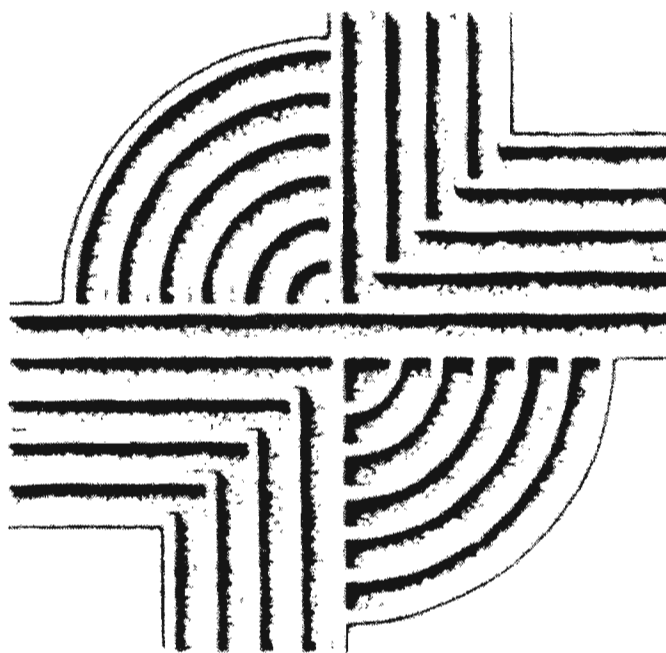


CHICORA WHITE PAPER ON THE  
REESTABLISHMENT OF A CEMETERY  
BOARD AND ITS EFFECT ON CEMETERY  
PRESERVATION



CHICORA RESEARCH CONTRIBUTION 325

# CHICORA WHITE PAPER ON THE REESTABLISHMENT OF A CEMETERY BOARD AND ITS EFFECT ON THE PRESERVATION OF CEMETERIES

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CHICORA RESEARCH CONTRIBUTION 325



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## EXECUTIVE SUMMARY

South Carolina faces an impending crisis in the care and preservation of its abandoned and forgotten cemeteries. Cemeteries, long out of use, are found during development activities — resulting in loss or damage to the cemetery, as well as additional development costs. Other cemeteries are not recognized during development and are destroyed or built over.

The loss of cemeteries is a tragedy because they represent storehouses of bioanthropological data on past generations, as well as reservoirs of genealogical information. In addition, our society demands that the graves should be treated with the greatest possible sanctity.

Some have recently made the claim that South Carolina needs a “Cemetery Board” to preserve and protect these resources. They have pointed to the current efforts to restore a Cemetery Board, suggesting that this action will help resolve the loss and damage to the State’s cemeteries. This prompted Chicora Foundation to explore one bill — H. 3319 — and examine its impact on abandoned cemeteries.

South Carolina’s first Cemetery Board legislation was enacted in 1954. The premise of the law was that cemeteries advertising perpetual or endowment care were unregulated and that through regulation the State would,

“ensure the establishment of sound business practices necessary to furnish the perpetual care or endowment care guaranteed.”

This original legislation remained largely unchanged until its Legislative Audit Council review in 1983. Undertaken in compliance with the 1978 Sunset Act, this review found that the Board had no staff and insufficient authority to regulate the industry it was charged with overseeing. In addition, it was pointed out that the Board had no staff to investigate the number, location, or management of cemeteries across the State. Moreover, it had authority only over those with trust funds or which advertised perpetual care.

The Audit Council recommended that the South Carolina Cemetery Board be terminated in accordance with Act 608 of 1978 and that the authority to regulate cemeteries be vested with the State Board of Financial Institutions. The Audit Council report also recommended that the laws regulating cemetery care be strengthened to provide “adequate protection so that the public’s financial investments will be protected.”

The legislature did not terminate the Board, but did enact some modifications of the law in 1984. The Cemetery Board continued in operation until 1990, when it

was not reauthorized.

The current legislation is similar to that under which the Board operated from 1984 through 1990, although there continue to be some modifications which were perhaps promoted by the Audit Council review.

Nevertheless, the current law still covers only perpetual care cemeteries, specifically exempting from regulation those "governmental cemeteries, nonprofit cemeteries, church cemeteries, [and] family burial grounds." The proposed law would do nothing to encourage or mandate the care and preservation of abandoned cemeteries.

Chicora Foundation, after nearly two decades of cemetery research, suggests that dealing with the abandoned, forgotten, or "lost" cemeteries of South Carolina will require a much broader program.

First, it is critical that funding be identified to allow counties and municipalities to take advantage of existing Section 16-1-35, which allows them to take steps to preserve and protect cemeteries.

Second, the State must craft mechanisms which encourage private property owners to care for and preserve cemeteries on their property. This can be accomplished through a variety of means, including incentives and property tax reductions.

Third, the State must encourage individual counties to enact ordinances that require developers to take strong, proactive preservation steps to ensure the protection of cemeteries.

Fourth, the State must fund efforts to identify and record all cemeteries in South Carolina. It was astonishing to the Legislative Audit Council that there was no such effort in 1983. It is even more amazing that no action has been taken in the succeeding 18 years.

And fifth, when cemeteries must be moved, there should be a requirement that the effort includes both licensed funeral home directors and trained and/or licensed bioanthropologists. We are allowing irreplaceable information to be lost.

We call on the South Carolina Legislature to examine the issue of cemetery preservation in greater depth and take steps to make the State a leader in the growing movement to preserve and protect cemeteries, graveyards, and burying grounds.

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## INTRODUCTION

Recently the public's attention has focused on the issue of old, "abandoned,"<sup>1</sup> or little used cemeteries. Brought about by damage to several cemeteries which has made headlines in the media, it has been suggested that a "cemetery board" might be the solution to the problem.

But, what exactly is the problem?

Without desiring to make what really is a very complex problem seem simple, the issue revolves around the fact that there are many graveyards, cemeteries, or places of burial which are no longer recognized or at times even recognizable to most individuals. Frequently called "abandoned" or "forgotten," these cemeteries may be unexpectedly discovered — and damaged or destroyed — by development activities.

Even when development does not destroy the cemetery, construction activities may be significantly delayed by the discovery of a forgotten cemetery. The delays associated with construction can have very costly

ramifications.

There are also cases where a cemetery is "preserved" by a land developer at far less than its original, or used, acreage. In such cases only the site core, or the area most clearly recognizable as burying grounds, are preserved. Other parts of the cemetery, often the majority, are then developed.

Another problem is how these cemeteries and burying grounds are handled when they are discovered. Typically they are removed by individuals associated with the funeral home industry.<sup>2</sup> Cemeteries are exceptional reservoirs of bioanthropological data — information which can help us understand the diet, disease, health, demography, status, ethnicity, and biological features of past peoples. Dr. Ted Rathbun, a board certified forensic anthropologist, has been a vocal advocate of the professional study of burials, noted, "There are tragic examples of a backhoe simply being used, scooping out some contents of a grave, putting it into a container and sending it off to a new burial site" without study or recordation.<sup>3</sup> Burials

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<sup>1</sup> The term "abandoned" is used in the vernacular sense of deserted. The legal definition is offered in Section 27-43-40, Code of Laws of South Carolina, 1979, as amended: "The conveyance of the land upon which the cemetery or burying ground is situated without reservation of the cemetery or burying ground shall be evidence of abandonment for the purposes of this chapter."

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<sup>2</sup> Section 27-43-30, Code of Laws of South Carolina, 1979, as amended specifies that burial removals be done by a "funeral director licensed by this State."

<sup>3</sup> "Expert Says Bones Have Great Value," *The State*, March 1, 2001.

and cemeteries are also storehouses of genealogical data — data which can often not be replaced.<sup>4</sup>

Funeral directors are not trained in identifying graves, burial excavation, or the forensic study of human remains. As a result, much of the information which the burials could contribute is lost.<sup>5</sup> Too often the removals fail to completely recover all of the remains present. A lack of training in the identification of burials may also result in not all burials being found or removed. And certainly whatever information may be identified through such removals is never made available to the professional community or the public in any meaningful fashion.<sup>6</sup>

With this in mind, is a “cemetery board” an answer? Would a cemetery board be capable of ensuring the preservation of

abandoned, lost, or neglected cemeteries and graveyards? Would a cemetery board be able to ensure that burials, removed prior to development, would also be professionally studied prior to reburial?

Those are the questions addressed by this white paper.

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<sup>4</sup> In South Carolina, for example, death certificates were not required before 1915. As a result, gravestones often provide the only source of basic vital information.

<sup>5</sup> In the April 7, 2001 *The State*, page B-1, there was a photograph of two individuals associated with a “grave digging service” that had been retained to move a grave. The photo shows them sifting through the backdirt from a grave with their fingers, while the caption noted, “Small pieces of wood from three caskets were about all that was recovered.” This photograph exemplifies what is wrong with burial removals. No screening was conducted and the individuals were not trained in physical anthropology or osteology. If there were wood fragments recovered then bone should also have been preserved.

<sup>6</sup> A recent example of this is the relocation of the Norris graveyard in Newberry County. *The State* newspaper (January 20, 2001) reported that at least three “unique” coffins were recovered and relocated, but there will be no professional, published report on this work, since it was conducted, as specified by state law, by a funeral home.

# SOUTH CAROLINA'S OLD CEMETERY BOARD

## Introduction

South Carolina's first State Cemetery Board was created by Act 704 in 1954.<sup>1</sup> That law noted that cemeteries advertising "perpetual" or "endowment" care required regulation and through such regulation the State would, "ensure the establishment of sound business practices necessary to furnish the perpetual care or endowment care guaranteed."

The resulting board consisted of four members, nominated by the South Carolina Cemetery Association and appointed by the Governor for four-year terms, with no limit to the number of possible terms. The Board was given no staff, but was required to meet at least once a year. It could require perpetual care cemeteries to obtain a license annually or biennially, although the license was limited to a maximum of \$25. The Board was required to audit the financial records of perpetual care cemeteries once every two years.

