

## 1 SENATE BILL NO. 56

2 INTRODUCED BY LYNCH

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING PRIVATELY OWNED, FOR-PROFIT, PERPETUALLY  
6 MAINTAINED CEMETERIES; REGULATING PRIVATE CEMETERY PERPETUAL CARE AND MAINTENANCE  
7 TRUST FUNDS; ADDING A SIXTH MEMBER TO THE BOARD OF FUNERAL SERVICE; AMENDING  
8 SECTIONS 2-15-1853 AND 37-19-101, MCA; AND REPEALING SECTIONS 35-21-101, 35-21-102,  
9 35-21-103, 35-21-201, 35-21-202, 35-21-203, 35-21-204, 35-21-205, 35-21-206, 35-21-207,  
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13 35-21-408, 35-21-409, 35-21-410, 35-21-411, 35-21-412, 35-21-413, 35-21-414, 35-21-415,  
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20 35-21-702, 35-21-703, 35-21-704, 35-21-705, 35-21-706, 35-21-707, 35-21-708, 35-21-710,  
21 35-21-711, 35-21-712, AND 35-21-713, MCA."

22

## 23 STATEMENT OF INTENT

24 This bill requires a statement of intent because it requires rulemaking by the board of funeral  
25 service. The board shall adopt rules setting forth the information that must be included in an application  
26 to establish or expand a cemetery, rules setting forth the information that must be included in an application  
27 for a permit for an existing cemetery, rules determining the fee schedules for the permits required by  
28 [sections 3 through 16], rules determining the information required to build structures on a cemetery  
29 covered by [section 3 through 16], and rules setting forth the information that must be included in the  
30 reports submitted to the board by a cemetery company covered under [sections 3 through 16]. Recognizing

1 the sensitive nature of cemetery services and the potential for abuse to those in need of cemetery services,  
2 the legislature considers it necessary to provide guidelines for the operation of for-profit cemeteries.  
3 However, protection of the public must be balanced against the right of a business to conduct its affairs  
4 in a private manner. All rules promulgated by the board must be narrowly tailored to require only such  
5 disclosure as is necessary to effectuate the intent of this legislation without violating the people's  
6 constitutional right to know. The intent of this legislation includes ensuring that for-profit cemeteries are  
7 operated in a fiscally sound and prudent manner to protect the public's interest in well-maintained  
8 cemeteries, both now and in the future.

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 **Section 1.** Section 2-15-1853, MCA, is amended to read:

13 "**2-15-1853. Board of funeral service.** (1) There is a board of funeral service.

14 (2) The board consists of ~~five~~ six members appointed by the governor with the consent of the  
15 senate. Three members must be licensed morticians. One member must be a representative of the public  
16 who is not engaged in the practice of mortuary science or funeral directing. One member must be a licensed  
17 crematory operator or crematory technician or a mortician who is engaged in a crematory operation. One  
18 member must be a representative of a cemetery company governed by [sections 3 through 16].

19 (3) Board members shall serve staggered 5-year terms.

20 (4) The board is allocated to the department for administrative purposes only as prescribed in  
21 2-15-121."

22

23 **Section 2.** Section 37-19-101, MCA, is amended to read:

24 "**37-19-101. Definitions.** Unless the context requires otherwise, in this chapter, the following  
25 definitions apply:

26 (1) "Authorizing agent" means a person legally entitled to order the cremation of human remains.

27 An authorizing agent is, in order of preference:

28 (a) a spouse;

29 (b) a majority of adult children;

30 (c) a parent;

1 (d) a close relative of the deceased; or

2 (e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal  
3 representative, a public administrator, the deceased through a preneed authorization, or others as  
4 designated by board rule.

5 (2) "Board" means the board of funeral service provided for in 2-15-1853.

6 (3) "Cemetery" means any land or structure in this state dedicated to and used or intended to be  
7 used for interment of cremated remains or human remains. It may be any one or a combination of a burial  
8 park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.

9 (4) "Cemetery company" means an individual, partnership, corporation, or association that:

10 (a) owns or controls cemetery lands or property and conducts the business of a cemetery; or

11 (b) applies to the board to own or control cemetery lands or property and conduct the business of  
12 a cemetery.

13 ~~(3)~~(5) "Closed container" means a container in which cremated remains can be placed and enclosed  
14 in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

15 (6) "Columbarium" means a room or space in a building or structure used or intended to be used  
16 for the interment of cremated remains.

17 ~~(4)~~(7) "Cremated remains" means all human remains recovered after the completion of the  
18 cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

19 ~~(5)~~(8) "Cremation" means the technical process, using heat, that reduces human remains to bone  
20 fragments. The reduction takes place through heat and evaporation.

21 ~~(6)~~(9) "Cremation chamber" means the enclosed space within which the cremation process takes  
22 place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the  
23 cremation of human remains.

24 ~~(7)~~(10) "Cremation container" means the container in which the human remains are placed in the  
25 cremation chamber for a cremation. A cremation container must meet substantially all of the following  
26 standards:

27 (a) be composed of readily combustible materials suitable for cremation;

28 (b) be able to be closed in order to provide a complete covering for the human remains;

29 (c) be resistant to leakage and spillage;

30 (d) be rigid enough for handling with ease; and

1 (e) be able to provide protection for the health, safety, and integrity of crematory personnel.

2 ~~(8)~~(11) "Crematory" means the building or portion of a building that houses the cremation chamber  
3 and the holding facility.

4 ~~(9)~~(12) "Crematory operator" means the person in charge of the licensed crematory facility.

5 ~~(10)~~(13) "Crematory technician" means an employee of a crematory facility who is trained to  
6 perform cremations and is licensed by the board.

7 (14) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.

8 ~~(11)~~(15) "Department" means the department of commerce provided for in Title 2, chapter 15, part  
9 18.

10 ~~(12)~~(16) "Embalming" means the preservation and disinfection of the dead human body by  
11 application of chemicals, externally, internally, or both.

12 ~~(13)~~(17) "Funeral directing" includes:

13 (a) supervising funerals, including the making of preneed or at-need contractual arrangements for  
14 funerals;

15 (b) preparing dead bodies for burial, other than by embalming;

16 (c) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

17 (d) representing to the public that one is a funeral director.

18 ~~(14)~~(18) "Holding facility" means an area within or adjacent to the crematory facility designated for  
19 the retention of human remains prior to cremation that must:

20 (a) comply with any applicable public health law;

21 (b) preserve the dignity of the human remains;

22 (c) recognize the health, safety, and integrity of the crematory operator and crematory personnel;

23 and

24 (d) be secure from access by anyone other than authorized personnel.

25 ~~(15)~~(19) "Human remains" means the body of a deceased person or part of a body or limb that has  
26 been removed from a living person, including the body, part of a body, or limb in any stage of  
27 decomposition.

28 (20) "Interment" means any lawful disposition of cremated remains or human remains.

29 (21) "Lot or grave space" means a space in a cemetery used or intended to be used for interment.

30 (22) "Mausoleum" means a community-type room or space in a building or structure used or

1 intended to be used for the interment of human remains in crypts or niches.

2 ~~(16)~~(23) "Mortician" means a person licensed under this chapter to practice mortuary science.

3 ~~(17)~~(24) "Mortuary" means a place of business used for the care and preparation for burial or  
4 transportation of dead human bodies or a place where a person represents that the person is engaged in  
5 the profession of mortuary science or funeral directing.

6 ~~(18)~~(25) "Mortuary science" means the profession or practice of funeral directing and embalming.

7 (26) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the  
8 interment of the cremated remains or human remains of one or more deceased persons.

9 (27) "Perpetual care and maintenance" means continual and proper maintenance of cemetery  
10 building's, grounds, and lots or grave spaces.

11 ~~(19)~~(28) "Temporary container" means a receptacle for cremated remains that is usually made of  
12 cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other  
13 permanent container is acquired.

14 ~~(20)~~(29) "Urn" means a receptacle designed to permanently encase the cremated remains."  
15

16 **NEW SECTION. Section 3. Title.** [Sections 3 through 16] may be referred to as the "Perpetually  
17 Maintained Cemeteries Act".

18  
19 **NEW SECTION. Section 4. Purpose.** The legislature declares that it is the public policy of this  
20 state to regulate privately owned, for-profit cemeteries to protect public health and promote financial  
21 stability through perpetual care and maintenance trusts.

