for permission to relocate the  
8 remains, or notice by certified mail or restricted certified  
9 mail must be given not later than the sixteenth day before the  
10 date of application.

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

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

20 a. The date the remains are removed.

21 b. The name of the decedent and age at death if those  
22 facts can be conveniently obtained.

23 c. The place to which the remains are removed.

24 d. The name of the cemetery and the location of the  
25 interment space from which the remains are removed.

26 11. A cemetery corporation may disinter and relocate  
27 remains interred in the cemetery for the purpose of correcting  
28 an error made by the cemetery corporation. The cemetery  
29 corporation shall provide written notice to the commissioner  
30 and to the person by restricted certified mail describing who  
31 has the right to control the interment, relocation, or  
32 disinterment of the remains erroneously interred, at the  
33 person's last known address and sixty days prior to the  
34 disinterment. The notice shall include the location where the  
35 disinterment will occur and the location of the new interment

1 space. A cemetery corporation is not civilly or criminally  
2 liable for an erroneously made interment that is corrected in  
3 compliance with this subsection unless the error was the  
4 result of gross negligence or intentional misconduct.

5 12. To the extent that any provision of section 135.11 or  
6 chapter 156 or any administrative rule adopted pursuant  
7 thereto is inconsistent with this, the provisions of this  
8 section shall apply.

9 Sec. 46. NEW SECTION. 523I.815 FEE AND CARE ASSESSMENTS  
10 AND MAINTENANCE FUNDS AT NONPERPETUAL CARE CEMETERIES.

11 1. a. On or after July 1, 2003, a cemetery corporation  
12 that operates a nonperpetual care cemetery shall, prior to  
13 selling any interment rights, establish a maintenance fund to  
14 provide funding for the maintenance of the cemetery.  
15 Maintenance fund income shall be applied in the manner the  
16 directors of the cemetery corporation determine is in the best  
17 interests of the cemetery, provided that, maintenance fund  
18 income shall be used only for the care described in a  
19 resolution, bylaw, or other action or instrument establishing  
20 the maintenance fund, including the general care and  
21 maintenance of memorials, memorialization, and the cemetery.  
22 Maintenance fund income may be used for any of the following  
23 purposes:

24 (1) Cutting and trimming lawns, shrubs, and trees at  
25 reasonable intervals.

26 (2) Maintaining drains, water lines, roads, buildings,  
27 fences, and other structures.

28 (3) Maintaining machinery, tools, and equipment.

29 (4) Compensating maintenance employees, paying insurance  
30 premiums, and making payments to employees' pension and  
31 benefit plans.

32 (5) Paying overhead expenses incidental to such payments.

33 (6) Paying expenses necessary to maintain ownership,  
34 transfer, and interment records of the cemetery.

35 b. The cemetery corporation's maintenance fund shall be

1 established as a separate fund. The principal of the  
2 maintenance fund is intended to remain available perpetually  
3 as a funding source for the care of the cemetery. The  
4 principal of the maintenance fund shall not be reduced  
5 voluntarily and must remain inviolable, except as provided in  
6 this section. The cemetery corporation shall maintain the  
7 principal of the maintenance fund separate from all operating  
8 funds of the cemetery corporation.

9 c. A cemetery corporation shall be responsible for the  
10 deposit of all moneys required to be placed in the maintenance  
11 fund. These moneys shall be invested or deposited in a  
12 financial account or accounts, unless the cemetery is a  
13 religious cemetery or a cemetery owned or operated by a  
14 political subdivision of this state. The maintenance fund may  
15 receive and hold as a part of the maintenance fund or as an  
16 incident to the maintenance fund any property contributed to  
17 the maintenance fund. Moneys to be deposited in a maintenance  
18 funds shall be deposited at a financial institution no later  
19 than the fifteenth day after the close of the month when the  
20 cemetery corporation receives the final payment from the  
21 purchaser.

22 d. The maintenance fund and contributions to the  
23 maintenance fund are for charitable purposes. The care  
24 financed by the maintenance fund constitutes the discharge of  
25 a duty due by the cemetery corporation to persons interred and  
26 to be interred in the cemetery and for the benefit and  
27 protection of the public by preserving and keeping the  
28 cemetery from becoming a place of disorder, reproach, and  
29 desolation in the community in which the cemetery is located.

30 e. A contribution to a maintenance fund is not invalid  
31 because of the following:

32 (1) Indefiniteness or uncertainty as to the identity of  
33 the person designated as a beneficiary in the instrument  
34 establishing the maintenance fund.

35 (2) A violation of the law against perpetuities or the law

1 against the suspension of the power of alienation of title to  
2 or use of property.

3 2. A financial institution holding moneys in a maintenance  
4 fund for a cemetery corporation shall not do any of the  
5 following:

6 a. Be owned, under the control of, or affiliated with a  
7 cemetery corporation.

8 b. Use any funds required to be deposited pursuant to this  
9 chapter to purchase an interest in a contract or agreement in  
10 which the cemetery corporation is a party.

11 c. Otherwise invest moneys in a maintenance fund, directly  
12 or indirectly, in a cemetery corporation's business  
13 operations.

14 3. A cemetery corporation shall make reasonable investment  
15 decisions and properly oversee and manage moneys in a  
16 maintenance fund. A cemetery corporation shall use the  
17 judgment and care, under the circumstances then prevailing,  
18 that a person of prudence, discretion, and intelligence  
19 exercises in the management of the person's own affairs,  
20 without speculation in the permanent disposition of the  
21 person's own funds, to ensure the probable safety of the  
22 person's capital. The commissioner may take enforcement  
23 action against a cemetery corporation for a breach of  
24 fiduciary duty proven under this chapter.

25 4. Moneys deposited in a maintenance fund may be  
26 commingled for investment purposes if separate accounting of  
27 principal, interest, and income is maintained for each  
28 cemetery and each deposit includes a detailed listing of the  
29 amount deposited in trust for each purchaser. A cemetery  
30 corporation may establish a common maintenance fund for two or  
31 more cemeteries into which deposits required under this  
32 chapter are made, provided that separate records of principal  
33 and income are maintained for each cemetery for the benefit of  
34 which the common maintenance fund is established.

35 5. A cemetery corporation may appoint an independent

1 investment adviser to advise the financial institution about  
2 investment of the moneys in a maintenance fund.

3 6. Subject to agreement between the parties, a financial  
4 institution may receive a reasonable fee from the maintenance  
5 fund for services performed on behalf of the maintenance fund.  
6 The maintenance fund shall pay the operation costs and any  
7 annual audit fees.

8 7. All moneys required to be deposited by the cemetery  
9 corporation shall be deposited in the name of the maintenance  
10 fund, pursuant to the terms of a written agreement and the  
11 cemetery corporation shall invest, reinvest, exchange, retain,  
12 sell, and otherwise manage the maintenance fund for the  
13 benefit and protection of the cemetery.

14 8. This section does not prohibit a cemetery corporation  
15 from moving moneys in a maintenance fund from one financial  
16 institution to another.

17 9. A cemetery corporation that operates a nonperpetual  
18 care cemetery shall collect a care assessment equal to or  
19 greater than the lesser of fifty dollars or twenty percent of  
20 the gross selling price received by the cemetery corporation  
21 for the sale of interment rights. The cemetery corporation  
22 shall also collect a five dollar fee assessment from each  
23 purchaser of interment rights. The fee assessments collected  
24 by the cemetery corporation shall be submitted to the  
25 commissioner no later than April 1 of the calendar year  
26 following collection and shall be deposited in the insurance  
27 division's cemetery fund. The care assessments shall be  
28 deposited in the cemetery corporation's maintenance fund.

29

#### SUBCHAPTER 9

30

#### ACCESS TO CEMETERIES

31

32 Sec. 47. NEW SECTION. 523I.901 ACCESS TO INACTIVE  
33 CEMETERIES BY HISTORICAL COMMISSIONS AND CEMETERY PRESERVATION  
34 ASSOCIATIONS.

34

35 1. After reasonable written notice sent to a property  
owner at the property owner's last known address,

1 representatives of local historical commissions and  
2 associations dedicated to the preservation of cemeteries shall  
3 have an easement for ingress and egress for purposes of  
4 visiting a cemetery at reasonable times and in a reasonable  
5 manner and may enter upon the land of a private or family  
6 cemetery for the purpose of conducting official business.

7 2. Entry onto the property to visit a cemetery pursuant to  
8 subsection 1 shall not unreasonably interfere with the  
9 enjoyment of the property by the property owner. The property  
10 owner may specify a reasonable route which visitors to a  
11 cemetery pursuant to subsection 1 must use in all entries and  
12 exits from the property.

13 Sec. 48. NEW SECTION. 523I.902 ACCESS TO CEMETERIES BY  
14 INDIVIDUALS -- MAINTENANCE BY RELATIVES AND DESCENDANTS.

15 1. A person who wishes to visit a cemetery or private  
16 burial ground for which no public ingress or egress is  
17 available shall have the right to reasonable ingress and  
18 egress for the purpose of visiting a cemetery or private  
19 burial grounds. This right of access extends only to  
20 visitation during reasonable hours and only for purposes  
21 usually associated with cemetery visits.

22 2. Relatives and descendants of a person interred in a  
23 cemetery, or a designee, shall have an easement for ingress  
24 and egress for the purpose of visiting the cemetery at  
25 reasonable times and in a reasonable manner.

26 3. A property owner may specify a reasonable route which  
27 the visitors must use in all entries and exits from the  
28 property. If a cemetery is abandoned or otherwise not being  
29 maintained, relatives or descendants of a person interred in  
30 the cemetery may ask the property owner to provide for  
31 reasonable maintenance of the cemetery.

32 4. If a property owner fails to care for an occupied  
33 interment space within two weeks after a request by the  
34 relatives or decedents of a person interred in the interment  
35 space, the relatives and descendants of a person interred in

1 the interment space, or their designees, shall have the right  
2 to maintain the occupied interment space.

3 Sec. 49. NEW SECTION. 523I.903 ACCESS TO CEMETERIES FOR  
4 BURIALS AND THE USE OF MOTORIZED VEHICLES OR MAINTENANCE  
5 EQUIPMENT.

6 1. Upon reasonable written notice sent to a property owner  
7 at the property owner's last known address, a property owner  
8 shall not unreasonably interfere with access to a cemetery by  
9 anyone involved with or attending a memorial service or burial  
10 at the cemetery or involved with the installation of a  
11 memorial or memorialization. A property owner may specify a  
12 reasonable route which visitors must use in all entries and  
13 exits from the property.

