Stricken language would be deleted from and underlined language would be added to present law. Act 390 of the Regular Session

1	State of Arkansas	A D:11	
2	89th General Assembly	A Bill	
3	Regular Session, 2013		SENATE BILL 462
4			
5	By: Senator J. Dismang		
6	By: Representative Perry		
7			
8	For An Act To Be Entitled		
9	AN ACT TO REVISE THE CEMETERY ACT FOR PERPETUALLY		
10	MAINTAINED CEMETERIES; AND FOR OTHER PURPOSES.		
11			
12			
13		Subtitle	
14	TO REVISE THE CEMETERY ACT FOR		
15	PERPETUAL	LY MAINTAINED CEMETERIES.	
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18	BE IT ENACTED BY THE GENERA	AL ASSEMBLY OF THE STATE OF AR	KANSAS:
19 20	SECTION 1 Arkenses	$r_{\rm red} = \frac{1}{2} \frac{1}{1006(1)} = \frac{1}{200000000000000000000000000000000000$	ng the sutherity of
20	SECTION 1. Arkansas Code § 20-17-1006(1), concerning the authority of the Arkansas Cemetery Board, is amended to read as follows:		
22	(1)(<u>A)</u> Conduct at any time and from time to time such reasonable		
23	periodic, special, or other examination of $\frac{any}{a}$ cemetery or cemetery		
24	company, including, but not limited to, without limitation an examination of		
25	the physical condition or appearance of the cemetery, the financial condition		
26	of the company and any trust funds maintained by the company, and such other		
27	examinations as the board or Securities Commissioner deems necessary or		
28	appropriate in the public interest.		
29		examinations shall be made by	e examination shall be
30	carried out by:		
31	<u>(i)</u>	<u>members</u> <u>Members</u> or represen	tatives of the board <u>;</u>
32	or by		
33	<u>(11</u>	<u>L) a A</u> certified public accou	ntant or registered
34	public accountant as authorized in § 20-17-1007; or		
35	<u>(</u> ii	ii) The State Securities Depa	rtment;
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1 SECTION 2. Arkansas Code § 20-17-1007(a), concerning examinations of 2 cemeteries, is amended to read as follows: 3 (a)(1)(A) <u>Each</u> A cemetery company examined in accordance with § 20-17-4 1006 shall pay to the Arkansas Cemetery Board a fee for each for the 5 examination as the board shall prescribe by rule: 6 (i) Sixty dollars (\$60) per day for each examiner 7 who conducts the examination; and 8 (ii) The amount necessary to reimburse the travel, 9 meal, and lodging expenses of each examiner. 10 In addition, the cemetery company shall pay to the (B) 11 board the amount of expenses and stipends paid by the board to any board 12 member examining the physical condition or appearance of a cemetery when the 13 examination is ordered by the board on its own motion or on request of an 14 interested individual. 15 (2) However, all examinations shall be An examination shall be 16 conducted by at least one (1) examiner employee of the State Securities 17 Department or board member, and the examinations shall be conducted only 18 pursuant to an order of the board. 19 SECTION 3. Arkansas Code § 20-17-1008, concerning application for a 20 21 permit, is amended to add an additional subsection to read as follows: 22 (e) The board may for good cause waive all or part of an application 23 requirement of this section if an applicant is a state, city, or municipal 24 government, or nonprofit organization as defined by the Internal Revenue 25 Code, 26 U.S.C. § 501(c)(3). 26 27 SECTION 4. Arkansas Code § 20-17-1013(a), concerning permanent 28 maintenance funds, is amended to read as follows: 29 (a)(1)(A) The permanent maintenance fund is declared to be a trust 30 fund for the purpose of administration, care, and maintenance of the 31 cemetery, including lots, graves, spaces, crypts, niches, and burial rights, or otherwise. 32 33 (B) The principal of the permanent maintenance fund shall 34 be preserved. 35 (2)(A) The net income generated from the investment of the 36 principal of the permanent maintenance fund shall be paid to and be

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exclusively used and expended by the owners, managers, or officers, and or directors of the cemetery company <u>exclusively</u> for the care and maintenance of the cemetery, including the payment of taxes and administrative expenses of <u>maintaining the fund</u> and for no other purpose.

5 (B) A cemetery company may add unused net income to the
6 principal of the permanent maintenance fund.

7 (3) The Except and provided in subdivision (a)(4) of this 8 section, the principal of the permanent maintenance fund shall be invested 9 and remain invested in such securities and funds as are permitted by the laws 10 of Arkansas for the investment of policy reserves of life insurance companies 11 as set forth in under § 23-60-101 et seq., and in the common trust funds of 12 state or national banks.

13 (4)(<u>A)</u> However, any <u>A</u> permanent maintenance fund having assets 14 of more than two hundred fifty thousand dollars (\$250,000) may invest not 15 more than fifty percent (50%) of its assets in nonassessable common stocks 16 which are listed on a national securities exchange, preferred stocks meeting 17 the requirements of § 23-63-815, and investment trust securities meeting the 18 requirements of § 23-63-820, and.

19 (B) the The diversification restrictions of § 23-63-805
 20 shall do not apply to investments in investment trust securities.

(5) In investing these funds, the trustee shall exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence exercise in management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income and capital appreciation as well as the probable safety of their the capital.

27 (6)(A) For purposes of this section, no more than fifty percent
28 (50%) of annual realized net capital gains on investments bought or acquired
29 after January 1, 2013, may be considered income and used according to
30 subdivision (a)(2) of this section.

31 (B) All other net capital gains on investments shall be
 32 added to principal.

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34 SECTION 5. Arkansas Code § 20-17-1014(c), concerning trustees of 35 permanent maintenance funds, is amended to add an additional subsection to 36 read as follows:

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1 (c)(1) The board may require a trustee who fails to protect the 2 principal of the permanent maintenance fund under § 20-17-1013 to pay an additional contribution to the permanent maintenance fund of twenty five 3 4 dollars (\$25.00) per day for each day that the principal is deficient. 5 (2) The additional contribution made under subdivision (c)(1) of 6 this section shall not exceed a total of one thousand dollars (\$1,000) for a 7 continuous violation. 8 9 SECTION 6. Arkansas Code § 20-17-1015(c)(3), concerning an annual 10 report of a permanent maintenance fund, is amended to read as follows: 11 (3) Failure by If the trustee to make a does not timely filing 12 of file the annual report required by subsection (a) of this section shall be 13 grounds for, the board may require the trustee to pay an additional 14 contribution to the permanent maintenance fund of no more than fifty dollars 15 (\$50.00) per day until the report is filed with the board. 16 17 SECTION 7. Arkansas Code § 20-17-1023(c)(1), concerning an annual 18 report on the condition of a cemetery, is amended to read as follows: 19 (c)(1) Failure by If the cemetery company to make a timely filing of 20 does not timely file its annual report shall be grounds for, the board may 21 require the cemetery company to pay an additional contribution to the 22 permanent maintenance fund of no more than fifty dollars (\$50.00) per day 23 until the report is filed with the board. 24 25 SECTION 8. Arkansas Code § 20-17-1027(b), concerning duties of the 26 State Securities Department, is amended to add an additional subdivision to 27 read as follows: (15) Performing regular audits or examinations of perpetual care 28 29 cemeteries. 30 31 32 APPROVED: 03/14/2013 33 34 35 36

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