22  
23 **NEW SECTION. Section 5. Application of [sections 3 through 16] -- exceptions.** [Sections 3  
24 through 16] apply to all cemeteries and burial grounds located in the state of Montana unless the cemetery  
25 is owned and operated by:

- 26 (1) a church or similar religious organization;
- 27 (2) a municipality or county government;
- 28 (3) a family, as a private family burial ground where lots are not offered for sale; or
- 29 (4) a community nonprofit association in which persons other than the bookkeeper and  
30 maintenance crew are not entitled to receive any pecuniary profit.

1           **NEW SECTION. Section 6. Powers and duties of board.** The board is charged with administering  
2 [sections 3 through 16]. The board may:

3           (1) conduct reasonable periodic, special, or other examinations of a cemetery or cemetery  
4 company, including but not limited to an examination of the physical condition or appearance of the  
5 cemetery, an audit of the financial condition of the cemetery company and any trust funds maintained by  
6 the cemetery company, and any other examinations the board considers necessary or appropriate in the  
7 public interest. The board may also order examinations in response to public complaints. The examinations  
8 must be made by members or representatives of the board that may include a certified or registered public  
9 accountant or any other person designated by the board.

10           (2) issue or amend permits to operate a cemetery in accordance with the provisions of [sections  
11 3 through 16];

12           (3) adopt rules and forms to enforce the provisions of [sections 3 through 16];

13           (4) require a cemetery company to observe minimum accounting principles and practices and to  
14 keep books and records in accordance with the principles and practices for the period of time the board  
15 may by rule prescribe; and

16           (5) require a cemetery company to provide additional contributions to the perpetual care and  
17 maintenance fund of the cemetery as provided for in [sections 3 through 16], including but not limited to  
18 contributions not to exceed \$1,000 whenever a cemetery company fails to properly care for, maintain, or  
19 preserve a cemetery.

20

21           **NEW SECTION. Section 7. Authority to inspect cemeteries and audit cemetery companies.** (1) The  
22 board may order an inspection of a cemetery or may audit a cemetery company. For each cemetery  
23 examined or cemetery company audited in accordance with [sections 3 through 16], the cemetery company  
24 shall pay to the board a fee for each examination or audit as the board prescribes by rule. When an  
25 examination is ordered by the board, the cemetery company shall pay, at the state per diem rate, travel  
26 expenses, meals, and lodging for each day that a member of the board or an authorized examiner spends  
27 in examining the physical condition or appearance of a cemetery.

28           (2) (a) In lieu of any financial examination that the board is authorized to make, the board may  
29 accept the audit of an independent certified or registered public accountant if the board has notified the  
30 cemetery company that the audit would be acceptable and the cemetery company has notified the board

1 in writing that the audit will be prepared.

2 (b) The costs of the audit provided for in subsection (2)(a) must be borne by the cemetery  
3 company, and the scope of the audit must be at least equal to the scope of the examination required by  
4 the board.

5

6 **NEW SECTION. Section 8. Permit -- application.** (1) By January 1, 1998, a person operating a  
7 cemetery or a cemetery company governed by [sections 3 through 16] must have a permit issued by the  
8 board. The permit must be displayed in a conspicuous place at the cemetery.

9 (2) A cemetery permit expires on the date set by board rule and may be renewed upon payment  
10 of a fee set by the board. An application for a permit or renewal of a permit must designate a responsible  
11 person, including that person's address and telephone number, who is available to act on behalf of the  
12 cemetery company with regard to the requirements of [sections 3 through 16]. A cemetery company may  
13 designate a different person with board approval. An application for renewal of a permit must contain:

14 (a) the name of the cemetery company, the location of the cemetery, the name of the person in  
15 charge of the records of the cemetery company, and the telephone number of the cemetery company;

16 (b) the number and dollar amount of sales of cemetery lots, grave spaces, mausoleums, crypts,  
17 niches, and burial rights for which payment has been made in full and the number of certificates or deeds  
18 of conveyance issued during the preceding calendar year;

19 (c) an accounting of the amounts paid into the perpetual care and maintenance fund and the  
20 income received from the fund during the preceding calendar or fiscal year, including the total amount due  
21 to the fund whether paid in or not, the amount due to the fund at the date of the report, and the amount  
22 expended for maintenance of the cemetery;

23 (d) the names and addresses of the owners of the cemetery company or the officers and directors  
24 of the cemetery company, any change in control of the cemetery company that has occurred during the  
25 past fiscal or calendar year, the date of incorporation, if applicable, and the resident agent and address of  
26 the registered agent's office if the cemetery company is a corporation; and

27 (e) any other information that the board requires by rule.

28 (3) The board may set a penalty fee for late renewal of a permit.

29

30 **NEW SECTION. Section 9. Permit -- amendment.** (1) Whenever a cemetery company that is

1 subject to the provisions of [sections 3 through 16] proposes to amend its present permit for construction  
2 of a mausoleum, reduction or increase in percentage of gross sales proceeds to be placed in the perpetual  
3 care and maintenance fund, expansion of a cemetery, or other changes in its operation, the cemetery  
4 company shall file an application for amendment of the permit with the board.

5 (2) The application must be accompanied by a fee and other information that the board requires  
6 by rule.

7

8 **NEW SECTION. Section 10. Permit -- transfer of ownership.** (1) If a cemetery company that is  
9 subject to the provisions of [sections 3 through 16] is to be sold, if the ownership is to be otherwise  
10 transferred, or if a controlling interest in the company is to be sold or otherwise transferred, the proposed  
11 purchaser or transferee shall file an application for the issuance of a new permit with the board.

12 (2) The application must be accompanied by a fee and other information that the board requires  
13 by rule.

14

15 **NEW SECTION. Section 11. Perpetual care and maintenance fund.** (1) A perpetual care and  
16 maintenance fund established pursuant to the provisions of [sections 3 through 16] for the purpose of  
17 administration, care, and maintenance of a cemetery, including lots, grave spaces, crypts, niches, burial  
18 rights, or other land or building's, is a trust fund.

19 (2) The net income from the fund must be used by the owners, managers, or officers and directors  
20 of a cemetery company exclusively for the care and maintenance of the cemetery and may not be used for  
21 any other purpose.

22 (3) The principal of a perpetual care and maintenance fund must in all cases remain intact and  
23 inviolate and must be administered with the same care, skill, prudence, and diligence, under the  
24 circumstances then prevailing, that a prudent person would use to accomplish the purpose of the trust as  
25 required by this section and reflected in the trust document.

26 (4) Each cemetery company shall maintain at a minimum the following:

27 (a) a general ledger and general journal or comparable books of entry showing all receipts,  
28 disbursements, assets, liabilities, and income of the perpetual care and maintenance fund;

29 (b) documents supporting and verifying each asset of the fund; and

30 (c) a trust agreement.



1 (5) The board may require a cemetery company to provide an accounting or audit of its perpetual  
2 care and maintenance fund.

3 (6) Each cemetery company shall deposit not less than 15% of the gross proceeds of each sale  
4 of a lot, grave space, crypt, niche, or burial right, as determined by the board, into the perpetual care and  
5 maintenance fund.

6 (7) In establishing a perpetual care and maintenance fund, a cemetery company may from time to  
7 time adopt plans for the general care and maintenance of its cemetery.

8 (8) A perpetual care and maintenance fund may receive, take, and hold any real or personal  
9 property that is bequeathed, devised, granted, given, or otherwise contributed to it.

10

11 **NEW SECTION. Section 12. Records required.** (1) A cemetery company shall make and keep  
12 accounts and records confirming that it has made the required contributions to its perpetual care and  
13 maintenance fund. The burden is upon the cemetery company to maintain the accounts and records.

14 (2) All sales contracts and deeds, unless otherwise authorized by the board, issued by a cemetery  
15 company must be numbered prior to their execution by the cemetery company and must contain those  
16 items the board prescribes by rule.

17

18 **NEW SECTION. Section 13. Conveyance.** (1) An instrument of conveyance or deed for a lot,  
19 grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space must be issued to the  
20 purchaser upon complete payment of the purchase price.

21 (2) Only a cemetery company or its agents may sell or convey the items listed in subsection (1).  
22 However, an owner may sell the item if the owner has first offered in writing to sell it to the cemetery  
23 company at the purchase price then being charged by the cemetery company for a similar item and the  
24 cemetery company has not accepted the offer within 30 days of the offer.

25 (3) The secretary or other responsible person of a cemetery company shall file and record in the  
26 cemetery company's books all instruments of conveyance and deeds.

27 (4) An instrument of conveyance or deed must be signed on behalf of a cemetery company by the  
28 person having proper authority to sign the instrument of conveyance or deed.