All cemeteries, other than perpetual care cemeteries, were exempt from the law, except for a signage requirement.

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<sup>1</sup> This 1954 law was amended only once, in 1984. It was cited as Section 39-55-15 *et seq.* of the South Carolina Code of Laws.

In 1978 the General Assembly passed Act 608, the Sunset Act. This act abolished specific boards and commissions on predetermined dates unless the agencies involved demonstrated a public need to justify their continued existence. The State Cemetery Board was scheduled for termination on June 30, 1984. Prior to termination the Legislative Audit Council was required to evaluate the performance of the boards scheduled for termination and provide a report. Such a study was conducted for the State Cemetery Board. Some modifications of the law were made in 1984, but the reprieve was short-lived and the Board was formally terminated effective June 30, 1990.<sup>2</sup>

## The 1983 Audit Council Evaluation of the State Cemetery Board

One of the most significant problems cited by the Audit Council was that the 1954 law failed to define perpetual care nor did the law define standards for maintaining a cemetery. In fact, during its 29 years of existence, the Board never enacted regulations

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<sup>2</sup> The records of the State Cemetery Board are housed at the S.C. Department of Archives and History as Record Group 115000. They consist of Miscellaneous Papers (1956-1992; 1.33 cubic feet), Minutes of the Cemetery Board (1965-1991; 1 bound volume; and the Perpetual Care Cemeteries File (1955-1991; 11 cubic feet). The last item consists of folders on the ca. 113 perpetual care cemeteries in South Carolina.



setting standards for the proper care or appearance of a perpetual care cemetery. This, however, was because **the Board lacked the authority to establish these regulations.** The Audit Council observed that other states, including Florida, Georgia, Louisiana, North Carolina, and Tennessee had laws concerning the paving of roads, appearance of the land, and upkeep of the cemetery. The Audit Committee reported that, in essence, "the State is authorizing businesses to advertise perpetual care without ensuring that the public will receive the service it paid for."

The Audit Council also found that **the initial deposit requirements for trust funds of perpetual care cemeteries was entirely too low.** The \$5,000 initial deposit required in South Carolina was contrasted with initial required deposits of \$25,000 in Florida and \$15,000 in North Carolina.

More surprising, the State Cemetery Board was unable to provide any estimate of the average cost of maintaining a cemetery — making it impossible to determine the size of an adequate trust fund. Nor was it possible to determine how much money would be needed to furnish perpetual care once a cemetery had sold all of its lots. However, the study revealed that there were 18 perpetual care cemeteries in South Carolina, founded between 1954 and 1973, which had less than \$17,500 in their trust funds, with 10 having less than \$10,000.

It seems unlikely that these meager funds, even at a 20% rate of return, would be adequate to properly care for a cemetery and provide the routine repairs and maintenance

necessary.

The Audit Council also noted that **in its 29 years, the Cemetery Board had not audited the books of a single cemetery.** Lacking the staff or funds<sup>3</sup> to do so, they had relied on statements from the cemeteries themselves, requiring CPA reports.<sup>4</sup>

In only two years did the Board undertake any independent investigations of cemeteries, using Board members as investigators. The Audit Council observed that, "although South Carolina has a State Cemetery Board, its operation is similar to the states which do not regulate cemeteries" and that "South Carolina differs only in that perpetual care cemeteries report to a state official." The review went on to note that the State must "have personnel assigned to investigate them [perpetual care cemeteries]. Without this staff support, the State cannot ensure its citizens they are being protected from 'unscrupulous' cemetery operators."

The Audit Council also found that there were **no written procedures or policies developed to process complaints, nor did the Board keep any means to log or track complaints.**

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<sup>3</sup> The Board, in FY 81-82 had an appropriation of \$2,562 and only a part-time secretary.

<sup>4</sup> The Audit Council found that 58% of the cemeteries were late filing their financial reports and that 40% were not using CPAs to file and sign their statements. In response, the State Cemetery Board weakened its already weak requirements by establishing new regulations which allow the annual statement to be signed by a licensed public accountant.

Most significant, however, was the observation by the Audit Council that:

No State agency or private organization could tell the Audit Council how many cemeteries exist in South Carolina. The Cemetery Board has no staff to investigate the number, location and management of every cemetery in the State and has no authority to do so. State law only gives the Board authority to require a trust fund and to license and audit perpetual care cemeteries.

As a result of the investigation the Audit Council recommended that, "The South Carolina State Cemetery Board should be terminated in accordance with Act 608 of 1978." In response, the Secretary of State, an ex-officio member and chair of the Board, wrote: "I have this day read the report concerning the South Carolina Cemetery Board . . . and feel this is a true picture of the problems facing this agency" (letter from John T. Campbell, Secretary of State to George L. Schroeder, Legislative Audit Council, dated August 10, 1983).

### The 1984 Changes

The 1984 Cemetery Board law vaguely defined perpetual care as "the maintenance and the reasonable administration of the cemetery grounds and buildings in keeping with a properly maintained cemetery."

Section 39-55-45 provided the Board "with the power and duty to promulgate regulations to carry out the provisions of this chapter." The initial deposit was increased to \$15,000, far less than required by Florida, but equal to that required by neighboring North Carolina.

The new Board required perpetual care cemeteries to "furnish adequate financial reports" within 90 days of the end of the calendar or fiscal year. No longer was a CPA report required. Nor was the Board empowered to audit the financial records of the various perpetual care cemeteries.

While the 1984 legislation required that cemeteries "must [keep a record of] each written complaint received, action taken, and disposition of complaint," there was no similar requirement concerning complaints which might be directed to the Board.

Consequently, the 1984 revisions addressed some, but certainly not all of the Audit Council concerns. The text of the 1984 Cemetery Board law is provided as Appendix 1.

Most significantly, the 1984 Cemetery Board still did not have the power to regulate any cemetery, or establish any standards of cemetery care, outside of the small handful established as "perpetual care" cemeteries.



# THE PROPOSED CEMETERY BOARD

## Introduction

A reauthorization of the Cemetery Board is proposed by House Bill 3319, introduced and read the first time on January 23, 2001. The bill has broad support, being sponsored by Sandifer (R, District 2, Oconee), Allison (R, District 36, Spartanburg), Barrett (R, District 1, Oconee), Cato (R, District 17, Greenville), Chellis (R, District 44, Dorchester-Charleston), Cooper (R, District 10, Anderson), Davenport (R, District 37, Spartanburg), Edge (R, District 104, Horry), Emory (D, District 45, Lancaster), Fleming (R, District 42, Union), Gilham (R, District 123, Beaufort), Harrison (R, District 75, Richland), Harvin (D, District 64, Clarendon-Williamsburg), Keegan (R, District 106, Horry), Kelley (R, District 107, Horry), Kirsh (D, District 47, York), Knotts (R, District 88, Lexington), Law (R, District 100, Berkeley), Leach (R, District 21, Greenville), Lee (D, District 31, Spartanburg), Limehouse (R, District 110, Charleston), Littlejohn (R, District 33, Spartanburg-Cherokee), Martin (R, District 8, Anderson-Oconee), McCraw (D, District 29, Cherokee-Chester-York), Meacham-Richardson (R, District 48, York), Moody-Lawrence (D, District 49, York), J.M. Neal (D, District 44, Lancaster-Kershaw), Neilson (D, District 56, Darlington-Chesterfield), Perry (R, District 81, Aiken), Phillips (D, District 30, Cherokee), Quinn (R,

District 71, Richland), Robertson (R, District 5, Pickens), Rodgers (R, District 124, Beaufort), Simrill (R, District 46, York), J.E. Smith (D, District 72, Richland), J. R. Smith (R, District 84, Aiken), Stille (D, District 11, Abbeville-Anderson), Talley (R, District 34, Spartanburg), Thompson (R, District 9, Anderson), Trotter (R, District 4, Pickens), Walker (R, District 38, Spartanburg), A. Young (R, District 98, Dorchester), and White (R, District 6, Anderson). The bill was referred to the House Committee on Labor, Commerce, and Industry.

The bill, on March 22, received a favorable committee report with several amendments (for example, the number of Board members was increased from the original seven [three public members and four from the funeral industry] to eight [three public members, four from the funeral industry, and one from the monument industry]). On March 28, 2001 the bill was again amended and read a second time on the House floor. The third reading occurred on March 29, when the bill passed and was sent to the Senate.

## The Proposed Law

This law is substantially similar to the Cemetery Board Law which was renewed by the Legislature in 1990. There are changes

which the reader may explore by comparing the old law in Appendix 1 with the proposed law in Appendix 2.

One difference, for example, is that the new law would prohibit the formation of public cemeteries that are not perpetual care, unless they are “governmental, non-profit, church, or family burial grounds” (Section 40-8-240). This stipulation may serve to minimize the number of cemeteries which become abandoned in the future. If this is the case, then the provision is good and welcomed.

The new law would also increase the license fee from \$100 to \$400 a year. This would substantially increase the fees coming to the Board and the financial impact statement indicates that the additional funds are intended to support a part-time investigator. **While this may be a significant improvement, it seems uncertain whether a part-time inspector would be adequate to investigate the care and operation of the State’s perpetual care cemeteries.**

The funds directed into the perpetual care fund would also be increased from “not less than twenty dollars or ten percent of the sale price, whichever is greater, per grave space” to “not less than forty dollars or a minimum of ten percent of the sale price, whichever is greater, per grave space.” **While this potential increase in funds going into the care and maintenance fund should be applauded, there is still no assurance that these funds will be adequate to care for the cemetery forever.**

### The Law’s Preservation Impact

Most significant, however, is that the proposed law — like those that preceded it — **fails to do anything to ensure the preservation and care of non-perpetual care cemeteries.**

In other words, those cemeteries which offer no perpetual care would not be covered. Those cemeteries would continue to sell burial plots for profit, but when all of the burial spaces were sold and there was no further source of revenue, the future of the cemetery would be uncertain. Historically those cemeteries are jointly cared for by family members (out of respect for their deceased loved ones) and the property owner (who, as long as grave spaces are available for sale, has a vested interest in good marketing). As families leave the area or family members die out and as the property owner no longer has a financial motive for the care and upkeep of the property, these cemeteries will continue to fall into disuse and become “abandoned.”

