

ACT 199

H. B. 36.

A Bill for an Act Relating to Cemeteries and Cemetery Salesmen, Providing for the Dedication of Property for Cemetery Purposes, the Regulation of Perpetual Care Cemeteries, and the Licensing of Cemetery Salesmen, Adding Chapter 171B to the Revised Laws of Hawaii 1955.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. A new chapter 171B is hereby added to the Revised Laws of Hawaii 1955, to read as follows:

**“CHAPTER 171B
CEMETERIES**

Sec. 171B-1. Definitions. As used in this chapter:

‘Cemetery’ means a place dedicated to and used or intended to be used for the permanent interment of human remains. It may be either a burial park, for earth interment; a mausoleum for vault for crypt interments; a structure or place used or intended to be used for the interment of cremated remains; or any combination of one or more thereof.

‘Cemetery authority’ means any person who undertakes to establish, maintain, manage, operate, improve or conduct a cemetery, the interring of human remains, or the care, preservation and embellishment of cemetery property, whether or not such person undertakes such activity for profit.

‘Mausoleum crypt’ means a chamber or space in a structure or building of sufficient size, used or intended to be used, to entomb human remains.

‘Niche’ means recess of space in a structure or plot of earth used or intended to be used for the permanent inurnment therein of the cremated remains of one or more deceased persons.

‘Perpetual care’ by whatever term denominated by a cemetery authority, including, but not limited to endowment care, endowment fund care, and free maintenance, means keeping the sod in repair, keeping all places wherein interments have been made in proper order, caring for the trees and shrubs, and the general maintenance, care and embellishment of a cemetery, regularly and continually without limitation as to time.

‘Perpetual care cemetery’ means any cemetery or section of a cemetery, the plots, crypts or niches of which are sold or disposed of, or are offered for sale or disposition, upon the representation that such plots, crypts or niches will receive perpetual care.

‘Perpetual care fund’ means a fund separately maintained to provide for the perpetual care of a cemetery in conformity with the provisions of this chapter.

‘Plot’ or ‘interment space’ means a grave or space in a cemetery sold or otherwise disposed of to one or more persons, used or intended to be used, for the permanent interment therein of the remains of one or more deceased persons.

‘Board’ means the Cemetery Board of the State of Hawaii as hereinafter constituted.

'Cemetery salesman' means any natural person who sells or offers to sell, buys or offers to buy, leases or offers to lease, lists, or solicits prospective purchasers or negotiates the purchase, sale, lease or exchange of cemetery property or interment services, or any interest therein.

'Cemetery property' means any property, or part or interest therein, dedicated to, used or intended to be used for, the permanent interment of human remains. It may be a plot or plots in a burial park for earth interment; a place or places in a mausoleum for vault or crypt interment; one or more niches, recesses, or other receptacles for the interment of cremated remains; or any combination of one or more thereof.

'Person' means an individual, partnership, corporation, county, association, or any other group however organized.

Sec. 171B-2. Certificate of dedication. Every cemetery authority from time to time as its property may hereafter be made available for cemetery purposes, shall file in the office of the bureau of conveyances or, in the case of registered land, in the office of the assistant registrar of the land court, a written certificate of dedication containing a description of the land or other property which is to be made available for cemetery purposes, and dedicating the property exclusively to cemetery purposes.

Sec. 171B-3. Map or plat required. Such cemetery authority from time to time as any of the property described in the certificate of dedication, or any part or section thereof, is offered for sale, transfer or disposition in the form of plots, crypts or niches, shall also;

(a) In the case of land, survey and subdivide it into sections, blocks, plots, avenues, walks or other subdivisions; make a good and substantial map or plat showing the sections, blocks, plots, avenues, walks or other subdivisions, with descriptive names, initials or numbers.

(b) In the case of a mausoleum or columbarium, make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevation, and other divisions, with descriptive names, initials or numbers.

Such map or plat shall likewise be filed in the office of the bureau of conveyances or the office of the assistant registrar of the land court, as the case may be.