29

30 **NEW SECTION. Section 14. Preexisting cemeteries.** A cemetery or cemetery company that is in

1 existence on January 1, 1998, shall obtain the necessary permits required by [sections 3 through 16] in  
 2 order to continue operation and is subject as of January 1, 1998, to the provisions of [sections 3 through  
 3 16].

4

5 **NEW SECTION. Section 15. Prearranged funeral plans.** Where applicable, the provisions of Title  
 6 72, chapter 37, part 1, apply to persons subject to the provisions of [sections 3 through 16].

7

8 **NEW SECTION. Section 16. Penalty -- injunction.** (1) A person who violates a provision of  
 9 [sections 3 through 16] is guilty of a misdemeanor and upon conviction shall be fined not more than \$500  
 10 or imprisoned for not more than 90 days, or both.

11 (2) The board may enforce any provision of [sections 3 through 16] by injunction or any other  
 12 appropriate proceeding.

13

14 **NEW SECTION. Section 17. Repealer.** Sections 35-21-101, 35-21-102, 35-21-103, 35-21-201,  
 15 35-21-202, 35-21-203, 35-21-204, 35-21-205, 35-21-206, 35-21-207, 35-21-208, 35-21-209,  
 16 35-21-210, 35-21-211, 35-21-212, 35-21-213, 35-21-214, 35-21-215, 35-21-216, 35-21-217,  
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 26 35-21-704, 35-21-705, 35-21-706, 35-21-707, 35-21-708, 35-21-710, 35-21-711, 35-21-712, and  
 27 35-21-713, MCA, are repealed.

28

29 **NEW SECTION. Section 18. Codification instruction.** [Sections 3 through 16] are intended to be  
 30 codified as an integral part of Title 37, chapter 19, and the provisions of Title 37, chapter 19, apply to

1 [sections 3 through 16].

2

3 NEW SECTION. **Section 19. Severability.** If a part of [this act] is invalid, all valid parts that are  
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
5 applications, the part remains in effect in all valid applications that are severable from the invalid  
6 applications.

7

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0056, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act regulating privately owned, for-profit, perpetually maintained cemeteries; regulating private cemetery perpetual care and maintenance trust funds; adding a sixth member to the Board of Funeral Service.

ASSUMPTIONS:

1. Ten private for-profit cemeteries will be issued permits.
2. The sixth board member will be required to attend four one-day board meetings per year and receive per diem of \$50 per day and travel expenses at the state approved rates.
3. Operating expenses of \$1,912 in fiscal year 1998 and fiscal year 1999 will be needed for legal fees and court costs, travel, administrative rules, printing and postage.
4. The increased workload will be absorbed by existing staff.
5. The periodic audits and examinations will be conducted by existing Professional and Occupational Licensing (POL) audit staff.
6. An initial permit fee of \$170 will be collected from the estimated 10 cemeteries in fiscal year 1998; and in fiscal year 1999 these 10 cemeteries will pay a renewal fee of \$170.
7. One-half of the cemeteries will pay a \$100 examination/audit fee in fiscal year 1998 and the other half in fiscal year 1999.

FISCAL IMPACT:

Expenditures:


Department of Commerce	<u>FY98</u>	<u>FY99</u>
POL Bureau:	<u>Difference</u>	<u>Difference</u>
Per Diem	200	200
Operating Expenses	<u>1,912</u>	<u>1,912</u>
Total	2,112	2,112

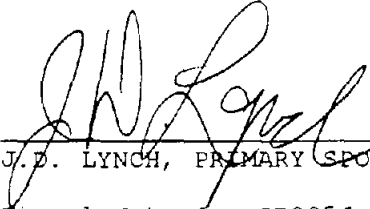
Revenues:

Funeral Service SSR (02)	2,200	2,200
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Net Impact:

Funeral Service SSR (02)	88	88
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 1/6/97  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

 1/6/97  
 J.D. LYNCH, PRIMARY SPONSOR      DATE  
 Fiscal Note for SB0056, as introduced

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18 35-21-612, 35-21-613, 35-21-614, 35-21-615, 35-21-616, 35-21-617, 35-21-618, 35-21-619,  
19 35-21-620, 35-21-621, 35-21-622, 35-21-623, 35-21-624, 35-21-625, 35-21-626, 35-21-701,  
20 35-21-702, 35-21-703, 35-21-704, 35-21-705, 35-21-706, 35-21-707, 35-21-708, 35-21-710,  
21 35-21-711, 35-21-712, AND 35-21-713, MCA."

22  
23 STATEMENT OF INTENT

24 This bill requires a statement of intent because it requires rulemaking by the board of funeral  
25 service. The board shall adopt rules setting forth the information that must be included in an application  
26 to establish or expand a cemetery, rules setting forth the information that must be included in an application  
27 for a permit for an existing cemetery, rules determining the fee schedules for the permits required by  
28 [sections 3 through 16], rules determining the information required to build structures on a cemetery  
29 covered by [section 3 through 16], and rules setting forth the information that must be included in the  
30 reports submitted to the board by a cemetery company covered under [sections 3 through 16]. Recognizing

1 the sensitive nature of cemetery services and the potential for abuse to those in need of cemetery services,  
2 the legislature considers it necessary to provide guidelines for the operation of for-profit cemeteries.  
3 However, protection of the public must be balanced against the right of a business to conduct its affairs  
4 in a private manner. All rules promulgated by the board must be narrowly tailored to require only such  
5 disclosure as is necessary to effectuate the intent of this legislation without violating the people's  
6 constitutional right to know. The intent of this legislation includes ensuring that for-profit cemeteries are  
7 operated in a fiscally sound and prudent manner to protect the public's interest in well-maintained  
8 cemeteries, both now and in the future.

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 **Section 1.** Section 2-15-1853, MCA, is amended to read:

13 **"2-15-1853. Board of funeral service.** (1) There is a board of funeral service.

14 (2) The board consists of ~~five~~ six members appointed by the governor with the consent of the  
15 senate. Three members must be licensed morticians. One member must be a representative of the public  
16 who is not engaged in the practice of mortuary science or funeral directing. One member must be a licensed  
17 crematory operator or crematory technician or a mortician who is engaged in a crematory operation. One  
18 member must be a representative of a cemetery company governed by [sections 3 through 16].

19 (3) Board members shall serve staggered 5-year terms.

20 (4) The board is allocated to the department for administrative purposes only as prescribed in  
21 2-15-121."

22

23 **Section 2.** Section 37-19-101, MCA, is amended to read:

24 **"37-19-101. Definitions.** Unless the context requires otherwise, in this chapter, the following  
25 definitions apply:

26 (1) "Authorizing agent" means a person legally entitled to order the cremation of human remains.

27 An authorizing agent is, in order of preference:

28 (a) a spouse;

29 (b) a majority of adult children;

30 (c) a parent;

- 1 (d) a close relative of the deceased; or
- 2 (e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal  
3 representative, a public administrator, the deceased through a preneed authorization, or others as  
4 designated by board rule.
- 5 (2) "Board" means the board of funeral service provided for in 2-15-1853.
- 6 (3) "Cemetery" means any land or structure in this state dedicated to and used or intended to be  
7 used for interment of cremated remains or human remains. It may be any one or a combination of a burial  
8 park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.
- 9 (4) "Cemetery company" means an individual, partnership, corporation, or association that:  
10 (a) owns or controls cemetery lands or property and conducts the business of a cemetery; or  
11 (b) applies to the board to own or control cemetery lands or property and conduct the business of  
12 a cemetery.
- 13 ~~(3)~~(5) "Closed container" means a container in which cremated remains can be placed and enclosed  
14 in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.
- 15 (6) "Columbarium" means a room or space in a building or structure used or intended to be used  
16 for the interment of cremated remains.
- 17 ~~(4)~~(7) "Cremated remains" means all human remains recovered after the completion of the  
18 cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.
- 19 ~~(5)~~(8) "Cremation" means the technical process, using heat, that reduces human remains to bone  
20 fragments. The reduction takes place through heat and evaporation.
- 21 ~~(6)~~(9) "Cremation chamber" means the enclosed space within which the cremation process takes  
22 place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the  
23 cremation of human remains.
- 24 ~~(7)~~(10) "Cremation container" means the container in which the human remains are placed in the  
25 cremation chamber for a cremation. A cremation container must meet substantially all of the following  
26 standards:
- 27 (a) be composed of readily combustible materials suitable for cremation;
- 28 (b) be able to be closed in order to provide a complete covering for the human remains;
- 29 (c) be resistant to leakage and spillage;
- 30 (d) be rigid enough for handling with ease; and

1 (e) be able to provide protection for the health, safety, and integrity of crematory personnel.

