

APR 4 2005
WAYS & MEANS CALENDAR

HOUSE FILE 836
BY COMMITTEE ON WAYS
AND MEANS

(SUCCESSOR TO HF 763)
(SUCCESSOR TO HSB 212)

Passed House, Date 4-14-05 Passed Senate, Date _____
Vote: Ayes 97 Nays 0 Vote: Ayes _____ Nays _____
Approved 5/12/05

A BILL FOR

1 An Act relating to cemeteries and cemetery regulation, providing
2 administration and enforcement procedures, establishing
3 requirements for interment rights agreements and reporting,
4 establishing and appropriating fees, and providing penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6

HF 836

HOUSE FILE 836

H-1361

- 1 Amend House File 836 as follows:
2 1. Page 36, line 8, by striking the word "a."
3 2. Page 36, by striking lines 16 through 19.

By TOMENGA of Polk

H-1361 FILED APRIL 13, 2005

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

3 2. Each county board of supervisors may adopt an ordinance
4 assuming jurisdiction and control of pioneer cemeteries in the
5 county. The board shall exercise the powers and duties of
6 township trustees relating to the maintenance and repair of
7 cemeteries in the county as provided in sections 359.28
8 through ~~359.41~~ 359.40 except that the board shall not certify
9 a tax levy pursuant to section 359.30 or 359.33 and except
10 that the maintenance and repair of all cemeteries under the
11 jurisdiction of the county including pioneer cemeteries shall
12 be paid from the county general fund. The maintenance and
13 improvement program for a pioneer cemetery may include
14 restoration and management of native prairie grasses and
15 wildflowers.

16 3. In lieu of management of the cemeteries, the board of
17 supervisors may create, by ordinance, a cemetery commission to
18 assume jurisdiction and management of the pioneer cemeteries
19 in the county. The ordinance shall delineate the number of
20 commissioners, the appointing authority, the term of office,
21 officers, employees, organizational matters, rules of
22 procedure, compensation and expenses, and other matters deemed
23 pertinent by the board. The board may delegate any power and
24 duties relating to cemeteries which may otherwise be exercised
25 by township trustees pursuant to sections 359.28 through
26 ~~359.41~~ 359.40 to the cemetery commission except the commission
27 shall not certify a tax levy pursuant to section 359.30 or
28 359.33 and except that the expenses of the cemetery commission
29 shall be paid from the county general fund.

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

32 34. Serve as a trustee for funds of a cemetery association
33 as provided in ~~sections-566-12-and-566-13~~ section 523I.505.

34 Sec. 3. Section 523A.203, subsection 6, paragraph b, Code
35 2005, is amended to read as follows:

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

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

6 523A.812 INSURANCE DIVISION REGULATORY FUND.

7 The insurance division may authorize the creation of a
8 special revenue fund in the state treasury, to be known as the
9 insurance division regulatory fund. The commissioner shall
10 allocate annually from the fees paid pursuant to section
11 523A.204, two dollars for each purchase agreement reported on
12 an establishment permit holder's annual report for deposit to
13 the regulatory fund. The remainder of the fees collected
14 pursuant to section 523A.204 shall be deposited into the
15 general fund of the state. The commissioner shall also
16 allocate annually the audit fees paid pursuant to section
17 523A.814 for deposit to the regulatory fund. The moneys in
18 the regulatory fund shall be retained in the fund. The moneys
19 are appropriated and, subject to authorization by the
20 commissioner, may be used to pay auditors, audit expenses,
21 investigative expenses, the expenses of mediation ordered by
22 the commissioner, consumer education expenses, the expenses of
23 a toll-free telephone line to receive consumer complaints, and
24 the expenses of receiverships established under section
25 523A.811. An annual allocation to the regulatory fund shall
26 not be imposed if the current balance of the fund exceeds two
27 hundred thousand dollars.

28 Sec. 5. NEW SECTION. 523A.814 AUDIT FEE.

29 In addition to the filing fee paid pursuant to section
30 523A.204, subsection 5, an establishment filing an annual
31 report shall pay an audit fee in the amount of five dollars
32 for each purchase agreement subject to a filing fee that is
33 sold between July 1, 2005, and December 31, 2007.

34

SUBCHAPTER 1

35

SHORT TITLE, DEFINITIONS, AND APPLICABILITY

1 Sec. 6. NEW SECTION. 523I.101 SHORT TITLE.

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

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

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

6 1. "Authorized to do business within this state" means a
7 person licensed, registered, or subject to regulation by an
8 agency of the state of Iowa or who has filed a consent to
9 service of process with the commissioner for purposes of this
10 chapter.

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

13 3. "Capital gains" means appreciation in the value of
14 trust assets for which a market value may be determined with
15 reasonable certainty after deduction of investment losses,
16 taxes, expenses incurred in the sale of trust assets, any
17 costs of the operation of the trust, and any annual audit
18 fees.

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

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

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

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

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

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

34 a. A private burial site where use is restricted to
35 members of a family, if the interment rights are conveyed

1 without a monetary payment, fee, charge, or other valuable
2 form of compensation or consideration.

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

7 c. A pioneer cemetery.

8 7. "Columbarium" means a structure, room, or space in a
9 mausoleum or other building containing niches or recesses for
10 disposition of cremated remains.

11 8. "Commissioner" means the commissioner of insurance or
12 the deputy administrator authorized in section 523A.801 to the
13 extent the commissioner delegates functions to the deputy
14 administrator.

15 9. "Common business enterprise" means a group of two or
16 more business entities that share common ownership in excess
17 of fifty percent.

18 10. "Disinterment" means to remove human remains from
19 their place of final disposition.

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

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

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

34 14. "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 15. "Gross selling price" means the aggregate amount a
2 purchaser is obligated to pay for interment rights, exclusive
3 of finance charges.

4 16. "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 17. "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 18. "Insolvent" means the inability to pay debts as they
23 become due in the usual course of business.

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

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

30 21. "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 22. "Lawn crypt" means a preplaced enclosed chamber, which
34 is usually constructed of reinforced concrete and poured in
35 place, or a precast unit installed in quantity, either side-

1 by-side or at multiple depths, and covered by earth or sod.

2 23. "Lot" means an area in a cemetery containing more than
3 one interment space which is uniquely identified by an
4 alphabetical, numeric, or alphanumerical identification
5 system.

6 24. "Maintenance fund" means funds set aside for the
7 maintenance of a nonperpetual care cemetery, including all of
8 the following:

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

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

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

14 25. "Mausoleum" means an aboveground structure designed
15 for the entombment of human remains.

16 26. "Mausoleum crypt" means a chamber in a mausoleum of
17 sufficient size to contain casketed human remains.

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

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

30 29. "Memorial dealer" means any person offering or selling
31 memorials retail to the public.

32 30. "Memorialization" means any permanent system designed
33 to mark or record the name and other data pertaining to a
34 decedent.

35 31. "Merchandise" means any personal property offered or

1 sold for use in connection with the funeral, final
2 disposition, memorialization, or interment of human remains,
3 but which is exclusive of interment rights.

4 32. "Neglected cemetery" means a cemetery where there has
5 been a failure to cut grass or weeds or care for graves,
6 memorials or memorialization, walls, fences, driveways, and
7 buildings, or for which proper records of interments have not
8 been maintained.

9 33. "Niche" means a recess or space in a columbarium or
10 mausoleum used for placement of cremated human remains.

11 34. "Opening and closing services" means one or more
12 services necessarily or customarily provided in connection
13 with the interment or entombment of human remains or a
14 combination thereof.

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

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

27 37. "Perpetual care cemetery" includes all of the
28 following:

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

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

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

35 d. Any cemetery that represents in any other manner that

1 the cemetery provides perpetual, permanent, or guaranteed
2 care.

3 38. "Person" means an individual, firm, corporation,
4 partnership, joint venture, limited liability company,
5 association, trustee, government or governmental subdivision,
6 agency, or other entity, or any combination thereof.

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

9 40. "Purchaser" means a person who purchases memorials,
10 memorialization, opening and closing services, scattering
11 services, interment rights, or a combination thereof. A
12 purchaser need not be a beneficiary of the interment rights
13 agreement.

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

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

31 43. "Relocation" means the act of taking remains from the
32 place of interment or the place where the remains are being
33 held to another designated place.

34 44. "Remains" means the body of a deceased human or a body
35 part, or limb that has been removed from a living human,

1 including a body, body part, or limb in any stage of
2 decomposition, or cremated remains.

3 45. "Scattering services provider" means a person in the
4 business of scattering human cremated remains.

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

13 47. "Special care" means any care provided or to be
14 provided that supplements or exceeds the requirements of this
15 chapter in accordance with the specific directions of any
16 donor of funds for such purposes.

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

20 Sec. 8. NEW SECTION. 523I.103 APPLICABILITY OF CHAPTER.

21 1. This chapter applies to all of the following:

22 a. All cemeteries, except religious cemeteries that
23 commenced business prior to July 1, 2005.

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

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

30 2. This chapter applies when a purchase agreement is
31 executed within this state or an advertisement, promotion, or
32 offer to furnish memorials, memorialization, opening and
33 closing services, scattering services, interment rights, or a
34 combination thereof is made or accepted within this state. An
35 offer to furnish memorials, memorialization, opening and

1 closing services, scattering services, interment rights, or a
2 combination thereof is made within this state, whether or not
3 either party is then present in this state, when the offer
4 originates from this state or is directed by the offeror to
5 this state and received by the offeree in this state through
6 the mail, over the telephone, by the internet, or through any
7 other means of commerce.

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

15 SUBCHAPTER 2

16 ADMINISTRATION AND ENFORCEMENT

17 Sec. 9. NEW SECTION. 523I.201 ADMINISTRATION.

18 1. This chapter shall be administered by the commissioner.
19 The deputy administrator appointed pursuant to section
20 523A.801 shall be the principal operations officer responsible
21 to the commissioner for the routine administration of this
22 chapter and management of the administrative staff. In the
23 absence of the commissioner, whether because of vacancy in the
24 office due to absence, physical disability, or other cause,
25 the deputy administrator shall, for the time being, have and
26 exercise the authority conferred upon the commissioner. The
27 commissioner may by order from time to time delegate to the
28 deputy administrator any or all of the functions assigned to
29 the commissioner in this chapter. The deputy administrator
30 shall employ officers, attorneys, accountants, and other
31 employees as needed for administering this chapter.

32 2. It is unlawful for the commissioner or any
33 administrative staff to use for personal benefit any
34 information which is filed with or obtained by the
35 commissioner and which is not made public. This chapter does

1 not authorize the commissioner or any staff member to disclose
2 any such information except among themselves or to other
3 cemetery and funeral administrators, regulatory authorities,
4 or governmental agencies, or when necessary and appropriate in
5 a proceeding or investigation under this chapter or as
6 required by chapter 22. This chapter neither creates nor
7 derogates any privileges that exist at common law or otherwise
8 when documentary or other evidence is sought under a subpoena
9 directed to the commissioner or any administrative staff.

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

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

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

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

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

35 d. Investigate a cemetery and examine the books, accounts,

1 papers, correspondence, memoranda, purchase agreements, files,
2 or other documents or records of the cemetery.

3 e. Administer oaths and affirmations, subpoena witnesses,
4 compel their attendance, take evidence, and require the
5 production of any books, accounts, papers, correspondence,
6 memoranda, purchase agreements, files, or other documents or
7 records which the commissioner deems relevant or material to
8 any investigation or proceeding under this chapter and
9 implement rules, all of which may be enforced under chapter
10 17A.

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

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

25 Sec. 11. NEW SECTION. 523I.203 CEASE AND DESIST ORDERS
26 -- INJUNCTIONS.

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

32 1. Issue a summary order directed to the person that
33 requires the person to cease and desist from engaging in such
34 an act or practice. A person may request a hearing within
35 thirty days of issuance of the summary order. If a hearing is

1 not timely requested, the summary order shall become final by
2 operation of law. The order shall remain effective from the
3 date of issuance until the date the order becomes final by
4 operation of law or is overturned by a presiding officer
5 following a request for hearing. Section 17A.18A is
6 inapplicable to summary cease and desist orders issued under
7 this section.

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

24 Sec. 12. NEW SECTION. 523I.204 COURT ACTION FOR FAILURE
25 TO COOPERATE.

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

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

1 combination thereof.

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

5 c. Such other relief as may be required.

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

9 Sec. 13. NEW SECTION. 523I.205 PROSECUTION FOR
10 VIOLATIONS OF LAW -- CIVIL PENALTIES.

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

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

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

1 state.

2 Sec. 14. NEW SECTION. 523I.206 COOPERATION WITH OTHER
3 AGENCIES.

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

9 2. Cooperation with other agencies may include but is not
10 limited to:

11 a. Making a joint examination or investigation.

12 b. Holding a joint administrative hearing.

13 c. Filing and prosecuting a joint civil or administrative
14 proceeding.

15 d. Sharing and exchanging personnel.

16 e. Sharing and exchanging relevant information and
17 documents.

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

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

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

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

34 3. A provision of this chapter imposing any liability does
35 not apply to an act done or omitted in good faith in

1 conformity with any rule, form, or order of the commissioner.

2 Sec. 16. NEW SECTION. 523I.208 DATE OF FILING --

3 INTERPRETIVE OPINIONS.

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

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

8 Sec. 17. NEW SECTION. 523I.209 MISLEADING FILINGS.

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

17 Sec. 18. NEW SECTION. 523I.210 MISREPRESENTATIONS OF
18 GOVERNMENT APPROVAL.

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

24 Sec. 19. NEW SECTION. 523I.211 FRAUDULENT PRACTICES.

25 A person who commits any of the following acts commits a
26 fraudulent practice which is punishable as provided in chapter
27 714:

28 1. Knowingly fails to comply with any requirement of this
29 chapter.

30 2. Knowingly makes, causes to be made, or subscribes to a
31 false statement or representation in a report or other
32 document required under this chapter, or implementing rules or
33 orders, or renders such a report or document misleading
34 through the deliberate omission of information properly
35 belonging in the report or document.

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

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

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

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

15 Sec. 20. NEW SECTION. 523I.212 RECEIVERSHIPS.

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

20 a. Is insolvent.

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

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

25 2. The commissioner or attorney general may apply to the
26 district court in any county of the state for the
27 establishment of a receivership. Upon proof that any of the
28 conditions described in this section have occurred, the court
29 may grant a receivership.

30 Sec. 21. NEW SECTION. 523I.213 INSURANCE DIVISION'S
31 ENFORCEMENT FUND.

32 A special revenue fund in the state treasury, to be known
33 as the insurance division's enforcement fund, is created under
34 the authority of the commissioner. The commissioner shall
35 allocate annually from the audit fees paid pursuant to section

1 523I.808, an amount not exceeding fifty thousand dollars, for
2 deposit to the insurance division's enforcement fund. The
3 moneys in the enforcement fund shall be retained in the fund.
4 The moneys are appropriated and, subject to authorization by
5 the commissioner, shall be used to pay auditors, audit
6 expenses, investigative expenses, the expenses of consumer
7 education, compliance, and education programs for filers and
8 other regulated persons, and educational or compliance program
9 materials, the expenses of a toll-free telephone line for
10 consumer complaints, and the expenses of receiverships of
11 perpetual care cemeteries established under section 523I.212.

12 Sec. 22. NEW SECTION. 523I.214 VIOLATIONS OF LAW --
13 REFERRALS TO THE DEPARTMENT OF PUBLIC HEALTH.

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

21 SUBCHAPTER 3

22 CEMETERY MANAGEMENT

23 Sec. 23. NEW SECTION. 523I.301 DISCLOSURE REQUIREMENTS
24 -- PRICES AND FEES.

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

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

35 3. A person owning interment rights may sell those rights

1 to third parties. The cemetery shall fully disclose, in the
2 cemetery's rules, any requirements necessary to transfer title
3 of interment rights to a third party.

4 Sec. 24. NEW SECTION. 523I.302 INSTALLATION OF OUTER
5 BURIAL CONTAINERS.

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

12 Sec. 25. NEW SECTION. 523I.303 ACCESS BY FUNERAL
13 DIRECTORS.

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

17 Sec. 26. NEW SECTION. 523I.304 RULEMAKING AND
18 ENFORCEMENT.

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

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

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

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

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

35 d. Prohibit or regulate the placement of nonhuman remains

1 within the cemetery.

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

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

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

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

10 3. A cemetery shall not adopt or enforce a rule that
11 prohibits interment because of the race, color, or national
12 origin of a decedent. A provision of a contract or a
13 certificate of ownership or other instrument conveying
14 interment rights that prohibits interment in a cemetery
15 because of the race, color, or national origin of a decedent
16 is void.

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

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

1 an interment space or a damaged or defaced memorial or
2 memorialization.

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

7 Sec. 27. NEW SECTION. 523I.305 MEMORIALS AND
8 MEMORIALIZATION.

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

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

22 3. SPECIFICATIONS. Upon request, a cemetery shall provide
23 reasonable written specifications and instructions governing
24 installation of memorials, which shall apply to all
25 installations whether performed by the cemetery or another
26 person. The written specifications shall include provisions
27 governing hours of installation or any other relevant
28 administrative requirements of the cemetery. A copy of these
29 specifications and instructions shall be provided upon
30 request, without charge, to the owner of the interment space,
31 next of kin, or a personal representative or agent of the
32 owner, including the person installing the memorial. The
33 person installing the memorial shall comply with the
34 cemetery's written installation specifications and
35 instructions. A cemetery shall not adopt or enforce any rule

1 prohibiting the installation of a memorial by a memorial
2 dealer or independent third party, unless the rule is adopted
3 and enforced uniformly for all memorials installed in the
4 cemetery.

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

16 5. PREPARATION AND INSTALLATION.

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

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

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

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

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

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

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

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

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

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

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

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

34 6. INSPECTION. A cemetery may inspect the installation
35 site of a memorial at any time. If the cemetery determines

1 that cemetery rules are not being followed during the
2 installation, the cemetery may order the installation to stop
3 until the infraction is corrected. The cemetery shall provide
4 written notice to the installer as soon as possible if the
5 cemetery believes that any of the following have occurred:

6 a. The memorial has not been installed correctly.

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

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

11 7. LOCATION AND SERVICE CHARGE. A cemetery may charge a
12 reasonable service charge for allowing the installation of a
13 memorial purchased or obtained from and installed by a person
14 other than the cemetery or its agents. This service charge
15 shall be based on the cemetery's actual labor costs, including
16 fringe benefits, of those employees whose normal duty is to
17 inspect the installation of memorials, in accordance with
18 generally accepted accounting practices. General
19 administrative and overhead costs and any other functions not
20 related to actual inspection time shall be excluded from the
21 service charge.

22 8. FAULTY INSTALLATION. If a memorial sinks, tilts, or
23 becomes misaligned within twelve months of its installation
24 and the cemetery believes the cause is faulty installation,
25 the cemetery shall notify the person who installed the
26 memorial in writing and the person who installed the memorial
27 shall be responsible to correct the damage, unless the damage
28 is caused by inadequate written specifications and
29 instructions from the cemetery or acts of the cemetery and its
30 agents or employees, including but not limited to running a
31 backhoe over the memorial, carrying a vault or other heavy
32 equipment over the memorial, or opening or closing an
33 interment space adjacent to the memorial.

34 9. PERPETUAL CARE. A cemetery may require contributions
35 from the purchaser of a memorial for perpetual care, if a

1 perpetual care fund deposit is uniformly charged on every
2 memorial installed in the cemetery.

3 Sec. 28. NEW SECTION. 523I.306 COMMISSION OR BONUS
4 UNLAWFUL.

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

18 Sec. 29. NEW SECTION. 523I.307 DISCRIMINATION
19 PROHIBITED.

20 It shall be unlawful for any organization subject to the
21 provisions of this chapter to deny the privilege of interment
22 of the remains of any deceased person in any cemetery solely
23 because of the race, color, or national origin of such
24 deceased person. Any contract, agreement, deed, covenant,
25 restriction, or charter provision at any time entered into, or
26 bylaw, rule, or regulation adopted or put in force, either
27 subsequent or prior to July 4, 1953, authorizing, permitting,
28 or requiring any organization subject to the provisions of
29 this chapter to deny such privilege of interment because of
30 race, color, or national origin of such deceased person is
31 hereby declared to be null and void and in conflict with the
32 public policy of this state. An organization subject to the
33 provisions of this chapter or any director, officer, agent,
34 employee, or trustee thereof, shall not be liable for damages
35 or other relief, or be subjected to any action in any court of

1 competent jurisdiction for refusing to commit any act unlawful
2 under this chapter.

3 Sec. 30. NEW SECTION. 523I.308 SPECULATION PROHIBITED.

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

9 Sec. 31. NEW SECTION. 523I.309 INTERMENT, RELOCATION, OR
10 DISINTERMENT OF REMAINS.

11 1. Any available member of the following classes of
12 persons, in the priority listed, shall have the right to
13 control the interment, relocation, or disinterment of a
14 decedent's remains within or from a cemetery:

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

17 b. The surviving spouse of the decedent.

18 c. The decedent's surviving adult children. If there is
19 more than one surviving adult child, any adult child who can
20 confirm, in writing, that all other adult children have been
21 notified of the proposed interment, relocation, or
22 disinterment may authorize the interment, relocation, or
23 disinterment, unless the cemetery receives an objection to
24 such action from another adult child of the decedent.

25 d. A surviving parent of the decedent.

26 e. A surviving adult sibling of the decedent.

27 f. A surviving grandparent of the decedent.

28 g. The legal guardian of the decedent at the time of the
29 decedent's death.

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

1 representation.

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

18 4. A cemetery shall not be liable for carrying out the
19 written directions of a decedent or the directions of any
20 person entitled to control the interment, relocation, or
21 disinterment of the decedent's remains.

22 5. In the event of a dispute concerning the right to
23 control the interment, relocation, or disinterment of a
24 decedent's remains, the dispute may be resolved by a court of
25 competent jurisdiction. A cemetery shall not be liable for
26 refusing to accept the decedent's remains, relocate or
27 disinter, inter or otherwise dispose of the decedent's
28 remains, until the cemetery receives a court order or other
29 suitable confirmation that the dispute has been resolved or
30 settled.

31 6. a. If good cause exists to relocate or disinter
32 remains interred in a cemetery, the remains may be removed
33 from the cemetery pursuant to a disinterment permit as
34 required under section 144.34, with the written consent of the
35 cemetery, the current interment rights owner and the person

1 entitled by this section to control the interment, relocation,
2 or disinterment of the decedent's remains.

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

12 c. For the purposes of this subsection, personal notice
13 must be given not later than the eleventh day before the date
14 of application to the court for permission to relocate or
15 disinter the remains, or notice by certified mail or
16 restricted certified mail must be given not later than the
17 sixteenth day before the date of application.

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

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

27 a. The date the remains are removed.

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

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

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

33 8. A cemetery may disinter and relocate remains interred
34 in the cemetery for the purpose of correcting an error made by
35 the cemetery after obtaining a disinterment permit as required

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

13 9. Relocations and disinterments of human remains shall be
14 done in compliance with sections 144.32 and 144.34.

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

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

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

24 3. A conveyance of exclusive rights of interment shall be
25 filed and recorded in the cemetery office. Any transfer of
26 the ownership of interment rights shall be filed and recorded
27 in the cemetery office. The cemetery may charge a reasonable
28 recording fee to record the transfer of interment rights.

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

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

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

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

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

8 2. For interments made on or after July 1, 2005, a
9 cemetery shall keep a record of each interment in a cemetery.

10 The records shall include all of the following:

11 a. The date the remains are interred.

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

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

18 Sec. 34. NEW SECTION. 523I.312 DISCLOSURE REQUIREMENTS
19 -- INTERMENT AGREEMENTS.

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

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

30 a. Identify the seller and purchaser.

31 b. Identify the salesperson.

32 c. Specify the interment rights to be provided and the
33 cost of each item.

34 d. State clearly the conditions on which substitution will
35 be allowed.

1 e. Set forth the total purchase price and the terms under
2 which it is to be paid.

3 f. State clearly whether the agreement is revocable or
4 irrevocable, and if revocable, which parties have the
5 authority to revoke the agreement.

6 g. State the amount or percentage of money to be placed in
7 the cemetery's care or maintenance fund.

8 h. If the cemetery has a care fund, set forth an
9 explanation that the care fund is an irrevocable trust, that
10 deposits cannot be withdrawn even in the event of
11 cancellation, and that the trust's income shall be used by the
12 cemetery for its care.

13 i. Set forth an explanation of any fees or expenses that
14 may be charged.

15 j. Set forth an explanation of whether amounts for
16 perpetual care will be deposited in trust upon payment in full
17 or on an allocable basis as payments are made.

18 k. Set forth an explanation of whether initial payments on
19 agreements for multiple items of funeral and cemetery
20 merchandise or services, or both, will be allocated first to
21 the purchase of an interment space. If such an allocation is
22 to be made, the agreement shall provide for the immediate
23 transfer of such interment rights upon payment in full and
24 prominently state that any applicable trust deposits under
25 chapter 523A will not be made until the cemetery has received
26 payment in full for the interment rights. The transfer of an
27 undeveloped interment space may be deferred until the
28 interment space is ready for interment.

29 l. If the transfer of an undeveloped interment space will
30 be deferred until the interment space is ready for interment
31 as permitted in paragraph "k", the agreement shall provide for
32 some form of written acknowledgement upon payment in full,
33 specify a reasonable time period for development of the
34 interment space, describe what happens in the event of a death
35 prior to development of the interment space, and provide for

1 the immediate transfer of the interment rights when
2 development of the interment space is complete.

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

5 n. State the name and address of the commissioner.

6 Sec. 35. NEW SECTION. 523I.313 NEW CEMETERIES AND
7 GARDENS AND CEMETERY REGISTRY.

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

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

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

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

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

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

1 sixty days of the change.

2 Sec. 36. NEW SECTION. 523I.314 NEW CONSTRUCTION.

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

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

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

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

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

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

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

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

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

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

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

1 1. FORECLOSURE -- UNPAID ASSESSMENTS. Unpaid care
2 assessments for an unoccupied interment space not under
3 perpetual care shall create a lien by the cemetery against the
4 applicable interment space. The cemetery may, following
5 notice, foreclose on the interment space if the amount of the
6 lien exceeds the amount paid for the interment space. If the
7 lien is not paid within one year from the date that notice of
8 foreclosure is served on the owner of record or the owner of
9 record's heirs, the ownership in or right to the unoccupied
10 interment space shall revert to the cemetery that owns the
11 cemetery in which the unoccupied interment space is located.

