

SENATE FILE 2245
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3127)

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 and
3 reporting; establishing and appropriating fees; and providing
4 administration and enforcement procedures and penalties.

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

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SF 2245
COMMERCE

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

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

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

19 6A.7 CEMETERY LANDS.

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

24 Sec. 3. Section 331.325, subsections 2 and 3, Code 2003,
25 are amended to read as follows:

26 2. Each county board of supervisors may adopt an ordinance
27 assuming jurisdiction and control of pioneer cemeteries in the
28 county. The board shall exercise the powers and duties of
29 township trustees relating to the maintenance and repair of
30 cemeteries in the county as provided in sections 359.28
31 through ~~359.41~~ 359.39 except that the board shall not certify
32 a tax levy pursuant to section 359.30 or 359.33 and except
33 that the maintenance and repair of all cemeteries under the
34 jurisdiction of the county including pioneer cemeteries shall
35 be paid from the county general fund. The maintenance and

1 improvement program for a pioneer cemetery may include
2 restoration and management of native prairie grasses and
3 wildflowers.

4 3. In lieu of management of the cemeteries, the board of
5 supervisors may create, by ordinance, a cemetery commission to
6 assume jurisdiction and management of the pioneer cemeteries
7 in the county. The ordinance shall delineate the number of
8 commissioners, the appointing authority, the term of office,
9 officers, employees, organizational matters, rules of
10 procedure, compensation and expenses, and other matters deemed
11 pertinent by the board. The board may delegate any power and
12 duties relating to cemeteries which may otherwise be exercised
13 by township trustees pursuant to sections 359.28 through
14 ~~359.41~~ 359.39 to the cemetery commission except the commission
15 shall not certify a tax levy pursuant to section 359.30 or
16 359.33 and except that the expenses of the cemetery commission
17 shall be paid from the county general fund.

18 Sec. 4. Section 427.1, subsection 6, Code Supplement 2003,
19 is amended to read as follows:

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

28 Sec. 5. Section 450.10, subsection 3, unnumbered paragraph
29 1, Code 2003, is amended to read as follows:

30 When the property or any interest therein or income
31 therefrom, taxable under the provisions of this chapter,
32 passes in any manner to societies, institutions or
33 associations incorporated or organized under the laws of any
34 other state, territory, province or country than this state,
35 for charitable, educational or religious purposes, or to

1 cemetery associations corporations incorporated as a nonprofit
2 corporation under chapter 504A, including humane societies not
3 organized under the laws of this state, or to resident
4 trustees for uses without this state, the rate of tax imposed
5 shall be as follows:

6 Sec. 6. Section 459.102, subsection 9, Code Supplement
7 2003, is amended to read as follows:

8 9. "Cemetery" means a space held for the purpose of
9 permanent burial, entombment, or interment of human remains
10 that is owned or managed by a political subdivision or private
11 entity, or a cemetery regulated pursuant to chapter 523I or
12 566A. However, "cemetery" does not include a pioneer cemetery
13 as defined in section 331.325.

14 Sec. 7. Section 523A.203, subsection 6, paragraph b, Code
15 2003, is amended to read as follows:

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

19 SUBCHAPTER 1

20 SHORT TITLE AND DEFINITIONS

21 Sec. 8. NEW SECTION. 523I.101 SHORT TITLE.

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

23 Sec. 9. NEW SECTION. 523I.102 DEFINITIONS.

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

26 1. "Authorized to do business within this state" means a
27 person licensed, registered, or subject to regulation by an
28 agency of the state of Iowa or who has filed a consent to
29 service of process with the commissioner for purposes of this
30 chapter.

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

33 3. "Capital gains" means appreciation in the value of
34 trust assets for which a market value may be determined with
35 reasonable certainty after deduction of investment losses,

1 taxes, expenses incurred in the sale of trust assets, any
2 costs of the operation of the trust, and any annual audit
3 fees.

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

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

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

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

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

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

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

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

27 c. A pioneer cemetery.

28 7. "Cemetery corporation" means a corporation that
29 operates one or more cemeteries.

30 8. "Columbarium" means a structure, room, or space in a
31 mausoleum or other building containing niches or recesses for
32 disposition of cremated remains.

33 9. "Commissioner" means the commissioner of insurance or
34 the deputy administrator authorized in section 523A.801 to the
35 extent the commissioner delegates functions to the deputy

1 administrator.

2 10. "Common business enterprise" means a group of two or
3 more business entities that share common ownership in excess
4 of fifty percent.

5 11. "Credit sale" means a sale of goods, services, or an
6 interest in land in which all of the following are applicable:

7 a. Credit is granted either under a seller credit card or
8 by a seller who regularly engages as a seller in credit
9 transactions of the same kind.

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

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

13 d. Either the debt is payable in installments or a finance
14 charge is made.

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

17 12. "Disinterment" means to remove human remains from
18 their place of final disposition.

19 13. "Doing business in this state" means issuing or
20 performing wholly or in part any term of an interment rights
21 agreement executed within the state of Iowa.

22 14. "Financial institution" means a state or federally
23 insured bank, savings and loan association, credit union,
24 trust department thereof, or a trust company that is
25 authorized to do business within this state, that has been
26 granted trust powers under the laws of this state or the
27 United States, and that holds funds under a trust agreement.
28 "Financial institution" does not include a cemetery, a
29 cemetery corporation, or any person employed by or directly
30 involved with a cemetery.

31 15. "Garden" means an area within a cemetery established
32 by the cemetery as a subdivision for organizational purposes,
33 not for sale purposes.

34 16. "Grave space" means a space of ground in a cemetery
35 that is used or intended to be used for an in-ground burial.

1 17. "Gross selling price" means the aggregate amount a
2 purchaser is obligated to pay for interment rights, exclusive
3 of finance charges.

4 18. "Inactive cemetery" means a cemetery that is not
5 operating on a regular basis, is not offering to sell or
6 provide interments or other services reasonably necessary for
7 interment, and does not provide or permit reasonable ingress
8 or egress for the purposes of visiting interment spaces.

9 19. "Income" means the return in money or property derived
10 from the use of trust principal after deduction of investment
11 losses, taxes, and expenses incurred in the sale of trust
12 assets, any cost of the operation of the trust, and any annual
13 audit fees. "Income" includes but is not limited to:

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

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

19 c. Cash dividends paid on corporate stock.

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

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

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

24 21. "Interment rights" means the rights to place remains
25 in a specific location for use as a final resting place or
26 memorial.

27 22. "Interment rights agreement" means an agreement to
28 furnish memorials, memorialization, opening and closing
29 services, or interment rights.

30 23. "Interment space" means a space used or intended to be
31 used for the interment of remains including, but not limited
32 to, a grave space, lawn crypt, mausoleum crypt, and niche.

33 24. "Landlocked cemetery" means a cemetery that offered or
34 sold interment rights to the public in general, and which does
35 not have a means of ingress and egress available to members of

1 the public in general.

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

6 26. "Lot" means an area in a cemetery containing more than
7 one interment space which is uniquely identified by an
8 alphabetical, numeric, or alphanumerical identification
9 system.

10 27. "Maintenance fund" means funds set aside for the
11 maintenance of a nonperpetual care cemetery, including all of
12 the following:

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

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

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

18 28. "Mausoleum" means an aboveground structure designed
19 for the entombment of human remains.

20 29. "Mausoleum crypt" means a chamber in a mausoleum of
21 sufficient size to contain casketed human remains.

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

28 31. "Memorial care" means any care provided or to be
29 provided for the general maintenance of memorials including
30 foundation repair or replacement, resetting or straightening
31 tipped memorials, repairing or replacing inadvertently damaged
32 memorials and any other care clearly specified in the purchase
33 agreement.

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

1 33. "Memorialization" means any permanent system designed
2 to mark or record the names and other data pertaining to a
3 decedent.

4 34. "Merchandise" means any personal property offered or
5 sold for use in connection with the funeral, final
6 disposition, memorialization, or interment of human remains,
7 but which is exclusive of interment rights.

8 35. "Neglected cemetery" means a cemetery where there has
9 been a failure to cut grass or weeds or care for graves,
10 memorials or memorialization, walls, fences, driveways, and
11 buildings, or for which proper records of interments have not
12 been maintained.

13 36. "Niche" means a recess or space in a columbarium or
14 mausoleum used for placement of cremated human remains.

15 37. "Opening and closing services" means one or more
16 services necessarily or customarily provided in connection
17 with the interment or entombment of human remains or a
18 combination thereof.

19 38. "Operating a cemetery" means offering to sell or
20 selling interment rights, or any service or merchandise
21 necessarily or customarily provided for a funeral, or for the
22 entombment or cremation of a dead human, or any combination
23 thereof, including but not limited to opening and closing
24 services, caskets, memorials, vaults, urns, and interment
25 receptacles.

26 39. "Outer burial container" means any container which is
27 designed for placement in the ground around a casket or an urn
28 including, but not limited to, containers commonly known as
29 burial vaults, urn vaults, grave boxes, grave liners, and lawn
30 crypts.

31 40. "Parent company" means a corporation that has a
32 controlling interest in a cemetery corporation.

33 41. "Perpetual care cemetery" includes all of the
34 following:

35 a. Any cemetery that was organized or commenced business

1 in this state on or after July 1, 1995.

2 b. Any cemetery that has established a care fund in
3 compliance with subchapter 11.

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

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

9 42. "Person" means an individual, firm, corporation,
10 partnership, joint venture, limited liability company,
11 association, trustee, government or governmental subdivision,
12 agency, or other entity, or any combination thereof.

13 43. "Pioneer cemetery" means a cemetery where there were
14 six or fewer burials in the preceding fifty years.

15 44. "Purchaser" means a person who purchases memorials,
16 memorialization, opening and closing services, scattering
17 services, interment rights, or a combination thereof. The
18 purchaser need not be a beneficiary of the interment rights
19 agreement.

20 45. "Religious cemetery" means a cemetery that is owned,
21 operated, or controlled by a recognized church or
22 denomination, a cemetery designated as such in the Official
23 Catholic Directory on file with the insurance division or in a
24 similar publication of a recognized church or denomination, or
25 a cemetery that the commissioner determines is operating as a
26 religious cemetery upon review of an application by the
27 cemetery that includes a description of the cemetery's
28 affiliation with a recognized church or denomination, or the
29 extent to which the affiliate organization is responsible for
30 the financial and contractual obligations of the cemetery, or
31 the provision of the federal Internal Revenue Code, if any,
32 which exempts the cemetery from the payment of federal income
33 tax.

34 46. "Relocation" means the act of taking remains from the
35 place of interment or the place where the remains are being

1 held to another designated place.

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

6 48. "Scattering services provider" means a person in the
7 business of scattering human cremated remains.

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

16 50. "Special care" means any care provided or to be
17 provided that supplements or exceeds the requirements of this
18 chapter in accordance with the specific directions of any
19 donor of funds for such purposes.

20 51. "Undeveloped space" means a designated area or
21 building within a cemetery that has been mapped and planned
22 for future development but is not yet fully developed.

23 SUBCHAPTER 2

24 CEMETERY DEDICATION REQUIREMENTS AND PROCEDURES

25 Sec. 10. NEW SECTION. 523I.201 DEDICATION.

26 1. A person that dedicates property for a new cemetery on
27 or after July 1, 2004, and a cemetery corporation that
28 dedicates an additional garden on or after July 1, 2004,
29 shall:

30 a. In the case of land, survey and subdivide the property
31 into gardens with descriptive names or numbers and make a map
32 or plat of the property. Individual spaces do not need to be
33 set forth visually. The map or plat must include narrative
34 descriptions for each garden that allow individuals to
35 determine the location of each interment space. The narrative

1 descriptions must include appropriate compass directions, the
2 size of interment spaces in each defined area, and a
3 description of a progressive numbering system used to organize
4 individual spaces in each defined area.

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

16 c. File the map or plat with the commissioner, including a
17 written certificate or declaration of dedication of the
18 property delineated by the map or plat, dedicating the
19 property to cemetery purposes. The certificate or declaration
20 shall include all of the following:

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

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

25 (3) Verification by a notary public.

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

30 3. A certificate or declaration of dedication may contain
31 a provision permitting a cemetery corporation to resurvey and
32 change the shape and size of the property for which the
33 associated map or plat is filed if that change does not
34 disturb any interred remains. If a change is made, the
35 cemetery corporation shall file an amended map or plat and

1 shall indicate any change in a specific unique number assigned
2 to an interment space.

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

7 Sec. 11. NEW SECTION. 523I.202 EFFECT OF DEDICATION.

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

12 2. Dedication of property as a cemetery and a property
13 owner's title to the exclusive interment rights are not
14 affected by the dissolution of the corporation owning the
15 cemetery, nonuse, alienation, encumbrance, or forced sale of
16 the property.

17 3. Dedication of property as a cemetery shall not be
18 invalidated because of a violation of the law against
19 perpetuities or the law against the suspension of the power of
20 alienation of title to or use of property.

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

23 a. Is exempt from public improvements assessments, fees,
24 and public taxation.

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

27 5. If human remains are not interred in a garden, the
28 dedication of that portion of the property as a cemetery may
29 be removed if notice is filed with the commissioner. Property
30 dedicated as a cemetery shall continue to be used for cemetery
31 purposes until the dedication is removed by filing notice with
32 the commissioner, or by court order.

33 Sec. 12. NEW SECTION. 523I.203 REMOVAL OF DEDICATION.

34 A cemetery corporation may petition a district court of the
35 county in which a cemetery is located to remove the dedication

1 with respect to all or any portion of the cemetery if any of
2 the following occurs:

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

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

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

10

SUBCHAPTER 3

11

CEMETERY CORPORATIONS

12

Sec. 13. NEW SECTION. 523I.301 CORPORATE OWNERSHIP.

13

1. Except for a governmental subdivision, a cemetery that
14 sells interment rights on or after July 1, 2004, shall be
15 operated by a corporation. A corporation may own or operate
16 more than one cemetery and need not be formed solely for the
17 purpose of owning or operating a cemetery.

18

2. The powers, privileges, and duties conferred and
19 imposed upon any cemetery corporation doing business under
20 this chapter are hereby enlarged as each particular case may
21 require to conform to the provisions of this chapter.

22

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

27

Sec. 14. NEW SECTION. 523I.302 PROPERTY ACQUISITION BY
28 CEMETERY CORPORATION.

29

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

32

2. A cemetery corporation that acquires property may
33 record title to its property with the county recorder of the
34 county in which the property is located if its president and
35 secretary or other authorized delegate of the cemetery

1 corporation sign and acknowledge a declaration executed by the
2 cemetery corporation that describes the property and declares
3 the cemetery corporation's intention to use the property or a
4 part of the property for interment purposes.

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

8 Sec. 15. NEW SECTION. 523I.303 AUTHORITY OF CEMETERY
9 CORPORATION.

10 A cemetery corporation may do any of the following:

11 1. Divide the cemetery into interment spaces and
12 subdivisions for cemetery purposes.

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

15 3. Take any action that is necessary to carry out the
16 cemetery's business purposes including those purposes that are
17 necessarily incidental to the final disposition of human
18 remains, including any of the following:

19 a. Convey property or other assets of the corporation.

20 b. Borrow money.

21 SUBCHAPTER 4

22 INTERMENT RIGHTS

23 Sec. 16. NEW SECTION. 523I.401 SALE OF INTERMENT RIGHTS.

24 1. For sales or transfers of interment rights made on or
25 after July 1, 2004, a cemetery corporation may sell and convey
26 exclusive rights of interment in the cemetery under the
27 following conditions:

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

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

33 2. A certificate of interment rights or other instrument
34 evidencing the conveyance of exclusive rights of interment
35 must be issued by the cemetery corporation.

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

5 4. A conveyance of exclusive rights of interment must be
6 filed and recorded in the cemetery corporation's office. Any
7 transfer of the ownership of interment rights must be filed
8 and recorded in the cemetery corporation's office. The
9 cemetery corporation may charge a reasonable recording fee to
10 record the transfer of interment rights.