Sec. 171B-4. Subdivision law not applicable; approval of location and boundaries by board of supervisors or city council. No provision of law, ordinance or government regulation relating generally to subdivisions, or the sale or transfer of land within subdivisions, shall be applicable to cemeteries. Each county may enact ordinances dealing separately with the development of cemeteries. No cemetery shall hereafter be established, nor shall the boundaries of any existing cemetery be extended, without the location and boundaries of such cemetery or extension thereof having first been approved by the board of supervisors or city council of the county in which such cemetery is located. The approval may be endorsed in writing by authority of the board of supervisors or city council, upon the certificate of dedication referred to in section 171B-2, and the registrar of

conveyances or the assistant registrar of the land court, as the case may be, shall not accept for filing any certificate of dedication without such endorsement or, in lieu thereof, a certified copy of a resolution of the board of supervisors or city council approving the location and boundaries of the cemetery or extension thereof which resolution shall be recorded.

Sec. 171B-5. Securities law not applicable to sales of cemetery property. No provision of law, ordinance or government regulation relating to the registration and sale of securities shall apply to the sale by a cemetery authority of plots, crypts or niches dedicated, described and shown on a proper map or plat pursuant to this chapter.

Sec. 171B-6. When dedication complete; effect of dedication. Upon the recordation or filing of a map or plat and certificate of dedication pursuant to section 171B-2 and 171B-3, the dedication is complete with respect to all property or parts thereof which shall have been described or depicted in or on both such certificate of dedication and map or plat for all purposes and thereafter the property shall be occupied and used exclusively for cemetery purposes.

Sec. 171B-7. Constructive notice of dedication. The filed map or plat and the recorded certificate of dedication shall constitute constructive notice to all persons of the dedication of the property to cemetery purposes.

Sec. 171B-8. Resurvey; amended map or plat. Any part of the property mapped or platted in accordance with this chapter may be resurveyed and replatted, and an amended map or plat filed, so long as such change does not disturb the interred remains of any deceased person.

Sec. 171B-9. Dedicated property exempt from improvement assessment. All property dedicated to cemetery purposes pursuant to this chapter, including roads, alleys and walks, shall be exempt from public improvement assessments.

Sec. 171B-10. Proration and consolidation of existing improvement district encumbrances in order to clear such encumbrances prior to dedication. Notwithstanding section 171B-4 exempting dedicated cemetery property from subdivision laws, the map or plat required by section 171B-3 may be treated for purposes of proration or consolidation of any improvement district lien as a subdivision or consolidation thereof.

Sec. 171B-11. Use as cemetery may not be disturbed after dedication. After property is dedicated to cemetery purposes pursuant to this chapter, neither the dedication nor the title of any plot, crypt or niche owner shall be affected by the dissolution of the cemetery authority, by non-user on its part, by alienation of the property, by any liens or incumbrances, by sale under execution, power of sale or foreclosure, or otherwise except as expressly provided by law. Nothing herein contained, however, shall affect the rights of incumbrances which attached to property prior to the dedication thereof for cemetery purposes.

Sec. 171B-12. Mortgages and liens subject to dedication. Cemetery authorities shall have the right to secure pecuniary obligations by mort-

gage or lien upon their property, whether or not such property shall have been set aside for interment purposes, and may sell plots, crypts, or niches subject to such mortgage or lien within the limitations and conditions imposed by this part. All mortgages and other liens of any nature hereafter contracted, placed or incurred upon property which has been and was, at the time of the perfection of the lien, with the recorded written consent of the owner of any mortgage or lien, dedicated to cemetery purposes pursuant to this chapter, shall not affect or defeat the dedication, or the title of any plot, crypt or niche owner, but such mortgage or other lien shall be subject and subordinate to such dedication and title of any plot, crypt or niche owner, and any and all sales made upon foreclosure shall be subject and subordinate to such dedication and title of any plot, crypt or niche owner.