In fact, the proposed Board would have no jurisdiction whatsoever over operating governmental cemeteries, nonprofit cemeteries, church cemeteries, or family burial grounds.

Governmental cemeteries are among some of the worst offenders. Typically the funds received from the sale of burial plots go directly into general revenues. With no clearly allocated cemetery fund and relying on general revenues to support care and maintenance, these cemeteries are often poorly tended by staffs with no cemetery maintenance training

or skill. Major expenditures, such as repair of stones or repaving roads, are often deferred or not even considered.

Churches are frequently no better prepared to deal with the long-term costs of cemetery maintenance and preservation. Occasionally churches go out of existence or their congregations dwindle in size to the point where cemetery maintenance funds are no longer available. There is also a disgraceful history of churches "converting" cemeteries to other uses.

Family burial grounds, including kin-based and community-based (but not municipally-sponsored cemeteries) are common in South Carolina and may, in fact, comprise the majority of abandoned, lost, or uncared for cemeteries. These cemeteries are cared for until there are no longer members in the community capable or willing to do so. Often they are located on lands without benefit of any clear title. Frequently used by less wealthy individuals, the graves may be marked by only impermanent markers, allowing the cemetery to be more easily "lost" and converted to other uses.



## WHAT IS NEEDED?

While there may be a need for the Cemetery Board as proposed, this legislation will do little or nothing to help preserve and protect “abandoned” cemeteries in South Carolina.

South Carolina does have a law (Section 6-1-35) that is intended to provide some protection to “abandoned cemeteries.” It specifies that:

Counties and municipalities are authorized to preserve and protect any cemetery located within its jurisdiction which the county or municipality determines has been abandoned or is not being maintained and are further authorized to expend public funds and use county or municipal inmate labor, in the manner authorized by law, in connection with the cemetery (Section 6-1-35(A)).

This code section also defines “preserve and protect,” as “to keep safe from destruction, peril, or other adversity, and may include the placement of signs, markers, fencing, or other appropriate features so as to identify the site as a cemetery and so as to aid in the preservation and protection of the abandoned cemetery.”

This is a very broad and sweeping law, allowing local governments to mow, maintain, fence, protect, and preserve cemeteries. What it does not do, of course, is provide any funds to achieve those goals. As a result, many municipalities and counties are loath to engage in cemetery preservation activities.

From our 18 years of experience working in cemetery preservation, we believe that five actions are necessary to help ensure the preservation of South Carolina’s historic cemeteries.

**First, funding should be provided to help counties and municipalities take advantage of the powers vested in Section 16-1-35.** We recognize that in a tight economy, the State is reluctant to take on programs, but some source of funding is essential to ensure the preservation of these resources. Funding might be obtained from increasing the fees on perpetual care cemeteries, or from other revenue streams.

**Second, the State should devise mechanisms that would encourage private property owners to care for and preserve “abandoned” cemeteries on their property.** The State and the various counties have a broad arsenal of incentives that could be used to encourage preservation efforts. These include, but are certainly not limited to,



proffers, incentive or bonus zoning, transfer of development rights, cluster subdivisions, use of agricultural districts, property tax reductions, outright purchase, and use of preservation easements.

**Third, the State should encourage individual counties to enact ordinances which require developers to take strong preservation actions.** These actions should include (1) complete inventory of existing cemetery elements (stones, fences, and other physical features), (2) establishment of lot lines in a way that ensures the preservation of cemeteries, (3) requirement that the cemetery be deeded to the county, an existing cemetery association, a homeowner's association, or other responsible party, and (4) establishment of at least a 50-foot buffer around the obvious cemetery elements, such as stone walls or marked graves.

**Fourth, the State should fund efforts to identify, and record, all cemeteries.** It will only be through a complete identification of the problem that we can begin to fully understand the problem. This identification can be accomplished by consultants using funds provided by State agencies, or can be accomplished by existing staff of State agencies. This recordation will also assist developers — providing advance notice of a cemetery before development activities begin.

**And fifth, when cemeteries must be moved, the State should mandate that the move be attended by both representatives of the funeral industry and by bioanthropologists.** Representatives of the

funeral industry have been long trusted by the public to care for their loved ones. They can be present to ensure that the public trust is maintained. Bioanthropologists, on the other hand, have the skill and training to ensure that all remains are collected, and that those remains are appropriately examined and reported on, where such activity is allowed by the next of kin. By combining the efforts of both funeral directors and bioanthropologists in this manner it is possible that the dead can teach the living. When graves must be moved, the move can be both dignified and educational, helping future generations learn about their past and their heritage.

Clearly none of these elements are contained in the current Cemetery Board law and will require additional attention by the South Carolina Legislature. It seems that the time for this action is now — not only is the memory of the “lost” Sligh’s Avenue cemetery being “discovered” by the City of Columbia during its efforts to build a golf driving range still fresh, but so too is the recognition of the information to be gleaned from the excavation of the Hunley crew members in Charleston.

South Carolina can establish itself as a leader in cemetery preservation — establishing legislation which would be a model for other states.

# APPENDIX 1. THE 1984 CEMETERY BOARD LAW

## CHAPTER 55.

### CEMETERIES

#### SECTION 39-55-15. Short title.

The provisions of this chapter are known and may be cited as the "South Carolina Cemetery Act of 1984".

#### SECTION 39-55-25. Declaration of legislative findings.

It is found to be necessary in the public interest that cemeteries, burial grounds, and any agreement or contract which has for a purpose the furnishing or delivering of any person, property, or merchandise of any nature in connection with the final disposition of a dead human body, must be subject to sufficient regulation by the State to ensure that sound business practices are followed by all entities subject to the provisions of this chapter.

#### SECTION 39-55-35. Definitions.

As used in this chapter, unless otherwise stated or unless the context clearly indicates otherwise:

1. "Board" means the South Carolina Cemetery Board.
2. "Cemetery" means a place used, dedicated, or designated for cemetery purposes including any one or combination of:
  - (a) perpetual care cemeteries;
  - (b) burial parks for earth interment;
  - (c) mausoleums;
  - (d) columbariums.
3. "Cemetery company" means any legal entity that owns or controls cemetery lands or property and conducts the business of a cemetery, including all cemeteries owned and operated by cemetery sales organizations or cemetery management organizations or any other legal entity.
4. "Columbarium" means a structure or building substantially exposed aboveground intended to be used for the interment of the cremated remains of a deceased person.
5. "Grave space" means a space of ground in a cemetery intended to be used for the interment in the ground of the remains of a deceased person.
6. "Human remains" or "remains" means the body of a deceased person and includes the body in any stage of decomposition.
7. "Mausoleum" means a structure or building substantially exposed aboveground, intended to be used for the entombment of the remains of a deceased person.
8. "Perpetual care" means the maintenance and the reasonable administration of the cemetery grounds and buildings in keeping with a properly maintained cemetery. In the event that a cemetery offers perpetual care for some designated sections of its property but does not offer perpetual care to other designated sections, the cemetery must be considered a perpetual care cemetery for the purposes of this chapter.
9. "Person" means an individual, corporation, partnership, joint venture, or association.
10. "Vault" means a crypt or underground receptacle which is used for interment in the ground and is designed to encase and protect caskets or similar burial devices. For the purposes of this chapter a vault is a preneed item until delivery to the purchaser at the selling cemetery.
11. "Memorial" means a bronze marker set approximately level with the turf for the purpose of identification, or interchanged to

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mean upright markers in garden sections which are plotted and specified for the use of upright markers. The term 'marker' is herein interchanged with the term "memorial".

12. "Merchandise" means items used in connection with grave space, niches, mausoleum crypts, granite, memorials, or vaults; provided, however, merchandise shall expressly exclude burial caskets, clothing, cremation urns, professional services, facilities used for preparation, viewing, or services, and automotive equipment and transportation. Items expressly excluded under the definition of merchandise in this provision shall be governed by Chapter 7 of Title 32.

13. "Trust institution" means any state or national bank, state or federal savings and loan association, or trust company authorized to act in a fiduciary capacity in this State.

**SECTION 39-55-45. South Carolina Cemetery Board.**

For the purposes of administering the provisions of this chapter, there is established in the Office of the Secretary of State a South Carolina Cemetery Board with the power and duty to promulgate regulations to carry out the provisions of this chapter.

**SECTION 39-55-55. Membership; appointment; term of office.**

The board consists of seven members, six of whom must be appointed by the Governor. The Secretary of State is a member ex officio and shall serve as chairman of the board. Two members must be public members who have no financial interest in and are not involved in management of any cemetery or funeral related business, two members must be owners or managers of cemeteries in this State, and two members must be selected from four nominees submitted by the South Carolina Cemetery Association. The Governor may reject any or all of the nominees submitted by the Cemetery Association upon satisfactory showing of unfitness of those rejected. If the Governor declines to appoint any of the nominees so submitted, additional nominees must be submitted in the same manner. Of the six appointed members, two of the initial board must be appointed for a term of two years, two for a term of three years, and two for a term of four years. At the end of their respective terms, successors must be selected in the same manner and appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the board created by the resignation, dismissal, death, or disability of a member is for the balance of the unexpired term.