12 2. ABANDONMENT -- QUIET TITLE ACTION. A cemetery may file
13 an action to quiet title to determine whether an interment
14 space has been abandoned if the interment space is unoccupied
15 and has not been occupied in the preceding seventy-five years.
16 An action to quiet title shall commence when the cemetery
17 serves notice on the owner of record or the owner of record's
18 heirs declaring that the interment space is considered to be
19 abandoned. If the owner of record or the owner of record's
20 heirs do not respond within three years from the date that
21 notice is served, the abandonment is considered to be
22 complete. The ownership in or right to an abandoned interment
23 space shall revert to the cemetery in which the abandoned
24 interment space is located and the cemetery may sell and
25 convey title to the interment space.

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

35 Sec. 38. NEW SECTION. 523I.316 PROTECTION OF CEMETERIES

1 AND BURIAL SITES.

2 1. EXISTENCE OF CEMETERY OR BURIAL SITE -- NOTIFICATION.

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

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

20 3. DUTY TO PRESERVE AND PROTECT. A governmental
21 subdivision having a cemetery, or a burial site that is not
22 located within a dedicated cemetery, within its jurisdiction,
23 for which preservation is not otherwise provided, shall
24 preserve and protect the cemetery or burial site as necessary
25 to restore or maintain its physical integrity as a cemetery or
26 burial site. The governmental subdivision may enter into an
27 agreement to delegate the responsibility for the preservation
28 and protection of the cemetery or burial site to a private
29 organization interested in historical preservation.

30 4. CONFISCATION AND RETURN OF MEMORIALS. A law
31 enforcement officer having reason to believe that a memorial
32 or memorialization is in the possession of a person without
33 authorization or right to possess the memorial or
34 memorialization may take possession of the memorial or
35 memorialization from that person and turn it over to the

1 officer's law enforcement agency. If a law enforcement agency
2 determines that a memorial or memorialization the agency has
3 taken possession of rightfully belongs on an interment space,
4 the agency shall return the memorial or memorialization to the
5 interment space, or make arrangements with the person having
6 jurisdiction over the interment space for its return.

7 5. BURIAL SITES LOCATED ON PRIVATE PROPERTY.

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

16 b. Pursuant to section 558.69, each declaration of value
17 submitted to a county recorder pursuant to chapter 428A shall
18 be accompanied by a statement concerning whether or not any
19 known private burial sites are located on the property.

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

31

SUBCHAPTER 4

32

COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES

33

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

34

The commissioner shall create a form that interested
35 persons may use to report neglected cemeteries to the

1 commissioner. The commissioner shall catalog and review the
2 neglected cemetery reports received on or before December 31,
3 2007, conduct site visits as warranted to determine the nature
4 or extent of any neglect, and publish a report of findings on
5 or before December 31, 2008.

6 Sec. 40. NEW SECTION. 523I.402 REMOVAL OF REMAINS.

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

28 2. Any heir at law or descendent of a deceased person
29 interred in a neglected cemetery may file suit in the district
30 court in the county where the cemetery is located, to have the
31 deceased person's remains interred in the cemetery removed to
32 another cemetery. The owner of the land, any beneficiaries of
33 any reservation of rights, and any other persons in interest,
34 known or unknown, other than the plaintiffs shall be made
35 defendants. If any parties are unknown, notice may be given

1 by publication. After hearing and upon a showing of good
2 cause, the court may order removal and the proper interment of
3 the remains in another cemetery, at the expense of the
4 petitioner. The removal and reinterment shall be done with
5 due care and decency.

6 SUBCHAPTER 5

7 GOVERNMENTAL SUBDIVISIONS

8 Sec. 41. NEW SECTION. 523I.501 CEMETERY AUTHORIZED.

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

14 Sec. 42. NEW SECTION. 523I.502 TRUST FOR CEMETERY.

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

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

26 Sec. 43. NEW SECTION. 523I.503 AUTHORITY TO RECEIVE
27 GIFTS AND DEPOSITS FOR CARE -- CERTIFICATES.

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

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

35 3. A governmental subdivision's acceptance of a deposit

1 for permanent maintenance of an interment space constitutes a
2 perpetual trust for the designated interment space.

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

8 a. The depositor's name.

9 b. The amount and purpose of the deposit.

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

12 d. Other information required by the governmental
13 subdivision.

14 5. An individual, association, foundation, or corporation
15 that is interested in the maintenance of a neglected cemetery
16 in a governmental subdivision's possession and control may
17 donate funds to the cemetery's perpetual trust fund to
18 beautify and maintain the entire cemetery or burial grounds
19 generally.

20 Sec. 44. NEW SECTION. 523I.504 APPOINTMENT OF SUCCESSOR
21 TRUSTEE.

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

29 Sec. 45. NEW SECTION. 523I.505 COUNTY AUDITOR AS
30 TRUSTEE.

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

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

1 bond.

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

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

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

14 Sec. 46. NEW SECTION. 523I.506 COMMINGLING OF CARE FUNDS
15 BY GOVERNMENTAL SUBDIVISIONS.

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

21 Sec. 47. NEW SECTION. 523I.507 INVESTMENT OF CARE FUNDS
22 BY GOVERNMENTAL SUBDIVISIONS.

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

35 Sec. 48. NEW SECTION. 523I.508 MANAGEMENT BY

1 GOVERNMENTAL SUBDIVISIONS.

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

19 2. AUTHORITY TO INVEST FUNDS -- CURRENT CARE CHARGE
20 PAYMENTS. The board of supervisors, mayor and council, or
21 other elected governmental body, as the case may be, may
22 receive and invest all moneys and property, donated or
23 bequeathed, and that portion of cemetery lot sales and
24 permanent charges made against cemetery lots which have been
25 set aside in a perpetual care fund, and in so investing, shall
26 use the judgment and care under the circumstances then
27 prevailing that persons of prudence, discretion, and
28 intelligence exercise in the management of their own affairs
29 not in regard to speculation but in regard to the permanent
30 disposition of their funds, considering the probable income as
31 well as the probable safety of their capital. The trustee of
32 the trust funds has a fiduciary duty to make reasonable
33 investment decisions and to properly oversee and manage the
34 funds entrusted to the trust fund. The income from the
35 investment shall be used in caring for the property of the

1 donor in any cemetery, or as provided in the terms of the gift
2 or donations or agreement for sale and purchase of a cemetery
3 lot.

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

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

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

1 4. DELEGATES TO CONVENTIONS. A township having one or
2 more cemeteries under its control may designate, not to exceed
3 two, officials from each cemetery as delegates to attend
4 meetings of cemetery officials, and certain expenses,
5 including association dues, not to exceed twenty-five dollars,
6 of the delegates may be paid out of the cemetery fund of the
7 township.

8 5. SUBSCRIBING TO PUBLICATIONS. The cemetery officials of
9 every township having a cemetery under its control may
10 subscribe to one or more publications devoted exclusively to
11 cemetery management, and the subscriptions may be paid out of
12 the cemetery fund of the township.

13 SUBCHAPTER 6

14 GENERAL PROVISIONS

15 Sec. 49. NEW SECTION. 523I.601 SETTLEMENT OF ESTATES --
16 MAINTENANCE FUND.

17 The court in which the estate of a deceased person is
18 administered, before final distribution, may allow and set
19 apart from the estate a sum sufficient to provide an income
20 adequate to pay for the perpetual care and upkeep of the
21 interment spaces upon which the body of the deceased is
22 buried, except where perpetual care has otherwise been
23 provided for. The sum so allowed and set apart shall be paid
24 to a trustee as provided by this chapter.

25 Sec. 50. NEW SECTION. 523I.602 MANAGEMENT BY TRUSTEE.

26 1. TRUSTEE APPOINTED -- TRUST FUNDS. The owners of, or
27 any party interested in, a cemetery may, by petition presented
28 to the district court of the county where the cemetery is
29 situated, have a trustee appointed with authority to receive
30 any and all moneys or property that may be donated for and on
31 account of the cemetery and to invest, manage, and control the
32 moneys or property under the direction of the court. However,
33 the trustee shall not be authorized to receive any gift,
34 except with the understanding that the principal sum is to be
35 a permanent fund, and only the net proceeds therefrom shall be

1 used in carrying out the purpose of the trust created, and all
2 such funds shall be exempt from taxation.

3 2. REQUISITES OF PETITION. The petition shall state the
4 amount proposed to be placed in such trust fund, the manner of
5 investment thereof, and the provisions made for the
6 disposition of any surplus income not required for the care
7 and upkeep of the property described in such petition.

8 3. APPROVAL OF COURT -- SURPLUS FUND. Such provisions
9 shall be subject to the approval of the court and when so
10 approved the trust fund and the trustee thereof shall, at all
11 times, be subject to the orders and control of the court and
12 such surplus arising from the trust fund shall not be used
13 except for charitable, eleemosynary, or public purposes under
14 the direction of the court.

15 4. RECEIPT -- CEMETERY RECORD. Every such trustee shall
16 execute and deliver to the donor a receipt showing the amount
17 of money or other property received, and the use to be made of
18 the net proceeds from the same, duly attested by the clerk of
19 the court granting letters of trusteeship, and a copy thereof,
20 signed by the trustee and so attested, shall be filed with and
21 recorded by the clerk in a book to be known as the cemetery
22 record, in which shall be recorded all reports and other
23 papers, including orders made by the court relative to
24 cemetery matters.

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

31 6. BOND -- APPROVAL -- OATH. Every such trustee before
32 entering upon the discharge of the trustee's duties or at any
33 time thereafter when required by the court shall give a bond
34 in an amount as may be required by the court, approved by the
35 clerk, and conditioned for the faithful discharge of the

1 trustee's duties, and take and subscribe an oath the same in
2 substance as the condition of the bond, which bond and oath
3 must be filed with the clerk.

4 7. CLERK -- DUTY OF. At the time of filing each bond and
5 oath the clerk shall at once advise the court as to the amount
6 of the principal fund in the hands of such trustee, the amount
7 of the bond filed, and whether it is good and sufficient for
8 the amount given.

9 8. COMPENSATION -- COSTS. Such trustee shall serve
10 without compensation, but may, out of the income received, pay
11 all proper items of expense incurred in the performance of the
12 trustee's duties, including cost of the bond, if any.

13 9. ANNUAL REPORT. Such trustee shall make a full report
14 of the trustee's doings in the month of January following
15 appointment and in January of each successive year. In each
16 report the trustee shall apportion the net proceeds received
17 from the sum total of the permanent funds assigned to the
18 trustee in trust.

19 10. REMOVAL -- VACANCY FILLED. Any such trustee may be
20 removed by the court at any time for cause, and in the event
21 of removal or death, the court shall appoint a new trustee and
22 require the new trustee's predecessor or the predecessor's
23 personal representative to make a full accounting.

24 Sec. 51. NEW SECTION. 523I.603 OWNERS OF INTERMENT
25 RIGHTS.

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

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

1 Sec. 52. NEW SECTION. 523I.604 LIEN AGAINST CEMETERY
2 PROPERTY.

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

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

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

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

19 SUBCHAPTER 7

20 LAWN CRYPTS

21 Sec. 54. NEW SECTION. 523I.701 REQUIREMENTS FOR LAWN
22 CRYPTS.

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

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

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

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

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

35 5. Except as provided by section 523I.702, the lawn crypt

1 is installed in multiple units of ten or more.

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

5 Sec. 55. NEW SECTION. 523I.702 REQUEST TO INSTALL LAWN
6 CRYPTS IN FEWER THAN TEN UNITS.

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

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

14 a. The owner's name and address.

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

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

17 d. A description of the interment spaces.

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

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

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

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

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

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

35 g. The date on which a representative of the cemetery

1 signed the form.

2 SUBCHAPTER 8

3 PERPETUAL CARE CEMETERIES -- REQUIREMENTS

4 Sec. 56. NEW SECTION. 523I.801 APPLICABILITY AND
5 CONVERSION BY NONPERPETUAL CARE CEMETERIES.

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

11 2. A cemetery that operates a nonperpetual care cemetery
12 may elect to become a perpetual care cemetery if at all times
13 subsequent to the date of the election, the cemetery complies
14 with the other requirements of this subchapter except section
15 523I.805.

16 Sec. 57. NEW SECTION. 523I.802 ADVERTISING.

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

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

28 Sec. 58. NEW SECTION. 523I.803 PERPETUAL CARE REGISTRY.

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

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

1 Sec. 59. NEW SECTION. 523I.804 USE OF GIFT FOR SPECIAL
2 CARE.

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

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

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

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

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

16 Sec. 60. NEW SECTION. 523I.805 INITIAL DEPOSIT.

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

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

35 Sec. 61. NEW SECTION. 523I.806 IRREVOCABLE TRUST.

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

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

17 Sec. 62. NEW SECTION. 523I.807 CARE FUND DEPOSITS.

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

23 2. A cemetery may require a contribution to the care fund
24 for perpetual care of a memorial or memorialization placed in
25 the cemetery. A cemetery may establish a separate care fund
26 for this purpose. The contributions shall be nonrefundable
27 and shall not be withdrawn from the trust fund once deposited.
28 The amount charged shall be uniformly charged on every
29 installation of a memorial, based on the height and width of
30 the memorial or the size of the ground surface area used for
31 the memorial. A fee for special care of a memorial may be
32 collected if the terms of the special care items and
33 arrangements are clearly specified in the interment rights
34 agreement. Except as otherwise provided in an interment
35 rights agreement, a cemetery is not liable for repair or

1 maintenance of memorials or vandalism. A cemetery may use
2 income from a care fund to repair or replace memorials or
3 interment spaces damaged by vandalism or acts of God.

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

8 Sec. 63. NEW SECTION. 523I.808 AUDIT FEE.

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

14 Sec. 64. NEW SECTION. 523I.809 TRUST AGREEMENT
15 PROVISIONS.

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

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

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

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

29 Sec. 65. NEW SECTION. 523I.810 CARE FUNDS.

30 1. A trustee of a care fund shall use the judgment and
31 care under the circumstances then prevailing that persons of
32 prudence, discretion, and intelligence exercise in the
33 management of their own affairs, not in regard to speculation
34 but in regard to the permanent disposition of their funds,
35 considering the probable income as well as the probable safety

1 of their capital. The trustee of a care fund has a fiduciary
2 duty to make reasonable investment decisions and to properly
3 oversee and manage the funds entrusted to the care fund.

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

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

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

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

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

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

1 following:

2 (1) Be owned, under the control of, or affiliated with the
3 cemetery.

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

7 (3) Otherwise invest care funds, directly or indirectly,
8 in the cemetery's business operations.

9 2. All moneys required to be deposited in the care fund
10 shall be deposited in the name of the trustee, as trustee,
11 under the terms of a trust agreement and the trustee may
12 invest, reinvest, exchange, retain, sell, and otherwise manage
13 the care fund trust for the benefit and protection of the
14 cemetery.

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

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

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

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

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

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

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

35 b. A violation of the law against perpetuities or the law

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

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

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

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

31 Sec. 66. NEW SECTION. 523I.811 USE OF DISTRIBUTIONS FROM
32 CARE FUND.

33 1. Care fund distributions may be used in any manner
34 determined to be in the best interests of the cemetery if
35 authorized by a resolution, bylaw, or other action or

1 instrument establishing the care fund, including but not
2 limited to the general care of memorials, memorialization, and
3 any of the following:

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

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

8 c. Maintaining machinery, tools, and equipment.

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

12 e. Paying overhead expenses incidental to such purposes.

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

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

18 Sec. 67. NEW SECTION. 523I.812 SUIT BY COMMISSIONER.

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

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

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

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

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

32 a. Failure to adequately mow grass.

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

35 c. Failure to keep walkways and sidewalks free of

1 obstructions.

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

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

6 Sec. 68. NEW SECTION. 523I.813 ANNUAL REPORT BY
7 PERPETUAL CARE CEMETERIES.

8 1. A perpetual care cemetery shall file a written report
9 at the end of each fiscal year of the cemetery that includes
10 all of the following:

11 a. The name and address of the cemetery.

12 b. The name and address of the corporation that owns the
13 cemetery, if any.

14 c. A description of any common business enterprise or
15 parent company that owns the cemetery, if any.

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

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

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

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

26 h. The amount of the principal of the cemetery's care
27 funds or maintenance funds, if any, at the end of the fiscal
28 year.

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

32 Sec. 69. NEW SECTION. 523I.814 UNIFIED ANNUAL REPORTS.

33 The commissioner shall permit the filing of a unified
34 report in the event of commonly owned or affiliated cemeteries
35 if each cemetery is separately identified and separate records

1 are maintained for each cemetery.

2 Sec. 70. Section 602.8102, subsection 81, Code 2005, is
3 amended to read as follows:

4 81. Carry out duties relating to cemeteries as provided in
5 ~~sections-566-4, 566-7, and 566-8~~ section 523I.602.

6 Sec. 71. Section 602.8104, subsection 2, paragraph h, Code
7 2005, is amended to read as follows:

8 h. A cemetery record as provided in section ~~566-4~~
9 523I.602.

10 Sec. 72. Section 636.23, subsection 14, Code 2005, is
11 amended to read as follows:

12 14. LIMITATION AS TO COURT-APPROVED INVESTMENTS. This
13 section does not prohibit investment of such funds in a
14 savings account or time certificate of deposit of a bank or
15 savings and loan association, located within the city or its
16 county of this state and when first approved by the court.
17 However, a city that is the trustee of a cemetery as provided
18 in section ~~566-14~~ 523I.508 may invest perpetual care funds in
19 a savings account or certificates of deposit at a bank or
20 savings and loan association, located in this state without
21 court approval.

22 Sec. 73. Section 359.41, Code 2005, is repealed.

23 Sec. 74. Chapters 523I, 566, and 566A, Code 2005, are
24 repealed.

25 EXPLANATION

26 This bill relates to cemeteries and cemetery regulation and
27 provides for administration and enforcement procedures related
28 to cemeteries, including establishing and appropriating fees,
29 and providing for penalties.

30 The bill amends Code section 523A.812 and adds new Code
31 section 523A.814 to require a business establishment that is
32 involved with cemetery and funeral merchandise and funeral
33 services or a combination thereof to pay an annual audit fee
34 of \$5 for each purchase agreement sold that is filed and
35 subject to a filing fee between July 1, 2005, and December 31,

1 2007. The insurance commissioner is required to allocate the
2 audit fees collected to the insurance division regulatory fund
3 for pay for auditors, audit expenses, investigative expenses,
4 mediation expenses, consumer education expenses, a toll-free
5 consumer complaint telephone line, and receivership expenses.

6 The bill repeals Code chapter 523I concerning cemeteries,
7 Code chapter 566 concerning cemetery management, and Code
8 chapter 566A concerning cemetery regulation.

9 The bill creates a new Code chapter 523I concerning
10 cemeteries, cemetery administration and enforcement
11 procedures, cemetery management, county cemetery commissions
12 and neglected cemeteries, cemeteries owned or operated by
13 governmental subdivisions, requirements for lawn crypts, and
14 requirements applying to perpetual care cemeteries.

15 The new Code chapter 523I is applicable to all cemeteries,
16 except religious cemeteries that commenced business prior to
17 July 1, 2005; all persons advertising or offering memorials,
18 memorialization, opening and closing services, scattering
19 services at a cemetery, interment rights, or a combination
20 thereof for sale; and interments made in areas not dedicated
21 as a cemetery, by a person other than the state archaeologist.

22 The bill authorizes civil lawsuits brought by the insurance
23 division against a cemetery that fails to use care funds to
24 maintain the cemetery property.

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

27 The bill provides for the establishment of a receivership
28 for a cemetery under certain circumstances.

29 The bill provides for the creation of a special revenue
30 fund in the state treasury to be known as the insurance
31 division's enforcement fund by allocating filing fees in an
32 amount not exceeding \$50,000. The moneys in the fund are
33 appropriated to the use of the insurance commissioner to pay
34 for auditors, investigative expenses, consumer education
35 expenses, a toll-free consumer complaint telephone line, and

1 receivership expenses of perpetual care cemeteries.

2 The bill requires cemeteries to make disclosures to a buyer
3 of interment rights when grave opening and closing fees are
4 not included in the agreement. The bill authorizes a cemetery
5 to accept written instructions of a decedent concerning
6 interment, relocation, or disinterment of remains. The bill
7 contains provisions for making a determination of who has the
8 right to control interment, relocation, or disinterment of
9 remains.

10 The bill establishes requirements for recording ownership
11 of interment rights at each cemetery location rather than just
12 with the county recorder. The bill requires cemeteries to
13 maintain complete interment records that identify the owners
14 of all interment rights sold or transferred by the cemetery on
15 or after July 1, 2005, and contain historical information
16 concerning any changes of ownership of interment rights. The
17 bill sets forth requirements for interment rights agreements.

18 The bill contains a procedure to dedicate new cemeteries or
19 subdivisions of cemeteries with a public filing with the
20 insurance division.

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

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

33 The bill contains a procedure for the removal of remains
34 from a neglected cemetery. The bill provides a procedure for
35 reporting neglected cemeteries to the insurance division and

1 provides that the commissioner shall catalog and review such
2 reports received, on or before December 31, 2007, and publish
3 a report of findings on or before December 31, 2008.

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

10 The bill sets forth requirements for lawn crypts and their
11 installation.

12 The bill sets forth requirements for perpetual care
13 cemeteries and provides that cemeteries that represent that
14 they are offering perpetual care on or after July 1, 2005, are
15 subject to the provisions of the bill. The bill requires any
16 cemetery commencing business on or after July 1, 2005, other
17 than those owned or operated by governmental subdivisions, to
18 establish a care fund of at least \$25,000 in cash. The bill
19 allows a nonperpetual care cemetery to elect to become a
20 perpetual care cemetery if the cemetery complies with the
21 requirements applicable to a perpetual care cemetery, except
22 such a cemetery is not required to make an initial \$25,000
23 care fund deposit. The bill does not apply to religious
24 cemeteries that commenced business prior to July 1, 2005.

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HOUSE FILE 836
BY COMMITTEE ON WAYS
AND MEANS

(SUCCESSOR TO HF 763)
(SUCCESSOR TO HSB 212)

(As Amended and Passed by the House April 14, 2005)

Passed House, Date _____ Passed Senate, Date 4-27-05
Vote: Ayes _____ Nays _____ Vote: Ayes 50 Nays 0
Approved _____

A BILL FOR

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

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

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Deleted Language *

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

3 2. Each county board of supervisors may adopt an ordinance
4 assuming jurisdiction and control of pioneer cemeteries in the
5 county. The board shall exercise the powers and duties of
6 township trustees relating to the maintenance and repair of
7 cemeteries in the county as provided in sections 359.28
8 through ~~359.41~~ 359.40 except that the board shall not certify
9 a tax levy pursuant to section 359.30 or 359.33 and except
10 that the maintenance and repair of all cemeteries under the
11 jurisdiction of the county including pioneer cemeteries shall
12 be paid from the county general fund. The maintenance and
13 improvement program for a pioneer cemetery may include
14 restoration and management of native prairie grasses and
15 wildflowers.

16 3. In lieu of management of the cemeteries, the board of
17 supervisors may create, by ordinance, a cemetery commission to
18 assume jurisdiction and management of the pioneer cemeteries
19 in the county. The ordinance shall delineate the number of
20 commissioners, the appointing authority, the term of office,
21 officers, employees, organizational matters, rules of
22 procedure, compensation and expenses, and other matters deemed
23 pertinent by the board. The board may delegate any power and
24 duties relating to cemeteries which may otherwise be exercised
25 by township trustees pursuant to sections 359.28 through
26 ~~359.41~~ 359.40 to the cemetery commission except the commission
27 shall not certify a tax levy pursuant to section 359.30 or
28 359.33 and except that the expenses of the cemetery commission
29 shall be paid from the county general fund.

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

32 34. Serve as a trustee for funds of a cemetery association
33 as provided in ~~sections-566.12-and-566.13~~ section 523I.505.

34 Sec. 3. Section 523A.203, subsection 6, paragraph b, Code
35 2005, is amended to read as follows:

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

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

6 523A.812 INSURANCE DIVISION REGULATORY FUND.

7 The insurance division may authorize the creation of a
8 special revenue fund in the state treasury, to be known as the
9 insurance division regulatory fund. The commissioner shall
10 allocate annually from the fees paid pursuant to section
11 523A.204, two dollars for each purchase agreement reported on
12 an establishment permit holder's annual report for deposit to
13 the regulatory fund. The remainder of the fees collected
14 pursuant to section 523A.204 shall be deposited into the
15 general fund of the state. The commissioner shall also
16 allocate annually the audit fees paid pursuant to section
17 523A.814 for deposit to the regulatory fund. The moneys in
18 the regulatory fund shall be retained in the fund. The moneys
19 are appropriated and, subject to authorization by the
20 commissioner, may be used to pay auditors, audit expenses,
21 investigative expenses, the expenses of mediation ordered by
22 the commissioner, consumer education expenses, the expenses of
23 a toll-free telephone line to receive consumer complaints, and
24 the expenses of receiverships established under section
25 523A.811. An annual allocation to the regulatory fund shall
26 not be imposed if the current balance of the fund exceeds two
27 hundred thousand dollars.

28 Sec. 5. NEW SECTION. 523A.814 AUDIT FEE.

29 In addition to the filing fee paid pursuant to section
30 523A.204, subsection 5, an establishment filing an annual
31 report shall pay an audit fee in the amount of five dollars
32 for each purchase agreement subject to a filing fee that is
33 sold between July 1, 2005, and December 31, 2007.

34 SUBCHAPTER 1

35 SHORT TITLE, DEFINITIONS, AND APPLICABILITY

1 Sec. 6. NEW SECTION. 523I.101 SHORT TITLE.

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

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

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

6 1. "Authorized to do business within this state" means a
7 person licensed, registered, or subject to regulation by an
8 agency of the state of Iowa or who has filed a consent to
9 service of process with the commissioner for purposes of this
10 chapter.

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

13 3. "Capital gains" means appreciation in the value of
14 trust assets for which a market value may be determined with
15 reasonable certainty after deduction of investment losses,
16 taxes, expenses incurred in the sale of trust assets, any
17 costs of the operation of the trust, and any annual audit
18 fees.

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

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

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

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

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

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

34 a. A private burial site where use is restricted to
35 members of a family, if the interment rights are conveyed

1 without a monetary payment, fee, charge, or other valuable
2 form of compensation or consideration.

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

7 c. A pioneer cemetery.

8 7. "Columbarium" means a structure, room, or space in a
9 mausoleum or other building containing niches or recesses for
10 disposition of cremated remains.

11 8. "Commissioner" means the commissioner of insurance or
12 the deputy administrator authorized in section 523A.801 to the
13 extent the commissioner delegates functions to the deputy
14 administrator.

15 9. "Common business enterprise" means a group of two or
16 more business entities that share common ownership in excess
17 of fifty percent.

18 10. "Disinterment" means to remove human remains from
19 their place of final disposition.

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

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

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

34 14. "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 15. "Gross selling price" means the aggregate amount a
2 purchaser is obligated to pay for interment rights, exclusive
3 of finance charges.