14 2. The right of ingress and egress provided by this  
15 subchapter shall include access by motorized vehicles involved  
16 with funeral and burial processions. If notice to the  
17 landowner is provided by September 1 of the prior year, the  
18 right of ingress and egress provided by this subchapter shall  
19 include access by motorized vehicles and equipment necessary  
20 for repairs and maintenance. The landowner may specify a  
21 reasonable route which the visitors must use in all entries  
22 and exits from the property.

23

#### SUBCHAPTER 10

24

#### GOVERNMENTAL SUBDIVISIONS

25 Sec. 50. NEW SECTION. 523I.1001 CEMETERY AUTHORIZED.

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

31 Sec. 51. NEW SECTION. 523I.1002 TRUST FOR CEMETERY.

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

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

8 Sec. 52. NEW SECTION. 523I.1003 AUTHORITY TO RECEIVE  
9 GIFTS AND DEPOSITS FOR CARE -- CERTIFICATES.

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

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

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

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

25 a. The depositor's name.

26 b. The amount and purpose of the deposit.

27 c. The location, with as much specificity as possible, of  
28 the interment space to be maintained.

29 d. Other information required by the governmental  
30 subdivision.

31 5. An individual, association, foundation, or corporation  
32 that is interested in the maintenance of a neglected cemetery  
33 in a governmental subdivision's possession and control may  
34 donate funds to the cemetery's perpetual trust fund to  
35 beautify and maintain the entire cemetery or burial grounds

1 generally.

2 Sec. 53. NEW SECTION. 523I.1004 INVESTMENT OF CARE  
3 FUNDS.

4 Notwithstanding section 12B.10, a cemetery corporation  
5 owned by a governmental subdivision may invest and reinvest  
6 deposits under this subchapter as set forth in section  
7 523I.1203. The trustee of the trust funds has a fiduciary  
8 duty to make reasonable investment decisions and to properly  
9 oversee and manage the funds entrusted to the trust fund.

10 Sec. 54. NEW SECTION. 523I.1005 APPOINTMENT OF SUCCESSOR  
11 TRUSTEE.

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

19 Sec. 55. NEW SECTION. 523I.1006 PRIVATE CARE OF GRAVES.

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

26 SUBCHAPTER 11

27 COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES

28 Sec. 56. NEW SECTION. 523I.1101 NEGLECTED CEMETERIES.

29 The commissioner shall create a form that interested  
30 persons may use to report neglected cemeteries to the  
31 commissioner and the county board of supervisors. The board  
32 of supervisors of each county shall accept any neglected  
33 cemetery report forms filed with the board and submit copies  
34 of such report forms received during calendar years 2004,  
35 2005, and 2006 to the commissioner no later than March 1 of

1 the year following receipt. The commissioner shall prepare an  
2 annual summary of the report forms received, organized by  
3 county.

4 Sec. 57. NEW SECTION. 523I.1102 CONDEMNATION OF  
5 NEGLECTED CEMETERIES.

6 1. When a nonreligious cemetery within a county has been  
7 neglected in whole or in part by the owners, the county may  
8 acquire title to the cemetery by condemnation proceedings, to  
9 be instituted and conducted in the manner prescribed in the  
10 statutes providing for the exercise of the power of eminent  
11 domain by counties. A court with jurisdiction over such  
12 proceedings may, in its discretion, require the county to  
13 acquire the entire cemetery, in which event the county may use  
14 such part of the cemetery as may be necessary for its purposes  
15 and sell the residue. Upon a showing of good cause, the court  
16 may direct that, if possible, remains interred in the cemetery  
17 be removed to another cemetery.

18 2. In the event that the proceeds from the condemnation  
19 proceedings are insufficient to defray the costs of the suit  
20 and removal and reinterment of the remains, then any  
21 additional funds needed shall be paid by the county  
22 instituting the suit. After payment of proper costs, any  
23 residue of the proceeds shall be paid to the parties entitled  
24 thereto. If there are any unknown parties who are entitled to  
25 a portion of the proceeds, the county shall hold such amount  
26 in trust for those parties, without any accrual of interest or  
27 income. If any amount held in trust is not claimed within  
28 seven years from the date of condemnation or sale of the  
29 cemetery, or a portion thereof, title to the unclaimed funds  
30 shall pass pursuant to the statute of escheats.

31 Sec. 58. NEW SECTION. 523I.1103 REMOVAL OF REMAINS.

32 1. Upon a showing of good cause, a county cemetery  
33 commission may file suit in a district court in that county to  
34 have remains interred in a cemetery owned and operated by the  
35 commission removed to another cemetery. All persons in

1 interest, known or unknown, other than the plaintiffs, shall  
2 be made defendants to the suit. If any parties are unknown,  
3 notice may be given by publication. After hearing and a  
4 showing of good cause for the removal, the court may order the  
5 removal of the remains and the remains shall be properly  
6 interred in another cemetery, at the expense of the county.  
7 The removal and reinterment of the remains shall be done  
8 pursuant to a disinterment permit issued under section 144.34  
9 with due care and decency.

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

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

32

## SUBCHAPTER 12

33

### PERPETUAL CARE CEMETERIES

34

Sec. 59. NEW SECTION. 523I.1201 APPLICABILITY.

35

1. All cemeteries are designated as either "perpetual care

1 cemeteries" or "nonperpetual care cemeteries" for the purposes  
2 of this chapter.

3 2. A cemetery corporation organized or commencing business  
4 in this state on or after July 1, 1995, shall operate as a  
5 perpetual care cemetery and is subject to this subchapter.

6 3. A cemetery corporation that represents that it is  
7 offering perpetual care is subject to this subchapter.

8 4. A cemetery corporation that operates a nonperpetual  
9 care cemetery may elect to become a perpetual care cemetery by  
10 complying with the terms of section 523I.1202, if at all times  
11 subsequent to the date of the election, the cemetery  
12 corporation complies with the other requirements of this  
13 subchapter except section 523I.1203, subsection 1.

14 Sec. 60. NEW SECTION. 523I.1202 TRUST AGREEMENT --  
15 IRREVOCABLE TRUST.

16 1. A cemetery corporation operating as a perpetual care  
17 cemetery shall execute a trust instrument and establish an  
18 irrevocable trust fund to provide for the care and maintenance  
19 of the cemetery.

20 2. The trust agreement shall provide for the appointment  
21 of at least one trustee, with perpetual succession, in case  
22 the cemetery corporation is dissolved or ceases to be  
23 responsible for the cemetery's care and maintenance.

24 3. A cemetery corporation and the trustee or trustees of  
25 the trust fund may, by agreement, amend the instrument that  
26 established the fund to include any provision that is  
27 necessary to comply with the requirements of this chapter.

28 4. A cemetery corporation shall be responsible for the  
29 deposit of all moneys required to be placed in a trust fund.

30 5. The commissioner may require amendments to a trust  
31 agreement that is not in accord with the provisions of this  
32 chapter.

33 Sec. 61. NEW SECTION. 523I.1203 TRUST FUND REQUIREMENTS.

34 1. A religious cemetery or a cemetery owned or operated by  
35 a political subdivision of this state is not required to make

1 a minimum initial deposit in a trust fund. A cemetery  
2 corporation organized or commencing business in this state on  
3 or after July 1, 1995, shall not commence operations as a  
4 perpetual care cemetery unless the cemetery corporation has a  
5 trust fund of at least twenty-five thousand dollars in cash.

6 2. If an initial deposit is made by a cemetery corporation  
7 to satisfy subsection 1, the initial twenty-five thousand  
8 dollar deposit may be withdrawn by the cemetery corporation  
9 when the trust fund balance reaches one hundred thousand  
10 dollars. An affidavit shall be filed with the commissioner  
11 providing prior notice of the intended withdrawal of the  
12 initial deposit and attesting that the money has not  
13 previously been withdrawn. Upon a showing by the cemetery  
14 corporation that the initial deposit has not previously been  
15 withdrawn, the commissioner shall approve withdrawal of the  
16 money and the withdrawal shall take place within one year  
17 after the trust fund balance reaches one hundred thousand  
18 dollars.

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

30 4. A trust fund must be established at a financial  
31 institution, unless the cemetery is a religious cemetery or a  
32 cemetery owned or operated by a governmental subdivision of  
33 this state.

34 a. A financial institution may serve as a trustee if  
35 granted those powers under the laws of this state or of the

1 United States. A financial institution acting as a trustee of  
2 trust funds under this chapter shall invest the funds in  
3 accordance with applicable law.

4 b. A financial institution acting as a trustee of trust  
5 funds under this chapter has a fiduciary duty to make  
6 reasonable investment decisions and to properly oversee and  
7 manage the funds entrusted to the financial institution. A  
8 trustee shall use the judgment and care, under the  
9 circumstances then prevailing, that a person of prudence,  
10 discretion, and intelligence exercises in the management of  
11 the person's own affairs, without speculation, in the  
12 permanent disposition of a person's own funds to ensure the  
13 probable safety of the person's capital. The commissioner may  
14 take enforcement action against a financial institution in its  
15 capacity as trustee for a breach of fiduciary duty proven  
16 under this chapter.

17 c. Moneys deposited under a master trust agreement may be  
18 commingled by the financial institution for investment  
19 purposes if separate accounting of principal, interest, and  
20 income is maintained for each cemetery and each deposit  
21 includes a detailed listing of the amount deposited in trust  
22 for each purchaser. The trustors of two or more care funds  
23 may establish a common trust fund in which deposits required  
24 under this chapter are made, provided that separate records of  
25 principal and income are maintained for each perpetual care  
26 cemetery for the benefit of which the common trust fund is  
27 established.

28 d. Subject to a master trust agreement, the cemetery  
29 corporation may appoint an independent investment adviser to  
30 advise the financial institution about investment of the trust  
31 fund.

32 e. Subject to an agreement between the cemetery  
33 corporation and the financial institution, the financial  
34 institution may receive a reasonable fee from the trust fund  
35 for services rendered as trustee. The trust fund shall pay

1 the trust operation costs and any annual audit fees.

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

10 (1) Be owned, under the control of, or affiliated with a  
11 cemetery corporation.

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

15 (3) Otherwise invest trust funds, directly or indirectly,  
16 in a cemetery corporation's business operations.

