

CHAPTER NO. 1012

HOUSE BILL NO. 4027

By Representatives McMillan, Hackworth, Shepard, Armstrong, Fraley, Sherry Jones, Tindell, Winningham, Dunn, Ferguson

Substituted for: Senate Bill No. 3926

By Senators Kyle, Burchett, McNally

AN ACT to amend Tennessee Code Annotated, Title 46, relative to cemeteries.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 46, Chapter 1, is amended by deleting the chapter in its entirety and by substituting Sections 2 through 4 below as new, appropriately designated parts thereto.

SECTION 2.

46-1-101.

(a) The provisions of this chapter apply to all cemeteries, community and public mausoleums, whether operated for profit or not for profit, within the state of Tennessee, except cemeteries exempt under §46-1-106. Cemeteries existing on or after the effective date of this act shall be operated in accordance with the provisions of this chapter and chapter 2 of this title, which together shall be known and may be cited as the "Cemetery Act of 2006." The provisions of this chapter also apply to all contracts executed subsequent to January 1, 2007.

(b) Unless otherwise specified, any person violating the provisions of this chapter commits a Class A misdemeanor.

46-1-102. As used in this chapter, unless the context otherwise requires:

(1) "Cemetery" means any land or structure in this state dedicated to and used, or intended to be used, for interment of human remains;

(2) "Cemetery company" means an individual, partnership, corporation, or association, now or hereafter organized, owning or controlling cemetery lands or property and conducting the business of a cemetery;

(3) "Cemetery operator" means any owner, director, principal, manager, member, stockholder with a majority ownership interest, or other person who has any ownership interest in or has any control over the financial operations of a cemetery company;

(4) "Cemetery purposes" means any and all things requisite or necessary for or incident or convenient to the establishment, maintenance, management, operation, improvement and conduct of a cemetery, the preparation of the

premises for interment and the interment of the human dead, and the care, preservation and embellishment of cemetery property;

(5) "Columbarium" means a structure or room or space in a building or structure used, or intended to be used, for the interment of cremated human remains;

(6) "Commissioner" means the commissioner of commerce and insurance;

(7) "Commodity" includes, but is not limited to, memorials consisting of permanent monuments or gravemarkers of marble, granite or bronze, bronze plaques, or bronze vases; and foundations or footings of such memorials. "Commodity" does not include floral arrangements and plants;

(8) "Consumer price index" means the consumer price index (all items—United States city average), as published by the United States department of labor, bureau of labor statistics;

(9) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person;

(10) "General fund" means the sum total of specific funds placed in a single fund;

(11) "Human remains" or "remains" means the body of a deceased person and includes the body in any stage of decomposition and cremated remains;

(12) "Improvement care" means the continual maintenance of the cemetery grounds and graves in keeping with a properly maintained cemetery, including the cutting of the grass upon and the raking and cleaning of cemetery plots at reasonable intervals, the pruning of shrubs and trees thereon; the memorial care of commodities; the procuring, maintaining and keeping in workable condition the machinery, tools and equipment needed for the shop and replacing the same when necessary; keeping in repair and preserving the drains, water lines, roads, buildings, fences and other structures, including cemetery-owned statues and embellishments of general character applicable to the cemetery as a whole or a particular area; administration of the cemetery, including, but not limited to, the paying of insurance premiums, pensions, maintaining the necessary records of lot ownership, burials and other necessary information and making the same available to public authorities and interested persons;

(13) "Interment" means any lawful disposition of the remains of a deceased person as provided by law;

(14) "Lawn crypts" means pre-placed chambers, constructed of reinforced concrete and installed in quantity, either side by side or multiple depth, with gravel and tile underlay and covered by earth or sod, each crypt being an integral part of a given garden area;

(15) "Lot" or "grave space" means a space of ground in a cemetery used or intended to be used for interment therein, the beautification of the ground, or the memorialization of the deceased person;

(16) "Mausoleum crypts" means chambers contained in a structure or building constructed of reinforced concrete whether assembled above or below ground;

(17) "Memorial care" includes, but is not limited to, resetting or straightening tipped commodities, replacing damaged commodities, and providing for the general maintenance of commodities;

(18) "Merchandise" means personal property sold by a cemetery company, such as foundations, markers, memorials, memorial bases, monuments, urns, vases, lawn and mausoleum crypts;

(19) "Niche" means a space in a columbarium used, or intended to be used, for the interment of the cremated remains of one (1) or more deceased persons;

(20) "Preneed" means the time prior to death when the use of merchandise or services is not actually required;

(21) "Services" means acts performed by a cemetery company on its premises in the final interment of human remains or the installation of merchandise used in connection therewith;

(22) "Specific funds" means funds identified to merchandise to be delivered or services to be performed as specified in a certain contract and earmarked as having been paid by a certain purchaser; and

(23) "Undeveloped" means real property which is not presently suitable for interment, entombment or inurnment as described in the purchase agreement.

(24) "Interment right" means the right to inter human remains in a particular space in cemetery, including, but not limited to a grave space, mausoleum crypt, niche, memorial bench, and scattering garden.

46-1-103.

(a) Except as otherwise provided in this chapter, it is a Class A misdemeanor for any cemetery company to operate a cemetery or separate geographical site of a cemetery in this state without a valid certificate of registration for such cemetery or separate site thereof.

(b) An application for registration shall be submitted on the form prescribed by the commissioner. The applicant shall provide on such form:

(1) The location of the cemetery (or separate site thereof);

(2) The name and address of the cemetery company, and (if a corporation) the date of incorporation;

(3) Proof of having established improvement care and preneed merchandise and services trust funds in accordance with this chapter; and

(4) Proof of a map showing all interment sites that will be available for sale and developed or planned for development upon approval of the application.

(5) Such other information as the commissioner may reasonably require.

(c)

(1) Upon approval of the application and receipt of a filing fee as set by the commissioner, the commissioner shall issue a certificate of registration to the applicant.

(2) No certificate of registration is transferable.

(d)

(1) Upon receipt of a satisfactory application on the prescribed form, the commissioner may issue a temporary permit authorizing operation of a cemetery if the commissioner determines that:

(A) No cemetery company holds a valid certificate of registration for such cemetery;

(B) No cemetery company has submitted a sufficient application for a certificate of registration for such cemetery; and

(C) Issuance of such temporary permit would be clearly in the public interest.

(2) A temporary permit is subject to such conditions and limitations as the commissioner may set forth.

(3) The commissioner may, upon request, extend the duration of a temporary permit. In no case, however, shall a temporary permit authorize continuous operation of a cemetery for longer than one (1) year.

(4) The commissioner may terminate a temporary permit at any time by giving written notice to the holder at least ten (10) days before the effective date of such termination.

46-1-104.

(a) All certificates of registration issued by the commissioner under the provisions of this chapter expire at the end of the registrant's fiscal year following issuance thereof, and become invalid after such date unless renewed.

(b) Renewal of a certificate of registration may be effected at any time during the two (2) months preceding the date of expiration upon submission of an application to the commissioner on the prescribed form, accompanied by a renewal fee as set by the commissioner.

(c) The fee for late renewal for certificates of registration shall be increased by an amount as set by the commissioner for each month or fraction thereof that payment for renewal is delayed. No renewal application will be accepted later than nine (9) months after the expiration date of a certificate.

(d) The fee for reinstatement of a nonrenewed certificate of registration shall be set by the commissioner.

46-1-105.

(a) There is hereby established within the general fund a cemetery consumer protection account, hereinafter the "account". All funds received by the commissioner under this section shall be deposited into the account and held solely for the purposes of this section.

(b) Moneys within the account shall be invested by the state treasurer in accordance with the provisions of §9-4-603 for the sole benefit of the account.

(c) No renewal cemetery registration shall be issued unless the applicant pays, in addition to the renewal fee, a consumer protection fee of twenty dollars (\$20.00) for every preneed sales contract entered into during the preceding renewal period.

(d) One-half (1/2) of the funds received pursuant to this section shall be used to fund the cemetery registration program, and one-half (1/2) of the funds received pursuant to this section shall be used to fund any receivership action initiated by the commissioner against a cemetery due to a deficiency in the cemetery's improvement care or preneed merchandise and services trust fund.

46-1-106.

(a) The provisions of this chapter and chapter 2 of this title do not apply to:

(1) Cemeteries owned by municipalities;

(2) Cemeteries owned by churches, associations of churches, or church governing bodies;

(3) Cemeteries owned by religious organizations;

(4) Family burial grounds; or

(5) Cemeteries owned by general welfare corporations created by special act of the general assembly; provided, that such cemeteries are not operated for profit and no funds of the cemeteries are used or expended, directly or indirectly, to compensate a sales contractor, sales manager or promoter of the cemetery; provided, that nothing herein shall prevent a cemetery owned by a church, association of churches or church governing body that has owned the cemetery in question for a period of five (5) years, and has operated the cemetery for religious purposes and not for profit during the period, from compensating a sales manager, sales contractor or promoter.

(b) The commissioner has the discretion to extend this exemption to community cemeteries after taking into consideration the intent of this chapter and factors including, but not limited to, the following:

- (1) The age of the cemetery;
- (2) The remaining area for future use;
- (3) The sale of lots over the preceding ten (10) years; and
- (4) The population of the community normally served by the cemetery.