4 16. "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 17. "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 18. "Insolvent" means the inability to pay debts as they
23 become due in the usual course of business.

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

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

30 21. "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 22. "Lawn crypt" means a preplaced enclosed chamber, which
34 is usually constructed of reinforced concrete and poured in
35 place, or a precast unit installed in quantity, either side-

1 by-side or at multiple depths, and covered by earth or sod.

2 23. "Lot" means an area in a cemetery containing more than
3 one interment space which is uniquely identified by an
4 alphabetical, numeric, or alphanumerical identification
5 system.

6 24. "Maintenance fund" means funds set aside for the
7 maintenance of a nonperpetual care cemetery, including all of
8 the following:

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

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

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

14 25. "Mausoleum" means an aboveground structure designed
15 for the entombment of human remains.

16 26. "Mausoleum crypt" means a chamber in a mausoleum of
17 sufficient size to contain casketed human remains.

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

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

30 29. "Memorial dealer" means any person offering or selling
31 memorials retail to the public.

32 30. "Memorialization" means any permanent system designed
33 to mark or record the name and other data pertaining to a
34 decedent.

35 31. "Merchandise" means any personal property offered or

1 sold for use in connection with the funeral, final
2 disposition, memorialization, or interment of human remains,
3 but which is exclusive of interment rights.

4 32. "Neglected cemetery" means a cemetery where there has
5 been a failure to cut grass or weeds or care for graves,
6 memorials or memorialization, walls, fences, driveways, and
7 buildings, or for which proper records of interments have not
8 been maintained.

9 33. "Niche" means a recess or space in a columbarium or
10 mausoleum used for placement of cremated human remains.

11 34. "Opening and closing services" means one or more
12 services necessarily or customarily provided in connection
13 with the interment or entombment of human remains or a
14 combination thereof.

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

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

27 37. "Perpetual care cemetery" includes all of the
28 following:

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

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

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

35 d. Any cemetery that represents in any other manner that

1 the cemetery provides perpetual, permanent, or guaranteed
2 care.

3 38. "Person" means an individual, firm, corporation,
4 partnership, joint venture, limited liability company,
5 association, trustee, government or governmental subdivision,
6 agency, or other entity, or any combination thereof.

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

9 40. "Purchaser" means a person who purchases memorials,
10 memorialization, opening and closing services, scattering
11 services, interment rights, or a combination thereof. A
12 purchaser need not be a beneficiary of the interment rights
13 agreement.

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

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

31 43. "Relocation" means the act of taking remains from the
32 place of interment or the place where the remains are being
33 held to another designated place.

34 44. "Remains" means the body of a deceased human or a body
35 part, or limb that has been removed from a living human,

1 including a body, body part, or limb in any stage of
2 decomposition, or cremated remains.

3 45. "Scattering services provider" means a person in the
4 business of scattering human cremated remains.

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

13 47. "Special care" means any care provided or to be
14 provided that supplements or exceeds the requirements of this
15 chapter in accordance with the specific directions of any
16 donor of funds for such purposes.

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

20 Sec. 8. NEW SECTION. 523I.103 APPLICABILITY OF CHAPTER.

21 1. This chapter applies to all of the following:

22 a. All cemeteries, except religious cemeteries that
23 commenced business prior to July 1, 2005.

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

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

30 2. This chapter applies when a purchase agreement is
31 executed within this state or an advertisement, promotion, or
32 offer to furnish memorials, memorialization, opening and
33 closing services, scattering services, interment rights, or a
34 combination thereof is made or accepted within this state. An
35 offer to furnish memorials, memorialization, opening and

1 closing services, scattering services, interment rights, or a
2 combination thereof is made within this state, whether or not
3 either party is then present in this state, when the offer
4 originates from this state or is directed by the offeror to
5 this state and received by the offeree in this state through
6 the mail, over the telephone, by the internet, or through any
7 other means of commerce.

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

15 SUBCHAPTER 2

16 ADMINISTRATION AND ENFORCEMENT

17 Sec. 9. NEW SECTION. 523I.201 ADMINISTRATION.

18 1. This chapter shall be administered by the commissioner.
19 The deputy administrator appointed pursuant to section
20 523A.801 shall be the principal operations officer responsible
21 to the commissioner for the routine administration of this
22 chapter and management of the administrative staff. In the
23 absence of the commissioner, whether because of vacancy in the
24 office due to absence, physical disability, or other cause,
25 the deputy administrator shall, for the time being, have and
26 exercise the authority conferred upon the commissioner. The
27 commissioner may by order from time to time delegate to the
28 deputy administrator any or all of the functions assigned to
29 the commissioner in this chapter. The deputy administrator
30 shall employ officers, attorneys, accountants, and other
31 employees as needed for administering this chapter.

32 2. It is unlawful for the commissioner or any
33 administrative staff to use for personal benefit any
34 information which is filed with or obtained by the
35 commissioner and which is not made public. This chapter does

1 not authorize the commissioner or any staff member to disclose
2 any such information except among themselves or to other
3 cemetery and funeral administrators, regulatory authorities,
4 or governmental agencies, or when necessary and appropriate in
5 a proceeding or investigation under this chapter or as
6 required by chapter 22. This chapter neither creates nor
7 derogates any privileges that exist at common law or otherwise
8 when documentary or other evidence is sought under a subpoena
9 directed to the commissioner or any administrative staff.

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

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

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

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

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

35 d. Investigate a cemetery and examine the books, accounts,

1 papers, correspondence, memoranda, purchase agreements, files,
2 or other documents or records of the cemetery.

3 e. Administer oaths and affirmations, subpoena witnesses,
4 compel their attendance, take evidence, and require the
5 production of any books, accounts, papers, correspondence,
6 memoranda, purchase agreements, files, or other documents or
7 records which the commissioner deems relevant or material to
8 any investigation or proceeding under this chapter and
9 implement rules, all of which may be enforced under chapter
10 17A.

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

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

25 Sec. 11. NEW SECTION. 523I.203 CEASE AND DESIST ORDERS
26 -- INJUNCTIONS.

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

32 1. Issue a summary order directed to the person that
33 requires the person to cease and desist from engaging in such
34 an act or practice. A person may request a hearing within
35 thirty days of issuance of the summary order. If a hearing is

1 not timely requested, the summary order shall become final by
2 operation of law. The order shall remain effective from the
3 date of issuance until the date the order becomes final by
4 operation of law or is overturned by a presiding officer
5 following a request for hearing. Section 17A.18A is
6 inapplicable to summary cease and desist orders issued under
7 this section.

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

24 Sec. 12. NEW SECTION. 523I.204 COURT ACTION FOR FAILURE
25 TO COOPERATE.

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

- 33 a. Injunctive relief restricting or prohibiting the offer
34 or sale of memorials, memorialization, opening and closing
35 services, scattering services, interment rights, or a

1 combination thereof.

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

5 c. Such other relief as may be required.

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

9 Sec. 13. NEW SECTION. 523I.205 PROSECUTION FOR
10 VIOLATIONS OF LAW -- CIVIL PENALTIES.

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

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

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

1 state.

2 Sec. 14. NEW SECTION. 523I.206 COOPERATION WITH OTHER
3 AGENCIES.

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

9 2. Cooperation with other agencies may include but is not
10 limited to:

11 a. Making a joint examination or investigation.

12 b. Holding a joint administrative hearing.

13 c. Filing and prosecuting a joint civil or administrative
14 proceeding.

15 d. Sharing and exchanging personnel.

16 e. Sharing and exchanging relevant information and
17 documents.

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

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

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

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

34 3. A provision of this chapter imposing any liability does
35 not apply to an act done or omitted in good faith in

1 conformity with any rule, form, or order of the commissioner.

2 Sec. 16. NEW SECTION. 523I.208 DATE OF FILING --
3 INTERPRETIVE OPINIONS.

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

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

8 Sec. 17. NEW SECTION. 523I.209 MISLEADING FILINGS.

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

17 Sec. 18. NEW SECTION. 523I.210 MISREPRESENTATIONS OF
18 GOVERNMENT APPROVAL.

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

24 Sec. 19. NEW SECTION. 523I.211 FRAUDULENT PRACTICES.

25 A person who commits any of the following acts commits a
26 fraudulent practice which is punishable as provided in chapter
27 714:

28 1. Knowingly fails to comply with any requirement of this
29 chapter.

30 2. Knowingly makes, causes to be made, or subscribes to a
31 false statement or representation in a report or other
32 document required under this chapter, or implementing rules or
33 orders, or renders such a report or document misleading
34 through the deliberate omission of information properly
35 belonging in the report or document.

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

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

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

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

15 Sec. 20. NEW SECTION. 523I.212 RECEIVERSHIPS.

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

20 a. Is insolvent.

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

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

25 2. The commissioner or attorney general may apply to the
26 district court in any county of the state for the
27 establishment of a receivership. Upon proof that any of the
28 conditions described in this section have occurred, the court
29 may grant a receivership.

30 Sec. 21. NEW SECTION. 523I.213 INSURANCE DIVISION'S
31 ENFORCEMENT FUND.

32 A special revenue fund in the state treasury, to be known
33 as the insurance division's enforcement fund, is created under
34 the authority of the commissioner. The commissioner shall
35 allocate annually from the audit fees paid pursuant to section

1 523I.808, an amount not exceeding fifty thousand dollars, for
2 deposit to the insurance division's enforcement fund. The
3 moneys in the enforcement fund shall be retained in the fund.
4 The moneys are appropriated and, subject to authorization by
5 the commissioner, shall be used to pay auditors, audit
6 expenses, investigative expenses, the expenses of consumer
7 education, compliance, and education programs for filers and
8 other regulated persons, and educational or compliance program
9 materials, the expenses of a toll-free telephone line for
10 consumer complaints, and the expenses of receiverships of
11 perpetual care cemeteries established under section 523I.212.

12 Sec. 22. NEW SECTION. 523I.214 VIOLATIONS OF LAW --
13 REFERRALS TO THE DEPARTMENT OF PUBLIC HEALTH.

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

21 SUBCHAPTER 3

22 CEMETERY MANAGEMENT

23 Sec. 23. NEW SECTION. 523I.301 DISCLOSURE REQUIREMENTS
24 -- PRICES AND FEES.

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

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

35 3. A person owning interment rights may sell those rights

1 to third parties. The cemetery shall fully disclose, in the
2 cemetery's rules, any requirements necessary to transfer title
3 of interment rights to a third party.

4 Sec. 24. NEW SECTION. 523I.302 INSTALLATION OF OUTER
5 BURIAL CONTAINERS.

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

12 Sec. 25. NEW SECTION. 523I.303 ACCESS BY FUNERAL
13 DIRECTORS.

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

17 Sec. 26. NEW SECTION. 523I.304 RULEMAKING AND
18 ENFORCEMENT.

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

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

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

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

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

35 d. Prohibit or regulate the placement of nonhuman remains

1 within the cemetery.

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

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

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

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

10 3. A cemetery shall not adopt or enforce a rule that
11 prohibits interment because of the race, color, or national
12 origin of a decedent. A provision of a contract or a
13 certificate of ownership or other instrument conveying
14 interment rights that prohibits interment in a cemetery
15 because of the race, color, or national origin of a decedent
16 is void.

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

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

1 an interment space or a damaged or defaced memorial or
2 memorialization.

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

7 Sec. 27. NEW SECTION. 523I.305 MEMORIALS AND
8 MEMORIALIZATION.

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

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

22 3. SPECIFICATIONS. Upon request, a cemetery shall provide
23 reasonable written specifications and instructions governing
24 installation of memorials, which shall apply to all
25 installations whether performed by the cemetery or another
26 person. The written specifications shall include provisions
27 governing hours of installation or any other relevant
28 administrative requirements of the cemetery. A copy of these
29 specifications and instructions shall be provided upon
30 request, without charge, to the owner of the interment space,
31 next of kin, or a personal representative or agent of the
32 owner, including the person installing the memorial. The
33 person installing the memorial shall comply with the
34 cemetery's written installation specifications and
35 instructions. A cemetery shall not adopt or enforce any rule

1 prohibiting the installation of a memorial by a memorial
2 dealer or independent third party, unless the rule is adopted
3 and enforced uniformly for all memorials installed in the
4 cemetery.

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

16 5. PREPARATION AND INSTALLATION.

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

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

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

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

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

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

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

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

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

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

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

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

34 6. INSPECTION. A cemetery may inspect the installation
35 site of a memorial at any time. If the cemetery determines

1 that cemetery rules are not being followed during the
2 installation, the cemetery may order the installation to stop
3 until the infraction is corrected. The cemetery shall provide
4 written notice to the installer as soon as possible if the
5 cemetery believes that any of the following have occurred:

- 6 a. The memorial has not been installed correctly.
- 7 b. The person installing the memorial has damaged property
8 at the cemetery.

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

11 7. LOCATION AND SERVICE CHARGE. A cemetery may charge a
12 reasonable service charge for allowing the installation of a
13 memorial purchased or obtained from and installed by a person
14 other than the cemetery or its agents. This service charge
15 shall be based on the cemetery's actual labor costs, including
16 fringe benefits, of those employees whose normal duty is to
17 inspect the installation of memorials, in accordance with
18 generally accepted accounting practices. General
19 administrative and overhead costs and any other functions not
20 related to actual inspection time shall be excluded from the
21 service charge.

22 8. FAULTY INSTALLATION. If a memorial sinks, tilts, or
23 becomes misaligned within twelve months of its installation
24 and the cemetery believes the cause is faulty installation,
25 the cemetery shall notify the person who installed the
26 memorial in writing and the person who installed the memorial
27 shall be responsible to correct the damage, unless the damage
28 is caused by inadequate written specifications and
29 instructions from the cemetery or acts of the cemetery and its
30 agents or employees, including but not limited to running a
31 backhoe over the memorial, carrying a vault or other heavy
32 equipment over the memorial, or opening or closing an
33 interment space adjacent to the memorial.

34 9. PERPETUAL CARE. A cemetery may require contributions
35 from the purchaser of a memorial for perpetual care, if a

1 perpetual care fund deposit is uniformly charged on every
2 memorial installed in the cemetery.

3 Sec. 28. NEW SECTION. 523I.306 COMMISSION OR BONUS
4 UNLAWFUL.

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

18 Sec. 29. NEW SECTION. 523I.307 DISCRIMINATION
19 PROHIBITED.

20 It shall be unlawful for any organization subject to the
21 provisions of this chapter to deny the privilege of interment
22 of the remains of any deceased person in any cemetery solely
23 because of the race, color, or national origin of such
24 deceased person. Any contract, agreement, deed, covenant,
25 restriction, or charter provision at any time entered into, or
26 bylaw, rule, or regulation adopted or put in force, either
27 subsequent or prior to July 4, 1953, authorizing, permitting,
28 or requiring any organization subject to the provisions of
29 this chapter to deny such privilege of interment because of
30 race, color, or national origin of such deceased person is
31 hereby declared to be null and void and in conflict with the
32 public policy of this state. An organization subject to the
33 provisions of this chapter or any director, officer, agent,
34 employee, or trustee thereof, shall not be liable for damages
35 or other relief, or be subjected to any action in any court of

1 competent jurisdiction for refusing to commit any act unlawful
2 under this chapter.

3 Sec. 30. NEW SECTION. 523I.308 SPECULATION PROHIBITED.

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

9 Sec. 31. NEW SECTION. 523I.309 INTERMENT, RELOCATION, OR
10 DISINTERMENT OF REMAINS.

11 1. Any available member of the following classes of
12 persons, in the priority listed, shall have the right to
13 control the interment, relocation, or disinterment of a
14 decedent's remains within or from a cemetery:

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

17 b. The surviving spouse of the decedent.

18 c. The decedent's surviving adult children. If there is
19 more than one surviving adult child, any adult child who can
20 confirm, in writing, that all other adult children have been
21 notified of the proposed interment, relocation, or
22 disinterment may authorize the interment, relocation, or
23 disinterment, unless the cemetery receives an objection to
24 such action from another adult child of the decedent.

25 d. A surviving parent of the decedent.

26 e. A surviving adult sibling of the decedent.

27 f. A surviving grandparent of the decedent.

28 g. The legal guardian of the decedent at the time of the
29 decedent's death.

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

1 representation.

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

18 4. A cemetery shall not be liable for carrying out the
19 written directions of a decedent or the directions of any
20 person entitled to control the interment, relocation, or
21 disinterment of the decedent's remains.

22 5. In the event of a dispute concerning the right to
23 control the interment, relocation, or disinterment of a
24 decedent's remains, the dispute may be resolved by a court of
25 competent jurisdiction. A cemetery shall not be liable for
26 refusing to accept the decedent's remains, relocate or
27 disinter, inter or otherwise dispose of the decedent's
28 remains, until the cemetery receives a court order or other
29 suitable confirmation that the dispute has been resolved or
30 settled.

31 6. a. If good cause exists to relocate or disinter
32 remains interred in a cemetery, the remains may be removed
33 from the cemetery pursuant to a disinterment permit as
34 required under section 144.34, with the written consent of the
35 cemetery, the current interment rights owner and the person

1 entitled by this section to control the interment, relocation,
2 or disinterment of the decedent's remains.

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

12 c. For the purposes of this subsection, personal notice
13 must be given not later than the eleventh day before the date
14 of application to the court for permission to relocate or
15 disinter the remains, or notice by certified mail or
16 restricted certified mail must be given not later than the
17 sixteenth day before the date of application.

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

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

27 a. The date the remains are removed.

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

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

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

33 8. A cemetery may disinter and relocate remains interred
34 in the cemetery for the purpose of correcting an error made by
35 the cemetery after obtaining a disinterment permit as required

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

13 9. Relocations and disinterments of human remains shall be
14 done in compliance with sections 144.32 and 144.34.

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

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

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

24 3. A conveyance of exclusive rights of interment shall be
25 filed and recorded in the cemetery office. Any transfer of
26 the ownership of interment rights shall be filed and recorded
27 in the cemetery office. The cemetery may charge a reasonable
28 recording fee to record the transfer of interment rights.

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

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

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

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

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

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

11 a. The date the remains are interred.

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

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

18 Sec. 34. NEW SECTION. 523I.312 DISCLOSURE REQUIREMENTS
19 -- INTERMENT AGREEMENTS.

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

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

30 a. Identify the seller and purchaser.

31 b. Identify the salesperson.

32 c. Specify the interment rights to be provided and the
33 cost of each item.

34 d. State clearly the conditions on which substitution will
35 be allowed.

- 1 e. Set forth the total purchase price and the terms under
2 which it is to be paid.
- 3 f. State clearly whether the agreement is revocable or
4 irrevocable, and if revocable, which parties have the
5 authority to revoke the agreement.
- 6 g. State the amount or percentage of money to be placed in
7 the cemetery's care or maintenance fund.
- 8 h. If the cemetery has a care fund, set forth an
9 explanation that the care fund is an irrevocable trust, that
10 deposits cannot be withdrawn even in the event of
11 cancellation, and that the trust's income shall be used by the
12 cemetery for its care.
- 13 i. Set forth an explanation of any fees or expenses that
14 may be charged.
- 15 j. Set forth an explanation of whether amounts for
16 perpetual care will be deposited in trust upon payment in full
17 or on an allocable basis as payments are made.
- 18 k. Set forth an explanation of whether initial payments on
19 agreements for multiple items of funeral and cemetery
20 merchandise or services, or both, will be allocated first to
21 the purchase of an interment space. If such an allocation is
22 to be made, the agreement shall provide for the immediate
23 transfer of such interment rights upon payment in full and
24 prominently state that any applicable trust deposits under
25 chapter 523A will not be made until the cemetery has received
26 payment in full for the interment rights. The transfer of an
27 undeveloped interment space may be deferred until the
28 interment space is ready for interment.
- 29 l. If the transfer of an undeveloped interment space will
30 be deferred until the interment space is ready for interment
31 as permitted in paragraph "k", the agreement shall provide for
32 some form of written acknowledgement upon payment in full,
33 specify a reasonable time period for development of the
34 interment space, describe what happens in the event of a death
35 prior to development of the interment space, and provide for

1 the immediate transfer of the interment rights when
2 development of the interment space is complete.

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

5 n. State the name and address of the commissioner.

6 Sec. 35. NEW SECTION. 523I.313 NEW CEMETERIES AND
7 GARDENS AND CEMETERY REGISTRY.

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

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

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

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

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

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

1 sixty days of the change.

2 Sec. 36. NEW SECTION. 523I.314 NEW CONSTRUCTION.

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

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

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

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

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

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

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

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

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

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

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

1 1. FORECLOSURE -- UNPAID ASSESSMENTS. Unpaid care
2 assessments for an unoccupied interment space not under
3 perpetual care shall create a lien by the cemetery against the
4 applicable interment space. The cemetery may, following
5 notice, foreclose on the interment space if the amount of the
6 lien exceeds the amount paid for the interment space. If the
7 lien is not paid within one year from the date that notice of
8 foreclosure is served on the owner of record or the owner of
9 record's heirs, the ownership in or right to the unoccupied
10 interment space shall revert to the cemetery that owns the
11 cemetery in which the unoccupied interment space is located.

12 2. ABANDONMENT -- QUIET TITLE ACTION. A cemetery may file
13 an action to quiet title to determine whether an interment
14 space has been abandoned if the interment space is unoccupied
15 and has not been occupied in the preceding seventy-five years.
16 An action to quiet title shall commence when the cemetery
17 serves notice on the owner of record or the owner of record's
18 heirs declaring that the interment space is considered to be
19 abandoned. If the owner of record or the owner of record's
20 heirs do not respond within three years from the date that
21 notice is served, the abandonment is considered to be
22 complete. The ownership in or right to an abandoned interment
23 space shall revert to the cemetery in which the abandoned
24 interment space is located and the cemetery may sell and
25 convey title to the interment space.

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

35 Sec. 38. NEW SECTION. 523I.316 PROTECTION OF CEMETERIES

1 AND BURIAL SITES.

2 1. EXISTENCE OF CEMETERY OR BURIAL SITE -- NOTIFICATION.

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

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

20 3. DUTY TO PRESERVE AND PROTECT. A governmental
21 subdivision having a cemetery, or a burial site that is not
22 located within a dedicated cemetery, within its jurisdiction,
23 for which preservation is not otherwise provided, shall
24 preserve and protect the cemetery or burial site as necessary
25 to restore or maintain its physical integrity as a cemetery or
26 burial site. The governmental subdivision may enter into an
27 agreement to delegate the responsibility for the preservation
28 and protection of the cemetery or burial site to a private
29 organization interested in historical preservation.

30 4. CONFISCATION AND RETURN OF MEMORIALS. A law
31 enforcement officer having reason to believe that a memorial
32 or memorialization is in the possession of a person without
33 authorization or right to possess the memorial or
34 memorialization may take possession of the memorial or
35 memorialization from that person and turn it over to the

1 officer's law enforcement agency. If a law enforcement agency
2 determines that a memorial or memorialization the agency has
3 taken possession of rightfully belongs on an interment space,
4 the agency shall return the memorial or memorialization to the
5 interment space, or make arrangements with the person having
6 jurisdiction over the interment space for its return.

7 5. BURIAL SITES LOCATED ON PRIVATE PROPERTY.

* 8 If a person notifies a governmental subdivision that a
9 burial site of the person's relative is located on property
10 owned by another person within the jurisdiction of the
11 governmental subdivision, the governmental subdivision shall
12 notify the property owner of the location of the burial site
13 and that the property owner is required to permit the person
14 reasonable ingress and egress for the purposes of visiting the
15 burial site of the person's relative.

* 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

SUBCHAPTER 4

28

COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES

29

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

30

The commissioner shall create a form that interested
31 persons may use to report neglected cemeteries to the
32 commissioner. The commissioner shall catalog and review the
33 neglected cemetery reports received on or before December 31,
34 2007, conduct site visits as warranted to determine the nature
35 or extent of any neglect, and publish a report of findings on

1 or before December 31, 2008.

2 Sec. 40. NEW SECTION. 523I.402 REMOVAL OF REMAINS.

3 1. Upon a showing of good cause, a county cemetery
4 commission may file suit in the district court in that county
5 to have remains interred in a cemetery owned and operated by
6 the 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 the 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 5

3 GOVERNMENTAL SUBDIVISIONS

4 Sec. 41. NEW SECTION. 523I.501 CEMETERY AUTHORIZED.

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

10 Sec. 42. NEW SECTION. 523I.502 TRUST FOR CEMETERY.

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

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

22 Sec. 43. NEW SECTION. 523I.503 AUTHORITY TO RECEIVE
23 GIFTS AND DEPOSITS FOR CARE -- CERTIFICATES.

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

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

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

34 4. Upon acceptance of a deposit, a governmental
35 subdivision's secretary, clerk, or mayor shall issue a

1 certificate in the name of the governmental subdivision to the
2 trustee or depositor. The certificate shall state all of the
3 following:

4 a. The depositor's name.

5 b. The amount and purpose of the deposit.

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

8 d. Other information required by the governmental
9 subdivision.

10 5. An individual, association, foundation, or corporation
11 that is interested in the maintenance of a neglected cemetery
12 in a governmental subdivision's possession and control may
13 donate funds to the cemetery's perpetual trust fund to
14 beautify and maintain the entire cemetery or burial grounds
15 generally.

16 Sec. 44. NEW SECTION. 523I.504 APPOINTMENT OF SUCCESSOR
17 TRUSTEE.

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

25 Sec. 45. NEW SECTION. 523I.505 COUNTY AUDITOR AS
26 TRUSTEE.

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

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

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

1 trustee, if any.

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

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

10 Sec. 46. NEW SECTION. 523I.506 COMMINGLING OF CARE FUNDS
11 BY GOVERNMENTAL SUBDIVISIONS.

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

17 Sec. 47. NEW SECTION. 523I.507 INVESTMENT OF CARE FUNDS
18 BY GOVERNMENTAL SUBDIVISIONS.

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

31 Sec. 48. NEW SECTION. 523I.508 MANAGEMENT BY
32 GOVERNMENTAL SUBDIVISIONS.

33 1. POLITICAL SUBDIVISIONS AS TRUSTEES. Counties, cities,
34 irrespective of their form of government, boards of trustees
35 of cities to whom the management of municipal cemeteries has

1 been transferred by ordinance, and civil townships wholly
2 outside of any city, are trustees in perpetuity, and are
3 required to accept, receive, and expend all moneys and
4 property donated or left to them by bequest for perpetual
5 care, and that portion of interment space sales or permanent
6 charges made against interment spaces which has been set aside
7 in a perpetual care fund for which there is no other acting
8 trustee, shall be used in caring for the property of the donor
9 or lot owner who by purchase or otherwise has provided for the
10 perpetual care of an interment space in any cemetery, or in
11 accordance with the terms of the donation, bequest, or
12 agreement for sale and purchase of an interment space, and the
13 money or property thus received shall be used for no other
14 purpose.

