

By: Representative Banks

To: Judiciary A

HOUSE BILL NO. 616

1 AN ACT TO AMEND SECTION 41-43-33, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE THAT ANY NEW PERPETUAL CARE CEMETERY ORGANIZED ON OR
 3 AFTER JULY 1, 2018, MUST NOT BE SMALLER THAN A CERTAIN SPECIFIED
 4 ACREAGE; TO AMEND SECTION 41-43-37, MISSISSIPPI CODE OF 1972, TO
 5 INCREASE THE AMOUNT OF THE INITIAL DEPOSIT REQUIRED TO BE MADE
 6 INTO AN IRREVOCABLE PERPETUAL CARE TRUST FUND FOR ANY CEMETERY
 7 ORGANIZED AFTER JULY 1, 2018; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 41-43-33, Mississippi Code of 1972, is
 10 amended as follows:

11 41-43-33. (1) Any person, partnership, corporation or other
 12 organization organized or engaging in business under the laws of
 13 the State of Mississippi, whether for profit or not-for-profit, or
 14 wheresoever organized and doing business in the State of
 15 Mississippi, of owning, maintaining or operating a cemetery,
 16 providing lots or other interment space therein for the remains of
 17 human bodies, except such organizations and cemeteries that are
 18 affiliated with or owned by churches or religious societies,
 19 established fraternal societies, municipalities, other political
 20 subdivisions of the State of Mississippi, or family cemeteries or



21 family burial grounds, and community cemeteries that provide
22 burial lots at no charge, or sell burial lots to the public, shall
23 be subject to the provisions of Section 41-43-31 et seq.

24 (2) From and after July 1, 2009, all new cemeteries must be
25 perpetual care cemeteries unless exempt under the provisions of
26 this section.

27 (3) Any new perpetual care cemetery organized on or after
28 July 1, 2018, must not be smaller than the acreage specified
29 below:

30 (a) Cemeteries located in a county with a population of
31 more than one hundred forty thousand (140,000), according to the
32 most recent federal decennial census at the time that the cemetery
33 is organized, must not be smaller than forty (40) acres.

34 (b) Cemeteries located in a county with a population of
35 more than seventy-five thousand (75,000) but not more than one
36 hundred forty thousand (140,000), according to the most recent
37 federal decennial census at the time that the cemetery is
38 organized, must not be smaller than thirty (30) acres.

39 (c) Cemeteries located in a county with a population of
40 not more than seventy-five thousand (75,000), according to the
41 most recent federal decennial census at the time that the cemetery
42 is organized, must not be smaller than twenty (20) acres.

43 **SECTION 2.** Section 41-43-37, Mississippi Code of 1972, is
44 amended as follows:



45 41-43-37. (1) The owner of every cemetery * * * subject to
46 the provisions of Section 41-43-31 et seq., that is organized,
47 begins or continues to do business in the State of Mississippi
48 after July 1, 2009, shall provide for the creation and
49 establishment of an irrevocable perpetual care trust fund, the
50 principal of which shall permanently remain intact except as
51 hereinafter provided and only the income thereof shall be devoted
52 to the perpetual care of the cemetery. The perpetual care trust
53 fund shall not be subject to the claims of the cemetery's
54 creditors and shall not be used as collateral, pledged, encumbered
55 or placed at risk. This fund shall be created and established as
56 follows:

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

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

65 (c) In respect to the placement of an above-ground,
66 free-standing or private mausoleum, by the application and payment
67 thereof of an amount equivalent to fifteen percent (15%) of the
68 sale price for the ground interment right upon which the private
69 mausoleum is installed and five percent (5%) of the sales price as



70 determined by the customer's invoice for the purchase price of the
71 private mausoleum; and

72 (d) In respect to a community columbarium, by the
73 application and payment thereto of an amount equivalent to five
74 percent (5%) of the sale price, or Ten Dollars (\$10.00) per niche
75 sold, whichever is greater.

76 For any sale of a lot for an earth burial, mausoleum crypt or
77 columbarium niche in which payment is made by the purchaser on an
78 installment basis over time, the percentage required to be trusted
79 shall be paid into the perpetual care trust fund calculated on
80 each payment.

81 (2) From the sale price the owner shall pay to the perpetual
82 care fund an amount in proportion to the requirements in
83 subsection (1) of this section, which payment shall be in cash,
84 check, money order or electronic transfer and shall be deposited
85 with the custodian or trustee of the fund not later than the fifth
86 day of the following month from when funds are received.