2 ~~(8)~~(11) "Crematory" means the building or portion of a building that houses the cremation chamber  
3 and the holding facility.

4 ~~(9)~~(12) "Crematory operator" means the person in charge of the licensed crematory facility.

5 ~~(10)~~(13) "Crematory technician" means an employee of a crematory facility who is trained to  
6 perform cremations and is licensed by the board.

7 (14) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.

8 ~~(11)~~(15) "Department" means the department of commerce provided for in Title 2, chapter 15, part  
9 18.

10 ~~(12)~~(16) "Embalming" means the preservation and disinfection of the dead human body by  
11 application of chemicals, externally, internally, or both.

12 ~~(13)~~(17) "Funeral directing" includes:

13 (a) supervising funerals, including the making of preneed or at-need contractual arrangements for  
14 funerals;

15 (b) preparing dead bodies for burial, other than by embalming;

16 (c) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

17 (d) representing to the public that one is a funeral director.

18 ~~(14)~~(18) "Holding facility" means an area within or adjacent to the crematory facility designated for  
19 the retention of human remains prior to cremation that must:

20 (a) comply with any applicable public health law;

21 (b) preserve the dignity of the human remains;

22 (c) recognize the health, safety, and integrity of the crematory operator and crematory personnel;

23 and

24 (d) be secure from access by anyone other than authorized personnel.

25 ~~(15)~~(19) "Human remains" means the body of a deceased person or part of a body or limb that has  
26 been removed from a living person, including the body, part of a body, or limb in any stage of  
27 decomposition.

28 (20) "Interment" means any lawful disposition of cremated remains or human remains.

29 (21) "Lot or grave space" means a space in a cemetery used or intended to be used for interment.

30 (22) "Mausoleum" means a community-type room or space in a building or structure used or



1 intended to be used for the interment of human remains in crypts or niches.

2 ~~(16)~~(23) "Mortician" means a person licensed under this chapter to practice mortuary science.

3 ~~(17)~~(24) "Mortuary" means a place of business used for the care and preparation for burial or  
4 transportation of dead human bodies or a place where a person represents that the person is engaged in  
5 the profession of mortuary science or funeral directing.

6 ~~(18)~~(25) "Mortuary science" means the profession or practice of funeral directing and embalming.

7 (26) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the  
8 interment of the cremated remains or human remains of one or more deceased persons.

9 (27) "Perpetual care and maintenance" means continual and proper maintenance of cemetery  
10 buildings, grounds, and lots or grave spaces.

11 ~~(19)~~(28) "Temporary container" means a receptacle for cremated remains that is usually made of  
12 cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other  
13 permanent container is acquired.

14 ~~(20)~~(29) "Urn" means a receptacle designed to permanently encase the cremated remains."  
15

16 NEW SECTION. Section 3. Title. [Sections 3 through 16] may be referred to as the "Perpetually  
17 Maintained Cemeteries Act".  
18

19 NEW SECTION. Section 4. Purpose. The legislature declares that it is the public policy of this  
20 state to regulate privately owned, for-profit cemeteries to protect public health and promote financial  
21 stability through perpetual care and maintenance trusts.  
22

23 NEW SECTION. Section 5. Application of [sections 3 through 16] -- exceptions. [Sections 3  
24 through 16] apply to all cemeteries and burial grounds located in the state of Montana unless the cemetery  
25 is owned and operated by:

- 26 (1) a church or similar religious organization;
- 27 (2) a municipality or county government;
- 28 (3) a family, as a private family burial ground where lots are not offered for sale; or
- 29 (4) a community nonprofit association in which persons other than the bookkeeper and  
30 maintenance crew are not entitled to receive any pecuniary profit.

1           **NEW SECTION. Section 6. Powers and duties of board.** The board is charged with administering  
2 [sections 3 through 16]. The board may:

3           (1) conduct reasonable periodic, special, or other examinations of a cemetery or cemetery  
4 company, including but not limited to an examination of the physical condition or appearance of the  
5 cemetery, an audit of the financial condition of the cemetery company and any trust funds maintained by  
6 the cemetery company, and any other examinations the board considers necessary or appropriate in the  
7 public interest. The board may also order examinations in response to public complaints. The examinations  
8 must be made by members or representatives of the board that may include a certified or registered public  
9 accountant or any other person designated by the board.

10           (2) issue or amend permits to operate a cemetery in accordance with the provisions of [sections  
11 3 through 16];

12           (3) adopt rules and forms to enforce the provisions of [sections 3 through 16];

13           (4) require a cemetery company to observe minimum accounting principles and practices and to  
14 keep books and records in accordance with the principles and practices for the period of time the board  
15 may by rule prescribe; and

16           (5) require a cemetery company to provide additional contributions to the perpetual care and  
17 maintenance fund of the cemetery as provided for in [sections 3 through 16], including but not limited to  
18 contributions not to exceed \$1,000 whenever a cemetery company fails to properly care for, maintain, or  
19 preserve a cemetery.

20

21           **NEW SECTION. Section 7. Authority to inspect cemeteries and audit cemetery companies.** (1) The  
22 board may order an inspection of a cemetery or may audit a cemetery company. For each cemetery  
23 examined or cemetery company audited in accordance with [sections 3 through 16], the cemetery company  
24 shall pay to the board a fee for each examination or audit as the board prescribes by rule. When an  
25 examination is ordered by the board, the cemetery company shall pay, at the state per diem rate, travel  
26 expenses, meals, and lodging for each day that a member of the board or an authorized examiner spends  
27 in examining the physical condition or appearance of a cemetery. **ONCE AUDITED, A CEMETERY**  
28 **COMPANY MAY NOT BE REQUIRED TO SUBMIT TO AN AUDIT AT THE REQUEST OF THE BOARD FOR**  
29 **A PERIOD OF 5 YEARS UNLESS COMPLAINTS HAVE RESULTED IN A FORMAL NOTICE OF DISCIPLINARY**  
30 **ACTION BY THE DEPARTMENT AGAINST THE CEMETERY COMPANY.**

1           (2) (a) In lieu of any financial examination that the board is authorized to make, the board may  
 2 accept the audit of an independent certified or registered public accountant if the board has notified the  
 3 cemetery company that the audit would be acceptable and the cemetery company has notified the board  
 4 in writing that the audit will be prepared.

5           (b) The costs of the audit provided for in subsection (2)(a) must be borne by the cemetery  
 6 company, and the scope of the audit must be at least equal to the scope of the examination required by  
 7 the board.

8  
 9           **NEW SECTION. Section 8. Permit -- application.** (1) By January 1, 1998, a person operating a  
 10 cemetery or a cemetery company governed by [sections 3 through 16] must have a permit issued by the  
 11 board. The permit must be displayed in a conspicuous place at the cemetery.

12           (2) A cemetery permit expires on the date set by board rule and may be renewed FOR A 5-YEAR  
 13 PERIOD upon payment of a fee set by the board. An application for a permit or renewal of a permit must  
 14 designate a responsible person, including that person's address and telephone number, who is available to  
 15 act on behalf of the cemetery company with regard to the requirements of [sections 3 through 16]. A  
 16 cemetery company may designate a different person with board approval. An application for renewal of  
 17 a permit must contain:

18           (a) the name of the cemetery company, the location of the cemetery, the name of the person in  
 19 charge of the records of the cemetery company, and the telephone number of the cemetery company;

20           (b) the number and dollar amount of sales of cemetery lots, grave spaces, mausoleums, crypts,  
 21 niches, and burial rights for which payment has been made in full and the number of certificates or deeds  
 22 of conveyance issued during the preceding 5 calendar ~~year~~ YEARS;

23           (c) an accounting of the amounts paid into the perpetual care and maintenance fund and the  
 24 income received from the fund during the preceding 5 calendar or fiscal ~~year~~ YEARS, including the total  
 25 amount due to the fund whether paid in or not, the amount due to the fund at the date of the report, and  
 26 the amount expended for maintenance of the cemetery;

27           (d) the names and addresses of the owners of the cemetery company or the officers and directors  
 28 of the cemetery company, any change in control of the cemetery company that has occurred during the  
 29 past ~~fiscal or~~ 5 calendar ~~year~~ OR FISCAL YEARS, the date of incorporation, if applicable, and the resident  
 30 agent and address of the registered agent's office if the cemetery company is a corporation; and

1 (e) any other information that the board requires by rule.

2 (3) The board may set a penalty fee for late renewal of a permit.

