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Chapter No. 362

11/HR07/R1266

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## ***HOUSE BILL NO. 822***

Originated in House Don Richardson Clerk

HOUSE BILL NO. 822

AN ACT TO AMEND SECTION 41-43-38, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT WHENEVER A PERPETUAL CARE CEMETERY BECOMES THE SUBJECT OF A COURT ORDER OF RECEIVERSHIP AND THE RECEIVER DETERMINES THAT INSUFFICIENT CASH FLOW OR INCOME EXISTS TO PROVIDE MAINTENANCE AND UPKEEP, THE RECEIVER SHALL NOTIFY THE LOCAL GOVERNING AUTHORITIES WHERE THE CEMETERY IS LOCATED, WHO SHALL APPOINT A CEMETERY MAINTENANCE COMMITTEE; TO AUTHORIZE THE COMMITTEE TO SOLICIT DONATIONS AND RAISE FUNDS AND ESTABLISH A TRUST FUND TO SUPPLY CONTINUING NEEDS OVER A LONG PERIOD OF TIME; AND FOR RELATED PURPOSES.

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

**SECTION 1.** Section 41-43-38, Mississippi Code of 1972, is amended as follows:

41-43-38. (1) The provisions of this section shall apply to every cemetery that is required to establish and maintain a perpetual care trust fund as provided in Section 41-43-37.

(2) By March 31 of each year, each perpetual care cemetery not exempt by Section 41-43-33 shall file with the Secretary of State the following information:

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

(b) The amounts of sales of cemetery lots, grave spaces, mausoleum crypts or columbarium niches for which payment has been made in full or deeds of conveyance or perpetual easements issued thereon during the preceding calendar year;

(c) The amounts paid into the perpetual care fund, and the income earned therefrom during the preceding calendar year;

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

(e) The names and addresses of the owners of the cemetery or the officers and directors of the corporation and any change of control that occurred during the preceding calendar year.

(3) The custodian or trustee of the perpetual care fund of each cemetery shall annually prepare and file with the Secretary of State a detailed accounting and report of the fund on or before March 31 of each year for the preceding calendar year. The accounting and report shall contain a properly itemized description of the securities in which the monies of the perpetual care fund are invested, the fund value, and any changes in the investment portfolio from the prior year's report. The accounting and report shall be at all times available to inspection and copy by any owner of a burial right in the cemetery, or the family, legal representative or next of kin of the owner, at the usual place for transacting the regular business of the cemetery.

For each day that the report and accounting required by subsections (2) and (3) of this section are late, the Secretary of State is authorized to charge a late fee of Ten Dollars (\$10.00) per day.

(4) As a condition to the transfer of any perpetual care trust fund monies from one (1) trustee or trust institution to another, the cemetery for which the fund is maintained shall, not less than thirty (30) days before the time when the transfer is to occur, file with the Secretary of State a written notice of intent to transfer accompanied with a letter of intent to receive the trust fund monies from the trustee or trust institution to which the trust fund monies are to be transferred. The fund monies shall be transferred directly from the existing custodian or trustee to the receiving custodian or trustee only after approval has been issued in writing by the Secretary of State or his representative.

(5) Before any sale or transfer of a perpetual care cemetery or a controlling interest therein, an independent audit of the perpetual care trust fund shall be performed at the expense of the seller and/or buyer or transferor and transferee and filed with the Secretary of State. The audit shall be current within thirty (30) days of the proposed sale or transfer. No sale or transfer of any perpetual care cemetery shall occur until approved in writing by the Secretary of State or his representative.

(6) The Secretary of State shall, upon the failure to timely receive any of the records, reports or notices provided for in this section, immediately give notice by certified letter or hand delivery to the last known cemetery owner or owners, or, if incorporated, its officers and directors, at its or their last known address, that those records, reports or notices have not been received. Failure of those persons to file the records, reports or notices within fifteen (15) days after receipt of the certified letter or hand delivery shall, in the absence of clear justification or excuse, constitute a misdemeanor and each owner of the cemetery and, if incorporated, its officers and directors, shall be subject to the penalties provided for in Section 41-43-53.