17 5. Moneys shall be deposited in the trust fund no later  
18 than the fifteenth day after the close of the month when the  
19 cemetery corporation receives the final payment from a  
20 purchaser of interment rights in an amount equal to or greater  
21 than either of the following:

22 a. The greater of fifty dollars or twenty percent of the  
23 gross selling price received by the cemetery for the sale of  
24 interment rights.

25 b. The amount charged for the perpetual care and special  
26 care of a memorial or memorialization placed in the cemetery.  
27 A fee for memorial care shall be uniformly charged on every  
28 installation of a memorial in the cemetery based upon the size  
29 of the memorial, using the height and width of the memorial or  
30 the size of the ground surface area used for the memorial. A  
31 fee for special care of a memorial may be collected if the  
32 terms of the special care items and arrangements are clearly  
33 specified in the interment rights purchase agreement. A  
34 cemetery corporation's liability for acts of God and vandalism  
35 is limited to income available from the care fund.

1 6. All moneys required to be deposited in the trust fund  
2 by the cemetery corporation shall be deposited in the name of  
3 the trustee, as trustee, under the terms of a trust agreement  
4 and the trustee may invest, reinvest, exchange, retain, sell,  
5 and otherwise manage the trust for the benefit and protection  
6 of the cemetery.

7 7. This section does not prohibit a cemetery corporation  
8 from moving trust funds from one financial institution to  
9 another.

10 8. A trust fund may receive and hold as a part of the fund  
11 or as an incident to the fund any property contributed to the  
12 fund.

13 9. The trust fund and contributions to the trust fund are  
14 for charitable purposes. The care financed by the fund is for  
15 the following purposes:

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

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

24 10. A contribution to a trust fund is not invalid because  
25 of any of the following:

26 a. Indefiniteness or uncertainty as to the person  
27 designated as a beneficiary in the instrument establishing the  
28 fund.

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

32 Sec. 62. NEW SECTION. 523I.1204 PURPOSES OF CARE FUND.

33 1. The principal of a care fund is intended to remain  
34 available perpetually as a funding source for care of the  
35 cemetery. The principal of the fund shall not be reduced

1 voluntarily and shall remain inviolable, except as provided in  
2 this section. The trustee or trustees of the care fund shall  
3 maintain the principal of the care fund separate from all  
4 operating funds of the cemetery corporation.

5 2. In establishing a care fund, the cemetery corporation  
6 may adopt plans for the care of the cemetery and installed  
7 memorials and memorialization.

8 3. A cemetery corporation may, by resolution adopted by a  
9 vote of at least two-thirds of the members of its board at any  
10 authorized meeting of the board, authorize the withdrawal and  
11 use of not more than twenty percent of the principal of the  
12 care fund to acquire additional land for cemetery purposes, to  
13 repair a mausoleum or other building or structure intended for  
14 cemetery purposes, or to build, improve, or repair roads and  
15 walkways in the cemetery. The resolution shall establish a  
16 reasonable repayment schedule, not to exceed five years, and  
17 provide for interest in an amount comparable to the care  
18 fund's current rate of return on its investments. However,  
19 the care fund shall not be diminished below an amount equal to  
20 the greater of one hundred thousand dollars or five thousand  
21 dollars per acre of land in the cemetery. The resolution, and  
22 either a bond or proof of insurance to guarantee replenishment  
23 of the care fund, shall be filed with the commissioner thirty  
24 days prior to the withdrawal of funds.

25 Sec. 63. NEW SECTION. 523I.1205 USE OF CARE FUND INCOME  
26 AND CAPITAL GAINS.

27 1. Care fund income may be used in a manner determined by  
28 the directors of the cemetery corporation to be in the best  
29 interests of the cemetery, provided that care fund income  
30 shall be used only for care that is described in a resolution,  
31 bylaw, or other action or instrument establishing the fund,  
32 including the general care and maintenance of memorials,  
33 memorialization, and the cemetery. Fund income may be used  
34 for any of the following purposes:

35 a. Cutting and trimming lawns, shrubs, and trees at

1 reasonable intervals.

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

4 c. Maintaining machinery, tools, and equipment.

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

8 e. Paying overhead expenses incidental to such purposes.

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

11 2. A cemetery corporation may, by amending the cemetery  
12 corporation trust agreement, elect to withdraw capital gains  
13 from the care fund, subject to the following conditions:

14 a. The amount of principal in the care fund shall be  
15 adjusted annually by allocating income or capital gains as  
16 necessary to adjust the principal of the care fund for  
17 inflation, based on the consumer price index as set by the  
18 commissioner and the amount of principal in the care fund at  
19 the beginning of the prior year. The amount of principal in  
20 the care fund shall also be adjusted by adding the amount of  
21 the deposits received during the prior year, as required by  
22 section 523I.1203, subsection 5.

23 b. For purposes of this section, "adjusted basis" means  
24 the total of the market value of the care fund on the date of  
25 the conversion, the aggregate amount of the inflation  
26 adjustments required by this section, and the aggregate amount  
27 of deposits received as required by section 523I.1203,  
28 subsection 5, since the date of the conversion.

29 c. If the adjusted basis of the care fund is more than the  
30 market value of the care fund at the end of the prior year,  
31 the cemetery corporation shall not withdraw capital gains. If  
32 the adjusted basis of the care fund is less than the market  
33 value of the care fund at the end of the prior year, an amount  
34 equal to fifty percent of the excess may be withdrawn and used  
35 for the cemetery's care.

1     Sec. 64. NEW SECTION. 523I.1206 SUIT BY OWNERS OR  
2 COMMISSIONER.

3     1. If the directors of a cemetery corporation do not care  
4 for and maintain the cemetery, the district court of the  
5 county in which the cemetery is located may do the following:

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

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

11    2. Grant relief on a petition for relief filed pursuant to  
12 this section by the commissioner or by at least five owners of  
13 interment rights in the cemetery.

14    Sec. 65. NEW SECTION. 523I.1207 ADVERTISING.

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

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

26    Sec. 66. NEW SECTION. 523I.1208 PERPETUAL CARE REGISTRY.

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

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

34    Sec. 67. NEW SECTION. 523I.1209 USE OF GIFT FOR SPECIAL  
35 CARE.

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

- 6 1. Improvement or embellishment of any part of the  
7 cemetery.
- 8 2. Erection, renewal, repair, or preservation of a  
9 monument, fence, building, or other structure in the cemetery.
- 10 3. Planting or cultivation of plants in or around the  
11 cemetery.
- 12 4. Special care of or embellishment of an interment space,  
13 section, or building in the cemetery.

14 Sec. 68. NEW SECTION. 523I.1210 GOVERNMENTAL  
15 SUBDIVISIONS.

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

21 Sec. 69. NEW SECTION. 523I.1211 ANNUAL REPORT BY  
22 PERPETUAL CARE CEMETERIES.

- 23 1. A cemetery corporation that operates a perpetual care  
24 cemetery corporation shall file a written report at the end of  
25 each fiscal year of the cemetery that includes the following:
  - 26 a. The name and address of the cemetery.
  - 27 b. The name and address of the cemetery corporation.
  - 28 c. An affidavit that the cemetery is in compliance with  
29 this chapter.
  - 30 d. Copies of all sales agreement forms used by the  
31 cemetery.
  - 32 e. The amount of the principal of the cemetery  
33 corporation's care funds at the end of the fiscal year.
  - 34 f. The number of interments made and interment spaces sold  
35 during the fiscal year.

1 2. The report and a five-dollar filing fee for each  
2 certificate of interment rights issued during the fiscal year  
3 of the cemetery shall be filed with the commissioner within  
4 four months following the end of the cemetery corporation's  
5 fiscal year in the form required by the commissioner. The  
6 filing fee may be charged directly to the purchaser of the  
7 interment rights.

8 Sec. 70. NEW SECTION. 523I.1212 UNIFIED ANNUAL REPORTS.

9 The commissioner shall permit the filing of a unified  
10 report in the event of commonly owned or affiliated  
11 cemeteries.

12 SUBCHAPTER 13

13 FRAUDULENT PRACTICES

14 Sec. 71. NEW SECTION. 523I.1301 MISLEADING FILINGS.

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

23 Sec. 72. NEW SECTION. 523I.1302 MISREPRESENTATIONS OF  
24 GOVERNMENT APPROVAL.

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

30 Sec. 73. NEW SECTION. 523I.1303 FRAUDULENT PRACTICES.

31 A person who commits any of the following acts commits a  
32 fraudulent practice and is punishable as provided in chapter  
33 714:

34 1. Knowingly fails to comply with any requirement of this  
35 chapter.

1 2. Knowingly makes, causes to be made, or subscribes to a  
2 false statement or representation in a report or other  
3 document required under this chapter, implementing rules, or  
4 orders, or renders such a report or document misleading  
5 through the deliberate omission of information properly  
6 belonging in the report or document.

7 3. Conspires to defraud in connection with the sale of  
8 memorials, memorialization, opening and closing services,  
9 scattering services, interment rights, or a combination  
10 thereof under this chapter.

11 4. Fails to deposit funds under section 523I.815 or  
12 section 523I.1203 or withdraws funds in a manner inconsistent  
13 with this chapter.

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

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

22 SUBCHAPTER 14

23 ADMINISTRATION AND ENFORCEMENT

24 Sec. 74. NEW SECTION. 523I.1401 ADMINISTRATION.

25 1. This chapter shall be administered by the commissioner.  
26 The deputy administrator appointed pursuant to section 502.601  
27 shall be the principal operations officer responsible to the  
28 commissioner for the routine administration of this chapter  
29 and management of the administrative staff. In the absence of  
30 the commissioner, whether because of vacancy in the office due  
31 to absence, physical disability, or other cause, the deputy  
32 administrator shall, for the time being, have and exercise the  
33 authority conferred upon the commissioner. The commissioner  
34 may by order from time to time delegate to the deputy  
35 administrator any or all of the functions assigned to the

1 commissioner in this chapter. The deputy administrator shall  
2 employ officers, attorneys, accountants, and other employees  
3 as needed for administering this chapter.

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

17 Sec. 75. NEW SECTION. 523I.1402 SCOPE.

18 1. This chapter applies to cemeteries, to any person  
19 advertising or offering memorials, memorialization, opening  
20 and closing services, scattering services at a cemetery,  
21 interment rights, or a combination thereof for sale, and to  
22 interments made in areas not dedicated as a cemetery by a  
23 person other than the state archaeologist.