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

35 All current care charge payments received shall be

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

13 3. RESOLUTION OF ACCEPTANCE -- INTEREST. Before any part
14 of the principal may be invested or used, the county, city,
15 board of trustees of a city to whom the management of a
16 municipal cemetery has been transferred by ordinance, or civil
17 township shall, by resolution, accept the moneys described in
18 subsection 1 and, by resolution, shall provide for the payment
19 of interest annually to the appropriate fund, or to the
20 cemetery, or the person in charge of the cemetery, to be used
21 in caring for or maintaining the individual property of the
22 donor in the cemetery, or interment spaces which have been
23 sold if provision was made for perpetual care, all in
24 accordance with the terms of the donation or bequest, or the
25 terms of the sale or purchase of an interment space.

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

32 4. DELEGATES TO CONVENTIONS. A township having one or
33 more cemeteries under its control may designate, not to exceed
34 two, officials from each cemetery as delegates to attend
35 meetings of cemetery officials, and certain expenses,

1 including association dues, not to exceed twenty-five dollars,
2 of the delegates may be paid out of the cemetery fund of the
3 township.

4 5. SUBSCRIBING TO PUBLICATIONS. The cemetery officials of
5 every township having a cemetery under its control may
6 subscribe to one or more publications devoted exclusively to
7 cemetery management, and the subscriptions may be paid out of
8 the cemetery fund of the township.

9 SUBCHAPTER 6

10 GENERAL PROVISIONS

11 Sec. 49. NEW SECTION. 523I.601 SETTLEMENT OF ESTATES --
12 MAINTENANCE FUND.

13 The court in which the estate of a deceased person is
14 administered, before final distribution, may allow and set
15 apart from the estate a sum sufficient to provide an income
16 adequate to pay for the perpetual care and upkeep of the
17 interment spaces upon which the body of the deceased is
18 buried, except where perpetual care has otherwise been
19 provided for. The sum so allowed and set apart shall be paid
20 to a trustee as provided by this chapter.

21 Sec. 50. NEW SECTION. 523I.602 MANAGEMENT BY TRUSTEE.

22 1. TRUSTEE APPOINTED -- TRUST FUNDS. The owners of, or
23 any party interested in, a cemetery may, by petition presented
24 to the district court of the county where the cemetery is
25 situated, have a trustee appointed with authority to receive
26 any and all moneys or property that may be donated for and on
27 account of the cemetery and to invest, manage, and control the
28 moneys or property under the direction of the court. However,
29 the trustee shall not be authorized to receive any gift,
30 except with the understanding that the principal sum is to be
31 a permanent fund, and only the net proceeds therefrom shall be
32 used in carrying out the purpose of the trust created, and all
33 such funds shall be exempt from taxation.

34 2. REQUISITES OF PETITION. The petition shall state the
35 amount proposed to be placed in such trust fund, the manner of

1 investment thereof, and the provisions made for the
2 disposition of any surplus income not required for the care
3 and upkeep of the property described in such petition.

4 3. APPROVAL OF COURT -- SURPLUS FUND. Such provisions
5 shall be subject to the approval of the court and when so
6 approved the trust fund and the trustee thereof shall, at all
7 times, be subject to the orders and control of the court and
8 such surplus arising from the trust fund shall not be used
9 except for charitable, eleemosynary, or public purposes under
10 the direction of the court.

11 4. RECEIPT -- CEMETERY RECORD. Every such trustee shall
12 execute and deliver to the donor a receipt showing the amount
13 of money or other property received, and the use to be made of
14 the net proceeds from the same, duly attested by the clerk of
15 the court granting letters of trusteeship, and a copy thereof,
16 signed by the trustee and so attested, shall be filed with and
17 recorded by the clerk in a book to be known as the cemetery
18 record, in which shall be recorded all reports and other
19 papers, including orders made by the court relative to
20 cemetery matters.

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

27 6. BOND -- APPROVAL -- OATH. Every such trustee before
28 entering upon the discharge of the trustee's duties or at any
29 time thereafter when required by the court shall give a bond
30 in an amount as may be required by the court, approved by the
31 clerk, and conditioned for the faithful discharge of the
32 trustee's duties, and take and subscribe an oath the same in
33 substance as the condition of the bond, which bond and oath
34 must be filed with the clerk.

35 7. CLERK -- DUTY OF. At the time of filing each bond and

1 oath the clerk shall at once advise the court as to the amount
2 of the principal fund in the hands of such trustee, the amount
3 of the bond filed, and whether it is good and sufficient for
4 the amount given.

5 8. COMPENSATION -- COSTS. Such trustee shall serve
6 without compensation, but may, out of the income received, pay
7 all proper items of expense incurred in the performance of the
8 trustee's duties, including cost of the bond, if any.

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

15 10. REMOVAL -- VACANCY FILLED. Any such trustee may be
16 removed by the court at any time for cause, and in the event
17 of removal or death, the court shall appoint a new trustee and
18 require the new trustee's predecessor or the predecessor's
19 personal representative to make a full accounting.

20 Sec. 51. NEW SECTION. 523I.603 OWNERS OF INTERMENT
21 RIGHTS.

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

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

32 Sec. 52. NEW SECTION. 523I.604 LIEN AGAINST CEMETERY
33 PROPERTY.

34 1. A cemetery, by contract, may incur indebtedness as
35 necessary to conduct its business and may secure the

1 indebtedness by mortgage, deed of trust, or other lien against
2 its property.

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

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

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

15 SUBCHAPTER 7

16 LAWN CRYPTS

17 Sec. 54. NEW SECTION. 523I.701 REQUIREMENTS FOR LAWN
18 CRYPTS.

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

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

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

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

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

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

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

1 Sec. 55. NEW SECTION. 523I.702 REQUEST TO INSTALL LAWN
2 CRYPTS IN FEWER THAN TEN UNITS.

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

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

10 a. The owner's name and address.

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

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

13 d. A description of the interment spaces.

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

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

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

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

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

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

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

33

SUBCHAPTER 8

34

PERPETUAL CARE CEMETERIES -- REQUIREMENTS

35

Sec. 56. NEW SECTION. 523I.801 APPLICABILITY AND

1 CONVERSION BY NONPERPETUAL CARE CEMETERIES.

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

7 2. A cemetery that operates a nonperpetual care cemetery
8 may elect to become a perpetual care cemetery if at all times
9 subsequent to the date of the election, the cemetery complies
10 with the other requirements of this subchapter except section
11 523I.805.

12 Sec. 57. NEW SECTION. 523I.802 ADVERTISING.

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

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

24 Sec. 58. NEW SECTION. 523I.803 PERPETUAL CARE REGISTRY.

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

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

32 Sec. 59. NEW SECTION. 523I.804 USE OF GIFT FOR SPECIAL
33 CARE.

34 A trustee may accept and hold money or property transferred
35 to the trustee in trust for the purpose of applying the

1 principal or income of the money or property transferred for a
2 purpose consistent with the purpose of a perpetual care
3 cemetery, including the following:

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

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

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

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

12 Sec. 60. NEW SECTION. 523I.805 INITIAL DEPOSIT.

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

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

31 Sec. 61. NEW SECTION. 523I.806 IRREVOCABLE TRUST.

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

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

13 Sec. 62. NEW SECTION. 523I.807 CARE FUND DEPOSITS.

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

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

35 3. Moneys shall be deposited in the care fund no later

1 than the fifteenth day after the close of the month when the
2 cemetery receives the final payment from a purchaser of
3 interment rights.

4 Sec. 63. NEW SECTION. 523I.808 AUDIT FEE.

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

10 Sec. 64. NEW SECTION. 523I.809 TRUST AGREEMENT
11 PROVISIONS.

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

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

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

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

25 Sec. 65. NEW SECTION. 523I.810 CARE FUNDS.

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

35 a. A financial institution may serve as a trustee if

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

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

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

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

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

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

33 (1) Be owned, under the control of, or affiliated with the
34 cemetery.

35 (2) Use any funds required to be held in trust under this

1 chapter to purchase an interest in a contract or agreement to
2 which the cemetery is a party.

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

5 2. All moneys required to be deposited in the care fund
6 shall be deposited in the name of the trustee, as trustee,
7 under the terms of a trust agreement and the trustee may
8 invest, reinvest, exchange, retain, sell, and otherwise manage
9 the care fund trust for the benefit and protection of the
10 cemetery.

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

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

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

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

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

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

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

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

34 7. A care fund shall pay the fund's operation costs and
35 any annual audit fees. The principal of a care fund is

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

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

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

27 Sec. 66. NEW SECTION. 523I.811 USE OF DISTRIBUTIONS FROM
28 CARE FUND.

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

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

1 reasonable intervals.

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

4 c. Maintaining machinery, tools, and equipment.

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

8 e. Paying overhead expenses incidental to such purposes.

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

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

14 Sec. 67. NEW SECTION. 523I.812 SUIT BY COMMISSIONER.

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

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

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

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

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

28 a. Failure to adequately mow grass.

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

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

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

35 This subsection is not intended to prevent the

1 establishment of a cemetery as a nature park or preserve.

2 Sec. 68. NEW SECTION. 523I.813 ANNUAL REPORT BY
3 PERPETUAL CARE CEMETERIES.

4 1. A perpetual care cemetery shall file a written report
5 at the end of each fiscal year of the cemetery that includes
6 all of the following:

7 a. The name and address of the cemetery.

8 b. The name and address of the corporation that owns the
9 cemetery, if any.

10 c. A description of any common business enterprise or
11 parent company that owns the cemetery, if any.

12 d. The name and address of any owner, officer, or other
13 official of the cemetery, including, when relevant, the chief
14 executive officer and the members of the board of directors.

15 e. The name and address of any trustee holding trust funds
16 for the cemetery, including the name and location of the
17 applicable trust account.

18 f. An affidavit that the cemetery is in compliance with
19 this chapter.

20 g. Copies of all sales agreement forms used by the
21 cemetery.

22 h. The amount of the principal of the cemetery's care
23 funds or maintenance funds, if any, at the end of the fiscal
24 year.

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

28 Sec. 69. NEW SECTION. 523I.814 UNIFIED ANNUAL REPORTS.

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

33 Sec. 70. Section 602.8102, subsection 81, Code 2005, is
34 amended to read as follows:

35 81. Carry out duties relating to cemeteries as provided in

1 ~~sections-566-4, 566-7, and 566-8~~ section 523I.602.

2 Sec. 71. Section 602.8104, subsection 2, paragraph h, Code
3 2005, is amended to read as follows:

4 h. A cemetery record as provided in section ~~566-4~~
5 523I.602.

6 Sec. 72. Section 636.23, subsection 14, Code 2005, is
7 amended to read as follows:

8 14. LIMITATION AS TO COURT-APPROVED INVESTMENTS. This
9 section does not prohibit investment of such funds in a
10 savings account or time certificate of deposit of a bank or
11 savings and loan association, located within the city or its
12 county of this state and when first approved by the court.
13 However, a city that is the trustee of a cemetery as provided
14 in section ~~566-14~~ 523I.508 may invest perpetual care funds in
15 a savings account or certificates of deposit at a bank or
16 savings and loan association, located in this state without
17 court approval.

18 Sec. 73. Section 359.41, Code 2005, is repealed.

19 Sec. 74. Chapters 523I, 566, and 566A, Code 2005, are
20 repealed.

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TOMENGA, CH
HOFFMAN
T. TAYLOR

HSB 212

COMMERCE, REGULATION & LABOR

SENATE/HOUSE FILE _____

BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE
DIVISION BILL)

Recorded By
SF  836

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, providing
2 administration and enforcement procedures, establishing
3 requirements for interment rights agreements and reporting,
4 establishing and appropriating fees, and providing penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

3 2. Each county board of supervisors may adopt an ordinance
4 assuming jurisdiction and control of pioneer cemeteries in the
5 county. The board shall exercise the powers and duties of
6 township trustees relating to the maintenance and repair of
7 cemeteries in the county as provided in sections 359.28
8 through ~~359.41~~ 359.40 except that the board shall not certify
9 a tax levy pursuant to section 359.30 or 359.33 and except
10 that the maintenance and repair of all cemeteries under the
11 jurisdiction of the county including pioneer cemeteries shall
12 be paid from the county general fund. The maintenance and
13 improvement program for a pioneer cemetery may include
14 restoration and management of native prairie grasses and
15 wildflowers.

16 3. In lieu of management of the cemeteries, the board of
17 supervisors may create, by ordinance, a cemetery commission to
18 assume jurisdiction and management of the pioneer cemeteries
19 in the county. The ordinance shall delineate the number of
20 commissioners, the appointing authority, the term of office,
21 officers, employees, organizational matters, rules of
22 procedure, compensation and expenses, and other matters deemed
23 pertinent by the board. The board may delegate any power and
24 duties relating to cemeteries which may otherwise be exercised
25 by township trustees pursuant to sections 359.28 through
26 ~~359.41~~ 359.40 to the cemetery commission except the commission
27 shall not certify a tax levy pursuant to section 359.30 or
28 359.33 and except that the expenses of the cemetery commission
29 shall be paid from the county general fund.

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

32 34. Serve as a trustee for funds of a cemetery association
33 as provided in ~~sections-566-12-and-566-13~~ section 523I.505.

34 Sec. 3. Section 523A.203, subsection 6, paragraph b, Code
35 2005, is amended to read as follows:

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

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

6 523A.812 INSURANCE DIVISION REGULATORY FUND.

7 The insurance division may authorize the creation of a
8 special revenue fund in the state treasury, to be known as the
9 insurance division regulatory fund. The commissioner shall
10 allocate annually from the fees paid pursuant to section
11 523A.204, two dollars for each purchase agreement reported on
12 an establishment permit holder's annual report for deposit to
13 the regulatory fund. The remainder of the fees collected
14 pursuant to section 523A.204 shall be deposited into the
15 general fund of the state. The commissioner shall also
16 allocate annually the audit fees paid pursuant to section
17 523A.814 for deposit to the regulatory fund. The moneys in
18 the regulatory fund shall be retained in the fund. The moneys
19 are appropriated and, subject to authorization by the
20 commissioner, may be used to pay auditors, audit expenses,
21 investigative expenses, the expenses of mediation ordered by
22 the commissioner, consumer education expenses, the expenses of
23 a toll-free telephone line to receive consumer complaints, and
24 the expenses of receiverships established under section
25 523A.811. An annual allocation to the regulatory fund shall
26 not be imposed if the current balance of the fund exceeds two
27 hundred thousand dollars.

28 Sec. 5. NEW SECTION. 523A.814 AUDIT FEE.

29 In addition to the filing fee paid pursuant to section
30 523A.204, subsection 5, an establishment filing an annual
31 report shall pay an audit fee in the amount of five dollars
32 for each purchase agreement subject to a filing fee that is
33 sold between July 1, 2005, and December 31, 2007.

34 SUBCHAPTER 1

35 SHORT TITLE, DEFINITIONS, AND APPLICABILITY

1 Sec. 6. NEW SECTION. 523I.101 SHORT TITLE.

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

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

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

6 1. "Authorized to do business within this state" means a
7 person licensed, registered, or subject to regulation by an
8 agency of the state of Iowa or who has filed a consent to
9 service of process with the commissioner for purposes of this
10 chapter.

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

13 3. "Capital gains" means appreciation in the value of
14 trust assets for which a market value may be determined with
15 reasonable certainty after deduction of investment losses,
16 taxes, expenses incurred in the sale of trust assets, any
17 costs of the operation of the trust, and any annual audit
18 fees.

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

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

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

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

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

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

34 a. A private burial site where use is restricted to
35 members of a family, if the interment rights are conveyed

1 without a monetary payment, fee, charge, or other valuable
2 form of compensation or consideration.

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

7 c. A pioneer cemetery.

8 7. "Columbarium" means a structure, room, or space in a
9 mausoleum or other building containing niches or recesses for
10 disposition of cremated remains.

11 8. "Commissioner" means the commissioner of insurance or
12 the deputy administrator authorized in section 523A.801 to the
13 extent the commissioner delegates functions to the deputy
14 administrator.

15 9. "Common business enterprise" means a group of two or
16 more business entities that share common ownership in excess
17 of fifty percent.

18 10. "Disinterment" means to remove human remains from
19 their place of final disposition.

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

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

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

34 14. "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 15. "Gross selling price" means the aggregate amount a
2 purchaser is obligated to pay for interment rights, exclusive
3 of finance charges.

4 16. "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 17. "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 18. "Insolvent" means the inability to pay debts as they
23 become due in the usual course of business.

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

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

30 21. "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 22. "Lawn crypt" means a preplaced enclosed chamber, which
34 is usually constructed of reinforced concrete and poured in
35 place, or a precast unit installed in quantity, either side-

1 by-side or at multiple depths, and covered by earth or sod.

2 23. "Lot" means an area in a cemetery containing more than
3 one interment space which is uniquely identified by an
4 alphabetical, numeric, or alphanumerical identification
5 system.

6 24. "Maintenance fund" means funds set aside for the
7 maintenance of a nonperpetual care cemetery, including all of
8 the following:

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

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

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

14 25. "Mausoleum" means an aboveground structure designed
15 for the entombment of human remains.

16 26. "Mausoleum crypt" means a chamber in a mausoleum of
17 sufficient size to contain casketed human remains.

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

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

30 29. "Memorial dealer" means any person offering or selling
31 memorials retail to the public.

32 30. "Memorialization" means any permanent system designed
33 to mark or record the name and other data pertaining to a
34 decedent.

35 31. "Merchandise" means any personal property offered or

1 sold for use in connection with the funeral, final
2 disposition, memorialization, or interment of human remains,
3 but which is exclusive of interment rights.

4 32. "Neglected cemetery" means a cemetery where there has
5 been a failure to cut grass or weeds or care for graves,
6 memorials or memorialization, walls, fences, driveways, and
7 buildings, or for which proper records of interments have not
8 been maintained.

9 33. "Niche" means a recess or space in a columbarium or
10 mausoleum used for placement of cremated human remains.

11 34. "Opening and closing services" means one or more
12 services necessarily or customarily provided in connection
13 with the interment or entombment of human remains or a
14 combination thereof.

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

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

27 37. "Perpetual care cemetery" includes all of the
28 following:

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

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

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

35 d. Any cemetery that represents in any other manner that

1 the cemetery provides perpetual, permanent, or guaranteed
2 care.

3 38. "Person" means an individual, firm, corporation,
4 partnership, joint venture, limited liability company,
5 association, trustee, government or governmental subdivision,
6 agency, or other entity, or any combination thereof.

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

9 40. "Purchaser" means a person who purchases memorials,
10 memorialization, opening and closing services, scattering
11 services, interment rights, or a combination thereof. A
12 purchaser need not be a beneficiary of the interment rights
13 agreement.

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

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

31 43. "Relocation" means the act of taking remains from the
32 place of interment or the place where the remains are being
33 held to another designated place.

34 44. "Remains" means the body of a deceased human or a body
35 part, or limb that has been removed from a living human,

1 including a body, body part, or limb in any stage of
2 decomposition, or cremated remains.

3 45. "Scattering services provider" means a person in the
4 business of scattering human cremated remains.

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

13 47. "Special care" means any care provided or to be
14 provided that supplements or exceeds the requirements of this
15 chapter in accordance with the specific directions of any
16 donor of funds for such purposes.

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

20 Sec. 8. NEW SECTION. 523I.103 APPLICABILITY OF CHAPTER.

21 1. This chapter applies to all of the following:

22 a. All cemeteries, except religious cemeteries that
23 commenced business prior to July 1, 2005.

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

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

30 2. This chapter applies when a purchase agreement is
31 executed within this state or an advertisement, promotion, or
32 offer to furnish memorials, memorialization, opening and
33 closing services, scattering services, interment rights, or a
34 combination thereof is made or accepted within this state. An
35 offer to furnish memorials, memorialization, opening and

1 closing services, scattering services, interment rights, or a
2 combination thereof is made within this state, whether or not
3 either party is then present in this state, when the offer
4 originates from this state or is directed by the offeror to
5 this state and received by the offeree in this state through
6 the mail, over the telephone, by the internet, or through any
7 other means of commerce.

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

15 SUBCHAPTER 2

16 ADMINISTRATION AND ENFORCEMENT

17 Sec. 9. NEW SECTION. 523I.201 ADMINISTRATION.

18 1. This chapter shall be administered by the commissioner.
19 The deputy administrator appointed pursuant to section
20 523A.801 shall be the principal operations officer responsible
21 to the commissioner for the routine administration of this
22 chapter and management of the administrative staff. In the
23 absence of the commissioner, whether because of vacancy in the
24 office due to absence, physical disability, or other cause,
25 the deputy administrator shall, for the time being, have and
26 exercise the authority conferred upon the commissioner. The
27 commissioner may by order from time to time delegate to the
28 deputy administrator any or all of the functions assigned to
29 the commissioner in this chapter. The deputy administrator
30 shall employ officers, attorneys, accountants, and other
31 employees as needed for administering this chapter.

32 2. It is unlawful for the commissioner or any
33 administrative staff to use for personal benefit any
34 information which is filed with or obtained by the
35 commissioner and which is not made public. This chapter does

1 not authorize the commissioner or any staff member to disclose
2 any such information except among themselves or to other
3 cemetery and funeral administrators, regulatory authorities,
4 or governmental agencies, or when necessary and appropriate in
5 a proceeding or investigation under this chapter or as
6 required by chapter 22. This chapter neither creates nor
7 derogates any privileges that exist at common law or otherwise
8 when documentary or other evidence is sought under a subpoena
9 directed to the commissioner or any administrative staff.

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

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

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

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

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

35 d. Investigate a cemetery and examine the books, accounts,

1 papers, correspondence, memoranda, purchase agreements, files,
2 or other documents or records of the cemetery.

3 e. Administer oaths and affirmations, subpoena witnesses,
4 compel their attendance, take evidence, and require the
5 production of any books, accounts, papers, correspondence,
6 memoranda, purchase agreements, files, or other documents or
7 records which the commissioner deems relevant or material to
8 any investigation or proceeding under this chapter and
9 implement rules, all of which may be enforced under chapter
10 17A.

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

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

25 Sec. 11. NEW SECTION. 523I.203 CEASE AND DESIST ORDERS
26 -- INJUNCTIONS.

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

32 1. Issue a summary order directed to the person that
33 requires the person to cease and desist from engaging in such
34 an act or practice. A person may request a hearing within
35 thirty days of issuance of the summary order. If a hearing is

1 not timely requested, the summary order shall become final by
2 operation of law. The order shall remain effective from the
3 date of issuance until the date the order becomes final by
4 operation of law or is overturned by a presiding officer
5 following a request for hearing. Section 17A.18A is
6 inapplicable to summary cease and desist orders issued under
7 this section.

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

24 Sec. 12. NEW SECTION. 523I.204 COURT ACTION FOR FAILURE
25 TO COOPERATE.

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

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

1 combination thereof.

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

5 c. Such other relief as may be required.

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

9 Sec. 13. NEW SECTION. 523I.205 PROSECUTION FOR
10 VIOLATIONS OF LAW -- CIVIL PENALTIES.

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

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

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

1 state.

2 Sec. 14. NEW SECTION. 523I.206 COOPERATION WITH OTHER
3 AGENCIES.

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

9 2. Cooperation with other agencies may include but is not
10 limited to:

11 a. Making a joint examination or investigation.

12 b. Holding a joint administrative hearing.

13 c. Filing and prosecuting a joint civil or administrative
14 proceeding.

15 d. Sharing and exchanging personnel.

16 e. Sharing and exchanging relevant information and
17 documents.

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

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

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

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

34 3. A provision of this chapter imposing any liability does
35 not apply to an act done or omitted in good faith in

1 conformity with any rule, form, or order of the commissioner.

2 Sec. 16. NEW SECTION. 523I.208 DATE OF FILING --
3 INTERPRETIVE OPINIONS.

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

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

8 Sec. 17. NEW SECTION. 523I.209 MISLEADING FILINGS.

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

17 Sec. 18. NEW SECTION. 523I.210 MISREPRESENTATIONS OF
18 GOVERNMENT APPROVAL.

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

24 Sec. 19. NEW SECTION. 523I.211 FRAUDULENT PRACTICES.

25 A person who commits any of the following acts commits a
26 fraudulent practice which is punishable as provided in chapter
27 714:

28 1. Knowingly fails to comply with any requirement of this
29 chapter.

30 2. Knowingly makes, causes to be made, or subscribes to a
31 false statement or representation in a report or other
32 document required under this chapter, or implementing rules or
33 orders, or renders such a report or document misleading
34 through the deliberate omission of information properly
35 belonging in the report or document.

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

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

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

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

15 Sec. 20. NEW SECTION. 523I.212 RECEIVERSHIPS.

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

20 a. Is insolvent.

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

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

25 2. The commissioner or attorney general may apply to the
26 district court in any county of the state for the
27 establishment of a receivership. Upon proof that any of the
28 conditions described in this section have occurred, the court
29 may grant a receivership.

30 Sec. 21. NEW SECTION. 523I.213 INSURANCE DIVISION'S
31 ENFORCEMENT FUND.

32 A special revenue fund in the state treasury, to be known
33 as the insurance division's enforcement fund, is created under
34 the authority of the commissioner. The commissioner shall
35 allocate annually from the audit fees paid pursuant to section

1 523I.808, an amount not exceeding fifty thousand dollars, for
2 deposit to the insurance division's enforcement fund. The
3 moneys in the enforcement fund shall be retained in the fund.
4 The moneys are appropriated and, subject to authorization by
5 the commissioner, shall be used to pay auditors, audit
6 expenses, investigative expenses, the expenses of consumer
7 education, compliance, and education programs for filers and
8 other regulated persons, and educational or compliance program
9 materials, the expenses of a toll-free telephone line for
10 consumer complaints, and the expenses of receiverships of
11 perpetual care cemeteries established under section 523I.212.

12 Sec. 22. NEW SECTION. 523I.214 VIOLATIONS OF LAW --
13 REFERRALS TO THE DEPARTMENT OF PUBLIC HEALTH.

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

21 SUBCHAPTER 3
22 CEMETERY MANAGEMENT

23 Sec. 23. NEW SECTION. 523I.301 DISCLOSURE REQUIREMENTS
24 -- PRICES AND FEES.

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

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

35 3. A person owning interment rights may sell those rights

1 to third parties. The cemetery shall fully disclose, in the
2 cemetery's rules, any requirements necessary to transfer title
3 of interment rights to a third party.

4 Sec. 24. NEW SECTION. 523I.302 INSTALLATION OF OUTER
5 BURIAL CONTAINERS.

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

12 Sec. 25. NEW SECTION. 523I.303 ACCESS BY FUNERAL
13 DIRECTORS.

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

17 Sec. 26. NEW SECTION. 523I.304 RULEMAKING AND
18 ENFORCEMENT.

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

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

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

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

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

35 d. Prohibit or regulate the placement of nonhuman remains

1 within the cemetery.

