

House Study Bill 266

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 1 Section 1. Section 6A.4, subsection 4, Code 2003, is
2 amended to read as follows:
1 3 4. CEMETERY ASSOCIATIONS CORPORATIONS. Upon any private
1 4 cemetery or cemetery association corporation which is
1 5 incorporated under the laws of this state relating to
1 6 corporations not for pecuniary profit, and having its cemetery
1 7 located outside the limits of a city, for the purpose of
1 8 acquiring necessary grounds for cemetery use or reasonable
1 9 additions thereto. The right granted in this subsection shall
1 10 not be exercised until the board of supervisors, of the county
1 11 in which the land sought to be condemned is located, has, on
1 12 written application and hearing, on such reasonable notice to
1 13 all interested parties as it may fix, found that the land,
1 14 describing it, sought to be condemned, is necessary for
1 15 cemetery purposes. The association cemetery corporation shall
1 16 pay all costs attending such hearing.

1 17 Sec. 2. Section 6A.7, Code 2003, is amended to read as
1 18 follows:

1 19 6A.7 CEMETERY LANDS.

1 20 No lands actually platted, used, and devoted to cemetery
1 21 purposes shall be taken for any railway purpose without the
1 22 consent of the proper cemetery corporation's officers or
1 23 owners thereof.

1 24 Sec. 3. Section 359.28, Code 2003, is amended to read as
1 25 follows:

1 26 359.28 CONDEMNATION.

1 27 The township trustees are hereby empowered to condemn, or
1 28 purchase and pay for out of the general fund, or the specific
1 29 fund voted for such purpose, and enter upon and take, any
1 30 lands within the territorial limits of such township for the
1 31 use of existing cemeteries, a community center or juvenile
1 32 playgrounds, in the same manner as is now provided for cities.
1 33 However, the board of supervisors or a cemetery commission
1 34 appointed by the board of supervisors shall control and
1 35 maintain pioneer cemeteries as defined in section 331.325.

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

2 3 359.29 GIFTS AND DONATIONS.

2 4 Civil townships are hereby authorized and empowered to
2 5 receive by gift, devise, or bequest, money or property for the
2 6 purpose of establishing and maintaining libraries, township
2 7 halls, maintaining existing cemeteries, or for any other
2 8 public purpose. All such gifts, devises, or bequests shall be
2 9 effectual only when accepted by resolution of the board of
2 10 trustees of such township.

2 11 Sec. 5. Section 427.1, subsection 6, Code 2003, is amended
2 12 to read as follows:

2 13 6. PROPERTY OF CEMETERY ASSOCIATIONS CORPORATIONS. Burial
2 14 grounds, mausoleums, buildings and equipment owned and
2 15 operated by cemetery associations corporations incorporated as
2 16 a nonprofit corporation under chapter 504A and used

2 17 exclusively for the maintenance and care of the cemeteries
2 18 devoted to interment of human bodies and human remains. The
2 19 exemption granted by this subsection shall not apply to any

2 20 property used for the practice of mortuary science.
2 21 Sec. 6. Section 450.10, subsection 3, unnumbered paragraph
2 22 1, Code 2003, is amended to read as follows:
2 23 When the property or any interest therein or income
2 24 therefrom, taxable under the provisions of this chapter,
2 25 passes in any manner to societies, institutions or
2 26 associations incorporated or organized under the laws of any
2 27 other state, territory, province or country than this state,
2 28 for charitable, educational or religious purposes, or to
2 29 cemetery ~~associations corporations incorporated as a nonprofit~~
2 30 ~~corporation under chapter 504A~~, including humane societies not
2 31 organized under the laws of this state, or to resident
2 32 trustees for uses without this state, the rate of tax imposed
2 33 shall be as follows:

2 34 Sec. 7. Section 459.102, subsection 9, Code 2003, is
2 35 amended to read as follows:

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

3 7 Sec. 8. Section 523A.203, subsection 6, paragraph b, Code
3 8 2003, is amended to read as follows:

3 9 b. Use any funds required to be held in trust under this
3 10 chapter ~~or chapter 566A~~ to purchase an interest in any
3 11 contract or agreement to which a seller is a party.

3 12 SUBCHAPTER 1

3 13 SHORT TITLE AND DEFINITIONS

3 14 Sec. 9. NEW SECTION. 523I.101 SHORT TITLE.

3 15 This chapter may be cited as the "Iowa Cemetery Act".

3 16 Sec. 10. NEW SECTION. 523I.102 DEFINITIONS.

3 17 For purposes of this chapter, unless the context otherwise
3 18 requires:

3 19 1. "Authorized to do business within this state" means a
3 20 person licensed, registered, or subject to regulation by an
3 21 agency of the state of Iowa or who has filed a consent to
3 22 service of process with the commissioner for purposes of this
3 23 chapter.

3 24 2. "Burial site" means any area, except a cemetery, that
3 25 is used to inter or scatter remains.

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

3 32 4. "Care" means the maintenance of a cemetery's interment
3 33 spaces, niches, and mausoleums.

3 34 5. "Care fund" means money or real or personal property
3 35 impressed with a trust by the terms of this chapter, a gift,
4 1 grant, contribution, payment, legacy, or the terms of a
4 2 contract accepted by the cemetery corporation or any trustee
4 3 of the trust fund and any accumulated income allocated to
4 4 principal.

4 5 6. "Casket" means a rigid container which is designed for
4 6 the encasement of human remains and which is usually
4 7 constructed of wood, metal, fiberglass, plastic, or like
4 8 material and ornamented and lined with fabric.

4 9 7. "Cemetery" means an area dedicated to and used or
4 10 intended to be used to inter or scatter remains.

4 11 8. "Cemetery corporation" means a corporation that
4 12 operates one or more cemeteries.

4 13 9. "Columbarium" means a structure, room, or space in a
4 14 mausoleum or other building containing niches or recesses for
4 15 disposition of cremated remains.

4 16 10. "Commissioner" means the commissioner of insurance or
4 17 the deputy administrator authorized in section 523A.801 to the
4 18 extent the commissioner delegates functions to the deputy
4 19 administrator.

4 20 11. "Common business enterprise" means a group of two or
4 21 more business entities that share common ownership in excess
4 22 of fifty percent.

4 23 12. "Credit sale" means a sale of goods, services, or an
4 24 interest in land in which all of the following are applicable:

4 25 a. Credit is granted either under a seller credit card or
4 26 by a seller who regularly engages as a seller in credit
4 27 transactions of the same kind.

4 28 b. The buyer is a person other than an organization.

4 29 c. The goods, services, or interest in land are purchased
4 30 primarily for a personal, family, or household purpose.

4 31 d. Either the debt is payable in installments or a finance
4 32 charge is made.

4 33 e. For goods and services, the amount financed does not
4 34 exceed twenty-five thousand dollars.

4 35 13. "Cremated remains" means the bone fragments that
5 1 remain after the cremation process is completed.

5 2 14. "Cremation" means the technical process using heat and
5 3 flame that reduces human remains to bone fragments. The
5 4 reduction takes place through heat and evaporation.
5 5 "Cremation" shall include the processing, and may include the
5 6 pulverization, of the bone fragments.

5 7 15. "Disinterment" means to remove human remains from
5 8 their place of final disposition.

5 9 16. "Doing business in this state" means issuing or
5 10 performing wholly or in part any term of an interment rights
5 11 agreement executed within the state of Iowa.

5 12 17. "Financial institution" means a state or federally
5 13 insured bank, savings and loan association, credit union,
5 14 trust department thereof, or a trust company that is
5 15 authorized to do business within this state, that has been
5 16 granted trust powers under the laws of this state or the
5 17 United States, and that holds funds under a trust agreement.
5 18 "Financial institution" does not include a cemetery, a
5 19 cemetery corporation, or any person employed by or directly
5 20 involved with a cemetery.

5 21 18. "Garden" means an area within a cemetery established
5 22 by the cemetery as a subdivision for organizational purposes,
5 23 not for sale purposes.

5 24 19. "Grave space" means a space of ground in a cemetery
5 25 that is used or intended to be used for an in-ground burial.

5 26 20. "Gross selling price" means the aggregate amount a
5 27 purchaser is obligated to pay for interment rights, exclusive
5 28 of finance charges.

5 29 21. "Inactive cemetery" means a cemetery that is not
5 30 operating on a regular basis, is not offering to sell or
5 31 provide interments or other services reasonably necessary for
5 32 interment, and does not provide or permit reasonable ingress
5 33 or egress for the purposes of visiting interment spaces.

5 34 22. "Income" means the return in money or property derived
5 35 from the use of trust principal after deduction of investment
6 1 losses, taxes, and expenses incurred in the sale of trust
6 2 assets, any cost of the operation of the trust, and any annual
6 3 audit fees. "Income" includes but is not limited to:

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

6 7 b. Interest on money lent, including sums received as
6 8 consideration for prepayment of principal.

6 9 c. Cash dividends paid on corporate stock.

6 10 d. Interest paid on deposit funds or debt obligations.

6 11 e. Gain realized from the sale of trust assets.

6 12 23. "Insolvent" means the inability to pay debts as they
6 13 become due in the usual course of business.

6 14 24. "Interment rights" means the rights to place remains
6 15 in a specific location for use as a final resting place or
6 16 memorial.

6 17 25. "Interment rights agreement" means an agreement to
6 18 furnish memorials, memorialization, opening and closing
6 19 services, or interment rights.

6 20 26. "Interment space" means a space used or intended to be
6 21 used for the interment of remains including, but not limited
6 22 to, a grave space, lawn crypt, mausoleum crypt, and niche.

6 23 27. "Lawn crypt" means a preplaced enclosed chamber, which
6 24 is usually constructed of reinforced concrete and poured in
6 25 place, or a precast unit installed in quantity, either side=
6 26 by=side or at multiple depths, and covered by earth or sod.

6 27 28. "Lot" means an area in a cemetery containing more than
6 28 one interment space which is uniquely identified by an
6 29 alphabetical, numeric, or alphanumeric identification
6 30 system.

6 31 29. "Maintenance funds" means any money and real or
6 32 personal property held by a nonperpetual cemetery under the
6 33 terms of this chapter, and any accumulated income allocated to
6 34 principal.

6 35 30. "Mausoleum" means an aboveground structure designed
7 1 for the entombment of human remains.

7 2 31. "Mausoleum crypt" means a chamber in a mausoleum of
7 3 sufficient size to contain casketed human remains.

7 4 32. "Memorial" means any product, including any foundation
7 5 other than a mausoleum or columbarium, used for identifying an
7 6 interment space or for commemoration of the life, deeds, or

7 7 career of a decedent including, but not limited to, a
7 8 monument, marker, niche plate, urn garden plaque, crypt plate,
7 9 cenotaph, marker bench, and vase.

7 10 33. "Memorial care" means any care provided or to be
7 11 provided for the general maintenance of memorials including
7 12 foundation repair or replacement, resetting or straightening
7 13 tipped memorials, repairing or replacing inadvertently damaged
7 14 memorials and any other care clearly specified in the purchase
7 15 agreement.

7 16 34. "Memorial dealer" means any person offering or selling
7 17 memorials retail to the public.

7 18 35. "Memorialization" means any permanent system designed
7 19 to mark or record the names and other data pertaining to a
7 20 decedent.

7 21 36. "Merchandise" means any personal property offered or
7 22 sold for use in connection with the funeral, final
7 23 disposition, memorialization, or interment of human remains,
7 24 but which is exclusive of interment rights.

7 25 37. "Neglected cemetery" means a cemetery where there has
7 26 been a failure to cut grass or weeds or care for graves,
7 27 memorials or memorialization, walls, fences, driveways, and
7 28 buildings, or for which proper records of interments have not
7 29 been maintained.

7 30 38. "Niche" means a recess or space in a columbarium or
7 31 mausoleum used for placement of cremated human remains.

7 32 39. "Opening and closing services" means one or more
7 33 services necessarily or customarily provided in connection
7 34 with the interment or entombment of human remains or a
7 35 combination thereof.

8 1 40. "Outer burial container" means any container which is
8 2 designed for placement in the ground around a casket or an urn
8 3 including, but not limited to, containers commonly known as
8 4 burial vaults, urn vaults, grave boxes, grave liners, and lawn
8 5 crypts.

8 6 41. "Parent company" means a corporation that has a
8 7 controlling interest in a cemetery corporation.

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

8 10 a. Any cemetery that was organized or commenced business
8 11 in this state on or after July 1, 1995.

8 12 b. Any cemetery that has established a care fund in
8 13 compliance with subchapter 12.

8 14 c. Any cemetery that represents that it is a perpetual
8 15 care cemetery in its interment rights agreement.

8 16 d. Any cemetery that represents in any other manner that
8 17 the cemetery provides perpetual, permanent, or guaranteed
8 18 care.

8 19 43. "Person" means an individual, firm, corporation,
8 20 partnership, joint venture, limited liability company,
8 21 association, trustee, government or governmental subdivision,
8 22 agency, or other entity, or any combination thereof.

8 23 44. "Pioneer cemetery" means a cemetery where there were
8 24 six or fewer burials in the preceding fifty years.

8 25 45. "Purchaser" means a person who purchases memorials,
8 26 memorialization, opening and closing services, scattering
8 27 services, interment rights, or a combination thereof. The
8 28 purchaser need not be a beneficiary of the interment rights
8 29 agreement.

8 30 46. "Religious cemetery" means a cemetery that is owned,
8 31 operated, or controlled by a recognized church or
8 32 denomination.

8 33 47. "Relocation" means the act of taking remains from the
8 34 place of interment or the place where the remains are being
8 35 held to another designated place.

9 1 48. "Remains" means the body of a deceased human or a body
9 2 part, or limb that has been removed from a living human,
9 3 including a body, body part, or limb in any stage of
9 4 decomposition, or cremated remains.

9 5 49. "Scattering" means the disposition of cremated remains
9 6 by lawful dispersion.

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

9 10 51. "Scattering services provider" means a person in the
9 11 business of scattering human cremated remains.

9 12 52. "Seller" means a person doing business within this
9 13 state, including a person doing business within this state who
9 14 advertises, sells, promotes, or offers to furnish memorials,
9 15 memorialization, opening and closing services, scattering
9 16 services or interment rights, or a combination thereof,
9 17 whether the transaction is completed or offered in person,

9 18 through the mail, over the telephone, by the internet, or
9 19 through any other means of commerce.

9 20 53. "Special care" means any care provided or to be
9 21 provided that supplements or exceeds the requirements of this
9 22 chapter in accordance with the specific directions of any
9 23 donor of funds for such purposes.

9 24 54. "Undeveloped space" means a designated area or
9 25 building within a cemetery that has been mapped and planned
9 26 for future development but is not yet fully developed.

9 27 SUBCHAPTER 2

9 28 CEMETERY DEDICATION REQUIREMENTS AND PROCEDURES

9 29 Sec. 11. NEW SECTION. 523I.201 DEDICATION.

9 30 1. A person that dedicates property for a new cemetery on
9 31 or after July 1, 2003, and a cemetery corporation that
9 32 dedicates an additional garden on or after July 1, 2003,
9 33 shall:

9 34 a. In the case of land, survey and subdivide the property
9 35 into gardens with descriptive names or numbers and make a map
10 1 or plat of the property. Individual spaces do not need to be
10 2 set forth visually. The map or plat must include narrative
10 3 descriptions for each garden that allow individuals to
10 4 determine the location of each interment space. The narrative
10 5 descriptions must include appropriate compass directions, the
10 6 size of interment spaces in each defined area, and a
10 7 description of a progressive numbering system used to organize
10 8 individual spaces in each defined area.

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

10 20 c. File the map or plat with the commissioner, including a
10 21 written certificate or declaration of dedication of the
10 22 property delineated by the map or plat, dedicating the
10 23 property to cemetery purposes. The certificate or declaration
10 24 shall include all of the following:

10 25 (1) Provision of information on a form prescribed by the
10 26 directors or officers of the cemetery corporation.

10 27 (2) The signature of two individuals authorized by the
10 28 cemetery corporation for that purpose.

10 29 (3) Verification by a notary public.

10 30 2. A map or plat and a certificate or declaration of
10 31 dedication that is filed pursuant to this section dedicates
10 32 the property for cemetery purposes and constitutes
10 33 constructive notice of that dedication.

10 34 3. A certificate or declaration of dedication may contain
10 35 a provision permitting a cemetery corporation to resurvey and
11 1 change the shape and size of the property for which the
11 2 associated map or plat is filed if that change does not
11 3 disturb any interred remains. If a change is made, the
11 4 cemetery corporation shall file an amended map or plat and
11 5 shall indicate any change in a specific unique number assigned
11 6 to an interment space.

11 7 4. A cemetery corporation is civilly liable to the state
11 8 in an amount not to exceed one thousand dollars for each map
11 9 or plat that fails to meet the requirements of this section.

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

11 14 Sec. 12. NEW SECTION. 523I.202 EFFECT OF DEDICATION.

11 15 1. Property may be dedicated for use as a cemetery, and
11 16 the dedication is permitted out of respect for the dead, to
11 17 provide for the disposition of remains, and in fulfillment of
11 18 a duty to and for the benefit of the public.

11 19 2. Dedication of property as a cemetery and a property
11 20 owner's title to the exclusive interment rights are not
11 21 affected by the dissolution of the corporation owning the
11 22 cemetery, nonuse, alienation, encumbrance, or forced sale of
11 23 the property.

11 24 3. Dedication of property as a cemetery may not be
11 25 invalidated because of a violation of the law against
11 26 perpetuities or the law against the suspension of the power of
11 27 alienation of title to or use of property.

11 28 4. All property located on land dedicated as a cemetery,

11 29 including a road, alley, or walk in the cemetery:
11 30 a. Is exempt from public improvements assessments, fees,
11 31 and public taxation.
11 32 b. Shall not be sold on execution or applied in payment of
11 33 debts due from individual owners.
11 34 5. If human remains are not interred in a garden, the
11 35 dedication of that portion of the property as a cemetery may
12 1 be removed if notice is filed with the commissioner. Property
12 2 dedicated as a cemetery shall continue to be used for cemetery
12 3 purposes until the dedication is removed by filing notice with
12 4 the commissioner, by court order, or until maintenance of the
12 5 cemetery is enjoined or abated as a nuisance under section
12 6 523I.804.

12 7 Sec. 13. NEW SECTION. 523I.203 REMOVAL OF DEDICATION.
12 8 A cemetery corporation may petition a district court of the
12 9 county in which a cemetery is located to remove the dedication
12 10 with respect to all or any portion of the cemetery if any of
12 11 the following occurs:
12 12 1. All remains have been removed from that portion of the
12 13 cemetery where the dedication is to be removed.
12 14 2. No interments were made in that portion of the cemetery
12 15 where the dedication is to be removed and that portion of the
12 16 cemetery is not used or necessary for interment purposes.
12 17 3. A court orders the removal of the dedication upon
12 18 notice and proof deemed satisfactory by the court.

12 19 SUBCHAPTER 3

12 20 CEMETERY CORPORATIONS

12 21 Sec. 14. NEW SECTION. 523I.301 FORMATION OF CORPORATION
12 22 TO MAINTAIN AND OPERATE A CEMETERY.

12 23 1. A person shall not operate as a cemetery except by
12 24 means of a corporation.
12 25 2. A corporation may, if authorized to do so by its
12 26 articles, establish, maintain, manage, improve, or operate a
12 27 cemetery either for or without profit to its members or
12 28 stockholders. A nonprofit cemetery corporation shall be
12 29 organized pursuant to chapter 504A, the Iowa nonprofit
12 30 corporation Act. A for-profit cemetery corporation shall be
12 31 organized pursuant to chapter 490, the Iowa business
12 32 corporation Act, or chapter 490A, the Iowa limited liability
12 33 company Act.

12 34 3. The powers, privileges, and duties conferred and
12 35 imposed upon any cemetery corporation doing business under
13 1 this chapter are hereby enlarged as each particular case may
13 2 require to conform to the provisions of this chapter.

13 3 4. Unless otherwise limited by law, a cemetery corporation
13 4 shall have the same powers granted to other corporations in
13 5 general, including the right to enter into contracts secured
13 6 by a mortgage, deed of trust, or other obligation upon the
13 7 cemetery corporation's property.

13 8 Sec. 15. NEW SECTION. 523I.302 PROPERTY ACQUISITION BY
13 9 CEMETERY CORPORATION.

13 10 1. A cemetery corporation may acquire by purchase,
13 11 donation, or devise property consisting of land or other
13 12 property in which remains may be interred under law.

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

13 21 3. Title recorded pursuant to subsection 2 constitutes
13 22 constructive notice as of the date of filing that the property
13 23 is intended to be used for interment.

13 24 4. A cemetery corporation may by condemnation acquire
13 25 property in which remains may be interred when the acquisition
13 26 of that property is for a public purpose.