24 2. This chapter applies when a purchase agreement is  
25 executed within this state or an advertisement, promotion, or  
26 offer to furnish memorials, memorialization, opening and  
27 closing services, scattering services, interment rights, or a  
28 combination thereof is made or accepted within this state. An  
29 offer to furnish memorials, memorialization, opening and  
30 closing services, scattering services, interment rights, or a  
31 combination thereof is made within this state, whether or not  
32 either party is then present in this state, when the offer  
33 originates from this state or is directed by the offeror to  
34 this state and received by the offeree in this state through  
35 the mail, over the telephone, by the internet, or through any

1 other means of commerce.

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

9 Sec. 76. NEW SECTION. 523I.1403 INVESTIGATIONS AND  
10 SUBPOENAS.

11 1. The commissioner may, for the purpose of discovering  
12 violations of this chapter, or implementing rules or orders  
13 issued under this chapter:

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

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

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

33 d. Investigate the cemetery corporation and examine the  
34 books, accounts, papers, correspondence, memoranda, purchase  
35 agreements, files, or other documents or records used by every

1 applicant and permit holder under this chapter.

2 e. Administer oaths and affirmations, subpoena witnesses,  
3 compel their attendance, take evidence, and require the  
4 production of any books, accounts, papers, correspondence,  
5 memoranda, purchase agreements, files, or other documents or  
6 records which the commissioner deems relevant or material to  
7 any investigation or proceeding under this chapter and  
8 implement rules, all of which may be enforced under chapter  
9 17A.

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

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

24 Sec. 77. NEW SECTION. 523I.1404 MEDIATION.

25 1. The commissioner may order a cemetery corporation to  
26 participate in mediation in any dispute regarding a purchase  
27 agreement. Mediation performed under this section shall be  
28 conducted by a mediator appointed by the commissioner and  
29 shall comply with the provisions of chapter 679C.

30 2. Mediation of disputes pursuant to subsection 1 shall  
31 include attendance at a mediation session with a mediator and  
32 the parties to the dispute, listening to the mediator's  
33 explanation of the mediation process by the mediator,  
34 presentation of each party's view of the dispute, and  
35 listening to the response by the other party. Participation

1 in mediation does not require that the parties reach a  
2 mediation agreement.

3 3. Parties to the mediation shall have the right to advice  
4 and presence of counsel at all times. The parties to the  
5 mediation shall present any mediation agreement reached  
6 through the mediation to the commissioner. If a mediation  
7 agreement is not reached, the mediator shall file a report  
8 with the commissioner. The costs of the mediation shall be  
9 approved by the commissioner and shall be borne by the  
10 insurance division's cemetery fund created pursuant to section  
11 523I.1413.

12 Sec. 78. NEW SECTION. 523I.1405 CEASE AND DESIST ORDERS  
13 -- INJUNCTIONS.

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

19 1. Issue a summary order directed to the person that  
20 requires the person to cease and desist from engaging in such  
21 act or practice. A person may request a hearing within thirty  
22 days of issuance of the summary order. If a hearing is not  
23 timely requested, the summary order shall become final by  
24 operation of law. The order shall remain effective from the  
25 date of issuance until the date the order becomes final by  
26 operation of law or is overturned by a presiding officer  
27 following a request for hearing. Section 17A.18A is  
28 inapplicable to summary cease and desist orders issued under  
29 this section.

30 2. Bring an action in the district court in any county of  
31 the state for an injunction to restrain a person subject to  
32 this chapter and any agents, employees, or associates of the  
33 person from engaging in conduct or practices deemed contrary  
34 to the public interest. In any proceeding for an injunction,  
35 the commissioner or attorney general may apply to the court

1 for a subpoena to require the appearance of a defendant and  
2 the defendant's agents, employees, or associates and for the  
3 production of any books, accounts, papers, correspondence,  
4 memoranda, purchase agreements, files, or other documents or  
5 records germane to the hearing upon the petition for an  
6 injunction. Upon a proper showing, a permanent or temporary  
7 injunction, restraining order, or writ of mandamus shall be  
8 granted and a receiver may be appointed for the defendant or  
9 the defendant's assets. The commissioner or attorney general  
10 shall not be required to post a bond.

11 Sec. 79. NEW SECTION. 523I.1406 COURT ACTION FOR FAILURE  
12 TO COOPERATE.

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

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

24 b. Revocation or suspension of a permit issued under this  
25 chapter.

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

29 d. Such other relief as may be required.

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

33 Sec. 80. NEW SECTION. 523I.1407 PROSECUTION FOR  
34 VIOLATIONS OF LAW.

35 1. A violation of this chapter or rules adopted or orders

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

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

16 Sec. 81. NEW SECTION. 523I.1408 COOPERATION WITH OTHER  
17 AGENCIES.

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

23 2. Cooperation with other agencies may include but is not  
24 limited to:

25 a. Making a joint examination or investigation.

26 b. Holding a joint administrative hearing.

27 c. Filing and prosecuting a joint civil or administrative  
28 proceeding.

29 d. Sharing and exchanging personnel.

30 e. Sharing and exchanging relevant information and  
31 documents.

32 f. Formulating, in accordance with chapter 17A, rules or  
33 proposed rules on matters such as statements of policy,  
34 regulatory standards, guidelines, and interpretive opinions.

35 Sec. 82. NEW SECTION. 523I.1409 RULES, FORMS, AND

1 ORDERS.

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

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

14 3. A provision of this chapter imposing any liability does  
15 not apply to an act done or omitted in good faith in  
16 conformity with any rule, form, or order of the commissioner,  
17 notwithstanding that the rule, form, or order may later be  
18 amended or rescinded or be determined by judicial or other  
19 authority to be invalid for any reason.

20 Sec. 83. NEW SECTION. 523I.1410 DATE OF FILING --  
21 INTERPRETIVE OPINIONS.

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

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

26 Sec. 84. NEW SECTION. 523I.1411 RECEIVERSHIPS.

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

31 a. Is insolvent.

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

34 c. The amount of care funds currently held in trust for  
35 perpetual care is less than the amount required by this

1 chapter.

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

7 Sec. 85. NEW SECTION. 523I.1412 LIQUIDATION PROCEDURES.

8 1. GROUNDS FOR LIQUIDATION. The commissioner may petition  
9 the district court for an order directing the commissioner to  
10 liquidate a cemetery corporation on any of the following  
11 grounds:

12 a. The cemetery corporation did not deposit funds pursuant  
13 to subchapter 12 or withdrew funds in a manner inconsistent  
14 with this chapter and is insolvent.

15 b. The cemetery corporation did not deposit funds pursuant  
16 to subchapter 12 or withdrew funds in a manner inconsistent  
17 with this chapter and the condition of the cemetery  
18 corporation is such that further transaction of business would  
19 be hazardous, financially or otherwise, to purchasers or the  
20 public.

21 2. LIQUIDATION ORDER.

22 a. An order to liquidate the business of a cemetery  
23 corporation shall appoint the commissioner as liquidator and  
24 shall direct the liquidator to immediately take possession of  
25 the assets of the cemetery corporation and to administer them  
26 under the general supervision of the court. The liquidator is  
27 vested with the title to the property, contracts, rights of  
28 action, and the books and records of the cemetery corporation,  
29 wherever located, that is ordered liquidated as of the entry  
30 of the final order of liquidation. The filing or recording of  
31 the order with the clerk of court and the recorder of deeds of  
32 the county in which the principal office or place of business  
33 of the cemetery corporation is located, or, in the case of  
34 real estate with the recorder of deeds of the county where the  
35 property is located, constitutes the same notice as a deed,

1 bill of sale, or other evidence of title duly filed or  
2 recorded with the recorder of deeds.

3 b. Upon issuance of an order, the rights and liabilities  
4 of a cemetery corporation and of the cemetery corporation's  
5 creditors, purchasers, owners, and other persons interested in  
6 the cemetery corporation's estate shall become fixed as of the  
7 date of the entry of the order of liquidation, except as  
8 provided in subsection 14.

9 c. At the time of petitioning for an order of liquidation,  
10 or at any time after the time of petitioning, the  
11 commissioner, after making appropriate findings of a cemetery  
12 corporation's insolvency, may petition the court for a  
13 declaration of insolvency. After providing notice and hearing  
14 as it deems proper, the court may make the declaration.

15 d. An order issued under this section shall require  
16 accounting to the court by the liquidator. Accountings, at a  
17 minimum, must include all funds received or disbursed by the  
18 liquidator during the current period. An accounting shall be  
19 filed within one year of the liquidation order and at such  
20 other times as the court may require.

21 e. Within five days after the initiation of an appeal of  
22 an order of liquidation, which order has not been stayed, the  
23 commissioner shall present for the court's approval a plan for  
24 the continued performance of the cemetery corporation's  
25 obligations during the pendency of an appeal. The plan shall  
26 provide for the continued performance of interment rights  
27 agreements in the normal course of events, notwithstanding the  
28 grounds alleged in support of the order of liquidation  
29 including the ground of insolvency. If the defendant cemetery  
30 corporation's financial condition, in the judgment of the  
31 commissioner, will not support the full performance of all  
32 obligations during the appeal pendency period, the plan may  
33 prefer the claims of certain purchasers and claimants over  
34 creditors and interested parties as well as other purchasers  
35 and claimants, as the commissioner finds to be fair and

1 equitable, considering the relative circumstances of such  
2 purchasers and claimants. The court shall examine the plan  
3 submitted by the commissioner and if it finds the plan to be  
4 in the best interests of the parties, the court shall approve  
5 the plan. An action shall not lie against the commissioner or  
6 any of the commissioner's deputies, agents, clerks,  
7 assistants, or attorneys by any party based on preference in  
8 an appeal pendency plan approved by the court.

9 3. POWERS OF LIQUIDATOR.

10 a. The liquidator may do any of the following:

11 (1) Appoint a special deputy to act for the liquidator  
12 under this chapter, and determine the special deputy's  
13 reasonable compensation. The special deputy shall have all  
14 the powers of the liquidator granted by this section. The  
15 special deputy shall serve at the pleasure of the liquidator.

16 (2) Hire employees and agents, legal counsel, accountants,  
17 appraisers, consultants, and other personnel as the  
18 commissioner may deem necessary to assist in the liquidation.

19 (3) With the approval of the court, fix reasonable  
20 compensation of employees and agents, legal counsel,  
21 accountants, appraisers, and consultants.