Sec. 171B-13. Sale of plots after dedication; sale of incumbered plots prohibited unless incumbrance subordinate to dedication. After property has been dedicated pursuant to this chapter, a cemetery authority may sell, transfer and convey plots, crypts or niches thereof, which plots, crypts or niches may be described by reference to the map or plat, or amended map or plat, filed in accordance with section 171B-3 or 171B-8. No plot, crypt or niche shall be sold, transferred, conveyed, or otherwise disposed of, or offered for sale, transfer, conveyance or other disposition, unless the property on or in which such plot, crypt, or niche is included shall have been dedicated pursuant to this chapter, nor shall any plot, crypt, or niche be sold, transferred, conveyed, or otherwise disposed of, or offered for sale, transfer, conveyance or other disposition, unless the property on or in which such plot, crypt or niche is included shall either be free and clear of all incumbrances or there shall have been recorded the written consent of every incumbrancer thereof that his incumbrance shall be subject and subordinate to the dedication of such property to cemetery purposes and the title of any plot, crypt or niche owner.

Sec. 171B-14. Dedication to cemetery purposes does not violate laws against perpetuities. Dedication to cemetery purposes pursuant to this chapter is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property, but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to and for the benefit of the general public.

Sec. 171B-15. Removal of dedication. Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes unless and until the dedication is removed from all or any part of it by an order and decree of the circuit court of the judicial circuit in which the property is located and such decree is filed in the bureau of conveyances or land court in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(a) That no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed.

(b) That the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

Sec. 171B-16. Hearing. The notice of hearing provided in section 171B-15 shall be given by publication once a week for at least three consecutive weeks in a daily newspaper of general circulation in the county where said cemetery is located, and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed. The notice shall:

(a) Describe the portion of the cemetery property sought to be removed from dedication.

(b) State that all remains have been removed or that no interments have been made in the portion of the cemetery property sought to be removed from dedication.

(c) Specify the time and place of the hearing.

Sec. 171B-17. Existing cemeteries deemed dedicated; extension of existing cemeteries. All existing cemeteries or parts thereof which shall have been lawfully established, and for which a map or plat substantially similar to that required by section 171B-3 has been filed or recorded in the bureau of conveyances or in the office of the assistant registrar of the land court, as the case may be, shall be deemed to have been dedicated as of the effective date of this act to the same extent and with like effect as provided in this chapter.

Sec. 171B-18. Cemetery board. (a) There shall be a cemetery board of seven members appointed by the governor in the manner prescribed in section 14A-3. Provided, however, that no two members of the board shall be employed by or associated with the same cemetery authority or organization dealing in any manner with cemetery property.

(b) (1) Four members of the board shall be persons who have been actively engaged in the administration of perpetual care cemeteries for a period of not less than three years immediately preceding the date of their appointment.

(2) Three members of the board shall be non-cemetery members and shall be public members of the board.

(3) Four members shall be residents of the city and county of Honolulu and the other three shall be residents of the counties of Hawaii, Maui, and Kauai, respectively.

(4) No member shall receive any compensation for his services but shall be reimbursed for his necessary travel expenses incurred in the performance of his duties in attending meetings on an island other than that of the board member's residence.

(c) Organization, records, reports. Immediately upon the appointment and qualification of the original members, and annually thereafter, the board shall organize by the election of one member as chairman and one member as vice chairman. The board shall keep a complete record of all its proceedings and shall present annually to the governor a detailed statement of the receipts and disbursements of the board during the preceding year,

with a statement of its acts and proceedings and such recommendations as the board may deem proper. The board is placed within the department of regulatory agencies for administrative purposes.