13 27 Sec. 16. NEW SECTION. 523I.303 AUTHORITY OF CEMETERY
13 28 CORPORATION.

13 29 A cemetery corporation may do any of the following:

- 13 30 1. Divide the cemetery into interment spaces and
- 13 31 subdivisions for cemetery purposes.
- 13 32 2. Charge an assessment on cemetery property for the
- 13 33 purpose of general improvement and maintenance.
- 13 34 3. Take any action that is necessary to carry out the
- 13 35 cemetery's business purposes including those purposes that are
- 14 1 necessarily incidental to the final disposition of human
- 14 2 remains, including any of the following:
 - 14 3 a. Convey property or other assets of the corporation.
 - 14 4 b. Borrow money.

SUBCHAPTER 4

INTERMENT RIGHTS

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

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

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

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

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

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

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

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

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

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

Sec. 19. NEW SECTION. 523I.403 MULTIPLE OWNERS OF

INTERMENT RIGHTS.

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

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

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

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

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

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

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

a. The date the remains are interred.

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

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

Sec. 21. NEW SECTION. 523I.405 ABANDONED INTERMENT

SPACES.

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

2. PRESUMPTION OF ABANDONMENT. Unpaid care assessments and fees for an unoccupied interment space not under perpetual care shall create a lien by the cemetery corporation against the applicable interment space. The continued failure of the owner to maintain or care for an unoccupied interment space not under perpetual care, for a period of ten years, or to pay

16 16 a lien for care assessments or care fees that exceed the
16 17 amount paid for the interment space, shall create the
16 18 presumption that the interment space has been abandoned. An
16 19 unused interment space under perpetual care in a lot which has
16 20 not had a burial for seventy-five years shall create a
16 21 presumption that the interment space has been abandoned.

16 22 3. NOTICE OF ABANDONMENT. Abandonment shall not be deemed
16 23 complete pursuant to subsection 2 until the cemetery
16 24 corporation gives notice declaring the interment space to be
16 25 abandoned, to the owner of record or, if the owner of record
16 26 is deceased or unknown, to the heirs of the owner of record.

16 27 4. SERVICE OF NOTICE. Notice of abandonment may be served
16 28 personally on the owner of record or the owner of record's
16 29 heirs, or may be served by mailing notice by certified mail to
16 30 the owner of record, or the owner of record's heirs, at the
16 31 last known address of the owner of record or owner of record's
16 32 heirs. If the address of the owner of record or the owner of
16 33 record's heirs cannot be ascertained, notice of such
16 34 abandonment shall be given by one publication of the notice of
16 35 abandonment in the official newspaper of the county in which
17 1 the cemetery is located.

17 2 5. OVERCOMING PRESUMPTION OF ABANDONMENT. If within one
17 3 year from the time of serving notice the owner of record or
17 4 the owner of record's heirs pay the past due annual care
17 5 charges assessed against the interment space, the presumption
17 6 of abandonment shall no longer exist and the owner of record
17 7 or the owner of record's heirs may be required to make full
17 8 payment for future perpetual care.

17 9 6. REVERSIONER'S RIGHT TO SELL. When the abandonment is
17 10 deemed complete, the reversionary owner of the abandoned
17 11 interment space, or a portion thereof, may sell and convey
17 12 title to the interment space.

17 13 7. USE OF FUNDS. Any funds realized from the sale of an
17 14 interment space not under perpetual care which has reverted to
17 15 the reversionary owner shall be allocated to the care fund or
17 16 to the fund paying the costs of cemetery operation.

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

17 25 SUBCHAPTER 5

17 26 INTERMENT RIGHTS AGREEMENTS

17 27 Sec. 22. NEW SECTION. 523I.501 STATEMENT BY PERPETUAL
17 28 CARE CEMETERY.

17 29 1. A perpetual care cemetery shall include the following
17 30 statement in the heading of each interment rights agreement:

17 31 "This cemetery is operated as a perpetual care cemetery,
17 32 which means that a care fund for its maintenance has been
17 33 established in conformity with the laws of the State of Iowa.
17 34 At least twenty percent of the purchase price for interment
17 35 rights must be placed in the care fund and the care fund's
18 1 income is used to maintain, repair, and care for the
18 2 cemetery."

18 3 2. If the care fund contains less than twenty-five
18 4 thousand dollars, the statement shall include a statement that
18 5 the balance of the care fund is less than twenty-five thousand
18 6 dollars or shall disclose the exact amount contained in the
18 7 care fund on a date not more than twelve months prior to the
18 8 date of execution of the interment rights agreement.

18 9 Sec. 23. NEW SECTION. 523I.502 STATEMENT BY NONPERPETUAL
18 10 CARE CEMETERY.

18 11 1. A nonperpetual care cemetery shall include the
18 12 following statement in the heading of each interment rights
18 13 agreement:

18 14 "This cemetery is a nonperpetual care cemetery and has not
18 15 established a perpetual trust fund for the cemetery's care."

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

18 27 rights.

18 28 Sec. 24. NEW SECTION. 523I.503 INTERMENT RIGHTS

18 29 AGREEMENT REQUIREMENTS.

18 30 An agreement for interment rights shall be written in
18 31 clear, understandable language and shall contain all of the
18 32 following:

18 33 1. The name of the cemetery where the rights to interment
18 34 are located, the name of the cemetery corporation selling
18 35 interment rights or the name of a seller other than the
19 1 cemetery corporation, and the name of the purchaser.

19 2 2. The name and sales permit number of the salesperson.

19 3 3. A description of the interment rights to be provided
19 4 and the cost of merchandise or services to be provided.

19 5 4. The conditions under which substitutions will be
19 6 allowed.

19 7 5. The total purchase price and the terms under which the
19 8 purchase price is to be paid.

19 9 6. That the purchase of interment rights is an irrevocable
19 10 contract, except as otherwise specified in the cemetery
19 11 corporation's rules and regulations.

19 12 7. The amount or percentage of money to be placed in the
19 13 cemetery corporation's care fund or maintenance fund.

19 14 8. A statement explaining that the care fund or
19 15 maintenance fund is an irrevocable trust, that deposits cannot
19 16 be withdrawn even in the event of cancellation of the
19 17 agreement, and that the care fund or maintenance fund must be
19 18 used by the cemetery corporation for the care and maintenance
19 19 of the cemetery.

19 20 9. An explanation of any fees or expenses that may be
19 21 charged.

19 22 10. An explanation of whether the money to be placed in
19 23 the cemetery corporation's care fund or maintenance fund will
19 24 be deposited in trust upon payment in full or on an allocable
19 25 basis as payments are made.

19 26 11. An explanation of whether initial payments on
19 27 agreements for multiple items of merchandise or services, or
19 28 both, will be allocated first to the purchase of interment
19 29 rights. If such an allocation will be made, the agreement
19 30 shall provide for the immediate transfer of such interment
19 31 rights upon payment in full and prominently state that any
19 32 applicable trust deposits under chapter 523A will not be made
19 33 until the cemetery has received payment in full for the
19 34 interment rights. The transfer of interment rights in an
19 35 undeveloped space may be deferred until such space is ready
20 1 for burial.

20 2 12. A provision that if the transfer of an undeveloped
20 3 interment space will be deferred as set forth in subsection
20 4 11, there will be written acknowledgement when payment in full
20 5 is made, specification of a reasonable time period for
20 6 development of the space, a description of what happens in the
20 7 event of the purchaser's death prior to development of the
20 8 space, and immediate transfer of the interment rights when
20 9 development of the space is complete.

20 10 13. Specification of the purchaser's right to cancel the
20 11 agreement and liability for damages upon such cancellation, if
20 12 any.

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

20 21 15. If the cemetery corporation offers opening and closing
20 22 services, specification of whether opening and closing of
20 23 interment spaces are included in the interment rights
20 24 agreement, and, if not, the current prices for such opening
20 25 and closing services and a statement that these prices are
20 26 subject to change.

20 27 16. Signatures of the purchaser and the seller.

20 28 A seller shall furnish the purchaser with a completed copy
20 29 of the interment rights agreement at the time the agreement is
20 30 signed.

20 31 SUBCHAPTER 6

20 32 LAWN CRYPTS

20 33 Sec. 25. NEW SECTION. 523I.601 REQUIREMENTS FOR LAWN

20 34 CRYPTS.

20 35 A lawn crypt shall not be installed unless all of the
21 1 following apply:

21 2 1. The lawn crypt is constructed of concrete and

21 3 reinforced steel or other comparable durable material.
21 4 2. The lawn crypt is installed on not less than six inches
21 5 of rock, gravel, or other drainage material.
21 6 3. The lawn crypt provides a method to drain water out of
21 7 the lawn crypt.
21 8 4. The outside top surface of the lawn crypt at the time
21 9 of installation is at least one and one-half feet below the
21 10 surface of the ground and is capable of withstanding the
21 11 weight of the soil and sod above the top surface and the
21 12 weight of machinery and equipment normally used in the
21 13 maintenance of the cemetery.
21 14 5. Except as provided by section 523I.602, the lawn crypt
21 15 is installed in multiple units of ten or more.
21 16 6. To the extent that any provision of section 135.11 or
21 17 chapter 156 or any administrative rule adopted pursuant
21 18 thereto is inconsistent with this section, the provisions of
21 19 this section shall govern.
21 20 Sec. 26. NEW SECTION. 523I.602 REQUEST TO INSTALL LAWN
21 21 CRYPT IN FEWER THAN TEN UNITS.
21 22 1. A lawn crypt may be installed in fewer than ten units
21 23 if it is installed in an interment space pursuant to a written
21 24 request to the commissioner signed by the owner or owners of
21 25 the interment space.
21 26 2. The written request shall be filed on a form prescribed
21 27 by the commissioner and shall contain substantially all of the
21 28 following information:
21 29 a. The owner's name and address.
21 30 b. The name of the cemetery and the owner of the cemetery.
21 31 c. The number of lawn crypt units to be installed.
21 32 d. A description of the interment spaces.
21 33 e. A statement that the lawn crypt meets the requirements
21 34 of section 523I.601, including all of the following:
21 35 (1) A statement that the lawn crypt will be constructed of
22 1 concrete and reinforced steel or other comparable durable
22 2 materials.
22 3 (2) A statement that the lawn crypt will be installed on
22 4 not less than six inches of rock, gravel, or other drainage
22 5 material.
22 6 (3) A statement that the lawn crypt will provide a method
22 7 to drain water out of the lawn crypt.
22 8 (4) A statement that the outside top surface of the lawn
22 9 crypt at the time of installation will be at least one and
22 10 one-half feet below the surface of the ground and be capable
22 11 of withstanding the weight of the soil and sod above the top
22 12 surface and the weight of machinery and equipment normally
22 13 used in the maintenance of the cemetery.
22 14 f. A statement that the space in which the lawn crypt is
22 15 to be installed is located in a garden.
22 16 g. The date on which the owner or owners signed the form.
22 17 3. To the extent that any provision of section 135.11 or
22 18 chapter 156 or any administrative rule adopted pursuant
22 19 thereto is inconsistent with this section, the provisions of
22 20 this section shall govern.
22 21 Sec. 27. NEW SECTION. 523I.603 NEW CONSTRUCTION.
22 22 1. A person shall not offer to sell interment rights in a
22 23 mausoleum or columbarium that will be built or completed in
22 24 the future unless the person has submitted an application to
22 25 sell such interment rights with the commissioner on a form
22 26 prescribed by the commissioner and accompanied by a fee of one
22 27 hundred dollars.
22 28 2. The application to sell interment rights in a mausoleum
22 29 or columbarium must include the following information:
22 30 a. A description of the new facility or the proposed
22 31 expansion, including a description of the interment rights to
22 32 be offered to prospective purchasers.
22 33 b. A statement of the financial resources available for
22 34 the project.
22 35 c. A copy of the proposed interment rights agreement to be
23 1 used, which shall include the following:
23 2 (1) That purchase payments will be held in trust in
23 3 accordance with the requirements of chapter 523A until
23 4 construction of the mausoleum or columbarium is complete.
23 5 (2) That the purchaser may request a refund of the
23 6 purchase amount, if construction does not begin within five
23 7 years of the purchaser's first payment.
23 8 (3) That the new facility will operate as a perpetual care
23 9 cemetery in compliance with this chapter, even if the facility
23 10 is located at a nonperpetual care cemetery.
23 11 (4) That the purchaser will receive an ownership
23 12 certificate upon payment in full or, if later, when
23 13 construction is complete.

23 14 3. Unless financing has been secured that is adequate in
23 15 amount and terms to complete the facility proposed, new
23 16 construction of a mausoleum or columbarium shall not begin
23 17 until the application required by this section has been
23 18 approved by the commissioner.

23 19 SUBCHAPTER 7
23 20 PERMIT REQUIREMENTS

23 21 Sec. 28. NEW SECTION. 523I.701 CEMETERY PERMITS.

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

23 27 2. A filing fee shall not be required.

23 28 3. An application for a cemetery permit shall be filed on
23 29 a form prescribed by the commissioner and include a copy of
23 30 each interment rights agreement form used by the cemetery.

23 31 4. The application shall contain all of the following:

23 32 a. The name and address of the cemetery.

23 33 b. The name and address of the cemetery corporation.

23 34 c. The name and address of each owner, officer, or other
23 35 official of the cemetery corporation, including, when

24 1 relevant, the chief executive officer and the members of the
24 2 board of directors.

24 3 d. A description of any common business enterprise or
24 4 parent company.

24 5 e. A list of the financial institutions used by the
24 6 cemetery corporation on a regular basis.

24 7 f. The name and address of any trustee holding trust funds
24 8 for the cemetery corporation, including the name and location
24 9 of the applicable trust account.

24 10 5. The commissioner shall grant or deny an application for
24 11 a cemetery permit within thirty days after receipt, but the
24 12 commissioner's failure to act within that time period shall
24 13 not be deemed approval of the application. If the
24 14 commissioner does not grant the permit, the commissioner shall
24 15 notify the person in writing of the reasons for denial.

24 16 6. A cemetery permit is valid for four years.

24 17 Sec. 29. NEW SECTION. 523I.702 SALES PERMITS.

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

24 26 2. A person must have a sales permit for each cemetery
24 27 corporation for which the person is employed or is an agent.

24 28 3. A cemetery corporation is liable for the acts of its
24 29 employees and agents performed in advertising, selling,
24 30 promoting, or offering to furnish interment rights.

24 31 4. An application for a sales permit shall be filed on a
24 32 form prescribed by the commissioner.

24 33 5. The application shall contain all of the following:

24 34 a. The name and address of the person.

24 35 b. The name and address of the cemetery and, if different,
25 1 the cemetery corporation on whose behalf the person will be
25 2 advertising, selling, promoting, or offering to furnish
25 3 interment rights.

25 4 6. A permit holder shall inform the commissioner of
25 5 changes in the information required to be provided by
25 6 subsection 5 in the initial application or in an application
25 7 for renewal within thirty days of the change.

25 8 7. An initial permit shall be accompanied by a five dollar
25 9 filing fee and shall expire one year from the date the
25 10 application is filed. The permit may be renewed for an
25 11 additional four years by filing the form prescribed by the
25 12 commissioner under this section, accompanied by a twenty
25 13 dollar filing fee.

25 14 8. The commissioner shall grant or deny a permit
25 15 application within thirty days after receipt, but the
25 16 commissioner's failure to act within that time period shall
25 17 not be deemed approval of the application. If the
25 18 commissioner does not grant the permit, the commissioner shall
25 19 notify the applicant in writing of the reasons for the denial.

25 20 9. The commissioner may, by rule, create or accept a
25 21 multijurisdiction sales permit. If the sales permit is issued
25 22 by another jurisdiction, the rules shall require the filing of
25 23 an application or notice form and payment of the applicable
25 24 filing fee of five dollars for each year. The application or

25 25 notice form utilized and the effective dates and terms of the
25 26 permit may vary from the provisions set forth in subsections
25 27 4, 5, 6, and 7.
25 28 10. The commissioner may create and accept a joint sales
25 29 permit for persons who are also required to hold a sales
25 30 permit under section 523A.502. Notwithstanding subsection 7
25 31 and section 523A.502, if a joint application is filed for both
25 32 sales permits, the fee for an initial joint permit shall be
25 33 five dollars and the fee for a renewed joint permit shall be
25 34 twenty dollars.

25 35 Sec. 30. NEW SECTION. 523I.703 DENIAL == SUSPENSION ==
26 1 REVOCATION == SURRENDER OF PERMITS.

26 2 1. The commissioner may, subject to chapter 17A, deny any
26 3 permit application or immediately suspend or revoke a permit
26 4 issued under this chapter for several reasons, including but
26 5 not limited to:

26 6 a. Committing a fraudulent act, engaging in a fraudulent
26 7 practice, or violating any provision of this chapter, or any
26 8 implementing rule or order issued under this chapter.

26 9 b. Violating any other state or federal law applicable to
26 10 the conduct of the applicant's or permit holder's business.

26 11 c. Insolvency or financial condition.

26 12 d. Engaging in a deceptive act or practice or
26 13 misrepresenting or omitting a material fact regarding the sale
26 14 of interment rights under this chapter.

26 15 e. Conviction of a criminal offense involving dishonesty
26 16 or a false statement.

26 17 f. Inability to provide the interment rights which the
26 18 applicant or permit holder purports to sell.

26 19 g. Selling the cemetery without filing a prior notice of
26 20 the sale with the commissioner. A cemetery permit shall be
26 21 revoked thirty days following such sale.

26 22 h. Allowing a person who is not an employee or agent of
26 23 the applicant or permit holder to sell interment rights.

26 24 i. Inadequate care and maintenance of the cemetery,
26 25 including but not limited to the following:

26 26 (1) Failure to adequately mow grass.

26 27 (2) Failure to adequately edge and trim bushes, trees, and
26 28 memorials.

26 29 (3) Failure to keep walkways and sidewalks free of
26 30 obstructions.

26 31 (4) Failure to adequately maintain the cemetery's
26 32 equipment and fixtures.

26 33 2. The commissioner may, for good cause shown, suspend any
26 34 permit for a period not exceeding thirty days, pending
26 35 investigation.

27 1 3. Except as provided in subsection 2, a permit shall not
27 2 be revoked or suspended except after notice and hearing under
27 3 chapter 17A.

27 4 4. Any permit holder may surrender a permit by delivering
27 5 to the commissioner written notice that the permit holder
27 6 surrenders the permit, but the surrender shall not affect the
27 7 permit holder's civil or criminal liability for acts committed
27 8 before the surrender.

27 9 5. Denial, revocation, suspension, or surrender of a
27 10 permit does not impair or affect the obligation of any
27 11 preexisting lawful agreement between the permit holder and any
27 12 person.

27 13 Sec. 31. NEW SECTION. 523I.704 ASSIGNMENTS AND TRANSFERS
27 14 PROHIBITED.

27 15 Permits issued pursuant to this chapter are not assignable
27 16 or transferable. This section does not apply to a religious
27 17 cemetery if it remains a religious cemetery after the
27 18 assignment or transfer of a permit.

27 19 Sec. 32. NEW SECTION. 523I.705 TRANSFER OF OWNERSHIP.

27 20 If an applicant or permit holder sells a cemetery, the
27 21 applicant or holder of a cemetery permit for that cemetery
27 22 shall notify the commissioner no later than thirty days after
27 23 the sale of the cemetery.

27 24 SUBCHAPTER 8
27 25 GENERAL PROVISIONS

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

27 28 1. A cemetery corporation, by contract, may incur
27 29 indebtedness as necessary to conduct its business and may
27 30 secure the indebtedness by mortgage, deed of trust, or other
27 31 lien against its property.

27 32 2. A mortgage, deed of trust, or other lien placed on
27 33 dedicated cemetery property, or on cemetery property that is
27 34 later dedicated with the consent of the holder of the lien,
27 35 does not affect the dedication and is subject to the

28 1 dedication. A sale on foreclosure of the lien is subject to
28 2 the dedication of the property for cemetery purposes.

28 3 Sec. 34. NEW SECTION. 523I.802 DEPTH OF GROUND BURIALS
28 4 == CRIMINAL PENALTY.

28 5 1. The outside top surface of a container holding human
28 6 remains shall not be buried as follows:

28 7 a. Less than two feet below the surface of the ground if
28 8 the container is biodegradable.

28 9 b. Less than one and one-half feet below the surface of
28 10 the ground if the container is made of nonbiodegradable
28 11 material.

28 12 2. The governing body of a political subdivision of this
28 13 state may, because of subsurface soil conditions or other
28 14 relevant considerations, allow, by ordinance, order, or rule,
28 15 burials in that political subdivision at a depth shallower
28 16 than that required by subsection 1.

28 17 3. This section does not apply to lawn crypts.

28 18 4. If the cemetery is in a floodplain or within one mile
28 19 of a river, lake, or similar body of water and flooding is a
28 20 significant risk, the surface level of the ground above the
28 21 grave at its shallowest point shall be at least three feet
28 22 from the top of the burial container.