11 Sec. 17. NEW SECTION. 523I.402 INTERMENT RIGHTS.

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

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

22 Sec. 18. NEW SECTION. 523I.403 MULTIPLE OWNERS OF
23 INTERMENT RIGHTS.

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

30 Sec. 19. NEW SECTION. 523I.404 RECORDS OF INTERMENT
31 RIGHTS AND INTERMENT.

32 1. For sales or transfers of interment rights made on or
33 after July 1, 2004, a cemetery corporation shall keep complete
34 records identifying the owners of all interment rights sold by
35 the cemetery corporation and historical information regarding

1 any transfers of ownership. The records shall include all of
2 the following:

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

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

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

10 2. For sales or transfers of interment rights made on or
11 after July 1, 2004, a cemetery corporation shall keep a record
12 of each interment in a cemetery. The records shall include
13 all of the following:

14 a. The date the remains are interred.

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

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

21 Sec. 20. NEW SECTION. 523I.405 UNPAID CARE ASSESSMENTS
22 AND UNOCCUPIED INTERMENT SPACES.

23 1. FORECLOSURE -- UNPAID ASSESSMENTS. Unpaid care
24 assessments for an unoccupied interment space not under
25 perpetual care shall create a lien by the cemetery corporation
26 against the applicable interment space. The cemetery
27 corporation may, following notice, foreclose on the interment
28 space if the amount of the lien exceeds the amount paid for
29 the interment space. If the lien is not paid within one year
30 from the date that notice of foreclosure is served on the
31 owner of record or the owner of record's heirs, the ownership
32 in or right to the unoccupied interment space shall revert to
33 the cemetery corporation that owns the cemetery in which the
34 unoccupied interment space is located.

35 2. ABANDONMENT -- QUIET TITLE ACTION. A cemetery

1 corporation may file an action to quiet title to determine
2 whether an interment space has been abandoned if the interment
3 space is unoccupied and has not been occupied in the preceding
4 seventy-five years. An action to quiet title shall commence
5 when the cemetery corporation serves notice on the owner of
6 record or the owner of record's heirs declaring that the
7 interment space is considered to be abandoned. If the owner
8 of record or the heirs of the owner of record do not respond
9 within three years from the date that notice is served, the
10 abandonment is considered to be complete. The ownership in or
11 right to an abandoned space shall revert to the cemetery
12 corporation that owns the cemetery in which the abandoned
13 interment space is located and the cemetery corporation may
14 sell and convey title to the interment space.

15 3. SERVICE OF NOTICE. Notice under this section shall be
16 served personally on the owner of record or the heirs of the
17 owner of record, or may be served by mailing notice by
18 certified mail to the owner of record or to the heirs of the
19 owner of record at the last known address. If the address of
20 the owner of record or of the heirs of the owner of record
21 cannot be ascertained, notice of abandonment shall be given by
22 one publication of the notice in the official newspaper of the
23 county in which the cemetery is located.

24 SUBCHAPTER 5

25 INTERMENT RIGHTS AGREEMENTS

26 Sec. 21. NEW SECTION. 523I.501 STATEMENT BY PERPETUAL
27 CARE CEMETERY.

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

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

1 cemetery."

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

8 Sec. 22. NEW SECTION. 523I.502 STATEMENT BY NONPERPETUAL
9 CARE CEMETERY.

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

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

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

27 Sec. 23. NEW SECTION. 523I.503 INTERMENT RIGHTS
28 AGREEMENT REQUIREMENTS.

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

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

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

1 interment space will be deferred as set forth in subsection
2 10, there will be written acknowledgement when payment in full
3 is made, specification of a reasonable time period for
4 development of the space, a description of what happens in the
5 event of the purchaser's death prior to development of the
6 space, and immediate transfer of the interment rights when
7 development of the space is complete.

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

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

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

25 15. Signatures of the purchaser and the seller.

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

29 SUBCHAPTER 6

30 LAWN CRYPTS

31 Sec. 24. NEW SECTION. 523I.601 REQUIREMENTS FOR LAWN
32 CRYPTS.

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

35 1. The lawn crypt is constructed of concrete and

1 reinforced steel or other comparable durable material.

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

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

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

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

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

15 Sec. 25. NEW SECTION. 523I.602 REQUEST TO INSTALL LAWN
16 CRYPT IN FEWER THAN TEN UNITS.

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

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

24 a. The owner's name and address.

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

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

27 d. A description of the interment spaces.

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

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

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

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

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

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

10 g. The date on which the owner or owners signed the form.
11 Sec. 26. NEW SECTION. 523I.603 NEW CONSTRUCTION.

12 1. A person shall not offer to sell interment rights in a
13 mausoleum or columbarium that will be built or completed in
14 the future unless the person has notified the commissioner of
15 the offer to sell on a form prescribed by the commissioner and
16 accompanied by a fee of one hundred dollars.

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

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

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

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

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

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

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

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

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

9 SUBCHAPTER 7

10 GENERAL PROVISIONS

11 Sec. 27. NEW SECTION. 523I.701 LIEN AGAINST CEMETERY
12 PROPERTY.

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

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

23 Sec. 28. NEW SECTION. 523I.702 REMOVAL OF REMAINS FROM
24 NEGLECTED CEMETERY.

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

34 2. If a county does not have a perpetual care cemetery
35 that under its rules permits the interment of human remains

1 that have been removed from another cemetery, the human
2 remains, monuments, tombs, and other similar items may be
3 removed to a nonperpetual care cemetery in the county that has
4 provided for assessments for the cemetery's future care.

5 Sec. 29. NEW SECTION. 523I.703 RULEMAKING AND
6 ENFORCEMENT.

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

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

16 a. Prohibiting the placement of memorials or
17 memorialization, buildings, or other types of structures
18 within any portion of the cemetery.

19 b. Regulating the uniformity, class, and kind of memorials
20 and memorialization and structures within the cemetery.

21 c. Regulating the scattering or placement of cremated
22 remains within the cemetery.

23 d. Prohibiting or regulating the placement of nonhuman
24 remains within the cemetery.

25 e. Prohibiting or regulating the introduction or care of
26 trees, shrubs, and other types of plants within the cemetery.

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

29 g. Prohibiting interment in any part of the cemetery not
30 designated as an interment space.

31 h. Preventing the use of space for any purpose
32 inconsistent with the use of the property as a cemetery.

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

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

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

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

25 6. The cemetery corporation shall not approve any bylaw
26 which unreasonably restricts competition, or which
27 unreasonably increases the cost to the owner of interment
28 rights in utilizing these rights.

29 Sec. 30. NEW SECTION. 523I.704 PROTECTION OF CEMETERIES
30 AND BURIAL SITES.

31 1. EXISTENCE OF CEMETERY OR BURIAL SITE -- NOTIFICATION.
32 If a governmental subdivision is notified of the existence of
33 a cemetery, or a marked burial site that is not located in a
34 dedicated cemetery, within its jurisdiction and the cemetery
35 or burial site is not otherwise provided for under this

1 chapter, the governmental subdivision shall, as soon as is
2 practicable, notify the owner of the land upon which the
3 cemetery or burial site is located of the cemetery's or burial
4 site's existence and location. The notification shall include
5 an explanation of the provisions of this section. If there is
6 a basis to believe that interment may have occurred more than
7 one hundred fifty years earlier, the governmental subdivision
8 shall also notify the state archaeologist.

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

14 3. DUTY TO PRESERVE AND PROTECT. A governmental
15 subdivision having a cemetery, or a burial site that is not
16 located within a dedicated cemetery, within its jurisdiction,
17 for which preservation is not otherwise provided, shall
18 preserve and protect the cemetery or burial site as necessary
19 to restore or maintain its physical integrity as a cemetery or
20 burial site. The governmental subdivision may enter into an
21 agreement to delegate the responsibility for the preservation
22 and protection of the cemetery or burial site to a private
23 organization interested in historical preservation. A
24 cemetery corporation shall be formed to operate the cemetery,
25 if applicable.

26 4. CONFISCATION AND RETURN OF MEMORIALS. A law
27 enforcement officer having reason to believe that a memorial
28 or memorialization is in the possession of a person without
29 authorization or right to possess the memorial or
30 memorialization may take possession of the memorial or
31 memorialization from that person and turn it over to the
32 officer's law enforcement agency. If a law enforcement agency
33 determines that a memorial or memorialization the agency has
34 taken possession of rightfully belongs on an interment space,
35 the agency shall return the memorial or memorialization to the

1 interment space, or make arrangements with the person having
2 jurisdiction over the interment space for its return.

3 5. BURIAL SITES LOCATED ON PRIVATE PROPERTY.

4 a. If a person notifies a governmental subdivision that a
5 burial site of the person's ancestor is located on property
6 owned by another person within the jurisdiction of the
7 governmental subdivision, the governmental subdivision shall
8 notify the property owner of the location of the burial site
9 and that the property owner is required to permit the person
10 reasonable ingress and egress for the purposes of visiting the
11 burial site of the person's ancestor.

12 b. Pursuant to section 558.69, each declaration of value
13 submitted to a county recorder pursuant to chapter 428A shall
14 be accompanied by a statement concerning whether or not any
15 known private burial sites are situated on the property.

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

27 Sec. 31. NEW SECTION. 523I.705 COMPLIANCE WITH IOWA
28 CONSUMER CREDIT CODE.

29 A seller of credit sales agreements pursuant to this
30 chapter shall comply with the requirements of chapter 537, and
31 is subject to the remedies and penalties provided for in that
32 chapter.

33 Sec. 32. NEW SECTION. 523I.706 DISCLOSURE REQUIREMENTS.

34 1. A cemetery corporation shall disclose, prior to the
35 sale of interment rights, whether opening and closing of the

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

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

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

16 Sec. 33. NEW SECTION. 523I.707 INSTALLATION OF OUTER
17 BURIAL CONTAINERS.

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

25 Sec. 34. NEW SECTION. 523I.708 ACCESS BY FUNERAL
26 DIRECTORS.

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

30 Sec. 35. NEW SECTION. 523I.709 COUNTY AUDITOR AS
31 TRUSTEE.

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

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

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

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

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

15 Sec. 36. NEW SECTION. 523I.710 MEMORIALS AND
16 MEMORIALIZATION.

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

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

31 3. SPECIFICATIONS. Upon request, a cemetery corporation
32 shall provide reasonable written specifications and
33 instructions governing installation of memorials, which shall
34 apply to all installations whether performed by the cemetery
35 corporation or another person. The written specifications

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

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

26 5. PREPARATION AND INSTALLATION.

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

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

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

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

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

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

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

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

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

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

31 k. If the person who is installing a memorial damages any
32 cemetery property, the person shall notify the cemetery
33 corporation immediately. The person installing the memorial
34 shall then repair the damage as soon as possible, upon
35 approval by the cemetery corporation. The cemetery

1 corporation may require a person installing a memorial to
2 provide current proof of workers' compensation insurance as
3 required by state law and current proof of liability
4 insurance, sufficient to indemnify the cemetery corporation
5 against claims resulting from installation of the memorial.
6 Proof of liability insurance in an amount of one million
7 dollars or more shall preclude the cemetery corporation from
8 requiring a person installing a memorial to obtain a
9 performance bond.

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

14 6. INSPECTION. A cemetery corporation may inspect the
15 installation site of a memorial at any time. If the cemetery
16 corporation determines that cemetery corporation rules are not
17 being followed during the installation, the cemetery
18 corporation may order the installation to stop until the
19 infraction is corrected. The cemetery corporation shall
20 provide written notice to the installer as soon as possible if
21 the cemetery corporation believes that any of the following
22 have occurred:

- 23 a. The memorial has not been installed correctly.
- 24 b. The person installing the memorial has damaged property
25 at the cemetery.
- 26 c. Other cemetery corporation requirements for
27 installation have not been met, such as removal of debris or
28 equipment.

29 7. LOCATION AND SERVICE CHARGE. A cemetery corporation
30 may charge a reasonable service charge for allowing the
31 installation of a memorial purchased or obtained from and
32 installed by a person other than the cemetery corporation or
33 its agents. This service charge shall be based on the
34 cemetery corporation's actual labor costs, including fringe
35 benefits, of those employees whose normal duty is to inspect

1 the installation of memorials, in accordance with generally
2 accepted accounting practices. General administrative and
3 overhead costs and any other functions not related to actual
4 inspection time shall be excluded from the service charge.

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

18 9. PERPETUAL CARE. A cemetery corporation may require
19 contributions from the purchaser of a memorial for perpetual
20 care, if a perpetual care fund deposit is uniformly charged on
21 every memorial installed in the cemetery.

22 Sec. 37. NEW SECTION. 5231.711 INTERMENT, RELOCATION, OR
23 DISINTERMENT OF REMAINS.

24 1. Unless a decedent has left directions in writing for
25 the disposition of the decedent's remains as provided in
26 subsection 2, the following persons, in the priority listed,
27 shall have the right to control the interment, relocation, or
28 disinterment of the decedent's remains within or from a
29 cemetery:

30 a. The person designated in and adequately identified by a
31 written instrument signed by the decedent.

32 b. The surviving spouse of the decedent, if not legally
33 separated from the decedent.

34 c. A majority of the surviving adult children of the
35 decedent whose whereabouts are reasonably ascertainable.

1 d. The surviving parents or legal guardians of the
2 decedent whose whereabouts are reasonably ascertainable.

3 e. A majority of the surviving adult siblings of the
4 decedent whose whereabouts are reasonably ascertainable.

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

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

10 DIRECTIONS FOR DISPOSITION OF MY REMAINS

11 Name of person whose remains are to be disposed of as
12 directed (decedent):

13 Address:

14 Telephone Number:

15 Acceptance of Appointment: (signature of agent)

16 Date of Signature:

17 SUCCESSORS

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

23 First Successor

24 Name:

25 Address:

26 Telephone Number:

27 Acceptance of Appointment: (signature of first successor)

28 Date of Signature:

29 Second Successor

30 Name:

31 Address:

32 Telephone Number:

33 Acceptance of Appointment: (signature of second successor)

34 Date of Signature:

35 DURATION

1 This appointment becomes effective upon my death.

2 PRIOR APPOINTMENTS REVOKED

3 I hereby revoke any prior appointment of any person to
4 control the disposition of my remains.

5 RELIANCE

6 I hereby agree that any cemetery corporation that receives
7 a copy of this document may act under it. Any modification or
8 revocation of this document is not effective as to any such
9 party until that party receives actual notice of the
10 modification or revocation. No such party shall be liable
11 because of reliance on a copy of this document.

12 ASSUMPTION

13 THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS
14 APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND
15 BY THE PROVISIONS OF, SECTION 523I.711. Signed this ____ day
16 of _____, ____.

17 3. A written instrument referred to in subsection 1,
18 paragraph "a", is legally sufficient if the wording of the
19 instrument complies substantially with subsection 2, the
20 instrument is properly completed, the instrument is signed by
21 the decedent, the agent, and each successor agent, and the
22 signature of the decedent is acknowledged. Such written
23 instrument may be modified or revoked only by a subsequent
24 written instrument that complies with the requirements of this
25 subsection.

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

33 5. A person may provide written directions for the
34 interment, relocation, or disinterment of the person's own
35 remains in a will, prepaid funeral or cemetery contract, or

1 written instrument signed and acknowledged by the person. The
2 directions may govern the inscription to be placed on a grave
3 marker attached to any interment space in which the decedent
4 had the right of interment at the time of death and in which
5 interment space the decedent is subsequently interred. The
6 directions may be modified or revoked only by a subsequent
7 writing signed and acknowledged by the person. A person other
8 than a decedent who is entitled to control the interment,
9 relocation, or disinterment of a decedent's remains under this
10 section shall faithfully carry out the directions of the
11 decedent to the extent that the decedent's estate or the
12 person controlling the interment, relocation, or disinterment
13 is financially able to do so.

14 6. If the decedent's directions for the interment of the
15 decedent's remains are in a will, the directions shall be
16 carried out immediately without the necessity of probate. If
17 a will is not probated or is declared invalid for testamentary
18 purposes, the directions for the interment of the decedent's
19 remains are valid to the extent that they have been acted upon
20 in good faith.

21 7. A cemetery corporation shall not be liable for carrying
22 out the written directions of a decedent or the directions of
23 any person entitled to control the interment, relocation, or
24 disinterment of the decedent's remains.