Sec. 171B-19. Powers and duties of board. In addition to any other duties and powers granted by this chapter the board shall, pursuant to chapter 6C:

- (a) Grant licenses to cemetery authorities pursuant to this chapter;
- (b) Grant licenses to cemetery salesmen pursuant to this chapter;
- (c) Examine applicants for such licenses;
- (d) Make, amend or repeal such rules and regulations as it deems proper to fully effectuate the provisions of this chapter and carry out the purpose thereof, which purpose is the protection of the general public in its acquisitions of cemetery property. The rules and regulations may forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter, and such rules and regulations may require cemetery authorities and cemetery salesmen to make reports to the board containing such information as will better enable the board to enforce this chapter and the rules and regulations, or as will better enable the board from time to time to amend the rules and regulations to more fully effect the purpose of this chapter, and further, the rules and regulations may require cemetery authorities and cemetery salesmen to furnish reports to their clients containing such matters of information as the board deems necessary to promote the purpose of this chapter; provided, that this enumeration of specific matters which may properly be made the subject of rules and regulations shall not be construed to limit the board's broad general power to make all rules and regulations necessary to fully effectuate the purpose of this chapter;
- (e) Enforce the provisions of this chapter and rules and regulations adopted pursuant thereto;
- (f) Suspend or revoke any license for any cause prescribed by this chapter, or for any violation of the rules and regulations, and refuse to grant any license for any cause which would be ground for revocation or suspension of a license;
- (g) Report to the governor annually and at such other times and in such other manner as he may require concerning its activities;
- (h) Publish and distribute pamphlets and circulars containing such information as it deems proper to further the accomplishments of the purpose of this chapter.

Sec. 171B-20. License required to act as cemetery authority. No person shall act as a cemetery authority without a license previously issued by the board in compliance with the provisions of this chapter and the rules and regulations of the board; provided, however, that the board shall exempt any cemetery authority upon its proof satisfactory to the board that it will not make any additional interments.

Sec. 171B-21. No cemetery authority license issued when. No cemetery authority license shall be issued:

- (a) To any person unless he has filed an application therefor;

(b) To any person who does not possess a good reputation for honesty, truthfulness, financial integrity and fair dealing;

(c) To any person unless it is a religious institution, corporation, county or any association which has a perpetual existence; provided, however, that the board may issue a cemetery authority license to any person who is in bona fide operation as a cemetery authority on the effective date of this Act.

(d) To any person unless he shall file with the board a bond as required by section 171B-22.

Sec. 171B-22. Bond. Each cemetery authority licensed hereunder shall file and maintain with the board a bond in the penal sum of \$50,000, issued by a surety company authorized to do business in the State, and running to the State. The bond shall be conditioned that the cemetery authority will faithfully, promptly, and truly account and pay over to all persons to or for whom it may sell, lease, or otherwise deal in cemetery property all sums of money that may properly be due them. In addition to any other remedy, every person sustaining any damage resulting from a breach of the conditions of the bond may sue the surety for the recovery of any damages sustained by such person. The liability of the surety shall not exceed \$50,000 for each licensee. The bond shall be continuous in form and remain in full force and effect and shall run concurrently with the license period and for any renewals thereof, unless terminated or cancelled by the surety. Such termination or cancellation shall not be effective, however, unless notice thereof is delivered by the surety to the board at least sixty days prior to the date of termination or cancellation. The board shall forthwith give notice thereof to the cemetery authority affected by such termination or cancellation, which notice shall be by registered or certified mail, with request for return receipt, and shall be addressed, to the licensees at the addresses shown on the records of the board. The license of any licensee shall be suspended upon termination or cancellation of the bond, unless prior thereto, a new bond has been filed with the board. The form of the bond shall be approved by the board.

Sec. 171B-23. Revocation, suspension, and renewal of cemetery authority licenses. The board may revoke any cemetery authority license, or suspend the right of the licensee to use such license, or refuse to renew any such license for any of the following causes:

(a) Conviction of any felony, or any misdemeanor involving moral turpitude;

(b) Any dishonest or fraudulent act as a cemetery authority which causes substantial damage to another;

(c) Making repeated misrepresentations or false promises through advertising or otherwise;

(d) Willful violation of this chapter or the rules and regulations promulgated pursuant thereto;

(e) Commingling the money or other property of others with his own;

(f) Adjudicated insane or incompetent;

(g) Selling or offering to sell any cemetery property based on speculation or promises of profit from resale.

No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years.