28 23 5. A person who buries human remains in violation of this
28 24 section or an ordinance or rule adopted pursuant to this
28 25 section commits a simple misdemeanor.

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

28 30 Sec. 35. NEW SECTION. 523I.803 REMOVAL OF REMAINS FROM
28 31 NEGLECTED CEMETERY.

28 32 1. If a neglected cemetery for which no care fund has been
28 33 regularly and legally established is abated as a nuisance, the
28 34 court abating the nuisance and enjoining its continuance or
28 35 the governing body of the municipality in which the cemetery
29 1 is located may authorize the removal of all human remains,
29 2 monuments, tombs, and other similar items from the cemetery to
29 3 another religious cemetery of the same denomination, if
29 4 applicable, or to a perpetual care cemetery in the same
29 5 county.

29 6 2. If a county does not have a perpetual care cemetery
29 7 that under its rules permits the interment of human remains
29 8 that have been removed from another cemetery, the human
29 9 remains, monuments, tombs, and other similar items may be
29 10 removed to a nonperpetual care cemetery in the county that has
29 11 provided for assessments for the cemetery's future care.

29 12 Sec. 36. NEW SECTION. 523I.804 NUISANCE == ABATEMENT ==
29 13 INJUNCTION.

29 14 1. A district court of the county in which a cemetery is
29 15 located may, by order, abate the cemetery as a nuisance and
29 16 enjoin its continuance if the cemetery is either:

29 17 a. Maintained, located, or used in violation of this
29 18 chapter.

29 19 b. Neglected so that it is offensive to the inhabitants of
29 20 the surrounding area.

29 21 2. A proceeding for abatement may be brought by the county
29 22 attorney, the attorney general, or the commissioner.

29 23 3. The court shall grant a permanent injunction against
29 24 each person responsible for the nuisance if a cemetery
29 25 nuisance exists or is threatened.

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

29 31 Sec. 37. NEW SECTION. 523I.805 RULEMAKING AND
29 32 ENFORCEMENT.

29 33 1. A cemetery corporation may adopt, amend, and enforce
29 34 rules for the use, care, control, management, restriction, and
29 35 protection of the cemetery, as necessary for the proper
30 1 conduct of the business of the cemetery, including, but not
30 2 limited to, the use, care, and transfer of any space or right
30 3 of interment.

30 4 2. A cemetery corporation may restrict and limit the use
30 5 of all property within the cemetery by rules that do all of
30 6 the following:

30 7 a. Prohibit the placement of memorials or memorialization,
30 8 buildings, or other types of structures within any portion of
30 9 the cemetery.

30 10 b. Regulate the uniformity, class, and kind of memorials
30 11 and memorialization and structures within the cemetery.

30 12 c. Regulate the scattering or placement of cremated
30 13 remains within the cemetery.

30 14 d. Prohibit or regulate the placement of nonhuman remains
30 15 within the cemetery.

30 16 e. Prohibit or regulate the introduction or care of trees,
30 17 shrubs, and other types of plants within the cemetery.

30 18 f. Regulate the right of third parties to open, prepare
30 19 for interment, and close interment spaces.

30 20 g. Prohibit interment in any part of the cemetery not
30 21 designated as an interment space.

30 22 h. Prevent the use of space for any purpose inconsistent
30 23 with the use of the property as a cemetery.

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

30 31 4. A cemetery corporation's rules shall be plainly printed
30 32 or typewritten and maintained for inspection in the office of
30 33 the cemetery or, if the cemetery does not have an office, in
30 34 another suitable place within the cemetery. The cemetery's
30 35 rules shall be provided to owners of interment spaces upon
31 1 request.

31 2 5. A cemetery corporation's rules shall specify the
31 3 cemetery corporation's obligations in the event that memorials
31 4 or memorialization are damaged or defaced by acts of
31 5 vandalism. The rules may specify a multiyear restoration of a
31 6 memorial or memorialization when the damage is extensive or
31 7 when money available from the cemetery's trust fund is
31 8 inadequate to complete repairs immediately. The owner of a
31 9 memorial or memorialization that has been damaged or defaced
31 10 shall be notified by the cemetery corporation by restricted
31 11 certified mail at the owner's last known address within sixty
31 12 days of the discovery of the damage or defacement. The rules
31 13 shall specify whether the owner is liable, in whole or in
31 14 part, for the cost to repair or replace a damaged or defaced
31 15 memorial or memorialization.

31 16 6. The cemetery corporation shall not approve any bylaw
31 17 which unreasonably restricts competition, or which
31 18 unreasonably increases the cost to the owner of interment
31 19 rights in utilizing these rights.

31 20 Sec. 38. NEW SECTION. 523I.806 PROTECTION OF CEMETERIES
31 21 AND BURIAL SITES.

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

32 1 2. DISTURBANCE OF INTERMENT SPACES == PENALTY. A person
32 2 who knowingly and without authorization damages, defaces,
32 3 destroys, or otherwise disturbs an interment space commits
32 4 criminal mischief in the third degree. Criminal mischief in
32 5 the third degree is an aggravated misdemeanor.

32 6 3. DUTY TO PRESERVE AND PROTECT. A governmental
32 7 subdivision or agency having a cemetery, or a burial site that
32 8 is not located within a dedicated cemetery, within its
32 9 jurisdiction, for which preservation is not otherwise
32 10 provided, shall preserve and protect the cemetery or burial
32 11 site as necessary to restore or maintain its physical
32 12 integrity as a cemetery or burial site. The governmental
32 13 subdivision or agency may enter into an agreement to delegate
32 14 the responsibility for the preservation and protection of the
32 15 cemetery or burial site to a person interested in historical
32 16 preservation. A cemetery corporation shall be formed to
32 17 operate the cemetery, if applicable.

32 18 4. CONFISCATION AND RETURN OF MEMORIALS. A law
32 19 enforcement officer having reason to believe that a memorial
32 20 or memorialization is in the possession of a person without
32 21 authorization or right to possess the memorial or
32 22 memorialization may take possession of the memorial or

32 23 memorialization from that person and turn it over to the
32 24 officer's law enforcement agency. If a law enforcement agency
32 25 determines that a memorial or memorialization the agency has
32 26 taken possession of rightfully belongs on an interment space,
32 27 the agency shall return the memorial or memorialization to the
32 28 interment space, or make arrangements with the person having
32 29 jurisdiction over the interment space for its return.

32 30 5. INTERMENT SPACES LOCATED ON PRIVATE PROPERTY.

32 31 a. A person shall notify a governmental subdivision or
32 32 agency if an interment of the person's ancestor exists on
32 33 property owned by another person within the jurisdiction of
32 34 the governmental subdivision or agency. The owner of the
32 35 property shall be notified by the governmental subdivision or
33 1 agency that the interment exists and that the owner must
33 2 permit the person reasonable ingress and egress for the
33 3 purposes of visiting the interment space of the person's
33 4 ancestor.

33 5 b. Pursuant to section 558.69, a declaration of value
33 6 submitted to a county recorder pursuant to chapter 428A shall
33 7 also include information concerning the existence of any known
33 8 private interment space situated on the property.

33 9 6. DISCOVERY OF HUMAN REMAINS. Any person discovering
33 10 human remains shall notify the county or state medical
33 11 examiner or a city, county, or state law enforcement agency as
33 12 soon as is reasonably possible unless the person knows or has
33 13 good reason to believe that such notice has already been given
33 14 or the discovery occurs in a cemetery. If there is reason to
33 15 believe that interment may have occurred more than one hundred
33 16 fifty years earlier, the governmental subdivision or agency
33 17 notified shall also notify the state archeologist. A person
33 18 who does not provide notice required pursuant to this
33 19 subsection commits a serious misdemeanor.

33 20 Sec. 39. NEW SECTION. 523I.808 COMPLIANCE WITH IOWA
33 21 CONSUMER CREDIT CODE.

33 22 A seller of credit sales agreements pursuant to this
33 23 chapter shall comply with the requirements of chapter 537, and
33 24 is subject to the remedies and penalties provided for in that
33 25 chapter.

33 26 Sec. 40. NEW SECTION. 523I.809 DISCLOSURE REQUIREMENTS.

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

34 1 2. The cemetery corporation shall fully disclose all fees
34 2 required for interment, entombment, or inurnment of human
34 3 remains.

34 4 3. A person owning interment rights may sell those rights
34 5 to third parties. The cemetery corporation shall fully
34 6 disclose, in the cemetery corporation's rules, any
34 7 requirements necessary to transfer title of interment rights
34 8 to a third party.

34 9 Sec. 41. NEW SECTION. 523I.810 INSTALLATION OF OUTER
34 10 BURIAL CONTAINERS.

34 11 A cemetery corporation shall provide services necessary for
34 12 the installation of outer burial containers or other similar
34 13 merchandise sold by the cemetery corporation. This section
34 14 shall not require the cemetery corporation to provide for
34 15 opening and closing of interment or entombment space, unless
34 16 an agreement executed by the cemetery corporation expressly
34 17 provides otherwise.

34 18 Sec. 42. NEW SECTION. 523I.811 ACCESS BY FUNERAL
34 19 DIRECTORS.

34 20 A licensed funeral director shall not be denied access by a
34 21 cemetery corporation to conduct a funeral for or to supervise
34 22 interment or disinterment of human remains.

34 23 Sec. 43. NEW SECTION. 523I.812 COUNTY AUDITOR AS
34 24 TRUSTEE.

34 25 1. In the absence of a trustee for care funds, unless
34 26 otherwise provided by law, the care funds shall be placed in
34 27 the hands of the county auditor, who shall receipt for, loan,
34 28 and make annual reports of the care funds.

34 29 2. The county auditor shall not be required to post a
34 30 bond.

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

34 trustee, if any.

34 35 4. The county auditor shall make a full report of the
35 1 trustee's actions and trust funds annually in January. The
35 2 net proceeds for care funds received by the county auditor as
35 3 trustee shall be apportioned and credited to each of any
35 4 separate care funds assigned to the auditor.

35 5 5. The county auditor shall turn over the accrued income
35 6 from each care fund annually to the person having control of
35 7 the cemetery.

35 8 Sec. 44. NEW SECTION. 523I.813 MEMORIALS AND
35 9 MEMORIALIZATION.

35 10 1. AUTHORIZATION. A cemetery corporation is entitled to
35 11 determine whether that a person requesting installation of a
35 12 memorial is authorized to do so, to the extent that this can
35 13 be determined from the records of the cemetery corporation, as
35 14 is consistent with the cemetery corporation's rules. The
35 15 owner of an interment space or the owner's agent may authorize
35 16 a memorial dealer or independent third party to perform all
35 17 necessary work related to preparation and installation of a
35 18 memorial.

35 19 2. CONFORMITY WITH CEMETERY CORPORATION RULES. A person
35 20 selling a memorial shall review the rules of the cemetery
35 21 corporation for the cemetery where the memorial is to be
35 22 installed to ensure that the memorial will comply with those
35 23 rules prior to ordering or manufacturing the memorial.

35 24 3. SPECIFICATIONS. Upon request, a cemetery corporation
35 25 shall provide reasonable written specifications and
35 26 instructions governing installation of memorials, which shall
35 27 apply to all installations whether performed by the cemetery
35 28 corporation or another person. The written specifications
35 29 shall include provisions governing hours of installation or
35 30 any other relevant administrative requirements of the
35 31 cemetery. A copy of these specifications and instructions
35 32 shall be provided upon request, without charge, to the owner
35 33 of the interment space, next of kin, or a personal
35 34 representative or agent of the owner, including the person
35 35 installing the memorial. The person installing the memorial
36 1 shall comply with the cemetery corporation's written
36 2 installation specifications and instructions. A cemetery
36 3 corporation shall not adopt or enforce any rule prohibiting
36 4 the installation of a memorial by a memorial dealer or
36 5 independent third party, unless the rule is adopted and
36 6 enforced uniformly for all memorials installed in the
36 7 cemetery.

36 8 4. WRITTEN NOTICE. A memorial dealer or independent third
36 9 party shall provide the cemetery corporation with at least
36 10 seven days' prior written notice of intent to install a
36 11 memorial at the cemetery, or such lesser notice as the
36 12 cemetery corporation deems acceptable. The notice shall
36 13 contain the full name, address, and relationship of the
36 14 memorial's purchaser to the person interred in the interment
36 15 space or the owner of the interment space, if different. The
36 16 notice shall also contain the color, type, and size of the
36 17 memorial, the material, the inscription, and the full name and
36 18 interment date of the person interred in the interment space.

36 19 5. PREPARATION AND INSTALLATION.

36 20 a. A person installing a memorial shall be responsible to
36 21 the cemetery corporation for any damage caused to the cemetery
36 22 grounds, including roadways, other than normal use during
36 23 installation of the memorial.

36 24 b. Installation work shall cease during any nearby funeral
36 25 procession or committal service.

36 26 c. Installation work shall be done during the cemetery's
36 27 normal weekday hours or at such other times as may be arranged
36 28 with the cemetery corporation.

36 29 d. A memorial must comply with the cemetery corporation's
36 30 rules and regulations for the cemetery. In the event of
36 31 noncompliance, the person installing a memorial is responsible
36 32 for removal of the memorial and shall pay any reasonable
36 33 expenses incurred by the cemetery in connection with the
36 34 memorial's removal.

36 35 e. The cemetery corporation shall, without charge, provide
37 1 information as described on the cemetery's map or plat
37 2 necessary to locate the place where a memorial is to be
37 3 installed and any other essential information the person
37 4 installing the memorial needs to locate the proper interment
37 5 space.

37 6 f. A person installing a memorial shall follow the
37 7 cemetery corporation's instructions regarding the positioning
37 8 of the memorial.

37 9 g. During the excavation, all sod and dirt shall be

37 10 carefully removed with no sod or dirt left on the interment
37 11 space except the amount needed to fill the space between the
37 12 memorial and the adjacent lawn.

37 13 h. A person installing a memorial shall carefully fill in
37 14 any areas around the memorial with topsoil or sand, in
37 15 accordance with the cemetery corporation's written
37 16 instructions.

37 17 i. A person installing a memorial shall remove all
37 18 equipment and any debris which has accumulated during
37 19 installation of the memorial.

37 20 j. A person installing a memorial shall check to see if
37 21 any adjacent memorials have become soiled or dirty during
37 22 installation of the memorial and, if so, clean the adjacent
37 23 memorials.

37 24 k. If the person who is installing a memorial damages any
37 25 cemetery property, the person shall notify the cemetery
37 26 corporation immediately. The person installing the memorial
37 27 shall then repair the damage as soon as possible, upon
37 28 approval by the cemetery corporation. The cemetery
37 29 corporation may require a person installing a memorial to
37 30 provide current proof of workers' compensation insurance as
37 31 required by state law and current proof of liability
37 32 insurance, sufficient to indemnify the cemetery corporation
37 33 against claims resulting from installation of the memorial.
37 34 Proof of liability insurance in an amount of one million
37 35 dollars or more shall preclude the cemetery corporation from
38 1 requiring a person installing a memorial to obtain a
38 2 performance bond.

38 3 l. If a cemetery has an office, a person installing a
38 4 memorial shall immediately leave notice at the cemetery office
38 5 when the memorial has been installed and all work related to
38 6 the installation is complete.

38 7 6. INSPECTION. A cemetery corporation may inspect the
38 8 installation site of a memorial at any time. If the cemetery
38 9 corporation determines that cemetery corporation rules are not
38 10 being followed during the installation, the cemetery
38 11 corporation may order the installation to stop until the
38 12 infraction is corrected. The cemetery corporation shall
38 13 provide written notice to the installer within seven days if
38 14 the cemetery corporation believes that any of the following
38 15 have occurred:

38 16 a. The memorial has not been installed correctly.
38 17 b. The person installing the memorial has damaged property
38 18 at the cemetery.
38 19 c. Other cemetery corporation requirements for
38 20 installation have not been met, such as removal of debris or
38 21 equipment.

38 22 7. LOCATION AND SERVICE CHARGE. A cemetery corporation
38 23 may charge a reasonable service charge for allowing the
38 24 installation of a memorial purchased or obtained from and
38 25 installed by a person other than the cemetery corporation or
38 26 its agents. This service charge shall be based on the
38 27 cemetery corporation's actual labor costs, including fringe
38 28 benefits, of those employees whose normal duty is to inspect
38 29 the installation of memorials, in accordance with generally
38 30 accepted accounting practices. General administrative and
38 31 overhead costs and any other functions not related to actual
38 32 inspection time shall be excluded from the service charge.

38 33 8. FAULTY INSTALLATION. If a memorial sinks, tilts, or
38 34 becomes misaligned within twelve months of its installation
38 35 and the cemetery corporation believes the cause is faulty
39 1 installation, the cemetery corporation shall notify the person
39 2 who installed the memorial in writing and the person who
39 3 installed the memorial shall be responsible to correct the
39 4 damage, unless the damage is caused by inadequate written
39 5 specifications and instructions from the cemetery corporation
39 6 or acts of the cemetery corporation and its agents or
39 7 employees, including but not limited to running a backhoe over
39 8 the memorial, carrying a vault or other heavy equipment over
39 9 the memorial, or opening or closing an interment space
39 10 adjacent to the memorial.

39 11 9. PERPETUAL CARE. A cemetery corporation may require
39 12 contributions from the purchaser of a memorial for perpetual
39 13 care, if a perpetual care fund deposit is uniformly charged on
39 14 every memorial installed in the cemetery.

39 15 Sec. 45. NEW SECTION. 523I.814 INTERMENT, RELOCATION, OR
39 16 DISINTERMENT OF REMAINS.

39 17 1. Unless a decedent has left directions in writing for
39 18 the disposition of the decedent's remains as provided in
39 19 subsection 2, the following persons, in the priority listed,
39 20 shall have the right to control the interment, relocation, or

39 21 disinterment of the decedent's remains within or from a
39 22 cemetery:
39 23 a. The person designated in a written instrument signed by
39 24 the decedent.
39 25 b. The surviving spouse of the decedent.
39 26 c. A surviving adult child of the decedent.
39 27 d. A surviving parent of the decedent.
39 28 e. A surviving adult sibling of the decedent.
39 29 f. Any adult person in the next degree of kinship in the
39 30 order named by law to inherit the estate of the decedent under
39 31 the rules of inheritance for intestate succession.

39 32 2. The written instrument referred to in subsection 1,
39 33 paragraph "a", shall be in substantially the following form:

39 34 DIRECTIONS FOR DISPOSITION OF MY REMAINS

39 35 Name of person whose remains are to be disposed of as
40 1 directed (decedent):

40 2 Address:

40 3 Telephone Number:

40 4 Acceptance of Appointment: (signature of agent)

40 5 Date of Signature:

40 6 SUCCESSORS

40 7 If my agent dies, becomes legally disabled, resigns, or
40 8 refuses to act, I hereby appoint the following persons (each
40 9 to act alone and successively, in the order named) to serve as
40 10 my agent (attorney-in-fact) to control the disposition of my
40 11 remains as authorized by this document:

40 12 First Successor

40 13 Name:

40 14 Address:

40 15 Telephone Number:

40 16 Acceptance of Appointment: (signature of first successor)

40 17 Date of Signature:

40 18 Second Successor

40 19 Name:

40 20 Address:

40 21 Telephone Number:

40 22 Acceptance of Appointment: (signature of second successor)

40 23 Date of Signature:

40 24 DURATION

40 25 This appointment becomes effective upon my death.

40 26 PRIOR APPOINTMENTS REVOKED

40 27 I hereby revoke any prior appointment of any person to
40 28 control the disposition of my remains.

40 29 RELIANCE

40 30 I hereby agree that any cemetery corporation, business
40 31 operating a crematory or columbarium or both, funeral director
40 32 or embalmer, or funeral establishment that receives a copy of
40 33 this document may act under it. Any modification or
40 34 revocation of this document is not effective as to any such
40 35 party until that party receives actual notice of the
41 1 modification or revocation. No such party shall be liable
41 2 because of reliance on a copy of this document.

41 3 ASSUMPTION

41 4 THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS

41 5 APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND

41 6 BY THE PROVISIONS OF, SECTION 523I.814. Signed this ____ day
41 7 of _____, _____.

41 8 3. A written instrument referred to in subsection 1,
41 9 paragraph "a", is legally sufficient if the wording of the
41 10 instrument complies substantially with subsection 2, the
41 11 instrument is properly completed, the instrument is signed by
41 12 the decedent, the agent, and each successor agent, and the
41 13 signature of the decedent is acknowledged. Such written
41 14 instrument may be modified or revoked only by a subsequent
41 15 written instrument that complies with the requirements of this
41 16 subsection.