25 8. If the agreement of a majority of the persons
26 designated in subsection 1, paragraph "c", "d", or "e", is
27 required and cannot be obtained concerning their right to
28 control the interment, relocation, or disinterment of a
29 decedent's remains, the dispute may be resolved by a court of
30 competent jurisdiction. A cemetery corporation shall not be
31 liable for refusing to accept the decedent's remains, relocate
32 or disinter, inter or otherwise dispose of the decedent's
33 remains, until the cemetery corporation receives a court order
34 or other suitable confirmation that the dispute has been
35 resolved or settled.

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

8 b. If the consent required by this subsection cannot be
9 obtained, the remains may be relocated by permission of the
10 district court of the county in which the cemetery is located.
11 Before the date of application to the court for permission to
12 relocate remains under this subsection, notice must be given
13 to the cemetery corporation that operates the cemetery in
14 which the remains are interred, each person whose consent is
15 required for relocation of the remains under subsection 1, and
16 any other person that the court requires to be served.

17 c. For the purposes of this subsection, personal notice
18 must be given not later than the eleventh day before the date
19 of application to the court for permission to relocate the
20 remains, or notice by certified mail or restricted certified
21 mail must be given not later than the sixteenth day before the
22 date of application.

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

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

32 a. The date the remains are removed.

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

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

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

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

19 12. Relocations and disinterments of human remains shall
20 be done in compliance with sections 144.32 and 144.34.

21 SUBCHAPTER 8

22 GOVERNMENTAL SUBDIVISIONS

23 Sec. 38. NEW SECTION. 523I.801 CEMETERY AUTHORIZED.

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

29 Sec. 39. NEW SECTION. 523I.802 TRUST FOR CEMETERY.

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

34 2. To act as a trustee, a majority of the governmental
35 subdivision's governing body must adopt an ordinance or

1 resolution stating the governmental subdivision's willingness
2 and intention to act as a trustee for the perpetual
3 maintenance of cemetery property. When the ordinance or
4 resolution is adopted and the trust is accepted, the trust is
5 perpetual.

6 Sec. 40. NEW SECTION. 523I.803 AUTHORITY TO RECEIVE
7 GIFTS AND DEPOSITS FOR CARE -- CERTIFICATES.

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

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

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

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

23 a. The depositor's name.

24 b. The amount and purpose of the deposit.

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

27 d. Other information required by the governmental
28 subdivision.

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

35 Sec. 41. NEW SECTION. 523I.804 INVESTMENT OF CARE FUNDS.

1 Notwithstanding section 12B.10, a cemetery corporation
2 owned by a governmental subdivision may invest and reinvest
3 deposits under this subchapter as set forth in section
4 523I.1103. The trustee of the trust funds has a fiduciary
5 duty to make reasonable investment decisions and to properly
6 oversee and manage the funds entrusted to the trust fund.

7 Sec. 42. NEW SECTION. 523I.805 APPOINTMENT OF SUCCESSOR
8 TRUSTEE.

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

16 Sec. 43. NEW SECTION. 523I.806 PRIVATE CARE OF GRAVES.

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

22 SUBCHAPTER 9

23 COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES

24 Sec. 44. NEW SECTION. 523I.901 NEGLECTED CEMETERIES.

25 The commissioner shall create a form that interested
26 persons may use to report neglected cemeteries to the
27 commissioner and the county board of supervisors. The board
28 of supervisors of each county shall accept any neglected
29 cemetery report forms filed with the board and submit copies
30 of such report forms received during calendar years 2005 and
31 2006 to the commissioner no later than March 1 of the year
32 following receipt. The commissioner shall catalog and review
33 the neglected cemetery reports received, conduct site visits
34 as warranted to determine the nature or extent of any neglect,
35 and publish a report of findings no later than December 31,

1 2007.

2 Sec. 45. NEW SECTION. 523I.902 REMOVAL OF REMAINS.

3 1. Upon a showing of good cause, a county cemetery
4 commission may file suit in a district court in that county to
5 have remains interred in a cemetery owned and operated by the
6 commission removed to another cemetery. All persons in
7 interest, known or unknown, other than the plaintiffs, shall
8 be made defendants to the suit. If any parties are unknown,
9 notice may be given by publication. After hearing and a
10 showing of good cause for the removal, the court may order the
11 removal of the remains and the remains shall be properly
12 interred in another cemetery, at the expense of the county.
13 The removal and reinterment of the remains shall be done
14 pursuant to a disinterment permit issued under section 144.34
15 with due care and decency. In deciding whether to order the
16 removal of interred remains, a court shall consider present or
17 future access to the cemetery, the historical significance of
18 the cemetery, and the wishes of the parties concerned if they
19 are brought to the court's attention, including the desire of
20 any beneficiaries to reserve their rights to waive a
21 reservation of rights in favor of removal, and shall exercise
22 the court's sound discretion in granting or refusing the
23 removal of interred remains.

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

1 due care and decency.

2 SUBCHAPTER 10

3 REQUIREMENTS APPLYING ONLY TO NONPERPETUAL CARE CEMETERIES

4 Sec. 46. NEW SECTION. 523I.1001 ANNUAL REPORT BY

5 NONPERPETUAL CARE CEMETERIES.

6 1. A cemetery corporation that operates a nonperpetual
7 care cemetery shall file a written report at the end of each
8 fiscal year of the cemetery that includes the following:

9 a. The name and address of the cemetery.

10 b. The name and address of the corporation that owns the
11 cemetery.

12 c. A description of any common business enterprise or
13 parent company.

14 d. The name and address of each owner, officer, or other
15 official of the cemetery corporation, including when relevant,
16 the chief executive officer and the members of the board of
17 directors.

18 e. The name and address of any trustee holding trust funds
19 for the cemetery corporation, including the name and location
20 of the applicable trust account.

21 f. An affidavit that the cemetery is in compliance with
22 this chapter.

23 g. Copies of all sales agreement forms used by the
24 cemetery.

25 h. The amount of the principal of the cemetery
26 corporation's maintenance funds at the end of the fiscal year.

27 2. The report shall be filed with the commissioner each
28 March 1 in the form required by the commissioner.

29 Sec. 47. NEW SECTION. 523I.1002 UNIFIED ANNUAL REPORTS.

30 The commissioner shall permit the filing of a unified
31 report in the event of commonly owned or affiliated
32 cemeteries.

33 Sec. 48. NEW SECTION. 523I.1003 MAINTENANCE ASSESSMENTS
34 AND MAINTENANCE FUNDS AT NONPERPETUAL CARE CEMETERIES.

35 1. a. On or after July 1, 2004, a cemetery corporation

1 that operates a nonperpetual care cemetery shall, prior to
2 selling any interment rights, execute a trust instrument and
3 establish an irrevocable trust fund to provide funding for the
4 maintenance of the cemetery. The trust agreement shall
5 provide for the appointment of at least one trustee, with
6 perpetual succession, in case the cemetery corporation is
7 dissolved or ceases to be responsible for the cemetery's
8 maintenance. Maintenance fund distributions shall be used in
9 the manner determined to be in the best interests of the
10 cemetery, if authorized by a resolution, bylaw, or other
11 action or instrument establishing the maintenance fund,
12 including but not limited to the general care and maintenance
13 of memorials, memorialization, and any of the following:

14 (1) Cutting and trimming lawns, shrubs, and trees at
15 reasonable intervals.

16 (2) Maintaining drains, water lines, roads, buildings,
17 fences, and other structures.

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

19 (4) Compensating maintenance employees, paying insurance
20 premiums, and making payments to maintenance employees'
21 pension and benefit plans.

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

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

25 b. A cemetery corporation and the trustee or trustees of
26 the maintenance fund may, by agreement, amend the instrument
27 that established the maintenance fund to include any provision
28 that is necessary to comply with the requirements of this
29 chapter. The commissioner may require amendments to a trust
30 agreement that is not in accord with the provisions of this
31 chapter.

32 c. The maintenance fund shall be administered under the
33 jurisdiction of the district court of the county where the
34 cemetery is located. Notwithstanding chapter 633, annual
35 reports shall be filed with the court when necessary to

1 receive approval of appointments of trustees, trust agreements
2 and amendments, changes in fees and expenses, and other
3 matters within the court's jurisdiction. A court having
4 jurisdiction over a maintenance fund shall have full
5 jurisdiction to approve the appointment of trustees, the
6 amount of surety bond required, if any, and the investment of
7 funds.

8 d. The maintenance fund shall pay the fund's operation
9 costs and any annual audit fees. The principal of the
10 maintenance fund is intended to remain available perpetually
11 as a funding source for the maintenance of the cemetery. The
12 principal of the maintenance fund shall not be reduced
13 voluntarily and must remain inviolable, except as provided in
14 this section. The cemetery corporation shall maintain the
15 principal of the maintenance fund separate from all operating
16 funds of the cemetery corporation.

17 e. A cemetery corporation shall be responsible for the
18 deposit of all moneys required to be placed in the maintenance
19 fund. The maintenance fund may receive and hold any property
20 contributed to the maintenance fund as a part of the
21 maintenance fund or as an incident to the maintenance fund.
22 Moneys to be deposited in a maintenance fund shall be
23 deposited no later than the fifteenth day after the close of
24 the month when the cemetery corporation receives the final
25 payment from the purchaser.

26 f. Deposits and contributions to the maintenance fund are
27 for charitable purposes. The maintenance financed by the
28 maintenance fund constitutes the discharge of a duty due by
29 the cemetery corporation to persons interred and to be
30 interred in the cemetery and for the benefit and protection of
31 the public by preserving and keeping the cemetery from
32 becoming a place of disorder, reproach, and desolation in the
33 community in which the cemetery is located.

34 g. A contribution to a maintenance fund is not invalid
35 because of the following:

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

4 (2) A violation of the law against perpetuities or the law
5 against the suspension of the power of alienation of title to
6 or use of property.

7 2. A financial institution holding moneys in a maintenance
8 fund for a cemetery corporation shall not do any of the
9 following:

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

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

15 c. Otherwise invest moneys in a maintenance fund, directly
16 or indirectly, in a cemetery corporation's business
17 operations.

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

29 4. Maintenance fund moneys may be deposited pursuant to a
30 master trust agreement, if each maintenance fund is treated as
31 a separate beneficiary of the trust and each maintenance fund
32 is separable. The master trust shall maintain a separate
33 accounting of principal and income for each maintenance fund.
34 Moneys deposited pursuant to a master trust agreement may be
35 commingled for investment purposes.

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

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

10 7. This section does not prohibit a cemetery corporation
11 from moving moneys in a maintenance fund from one financial
12 institution to another.

13 8. A cemetery corporation that operates a nonperpetual
14 care cemetery shall collect a maintenance assessment equal to
15 or greater than fifty dollars or ten percent of the gross
16 selling price received by the cemetery corporation for the
17 sale of interment rights, whichever is more. The maintenance
18 assessments shall be deposited in the cemetery corporation's
19 maintenance fund.

20 SUBCHAPTER 11

21 REQUIREMENTS APPLYING ONLY TO PERPETUAL CARE CEMETERIES

22 Sec. 49. NEW SECTION. 523I.1101 APPLICABILITY.

23 1. All cemeteries are designated as either "perpetual care
24 cemeteries" or "nonperpetual care cemeteries" for the purposes
25 of this chapter.

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

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

31 4. A cemetery corporation that operates a nonperpetual
32 care cemetery may elect to become a perpetual care cemetery by
33 complying with the terms of section 523I.1102, if at all times
34 subsequent to the date of the election, the cemetery
35 corporation complies with the other requirements of this

1 subchapter except section 523I.1103, subsection 1.

2 Sec. 50. NEW SECTION. 523I.1102 TRUST AGREEMENT --
3 IRREVOCABLE TRUST -- CARE FUND.

4 1. A cemetery corporation operating as a perpetual care
5 cemetery shall execute a trust instrument and establish an
6 irrevocable trust fund to provide for the care of the
7 cemetery.

8 2. The trust agreement shall provide for the appointment
9 of at least one trustee, with perpetual succession, in case
10 the cemetery corporation is dissolved or ceases to be
11 responsible for the cemetery's care.

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

16 4. A cemetery corporation shall be responsible for the
17 deposit of all moneys required to be placed in a care fund.

18 5. The commissioner may require amendments to a trust
19 agreement that is not in accord with the provisions of this
20 chapter.

21 Sec. 51. NEW SECTION. 523I.1103 CARE FUND REQUIREMENTS.

22 1. A religious cemetery or a cemetery owned or operated by
23 a political subdivision of this state is not required to make
24 a minimum initial deposit in a care fund. A cemetery
25 corporation organized or commencing business in this state on
26 or after July 1, 1995, shall not commence operations as a
27 perpetual care cemetery unless the cemetery corporation has a
28 care fund of at least twenty-five thousand dollars in cash.

29 2. If an initial deposit is made by a cemetery corporation
30 to satisfy subsection 1, the initial twenty-five thousand
31 dollar deposit may be withdrawn by the cemetery corporation
32 when the care fund balance reaches one hundred thousand
33 dollars. An affidavit shall be filed with the commissioner
34 providing prior notice of the intended withdrawal of the
35 initial deposit and attesting that the money has not

1 previously been withdrawn. Upon a showing by the cemetery
2 corporation that the initial deposit has not previously been
3 withdrawn, the commissioner shall approve withdrawal of the
4 money and the withdrawal shall take place within one year
5 after the care fund balance reaches one hundred thousand
6 dollars.

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

19 4. The trustee shall use the judgment and care under the
20 circumstances then prevailing that persons of prudence,
21 discretion, and intelligence exercise in the management of
22 their own affairs, not in regard to speculation but in regard
23 to the permanent disposition of their funds, considering the
24 probable income as well as the probable safety of their
25 capital.

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

31 b. A financial institution acting as a trustee of care
32 funds under this chapter has a fiduciary duty to make
33 reasonable investment decisions and to properly oversee and
34 manage the funds entrusted to the financial institution. The
35 commissioner may take enforcement action against a financial

1 institution in its capacity as trustee for a breach of
2 fiduciary duty proven under this chapter.

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

10 d. Subject to a master trust agreement, the cemetery
11 corporation may appoint an independent investment adviser to
12 advise the financial institution about investment of the care
13 fund.

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

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

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

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

31 (3) Otherwise invest care funds, directly or indirectly,
32 in a cemetery corporation's business operations.

33 5. Moneys shall be deposited in the care fund no later
34 than the fifteenth day after the close of the month when the
35 cemetery corporation receives the final payment from a

1 purchaser of interment rights in an amount equal to or greater
2 than either of the following:

3 a. Fifty dollars or twenty percent of the gross selling
4 price received by the cemetery for the sale of interment
5 rights, whichever is more.

6 b. The amount charged for the perpetual care and special
7 care of a memorial or memorialization placed in the cemetery.
8 A fee for memorial care shall be uniformly charged on every
9 installation of a memorial in the cemetery based upon the size
10 of the memorial, using the height and width of the memorial or
11 the size of the ground surface area used for the memorial. A
12 fee for special care of a memorial may be collected if the
13 terms of the special care items and arrangements are clearly
14 specified in the interment rights purchase agreement. A
15 cemetery corporation's liability for acts of God and vandalism
16 is limited to income available from the care fund.

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

23 7. This section does not prohibit a cemetery corporation
24 from moving care funds from one financial institution to
25 another.

26 8. A care fund may receive and hold as a part of the fund
27 or as an incident to the fund any property contributed to the
28 fund.

29 9. The care fund and contributions to the care fund are
30 for charitable purposes. The care financed by the fund is for
31 the following purposes:

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

35 b. The benefit and protection of the public by preserving

1 and keeping the cemetery in a dignified condition so that the
2 cemetery does not become a nuisance or a place of disorder,
3 reproach, and desolation in the community in which the
4 cemetery is located.

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

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

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

13 Sec. 52. NEW SECTION. 523I.1104 PURPOSES OF CARE FUND.

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

22 2. In establishing a care fund, the cemetery corporation
23 may adopt plans for the care of the cemetery and installed
24 memorials and memorialization.