**SECTION 39-55-65. Office; notice of meetings; expenses of board; compensation of members.**

The principal office of the board is in the office of the Secretary of State. Notice of all regular meetings may be advertised in three newspapers having general circulation in the State ten or more days in advance of the meetings. Each member of the board shall receive the usual mileage, per diem, and subsistence as provided by law for members of state boards, committees, and commissions. All expenses of the board must be paid from fees received by the board.

**SECTION 39-55-75. Meetings.**

The board must meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon written request of at least four members.

**SECTION 39-55-85. Budget; source of funds; license fees.**

The board shall prepare an annual budget and shall collect the sums of money required for the budget from yearly fees and any other sources provided for in this chapter. On or before July first of each year, each licensed cemetery shall pay a license fee of at least one hundred dollars.

**SECTION 39-55-95. License for operation of cemetery; application; criteria for approval; investigation; notice of denial.**

(a) No legal entity may engage in the business of operating a cemetery company, except as authorized by this chapter, without first obtaining a license from the board.

(b) Any legal entity wishing to establish a cemetery shall file a written application for authority to do so with the board on forms prescribed and provided by it.

(c) Upon receipt of the application and a nonrefundable filing fee of at least four hundred dollars the board shall cause an

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investigation to be made to establish the following criteria for approval of the application:

- (1) The creation of a legal entity to conduct a cemetery business and the proposed financial structure.
  - (2) An irrevocable care and maintenance trust fund agreement must be established and maintained with a trust institution doing business in this State, with an initial deposit of not less than fifteen thousand dollars and a bank cashier's or certified check attached for the amount and payable to the trustee with the trust executed by the applicant and accepted by the trustee, conditioned only upon the approval of the application.
  - (3) A plat of the land to be used for a cemetery showing the county or municipality and the names of roads and access streets or ways.
  - (4) Designation by the legal entity, wishing to establish a cemetery, of a general manager who must be a person having had not less than two years' experience in cemetery business.
  - (5) Development plans sufficient to ensure the community that the cemetery will provide adequate cemetery services and that the property is suitable for use as a cemetery.
- (d) The board, after receipt of the investigating report and within ninety days after receipt of the application, shall grant or refuse to grant the authority to organize a cemetery.
- (e) If the board intends to deny an application, it shall give written notice to the applicant of its intention to deny. The notice shall state a time and place for a hearing before the board and a summary statement of the reasons for the proposed denial. The notice of intent must be mailed by certified mail to the applicant at the address stated in the application at least fifteen days prior to the scheduled hearing date. Notwithstanding any other provision of law, any appeal from the board's decision must be to the circuit court.
- (f) If the board intends to grant the authority it shall give written notice that the authority to organize a cemetery has been granted and that a license to operate will be issued upon the completion of the following:
- (1) Establishment of the irrevocable care and maintenance trust fund and receipt by the board of a certificate from the trust institution certifying receipt of the initial deposit required under this chapter.
  - (2) Development, ready for burial, of not less than two acres, certified by inspection of the board or its representative.
  - (3) A description, by metes and bounds, of the acreage tract of the proposed cemetery, together with evidence, by title insurance policy or certificate or certification by an attorney at law, that the applicant is the owner in fee simple of the tract of land, which must contain not less than thirty acres and that the fee simple title of the tract of not less than thirty acres is free and clear of all encumbrances. In counties with a population of less than thirty-five thousand inhabitants according to the latest official United States census the tract need be only fifteen acres.
  - (4) Submit to the board for its approval a copy of regulations as defined in Section 39-55-125.

### SECTION 39-55-100. Depth requirements for funeral vaults.

- (A) Where the excavation can be accomplished without drilling or the use of equipment other than a shovel, funeral vaults must be at least ten inches below the earth's surface. As used in this section, "funeral vaults" means caskets, grave liners, or other outer burial containers. It does not include markers, monuments, or crypts constructed in a mausoleum or columbarium.
- (B) This section does not apply to cemeteries located in the coastal/lowland areas which are subject to tidal or surface flooding or have a high-level water table, except that vaults may be placed level with the ground in coastal/lowland cemeteries where the water table is at least two feet below ground level and which cemeteries are not subject to tidal or surface water flooding.
- (C) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for not more than thirty days.

### SECTION 39-55-105. Transfer of control.

In any case where a person proposes to purchase or acquire control of an existing cemetery either by purchasing the outstanding capital stock of any cemetery company or the interest of the owner and, thereby to change the control of the cemetery company, the person must make application on a form prescribed and provided by the board for a license change. The application shall contain the name and address of the proposed new owner. The application for a license change must be accompanied by an initial filing fee of one hundred dollars to cover an investigation, if required.

### SECTION 39-55-115. Powers and duties of board.

In addition to other powers conferred by this chapter upon the board, the board also has the following powers and duties:

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- (1) Prior to the change of control of any cemetery company, to examine the licensee's records, and, if the board considers it advisable, to assess applicable fees provided for in this chapter or by regulation.
- (2) At any time the board finds it necessary to bring an action in the name of the State in the circuit court of the county in which the licensed place of business is located against any person who is the director, the owner, or an officer of a cemetery company to enjoin the person from engaging in or continuing any violation of this chapter or of any regulation or order promulgated pursuant to it. In any action of this nature an order or judgment may be entered by the court awarding a temporary restraining order, temporary injunction, or permanent injunction, as is considered proper. Before this action may be brought, the board shall give the person at least thirty days' notice in writing, stating the alleged violation and giving the person an opportunity within that period to correct the violation or to request by certified mail a hearing before the board. In addition to all other powers under provisions of law governing the issuance and the enforcement of a temporary restraining order, temporary injunction, or a permanent injunction, the court has the power and jurisdiction to impound and appoint a receiver for the property and business of the person, including books, papers, documents, and records, or so much of these as the court considers reasonably necessary to prevent further violation of this chapter or of any regulation or order promulgated pursuant to it through or by means of the use of the property and business. The board may institute proceedings against the cemetery or its officers or owners where, after an examination, pursuant to this chapter, a shortage in the care and maintenance trust fund is discovered so as to recover the shortage.

### SECTION 39-55-125. Records maintained by cemetery; regulations of cemetery; submission of regulations to board.

A. A record must be kept of every lot owner and every burial in the cemetery showing the date of purchase, date of burial, name of the person buried and of the lot owner, and space in which the burial was made. All sales, trust funds, accounting records, and other records of the licensee must be available at the licensee's principal place of business and must be readily available at all reasonable times for examination by an authorized representative of the board. In addition, the owner of a perpetual care cemetery shall have the records of the perpetual care cemetery examined annually by a licensed public accountant and shall submit a copy of the report to the board.

B. A record must be kept of each written complaint received, action taken, and disposition of complaint. These records must be available for examination by representatives of the board.

C. (1) The owner of every cemetery shall adopt, and enforce regulations for the use, care, control, management, restriction, and protection of the cemetery and of all parts and subdivisions thereof; for regulating the use of all property within a cemetery; for regulating the introduction and care of plants or shrubs within the grounds; for regulating the conduct of persons and preventing improper assemblages therein; and for all other purposes considered necessary by the owner of the cemetery for the proper conduct of the business of the cemetery and the protection of the premises and the principles on which the cemetery was organized. The owner may amend or abolish such regulations. The regulations must be plainly printed or typewritten, posted conspicuously, and maintained subject to inspection at the usual place for transacting the regular business of the cemetery. However, no cemetery licensed under the provisions of this chapter may adopt any regulation in conflict with any of the provisions of this chapter or in derogation of the contract rights of lot owners.

(2) The owner of every cemetery shall have the further right to establish reasonable regulations regarding the type material, design, composition, finish, and specifications of any and all merchandise to be used or installed in the cemetery. Reasonable regulations may further be adopted regarding the installing by the cemetery or others of all merchandise to be installed in the cemetery. These regulations must be posted conspicuously and maintained, subject to inspection, at the usual place for transacting the regular business of the cemetery. No cemetery owner may prevent the use of any merchandise purchased by a lot owner, his representative, agent, or heirs or assigns from any source, if the merchandise meets all cemetery regulations.

(3) All regulations established by a cemetery pursuant to this subsection must be submitted to the board for its approval.

### SECTION 39-55-135. Trust fund for perpetual care cemetery.

No cemetery company is permitted to establish a perpetual care cemetery or to operate an already-established perpetual care cemetery without providing for the future care and maintenance of the cemetery, for which a trust fund must be established to be known as "the care and maintenance trust fund of (Name of licensee)". If any perpetual care cemetery company refuses or otherwise fails to provide or maintain an adequate care and maintenance trust fund in accordance with the provisions of this chapter, the board, after reasonable notice, must proceed to enforce compliance. The trust fund agreement shall contain the name, location, and address of both the licensee and the trustee, showing the date of the trust agreement and the deposit in the trust of the required funds. No person may transfer the corpus of the care and maintenance trust fund without first obtaining

written consent from the board.

**SECTION 39-55-145. Use of income of trust fund; disclosure in written instrument.**

At the time of making a sale or receiving the initial deposit on the sale of grave space, niche, or mausoleum crypt, the cemetery company shall deliver to the person to whom the sale is made, or who makes the deposit, an instrument in writing which shall specifically state that the net income of the care and maintenance trust fund must be used solely for the care and maintenance of the cemetery, for reasonable costs of administering the care and maintenance and for reasonable costs of administering the trust fund. This information may be included in the sales contract.

**SECTION 39-55-155. Minimum deposits to trust fund.**

No cemetery may cause or permit advertising of a perpetual care fund in connection with the sale or offer for sale of its property unless the amount deposited in the care and maintenance trust fund is equal to not less than twenty dollars or ten percent of the sale price, whichever is greater, per grave space and niche and fifty dollars per mausoleum crypt sold or five percent of the sales price, whichever is greater. Also, for any memorial or grave marker for installation in a cemetery wherein perpetual care is promised or guaranteed, the cemetery shall transmit to the care and maintenance trust fund an amount equal to eight cents per square inch of the memorial's or the marker's base. All deposits must be made within sixty days upon receipt of final payment.

