Perpetual Care Cemeteries

§ 41-43-1. Regulation of cemeteries in the vicinity of hospitals; private family cemeteries.

(1) No person, firm, association, or corporation shall locate a new public or private cemetery for burial of human beings within five hundred (500) yards of a public or private hospital or other medical facility wherein sick or injured persons are usually kept overnight for medical treatment and rehabilitation, without such person, firm, association, or corporation having first obtained a written order of approval from the board of supervisors if the proposed cemetery or burial ground is located outside the corporate limits of a municipality, or without such person, firm, association, or corporation having first obtained a written order of approval from the governing authorities of the municipality if the proposed cemetery or burial ground is located inside the corporate limits of a municipality.

Any realty used for burial purposes in violation of this subsection shall be deemed a common nuisance, and may be abated by the chancery court upon a petition filed therefor by the district attorney or county attorney, city attorney, attorney for the board of supervisors, or any person or persons aggrieved by the violation of this subsection.

This subsection shall not apply to any established cemeteries or burial grounds which now have human remains interred thereon.

(2) The board of supervisors of any county is authorized and empowered, upon petition and request to do so, to establish or designate the location of any private family cemetery to be located in the county.

§ 41-43-3. Appointment of trustee for private or family cemetery or burying ground.

When any donation or bequest is made by any person, company or corporation, of money or property to be used for the maintenance and preservation of any private or family cemetery or burying ground, and no trustee be appointed by such person, company or corporation, or if appointed, the trustee should die, resign, or otherwise become incompetent, the chancellor, on petition of any person having, or feeling, any interest therein, may, in vacation or in term-time, appoint a trustee to administer the

trust on such terms as he may deem proper. If a trustee shall improperly administer the trust, he may be removed by the chancellor and another appointed.

§ 41-43-5. Use of vacant portions of lots by not-for-profit cemetery permitted under certain circumstances; notice to potential living heirs of original purchaser; recordkeeping.

(1) The provisions of this section apply to any not-for-profit cemetery:

(a) In which a lot was sold or reserved to be used for burial plots;

(b) Only a portion of the lot has been used for burial plots;

(c) There is sufficient space for additional burial plots to be located within the same lot;

(d) The owner of the cemetery desires to use the vacant portions of the lot for additional burial plots; and

(e) There are no known heirs of the person who originally purchased or reserved the lot from whom the cemetery may obtain permission to use the vacant portions of the lot for additional burial plots.

(2) The owner of the cemetery first shall make reasonably diligent efforts to identify any living heirs of the person who originally purchased or reserved the lot. If there are any potential living heirs known to the owner of the cemetery, the owner shall mail a notice to those persons at their last known address, informing them that if they do not notify the cemetery within ninety (90) days after the date of the notice, they will be barred from objecting to the cemetery's use of the vacant portions of the lot for additional burial plots after that time.

(3) In addition, the owner of the cemetery shall publish, for three (3) consecutive weeks in some newspaper published or having circulation in the county in which the cemetery is located, a notice that any persons having any claim of ownership to the lot in the cemetery must notify the cemetery within ninety (90) days after the first publication of the notice or they will be barred from objecting to the cemetery's use of vacant portions of the lot for additional burial plots after that time.

(4) If any person notifies the cemetery within the time specified in subsection (2) or (3) of this section, and the cemetery determines that the person has an ownership interest in the lot, then the cemetery may not use the vacant portions of the lot for additional burial plots without the permission of that person. If no person notifies the cemetery within the time specified in subsection (2) or (3) of this section, or if the cemetery determines that a person or persons who timely notified the cemetery does not have an ownership interest in the lot, then the cemetery may use the vacant portions of the lot for additional burial plots, and no claim shall be allowed that the cemetery has used the lot without the permission of an owner of the lot.

(5) The owner of the cemetery shall maintain permanent records documenting the mailed notice and the published notice provided by the cemetery under subsections (2) and (3) of this section.

§ 41-43-7. Penalty for violation of chapter; appeal.

(1) The Secretary of State may impose, following notice and an opportunity for a hearing, monetary penalties not to exceed One Thousand Dollars ($1,000.00) per occurrence for any violation of this chapter or any rule, regulation or order issued by the Secretary of State.

(2) Any person aggrieved by a final order of the Secretary of State may obtain a review of the order in the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing in the court, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside, in whole or in part. A copy of the petition shall be forthwith served upon the Secretary of State and thereupon the Secretary of State shall certify and file in the court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part.

Cemetery Law

§ 41-43-31. Title.

Sections 41-43-31 to 41-43-53 may be cited as the "Cemetery Law."

§ 41-43-33. Who is subject to cemetery law.