(c) The commissioner may at any time revoke any exemption granted a community cemetery under this authority.

46-1-107.

(a) No later than thirty (30) days prior to the sale or transfer of any cemetery required to be registered by this chapter, or the sale or transfer of a controlling interest in the cemetery company that owns the cemetery, the transferor shall notify the commissioner in writing and:

(1) Submit any documentation or records the commissioner may require in order to determine the amount of any indebtedness of the transferor to the preneed merchandise and services trust account or the improvement care trust fund; and

(2) Disclose any agreements between the transferor and transferee regarding:

(A) Any existing cemetery trust accounts established pursuant to this chapter; and

(B) Assumption or disclaimer of liabilities of the transferor.

(b) Except as provided in subsection (c), the transferee shall not be entitled to a certificate of registration for such cemetery before:

(1) The provisions of subsection (a) have been complied with;
and

(2) Any indebtedness of the transferor to the preneed merchandise and services trust account or the improvement care trust fund has been liquidated.

(c) Notwithstanding indebtedness of the transferor to the preneed merchandise and services trust account or the improvement care trust fund, the commissioner may issue a certificate of registration to the transferee if the commissioner determines that:

(1) The sale or transfer is in the best interests of the maintenance and continued operation of the cemetery;

(2) The sale or transfer is not designed to circumvent the provisions of this title; and

(3) The transferee has satisfactorily agreed to liquidate the indebtedness to the maximum feasible extent.

(d) The state may, for the benefit of the preneed merchandise and services trust account or the improvement care trust fund:

(1) Recover from the transferor all sums which the transferor has not properly accounted for and paid into the fund; and

(2) Recover from the transferee all sums which the transferee has not properly accounted for and paid into the fund.

(e) The issuance of a certificate of registration under this section shall not operate to release any person, firm or corporation from any obligations to the preneed merchandise and services trust account or the improvement care trust fund.

46-1-108.

(a) A cemetery company has the power to purchase land, not exceeding two hundred (200) acres, to be used as a cemetery forever; to lay the same off in suitable avenues or walks and embellish with trees, shrubbery, and flowers, and to subdivide the land into lots suitable for graves, monuments, and vaults, and sell the same in such manner as the board of directors of the cemetery may determine; provided, that any land may be purchased and used as a cemetery at any place within a town or city after the proposed location shall have been approved by resolution of the governing body of such town or city.

(b) Each contract for the sale of burial space or the conveyance of interment rights shall be executed in duplicate, and an executed copy shall be given to the purchaser.

(c) If a specific interment site is selected by the purchaser at the time the purchase contract is executed, the contract shall contain a detailed description of the location of the interment site purchased. All such contracts must also contain the following or similar notices to the purchaser: "This cemetery is regulated by the State of Tennessee Department of Commerce and Insurance Burial Services Section. The purchaser or the purchaser's designated legal agent has the right upon request to access the cemetery's records relating to the purchaser's interment right or interment site. Within ninety (90) days of the receipt of the final payment on the purchase contract for any interment right, the purchaser shall receive from the cemetery company proof of ownership of said interment right. The purchaser, at the purchaser's own cost, may record a copy of such proof of ownership with the register of deeds for the county in which the cemetery is located."

(d) All lots thus sold to purchasers shall forever be free from attachment or the levy of an execution.

46-1-109.

(a) A cemetery company may hold any grant or bequest in money or other property, and shall faithfully apply the same for the improvements of the cemetery, or in the erection or preservation of any tomb or monument, according to the terms of such grant or bequest, except those funds required to be held in trust, or paid into the improvement care trust fund as provided by §46-1-204.

(b) No cemetery company shall accept any special grant or bequest unless it is in writing and made a part of the permanent records of the cemetery.

46-1-110.

(a) Cemetery companies owning lands never actually used by them for cemetery purposes, and which are not suitable or adapted to such purpose, or are found by them to be not needful for such purposes, are empowered to sell and convey or otherwise dispose of the same for secular or general use; provided, that:

(1) No later than thirty (30) days prior to the disposition of the land the cemetery company notifies the commissioner in writing and obtains written approval of the disposition from the commissioner or the commissioner's designee; and

(2) The commissioner may order the cemetery company disposing of the land to deposit up to one hundred percent (100%) of the net proceeds of the disposition in the cemetery's improvement care trust fund or the cemetery's preneed merchandise and services trust fund, or both, within thirty (30) days after the disposition if there is a deficiency in either trust fund. Such order may not exceed the actual amount of the deficiency in the improvement care trust fund or the preneed merchandise and services trust fund, or both.

(b) Nothing in this section shall be construed to authorize cemetery companies to acquire any lands for the purpose of selling the same again or to engage in speculation of real estate.

46-1-111.

(a) A record shall be kept of every burial in the cemetery of the cemetery company, showing the date of burial and name of the person buried, together with the designation of lot or space in which such burial was made therein. In addition, the cemetery company shall keep records showing the date of the sale, the contract number, the name of the purchaser, and the amount of the sale to be held for inclusion in the improvement care trust fund and the date of the receipt of any payment on such sale, all on a form approved by the commissioner. The cemetery company shall also keep records showing the full amount received for installation of each commodity and the full amount deposited into the improvement care trust fund for memorial care of each commodity, identified by lot owner and decedent occupying grave space. The identical information is required if deposits to the improvement care trust fund are made on a collection basis. All sales records, trust fund records, accounting records, and all other records of the cemetery company shall be available at its principal place of business or principal office in this state, and shall be readily available at all reasonable times for examination or inspection by the commissioner or the commissioner's authorized representatives.

(b) A record shall be kept of every interment site or interment right sold to a consumer. The record required under this section shall contain a detailed description of the location of the interment site or interment right sold.

(c) Any consumer purchasing an interment site or interment right in a cemetery located in this state shall receive from the cemetery company at the time of purchase a copy of the executed purchase contract. If a specific interment site is selected by the consumer at the time the purchase contract is executed, the contract shall contain a detailed description of the location of the interment site purchased.

(d) After the effective date of this act, all cemetery companies applying for and obtaining a new registration in accordance with §46-1-103 shall develop and maintain a map of the cemetery detailing the location of interment sites. For all cemetery companies registered as of the effective date of this act, a map must be developed and maintained for any and all interment sites newly developed or planned for development before they can be made available for sale to consumers.

(e) All records required to be kept under this section shall be considered as part of the cemetery, and shall be included in any sale or transfer thereof. All burial and interment rights records, including copies of contracts for the sale of lots, shall be retained indefinitely. All other records shall be retained for at least ten (10) years, unless the commissioner approves a shorter period of retention.

SECTION 3.

46-1-201. It is the purpose of this part to require cemetery companies in the state at all times to carry a sufficient improvement care trust fund to maintain, keep up and beautify the cemeteries, without commercializing the operation of the same and to maintain a preneed merchandise and services trust fund to ensure that the preneed sale of merchandise and services is properly accounted for and administered.

46-1-202.

(a) Every cemetery company shall carry fidelity bond coverage of at least one hundred thousand dollars (\$100,000) or such higher amount that the commissioner deems sufficient for officers and employees who handle money and securities.

(b) The annual financial report required by §46-1-214 to be filed with the commissioner shall indicate the amount of fidelity bond coverage, the classes of employees included, name of carrier and policy number, and the expiration date of coverage.

(c) Cemeteries with combined funds (defined as cash, investments and assets) of less than forty thousand dollars (\$40,000) may apply to the commissioner for an exemption from meeting the requirements of subsections (a) and (b) of this section. The commissioner may grant an exemption upon receiving satisfactory documentation demonstrating that all financial transactions, including withdrawals from the preneed merchandise and services trust fund or operating funds, require the signatures of two or more designated cemetery officials.

(d) If any cemetery which is currently exempt should, at any time in the future, obtain combined funds in excess of forty thousand dollars (\$40,000), the cemetery shall, within sixty (60) days of notification of the commissioner, obtain the fidelity bond required by subsections (a) and (b) of this section.

46-1-203.

(a) No person or group of persons shall engage in the business of owning and operating a cemetery company except as authorized by this chapter and chapter 2 of this title, and without first:

(1) If an entity required to register with or obtain any form of approval from the secretary of state, obtaining such registration or approval and retaining the same in an active status as long as the cemetery company is owned and operated by the applicant;

(2) Entering into a trust agreement in accordance with §46-1-204; and

(3) Depositing either cash or a surety bond approved by the commissioner in its improvement care trust fund, in an amount to be determined according to the population of the county in which the cemetery is located as estimated by the federal census of 1960 or any subsequent federal census as follows:

10,000 or under.....	\$40,000	
10,001 to 15,000.....	60,000	
15,001 to 20,000.....		80,000
20,001 to 100,000.....	100,000	
100,001 or more.....	200,000	

(b) The requirements of this section shall also be applicable to any existing cemetery company which establishes or opens a new cemetery or an addition to an existing cemetery on or after January 1, 2007.

46-1-204.