22 (4) Pay reasonable compensation to persons appointed and  
23 defray from the funds or assets of the cemetery corporation  
24 all expenses of taking possession of, conserving, conducting,  
25 liquidating, disposing of, or otherwise dealing with the  
26 business and property of the cemetery corporation. If the  
27 property of the cemetery corporation does not contain  
28 sufficient cash or liquid assets to defray the costs incurred,  
29 the commissioner may advance the costs so incurred out of the  
30 insurance division's cemetery fund. Amounts so advanced for  
31 expenses of administration shall be repaid to the insurance  
32 division's cemetery fund for the use of the division out of  
33 the first available moneys of the cemetery corporation.

34 (5) Hold hearings, subpoena witnesses, and compel their  
35 attendance, administer oaths, examine a person under oath, and

1 compel a person to subscribe to the person's testimony after  
2 it has been correctly reduced to writing, and in connection to  
3 the proceedings require the production of books, accounts,  
4 papers, correspondence, memoranda, purchase agreements, files,  
5 or other documents or records which the liquidator deems  
6 relevant to the inquiry.

7 (6) Collect debts and moneys due and claims belonging to  
8 the cemetery corporation, wherever located. Pursuant to this  
9 subparagraph, the liquidator may do any of the following:

10 (a) Institute timely action in other jurisdictions to  
11 forestall garnishment and attachment proceedings against  
12 debts.

13 (b) Perform acts as are necessary or expedient to collect,  
14 conserve, or protect its assets or property, including the  
15 power to sell, compound, compromise, or assign debts for  
16 purposes of collection upon terms and conditions as the  
17 liquidator deems best.

18 (c) Pursue any creditor's remedies available to enforce  
19 claims.

20 (7) Conduct public and private sales of the property of  
21 the cemetery corporation.

22 (8) Use assets of the cemetery corporation under a  
23 liquidation order to transfer obligations of purchase  
24 agreements to a solvent cemetery corporation, if the transfer  
25 can be accomplished without prejudice to the applicable  
26 priorities under subsection 18.

27 (9) Acquire, hypothecate, encumber, lease, improve, sell,  
28 transfer, abandon, or otherwise dispose of or deal with  
29 property of the cemetery corporation at its market value or  
30 upon terms and conditions as are fair and reasonable. The  
31 liquidator shall also have power to execute, acknowledge, and  
32 deliver deeds, assignments, releases, and other instruments  
33 necessary to effectuate a sale of property or other  
34 transaction in connection with the liquidation.

35 (10) Borrow money on the security of the cemetery

1 corporation's assets or without security and execute and  
2 deliver documents necessary to that transaction for the  
3 purpose of facilitating the liquidation. Money borrowed  
4 pursuant to this subparagraph shall be repaid as an  
5 administrative expense and shall have priority over any other  
6 class 1 claims under the priority of distribution established  
7 in subsection 18.

8 (11) Enter into contracts as necessary to carry out the  
9 order to liquidate and affirm or disavow contracts to which  
10 the cemetery corporation is a party.

11 (12) Continue to prosecute and to institute in the name of  
12 the cemetery corporation or in the liquidator's own name any  
13 and all suits and other legal proceedings, in this state or  
14 elsewhere, and to abandon the prosecution of claims the  
15 liquidator deems unprofitable to pursue further.

16 (13) Prosecute an action on behalf of the creditors,  
17 purchasers, or owners against an officer of the cemetery  
18 corporation or any other person.

19 (14) Remove records and property of the cemetery  
20 corporation to the offices of the commissioner or to other  
21 places as may be convenient for the purposes of efficient and  
22 orderly execution of the liquidation.

23 (15) Deposit in one or more banks in this state sums as  
24 are required for meeting current administration expenses and  
25 distributions.

26 (16) Unless the court orders otherwise, invest funds not  
27 currently needed.

28 (17) File necessary documents for recording in the office  
29 of the recorder of deeds or record office in this state or  
30 elsewhere where property of the cemetery corporation is  
31 located.

32 (18) Assert defenses available to the cemetery corporation  
33 against third persons, including statutes of limitations,  
34 statutes of fraud, and the defense of usury. A waiver of a  
35 defense by the cemetery corporation after a petition in

1 liquidation has been filed shall not bind the liquidator.

2 (19) Exercise and enforce the rights, remedies, and powers  
3 of a creditor, purchaser, or owner, including the power to  
4 avoid transfer or lien that may be given by the general law  
5 and that is not included within subsections 7 through 9.

6 (20) Intervene in a proceeding wherever instituted that  
7 might lead to the appointment of a receiver or trustee, and  
8 act as the receiver or trustee whenever the appointment is  
9 offered.

10 (21) Exercise powers now held or later conferred upon  
11 receivers by the laws of this state which are not inconsistent  
12 with this chapter.

13 b. This subsection does not limit the liquidator or  
14 exclude the liquidator from exercising a power not listed in  
15 paragraph "a" that may be necessary or appropriate to  
16 accomplish the purposes of this chapter.

17 4. NOTICE TO CREDITORS AND OTHERS.

18 a. Unless the court otherwise directs, the liquidator  
19 shall give notice of the liquidation order as soon as possible  
20 by doing both of the following:

21 (1) Mailing notice, by first-class mail, to all persons  
22 known or reasonably expected to have claims against the  
23 cemetery corporation, including purchasers, at their last  
24 known address as indicated by the records of the cemetery  
25 corporation.

26 (2) Publication of notice in a newspaper of general  
27 circulation in the county in which the cemetery corporation  
28 has its principal place of business and in other locations as  
29 the liquidator deems appropriate.

30 b. Notice to potential claimants under paragraph "a" shall  
31 require claimants to file with the liquidator their claims  
32 together with proofs of the claim under subsection 13 on or  
33 before a date the liquidator shall specify in the notice.  
34 Claimants shall keep the liquidator informed of their changes  
35 of address, if any.

1 c. If notice is given pursuant to this subsection, the  
2 distribution of assets of the cemetery corporation under this  
3 chapter shall be conclusive with respect to claimants, whether  
4 or not a claimant actually received notice.

5 5. ACTIONS BY AND AGAINST LIQUIDATOR.

6 a. After issuance of an order appointing a liquidator of a  
7 cemetery corporation, an action at law or equity shall not be  
8 brought against the cemetery corporation within this state or  
9 elsewhere, and existing actions shall not be maintained or  
10 further presented after issuance of the order. Whenever in  
11 the liquidator's judgment, protection of the estate of the  
12 cemetery corporation necessitates intervention in an action  
13 against the cemetery corporation that is pending outside this  
14 state, the liquidator may intervene in the action. The  
15 liquidator may defend, at the expense of the estate of the  
16 cemetery corporation, an action in which the liquidator  
17 intervenes under this section.

18 b. Within two years or such additional time as applicable  
19 law may permit, the liquidator, after the issuance of an order  
20 for liquidation, may institute an action or proceeding on  
21 behalf of the estate of the cemetery corporation upon any  
22 cause of action against which the period of limitation fixed  
23 by applicable law has not expired at the time of the filing of  
24 the petition upon which the order is entered. If a period of  
25 limitation is fixed by agreement for instituting a suit or  
26 proceeding upon a claim, or for filing a claim, proof of  
27 claim, proof of loss, demand, notice, or the like, or if in a  
28 proceeding, judicial or otherwise, a period of limitation is  
29 fixed in the proceeding or pursuant to applicable law for  
30 taking an action, filing a claim or pleading, or doing an act,  
31 and if the period has not expired at the date of the filing of  
32 the petition, the liquidator may, for the benefit of the  
33 estate, take any action or do any act, required of or  
34 permitted to the cemetery corporation, within a period of one  
35 hundred eighty days subsequent to the entry of an order for

1 liquidation, or within a further period as is shown to the  
2 satisfaction of the court not to be unfairly prejudicial to  
3 the other party.

4 c. A statute of limitations or defense of laches shall not  
5 run with respect to an action against a cemetery corporation  
6 between the filing of a petition for liquidation against the  
7 cemetery corporation and the denial of the petition. An  
8 action against the cemetery corporation that might have been  
9 commenced when the petition was filed may be commenced for at  
10 least sixty days after the petition is denied.

11 6. COLLECTION AND LIST OF ASSETS.

12 a. As soon as practicable after the liquidation order but  
13 not later than one hundred twenty days after such order, the  
14 liquidator shall prepare in duplicate a list of the cemetery  
15 corporation's assets. The list shall be amended or  
16 supplemented as the liquidator may determine. One copy shall  
17 be filed in the office of the clerk of court, and one copy  
18 shall be retained for the liquidator's files. Amendments and  
19 supplements shall be similarly filed.

20 b. The liquidator shall reduce the assets to a degree of  
21 liquidity that is consistent with the effective execution of  
22 the liquidation.

23 c. A submission of a proposal to the court for  
24 distribution of assets in accordance with subsection 11  
25 fulfills the requirements of paragraph "a".

26 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.

27 a. A transfer made and an obligation incurred by a  
28 cemetery corporation within one year prior to the filing of a  
29 successful petition for liquidation under this chapter is  
30 fraudulent as to then existing and future creditors if made or  
31 incurred without fair consideration, or with actual intent to  
32 hinder, delay, or defraud either existing or future creditors.  
33 A fraudulent transfer made or an obligation incurred by a  
34 cemetery corporation ordered to be liquidated under this  
35 chapter may be avoided by the liquidator, except as to a

1 person who in good faith is a purchaser, lienor, or obligee  
2 for a present fair equivalent value. A purchaser, lienor, or  
3 obligee, who in good faith has given consideration that is  
4 less than the present fair equivalent value for such transfer,  
5 lien, or obligation may retain the transfer, lien, or  
6 obligation as security for repayment. The court may, on due  
7 notice, order any such transfer, lien, or obligation to be  
8 preserved for the benefit of the cemetery corporation and in  
9 that event, the receiver shall succeed to and may enforce the  
10 rights of the purchaser, lienor, or obligee.

11 b. (1) A transfer of property other than real property is  
12 made when it becomes perfected so that a subsequent lien  
13 obtainable by legal or equitable proceedings on a simple  
14 contract could not become superior to the rights of the  
15 transferee under subsection 9, paragraph "c".

16 (2) A transfer of real property is made when it becomes  
17 perfected so that a subsequent bona fide purchaser from the  
18 cemetery corporation could not obtain rights superior to the  
19 rights of the transferee.

20 (3) A transfer that creates an equitable lien is not  
21 perfected if there are available means by which a legal lien  
22 could be perfected.

23 (4) A transfer not perfected prior to the filing of a  
24 petition for liquidation is deemed to be made immediately  
25 before the filing of the successful petition.