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

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

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

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

10 3. A cemetery shall not adopt or enforce a rule that
11 prohibits interment because of the race, color, or national
12 origin of a decedent. A provision of a contract or a
13 certificate of ownership or other instrument conveying
14 interment rights that prohibits interment in a cemetery
15 because of the race, color, or national origin of a decedent
16 is void.

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

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

1 an interment space or a damaged or defaced memorial or
2 memorialization.

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

7 Sec. 27. NEW SECTION. 523I.305 MEMORIALS AND
8 MEMORIALIZATION.

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

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

22 3. SPECIFICATIONS. Upon request, a cemetery shall provide
23 reasonable written specifications and instructions governing
24 installation of memorials, which shall apply to all
25 installations whether performed by the cemetery or another
26 person. The written specifications shall include provisions
27 governing hours of installation or any other relevant
28 administrative requirements of the cemetery. A copy of these
29 specifications and instructions shall be provided upon
30 request, without charge, to the owner of the interment space,
31 next of kin, or a personal representative or agent of the
32 owner, including the person installing the memorial. The
33 person installing the memorial shall comply with the
34 cemetery's written installation specifications and
35 instructions. A cemetery shall not adopt or enforce any rule

1 prohibiting the installation of a memorial by a memorial
2 dealer or independent third party, unless the rule is adopted
3 and enforced uniformly for all memorials installed in the
4 cemetery.

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

16 5. PREPARATION AND INSTALLATION.

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

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

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

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

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

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

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

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

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

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

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

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

34 6. INSPECTION. A cemetery may inspect the installation
35 site of a memorial at any time. If the cemetery determines

1 that cemetery rules are not being followed during the
2 installation, the cemetery may order the installation to stop
3 until the infraction is corrected. The cemetery shall provide
4 written notice to the installer as soon as possible if the
5 cemetery believes that any of the following have occurred:

- 6 a. The memorial has not been installed correctly.
- 7 b. The person installing the memorial has damaged property
8 at the cemetery.
- 9 c. Other cemetery requirements for installation have not
10 been met, such as removal of debris or equipment.

11 7. LOCATION AND SERVICE CHARGE. A cemetery may charge a
12 reasonable service charge for allowing the installation of a
13 memorial purchased or obtained from and installed by a person
14 other than the cemetery or its agents. This service charge
15 shall be based on the cemetery's actual labor costs, including
16 fringe benefits, of those employees whose normal duty is to
17 inspect the installation of memorials, in accordance with
18 generally accepted accounting practices. General
19 administrative and overhead costs and any other functions not
20 related to actual inspection time shall be excluded from the
21 service charge.

22 8. FAULTY INSTALLATION. If a memorial sinks, tilts, or
23 becomes misaligned within twelve months of its installation
24 and the cemetery believes the cause is faulty installation,
25 the cemetery shall notify the person who installed the
26 memorial in writing and the person who installed the memorial
27 shall be responsible to correct the damage, unless the damage
28 is caused by inadequate written specifications and
29 instructions from the cemetery or acts of the cemetery and its
30 agents or employees, including but not limited to running a
31 backhoe over the memorial, carrying a vault or other heavy
32 equipment over the memorial, or opening or closing an
33 interment space adjacent to the memorial.

34 9. PERPETUAL CARE. A cemetery may require contributions
35 from the purchaser of a memorial for perpetual care, if a

1 perpetual care fund deposit is uniformly charged on every
2 memorial installed in the cemetery.

3 Sec. 28. NEW SECTION. 523I.306 COMMISSION OR BONUS
4 UNLAWFUL.

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

18 Sec. 29. NEW SECTION. 523I.307 DISCRIMINATION
19 PROHIBITED.

20 It shall be unlawful for any organization subject to the
21 provisions of this chapter to deny the privilege of interment
22 of the remains of any deceased person in any cemetery solely
23 because of the race, color, or national origin of such
24 deceased person. Any contract, agreement, deed, covenant,
25 restriction, or charter provision at any time entered into, or
26 bylaw, rule, or regulation adopted or put in force, either
27 subsequent or prior to July 4, 1953, authorizing, permitting,
28 or requiring any organization subject to the provisions of
29 this chapter to deny such privilege of interment because of
30 race, color, or national origin of such deceased person is
31 hereby declared to be null and void and in conflict with the
32 public policy of this state. An organization subject to the
33 provisions of this chapter or any director, officer, agent,
34 employee, or trustee thereof, shall not be liable for damages
35 or other relief, or be subjected to any action in any court of

1 competent jurisdiction for refusing to commit any act unlawful
2 under this chapter.

3 Sec. 30. NEW SECTION. 523I.308 SPECULATION PROHIBITED.

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

9 Sec. 31. NEW SECTION. 523I.309 INTERMENT, RELOCATION, OR
10 DISINTERMENT OF REMAINS.

11 1. Unless a decedent has left directions in writing for
12 the disposition of the decedent's remains as provided in
13 subsection 2, the following persons, in the priority listed,
14 shall have the right to control the interment, relocation, or
15 disinterment of the decedent's remains within or from a
16 cemetery:

17 a. The person designated in and adequately identified by a
18 written instrument signed by the decedent.

19 b. The surviving spouse of the decedent, if not legally
20 separated from the decedent.

21 c. A majority of the surviving adult children of the
22 decedent whose whereabouts are reasonably ascertainable.

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

25 e. A majority of the surviving adult siblings of the
26 decedent whose whereabouts are reasonably ascertainable.

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

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

32 DIRECTIONS FOR DISPOSITION OF MY REMAINS

33 Name of person whose remains are to be disposed of as
34 directed (decedent):

35 Address:

S.F. _____ H.F. _____

1 Telephone Number:

2 Acceptance of Appointment: (signature of agent)

3 Date of Signature:

4 SUCCESSORS

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

10 First Successor

11 Name:

12 Address:

13 Telephone Number:

14 Acceptance of Appointment: (signature of first successor)

15 Date of Signature:

16 Second Successor

17 Name:

18 Address:

19 Telephone Number:

20 Acceptance of Appointment: (signature of second successor)

21 Date of Signature:

22 DURATION

23 This appointment becomes effective upon my death.

24 PRIOR APPOINTMENTS REVOKED

25 I hereby revoke any prior appointment of any person to
26 control the disposition of my remains.

27 RELIANCE

28 I hereby agree that any cemetery that receives a copy of
29 this document may act under it. Any modification or
30 revocation of this document is not effective as to any such
31 party until that party receives actual notice of the
32 modification or revocation. No such party shall be liable
33 because of reliance on a copy of this document.

34 ASSUMPTION

35 THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS

1 APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND
2 BY THE PROVISIONS OF, SECTION 523I.309 OF THE CODE OF IOWA.

3 Signed this _____ day of _____, _____.

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

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

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

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

8 7. A cemetery shall not be liable for carrying out the
9 written directions of a decedent or the directions of any
10 person entitled to control the interment, relocation, or
11 disinterment of the decedent's remains.

12 8. If the agreement of a majority of the persons
13 designated in subsection 1, paragraph "c", "d", or "e", is
14 required and cannot be obtained concerning their right to
15 control the interment, relocation, or disinterment of a
16 decedent's remains, the dispute may be resolved by a court of
17 competent jurisdiction. A cemetery shall not be liable for
18 refusing to accept the decedent's remains, relocate or
19 disinter, inter or otherwise dispose of the decedent's
20 remains, until the cemetery receives a court order or other
21 suitable confirmation that the dispute has been resolved or
22 settled.

23 9. a. If good cause exists to relocate or disinter
24 remains interred in a cemetery, the remains may be removed
25 from the cemetery pursuant to a disinterment permit as
26 required under section 144.34, with the written consent of the
27 cemetery, the current interment rights owner and the person
28 entitled by this section to control the interment, relocation,
29 or disinterment of the decedent's remains.

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

1 whose consent is required for relocation of the remains under
2 subsection 1, and any other person that the court requires to
3 be served.

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

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

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

19 a. The date the remains are removed.

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

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

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

25 11. A cemetery may disinter and relocate remains interred
26 in the cemetery for the purpose of correcting an error made by
27 the cemetery after obtaining a disinterment permit as required
28 by section 144.34. The cemetery shall provide written notice
29 describing the error to the commissioner and to the person who
30 has the right to control the interment, relocation, or
31 disinterment of the remains erroneously interred, by
32 restricted certified mail at the person's last known address
33 and sixty days prior to the disinterment. The notice shall
34 include the location where the disinterment will occur and the
35 location of the new interment space. A cemetery is not

1 civilly or criminally liable for an erroneously made interment
2 that is corrected in compliance with this subsection unless
3 the error was the result of gross negligence or intentional
4 misconduct.

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

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

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

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

16 3. A conveyance of exclusive rights of interment shall be
17 filed and recorded in the cemetery office. Any transfer of
18 the ownership of interment rights shall be filed and recorded
19 in the cemetery office. The cemetery may charge a reasonable
20 recording fee to record the transfer of interment rights.

21 Sec. 33. NEW SECTION. 523I.311 RECORDS OF INTERMENT
22 RIGHTS AND INTERMENT.

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

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

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

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

35 2. For interments made on or after July 1, 2005, a

1 cemetery shall keep a record of each interment in a cemetery.

2 The records shall include all of the following:

3 a. The date the remains are interred.

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

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

10 Sec. 34. NEW SECTION. 523I.312 DISCLOSURE REQUIREMENTS

11 -- INTERMENT AGREEMENTS.

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

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

22 a. Identify the seller and purchaser.

23 b. Identify the salesperson.

24 c. Specify the interment rights to be provided and the
25 cost of each item.

26 d. State clearly the conditions on which substitution will
27 be allowed.

28 e. Set forth the total purchase price and the terms under
29 which it is to be paid.

30 f. State clearly whether the agreement is revocable or
31 irrevocable, and if revocable, which parties have the
32 authority to revoke the agreement.

33 g. State the amount or percentage of money to be placed in
34 the cemetery's care or maintenance fund.

35 h. If the cemetery has a care fund, set forth an

1 explanation that the care fund is an irrevocable trust, that
2 deposits cannot be withdrawn even in the event of
3 cancellation, and that the trust's income shall be used by the
4 cemetery for its care.

5 i. Set forth an explanation of any fees or expenses that
6 may be charged.

7 j. Set forth an explanation of whether amounts for
8 perpetual care will be deposited in trust upon payment in full
9 or on an allocable basis as payments are made.

10 k. Set forth an explanation of whether initial payments on
11 agreements for multiple items of funeral and cemetery
12 merchandise or services, or both, will be allocated first to
13 the purchase of an interment space. If such an allocation is
14 to be made, the agreement shall provide for the immediate
15 transfer of such interment rights upon payment in full and
16 prominently state that any applicable trust deposits under
17 chapter 523A will not be made until the cemetery has received
18 payment in full for the interment rights. The transfer of an
19 undeveloped interment space may be deferred until the
20 interment space is ready for interment.

21 l. If the transfer of an undeveloped interment space will
22 be deferred until the interment space is ready for interment
23 as permitted in paragraph "k", the agreement shall provide for
24 some form of written acknowledgement upon payment in full,
25 specify a reasonable time period for development of the
26 interment space, describe what happens in the event of a death
27 prior to development of the interment space, and provide for
28 the immediate transfer of the interment rights when
29 development of the interment space is complete.

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

32 n. State the name and address of the commissioner.

33 Sec. 35. NEW SECTION. 523I.313 NEW CEMETERIES AND
34 GARDENS AND CEMETERY REGISTRY.

35 1. A person that dedicates property for a new cemetery on

1 or after July 1, 2005, and a cemetery that dedicates an
2 additional garden on or after July 1, 2005, shall:

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

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

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

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

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

29 Sec. 36. NEW SECTION. 523I.314 NEW CONSTRUCTION.

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

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

1 information:

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

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

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

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

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

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

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

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

26 Sec. 37. NEW SECTION. 523I.315 UNPAID CARE ASSESSMENTS
27 AND UNOCCUPIED INTERMENT SPACES.

28 1. FORECLOSURE -- UNPAID ASSESSMENTS. Unpaid care
29 assessments for an unoccupied interment space not under
30 perpetual care shall create a lien by the cemetery against the
31 applicable interment space. The cemetery may, following
32 notice, foreclose on the interment space if the amount of the
33 lien exceeds the amount paid for the interment space. If the
34 lien is not paid within one year from the date that notice of
35 foreclosure is served on the owner of record or the owner of

1 record's heirs, the ownership in or right to the unoccupied
2 interment space shall revert to the cemetery that owns the
3 cemetery in which the unoccupied interment space is located.

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

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

27 Sec. 38. NEW SECTION. 5231.316 PROTECTION OF CEMETERIES
28 AND BURIAL SITES.

29 1. EXISTENCE OF CEMETERY OR BURIAL SITE -- NOTIFICATION.
30 If a governmental subdivision is notified of the existence of
31 a cemetery, or a marked burial site that is not located in a
32 dedicated cemetery, within its jurisdiction and the cemetery
33 or burial site is not otherwise provided for under this
34 chapter, the governmental subdivision shall, as soon as is
35 practicable, notify the owner of the land upon which the

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

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

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

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

34 5. BURIAL SITES LOCATED ON PRIVATE PROPERTY.

35 a. If a person notifies a governmental subdivision that a

1 burial site of the person's relative is located on property
2 owned by another person within the jurisdiction of the
3 governmental subdivision, the governmental subdivision shall
4 notify the property owner of the location of the burial site
5 and that the property owner is required to permit the person
6 reasonable ingress and egress for the purposes of visiting the
7 burial site of the person's relative.

8 b. Pursuant to section 558.69, each declaration of value
9 submitted to a county recorder pursuant to chapter 428A shall
10 be accompanied by a statement concerning whether or not any
11 known private burial sites are located on the property.

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

23 SUBCHAPTER 4

24 COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES

25 Sec. 39. NEW SECTION. 523I.401 NEGLECTED CEMETERIES.

26 The commissioner shall create a form that interested
27 persons may use to report neglected cemeteries to the
28 commissioner. The commissioner shall catalog and review the
29 neglected cemetery reports received on or before December 31,
30 2007, conduct site visits as warranted to determine the nature
31 or extent of any neglect, and publish a report of findings on
32 or before December 31, 2008.

33 Sec. 40. NEW SECTION. 523I.402 REMOVAL OF REMAINS.

34 1. Upon a showing of good cause, a county cemetery
35 commission may file suit in the district court in that county

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

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

33

SUBCHAPTER 5

34

GOVERNMENTAL SUBDIVISIONS

35

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

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

6 Sec. 42. NEW SECTION. 523I.502 TRUST FOR CEMETERY.

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

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

18 Sec. 43. NEW SECTION. 523I.503 AUTHORITY TO RECEIVE
19 GIFTS AND DEPOSITS FOR CARE -- CERTIFICATES.

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

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

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

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

35 a. The depositor's name.

1 b. The amount and purpose of the deposit.

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

4 d. Other information required by the governmental
5 subdivision.

6 5. An individual, association, foundation, or corporation
7 that is interested in the maintenance of a neglected cemetery
8 in a governmental subdivision's possession and control may
9 donate funds to the cemetery's perpetual trust fund to
10 beautify and maintain the entire cemetery or burial grounds
11 generally.

12 Sec. 44. NEW SECTION. 523I.504 APPOINTMENT OF SUCCESSOR
13 TRUSTEE.

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

21 Sec. 45. NEW SECTION. 523I.505 COUNTY AUDITOR AS
22 TRUSTEE.

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

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

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

33 4. The county auditor shall make a full report of the
34 trustee's actions and trust funds annually in January. The
35 net proceeds for care funds received by the county auditor as

1 trustee shall be apportioned and credited to each of any
2 separate care funds assigned to the auditor.

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

6 Sec. 46. NEW SECTION. 523I.506 COMMINGLING OF CARE FUNDS
7 BY GOVERNMENTAL SUBDIVISIONS.

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

13 Sec. 47. NEW SECTION. 523I.507 INVESTMENT OF CARE FUNDS
14 BY GOVERNMENTAL SUBDIVISIONS.

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

27 Sec. 48. NEW SECTION. 523I.508 MANAGEMENT BY
28 GOVERNMENTAL SUBDIVISIONS.

29 1. POLITICAL SUBDIVISIONS AS TRUSTEES. Counties, cities,
30 irrespective of their form of government, boards of trustees
31 of cities to whom the management of municipal cemeteries has
32 been transferred by ordinance, and civil townships wholly
33 outside of any city, are trustees in perpetuity, and are
34 required to accept, receive, and expend all moneys and
35 property donated or left to them by bequest for perpetual

1 care, and that portion of interment space sales or permanent
2 charges made against interment spaces which has been set aside
3 in a perpetual care fund for which there is no other acting
4 trustee, shall be used in caring for the property of the donor
5 or lot owner who by purchase or otherwise has provided for the
6 perpetual care of an interment space in any cemetery, or in
7 accordance with the terms of the donation, bequest, or
8 agreement for sale and purchase of an interment space, and the
9 money or property thus received shall be used for no other
10 purpose.

11 2. AUTHORITY TO INVEST FUNDS -- CURRENT CARE CHARGE
12 PAYMENTS. The board of supervisors, mayor and council, or
13 other elected governmental body, as the case may be, may
14 receive and invest all moneys and property, donated or
15 bequeathed, and that portion of cemetery lot sales and
16 permanent charges made against cemetery lots which have been
17 set aside in a perpetual care fund, and in so investing, shall
18 use the judgment and care under the circumstances then
19 prevailing that persons of prudence, discretion, and
20 intelligence exercise in the management of their own affairs
21 not in regard to speculation but in regard to the permanent
22 disposition of their funds, considering the probable income as
23 well as the probable safety of their capital. The trustee of
24 the trust funds has a fiduciary duty to make reasonable
25 investment decisions and to properly oversee and manage the
26 funds entrusted to the trust fund. The income from the
27 investment shall be used in caring for the property of the
28 donor in any cemetery, or as provided in the terms of the gift
29 or donations or agreement for sale and purchase of a cemetery
30 lot.

31 All current care charge payments received shall be
32 allocated to the perpetual care fund or to the fund paying the
33 costs of cemetery operations. Care charge payments received
34 one year or more after the date they were incurred shall be
35 used to fund the cost of operating the cemetery. Care charge

1 payments received one year or more in advance of their due
2 date shall be deposited in the perpetual care fund. Interest
3 from the perpetual care fund shall be used for the maintenance
4 of both occupied and unoccupied lots or spaces. Any remaining
5 interest may be used for costs of access roads and paths,
6 fencing, and general maintenance of the cemetery. Lots under
7 perpetual care shall be maintained in accordance with the
8 cemetery covenants of sale.

9 3. RESOLUTION OF ACCEPTANCE -- INTEREST. Before any part
10 of the principal may be invested or used, the county, city,
11 board of trustees of a city to whom the management of a
12 municipal cemetery has been transferred by ordinance, or civil
13 township shall, by resolution, accept the moneys described in
14 subsection 1 and, by resolution, shall provide for the payment
15 of interest annually to the appropriate fund, or to the
16 cemetery, or the person in charge of the cemetery, to be used
17 in caring for or maintaining the individual property of the
18 donor in the cemetery, or interment spaces which have been
19 sold if provision was made for perpetual care, all in
20 accordance with the terms of the donation or bequest, or the
21 terms of the sale or purchase of an interment space.

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

28 4. DELEGATES TO CONVENTIONS. A township having one or
29 more cemeteries under its control may designate, not to exceed
30 two, officials from each cemetery as delegates to attend
31 meetings of cemetery officials, and certain expenses,
32 including association dues, not to exceed twenty-five dollars,
33 of the delegates may be paid out of the cemetery fund of the
34 township.

35 5. SUBSCRIBING TO PUBLICATIONS. The cemetery officials of

1 every township having a cemetery under its control may
2 subscribe to one or more publications devoted exclusively to
3 cemetery management, and the subscriptions may be paid out of
4 the cemetery fund of the township.

5 SUBCHAPTER 6

6 GENERAL PROVISIONS

7 Sec. 49. NEW SECTION. 523I.601 SETTLEMENT OF ESTATES --
8 MAINTENANCE FUND.

9 The court in which the estate of a deceased person is
10 administered, before final distribution, may allow and set
11 apart from the estate a sum sufficient to provide an income
12 adequate to pay for the perpetual care and upkeep of the
13 interment spaces upon which the body of the deceased is
14 buried, except where perpetual care has otherwise been
15 provided for. The sum so allowed and set apart shall be paid
16 to a trustee as provided by this chapter.

17 Sec. 50. NEW SECTION. 523I.602 MANAGEMENT BY TRUSTEE.

18 1. TRUSTEE APPOINTED -- TRUST FUNDS. The owners of, or
19 any party interested in, a cemetery may, by petition presented
20 to the district court of the county where the cemetery is
21 situated, have a trustee appointed with authority to receive
22 any and all moneys or property that may be donated for and on
23 account of the cemetery and to invest, manage, and control the
24 moneys or property under the direction of the court. However,
25 the trustee shall not be authorized to receive any gift,
26 except with the understanding that the principal sum is to be
27 a permanent fund, and only the net proceeds therefrom shall be
28 used in carrying out the purpose of the trust created, and all
29 such funds shall be exempt from taxation.

30 2. REQUISITES OF PETITION. The petition shall state the
31 amount proposed to be placed in such trust fund, the manner of
32 investment thereof, and the provisions made for the
33 disposition of any surplus income not required for the care
34 and upkeep of the property described in such petition.

35 3. APPROVAL OF COURT -- SURPLUS FUND. Such provisions

1 shall be subject to the approval of the court and when so
2 approved the trust fund and the trustee thereof shall, at all
3 times, be subject to the orders and control of the court and
4 such surplus arising from the trust fund shall not be used
5 except for charitable, eleemosynary, or public purposes under
6 the direction of the court.

7 4. RECEIPT -- CEMETERY RECORD. Every such trustee shall
8 execute and deliver to the donor a receipt showing the amount
9 of money or other property received, and the use to be made of
10 the net proceeds from the same, duly attested by the clerk of
11 the court granting letters of trusteeship, and a copy thereof,
12 signed by the trustee and so attested, shall be filed with and
13 recorded by the clerk in a book to be known as the cemetery
14 record, in which shall be recorded all reports and other
15 papers, including orders made by the court relative to
16 cemetery matters.

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

23 6. BOND -- APPROVAL -- OATH. Every such trustee before
24 entering upon the discharge of the trustee's duties or at any
25 time thereafter when required by the court shall give a bond
26 in an amount as may be required by the court, approved by the
27 clerk, and conditioned for the faithful discharge of the
28 trustee's duties, and take and subscribe an oath the same in
29 substance as the condition of the bond, which bond and oath
30 must be filed with the clerk.

31 7. CLERK -- DUTY OF. At the time of filing each bond and
32 oath the clerk shall at once advise the court as to the amount
33 of the principal fund in the hands of such trustee, the amount
34 of the bond filed, and whether it is good and sufficient for
35 the amount given.

1 8. COMPENSATION -- COSTS. Such trustee shall serve
2 without compensation, but may, out of the income received, pay
3 all proper items of expense incurred in the performance of the
4 trustee's duties, including cost of the bond, if any.

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

11 10. REMOVAL -- VACANCY FILLED. Any such trustee may be
12 removed by the court at any time for cause, and in the event
13 of removal or death, the court shall appoint a new trustee and
14 require the new trustee's predecessor or the predecessor's
15 personal representative to make a full accounting.

16 Sec. 51. NEW SECTION. 523I.603 OWNERS OF INTERMENT
17 RIGHTS.

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

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

28 Sec. 52. NEW SECTION. 523I.604 LIEN AGAINST CEMETERY
29 PROPERTY.

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

34 2. A mortgage, deed of trust, or other lien placed on
35 dedicated cemetery property, or on cemetery property that is

1 later dedicated with the consent of the holder of the lien,
2 does not affect the dedication and is subject to the
3 dedication. A sale on foreclosure of the lien is subject to
4 the dedication of the property for cemetery purposes.

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

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

11 SUBCHAPTER 7

12 LAWN CRYPTS

13 Sec. 54. NEW SECTION. 523I.701 REQUIREMENTS FOR LAWN
14 CRYPTS.

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

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

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

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

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

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

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

32 Sec. 55. NEW SECTION. 523I.702 REQUEST TO INSTALL LAWN
33 CRYPTS IN FEWER THAN TEN UNITS.

34 1. A lawn crypt may be installed in fewer than ten units
35 if it is installed in an interment space pursuant to a written

1 request to the commissioner signed by the owner or owners of
2 the interment space.

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

6 a. The owner's name and address.

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

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

9 d. A description of the interment spaces.

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

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

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

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

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

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

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

29

SUBCHAPTER 8

30

PERPETUAL CARE CEMETERIES -- REQUIREMENTS

31

Sec. 56. NEW SECTION. 523I.801 APPLICABILITY AND

32

CONVERSION BY NONPERPETUAL CARE CEMETERIES.

33

1. All cemeteries are designated as either "perpetual care
34 cemeteries" or "nonperpetual care cemeteries" for the purposes
35 of this chapter. A cemetery that represents that it is

1 offering perpetual care on or after July 1, 2005, is subject
2 to this subchapter.

3 2. A cemetery that operates a nonperpetual care cemetery
4 may elect to become a perpetual care cemetery if at all times
5 subsequent to the date of the election, the cemetery complies
6 with the other requirements of this subchapter except section
7 523I.805.

8 Sec. 57. NEW SECTION. 523I.802 ADVERTISING.

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

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

20 Sec. 58. NEW SECTION. 523I.803 PERPETUAL CARE REGISTRY.

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

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

28 Sec. 59. NEW SECTION. 523I.804 USE OF GIFT FOR SPECIAL
29 CARE.

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

35 1. Improvement or embellishment of any part of the

1 cemetery.

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

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

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

8 Sec. 60. NEW SECTION. 523I.805 INITIAL DEPOSIT.

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

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

27 Sec. 61. NEW SECTION. 523I.806 IRREVOCABLE TRUST.

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

32 2. The care 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 not be required unless specifically required by

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

9 Sec. 62. NEW SECTION. 523I.807 CARE FUND DEPOSITS.

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

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

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

35 Sec. 63. NEW SECTION. 523I.808 AUDIT FEE.

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

6 Sec. 64. NEW SECTION. 523I.809 TRUST AGREEMENT
7 PROVISIONS.

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

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

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

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

21 Sec. 65. NEW SECTION. 523I.810 CARE FUNDS.

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

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

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

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

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

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

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

29 (1) Be owned, under the control of, or affiliated with the
30 cemetery.

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

34 (3) Otherwise invest care funds, directly or indirectly,
35 in the cemetery's business operations.