25 3. A cemetery corporation may, by resolution adopted by a
26 vote of at least two-thirds of the members of its board at any
27 authorized meeting of the board, authorize the withdrawal and
28 use of not more than twenty percent of the principal of the
29 care fund to acquire additional land for cemetery purposes, to
30 repair a mausoleum or other building or structure intended for
31 cemetery purposes, or to build, improve, or repair roads and
32 walkways in the cemetery. The resolution shall establish a
33 reasonable repayment schedule, not to exceed five years, and
34 provide for interest in an amount comparable to the care
35 fund's current rate of return on its investments. However,

1 the care fund shall not be diminished below an amount equal to
2 the greater of twenty-five thousand dollars or five thousand
3 dollars per acre of land in the cemetery. The resolution, and
4 either a bond or proof of insurance to guarantee replenishment
5 of the care fund, shall be filed with the commissioner thirty
6 days prior to the withdrawal of funds.

7 Sec. 53. NEW SECTION. 523I.1105 USE OF DISTRIBUTIONS
8 FROM CARE FUND.

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

- 15 a. Cutting and trimming lawns, shrubs, and trees at
16 reasonable intervals.
- 17 b. Maintaining drains, water lines, roads, buildings,
18 fences, and other structures.
- 19 c. Maintaining machinery, tools, and equipment.
- 20 d. Compensating maintenance employees, paying insurance
21 premiums, and making payments to employees' pension and
22 benefit plans.
- 23 e. Paying overhead expenses incidental to such purposes.
- 24 f. Paying expenses necessary to maintain ownership,
25 transfer, and interment records of the cemetery corporation.

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

- 29 a. The amount of principal in the care fund shall be
30 adjusted annually by allocating income or capital gains as
31 necessary to adjust the principal of the care fund for
32 inflation, based on the consumer price index as set by the
33 commissioner and the amount of principal in the care fund at
34 the beginning of the prior year. The amount of principal in
35 the care fund shall also be adjusted by adding the amount of

1 the deposits received during the prior year, as required by
2 section 523I.1103, subsection 5.

3 b. For purposes of this section, "adjusted basis" means
4 the total of the market value of the care fund on the date of
5 the conversion, the aggregate amount of the inflation
6 adjustments required by this section, and the aggregate amount
7 of deposits received as required by section 523I.1103,
8 subsection 5, since the date of the conversion.

9 c. If the adjusted basis of the care fund is more than the
10 market value of the care fund at the end of the prior year,
11 the cemetery corporation shall not withdraw capital gains. If
12 the adjusted basis of the care fund is less than the market
13 value of the care fund at the end of the prior year, an amount
14 equal to fifty percent of the excess may be withdrawn and used
15 for the cemetery's care.

16 Sec. 54. NEW SECTION. 523I.1106 SUIT BY COMMISSIONER.

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

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

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

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

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

29 a. Failure to adequately mow grass.

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

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

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

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

3 Sec. 55. NEW SECTION. 523I.1107 ADVERTISING.

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

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

15 Sec. 56. NEW SECTION. 523I.1108 PERPETUAL CARE REGISTRY.

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

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

23 Sec. 57. NEW SECTION. 523I.1109 USE OF GIFT FOR SPECIAL
24 CARE.

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

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

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

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

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

3 Sec. 58. NEW SECTION. 523I.1110 GOVERNMENTAL
4 SUBDIVISIONS.

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

10 Sec. 59. NEW SECTION. 523I.1111 ANNUAL REPORT AND FILING
11 FEES BY PERPETUAL CARE CEMETERIES.

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

15 a. The name and address of the cemetery.

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

17 c. A description of any common business enterprise or
18 parent company.

19 d. The name and address of each owner, officer, or other
20 official of the cemetery corporation, including, when
21 relevant, the chief executive officer and the members of the
22 board of directors.

23 e. The name and address of any trustee holding trust funds
24 for the cemetery corporation, including the name and location
25 of the applicable trust account.

26 f. An affidavit that the cemetery is in compliance with
27 this chapter.

28 g. Copies of all sales agreement forms used by the
29 cemetery.

30 h. The amount of the principal of the cemetery
31 corporation's care funds at the end of the fiscal year.

32 i. The number of interments made and interment spaces sold
33 during the fiscal year.

34 2. The report and a five-dollar filing fee for each
35 certificate of interment rights issued during the fiscal year

1 of the cemetery shall be filed with the commissioner within
2 four months following the end of the cemetery corporation's
3 fiscal year in the form required by the commissioner. The
4 filing fee may be charged directly to the purchaser of the
5 interment rights.

6 Sec. 60. NEW SECTION. 523I.1112 UNIFIED ANNUAL REPORTS.

7 The commissioner shall permit the filing of a unified
8 report in the event of commonly owned or affiliated
9 cemeteries.

10 SUBCHAPTER 12

11 FRAUDULENT PRACTICES

12 Sec. 61. NEW SECTION. 523I.1201 MISLEADING FILINGS.

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

21 Sec. 62. NEW SECTION. 523I.1202 MISREPRESENTATIONS OF
22 GOVERNMENT APPROVAL.

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

28 Sec. 63. NEW SECTION. 523I.1203 FRAUDULENT PRACTICES.

29 A person who commits any of the following acts commits a
30 fraudulent practice which is punishable as provided in chapter
31 714:

32 1. Knowingly fails to comply with any requirement of this
33 chapter.

34 2. Knowingly makes, causes to be made, or subscribes to a
35 false statement or representation in a report or other

1 document required under this chapter, implementing rules, or
2 orders, or renders such a report or document misleading
3 through the deliberate omission of information properly
4 belonging in the report or document.

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

9 4. Fails to deposit funds under section 523I.1003 or
10 section 523I.1103 or withdraws funds in a manner inconsistent
11 with this chapter.

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

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

20 SUBCHAPTER 13

21 ADMINISTRATION AND ENFORCEMENT

22 Sec. 64. NEW SECTION. 523I.1301 ADMINISTRATION.

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

1 as needed for administering this chapter.

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

15 Sec. 65. NEW SECTION. 523I.1302 SCOPE.

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

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

35 3. If a foreign person does not have a registered agent or

1 agents in the state of Iowa, doing business within this state
2 shall constitute the person's appointment of the secretary of
3 state of the state of Iowa to be its true and lawful attorney
4 upon whom may be served all lawful process of original notice
5 in actions or proceedings arising or growing out of any
6 contract or tort.

7 Sec. 66. NEW SECTION. 523I.1303 INVESTIGATIONS AND
8 SUBPOENAS.

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

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

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

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

31 d. Investigate the cemetery corporation and examine the
32 books, accounts, papers, correspondence, memoranda, purchase
33 agreements, files, or other documents or records of the
34 cemetery.

35 e. Administer oaths and affirmations, subpoena witnesses,

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

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

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

22 Sec. 67. NEW SECTION. 523I.1304 CEASE AND DESIST ORDERS
23 -- INJUNCTIONS.

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

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

1 operation of law or is overturned by a presiding officer
2 following a request for hearing. Section 17A.18A is
3 inapplicable to summary cease and desist orders issued under
4 this section.

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

21 Sec. 68. NEW SECTION. 523I.1305 COURT ACTION FOR FAILURE
22 TO COOPERATE.

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

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

34 b. Production of documents or records including but not
35 limited to books, accounts, papers, correspondence, memoranda,

1 purchase agreements, files, or other documents or records.

2 c. Such other relief as may be required.

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

6 Sec. 69. NEW SECTION. 523I.1306 PROSECUTION FOR
7 VIOLATIONS OF LAW -- CIVIL PENALTIES.

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

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

24 3. A person who violates a provision of this chapter or
25 rules adopted or orders issued under this chapter may be
26 subject to civil penalties in addition to criminal penalties.
27 The commissioner may impose, assess, and collect a civil
28 penalty not exceeding ten thousand dollars for each violation.
29 For the purposes of computing the amount of each civil
30 penalty, each day of a continuing violation constitutes a
31 separate violation. All civil penalties collected pursuant to
32 this section shall be deposited in the general fund of the
33 state.

34 Sec. 70. NEW SECTION. 523I.1307 COOPERATION WITH OTHER
35 AGENCIES.

1 1. The commissioner may cooperate with any governmental
2 law enforcement or regulatory agency to encourage uniform
3 interpretation and administration of this chapter and
4 effective enforcement of this chapter and effective regulation
5 of the sale of memorials, memorialization, and cemeteries.

6 2. Cooperation with other agencies may include but is not
7 limited to:

8 a. Making a joint examination or investigation.

9 b. Holding a joint administrative hearing.

10 c. Filing and prosecuting a joint civil or administrative
11 proceeding.

12 d. Sharing and exchanging personnel.

13 e. Sharing and exchanging relevant information and
14 documents.

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

18 Sec. 71. NEW SECTION. 523I.1308 RULES, FORMS, AND
19 ORDERS.

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

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

32 3. A provision of this chapter imposing any liability does
33 not apply to an act done or omitted in good faith in
34 conformity with any rule, form, or order of the commissioner,
35 notwithstanding that the rule, form, or order may later be

1 amended or rescinded or be determined by judicial or other
2 authority to be invalid for any reason.

3 Sec. 72. NEW SECTION. 523I.1309 DATE OF FILING --
4 INTERPRETIVE OPINIONS.

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

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

9 Sec. 73. NEW SECTION. 523I.1310 RECEIVERSHIPS.

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

14 a. Is insolvent.

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

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

19 2. The commissioner or attorney general may apply to the
20 district court in any county of the state for the
21 establishment of a receivership. Upon proof that any of the
22 conditions described in this section have occurred, the court
23 may grant a receivership.

24 Sec. 74. NEW SECTION. 523I.1311 INSURANCE DIVISION'S
25 ENFORCEMENT FUND.

26 A special revenue fund in the state treasury, to be known
27 as the insurance division's enforcement fund, is created under
28 the authority of the commissioner of insurance. The
29 commissioner shall allocate annually from the fees paid
30 pursuant to section 523I.1111, an amount not exceeding fifty
31 thousand dollars, for deposit to the insurance division's
32 enforcement fund. The moneys in the enforcement fund shall be
33 retained in the fund. The moneys are appropriated and,
34 subject to authorization by the commissioner, shall be used to
35 pay auditors, audit expenses, investigative expenses, the

1 expenses of consumer education, compliance, and education
2 programs for filers and other regulated persons, and
3 educational or compliance program materials, the expenses of a
4 toll-free telephone line for consumer complaints, and the
5 expenses of receiverships of perpetual care cemeteries
6 established under section 523I.1310.

7 Sec. 75. NEW SECTION. 523I.1312 VIOLATIONS OF LAW --
8 REFERRALS TO THE DEPARTMENT OF PUBLIC HEALTH.

9 If the commissioner discovers a violation of a provision of
10 this chapter or any other state law or rule concerning the
11 disposal or transportation of human remains, the commissioner
12 shall forward all evidence in the possession of the
13 commissioner concerning such a violation to the department of
14 public health for such proceedings as the department of public
15 health deems appropriate.

16 Sec. 76. Sections 359.37, 359.40, and 359.41, Code 2003,
17 are repealed.

18 Sec. 77. Chapters 523I, 566, and 566A, Code 2003, are
19 repealed.

20 EXPLANATION

21 This bill repeals Code chapter 523I concerning cemeteries,
22 Code chapter 566 concerning cemetery management, and Code
23 chapter 566A concerning cemetery regulation and creates a new
24 Code chapter 523I concerning cemeteries, cemetery regulation,
25 and administration and enforcement procedures relating to
26 cemeteries.

27 The bill contains a procedure to dedicate new cemeteries or
28 subdivisions of cemeteries with a public filing with the
29 insurance division.

30 The bill requires all persons currently operating as
31 cemeteries to form a corporation to own and operate the
32 cemetery property and prohibits unincorporated cemetery
33 associations.

34 The bill establishes requirements for recording ownership
35 of interment rights at each cemetery location rather than just

1 with the county recorder. The bill requires cemeteries to
2 maintain complete interment records that identify the owners
3 of all interment rights sold or transferred by the cemetery
4 corporation on or after July 1, 2004, and contain historical
5 information concerning any changes of ownership of interment
6 rights. The bill sets forth requirements for interment rights
7 agreements.

8 The bill sets forth requirements for lawn crypts and their
9 installation.

10 The bill requires a public filing with the insurance
11 division before the construction of new mausoleums and
12 columbariums. The bill sets forth procedures governing the
13 installation of memorials and memorialization by third
14 parties.

15 The bill requires cemetery corporations to make disclosures
16 to a buyer of interment rights when grave opening and closing
17 fees are not included in the agreement. The bill authorizes a
18 cemetery corporation to accept written instructions of a
19 decedent concerning interment, relocation, or disinterment of
20 remains. The bill contains provisions for making a
21 determination of who has the right to control interment,
22 relocation, or disinterment of remains.

23 The bill contains a procedure for the removal of remains
24 from a neglected cemetery. The bill provides a procedure for
25 reporting neglected cemeteries to the insurance division and
26 to the appropriate county board of supervisors.

27 The bill increases the penalty for disturbing an interment
28 site from a simple misdemeanor to an aggravated misdemeanor.
29 A simple misdemeanor is punishable by confinement for no more
30 than 30 days or a fine of at least \$50 but not more than \$500
31 or by both. An aggravated misdemeanor is punishable by
32 confinement for no more than two years and a fine of at least
33 \$500 but not more than \$5,000.

34 The bill requires a nonperpetual care cemetery to create a
35 maintenance fund to pay for the upkeep of the cemetery

1 property and to deposit at least \$50 into the maintenance fund
2 for each sale.

3 The bill authorizes governmental subdivisions to commingle
4 care funds for the purposes of investment and administration.
5 The bill authorizes governmental subdivisions that operate
6 cemeteries to invest their maintenance and care funds in the
7 same manner as other cemetery corporations notwithstanding
8 Code section 12B.10.

9 The bill authorizes civil lawsuits brought by the insurance
10 division against a cemetery corporation that fails to use care
11 funds to maintain the cemetery property.

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

14 The bill provides for the establishment of a receivership
15 for a cemetery corporation under certain circumstances.

16 The bill provides for the creation of a special revenue
17 fund in the state treasury to be known as the insurance
18 division's enforcement fund by allocating filing fees in an
19 amount not exceeding \$50,000. The moneys in the fund are
20 appropriated to the use of the insurance commissioner to pay
21 for auditors, investigative expenses, consumer education
22 expenses, a toll-free consumer complaint telephone line, and
23 receivership expenses of perpetual care cemeteries.

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**Fiscal Services Division
Legislative Services Agency
Fiscal Note**

SF 2245 - Cemetery Regulation (LSB 5208 SV)
Analyst: Ron Robinson (Phone: (515) 281-6256) (ron.robinson@legis.state.ia.us)
Fiscal Note Version - New

Description

Senate File 2245 provides for the establishment of interment rights agreements and reporting.

Section 30.2 of the Bill creates new Section 523I.704, Code of Iowa, and provides that a person commits an aggravated misdemeanor if they knowingly and without authorization damage, deface, destroy, or otherwise disturb an interment space. Current law makes this violation a simple misdemeanor under Section 566.32, Code of Iowa.

Section 59.2 of the Bill increases the fee charged to perpetual care cemeteries for each certificate of interment rights issued during the year from the current \$3 to \$5. The fee may be charged to the purchaser of the interment rights.

Section 63 of the Bill makes it a fraudulent practice to violate the provisions of the Iowa Cemetery Act, Chapter 523I, Code of Iowa. The Section provides a violation penalty, which is determined by the degree of the fraudulent practice as established in Chapter 714, Code of Iowa. The penalty will range from a simple misdemeanor to a Class "C" Felony. Current law makes this violation a simple misdemeanor under Section 566A.9, Code of Iowa.

Section 74 of the Bill reallocates the distribution of the fee authorized by Section 566A.2D, Code of Iowa, and eliminates the allocation to the General Fund.

Assumptions

1. The analysis is based on information obtained from the Justice Data Warehouse, which includes statewide court and Community-Based Corrections (CBC) information. Conviction and penalty information is based on FY 2003 data.
2. The Iowa Justice Data Warehouse contains no convictions in FY 2003 for current violations of Chapter 566.32 or 566A.9, Code of Iowa.
3. Senate File 2245 will result in no additional convictions.
4. There are an estimated 2,500 certificate of interment rights issued each year.