26 (5) This subsection applies whether or not there are or  
27 were creditors who might have obtained a lien or persons who  
28 might have become bona fide purchasers.

29 8. FRAUDULENT TRANSFER AFTER PETITION.

30 a. After a petition for liquidation has been filed, a  
31 transfer of real property of the cemetery corporation made to  
32 a person acting in good faith is valid against the liquidator  
33 if made for a present fair equivalent value. If the transfer  
34 is not made for a present fair equivalent value, the transfer  
35 is valid to the extent of the present consideration actually

1 paid for which amount the transferee shall have a lien on the  
2 property transferred. The commencement of a proceeding in  
3 liquidation is constructive notice upon the recording of a  
4 copy of the petition for or order of liquidation with the  
5 recording of deeds in the county where any real property in  
6 question is located. The exercise by a court of the United  
7 States or a state or jurisdiction to authorize a judicial sale  
8 of real property of the cemetery corporation within a county  
9 in a state shall not be impaired by the pendency of a  
10 proceeding unless the copy is recorded in the county prior to  
11 the consummation of the judicial sale.

12 b. After a petition for liquidation has been filed and  
13 before either the liquidator takes possession of the property  
14 of the cemetery corporation or an order of liquidation is  
15 granted:

16 (1) A transfer of the property, other than real property,  
17 of the cemetery corporation made to a person acting in good  
18 faith is valid against the liquidator if made for a present  
19 fair equivalent value. If the transfer was not made for a  
20 present fair equivalent value, then the transfer is valid to  
21 the extent of the present consideration actually paid for  
22 which amount the transferee shall have a lien on the property  
23 transferred.

24 (2) If acting in good faith, a person indebted to the  
25 cemetery corporation or holding property of the cemetery  
26 corporation may pay the debt or deliver the property, or any  
27 part of the property, to the cemetery corporation or upon the  
28 cemetery corporation's order as if the petition were not  
29 pending.

30 (3) A person having actual knowledge of the pending  
31 liquidation is not acting in good faith.

32 (4) A person asserting the validity of a transfer under  
33 this subsection has the burden of proof. Except as provided  
34 in this subsection, a transfer by or on behalf of the cemetery  
35 corporation after the date of the petition for liquidation by

1 any person other than the liquidator is not valid against the  
2 liquidator.

3 c. A person receiving any property from the cemetery  
4 corporation or any benefit of the property of the cemetery  
5 corporation which is a fraudulent transfer under paragraph "a"  
6 is personally liable for the property or benefit and shall  
7 account to the liquidator.

8 d. This chapter does not impair the negotiability of  
9 currency or negotiable instruments.

10 9. VOIDABLE PREFERENCES AND LIENS.

11 a. (1) A preference is a transfer of the property of a  
12 cemetery corporation to or for the benefit of a creditor for  
13 an antecedent debt made or suffered by the cemetery  
14 corporation within one year before the filing of a successful  
15 petition for liquidation under this chapter, the effect of  
16 which transfer may be to enable the creditor to obtain a  
17 greater percentage of this debt than another creditor of the  
18 same class would receive. If a liquidation order is entered  
19 while the cemetery corporation is already subject to a  
20 receivership, then the transfers are preferences if made or  
21 suffered within one year before the filing of the successful  
22 petition for the receivership, or within two years before the  
23 filing of the successful petition for liquidation, whichever  
24 time is shorter.

25 (2) A preference may be avoided by the liquidator if any  
26 of the following exist:

27 (a) The cemetery corporation was insolvent at the time of  
28 the transfer.

29 (b) The transfer was made within four months before the  
30 filing of the petition.

31 (c) At the time the transfer was made, the creditor  
32 receiving the transfer or to be benefited by the transfer or  
33 the creditor's agent acting with reference to the transfer had  
34 reasonable cause to believe that the cemetery corporation was  
35 insolvent or was about to become insolvent.

1 (d) The creditor receiving the transfer was an officer, or  
2 an employee, attorney, or other person who was in fact in a  
3 position of comparable influence in the cemetery corporation  
4 to an officer whether or not the person held the position of  
5 an officer, owner, or other person, firm, corporation,  
6 association, or aggregation of persons with whom the cemetery  
7 corporation did not deal at arm's length.

8 (3) Where the preference is voidable, the liquidator may  
9 recover the property. If the property has been converted, the  
10 liquidator may recover its value from a person who has  
11 received or converted the property. However, if a bona fide  
12 purchaser or lienor has given less than the present fair  
13 equivalent value, the purchaser or lienor shall have a lien  
14 upon the property to the extent of the consideration actually  
15 given. Where a preference by way of lien or security interest  
16 is voidable, the court may on due notice order the lien or  
17 security interest to be preserved for the benefit of the  
18 estate, in which event the lien or title shall pass to the  
19 liquidator.

20 b. (1) A transfer of property other than real property is  
21 made when it becomes perfected so that a subsequent lien  
22 obtainable by legal or equitable proceedings on a simple  
23 contract could not become superior to the rights of the  
24 transferee.

25 (2) A transfer of real property is made when it becomes  
26 perfected so that a subsequent bona fide purchaser from the  
27 cemetery corporation could not obtain rights superior to the  
28 rights of the transferee.

29 (3) A transfer which creates an equitable lien is not  
30 perfected if there are available means by which a legal lien  
31 could be created.

32 (4) A transfer not perfected prior to the filing of a  
33 petition for liquidation is deemed to be made immediately  
34 before the filing of the successful petition.

35 (5) This subsection applies whether or not there are or

1 were creditors who might have obtained liens or persons who  
2 might have become bona fide purchasers.

3 c. (1) A lien obtainable by legal or equitable  
4 proceedings upon a simple contract is one arising in the  
5 ordinary course of the proceedings upon the entry or docketing  
6 of a judgment or decree, or upon attachment, garnishment,  
7 execution, or like process, whether before, upon, or after  
8 judgment or decree and whether before or upon levy. It does  
9 not include liens which under applicable law are given a  
10 special priority over other liens which are prior in time.

11 (2) A lien obtainable by legal or equitable proceedings  
12 may become superior to the rights of a transferee, or a  
13 purchaser may obtain rights superior to the rights of a  
14 transferee within the meaning of paragraph "b", if such  
15 consequences follow only from the lien or purchase itself, or  
16 from the lien or purchase followed by a step wholly within the  
17 control of the respective lienholder or purchaser, with or  
18 without the aid of ministerial action by public officials.  
19 However, a lien does not become superior and a purchase does  
20 not create superior rights for the purpose of paragraph "b"  
21 through an act subsequent to the obtaining of a lien or  
22 subsequent to a purchase which requires the agreement or  
23 concurrence of any third party or which requires further  
24 judicial action or ruling.

25 d. A transfer of property for or on account of a new and  
26 contemporaneous consideration, which is under paragraph "b",  
27 made or suffered after the transfer because of delay in  
28 perfecting it, does not become a transfer for or on account of  
29 an antecedent debt if any acts required by the applicable law  
30 to be performed in order to perfect the transfer as against  
31 liens or a bona fide purchaser's rights are performed within  
32 twenty-one days or any period expressly allowed by the law,  
33 whichever is less. A transfer to secure a future loan, if a  
34 loan is actually made, or a transfer which becomes security  
35 for a future loan, shall have the same effect as a transfer

1 for or on account of a new and contemporaneous consideration.

2 e. If a lien which is voidable under paragraph "a",  
3 subparagraph (2), has been dissolved by the furnishing of a  
4 bond or other obligation, the surety of which has been  
5 indemnified directly or indirectly by the transfer or the  
6 creation of a lien upon property of a cemetery corporation  
7 before the filing of a petition under this chapter which  
8 results in the liquidation order, the indemnifying transfer or  
9 lien is also voidable.

10 f. The property affected by a lien voidable under  
11 paragraphs "a" and "e" is discharged from the lien. The  
12 property and any of the indemnifying property transferred to  
13 or for the benefit of a surety shall pass to the liquidator.  
14 However, the court may on due notice order a lien to be  
15 preserved for the benefit of the estate and the court may  
16 direct that the conveyance be executed to evidence the title  
17 of the liquidator.

18 g. The court shall have summary jurisdiction of a  
19 proceeding by a liquidator to hear and determine the rights of  
20 the parties under this section. Reasonable notice of hearing  
21 in the proceeding shall be given to all parties in interest,  
22 including the obligee of a releasing bond or other like  
23 obligation. Where an order is entered for the recovery of  
24 indemnifying property in kind or for the avoidance of an  
25 indemnifying lien, upon application of any party in interest,  
26 the court shall in the same proceeding ascertain the value of  
27 the property or lien. If the value is less than the amount  
28 for which the property is indemnified or less than the amount  
29 of the lien, the transferee or lienholder may elect to retain  
30 the property or lien upon payment of its value, as ascertained  
31 by the court, to the liquidator within the time as fixed by  
32 the court.

33 h. The liability of a surety under a releasing bond or  
34 other like obligation is discharged to the extent of the value  
35 of the indemnifying property recovered or the indemnifying

1 lien nullified and avoided by the liquidator. Where the  
2 property is retained under paragraph "g", the liability of the  
3 surety is discharged to the extent of the amount paid to the  
4 liquidator.

5 i. If a creditor has been preferred for property which  
6 becomes a part of the cemetery corporation's estate, and  
7 afterward in good faith gives the cemetery corporation further  
8 credit without security of any kind, the amount of the new  
9 credit remaining unpaid at the time of the petition may be set  
10 off against the preference which would otherwise be  
11 recoverable from the creditor.

12 j. If within four months before the filing of a successful  
13 petition for liquidation under this chapter, or at any time in  
14 contemplation of a proceeding to liquidate, a cemetery  
15 corporation, directly or indirectly, pays money or transfers  
16 property to an attorney for services rendered or to be  
17 rendered, the transaction may be examined by the court on its  
18 own motion or shall be examined by the court on petition of  
19 the liquidator. The payment or transfer shall be held valid  
20 only to the extent of a reasonable amount to be determined by  
21 the court. The excess may be recovered by the liquidator for  
22 the benefit of the estate. However, where the attorney is in  
23 a position of influence in a cemetery corporation of an  
24 affiliate, payment of any money or the transfer of any  
25 property to the attorney for services rendered or to be  
26 rendered shall be governed by the provisions of paragraph "a",  
27 subparagraph (2), subparagraph subdivision (d).