41 17 4. A person who represents that the person knows the
41 18 identity of a decedent and, in order to procure the interment,
41 19 relocation, or disinterment of the decedent's remains, signs
41 20 an order or statement, other than a death certificate, that
41 21 warrants the identity of the decedent is liable for all
41 22 damages that result, directly or indirectly, from that
41 23 representation.

41 24 5. A person may provide written directions for the
41 25 interment, relocation, or disinterment of the person's own
41 26 remains in a will, prepaid funeral or cemetery contract, or
41 27 written instrument signed and acknowledged by the person. The
41 28 directions may govern the inscription to be placed on a grave
41 29 marker attached to any interment space in which the decedent
41 30 had the right of interment at the time of death and in which
41 31 interment space the decedent is subsequently interred. The

41 32 directions may be modified or revoked only by a subsequent
41 33 writing signed and acknowledged by the person. A person other
41 34 than a decedent who is entitled to control the interment,
41 35 relocation, or disinterment of a decedent's remains under this
42 1 section shall faithfully carry out the directions of the
42 2 decedent to the extent that the decedent's estate or the
42 3 person controlling the interment, relocation, or disinterment
42 4 is financially able to do so.

42 5 6. If the decedent's directions for the interment of the
42 6 decedent's remains are in a will, the directions shall be
42 7 carried out immediately without the necessity of probate. If
42 8 a will is not probated or is declared invalid for testamentary
42 9 purposes, the directions for the interment of the decedent's
42 10 remains are valid to the extent that they have been acted upon
42 11 in good faith.

42 12 7. A cemetery corporation shall not be liable for carrying
42 13 out the written directions of a decedent or the directions of
42 14 any person entitled to control the interment, relocation, or
42 15 disinterment of the decedent's remains.

42 16 8. A dispute among any of the persons listed in subsection
42 17 1 concerning their right to control the interment, relocation,
42 18 or disinterment of a decedent's remains may be resolved by a
42 19 court of competent jurisdiction. A cemetery corporation shall
42 20 not be liable for refusing to accept the decedent's remains,
42 21 relocate or disinter, inter or otherwise dispose of the
42 22 decedent's remains, until the cemetery corporation receives a
42 23 court order or other suitable confirmation that the dispute
42 24 has been resolved or settled.

42 25 9. a. If good cause exists to relocate or disinter
42 26 remains interred in a cemetery, the remains may be removed
42 27 from the cemetery with the written consent of the cemetery
42 28 corporation, the current interment rights owner and the person
42 29 entitled by this section to control the interment, relocation,
42 30 or disinterment of the decedent's remains.

42 31 b. If the consent required by this subsection cannot be
42 32 obtained, the remains may be relocated by permission of the
42 33 district court of the county in which the cemetery is located.
42 34 Before the date of application to the court for permission to
42 35 relocate remains under this subsection, notice must be given
43 1 to the cemetery corporation that operates the cemetery in
43 2 which the remains are interred, each person whose consent is
43 3 required for relocation of the remains under subsection 1, and
43 4 any other person that the court requires to be served.

43 5 c. For the purposes of this subsection, personal notice
43 6 must be given not later than the eleventh day before the date
43 7 of application to the court for permission to relocate the
43 8 remains, or notice by certified mail or restricted certified
43 9 mail must be given not later than the sixteenth day before the
43 10 date of application.

43 11 d. This subsection does not apply to the removal of
43 12 remains from one interment space to another interment space in
43 13 the same cemetery to correct an error, or relocation of the
43 14 remains by the cemetery from an interment space for which the
43 15 purchase price is past due and unpaid, to another suitable
43 16 interment space.

43 17 10. A person who removes remains from a cemetery shall
43 18 keep a record of the removal, and provide a copy to the
43 19 cemetery, that includes all of the following:

43 20 a. The date the remains are removed.

43 21 b. The name of the decedent and age at death if those
43 22 facts can be conveniently obtained.

43 23 c. The place to which the remains are removed.

43 24 d. The name of the cemetery and the location of the
43 25 interment space from which the remains are removed.

43 26 11. A cemetery corporation may disinter and relocate
43 27 remains interred in the cemetery for the purpose of correcting
43 28 an error made by the cemetery corporation. The cemetery
43 29 corporation shall provide written notice to the commissioner
43 30 and to the person by restricted certified mail describing who
43 31 has the right to control the interment, relocation, or
43 32 disinterment of the remains erroneously interred, at the
43 33 person's last known address and sixty days prior to the
43 34 disinterment. The notice shall include the location where the
43 35 disinterment will occur and the location of the new interment
44 1 space. A cemetery corporation is not civilly or criminally
44 2 liable for an erroneously made interment that is corrected in
44 3 compliance with this subsection unless the error was the
44 4 result of gross negligence or intentional misconduct.

44 5 12. To the extent that any provision of section 135.11 or
44 6 chapter 156 or any administrative rule adopted pursuant
44 7 thereto is inconsistent with this, the provisions of this

44 8 section shall apply.
44 9 Sec. 46. NEW SECTION. 523I.815 FEE AND CARE ASSESSMENTS
44 10 AND MAINTENANCE FUNDS AT NONPERPETUAL CARE CEMETERIES.
44 11 1. a. On or after July 1, 2003, a cemetery corporation
44 12 that operates a nonperpetual care cemetery shall, prior to
44 13 selling any interment rights, establish a maintenance fund to
44 14 provide funding for the maintenance of the cemetery.
44 15 Maintenance fund income shall be applied in the manner the
44 16 directors of the cemetery corporation determine is in the best
44 17 interests of the cemetery, provided that, maintenance fund
44 18 income shall be used only for the care described in a
44 19 resolution, bylaw, or other action or instrument establishing
44 20 the maintenance fund, including the general care and
44 21 maintenance of memorials, memorialization, and the cemetery.
44 22 Maintenance fund income may be used for any of the following
44 23 purposes:
44 24 (1) Cutting and trimming lawns, shrubs, and trees at
44 25 reasonable intervals.
44 26 (2) Maintaining drains, water lines, roads, buildings,
44 27 fences, and other structures.
44 28 (3) Maintaining machinery, tools, and equipment.
44 29 (4) Compensating maintenance employees, paying insurance
44 30 premiums, and making payments to employees' pension and
44 31 benefit plans.
44 32 (5) Paying overhead expenses incidental to such payments.
44 33 (6) Paying expenses necessary to maintain ownership,
44 34 transfer, and interment records of the cemetery.
44 35 b. The cemetery corporation's maintenance fund shall be
45 1 established as a separate fund. The principal of the
45 2 maintenance fund is intended to remain available perpetually
45 3 as a funding source for the care of the cemetery. The
45 4 principal of the maintenance fund shall not be reduced
45 5 voluntarily and must remain inviolable, except as provided in
45 6 this section. The cemetery corporation shall maintain the
45 7 principal of the maintenance fund separate from all operating
45 8 funds of the cemetery corporation.
45 9 c. A cemetery corporation shall be responsible for the
45 10 deposit of all moneys required to be placed in the maintenance
45 11 fund. These moneys shall be invested or deposited in a
45 12 financial account or accounts, unless the cemetery is a
45 13 religious cemetery or a cemetery owned or operated by a
45 14 political subdivision of this state. The maintenance fund may
45 15 receive and hold as a part of the maintenance fund or as an
45 16 incident to the maintenance fund any property contributed to
45 17 the maintenance fund. Moneys to be deposited in a maintenance
45 18 funds shall be deposited at a financial institution no later
45 19 than the fifteenth day after the close of the month when the
45 20 cemetery corporation receives the final payment from the
45 21 purchaser.
45 22 d. The maintenance fund and contributions to the
45 23 maintenance fund are for charitable purposes. The care
45 24 financed by the maintenance fund constitutes the discharge of
45 25 a duty due by the cemetery corporation to persons interred and
45 26 to be interred in the cemetery and for the benefit and
45 27 protection of the public by preserving and keeping the
45 28 cemetery from becoming a place of disorder, reproach, and
45 29 desolation in the community in which the cemetery is located.
45 30 e. A contribution to a maintenance fund is not invalid
45 31 because of the following:
45 32 (1) Indefiniteness or uncertainty as to the identity of
45 33 the person designated as a beneficiary in the instrument
45 34 establishing the maintenance fund.
45 35 (2) A violation of the law against perpetuities or the law
46 1 against the suspension of the power of alienation of title to
46 2 or use of property.
46 3 2. A financial institution holding moneys in a maintenance
46 4 fund for a cemetery corporation shall not do any of the
46 5 following:
46 6 a. Be owned, under the control of, or affiliated with a
46 7 cemetery corporation.
46 8 b. Use any funds required to be deposited pursuant to this
46 9 chapter to purchase an interest in a contract or agreement in
46 10 which the cemetery corporation is a party.
46 11 c. Otherwise invest moneys in a maintenance fund, directly
46 12 or indirectly, in a cemetery corporation's business
46 13 operations.
46 14 3. A cemetery corporation shall make reasonable investment
46 15 decisions and properly oversee and manage moneys in a
46 16 maintenance fund. A cemetery corporation shall use the
46 17 judgment and care, under the circumstances then prevailing,
46 18 that a person of prudence, discretion, and intelligence

46 19 exercises in the management of the person's own affairs,
46 20 without speculation in the permanent disposition of the
46 21 person's own funds, to ensure the probable safety of the
46 22 person's capital. The commissioner may take enforcement
46 23 action against a cemetery corporation for a breach of
46 24 fiduciary duty proven under this chapter.

46 25 4. Moneys deposited in a maintenance fund may be
46 26 commingled for investment purposes if separate accounting of
46 27 principal, interest, and income is maintained for each
46 28 cemetery and each deposit includes a detailed listing of the
46 29 amount deposited in trust for each purchaser. A cemetery
46 30 corporation may establish a common maintenance fund for two or
46 31 more cemeteries into which deposits required under this
46 32 chapter are made, provided that separate records of principal
46 33 and income are maintained for each cemetery for the benefit of
46 34 which the common maintenance fund is established.

46 35 5. A cemetery corporation may appoint an independent
47 1 investment adviser to advise the financial institution about
47 2 investment of the moneys in a maintenance fund.

47 3 6. Subject to agreement between the parties, a financial
47 4 institution may receive a reasonable fee from the maintenance
47 5 fund for services performed on behalf of the maintenance fund.
47 6 The maintenance fund shall pay the operation costs and any
47 7 annual audit fees.

47 8 7. All moneys required to be deposited by the cemetery
47 9 corporation shall be deposited in the name of the maintenance
47 10 fund, pursuant to the terms of a written agreement and the
47 11 cemetery corporation shall invest, reinvest, exchange, retain,
47 12 sell, and otherwise manage the maintenance fund for the
47 13 benefit and protection of the cemetery.

47 14 8. This section does not prohibit a cemetery corporation
47 15 from moving moneys in a maintenance fund from one financial
47 16 institution to another.

47 17 9. A cemetery corporation that operates a nonperpetual
47 18 care cemetery shall collect a care assessment equal to or
47 19 greater than the lesser of fifty dollars or twenty percent of
47 20 the gross selling price received by the cemetery corporation
47 21 for the sale of interment rights. The cemetery corporation
47 22 shall also collect a five dollar fee assessment from each
47 23 purchaser of interment rights. The fee assessments collected
47 24 by the cemetery corporation shall be submitted to the
47 25 commissioner no later than April 1 of the calendar year
47 26 following collection and shall be deposited in the insurance
47 27 division's cemetery fund. The care assessments shall be
47 28 deposited in the cemetery corporation's maintenance fund.

47 29 SUBCHAPTER 9

47 30 ACCESS TO CEMETERIES

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

47 34 1. After reasonable written notice sent to a property
47 35 owner at the property owner's last known address,
48 1 representatives of local historical commissions and
48 2 associations dedicated to the preservation of cemeteries shall
48 3 have an easement for ingress and egress for purposes of
48 4 visiting a cemetery at reasonable times and in a reasonable
48 5 manner and may enter upon the land of a private or family
48 6 cemetery for the purpose of conducting official business.

48 7 2. Entry onto the property to visit a cemetery pursuant to
48 8 subsection 1 shall not unreasonably interfere with the
48 9 enjoyment of the property by the property owner. The property
48 10 owner may specify a reasonable route which visitors to a
48 11 cemetery pursuant to subsection 1 must use in all entries and
48 12 exits from the property.

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

48 15 1. A person who wishes to visit a cemetery or private
48 16 burial ground for which no public ingress or egress is
48 17 available shall have the right to reasonable ingress and
48 18 egress for the purpose of visiting a cemetery or private
48 19 burial grounds. This right of access extends only to
48 20 visitation during reasonable hours and only for purposes
48 21 usually associated with cemetery visits.

48 22 2. Relatives and descendants of a person interred in a
48 23 cemetery, or a designee, shall have an easement for ingress
48 24 and egress for the purpose of visiting the cemetery at
48 25 reasonable times and in a reasonable manner.

48 26 3. A property owner may specify a reasonable route which
48 27 the visitors must use in all entries and exits from the
48 28 property. If a cemetery is abandoned or otherwise not being
48 29 maintained, relatives or descendants of a person interred in

48 30 the cemetery may ask the property owner to provide for
48 31 reasonable maintenance of the cemetery.

48 32 4. If a property owner fails to care for an occupied
48 33 interment space within two weeks after a request by the
48 34 relatives or decedents of a person interred in the interment
48 35 space, the relatives and descendants of a person interred in
49 1 the interment space, or their designees, shall have the right
49 2 to maintain the occupied interment space.

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

49 6 1. Upon reasonable written notice sent to a property owner
49 7 at the property owner's last known address, a property owner
49 8 shall not unreasonably interfere with access to a cemetery by
49 9 anyone involved with or attending a memorial service or burial
49 10 at the cemetery or involved with the installation of a
49 11 memorial or memorialization. A property owner may specify a
49 12 reasonable route which visitors must use in all entries and
49 13 exits from the property.

49 14 2. The right of ingress and egress provided by this
49 15 subchapter shall include access by motorized vehicles involved
49 16 with funeral and burial processions. If notice to the
49 17 landowner is provided by September 1 of the prior year, the
49 18 right of ingress and egress provided by this subchapter shall
49 19 include access by motorized vehicles and equipment necessary
49 20 for repairs and maintenance. The landowner may specify a
49 21 reasonable route which the visitors must use in all entries
49 22 and exits from the property.

49 23 SUBCHAPTER 10
49 24 GOVERNMENTAL SUBDIVISIONS

49 25 Sec. 50. NEW SECTION. 523I.1001 CEMETERY AUTHORIZED.
49 26 The governing body of a governmental subdivision may
49 27 purchase, establish, operate, enclose, improve, or regulate a
49 28 cemetery. A cemetery owned or operated by a governmental
49 29 subdivision may sell interment rights subject to the
49 30 provisions of this chapter.

49 31 Sec. 51. NEW SECTION. 523I.1002 TRUST FOR CEMETERY.

49 32 1. A governmental subdivision that owns or operates a
49 33 cemetery or has control of cemetery property may act as a
49 34 permanent trustee for the perpetual maintenance of interment
49 35 spaces in the cemetery.

50 1 2. To act as a trustee, a majority of the governmental
50 2 subdivision's governing body must adopt an ordinance or
50 3 resolution stating the governmental subdivision's willingness
50 4 and intention to act as a trustee for the perpetual
50 5 maintenance of cemetery property. When the ordinance or
50 6 resolution is adopted and the trust is accepted, the trust is
50 7 perpetual.

50 8 Sec. 52. NEW SECTION. 523I.1003 AUTHORITY TO RECEIVE
50 9 GIFTS AND DEPOSITS FOR CARE == CERTIFICATES.

50 10 1. A governmental subdivision that is a trustee for the
50 11 perpetual maintenance of a cemetery may adopt reasonable rules
50 12 governing the receipt of a gift or grant from any source.

50 13 2. A governmental subdivision that is a trustee for a
50 14 person shall accept the amount the governmental subdivision
50 15 requires for permanent maintenance of an interment space on
50 16 behalf of that person or a decedent.

50 17 3. A governmental subdivision's acceptance of a deposit
50 18 for permanent maintenance of an interment space constitutes a
50 19 perpetual trust for the designated interment space.

50 20 4. Upon acceptance of a deposit, a governmental
50 21 subdivision's secretary, clerk, or mayor shall issue a
50 22 certificate in the name of the governmental subdivision to the
50 23 trustee or depositor. The certificate shall state all of the
50 24 following:

- 50 25 a. The depositor's name.
- 50 26 b. The amount and purpose of the deposit.
- 50 27 c. The location, with as much specificity as possible, of
50 28 the interment space to be maintained.
- 50 29 d. Other information required by the governmental
50 30 subdivision.

50 31 5. An individual, association, foundation, or corporation
50 32 that is interested in the maintenance of a neglected cemetery
50 33 in a governmental subdivision's possession and control may
50 34 donate funds to the cemetery's perpetual trust fund to
50 35 beautify and maintain the entire cemetery or burial grounds
51 1 generally.

51 2 Sec. 53. NEW SECTION. 523I.1004 INVESTMENT OF CARE
51 3 FUNDS.

51 4 Notwithstanding section 12B.10, a cemetery corporation
51 5 owned by a governmental subdivision may invest and reinvest

51 6 deposits under this subchapter as set forth in section
51 7 523I.1203. The trustee of the trust funds has a fiduciary
51 8 duty to make reasonable investment decisions and to properly
51 9 oversee and manage the funds entrusted to the trust fund.

51 10 Sec. 54. NEW SECTION. 523I.1005 APPOINTMENT OF SUCCESSOR
51 11 TRUSTEE.

51 12 A district judge of a county in which a cemetery is located
51 13 shall appoint a suitable successor or trustee to faithfully
51 14 execute a trust in accordance with this subchapter if a
51 15 governmental subdivision renounces a trust assumed under this
51 16 subchapter, fails to act as its trustee, a vacancy occurs, or
51 17 the appointment of a successor or trustee is otherwise
51 18 necessary.

51 19 Sec. 55. NEW SECTION. 523I.1006 PRIVATE CARE OF GRAVES.

51 20 This subchapter does not affect the right of a person who
51 21 has an interest in an interment space, or who is related to a
51 22 decedent interred in a cemetery, to beautify or maintain an
51 23 interment space individually or at the person's own expense in
51 24 accordance with reasonable rules established by the
51 25 governmental subdivision.

51 26 SUBCHAPTER 11

51 27 COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES

51 28 Sec. 56. NEW SECTION. 523I.1101 NEGLECTED CEMETERIES.

51 29 The commissioner shall create a form that interested
51 30 persons may use to report neglected cemeteries to the
51 31 commissioner and the county board of supervisors. The board
51 32 of supervisors of each county shall accept any neglected
51 33 cemetery report forms filed with the board and submit copies
51 34 of such report forms received during calendar years 2004,
51 35 2005, and 2006 to the commissioner no later than March 1 of
52 1 the year following receipt. The commissioner shall prepare an
52 2 annual summary of the report forms received, organized by
52 3 county.

52 4 Sec. 57. NEW SECTION. 523I.1102 CONDEMNATION OF
52 5 NEGLECTED CEMETERIES.

52 6 1. When a nonreligious cemetery within a county has been
52 7 neglected in whole or in part by the owners, the county may
52 8 acquire title to the cemetery by condemnation proceedings, to
52 9 be instituted and conducted in the manner prescribed in the
52 10 statutes providing for the exercise of the power of eminent
52 11 domain by counties. A court with jurisdiction over such
52 12 proceedings may, in its discretion, require the county to
52 13 acquire the entire cemetery, in which event the county may use
52 14 such part of the cemetery as may be necessary for its purposes
52 15 and sell the residue. Upon a showing of good cause, the court
52 16 may direct that, if possible, remains interred in the cemetery
52 17 be removed to another cemetery.

52 18 2. In the event that the proceeds from the condemnation
52 19 proceedings are insufficient to defray the costs of the suit
52 20 and removal and reinterment of the remains, then any
52 21 additional funds needed shall be paid by the county
52 22 instituting the suit. After payment of proper costs, any
52 23 residue of the proceeds shall be paid to the parties entitled
52 24 thereto. If there are any unknown parties who are entitled to
52 25 a portion of the proceeds, the county shall hold such amount
52 26 in trust for those parties, without any accrual of interest or
52 27 income. If any amount held in trust is not claimed within
52 28 seven years from the date of condemnation or sale of the
52 29 cemetery, or a portion thereof, title to the unclaimed funds
52 30 shall pass pursuant to the statute of escheats.

52 31 Sec. 58. NEW SECTION. 523I.1103 REMOVAL OF REMAINS.

52 32 1. Upon a showing of good cause, a county cemetery
52 33 commission may file suit in a district court in that county to
52 34 have remains interred in a cemetery owned and operated by the
52 35 commission removed to another cemetery. All persons in
53 1 interest, known or unknown, other than the plaintiffs, shall
53 2 be made defendants to the suit. If any parties are unknown,
53 3 notice may be given by publication. After hearing and a
53 4 showing of good cause for the removal, the court may order the
53 5 removal of the remains and the remains shall be properly
53 6 interred in another cemetery, at the expense of the county.
53 7 The removal and reinterment of the remains shall be done
53 8 pursuant to a disinterment permit issued under section 144.34
53 9 with due care and decency.

