

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.