(a) Every cemetery company engaged in the business of selling lots, grave spaces, crypts, niches, and burial rights in this state shall establish and forever maintain an improvement care trust fund for each separate cemetery and for each separate geographical location of each cemetery owned and operated by the cemetery company, to provide for the improvement care and maintenance of such cemetery or such separate geographical location. Such trust fund shall be established by executing a written trust agreement with a trust company approved by the commissioner, or with a state or national bank, or with savings and loan associations having insurance of accounts as required by law; provided, that a cemetery company may change the trustee of its trust fund by providing written notice to the commissioner no later than thirty (30) days prior to the change along with evidence sufficient to the commissioner that the trustee will be able to comply with the requirements of this chapter. If the commissioner determines that the evidence submitted is insufficient to ensure that the trustee will be able to comply with the requirements of this chapter, the commissioner may refuse to allow the cemetery company to change the trustee.

(b) The written trust agreement shall specifically state the following:

(1) The nature and extent of care to be furnished;

(2) That such care shall be furnished only insofar as the net income derived from the amount deposited in the trust will permit; and

(3)

(A) That within thirty (30) days of a transaction, not less than the following minimum amounts will be set aside and deposited in trust by the cemetery company:

(i) For land, but not including lawn crypts, fifty cents (50¢) per square foot of the land sold or twenty percent (20%) of total sales price, whichever is greater;

(ii) For a lawn crypt, twenty percent (20%) of the total sales price of the land excluding the lawn crypt, or fifty dollars (\$50.00), whichever is greater;

(iii) For a mausoleum, crypt, niche, or any memorial other than a commodity, not less than ten percent (10%) of the total sales price;

(iv) For the special care of any lot, grave, crypt, or niche or of a family mausoleum, memorial, marker or monument, the full amount received; and

(v) For a commodity, the full amount received for memorial care.

(vi) For the sale of land for non-cemetery purposes, the commissioner may order the cemetery company disposing of the land to deposit up to one hundred percent (100%) of the net proceeds of the disposition in the cemetery's improvement care trust fund or the cemetery's preneed merchandise and services trust fund, or both, within thirty (30) days after the disposition if there is a deficiency in either trust fund. Such order may not exceed the actual amount of the deficiency in the improvement care trust fund or the preneed merchandise and services trust fund, or both.

(B) Notwithstanding anything in chapter 1 of this title or this part to the contrary, any cemetery company depositing more than the required amounts in its improvement care trust fund, in accordance with prior statutory requirements or the provisions of its charter or contracts, shall be hereby authorized to continue to do so; provided, that deliberate advance payments made to the improvement care fund shall not be credited toward any future liability.

(c) Every cemetery company shall be permitted to charge a fee for the memorial care of every commodity installed in the cemetery. Such fee shall not exceed twenty-three cents (\$0.23) per square inch of the ground covered by the commodity. As of the end of each calendar year, the cemetery company shall be permitted to increase its fee for the memorial care of commodities by no more than the percentage representing the consumer price index as of the end of such calendar year. The fee charged for memorial care of a commodity shall not exceed the fee charged by the cemetery company for installation of the commodity. The charge for memorial care of a commodity shall be the same to all regardless of the source of the commodity.

(d) Such setting aside and deposit shall be made by the cemetery company not later than thirty (30) days after the close of the month in which the final payment on the purchase price of each lot, grave space, crypt or niche, or the final payment for the general or special care of the lot, grave space, crypt, or niche, or of a family mausoleum, memorial, marker or monument is received; or the final payment for the memorial care of a commodity; such amounts deposited shall be held by the trustee of the improvement care funds of such cemetery in trust and perpetuity for the specific purposes stated in the written agreement. All

deposits with a trustee by a cemetery company under this part shall be in cash only.

(e)

(1) As used in this subsection (e), unless the context otherwise requires:

(A) "Net earnings" means:

(i) All net income excluding capital gains; or

(ii) An amount not exceeding five percent (5%) of the fair market value of the trust as of the last day of the trust fiscal year immediately preceding the distribution year. This amount is not reduced by taxes or fees unless the fees exceed two and one half percent (2.5%) of the market value of the trust as of the last day of the trust fiscal year immediately preceding the distribution year, and if any fees exceed two and one half percent (2.5%) of the market value of the trust as of the last day of the preceding fiscal year, then the amount of the disbursement shall be reduced by such excess;

(B) "Net income" means the collected dividends, interest and other income of the trust reduced by taxes on income and fees.

(2) The net earnings of each improvement care trust fund shall be paid to and shall be used and expended by the owners or officers and directors of the cemetery company, or by the trustee of the improvement care trust fund while the cemetery is not being operated by its owner, for the improvement care, as defined in §46-1-102, of the cemetery or separate geographical location of the cemetery for which the fund was established and for no other purpose.

(3) While a cemetery for which an improvement care trust has been funded is not being operated by its owner, the trustee may disburse net income from the trust to compensate any responsible person for work performed or expenses incurred in the improvement care of the cemetery. In investing these funds, the trustee shall exercise the judgment and care under the circumstances then prevailing that men 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 and capital appreciation as well as the probable safety of their capital. Within the limitations of the foregoing standard, subject to any express provisions of limitations contained in any particular trust instrument, the trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not limited to, corporate obligations

of every kind, and stocks, preferred or common, that persons of prudence, discretion and intelligence acquire for their own accounts.

(4)

(A) A cemetery owner may select a method to calculate the net earnings of a trust for the first fiscal year in which this subsection (e) is effective, by delivering written instructions to the trustee of the fund by no later than sixty (60) days prior to the end of that fiscal year.

(B) A cemetery owner may select a method of calculation to be used for any given fiscal year by using either subdivision (e)(1)(A)(i) or (e)(1)(A)(ii). A cemetery owner shall provide the trustee with written instructions of which method of calculation has been chosen by no later than the last day of the preceding fiscal year. In the event that the method of calculation chosen by the cemetery owner prior to the start of the fiscal year would result in lower disbursements than would the other calculation, then the cemetery owner may provide the trustee with written instructions by no later than sixty (60) days prior to the end of the fiscal year to change the method of calculation.

(C) In the event that the trustee does not receive written instructions for a given fiscal year from the cemetery owner informing the trustee of the method of calculation chosen or the trustee has never received any written instructions of the method of calculation chosen, then the trustee shall calculate and disburse funds in accordance with subdivision (e)(1)(A)(i).

(D)

(i) In order to withdraw up to five percent (5%) of a trust that is already in existence on July 1, 2005, in accordance with subdivision (e)(1)(A)(ii), the current market value of the trust after the withdrawal shall be greater than $.90 \times [MV(T)+C]$. T represents July 1, 2005. MV represents the principal market value of the trust at T. C represents the total contributions made to the trust principal from T to the date that the method of calculation is selected.

(ii) In order to withdraw up to five percent (5%) of a trust that is established after July 1, 2005, in accordance with subdivision (e)(1)(A)(ii), the current market value after the withdrawal shall be greater than $.90 \times [MV(N)+C]$. MV(N) represents the principal market value of the trust that will be determined at the end of the trust's fiscal year. C represents contributions made to the principal after the first completed fiscal year.

(iii) Disbursements from the trust that are calculated pursuant to subdivision (e)(1)(A)(ii) shall be made on a monthly, quarterly, semi-annual or annual basis.

(E) In order for a cemetery owner to receive distributions from the trust that are calculated by using either method of calculation in subdivision (e)(1)(A)(i) or (e)(1)(A)(ii), the cemetery owner shall:

(i) Be current on payment of the annual registration fee. The cemetery owner shall certify to the trustee on forms provided by the commissioner that the cemetery is registered with the department; and

(ii) Be current on required deposits to the trust or make payments on any arrearages through special arrangements with the commissioner. At the commissioner's discretion, the commissioner may allow cemetery owners to make payments on arrearages. The cemetery owner shall certify to the trustee on forms provided by the commissioner that the cemetery owner is current on required deposits or is making payments on arrearages.

(f) No cemetery company shall commingle the improvement care funds for the benefit of one (1) cemetery with improvement care funds for the benefit of any other cemetery or with any other funds, and each separate geographical site of a cemetery shall have a separate improvement care fund. However, improvement care funds from more than one (1) cemetery may be commingled by trustees for investment purposes, so long as an accurate accounting is maintained for each individual fund.

(g) The improvement care trust fund shall not be a part of the assets of any cemetery company operating under this part and the improvement care trust fund shall not be subject to the debts of the cemetery company.

46-1-205. No dividend, salary or compensation of any description shall be paid to any stockholder of any cemetery company or any cemetery operator until the company has first set up the improvement care trust fund in the manner and amount provided in §46-1-204, and no such dividend, salary or compensation shall be paid to any stockholder of any cemetery company or any cemetery operator while any improvement care trust fund is deficient because of not having received the payments required by §46-1-204; except that a receiver, as provided for in this chapter, may pay such salaries and compensation as the receiver may deem necessary to restore the cemetery to a sound financial condition. Any dividend, salary or commission so paid in violation of this section shall be recoverable at the suit of the commissioner, any lot owner, or descendant or next of kin of a lot owner, in the circuit or chancery court, and all stockholders of the cemetery company and cemetery operators so receiving such unlawful dividends, salaries or compensation may be joined in the same suit. The

proceeds of such suit or claim shall be added to the improvement care trust fund to assist in making it current.

