

SENATE BILL No. 301

May 7, 1991, Introduced by Senators KELLY, PRIDNIA, CHERRY, FAUST, BERRYMAN, KOIVISTO, HONIGMAN, BARCIA, CARL and GAST and referred to the Committee on Health Policy.

A bill to amend section 16 of Act No. 251 of the Public Acts of 1968, entitled as amended

"Cemetery regulation act,"

as amended by Act No. 132 of the Public Acts of 1982, being section 456.536 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 16 of Act No. 251 of the Public Acts of
2 1968, as amended by Act No. 132 of the Public Acts of 1982, being
3 section 456.536 of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 16. (1) ~~The commissioner shall require each~~ A ceme-
6 tery ~~to~~ SHALL establish and maintain an irrevocable endowment
7 care fund as required by section 35a of Act No. 87 of the Public
8 Acts of 1855, being section 456.35a of the Michigan Compiled
9 Laws, or section 7a of Act No. 12 of the Public Acts of 1869, as

1 amended, being section 456.107a of the Michigan Compiled Laws,
2 and ~~to~~ SHALL report annually ON OR before July 1 of each year
3 ~~, on forms approved and furnished by the commissioner,~~ care
4 fund information required ~~to be reported to the commissioner~~ by
5 THIS SECTION AND other statutes. ~~and information regarding the~~
6 ~~funds as the commissioner considers pertinent in the public~~
7 ~~interest.~~ A cemetery applying to the commissioner as authorized
8 by other statutes for a care fund deposit modification or waiver
9 shall be assessed the actual expenses for an examination or
10 investigation by the commissioner. ~~The commissioner shall~~
11 ~~require each~~

12 (2) EXCEPT IN THE CASE OF A MODIFICATION OR WAIVER BY THE
13 COMMISSIONER PURSUANT TO THIS SECTION, A person ~~engaged as agent~~
14 ~~or seller, as a means of livelihood~~ SELLING, either part-time or
15 full-time, ~~in the selling of~~ burial rights, entombment rights,
16 or columbarium rights owned by a party other than a cemetery or
17 corporation subject to the care fund requirements of other laws,
18 ~~to~~ SHALL deposit 15% of all gross proceeds received from the
19 sales of those rights into ~~the~~ AN irrevocable care fund of the
20 cemetery in which the rights are located if an irrevocable care
21 fund exists for that cemetery. Excess sums on deposit in the
22 fund can be applied by a cemetery against future deposits. A
23 deposit required ~~to be made by~~ OF those persons shall be modi-
24 fied or waived ONLY if the cemetery has received a care fund
25 deposit modification or waiver approved by the commissioner. The
26 total deposit for a single adult burial right sale or assignment
27 shall not be less than \$20.00.

1 (3) ~~-(2)-~~ A cemetery which is required to register pursuant
2 to this act and an agent which is authorized by a cemetery or
3 acting on its behalf under an agreement or sales contract to sell
4 cemetery merchandise or cemetery services shall establish a mer-
5 chandise trust account and deposit a percentage of the gross pro-
6 ceeds received from the sales as determined by the commissioner.
7 The CEMETERY SHALL MAINTAIN THE merchandise trust account ~~-shall~~
8 ~~be maintained~~ exclusively for the deposit of the money into a
9 bank or trust company located in this state under the terms of a
10 written trust agreement approved by the commissioner. The funds
11 shall be deposited not later than the month following their
12 receipt.

13 (4) ~~-(3)-~~ The total deposits to a merchandise trust ACCOUNT
14 for the sale of cemetery burial vaults or other outside contain-
15 ers, other than crypts installed underground and sold as part of
16 a cemetery lot, shall at all times be not less than the greater
17 of \$100.00 per BURIAL vault or outside container or 130% of the
18 total costs of the containers covered by the ~~-trust-~~ ACCOUNT.
19 Money deposited in connection with a sale shall be repaid within
20 30 days upon written demand of purchaser. A burial vault shall
21 be installed only at need or by separate written authorization of
22 the purchaser. The cemetery shall have the right to withdraw the
23 amount on deposit IN THE MERCHANDISE TRUST ACCOUNT for the deliv-
24 ered vault or outside container.

25 (5) ~~-(4)-~~ A contract or agreement made with a purchaser of
26 cemetery merchandise and CEMETERY services shall contain a

1 complete description of the cemetery merchandise purchased and of
2 the CEMETERY services to be rendered.

3 ~~(5) The commissioner shall require each cemetery or agent~~
4 ~~authorized by it acting on its behalf to report annually before~~
5 ~~July 1 of each year on forms provided by the commissioner. The~~
6 ~~reports shall contain information as the commissioner considers~~
7 ~~necessary to ascertain that this act is being implemented.~~