28 k. (1) An officer, manager, employee, shareholder,  
29 subscriber, attorney, or other person acting on behalf of the  
30 cemetery corporation who knowingly participates in giving any  
31 preference when the person has reasonable cause to believe the  
32 cemetery corporation is or is about to become insolvent at the  
33 time of the preference is personally liable to the liquidator  
34 for the amount of the preference. There is an inference that  
35 reasonable cause exists if the transfer was made within four

1 months before the date of filing of the successful petition  
2 for liquidation.

3 (2) A person receiving property from the cemetery  
4 corporation or the benefit of the property of the cemetery  
5 corporation as a preference voidable under paragraph "a" is  
6 personally liable for the property and shall account to the  
7 liquidator.

8 (3) This subsection shall not prejudice any other claim by  
9 the liquidator against any person.

10 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.

11 a. A claim of a creditor who has received or acquired a  
12 preference, lien, conveyance, transfer, assignment, or  
13 encumbrance, voidable under this chapter, shall not be allowed  
14 unless the creditor surrenders the preference, lien,  
15 conveyance, transfer, assignment, or encumbrance. If the  
16 avoidance is effected by a proceeding in which a final  
17 judgment has been entered, the claim shall not be allowed  
18 unless the money is paid or the property is delivered to the  
19 liquidator within thirty days from the date of the entering of  
20 the final judgment. However, the court having jurisdiction  
21 over the liquidation may allow further time if there is an  
22 appeal or other continuation of the proceeding.

23 b. A claim allowable under paragraph "a" by reason of a  
24 voluntary or involuntary avoidance, preference, lien,  
25 conveyance, transfer, assignment, or encumbrance may be filed  
26 as an excused late filing under subsection 12, if filed within  
27 thirty days from the date of the avoidance or within the  
28 further time allowed by the court under paragraph "a".

29 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.

30 a. From time to time as assets become available, the  
31 liquidator shall make application to the court for approval of  
32 a proposal to disburse assets out of marshaled assets.

33 b. The proposal shall at least include provisions for all  
34 of the following:

35 (1) Reserving amounts for the payment of all the

1 following:

2 (a) Expenses of administration.

3 (b) To the extent of the value of the security held, the  
4 payment of claims of secured creditors.

5 (c) Claims falling within the priorities established in  
6 subsection 18, paragraphs "a" and "b".

7 (2) Disbursement of the assets marshaled to date and  
8 subsequent disbursement of assets as they become available.

9 c. Action on the application may be taken by the court  
10 provided that the liquidator's proposal complies with  
11 paragraph "b".

12 12. FILING PROOFS OF CLAIMS.

13 a. Proof of all claims shall be filed with the liquidator  
14 in the form required by subsection 13 on or before the last  
15 day for filing specified in the notice required under  
16 subsection 4.

17 b. The liquidator may permit a claimant making a late  
18 filing to share in distributions, whether past or future, as  
19 if the claimant were not late, to the extent that the payment  
20 will not prejudice the orderly administration of the  
21 liquidation under any of the following circumstances:

22 (1) The existence of the claim was not known to the  
23 claimant and the claimant filed the claim as promptly as  
24 reasonably possible after learning of it.

25 (2) A transfer to a creditor was avoided under subsections  
26 7 through 9, or was voluntarily surrendered under subsection  
27 10, and the filing satisfies the conditions of subsection 10.

28 (3) The valuation under subsection 17 of security held by  
29 a secured creditor shows a deficiency, which is filed within  
30 thirty days after the valuation.

31 c. The liquidator may consider any claim filed late and  
32 permit the claimant to receive distributions which are  
33 subsequently declared on any claims of the same or lower  
34 priority if the payment does not prejudice the orderly  
35 administration of the liquidation. The late-filing claimant

1 shall receive at each distribution the same percentage of the  
2 amount allowed on the claim as is then being paid to claimants  
3 of any lower priority. This shall continue until the claim  
4 has been paid in full.

5 13. PROOF OF CLAIM.

6 a. Proof of claim shall consist of a statement signed by  
7 the claimant that includes all of the following that are  
8 applicable:

9 (1) The particulars of the claim, including the  
10 consideration given for it.

11 (2) The identity and amount of the security on the claim.

12 (3) The payments, if any, made on the debt.

13 (4) A statement that the sum claimed is justly owing and  
14 that there is no setoff, counterclaim, or defense to the  
15 claim.

16 (5) Any right of priority of payment or other specific  
17 right asserted by the claimant.

18 (6) A copy of the written instrument which is the  
19 foundation of the claim.

20 (7) The name and address of the claimant and the attorney  
21 who represents the claimant, if any.

22 b. A claim need not be considered or allowed if it does  
23 not contain all the information identified in paragraph "a"  
24 which is applicable. The liquidator may require that a  
25 prescribed form be used and may require that other information  
26 and documents be included.

27 c. At any time the liquidator may request the claimant to  
28 present information or evidence supplementary to that required  
29 under paragraph "a", and may take testimony under oath,  
30 require production of affidavits or depositions, or otherwise  
31 obtain additional information or evidence.

32 d. A judgment or order against a cemetery corporation  
33 entered after the date of filing of a successful petition for  
34 liquidation, or a judgment or order against the cemetery  
35 corporation entered at any time by default or by collusion

1 need not be considered as evidence of liability or of the  
2 amount of damages. A judgment or order against a cemetery  
3 corporation before the filing of the petition need not be  
4 considered as evidence of liability or of the amount of  
5 damages.

6 14. SPECIAL CLAIMS.

7 a. A claim may be allowed even if contingent, if it is  
8 filed pursuant to subsection 12. The claim may be allowed and  
9 the claimant may participate in all distributions declared  
10 after it is filed to the extent that it does not prejudice the  
11 orderly administration of the liquidation.

12 b. Claims that are due except for the passage of time  
13 shall be treated as absolute claims are treated. However, the  
14 claims may be discounted at the legal rate of interest.

15 c. Claims made under employment contracts by directors,  
16 principal officers, or persons in fact performing similar  
17 functions or having similar powers are limited to payment for  
18 services rendered prior to the issuance of an order of  
19 liquidation under subsection 2.

20 15. DISPUTED CLAIMS.

21 a. If a claim is denied in whole or in part by the  
22 liquidator, written notice of the determination shall be given  
23 to the claimant or the claimant's attorney by first-class mail  
24 at the address shown in the proof of claim. Within sixty days  
25 from the mailing of the notice, the claimant may file  
26 objections with the liquidator. Unless a filing is made, the  
27 claimant shall not further object to the determination.

28 b. If objections are filed with the liquidator and the  
29 liquidator does not alter the denial of the claim as a result  
30 of the objections, the liquidator shall ask the court for a  
31 hearing as soon as practicable and give notice of the hearing  
32 by first-class mail to the claimant or the claimant's attorney  
33 and to any other persons directly affected. The notice shall  
34 be given not less than ten nor more than thirty days before  
35 the date of hearing. The matter shall be heard by the court

1 or by a court-appointed referee. The referee shall submit  
2 findings of fact along with a recommendation.

3 16. CLAIMS OF OTHER PERSON. If a creditor, whose claim  
4 against a cemetery corporation is secured in whole or in part  
5 by the undertaking of another person, fails to prove and file  
6 that claim, then the other person may do so in the creditor's  
7 name and shall be subrogated to the rights of the creditor,  
8 whether the claim has been filed by the creditor or by the  
9 other person in the creditor's name to the extent that the  
10 other person discharges the undertaking. However, in the  
11 absence of an agreement with the creditor to the contrary, the  
12 other person is not entitled to any distribution until the  
13 amount paid to the creditor on the undertaking plus the  
14 distributions paid on the claim from the cemetery  
15 corporation's estate to the creditor equal the amount of the  
16 entire claim of the creditor. An excess received by the  
17 creditor shall be held by the creditor in trust for the other  
18 person.

19 17. SECURED CREDITOR'S CLAIMS.

20 a. The value of the security held by a secured creditor  
21 shall be determined in one of the following ways, as the court  
22 may direct:

23 (1) By converting the security into money according to the  
24 terms of the agreement pursuant to which the security was  
25 delivered to the creditors.

26 (2) By agreement, arbitration, compromise, or litigation  
27 between the creditor and the liquidator.

28 b. The determination shall be under the supervision and  
29 control of the court with due regard for the recommendation of  
30 the liquidator. The amount so determined shall be credited  
31 upon the secured claim. A deficiency shall be treated as an  
32 unsecured claim. If the claimant surrenders the security to  
33 the liquidator, the entire claim shall be allowed as if  
34 unsecured.

35 18. PRIORITY OF DISTRIBUTION. The priority of

1 distribution of claims from the cemetery corporation's estate  
2 shall be in accordance with the order in which each class of  
3 claims is set forth. Claims in each class shall be paid in  
4 full or adequate funds retained for the payment before the  
5 members of the next class receive any payment. Subclasses  
6 shall not be established within a class. The order of  
7 distribution of claims is as follows:

8 a. CLASS 1. The costs and expenses of administration,  
9 including but not limited to the following:

10 (1) Actual and necessary costs of preserving or recovering  
11 assets of the cemetery corporation.

12 (2) Compensation for all authorized services rendered in  
13 the liquidation.

14 (3) Necessary filing fees.

15 (4) Fees and mileage payable to witnesses.

16 (5) Authorized reasonable attorney fees and other  
17 professional services rendered in the liquidation.

18 b. CLASS 2. Reasonable compensation to employees for  
19 services performed to the extent that they do not exceed two  
20 months of monetary compensation and represent payment for  
21 services performed within one year before the filing of the  
22 petition for liquidation. Officers and directors are not  
23 entitled to the benefit of this priority. The priority is in  
24 lieu of any other similar priority which may be authorized by  
25 law as to wages or compensation of employees.

26 c. CLASS 3. Claims under purchase agreements.

27 d. CLASS 4. Claims of general creditors.

28 e. CLASS 5. Claims of the federal or of any state or  
29 local government. Claims, including those of a governmental  
30 body for a penalty or forfeiture, are allowed in this class  
31 only to the extent of the pecuniary loss sustained from the  
32 act, transaction, or proceeding out of which the penalty or  
33 forfeiture arose, with reasonable and actual costs incurred.  
34 The remainder of such claims shall be postponed to the class  
35 of claims under paragraph "g".

1 f. CLASS 6. Claims filed late or any other claims other  
2 than claims under paragraph "g".

3 g. CLASS 7. The claims of shareholders or other owners.

4 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.