Sec. 171B-24. Inspection of cemetery authority books; annual exhibits. The books, records and papers of every cemetery authority whether or not a corporation, which operates or claims to operate a perpetual care cemetery, shall be subject to examination by the board to the same extent and in the same manner as may be from time to time provided for corporations in section 172-115, and every cemetery authority operating a perpetual care cemetery shall submit such annual exhibits as may be required by the board in order to furnish information as to whether or not such cemetery authority has complied with the provisions of this chapter.

Sec. 171B-25. License required to act as cemetery salesman. No person shall sell, offer to sell, exchange, lease, advertise or otherwise dispose of any interest in cemetery property without a license previously issued by the board in compliance with the provisions of this chapter and the rules and regulations of the board, provided that this requirement shall not apply to:

(a) A person acting with reference to an occasional sale of his own property or the property of another when acting under a duly executed power of attorney.

(b) The regular officers of a cemetery authority acting with reference to the authority's property.

(c) Any person acting as a receiver, trustee in bankruptcy, administrator or executor, trustee acting under a trust agreement, deed of trust or will, or otherwise acting under any order of authorization of any court.

The provisions of chapter 170, relating to real estate brokers and salesmen, shall not be applicable to cemetery salesmen.

Sec. 171B-26. No cemetery salesman license issued when. No cemetery salesman license shall be issued:

(a) To any person unless he has filed an application therefor.

(b) To any person who does not possess a good character and reputation for honesty, truthfulness and fair dealing; or any person who has been convicted of a felony or misdemeanor involving moral turpitude, unless such person has received a full and free pardon or presents satisfactory proof to the board that for the five years next preceding the date of his application he has lived an upright and moral life.

(c) To any person unless such person is of the age of twenty years or more.

(d) To any person unless he shall file with the board a bond as required by section 171B-27.

Sec. 171B-27. Bond. Each salesman licensed hereunder shall file and maintain with the board a bond in the penal sum of \$5,000 issued by a surety company authorized to do business in the State, and running to the

State. The bond shall be conditioned that the salesman will faithfully, promptly, and truly account and pay over to all persons to or for whom he may sell, lease, or otherwise deal in cemetery property all sums of money that may properly be due them. In addition to any other remedy, every person sustaining any damage resulting from a breach of the conditions of the bond may sue the surety for the recovery of any damages sustained by such person. The liability of the surety shall not exceed \$5,000 for each licensee. The bond shall be continuous in form and remain in full force and effect and shall run concurrently with the license period and for any renewals thereof, unless terminated or cancelled by the surety. Such termination or cancellation shall not be effective, however, unless notice thereof is delivered by the surety to the board at least sixty days prior to the date of termination or cancellation. The board shall forthwith give notice thereof to the salesman affected by such termination or cancellation, which notice shall be by registered or certified mail, with request for return receipt, and shall be addressed to the licensees at the addresses shown on the records of the board. The license of any licensee shall be suspended upon termination or cancellation of the bond, unless prior thereto, a new bond has been filed with the board. The form of the bond shall be approved by the board..

Sec. 171B-28. Revocation, suspension and renewal of cemetery salesman licenses. The board may revoke any cemetery salesman license, or suspend the right of the licensee to use such license, or refuse to renew any such license, for any of the following causes:

(a) Conviction of any felony, or any misdemeanor involving moral turpitude.

(b) Making any misrepresentation concerning any cemetery property transaction.

(c) Making any false promises concerning any cemetery property transaction of a character likely to mislead another.

(d) Making repeated misrepresentations or false promises through advertising or otherwise.

(e) When a cemetery salesman acts or attempts to act or represents, or attempts to represent a cemetery authority other than his employer.

(f) Failing, within reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee.

(g) Any other conduct constituting fraudulent or dishonest dealings.

(h) When a cemetery salesman fails to file with the board a written statement setting forth the name of the cemetery authority by whom he is employed.

(i) Violation of this chapter or the rules and regulations promulgated pursuant thereto.

(j) Commingling the money or other property of others with his own.

(k) Adjudicated insane or incompetent.

(l) When a cemetery salesman sells or offers to sell any cemetery property based on speculation or promises of profit from resale.

No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years.