3

4 **NEW SECTION. Section 9. Permit -- amendment.** (1) Whenever a cemetery company that is  
5 subject to the provisions of [sections 3 through 16] proposes to amend its present permit for construction  
6 of a mausoleum, reduction or increase in percentage of gross sales proceeds to be placed in the perpetual  
7 care and maintenance fund, expansion of a cemetery, or other changes in its operation, the cemetery  
8 company shall file an application for amendment of the permit with the board.

9 (2) The application must be accompanied by a fee and other information that the board requires  
10 by rule.

11

12 **NEW SECTION. Section 10. Permit -- transfer of ownership.** (1) If a cemetery company that is  
13 subject to the provisions of [sections 3 through 16] is to be sold, if the ownership is to be otherwise  
14 transferred, or if a controlling interest in the company is to be sold or otherwise transferred, the proposed  
15 purchaser or transferee shall file an application for the issuance of a new permit with the board.

16 (2) The application must be accompanied by a fee and other information that the board requires  
17 by rule.

18

19 **NEW SECTION. Section 11. Perpetual care and maintenance fund.** (1) A perpetual care and  
20 maintenance fund established pursuant to the provisions of [sections 3 through 16] for the purpose of  
21 administration, care, and maintenance of a cemetery, including lots, grave spaces, crypts, niches, burial  
22 rights, or other land or building's, is a trust fund.

23 (2) The net income from the fund must be used by the owners, managers, or officers and directors  
24 of a cemetery company exclusively for the care and maintenance of the cemetery and may not be used for  
25 any other purpose.

26 (3) The principal of a perpetual care and maintenance fund must in all cases remain intact and  
27 inviolate and must be administered with the same care, skill, prudence, and diligence, under the  
28 circumstances then prevailing, that a prudent person would use to accomplish the purpose of the trust as  
29 required by this section and reflected in the trust document.

30 (4) Each cemetery company shall maintain at a minimum the following:

1 (a) a general ledger and general journal or comparable books of entry showing all receipts,  
2 disbursements, assets, liabilities, and income of the perpetual care and maintenance fund;

3 (b) documents supporting and verifying each asset of the fund; and

4 (c) a trust agreement.

5 (5) The board may require a cemetery company to provide an accounting or audit of its perpetual  
6 care and maintenance fund.

7 (6) Each cemetery company shall deposit not less than 15% of the gross proceeds of each sale  
8 of a lot, grave space, crypt, niche, or burial right, as determined by the board, into the perpetual care and  
9 maintenance fund.

10 (7) In establishing a perpetual care and maintenance fund, a cemetery company may from time to  
11 time adopt plans for the general care and maintenance of its cemetery.

12 (8) A perpetual care and maintenance fund may receive, take, and hold any real or personal  
13 property that is bequeathed, devised, granted, given, or otherwise contributed to it.

14  
15 **NEW SECTION. Section 12. Records required.** (1) A cemetery company shall make and keep  
16 accounts and records confirming that it has made the required contributions to its perpetual care and  
17 maintenance fund. The burden is upon the cemetery company to maintain the accounts and records.

18 (2) All sales contracts and deeds, unless otherwise authorized by the board, issued by a cemetery  
19 company must be numbered prior to their execution by the cemetery company and must contain those  
20 items the board prescribes by rule.

21  
22 **NEW SECTION. Section 13. Conveyance.** (1) An instrument of conveyance or deed for a lot,  
23 grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space must be issued to the  
24 purchaser upon complete payment of the purchase price.

25 (2) Only a cemetery company or its agents may sell or convey the items listed in subsection (1).  
26 However, an owner may sell the item if the owner has first offered in writing to sell it to the cemetery  
27 company at the purchase price then being charged by the cemetery company for a similar item and the  
28 cemetery company has not accepted the offer within 30 days of the offer.

29 (3) The secretary or other responsible person of a cemetery company shall file and record in the  
30 cemetery company's books all instruments of conveyance and deeds.

1 (4) An instrument of conveyance or deed must be signed on behalf of a cemetery company by the  
2 person having proper authority to sign the instrument of conveyance or deed.

3  
4 **NEW SECTION. Section 14. Preexisting cemeteries.** A cemetery or cemetery company that is in  
5 existence on January 1, 1998, shall obtain the necessary permits required by [sections 3 through 16] in  
6 order to continue operation and is subject as of January 1, 1998, to the provisions of [sections 3 through  
7 16].

8  
9 **NEW SECTION. Section 15. Prearranged funeral plans.** Where applicable, the provisions of Title  
10 72, chapter 37, part 1, apply to persons subject to the provisions of [sections 3 through 16].

11  
12 **NEW SECTION. Section 16. Penalty -- injunction.** (1) A person who violates a provision of  
13 [sections 3 through 16] is guilty of a misdemeanor and upon conviction shall be fined not more than \$500  
14 or imprisoned for not more than 90 days, or both.

15 (2) The board may enforce any provision of [sections 3 through 16] by injunction or any other  
16 appropriate proceeding.

17  
18 **NEW SECTION. Section 17. Repealer.** Sections 35-21-101, 35-21-102, 35-21-103, 35-21-201,  
19 35-21-202, 35-21-203, 35-21-204, 35-21-205, 35-21-206, 35-21-207, 35-21-208, 35-21-209,  
20 35-21-210, 35-21-211, 35-21-212, 35-21-213, 35-21-214, 35-21-215, 35-21-216, 35-21-217,  
21 35-21-301, 35-21-302, 35-21-303, 35-21-304, 35-21-305, 35-21-306, 35-21-307, 35-21-401,  
22 35-21-402, 35-21-403, 35-21-404, 35-21-405, 35-21-406, 35-21-407, 35-21-408, 35-21-409,  
23 35-21-410, 35-21-411, 35-21-412, 35-21-413, 35-21-414, 35-21-415, 35-21-416, 35-21-417,  
24 35-21-418, 35-21-419, 35-21-420, 35-21-421, 35-21-422, 35-21-423, 35-21-424, 35-21-425,  
25 35-21-426, 35-21-427, 35-21-428, 35-21-429, 35-21-430, 35-21-431, 35-21-432, 35-21-433,  
26 35-21-501, 35-21-502, 35-21-503, 35-21-601, 35-21-602, 35-21-603, 35-21-604, 35-21-605,  
27 35-21-606, 35-21-607, 35-21-608, 35-21-609, 35-21-610, 35-21-611, 35-21-612, 35-21-613,  
28 35-21-614, 35-21-615, 35-21-616, 35-21-617, 35-21-618, 35-21-619, 35-21-620, 35-21-621,  
29 35-21-622, 35-21-623, 35-21-624, 35-21-625, 35-21-626, 35-21-701, 35-21-702, 35-21-703,  
30 35-21-704, 35-21-705, 35-21-706, 35-21-707, 35-21-708, 35-21-710, 35-21-711, 35-21-712, and

1 35-21-713, MCA, are repealed.

2

3 NEW SECTION. Section 18. Codification instruction. [Sections 3 through 16] are intended to be  
4 codified as an integral part of Title 37, chapter 19, and the provisions of Title 37, chapter 19, apply to  
5 [sections 3 through 16].

6

7 NEW SECTION. Section 19. Severability. If a part of [this act] is invalid, all valid parts that are  
8 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
9 applications, the part remains in effect in all valid applications that are severable from the invalid  
10 applications.

11

-END-

SENATE BILL NO. 56

INTRODUCED BY LYNCH

BY REQUEST OF THE DEPARTMENT OF COMMERCE

1  
2  
3  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING PRIVATELY OWNED, FOR-PROFIT, PERPETUALLY  
6 MAINTAINED CEMETERIES; REGULATING PRIVATE CEMETERY PERPETUAL CARE AND MAINTENANCE  
7 TRUST FUNDS; ADDING A SIXTH MEMBER TO THE BOARD OF FUNERAL SERVICE; AMENDING  
8 SECTIONS 2-15-1853 AND 37-19-101, MCA; AND REPEALING SECTIONS 35-21-101, 35-21-102,  
9 35-21-103, 35-21-201, 35-21-202, 35-21-203, 35-21-204, 35-21-205, 35-21-206, 35-21-207,  
10 35-21-208, 35-21-209, 35-21-210, 35-21-211, 35-21-212, 35-21-213, 35-21-214, 35-21-215,  
11 35-21-216, 35-21-217, 35-21-301, 35-21-302, 35-21-303, 35-21-304, 35-21-305, 35-21-306,  
12 35-21-307, 35-21-401, 35-21-402, 35-21-403, 35-21-404, 35-21-405, 35-21-406, 35-21-407,  
13 35-21-408, 35-21-409, 35-21-410, 35-21-411, 35-21-412, 35-21-413, 35-21-414, 35-21-415,  
14 35-21-416, 35-21-417, 35-21-418, 35-21-419, 35-21-420, 35-21-421, 35-21-422, 35-21-423,  
15 35-21-424, 35-21-425, 35-21-426, 35-21-427, 35-21-428, 35-21-429, 35-21-430, 35-21-431,  
16 35-21-432, 35-21-433, 35-21-501, 35-21-502, 35-21-503, 35-21-601, 35-21-602, 35-21-603,  
17 35-21-604, 35-21-605, 35-21-606, 35-21-607, 35-21-608, 35-21-609, 35-21-610, 35-21-611,  
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19 35-21-620, 35-21-621, 35-21-622, 35-21-623, 35-21-624, 35-21-625, 35-21-626, 35-21-701,  
20 35-21-702, 35-21-703, 35-21-704, 35-21-705, 35-21-706, 35-21-707, 35-21-708, 35-21-710,  
21 35-21-711, 35-21-712, AND 35-21-713, MCA."

