



HOUSE BILL No. 5187

November 4, 1993, Introduced by Reps. Brackenridge, McBryde, Kaza and Dobronski and referred to the Committee on Business and Finance.

A bill to amend sections 2, 9, 12, 16, and 21 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 sections 456.522, 456.529, 456.532, 456.536, and 456.541 of the Michigan Compiled Laws; and to add sections 16a, 16b, 18a, and 18b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2, 9, 12, 16, and 21 of Act No. 251 of
2 the Public Acts of 1968, as amended by Act No. 132 of the Public
3 Acts of 1982, being sections 456.522, 456.529, 456.532, 456.536,
4 and 456.541 of the Michigan Compiled Laws, are amended and sec-
5 tions 16a, 16b, 18a, and 18b are added to read as follows:

6 Sec. 2. As used in this act:

1 ~~(a) "Cemetery" means + or a combination of more than + of~~
2 ~~the following:~~

3 ~~(i) A burial ground for earth interments.~~

4 ~~(ii) A mausoleum for crypt entombments.~~

5 ~~(iii) A crematory for the cremation for human remains.~~

6 ~~(iv) A columbarium for the deposit of cremated remains.~~

7 ~~(b) "Interment" means the disposition of human remains by~~
8 ~~earth interment, entombment, or inurnment.~~

9 ~~(c) "Burial right" means a right of earth interment.~~

10 ~~(d) "Entombment right" means the right of crypt entombment~~
11 ~~in a mausoleum or in an aboveground vault.~~

12 ~~(e) "Columbarium right" means the right of inurnment in a~~
13 ~~columbarium for cremated remains.~~

14 ~~(f) "Mausoleum" means a structure used, or intended to be~~
15 ~~used, for the entombment in a crypt or crypts in the structure of~~
16 ~~the remains of deceased persons.~~

17 ~~(g) "Crypt" means a chamber in a mausoleum of sufficient~~
18 ~~size to entomb the uncremated remains of a deceased person.~~

19 ~~(h) "Columbarium" means a structure or room or other space~~
20 ~~in a building or structure used or intended to be used for the~~
21 ~~inurnment or deposit of cremated remains.~~

22 ~~(i) "Crematory" means a building or structure, within which~~
23 ~~the remains of deceased persons are or are intended to be~~
24 ~~cremated.~~

25 ~~(j) "Cremation" means the incineration of the body of the~~
26 ~~deceased person.~~

1 ~~(k) "Cemetery services" means all services offered to the~~
 2 ~~public, including grave opening, closings, and foundation~~
 3 ~~installation.~~

4 ~~(l) "Cemetery merchandise" means all merchandise sold to the~~
 5 ~~public by a cemetery, including vaults, concrete boxes, monu-~~
 6 ~~ments, memorials, and foundations.~~

7 ~~(m) "Cemetery commissioner" or "commissioner" means the~~
 8 ~~director of licensing and regulation or a designee of the~~
 9 ~~director.~~

10 (A) "BURIAL RIGHT" MEANS A RIGHT OF EARTH INTERMENT.

11 (B) "CASKET" MEANS A BOX OR CONTAINER CONSISTING OF 1 OR
 12 MORE PARTS IN WHICH A DEAD HUMAN BODY IS PLACED PRIOR TO INTER-
 13 MENT, ENTOMBMENT, OR CREMATION THAT MAY BE PERMANENTLY INTERRED,
 14 ENTOMBED, OR CREMATED WITH THE DEAD HUMAN BODY. A PERMANENT
 15 INTERMENT OR ENTOMBMENT RECEPTABLE THAT IS DESIGNED OR INTENDED
 16 FOR USE WITHOUT A VAULT SHALL ALSO BE CONSIDERED A CASKET.

17 (C) "CATAFALQUE" MEANS AN ORNAMENTAL OR DECORATIVE OBJECT OR
 18 STRUCTURE THAT IS PLACED BENEATH, OVER, OR AROUND A CASKET,
 19 VAULT, OR A DEAD HUMAN BODY PRIOR TO FINAL DISPOSITION OF THE
 20 DEAD HUMAN BODY.

21 (D) "CEMETERY" MEANS 1 OR A COMBINATION OF MORE THAN 1 OF
 22 THE FOLLOWING:

23 (i) A BURIAL GROUND FOR EARTH INTERMENTS.