53 10 2. In deciding whether to order the removal of interred
53 11 remains, a court shall consider present or future access to
53 12 the cemetery, the historical significance of the cemetery, and
53 13 the wishes of the parties concerned if they are brought to the
53 14 court's attention, including the desire of any beneficiaries
53 15 to reserve their rights to waive a reservation of rights in
53 16 favor of removal, and shall exercise the court's sound

53 17 discretion in granting or refusing the removal of interred
53 18 remains.
53 19 3. Any heir at law or descendent of a deceased person
53 20 interred in a neglected cemetery may file suit in a district
53 21 court in the county where the cemetery is located, to have the
53 22 deceased person's remains interred in the cemetery removed to
53 23 another cemetery. The owner of the land, any beneficiaries of
53 24 any reservation of rights, and any other persons in interest,
53 25 known or unknown, other than the plaintiffs shall be made
53 26 defendants. If any parties are unknown, notice may be given
53 27 by publication. After hearing and upon a showing of good
53 28 cause, the court may order removal and the proper interment of
53 29 the remains in another cemetery, at the expense of the
53 30 petitioner. The removal and reinterment shall be done with
53 31 due care and decency.

53 32 SUBCHAPTER 12

53 33 PERPETUAL CARE CEMETERIES

53 34 Sec. 59. NEW SECTION. 523I.1201 APPLICABILITY.

53 35 1. All cemeteries are designated as either "perpetual care
54 1 cemeteries" or "nonperpetual care cemeteries" for the purposes
54 2 of this chapter.

54 3 2. A cemetery corporation organized or commencing business
54 4 in this state on or after July 1, 1995, shall operate as a
54 5 perpetual care cemetery and is subject to this subchapter.

54 6 3. A cemetery corporation that represents that it is
54 7 offering perpetual care is subject to this subchapter.

54 8 4. A cemetery corporation that operates a nonperpetual
54 9 care cemetery may elect to become a perpetual care cemetery by
54 10 complying with the terms of section 523I.1202, if at all times
54 11 subsequent to the date of the election, the cemetery
54 12 corporation complies with the other requirements of this
54 13 subchapter except section 523I.1203, subsection 1.

54 14 Sec. 60. NEW SECTION. 523I.1202 TRUST AGREEMENT ==
54 15 IRREVOCABLE TRUST.

54 16 1. A cemetery corporation operating as a perpetual care
54 17 cemetery shall execute a trust instrument and establish an
54 18 irrevocable trust fund to provide for the care and maintenance
54 19 of the cemetery.

54 20 2. The trust agreement shall provide for the appointment
54 21 of at least one trustee, with perpetual succession, in case
54 22 the cemetery corporation is dissolved or ceases to be
54 23 responsible for the cemetery's care and maintenance.

54 24 3. A cemetery corporation and the trustee or trustees of
54 25 the trust fund may, by agreement, amend the instrument that
54 26 established the fund to include any provision that is
54 27 necessary to comply with the requirements of this chapter.

54 28 4. A cemetery corporation shall be responsible for the
54 29 deposit of all moneys required to be placed in a trust fund.

54 30 5. The commissioner may require amendments to a trust
54 31 agreement that is not in accord with the provisions of this
54 32 chapter.

54 33 Sec. 61. NEW SECTION. 523I.1203 TRUST FUND REQUIREMENTS.

54 34 1. A religious cemetery or a cemetery owned or operated by
54 35 a political subdivision of this state is not required to make
55 1 a minimum initial deposit in a trust fund. A cemetery
55 2 corporation organized or commencing business in this state on
55 3 or after July 1, 1995, shall not commence operations as a
55 4 perpetual care cemetery unless the cemetery corporation has a
55 5 trust fund of at least twenty-five thousand dollars in cash.

55 6 2. If an initial deposit is made by a cemetery corporation
55 7 to satisfy subsection 1, the initial twenty-five thousand
55 8 dollar deposit may be withdrawn by the cemetery corporation
55 9 when the trust fund balance reaches one hundred thousand
55 10 dollars. An affidavit shall be filed with the commissioner
55 11 providing prior notice of the intended withdrawal of the
55 12 initial deposit and attesting that the money has not
55 13 previously been withdrawn. Upon a showing by the cemetery
55 14 corporation that the initial deposit has not previously been
55 15 withdrawn, the commissioner shall approve withdrawal of the
55 16 money and the withdrawal shall take place within one year
55 17 after the trust fund balance reaches one hundred thousand
55 18 dollars.

55 19 3. The trust fund shall be administered under the
55 20 jurisdiction of the district court of the county where the
55 21 cemetery is located. Notwithstanding chapter 633, annual
55 22 reports shall not be required unless specifically required by
55 23 the district court. Reports shall be filed with the court
55 24 when necessary to receive approval of appointments of
55 25 trustees, trust agreements and amendments, changes in fees or
55 26 expenses, and other matters within the court's jurisdiction.
55 27 A court having jurisdiction over a trust fund shall have full

55 28 jurisdiction to approve the appointment of trustees, the
55 29 amount of surety bond required, and investment of funds.

55 30 4. A trust fund must be established at a financial
55 31 institution, unless the cemetery is a religious cemetery or a
55 32 cemetery owned or operated by a governmental subdivision of
55 33 this state.

55 34 a. A financial institution may serve as a trustee if
55 35 granted those powers under the laws of this state or of the
56 1 United States. A financial institution acting as a trustee of
56 2 trust funds under this chapter shall invest the funds in
56 3 accordance with applicable law.

56 4 b. A financial institution acting as a trustee of trust
56 5 funds under this chapter has a fiduciary duty to make
56 6 reasonable investment decisions and to properly oversee and
56 7 manage the funds entrusted to the financial institution. A
56 8 trustee shall use the judgment and care, under the
56 9 circumstances then prevailing, that a person of prudence,
56 10 discretion, and intelligence exercises in the management of
56 11 the person's own affairs, without speculation, in the
56 12 permanent disposition of a person's own funds to ensure the
56 13 probable safety of the person's capital. The commissioner may
56 14 take enforcement action against a financial institution in its
56 15 capacity as trustee for a breach of fiduciary duty proven
56 16 under this chapter.

56 17 c. Moneys deposited under a master trust agreement may be
56 18 commingled by the financial institution for investment
56 19 purposes if separate accounting of principal, interest, and
56 20 income is maintained for each cemetery and each deposit
56 21 includes a detailed listing of the amount deposited in trust
56 22 for each purchaser. The trustors of two or more care funds
56 23 may establish a common trust fund in which deposits required
56 24 under this chapter are made, provided that separate records of
56 25 principal and income are maintained for each perpetual care
56 26 cemetery for the benefit of which the common trust fund is
56 27 established.

56 28 d. Subject to a master trust agreement, the cemetery
56 29 corporation may appoint an independent investment adviser to
56 30 advise the financial institution about investment of the trust
56 31 fund.

56 32 e. Subject to an agreement between the cemetery
56 33 corporation and the financial institution, the financial
56 34 institution may receive a reasonable fee from the trust fund
56 35 for services rendered as trustee. The trust fund shall pay
57 1 the trust operation costs and any annual audit fees.

57 2 f. If the amount of the trust funds exceeds two hundred
57 3 thousand dollars, the cemetery corporation or any officer,
57 4 director, agent, employee, or affiliate of the cemetery
57 5 corporation shall not serve as trustee unless the cemetery is
57 6 a religious cemetery or a cemetery owned or operated by a
57 7 governmental subdivision of this state. A financial
57 8 institution holding trust funds shall not do any of the
57 9 following:

57 10 (1) Be owned, under the control of, or affiliated with a
57 11 cemetery corporation.

57 12 (2) Use any funds required to be held in trust under this
57 13 chapter to purchase an interest in a contract or agreement in
57 14 which the cemetery corporation is a party.

57 15 (3) Otherwise invest trust funds, directly or indirectly,
57 16 in a cemetery corporation's business operations.

57 17 5. Moneys shall be deposited in the trust fund no later
57 18 than the fifteenth day after the close of the month when the
57 19 cemetery corporation receives the final payment from a
57 20 purchaser of interment rights in an amount equal to or greater
57 21 than either of the following:

57 22 a. The greater of fifty dollars or twenty percent of the
57 23 gross selling price received by the cemetery for the sale of
57 24 interment rights.

57 25 b. The amount charged for the perpetual care and special
57 26 care of a memorial or memorialization placed in the cemetery.
57 27 A fee for memorial care shall be uniformly charged on every
57 28 installation of a memorial in the cemetery based upon the size
57 29 of the memorial, using the height and width of the memorial or
57 30 the size of the ground surface area used for the memorial. A
57 31 fee for special care of a memorial may be collected if the
57 32 terms of the special care items and arrangements are clearly
57 33 specified in the interment rights purchase agreement. A
57 34 cemetery corporation's liability for acts of God and vandalism
57 35 is limited to income available from the care fund.

58 1 6. All moneys required to be deposited in the trust fund
58 2 by the cemetery corporation shall be deposited in the name of
58 3 the trustee, as trustee, under the terms of a trust agreement

58 4 and the trustee may invest, reinvest, exchange, retain, sell,
58 5 and otherwise manage the trust for the benefit and protection
58 6 of the cemetery.

58 7 7. This section does not prohibit a cemetery corporation
58 8 from moving trust funds from one financial institution to
58 9 another.

58 10 8. A trust fund may receive and hold as a part of the fund
58 11 or as an incident to the fund any property contributed to the
58 12 fund.

58 13 9. The trust fund and contributions to the trust fund are
58 14 for charitable purposes. The care financed by the fund is for
58 15 the following purposes:

58 16 a. The discharge of a duty due from the cemetery
58 17 corporation to persons interred and to be interred in the
58 18 cemetery.

58 19 b. The benefit and protection of the public by preserving
58 20 and keeping the cemetery in a dignified condition so that the
58 21 cemetery does not become a nuisance or a place of disorder,
58 22 reproach, and desolation in the community in which the
58 23 cemetery is located.

58 24 10. A contribution to a trust fund is not invalid because
58 25 of any of the following:

58 26 a. Indefiniteness or uncertainty as to the person
58 27 designated as a beneficiary in the instrument establishing the
58 28 fund.

58 29 b. A violation of the law against perpetuities or the law
58 30 against the suspension of the power of alienation of title to
58 31 or use of property.

58 32 Sec. 62. NEW SECTION. 523I.1204 PURPOSES OF CARE FUND.

58 33 1. The principal of a care fund is intended to remain
58 34 available perpetually as a funding source for care of the
58 35 cemetery. The principal of the fund shall not be reduced
59 1 voluntarily and shall remain inviolable, except as provided in
59 2 this section. The trustee or trustees of the care fund shall
59 3 maintain the principal of the care fund separate from all
59 4 operating funds of the cemetery corporation.

59 5 2. In establishing a care fund, the cemetery corporation
59 6 may adopt plans for the care of the cemetery and installed
59 7 memorials and memorialization.

59 8 3. A cemetery corporation may, by resolution adopted by a
59 9 vote of at least two-thirds of the members of its board at any
59 10 authorized meeting of the board, authorize the withdrawal and
59 11 use of not more than twenty percent of the principal of the
59 12 care fund to acquire additional land for cemetery purposes, to
59 13 repair a mausoleum or other building or structure intended for
59 14 cemetery purposes, or to build, improve, or repair roads and
59 15 walkways in the cemetery. The resolution shall establish a
59 16 reasonable repayment schedule, not to exceed five years, and
59 17 provide for interest in an amount comparable to the care
59 18 fund's current rate of return on its investments. However,
59 19 the care fund shall not be diminished below an amount equal to
59 20 the greater of one hundred thousand dollars or five thousand
59 21 dollars per acre of land in the cemetery. The resolution, and
59 22 either a bond or proof of insurance to guarantee replenishment
59 23 of the care fund, shall be filed with the commissioner thirty
59 24 days prior to the withdrawal of funds.

59 25 Sec. 63. NEW SECTION. 523I.1205 USE OF CARE FUND INCOME
59 26 AND CAPITAL GAINS.

59 27 1. Care fund income may be used in a manner determined by
59 28 the directors of the cemetery corporation to be in the best
59 29 interests of the cemetery, provided that care fund income
59 30 shall be used only for care that is described in a resolution,
59 31 bylaw, or other action or instrument establishing the fund,
59 32 including the general care and maintenance of memorials,
59 33 memorialization, and the cemetery. Fund income may be used
59 34 for any of the following purposes:

59 35 a. Cutting and trimming lawns, shrubs, and trees at
60 1 reasonable intervals.

60 2 b. Maintaining drains, water lines, roads, buildings,
60 3 fences, and other structures.

60 4 c. Maintaining machinery, tools, and equipment.

60 5 d. Compensating maintenance employees, paying insurance
60 6 premiums, and making payments to employees' pension and
60 7 benefit plans.

60 8 e. Paying overhead expenses incidental to such purposes.

60 9 f. Paying expenses necessary to maintain ownership,
60 10 transfer, and interment records of the cemetery corporation.

60 11 2. A cemetery corporation may, by amending the cemetery
60 12 corporation trust agreement, elect to withdraw capital gains
60 13 from the care fund, subject to the following conditions:

60 14 a. The amount of principal in the care fund shall be

60 15 adjusted annually by allocating income or capital gains as
60 16 necessary to adjust the principal of the care fund for
60 17 inflation, based on the consumer price index as set by the
60 18 commissioner and the amount of principal in the care fund at
60 19 the beginning of the prior year. The amount of principal in
60 20 the care fund shall also be adjusted by adding the amount of
60 21 the deposits received during the prior year, as required by
60 22 section 523I.1203, subsection 5.

60 23 b. For purposes of this section, "adjusted basis" means
60 24 the total of the market value of the care fund on the date of
60 25 the conversion, the aggregate amount of the inflation
60 26 adjustments required by this section, and the aggregate amount
60 27 of deposits received as required by section 523I.1203,
60 28 subsection 5, since the date of the conversion.

60 29 c. If the adjusted basis of the care fund is more than the
60 30 market value of the care fund at the end of the prior year,
60 31 the cemetery corporation shall not withdraw capital gains. If
60 32 the adjusted basis of the care fund is less than the market
60 33 value of the care fund at the end of the prior year, an amount
60 34 equal to fifty percent of the excess may be withdrawn and used
60 35 for the cemetery's care.

61 1 Sec. 64. NEW SECTION. 523I.1206 SUIT BY OWNERS OR
61 2 COMMISSIONER.

61 3 1. If the directors of a cemetery corporation do not care
61 4 for and maintain the cemetery, the district court of the
61 5 county in which the cemetery is located may do the following:

61 6 a. By injunction compel the directors to expend the net
61 7 income of the care fund as required by this chapter.

61 8 b. Appoint a receiver to take charge of the care fund and
61 9 expend the net income of the care fund as required by this
61 10 chapter.

61 11 2. Grant relief on a petition for relief filed pursuant to
61 12 this section by the commissioner or by at least five owners of
61 13 interment rights in the cemetery.

61 14 Sec. 65. NEW SECTION. 523I.1207 ADVERTISING.

61 15 1. A cemetery corporation shall not advertise, represent,
61 16 guarantee, promise, or contract to provide or offer perpetual
61 17 care or use terms or phrases like permanent care, permanent
61 18 maintenance, care forever, continuous care, eternal care, or
61 19 everlasting care to imply that a certain level of care and
61 20 financial security will be furnished or is guaranteed except
61 21 in compliance with the provisions of this subchapter.

61 22 2. A cemetery corporation or person advertising or selling
61 23 interment rights shall not represent that the purchase of the
61 24 interment rights is or will be a desirable speculative
61 25 investment for resale purposes.

61 26 Sec. 66. NEW SECTION. 523I.1208 PERPETUAL CARE REGISTRY.

61 27 1. A cemetery corporation that operates a perpetual care
61 28 cemetery shall maintain a registry of individuals who have
61 29 purchased interment rights in the cemetery subject to the
61 30 trust fund requirements of this subchapter.

61 31 2. The registry shall include the amount deposited in
61 32 trust for each interment rights agreement entered into on or
61 33 after July 1, 1995.

61 34 Sec. 67. NEW SECTION. 523I.1209 USE OF GIFT FOR SPECIAL
61 35 CARE.

62 1 A trustee may accept and hold money or property transferred
62 2 to the trustee in trust for the purpose of applying the
62 3 principal or income of the money or property transferred for a
62 4 purpose consistent with the purpose of a perpetual care
62 5 cemetery, including the following:

62 6 1. Improvement or embellishment of any part of the
62 7 cemetery.

62 8 2. Erection, renewal, repair, or preservation of a
62 9 monument, fence, building, or other structure in the cemetery.

62 10 3. Planting or cultivation of plants in or around the
62 11 cemetery.

62 12 4. Special care of or embellishment of an interment space,
62 13 section, or building in the cemetery.

62 14 Sec. 68. NEW SECTION. 523I.1210 GOVERNMENTAL
62 15 SUBDIVISIONS.

62 16 A governmental subdivision subject to this section may
62 17 commingle care funds for the purposes of investment and
62 18 administration and may file a single report, if each cemetery
62 19 is appropriately identified and separate records are
62 20 maintained for each cemetery.

62 21 Sec. 69. NEW SECTION. 523I.1211 ANNUAL REPORT BY
62 22 PERPETUAL CARE CEMETERIES.

62 23 1. A cemetery corporation that operates a perpetual care
62 24 cemetery corporation shall file a written report at the end of
62 25 each fiscal year of the cemetery that includes the following:

62 26 a. The name and address of the cemetery.
62 27 b. The name and address of the cemetery corporation.
62 28 c. An affidavit that the cemetery is in compliance with
62 29 this chapter.
62 30 d. Copies of all sales agreement forms used by the
62 31 cemetery.
62 32 e. The amount of the principal of the cemetery
62 33 corporation's care funds at the end of the fiscal year.
62 34 f. The number of interments made and interment spaces sold
62 35 during the fiscal year.
63 1 2. The report and a five-dollar filing fee for each
63 2 certificate of interment rights issued during the fiscal year
63 3 of the cemetery shall be filed with the commissioner within
63 4 four months following the end of the cemetery corporation's
63 5 fiscal year in the form required by the commissioner. The
63 6 filing fee may be charged directly to the purchaser of the
63 7 interment rights.
63 8 Sec. 70. NEW SECTION. 523I.1212 UNIFIED ANNUAL REPORTS.
63 9 The commissioner shall permit the filing of a unified
63 10 report in the event of commonly owned or affiliated
63 11 cemeteries.

63 12 SUBCHAPTER 13

63 13 FRAUDULENT PRACTICES

63 14 Sec. 71. NEW SECTION. 523I.1301 MISLEADING FILINGS.
63 15 It is unlawful for a person to make or cause to be made, in
63 16 any document filed with the commissioner, or in any proceeding
63 17 under this chapter, any statement of material fact which is,
63 18 at the time and in the light of the circumstances under which
63 19 it is made, false or misleading, or, in connection with such
63 20 statement, to omit to state a material fact necessary in order
63 21 to make the statements made, in the light of the circumstances
63 22 under which they are made, not misleading.
63 23 Sec. 72. NEW SECTION. 523I.1302 MISREPRESENTATIONS OF
63 24 GOVERNMENT APPROVAL.

63 25 It is unlawful for a seller under this chapter to represent
63 26 or imply in any manner that the seller has been sponsored,
63 27 recommended, or approved, or that the seller's abilities or
63 28 qualifications have in any respect been passed upon by the
63 29 commissioner.

63 30 Sec. 73. NEW SECTION. 523I.1303 FRAUDULENT PRACTICES.
63 31 A person who commits any of the following acts commits a
63 32 fraudulent practice and is punishable as provided in chapter
63 33 714:

63 34 1. Knowingly fails to comply with any requirement of this
63 35 chapter.

64 1 2. Knowingly makes, causes to be made, or subscribes to a
64 2 false statement or representation in a report or other
64 3 document required under this chapter, implementing rules, or
64 4 orders, or renders such a report or document misleading
64 5 through the deliberate omission of information properly
64 6 belonging in the report or document.

64 7 3. Conspires to defraud in connection with the sale of
64 8 memorials, memorialization, opening and closing services,
64 9 scattering services, interment rights, or a combination
64 10 thereof under this chapter.

64 11 4. Fails to deposit funds under section 523I.815 or
64 12 section 523I.1203 or withdraws funds in a manner inconsistent
64 13 with this chapter.

64 14 5. Knowingly sells memorials, memorialization, opening and
64 15 closing services, scattering services, interment rights, or a
64 16 combination thereof without the permits required under this
64 17 chapter.