5 a. The liquidator shall review claims duly filed in the  
6 liquidation and shall make further investigation as necessary.  
7 The liquidator may compound, compromise, or in any other  
8 manner negotiate the amount for which claims will be  
9 recommended to the court except where the liquidator is  
10 required by law to accept claims as settled by a person or  
11 organization. Unresolved disputes shall be determined under  
12 subsection 15. As soon as practicable, the liquidator shall  
13 present to the court a report of the claims against the  
14 cemetery corporation with the liquidator's recommendations.  
15 The report shall include the name and address of each claimant  
16 and the amount of the claim finally recommended.

17 b. The court may approve, disapprove, or modify the report  
18 on claims by the liquidator. Reports not modified by the  
19 court within sixty days following submission by the liquidator  
20 shall be treated by the liquidator as allowed claims, subject  
21 to later modification or to rulings made by the court pursuant  
22 to subsection 15. A claim under a policy of insurance shall  
23 not be allowed for an amount in excess of the applicable  
24 policy limits.

25 20. DISTRIBUTION OF ASSETS. Under the direction of the  
26 court, the liquidator shall pay distributions in a manner that  
27 will ensure the proper recognition of priorities and a  
28 reasonable balance between the expeditious completion of the  
29 liquidation and the protection of unliquidated and  
30 undetermined claims, including third-party claims.  
31 Distribution of assets in kind may be made at valuations set  
32 by agreement between the liquidator and the creditor and  
33 approved by the court.

34 21. UNCLAIMED AND WITHHELD FUNDS.

35 a. Unclaimed funds subject to distribution remaining in

1 the liquidator's hands when the liquidator is ready to apply  
2 to the court for discharge, including the amount distributable  
3 to a creditor, owner, or other person who is unknown or cannot  
4 be found, shall be deposited with the treasurer of state, and  
5 shall be paid without interest, except as provided in  
6 subsection 18, to the person entitled or to the person's legal  
7 representative upon proof satisfactory to the treasurer of  
8 state of the right to the funds. Any amount on deposit not  
9 claimed within six years from the discharge of the liquidator  
10 is deemed to have been abandoned and shall become the property  
11 of the state without formal escheat proceedings and be  
12 transferred to the insurance division's cemetery fund.

13 b. Funds withheld under subsection 14 and not distributed  
14 shall upon discharge of the liquidator be deposited with the  
15 treasurer of state and paid pursuant to subsection 18. Sums  
16 remaining which under subsection 18 would revert to the  
17 undistributed assets of the cemetery corporation shall be  
18 transferred to the insurance division's cemetery fund and  
19 become the property of the state as provided under paragraph  
20 "a", unless the commissioner in the commissioner's discretion  
21 petitions the court to reopen the liquidation pursuant to  
22 subsection 23.

23 c. Notwithstanding any other provision of this chapter,  
24 funds as identified in paragraph "a", with the approval of the  
25 court, shall be made available to the commissioner for use in  
26 the detection and prevention of future insolvencies. The  
27 commissioner shall hold these funds in the insurance  
28 division's cemetery fund and shall pay without interest,  
29 except as provided in subsection 18, to the person entitled to  
30 the funds or to the person's legal representative upon proof  
31 satisfactory to the commissioner of the person's right to the  
32 funds. The funds shall be held by the commissioner for a  
33 period of two years at which time the rights and duties to the  
34 unclaimed funds shall vest in the commissioner.

35 22. TERMINATION OF PROCEEDINGS.

1 a. When all assets justifying the expense of collection  
2 and distribution have been collected and distributed under  
3 this chapter, the liquidator shall apply to the court for  
4 discharge. The court may grant the discharge and make any  
5 other orders, including an order to transfer remaining funds  
6 that are uneconomical to distribute, as appropriate.

7 b. Any other person may apply to the court at any time for  
8 an order under paragraph "a". If the application is denied,  
9 the applicant shall pay the costs and expenses of the  
10 liquidator in resisting the application, including a  
11 reasonable attorney fee.

12 23. REOPENING LIQUIDATION. At any time after the  
13 liquidation proceeding has been terminated and the liquidator  
14 discharged, the commissioner or other interested party may  
15 petition the court to reopen the proceedings for good cause,  
16 including the discovery of additional assets. The court shall  
17 order the proceeding reopened if it is satisfied that there is  
18 justification for the reopening.

19 24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF  
20 LIQUIDATION. If it appears to the commissioner that the  
21 records of a cemetery corporation in the process of  
22 liquidation or completely liquidated are no longer useful, the  
23 commissioner may recommend to the court and the court shall  
24 direct what records shall be retained for future reference and  
25 what records shall be destroyed.

26 25. EXTERNAL AUDIT OF LIQUIDATOR'S BOOKS. The court may  
27 order audits to be made of the books of the commissioner  
28 relating to a liquidation established under this chapter, and  
29 a report of each audit shall be filed with the commissioner  
30 and with the court. The books, records, and other documents  
31 of the liquidation shall be made available to the auditor at  
32 any time without notice. The expense of an audit shall be  
33 considered a cost of administration of the liquidation.

34 26. APPLICABILITY. This section shall not apply to a  
35 religious cemetery or a cemetery owned or operated by a

1 governmental subdivision of this state.

2 Sec. 86. NEW SECTION. 523I.1413 INSURANCE DIVISION'S  
3 CEMETERY FUND.

4 A special revenue fund in the state treasury, to be known  
5 as the insurance division's cemetery fund, is created under  
6 the authority of the commissioner of insurance. The  
7 commissioner shall allocate annually from the fees paid  
8 pursuant to section 523I.1211, four dollars for each sale of  
9 interment rights reported by a cemetery corporation on the  
10 cemetery corporation's annual report, for deposit to the  
11 insurance division's cemetery fund. The commissioner shall  
12 also deposit four dollars into the insurance division's  
13 cemetery fund for each care assessment submitted, as provided  
14 in section 523I.815. The moneys in the cemetery fund shall be  
15 retained in the fund. The moneys are appropriated and,  
16 subject to authorization by the commissioner, shall be used to  
17 pay auditors, audit expenses, investigative expenses, the  
18 expenses of mediation ordered by the commissioner, consumer  
19 education expenses, the expenses of a toll-free telephone line  
20 for consumer complaints, and the expenses of receiverships  
21 established under section 523I.1411. The commissioner shall  
22 not make an annual allocation to the cemetery fund if the  
23 current balance of the fund exceeds two hundred thousand  
24 dollars.

25 Sec. 87. Sections 359.37, 359.40, and 359.41, Code 2003,  
26 are repealed.

27 Sec. 88. Chapters 523I, 566 and 566A, Code 2003, are  
28 repealed.

29

**EXPLANATION**

30 This bill repeals Code chapter 523I concerning cemeteries,  
31 Code chapter 566 concerning cemetery management, and Code  
32 chapter 566A concerning cemetery regulation and creates a new  
33 Code chapter 523I concerning cemeteries, cemetery regulation,  
34 and administration and enforcement procedures relating to  
35 cemeteries.

1 The bill contains a procedure to dedicate new cemeteries or  
2 subdivisions of cemeteries with a public filing with the  
3 insurance division.

4 The bill requires all persons currently operating as  
5 cemeteries to form a corporation to own and operate the  
6 cemetery property and prohibits unincorporated cemetery  
7 associations.

8 The bill establishes requirements for recording ownership  
9 of interment rights at each cemetery location rather than just  
10 with the county recorder. The bill requires cemeteries to  
11 maintain complete interment records that identify the owners  
12 of all interment rights sold by the cemetery corporation and  
13 contain historical information concerning any changes of  
14 ownership of interment rights. The bill sets forth  
15 requirements for interment rights agreements.

16 The bill sets forth requirements for lawn crypts and their  
17 installation. The bill sets forth requirements for the depth  
18 of ground burials.

19 The bill requires a public filing with the insurance  
20 division before the construction of new mausoleums and  
21 columbariums. The bill sets forth procedures governing the  
22 installation of memorials and memorialization by third  
23 parties.

24 The bill requires all cemetery corporations that sell  
25 interment rights to have a cemetery permit issued by the  
26 insurance division. The bill requires all sales personnel of  
27 cemetery corporations to have a sales permit issued by the  
28 insurance division, with the exception of employees or agents  
29 of a religious cemetery or a political subdivision that  
30 operates a cemetery.

31 The bill requires cemetery corporations to make disclosures  
32 to a buyer of interment rights when grave opening and closing  
33 fees are not included in the agreement. The bill authorizes a  
34 cemetery corporation to accept written instructions of a  
35 decedent concerning interment, relocation, or disinterment of

1 remains. The bill contains provisions for making a  
2 determination of who has the right to control interment,  
3 relocation, or disinterment of remains.

4 The bill contains a procedure for the removal of remains  
5 from a neglected cemetery. The bill provides a procedure for  
6 obtaining access to inactive cemeteries. The bill provides a  
7 procedure for reporting neglected cemeteries to the insurance  
8 division and to the appropriate board of supervisors.

9 The bill increases the penalty for disturbing an interment  
10 site from a simple misdemeanor to an aggravated misdemeanor.  
11 A simple misdemeanor is punishable by confinement for no more  
12 than 30 days or a fine of at least \$50 but not more than \$500  
13 or by both. An aggravated misdemeanor is punishable by  
14 confinement for no more than two years and a fine of at least  
15 \$500 but not more than \$5,000.

16 The bill requires a nonperpetual care cemetery to create a  
17 maintenance fund to pay for the upkeep of the cemetery  
18 property and to deposit at least \$50 into the maintenance fund  
19 for each sale along with a \$5 fee assessment to be deposited  
20 in the insurance division's cemetery fund.

21 The bill authorizes governmental subdivisions to commingle  
22 care funds for the purposes of investment and administration.  
23 The bill authorizes governmental subdivisions that operate  
24 cemeteries to invest their maintenance and care funds in the  
25 same manner as other cemetery corporations notwithstanding  
26 Code section 12B.10.

27 The bill authorizes civil lawsuits brought by owners of  
28 interment spaces or the insurance division against a cemetery  
29 corporation that fails to use care funds to maintain the  
30 cemetery property. The bill also creates a procedure that  
31 allows the insurance division to order mediation of a  
32 complaint paid for with funds from the insurance division's  
33 cemetery fund.

34 The bill defines certain acts committed in violation of  
35 Code chapter 523I as fraudulent practices.

1 The bill provides for the establishment of a receivership  
2 and for liquidation of a cemetery corporation under certain  
3 circumstances.

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