46-1-206.

(a) Except as provided herein, no cemetery company as defined in this chapter shall directly or indirectly offer to or enter into a contract for the sale of merchandise or services to be used or performed in connection with the interment or commemoration of a deceased human being, if delivery of such merchandise, other than for incidental additions, such as dates, scrolls, or other supplementary matter representing not more than ten percent (10%) of the total contract price, or performance of such services is to be made more than sixty (60) days after the receipt of any payment under such contract of sale. This provision includes, but is not limited to, the preneed sales of merchandise and services as defined in this chapter.

(b) If a cemetery company enters into a contract for the sale of merchandise or services that provides for delivery thereof within sixty (60) days, and the cemetery company fails inexcusably to deliver such merchandise or services within one hundred twenty (120) days after the receipt of any payment under such contract, such cemetery company shall deposit to a preneed merchandise and services trust account or a preneed trust account established pursuant to §46-1-207 all moneys received under the contract. For purposes of this part, "delivery" includes physical delivery of the merchandise to the buyer; or, the cemetery company has paid its supplier for the merchandise, the supplier has caused the merchandise to be manufactured and stored, and has caused certificate of ownership of the merchandise to be sent to the purchaser, and has agreed to ship the merchandise upon the purchaser's request of the cemetery company, provided that the cemetery company set aside funds for the installation of said merchandise pursuant to §46-1-207. For the purposes of this part, no person, firm or corporation will be deemed a supplier to a Tennessee cemetery company, unless it:

(1) Permanently and unalterably identifies all merchandise with the name of the contract beneficiary; and

(2) Submits, upon request of the commissioner, a report of all merchandise which has been purchased through a Tennessee cemetery company and has been placed in storage; and

(3) Permits the commissioner or the commissioner's designee, at any time, to examine store merchandise which was purchased through a Tennessee cemetery company and to examine any document pertaining thereto; and

(4) Submits evidence to the cemetery company of a bond insuring the existing and good title of any merchandise due any contract beneficiary purchased through a Tennessee cemetery company; and

(5) Submits evidence to the cemetery company insuring that all merchandise purchased through a Tennessee cemetery company and being stored by the supplier is insured for casualty, theft or other loss

(c) Nothing in this part shall be construed to apply to contracts for the sale of funeral merchandise and services, such contracts being regulated under title 62, chapter 5, and other general laws of this state.

46-1-207.

(a) A sales contract shall be executed in duplicate, and a signed copy given to the purchaser. The contract shall contain the names of the purchaser and the seller and the name of any person, if other than the purchaser, who is to receive the merchandise or services contracted for, and a description of the merchandise and services shall appear in the contract.

(b)

(1) A preneed sales contract shall be enforceable against the purchaser only if:

(A) The seller is a cemetery company owning or operating a duly registered cemetery under chapter 1 of this title; and

(B) The seller, within sixty (60) days following receipt of any consideration paid pursuant to such contract, deposits an amount equal to the procurement costs of the merchandise and services identified in the sales contract, plus twenty percent (20%) of such costs, in a special general fund trust account in a state or national bank authorized by law to administer trust funds. If the sales contract provides for payment on an installment or deferred basis, the seller may elect to pay into the trust account the pro rata portion relating to procurement cost of each installment or deferred payment received, or to pay one hundred twenty percent (120%) of the procurement cost computed as of the date of sale.

(2) A separate general trust account shall be established and maintained for each cemetery owned or operated by a cemetery company, and each such account shall bear the additional legend, "preneed merchandise and services trust account."

(c) All deposits required by this part shall be pursuant to a written trust agreement with the trustee that holds the funds. The trust agreement shall:

(1) State the circumstances under which funds will be deposited and disbursed;

(2) Specify the trustee's fees (if any); and

(3) Provide that the trustee will furnish the trustor an accounting of general trust balances and earnings at least annually.

(d) Specific funds deposited in the trust account shall be identified or earmarked by contract number and the name of the purchaser. Nothing shall prevent the trustee from commingling the deposits in any trust fund for purposes of the management thereof or the investment of funds therein. The commissioner has the discretion to audit the records and the sources thereof tendered by the trustee and has full power, including power of subpoena, to inspect the records of the trustor. Failure to comply with the subpoena of the commissioner is a Class A misdemeanor.

(e)

(1) For purposes of this part, procurement costs shall be the costs of the merchandise and services as of January 1 of the year in which the pre-need sales contract is executed. These costs shall be determined and substantiated by a wholesale price list of a manufacturer or supplier of the merchandise so sold or by a cost analysis or itemization of the cost of construction of lawn or mausoleum crypts sold by the cemetery company. The procurement costs so determined shall be the basis for the deposits required by subsection (b) and shall be adjusted and verified annually to the commissioner.

(2) For the purposes of this part, procurement costs for interment services, including, but not limited to, entombment and inurnment services, shall not be less than the following: one hundred sixty-five dollars (\$165) for interment services, one hundred ten dollars (\$110) for entombment services, and forty-four dollars (\$ 44.00) for inurnment services. The basis for determining the procurement costs for these interment services shall be provided to the commissioner annually and verified at the time of audit. The commissioner shall increase such minimum costs by the consumer price index of each calendar year beginning on January 1, 2007.

(f) All deposits required by this part shall be in cash only.

(g)

(1) With respect to preneed sales of mausoleum crypts, the seller may, in lieu of depositing one hundred twenty percent (120%) of procurement costs, elect to set aside a crypt in inventory comparable to each crypt sold prior to construction; provided, that:

(A) The seller establishes and maintains a record of crypts in inventory reduced by the number set aside under this subsection; and

(B) The sales contract conveys interment rights or temporary interment rights pending completion of the crypt sold prior to construction.

(2) Subject to such setting aside, the seller shall at all times maintain its preneed merchandise and services trust account in the amount required by subsection (b).

(h) The seller shall offer the purchaser the option to pay any applicable sales or use tax on the selected merchandise or services at the time the contract is entered into. If the purchaser chooses to pay the tax, it shall be remitted to the department by the seller, and shall be considered full payment for the sales or use tax on the selected merchandise or services despite any changes in tax rate or cost of merchandise or services which may occur by the time of actual use. If the purchaser later cancels the preneed contract, the amount of tax paid shall be refunded by the seller who may then claim that amount as a credit against any sales or use tax then due from the seller.

46-1-208.

(a) The preneed merchandise and services trust funds, including the income therefrom after payment of any appropriate trustee fees, commissions and costs, shall remain intact until the merchandise is delivered or the services performed as specified in the sales contract. However, a seller may, upon proper certification to the trustee, withdraw specific funds previously deposited if no deposit was required by §46-1-207. Upon complete performance of the services or delivery of the merchandise specified in the sales contract, the seller shall certify the same to the trustee by affidavit. Upon the receipt of such certification, the amount of specific funds in the trust account identified to the delivered merchandise or the performed services, including any income or interest earned therefrom and not paid pursuant to subsection (b), shall be paid to the seller. The trustee may rely upon all such proper certifications herein required to be made and shall not be liable to anyone for such reliance.

(b) Notwithstanding the provisions of subsection (a), the trustee shall pay the seller, at the seller's option, the net income accumulated as of the end of any fiscal year; provided, that the trust assets after disbursement of income shall not have a market value of less than one hundred twenty percent (120%) of the aggregate procurement costs of all merchandise and services for which deposits are held in trust (subject to proration allowed under §46-1-207). The seller must exercise its option by delivering to the trustee a notarized certification of such procurement costs as of the first day of its current fiscal year.

(c) Any specified funds held on behalf of a purchaser, which have been dormant for a period of seventy-five (75) years since the time of deposit or last withdrawal against such moneys, may be considered to be closed accounts against which no further demand will be made by the purchaser, and such principal amount may be paid by the trustee to the seller's improvement care trust.

46-1-209.

(a) If for any reason a cemetery company that has entered into a contract for the sale of merchandise or services and has made the deposit into the trust funds as herein required, cannot or does not provide the merchandise or perform

the services called for by the contract within a reasonable time upon request, the purchaser, or the purchaser's heirs or assigns, or duly authorized representatives, shall have the right to provide such merchandise or services; and, having done so, shall be entitled to receive the deposit to the credit of that particular contract. Written instructions to the trustee by the cemetery company directing the trustee to refund the amount of money on deposit, or an affidavit by either the purchaser, or one (1) of the purchaser's heirs or assigns, or duly authorized representative, stating that the merchandise or services were not provided, shall be sufficient authority for the trustee to make refund of the funds on deposit to the person submitting the affidavit. However, nothing herein contained shall relieve the cemetery company from any liability for nonperformance of the contract.

(b) If the purchaser should be in default in making payments under such sales contract for a period of twelve (12) consecutive months, the cemetery company shall have the right to cancel the contract and to withdraw from the trust fund the entire balance to the credit of the defaulting purchaser's account as liquidated damages. In such event, the trustee shall deliver such balance to the cemetery company upon its certification of such default by the purchaser and upon receiving the certification, the trustee may rely thereon and shall not be liable to anyone for such reliance.

