

By: Representative Ellis

To: Public Health and Welfare

HOUSE BILL NO. 681

1 AN ACT TO AMEND SECTION 41-43-37, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT MONIES CONTAINED IN A PERPETUAL CARE CEMETERY FUND  
3 SHALL BE EXPENDED SOLELY FOR THE PURPOSE OF THE CARE AND  
4 MAINTENANCE OF THE CEMETERY; TO PROVIDE A CAUSE OF ACTION IN  
5 CHANCERY COURT TO ENFORCE A VIOLATION OF THIS PROVISION; AND FOR  
6 RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 SECTION 1. Section 41-43-37, Mississippi Code of 1972, is  
9 amended as follows:

10 41-43-37. (1) The owner of every cemetery, subject to the  
11 provisions of Sections 41-43-31 through 41-43-53, which is  
12 organized, commences, or continues to do business in the State of  
13 Mississippi after May 6, 1958, and desires to operate as a  
14 perpetual care cemetery, shall provide for the creation and  
15 establishment of an irrevocable perpetual care trust fund, the  
16 principal of which shall permanently remain intact except as  
17 hereinafter provided and only the income thereof shall be devoted  
18 to the perpetual care of such cemetery, and which principal shall  
19 be known as the perpetual care fund of such cemetery. This fund  
20 shall be created and established as follows:

21 (a) In respect to a cemetery for earth burials, by the  
22 application and payment thereto of an amount equivalent to fifteen  
23 percent (15%) of the sale price, or Forty Cents (40¢) per square  
24 foot of ground interment rights sold, whichever is greater;

25 (b) In respect to an above-ground community or public  
26 mausoleum, by the application and payment thereto of an amount  
27 equivalent to five percent (5%) of the sale price, or Fifty  
28 Dollars (\$50.00) per crypt sold, whichever is greater; and



29           (c) In respect to a community columbarium, by the  
30 application and payment thereto of an amount equivalent to five  
31 percent (5%) of the sale price, or Ten Dollars (\$10.00) per niche  
32 sold, whichever is greater.

33           (2) From the sale price the owner shall pay to the perpetual  
34 care fund an amount in proportion to the requirements in  
35 subsection (1) of this section, which payment shall be in cash and  
36 shall be deposited with the custodian or trustee of the fund not  
37 later than thirty (30) days after the close of the month in which  
38 the total payment on such sale is received.

39           (3) In addition to the provisions of subsections (1) and (2)  
40 of this section, any cemetery organized after May 6, 1958, or any  
41 mausoleum or columbarium which is built at any location other than  
42 upon property owned by an existing cemetery after such date,  
43 whether it be by incorporation, association, individually or by  
44 any other means, or having its first burial after such date,  
45 shall, before disposing of any burial lot or right or making any  
46 sale thereof and/or making its first burial, cause to be deposited  
47 the sum of Five Thousand Dollars (\$5,000.00) in cash into an  
48 irrevocable perpetual care trust fund as provided in subsection  
49 (1) of this section for the maintenance of such cemetery.

50           (4) Whenever the cemetery shall have deposited in the  
51 perpetual care fund, as required by this section, a sum amounting  
52 to Ten Thousand Dollars (\$10,000.00), it shall submit proof of  
53 such fact to its trustee, and it shall be the duty of the trustee  
54 to thereupon pay over to the cemetery the amount of Five Thousand  
55 Dollars (\$5,000.00) so originally deposited by it in the perpetual  
56 care fund.

57           (5) The perpetual care fund shall be permanently set aside  
58 in trust to be administered under the jurisdiction of the chancery  
59 court of the chancery court district wherein the cemetery is  
60 located. The chancery courts so having jurisdiction shall have  
61 full jurisdiction over the reports and accounting of trustees,



62 amount of surety bond required, and investment of funds. The  
63 courts may waive the surety bond and control of investments in the  
64 case of trusts placed with an established bank or corporate  
65 trustee. Only the income from such fund shall be used for the  
66 care and maintenance of the cemetery for which it was established.

67 (6) Monies in the perpetual care fund may be expended solely  
68 for the purpose of the care and maintenance of the cemetery. The  
69 chancery court of the chancery court district in which the  
70 cemetery is located shall have jurisdiction to determine if the  
71 monies contained in the perpetual care fund are properly expended.  
72 Any person owning a lot, grave space, crypt or niche in a cemetery  
73 that is subject to the provisions of Sections 41-43-31 through  
74 41-43-53 may bring an action in chancery court to enforce the  
75 provisions of this subsection.

76 (7) Each geographic location of a cemetery shall constitute  
77 a separate and distinct cemetery for the purpose of interpretation  
78 and application of this section.

79 SECTION 2. This act shall take effect and be in force from  
80 and after July 1, 2001.