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.**



APPROVED BY COM ON  
BUSINESS & LABOR

1 SENATE BILL NO. 56

2 INTRODUCED BY LYNCH

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING PRIVATELY OWNED, FOR-PROFIT, PERPETUALLY  
6 MAINTAINED CEMETERIES; REGULATING PRIVATE CEMETERY PERPETUAL CARE AND MAINTENANCE  
7 TRUST FUNDS; ADDING A SIXTH MEMBER TO THE BOARD OF FUNERAL SERVICE; AMENDING  
8 SECTIONS 2-15-1853 AND 37-19-101, MCA; AND REPEALING SECTIONS 35-21-101, 35-21-102,  
9 35-21-103, 35-21-201, 35-21-202, 35-21-203, 35-21-204, 35-21-205, 35-21-206, 35-21-207,  
10 35-21-208, 35-21-209, 35-21-210, 35-21-211, 35-21-212, 35-21-213, 35-21-214, 35-21-215,  
11 35-21-216, 35-21-217, 35-21-301, 35-21-302, 35-21-303, 35-21-304, 35-21-305, 35-21-306,  
12 35-21-307, 35-21-401, 35-21-402, 35-21-403, 35-21-404, 35-21-405, 35-21-406, 35-21-407,  
13 35-21-408, 35-21-409, 35-21-410, 35-21-411, 35-21-412, 35-21-413, 35-21-414, 35-21-415,  
14 35-21-416, 35-21-417, 35-21-418, 35-21-419, 35-21-420, 35-21-421, 35-21-422, 35-21-423,  
15 35-21-424, 35-21-425, 35-21-426, 35-21-427, 35-21-428, 35-21-429, 35-21-430, 35-21-431,  
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18 35-21-612, 35-21-613, 35-21-614, 35-21-615, 35-21-616, 35-21-617, 35-21-618, 35-21-619,  
19 35-21-620, 35-21-621, 35-21-622, 35-21-623, 35-21-624, 35-21-625, 35-21-626, 35-21-701,  
20 35-21-702, 35-21-703, 35-21-704, 35-21-705, 35-21-706, 35-21-707, 35-21-708, 35-21-710,  
21 35-21-711, 35-21-712, AND 35-21-713, MCA."

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO THIRD READING COPY (BLUE) FOR COMPLETE TEXT.**

## 1 SENATE BILL NO. 56

2 INTRODUCED BY LYNCH

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING PRIVATELY OWNED, FOR-PROFIT, PERPETUALLY  
6 MAINTAINED CEMETERIES; REGULATING PRIVATE CEMETERY PERPETUAL CARE AND MAINTENANCE  
7 TRUST FUNDS; ADDING A SIXTH MEMBER TO THE BOARD OF FUNERAL SERVICE; AMENDING  
8 SECTIONS 2-15-1853 AND 37-19-101, MCA; AND REPEALING SECTIONS 35-21-101, 35-21-102,  
9 35-21-103, 35-21-201, 35-21-202, 35-21-203, 35-21-204, 35-21-205, 35-21-206, 35-21-207,  
10 35-21-208, 35-21-209, 35-21-210, 35-21-211, 35-21-212, 35-21-213, 35-21-214, 35-21-215,  
11 35-21-216, 35-21-217, 35-21-301, 35-21-302, 35-21-303, 35-21-304, 35-21-305, 35-21-306,  
12 35-21-307, 35-21-401, 35-21-402, 35-21-403, 35-21-404, 35-21-405, 35-21-406, 35-21-407,  
13 35-21-408, 35-21-409, 35-21-410, 35-21-411, 35-21-412, 35-21-413, 35-21-414, 35-21-415,  
14 35-21-416, 35-21-417, 35-21-418, 35-21-419, 35-21-420, 35-21-421, 35-21-422, 35-21-423,  
15 35-21-424, 35-21-425, 35-21-426, 35-21-427, 35-21-428, 35-21-429, 35-21-430, 35-21-431,  
16 35-21-432, 35-21-433, 35-21-501, 35-21-502, 35-21-503, 35-21-601, 35-21-602, 35-21-603,  
17 35-21-604, 35-21-605, 35-21-606, 35-21-607, 35-21-608, 35-21-609, 35-21-610, 35-21-611,  
18 35-21-612, 35-21-613, 35-21-614, 35-21-615, 35-21-616, 35-21-617, 35-21-618, 35-21-619,  
19 35-21-620, 35-21-621, 35-21-622, 35-21-623, 35-21-624, 35-21-625, 35-21-626, 35-21-701,  
20 35-21-702, 35-21-703, 35-21-704, 35-21-705, 35-21-706, 35-21-707, 35-21-708, 35-21-710,  
21 35-21-711, 35-21-712, AND 35-21-713, MCA."

22  
23 STATEMENT OF INTENT

24 This bill requires a statement of intent because it requires rulemaking by the board of funeral  
25 service. The board shall adopt rules setting forth the information that must be included in an application  
26 to establish or expand a cemetery, rules setting forth the information that must be included in an application  
27 for a permit for an existing cemetery, rules determining the fee schedules for the permits required by  
28 [sections 3 through 16], rules determining the information required to build structures on a cemetery  
29 covered by [section 3 through 16], and rules setting forth the information that must be included in the  
30 reports submitted to the board by a cemetery company covered under [sections 3 through 16]. Recognizing

1 the sensitive nature of cemetery services and the potential for abuse to those in need of cemetery services,  
2 the legislature considers it necessary to provide guidelines for the operation of for-profit cemeteries.  
3 However, protection of the public must be balanced against the right of a business to conduct its affairs  
4 in a private manner. All rules promulgated by the board must be narrowly tailored to require only such  
5 disclosure as is necessary to effectuate the intent of this legislation without violating the people's  
6 constitutional right to know. The intent of this legislation includes ensuring that for-profit cemeteries are  
7 operated in a fiscally sound and prudent manner to protect the public's interest in well-maintained  
8 cemeteries, both now and in the future.

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11  
12 **Section 1.** Section 2-15-1853, MCA, is amended to read:

13 **"2-15-1853. Board of funeral service.** (1) There is a board of funeral service.

14 (2) The board consists of ~~five~~ six members appointed by the governor with the consent of the  
15 senate. Three members must be licensed morticians. One member must be a representative of the public  
16 who is not engaged in the practice of mortuary science or funeral directing. One member must be a licensed  
17 crematory operator or crematory technician or a mortician who is engaged in a crematory operation. One  
18 member must be a representative of a cemetery company governed by [sections 3 through 16].

19 (3) Board members shall serve staggered 5-year terms.

20 (4) The board is allocated to the department for administrative purposes only as prescribed in  
21 2-15-121."

22  
23 **Section 2.** Section 37-19-101, MCA, is amended to read:

24 **"37-19-101. Definitions.** Unless the context requires otherwise, in this chapter, the following  
25 definitions apply:

26 (1) "Authorizing agent" means a person legally entitled to order the cremation of human remains.

27 An authorizing agent is, in order of preference:

28 (a) a spouse;

29 (b) a majority of adult children;

30 (c) a parent;

1 (d) a close relative of the deceased; or

2 (e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal  
3 representative, a public administrator, the deceased through a preneed authorization, or others as  
4 designated by board rule.

5 (2) "Board" means the board of funeral service provided for in 2-15-1853.

6 (3) "Cemetery" means any land or structure in this state dedicated to and used or intended to be  
7 used for interment of cremated remains or human remains. It may be any one or a combination of a burial  
8 park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.

9 (4) "Cemetery company" means an individual, partnership, corporation, or association that:

10 (a) owns or controls cemetery lands or property and conducts the business of a cemetery; or

11 (b) applies to the board to own or control cemetery lands or property and conduct the business of  
12 a cemetery.