(c) In the event that the purchaser, or the purchaser's heirs or assigns, or authorized representatives, should desire to substitute merchandise or services different from that which is specified in the sales contract because of changed conditions or practices in burial customs, the cemetery company shall give credit to the extent of all moneys already paid toward the payment of the substituted merchandise or services; provided, that the original sales contract has not been completed.

46-1-210. Any provision of any contract for the sale of merchandise or the performance of services herein contemplated which purports to waive any of the provisions of this part shall be null and void.

46-1-211. The provisions of this part also apply to all corporations, persons, or businesses except those corporations, persons or businesses owning and operating a cemetery which maintains an improvement care trust fund, and in which the mausoleum is to be, is being, or has been constructed, engaged in the construction and/or sale of mausoleums, crypts, columbariums or other structures constructed for public use, space in which is offered to the public by sale, and constructed wholly or partially above the surface of the ground or partly covered with earth or sod, for the purpose of permanently containing the dead or cremated remains of human bodies.

46-1-212. Any corporation, person, or business except those corporations, persons or businesses owning and operating a cemetery which maintains an improvement care trust fund, and in which the mausoleum is to be, is being, or has been constructed, engaged in the public sale of burial space in a mausoleum, crypt or columbarium, which is not completely constructed at the time of a sale, shall withhold the first seventy-five percent (75%) of the proceeds of such sale, to be placed in trust or invested under the provisions of this part, until such time as the mausoleum, crypt, or

columbarium, space in which was sold, is completed. After completion the improvement care trust fund provided in §46-1-204 shall apply to such completed structure.

46-1-213. A cemetery company shall commence construction or development of any undeveloped ground or building in which lawn or mausoleum crypts are to be constructed and in which sales, contracts for sale, or agreements for sales, are being made, within thirty-six (36) months after the date of the first such sale. The construction or development of such undeveloped ground or building shall be completed within five (5) years after the date of such sale. Failure to complete construction, as represented at the time of such sale, shall entitle any purchaser, on demand, to recover all sums paid on the purchase price, plus interest thereon at the rate of six percent (6%) per annum.

46-1-214.

(a)

(1) Not later than seventy-five (75) days after the end of each of its fiscal years, each cemetery company that engages in sales requiring the establishment of a trust account under this part shall file with the commissioner on the prescribed form a report containing:

(A) Beginning balances of deposited funds and accumulated earnings in the trust account;

(B) The deposits to the trust account during the year;

(C) The amount of earnings during the year;

(D) The amounts of the withdrawals of deposits and earnings remaining in trust at the end of the year; and

(E) The aggregate procurement costs, including transportation and labor, of all merchandise and services sold preneed and yet to be delivered after the report year end; provided, that deferred or installment payments may be prorated to the extent allowed under §46-1-207.

(2) The commissioner may require a cemetery company to submit reasonably detailed information in support of any report required under this section.

(b) Not later than seventy-five (75) days after the end of the cemetery company's fiscal year, each trustee appointed under this part shall file with the commissioner on the prescribed form a report on each trust account established pursuant to this part. The report shall contain the following information:

(1) The combined beginning balance of deposits and earnings in trust;

(2) The aggregate amount of deposits received during the report year;

(3) The amount of the earnings added to the trust account during the year;

(4) The aggregate amount of deposits and earnings disbursed during the report year; and

(5) The aggregate amount of the deposits and earnings remaining in trust at the end of the report year.

(c) For late filing of a report required under this section, a cemetery company shall pay a late penalty not to exceed one hundred dollars (\$100) for each month or fraction thereof that the report is late. The commissioner is authorized to establish the amount of the late penalty by promulgating rules in accordance with the uniform administrative procedures act, compiled in title 4, chapter 5. The commissioner may, in extenuating circumstances, grant an extension of time for filing such report, and waive the penalty, on receipt of a written request before the report is overdue.

(d) If, on or before the date that a report would otherwise be due hereunder, a cemetery company notifies the commissioner that it has delivered all merchandise and services due for which a trust account was required, the company need not file such report.

(e) The commissioner shall promulgate and may from time to time revise rules and regulations for carrying out the intentions of this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commissioner shall require an audit at least once every two (2) years, or more frequently if the commissioner deems it necessary, to ensure that each person, firm, or corporation which offers or enters into a contract for the sale of merchandise or services under this chapter will be able to perform its contract with the purchaser.

(f) The necessary expenses for any examination pursuant to this section shall be paid by the cemetery company at a rate set by the commissioner.

46-1-215.

(a) Within seventy-five (75) days after the end of the calendar year or its fiscal year and within seventy-five (75) days on an annual basis thereafter, each cemetery company shall file with the commissioner a report of its condition, on forms provided by the commissioner, which report shall contain the following information:

(1) The name of the cemetery company, the date of incorporation, if incorporated, and the location of the cemetery or cemeteries owned by the company;

(2) The amounts of sales of cemetery lots, grave spaces, mausoleum crypts or niches for which payment has been made in full or

certificate or deeds of conveyance issued thereon during the preceding calendar or fiscal year;

(3) The amounts received for the special care of any lots, graves, crypts, niches, family mausoleums, memorials, markers or monuments;

(4) The amounts received for the memorial care of commodities;

(5) The amounts paid into the permanent improvement care fund, and the income earned therefrom during the preceding fiscal year;

(6) The number of acres embraced within each cemetery and held by the cemetery company for cemetery purposes; and

(7) The names and addresses of the owners of the cemetery company or the officers and directors of the corporation and any change of control which has occurred during the past calendar or fiscal year.

(b) Within forty-five (45) days after the end of the calendar or fiscal year of the cemetery company, the trustee of the improvement care fund of the cemetery company shall file with the commissioner a financial report with respect to the trust fund on forms which shall be obtained from the commissioner. The report shall include, among other financial disclosures, specific disclosure of the following:

(1) The current value of the assets (on both a book value and market value basis) and liabilities of the trust as of the beginning and end of the fiscal year of the trust;

(2) Any and all sales, exchanges, or leases of any property between the trust and the cemetery company, any owner of an interest in the cemetery company, any officers or directors or managers of the cemetery company, or immediate family of any such person;

(3) Any loans by the trust or fixed income obligations due the trust classified as uncollectible or in default as of the close of the fiscal year of the trust;

(4) Whether the trust at any time held twenty percent (20%) or more of its assets in any single security, debt, mortgage, parcel of real estate, or partnership/joint venture interests;

(5) Whether the trust at any time engaged in any transaction or series of related transactions involving twenty percent (20%) or more of the current value of the trust; and

(6) Whether there were any purchases of nonpublicly traded securities by the trust, the value of which was set without an appraisal by an independent third party.

The commissioner may require the trustee to make such additional financial reports as the commissioner may deem necessary.

(7) For late filing of a report required under this section, a cemetery company shall pay a late penalty not to exceed one hundred dollars (\$100) for each month or fraction thereof that the report is late. The commissioner is authorized to establish the amount of the late penalty by promulgating rules in accordance with the uniform administrative procedures act, compiled in title 4, chapter 5.

(8) The commissioner may promulgate such rules and regulations as are reasonably necessary to require cemeteries to submit audited financial statements or other financial reports prepared by independent certified public accountants.

46-1-216. The annual reports required to be filed herein shall be duly verified under oath by the owner of the cemetery company and the annual reports by the trustee of the trust fund. Upon filing, the reports shall become public records.

SECTION 4.

46-1-301.

(a) The commissioner is responsible for administering and enforcing the provisions of this title.

(b) The commissioner may promulgate such rules and regulations as are reasonably necessary to effectuate the purposes of this title. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The commissioner may seek relief at law or equity to restrain or enjoin any act or practice in violation of this title, or of any rule and regulation promulgated for the administration or enforcement of the provisions of this title. Jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine such a suit. No bond is required for the prosecution of the suit or for the issuance of an injunction.

(d) The commissioner shall, as authorized by §4-5-205, appoint an advisory board of experts in the field of cemetery operation and management service to advise the commissioner with respect to any contemplated rulemaking under this section. Such advisory board shall consist of one (1) member from each grand division of the state and two (2) members appointed at-large. Of the members initially appointed, one (1) shall serve for one (1) year, one (1) for two (2) years, one (1) for three (3) years, one (1) for four (4) years and one (1) for five (5) years. The advisory board shall consist of five (5) members. Prior to the end of the expiring term of each member of the advisory board, the Cemetery Association of Tennessee, Inc., shall submit a list of five (5) names to the commissioner. At least two (2) cemetery board members shall be selected from names submitted by the Cemetery Association of Tennessee, Inc. In making such appointments, the commissioner shall strive to ensure that the advisory

board includes at least one member who is sixty (60) years of age or older and at least one member of a racial minority. Such advisory board may make formal recommendations to the commissioner or the general assembly. The advisory board shall annually elect from its members a chair and necessary officers. Such advisory board members shall serve without compensation and travel expense. This advisory board is known as the cemetery advisory board.

46-1-302.

(a) Any owner or officer of a cemetery company or officer of the trustee of the respective improvement care fund who willfully fails to make the required report, or to file the report of the trustee, required in this part, commits a Class A misdemeanor.