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

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

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

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

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

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

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

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

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

30 7. A care fund shall pay the fund's operation costs and
31 any annual audit fees. The principal of a care fund is
32 intended to remain available perpetually as a funding source
33 for care of the cemetery. The principal of a care fund shall
34 not be reduced voluntarily and shall remain inviolable, except
35 as provided in this section. The trustee or trustees of a

1 care fund shall maintain the principal of the care fund
2 separate from all operating funds of the cemetery.

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

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

23 Sec. 66. NEW SECTION. 523I.811 USE OF DISTRIBUTIONS FROM
24 CARE FUND.

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

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

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

35 c. Maintaining machinery, tools, and equipment.

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

4 e. Paying overhead expenses incidental to such purposes.

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

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

10 Sec. 67. NEW SECTION. 523I.812 SUIT BY COMMISSIONER.

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

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

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

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

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

24 a. Failure to adequately mow grass.

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

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

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

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

33 Sec. 68. NEW SECTION. 523I.813 ANNUAL REPORT BY
34 PERPETUAL CARE CEMETERIES.

35 1. A perpetual care cemetery shall file a written report

1 at the end of each fiscal year of the cemetery that includes
2 all of the following:

3 a. The name and address of the cemetery.

4 b. The name and address of the corporation that owns the
5 cemetery, if any.

6 c. A description of any common business enterprise or
7 parent company that owns the cemetery, if any.

8 d. The name and address of any owner, officer, or other
9 official of the cemetery, including, when relevant, the chief
10 executive officer and the members of the board of directors.

11 e. The name and address of any trustee holding trust funds
12 for the cemetery, including the name and location of the
13 applicable trust account.

14 f. An affidavit that the cemetery is in compliance with
15 this chapter.

16 g. Copies of all sales agreement forms used by the
17 cemetery.

18 h. The amount of the principal of the cemetery's care
19 funds or maintenance funds, if any, at the end of the fiscal
20 year.

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

24 Sec. 69. NEW SECTION. 523I.814 UNIFIED ANNUAL REPORTS.

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

29 Sec. 70. Section 602.8102, subsection 81, Code 2005, is
30 amended to read as follows:

31 81. Carry out duties relating to cemeteries as provided in
32 ~~sections-566-47-566-77-and-566-8~~ section 523I.602.

33 Sec. 71. Section 602.8104, subsection 2, paragraph h, Code
34 2005, is amended to read as follows:

35 h. A cemetery record as provided in section 566-4

1 523I.602.

2 Sec. 72. Section 636.23, subsection 14, Code 2005, is
3 amended to read as follows:

4 14. LIMITATION AS TO COURT-APPROVED INVESTMENTS. This
5 section does not prohibit investment of such funds in a
6 savings account or time certificate of deposit of a bank or
7 savings and loan association, located within the city or its
8 county of this state and when first approved by the court.
9 However, a city that is the trustee of a cemetery as provided
10 in section ~~566.14~~ 523I.508 may invest perpetual care funds in
11 a savings account or certificates of deposit at a bank or
12 savings and loan association, located in this state without
13 court approval.

14 Sec. 73. Section 359.41, Code 2005, is repealed.

15 Sec. 74. Chapters 523I, 566, and 566A, Code 2005, are
16 repealed.

17 EXPLANATION

18 This bill relates to cemeteries and cemetery regulation and
19 provides for administration and enforcement procedures related
20 to cemeteries, including establishing and appropriating fees,
21 and providing for penalties.

22 The bill amends Code section 523A.812 and adds new Code
23 section 523A.814 to require a business establishment that is
24 involved with cemetery and funeral merchandise and funeral
25 services or a combination thereof to pay an annual audit fee
26 of \$5 for each purchase agreement sold that is filed and
27 subject to a filing fee between July 1, 2005, and December 31,
28 2007. The insurance commissioner is required to allocate the
29 audit fees collected to the insurance division regulatory fund
30 for pay for auditors, audit expenses, investigative expenses,
31 mediation expenses, consumer education expenses, a toll-free
32 consumer complaint telephone line, and receivership expenses.

33 The bill repeals Code chapter 523I concerning cemeteries,
34 Code chapter 566 concerning cemetery management, and Code
35 chapter 566A concerning cemetery regulation.

1 The bill creates a new Code chapter 523I concerning
2 cemeteries, cemetery administration and enforcement
3 procedures, cemetery management, county cemetery commissions
4 and neglected cemeteries, cemeteries owned or operated by
5 governmental subdivisions, requirements for lawn crypts, and
6 requirements applying to perpetual care cemeteries.

7 The new Code chapter 523I is applicable to all cemeteries,
8 except religious cemeteries that commenced business prior to
9 July 1, 2005; all persons advertising or offering memorials,
10 memorialization, opening and closing services, scattering
11 services at a cemetery, interment rights, or a combination
12 thereof for sale; and interments made in areas not dedicated
13 as a cemetery, by a person other than the state archaeologist.

14 The bill authorizes civil lawsuits brought by the insurance
15 division against a cemetery that fails to use care funds to
16 maintain the cemetery property.

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

19 The bill provides for the establishment of a receivership
20 for a cemetery under certain circumstances.

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

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

1 remains.

2 The bill establishes requirements for recording ownership
3 of interment rights at each cemetery location rather than just
4 with the county recorder. The bill requires cemeteries to
5 maintain complete interment records that identify the owners
6 of all interment rights sold or transferred by the cemetery on
7 or after July 1, 2005, and contain historical information
8 concerning any changes of ownership of interment rights. The
9 bill sets forth requirements for interment rights agreements.

10 The bill contains a procedure to dedicate new cemeteries or
11 subdivisions of cemeteries with a public filing with the
12 insurance division.

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

18 The bill increases the penalty for disturbing an interment
19 site from a simple misdemeanor to an aggravated misdemeanor.
20 A simple misdemeanor is punishable by confinement for no more
21 than 30 days or a fine of at least \$50 but not more than \$500
22 or by both. An aggravated misdemeanor is punishable by
23 confinement for no more than two years and a fine of at least
24 \$500 but not more than \$5,000.

25 The bill contains a procedure for the removal of remains
26 from a neglected cemetery. The bill provides a procedure for
27 reporting neglected cemeteries to the insurance division and
28 provides that the commissioner shall catalog and review such
29 reports received, on or before December 31, 2007, and publish
30 a report of findings on or before December 31, 2008.

31 The bill authorizes governmental subdivisions to commingle
32 care funds for the purposes of investment and administration.
33 The bill authorizes governmental subdivisions that operate
34 cemeteries to invest their maintenance and care funds in the
35 same manner as other cemetery corporations notwithstanding

1 Code section 12B.10.

2 The bill sets forth requirements for lawn crypts and their
3 installation.

4 The bill sets forth requirements for perpetual care
5 cemeteries and provides that cemeteries that represent that
6 they are offering perpetual care on or after July 1, 2005, are
7 subject to the provisions of the bill. The bill requires any
8 cemetery commencing business on or after July 1, 2005, other
9 than those owned or operated by governmental subdivisions, to
10 establish a care fund of at least \$25,000 in cash. The bill
11 allows a nonperpetual care cemetery to elect to become a
12 perpetual care cemetery if the cemetery complies with the
13 requirements applicable to a perpetual care cemetery, except
14 such a cemetery is not required to make an initial \$25,000
15 care fund deposit. The bill does not apply to religious
16 cemeteries that commenced business prior to July 1, 2005.

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HOUSE FILE 836

AN ACT

RELATING TO CEMETERIES AND CEMETERY REGULATION, PROVIDING ADMINISTRATION AND ENFORCEMENT PROCEDURES, ESTABLISHING REQUIREMENTS FOR INTERMENT RIGHTS AGREEMENTS AND REPORTING, ESTABLISHING AND APPROPRIATING FEES, AND PROVIDING PENALTIES.

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

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

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

3. In lieu of management of the cemeteries, the board of supervisors may create, by ordinance, a cemetery commission to assume jurisdiction and management of the pioneer cemeteries in the county. The ordinance shall delineate the number of commissioners, the appointing authority, the term of office, officers, employees, organizational matters, rules of procedure, compensation and expenses, and other matters deemed

pertinent by the board. The board may delegate any power and duties relating to cemeteries which may otherwise be exercised by township trustees pursuant to sections 359.28 through ~~359.41~~ 359.40 to the cemetery commission except the commission shall not certify a tax levy pursuant to section 359.30 or 359.33 and except that the expenses of the cemetery commission shall be paid from the county general fund.

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

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

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

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

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

523A.812 INSURANCE DIVISION REGULATORY FUND.

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. The commissioner shall allocate annually from the fees paid pursuant to section 523A.204, two dollars for each purchase agreement reported on an establishment permit holder's annual report for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523A.204 shall be deposited into the general fund of the state. The commissioner shall also allocate annually the audit fees paid pursuant to section 523A.814 for deposit to the regulatory fund. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay auditors, audit expenses, investigative expenses, the expenses of mediation ordered by the commissioner, consumer education expenses, the expenses of

a toll-free telephone line to receive consumer complaints, and the expenses of receiverships established under section 523A.811. An annual allocation to the regulatory fund shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

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

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

SUBCHAPTER 1

SHORT TITLE, DEFINITIONS, AND APPLICABILITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. A pioneer cemetery.

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

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

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

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

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

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

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

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

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

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

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

- a. Rent of real or personal property, including sums received for cancellation or renewal of a lease and any royalties.
- b. Interest on money lent, including sums received as consideration for prepayment of principal.
- c. Cash dividends paid on corporate stock.
- d. Interest paid on deposit funds or debt obligations.
- e. Gain realized from the sale of trust assets.

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

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

20. "Interment rights agreement" means an agreement to furnish memorials, memorialization, opening and closing services, or interment rights.

21. "Interment space" means a space used or intended to be used for the interment of remains including, but not limited to, a grave space, lawn crypt, mausoleum crypt, and niche.

22. "Lawn crypt" means a preplaced enclosed chamber, which is usually constructed of reinforced concrete and poured in place, or a precast unit installed in quantity, either side-by-side or at multiple depths, and covered by earth or sod.

23. "Lot" means an area in a cemetery containing more than one interment space which is uniquely identified by an alphabetical, numeric, or alphanumeric identification system.

24. "Maintenance fund" means funds set aside for the maintenance of a nonperpetual care cemetery, including all of the following:

- a. Money or real or personal property impressed with a trust by the terms of this chapter.
- b. Contributions in the form of a gift, grant or bequest.
- c. Any accumulated income that the trustee of the fund or the cemetery allocates to principal.

25. "Mausoleum" means an aboveground structure designed for the entombment of human remains.

26. "Mausoleum crypt" means a chamber in a mausoleum of sufficient size to contain casketed human remains.

27. "Memorial" means any product, including any foundation other than a mausoleum or columbarium, used for identifying an interment space or for commemoration of the life, deeds, or career of a decedent including, but not limited to, a

monument, marker, niche plate, urn garden plaque, crypt plate, cenotaph, marker bench, and vase.

28. "Memorial care" means any care provided or to be provided for the general maintenance of memorials including foundation repair or replacement, resetting or straightening tipped memorials, repairing or replacing inadvertently damaged memorials and any other care clearly specified in the purchase agreement.

29. "Memorial dealer" means any person offering or selling memorials retail to the public.

30. "Memorialization" means any permanent system designed to mark or record the name and other data pertaining to a decedent.

31. "Merchandise" means any personal property offered or sold for use in connection with the funeral, final disposition, memorialization, or interment of human remains, but which is exclusive of interment rights.

32. "Neglected cemetery" means a cemetery where there has been a failure to cut grass or weeds or care for graves, memorials or memorialization, walls, fences, driveways, and buildings, or for which proper records of interments have not been maintained.

33. "Niche" means a recess or space in a columbarium or mausoleum used for placement of cremated human remains.

34. "Opening and closing services" means one or more services necessarily or customarily provided in connection with the interment or entombment of human remains or a combination thereof.

35. "Operating a cemetery" means offering to sell or selling interment rights, or any service or merchandise necessarily or customarily provided for a funeral, or for the entombment or cremation of a dead human, or any combination thereof, including but not limited to opening and closing services, caskets, memorials, vaults, urns, and interment receptacles.

36. "Outer burial container" means any container which is designed for placement in the ground around a casket or an urn including, but not limited to, containers commonly known as burial vaults, urn vaults, grave boxes, grave liners, and lawn crypts.

37. "Perpetual care cemetery" includes all of the following:

a. Any cemetery that was organized or commenced business in this state on or after July 1, 1995.

b. Any cemetery that has established a care fund in compliance with section 523I.810.

c. Any cemetery that represents that it is a perpetual care cemetery in its interment rights agreement.

d. Any cemetery that represents in any other manner that the cemetery provides perpetual, permanent, or guaranteed care.

38. "Person" means an individual, firm, corporation, partnership, joint venture, limited liability company, association, trustee, government or governmental subdivision, agency, or other entity, or any combination thereof.

39. "Pioneer cemetery" means a cemetery where there were six or fewer burials in the preceding fifty years.

40. "Purchaser" means a person who purchases memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof. A purchaser need not be a beneficiary of the interment rights agreement.

41. "Relative" means a great-grandparent, grandparent, father, mother, spouse, child, brother, sister, nephew, niece, uncle, aunt, first cousin, second cousin, third cousin, or grandchild connected to a person by either blood or affinity.

42. "Religious cemetery" means a cemetery that is owned, operated, or controlled by a recognized church or denomination, or a cemetery designated as such in the Official Catholic Directory on file with the insurance division or in a

similar publication of a recognized church or denomination, or a cemetery that the commissioner determines is operating as a religious cemetery upon review of an application by the cemetery that includes a description of the cemetery's affiliation with a recognized church or denomination, the extent to which the affiliate organization is responsible for the financial and contractual obligations of the cemetery, or the provision of the Internal Revenue Code, if any, that exempts the cemetery from the payment of federal income tax.

43. "Relocation" means the act of taking remains from the place of interment or the place where the remains are being held to another designated place.

44. "Remains" means the body of a deceased human or a body part, or limb that has been removed from a living human, including a body, body part, or limb in any stage of decomposition, or cremated remains.

45. "Scattering services provider" means a person in the business of scattering human cremated remains.

46. "Seller" means a person doing business within this state, including a person doing business within this state who advertises, sells, promotes, or offers to furnish memorials, memorialization, opening and closing services, scattering services or interment rights, or a combination thereof, whether the transaction is completed or offered in person, through the mail, over the telephone, by the internet, or through any other means of commerce.

47. "Special care" means any care provided or to be provided that supplements or exceeds the requirements of this chapter in accordance with the specific directions of any donor of funds for such purposes.

48. "Undeveloped space" means a designated area or building within a cemetery that has been mapped and planned for future development but is not yet fully developed.

Sec. 8. NEW SECTION. 523I.103 APPLICABILITY OF CHAPTER.

1. This chapter applies to all of the following:

a. All cemeteries, except religious cemeteries that commenced business prior to July 1, 2005.

b. All persons advertising or offering memorials, memorialization, opening and closing services, scattering services at a cemetery, interment rights, or a combination thereof for sale.

c. Interments made in areas not dedicated as a cemetery, by a person other than the state archaeologist.

2. This chapter applies when a purchase agreement is executed within this state or an advertisement, promotion, or offer to furnish memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof is made or accepted within this state. An offer to furnish memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof is made within this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state through the mail, over the telephone, by the internet, or through any other means of commerce.

3. If a foreign person does not have a registered agent or agents in the state of Iowa, doing business within this state shall constitute the person's appointment of the secretary of state of the state of Iowa to be its true and lawful attorney upon whom may be served all lawful process of original notice in actions or proceedings arising or growing out of any contract or tort.

SUBCHAPTER 2

ADMINISTRATION AND ENFORCEMENT

Sec. 9. NEW SECTION. 523I.201 ADMINISTRATION.

1. This chapter shall be administered by the commissioner. The deputy administrator appointed pursuant to section 523A.801 shall be the principal operations officer responsible

to the commissioner for the routine administration of this chapter and management of the administrative staff. In the absence of the commissioner, whether because of vacancy in the office due to absence, physical disability, or other cause, the deputy administrator shall, for the time being, have and exercise the authority conferred upon the commissioner. The commissioner may by order from time to time delegate to the deputy administrator any or all of the functions assigned to the commissioner in this chapter. The deputy administrator shall employ officers, attorneys, accountants, and other employees as needed for administering this chapter.

2. It is unlawful for the commissioner or any administrative staff to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. This chapter does not authorize the commissioner or any staff member to disclose any such information except among themselves or to other cemetery and funeral administrators, regulatory authorities, or governmental agencies, or when necessary and appropriate in a proceeding or investigation under this chapter or as required by chapter 22. This chapter neither creates nor derogates any privileges that exist at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any administrative staff.

Sec. 10. NEW SECTION. 523I.202 INVESTIGATIONS AND SUBPOENAS.

1. The commissioner may, for the purpose of discovering a violation of this chapter, or implementing rules or orders issued under this chapter do any of the following:

a. Make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate this chapter, or implementing rules or orders issued under this chapter, or to aid in the enforcement of this chapter, or in the prescribing of rules and forms under this chapter.

b. Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner or attorney general determines, as to all the facts and circumstances concerning the matter being investigated.

c. Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the commissioner determines that it is necessary or appropriate in the public interest or for the protection of the public, the commissioner may share information with other administrators, regulatory authorities, or governmental agencies, or may publish information concerning a violation of this chapter, or implementing rules or orders issued under this chapter.

d. Investigate a cemetery and examine the books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records of the cemetery.

e. Administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records which the commissioner deems relevant or material to any investigation or proceeding under this chapter and implement rules, all of which may be enforced under chapter 17A.

f. Apply to the district court for an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, in cases where the person has refused to obey a subpoena issued by the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

2. The commissioner may issue and bring an action in district court to enforce subpoenas within this state at the request of an agency or administrator of another state, if the

activity constituting an alleged violation for which the information is sought would be a violation of this chapter had the activity occurred in this state.

Sec. 11. NEW SECTION. 523I.203 CEASE AND DESIST ORDERS -- INJUNCTIONS.

If it appears to the commissioner that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter, or implementing rules or orders issued under this chapter, the commissioner or the attorney general may do any of the following:

1. Issue a summary order directed to the person that requires the person to cease and desist from engaging in such an act or practice. A person may request a hearing within thirty days of issuance of the summary order. If a hearing is not timely requested, the summary order shall become final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer following a request for hearing. Section 17A.18A is inapplicable to summary cease and desist orders issued under this section.

2. Bring an action in the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from engaging in conduct or practices deemed contrary to the public interest. In any proceeding for an injunction, the commissioner or attorney general may apply to the court for a subpoena to require the appearance of a defendant and the defendant's agents, employees, or associates and for the production of any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records germane to the hearing upon the petition for an injunction. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or

the defendant's assets. The commissioner or attorney general shall not be required to post a bond.

Sec. 12. NEW SECTION. 523I.204 COURT ACTION FOR FAILURE TO COOPERATE.

1. If a person fails or refuses to file a statement or report or to produce any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records, or to obey a subpoena issued by the commissioner, the commissioner may refer the matter to the attorney general, who may apply to a district court to enforce compliance. The court may order any or all of the following:

- a. Injunctive relief restricting or prohibiting the offer or sale of memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof.
- b. Production of documents or records including but not limited to books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records.
- c. Such other relief as may be required.

2. A court order issued pursuant to subsection 1 is effective until the person files the statement or report or produces the documents requested, or obeys the subpoena.

Sec. 13. NEW SECTION. 523I.205 PROSECUTION FOR VIOLATIONS OF LAW -- CIVIL PENALTIES.

1. A violation of this chapter or rules adopted or orders issued under this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and penalties, apply to violations of this chapter.

2. If the commissioner believes that grounds exist for the criminal prosecution of persons subject to this chapter for violations of this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in

the commissioner's possession, so that the attorney general or the county attorney may proceed with the matter as deemed appropriate. At the request of the attorney general, the county attorney shall appear and prosecute the action when brought in the county attorney's county.

3. A person who violates a provision of this chapter or rules adopted or orders issued under this chapter may be subject to civil penalties in addition to criminal penalties. The commissioner may impose, assess, and collect a civil penalty not exceeding ten thousand dollars for each violation. For the purposes of computing the amount of each civil penalty, each day of a continuing violation constitutes a separate violation. All civil penalties collected pursuant to this section shall be deposited in the general fund of the state.

Sec. 14. NEW SECTION. 523I.206 COOPERATION WITH OTHER AGENCIES.

1. The commissioner may cooperate with any governmental law enforcement or regulatory agency to encourage uniform interpretation and administration of this chapter and effective enforcement of this chapter and effective regulation of the sale of memorials, memorialization, and cemeteries.

2. Cooperation with other agencies may include but is not limited to:

- a. Making a joint examination or investigation.
- b. Holding a joint administrative hearing.
- c. Filing and prosecuting a joint civil or administrative proceeding.
- d. Sharing and exchanging personnel.
- e. Sharing and exchanging relevant information and documents.

f. Formulating, in accordance with chapter 17A, rules or proposed rules on matters such as statements of policy, regulatory standards, guidelines, and interpretive opinions.

Sec. 15. NEW SECTION. 523I.207 RULES, FORMS, AND ORDERS.

1. Under chapter 17A, the commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary or appropriate for the protection of purchasers and the public and to administer the provisions of this chapter, its implementing rules, and orders issued under this chapter.

2. A rule, form, or order shall not be made, amended, or rescinded unless the commissioner finds that the action is necessary or appropriate to protect purchasers and the public and is consistent with the policies and provisions of this chapter, its implementing rules, and orders issued under this chapter.

3. A provision of this chapter imposing any liability does not apply to an act done or omitted in good faith in conformity with any rule, form, or order of the commissioner.

Sec. 16. NEW SECTION. 523I.208 DATE OF FILING -- INTERPRETIVE OPINIONS.

1. A document is filed when it is received by the commissioner.

2. Requests for interpretive opinions may be granted in the commissioner's discretion.

Sec. 17. NEW SECTION. 523I.209 MISLEADING FILINGS.

It is unlawful for a person to make or cause to be made, in any document filed with the commissioner, or in any proceeding under this chapter, any statement of material fact which is, at the time and in the light of the circumstances under which it is made, false or misleading, or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

Sec. 18. NEW SECTION. 523I.210 MISREPRESENTATIONS OF GOVERNMENT APPROVAL.

It is unlawful for a seller under this chapter to represent or imply in any manner that the seller has been sponsored,

recommended, or approved, or that the seller's abilities or qualifications have in any respect been passed upon by the commissioner.

Sec. 19. NEW SECTION. 523I.211 FRAUDULENT PRACTICES.

A person who commits any of the following acts commits a fraudulent practice which is punishable as provided in chapter 714:

1. Knowingly fails to comply with any requirement of this chapter.

2. Knowingly makes, causes to be made, or subscribes to a false statement or representation in a report or other document required under this chapter, or implementing rules or orders, or renders such a report or document misleading through the deliberate omission of information properly belonging in the report or document.

3. Conspires to defraud in connection with the sale of memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof under this chapter.

4. Fails to deposit funds under this chapter or withdraws funds in a manner inconsistent with this chapter.

5. Knowingly sells memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof without the permits required under this chapter.

6. Deliberately misrepresents or omits a material fact relative to the sale of memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof.

Sec. 20. NEW SECTION. 523I.212 RECEIVERSHIPS.

1. The commissioner shall notify the attorney general of the potential need for establishment of a receivership if the commissioner finds that a cemetery subject to this chapter meets one or more of the following conditions:

a. Is insolvent.

b. Has utilized trust funds for personal or business purposes in a manner inconsistent with this chapter.

c. The amount held in trust in a maintenance fund or care fund is less than the amount required by this chapter.

2. The commissioner or attorney general may apply to the district court in any county of the state for the establishment of a receivership. Upon proof that any of the conditions described in this section have occurred, the court may grant a receivership.

Sec. 21. NEW SECTION. 523I.213 INSURANCE DIVISION'S ENFORCEMENT FUND.

A special revenue fund in the state treasury, to be known as the insurance division's enforcement fund, is created under the authority of the commissioner. The commissioner shall allocate annually from the audit fees paid pursuant to section 523I.808, an amount not exceeding fifty thousand dollars, for deposit to the insurance division's enforcement fund. The moneys in the enforcement fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, shall be used to pay auditors, audit expenses, investigative expenses, the expenses of consumer education, compliance, and education programs for filers and other regulated persons, and educational or compliance program materials, the expenses of a toll-free telephone line for consumer complaints, and the expenses of receiverships of perpetual care cemeteries established under section 523I.212.

Sec. 22. NEW SECTION. 523I.214 VIOLATIONS OF LAW -- REFERRALS TO THE DEPARTMENT OF PUBLIC HEALTH.

If the commissioner discovers a violation of a provision of this chapter or any other state law or rule concerning the disposal or transportation of human remains, the commissioner shall forward all evidence in the possession of the commissioner concerning such a violation to the department of public health for such proceedings as the department of public

health deems appropriate.

SUBCHAPTER 3
CEMETERY MANAGEMENT

Sec. 23. NEW SECTION. 523I.301 DISCLOSURE REQUIREMENTS
-- PRICES AND FEES.

1. A cemetery shall disclose, prior to the sale of interment rights, whether opening and closing of the interment space is included in the purchase of the interment rights. If opening and closing services are not included in the sale and the cemetery offers opening and closing services, the cemetery must disclose that the price for this service is subject to change and disclose the current prices for opening and closing services provided by the cemetery.

2. The cemetery shall fully disclose all fees required for interment, entombment, or inurnment of human remains.

3. A person owning interment rights may sell those rights to third parties. The cemetery shall fully disclose, in the cemetery's rules, any requirements necessary to transfer title of interment rights to a third party.

Sec. 24. NEW SECTION. 523I.302 INSTALLATION OF OUTER BURIAL CONTAINERS.

A cemetery shall provide services necessary for the installation of outer burial containers or other similar merchandise sold by the cemetery. This section shall not require the cemetery to provide for opening and closing of interment or entombment space, unless an agreement executed by the cemetery expressly provides otherwise.

Sec. 25. NEW SECTION. 523I.303 ACCESS BY FUNERAL DIRECTORS.

A cemetery shall not deny access to a licensed funeral director who is conducting funeral services or supervising the interment or disinterment of human remains.

Sec. 26. NEW SECTION. 523I.304 RULEMAKING AND ENFORCEMENT.

1. A cemetery may adopt, amend, and enforce rules for the use, care, control, management, restriction, and protection of the cemetery, as necessary for the proper conduct of the business of the cemetery, including, but not limited to, the use, care, and transfer of any interment space or right of interment.