13 ~~(3)~~(5) "Closed container" means a container in which cremated remains can be placed and enclosed  
14 in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

15 (6) "Columbarium" means a room or space in a building or structure used or intended to be used  
16 for the interment of cremated remains.

17 ~~(4)~~(7) "Cremated remains" means all human remains recovered after the completion of the  
18 cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

19 ~~(5)~~(8) "Cremation" means the technical process, using heat, that reduces human remains to bone  
20 fragments. The reduction takes place through heat and evaporation.

21 ~~(6)~~(9) "Cremation chamber" means the enclosed space within which the cremation process takes  
22 place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the  
23 cremation of human remains.

24 ~~(7)~~(10) "Cremation container" means the container in which the human remains are placed in the  
25 cremation chamber for a cremation. A cremation container must meet substantially all of the following  
26 standards:

27 (a) be composed of readily combustible materials suitable for cremation;

28 (b) be able to be closed in order to provide a complete covering for the human remains;

29 (c) be resistant to leakage and spillage;

30 (d) be rigid enough for handling with ease; and

- 1 (e) be able to provide protection for the health, safety, and integrity of crematory personnel.
- 2 ~~(8)(11)~~ "Crematory" means the building or portion of a building that houses the cremation chamber
- 3 and the holding facility.
- 4 ~~(9)(12)~~ "Crematory operator" means the person in charge of the licensed crematory facility.
- 5 ~~(10)(13)~~ "Crematory technician" means an employee of a crematory facility who is trained to
- 6 perform cremations and is licensed by the board.
- 7 (14) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.
- 8 ~~(11)(15)~~ "Department" means the department of commerce provided for in Title 2, chapter 15, part
- 9 18.
- 10 ~~(12)(16)~~ "Embalming" means the preservation and disinfection of the dead human body by
- 11 application of chemicals, externally, internally, or both.
- 12 ~~(13)(17)~~ "Funeral directing" includes:
- 13 (a) supervising funerals, including the making of preneed or at-need contractual arrangements for
- 14 funerals;
- 15 (b) preparing dead bodies for burial, other than by embalming;
- 16 (c) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and
- 17 (d) representing to the public that one is a funeral director.
- 18 ~~(14)(18)~~ "Holding facility" means an area within or adjacent to the crematory facility designated for
- 19 the retention of human remains prior to cremation that must:
- 20 (a) comply with any applicable public health law;
- 21 (b) preserve the dignity of the human remains;
- 22 (c) recognize the health, safety, and integrity of the crematory operator and crematory personnel;
- 23 and
- 24 (d) be secure from access by anyone other than authorized personnel.
- 25 ~~(15)(19)~~ "Human remains" means the body of a deceased person or part of a body or limb that has
- 26 been removed from a living person, including the body, part of a body, or limb in any stage of
- 27 decomposition.
- 28 (20) "Interment" means any lawful disposition of cremated remains or human remains.
- 29 (21) "Lot or grave space" means a space in a cemetery used or intended to be used for interment.
- 30 (22) "Mausoleum" means a community-type room or space in a building or structure used or

1 intended to be used for the interment of human remains in crypts or niches.

2 ~~(16)~~(23) "Mortician" means a person licensed under this chapter to practice mortuary science.

3 ~~(17)~~(24) "Mortuary" means a place of business used for the care and preparation for burial or  
4 transportation of dead human bodies or a place where a person represents that the person is engaged in  
5 the profession of mortuary science or funeral directing.

6 ~~(18)~~(25) "Mortuary science" means the profession or practice of funeral directing and embalming.

7 (26) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the  
8 interment of the cremated remains or human remains of one or more deceased persons.

9 (27) "Perpetual care and maintenance" means continual and proper maintenance of cemetery  
10 buildings, grounds, and lots or grave spaces.

11 ~~(19)~~(28) "Temporary container" means a receptacle for cremated remains that is usually made of  
12 cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other  
13 permanent container is acquired.

14 ~~(20)~~(29) "Urn" means a receptacle designed to permanently encase the cremated remains."  
15

16 NEW SECTION. Section 3. Title. [Sections 3 through 16] may be referred to as the "Perpetually  
17 Maintained Cemeteries Act".

18

19 NEW SECTION. Section 4. Purpose. The legislature declares that it is the public policy of this  
20 state to regulate privately owned, for-profit cemeteries to protect public health and promote financial  
21 stability through perpetual care and maintenance trusts.

22

23 NEW SECTION. Section 5. Application of [sections 3 through 16] -- exceptions. [Sections 3  
24 through 16] apply to all cemeteries and burial grounds located in the state of Montana unless the cemetery  
25 is owned and operated by:

- 26 (1) a church or similar religious organization;  
27 (2) a municipality or county government;  
28 (3) a family, as a private family burial ground where lots are not offered for sale; or  
29 (4) a community nonprofit association in which persons other than the bookkeeper and  
30 maintenance crew are not entitled to receive any pecuniary profit.

1            NEW SECTION. **Section 6. Powers and duties of board.** The board is charged with administering  
2 [sections 3 through 16]. The board may:

3            (1) conduct reasonable periodic, special, or other examinations of a cemetery or cemetery  
4 company, including but not limited to an examination of the physical condition or appearance of the  
5 cemetery, an audit of the financial condition of the cemetery company and any trust funds maintained by  
6 the cemetery company, and any other examinations the board considers necessary or appropriate in the  
7 public interest. The board may also order examinations in response to public complaints. The examinations  
8 must be made by members or representatives of the board that may include a certified or registered public  
9 accountant or any other person designated by the board.

10           (2) issue or amend permits to operate a cemetery in accordance with the provisions of [sections  
11 3 through 16];

12           (3) adopt rules and forms to enforce the provisions of [sections 3 through 16];

13           (4) require a cemetery company to observe minimum accounting principles and practices and to  
14 keep books and records in accordance with the principles and practices for the period of time the board  
15 may by rule prescribe; and

16           (5) require a cemetery company to provide additional contributions to the perpetual care and  
17 maintenance fund of the cemetery as provided for in [sections 3 through 16], including but not limited to  
18 contributions not to exceed \$1,000 whenever a cemetery company fails to properly care for, maintain, or  
19 preserve a cemetery.

20  
21           NEW SECTION. **Section 7. Authority to inspect cemeteries and audit cemetery companies.** (1) The  
22 board may order an inspection of a cemetery or may audit a cemetery company. For each cemetery  
23 examined or cemetery company audited in accordance with [sections 3 through 16], the cemetery company  
24 shall pay to the board a fee for each examination or audit as the board prescribes by rule. When an  
25 examination is ordered by the board, the cemetery company shall pay, at the state per diem rate, travel  
26 expenses, meals, and lodging for each day that a member of the board or an authorized examiner spends  
27 in examining the physical condition or appearance of a cemetery. ONCE AUDITED, A CEMETERY  
28 COMPANY MAY NOT BE REQUIRED TO SUBMIT TO AN AUDIT AT THE REQUEST OF THE BOARD FOR  
29 A PERIOD OF 5 YEARS UNLESS COMPLAINTS HAVE RESULTED IN A FORMAL NOTICE OF DISCIPLINARY  
30 ACTION BY THE DEPARTMENT AGAINST THE CEMETERY COMPANY.

1 (2) (a) In lieu of any financial examination that the board is authorized to make, the board may  
 2 accept the audit of an independent certified or registered public accountant if the board has notified the  
 3 cemetery company that the audit would be acceptable and the cemetery company has notified the board  
 4 in writing that the audit will be prepared.

5 (b) The costs of the audit provided for in subsection (2)(a) must be borne by the cemetery  
 6 company, and the scope of the audit must be at least equal to the scope of the examination required by  
 7 the board.

8  
 9 **NEW SECTION. Section 8. Permit -- application.** (1) By January 1, 1998, a person operating a  
 10 cemetery or a cemetery company governed by [sections 3 through 16] must have a permit issued by the  
 11 board. The permit must be displayed in a conspicuous place at the cemetery.