(b) Upon failure to receive an annual report from any cemetery company when due, the commissioner shall be notified, and shall immediately notify the cemetery company, by registered letter sent to the address found on the cemetery company's registration form, that the annual report has not been received. Failure of the cemetery company to file the annual report within fifteen (15) days after such a registered letter is mailed shall constitute prima facie evidence of willful failure to file, and the commissioner has the discretion to order a conditional suspension of the certificate of registration and institute proceedings as set forth in §§46-1-311 and 46-1-312.

46-1-303.

(a) It is the duty of the commissioner or the commissioner's duly authorized representatives to examine the annual reports made by the cemetery companies and the annual reports made by the trustees, which shall be filed and carefully preserved as a part of the permanent records of the office. The commissioner or the commissioner's duly authorized representatives shall audit and examine the books, bank records, cash receipts and any other documents employed in preparing such annual reports of each cemetery company and trustee once every two (2) years. The commissioner or the commissioner's duly authorized representatives are authorized to audit and examine the books, bank records, cash receipts and any other documents employed in preparing such annual reports of each cemetery company and trustee more frequently than once every two (2) years whenever it appears to the commissioner that such cemetery company or trustee has failed to comply with any provisions contained in this chapter. Whenever it appears to the commissioner that any cemetery company has failed to comply with any provision contained in this chapter, the commissioner is hereby authorized to examine such cemetery company, including all books, bank records, cash receipts and any other documents employed in the transaction of its business for the purpose of discovering violations of this chapter.

(b) The necessary expense of any examination made pursuant to this section shall be paid by the cemetery company at a rate set by the commissioner.

(c) The commissioner is further authorized upon the finding of any irregularity or violation of this part to allow, at the commissioner's discretion, a reasonable time for such irregularity or violation to be corrected or to enforce compliance with the provisions of this part through the chancery courts or other courts of the state having jurisdiction.

46-1-304.

(a) As to matters within its reasonable control, a cemetery company shall maintain its cemeteries so as to reflect respect for the memory of the dead in keeping with the reasonable sensibilities of survivors of those whose remains are interred in such cemeteries.

(b)

(1) The district attorney general in whose district a cemetery is situated may bring an action in chancery court to remedy any violation of this section on the petition of five percent (5%) of, or ten (10), lot owners and next of kin of lot owners, whichever is less; provided, that only one (1) survivor shall be qualified as a petitioner on account of kinship with one (1) deceased person.

(2) Upon finding that the cemetery is not being consistently maintained as provided in this section, the court shall appoint one (1) or more of the petitioners to perform the maintenance that it finds to have been neglected and assess the costs of same to the cemetery company.

(3) After compliance with this section has been achieved, the court shall discharge the appointed petitioner or petitioners; provided, that the cemetery company agrees to provide an appropriate level of maintenance henceforth.

(4) If the trustee of the improvement care trust fund for the benefit of the cemetery has been made a defendant in the action, the court may order the trustee to disburse the net income from the trust to the court or the appointed petitioner or petitioners, and allocate such income to the cost of the maintenance approved by the court.

(c) The officers of such cemetery company, and the directors thereof, commit a Class E felony if they fail to set up and maintain the improvement care trust fund provided in §46-1-204; and they may all be jointly indicted in the same indictment. In addition, they shall be jointly liable at the suit of a lot owner, or descendant or next of kin of a lot owner, for the difference between the amount of the improvement care trust fund as set up by the company and what it should be if set up under the terms of §46-1-204, plus interest thereon from the date the fund should have been set up. Any recovery under this section or §46-1-205 shall be for the use of the company and shall be paid into the improvement care trust fund, so as to bring it up to the required amount.

46-1-305. In addition to the liabilities declared, the suitor who so brings suit and recovers from a stockholder, director or officer of a company shall also recover

reasonable attorney's fees, the amount of which shall be fixed and adjudged by the court before whom the case is tried.

46-1-306.

(a) The commissioner may refuse to issue or renew, and revoke or suspend the registration of any cemetery registered pursuant to this chapter or corresponding provisions of prior law for any one (1) or more of the following reasons:

(1) Fraud or deceit, on the part of a cemetery operator in application for registration;

(2) Cancellation, revocation, suspension or refusal to renew a registration of a cemetery for disciplinary reasons taken against the cemetery operator in any other state for any cause;

(3) Failure, on the part of a cemetery operator to maintain compliance with the requirements for issuance or renewal of such registration;

(4) Revocation or suspension of the right of any cemetery operator to practice before any state or federal agency;

(5) Dishonesty, fraud, or gross negligence on the part of a cemetery company or any cemetery operator in the performance of any services regulated by this chapter or chapter 2 of this title;

(6) Violation, on the part of a cemetery operator of any provision of this chapter or rule promulgated by the commissioner under this chapter or chapter 2 of this title;

(7) Violation, on the part of a cemetery company or any cemetery operator of any rule of professional conduct promulgated by the commissioner;

(8) Conviction, on the part of a cemetery company or any cemetery operator of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this state, or of any other state or country if the acts involved would have constituted a crime under the laws of this state;

(9) Performance, on the part of a cemetery company or any cemetery operator of any fraudulent act while holding an interest in a registered cemetery issued under this chapter or prior law;

(10) Failure, on the part of a cemetery company or any cemetery operator, or on the part of the trustee or any officer of the trustee, to timely and completely file the reports required by this chapter;

(11) Failure, on the part of a cemetery company or any cemetery operator to set up and fully fund the improvement care trust fund required by this chapter;

(12) Failure, on the part of a cemetery company or any cemetery operator to set up and fully fund the preneed merchandise and services trust fund required by this chapter;

(13) Failure, on the part of a cemetery company or any cemetery operator to maintain the cemetery grounds as set forth at §46-1-304, and in any rule promulgated for the administration or enforcement of the provisions of this title;

(14) Making any false or misleading statement or verification in support of an application for a registration filed by another; and

(15) Violation, on the part of a cemetery company or any cemetery operator of the terms of any lawful order entered by the commissioner.

(16) Selling an interment site or interment right that the cemetery or cemetery operator knew or should have known had been purchased previously by another consumer. This subdivision shall not be construed to prohibit a cemetery company or cemetery operator from selling an interment site that has been determined to have escheated to the cemetery company pursuant to §§46-2-103 through 46-2-105. This subdivision shall not be construed to prohibit a consumer who has purchased an interment site from selling or disposing of the interment site in the discretion of that consumer, if such disposition is otherwise in accordance with applicable law.

(b) In addition to or in lieu of any other lawful disciplinary action, the commissioner may assess civil penalties in an amount not to exceed one thousand dollars (\$1,000) for each separate violation of a law, rule or order pertaining to this chapter. Each day of continued violation constitutes a separate violation.

(c) The commissioner is authorized to assess a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) against the trustee of any trust fund authorized or required by this title, for each separate violation of this title or of any rule promulgated for the administration or enforcement of the provisions of this title, including but not limited to improperly making disbursements from such funds. Each day of continued violation constitutes a separate violation.

(d) In addition to or in lieu of any disciplinary action specifically provided for in subsections (a), (b) or (c), the commissioner may order the following action against any cemetery company found to be in violation of this title or any rule promulgated thereunder:

(1) A compliance examination of the cemetery by the commissioner or the commissioner's duly authorized representatives, to be funded by the cemetery company;

(2) An independent audit of the cemetery performed by a certified public accountant, to be funded by the cemetery company.

(e) In addition to or in lieu of any disciplinary action against a cemetery company found to be in violation of this title or any rule promulgated thereunder, the commissioner may:

(1) Direct the trustee of a cemetery's improvement care trust fund to withhold earnings and disbursements if such fund is not fully funded in accordance with this chapter;

(2) Direct the trustee of a cemetery's merchandise and services trust fund to withhold earnings and disbursements if such fund is not fully funded in accordance with this chapter.

(f)

(1) The commissioner or the commissioner's duly authorized representatives are authorized to issue citations, following an on-site inspection, against cemetery companies for failure to maintain the cemetery grounds as set forth at §46-1-304.

(2) Each citation shall be in writing and shall describe with particularity the basis of the citation.

(3) Each citation shall contain an order to cease all violations of this chapter and an assessment of a civil penalty in an amount not to exceed one thousand dollars (\$1,000).

(4) The commissioner shall promulgate rules and regulations to specify those conditions necessary to the issuance of a citation, and the range of penalties for violations of this chapter.

(g) In any proceeding in which discipline provided by subsection (a), (b), (c) or (d) is imposed, the commissioner may also require the respondent cemetery company to pay all costs of the proceeding.

(h) The provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, govern all matters and procedures respecting the hearing and judicial review of any contested case, as defined therein, arising under this chapter or chapter 2 of this title.

(i) In any case where the commissioner renders a decision imposing discipline against a cemetery company under this section, the commissioner shall examine the commissioner's records to determine whether the cemetery company holds a registration or a permit in any other state; and if so, the commissioner shall notify the cemetery regulatory authority of such other state of

its decision, by mail, within forty-five (45) days of rendering the decision. The commissioner may also furnish information relating to proceedings resulting in disciplinary action to other public authorities and to private professional organizations having a disciplinary interest in the registrant. Where a petition for review has been filed pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the notification and furnishing of information provided for in this subsection shall await the resolution of such review and, if resolution is in favor of the cemetery, no such notification or furnishing of information shall be made.