Correctional Impact

Senate File 2245 will have no significant correctional impact.

To the extent that violations are prosecuted with an enhanced penalty, the following are average State costs associated with imposing criminal penalties for one conviction:

- Simple Misdemeanors: State costs range from \$14 to \$300.
- Serious Misdemeanors: State costs range from \$100 to \$5,000.
- Aggravated Misdemeanors: State costs range from \$1,100 to \$5,000.
- Class D Felony: State costs range from \$1,700 to \$8,100.
- Class C Felony: State costs range from \$3,000 to \$23,000.

Fiscal Impact

Senate File 2245 reduces General Fund revenues by \$5,000 annually associated with the elimination of the allocation from internment rights fees.

The Bill increases revenues to the Cemetery Enforcement Fund by \$10,000 annually from adjustments to fees and the elimination of the General Fund allocation from internment rights fee revenue.

Sources

Department of Commerce, Insurance Division

Department of Human Rights, Criminal and Juvenile Justice Planning Division

Dennis C Prouty

March 16, 2004

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

Schuerer
Beall
Stewers

Succeeded By SSB#3127
Ⓢ/HF 2245 Commerce

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 and
3 reporting; establishing and appropriating fees; and providing
4 administration and enforcement procedures and penalties.

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

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

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

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

19 6A.7 CEMETERY LANDS.

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

24 Sec. 3. Section 331.325, subsections 2 and 3, Code 2003,
25 are amended to read as follows:

26 2. Each county board of supervisors may adopt an ordinance
27 assuming jurisdiction and control of pioneer cemeteries in the
28 county. The board shall exercise the powers and duties of
29 township trustees relating to the maintenance and repair of
30 cemeteries in the county as provided in sections 359.28
31 through ~~359.41~~ 359.39 except that the board shall not certify
32 a tax levy pursuant to section 359.30 or 359.33 and except
33 that the maintenance and repair of all cemeteries under the
34 jurisdiction of the county including pioneer cemeteries shall
35 be paid from the county general fund. The maintenance and

1 improvement program for a pioneer cemetery may include
2 restoration and management of native prairie grasses and
3 wildflowers.

4 3. In lieu of management of the cemeteries, the board of
5 supervisors may create, by ordinance, a cemetery commission to
6 assume jurisdiction and management of the pioneer cemeteries
7 in the county. The ordinance shall delineate the number of
8 commissioners, the appointing authority, the term of office,
9 officers, employees, organizational matters, rules of
10 procedure, compensation and expenses, and other matters deemed
11 pertinent by the board. The board may delegate any power and
12 duties relating to cemeteries which may otherwise be exercised
13 by township trustees pursuant to sections 359.28 through
14 ~~359.41~~ 359.39 to the cemetery commission except the commission
15 shall not certify a tax levy pursuant to section 359.30 or
16 359.33 and except that the expenses of the cemetery commission
17 shall be paid from the county general fund.

18 Sec. 4. Section 427.1, subsection 6, Code Supplement 2003,
19 is amended to read as follows:

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

28 Sec. 5. Section 450.10, subsection 3, unnumbered paragraph
29 1, Code 2003, is amended to read as follows:

30 When the property or any interest therein or income
31 therefrom, taxable under the provisions of this chapter,
32 passes in any manner to societies, institutions or
33 associations incorporated or organized under the laws of any
34 other state, territory, province or country than this state,
35 for charitable, educational or religious purposes, or to

1 cemetery associations corporations incorporated as a nonprofit
2 corporation under chapter 504A, including humane societies not
3 organized under the laws of this state, or to resident
4 trustees for uses without this state, the rate of tax imposed
5 shall be as follows:

6 Sec. 6. Section 459.102, subsection 9, Code Supplement
7 2003, is amended to read as follows:

8 9. "Cemetery" means a space held for the purpose of
9 permanent burial, entombment, or interment of human remains
10 that is owned or managed by a political subdivision or private
11 entity, or a cemetery regulated pursuant to chapter 523I or
12 566A. However, "cemetery" does not include a pioneer cemetery
13 as defined in section 331.325.

14 Sec. 7. Section 523A.203, subsection 6, paragraph b, Code
15 2003, is amended to read as follows:

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

19

SUBCHAPTER 1

20

SHORT TITLE AND DEFINITIONS

21 Sec. 8. NEW SECTION. 523I.101 SHORT TITLE.

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

23 Sec. 9. NEW SECTION. 523I.102 DEFINITIONS.

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

26 1. "Authorized to do business within this state" means a
27 person licensed, registered, or subject to regulation by an
28 agency of the state of Iowa or who has filed a consent to
29 service of process with the commissioner for purposes of this
30 chapter.

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

33 3. "Capital gains" means appreciation in the value of
34 trust assets for which a market value may be determined with
35 reasonable certainty after deduction of investment losses,

1 taxes, expenses incurred in the sale of trust assets, any
2 costs of the operation of the trust, and any annual audit
3 fees.

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

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

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

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

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

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

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

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

27 c. A pioneer cemetery.

28 7. "Cemetery corporation" means a corporation that
29 operates one or more cemeteries.

30 8. "Columbarium" means a structure, room, or space in a
31 mausoleum or other building containing niches or recesses for
32 disposition of cremated remains.

33 9. "Commissioner" means the commissioner of insurance or
34 the deputy administrator authorized in section 523A.801 to the
35 extent the commissioner delegates functions to the deputy

1 administrator.

2 10. "Common business enterprise" means a group of two or
3 more business entities that share common ownership in excess
4 of fifty percent.

5 11. "Credit sale" means a sale of goods, services, or an
6 interest in land in which all of the following are applicable:

7 a. Credit is granted either under a seller credit card or
8 by a seller who regularly engages as a seller in credit
9 transactions of the same kind.

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

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

13 d. Either the debt is payable in installments or a finance
14 charge is made.

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

17 12. "Disinterment" means to remove human remains from
18 their place of final disposition.

19 13. "Doing business in this state" means issuing or
20 performing wholly or in part any term of an interment rights
21 agreement executed within the state of Iowa.

22 14. "Financial institution" means a state or federally
23 insured bank, savings and loan association, credit union,
24 trust department thereof, or a trust company that is
25 authorized to do business within this state, that has been
26 granted trust powers under the laws of this state or the
27 United States, and that holds funds under a trust agreement.
28 "Financial institution" does not include a cemetery, a
29 cemetery corporation, or any person employed by or directly
30 involved with a cemetery.

31 15. "Garden" means an area within a cemetery established
32 by the cemetery as a subdivision for organizational purposes,
33 not for sale purposes.

34 16. "Grave space" means a space of ground in a cemetery
35 that is used or intended to be used for an in-ground burial.

1 17. "Gross selling price" means the aggregate amount a
2 purchaser is obligated to pay for interment rights, exclusive
3 of finance charges.

4 18. "Inactive cemetery" means a cemetery that is not
5 operating on a regular basis, is not offering to sell or
6 provide interments or other services reasonably necessary for
7 interment, and does not provide or permit reasonable ingress
8 or egress for the purposes of visiting interment spaces.

9 19. "Income" means the return in money or property derived
10 from the use of trust principal after deduction of investment
11 losses, taxes, and expenses incurred in the sale of trust
12 assets, any cost of the operation of the trust, and any annual
13 audit fees. "Income" includes but is not limited to:

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

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

19 c. Cash dividends paid on corporate stock.

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

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

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

24 21. "Interment rights" means the rights to place remains
25 in a specific location for use as a final resting place or
26 memorial.

27 22. "Interment rights agreement" means an agreement to
28 furnish memorials, memorialization, opening and closing
29 services, or interment rights.

30 23. "Interment space" means a space used or intended to be
31 used for the interment of remains including, but not limited
32 to, a grave space, lawn crypt, mausoleum crypt, and niche.

33 24. "Landlocked cemetery" means a cemetery that offered or
34 sold interment rights to the public in general, and which does
35 not have a means of ingress and egress available to members of

1 the public in general.

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

6 26. "Lot" means an area in a cemetery containing more than
7 one interment space which is uniquely identified by an
8 alphabetical, numeric, or alphanumerical identification
9 system.

10 27. "Maintenance fund" means funds set aside for the
11 maintenance of a nonperpetual care cemetery, including all of
12 the following:

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

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

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

18 28. "Mausoleum" means an aboveground structure designed
19 for the entombment of human remains.

20 29. "Mausoleum crypt" means a chamber in a mausoleum of
21 sufficient size to contain casketed human remains.

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

28 31. "Memorial care" means any care provided or to be
29 provided for the general maintenance of memorials including
30 foundation repair or replacement, resetting or straightening
31 tipped memorials, repairing or replacing inadvertently damaged
32 memorials and any other care clearly specified in the purchase
33 agreement.

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

1 33. "Memorialization" means any permanent system designed
2 to mark or record the names and other data pertaining to a
3 decedent.

4 34. "Merchandise" means any personal property offered or
5 sold for use in connection with the funeral, final
6 disposition, memorialization, or interment of human remains,
7 but which is exclusive of interment rights.

8 35. "Neglected cemetery" means a cemetery where there has
9 been a failure to cut grass or weeds or care for graves,
10 memorials or memorialization, walls, fences, driveways, and
11 buildings, or for which proper records of interments have not
12 been maintained.

13 36. "Niche" means a recess or space in a columbarium or
14 mausoleum used for placement of cremated human remains.

15 37. "Opening and closing services" means one or more
16 services necessarily or customarily provided in connection
17 with the interment or entombment of human remains or a
18 combination thereof.

19 38. "Operating a cemetery" means offering to sell or
20 selling interment rights, or any service or merchandise
21 necessarily or customarily provided for a funeral, or for the
22 entombment or cremation of a dead human, or any combination
23 thereof, including but not limited to opening and closing
24 services, caskets, memorials, vaults, urns, and interment
25 receptacles.

26 39. "Outer burial container" means any container which is
27 designed for placement in the ground around a casket or an urn
28 including, but not limited to, containers commonly known as
29 burial vaults, urn vaults, grave boxes, grave liners, and lawn
30 crypts.

31 40. "Parent company" means a corporation that has a
32 controlling interest in a cemetery corporation.

33 41. "Perpetual care cemetery" includes all of the
34 following:

35 a. Any cemetery that was organized or commenced business

1 in this state on or after July 1, 1995.

2 b. Any cemetery that has established a care fund in
3 compliance with subchapter 11.

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

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

9 42. "Person" means an individual, firm, corporation,
10 partnership, joint venture, limited liability company,
11 association, trustee, government or governmental subdivision,
12 agency, or other entity, or any combination thereof.

13 43. "Pioneer cemetery" means a cemetery where there were
14 six or fewer burials in the preceding fifty years.

15 44. "Purchaser" means a person who purchases memorials,
16 memorialization, opening and closing services, scattering
17 services, interment rights, or a combination thereof. The
18 purchaser need not be a beneficiary of the interment rights
19 agreement.

20 45. "Religious cemetery" means a cemetery that is owned,
21 operated, or controlled by a recognized church or
22 denomination, a cemetery designated as such in the Official
23 Catholic Directory on file with the insurance division or in a
24 similar publication of a recognized church or denomination, or
25 a cemetery that the commissioner determines is operating as a
26 religious cemetery upon review of an application by the
27 cemetery that includes a description of the cemetery's
28 affiliation with a recognized church or denomination, or the
29 extent to which the affiliate organization is responsible for
30 the financial and contractual obligations of the cemetery, or
31 the provision of the federal Internal Revenue Code, if any,
32 which exempts the cemetery from the payment of federal income
33 tax.

34 46. "Relocation" means the act of taking remains from the
35 place of interment or the place where the remains are being

1 held to another designated place.

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

6 48. "Scattering services provider" means a person in the
7 business of scattering human cremated remains.

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

16 50. "Special care" means any care provided or to be
17 provided that supplements or exceeds the requirements of this
18 chapter in accordance with the specific directions of any
19 donor of funds for such purposes.

20 51. "Undeveloped space" means a designated area or
21 building within a cemetery that has been mapped and planned
22 for future development but is not yet fully developed.

23 SUBCHAPTER 2

24 CEMETERY DEDICATION REQUIREMENTS AND PROCEDURES

25 Sec. 10. NEW SECTION. 523I.201 DEDICATION.

26 1. A person that dedicates property for a new cemetery on
27 or after July 1, 2004, and a cemetery corporation that
28 dedicates an additional garden on or after July 1, 2004,
29 shall:

30 a. In the case of land, survey and subdivide the property
31 into gardens with descriptive names or numbers and make a map
32 or plat of the property. Individual spaces do not need to be
33 set forth visually. The map or plat must include narrative
34 descriptions for each garden that allow individuals to
35 determine the location of each interment space. The narrative

1 descriptions must include appropriate compass directions, the
2 size of interment spaces in each defined area, and a
3 description of a progressive numbering system used to organize
4 individual spaces in each defined area.

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

16 c. File the map or plat with the commissioner, including a
17 written certificate or declaration of dedication of the
18 property delineated by the map or plat, dedicating the
19 property to cemetery purposes. The certificate or declaration
20 shall include all of the following:

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

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

25 (3) Verification by a notary public.

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

30 3. A certificate or declaration of dedication may contain
31 a provision permitting a cemetery corporation to resurvey and
32 change the shape and size of the property for which the
33 associated map or plat is filed if that change does not
34 disturb any interred remains. If a change is made, the
35 cemetery corporation shall file an amended map or plat and

1 shall indicate any change in a specific unique number assigned
2 to an interment space.

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

7 Sec. 11. NEW SECTION. 523I.202 EFFECT OF DEDICATION.

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

12 2. Dedication of property as a cemetery and a property
13 owner's title to the exclusive interment rights are not
14 affected by the dissolution of the corporation owning the
15 cemetery, nonuse, alienation, encumbrance, or forced sale of
16 the property.

17 3. Dedication of property as a cemetery shall not be
18 invalidated because of a violation of the law against
19 perpetuities or the law against the suspension of the power of
20 alienation of title to or use of property.

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

23 a. Is exempt from public improvements assessments, fees,
24 and public taxation.

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

27 5. If human remains are not interred in a garden, the
28 dedication of that portion of the property as a cemetery may
29 be removed if notice is filed with the commissioner. Property
30 dedicated as a cemetery shall continue to be used for cemetery
31 purposes until the dedication is removed by filing notice with
32 the commissioner, or by court order.

33 Sec. 12. NEW SECTION. 523I.203 REMOVAL OF DEDICATION.

34 A cemetery corporation may petition a district court of the
35 county in which a cemetery is located to remove the dedication

1 with respect to all or any portion of the cemetery if any of
2 the following occurs:

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

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

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

10 SUBCHAPTER 3

11 CEMETERY CORPORATIONS

12 Sec. 13. NEW SECTION. 523I.301 CORPORATE OWNERSHIP.

13 1. Except for a governmental subdivision, a cemetery that
14 sells interment rights on or after July 1, 2004, shall be
15 operated by a corporation. A corporation may own or operate
16 more than one cemetery and need not be formed solely for the
17 purpose of owning or operating a cemetery.

18 2. The powers, privileges, and duties conferred and
19 imposed upon any cemetery corporation doing business under
20 this chapter are hereby enlarged as each particular case may
21 require to conform to the provisions of this chapter.

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

27 Sec. 14. NEW SECTION. 523I.302 PROPERTY ACQUISITION BY
28 CEMETERY CORPORATION.

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

32 2. A cemetery corporation that acquires property may
33 record title to its property with the county recorder of the
34 county in which the property is located if its president and
35 secretary or other authorized delegate of the cemetery

1 corporation sign and acknowledge a declaration executed by the
2 cemetery corporation that describes the property and declares
3 the cemetery corporation's intention to use the property or a
4 part of the property for interment purposes.

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

8 Sec. 15. NEW SECTION. 523I.303 AUTHORITY OF CEMETERY
9 CORPORATION.

10 A cemetery corporation may do any of the following:

- 11 1. Divide the cemetery into interment spaces and
- 12 subdivisions for cemetery purposes.
- 13 2. Charge an assessment on cemetery property for the
- 14 purpose of general improvement and maintenance.
- 15 3. Take any action that is necessary to carry out the
- 16 cemetery's business purposes including those purposes that are
- 17 necessarily incidental to the final disposition of human
- 18 remains, including any of the following:

 - 19 a. Convey property or other assets of the corporation.
 - 20 b. Borrow money.