Sec. 171B-29. Application fees. Every applicant for any license under this chapter shall file an application with the board in such form and setting forth such information as may be prescribed or required by the board and shall furnish such additional information bearing upon the issuance of such license as it shall require. Every application shall be sworn to before an officer authorized to administer oaths.

Every application shall be accompanied by an application fee of \$10.

Sec. 171B-30. Form of licenses. The form of every license shall be prescribed by the board, and shall be issued in the name of the board, and signed by the chairman thereof.

Sec. 171B-31. Fees, annual renewals, refunds. (a) The fee for a cemetery authority license, annual renewal thereof and reinstatement of a suspended license, shall be \$200.

The annual renewal fee shall be paid to the board on or before January 1 of each year. Failure, neglect or refusal of any duly licensed cemetery authority to pay the annual renewal fee shall constitute a forfeiture of his license. Any such license may be restored upon written application therefor within one year from such date and the payment of the required fee plus an amount equal to ten per cent thereof.

(b) The fee for a cemetery salesman license shall be \$25. The annual renewal fee shall be \$15, and the fee for reinstatement of a suspended license shall be \$15.

The annual renewal fee shall be paid to the board on or before January 1 of each year. Failure, neglect, or refusal of any duly licensed cemetery salesman to pay the annual renewal fee shall constitute a forfeiture of his license. The license of such salesman may be restored upon written application therefor and the payment to the board of \$25.

(c) A fee of \$5 shall be charged for the reissuance of any lost license or for the reissuance of license when there has been a change in the licensee's name or when a cemetery salesman is employed by a different cemetery authority.

(d) All fees and other moneys collected or received under the provisions of this chapter shall be deposited by the director of regulatory agencies with the director of finance to the credit of the general fund.

(e) The board may request the director of regulatory agencies to have any fee erroneously paid to it under the provisions of this chapter refunded when the board deems it just and equitable.

Sec. 171B-32. Delivery of agreement. When a cemetery salesman secures the signature of any party or parties to any contract pertaining to cemetery property, he shall deliver a copy of such agreement or contract to the party or parties signing it, at the time the signature is obtained; provided that only one copy need be delivered to parties signing as co-tenants.

Sec. 171B-33. Cemetery authority prohibited from employing unlicensed salesman. No cemetery authority shall employ as a cemetery salesman, either directly or indirectly, whether as employee, agent, representative, independent contractor or otherwise, any person who does not hold a license to act as a cemetery salesman.

Sec. 171B-34. Hearings. In every case where it is proposed to refuse to grant a license or to revoke, suspend, or refuse to renew any license for any of the causes hereinabove enumerated, the applicant or licensee shall be entitled to notice and hearing in conformity with chapter 6C.

Sec. 171B-35. Perpetual care fund expressly permitted. A perpetual care fund and all payments or contributions to it are expressly permitted as and for charitable and eleemosynary purposes. No payment, gift, grant, bequest, or other contribution for perpetual care is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the fund, nor is the fund or any contribution to it invalid as violating any law against perpetuities, or the suspension of the power of alienation of title to property.

Sec. 171B-36. Perpetual care required. Any cemetery hereafter established shall be a perpetual care cemetery. No existing cemetery shall be operated as, or advertised or represented to be, a perpetual care cemetery except in compliance with this chapter.

Sec. 171B-37. Fund required; who may act as administrator. Every cemetery authority operating a perpetual care cemetery shall establish a perpetual care fund which shall be administered by a nonprofit corporation or by a perpetual care trust.

(a) If the administrator shall be a nonprofit corporation, the majority of the members of its board of directors shall not be affiliated with the cemetery authority which created the perpetual care fund.

(b) If the administrator shall be a perpetual care trust, the trustee thereof shall be either (1) a trust company authorized to do business in the State, or (2) a board of trustees appointed by the governing body of the cemetery authority consisting of three or more members, who shall be residents of the State, and the majority of which shall not be affiliated with the cemetery authority which created the perpetual care fund.

An executed copy of the declaration of trust, any amendments thereto, and notice of the appointment of any successor trustee thereunder shall be filed with the board.