87 (3) If the perpetual care trust fund principal is Fifty
88 Thousand Dollars (\$50,000.00) or less, a perpetual care cemetery
89 may maintain certificates of deposit that mature every thirty (30)
90 days issued by an institution whose deposits are insured by the
91 Federal Deposit Insurance Corporation. Certificates of deposits
92 held by a cemetery for perpetual care under this subsection shall
93 renew automatically with all earned interest added to principal
94 for each successive renewal. Collections owed to trust from sales



95 under subsection (1) of this section shall be added upon the next
96 maturity date of the certificate rather than the fifth day of the
97 following month as required by subsection (2) of this section.
98 Certificates of deposit meeting the requirements of this
99 subsection shall contain the words, "For Perpetual Care," in the
100 caption of the certificate. Each perpetual care cemetery electing
101 to maintain certificates of deposit under this subsection shall
102 file documentation from the issuer with the Office of the
103 Secretary of State with the submission of the annual report. Once
104 the perpetual care principal from the cemetery's operations
105 exceeds Fifty Thousand Dollars (\$50,000.00), such funds shall be
106 held in an irrevocable trust managed by a trustee and governed by
107 a trust instrument.

108 (4) In addition to the provisions of subsections (1) and (2)
109 of this section, any cemetery organized after July 1, 2009, and
110 before July 1, 2018, or any mausoleum or columbarium that is built
111 at any location other than upon property owned by an existing
112 cemetery after * * * July 1, 2009, and before July 1, 2018,
113 whether it is by incorporation, association, individually or by
114 any other means, or having its first burial after that date,
115 shall, before disposing of any burial lot or right or making any
116 sale thereof and/or making its first burial, cause to be deposited
117 the sum of Twenty-five Thousand Dollars (\$25,000.00) in cash into
118 an irrevocable perpetual care trust fund as provided in subsection
119 (1) of this section for the maintenance of the cemetery.



120 (5) In addition to the provisions of subsections (1) and (2)
121 of this section, any cemetery organized after July 1, 2018, or any
122 mausoleum or columbarium that is built at any location other than
123 upon property owned by an existing cemetery after July 1, 2018,
124 whether it is by incorporation, association, individually or by
125 any other means, or having its first burial after that date,
126 shall, before disposing of any burial lot or right or making any
127 sale thereof and/or making its first burial, cause to be deposited
128 the sum of Fifty Thousand Dollars (\$50,000.00) in cash into an
129 irrevocable perpetual care trust fund as provided in subsection
130 (1) of this section for the maintenance of the cemetery.

131 (* * *6) Whenever * * * a cemetery to which subsection (4)
132 of this section applies has deposited in the perpetual care fund,
133 as required by this section, a sum amounting to Fifty Thousand
134 Dollars (\$50,000.00), it shall submit proof of that fact to its
135 trustee, and it shall be the duty of the trustee to thereupon pay
136 over to the cemetery the amount of Twenty-five Thousand Dollars
137 (\$25,000.00) so originally deposited by it in the perpetual care
138 fund.

139 (7) Whenever a cemetery to which subsection (5) of this
140 section has deposited in the perpetual care fund, as required by
141 this section, a sum amounting to One Hundred Thousand Dollars
142 (\$100,000.00), it shall submit proof of that fact to its trustee,
143 and it shall be the duty of the trustee to thereupon pay over to



144 the cemetery the amount of Fifty Thousand Dollars (\$50,000.00) so
145 originally deposited by it in the perpetual care fund.

146 (* * *8) The perpetual care fund shall be permanently set
147 aside in trust to be administered under the jurisdiction of the
148 Secretary of State. The Secretary of State shall have full
149 jurisdiction over the reports and accounting of trustees and the
150 amount of a surety bond required, if any. The trust officer or
151 trustee responsible for the investment of funds shall be
152 affiliated with an established bank, trust company, other
153 financial institution or financial services company. Only the
154 income from the fund shall be used for the care and maintenance of
155 the cemetery for which it was established.

156 (* * *9) Each geographic location of a cemetery shall
157 constitute a separate and distinct cemetery for the purpose of
158 interpretation and application of this section.

159 (* * *10) The Secretary of State shall develop and
160 implement a registration system for perpetual care cemeteries
161 subject to this chapter. The Secretary of State is authorized to
162 promulgate rules and regulations for the development and
163 implementation of a statewide registry and to collect a
164 registration fee not to exceed Twenty-five Dollars (\$25.00) per
165 year to be paid at the same time as the reports and accountings
166 required by Section 41-43-38 are due.

167 (* * *11) To assist with the development of a statewide
168 registry of perpetual care cemeteries, the county boards of



169 supervisors in conjunction with the chancery clerks shall provide
170 the Secretary of State with a list of all perpetual care
171 cemeteries and other pertinent information regarding perpetual
172 care cemeteries situated in their respective counties no later
173 than October 31, 2009.

174 **SECTION 3.** This act shall take effect and be in force from
175 and after July 1, 2018.