46-1-307.

(a) Any cemetery company or seller who, having received any moneys under or in connection with a preneed sales contract for merchandise and services, fails to deposit or keep on deposit such moneys as required herein, or who fails to substantially perform the contract described in this part, commits a Class E Felony.

(b) In addition to other remedies, the commissioner may, upon determining that any deficiency exists in any trust account required under this part, order the liquidation of such deficiency upon such terms and conditions as the commissioner may determine to be appropriate. If the deficiency has not been liquidated as ordered, the commissioner may bring an action in chancery court to recover the amount of the trust deficiency. Upon finding that a deficiency exists, the court may appoint a receiver to operate the cemetery or, if necessary, order the seizure and sale of the assets of the cemetery company, to the end that the trust be made whole. The court may also award reasonable attorney's fees for the attorney representing the commissioner in an action brought under this section; provided, that the commissioner may not impose any penalty or bring any action against any person, firm or corporation that purchased a cemetery prior to July 1, 1986, with respect to a deficiency in any trust account required under this part related to transactions that occurred prior to July 1, 1986.

46-1-308. In civil actions in which the prevailing party proves fraud relative to a preneed sales contract for cemetery merchandise and services under this part, such prevailing party shall receive treble damages, together with attorney fees, costs, and interest.

46-1-309. Failure to comply with the provisions of §46-1-204 or §46-1-215 shall constitute grounds for the state to revoke the charter or certificate of authority of a corporate cemetery company. The revocation proceeding may be filed in the chancery court of the county where the cemetery is located, and may be brought on relation of the state or district attorney general. The court hearing such proceeding may order the seizure and sale of the cemetery company's assets to the extent necessary to set up the improvement care trust fund as required. If the court revokes the charter or certificate of authority, it may order the sale of the whole company property after the improvement care trust fund has been set up, so that the purchaser of the cemetery may continue to operate and maintain it under the terms of this part. The court may also award reasonable attorney's fees for the attorney representing the state in a proceeding brought under this section.

46-1-310.

(a) The state is authorized to recover from stockholders, for the use of the company, dividends illegally paid under §46-1-205.

(b) The state is also authorized to recover from the officers and directors of the company and the cemetery operators, at any time, for the use of the company, an amount sufficient to bring the improvement care trust fund up to the amount required, together with reasonable attorney's fees for the attorney handling such suit, to be fixed and adjudged by the court trying the case.

46-1-311.

(a) The commissioner may, upon determining that a deficiency exists in the improvement care fund or that a cemetery company has willfully failed to file annual reports as provided in §46-1-302 of any cemetery or separate geographical site of a cemetery as required by this part, order the correction of such deficiency or failure to file upon such terms and conditions as the commissioner may determine to be appropriate.

(b) While the owner or operator of the cemetery or separate geographical location is in compliance with the terms and conditions of the order, the provisions of §46-1-205 relative to the payment of dividends, salaries or compensation shall be suspended.

(c) Upon failure of the owner or operator of such cemetery or separate geographical site of a cemetery to correct the deficiency or failure to file as ordered, the commissioner may issue a conditional suspension of the certificate of registration required by §46-1-103.

(1) Such conditional suspension shall be accompanied by an order to correct the deficiency within a stated time, not less than thirty (30) days after issuance of the order.

(2) A conditional suspension of the registration certificate shall not have the effect of interrupting the operation of the cemetery company; it being the purpose of this chapter to provide for an orderly transition from operation by the owner to operation by a receiver, in cases where trust fund deficiencies cannot otherwise be corrected.

(3) If the deficiency is corrected within the time limit stated, further action on the suspension or receivership shall be terminated; provided, that the termination of a suspension shall not be construed to prohibit further actions toward suspension or receivership if a deficiency is determined to exist at a later time.

(d) The commissioner is authorized, upon determining that a substantial deficiency exists in the improvement care fund, to order the cemetery company to correct the deficiency and also to pay to the improvement care fund an amount equal to ten percent (10%) of the deficiency.

46-1-312.

(a) The chancery court, upon the petition of the commissioner, lot owner, descendant or next of kin of a lot owner, may, upon determining that a deficiency exists in the improvement care trust fund of any cemetery or separate geographical site of a cemetery within the county, after proper notice to the cemetery owner or operator and all other appropriate parties, and after a hearing thereon, and if the owner or operator of each cemetery or separate geographical location is not operating in compliance with the terms and conditions of an order of the commissioner then in force and effect, proceed to make final the suspension of the registration certificate, and appoint a receiver to take charge of, control and manage the cemetery, or separate geographical site of a cemetery, until the deficiency has been eliminated.

(b) The receiver so appointed may employ the proceeds from the sale of lots, and all other saleable items and the income from the operation of the cemetery, over and above that portion due the improvement care trust fund, and other special care funds, and the amount reasonably necessary for the operation and maintenance of the cemetery business, to reduce the deficiency in the improvement care trust fund, upon such terms and conditions and in the manner deemed appropriate by the chancellor, taking into consideration the overall operation of the cemetery, and the interests of the lot owners, next of kin of lot owners, and descendants of lot owners and the general public.

(c) The chancellor shall, upon a showing that the deficiency in the improvement care trust fund has been eliminated, terminate the suspension of the certificate of registration, compensate the receiver, dissolve the receivership, and restore the management of the cemetery to its owner.

(d) Should it appear to the court that it is impossible to correct the deficiency in the improvement care fund, the court may proceed to order the sale of the cemetery as provided in §46-1-309, or may otherwise order the termination of the use of the land as a cemetery as provided by law.

(e)

(1) For purposes of this subsection, Davidson County chancery court has exclusive jurisdiction over matters brought hereunder. In addition, any receiver appointed pursuant to this subsection is authorized to use any and all remedies available to a receiver pursuant to §§56-9-101 et seq.

(2) Notwithstanding any provision of this section to the contrary and in addition to or in lieu of any other authority granted to the commissioner by this chapter, the commissioner may file in the chancery court of Davidson County a petition alleging, with respect to a cemetery subject to registration pursuant to this chapter:

(A) That there exists any grounds that would justify a court order of a deficiency in either the improvement care or preneed merchandise and services trust fund of a cemetery;

(B) That the interests of the public will be endangered by delay; and

(C) The contents of an order deemed necessary by the commissioner.

(3) Upon a filing under subsection (e)(1), the Davidson County chancery court may issue forthwith, ex parte and without a hearing, the requested order, which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents and other records of a cemetery, and of the premises occupied by it for transaction of its business; and until further order of the court, enjoin the cemetery and its owners, officers, directors, operators, managers, agents and employees from disposition of its property and from the transaction of its business except with the written consent of the commissioner.

(4) The Davidson County chancery court shall specify in the order what its duration shall be, which shall be such time as the court deems necessary for the commissioner to ascertain the condition of the cemetery. On motion of either party or on its own motion, the court may from time to time hold such hearings as it deems desirable after such notice as it deems appropriate, and may extend, shorten or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a contested case proceeding to impose any appropriate, lawful disciplinary action against the cemetery after having had a reasonable opportunity to do so. An order of the commissioner pursuant to a contested case proceeding under this chapter shall ipso facto vacate the seizure order.

(5) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the cemetery.

(6)

(A) The commissioner may appoint one (1) or more special deputies, who have all the powers and responsibilities of the receiver granted under this section and the commissioner may employ such counsel, clerks and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks and assistants, and all expenses of taking possession of the cemetery company and of conducting the proceedings, shall be fixed by the commissioner, with the approval of the Davidson County chancery court, and shall be paid out of the funds or assets of the cemetery. The persons appointed under this section shall serve at the pleasure of the commissioner.

(B) In the event that the property of the cemetery or its owners, officers, directors or operators does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any

appropriation for the maintenance of the department of commerce and insurance. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the department out of the first available money of the cemetery.

(7) The receiver may take such action as the receiver deems necessary or appropriate to reform and revitalize the cemetery. The receiver has all the powers of the owners, directors and operators, whose authority shall be suspended, except as they are redelegated by the receiver. The receiver has full power to direct and manage, to hire and discharge any employees subject to any contractual rights they may have, and to deal with the property and business of the cemetery.

(8) If it appears to the receiver that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the cemetery by any owner, officer, director, operator or other person, the receiver may pursue all appropriate legal remedies on behalf of the cemetery.

(9) If the receiver determines that reorganization, consolidation, conversion, merger or other transformation of the cemetery is appropriate, the receiver shall prepare a plan to effect such changes. Upon application of the receiver of approval of the plan, and after such notice and hearings as the Davidson County chancery court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the receiver shall carry out the plan.

46-1-313.

(a) No person shall willfully destroy, deface, or injure any monument, tomb, gravestone, or other structure placed in the cemetery, or any roadway, walk, fence or enclosure in or around the same, or injure any tree, plant or shrub therein, or hunt or shoot therein, play at any game or amusement therein, or loiter for lascivious or lewd purposes therein, or interfere, by words or actions, with any funeral procession or any religious exercises.

(b)

(1) A violation of this section is a Class E felony.