**SECTION 39-55-165. Financial report of trust fund.**

Within ninety days after the end of the calendar or fiscal year of the cemetery company, the trustee shall furnish adequate financial reports with respect to the care and maintenance trust fund on forms prescribed and provided by the board. The board may require the trustee to make any additional financial reports the board considers advisable.

**SECTION 39-55-175. Investment of trust fund; allocation of expenses to income; payment of deficiencies by cemetery company.**

The care and maintenance trust fund must be invested and reinvested by the trustee in the same manner as provided by law for the investment of other trust funds. The fees and other expenses of the trust fund must be paid by the trustee from the net income of the trust fund and may not be paid from the corpus. To the extent that the net income is not sufficient to pay the fees and other expenses, they must be paid by the cemetery company.

**SECTION 39-55-185. Merchandise trust fund; records; interest; refunds; report of merchandise trust fund; examination by board; certain contracts void; schedule of charges; penalties.**

(A) Any person receiving funds from the sale of merchandise for use in a cemetery in connection with the burial or commemoration of a deceased human being when the use of the merchandise is not immediately requested or required shall deposit the funds in a merchandise trust fund administered by a trust institution.

The cemetery company shall maintain a record of each deposit into any such account and shall identify the name of the purchaser, the amount of the actual cost to the seller and the amount of money to be deposited, and a copy of the contract for the merchandise. Nothing contained herein prohibits the trustee from commingling the deposits in any trust fund of this kind for purposes of the management and investment of funds.

(B) When any memorial, mausoleum crypt, or other merchandise is sold in advance of need and not installed until a later date, one hundred percent of actual cost to the seller at time of deposit must be placed in a trust institution within sixty days after completion of the contract, with interest to accrue, and may not be withdrawn without the consent of the purchaser until the time of delivery or construction.

(C)(1) The funds must be held in a merchandise trust fund both as to principal and income earned and must remain intact, except that the cost of the operation of the trust may be deducted from the income until delivery of the merchandise is made by the cemetery company or other entity. Upon delivery of the merchandise, the cemetery company or other entity shall certify these facts to the trustee. Upon this certification, the amount of money on deposit to the credit of that particular contract, including principal and income, must be paid to the cemetery company, or other entity. The trustee may rely upon all certifications of this kind and is not liable to anyone for this reliance.

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- (2) If for any reason a cemetery company or other entity which has entered into a contract for the sale of merchandise cannot or does not provide within a reasonable time the merchandise that has been fully paid for and called for by the contract after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative is entitled to receive the entire amount paid on the contract and any income earned by the merchandise trust fund for that particular item. Reasonable time excludes riots, strikes, acts of war, or any delays beyond the control of the cemetery company or other entity.
- (D) At any time after payment in full and prior to delivery of merchandise, a purchaser may make written demand for a refund of the amount deposited in the merchandise trust fund to the credit of the purchaser, and, within thirty days of receipt of the written demand, the trustee shall refund to the purchaser the amount on deposit to his credit, less reasonable commission fees and administrative costs, together with all interest, dividends, increases, or accretions earned on the fund. Upon such refund, the cemetery company is relieved from any further liability for this merchandise.
- (E) The trustee shall, annually and within ninety days after the end of the calendar year, file a financial report of the merchandise trust fund with the board on forms provided by the board, setting forth the principal, investments, and payments made and the income earned and disbursed. The board may require the trustee to make additional financial reports as the board considers advisable.
- (F) The board may examine the business of any cemetery company or other entity writing contracts for the sale of the property or services described in this section. The written report of the examination must be filed in the office of the board. Any person or entity being examined shall produce the records of the company needed for the examination.
- (G) Any provision of any contract for the sale of merchandise described in this section which provides that the purchaser or beneficiary may waive any of the provisions of this section is void.
- (H) 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 copying at the usual place for transacting the regular business of the cemetery.
- (I) Any cemetery company or other entity failing to make required contributions to a care and maintenance trust fund or to a merchandise trust fund is guilty of a misdemeanor and, upon conviction, must be punished as provided in Section 39-55-265.
- (J) If any report is not received within the time stipulated herein, the board may levy and collect a penalty of twenty-five dollars per day for each day of delinquency.

### SECTION 39-55-195. Renewal of license.

Application for renewal of licenses must be submitted on or before July first of each year in the case of an existing cemetery company. Before any sale of cemetery property may take place in the case of a new cemetery company or in the case of a change of ownership or control, as provided in Sections 39-55-105 and 39-55-115, an application for a license must be submitted and a license must have been issued.

### SECTION 39-55-205. Transfer of license.

No license issued under this chapter is transferrable or assignable and no licensee may develop or operate any cemetery authorized by this chapter under any name or any location other than that contained in the license.

### SECTION 39-55-215. Minimum acreage; restrictions on sale, mortgage, lease, or encumbrance; conveyance to municipality; exceptions.

- (a) Each licensee shall set aside a minimum of thirty acres of land for use as a cemetery, except as may otherwise be provided in this chapter, and may not sell, mortgage, lease, or encumber it.
- (b) The fee simple title in any lands owned by the licensee and dedicated for use by the licensee as a cemetery, which lands are continuous, adjoining or adjacent to the minimum acreage described in subsection (a), may be sold, conveyed, or disposed of by the licensee for use by the new owner for purposes other than as a cemetery if no bodies have been previously interred and if any titles, interests, or burial rights which may have been sold or contracted to be sold in these lands are reconveyed to the licensee prior to the consummation of any conveyance.
- (c) Any licensee may convey and transfer to a municipality or county its real and personal property, together with monies deposited with the trustee, if the municipality or county accepts responsibility for maintenance and prior written approval of the board is obtained.
- (d) The provisions of subsections (a) and (b) relating to a requirement for minimum acreage do not apply to those cemeteries

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licensed by the board on or before July 1, 1984, which cemeteries own or control a total of less than the minimum acreage, but these cemeteries may not dispose of any of the lands.

(e) The provisions of subsections (a) and (b) relating to the minimum acreage do not apply when the governing body of a municipality which is within fifteen miles of the corporate limits of the City of Charlotte, North Carolina and in which the cemetery is to be located passes an ordinance authorizing a cemetery with less than thirty acres of land when a licensee establishes an irrevocable trust with a trust corpus of at least fifteen thousand dollars and five acres of land, and the dedication of fifteen percent of all future sales to deposit in the trust on a quarterly basis.

**SECTION 39-55-225.** Time for construction of mausoleum or bank of below ground crypts.

(a) A cemetery company is required to start construction of that section of a mausoleum or bank of below ground crypts in which sales, contracts for sale, reservations for sales, or agreements for sales are being made within thirty-six months after the date of the first sale, or refund the money. The construction of the mausoleum section or bank of below ground crypts must be completed within five years after the date of the first sale. Extensions for completion, not to exceed one year, may be granted by the board for good reasons shown.

(b) After construction has begun on the mausoleum section or bank of below ground crypts, the cemetery company shall certify the progress and expenditures to the trustee and is entitled to withdraw all funds deposited to the trust account.

(c) If the mausoleum section or bank of below ground crypts is not completed within the time limits set out in this section, the trustee must contract for and cause the project to be completed and paid for from the trust funds deposited to the project's account. Any balance, less costs and expenses, must be paid to the cemetery company. If not enough funds have been deposited to the escrow trust fund to complete the project, the cemetery company shall be liable for any shortage.

(d) In lieu of the payments to the escrow trust fund the cemetery company may deliver to the board a performance bond in an amount and by surety companies acceptable to the board.

**SECTION 39-55-235.** Signs designating presence or absence of perpetual care.

All cemeteries in this State, except family burial grounds, shall display a sign at each entrance, containing letters not less than six inches in height, stating "Perpetual Care" or "Endowment Care" or "No Perpetual Care" or "No Endowment Care", depending upon which method of operation the cemetery is using. Those cemeteries which furnish perpetual care to some portions and no perpetual care to other portions shall display these signs on the appropriate sections of the cemetery to which the sign applies. Portions designated "Perpetual Care" cannot be changed to "No Perpetual Care" once the designation is made.

**SECTION 39-55-245.** Free burial rights; care of facilities.

Any cemetery company which offers free burial rights to any person or group of persons must, at the time of the offer, clearly state all conditions upon which the offer is made. Cemeteries must be maintained to present a cared for appearance including, but not limited to, shrubs and trees pruned and trimmed, flower beds weeded, drives maintained, and lawns mowed when needed equivalent to once per week during the grass growing season with ample rainfall.

**SECTION 39-55-255.** Designation of cemetery for exclusive use of persons whose religious code requires isolation.

Cemetery companies may provide by their bylaws, regulations, contracts, or deeds the designation of parts of cemeteries for the specific use of persons whose religious code requires isolation.

**SECTION 39-55-265.** Penalties.

Any officer, director, or person occupying a similar status licensed to operate a cemetery company who fails to make required contributions to the care and maintenance trust fund or any other trust fund required to be established and maintained by this chapter and any other person violating any other provision of this chapter or order or regulation promulgated under the provisions of this chapter is guilty of a misdemeanor and upon conviction must be fined not more than five thousand dollars or imprisoned for not more than two years. Each violation constitutes a separate offense.

**SECTION 39-55-275.** License and filing fees; employees; investigators; subpoenas and search warrants.



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The board has authority to adjust license and filing fees through regulations promulgated pursuant to the Administrative Procedures Act and to employ examiners, clerks, and stenographers and other employees as the administration of this chapter may require. The board also has authority to appoint and employ investigators who shall have, in any case in which there is a reason to believe a violation of this chapter or of any order or regulation promulgated under the provisions of this chapter has occurred or is about to occur, the right and power to serve subpoenas and to swear out and execute search warrants.