21 SUBCHAPTER 4
22 INTERMENT RIGHTS

23 Sec. 16. NEW SECTION. 523I.401 SALE OF INTERMENT RIGHTS.

24 1. For sales or transfers of interment rights made on or
25 after July 1, 2004, a cemetery corporation may sell and convey
26 exclusive rights of interment in the cemetery under the
27 following conditions:

- 28 a. The sale or conveyance is allowed by the rules of the
- 29 cemetery and the restrictions in the certificate of interment
- 30 rights or other instrument of conveyance.
- 31 b. The purchase price for the interment rights has been
- 32 paid in full.

33 2. A certificate of interment rights or other instrument
34 evidencing the conveyance of exclusive rights of interment
35 must be issued by the cemetery corporation.

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

5 4. A conveyance of exclusive rights of interment must be
6 filed and recorded in the cemetery corporation's office. Any
7 transfer of the ownership of interment rights must be filed
8 and recorded in the cemetery corporation's office. The
9 cemetery corporation may charge a reasonable recording fee to
10 record the transfer of interment rights.

11 Sec. 17. NEW SECTION. 523I.402 INTERMENT RIGHTS.

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

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

22 Sec. 18. NEW SECTION. 523I.403 MULTIPLE OWNERS OF
23 INTERMENT RIGHTS.

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

30 Sec. 19. NEW SECTION. 523I.404 RECORDS OF INTERMENT
31 RIGHTS AND INTERMENT.

32 1. For sales or transfers of interment rights made on or
33 after July 1, 2004, a cemetery corporation shall keep complete
34 records identifying the owners of all interment rights sold by
35 the cemetery corporation and historical information regarding

1 any transfers of ownership. The records shall include all of
2 the following:

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

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

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

10 2. For sales or transfers of interment rights made on or
11 after July 1, 2004, a cemetery corporation shall keep a record
12 of each interment in a cemetery. The records shall include
13 all of the following:

14 a. The date the remains are interred.

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

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

21 Sec. 20. NEW SECTION. 523I.405 UNPAID CARE ASSESSMENTS
22 AND UNOCCUPIED INTERMENT SPACES.

23 1. FORECLOSURE -- UNPAID ASSESSMENTS. Unpaid care
24 assessments for an unoccupied interment space not under
25 perpetual care shall create a lien by the cemetery corporation
26 against the applicable interment space. The cemetery
27 corporation may, following notice, foreclose on the interment
28 space if the amount of the lien exceeds the amount paid for
29 the interment space. If the lien is not paid within one year
30 from the date that notice of foreclosure is served on the
31 owner of record or the owner of record's heirs, the ownership
32 in or right to the unoccupied interment space shall revert to
33 the cemetery corporation that owns the cemetery in which the
34 unoccupied interment space is located.

35 2. ABANDONMENT -- QUIET TITLE ACTION. A cemetery

1 corporation may file an action to quiet title to determine
2 whether an interment space has been abandoned if the interment
3 space is unoccupied and has not been occupied in the preceding
4 seventy-five years. An action to quiet title shall commence
5 when the cemetery corporation serves notice on the owner of
6 record or the owner of record's heirs declaring that the
7 interment space is considered to be abandoned. If the owner
8 of record or the heirs of the owner of record do not respond
9 within three years from the date that notice is served, the
10 abandonment is considered to be complete. The ownership in or
11 right to an abandoned space shall revert to the cemetery
12 corporation that owns the cemetery in which the abandoned
13 interment space is located and the cemetery corporation may
14 sell and convey title to the interment space.

15 3. SERVICE OF NOTICE. Notice under this section shall be
16 served personally on the owner of record or the heirs of the
17 owner of record, or may be served by mailing notice by
18 certified mail to the owner of record or to the heirs of the
19 owner of record at the last known address. If the address of
20 the owner of record or of the heirs of the owner of record
21 cannot be ascertained, notice of abandonment shall be given by
22 one publication of the notice in the official newspaper of the
23 county in which the cemetery is located.

24

SUBCHAPTER 5

25

INTERMENT RIGHTS AGREEMENTS

26

Sec. 21. NEW SECTION. 523I.501 STATEMENT BY PERPETUAL
27 CARE CEMETERY.

28

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

30

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

1 cemetery."

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

8 Sec. 22. NEW SECTION. 523I.502 STATEMENT BY NONPERPETUAL
9 CARE CEMETERY.

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

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

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

27 Sec. 23. NEW SECTION. 523I.503 INTERMENT RIGHTS
28 AGREEMENT REQUIREMENTS.

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

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

1 2. A description of the interment rights to be provided
2 and the cost of merchandise or services to be provided.

3 3. The conditions under which substitutions will be
4 allowed.

5 4. The total purchase price and the terms under which the
6 purchase price is to be paid.

7 5. That the purchase of interment rights is an irrevocable
8 contract, except as otherwise specified in the cemetery
9 corporation's rules and regulations.

10 6. The amount or percentage of money to be placed in the
11 cemetery corporation's care fund or maintenance fund.

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

18 8. An explanation of any fees or expenses that may be
19 charged.

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

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

35 11. A provision that if the transfer of an undeveloped

1 interment space will be deferred as set forth in subsection
2 10, there will be written acknowledgement when payment in full
3 is made, specification of a reasonable time period for
4 development of the space, a description of what happens in the
5 event of the purchaser's death prior to development of the
6 space, and immediate transfer of the interment rights when
7 development of the space is complete.

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

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

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

25 15. Signatures of the purchaser and the seller.

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

29 SUBCHAPTER 6

30 LAWN CRYPTS

31 Sec. 24. NEW SECTION. 523I.601 REQUIREMENTS FOR LAWN
32 CRYPTS.

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

35 1. The lawn crypt is constructed of concrete and

1 reinforced steel or other comparable durable material.

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

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

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

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

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

15 Sec. 25. NEW SECTION. 523I.602 REQUEST TO INSTALL LAWN
16 CRYPT IN FEWER THAN TEN UNITS.

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

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

24 a. The owner's name and address.

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

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

27 d. A description of the interment spaces.

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

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

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

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

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

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

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

11 Sec. 26. NEW SECTION. 523I.603 NEW CONSTRUCTION.

12 1. A person shall not offer to sell interment rights in a
13 mausoleum or columbarium that will be built or completed in
14 the future unless the person has notified the commissioner of
15 the offer to sell on a form prescribed by the commissioner and
16 accompanied by a fee of one hundred dollars.

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

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

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

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

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

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

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

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

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

9

SUBCHAPTER 7

10

GENERAL PROVISIONS

11 Sec. 27. NEW SECTION. 523I.701 LIEN AGAINST CEMETERY
12 PROPERTY.

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

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

23 Sec. 28. NEW SECTION. 523I.702 REMOVAL OF REMAINS FROM
24 NEGLECTED CEMETERY.

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

34 2. If a county does not have a perpetual care cemetery
35 that under its rules permits the interment of human remains

1 that have been removed from another cemetery, the human
2 remains, monuments, tombs, and other similar items may be
3 removed to a nonperpetual care cemetery in the county that has
4 provided for assessments for the cemetery's future care.

5 Sec. 29. NEW SECTION. 523I.703 RULEMAKING AND
6 ENFORCEMENT.

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

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

16 a. Prohibiting the placement of memorials or
17 memorialization, buildings, or other types of structures
18 within any portion of the cemetery.

19 b. Regulating the uniformity, class, and kind of memorials
20 and memorialization and structures within the cemetery.

21 c. Regulating the scattering or placement of cremated
22 remains within the cemetery.

23 d. Prohibiting or regulating the placement of nonhuman
24 remains within the cemetery.

25 e. Prohibiting or regulating the introduction or care of
26 trees, shrubs, and other types of plants within the cemetery.

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

29 g. Prohibiting interment in any part of the cemetery not
30 designated as an interment space.

31 h. Preventing the use of space for any purpose
32 inconsistent with the use of the property as a cemetery.

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

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

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

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

25 6. The cemetery corporation shall not approve any bylaw
26 which unreasonably restricts competition, or which
27 unreasonably increases the cost to the owner of interment
28 rights in utilizing these rights.

29 Sec. 30. NEW SECTION. 523I.704 PROTECTION OF CEMETERIES
30 AND BURIAL SITES.

31 1. EXISTENCE OF CEMETERY OR BURIAL SITE -- NOTIFICATION.
32 If a governmental subdivision is notified of the existence of
33 a cemetery, or a marked burial site that is not located in a
34 dedicated cemetery, within its jurisdiction and the cemetery
35 or burial site is not otherwise provided for under this

1 chapter, the governmental subdivision shall, as soon as is
 2 practicable, notify the owner of the land upon which the
 3 cemetery or burial site is located of the cemetery's or burial
 4 site's existence and location. The notification shall include
 5 an explanation of the provisions of this section. If there is
 6 a basis to believe that interment may have occurred more than
 7 one hundred fifty years earlier, the governmental subdivision
 8 shall also notify the state archaeologist.

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

14 3. DUTY TO PRESERVE AND PROTECT. A governmental
 15 subdivision having a cemetery, or a burial site that is not
 16 located within a dedicated cemetery, within its jurisdiction,
 17 for which preservation is not otherwise provided, shall
 18 preserve and protect the cemetery or burial site as necessary
 19 to restore or maintain its physical integrity as a cemetery or
 20 burial site. The governmental subdivision may enter into an
 21 agreement to delegate the responsibility for the preservation
 22 and protection of the cemetery or burial site to a private
 23 organization interested in historical preservation. A
 24 cemetery corporation shall be formed to operate the cemetery,
 25 if applicable.

26 4. CONFISCATION AND RETURN OF MEMORIALS. A law
 27 enforcement officer having reason to believe that a memorial
 28 or memorialization is in the possession of a person without
 29 authorization or right to possess the memorial or
 30 memorialization may take possession of the memorial or
 31 memorialization from that person and turn it over to the
 32 officer's law enforcement agency. If a law enforcement agency
 33 determines that a memorial or memorialization the agency has
 34 taken possession of rightfully belongs on an interment space,
 35 the agency shall return the memorial or memorialization to the

1 interment space, or make arrangements with the person having
2 jurisdiction over the interment space for its return.

3 5. BURIAL SITES LOCATED ON PRIVATE PROPERTY.

4 a. If a person notifies a governmental subdivision that a
5 burial site of the person's ancestor is located on property
6 owned by another person within the jurisdiction of the
7 governmental subdivision, the governmental subdivision shall
8 notify the property owner of the location of the burial site
9 and that the property owner is required to permit the person
10 reasonable ingress and egress for the purposes of visiting the
11 burial site of the person's ancestor.

12 b. Pursuant to section 558.69, each declaration of value
13 submitted to a county recorder pursuant to chapter 428A shall
14 be accompanied by a statement concerning whether or not any
15 known private burial sites are situated on the property.

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

27 Sec. 31. NEW SECTION. 523I.705 COMPLIANCE WITH IOWA
28 CONSUMER CREDIT CODE.

29 A seller of credit sales agreements pursuant to this
30 chapter shall comply with the requirements of chapter 537, and
31 is subject to the remedies and penalties provided for in that
32 chapter.

33 Sec. 32. NEW SECTION. 523I.706 DISCLOSURE REQUIREMENTS.

34 1. A cemetery corporation shall disclose, prior to the
35 sale of interment rights, whether opening and closing of the

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

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

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

16 Sec. 33. NEW SECTION. 523I.707 INSTALLATION OF OUTER
17 BURIAL CONTAINERS.

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

25 Sec. 34. NEW SECTION. 523I.708 ACCESS BY FUNERAL
26 DIRECTORS.

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

30 Sec. 35. NEW SECTION. 523I.709 COUNTY AUDITOR AS
31 TRUSTEE.

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

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

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

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

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

15 Sec. 36. NEW SECTION. 523I.710 MEMORIALS AND
16 MEMORIALIZATION.

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

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

31 3. SPECIFICATIONS. Upon request, a cemetery corporation
32 shall provide reasonable written specifications and
33 instructions governing installation of memorials, which shall
34 apply to all installations whether performed by the cemetery
35 corporation or another person. The written specifications

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

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

26 5. PREPARATION AND INSTALLATION.

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

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

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

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

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

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

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

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

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

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

31 k. If the person who is installing a memorial damages any
32 cemetery property, the person shall notify the cemetery
33 corporation immediately. The person installing the memorial
34 shall then repair the damage as soon as possible, upon
35 approval by the cemetery corporation. The cemetery

1 corporation may require a person installing a memorial to
 2 provide current proof of workers' compensation insurance as
 3 required by state law and current proof of liability
 4 insurance, sufficient to indemnify the cemetery corporation
 5 against claims resulting from installation of the memorial.
 6 Proof of liability insurance in an amount of one million
 7 dollars or more shall preclude the cemetery corporation from
 8 requiring a person installing a memorial to obtain a
 9 performance bond.

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

14 6. INSPECTION. A cemetery corporation may inspect the
 15 installation site of a memorial at any time. If the cemetery
 16 corporation determines that cemetery corporation rules are not
 17 being followed during the installation, the cemetery
 18 corporation may order the installation to stop until the
 19 infraction is corrected. The cemetery corporation shall
 20 provide written notice to the installer as soon as possible if
 21 the cemetery corporation believes that any of the following
 22 have occurred:

- 23 a. The memorial has not been installed correctly.
- 24 b. The person installing the memorial has damaged property
- 25 at the cemetery.
- 26 c. Other cemetery corporation requirements for
- 27 installation have not been met, such as removal of debris or
- 28 equipment.

29 7. LOCATION AND SERVICE CHARGE. A cemetery corporation
 30 may charge a reasonable service charge for allowing the
 31 installation of a memorial purchased or obtained from and
 32 installed by a person other than the cemetery corporation or
 33 its agents. This service charge shall be based on the
 34 cemetery corporation's actual labor costs, including fringe
 35 benefits, of those employees whose normal duty is to inspect

1 the installation of memorials, in accordance with generally
2 accepted accounting practices. General administrative and
3 overhead costs and any other functions not related to actual
4 inspection time shall be excluded from the service charge.

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

18 9. PERPETUAL CARE. A cemetery corporation may require
19 contributions from the purchaser of a memorial for perpetual
20 care, if a perpetual care fund deposit is uniformly charged on
21 every memorial installed in the cemetery.

22 Sec. 37. NEW SECTION. 523I.711 INTERMENT, RELOCATION, OR
23 DISINTERMENT OF REMAINS.

24 1. Unless a decedent has left directions in writing for
25 the disposition of the decedent's remains as provided in
26 subsection 2, the following persons, in the priority listed,
27 shall have the right to control the interment, relocation, or
28 disinterment of the decedent's remains within or from a
29 cemetery:

30 a. The person designated in and adequately identified by a
31 written instrument signed by the decedent.

32 b. The surviving spouse of the decedent, if not legally
33 separated from the decedent.

34 c. A majority of the surviving adult children of the
35 decedent whose whereabouts are reasonably ascertainable.

1 d. The surviving parents or legal guardians of the
2 decedent whose whereabouts are reasonably ascertainable.

3 e. A majority of the surviving adult siblings of the
4 decedent whose whereabouts are reasonably ascertainable.

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

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

10 DIRECTIONS FOR DISPOSITION OF MY REMAINS

11 Name of person whose remains are to be disposed of as
12 directed (decedent):

13 Address:

14 Telephone Number:

15 Acceptance of Appointment: (signature of agent)

16 Date of Signature:

17 SUCCESSORS

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

23 First Successor

24 Name:

25 Address:

26 Telephone Number:

27 Acceptance of Appointment: (signature of first successor)

28 Date of Signature:

29 Second Successor

30 Name:

31 Address:

32 Telephone Number:

33 Acceptance of Appointment: (signature of second successor)

34 Date of Signature:

35 DURATION

S.F. _____ H.F. _____

1 This appointment becomes effective upon my death.

2 PRIOR APPOINTMENTS REVOKED

3 I hereby revoke any prior appointment of any person to
4 control the disposition of my remains.

5 RELIANCE

6 I hereby agree that any cemetery corporation that receives
7 a copy of this document may act under it. Any modification or
8 revocation of this document is not effective as to any such
9 party until that party receives actual notice of the
10 modification or revocation. No such party shall be liable
11 because of reliance on a copy of this document.