(7) Whenever it reasonably appears to the Secretary of State, any owner or purchaser, or the family, legal representative or next of kin of any such owner or purchaser, of any lot, plot, grave, crypt, niche or burial space within a perpetual care cemetery, that (a) the cemetery is insolvent or about to become insolvent; or (b) no perpetual care trust fund has been established for the cemetery or, if established, the trust fund does not contain the funds as are required to be contained therein, that party may bring an action in the chancery court in the county in which the cemetery is located. Upon a proper showing, the court shall order a private audit and examination of any perpetual care trust fund of the cemetery and of all the

books, records and papers employed in the transaction of the cemetery business.

If the audit and examination show that the cemetery is insolvent or is about to become insolvent, or that a sufficient trust fund is not established or being maintained for the cemetery, the court shall exercise any jurisdiction and make and issue any orders and decrees as may be necessary to correct and enforce compliance with the provisions of Section 41-43-31 et seq. and all such other orders and decrees as shall be just, equitable and in the public interest, including the appointment of receivers to continue or terminate the operation of the business.

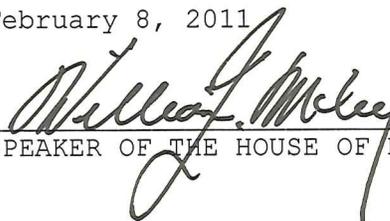
(8) All the necessary expenses of any examination or audit performed or court proceedings conducted under the provisions of subsection (7) of this section shall be paid by the cemetery owner or owners or, if incorporated, its officers and directors, and if a sale of any cemetery is ordered by the court, the proceeds of the sale shall first be applied to the costs expended under the provisions of subsection (7) of this section.

(9) Whenever a cemetery subject to the provisions of Section 41-43-31 et seq. becomes the subject of a court order of receivership, the receiver shall determine as soon as practical if the income of the receivership estate is sufficient for the operation of the cemetery including the upkeep and maintenance of cemetery grounds. If the receiver determines that insufficient cash flow or income exists to provide maintenance and upkeep, the receiver shall notify the mayor of the municipality in which the cemetery is located or the president of the board of supervisors for cemeteries located outside of a municipality, by certified mail return receipt requested, that insufficient income exists for the receivership estate. Upon receipt of that notice, the municipality or county shall appoint a cemetery maintenance committee of no more than seven (7) persons who have an interest in the cemetery through ownership of interment or entombment

rights, genealogical or historical reasons. The committee may  
solicit donations and raise funds by any lawful means from private  
citizens and private sources. The committee may establish a trust  
fund to supply continuing needs over a long period of time.  
However, the receiver shall have the authority to determine the  
maintenance and upkeep to be performed, the frequency of upkeep  
and the selection of workers or contractors to accomplish  
maintenance and upkeep. If, at the conclusion of the receivership  
estate, excess funds are on deposit with the maintenance  
committee, the receiver is authorized to apply excess funds to any  
short-term or long-term capital improvement by which the cemetery  
would benefit.

**SECTION 2.** This act shall take effect and be in force from  
and after July 1, 2011.

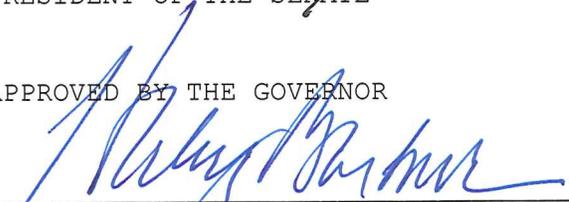
PASSED BY THE HOUSE OF REPRESENTATIVES  
February 8, 2011

  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE  
March 3, 2011

  
PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

  
GOVERNOR  
3/12/11 2:53pm