SECTION 39-55-285. Promulgation of regulations.

The board has the authority to make regulations pursuant to the Administrative Procedures Act and to issue orders from time to time as the board considers necessary for the enforcement of this chapter.

SECTION 39-55-295. Exemptions.

The provisions of this chapter do not apply to governmental cemeteries, church cemeteries, or family burial grounds, with the exception of the provisions of Sections 39-55-235 and 39-55-265.

SECTION 39-55-305. Application of provisions to existing cemetery companies.

Any cemetery company lawfully operating on the effective date of this act may continue to operate and must be granted a license by the South Carolina Cemetery Board but must hereafter be operated in accordance with the provisions of Chapter 55 of Title 39 of the 1976 Code. This act shall not apply retroactively to any cemetery company lawfully operating on the effective date of this chapter.

## APPENDIX 2. THE PROPOSED CEMETERY BOARD LAW

AMENDED  
March 28, 2001

### H. 3319

Introduced by Reps. Sandifer, Allison, Barrett, Cato, Chellis, Cooper, Davenport, Edge, Emory, Fleming, Gilham, Harrison, Harvin, Keegan, Kelley, Kirsh, Knotts, Law, Leach, Lee, Limehouse, Littlejohn, Martin, McCraw, Meacham-Richardson, Moody-Lawrence, J.M. Neal, Neilson, Perry, Phillips, Quinn, Rodgers, Simrill, J.E. Smith, J.R. Smith, Stille, Talley, Thompson, Trotter, Walker, A. Young, White and Robinson

S. Printed 3/28/01--H.  
Read the first time January 23, 2001.

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### A BILL

TO AMEND TITLE 40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROFESSIONALS AND OCCUPATIONS, BY ADDING CHAPTER 8 SO AS TO ESTABLISH THE SOUTH CAROLINA PERPETUAL CARE CEMETERY BOARD UNDER THE DEPARTMENT OF LABOR, LICENSING AND REGULATION; TO CONFORM THE PROVISIONS OF THIS CHAPTER TO THE STATUTORY ORGANIZATIONAL FRAMEWORK ESTABLISHED FOR PROFESSIONAL AND OCCUPATIONAL BOARDS UNDER THE ADMINISTRATION OF THE DEPARTMENT; AND TO FURTHER PROVIDE FOR THE LICENSURE AND REGULATION OF CEMETERY COMPANIES AND TO PROVIDE PENALTIES FOR CERTAIN VIOLATIONS; AND TO REPEAL CHAPTER 55 OF TITLE 39 RELATING TO CEMETERIES.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 40 of the 1976 Code is amended by adding:

"CHAPTER 8

Perpetual Care Cemeteries

Section 40-8-10. This chapter may be cited as the 'South Carolina Perpetual Care Cemetery Act'.

Section 40-8-20. For the purposes of administering this chapter, there is established a South Carolina Perpetual Care Cemetery Board with the power and duty to promulgate regulations, approved by the Director of the Department of Labor, Licensing and Regulation, to carry out this chapter as provided for by Section 40-1-10.

Cemeteries, burial grounds, and any agreement or contract which has for a purpose the furnishing or delivering of a person, property, or merchandise of any nature in connection with the final disposition of a dead human body, must be subject to sufficient regulation by the State to ensure that sound business practices are followed by all entities subject to this chapter.

Section 40-8-30. As used in this chapter, unless otherwise stated or unless the context clearly indicates otherwise:

(1) 'Administrator' means the individual, appointed by the director, to whom the director has delegated authority to administer the programs of the South Carolina Perpetual Care Cemetery Board.

(2) 'Authorization to operate' or 'operation authorization' means the approval to operate a cemetery, which has been granted by the South Carolina Perpetual Care Cemetery Board. This authorization is granted in the form of a license.

(3) 'Board' means the South Carolina Perpetual Care Cemetery Board.

(4) 'Cemetery' means a place used, dedicated, or designated for cemetery purposes including any one or combination of:

- (a) perpetual care cemeteries;
- (b) burial parks for earth interment;
- (c) mausoleums;
- (d) columbariums.

(5) 'Cemetery company' means a legal entity that owns or controls cemetery lands or property and conducts the business of a cemetery, including all cemeteries owned and operated by cemetery sales organizations or cemetery management organizations or any other entity.

(6) 'Columbarium' means a structure or building substantially exposed aboveground intended to be used for the interment of the cremated remains of a deceased person.

(7) 'Department' means the Department of Labor, Licensing and Regulation.

(8) 'Director' means the Director of the Department of Labor, Licensing and Regulation, or the director's official designee.

(9) 'Grave space' means a space of ground in a cemetery intended to be used for the interment in the ground of the remains of a deceased person.

(10) 'Human remains' or 'remains' means the body of a deceased person and includes the body in any stage of decomposition.

(11) 'Licensee' means a person granted an authorization to operate pursuant to this chapter and refers to a person holding a license granted pursuant to this chapter.

(12) 'Mausoleum' means a structure or building substantially exposed aboveground, intended to be used for the entombment of the remains of a deceased person.

(13) 'Memorial' means a bronze marker set approximately level with the turf for the purpose of identification, or interchanged to mean upright markers in garden sections which are plotted and specified for the use of upright markers. The term 'marker' is interchanged with the term 'memorial' in this chapter.

(14) 'Merchandise' means items used in connection with grave space, niches, mausoleum crypts, granite, memorials, grave liners, and vaults; however, merchandise shall expressly exclude caskets and cremation urns, burial clothing, facilities used for preparation,

## APPENDIX 2. THE PROPOSED CEMETERY BOARD LAW

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viewing, and automotive equipment and transportation. Items expressly excluded under the definition of merchandise in this provision must be governed by Chapter 7 of Title 32.

(15) 'Outer burial container' means the following:

(a) Category I - Protective Outer Burial Container - An outer burial container (vault) in which a casket or similar burial device is placed for in-ground interment and is designed and constructed to support the weight of the earth and standard cemetery maintenance equipment and to prevent the grave from collapsing while resisting the entrance of water or any other element found in the soil in which it is interred.

(b) Category II - Nonprotective Outer Burial Container - A nonsealing outer burial container (grave liner) in which a casket or similar burial device is placed for in-ground interment and is designed and constructed to support the weight of the earth and standard cemetery maintenance equipment and to prevent the grave from collapsing.

(16) 'Perpetual care' means the maintenance and the reasonable administration of the cemetery grounds and buildings in keeping with a cemetery properly maintained using a care and maintenance trust fund. In the event that a cemetery offers perpetual care for some designated sections of its property but does not offer perpetual care to other designated sections, the cemetery must be considered a perpetual care cemetery for the purposes of this chapter.

(17) 'Person' means an individual, entity, corporation, partnership, joint venture, or association.

(18) 'Trust institution' means a state or national bank, state or federal savings and loan association, or trust company authorized to act in a fiduciary capacity in this State.

Section 40-8-35. The cemetery contract must disclose to the consumer:

(1) the type of outer burial container being purchased (a Category I, Protective Outer Burial Container, or a Category II, Nonprotective Outer Burial Container);

(2) that the outer burial container either has a warranty or that it does not have a warranty; and

(3) if the outer burial container purchased in advance of need is not available at the time of need, the cemetery shall make available to the purchaser or his representative an outer burial container of equal or greater value. The purchaser or his representative is entitled to approve any substitutions.

Section 40-8-40. No entity may engage in the business of operating a perpetual care cemetery company, except as authorized by this chapter, without first obtaining a license from the board. A license issued under this chapter is not transferable or assignable and a licensee may not develop or operate a perpetual care cemetery authorized by this chapter under a name or a location other than that contained in the license.

No entity may hold itself out to be a perpetual care cemetery without an authorization to operate as such by the South Carolina Perpetual Care Cemetery Board.

Those cemeteries which furnish perpetual care to some portions and no perpetual care to other portions shall identify the appropriate sections of the cemetery at application and shall designate each section by a sign on the premises. Portions designated 'Perpetual Care' may not be changed to 'No Perpetual Care' once the designation is made.

Section 40-8-50. The board consists of eight members. Three appointed members must be public members who have no financial interest in and are not involved in the management of a cemetery or funeral-related business; one member must be a monument dealer in this State who may be selected from nominees submitted by the Monument Builders of the Carolinas; and four members must be owners or managers of cemeteries in this State who may be selected from nominees submitted by the South Carolina Cemetery Association. The Governor shall appoint members of the board in the manner provided in this section. Of the eight members, four of the initial board members must be appointed for a term of two years, two for a term of three years, and two for a term of four years. At the end of their respective terms, successors must be selected in the same manner and appointed for terms of four years and until their successors are appointed and qualify. Nominations for appointment for the four professional members must be received by the Governor from the South Carolina Cemetery Association. If the Governor does not approve the

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recommendations, the association shall provide the Governor with another list of nominees, and the Governor may select a nominee from the list provided or appoint another suitable candidate of his choice. The Governor may replace any board member at any time for cause. An appointment to fill a vacancy on the board is for the balance of the unexpired term in the manner of the original appointment.

Section 40-8-60. The board shall elect annually a chairman and vice chairman; Each member of the board shall receive the usual mileage, per diem, and subsistence as provided by law for members of state boards, committees, and commissions. All expenses of the board must be paid from fees received by the board.

The board shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon written request of at least four members.

Section 40-8-70. In addition to the powers and duties included in Sections 40-1-70 through 40-1-100, the board shall establish policies and procedures consistent with this chapter, shall have the full power to regulate the issuance of licenses, and shall discipline licensees in any manner permitted by this chapter or under the provisions of Sections 40-1-110 through 40-1-150.

Section 40-8-75. The board shall have and use an official seal bearing the name of the board.