24 (ii) A MAUSOLEUM FOR CRYPT ENTOMBMENTS.

25 (iii) A CREMATORY FOR THE CREMATION FOR HUMAN REMAINS.

26 (iv) A COLUMBARIUM FOR THE DEPOSIT OF CREMATED REMAINS.

1 (E) "CEMETERY COMMISSIONER" OR "COMMISSIONER" MEANS THE
2 DIRECTOR OF COMMERCE OR A DESIGNEE OF THE DIRECTOR.

3 (F) "CEMETERY MERCHANDISE" MEANS ALL MERCHANDISE SOLD TO THE
4 PUBLIC, INCLUDING BUT NOT LIMITED TO, VAULTS, CONCRETE BOXES,
5 MONUMENTS, MEMORIALS, AND FOUNDATIONS. CEMETERY MERCHANDISE DOES
6 NOT INCLUDE CASKETS, CATAFALQUES, COMBINATION UNITS, ACKNOWLEDG-
7 MENT CARDS, REGISTER BOOKS, MEMORY FOLDERS, PRAYER CARDS, AND
8 CLOTHING.

9 (G) "CEMETERY SERVICES" MEANS ALL SERVICES OFFERED TO THE
10 PUBLIC, INCLUDING BUT NOT LIMITED TO, GRAVE OPENING, CLOSINGS,
11 AND FOUNDATION INSTALLATION. CEMETERY SERVICES DO NOT INCLUDE
12 THOSE SERVICES REQUIRED TO BE PERFORMED BY A MORTUARY SCIENCE
13 LICENSEE WHO IS LICENSED PURSUANT TO ARTICLE 18 OF THE OCCUPA-
14 TIONAL CODE, ACT NO. 299 OF THE PUBLIC ACTS OF 1980, BEING
15 SECTIONS 339.1801 TO 339.1812 OF THE MICHIGAN COMPILED LAWS.

16 (H) "COLUMBARIUM" MEANS A STRUCTURE OR ROOM OR OTHER SPACE
17 IN A BUILDING OR STRUCTURE USED OR INTENDED TO BE USED FOR THE
18 INURNMENT OR DEPOSIT OF CREMATED REMAINS.

19 (I) "COLUMBARIUM RIGHT" MEANS THE RIGHT OF INURNMENT IN A
20 COLUMBARIUM FOR CREMATED REMAINS.

21 (J) "COMBINATION UNIT" MEANS A PRODUCT CONSISTING OF A UNIT
22 OR A SERIES OF UNITS THAT ARE DESIGNED OR INTENDED TO BE USED
23 TOGETHER AS BOTH A CASKET AND AS A PERMANENT BURIAL RECEPTACLE.

24 (K) "CONTROLLING INTEREST" MEANS THE CAPABILITY TO DECIDE
25 THE-OPERATING AND FINANCIAL POLICIES OF THE CEMETERY OR TO SELECT
26 A MAJORITY OF THE OFFICERS OR DIRECTORS OF THE CEMETERY
27 CORPORATION.

1 (L) "CREMATION" MEANS THE INCINERATION OF THE BODY OF A
2 DECEASED PERSON.

3 (M) "CREMATORY" MEANS A BUILDING OR STRUCTURE WITHIN WHICH
4 THE REMAINS OF DECEASED PERSONS ARE OR ARE INTENDED TO BE
5 CREMATED.

6 (N) "CRYPT" MEANS A CHAMBER IN A MAUSOLEUM OF SUFFICIENT
7 SIZE TO ENTOMB THE UNCREMATED REMAINS OF A DECEASED PERSON.

8 (O) "DEPARTMENT" MEANS THE DEPARTMENT OF COMMERCE.

9 (P) "ENDOWED CARE TRUST FUND" MEANS AN IRREVOCABLE TRUST
10 FUND ESTABLISHED FOR THE PURPOSE OF PERPETUALLY CARING FOR AND
11 MAINTAINING THE CEMETERY GROUNDS.

12 (Q) "ENTOMBMENT RIGHT" MEANS THE RIGHT OF CRYPT ENTOMBMENT
13 IN A MAUSOLEUM OR IN AN ABOVEGROUND VAULT.