Sec. 171B-38. Contributions and payments to administrator. A cemetery authority may take, receive and transfer to the administrator as a part of or incident to the perpetual care fund any property, real, personal or mixed, bequeathed, devised, granted, given or otherwise contributed to it for perpetual care purposes and shall transfer to the administrator the amount stipulated in the contract or deed as being for perpetual care purposes for each plot, niche, or mausoleum crypt sold or disposed of, but not less than:

- (a) \$1 per square foot of interment space;
- (b) \$50 for each mausoleum crypt;

(c) \$15 for each niche.

Such transfer shall be made not later than thirty days after the receipt of the final payment of the purchase price of each plot, niche or crypt sold as property entitled to perpetual care.

Sec. 171B-39. Principal of fund; use of income, reserves. The principal of the perpetual care fund shall be invested and in no event reduced. Only so much of the income of the fund shall be paid to the cemetery authority as it, by submission of vouchers, can reasonably show to be necessary to cover the cost of perpetual care of the cemetery, including reasonable administrative expenses incurred in connection therewith; provided that a reserve may be created from which principal losses may be replaced by setting aside a reasonable percentage of surplus income, if any, or net capital gains from investments, and a reserve may also be set aside out of surplus income or net capital gains for future maintenance, repair or restoration of property or embellishments in the cemetery which may be necessary or desirable as a result of wear, deterioration, accident, damage or destruction. "Net capital gains" means the amount by which the cumulative capital gains since the establishment of the perpetual care fund exceed the sum of cumulative capital losses since the establishment of the fund. Any surplus income or net capital gains not so set aside in reserve shall become a part of the principal of the fund.

Sec. 171B-40. Application of income; administrator not responsible for. The administrator shall not be required to inquire into the propriety of the expenditures made by the cemetery authority in connection with perpetual care of the cemetery, and it shall not be held responsible in any manner whatsoever for and on account of payments of the income from the perpetual care fund made to the cemetery authority upon vouchers as aforesaid.

Sec. 171B-41. Investment of perpetual care funds. The investment of perpetual care funds shall be governed by the standards prescribed in section 179-14 for trust companies acting as fiduciaries. The instrument creating the fund may reserve to the cemetery authority the right to approve investments. The administrator may, from time to time, reserve from investment and keep in the form of cash balances (which cash may be held on deposit with any institutional depository, without interest) such portion of the fund, whether principal or income, as the administrator may deem advisable.

Sec. 171B-42. Administrator's compensation. The administrator shall be entitled to the same compensation as provided by law for trust companies in the management of fiduciary accounts, but in no event shall any sum in excess of five per cent of the income derived from the fund in any year be paid as compensation to the administrator for its services in the administration of the fund.

Sec. 171B-43. Inspection, regulation and supervision of administrator. Any administrator of a perpetual care fund, other than a trust company, shall be subject to inspection, supervision and regulation by the board

to the same extent and in the same manner as may be from time to time provided by law for the inspection, supervision and regulation of trust companies doing business in the State.

Sec. 171B-44. Administrator's account; enforcement by attorney general. The administrator shall annually file with the board, an account which shall be made in such form as shall be prescribed by the board. The board shall notify the attorney general of any failure on the part of the administrator to comply with the provisions of sections 171B-39 to 171B-44, or of the instrument creating the fund, and the attorney general may take such action as he shall deem appropriate.

Sec. 171B-45. Penalty. Any person who violates, or omits to comply with, any of the provisions of this chapter shall be fined not more than \$1,000.

Sec. 171B-46. Severability. If any provisions of this chapter, or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

SECTION 2. Any law or provision of law inconsistent with this Act is hereby repealed to the extent of any such inconsistency.

SECTION 3. This Act shall become effective on July 1, 1967, except that the members of the cemetery board of the State of Hawaii shall be appointed, take office, organize and shall be empowered to examine applicants and issue licenses prior to July 1, 1967, which licenses shall become effective July 1, 1967.

(Approved June 4, 1967.)