64 18 6. Deliberately misrepresents or omits a material fact
64 19 relative to the sale of memorials, memorialization, opening
64 20 and closing services, scattering services, interment rights,
64 21 or a combination thereof.

64 22 SUBCHAPTER 14

64 23 ADMINISTRATION AND ENFORCEMENT

64 24 Sec. 74. NEW SECTION. 523I.1401 ADMINISTRATION.

64 25 1. This chapter shall be administered by the commissioner.
64 26 The deputy administrator appointed pursuant to section 502.601
64 27 shall be the principal operations officer responsible to the
64 28 commissioner for the routine administration of this chapter
64 29 and management of the administrative staff. In the absence of
64 30 the commissioner, whether because of vacancy in the office due
64 31 to absence, physical disability, or other cause, the deputy
64 32 administrator shall, for the time being, have and exercise the
64 33 authority conferred upon the commissioner. The commissioner
64 34 may by order from time to time delegate to the deputy
64 35 administrator any or all of the functions assigned to the
65 1 commissioner in this chapter. The deputy administrator shall

65 2 employ officers, attorneys, accountants, and other employees
65 3 as needed for administering this chapter.

65 4 2. It is unlawful for the commissioner or any
65 5 administrative staff to use for personal benefit any
65 6 information which is filed with or obtained by the
65 7 commissioner and which is not made public. This chapter does
65 8 not authorize the commissioner or any staff member to disclose
65 9 any such information except among themselves or to other
65 10 cemetery and funeral administrators, regulatory authorities,
65 11 or governmental agencies, or when necessary and appropriate in
65 12 a proceeding or investigation under this chapter or as
65 13 required by chapter 22. This chapter neither creates nor
65 14 derogates any privileges that exist at common law or otherwise
65 15 when documentary or other evidence is sought under a subpoena
65 16 directed to the commissioner or any administrative staff.

65 17 Sec. 75. NEW SECTION. 523I.1402 SCOPE.

65 18 1. This chapter applies to cemeteries, to any person
65 19 advertising or offering memorials, memorialization, opening
65 20 and closing services, scattering services at a cemetery,
65 21 interment rights, or a combination thereof for sale, and to
65 22 interments made in areas not dedicated as a cemetery by a
65 23 person other than the state archaeologist.

65 24 2. This chapter applies when a purchase agreement is
65 25 executed within this state or an advertisement, promotion, or
65 26 offer to furnish memorials, memorialization, opening and
65 27 closing services, scattering services, interment rights, or a
65 28 combination thereof is made or accepted within this state. An
65 29 offer to furnish memorials, memorialization, opening and
65 30 closing services, scattering services, interment rights, or a
65 31 combination thereof is made within this state, whether or not
65 32 either party is then present in this state, when the offer
65 33 originates from this state or is directed by the offeror to
65 34 this state and received by the offeree in this state through
65 35 the mail, over the telephone, by the internet, or through any
66 1 other means of commerce.

66 2 3. If a foreign person does not have a registered agent or
66 3 agents in the state of Iowa, doing business within this state
66 4 shall constitute the person's appointment of the secretary of
66 5 state of the state of Iowa to be its true and lawful attorney
66 6 upon whom may be served all lawful process of original notice
66 7 in actions or proceedings arising or growing out of any
66 8 contract or tort.

66 9 Sec. 76. NEW SECTION. 523I.1403 INVESTIGATIONS AND
66 10 SUBPOENAS.

66 11 1. The commissioner may, for the purpose of discovering
66 12 violations of this chapter, or implementing rules or orders
66 13 issued under this chapter:

66 14 a. Make such public or private investigations within or
66 15 outside of this state as the commissioner deems necessary to
66 16 determine whether any person has violated or is about to
66 17 violate this chapter, implementing rules, or orders issued
66 18 under this chapter, or to aid in enforcement of this chapter,
66 19 or in the prescribing of rules and forms under this chapter.

66 20 b. Require or permit any person to file a statement in
66 21 writing, under oath or otherwise as the commissioner or
66 22 attorney general determines, as to all the facts and
66 23 circumstances concerning the matter to be investigated.

66 24 c. Notwithstanding chapter 22, keep confidential the
66 25 information obtained in the course of an investigation.
66 26 However, if the commissioner determines that it is necessary
66 27 or appropriate in the public interest or for the protection of
66 28 the public, the commissioner may share information with other
66 29 administrators, regulatory authorities, or governmental
66 30 agencies, or may publish information concerning a violation of
66 31 this chapter, implementing rules, or orders issued under this
66 32 chapter.

66 33 d. Investigate the cemetery corporation and examine the
66 34 books, accounts, papers, correspondence, memoranda, purchase
66 35 agreements, files, or other documents or records used by every
67 1 applicant and permit holder under this chapter.

67 2 e. Administer oaths and affirmations, subpoena witnesses,
67 3 compel their attendance, take evidence, and require the
67 4 production of any books, accounts, papers, correspondence,
67 5 memoranda, purchase agreements, files, or other documents or
67 6 records which the commissioner deems relevant or material to
67 7 any investigation or proceeding under this chapter and
67 8 implement rules, all of which may be enforced under chapter
67 9 17A.

67 10 f. Apply to the district court for an order requiring a
67 11 person's appearance before the commissioner or attorney
67 12 general, or a designee of either or both, in cases where the

67 13 person has refused to obey a subpoena issued by the
67 14 commissioner or attorney general. The person may also be
67 15 required to produce documentary evidence germane to the
67 16 subject of the investigation. Failure to obey a court order
67 17 under this subsection constitutes contempt of court.

67 18 2. The commissioner may issue and bring an action in
67 19 district court to enforce subpoenas within this state at the
67 20 request of an agency or administrator of another state, if the
67 21 activity constituting an alleged violation for which the
67 22 information is sought would be a violation of this chapter had
67 23 the activity occurred in this state.

67 24 Sec. 77. NEW SECTION. 523I.1404 MEDIATION.

67 25 1. The commissioner may order a cemetery corporation to
67 26 participate in mediation in any dispute regarding a purchase
67 27 agreement. Mediation performed under this section shall be
67 28 conducted by a mediator appointed by the commissioner and
67 29 shall comply with the provisions of chapter 679C.

67 30 2. Mediation of disputes pursuant to subsection 1 shall
67 31 include attendance at a mediation session with a mediator and
67 32 the parties to the dispute, listening to the mediator's
67 33 explanation of the mediation process by the mediator,
67 34 presentation of each party's view of the dispute, and
67 35 listening to the response by the other party. Participation
68 1 in mediation does not require that the parties reach a
68 2 mediation agreement.

68 3 3. Parties to the mediation shall have the right to advice
68 4 and presence of counsel at all times. The parties to the
68 5 mediation shall present any mediation agreement reached
68 6 through the mediation to the commissioner. If a mediation
68 7 agreement is not reached, the mediator shall file a report
68 8 with the commissioner. The costs of the mediation shall be
68 9 approved by the commissioner and shall be borne by the
68 10 insurance division's cemetery fund created pursuant to section
68 11 523I.1413.

68 12 Sec. 78. NEW SECTION. 523I.1405 CEASE AND DESIST ORDERS
68 13 == INJUNCTIONS.

68 14 If it appears to the commissioner that a person has engaged
68 15 or is about to engage in an act or practice constituting a
68 16 violation of this chapter, or implementing rules or orders
68 17 issued under this chapter, the commissioner or the attorney
68 18 general may do any of the following:

68 19 1. Issue a summary order directed to the person that
68 20 requires the person to cease and desist from engaging in such
68 21 act or practice. A person may request a hearing within thirty
68 22 days of issuance of the summary order. If a hearing is not
68 23 timely requested, the summary order shall become final by
68 24 operation of law. The order shall remain effective from the
68 25 date of issuance until the date the order becomes final by
68 26 operation of law or is overturned by a presiding officer
68 27 following a request for hearing. Section 17A.18A is
68 28 inapplicable to summary cease and desist orders issued under
68 29 this section.

68 30 2. Bring an action in the district court in any county of
68 31 the state for an injunction to restrain a person subject to
68 32 this chapter and any agents, employees, or associates of the
68 33 person from engaging in conduct or practices deemed contrary
68 34 to the public interest. In any proceeding for an injunction,
68 35 the commissioner or attorney general may apply to the court
69 1 for a subpoena to require the appearance of a defendant and
69 2 the defendant's agents, employees, or associates and for the
69 3 production of any books, accounts, papers, correspondence,
69 4 memoranda, purchase agreements, files, or other documents or
69 5 records germane to the hearing upon the petition for an
69 6 injunction. Upon a proper showing, a permanent or temporary
69 7 injunction, restraining order, or writ of mandamus shall be
69 8 granted and a receiver may be appointed for the defendant or
69 9 the defendant's assets. The commissioner or attorney general
69 10 shall not be required to post a bond.

69 11 Sec. 79. NEW SECTION. 523I.1406 COURT ACTION FOR FAILURE
69 12 TO COOPERATE.

69 13 1. If a person fails or refuses to file a statement or
69 14 report or to produce any books, accounts, papers,
69 15 correspondence, memoranda, purchase agreements, files, or
69 16 other documents or records, or to obey a subpoena issued by
69 17 the commissioner, the commissioner may refer the matter to the
69 18 attorney general, who may apply to a district court to enforce
69 19 compliance. The court may order any or all of the following:

69 20 a. Injunctive relief restricting or prohibiting the offer
69 21 or sale of memorials, memorialization, opening and closing
69 22 services, scattering services, interment rights, or a
69 23 combination thereof.

69 24 b. Revocation or suspension of a permit issued under this
69 25 chapter.

69 26 c. Production of documents or records including but not
69 27 limited to books, accounts, papers, correspondence, memoranda,
69 28 purchase agreements, files, or other documents or records.

69 29 d. Such other relief as may be required.

69 30 2. A court order issued pursuant to subsection 1 is
69 31 effective until the person files the statement or report or
69 32 produces the documents requested, or obeys the subpoena.

69 33 Sec. 80. NEW SECTION. 523I.1407 PROSECUTION FOR
69 34 VIOLATIONS OF LAW.

69 35 1. A violation of this chapter or rules adopted or orders
70 1 issued under this chapter is a violation of section 714.16,
70 2 subsection 2, paragraph "a". The remedies and penalties
70 3 provided by section 714.16, including but not limited to
70 4 injunctive relief and penalties, apply to violations of this
70 5 chapter.

70 6 2. If the commissioner believes that grounds exist for the
70 7 criminal prosecution of persons subject to this chapter for
70 8 violations of this chapter or any other law of this state, the
70 9 commissioner may forward to the attorney general or the county
70 10 attorney the grounds for the belief, including all evidence in
70 11 the commissioner's possession, so that the attorney general or
70 12 the county attorney may proceed with the matter as deemed
70 13 appropriate. At the request of the attorney general, the
70 14 county attorney shall appear and prosecute the action when
70 15 brought in the county attorney's county.

70 16 Sec. 81. NEW SECTION. 523I.1408 COOPERATION WITH OTHER
70 17 AGENCIES.

70 18 1. The commissioner may cooperate with any governmental
70 19 law enforcement or regulatory agency to encourage uniform
70 20 interpretation and administration of this chapter and
70 21 effective enforcement of this chapter and effective regulation
70 22 of the sale of memorials, memorialization, and cemeteries.

70 23 2. Cooperation with other agencies may include but is not
70 24 limited to:

70 25 a. Making a joint examination or investigation.

70 26 b. Holding a joint administrative hearing.

70 27 c. Filing and prosecuting a joint civil or administrative
70 28 proceeding.

70 29 d. Sharing and exchanging personnel.

70 30 e. Sharing and exchanging relevant information and
70 31 documents.

70 32 f. Formulating, in accordance with chapter 17A, rules or
70 33 proposed rules on matters such as statements of policy,
70 34 regulatory standards, guidelines, and interpretive opinions.

70 35 Sec. 82. NEW SECTION. 523I.1409 RULES, FORMS, AND
71 1 ORDERS.

71 2 1. Under chapter 17A, the commissioner may from time to
71 3 time make, amend, and rescind such rules, forms, and orders as
71 4 are necessary or appropriate for the protection of purchasers
71 5 and the public and to administer the provisions of this
71 6 chapter, its implementing rules, and orders issued under this
71 7 chapter.

71 8 2. A rule, form, or order shall not be made, amended, or
71 9 rescinded unless the commissioner finds that the action is
71 10 necessary or appropriate to protect purchasers and the public
71 11 and is consistent with the policies and provisions of this
71 12 chapter, its implementing rules, and orders issued under this
71 13 chapter.

71 14 3. A provision of this chapter imposing any liability does
71 15 not apply to an act done or omitted in good faith in
71 16 conformity with any rule, form, or order of the commissioner,
71 17 notwithstanding that the rule, form, or order may later be
71 18 amended or rescinded or be determined by judicial or other
71 19 authority to be invalid for any reason.

71 20 Sec. 83. NEW SECTION. 523I.1410 DATE OF FILING ==
71 21 INTERPRETIVE OPINIONS.

71 22 1. A document is filed when it is received by the
71 23 commissioner.

71 24 2. Requests for interpretive opinions may be granted in
71 25 the commissioner's discretion.

71 26 Sec. 84. NEW SECTION. 523I.1411 RECEIVERSHIPS.

71 27 1. The commissioner shall notify the attorney general of
71 28 the potential need for establishment of a receivership if the
71 29 commissioner finds that a cemetery subject to this chapter
71 30 meets one or more of the following conditions:

71 31 a. Is insolvent.

71 32 b. Has utilized trust funds for personal or business
71 33 purposes in a manner inconsistent with this chapter.

71 34 c. The amount of care funds currently held in trust for

71 35 perpetual care is less than the amount required by this
72 1 chapter.

72 2 2. The commissioner or attorney general may apply to the
72 3 district court in any county of the state for the
72 4 establishment of a receivership. Upon proof that any of the
72 5 conditions described in this section have occurred, the court
72 6 may grant a receivership.

72 7 Sec. 85. NEW SECTION. 523I.1412 LIQUIDATION PROCEDURES.

72 8 1. GROUNDS FOR LIQUIDATION. The commissioner may petition
72 9 the district court for an order directing the commissioner to
72 10 liquidate a cemetery corporation on any of the following
72 11 grounds:

72 12 a. The cemetery corporation did not deposit funds pursuant
72 13 to subchapter 12 or withdrew funds in a manner inconsistent
72 14 with this chapter and is insolvent.

72 15 b. The cemetery corporation did not deposit funds pursuant
72 16 to subchapter 12 or withdrew funds in a manner inconsistent
72 17 with this chapter and the condition of the cemetery
72 18 corporation is such that further transaction of business would
72 19 be hazardous, financially or otherwise, to purchasers or the
72 20 public.

72 21 2. LIQUIDATION ORDER.

72 22 a. An order to liquidate the business of a cemetery
72 23 corporation shall appoint the commissioner as liquidator and
72 24 shall direct the liquidator to immediately take possession of
72 25 the assets of the cemetery corporation and to administer them
72 26 under the general supervision of the court. The liquidator is
72 27 vested with the title to the property, contracts, rights of
72 28 action, and the books and records of the cemetery corporation,
72 29 wherever located, that is ordered liquidated as of the entry
72 30 of the final order of liquidation. The filing or recording of
72 31 the order with the clerk of court and the recorder of deeds of
72 32 the county in which the principal office or place of business
72 33 of the cemetery corporation is located, or, in the case of
72 34 real estate with the recorder of deeds of the county where the
72 35 property is located, constitutes the same notice as a deed,
73 1 bill of sale, or other evidence of title duly filed or
73 2 recorded with the recorder of deeds.

73 3 b. Upon issuance of an order, the rights and liabilities
73 4 of a cemetery corporation and of the cemetery corporation's
73 5 creditors, purchasers, owners, and other persons interested in
73 6 the cemetery corporation's estate shall become fixed as of the
73 7 date of the entry of the order of liquidation, except as
73 8 provided in subsection 14.

73 9 c. At the time of petitioning for an order of liquidation,
73 10 or at any time after the time of petitioning, the
73 11 commissioner, after making appropriate findings of a cemetery
73 12 corporation's insolvency, may petition the court for a
73 13 declaration of insolvency. After providing notice and hearing
73 14 as it deems proper, the court may make the declaration.

73 15 d. An order issued under this section shall require
73 16 accounting to the court by the liquidator. Accountings, at a
73 17 minimum, must include all funds received or disbursed by the
73 18 liquidator during the current period. An accounting shall be
73 19 filed within one year of the liquidation order and at such
73 20 other times as the court may require.

73 21 e. Within five days after the initiation of an appeal of
73 22 an order of liquidation, which order has not been stayed, the
73 23 commissioner shall present for the court's approval a plan for
73 24 the continued performance of the cemetery corporation's
73 25 obligations during the pendency of an appeal. The plan shall
73 26 provide for the continued performance of interment rights
73 27 agreements in the normal course of events, notwithstanding the
73 28 grounds alleged in support of the order of liquidation
73 29 including the ground of insolvency. If the defendant cemetery
73 30 corporation's financial condition, in the judgment of the
73 31 commissioner, will not support the full performance of all
73 32 obligations during the appeal pendency period, the plan may
73 33 prefer the claims of certain purchasers and claimants over
73 34 creditors and interested parties as well as other purchasers
73 35 and claimants, as the commissioner finds to be fair and
74 1 equitable, considering the relative circumstances of such
74 2 purchasers and claimants. The court shall examine the plan
74 3 submitted by the commissioner and if it finds the plan to be
74 4 in the best interests of the parties, the court shall approve
74 5 the plan. An action shall not lie against the commissioner or
74 6 any of the commissioner's deputies, agents, clerks,
74 7 assistants, or attorneys by any party based on preference in
74 8 an appeal pendency plan approved by the court.

74 9 3. POWERS OF LIQUIDATOR.

74 10 a. The liquidator may do any of the following:

74 11 (1) Appoint a special deputy to act for the liquidator
74 12 under this chapter, and determine the special deputy's
74 13 reasonable compensation. The special deputy shall have all
74 14 the powers of the liquidator granted by this section. The
74 15 special deputy shall serve at the pleasure of the liquidator.
74 16 (2) Hire employees and agents, legal counsel, accountants,
74 17 appraisers, consultants, and other personnel as the
74 18 commissioner may deem necessary to assist in the liquidation.
74 19 (3) With the approval of the court, fix reasonable
74 20 compensation of employees and agents, legal counsel,
74 21 accountants, appraisers, and consultants.
74 22 (4) Pay reasonable compensation to persons appointed and
74 23 defray from the funds or assets of the cemetery corporation
74 24 all expenses of taking possession of, conserving, conducting,
74 25 liquidating, disposing of, or otherwise dealing with the
74 26 business and property of the cemetery corporation. If the
74 27 property of the cemetery corporation does not contain
74 28 sufficient cash or liquid assets to defray the costs incurred,
74 29 the commissioner may advance the costs so incurred out of the
74 30 insurance division's cemetery fund. Amounts so advanced for
74 31 expenses of administration shall be repaid to the insurance
74 32 division's cemetery fund for the use of the division out of
74 33 the first available moneys of the cemetery corporation.
74 34 (5) Hold hearings, subpoena witnesses, and compel their
74 35 attendance, administer oaths, examine a person under oath, and
75 1 compel a person to subscribe to the person's testimony after
75 2 it has been correctly reduced to writing, and in connection to
75 3 the proceedings require the production of books, accounts,
75 4 papers, correspondence, memoranda, purchase agreements, files,
75 5 or other documents or records which the liquidator deems
75 6 relevant to the inquiry.
75 7 (6) Collect debts and moneys due and claims belonging to
75 8 the cemetery corporation, wherever located. Pursuant to this
75 9 subparagraph, the liquidator may do any of the following:
75 10 (a) Institute timely action in other jurisdictions to
75 11 forestall garnishment and attachment proceedings against
75 12 debts.
75 13 (b) Perform acts as are necessary or expedient to collect,
75 14 conserve, or protect its assets or property, including the
75 15 power to sell, compound, compromise, or assign debts for
75 16 purposes of collection upon terms and conditions as the
75 17 liquidator deems best.
75 18 (c) Pursue any creditor's remedies available to enforce
75 19 claims.
75 20 (7) Conduct public and private sales of the property of
75 21 the cemetery corporation.
75 22 (8) Use assets of the cemetery corporation under a
75 23 liquidation order to transfer obligations of purchase
75 24 agreements to a solvent cemetery corporation, if the transfer
75 25 can be accomplished without prejudice to the applicable
75 26 priorities under subsection 18.
75 27 (9) Acquire, hypothecate, encumber, lease, improve, sell,
75 28 transfer, abandon, or otherwise dispose of or deal with
75 29 property of the cemetery corporation at its market value or
75 30 upon terms and conditions as are fair and reasonable. The
75 31 liquidator shall also have power to execute, acknowledge, and
75 32 deliver deeds, assignments, releases, and other instruments
75 33 necessary to effectuate a sale of property or other
75 34 transaction in connection with the liquidation.
75 35 (10) Borrow money on the security of the cemetery
76 1 corporation's assets or without security and execute and
76 2 deliver documents necessary to that transaction for the
76 3 purpose of facilitating the liquidation. Money borrowed
76 4 pursuant to this subparagraph shall be repaid as an
76 5 administrative expense and shall have priority over any other
76 6 class 1 claims under the priority of distribution established
76 7 in subsection 18.
76 8 (11) Enter into contracts as necessary to carry out the
76 9 order to liquidate and affirm or disavow contracts to which
76 10 the cemetery corporation is a party.
76 11 (12) Continue to prosecute and to institute in the name of
76 12 the cemetery corporation or in the liquidator's own name any
76 13 and all suits and other legal proceedings, in this state or
76 14 elsewhere, and to abandon the prosecution of claims the
76 15 liquidator deems unprofitable to pursue further.
76 16 (13) Prosecute an action on behalf of the creditors,
76 17 purchasers, or owners against an officer of the cemetery
76 18 corporation or any other person.
76 19 (14) Remove records and property of the cemetery
76 20 corporation to the offices of the commissioner or to other
76 21 places as may be convenient for the purposes of efficient and

76 22 orderly execution of the liquidation.