14 (R) "GOOD MORAL CHARACTER" MEANS GOOD MORAL CHARACTER AS
15 DEFINED AND DETERMINED IN ACT NO. 381 OF THE PUBLIC ACTS OF 1974,
16 BEING SECTIONS 338.41 TO 338.47 OF THE MICHIGAN COMPILED LAWS.

17 (S) "INTERMENT" MEANS THE DISPOSITION OF HUMAN REMAINS BY
18 EARTH INTERMENT, ENTOMBMENT, OR INURNMENT.

19 (T) "MAUSOLEUM" MEANS A STRUCTURE USED OR INTENDED TO BE
20 USED FOR THE ENTOMBMENT IN A CRYPT OR CRYPTS IN THE STRUCTURE OF
21 THE REMAINS OF DECEASED PERSONS.

22 (U) "MERCHANDISE TRUST FUND" MEANS A TRUST FUND ESTABLISHED
23 FOR THE PURPOSE OF PROVIDING CEMETERY MERCHANDISE AND SERVICES
24 FOR USE OR PLACEMENT AT A LATER DATE.

25 (V) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
26 ASSOCIATION, OR OTHER LEGAL ENTITY.

1 Sec. 9. (1) The commissioner may hold hearings PURSUANT TO
2 THE ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE
3 PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO 24.328 OF THE
4 MICHIGAN COMPILED LAWS, administer oaths, take testimony under
5 oath, and request in writing the appearance and testimony of wit-
6 nesses, including the production of books and records. Upon the
7 refusal of a witness to appear, testify, or submit books and
8 records after a written request, the commissioner or a party to a
9 contested case may apply to the circuit court for Ingham county
10 for a subpoena or a subpoena duces tecum. The court shall issue
11 a subpoena when reasonable grounds are shown.

12 (2) When it appears to the commissioner that a person or
13 registrant has violated this act or a rule promulgated or order
14 issued under this act, the commissioner may do 1 or more of the
15 following:

16 (a) Issue a cease and desist order.

17 (b) Accept an assurance of discontinuance.

18 (c) REFER THE MATTER TO THE ATTORNEY GENERAL FOR CIVIL OR
19 CRIMINAL PROSECUTION OR ENFORCEMENT.

20 (d) INSTITUTE A PROCEEDING UNDER ACT NO. 306 OF THE PUBLIC
21 ACTS OF 1969.

22 (e) ~~(c)~~ Bring an action in the circuit court for the
23 county in which the person resides or in the circuit court for
24 the county of Ingham ~~—~~ to enforce compliance with this act or a
25 rule promulgated or order issued under this act. Upon a proper
26 showing, ~~a permanent or temporary injunction or a restraining~~
27 ~~order~~ INJUNCTIVE RELIEF may be granted and a receiver or

1 conservator may be appointed for the defendant or the defendant's
2 assets. The court shall not require the commissioner to post a
3 bond.

4 (F) RESTRICT THE CEMETERY FROM SELLING PRENEED MERCHANDISE
5 AND SERVICES.

6 (3) In addition to an action taken under this section, the
7 commissioner may ~~deny~~ DO ANY OF THE FOLLOWING:

8 (A) DENY an application or ~~may~~ suspend or revoke a permit
9 or registration after a hearing as set forth in this act.

10 (B) REQUIRE RESTITUTION OF FUNDS PAID PURSUANT TO A CONTRACT
11 FOR CEMETERY SERVICES OR MERCHANDISE AND MAY SUSPEND A PERMIT OR
12 REGISTRATION UNTIL THE RESTITUTION IS PAID.

13 (C) IMPOSE A PERIOD OF PROBATION DURING WHICH THE REGISTRANT
14 IS REQUIRED TO COMPLY WITH ADDITIONAL CONDITIONS IMPOSED BY THE
15 COMMISSIONER INSTEAD OF OR IN ADDITION TO THE IMPOSITION OF OTHER
16 PENALTIES PROVIDED UNDER THIS ACT.