12 ASSUMPTION

13 THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS
14 APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND
15 BY THE PROVISIONS OF, SECTION 523I.711. Signed this _____ day
16 of _____, ____.

17 3. A written instrument referred to in subsection 1,
18 paragraph "a", is legally sufficient if the wording of the
19 instrument complies substantially with subsection 2, the
20 instrument is properly completed, the instrument is signed by
21 the decedent, the agent, and each successor agent, and the
22 signature of the decedent is acknowledged. Such written
23 instrument may be modified or revoked only by a subsequent
24 written instrument that complies with the requirements of this
25 subsection.

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

33 5. A person may provide written directions for the
34 interment, relocation, or disinterment of the person's own
35 remains in a will, prepaid funeral or cemetery contract, or

1 written instrument signed and acknowledged by the person. The
2 directions may govern the inscription to be placed on a grave
3 marker attached to any interment space in which the decedent
4 had the right of interment at the time of death and in which
5 interment space the decedent is subsequently interred. The
6 directions may be modified or revoked only by a subsequent
7 writing signed and acknowledged by the person. A person other
8 than a decedent who is entitled to control the interment,
9 relocation, or disinterment of a decedent's remains under this
10 section shall faithfully carry out the directions of the
11 decedent to the extent that the decedent's estate or the
12 person controlling the interment, relocation, or disinterment
13 is financially able to do so.

14 6. If the decedent's directions for the interment of the
15 decedent's remains are in a will, the directions shall be
16 carried out immediately without the necessity of probate. If
17 a will is not probated or is declared invalid for testamentary
18 purposes, the directions for the interment of the decedent's
19 remains are valid to the extent that they have been acted upon
20 in good faith.

21 7. A cemetery corporation shall not be liable for carrying
22 out the written directions of a decedent or the directions of
23 any person entitled to control the interment, relocation, or
24 disinterment of the decedent's remains.

25 8. If the agreement of a majority of the persons
26 designated in subsection 1, paragraph "c", "d", or "e", is
27 required and cannot be obtained concerning their right to
28 control the interment, relocation, or disinterment of a
29 decedent's remains, the dispute may be resolved by a court of
30 competent jurisdiction. A cemetery corporation shall not be
31 liable for refusing to accept the decedent's remains, relocate
32 or disinter, inter or otherwise dispose of the decedent's
33 remains, until the cemetery corporation receives a court order
34 or other suitable confirmation that the dispute has been
35 resolved or settled.

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

8 b. If the consent required by this subsection cannot be
9 obtained, the remains may be relocated by permission of the
10 district court of the county in which the cemetery is located.
11 Before the date of application to the court for permission to
12 relocate remains under this subsection, notice must be given
13 to the cemetery corporation that operates the cemetery in
14 which the remains are interred, each person whose consent is
15 required for relocation of the remains under subsection 1, and
16 any other person that the court requires to be served.

17 c. For the purposes of this subsection, personal notice
18 must be given not later than the eleventh day before the date
19 of application to the court for permission to relocate the
20 remains, or notice by certified mail or restricted certified
21 mail must be given not later than the sixteenth day before the
22 date of application.

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

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

32 a. The date the remains are removed.

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

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

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

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

19 12. Relocations and disinterments of human remains shall
20 be done in compliance with sections 144.32 and 144.34.

21 SUBCHAPTER 8

22 GOVERNMENTAL SUBDIVISIONS

23 Sec. 38. NEW SECTION. 523I.801 CEMETERY AUTHORIZED.

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

29 Sec. 39. NEW SECTION. 523I.802 TRUST FOR CEMETERY.

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

34 2. To act as a trustee, a majority of the governmental
35 subdivision's governing body must adopt an ordinance or

1 resolution stating the governmental subdivision's willingness
2 and intention to act as a trustee for the perpetual
3 maintenance of cemetery property. When the ordinance or
4 resolution is adopted and the trust is accepted, the trust is
5 perpetual.

6 Sec. 40. NEW SECTION. 523I.803 AUTHORITY TO RECEIVE
7 GIFTS AND DEPOSITS FOR CARE -- CERTIFICATES.

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

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

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

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

23 a. The depositor's name.

24 b. The amount and purpose of the deposit.

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

27 d. Other information required by the governmental
28 subdivision.

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

35 Sec. 41. NEW SECTION. 523I.804 INVESTMENT OF CARE FUNDS.

1 Notwithstanding section 12B.10, a cemetery corporation
2 owned by a governmental subdivision may invest and reinvest
3 deposits under this subchapter as set forth in section
4 523I.1103. The trustee of the trust funds has a fiduciary
5 duty to make reasonable investment decisions and to properly
6 oversee and manage the funds entrusted to the trust fund.

7 Sec. 42. NEW SECTION. 523I.805 APPOINTMENT OF SUCCESSOR
8 TRUSTEE.

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

16 Sec. 43. NEW SECTION. 523I.806 PRIVATE CARE OF GRAVES.

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

22 SUBCHAPTER 9

23 COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES

24 Sec. 44. NEW SECTION. 523I.901 NEGLECTED CEMETERIES.

25 The commissioner shall create a form that interested
26 persons may use to report neglected cemeteries to the
27 commissioner and the county board of supervisors. The board
28 of supervisors of each county shall accept any neglected
29 cemetery report forms filed with the board and submit copies
30 of such report forms received during calendar years 2005 and
31 2006 to the commissioner no later than March 1 of the year
32 following receipt. The commissioner shall catalog and review
33 the neglected cemetery reports received, conduct site visits
34 as warranted to determine the nature or extent of any neglect,
35 and publish a report of findings no later than December 31,

1 2007.

2 Sec. 45. NEW SECTION. 523I.902 REMOVAL OF REMAINS.

3 1. Upon a showing of good cause, a county cemetery
4 commission may file suit in a district court in that county to
5 have remains interred in a cemetery owned and operated by the
6 commission removed to another cemetery. All persons in
7 interest, known or unknown, other than the plaintiffs, shall
8 be made defendants to the suit. If any parties are unknown,
9 notice may be given by publication. After hearing and a
10 showing of good cause for the removal, the court may order the
11 removal of the remains and the remains shall be properly
12 interred in another cemetery, at the expense of the county.
13 The removal and reinterment of the remains shall be done
14 pursuant to a disinterment permit issued under section 144.34
15 with due care and decency. In deciding whether to order the
16 removal of interred remains, a court shall consider present or
17 future access to the cemetery, the historical significance of
18 the cemetery, and the wishes of the parties concerned if they
19 are brought to the court's attention, including the desire of
20 any beneficiaries to reserve their rights to waive a
21 reservation of rights in favor of removal, and shall exercise
22 the court's sound discretion in granting or refusing the
23 removal of interred remains.

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

1 due care and decency.

2 SUBCHAPTER 10

3 REQUIREMENTS APPLYING ONLY TO NONPERPETUAL CARE CEMETERIES

4 Sec. 46. NEW SECTION. 523I.1001 ANNUAL REPORT BY
5 NONPERPETUAL CARE CEMETERIES.

6 1. A cemetery corporation that operates a nonperpetual
7 care cemetery shall file a written report at the end of each
8 fiscal year of the cemetery that includes the following:

9 a. The name and address of the cemetery.

10 b. The name and address of the corporation that owns the
11 cemetery.

12 c. A description of any common business enterprise or
13 parent company.

14 d. The name and address of each owner, officer, or other
15 official of the cemetery corporation, including when relevant,
16 the chief executive officer and the members of the board of
17 directors.

18 e. The name and address of any trustee holding trust funds
19 for the cemetery corporation, including the name and location
20 of the applicable trust account.

21 f. An affidavit that the cemetery is in compliance with
22 this chapter.

23 g. Copies of all sales agreement forms used by the
24 cemetery.

25 h. The amount of the principal of the cemetery
26 corporation's maintenance funds at the end of the fiscal year.

27 2. The report shall be filed with the commissioner each
28 March 1 in the form required by the commissioner.

29 Sec. 47. NEW SECTION. 523I.1002 UNIFIED ANNUAL REPORTS.

30 The commissioner shall permit the filing of a unified
31 report in the event of commonly owned or affiliated
32 cemeteries.

33 Sec. 48. NEW SECTION. 523I.1003 MAINTENANCE ASSESSMENTS
34 AND MAINTENANCE FUNDS AT NONPERPETUAL CARE CEMETERIES.

35 1. a. On or after July 1, 2004, a cemetery corporation

1 that operates a nonperpetual care cemetery shall, prior to
2 selling any interment rights, execute a trust instrument and
3 establish an irrevocable trust fund to provide funding for the
4 maintenance of the cemetery. The trust agreement shall
5 provide for the appointment of at least one trustee, with
6 perpetual succession, in case the cemetery corporation is
7 dissolved or ceases to be responsible for the cemetery's
8 maintenance. Maintenance fund distributions shall be used in
9 the manner determined to be in the best interests of the
10 cemetery, if authorized by a resolution, bylaw, or other
11 action or instrument establishing the maintenance fund,
12 including but not limited to the general care and maintenance
13 of memorials, memorialization, and any of the following:

14 (1) Cutting and trimming lawns, shrubs, and trees at
15 reasonable intervals.

16 (2) Maintaining drains, water lines, roads, buildings,
17 fences, and other structures.

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

19 (4) Compensating maintenance employees, paying insurance
20 premiums, and making payments to maintenance employees'
21 pension and benefit plans.

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

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

25 b. A cemetery corporation and the trustee or trustees of
26 the maintenance fund may, by agreement, amend the instrument
27 that established the maintenance fund to include any provision
28 that is necessary to comply with the requirements of this
29 chapter. The commissioner may require amendments to a trust
30 agreement that is not in accord with the provisions of this
31 chapter.

32 c. The maintenance fund shall be administered under the
33 jurisdiction of the district court of the county where the
34 cemetery is located. Notwithstanding chapter 633, annual
35 reports shall be filed with the court when necessary to

1 receive approval of appointments of trustees, trust agreements
 2 and amendments, changes in fees and expenses, and other
 3 matters within the court's jurisdiction. A court having
 4 jurisdiction over a maintenance fund shall have full
 5 jurisdiction to approve the appointment of trustees, the
 6 amount of surety bond required, if any, and the investment of
 7 funds.

8 d. The maintenance fund shall pay the fund's operation
 9 costs and any annual audit fees. The principal of the
 10 maintenance fund is intended to remain available perpetually
 11 as a funding source for the maintenance of the cemetery. The
 12 principal of the maintenance fund shall not be reduced
 13 voluntarily and must remain inviolable, except as provided in
 14 this section. The cemetery corporation shall maintain the
 15 principal of the maintenance fund separate from all operating
 16 funds of the cemetery corporation.

17 e. A cemetery corporation shall be responsible for the
 18 deposit of all moneys required to be placed in the maintenance
 19 fund. The maintenance fund may receive and hold any property
 20 contributed to the maintenance fund as a part of the
 21 maintenance fund or as an incident to the maintenance fund.
 22 Moneys to be deposited in a maintenance fund shall be
 23 deposited no later than the fifteenth day after the close of
 24 the month when the cemetery corporation receives the final
 25 payment from the purchaser.

26 f. Deposits and contributions to the maintenance fund are
 27 for charitable purposes. The maintenance financed by the
 28 maintenance fund constitutes the discharge of a duty due by
 29 the cemetery corporation to persons interred and to be
 30 interred in the cemetery and for the benefit and protection of
 31 the public by preserving and keeping the cemetery from
 32 becoming a place of disorder, reproach, and desolation in the
 33 community in which the cemetery is located.

34 g. A contribution to a maintenance fund is not invalid
 35 because of the following:

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

4 (2) A violation of the law against perpetuities or the law
5 against the suspension of the power of alienation of title to
6 or use of property.

7 2. A financial institution holding moneys in a maintenance
8 fund for a cemetery corporation shall not do any of the
9 following:

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

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

15 c. Otherwise invest moneys in a maintenance fund, directly
16 or indirectly, in a cemetery corporation's business
17 operations.

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

29 4. Maintenance fund moneys may be deposited pursuant to a
30 master trust agreement, if each maintenance fund is treated as
31 a separate beneficiary of the trust and each maintenance fund
32 is separable. The master trust shall maintain a separate
33 accounting of principal and income for each maintenance fund.
34 Moneys deposited pursuant to a master trust agreement may be
35 commingled for investment purposes.

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

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

10 7. This section does not prohibit a cemetery corporation
11 from moving moneys in a maintenance fund from one financial
12 institution to another.

13 8. A cemetery corporation that operates a nonperpetual
14 care cemetery shall collect a maintenance assessment equal to
15 or greater than fifty dollars or ten percent of the gross
16 selling price received by the cemetery corporation for the
17 sale of interment rights, whichever is more. The maintenance
18 assessments shall be deposited in the cemetery corporation's
19 maintenance fund.

20 SUBCHAPTER 11

21 REQUIREMENTS APPLYING ONLY TO PERPETUAL CARE CEMETERIES

22 Sec. 49. NEW SECTION. 523I.1101 APPLICABILITY.

23 1. All cemeteries are designated as either "perpetual care
24 cemeteries" or "nonperpetual care cemeteries" for the purposes
25 of this chapter.

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

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

31 4. A cemetery corporation that operates a nonperpetual
32 care cemetery may elect to become a perpetual care cemetery by
33 complying with the terms of section 523I.1102, if at all times
34 subsequent to the date of the election, the cemetery
35 corporation complies with the other requirements of this

1 subchapter except section 523I.1103, subsection 1.

2 Sec. 50. NEW SECTION. 523I.1102 TRUST AGREEMENT --
3 IRREVOCABLE TRUST -- CARE FUND.

4 1. A cemetery corporation operating as a perpetual care
5 cemetery shall execute a trust instrument and establish an
6 irrevocable trust fund to provide for the care of the
7 cemetery.

8 2. The trust agreement shall provide for the appointment
9 of at least one trustee, with perpetual succession, in case
10 the cemetery corporation is dissolved or ceases to be
11 responsible for the cemetery's care.

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

16 4. A cemetery corporation shall be responsible for the
17 deposit of all moneys required to be placed in a care fund.

18 5. The commissioner may require amendments to a trust
19 agreement that is not in accord with the provisions of this
20 chapter.

21 Sec. 51. NEW SECTION. 523I.1103 CARE FUND REQUIREMENTS.

22 1. A religious cemetery or a cemetery owned or operated by
23 a political subdivision of this state is not required to make
24 a minimum initial deposit in a care fund. A cemetery
25 corporation organized or commencing business in this state on
26 or after July 1, 1995, shall not commence operations as a
27 perpetual care cemetery unless the cemetery corporation has a
28 care fund of at least twenty-five thousand dollars in cash.

29 2. If an initial deposit is made by a cemetery corporation
30 to satisfy subsection 1, the initial twenty-five thousand
31 dollar deposit may be withdrawn by the cemetery corporation
32 when the care fund balance reaches one hundred thousand
33 dollars. An affidavit shall be filed with the commissioner
34 providing prior notice of the intended withdrawal of the
35 initial deposit and attesting that the money has not

1 previously been withdrawn. Upon a showing by the cemetery
2 corporation that the initial deposit has not previously been
3 withdrawn, the commissioner shall approve withdrawal of the
4 money and the withdrawal shall take place within one year
5 after the care fund balance reaches one hundred thousand
6 dollars.

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

19 4. The trustee shall use the judgment and care under the
20 circumstances then prevailing that persons of prudence,
21 discretion, and intelligence exercise in the management of
22 their own affairs, not in regard to speculation but in regard
23 to the permanent disposition of their funds, considering the
24 probable income as well as the probable safety of their
25 capital.

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

31 b. A financial institution acting as a trustee of care
32 funds under this chapter has a fiduciary duty to make
33 reasonable investment decisions and to properly oversee and
34 manage the funds entrusted to the financial institution. The
35 commissioner may take enforcement action against a financial

1 institution in its capacity as trustee for a breach of
2 fiduciary duty proven under this chapter.