12 (2) A cemetery permit expires on the date set by board rule and may be renewed FOR A 5-YEAR  
 13 PERIOD upon payment of a fee set by the board. An application for a permit or renewal of a permit must  
 14 designate a responsible person, including that person's address and telephone number, who is available to  
 15 act on behalf of the cemetery company with regard to the requirements of [sections 3 through 16]. A  
 16 cemetery company may designate a different person with board approval. An application for renewal of  
 17 a permit must contain:

18 (a) the name of the cemetery company, the location of the cemetery, the name of the person in  
 19 charge of the records of the cemetery company, and the telephone number of the cemetery company;

20 (b) the number and dollar amount of sales of cemetery lots, grave spaces, mausoleums, crypts,  
 21 niches, and burial rights for which payment has been made in full and the number of certificates or deeds  
 22 of conveyance issued during the preceding 5 calendar ~~year~~ YEARS;

23 (c) an accounting of the amounts paid into the perpetual care and maintenance fund and the  
 24 income received from the fund during the preceding 5 calendar or fiscal ~~year~~ YEARS, including the total  
 25 amount due to the fund whether paid in or not, the amount due to the fund at the date of the report, and  
 26 the amount expended for maintenance of the cemetery;

27 (d) the names and addresses of the owners of the cemetery company or the officers and directors  
 28 of the cemetery company, any change in control of the cemetery company that has occurred during the  
 29 past ~~fiscal or~~ 5 calendar ~~year~~ OR FISCAL YEARS, the date of incorporation, if applicable, and the resident  
 30 agent and address of the registered agent's office if the cemetery company is a corporation; and



1 (e) any other information that the board requires by rule.

2 (3) The board may set a penalty fee for late renewal of a permit.

3  
4 **NEW SECTION. Section 9. Permit -- amendment.** (1) Whenever a cemetery company that is  
5 subject to the provisions of [sections 3 through 16] proposes to amend its present permit for construction  
6 of a mausoleum, reduction or increase in percentage of gross sales proceeds to be placed in the perpetual  
7 care and maintenance fund, expansion of a cemetery, or other changes in its operation, the cemetery  
8 company shall file an application for amendment of the permit with the board.

9 (2) The application must be accompanied by a fee and other information that the board requires  
10 by rule.

11  
12 **NEW SECTION. Section 10. Permit -- transfer of ownership.** (1) If a cemetery company that is  
13 subject to the provisions of [sections 3 through 16] is to be sold, if the ownership is to be otherwise  
14 transferred, or if a controlling interest in the company is to be sold or otherwise transferred, the proposed  
15 purchaser or transferee shall file an application for the issuance of a new permit with the board.

16 (2) The application must be accompanied by a fee and other information that the board requires  
17 by rule.

18  
19 **NEW SECTION. Section 11. Perpetual care and maintenance fund.** (1) A perpetual care and  
20 maintenance fund established pursuant to the provisions of [sections 3 through 16] for the purpose of  
21 administration, care, and maintenance of a cemetery, including lots, grave spaces, crypts, niches, burial  
22 rights, or other land or building's, is a trust fund.

23 (2) The net income from the fund must be used by the owners, managers, or officers and directors  
24 of a cemetery company exclusively for the care and maintenance of the cemetery and may not be used for  
25 any other purpose.

26 (3) The principal of a perpetual care and maintenance fund must in all cases remain intact and  
27 inviolate and must be administered with the same care, skill, prudence, and diligence, under the  
28 circumstances then prevailing, that a prudent person would use to accomplish the purpose of the trust as  
29 required by this section and reflected in the trust document.

30 (4) Each cemetery company shall maintain at a minimum the following:

1 (a) a general ledger and general journal or comparable books of entry showing all receipts,  
2 disbursements, assets, liabilities, and income of the perpetual care and maintenance fund;

3 (b) documents supporting and verifying each asset of the fund; and

4 (c) a trust agreement.

5 (5) The board may require a cemetery company to provide an accounting or audit of its perpetual  
6 care and maintenance fund.

7 (6) Each cemetery company shall deposit not less than 15% of the gross proceeds of each sale  
8 of a lot, grave space, crypt, niche, or burial right, as determined by the board, into the perpetual care and  
9 maintenance fund.

10 (7) In establishing a perpetual care and maintenance fund, a cemetery company may from time to  
11 time adopt plans for the general care and maintenance of its cemetery.

12 (8) A perpetual care and maintenance fund may receive, take, and hold any real or personal  
13 property that is bequeathed, devised, granted, given, or otherwise contributed to it.

14  
15 **NEW SECTION. Section 12. Records required.** (1) A cemetery company shall make and keep  
16 accounts and records confirming that it has made the required contributions to its perpetual care and  
17 maintenance fund. The burden is upon the cemetery company to maintain the accounts and records.

18 (2) All sales contracts and deeds, unless otherwise authorized by the board, issued by a cemetery  
19 company must be numbered prior to their execution by the cemetery company and must contain those  
20 items the board prescribes by rule.

21  
22 **NEW SECTION. Section 13. Conveyance.** (1) An instrument of conveyance or deed for a lot,  
23 grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space must be issued to the  
24 purchaser upon complete payment of the purchase price.

25 (2) Only a cemetery company or its agents may sell or convey the items listed in subsection (1).  
26 However, an owner may sell the item if the owner has first offered in writing to sell it to the cemetery  
27 company at the purchase price then being charged by the cemetery company for a similar item and the  
28 cemetery company has not accepted the offer within 30 days of the offer.

29 (3) The secretary or other responsible person of a cemetery company shall file and record in the  
30 cemetery company's books all instruments of conveyance and deeds.

1 (4) An instrument of conveyance or deed must be signed on behalf of a cemetery company by the  
2 person having proper authority to sign the instrument of conveyance or deed.

3  
4 **NEW SECTION. Section 14. Preexisting cemeteries.** A cemetery or cemetery company that is in  
5 existence on January 1, 1998, shall obtain the necessary permits required by [sections 3 through 16] in  
6 order to continue operation and is subject as of January 1, 1998, to the provisions of [sections 3 through  
7 16].

8  
9 **NEW SECTION. Section 15. Prearranged funeral plans.** Where applicable, the provisions of Title  
10 72, chapter 37, part 1, apply to persons subject to the provisions of [sections 3 through 16].

11  
12 **NEW SECTION. Section 16. Penalty -- injunction.** (1) A person who violates a provision of  
13 [sections 3 through 16] is guilty of a misdemeanor and upon conviction shall be fined not more than \$500  
14 or imprisoned for not more than 90 days, or both.

15 (2) The board may enforce any provision of [sections 3 through 16] by injunction or any other  
16 appropriate proceeding.

17  
18 **NEW SECTION. Section 17. Repealer.** Sections 35-21-101, 35-21-102, 35-21-103, 35-21-201,  
19 35-21-202, 35-21-203, 35-21-204, 35-21-205, 35-21-206, 35-21-207, 35-21-208, 35-21-209,  
20 35-21-210, 35-21-211, 35-21-212, 35-21-213, 35-21-214, 35-21-215, 35-21-216, 35-21-217,  
21 35-21-301, 35-21-302, 35-21-303, 35-21-304, 35-21-305, 35-21-306, 35-21-307, 35-21-401,  
22 35-21-402, 35-21-403, 35-21-404, 35-21-405, 35-21-406, 35-21-407, 35-21-408, 35-21-409,  
23 35-21-410, 35-21-411, 35-21-412, 35-21-413, 35-21-414, 35-21-415, 35-21-416, 35-21-417,  
24 35-21-418, 35-21-419, 35-21-420, 35-21-421, 35-21-422, 35-21-423, 35-21-424, 35-21-425,  
25 35-21-426, 35-21-427, 35-21-428, 35-21-429, 35-21-430, 35-21-431, 35-21-432, 35-21-433,  
26 35-21-501, 35-21-502, 35-21-503, 35-21-601, 35-21-602, 35-21-603, 35-21-604, 35-21-605,  
27 35-21-606, 35-21-607, 35-21-608, 35-21-609, 35-21-610, 35-21-611, 35-21-612, 35-21-613,  
28 35-21-614, 35-21-615, 35-21-616, 35-21-617, 35-21-618, 35-21-619, 35-21-620, 35-21-621,  
29 35-21-622, 35-21-623, 35-21-624, 35-21-625, 35-21-626, 35-21-701, 35-21-702, 35-21-703,  
30 35-21-704, 35-21-705, 35-21-706, 35-21-707, 35-21-708, 35-21-710, 35-21-711, 35-21-712, and

1 35-21-713, MCA, are repealed.

2

3 **NEW SECTION.** **Section 18. Codification instruction.** [Sections 3 through 16] are intended to be  
4 codified as an integral part of Title 37, chapter 19, and the provisions of Title 37, chapter 19, apply to  
5 [sections 3 through 16].

6

7 **NEW SECTION.** **Section 19. Severability.** If a part of [this act] is invalid, all valid parts that are  
8 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
9 applications, the part remains in effect in all valid applications that are severable from the invalid  
10 applications.

11

-END-