Section 40-8-80. (A) The following fees must be assessed, collected, and adjusted on behalf of the board by the Department of Labor, Licensing and Regulation in accordance with this chapter and the provisions of Section 40-1-50(D):

- (1) a license fee of eight hundred fifty dollars, annually;
- (2) an application fee of two hundred fifty dollars.

(B) Notwithstanding subsection (A), the fees for a cemetery in existence on the effective date of this chapter, which consists of ten acres or less of land are as follows:

- (1) a license fee of four hundred dollars, annually;
- (2) an application fee of two hundred fifty dollars.

(C) The license period is from January first through December thirty-first.

(D) Failure to renew a license by the December thirty-first renewal date renders the license invalid. The license may be reinstated upon receipt of an application postmarked not later than January thirty-first. Delinquent renewal requests not postmarked on or before January thirty-first require that a new application be submitted under the guidelines in effect for the current period.

(E) All fees are nonrefundable.

Section 40-8-90. (A) A legal entity wishing to establish a cemetery shall file a written application for authority to do so with the board on forms prescribed and provided by the department.

(1) Upon receipt of the application and a nonrefundable application fee the board shall cause an investigation to be made to establish the following criteria for approval of the application:

- (a) creation of a legal entity to conduct a cemetery business and the proposed financial structure;
- (b) establishment and maintenance of an irrevocable care and maintenance trust fund agreement with a trust institution doing business in this State, with an initial deposit of not less than fifteen thousand dollars and a bank cashier's or certified check attached for the amount and payable to the trustee with the trust executed by the applicant and accepted by the trustee, conditioned only upon the approval of the application;
- (c) presentation of a plat of the land to be used for a cemetery showing the county or municipality and the names of roads and access streets or ways;

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(d) designation by the legal entity, wishing to establish a cemetery, of a general manager who must be a person having had not less than two years' experience in the cemetery business;

(e) presentation of development plans sufficient to ensure the community that the cemetery shall provide adequate cemetery services and that the property is suitable for use as a cemetery.

(2) The board, after receipt of the investigating report and within ninety days after receipt of the application, shall grant or refuse to grant the authority to organize a cemetery;

(3) If the board intends to deny an application, it shall give written notice to the applicant of its intention to deny. The notice shall state a time and place for a hearing before the board and a summary statement of the reasons for the proposed denial. The notice of intent must be mailed by certified mail to the applicant at the address stated in the application at least fifteen days before the scheduled hearing date. Within thirty days of the hearing, the board must provide the applicant with its written decision regarding its intent to deny the application. An appeal from the board's decision must be made in accordance with the Administrative Procedures Act;

(4) If the board intends to grant the authority, it shall give written notice that the authority to organize a cemetery has been granted and that a license to operate must be issued upon the completion of the:

(a) establishment of the irrevocable care and maintenance trust fund and receipt by the board of a certificate from the trust institution certifying receipt of the initial deposit required under this chapter;

(b) development, ready for burial, of not less than two acres, certified by inspection of the board or its representative;

(c) presentation of a description, by metes and bounds, of the acreage tract of the proposed cemetery, with evidence, by title insurance policy or certificate or certification by an attorney at law, that the applicant is the owner in fee simple of the tract of land which must contain not less than thirty acres, and may not mortgage, lease, or encumber it. In counties with a population of less than thirty-five thousand inhabitants according to the latest official United States census, the tract needs to be only fifteen acres;

(d) submission to the board, for its approval, a copy of the cemetery company's policies and procedures as provided for in this chapter.

(B) If a person proposes to purchase or acquire control of an existing cemetery either by purchasing the outstanding capital stock of any cemetery company or the interest of the owner and thereby to change the control of the cemetery company, the person shall make application on a form prescribed and provided by the board for a license change. The application shall contain the name and address of the proposed new owner. The application for a license change must be accompanied by an initial application fee.

(C) The provisions of subsection (A)(4)(c) relating to the minimum acreage do not apply when the governing body of a municipality which is within fifteen miles of the corporate limits of the City of Charlotte, North Carolina, and in which the cemetery is to be located passes an ordinance authorizing a cemetery with less than thirty acres of land when a license establishes an irrevocable trust with a trust corpus of at least fifteen thousand dollars and five acres of land, and the dedication of fifteen percent of all future sales to deposit in the trust on a quarterly basis.

Section 40-8-100. (A) A record must be kept of every lot owner and every burial in the cemetery showing the date of purchase, date of burial, name of the person buried and of the lot owner, and space in which the burial was made. Sales, trust funds, accounting records, and other records of the licensee must be available at the licensee's principal place of business at reasonable times during regular business hours for examination by the department. In addition, the owner of a perpetual care cemetery shall have the records of the care and maintenance fund examined annually by a licensed public accountant and shall submit a copy of the report to the board or its designee.

(B) A record must be kept of each written complaint received, action taken, and disposition of the complaint. These records must be available for examination by the chairman or other authorized representative of the board.

(C) The owner of a cemetery shall adopt and enforce policies and procedures for the use, care, control, management, restriction, and protection of the cemetery and its parts and subdivisions, the use of property within a cemetery, the introduction and care of plants or shrubs within the grounds, the conduct of persons and prevention of improper assemblages, and other purposes considered necessary by the owner of the cemetery for the proper conduct of the business of the cemetery and the protection of the premises and the principles on which the cemetery was organized. The owner may amend or abolish the policies and procedures pursuant to subsection

(H). The regulations must be printed or typewritten plainly, posted conspicuously, and maintained, subject to inspection by the board or its designee, at the usual place for transacting the regular business of the cemetery. The owner must also include in this posting a statement explaining that it is acceptable to purchase memorials and merchandise from vendors other than the cemetery if the items meet the reasonable policies and procedures established for those items by the cemetery. However, a cemetery licensed under this chapter may not adopt policies or procedures in conflict with this chapter or in derogation of the contract rights of lot owners.

(D) The owner of a cemetery shall establish reasonable policies and procedures regarding the type material, design, composition, finish, specifications, and installation of merchandise to be used in the cemetery. However, a policy or procedure may not be promulgated which:

(1) requires the owner or purchaser of a lot to purchase a monument or marker or the actual installation of a monument or marker from the cemetery company;

(2) restricts the right of the owner or purchaser of a lot to purchase a monument or marker or the actual installation of a monument from the vendor of his choice;

(3) charges the owner or purchaser of a lot a fee for purchasing a monument or marker or the actual installation of a monument from a vendor or charges a vendor a fee for delivering or installing the monument;

(4) discriminates against an owner or a purchaser of a lot who has purchased a monument or services related to installation of a monument from a vendor.

(E) Subsection (D) does not prohibit the cemetery from charging the owner or purchaser of a lot a reasonable fee for services actually performed by the cemetery relating to the installation, care, and maintenance of a monument or marker including, but not limited to, the survey, recording, and supervision of the installation of the monument or marker, whether or not it is purchased from a cemetery or an outside vendor.

(F) These policies and procedures must be posted conspicuously and maintained, subject to inspection by the department, at the usual place for transacting the regular business of the cemetery. A cemetery owner may not prevent the use of merchandise purchased by a lot owner or his representative, agent, heirs, or assigns from any source if the merchandise meets cemetery regulations.

(G) When an interment right is sold, the cemetery must provide a written listing of the current charges associated with all merchandise, memorials, and services that are then required by the cemetery. The cemetery also shall provide a list of cemetery services for which there may be a later charge. When a monument, marker, or memorial is sold by a cemetery company, the cemetery shall provide on the sales contract an itemized statement of the fees charged for installation, care, and maintenance of the monument, marker, or memorial. Fees charged for installation, care, and maintenance of a monument, marker, or memorial must be shown on the statement as charges separate from its price, and the statement shall disclose the amount of fees to be placed in trust by the cemetery company. The board shall promulgate regulations for the disclosure of fees and services.

(H) Policies and procedures established, amended, or abolished by a cemetery pursuant to this section must be submitted to the board for its approval.

Section 40-8-110. (A) A cemetery company is not permitted to establish a perpetual care cemetery or to operate an already-established perpetual care cemetery without providing for the future care and maintenance of the cemetery, for which a trust fund must be established to be known as 'The Care and Maintenance Trust Fund of (name of licensee)'. If a perpetual care cemetery company refuses or otherwise fails to provide or maintain an adequate care and maintenance trust fund in accordance with the provisions of this chapter, the board, after thirty days, shall enforce compliance. The trust fund agreement shall contain the name, location, and address of both the licensee and the trustee, showing the date of the trust agreement and the deposit in the trust of the required funds. No person shall transfer the corpus of the care and maintenance trust fund without first obtaining written consent from the board.

(B) At the time of making a sale or receiving the initial deposit on the sale of grave space, niche, or mausoleum crypt, the cemetery company shall deliver to the person to whom the sale is made, or who makes the deposit, an instrument in writing which shall specifically state that the net income of the care and maintenance trust fund must be used solely for the care and maintenance of the cemetery, for reasonable costs of administering the care and maintenance, and for reasonable costs of administering the trust fund. This information must be included in the sales contract.

(C) A perpetual care cemetery shall deposit into the care and maintenance fund not less than forty dollars or a minimum of ten

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percent of the sale price, whichever is greater, per grave space and niche, and one hundred dollars per mausoleum crypt sold or a minimum of five percent of the sales price, whichever is greater. Also, for a memorial or grave marker for installation in a cemetery where perpetual care is promised or guaranteed, the cemetery shall transmit to the care and maintenance trust fund an amount equal to a minimum of eight cents per square inch of the memorial's or the marker's base. All deposits must be made within sixty days upon receipt of final payment.

(D) Within ninety days after the end of the calendar or fiscal year of the cemetery company, the trustee shall furnish adequate financial reports with respect to the care and maintenance trust fund on forms prescribed and provided by the board. The board shall require the trustee to make any additional financial reports the board considers advisable.