76 23 (15) Deposit in one or more banks in this state sums as
76 24 are required for meeting current administration expenses and
76 25 distributions.

76 26 (16) Unless the court orders otherwise, invest funds not
76 27 currently needed.

76 28 (17) File necessary documents for recording in the office
76 29 of the recorder of deeds or record office in this state or
76 30 elsewhere where property of the cemetery corporation is
76 31 located.

76 32 (18) Assert defenses available to the cemetery corporation
76 33 against third persons, including statutes of limitations,
76 34 statutes of fraud, and the defense of usury. A waiver of a
76 35 defense by the cemetery corporation after a petition in
77 1 liquidation has been filed shall not bind the liquidator.

77 2 (19) Exercise and enforce the rights, remedies, and powers
77 3 of a creditor, purchaser, or owner, including the power to
77 4 avoid transfer or lien that may be given by the general law
77 5 and that is not included within subsections 7 through 9.

77 6 (20) Intervene in a proceeding wherever instituted that
77 7 might lead to the appointment of a receiver or trustee, and
77 8 act as the receiver or trustee whenever the appointment is
77 9 offered.

77 10 (21) Exercise powers now held or later conferred upon
77 11 receivers by the laws of this state which are not inconsistent
77 12 with this chapter.

77 13 b. This subsection does not limit the liquidator or
77 14 exclude the liquidator from exercising a power not listed in
77 15 paragraph "a" that may be necessary or appropriate to
77 16 accomplish the purposes of this chapter.

77 17 4. NOTICE TO CREDITORS AND OTHERS.

77 18 a. Unless the court otherwise directs, the liquidator
77 19 shall give notice of the liquidation order as soon as possible
77 20 by doing both of the following:

77 21 (1) Mailing notice, by first-class mail, to all persons
77 22 known or reasonably expected to have claims against the
77 23 cemetery corporation, including purchasers, at their last
77 24 known address as indicated by the records of the cemetery
77 25 corporation.

77 26 (2) Publication of notice in a newspaper of general
77 27 circulation in the county in which the cemetery corporation
77 28 has its principal place of business and in other locations as
77 29 the liquidator deems appropriate.

77 30 b. Notice to potential claimants under paragraph "a" shall
77 31 require claimants to file with the liquidator their claims
77 32 together with proofs of the claim under subsection 13 on or
77 33 before a date the liquidator shall specify in the notice.
77 34 Claimants shall keep the liquidator informed of their changes
77 35 of address, if any.

78 1 c. If notice is given pursuant to this subsection, the
78 2 distribution of assets of the cemetery corporation under this
78 3 chapter shall be conclusive with respect to claimants, whether
78 4 or not a claimant actually received notice.

78 5 5. ACTIONS BY AND AGAINST LIQUIDATOR.

78 6 a. After issuance of an order appointing a liquidator of a
78 7 cemetery corporation, an action at law or equity shall not be
78 8 brought against the cemetery corporation within this state or
78 9 elsewhere, and existing actions shall not be maintained or
78 10 further presented after issuance of the order. Whenever in
78 11 the liquidator's judgment, protection of the estate of the
78 12 cemetery corporation necessitates intervention in an action
78 13 against the cemetery corporation that is pending outside this
78 14 state, the liquidator may intervene in the action. The
78 15 liquidator may defend, at the expense of the estate of the
78 16 cemetery corporation, an action in which the liquidator
78 17 intervenes under this section.

78 18 b. Within two years or such additional time as applicable
78 19 law may permit, the liquidator, after the issuance of an order
78 20 for liquidation, may institute an action or proceeding on
78 21 behalf of the estate of the cemetery corporation upon any
78 22 cause of action against which the period of limitation fixed
78 23 by applicable law has not expired at the time of the filing of
78 24 the petition upon which the order is entered. If a period of
78 25 limitation is fixed by agreement for instituting a suit or
78 26 proceeding upon a claim, or for filing a claim, proof of
78 27 claim, proof of loss, demand, notice, or the like, or if in a
78 28 proceeding, judicial or otherwise, a period of limitation is
78 29 fixed in the proceeding or pursuant to applicable law for
78 30 taking an action, filing a claim or pleading, or doing an act,
78 31 and if the period has not expired at the date of the filing of
78 32 the petition, the liquidator may, for the benefit of the

78 33 estate, take any action or do any act, required of or
78 34 permitted to the cemetery corporation, within a period of one
78 35 hundred eighty days subsequent to the entry of an order for
79 1 liquidation, or within a further period as is shown to the
79 2 satisfaction of the court not to be unfairly prejudicial to
79 3 the other party.

79 4 c. A statute of limitations or defense of laches shall not
79 5 run with respect to an action against a cemetery corporation
79 6 between the filing of a petition for liquidation against the
79 7 cemetery corporation and the denial of the petition. An
79 8 action against the cemetery corporation that might have been
79 9 commenced when the petition was filed may be commenced for at
79 10 least sixty days after the petition is denied.

79 11 6. COLLECTION AND LIST OF ASSETS.

79 12 a. As soon as practicable after the liquidation order but
79 13 not later than one hundred twenty days after such order, the
79 14 liquidator shall prepare in duplicate a list of the cemetery
79 15 corporation's assets. The list shall be amended or
79 16 supplemented as the liquidator may determine. One copy shall
79 17 be filed in the office of the clerk of court, and one copy
79 18 shall be retained for the liquidator's files. Amendments and
79 19 supplements shall be similarly filed.

79 20 b. The liquidator shall reduce the assets to a degree of
79 21 liquidity that is consistent with the effective execution of
79 22 the liquidation.

79 23 c. A submission of a proposal to the court for
79 24 distribution of assets in accordance with subsection 11
79 25 fulfills the requirements of paragraph "a".

79 26 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.

79 27 a. A transfer made and an obligation incurred by a
79 28 cemetery corporation within one year prior to the filing of a
79 29 successful petition for liquidation under this chapter is
79 30 fraudulent as to then existing and future creditors if made or
79 31 incurred without fair consideration, or with actual intent to
79 32 hinder, delay, or defraud either existing or future creditors.
79 33 A fraudulent transfer made or an obligation incurred by a
79 34 cemetery corporation ordered to be liquidated under this
79 35 chapter may be avoided by the liquidator, except as to a
80 1 person who in good faith is a purchaser, lienor, or obligee
80 2 for a present fair equivalent value. A purchaser, lienor, or
80 3 obligee, who in good faith has given consideration that is
80 4 less than the present fair equivalent value for such transfer,
80 5 lien, or obligation may retain the transfer, lien, or
80 6 obligation as security for repayment. The court may, on due
80 7 notice, order any such transfer, lien, or obligation to be
80 8 preserved for the benefit of the cemetery corporation and in
80 9 that event, the receiver shall succeed to and may enforce the
80 10 rights of the purchaser, lienor, or obligee.

80 11 b. (1) A transfer of property other than real property is
80 12 made when it becomes perfected so that a subsequent lien
80 13 obtainable by legal or equitable proceedings on a simple
80 14 contract could not become superior to the rights of the
80 15 transferee under subsection 9, paragraph "c".

80 16 (2) A transfer of real property is made when it becomes
80 17 perfected so that a subsequent bona fide purchaser from the
80 18 cemetery corporation could not obtain rights superior to the
80 19 rights of the transferee.

80 20 (3) A transfer that creates an equitable lien is not
80 21 perfected if there are available means by which a legal lien
80 22 could be perfected.

80 23 (4) A transfer not perfected prior to the filing of a
80 24 petition for liquidation is deemed to be made immediately
80 25 before the filing of the successful petition.

80 26 (5) This subsection applies whether or not there are or
80 27 were creditors who might have obtained a lien or persons who
80 28 might have become bona fide purchasers.

80 29 8. FRAUDULENT TRANSFER AFTER PETITION.

80 30 a. After a petition for liquidation has been filed, a
80 31 transfer of real property of the cemetery corporation made to
80 32 a person acting in good faith is valid against the liquidator
80 33 if made for a present fair equivalent value. If the transfer
80 34 is not made for a present fair equivalent value, the transfer
80 35 is valid to the extent of the present consideration actually
81 1 paid for which amount the transferee shall have a lien on the
81 2 property transferred. The commencement of a proceeding in
81 3 liquidation is constructive notice upon the recording of a
81 4 copy of the petition for or order of liquidation with the
81 5 recording of deeds in the county where any real property in
81 6 question is located. The exercise by a court of the United
81 7 States or a state or jurisdiction to authorize a judicial sale
81 8 of real property of the cemetery corporation within a county

81 9 in a state shall not be impaired by the pendency of a
81 10 proceeding unless the copy is recorded in the county prior to
81 11 the consummation of the judicial sale.

81 12 b. After a petition for liquidation has been filed and
81 13 before either the liquidator takes possession of the property
81 14 of the cemetery corporation or an order of liquidation is
81 15 granted:

81 16 (1) A transfer of the property, other than real property,
81 17 of the cemetery corporation made to a person acting in good
81 18 faith is valid against the liquidator if made for a present
81 19 fair equivalent value. If the transfer was not made for a
81 20 present fair equivalent value, then the transfer is valid to
81 21 the extent of the present consideration actually paid for
81 22 which amount the transferee shall have a lien on the property
81 23 transferred.

81 24 (2) If acting in good faith, a person indebted to the
81 25 cemetery corporation or holding property of the cemetery
81 26 corporation may pay the debt or deliver the property, or any
81 27 part of the property, to the cemetery corporation or upon the
81 28 cemetery corporation's order as if the petition were not
81 29 pending.

81 30 (3) A person having actual knowledge of the pending
81 31 liquidation is not acting in good faith.

81 32 (4) A person asserting the validity of a transfer under
81 33 this subsection has the burden of proof. Except as provided
81 34 in this subsection, a transfer by or on behalf of the cemetery
81 35 corporation after the date of the petition for liquidation by
82 1 any person other than the liquidator is not valid against the
82 2 liquidator.

82 3 c. A person receiving any property from the cemetery
82 4 corporation or any benefit of the property of the cemetery
82 5 corporation which is a fraudulent transfer under paragraph "a"
82 6 is personally liable for the property or benefit and shall
82 7 account to the liquidator.

82 8 d. This chapter does not impair the negotiability of
82 9 currency or negotiable instruments.

82 10 9. VOIDABLE PREFERENCES AND LIENS.

82 11 a. (1) A preference is a transfer of the property of a
82 12 cemetery corporation to or for the benefit of a creditor for
82 13 an antecedent debt made or suffered by the cemetery
82 14 corporation within one year before the filing of a successful
82 15 petition for liquidation under this chapter, the effect of
82 16 which transfer may be to enable the creditor to obtain a
82 17 greater percentage of this debt than another creditor of the
82 18 same class would receive. If a liquidation order is entered
82 19 while the cemetery corporation is already subject to a
82 20 receivership, then the transfers are preferences if made or
82 21 suffered within one year before the filing of the successful
82 22 petition for the receivership, or within two years before the
82 23 filing of the successful petition for liquidation, whichever
82 24 time is shorter.

82 25 (2) A preference may be avoided by the liquidator if any
82 26 of the following exist:

82 27 (a) The cemetery corporation was insolvent at the time of
82 28 the transfer.

82 29 (b) The transfer was made within four months before the
82 30 filing of the petition.

82 31 (c) At the time the transfer was made, the creditor
82 32 receiving the transfer or to be benefited by the transfer or
82 33 the creditor's agent acting with reference to the transfer had
82 34 reasonable cause to believe that the cemetery corporation was
82 35 insolvent or was about to become insolvent.

83 1 (d) The creditor receiving the transfer was an officer, or
83 2 an employee, attorney, or other person who was in fact in a
83 3 position of comparable influence in the cemetery corporation
83 4 to an officer whether or not the person held the position of
83 5 an officer, owner, or other person, firm, corporation,
83 6 association, or aggregation of persons with whom the cemetery
83 7 corporation did not deal at arm's length.

83 8 (3) Where the preference is voidable, the liquidator may
83 9 recover the property. If the property has been converted, the
83 10 liquidator may recover its value from a person who has
83 11 received or converted the property. However, if a bona fide
83 12 purchaser or lienor has given less than the present fair
83 13 equivalent value, the purchaser or lienor shall have a lien
83 14 upon the property to the extent of the consideration actually
83 15 given. Where a preference by way of lien or security interest
83 16 is voidable, the court may on due notice order the lien or
83 17 security interest to be preserved for the benefit of the
83 18 estate, in which event the lien or title shall pass to the
83 19 liquidator.

83 20 b. (1) A transfer of property other than real property is
83 21 made when it becomes perfected so that a subsequent lien
83 22 obtainable by legal or equitable proceedings on a simple
83 23 contract could not become superior to the rights of the
83 24 transferee.

83 25 (2) A transfer of real property is made when it becomes
83 26 perfected so that a subsequent bona fide purchaser from the
83 27 cemetery corporation could not obtain rights superior to the
83 28 rights of the transferee.

83 29 (3) A transfer which creates an equitable lien is not
83 30 perfected if there are available means by which a legal lien
83 31 could be created.

83 32 (4) A transfer not perfected prior to the filing of a
83 33 petition for liquidation is deemed to be made immediately
83 34 before the filing of the successful petition.

83 35 (5) This subsection applies whether or not there are or
84 1 were creditors who might have obtained liens or persons who
84 2 might have become bona fide purchasers.

84 3 c. (1) A lien obtainable by legal or equitable
84 4 proceedings upon a simple contract is one arising in the
84 5 ordinary course of the proceedings upon the entry or docketing
84 6 of a judgment or decree, or upon attachment, garnishment,
84 7 execution, or like process, whether before, upon, or after
84 8 judgment or decree and whether before or upon levy. It does
84 9 not include liens which under applicable law are given a
84 10 special priority over other liens which are prior in time.

84 11 (2) A lien obtainable by legal or equitable proceedings
84 12 may become superior to the rights of a transferee, or a
84 13 purchaser may obtain rights superior to the rights of a
84 14 transferee within the meaning of paragraph "b", if such
84 15 consequences follow only from the lien or purchase itself, or
84 16 from the lien or purchase followed by a step wholly within the
84 17 control of the respective lienholder or purchaser, with or
84 18 without the aid of ministerial action by public officials.
84 19 However, a lien does not become superior and a purchase does
84 20 not create superior rights for the purpose of paragraph "b"
84 21 through an act subsequent to the obtaining of a lien or
84 22 subsequent to a purchase which requires the agreement or
84 23 concurrence of any third party or which requires further
84 24 judicial action or ruling.

84 25 d. A transfer of property for or on account of a new and
84 26 contemporaneous consideration, which is under paragraph "b",
84 27 made or suffered after the transfer because of delay in
84 28 perfecting it, does not become a transfer for or on account of
84 29 an antecedent debt if any acts required by the applicable law
84 30 to be performed in order to perfect the transfer as against
84 31 liens or a bona fide purchaser's rights are performed within
84 32 twenty-one days or any period expressly allowed by the law,
84 33 whichever is less. A transfer to secure a future loan, if a
84 34 loan is actually made, or a transfer which becomes security
84 35 for a future loan, shall have the same effect as a transfer
85 1 for or on account of a new and contemporaneous consideration.

85 2 e. If a lien which is voidable under paragraph "a",
85 3 subparagraph (2), has been dissolved by the furnishing of a
85 4 bond or other obligation, the surety of which has been
85 5 indemnified directly or indirectly by the transfer or the
85 6 creation of a lien upon property of a cemetery corporation
85 7 before the filing of a petition under this chapter which
85 8 results in the liquidation order, the indemnifying transfer or
85 9 lien is also voidable.

85 10 f. The property affected by a lien voidable under
85 11 paragraphs "a" and "e" is discharged from the lien. The
85 12 property and any of the indemnifying property transferred to
85 13 or for the benefit of a surety shall pass to the liquidator.
85 14 However, the court may on due notice order a lien to be
85 15 preserved for the benefit of the estate and the court may
85 16 direct that the conveyance be executed to evidence the title
85 17 of the liquidator.

85 18 g. The court shall have summary jurisdiction of a
85 19 proceeding by a liquidator to hear and determine the rights of
85 20 the parties under this section. Reasonable notice of hearing
85 21 in the proceeding shall be given to all parties in interest,
85 22 including the obligee of a releasing bond or other like
85 23 obligation. Where an order is entered for the recovery of
85 24 indemnifying property in kind or for the avoidance of an
85 25 indemnifying lien, upon application of any party in interest,
85 26 the court shall in the same proceeding ascertain the value of
85 27 the property or lien. If the value is less than the amount
85 28 for which the property is indemnified or less than the amount
85 29 of the lien, the transferee or lienholder may elect to retain
85 30 the property or lien upon payment of its value, as ascertained

85 31 by the court, to the liquidator within the time as fixed by
85 32 the court.

85 33 h. The liability of a surety under a releasing bond or
85 34 other like obligation is discharged to the extent of the value
85 35 of the indemnifying property recovered or the indemnifying
86 1 lien nullified and avoided by the liquidator. Where the
86 2 property is retained under paragraph "g", the liability of the
86 3 surety is discharged to the extent of the amount paid to the
86 4 liquidator.

86 5 i. If a creditor has been preferred for property which
86 6 becomes a part of the cemetery corporation's estate, and
86 7 afterward in good faith gives the cemetery corporation further
86 8 credit without security of any kind, the amount of the new
86 9 credit remaining unpaid at the time of the petition may be set
86 10 off against the preference which would otherwise be
86 11 recoverable from the creditor.

86 12 j. If within four months before the filing of a successful
86 13 petition for liquidation under this chapter, or at any time in
86 14 contemplation of a proceeding to liquidate, a cemetery
86 15 corporation, directly or indirectly, pays money or transfers
86 16 property to an attorney for services rendered or to be
86 17 rendered, the transaction may be examined by the court on its
86 18 own motion or shall be examined by the court on petition of
86 19 the liquidator. The payment or transfer shall be held valid
86 20 only to the extent of a reasonable amount to be determined by
86 21 the court. The excess may be recovered by the liquidator for
86 22 the benefit of the estate. However, where the attorney is in
86 23 a position of influence in a cemetery corporation of an
86 24 affiliate, payment of any money or the transfer of any
86 25 property to the attorney for services rendered or to be
86 26 rendered shall be governed by the provisions of paragraph "a",
86 27 subparagraph (2), subparagraph subdivision (d).

86 28 k. (1) An officer, manager, employee, shareholder,
86 29 subscriber, attorney, or other person acting on behalf of the
86 30 cemetery corporation who knowingly participates in giving any
86 31 preference when the person has reasonable cause to believe the
86 32 cemetery corporation is or is about to become insolvent at the
86 33 time of the preference is personally liable to the liquidator
86 34 for the amount of the preference. There is an inference that
86 35 reasonable cause exists if the transfer was made within four
87 1 months before the date of filing of the successful petition
87 2 for liquidation.

87 3 (2) A person receiving property from the cemetery
87 4 corporation or the benefit of the property of the cemetery
87 5 corporation as a preference voidable under paragraph "a" is
87 6 personally liable for the property and shall account to the
87 7 liquidator.

87 8 (3) This subsection shall not prejudice any other claim by
87 9 the liquidator against any person.

87 10 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.

87 11 a. A claim of a creditor who has received or acquired a
87 12 preference, lien, conveyance, transfer, assignment, or
87 13 encumbrance, voidable under this chapter, shall not be allowed
87 14 unless the creditor surrenders the preference, lien,
87 15 conveyance, transfer, assignment, or encumbrance. If the
87 16 avoidance is effected by a proceeding in which a final
87 17 judgment has been entered, the claim shall not be allowed
87 18 unless the money is paid or the property is delivered to the
87 19 liquidator within thirty days from the date of the entering of
87 20 the final judgment. However, the court having jurisdiction
87 21 over the liquidation may allow further time if there is an
87 22 appeal or other continuation of the proceeding.