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

10 d. Subject to a master trust agreement, the cemetery
11 corporation may appoint an independent investment adviser to
12 advise the financial institution about investment of the care
13 fund.

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

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

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

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

31 (3) Otherwise invest care funds, directly or indirectly,
32 in a cemetery corporation's business operations.

33 5. Moneys shall be deposited in the care fund no later
34 than the fifteenth day after the close of the month when the
35 cemetery corporation receives the final payment from a

1 purchaser of interment rights in an amount equal to or greater
2 than either of the following:

3 a. Fifty dollars or twenty percent of the gross selling
4 price received by the cemetery for the sale of interment
5 rights, whichever is more.

6 b. The amount charged for the perpetual care and special
7 care of a memorial or memorialization placed in the cemetery.
8 A fee for memorial care shall be uniformly charged on every
9 installation of a memorial in the cemetery based upon the size
10 of the memorial, using the height and width of the memorial or
11 the size of the ground surface area used for the memorial. A
12 fee for special care of a memorial may be collected if the
13 terms of the special care items and arrangements are clearly
14 specified in the interment rights purchase agreement. A
15 cemetery corporation's liability for acts of God and vandalism
16 is limited to income available from the care fund.

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

23 7. This section does not prohibit a cemetery corporation
24 from moving care funds from one financial institution to
25 another.

26 8. A care fund may receive and hold as a part of the fund
27 or as an incident to the fund any property contributed to the
28 fund.

29 9. The care fund and contributions to the care fund are
30 for charitable purposes. The care financed by the fund is for
31 the following purposes:

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

35 b. The benefit and protection of the public by preserving

1 and keeping the cemetery in a dignified condition so that the
2 cemetery does not become a nuisance or a place of disorder,
3 reproach, and desolation in the community in which the
4 cemetery is located.

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

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

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

13 Sec. 52. NEW SECTION. 523I.1104 PURPOSES OF CARE FUND.

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

22 2. In establishing a care fund, the cemetery corporation
23 may adopt plans for the care of the cemetery and installed
24 memorials and memorialization.

25 3. A cemetery corporation may, by resolution adopted by a
26 vote of at least two-thirds of the members of its board at any
27 authorized meeting of the board, authorize the withdrawal and
28 use of not more than twenty percent of the principal of the
29 care fund to acquire additional land for cemetery purposes, to
30 repair a mausoleum or other building or structure intended for
31 cemetery purposes, or to build, improve, or repair roads and
32 walkways in the cemetery. The resolution shall establish a
33 reasonable repayment schedule, not to exceed five years, and
34 provide for interest in an amount comparable to the care
35 fund's current rate of return on its investments. However,

1 the care fund shall not be diminished below an amount equal to
2 the greater of twenty-five thousand dollars or five thousand
3 dollars per acre of land in the cemetery. The resolution, and
4 either a bond or proof of insurance to guarantee replenishment
5 of the care fund, shall be filed with the commissioner thirty
6 days prior to the withdrawal of funds.

7 Sec. 53. NEW SECTION. 523I.1105 USE OF DISTRIBUTIONS
8 FROM CARE FUND.

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

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

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

19 c. Maintaining machinery, tools, and equipment.

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

23 e. Paying overhead expenses incidental to such purposes.

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

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

29 a. The amount of principal in the care fund shall be
30 adjusted annually by allocating income or capital gains as
31 necessary to adjust the principal of the care fund for
32 inflation, based on the consumer price index as set by the
33 commissioner and the amount of principal in the care fund at
34 the beginning of the prior year. The amount of principal in
35 the care fund shall also be adjusted by adding the amount of

1 the deposits received during the prior year, as required by
2 section 523I.1103, subsection 5.

3 b. For purposes of this section, "adjusted basis" means
4 the total of the market value of the care fund on the date of
5 the conversion, the aggregate amount of the inflation
6 adjustments required by this section, and the aggregate amount
7 of deposits received as required by section 523I.1103,
8 subsection 5, since the date of the conversion.

9 c. If the adjusted basis of the care fund is more than the
10 market value of the care fund at the end of the prior year,
11 the cemetery corporation shall not withdraw capital gains. If
12 the adjusted basis of the care fund is less than the market
13 value of the care fund at the end of the prior year, an amount
14 equal to fifty percent of the excess may be withdrawn and used
15 for the cemetery's care.

16 Sec. 54. NEW SECTION. 523I.1106 SUIT BY COMMISSIONER.

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

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

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

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

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

29 a. Failure to adequately mow grass.

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

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

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

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

3 Sec. 55. NEW SECTION. 523I.1107 ADVERTISING.

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

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

15 Sec. 56. NEW SECTION. 523I.1108 PERPETUAL CARE REGISTRY.

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

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

23 Sec. 57. NEW SECTION. 523I.1109 USE OF GIFT FOR SPECIAL
24 CARE.

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

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

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

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

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

3 Sec. 58. NEW SECTION. 523I.1110 GOVERNMENTAL
4 SUBDIVISIONS.

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

10 Sec. 59. NEW SECTION. 523I.1111 ANNUAL REPORT AND FILING
11 FEES BY PERPETUAL CARE CEMETERIES.

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

15 a. The name and address of the cemetery.

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

17 c. A description of any common business enterprise or
18 parent company.

19 d. The name and address of each owner, officer, or other
20 official of the cemetery corporation, including, when
21 relevant, the chief executive officer and the members of the
22 board of directors.

23 e. The name and address of any trustee holding trust funds
24 for the cemetery corporation, including the name and location
25 of the applicable trust account.

26 f. An affidavit that the cemetery is in compliance with
27 this chapter.

28 g. Copies of all sales agreement forms used by the
29 cemetery.

30 h. The amount of the principal of the cemetery
31 corporation's care funds at the end of the fiscal year.

32 i. The number of interments made and interment spaces sold
33 during the fiscal year.

34 2. The report and a five-dollar filing fee for each
35 certificate of interment rights issued during the fiscal year

1 of the cemetery shall be filed with the commissioner within
2 four months following the end of the cemetery corporation's
3 fiscal year in the form required by the commissioner. The
4 filing fee may be charged directly to the purchaser of the
5 interment rights.

6 Sec. 60. NEW SECTION. 523I.1112 UNIFIED ANNUAL REPORTS.

7 The commissioner shall permit the filing of a unified
8 report in the event of commonly owned or affiliated
9 cemeteries.

10 SUBCHAPTER 12

11 FRAUDULENT PRACTICES

12 Sec. 61. NEW SECTION. 523I.1201 MISLEADING FILINGS.

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

21 Sec. 62. NEW SECTION. 523I.1202 MISREPRESENTATIONS OF
22 GOVERNMENT APPROVAL.

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

28 Sec. 63. NEW SECTION. 523I.1203 FRAUDULENT PRACTICES.

29 A person who commits any of the following acts commits a
30 fraudulent practice and is punishable as provided in chapter
31 714:

32 1. Knowingly fails to comply with any requirement of this
33 chapter.

34 2. Knowingly makes, causes to be made, or subscribes to a
35 false statement or representation in a report or other

1 document required under this chapter, implementing rules, or
2 orders, or renders such a report or document misleading
3 through the deliberate omission of information properly
4 belonging in the report or document.

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

9 4. Fails to deposit funds under section 523I.1003 or
10 section 523I.1103 or withdraws funds in a manner inconsistent
11 with this chapter.

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

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

20 SUBCHAPTER 13

21 ADMINISTRATION AND ENFORCEMENT

22 Sec. 64. NEW SECTION. 523I.1301 ADMINISTRATION.

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

1 as needed for administering this chapter.

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

15 Sec. 65. NEW SECTION. 523I.1302 SCOPE.

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

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

35 3. If a foreign person does not have a registered agent or

1 agents in the state of Iowa, doing business within this state
2 shall constitute the person's appointment of the secretary of
3 state of the state of Iowa to be its true and lawful attorney
4 upon whom may be served all lawful process of original notice
5 in actions or proceedings arising or growing out of any
6 contract or tort.

7 Sec. 66. NEW SECTION. 523I.1303 INVESTIGATIONS AND
8 SUBPOENAS.

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

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

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

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

31 d. Investigate the cemetery corporation and examine the
32 books, accounts, papers, correspondence, memoranda, purchase
33 agreements, files, or other documents or records of the
34 cemetery.

35 e. Administer oaths and affirmations, subpoena witnesses,

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

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

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

22 Sec. 67. NEW SECTION. 523I.1304 CEASE AND DESIST ORDERS
23 -- INJUNCTIONS.

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

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

1 operation of law or is overturned by a presiding officer
2 following a request for hearing. Section 17A.18A is
3 inapplicable to summary cease and desist orders issued under
4 this section.

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

21 Sec. 68. NEW SECTION. 523I.1305 COURT ACTION FOR FAILURE
22 TO COOPERATE.

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

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

34 b. Production of documents or records including but not
35 limited to books, accounts, papers, correspondence, memoranda,

1 purchase agreements, files, or other documents or records.

2 c. Such other relief as may be required.

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

6 Sec. 69. NEW SECTION. 523I.1306 PROSECUTION FOR
7 VIOLATIONS OF LAW -- CIVIL PENALTIES.

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

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

24 3. A person who violates a provision of this chapter or
25 rules adopted or orders issued under this chapter may be
26 subject to civil penalties in addition to criminal penalties.
27 The commissioner may impose, assess, and collect a civil
28 penalty not exceeding ten thousand dollars for each violation.
29 For the purposes of computing the amount of each civil
30 penalty, each day of a continuing violation constitutes a
31 separate violation. All civil penalties collected pursuant to
32 this section shall be deposited in the general fund of the
33 state.

34 Sec. 70. NEW SECTION. 523I.1307 COOPERATION WITH OTHER
35 AGENCIES.

1 1. The commissioner may cooperate with any governmental
2 law enforcement or regulatory agency to encourage uniform
3 interpretation and administration of this chapter and
4 effective enforcement of this chapter and effective regulation
5 of the sale of memorials, memorialization, and cemeteries.

6 2. Cooperation with other agencies may include but is not
7 limited to:

8 a. Making a joint examination or investigation.

9 b. Holding a joint administrative hearing.

10 c. Filing and prosecuting a joint civil or administrative
11 proceeding.

12 d. Sharing and exchanging personnel.

13 e. Sharing and exchanging relevant information and
14 documents.

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

18 Sec. 71. NEW SECTION. 523I.1308 RULES, FORMS, AND
19 ORDERS.

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

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

32 3. A provision of this chapter imposing any liability does
33 not apply to an act done or omitted in good faith in
34 conformity with any rule, form, or order of the commissioner,
35 notwithstanding that the rule, form, or order may later be

1 amended or rescinded or be determined by judicial or other
2 authority to be invalid for any reason.

3 Sec. 72. NEW SECTION. 523I.1309 DATE OF FILING --
4 INTERPRETIVE OPINIONS.

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

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

9 Sec. 73. NEW SECTION. 523I.1310 RECEIVERSHIPS.

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

14 a. Is insolvent.

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

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

19 2. The commissioner or attorney general may apply to the
20 district court in any county of the state for the
21 establishment of a receivership. Upon proof that any of the
22 conditions described in this section have occurred, the court
23 may grant a receivership.

24 Sec. 74. NEW SECTION. 523I.1311 INSURANCE DIVISION'S
25 ENFORCEMENT FUND.

26 A special revenue fund in the state treasury, to be known
27 as the insurance division's enforcement fund, is created under
28 the authority of the commissioner of insurance. The
29 commissioner shall allocate annually from the fees paid
30 pursuant to section 523I.1111, an amount not exceeding fifty
31 thousand dollars, for deposit to the insurance division's
32 enforcement fund. The moneys in the enforcement fund shall be
33 retained in the fund. The moneys are appropriated and,
34 subject to authorization by the commissioner, shall be used to
35 pay auditors, audit expenses, investigative expenses, the

1 expenses of consumer education, compliance, and education
2 programs for filers and other regulated persons, and
3 educational or compliance program materials, the expenses of a
4 toll-free telephone line for consumer complaints, and the
5 expenses of receiverships of perpetual care cemeteries
6 established under section 523I.1311.

7 Sec. 75. NEW SECTION. 523I.1312 VIOLATIONS OF LAW --
8 REFERRALS TO THE DEPARTMENT OF PUBLIC HEALTH.

9 If the commissioner discovers a violation of a provision of
10 this chapter or any other state law or rule concerning the
11 disposal or transportation of human remains, the commissioner
12 shall forward all evidence in the possession of the
13 commissioner concerning such a violation to the department of
14 public health for such proceedings as the department of public
15 health deems appropriate.

16 Sec. 76. Sections 359.37, 359.40, and 359.41, Code 2003,
17 are repealed.

18 Sec. 77. Chapters 523I, 566, and 566A, Code 2003, are
19 repealed.

20 EXPLANATION

21 This bill repeals Code chapter 523I concerning cemeteries,
22 Code chapter 566 concerning cemetery management, and Code
23 chapter 566A concerning cemetery regulation and creates a new
24 Code chapter 523I concerning cemeteries, cemetery regulation,
25 and administration and enforcement procedures relating to
26 cemeteries.

27 The bill contains a procedure to dedicate new cemeteries or
28 subdivisions of cemeteries with a public filing with the
29 insurance division.

30 The bill requires all persons currently operating as
31 cemeteries to form a corporation to own and operate the
32 cemetery property and prohibits unincorporated cemetery
33 associations.

34 The bill establishes requirements for recording ownership
35 of interment rights at each cemetery location rather than just

1 with the county recorder. The bill requires cemeteries to
 2 maintain complete interment records that identify the owners
 3 of all interment rights sold or transferred by the cemetery
 4 corporation on or after July 1, 2004, and contain historical
 5 information concerning any changes of ownership of interment
 6 rights. The bill sets forth requirements for interment rights
 7 agreements.

8 The bill sets forth requirements for lawn crypts and their
 9 installation.

10 The bill requires a public filing with the insurance
 11 division before the construction of new mausoleums and
 12 columbariums. The bill sets forth procedures governing the
 13 installation of memorials and memorialization by third
 14 parties.

15 The bill requires cemetery corporations to make disclosures
 16 to a buyer of interment rights when grave opening and closing
 17 fees are not included in the agreement. The bill authorizes a
 18 cemetery corporation to accept written instructions of a
 19 decedent concerning interment, relocation, or disinterment of
 20 remains. The bill contains provisions for making a
 21 determination of who has the right to control interment,
 22 relocation, or disinterment of remains.

23 The bill contains a procedure for the removal of remains
 24 from a neglected cemetery. The bill provides a procedure for
 25 reporting neglected cemeteries to the insurance division and
 26 to the appropriate county board of supervisors.

27 The bill increases the penalty for disturbing an interment
 28 site from a simple misdemeanor to an aggravated misdemeanor.
 29 A simple misdemeanor is punishable by confinement for no more
 30 than 30 days or a fine of at least \$50 but not more than \$500
 31 or by both. An aggravated misdemeanor is punishable by
 32 confinement for no more than two years and a fine of at least
 33 \$500 but not more than \$5,000.

34 The bill requires a nonperpetual care cemetery to create a
 35 maintenance fund to pay for the upkeep of the cemetery

1 property and to deposit at least \$50 into the maintenance fund
2 for each sale.

3 The bill authorizes governmental subdivisions to commingle
4 care funds for the purposes of investment and administration.
5 The bill authorizes governmental subdivisions that operate
6 cemeteries to invest their maintenance and care funds in the
7 same manner as other cemetery corporations notwithstanding
8 Code section 12B.10.

9 The bill authorizes civil lawsuits brought by the insurance
10 division against a cemetery corporation that fails to use care
11 funds to maintain the cemetery property.

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

14 The bill provides for the establishment of a receivership
15 for a cemetery corporation under certain circumstances.

16 The bill provides for the creation of a special revenue
17 fund in the state treasury to be known as the insurance
18 division's enforcement fund by allocating filing fees in an
19 amount not exceeding \$50,000. The moneys in the fund are
20 appropriated to the use of the insurance commissioner to pay
21 for auditors, investigative expenses, consumer education
22 expenses, a toll-free consumer complaint telephone line, and
23 receivership expenses of perpetual care cemeteries.

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