2. A cemetery may restrict and limit the use of all property within the cemetery by rules that do, but are not limited to doing, all of the following:

a. Prohibit the placement of memorials or memorialization, buildings, or other types of structures within any portion of the cemetery.

b. Regulate the uniformity, class, and kind of memorials and memorialization and structures within the cemetery.

c. Regulate the scattering or placement of cremated remains within the cemetery.

d. Prohibit or regulate the placement of nonhuman remains within the cemetery.

e. Prohibit or regulate the introduction or care of trees, shrubs, and other types of plants within the cemetery.

f. Regulate the right of third parties to open, prepare for interment, and close interment spaces.

g. Prohibit interment in any part of the cemetery not designated as an interment space.

h. Prevent the use of space for any purpose inconsistent with the use of the property as a cemetery.

3. A cemetery shall not adopt or enforce a rule that prohibits interment because of the race, color, or national origin of a decedent. A provision of a contract or a certificate of ownership or other instrument conveying interment rights that prohibits interment in a cemetery because of the race, color, or national origin of a decedent is void.

4. A cemetery's rules shall be plainly printed or typewritten and maintained for inspection in the office of the

cemetery or, if the cemetery does not have an office, in another suitable place within the cemetery. The cemetery's rules shall be provided to owners of interment spaces upon request.

5. A cemetery's rules shall specify the cemetery's obligations in the event that interment spaces, memorials, or memorialization are damaged or defaced by acts of vandalism. The rules may specify a multiyear restoration of an interment space, or a memorial or memorialization when the damage is extensive or when money available from the cemetery's trust fund is inadequate to complete repairs immediately. The owner of an interment space, or a memorial or memorialization that has been damaged or defaced shall be notified by the cemetery by restricted certified mail at the owner's last known address within sixty days of the discovery of the damage or defacement. The rules shall specify whether the owner is liable, in whole or in part, for the cost to repair or replace an interment space or a damaged or defaced memorial or memorialization.

6. The cemetery shall not approve any rule which unreasonably restricts competition, or which unreasonably increases the cost to the owner of interment rights in exercising these rights.

Sec. 27. NEW SECTION. 523I.305 MEMORIALS AND MEMORIALIZATION.

1. AUTHORIZATION. A cemetery is entitled to determine whether a person requesting installation of a memorial is authorized to do so, to the extent that this can be determined from the records of the cemetery, as is consistent with the cemetery's rules. The owner of an interment space or the owner's agent may authorize a memorial dealer or independent third party to perform all necessary work related to preparation and installation of a memorial.

2. CONFORMITY WITH CEMETERY RULES. A person selling a memorial shall review the rules of the cemetery where the

memorial is to be installed to ensure that the memorial will comply with those rules prior to ordering or manufacturing the memorial.

3. SPECIFICATIONS. Upon request, a cemetery shall provide reasonable written specifications and instructions governing installation of memorials, which shall apply to all installations whether performed by the cemetery or another person. The written specifications shall include provisions governing hours of installation or any other relevant administrative requirements of the cemetery. A copy of these specifications and instructions shall be provided upon request, without charge, to the owner of the interment space, next of kin, or a personal representative or agent of the owner, including the person installing the memorial. The person installing the memorial shall comply with the cemetery's written installation specifications and instructions. A cemetery shall not adopt or enforce any rule prohibiting the installation of a memorial by a memorial dealer or independent third party, unless the rule is adopted and enforced uniformly for all memorials installed in the cemetery.

4. WRITTEN NOTICE. A memorial dealer or independent third party shall provide the cemetery with at least seven business days' prior written notice of intent to install a memorial at the cemetery, or such lesser notice as the cemetery deems acceptable. The notice shall contain the full name, address, and relationship of the memorial's purchaser to the person interred in the interment space or the owner of the interment space, if different. The notice shall also contain the color, type, and size of the memorial, the material, the inscription, and the full name and interment date of the person interred in the interment space.

5. PREPARATION AND INSTALLATION.

a. A person installing a memorial shall be responsible to the cemetery for any damage caused to the cemetery grounds,

including roadways, other than normal use during installation of the memorial.

b. Installation work shall cease during any nearby funeral procession or committal service.

c. Installation work shall be done during the cemetery's normal weekday hours or at such other times as may be arranged with the cemetery.

d. A memorial must comply with the cemetery's rules. In the event of noncompliance, the person installing a memorial is responsible for removal of the memorial and shall pay any reasonable expenses incurred by the cemetery in connection with the memorial's removal.

e. The cemetery shall, without charge, provide information as described on the cemetery's map or plat necessary to locate the place where a memorial is to be installed and any other essential information the person installing the memorial needs to locate the proper interment space.

f. A person installing a memorial shall follow the cemetery's instructions regarding the positioning of the memorial.

g. During the excavation, all sod and dirt shall be carefully removed with no sod or dirt left on the interment space except the amount needed to fill the space between the memorial and the adjacent lawn.

h. A person installing a memorial shall carefully fill in any areas around the memorial with topsoil or sand, in accordance with the cemetery's written instructions.

i. A person installing a memorial shall remove all equipment and any debris which has accumulated during installation of the memorial.

j. A person installing a memorial shall check to see if any adjacent memorials have become soiled or dirty during installation of the memorial and, if so, clean the adjacent memorials.

k. If the person who is installing a memorial damages any cemetery property, the person shall notify the cemetery immediately. The person installing the memorial shall then repair the damage as soon as possible, upon approval by the cemetery. The cemetery may require a person installing a memorial to provide current proof of workers' compensation insurance as required by state law and current proof of liability insurance, sufficient to indemnify the cemetery against claims resulting from installation of the memorial. Proof of liability insurance in an amount of one million dollars or more shall preclude the cemetery from requiring a person installing a memorial to obtain a performance bond.

1. If a cemetery has an office, a person installing a memorial shall immediately leave notice at the cemetery office when the memorial has been installed and all work related to the installation is complete.

6. INSPECTION. A cemetery may inspect the installation site of a memorial at any time. If the cemetery determines that cemetery rules are not being followed during the installation, the cemetery may order the installation to stop until the infraction is corrected. The cemetery shall provide written notice to the installer as soon as possible if the cemetery believes that any of the following have occurred:

- a. The memorial has not been installed correctly.
- b. The person installing the memorial has damaged property at the cemetery.
- c. Other cemetery requirements for installation have not been met, such as removal of debris or equipment.

7. LOCATION AND SERVICE CHARGE. A cemetery may charge a reasonable service charge for allowing the installation of a memorial purchased or obtained from and installed by a person other than the cemetery or its agents. This service charge shall be based on the cemetery's actual labor costs, including fringe benefits, of those employees whose normal duty is to inspect the installation of memorials, in accordance with

generally accepted accounting practices. General administrative and overhead costs and any other functions not related to actual inspection time shall be excluded from the service charge.

8. **FAULTY INSTALLATION.** If a memorial sinks, tilts, or becomes misaligned within twelve months of its installation and the cemetery believes the cause is faulty installation, the cemetery shall notify the person who installed the memorial in writing and the person who installed the memorial shall be responsible to correct the damage, unless the damage is caused by inadequate written specifications and instructions from the cemetery or acts of the cemetery and its agents or employees, including but not limited to running a backhoe over the memorial, carrying a vault or other heavy equipment over the memorial, or opening or closing an interment space adjacent to the memorial.

9. **PERPETUAL CARE.** A cemetery may require contributions from the purchaser of a memorial for perpetual care, if a perpetual care fund deposit is uniformly charged on every memorial installed in the cemetery.

Sec. 28. **NEW SECTION.** 523I.306 **COMMISSION OR BONUS UNLAWFUL.**

It shall be unlawful for any organization subject to the provisions of this chapter to pay or offer to pay to, or for any person, firm, or corporation to receive directly or indirectly a commission or bonus or rebate or other thing of value, for or in connection with the sale of any interment space, lot, or part thereof, in any cemetery. The provisions of this section shall not apply to a person regularly employed and supervised by such organization or to a person, firm, corporation, or other entity licensed under chapter 523A that contracts with the cemetery to sell interment spaces or lots. The conduct of any person, firm, corporation, or other entity described in this section is the direct responsibility of the cemetery.

Sec. 29. **NEW SECTION.** 523I.307 **DISCRIMINATION PROHIBITED.**

It shall be unlawful for any organization subject to the provisions of this chapter to deny the privilege of interment of the remains of any deceased person in any cemetery solely because of the race, color, or national origin of such deceased person. Any contract, agreement, deed, covenant, restriction, or charter provision at any time entered into, or bylaw, rule, or regulation adopted or put in force, either subsequent or prior to July 4, 1953, authorizing, permitting, or requiring any organization subject to the provisions of this chapter to deny such privilege of interment because of race, color, or national origin of such deceased person is hereby declared to be null and void and in conflict with the public policy of this state. An organization subject to the provisions of this chapter or any director, officer, agent, employee, or trustee thereof, shall not be liable for damages or other relief, or be subjected to any action in any court of competent jurisdiction for refusing to commit any act unlawful under this chapter.

Sec. 30. **NEW SECTION.** 523I.308 **SPECULATION PROHIBITED.**

A cemetery or any person representing a cemetery in a sales capacity shall not advertise or represent, in connection with the sale or attempted sale of any interment space, that the same is or will be a desirable speculative investment for resale purposes.

Sec. 31. **NEW SECTION.** 523I.309 **INTERMENT, RELOCATION, OR DISINTERMENT OF REMAINS.**

1. Any available member of the following classes of persons, in the priority listed, shall have the right to control the interment, relocation, or disinterment of a decedent's remains within or from a cemetery:

a. The attorney in fact of the decedent pursuant to a durable power of attorney for health care.

b. The surviving spouse of the decedent.

c. The decedent's surviving adult children. If there is more than one surviving adult child, any adult child who can confirm, in writing, that all other adult children have been notified of the proposed interment, relocation, or disinterment may authorize the interment, relocation, or disinterment, unless the cemetery receives an objection to such action from another adult child of the decedent.

d. A surviving parent of the decedent.

e. A surviving adult sibling of the decedent.

f. A surviving grandparent of the decedent.

g. The legal guardian of the decedent at the time of the decedent's death.

2. A person who represents that the person knows the identity of a decedent and, in order to procure the interment, relocation, or disinterment of the decedent's remains, signs an order or statement, other than a death certificate, that warrants the identity of the decedent is liable for all damages that result, directly or indirectly, from that representation.

3. A person may provide written directions for the interment, relocation, or disinterment of the person's own remains in a prepaid funeral or cemetery contract, or written instrument signed and acknowledged by the person. The directions may govern the inscription to be placed on a grave marker attached to any interment space in which the decedent had the right of interment at the time of death and in which interment space the decedent is subsequently interred. The directions may be modified or revoked only by a subsequent writing signed and acknowledged by the person. A person other than a decedent who is entitled to control the interment, relocation, or disinterment of a decedent's remains under this section shall faithfully carry out the directions of the decedent to the extent that the decedent's estate or the person controlling the interment, relocation, or disinterment is financially able to do so.

4. A cemetery shall not be liable for carrying out the written directions of a decedent or the directions of any person entitled to control the interment, relocation, or disinterment of the decedent's remains.

5. In the event of a dispute concerning the right to control the interment, relocation, or disinterment of a decedent's remains, the dispute may be resolved by a court of competent jurisdiction. A cemetery shall not be liable for refusing to accept the decedent's remains, relocate or disinter, inter or otherwise dispose of the decedent's remains, until the cemetery receives a court order or other suitable confirmation that the dispute has been resolved or settled.

6. a. If good cause exists to relocate or disinter remains interred in a cemetery, the remains may be removed from the cemetery pursuant to a disinterment permit as required under section 144.34, with the written consent of the cemetery, the current interment rights owner and the person entitled by this section to control the interment, relocation, or disinterment of the decedent's remains.

b. If the consent required by this subsection cannot be obtained, the remains may be relocated by permission of the district court of the county in which the cemetery is located. Before the date of application to the court for permission to relocate remains under this subsection, notice must be given to the cemetery in which the remains are interred, each person whose consent is required for relocation of the remains under subsection 1, and any other person that the court requires to be served.

c. For the purposes of this subsection, personal notice must be given not later than the eleventh day before the date of application to the court for permission to relocate or disinter the remains, or notice by certified mail or restricted certified mail must be given not later than the sixteenth day before the date of application.

d. This subsection does not apply to the removal of remains from one interment space to another interment space in the same cemetery to correct an error, or relocation of the remains by the cemetery from an interment space for which the purchase price is past due and unpaid, to another suitable interment space.

7. A person who removes remains from a cemetery shall keep a record of the removal, and provide a copy to the cemetery, that includes all of the following:

- a. The date the remains are removed.
- b. The name of the decedent and age at death if those facts can be conveniently obtained.
- c. The place to which the remains are removed.
- d. The name of the cemetery and the location of the interment space from which the remains are removed.

8. A cemetery may disinter and relocate remains interred in the cemetery for the purpose of correcting an error made by the cemetery after obtaining a disinterment permit as required by section 144.34. The cemetery shall provide written notice describing the error to the commissioner and to the person who has the right to control the interment, relocation, or disinterment of the remains erroneously interred, by restricted certified mail at the person's last known address and sixty days prior to the disinterment. The notice shall include the location where the disinterment will occur and the location of the new interment space. A cemetery is not civilly or criminally liable for an erroneously made interment that is corrected in compliance with this subsection unless the error was the result of gross negligence or intentional misconduct.

9. Relocations and disinterments of human remains shall be done in compliance with sections 144.32 and 144.34.

Sec. 32. NEW SECTION. 523I.310 SALE OF INTERMENT RIGHTS.

1. For sales or transfers of interment rights made on or after July 1, 2005, a cemetery shall issue a certificate of

interment rights or other instrument evidencing the conveyance of exclusive rights of interment upon payment in full of the purchase price.

2. The interment rights in an interment space that is conveyed by a certificate of ownership or other instrument shall not be divided without the consent of the cemetery.

3. A conveyance of exclusive rights of interment shall be filed and recorded in the cemetery office. Any transfer of the ownership of interment rights shall be filed and recorded in the cemetery office. The cemetery may charge a reasonable recording fee to record the transfer of interment rights.

Sec. 33. NEW SECTION. 523I.311 RECORDS OF INTERMENT RIGHTS AND INTERMENT.

1. For sales or transfers of interment rights made on or after July 1, 2005, a cemetery shall keep complete records identifying the owners of all interment rights sold by the cemetery and historical information regarding any transfers of ownership. The records shall include all of the following:

- a. The name and last known address of each owner or previous owner of interment rights.
- b. The date of each purchase or transfer of interment rights.
- c. A unique numeric or alphanumeric identifier that identifies the location of each interment space sold by the cemetery.

2. For interments made on or after July 1, 2005, a cemetery shall keep a record of each interment in a cemetery. The records shall include all of the following:

- a. The date the remains are interred.
- b. The name, date of birth, and date of death of the decedent interred, if those facts can be conveniently obtained.
- c. A unique numeric or alphanumeric identifier that identifies the location of the interment space where the remains are interred.

Sec. 34. NEW SECTION. 523I.312 DISCLOSURE REQUIREMENTS
-- INTERMENT AGREEMENTS.

1. Each nonperpetual care cemetery shall have printed or stamped at the head of all of its contracts, deeds, statements, letterheads, and advertising material, the legend: "This is a nonperpetual care cemetery", and shall not sell any lot or interment space in the cemetery unless the purchaser of the interment space is informed that the cemetery is a nonperpetual care cemetery.

2. An agreement for interment rights under this chapter shall be written in clear, understandable language and do all of the following:

- a. Identify the seller and purchaser.
- b. Identify the salesperson.
- c. Specify the interment rights to be provided and the cost of each item.
- d. State clearly the conditions on which substitution will be allowed.
- e. Set forth the total purchase price and the terms under which it is to be paid.
- f. State clearly whether the agreement is revocable or irrevocable, and if revocable, which parties have the authority to revoke the agreement.
- g. State the amount or percentage of money to be placed in the cemetery's care or maintenance fund.
- h. If the cemetery has a care fund, set forth an explanation that the care fund is an irrevocable trust, that deposits cannot be withdrawn even in the event of cancellation, and that the trust's income shall be used by the cemetery for its care.
- i. Set forth an explanation of any fees or expenses that may be charged.
- j. Set forth an explanation of whether amounts for perpetual care will be deposited in trust upon payment in full or on an allocable basis as payments are made.

k. Set forth an explanation of whether initial payments on agreements for multiple items of funeral and cemetery merchandise or services, or both, will be allocated first to the purchase of an interment space. If such an allocation is to be made, the agreement shall provide for the immediate transfer of such interment rights upon payment in full and prominently state that any applicable trust deposits under chapter 523A will not be made until the cemetery has received payment in full for the interment rights. The transfer of an undeveloped interment space may be deferred until the interment space is ready for interment.

1. If the transfer of an undeveloped interment space will be deferred until the interment space is ready for interment as permitted in paragraph "k", the agreement shall provide for some form of written acknowledgement upon payment in full, specify a reasonable time period for development of the interment space, describe what happens in the event of a death prior to development of the interment space, and provide for the immediate transfer of the interment rights when development of the interment space is complete.

m. Specify the purchaser's right to cancel and the damages payable for cancellation, if any.

n. State the name and address of the commissioner.

Sec. 35. NEW SECTION. 523I.313 NEW CEMETERIES AND GARDENS AND CEMETERY REGISTRY.

1. A person that dedicates property for a new cemetery on or after July 1, 2005, and a cemetery that dedicates an additional garden on or after July 1, 2005, shall:

a. In the case of land, survey and subdivide the property into gardens with descriptive names or numbers and make a map or plat of the cemetery or garden.

b. In the case of a mausoleum or a columbarium, make a map or plat of the property delineating sections or other divisions with descriptive names and numbers.

c. File the map or plat with the commissioner, including a written certificate or declaration of dedication of the property delineated by the map or plat, dedicating the property for cemetery purposes.

2. A map or plat and a certificate or declaration of dedication that is filed pursuant to this section dedicates the property for cemetery purposes and constitutes constructive notice of that dedication.

3. The commissioner shall maintain a registry of perpetual care and nonperpetual care cemeteries, to the extent that information is available. A cemetery selling interment rights on or after July 1, 2005, shall file a written notice with the commissioner that includes the legal description of the property with boundary lines of the land, the name of the cemetery, the status of the cemetery as either perpetual care or nonperpetual care, the status of the cemetery as either religious or nonreligious, and the cemetery's ownership in a form approved by the commissioner. A cemetery shall notify the commissioner of any changes in this information within sixty days of the change.

Sec. 36. NEW SECTION. 523I.314 NEW CONSTRUCTION.

1. A person shall not offer to sell interment rights in a mausoleum or columbarium that will be built or completed in the future unless the person has notified the commissioner of the offer to sell on a form prescribed by the commissioner.

2. The notice of an offer to sell interment rights in such a mausoleum or columbarium shall include the following information:

a. A description of the new facility or the proposed expansion, including a description of the interment rights to be offered to prospective purchasers.

b. A statement of the financial resources available for the project.

c. A copy of the proposed interment rights agreement to be used, which shall include the following:

(1) That purchase payments will be held in trust in accordance with the requirements of chapter 523A until construction of the mausoleum or columbarium is complete.

(2) That the purchaser may request a refund of the purchase amount, if construction does not begin within five years of the purchaser's first payment.

(3) That the new facility will operate as a perpetual care cemetery in compliance with this chapter, even if the facility is located at a nonperpetual care cemetery.

(4) That the purchaser will receive an ownership certificate upon payment in full or, if later, when construction is complete.

3. Unless financing has been secured that is adequate in amount and terms to complete the facility proposed, new construction of a mausoleum or columbarium shall not begin until the notice required by this section has been approved by the commissioner.

Sec. 37. NEW SECTION. 523I.315 UNPAID CARE ASSESSMENTS AND UNOCCUPIED INTERMENT SPACES.

1. FORECLOSURE -- UNPAID ASSESSMENTS. Unpaid care assessments for an unoccupied interment space not under perpetual care shall create a lien by the cemetery against the applicable interment space. The cemetery may, following notice, foreclose on the interment space if the amount of the lien exceeds the amount paid for the interment space. If the lien is not paid within one year from the date that notice of foreclosure is served on the owner of record or the owner of record's heirs, the ownership in or right to the unoccupied interment space shall revert to the cemetery that owns the cemetery in which the unoccupied interment space is located.

2. ABANDONMENT -- QUIET TITLE ACTION. A cemetery may file an action to quiet title to determine whether an interment space has been abandoned if the interment space is unoccupied and has not been occupied in the preceding seventy-five years. An action to quiet title shall commence when the cemetery

serves notice on the owner of record or the owner of record's heirs declaring that the interment space is considered to be abandoned. If the owner of record or the owner of record's heirs do not respond within three years from the date that notice is served, the abandonment is considered to be complete. The ownership in or right to an abandoned interment space shall revert to the cemetery in which the abandoned interment space is located and the cemetery may sell and convey title to the interment space.

3. SERVICE OF NOTICE. Notice under this section shall be served personally on the owner of record or the owner of record's heirs, or may be served by mailing notice by certified mail to the owner of record or to the owner of record's heirs at the last known address. If the address of the owner of record or the owner of record's heirs cannot be ascertained, notice of abandonment shall be given by one publication of the notice in the official newspaper of the county in which the cemetery is located.

Sec. 38. NEW SECTION. 523I.316 PROTECTION OF CEMETERIES AND BURIAL SITES.

1. EXISTENCE OF CEMETERY OR BURIAL SITE -- NOTIFICATION. If a governmental subdivision is notified of the existence of a cemetery, or a marked burial site that is not located in a dedicated cemetery, within its jurisdiction and the cemetery or burial site is not otherwise provided for under this chapter, the governmental subdivision shall, as soon as is practicable, notify the owner of the land upon which the cemetery or burial site is located of the cemetery's or burial site's existence and location. The notification shall include an explanation of the provisions of this section. If there is a basis to believe that interment may have occurred more than one hundred fifty years earlier, the governmental subdivision shall also notify the state archaeologist.

2. DISTURBANCE OF INTERMENT SPACES -- PENALTY. A person who knowingly and without authorization damages, defaces,

destroys, or otherwise disturbs an interment space commits criminal mischief in the third degree. Criminal mischief in the third degree is an aggravated misdemeanor.

3. DUTY TO PRESERVE AND PROTECT. A governmental subdivision having a cemetery, or a burial site that is not located within a dedicated cemetery, within its jurisdiction, for which preservation is not otherwise provided, shall preserve and protect the cemetery or burial site as necessary to restore or maintain its physical integrity as a cemetery or burial site. The governmental subdivision may enter into an agreement to delegate the responsibility for the preservation and protection of the cemetery or burial site to a private organization interested in historical preservation.

4. CONFISCATION AND RETURN OF MEMORIALS. A law enforcement officer having reason to believe that a memorial or memorialization is in the possession of a person without authorization or right to possess the memorial or memorialization may take possession of the memorial or memorialization from that person and turn it over to the officer's law enforcement agency. If a law enforcement agency determines that a memorial or memorialization the agency has taken possession of rightfully belongs on an interment space, the agency shall return the memorial or memorialization to the interment space, or make arrangements with the person having jurisdiction over the interment space for its return.

5. BURIAL SITES LOCATED ON PRIVATE PROPERTY. If a person notifies a governmental subdivision that a burial site of the person's relative is located on property owned by another person within the jurisdiction of the governmental subdivision, the governmental subdivision shall notify the property owner of the location of the burial site and that the property owner is required to permit the person reasonable ingress and egress for the purposes of visiting the burial site of the person's relative.

6. DISCOVERY OF HUMAN REMAINS. Any person discovering human remains shall notify the county or state medical examiner or a city, county, or state law enforcement agency as soon as is reasonably possible unless the person knows or has good reason to believe that such notice has already been given or the discovery occurs in a cemetery. If there is reason to believe that interment may have occurred more than one hundred fifty years earlier, the governmental subdivision notified shall also notify the state archaeologist. A person who does not provide notice required pursuant to this subsection commits a serious misdemeanor.

SUBCHAPTER 4

COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES

Sec. 39. NEW SECTION. 523I.401 NEGLECTED CEMETERIES.

The commissioner shall create a form that interested persons may use to report neglected cemeteries to the commissioner. The commissioner shall catalog and review the neglected cemetery reports received on or before December 31, 2007, conduct site visits as warranted to determine the nature or extent of any neglect, and publish a report of findings on or before December 31, 2008.

Sec. 40. NEW SECTION. 523I.402 REMOVAL OF REMAINS.

1. Upon a showing of good cause, a county cemetery commission may file suit in the district court in that county to have remains interred in a cemetery owned and operated by the commission removed to another cemetery. All persons in interest, known or unknown, other than the plaintiffs, shall be made defendants to the suit. If any parties are unknown, notice may be given by publication. After hearing and a showing of good cause for the removal, the court may order the removal of the remains and the remains shall be properly interred in another cemetery, at the expense of the county. The removal and reinterment of the remains shall be done pursuant to a disinterment permit issued under section 144.34 with due care and decency. In deciding whether to order the

removal of interred remains, a court shall consider present or future access to the cemetery, the historical significance of the cemetery, and the wishes of the parties concerned if they are brought to the court's attention, including the desire of any beneficiaries to reserve their rights to waive a reservation of rights in favor of removal, and shall exercise the court's sound discretion in granting or refusing the removal of interred remains.

2. Any heir at law or descendent of a deceased person interred in a neglected cemetery may file suit in the district court in the county where the cemetery is located, to have the deceased person's remains interred in the cemetery removed to another cemetery. The owner of the land, any beneficiaries of any reservation of rights, and any other persons in interest, known or unknown, other than the plaintiffs shall be made defendants. If any parties are unknown, notice may be given by publication. After hearing and upon a showing of good cause, the court may order removal and the proper interment of the remains in another cemetery, at the expense of the petitioner. The removal and reinterment shall be done with due care and decency.

SUBCHAPTER 5

GOVERNMENTAL SUBDIVISIONS

Sec. 41. NEW SECTION. 523I.501 CEMETERY AUTHORIZED.

The governing body of a governmental subdivision may purchase, establish, operate, enclose, improve, or regulate a cemetery. A cemetery owned or operated by a governmental subdivision may sell interment rights subject to the provisions of this chapter.

Sec. 42. NEW SECTION. 523I.502 TRUST FOR CEMETERY.

1. A governmental subdivision that owns or operates a cemetery or has control of cemetery property may act as a permanent trustee for the perpetual maintenance of interment spaces in the cemetery.

2. To act as a trustee, a majority of the governmental subdivision's governing body must adopt an ordinance or resolution stating the governmental subdivision's willingness and intention to act as a trustee for the perpetual maintenance of cemetery property. When the ordinance or resolution is adopted and the trust is accepted, the trust is perpetual.