(E) The care and maintenance trust fund must be invested and reinvested by the trustee in the same manner as provided by law for the investment of other trust funds. The fees and other expenses of the trust fund may be paid from the corpus. To the extent that the net income is not sufficient to pay the fees and other expenses, they must be paid by the cemetery company.

(F)(1) Upon payment in full, a licensee receiving funds from the sale of merchandise for use in a cemetery in connection with the burial or commemoration of a deceased human being when the use of contracted merchandise is not requested or required immediately shall store or warehouse the contracted merchandise, or bond or deposit the funds in a merchandise account with a financial institution licensed to do business in this State. Notwithstanding any other provision of law, all funds deposited in the merchandise account must be held for the benefit of the purchaser of the merchandise. Any such merchandise account must be subject to Section 40-8-110(G).

The cemetery company shall maintain a record of each deposit into the account, identify the name of the purchaser, the amount of the actual costs to the seller, and the amount of money to be deposited, and maintain a copy of the contract for the merchandise. This section does not prohibit the licensee from commingling the deposits in a fund of this kind to manage and invest the funds.

(2) When a memorial, a mausoleum crypt, or other merchandise is sold in advance of need and not installed, delivered, or bonded until a later date, one hundred percent of the actual cost to the seller at the time of deposit must be placed in a merchandise account within sixty days after completion of the contract with interest to accrue and must not be withdrawn without the consent of the purchaser until the time of delivery or construction.

(3) The funds must be held in a merchandise account as to principal and income earned and must remain intact, until delivery of the merchandise is made by the cemetery company or other entity; however, any service fees charged by the administering financial institution may be deducted from the income. Upon delivery of the merchandise, the cemetery company or other entity shall certify these facts. Upon this certification, the amount of money on deposit to the credit of that particular contract, including principal and income, must be paid to the cemetery company or other entity.

(4) After payment in full and before delivery of merchandise, a purchaser may make written demand for a refund of the amount deposited in the merchandise account to the credit of the purchaser, and within ninety days of receipt of the written demand, the licensee shall deliver the merchandise or refund to the purchaser the amount on deposit to his credit. Upon the refund or delivery of merchandise the cemetery company is relieved from further liability for this merchandise.

(G) The licensee, annually and within ninety days after the end of the calendar year, shall file a financial report, signed by a licensed accountant, of the merchandise account fund with the board on forms provided by the board setting forth the principal, investments, and payments made and the income earned and disbursed. The board may require the licensee to make additional financial reports the board considers advisable.

(H) The board may cause the examination of the business of a cemetery company or other entity writing contracts for the sale of the property or services described in this section. The written report of the examination must be filed in this office of the board. A person or an entity being examined shall produce the records of the company needed for the examination.

(I) A provision of a contract for the sale of merchandise described in this section which provides that the purchaser or beneficiary may waive this section is void.

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

(K) A cemetery company or other entity failing to make required contributions to a care and maintenance trust fund or to a merchandise account fund is guilty of a misdemeanor and, upon conviction, must be punished pursuant to Section 40-8-190.



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(L) If a report is not received within the required time, the board may levy and collect a penalty of not less than twenty-five dollars a day or more than one hundred dollars a day for each day of delinquency.

Section 40-8-120. (A) A licensee shall set aside a minimum of thirty acres of land for use as a cemetery, except as may otherwise be provided in this chapter, and may not mortgage, lease, or encumber it.

(B) The fee simple title in any land owned by the licensee as a cemetery, which lands are contiguous, adjoining, or adjacent to the minimum acreage described in subsection (A), may be sold, conveyed, or disposed of by the licensee for use by the new owner for purposes other than as a cemetery if no bodies have been previously interred and if any title, interest, or burial right which may have been sold or contracted to be sold in this land are reconveyed to the licensee before the consummation of any conveyance.

(C) A licensee may convey and transfer to a municipality or county its real and personal property, together with monies responsibility for maintenance and prior written approval of the board is obtained.

(D) The provisions of subsections (A) and (B) relating to a requirement for minimum acreage do not apply to those cemeteries in existence before the effective date of this chapter. If a cemetery owns or controls a total of less than the minimum acreage, this cemetery may not dispose of any of the lands.

Section 40-8-130. (A)(1) A cemetery company is required to start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sale, reservations for sales, or agreements for sales are being made within thirty-six months after the date of the first sale, or refund the money. The construction of the mausoleum section or bank of belowground crypts must be completed within sixty months after the date of the first sale. Extensions for completion, not to exceed one year, may be granted by the board for good reasons shown.

(2) After construction has begun on the mausoleum section or bank of belowground crypts, the cemetery company shall certify the progress and expenditures and is entitled to withdraw funds from the mausoleum account to meet construction expenditures.

(3) If the mausoleum section or bank of belowground crypts is not completed within the time limits set out in this section, the board shall contract for and cause the project to be completed and paid for from the funds deposited to the project and the cemetery company must be liable for any shortage.

(4) In lieu of the payments to the mausoleum account the cemetery company may deliver to the board a performance bond in an amount and by surety companies acceptable to the board.

(B)(1) Burial vaults must be at least ten inches below the earth's surface. As used in this section, 'burial vaults' includes caskets, grave liners, or other outer burial containers. It does not include markers, monuments, or crypts constructed in a mausoleum or columbarium.

(2) This section does not apply to cemeteries located in the coastal and lowland areas which are subject to tidal or surface flooding or have a high-level water table, except that where the water table is two feet or less from the surface, cemeteries not subject to tidal or surface flooding may place vaults level with the ground.

Section 40-8-140. All cemeteries in this State shall display a sign at each entrance containing letters not less than six inches in height stating 'Perpetual Care' or 'Endowment Care' or 'No Perpetual Care' or 'No Endowment Care' depending upon which method of operation the cemetery is using.

Those cemeteries which furnish perpetual care to some portions and no perpetual care to other portions shall display these signs on the appropriate sections of the cemetery to which the sign applies. Portions designated 'Perpetual Care' cannot be changed to 'No Perpetual Care' once the designation is made.

Section 40-8-150. In addition to grounds for disciplinary actions as set forth in Section 40-1-110, the board shall take disciplinary action against a licensee who:

- (1) fails to pay the required fees;

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- (2) fails to make required reports;
- (3) fails to remit to the care and maintenance trust fund or merchandise trust fund the required amounts;
- (4) knowingly makes a false statement intended to influence or persuade;
- (5) knowingly and continually makes flagrant misrepresentations or knowingly condones false promises by its cemetery agents or salesmen;
- (6) wilfully violates this chapter or regulations promulgated by the board;
- (7) acts in a fraudulent manner, whether of the same or a different character than specified in this section;
- (8) fails to make required contributions to the care and maintenance trust fund or any other funds required to be established and maintained by this chapter.

Section 40-8-160. Upon a determination by the board that one or more of the grounds for disciplining a licensee exist, as provided for in Sections 40-8-150 and 40-1-110, the board may, in addition to the actions provided for in Section 40-1-120, impose a fine not to exceed ten thousand dollars. All final orders which are made public must be mailed to local and state professional associations, all firms and facilities with which the respondent is associated, states where the person has a license known to the board, and to any other source to which the board wishes to furnish this information.

Section 40-8-170. A licensee who is under investigation for any of the grounds provided for in Section 40-8-150 for which the board may take disciplinary action may voluntarily surrender his license to the board in accordance with the provisions of Section 40-1-150.

Section 40-8-180. A person aggrieved by any action of the board may seek review of the decision in accordance with the provisions of Section 40-1-160.

Section 40-8-190. A person who operates a cemetery in this State in violation of this chapter or who knowingly submits false information to the board for the purpose of obtaining a license is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred fifty dollars or more than ten thousand dollars or imprisoned not less than thirty days or more than twelve months, or both.

Section 40-8-200. The provisions of this chapter do not apply to governmental cemeteries, nonprofit cemeteries, church cemeteries, or family burial grounds.

Section 40-8-210. (A) A perpetual care cemetery licensed by the South Carolina Cemetery Board and operating in good standing on June 30, 1990, may continue to operate and must be granted a license by the South Carolina Perpetual Care Cemetery Board.

(B) A perpetual care cemetery established between July 1, 1990, and the effective date of this chapter may continue to operate and must be granted a license by the South Carolina Perpetual Care Cemetery Board, provided an Irrevocable Care and Maintenance Trust Fund Agreement with a trust institution doing business in this State has been properly entered into by the perpetual care cemetery, and a copy of the same is on file with the board.

(C) Effective January 1, 2002, all perpetual care cemeteries must be operated in accordance with the provisions of this chapter.

Section 40-8-220. (A) A cemetery company which offers free burial rights to a person or group of persons, at the time of the offer, clearly shall state all conditions upon which the offer is made.

(B) Cemeteries must be maintained to present a cared-for appearance including, but not limited to, shrubs and trees pruned and

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trimmed, flower beds weeded, drives maintained, and lawns mowed when needed equivalent to once a week during grass growing season with ample rainfall.

(C) Cemetery companies may provide by their bylaws, regulations, contracts, or deeds the designations of parts of cemeteries for the specific use of persons whose religious code requires isolation.

Section 40-8-230. If any provision of this chapter or the application of this chapter to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Section 40-8-240. Except as provided in Section 40-8-200, no person including a cemetery company is permitted to establish a new public cemetery unless it is a perpetual care cemetery that meets all requirements of this chapter."

SECTION 2. (A) As of October 1, 1992, the State Cemetery Board was not reauthorized by the General Assembly, and pursuant to Section 1-20-50(a)(4) of the 1976 Code, terminated on June 30, 1990.

(B) Chapter 55 of Title 39 of the 1976 Code is therefore repealed.

SECTION 3. This act takes effect January 1, 2002.

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**Cemetery Preservation Plans**

**Historical Research**

**Identification of Grave Locations  
and Mapping**

**Condition Assessments**

**Treatment of Stone and Ironwork**



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