(2) Following conviction of a person for violating subsection (a), evidence of damages sustained as a result of such violation shall be presented to the jury which shall ascertain the total amount thereof. The court shall then render judgment in such amount against the offender in favor of the cemetery and/or the other aggrieved parties and shall order the offender to make full restitution for such damages. Execution of such judgment shall issue as in other civil cases. Such order of restitution shall be in addition to other sanctions imposed pursuant to subdivision (b)(1).

SECTION 5. Tennessee Code Annotated, Title 46, Chapter 2, is amended by deleting the chapter in its entirety and by substituting instead the following:

46-2-101.

(a)

(1) The owner of every cemetery may make, adopt and enforce reasonable rules and regulations for:

(A) The use, care, control, management, restriction and protection of such cemetery, and of all parts and subdivisions of such cemetery;

(B) Restricting, limiting and regulating the use of all property within such cemetery;

(C) Regulating and preventing the introduction and care of plants or shrubs within such grounds;

(D) Regulating the conduct of persons and preventing improper assemblages therein; and

(E) All other purposes deemed necessary by the owner of the cemetery for the proper conduct of the business of the cemetery and the protection or safeguarding of the premises and the principles, plans and ideas on which the cemetery was organized; and from time to time may amend, add to, revise, change, modify or abolish such rules and regulations.

(2) The owner of the cemetery may prescribe penalties for the violation of any such rule or regulation, which penalties may be recovered by the owner of the cemetery in a civil action.

(3) Such rules and regulations shall be plainly printed or typewritten, posted conspicuously and maintained, subject to inspection and copy at the usual place for transacting the regular business of the cemetery; provided, that no cemetery to which the provisions of chapter 1 of this title are applicable has the power to adopt any rule or regulation in conflict with any of the provisions of chapter 1 this title or in derogation of the contract rights of lot owners.

(b)

(1) The owner of every cemetery has the further right to establish reasonable rules and regulations regarding the type material, design, composition, finish, and specifications of any and all commodities to be used or installed in the cemetery. Such rules and regulations shall be posted conspicuously and maintained, subject to inspection and copy at the usual place for transacting the regular business of the cemetery. No

cemetery owner has the right to prevent the use of any commodity purchased by a lot owner, or the owner's representative, agent, or heirs or assigns from any source; provided, that the use meets such rules.

(2) A cemetery owner shall be permitted to prohibit the installation of a commodity by noncemetery personnel; provided, that the fee charged by the cemetery owner for installation of such commodity does not exceed twenty-three cents (\$0.23) per square inch of the ground covered by such commodity. As of the end of each calendar year, the cemetery owner shall be permitted to increase the fee for the installation of commodities by no more than the percentage representing the consumer price index as of the end of such calendar year. The charge for installation of a commodity by the cemetery owner shall be the same to all, regardless of the source of the commodity. The cemetery owner shall install all commodities furnished from sources other than the cemetery within thirty (30) days of the receipt of such commodity, weather permitting.

(3) If the fee charged by a cemetery owner for installation of a commodity exceeds the fee scale described in subdivision (b)(2), then the cemetery owner must permit installation of the commodity by noncemetery personnel if requested by the lot owner, or the owner's representative, agent, or heirs or assigns. If noncemetery personnel are permitted to install a commodity, they shall not be denied reasonable access to the lot or grave space for the purpose of installing or servicing the commodity. The cemetery owner shall not deny information pertinent to the place of burial and respective grave location or installation location of the commodity. Such information shall be furnished within a reasonable period of time not to exceed fourteen (14) days after receipt of request for information. The cemetery owner shall not charge for furnishing the information necessary for the proper installation of the commodity. The cemetery owner shall not charge for any service not performed. The cemetery owner shall only be allowed to charge an administrative or documentation fee to any noncemetery personnel seeking to install a commodity or to have a commodity installed by the cemetery company, provided however said fee is the same amount charged to all cemetery customers, including those customers who purchase the commodity from the cemetery company charging the fee and such fee shall not exceed one hundred dollars (\$100) per agreement. The cemetery owners shall not charge any other fees related to any noncemetery personnel seeking to install a commodity other than the administrative or documentation fee, installation and memorial care.

(4) All cemetery owners shall have a full and complete schedule of all charges for services provided by the cemetery plainly printed or typewritten, posted conspicuously and maintained subject to inspection and copy at the usual place for transacting the regular business of the cemetery.

46-2-102. All offenders shall be liable in an action of trespass in the name of the managers or trustees, to pay all such damages as have been occasioned by their

unlawful acts, which money, when recovered, shall be applied by the managers or trustees to the reparation of the property injured or destroyed.

46-2-103. In order to facilitate a more efficient and economical system for caring for and maintaining and improving cemeteries owned and operated by municipalities, corporations and associations within the state of Tennessee, it is hereby provided that after March 21, 1955, all vacant cemetery lots and grave spaces owned by any person dying intestate without issue and leaving no known relatives entitled by the law of descent to the cemetery lots and grave spaces shall escheat to the municipalities, corporations, associations or other owners of a cemetery where vacant lots and grave spaces exist, owned by any person dying testate without devising the same, and leaving no lawful heirs, as the case may be, entitled by law to take the same, or where the devisees or heirs are incapable of taking the same and where there are no lawful heirs as the case may be.

46-2-104. In all cases where any such municipalities, corporations, associations or other owners of cemeteries have a good right to believe any vacant cemetery lots or grave spaces have escheated to it, such municipalities, corporations, associations or other owners are hereby empowered to bring suit for the escheated property and shall make defendants to its bill filed in such cause the personal representative of the deceased, if known, and all other persons who are in possession or in any manner or way claim any interest in or to such vacant cemetery lots or grave spaces; and if parties are residents of the state, they shall be served with process; if nonresidents of the state, they shall be made parties by publication, according to law. In addition to the foregoing named defendants under the bill, there shall be publication made for thirty (30) days in a newspaper in the county in which the bill is filed, or if no newspaper is published in the county, then in the nearest newspaper so published, calling upon unknown heirs of such deceased person claiming under such deceased person, in any manner or way, whatever, to enter an appearance as defendants to the bill or suit, and all persons having an interest in the same may come into court and defend the same according to the rule of the court.

46-2-105. In determining the escheat of any such vacant cemetery lots or grave spaces to any municipalities, corporations, associations or other owners of cemeteries, the court shall hear proof, and if satisfied that it would be best for the vacant cemetery lots or grave spaces to escheat, shall decree accordingly.

46-2-106.

(a)

(1) A contract for the sale of a commodity shall be executed in duplicate and a signed copy given to the purchaser. The contract shall fully and conspicuously disclose in simple and readily understood language the terms and conditions of such contract.

(2) The contract shall specifically state the purchase price of the commodity, the installation fee, and any charge for memorial care of the commodity made pursuant to §46-1-204.

(b) The provisions of this section do not apply to cemeteries described in §46-1-105 providing such cemeteries do not engage in the sale of memorials consisting of permanent monuments or gravemarkers of marble, granite, or bronze, bronze plaques, or bronze vases.

46-2-107.

(a) Notwithstanding any other provision of the law to the contrary, upon a majority vote of the county legislative body, a county may draw upon its general fund and may solicit, receive and utilize funds from any and all other sources, public or non-public for the purpose of rehabilitating or maintaining dilapidated or abandoned cemeteries, or portions thereof, subject to the limitations imposed by subsection (b). Such maintenance may include

(1) Clearing vegetation or debris as appropriate, planting and otherwise improving the premises, cutting the grass upon and raking and cleaning cemetery plots at reasonable intervals;

(2) Repairing and preserving the drains, water lines, roads, fences, statues, fountains and other structures;

(3) Securing, maintaining or reconstructing the necessary records of lot ownership and burials;

(4) Resetting or straightening tipped gravemarkers, monuments or memorials; or

(5) Replacing damaged gravemarkers, monuments or memorials.

(b) The provisions of this section shall not be construed to authorize any such county to utilize such funds to maintain cemeteries or portions thereof which are presently maintained adequately or which maintain a sufficient improvement care trust fund pursuant to chapters 1 and 2 of this title.

SECTION 6. Tennessee Code Annotated, Title 46, Chapter 3 is repealed.

SECTION 7. Based on the concern that the current statutory methods of calculating the amounts of the required deposits into the preneed merchandise and services trust fund and the improvement care trust fund may result in inadequately funded trusts, the commissioner of commerce and insurance shall study the issue and present a report and recommendations, together with any recommended legislation, to the general assembly prior to February 15, 2007.

SECTION 8. For purposes of effectuating the intent of this act, the commissioner is authorized to promulgate rules by public necessity pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 9. Interested persons, as that term is defined in §46-4-102, may enter into an agreement with the owners of real property that is not designated as a cemetery but does have human remains with marked and identifiable graves to conduct improvement care, as that term is defined in §46-1-102, to the graves located on such real property. The provisions of this section shall not be construed to require real property owners to provide the improvement care.

SECTION 10. This act shall take effect immediately upon becoming law for the purposes of rulemaking and shall take effect on January 1, 2007 for all other purposes, the public welfare requiring it.

PASSED: May 25, 2006


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 27th day of June 2006


PHIL BREDEESEN, GOVERNOR