87 23 b. A claim allowable under paragraph "a" by reason of a
87 24 voluntary or involuntary avoidance, preference, lien,
87 25 conveyance, transfer, assignment, or encumbrance may be filed
87 26 as an excused late filing under subsection 12, if filed within
87 27 thirty days from the date of the avoidance or within the
87 28 further time allowed by the court under paragraph "a".

87 29 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.

87 30 a. From time to time as assets become available, the
87 31 liquidator shall make application to the court for approval of
87 32 a proposal to disburse assets out of marshaled assets.

87 33 b. The proposal shall at least include provisions for all
87 34 of the following:

87 35 (1) Reserving amounts for the payment of all the
88 1 following:

88 2 (a) Expenses of administration.

88 3 (b) To the extent of the value of the security held, the
88 4 payment of claims of secured creditors.

88 5 (c) Claims falling within the priorities established in
88 6 subsection 18, paragraphs "a" and "b".

88 7 (2) Disbursement of the assets marshaled to date and
88 8 subsequent disbursement of assets as they become available.

88 9 c. Action on the application may be taken by the court
88 10 provided that the liquidator's proposal complies with
88 11 paragraph "b".

88 12 12. FILING PROOFS OF CLAIMS.

88 13 a. Proof of all claims shall be filed with the liquidator
88 14 in the form required by subsection 13 on or before the last
88 15 day for filing specified in the notice required under
88 16 subsection 4.

88 17 b. The liquidator may permit a claimant making a late
88 18 filing to share in distributions, whether past or future, as
88 19 if the claimant were not late, to the extent that the payment
88 20 will not prejudice the orderly administration of the
88 21 liquidation under any of the following circumstances:

88 22 (1) The existence of the claim was not known to the
88 23 claimant and the claimant filed the claim as promptly as
88 24 reasonably possible after learning of it.

88 25 (2) A transfer to a creditor was avoided under subsections
88 26 7 through 9, or was voluntarily surrendered under subsection
88 27 10, and the filing satisfies the conditions of subsection 10.

88 28 (3) The valuation under subsection 17 of security held by
88 29 a secured creditor shows a deficiency, which is filed within
88 30 thirty days after the valuation.

88 31 c. The liquidator may consider any claim filed late and
88 32 permit the claimant to receive distributions which are
88 33 subsequently declared on any claims of the same or lower
88 34 priority if the payment does not prejudice the orderly
88 35 administration of the liquidation. The late-filing claimant
89 1 shall receive at each distribution the same percentage of the
89 2 amount allowed on the claim as is then being paid to claimants
89 3 of any lower priority. This shall continue until the claim
89 4 has been paid in full.

89 5 13. PROOF OF CLAIM.

89 6 a. Proof of claim shall consist of a statement signed by
89 7 the claimant that includes all of the following that are
89 8 applicable:

89 9 (1) The particulars of the claim, including the
89 10 consideration given for it.

89 11 (2) The identity and amount of the security on the claim.

89 12 (3) The payments, if any, made on the debt.

89 13 (4) A statement that the sum claimed is justly owing and
89 14 that there is no setoff, counterclaim, or defense to the
89 15 claim.

89 16 (5) Any right of priority of payment or other specific
89 17 right asserted by the claimant.

89 18 (6) A copy of the written instrument which is the
89 19 foundation of the claim.

89 20 (7) The name and address of the claimant and the attorney
89 21 who represents the claimant, if any.

89 22 b. A claim need not be considered or allowed if it does
89 23 not contain all the information identified in paragraph "a"
89 24 which is applicable. The liquidator may require that a
89 25 prescribed form be used and may require that other information
89 26 and documents be included.

89 27 c. At any time the liquidator may request the claimant to
89 28 present information or evidence supplementary to that required
89 29 under paragraph "a", and may take testimony under oath,
89 30 require production of affidavits or depositions, or otherwise
89 31 obtain additional information or evidence.

89 32 d. A judgment or order against a cemetery corporation
89 33 entered after the date of filing of a successful petition for
89 34 liquidation, or a judgment or order against the cemetery
89 35 corporation entered at any time by default or by collusion
90 1 need not be considered as evidence of liability or of the
90 2 amount of damages. A judgment or order against a cemetery
90 3 corporation before the filing of the petition need not be
90 4 considered as evidence of liability or of the amount of
90 5 damages.

90 6 14. SPECIAL CLAIMS.

90 7 a. A claim may be allowed even if contingent, if it is
90 8 filed pursuant to subsection 12. The claim may be allowed and
90 9 the claimant may participate in all distributions declared
90 10 after it is filed to the extent that it does not prejudice the
90 11 orderly administration of the liquidation.

90 12 b. Claims that are due except for the passage of time
90 13 shall be treated as absolute claims are treated. However, the
90 14 claims may be discounted at the legal rate of interest.

90 15 c. Claims made under employment contracts by directors,
90 16 principal officers, or persons in fact performing similar
90 17 functions or having similar powers are limited to payment for

90 18 services rendered prior to the issuance of an order of
90 19 liquidation under subsection 2.

90 20 15. DISPUTED CLAIMS.

90 21 a. If a claim is denied in whole or in part by the
90 22 liquidator, written notice of the determination shall be given
90 23 to the claimant or the claimant's attorney by first-class mail
90 24 at the address shown in the proof of claim. Within sixty days
90 25 from the mailing of the notice, the claimant may file
90 26 objections with the liquidator. Unless a filing is made, the
90 27 claimant shall not further object to the determination.

90 28 b. If objections are filed with the liquidator and the
90 29 liquidator does not alter the denial of the claim as a result
90 30 of the objections, the liquidator shall ask the court for a
90 31 hearing as soon as practicable and give notice of the hearing
90 32 by first-class mail to the claimant or the claimant's attorney
90 33 and to any other persons directly affected. The notice shall
90 34 be given not less than ten nor more than thirty days before
90 35 the date of hearing. The matter shall be heard by the court
91 1 or by a court-appointed referee. The referee shall submit
91 2 findings of fact along with a recommendation.

91 3 16. CLAIMS OF OTHER PERSON. If a creditor, whose claim
91 4 against a cemetery corporation is secured in whole or in part
91 5 by the undertaking of another person, fails to prove and file
91 6 that claim, then the other person may do so in the creditor's
91 7 name and shall be subrogated to the rights of the creditor,
91 8 whether the claim has been filed by the creditor or by the
91 9 other person in the creditor's name to the extent that the
91 10 other person discharges the undertaking. However, in the
91 11 absence of an agreement with the creditor to the contrary, the
91 12 other person is not entitled to any distribution until the
91 13 amount paid to the creditor on the undertaking plus the
91 14 distributions paid on the claim from the cemetery
91 15 corporation's estate to the creditor equal the amount of the
91 16 entire claim of the creditor. An excess received by the
91 17 creditor shall be held by the creditor in trust for the other
91 18 person.

91 19 17. SECURED CREDITOR'S CLAIMS.

91 20 a. The value of the security held by a secured creditor
91 21 shall be determined in one of the following ways, as the court
91 22 may direct:

91 23 (1) By converting the security into money according to the
91 24 terms of the agreement pursuant to which the security was
91 25 delivered to the creditors.

91 26 (2) By agreement, arbitration, compromise, or litigation
91 27 between the creditor and the liquidator.

91 28 b. The determination shall be under the supervision and
91 29 control of the court with due regard for the recommendation of
91 30 the liquidator. The amount so determined shall be credited
91 31 upon the secured claim. A deficiency shall be treated as an
91 32 unsecured claim. If the claimant surrenders the security to
91 33 the liquidator, the entire claim shall be allowed as if
91 34 unsecured.

91 35 18. PRIORITY OF DISTRIBUTION. The priority of
92 1 distribution of claims from the cemetery corporation's estate
92 2 shall be in accordance with the order in which each class of
92 3 claims is set forth. Claims in each class shall be paid in
92 4 full or adequate funds retained for the payment before the
92 5 members of the next class receive any payment. Subclasses
92 6 shall not be established within a class. The order of
92 7 distribution of claims is as follows:

92 8 a. CLASS 1. The costs and expenses of administration,
92 9 including but not limited to the following:

92 10 (1) Actual and necessary costs of preserving or recovering
92 11 assets of the cemetery corporation.

92 12 (2) Compensation for all authorized services rendered in
92 13 the liquidation.

92 14 (3) Necessary filing fees.

92 15 (4) Fees and mileage payable to witnesses.

92 16 (5) Authorized reasonable attorney fees and other
92 17 professional services rendered in the liquidation.

92 18 b. CLASS 2. Reasonable compensation to employees for
92 19 services performed to the extent that they do not exceed two
92 20 months of monetary compensation and represent payment for
92 21 services performed within one year before the filing of the
92 22 petition for liquidation. Officers and directors are not
92 23 entitled to the benefit of this priority. The priority is in
92 24 lieu of any other similar priority which may be authorized by
92 25 law as to wages or compensation of employees.

92 26 c. CLASS 3. Claims under purchase agreements.

92 27 d. CLASS 4. Claims of general creditors.

92 28 e. CLASS 5. Claims of the federal or of any state or

92 29 local government. Claims, including those of a governmental
92 30 body for a penalty or forfeiture, are allowed in this class
92 31 only to the extent of the pecuniary loss sustained from the
92 32 act, transaction, or proceeding out of which the penalty or
92 33 forfeiture arose, with reasonable and actual costs incurred.
92 34 The remainder of such claims shall be postponed to the class
92 35 of claims under paragraph "g".

93 1 f. CLASS 6. Claims filed late or any other claims other
93 2 than claims under paragraph "g".

93 3 g. CLASS 7. The claims of shareholders or other owners.

93 4 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.

93 5 a. The liquidator shall review claims duly filed in the
93 6 liquidation and shall make further investigation as necessary.
93 7 The liquidator may compound, compromise, or in any other
93 8 manner negotiate the amount for which claims will be
93 9 recommended to the court except where the liquidator is
93 10 required by law to accept claims as settled by a person or
93 11 organization. Unresolved disputes shall be determined under
93 12 subsection 15. As soon as practicable, the liquidator shall
93 13 present to the court a report of the claims against the
93 14 cemetery corporation with the liquidator's recommendations.
93 15 The report shall include the name and address of each claimant
93 16 and the amount of the claim finally recommended.

93 17 b. The court may approve, disapprove, or modify the report
93 18 on claims by the liquidator. Reports not modified by the
93 19 court within sixty days following submission by the liquidator
93 20 shall be treated by the liquidator as allowed claims, subject
93 21 to later modification or to rulings made by the court pursuant
93 22 to subsection 15. A claim under a policy of insurance shall
93 23 not be allowed for an amount in excess of the applicable
93 24 policy limits.

93 25 20. DISTRIBUTION OF ASSETS. Under the direction of the
93 26 court, the liquidator shall pay distributions in a manner that
93 27 will ensure the proper recognition of priorities and a
93 28 reasonable balance between the expeditious completion of the
93 29 liquidation and the protection of unliquidated and
93 30 undetermined claims, including third-party claims.
93 31 Distribution of assets in kind may be made at valuations set
93 32 by agreement between the liquidator and the creditor and
93 33 approved by the court.

93 34 21. UNCLAIMED AND WITHHELD FUNDS.

93 35 a. Unclaimed funds subject to distribution remaining in
94 1 the liquidator's hands when the liquidator is ready to apply
94 2 to the court for discharge, including the amount distributable
94 3 to a creditor, owner, or other person who is unknown or cannot
94 4 be found, shall be deposited with the treasurer of state, and
94 5 shall be paid without interest, except as provided in
94 6 subsection 18, to the person entitled or to the person's legal
94 7 representative upon proof satisfactory to the treasurer of
94 8 state of the right to the funds. Any amount on deposit not
94 9 claimed within six years from the discharge of the liquidator
94 10 is deemed to have been abandoned and shall become the property
94 11 of the state without formal escheat proceedings and be
94 12 transferred to the insurance division's cemetery fund.

94 13 b. Funds withheld under subsection 14 and not distributed
94 14 shall upon discharge of the liquidator be deposited with the
94 15 treasurer of state and paid pursuant to subsection 18. Sums
94 16 remaining which under subsection 18 would revert to the
94 17 undistributed assets of the cemetery corporation shall be
94 18 transferred to the insurance division's cemetery fund and
94 19 become the property of the state as provided under paragraph
94 20 "a", unless the commissioner in the commissioner's discretion
94 21 petitions the court to reopen the liquidation pursuant to
94 22 subsection 23.

94 23 c. Notwithstanding any other provision of this chapter,
94 24 funds as identified in paragraph "a", with the approval of the
94 25 court, shall be made available to the commissioner for use in
94 26 the detection and prevention of future insolvencies. The
94 27 commissioner shall hold these funds in the insurance
94 28 division's cemetery fund and shall pay without interest,
94 29 except as provided in subsection 18, to the person entitled to
94 30 the funds or to the person's legal representative upon proof
94 31 satisfactory to the commissioner of the person's right to the
94 32 funds. The funds shall be held by the commissioner for a
94 33 period of two years at which time the rights and duties to the
94 34 unclaimed funds shall vest in the commissioner.

94 35 22. TERMINATION OF PROCEEDINGS.

95 1 a. When all assets justifying the expense of collection
95 2 and distribution have been collected and distributed under
95 3 this chapter, the liquidator shall apply to the court for
95 4 discharge. The court may grant the discharge and make any

95 5 other orders, including an order to transfer remaining funds
95 6 that are uneconomical to distribute, as appropriate.
95 7 b. Any other person may apply to the court at any time for
95 8 an order under paragraph "a". If the application is denied,
95 9 the applicant shall pay the costs and expenses of the
95 10 liquidator in resisting the application, including a
95 11 reasonable attorney fee.

95 12 23. REOPENING LIQUIDATION. At any time after the
95 13 liquidation proceeding has been terminated and the liquidator
95 14 discharged, the commissioner or other interested party may
95 15 petition the court to reopen the proceedings for good cause,
95 16 including the discovery of additional assets. The court shall
95 17 order the proceeding reopened if it is satisfied that there is
95 18 justification for the reopening.

95 19 24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF
95 20 LIQUIDATION. If it appears to the commissioner that the
95 21 records of a cemetery corporation in the process of
95 22 liquidation or completely liquidated are no longer useful, the
95 23 commissioner may recommend to the court and the court shall
95 24 direct what records shall be retained for future reference and
95 25 what records shall be destroyed.

95 26 25. EXTERNAL AUDIT OF LIQUIDATOR'S BOOKS. The court may
95 27 order audits to be made of the books of the commissioner
95 28 relating to a liquidation established under this chapter, and
95 29 a report of each audit shall be filed with the commissioner
95 30 and with the court. The books, records, and other documents
95 31 of the liquidation shall be made available to the auditor at
95 32 any time without notice. The expense of an audit shall be
95 33 considered a cost of administration of the liquidation.

95 34 26. APPLICABILITY. This section shall not apply to a
95 35 religious cemetery or a cemetery owned or operated by a
96 1 governmental subdivision of this state.

96 2 Sec. 86. NEW SECTION. 523I.1413 INSURANCE DIVISION'S
96 3 CEMETERY FUND.

96 4 A special revenue fund in the state treasury, to be known
96 5 as the insurance division's cemetery fund, is created under
96 6 the authority of the commissioner of insurance. The
96 7 commissioner shall allocate annually from the fees paid
96 8 pursuant to section 523I.1211, four dollars for each sale of
96 9 interment rights reported by a cemetery corporation on the
96 10 cemetery corporation's annual report, for deposit to the
96 11 insurance division's cemetery fund. The commissioner shall
96 12 also deposit four dollars into the insurance division's
96 13 cemetery fund for each care assessment submitted, as provided
96 14 in section 523I.815. The moneys in the cemetery fund shall be
96 15 retained in the fund. The moneys are appropriated and,
96 16 subject to authorization by the commissioner, shall be used to
96 17 pay auditors, audit expenses, investigative expenses, the
96 18 expenses of mediation ordered by the commissioner, consumer
96 19 education expenses, the expenses of a toll-free telephone line
96 20 for consumer complaints, and the expenses of receiverships
96 21 established under section 523I.1411. The commissioner shall
96 22 not make an annual allocation to the cemetery fund if the
96 23 current balance of the fund exceeds two hundred thousand
96 24 dollars.

96 25 Sec. 87. Sections 359.37, 359.40, and 359.41, Code 2003,
96 26 are repealed.

96 27 Sec. 88. Chapters 523I, 566 and 566A, Code 2003, are
96 28 repealed.

96 29 EXPLANATION

96 30 This bill repeals Code chapter 523I concerning cemeteries,
96 31 Code chapter 566 concerning cemetery management, and Code
96 32 chapter 566A concerning cemetery regulation and creates a new
96 33 Code chapter 523I concerning cemeteries, cemetery regulation,
96 34 and administration and enforcement procedures relating to
96 35 cemeteries.

97 1 The bill contains a procedure to dedicate new cemeteries or
97 2 subdivisions of cemeteries with a public filing with the
97 3 insurance division.

97 4 The bill requires all persons currently operating as
97 5 cemeteries to form a corporation to own and operate the
97 6 cemetery property and prohibits unincorporated cemetery
97 7 associations.

97 8 The bill establishes requirements for recording ownership
97 9 of interment rights at each cemetery location rather than just
97 10 with the county recorder. The bill requires cemeteries to
97 11 maintain complete interment records that identify the owners
97 12 of all interment rights sold by the cemetery corporation and
97 13 contain historical information concerning any changes of
97 14 ownership of interment rights. The bill sets forth
97 15 requirements for interment rights agreements.

97 16 The bill sets forth requirements for lawn crypts and their
97 17 installation. The bill sets forth requirements for the depth
97 18 of ground burials.

97 19 The bill requires a public filing with the insurance
97 20 division before the construction of new mausoleums and
97 21 columbariums. The bill sets forth procedures governing the
97 22 installation of memorials and memorialization by third
97 23 parties.

97 24 The bill requires all cemetery corporations that sell
97 25 interment rights to have a cemetery permit issued by the
97 26 insurance division. The bill requires all sales personnel of
97 27 cemetery corporations to have a sales permit issued by the
97 28 insurance division, with the exception of employees or agents
97 29 of a religious cemetery or a political subdivision that
97 30 operates a cemetery.

97 31 The bill requires cemetery corporations to make disclosures
97 32 to a buyer of interment rights when grave opening and closing
97 33 fees are not included in the agreement. The bill authorizes a
97 34 cemetery corporation to accept written instructions of a
97 35 decedent concerning interment, relocation, or disinterment of
98 1 remains. The bill contains provisions for making a
98 2 determination of who has the right to control interment,
98 3 relocation, or disinterment of remains.

98 4 The bill contains a procedure for the removal of remains
98 5 from a neglected cemetery. The bill provides a procedure for
98 6 obtaining access to inactive cemeteries. The bill provides a
98 7 procedure for reporting neglected cemeteries to the insurance
98 8 division and to the appropriate board of supervisors.

98 9 The bill increases the penalty for disturbing an interment
98 10 site from a simple misdemeanor to an aggravated misdemeanor.
98 11 A simple misdemeanor is punishable by confinement for no more
98 12 than 30 days or a fine of at least \$50 but not more than \$500
98 13 or by both. An aggravated misdemeanor is punishable by
98 14 confinement for no more than two years and a fine of at least
98 15 \$500 but not more than \$5,000.

98 16 The bill requires a nonperpetual care cemetery to create a
98 17 maintenance fund to pay for the upkeep of the cemetery
98 18 property and to deposit at least \$50 into the maintenance fund
98 19 for each sale along with a \$5 fee assessment to be deposited
98 20 in the insurance division's cemetery fund.

98 21 The bill authorizes governmental subdivisions to commingle
98 22 care funds for the purposes of investment and administration.
98 23 The bill authorizes governmental subdivisions that operate
98 24 cemeteries to invest their maintenance and care funds in the
98 25 same manner as other cemetery corporations notwithstanding
98 26 Code section 12B.10.

98 27 The bill authorizes civil lawsuits brought by owners of
98 28 interment spaces or the insurance division against a cemetery
98 29 corporation that fails to use care funds to maintain the
98 30 cemetery property. The bill also creates a procedure that
98 31 allows the insurance division to order mediation of a
98 32 complaint paid for with funds from the insurance division's
98 33 cemetery fund.

98 34 The bill defines certain acts committed in violation of
98 35 Code chapter 523I as fraudulent practices.

99 1 The bill provides for the establishment of a receivership
99 2 and for liquidation of a cemetery corporation under certain
99 3 circumstances.

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