Any person, partnership, corporation or other organization organized or engaging in business under the laws of the State of Mississippi, whether for profit or not-for-profit, or wheresoever organized and doing business in the State of Mississippi, of owning, maintaining or operating a cemetery, providing lots or other interment space therein for the remains of human bodies, except such organizations and cemeteries that are affiliated with or owned by churches or religious societies, established fraternal societies, municipalities, other political subdivisions of the State of Mississippi, or family cemeteries or family burial grounds, and community cemeteries that provide burial lots at no charge, or sell burial lots to the public, shall be subject to the provisions of Section 41-43-31 et seq.

From and after July 1, 2009, all new cemeteries must be perpetual care cemeteries unless exempt under the provisions of this section.

§ 41-43-35. Designation of cemetery organizations as perpetual care cemeteries.

All such organizations subject to the provisions of Section 41-43-31 et seq. shall be, for the purposes hereof, designated as "perpetual care cemeteries."

§ 41-43-37. Operation as perpetual care cemetery; establishment of irrevocable perpetual care trust fund; registration system for perpetual care cemeteries.

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

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

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

(c) In respect to the placement of an above-ground, free-standing or private mausoleum, by the application and payment thereof of an amount equivalent to fifteen percent (15%) of the sale price for the ground interment right upon which the private mausoleum is installed and five percent (5%) of the sales price as determined by the customer's invoice for the purchase price of the private mausoleum; and

(d) In respect to a community columbarium, by the application and payment thereto of an amount equivalent to five percent (5%) of the sale price, or Ten Dollars ($10.00) per niche sold, whichever is greater. For any sale of a lot for an earth burial, mausoleum crypt or columbarium niche in which payment is made by the purchaser on an installment basis over time, the percentage required to be trusted shall be paid into the perpetual care trust fund calculated on each payment.

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

(3) If the perpetual care trust fund principal is Fifty Thousand Dollars ($50,000.00) or less, a perpetual care cemetery may maintain certificates of deposit that mature every thirty (30) days issued by an institution whose deposits are insured by the Federal

Deposit Insurance Corporation. Certificates of deposits held by a cemetery for perpetual care under this subsection shall renew automatically with all earned interest added to principal for each successive renewal. Collections owed to trust from sales under subsection (1) of this section shall be added upon the next maturity date of the certificate rather than the fifth day of the following month as required by subsection (2) of this section. Certificates of deposit meeting the requirements of this subsection shall contain the words, “For Perpetual Care,” in the caption of the certificate. Each perpetual care cemetery electing to maintain certificates of deposit under this subsection shall file documentation from the issuer with the Office of the Secretary of State with the submission of the annual report. Once the perpetual care principal from the cemetery's operations exceeds Fifty Thousand Dollars ($50,000.00), such funds shall be held in an irrevocable trust managed by a trustee and governed by a trust instrument.

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

(5) Whenever the cemetery has deposited in the perpetual care fund, as required by this section, a sum amounting to Fifty Thousand Dollars ($50,000.00), it shall submit proof of that fact to its trustee, and it shall be the duty of the trustee to thereupon pay over to the cemetery the amount of Twenty-five Thousand Dollars ($25,000.00) so originally deposited by it in the perpetual care fund.

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

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

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

(9) To assist with the development of a statewide registry of perpetual care cemeteries, the county boards of supervisors in conjunction with the chancery clerks shall provide the Secretary of State with a list of all perpetual care cemeteries and other pertinent information regarding perpetual care cemeteries situated in their respective counties no later than October 31, 2009.

§ 41-43-38. Operation as perpetual care cemetery; accounting and reporting requirements; penalties for failure to timely file requisite accountings, records, reports or notices; sale or transfer of perpetual care cemetery; audits; procedure if perpetual care cemetery becomes subject of court ordered receivership.

(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.

§ 41-43-39. Operation as perpetual care cemetery; procedure by existing organizations.

Any such organization, subject to the provisions of Sections 41-43-31 through 41-43-53, which is organized and engaged in business prior to May 6, 1958, shall be a perpetual care cemetery if:

(1) It shall, by July 5, 1958, have placed the entire principal and all accrued interest in any perpetual care fund then in its possession, or in the possession of trustees designated by it, in trust, to be administered as set forth in Sections 41-43-37 and 41-43-38. Should such perpetual care fund be less than ten percent (10%) of the gross selling price of all burial spaces, crypts or inurnment niches sold, such organization shall have deposited into the perpetual care fund such additional money as may be necessary to cause the fund to be ten percent (10%) of all gross sales prior to May 6, 1958.

(2) It shall, at all times after May 6, 1958, comply with the requirements of a perpetual care cemetery as set forth in Sections 41-43-37 and 41-43-38.

§ 41-43-40. Perpetual care cemetery to maintain up-to-date record of persons buried in cemetery or entombed in mausoleum or columbarium; contents.