8 (6) A CEMETERY THAT MAINTAINS AN ENDOWMENT CARE FUND OR A
9 MERCHANDISE TRUST ACCOUNT SHALL PROVIDE A REPORT PREPARED BY A
10 CERTIFIED PUBLIC ACCOUNTANT FOR EACH FUND OR ACCOUNT WHICH SHALL
11 COVER THE PRECEDING CALENDAR YEAR. THE REPORT SHALL BE ON FORMS
12 PROVIDED BY THE COMMISSIONER OR IN ANY OTHER FORMAT CONSIDERED
13 APPROPRIATE BY THE CERTIFIED PUBLIC ACCOUNTANT AND APPROVED BY
14 THE COMMISSIONER. THE CERTIFIED PUBLIC ACCOUNTANT SHALL NOT BE
15 REQUIRED TO REVIEW ALL CONTRACTS ENTERED INTO BY THE CEMETERY
16 THAT REQUIRE THE CEMETERY TO MAKE A DEPOSIT IN ITS ENDOWMENT CARE
17 FUND OR MERCHANDISE TRUST ACCOUNT; ALL RECORDS OF THE CEMETERY;
18 OR ALL RECEIPTS OR DEPOSITS OF FUNDS OR ACCOUNTS REPRESENTING THE
19 SALE OF CEMETERY MERCHANDISE AND CEMETERY SERVICES BY THE
20 CEMETERY. THE REPORT SHALL PROVIDE A DETERMINATION OF WHETHER
21 THE CEMETERY HAS APPARENTLY COMPLIED WITH ALL OF THE FOLLOWING
22 AND SHALL INDICATE AREAS OF NONCOMPLIANCE, IF APPLICABLE:

23 (A) THE DEPOSIT REQUIREMENTS.

24 (B) THE INVESTMENT REQUIREMENTS.

25 (C) THE WITHDRAWAL PROCEDURES AND REQUIREMENTS.

26 (D) OTHER REQUIREMENTS OF THIS ACT OR OTHER ACTS WITHIN THE
27 KNOWLEDGE OF THE CERTIFIED PUBLIC ACCOUNTANT AND READILY APPARENT

1 FROM REVIEW OF THE RECORDS AND INFORMATION USED TO COMPILE THE
2 REPORT.

3 (7) THE COMMISSIONER SHALL EXAMINE EACH REPORT REQUIRED BY
4 THIS SECTION AND IF THE COMMISSIONER DETERMINES FROM THAT EXAMI-
5 NATION THAT THE CEMETERY HAS NOT DEPOSITED, INVESTED, OR WITH-
6 DRAWN FUNDS IN ACCORDANCE WITH THIS OR OTHER ACTS OR HAS FAILED
7 TO FILE A REPORT COMPLYING WITH THE REQUIREMENTS OF SUBSECTION
8 (6), THE COMMISSIONER SHALL TAKE ANY APPROPRIATE ACTION AUTHO-
9 RIZED BY SECTION 18.

10 (8) THE COMMISSIONER MAY EXAMINE, REVIEW, OR AUDIT THE BOOKS
11 AND RECORDS OF CEMETERIES PERTAINING TO FUNDS RECEIVED FROM CON-
12 SUMERS THAT REQUIRE A DEPOSIT INTO AN ENDOWMENT CARE FUND OR MER-
13 CHANDISE TRUST ACCOUNT. AN AUDIT MAY INCLUDE AN EXAMINATION OF
14 THE BOOKS AND RECORDS OF THE CEMETERY AS WELL AS BOOKS AND
15 RECORDS OF THE TRUSTEE OR CUSTODIAN USED BY THE CEMETERY. A CEM-
16 ETERY SHALL AUTHORIZE THE TRUSTEES OR CUSTODIANS TO OPEN THEIR
17 RECORDS OF THE CEMETERY'S TRUST ACCOUNTS TO THE COMMISSIONER UPON
18 REQUEST.

19 (9) A CEMETERY THAT HAS NOT SOLD, PROVIDED, OR AGREED TO
20 SELL OR PROVIDE CEMETERY MERCHANDISE OR SERVICES ON A PREPAID
21 BASIS DURING THE PRECEDING CALENDAR YEAR AND THAT HAS NO OBLIGA-
22 TIONS WITH RESPECT TO ANY OUTSTANDING PREPAID CONTRACT FOR CEME-
23 TERY MERCHANDISE OR SERVICES SHALL SUBMIT A SWORN STATEMENT INDI-
24 CATING DURING THE PRECEDING CALENDAR YEAR A LACK OF ANY OUTSTAND-
25 ING PREPAID OBLIGATIONS OR CONTRACTS THAT WOULD REQUIRE A DEPOSIT
26 INTO A TRUST FUND OR ACCOUNT. THIS STATEMENT SHALL SATISFY THE

1 MERCHANDISE TRUST ACCOUNT REPORTING REQUIREMENTS IMPOSED IN
2 SUBSECTION (6).

3 (10) ~~—(6)—~~ If, after an audit by the commissioner's staff, a
4 deficit in the amount of required deposits to the trust funds is
5 found, the commissioner may assess a penalty not to exceed 10% of
6 the amount of the deficit. The cemetery or entity of a cemetery
7 may request a hearing before the commissioner within 30 days
8 after being notified of a deficit by the commissioner. If, fol-
9 lowing the hearing, the commissioner determines that a deficit
10 does exist, an additional penalty not to exceed 1.5% may be
11 assessed each month on the unpaid monthly balance until the defi-
12 cit is paid in full.

13 (11) ~~—(7)—~~ All fees, charges, and penalties collected under
14 this act, other than fines prescribed in section 21, shall be
15 paid to the commissioner. Upon receipt, the commissioner shall
16 remit funds received to the department of treasury for deposit in
17 the general fund of the state.

18 (12) A REPORT SUBMITTED IN COMPLIANCE WITH THIS SECTION
19 SHALL SUPERSEDE THE REQUIREMENTS OF SECTIONS 10(1) AND 12A.