Sec. 43. NEW SECTION. 523I.503 AUTHORITY TO RECEIVE GIFTS AND DEPOSITS FOR CARE -- CERTIFICATES.

1. A governmental subdivision that is a trustee for the perpetual maintenance of a cemetery may adopt reasonable rules governing the receipt of a gift or grant from any source.

2. A governmental subdivision that is a trustee for a person shall accept the amount the governmental subdivision requires for permanent maintenance of an interment space on behalf of that person or a decedent.

3. A governmental subdivision's acceptance of a deposit for permanent maintenance of an interment space constitutes a perpetual trust for the designated interment space.

4. Upon acceptance of a deposit, a governmental subdivision's secretary, clerk, or mayor shall issue a certificate in the name of the governmental subdivision to the trustee or depositor. The certificate shall state all of the following:

- a. The depositor's name.
- b. The amount and purpose of the deposit.
- c. The location, with as much specificity as possible, of the interment space to be maintained.
- d. Other information required by the governmental subdivision.

5. An individual, association, foundation, or corporation that is interested in the maintenance of a neglected cemetery in a governmental subdivision's possession and control may donate funds to the cemetery's perpetual trust fund to beautify and maintain the entire cemetery or burial grounds generally.

Sec. 44. NEW SECTION. 523I.504 APPOINTMENT OF SUCCESSOR TRUSTEE.

A district judge of a county in which a cemetery is located shall appoint a suitable successor or trustee to faithfully execute a trust in accordance with this subchapter if a governmental subdivision renounces a trust assumed under this subchapter, fails to act as its trustee, a vacancy occurs, or the appointment of a successor or trustee is otherwise necessary.

Sec. 45. NEW SECTION. 523I.505 COUNTY AUDITOR AS TRUSTEE.

1. In the absence of a trustee for care funds, unless otherwise provided by law, the care funds shall be placed in the hands of the county auditor, who shall provide a receipt for, loan, and make annual reports of the care funds.

2. The county auditor shall not be required to post a bond.

3. The county auditor shall serve without compensation, but may, out of the income received, pay all proper items of expense incurred in the performance of the auditor's duties as trustee, if any.

4. The county auditor shall make a full report of the trustee's actions and trust funds annually in January. The net proceeds for care funds received by the county auditor as trustee shall be apportioned and credited to each of any separate care funds assigned to the auditor.

5. The county auditor shall turn over the accrued income from each care fund annually to the person having control of the cemetery.

Sec. 46. NEW SECTION. 523I.506 COMMINGLING OF CARE FUNDS BY GOVERNMENTAL SUBDIVISIONS.

A governmental subdivision subject to this section may commingle care funds for more than one cemetery for the purposes of investment and administration and may file a single report, if each cemetery is appropriately identified and separate records are maintained for each cemetery.

Sec. 47. NEW SECTION. 523I.507 INVESTMENT OF CARE FUNDS BY GOVERNMENTAL SUBDIVISIONS.

Notwithstanding section 12B.10, a perpetual care cemetery owned by a governmental subdivision may invest and reinvest deposits pursuant to the requirements of this chapter. The trustee shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The trustee of the trust funds has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to the trust fund.

Sec. 48. NEW SECTION. 523I.508 MANAGEMENT BY GOVERNMENTAL SUBDIVISIONS.

1. POLITICAL SUBDIVISIONS AS TRUSTEES. Counties, cities, irrespective of their form of government, boards of trustees of cities to whom the management of municipal cemeteries has been transferred by ordinance, and civil townships wholly outside of any city, are trustees in perpetuity, and are required to accept, receive, and expend all moneys and property donated or left to them by bequest for perpetual care, and that portion of interment space sales or permanent charges made against interment spaces which has been set aside in a perpetual care fund for which there is no other acting trustee, shall be used in caring for the property of the donor or lot owner who by purchase or otherwise has provided for the perpetual care of an interment space in any cemetery, or in accordance with the terms of the donation, bequest, or agreement for sale and purchase of an interment space, and the money or property thus received shall be used for no other purpose.

2. AUTHORITY TO INVEST FUNDS -- CURRENT CARE CHARGE PAYMENTS. The board of supervisors, mayor and council, or

other elected governmental body, as the case may be, may receive and invest all moneys and property, donated or bequeathed, and that portion of cemetery lot sales and permanent charges made against cemetery lots which have been set aside in a perpetual care fund, and in so investing, shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The trustee of the trust funds has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to the trust fund. The income from the investment shall be used in caring for the property of the donor in any cemetery, or as provided in the terms of the gift or donations or agreement for sale and purchase of a cemetery lot.

All current care charge payments received shall be allocated to the perpetual care fund or to the fund paying the costs of cemetery operations. Care charge payments received one year or more after the date they were incurred shall be used to fund the cost of operating the cemetery. Care charge payments received one year or more in advance of their due date shall be deposited in the perpetual care fund. Interest from the perpetual care fund shall be used for the maintenance of both occupied and unoccupied lots or spaces. Any remaining interest may be used for costs of access roads and paths, fencing, and general maintenance of the cemetery. Lots under perpetual care shall be maintained in accordance with the cemetery covenants of sale.

3. RESOLUTION OF ACCEPTANCE -- INTEREST. Before any part of the principal may be invested or used, the county, city, board of trustees of a city to whom the management of a municipal cemetery has been transferred by ordinance, or civil

township shall, by resolution, accept the moneys described in subsection 1 and, by resolution, shall provide for the payment of interest annually to the appropriate fund, or to the cemetery, or the person in charge of the cemetery, to be used in caring for or maintaining the individual property of the donor in the cemetery, or interment spaces which have been sold if provision was made for perpetual care, all in accordance with the terms of the donation or bequest, or the terms of the sale or purchase of an interment space.

If there is no person in charge of the cemetery, the income from the fund shall be expended under the direction of the board of supervisors, city council, board of trustees, or civil township trustees, as the case may be, in accordance with the terms of the donation or bequest, or the terms of the sale or purchase of an interment space.

4. DELEGATES TO CONVENTIONS. A township having one or more cemeteries under its control may designate, not to exceed two, officials from each cemetery as delegates to attend meetings of cemetery officials, and certain expenses, including association dues, not to exceed twenty-five dollars, of the delegates may be paid out of the cemetery fund of the township.

5. SUBSCRIBING TO PUBLICATIONS. The cemetery officials of every township having a cemetery under its control may subscribe to one or more publications devoted exclusively to cemetery management, and the subscriptions may be paid out of the cemetery fund of the township.

SUBCHAPTER 6

GENERAL PROVISIONS

Sec. 49. NEW SECTION. 523I.601 SETTLEMENT OF ESTATES -- MAINTENANCE FUND.

The court in which the estate of a deceased person is administered, before final distribution, may allow and set apart from the estate a sum sufficient to provide an income adequate to pay for the perpetual care and upkeep of the

interment spaces upon which the body of the deceased is buried, except where perpetual care has otherwise been provided for. The sum so allowed and set apart shall be paid to a trustee as provided by this chapter.

Sec. 50. NEW SECTION. 523I.602 MANAGEMENT BY TRUSTEE.

1. TRUSTEE APPOINTED -- TRUST FUNDS. The owners of, or any party interested in, a cemetery may, by petition presented to the district court of the county where the cemetery is situated, have a trustee appointed with authority to receive any and all moneys or property that may be donated for and on account of the cemetery and to invest, manage, and control the moneys or property under the direction of the court. However, the trustee shall not be authorized to receive any gift, except with the understanding that the principal sum is to be a permanent fund, and only the net proceeds therefrom shall be used in carrying out the purpose of the trust created, and all such funds shall be exempt from taxation.

2. REQUISITES OF PETITION. The petition shall state the amount proposed to be placed in such trust fund, the manner of investment thereof, and the provisions made for the disposition of any surplus income not required for the care and upkeep of the property described in such petition.

3. APPROVAL OF COURT -- SURPLUS FUND. Such provisions shall be subject to the approval of the court and when so approved the trust fund and the trustee thereof shall, at all times, be subject to the orders and control of the court and such surplus arising from the trust fund shall not be used except for charitable, eleemosynary, or public purposes under the direction of the court.

4. RECEIPT -- CEMETERY RECORD. Every such trustee shall execute and deliver to the donor a receipt showing the amount of money or other property received, and the use to be made of the net proceeds from the same, duly attested by the clerk of the court granting letters of trusteeship, and a copy thereof, signed by the trustee and so attested, shall be filed with and

recorded by the clerk in a book to be known as the cemetery record, in which shall be recorded all reports and other papers, including orders made by the court relative to cemetery matters.

5. INVESTMENTS. Any such trustee may receive and invest all moneys and property, so donated or bequeathed, and that portion of cemetery lot sales and permanent charges made against interment spaces which has been set aside in a perpetual care fund, in such authorized investments and in the manner prescribed in section 636.23.

6. BOND -- APPROVAL -- OATH. Every such trustee before entering upon the discharge of the trustee's duties or at any time thereafter when required by the court shall give a bond in an amount as may be required by the court, approved by the clerk, and conditioned for the faithful discharge of the trustee's duties, and take and subscribe an oath the same in substance as the condition of the bond, which bond and oath must be filed with the clerk.

7. CLERK -- DUTY OF. At the time of filing each bond and oath the clerk shall at once advise the court as to the amount of the principal fund in the hands of such trustee, the amount of the bond filed, and whether it is good and sufficient for the amount given.

8. COMPENSATION -- COSTS. Such trustee shall serve without compensation, but may, out of the income received, pay all proper items of expense incurred in the performance of the trustee's duties, including cost of the bond, if any.

9. ANNUAL REPORT. Such trustee shall make a full report of the trustee's doings in the month of January following appointment and in January of each successive year. In each report the trustee shall apportion the net proceeds received from the sum total of the permanent funds assigned to the trustee in trust.

10. REMOVAL -- VACANCY FILLED. Any such trustee may be removed by the court at any time for cause, and in the event

of removal or death, the court shall appoint a new trustee and require the new trustee's predecessor or the predecessor's personal representative to make a full accounting.

Sec. 51. NEW SECTION. 523I.603 OWNERS OF INTERMENT RIGHTS.

1. An interment space in which exclusive rights of interment are conveyed is presumed to be the separate property of the person named as grantee in the certificate of interment rights or other instrument of conveyance.

2. Two or more owners of interment rights may designate a person to represent the interment space and file notice of the designation of a representative with the cemetery. If notice is not filed, the cemetery may inter or permit an interment in the interment space at the request or direction of a registered co-owner of the interment space.

Sec. 52. NEW SECTION. 523I.604 LIEN AGAINST CEMETERY PROPERTY.

1. A cemetery, by contract, may incur indebtedness as necessary to conduct its business and may secure the indebtedness by mortgage, deed of trust, or other lien against its property.

2. A mortgage, deed of trust, or other lien placed on dedicated cemetery property, or on cemetery property that is later dedicated with the consent of the holder of the lien, does not affect the dedication and is subject to the dedication. A sale on foreclosure of the lien is subject to the dedication of the property for cemetery purposes.

Sec. 53. NEW SECTION. 523I.605 PRIVATE CARE OF GRAVES.

This subchapter does not affect the right of a person who has an interest in an interment space, or who is a relative of a decedent interred in a cemetery, to beautify or maintain an interment space individually or at the person's own expense in accordance with reasonable rules established by the cemetery.

SUBCHAPTER 7
LAWN CRYPTS

Sec. 54. NEW SECTION. 523I.701 REQUIREMENTS FOR LAWN CRYPTS.

A lawn crypt shall not be installed unless all of the following apply:

1. The lawn crypt is constructed of concrete and reinforced steel or other comparable durable material.
2. The lawn crypt is installed on not less than six inches of rock, gravel, or other drainage material.
3. The lawn crypt provides a method to drain water out of the lawn crypt.
4. The lawn crypt is capable of withstanding the weight of the soil and sod above the top surface and the weight of machinery and equipment normally used in the maintenance of the cemetery.
5. Except as provided by section 523I.702, the lawn crypt is installed in multiple units of ten or more.
6. The lawn crypt shall be installed in compliance with any applicable law or rule adopted by the department of public health.

Sec. 55. NEW SECTION. 523I.702 REQUEST TO INSTALL LAWN CRYPTS IN FEWER THAN TEN UNITS.

1. A lawn crypt may be installed in fewer than ten units if it is installed in an interment space pursuant to a written request to the commissioner signed by the owner or owners of the interment space.
2. The written request shall be filed on a form prescribed by the commissioner and shall contain substantially all of the following information:
 - a. The owner's name and address.
 - b. The name of the cemetery and the owner of the cemetery.
 - c. The number of lawn crypt units to be installed.
 - d. A description of the interment spaces.
 - e. A statement that the lawn crypt meets the requirements of section 523I.701, including all of the following:

(1) A statement that the lawn crypt will be constructed of concrete and reinforced steel or other comparable durable materials.

(2) A statement that the lawn crypt will be installed on not less than six inches of rock, gravel, or other drainage material.

(3) A statement that the lawn crypt will provide a method to drain water out of the lawn crypt.

(4) A statement that the outside top surface of the lawn crypt at the time of installation will be capable of withstanding the weight of the soil and sod above the top surface and the weight of machinery and equipment normally used in the maintenance of the cemetery.

f. A statement that the space in which the lawn crypt is to be installed is located in a garden.

g. The date on which a representative of the cemetery signed the form.

SUBCHAPTER 8

PERPETUAL CARE CEMETERIES -- REQUIREMENTS

Sec. 56. NEW SECTION. 523I.801 APPLICABILITY AND CONVERSION BY NONPERPETUAL CARE CEMETERIES.

1. All cemeteries are designated as either "perpetual care cemeteries" or "nonperpetual care cemeteries" for the purposes of this chapter. A cemetery that represents that it is offering perpetual care on or after July 1, 2005, is subject to this subchapter.

2. A cemetery that operates a nonperpetual care cemetery may elect to become a perpetual care cemetery if at all times subsequent to the date of the election, the cemetery complies with the other requirements of this subchapter except section 523I.805.

Sec. 57. NEW SECTION. 523I.802 ADVERTISING.

1. A cemetery shall not advertise, represent, guarantee, promise, or contract to provide or offer perpetual care or use terms or phrases like permanent care, permanent maintenance,

care forever, continuous care, eternal care, or everlasting care to imply that a certain level of care and financial security will be furnished or is guaranteed except in compliance with the provisions of this subchapter.

2. A cemetery or person advertising or selling interment rights shall not represent that the purchase of the interment rights is or will be a desirable speculative investment for resale purposes.

Sec. 58. NEW SECTION. 523I.803 PERPETUAL CARE REGISTRY.

1. A cemetery that operates a perpetual care cemetery shall maintain a registry of individuals who have purchased interment rights in the cemetery subject to the care fund requirements of this subchapter.

2. The registry shall include the amount deposited in trust for each interment rights agreement entered into on or after July 1, 1995.

Sec. 59. NEW SECTION. 523I.804 USE OF GIFT FOR SPECIAL CARE.

A trustee may accept and hold money or property transferred to the trustee in trust for the purpose of applying the principal or income of the money or property transferred for a purpose consistent with the purpose of a perpetual care cemetery, including the following:

1. Improvement or embellishment of any part of the cemetery.
2. Erection, renewal, repair, or preservation of a monument, fence, building, or other structure in the cemetery.
3. Planting or cultivation of plants in or around the cemetery.
4. Special care of or embellishment of an interment space, section, or building in the cemetery.

Sec. 60. NEW SECTION. 523I.805 INITIAL DEPOSIT.

1. A cemetery owned or operated by a political subdivision of this state is not required to make a minimum initial deposit in a care fund. Any other cemetery commencing

business in this state on or after July 1, 2005, shall not sell interment spaces unless the cemetery has a care fund of at least twenty-five thousand dollars in cash.

2. If an initial deposit is made by a cemetery to satisfy subsection 1, the initial twenty-five thousand dollar deposit may be withdrawn by the cemetery when the care fund balance reaches one hundred thousand dollars. An affidavit shall be filed with the commissioner providing prior notice of the intended withdrawal of the initial deposit and attesting that the money has not previously been withdrawn. Upon a showing by the cemetery that the initial deposit has not previously been withdrawn, the commissioner shall approve withdrawal of the money and the withdrawal shall take place within one year after the care fund balance reaches one hundred thousand dollars.

Sec. 61. NEW SECTION. 523I.806 IRREVOCABLE TRUST.

1. A perpetual care cemetery shall establish a care fund as an irrevocable trust to provide for the care of the cemetery, which shall provide for the appointment of a trustee, with perpetual succession.

2. The care fund shall be administered under the jurisdiction of the district court of the county where the cemetery is located. Notwithstanding chapter 633, annual reports shall not be required unless specifically required by the district court. Reports shall be filed with the court when necessary to receive approval of appointments of trustees, trust agreements and amendments, changes in fees or expenses, and other matters within the court's jurisdiction. A court having jurisdiction over a care fund shall have full jurisdiction to approve the appointment of trustees, the amount of surety bond required, if any, and investment of funds.

Sec. 62. NEW SECTION. 523I.807 CARE FUND DEPOSITS.

1. To continue to operate as a perpetual care cemetery, a cemetery shall set aside and deposit in the care fund an

amount equal to or greater than fifty dollars or twenty percent of the gross selling price received by the cemetery for each sale of interment rights, whichever is more.

2. A cemetery may require a contribution to the care fund for perpetual care of a memorial or memorialization placed in the cemetery. A cemetery may establish a separate care fund for this purpose. The contributions shall be nonrefundable and shall not be withdrawn from the trust fund once deposited. The amount charged shall be uniformly charged on every installation of a memorial, based on the height and width of the memorial or the size of the ground surface area used for the memorial. A fee for special care of a memorial may be collected if the terms of the special care items and arrangements are clearly specified in the interment rights agreement. Except as otherwise provided in an interment rights agreement, a cemetery is not liable for repair or maintenance of memorials or vandalism. A cemetery may use income from a care fund to repair or replace memorials or interment spaces damaged by vandalism or acts of God.

3. Moneys shall be deposited in the care fund no later than the fifteenth day after the close of the month when the cemetery receives the final payment from a purchaser of interment rights.

Sec. 63. NEW SECTION. 523I.808 AUDIT FEE.

An audit fee shall be submitted with the cemetery's annual report in an amount equal to five dollars for each certificate of interment rights issued during the fiscal year covered by the report. The cemetery may charge the audit fee directly to the purchaser of the interment rights.

Sec. 64. NEW SECTION. 523I.809 TRUST AGREEMENT PROVISIONS.

1. A trust agreement shall provide for the appointment of at least one trustee, with perpetual succession, in case the cemetery is dissolved or ceases to be responsible for the cemetery's care.

2. A cemetery and the trustee or trustees of the care fund may, by agreement, amend the instrument that established the fund to include any provision that is necessary to comply with the requirements of this chapter.

3. A cemetery is responsible for the deposit of all moneys required to be placed in a care fund.

4. The commissioner may require the amending of a trust agreement that is not in accord with the provisions of this chapter.

Sec. 65. NEW SECTION. 523I.810 CARE FUNDS.

1. A trustee of a care fund shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The trustee of a care fund has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to the care fund.

a. A financial institution may serve as a trustee if granted those powers under the laws of this state or of the United States. A financial institution acting as a trustee of a care fund under this chapter shall invest the funds in accordance with applicable law.

b. A financial institution acting as a trustee of a care fund under this chapter has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to the financial institution. The commissioner may take enforcement action against a financial institution in its capacity as trustee for a breach of fiduciary duty under this chapter.

c. Care fund moneys may be deposited pursuant to a master trust agreement, if each care fund is treated as a separate beneficiary of the trust and each care fund is separable. The master trust shall maintain a separate accounting of principal

and income for each care fund. Moneys deposited under a master trust agreement may be commingled by the financial institution for investment purposes.

d. Subject to a master trust agreement, the cemetery may appoint an independent investment advisor to advise the financial institution about investment of the care fund.

e. Subject to an agreement between the cemetery and the financial institution, the financial institution may receive a reasonable fee from the care fund for services rendered as trustee.

f. If the amount of a care fund exceeds two hundred thousand dollars, the cemetery or any officer, director, agent, employee, or affiliate of the cemetery shall not serve as trustee unless the cemetery is a cemetery owned or operated by a governmental subdivision of this state. A financial institution holding care funds shall not do any of the following:

(1) Be owned, under the control of, or affiliated with the cemetery.

(2) Use any funds required to be held in trust under this chapter to purchase an interest in a contract or agreement to which the cemetery is a party.

(3) Otherwise invest care funds, directly or indirectly, in the cemetery's business operations.

2. All moneys required to be deposited in the care fund shall be deposited in the name of the trustee, as trustee, under the terms of a trust agreement and the trustee may invest, reinvest, exchange, retain, sell, and otherwise manage the care fund trust for the benefit and protection of the cemetery.

3. This section does not prohibit a cemetery from moving care funds from one financial institution to another.

4. A care fund may receive and hold as part of the care fund or as an incident to the care fund any property contributed to the care fund.

5. A contribution to a care fund is considered to be for charitable purposes if the care financed by the care fund is for the following purposes:

a. The discharge of a duty due from the cemetery to persons interred and to be interred in the cemetery.

b. The benefit and protection of the public by preserving and keeping the cemetery in a dignified condition so that the cemetery does not become a nuisance or a place of disorder, reproach, and desolation in the community in which the cemetery is located.

6. A contribution to a care fund is not invalid because of the following:

a. Indefiniteness or uncertainty as to the person designated as a beneficiary in the instrument establishing the care fund.

b. A violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

7. A care fund shall pay the fund's operation costs and any annual audit fees. The principal of a care fund is intended to remain available perpetually as a funding source for care of the cemetery. The principal of a care fund shall not be reduced voluntarily and shall remain inviolable, except as provided in this section. The trustee or trustees of a care fund shall maintain the principal of the care fund separate from all operating funds of the cemetery.

8. In establishing a care fund, the cemetery may adopt plans for the care of the cemetery and installed memorials and memorialization.

9. A cemetery may, by resolution adopted by a vote of at least two-thirds of the members of its board at any authorized meeting of the board, authorize the withdrawal and use of not more than twenty percent of the principal of the care fund to acquire additional land for cemetery purposes, to repair a mausoleum or other building or structure intended for cemetery

purposes, or to build, improve, or repair roads and walkways in the cemetery. The resolution shall establish a reasonable repayment schedule, not to exceed five years, and provide for interest in an amount comparable to the care fund's current rate of return on its investments. However, the care fund shall not be diminished below an amount equal to the greater of twenty-five thousand dollars or five thousand dollars per acre of land in the cemetery. The resolution, and either a bond or proof of insurance to guarantee replenishment of the care fund, shall be filed with the commissioner thirty days prior to the withdrawal of funds.

Sec. 66. NEW SECTION. 523I.811 USE OF DISTRIBUTIONS FROM CARE FUND.

1. Care fund distributions may be used in any manner determined to be in the best interests of the cemetery if authorized by a resolution, bylaw, or other action or instrument establishing the care fund, including but not limited to the general care of memorials, memorialization, and any of the following:

- a. Cutting and trimming lawns, shrubs, and trees at reasonable intervals.
- b. Maintaining drains, water lines, roads, buildings, fences, and other structures.
- c. Maintaining machinery, tools, and equipment.
- d. Compensating maintenance employees, paying insurance premiums, and making payments to employees' pension and benefit plans.
- e. Paying overhead expenses incidental to such purposes.
- f. Paying expenses necessary to maintain ownership, transfer, and interment records of the cemetery.

2. The commissioner may, by rule, establish terms and conditions under which a cemetery may withdraw capital gains from the care fund.

Sec. 67. NEW SECTION. 523I.812 SUIT BY COMMISSIONER.

1. If the person or persons in control of a cemetery do not care for and maintain the cemetery, the district court of the county in which the cemetery is located may do the following:

- a. By injunction compel the cemetery to expend the net income of the care fund as required by this chapter.
 - b. Appoint a receiver to take charge of the care fund and expend the net income of the care fund as required by this chapter.
 - c. Grant relief on a petition for relief filed pursuant to this section by the commissioner.
2. Inadequate care and maintenance of a cemetery includes but is not limited to the following:
- a. Failure to adequately mow grass.
 - b. Failure to adequately edge and trim bushes, trees, and memorials.
 - c. Failure to keep walkways and sidewalks free of obstructions.
 - d. Failure to adequately maintain the cemetery's equipment and fixtures.

This subsection is not intended to prevent the establishment of a cemetery as a nature park or preserve.

Sec. 68. NEW SECTION. 523I.813 ANNUAL REPORT BY PERPETUAL CARE CEMETERIES.

1. A perpetual care cemetery shall file a written report at the end of each fiscal year of the cemetery that includes all of the following:
 - a. The name and address of the cemetery.
 - b. The name and address of the corporation that owns the cemetery, if any.
 - c. A description of any common business enterprise or parent company that owns the cemetery, if any.
 - d. The name and address of any owner, officer, or other official of the cemetery, including, when relevant, the chief executive officer and the members of the board of directors.

e. The name and address of any trustee holding trust funds for the cemetery, including the name and location of the applicable trust account.

f. An affidavit that the cemetery is in compliance with this chapter.

g. Copies of all sales agreement forms used by the cemetery.

h. The amount of the principal of the cemetery's care funds or maintenance funds, if any, at the end of the fiscal year.

2. The report shall be filed with the commissioner within four months following the end of the cemetery's fiscal year in the form required by the commissioner.

Sec. 69. NEW SECTION. 523I.814 UNIFIED ANNUAL REPORTS.

The commissioner shall permit the filing of a unified report in the event of commonly owned or affiliated cemeteries if each cemetery is separately identified and separate records are maintained for each cemetery.

Sec. 70. Section 602.8102, subsection 81, Code 2005, is amended to read as follows:

81. Carry out duties relating to cemeteries as provided in ~~sections 566-47-566-77, and 566-8~~ section 523I.602.

Sec. 71. Section 602.8104, subsection 2, paragraph h, Code 2005, is amended to read as follows:

h. A cemetery record as provided in section 566-4 523I.602.

Sec. 72. Section 636.23, subsection 14, Code 2005, is amended to read as follows:

14. LIMITATION AS TO COURT-APPROVED INVESTMENTS. This section does not prohibit investment of such funds in a savings account or time certificate of deposit of a bank or savings and loan association, located within the city or its county of this state and when first approved by the court. However, a city that is the trustee of a cemetery as provided in section ~~566-14~~ 523I.508 may invest perpetual care funds in

a savings account or certificates of deposit at a bank or savings and loan association, located in this state without court approval.

Sec. 73. Section 359.41, Code 2005, is repealed.

Sec. 74. Chapters 523I, 566, and 566A, Code 2005, are repealed.

CHRISTOPHER C. RANTS
Speaker of the House

JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 836, Eighty-first General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved 5/12, 2005

THOMAS J. VILSACK
Governor