Every perpetual care cemetery shall maintain continuously and at all times an up-to-date record of the persons buried in the cemetery or entombed within a mausoleum or columbarium; the date of burial or entombment; a map of the designated lot for burial or entombment as well as a map of lots, burial spaces, mausoleum crypts or columbarium niches that have been sold. The map or plat shall also contain up-to-date designations indicating committed or planned designations of burial lots, crypt, niche or mausoleum spaces for future use. Additionally, the Secretary of State may require those maps to be filed with the Secretary of State in any intervals as the Secretary of State may establish by rule or regulation.

§ 41-43-41. Nonperpetual care cemetery may become perpetual care cemetery; all cemeteries created after July 1, 2009, to be perpetual care cemeteries unless exempt.

Any nonperpetual care cemetery, after May 6, 1958, may become a perpetual care cemetery by complying with the requirement for a perpetual care cemetery as provided in Section 41-43-31 et seq. From and after July 1, 2009, all cemeteries created shall be perpetual care cemeteries unless exempt under the provisions of Section 41-43-31 et seq.

§ 41-43-43. Nonperpetual care cemeteries to call attention to such fact in all sales contracts and deeds.

All nonperpetual care cemeteries shall have printed at the top of all contracts of sales and deeds the words “this is a nonperpetual care cemetery.”

§ 41-43-45. Lots sold to public to be free from liens; sale or transfer of lots by purchaser.

All lots and grave spaces offered for sale to the public shall be free and clear of liens or encumbrances. On payment of the purchase price, the purchaser shall be delivered a warranty deed or a perpetual easement for interment purposes.

Only the owner of a cemetery, or its agents, may sell or convey lots, plots, or parts thereof.

The purchaser of any lot, plot or part thereof may sell or transfer the same by giving notice thereof to the cemetery authorities or organization. Before acknowledging any transfer as valid, said cemetery authorities or organization may require the transferee to personally appear in the cemetery's principal place of business to accept any deed or transfer rights to the property conveyed, in order that the transfer may be properly

enrolled on the books of the cemetery. A memorandum of all transfers shall be made on the books of the cemetery corporation or organization.

§ 41-43-47. Cemetery rules and regulations.

The owner of any cemetery may make and enforce reasonable rules and regulations for the use, care, control, management, restriction and protection of such cemetery.

§ 41-43-49. Repealed.

Repealed by Laws 1982, ch. 371, § 7, eff from and after July 1, 1982. [Codes, 1942, § 5308-09; Laws, 1958, ch. 481, § 9]

§ 41-43-51. Rule against perpetuities inapplicable to perpetual care funds.

The rule against perpetuities shall not be applicable to perpetual care funds provided for in Sections 41-43-31 through 41-43-53.

§ 41-43-53. Penalty for violations of Section 41-43-31 et seq; punishment for embezzlement, misapplication or conversion of perpetual care trust funds.

(1) Violation of any of the provisions of Sections 41-43-31 through 41-43-53 by any person, partnership, corporation or organization shall be punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for a period not exceeding one (1) year, or by both.

(2) (a) Any person, partnership, corporation or organization that embezzles or fraudulently or knowingly and willfully misapplies or converts perpetual care trust funds shall, upon conviction, be punished as follows:

(i) if the amount embezzled, misapplied or converted is less than One Thousand Dollars ($1,000.00), by a fine of not more than Five Hundred Dollars ($500.00) and confinement in the county jail not more than one (1) year; or

(ii) if the amount embezzled, misapplied or converted is One Thousand Dollars ($1,000.00) or more, by imprisonment in the custody of the Mississippi Department of Corrections for a term of not more than ten (10) years.

(b) Each such violation shall constitute a separate offense.

§ 41-43-55. Business records of all perpetual care cemeteries to be available for inspection and examination by Secretary of State; inspection of cemetery sites.

The business records of any perpetual care cemetery, whether registered or not, the records of its financial institution, third-party administrator, or the trustee's records related to the perpetual care cemetery shall be available for inspection and examination

by the Secretary of State's examiners at all reasonable times, whether those records are located within this state or outside this state. The Secretary of State's examiners are authorized access to inspect cemetery sites subject to or potentially subject to this chapter wherever the same may be located.

§ 41-43-57. Application for release of trust principal for certain purposes under exceptional circumstances.

In exceptional circumstances only, a perpetual care owner can make an application to the Secretary of State for an order directing the trustee to release trust principal for the extended care, maintenance or improvements to the perpetual care cemetery for which interest funds are insufficient. Before issuing such an order, the Secretary of State shall satisfy himself that the request is for a major capital expenditure that will advance the perpetual care life of the cemetery without undue risk to the solvency of the perpetual care trust fund. Consistent with this section, this shall be the only instance in which a perpetual care trust corpus may be utilized for cemetery maintenance and improvements. In the consideration of the application, the Secretary of State may require the production of any records deemed necessary and relevant to the cemetery's application for a major capital expenditure.