17 (4) AN INDIVIDUAL WHO PURCHASED BURIAL RIGHTS, CEMETERY
18 SERVICES, OR CEMETERY MERCHANDISE REGULATED BY THIS ACT OR A
19 PERSON WHO HAS AN INTEREST BY VIRTUE OF BEING AN HEIR TO A PERSON
20 WHOSE PRE-NEED TRANSACTION IS REGULATED BY THIS ACT MAY BRING AN
21 ACTION IN THE CIRCUIT COURT TO COMPEL COMPLIANCE WITH THIS ACT BY
22 A REGISTRANT, A PERSON HOLDING A PERMIT UNDER THIS ACT, OR A
23 PERSON PERFORMING OR OFFERING TO PERFORM ACTIVITIES REGULATED BY
24 THIS ACT IF A WRITTEN COMPLAINT HAS BEEN SENT TO THE COMMISSIONER
25 AT LEAST 120 DAYS BEFORE BRINGING THE ACTION. THE COURT MAY PRO-
26 VIDE INJUNCTIVE RELIEF FOR A VIOLATION OF THIS ACT. THE COURT

1 MAY AWARD ACTUAL ATTORNEY FEES TO THE INDIVIDUAL OR PERSON WHO
2 BROUGHT THE ACTION IF THAT INDIVIDUAL OR PERSON PREVAILS.

3 (5) THE COMMISSIONER SHALL PROMULGATE RULES DESIGNATING
4 ADMINISTRATIVE VIOLATIONS THAT ARE TO BE CONSIDERED MINOR TECHNICAL VIOLATIONS INCLUDING, BUT NOT LIMITED TO, INCOMPLETE FILINGS
5 OF MERE IDENTIFYING INFORMATION OR LATE FILINGS OF CERTAIN
6 DOCUMENTS. THE RULES MAY PROVIDE FOR THE IMPOSITION OF ADMINISTRATIVE FINES NOT TO EXCEED THE FOLLOWING:

9 (A) FIVE HUNDRED DOLLARS FOR A FIRST OFFENSE.

10 (B) ONE THOUSAND FIVE HUNDRED DOLLARS FOR THE SECOND
11 OFFENSE.

12 (C) TWO THOUSAND FIVE HUNDRED DOLLARS FOR THE THIRD OR SUBSEQUENT OFFENSE.

14 Sec. 12. (1) ~~A person or business entity shall not establish a cemetery without a valid permit or operate an existing cemetery except under a valid registration under this act.~~

17 ~~(2) If a person or business entity proposes to purchase or otherwise acquire a controlling interest in an existing cemetery company, that person or business entity shall first make application to the commissioner for a certificate of approval of a proposed change of control of a cemetery company. The application shall contain the name and address of the proposed new owner or operator and other information as the commissioner requires. The commissioner shall issue a certificate of approval only after he or she is satisfied that the proposed new owner is qualified by character, experience, and financial responsibility to control and operate the cemetery in a legal and proper manner, and that~~

~~1 the interest of the public generally will not be jeopardized by~~
~~2 the proposed change in ownership and management. The application~~
~~3 for a purchase or change of control must be accompanied by an~~
~~4 initial filing or investigation fee of \$500.00. As used in this~~
~~5 section, "controlling interest" means the capability to decide~~
~~6 the operating and financial policies of the cemetery company or~~
~~7 to select a majority of the officers or directors of the cemetery~~
~~8 company. In deciding whether a person or business entity has or~~
~~9 proposes to acquire a controlling interest, the percentage of the~~
~~10 stock, assets, or other indicia of ownership which a person or~~
~~11 business entity acquires or proposes to acquire need not be the~~
~~12 only factor considered by the commissioner.~~ A PERSON SHALL NOT
13 ESTABLISH, OBTAIN CONTROLLING INTEREST IN, OR OPERATE A CEMETERY
14 WITHOUT OBTAINING A REGISTRATION ISSUED UNDER THIS ACT.

15 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), THE COMMISSIONER
16 SHALL ISSUE A CEMETERY REGISTRATION TO A PERSON WHO COMPLIES WITH
17 ALL OF THE FOLLOWING REQUIREMENTS:

18 (A) COMPLETES AN APPLICATION AND PAYS A NONREFUNDABLE APPLI-
19 CATION PROCESSING FEE OF \$500.00.

20 (B) PROVIDES EVIDENCE OF HAVING AN ENDOWED CARE TRUST FUND
21 BALANCE OF NOT LESS THAN \$25,000.00.

22 (C) DEMONSTRATES THE FINANCIAL RESPONSIBILITY OF EACH OWNER,
23 OFFICER, PARTNER, OR SHAREHOLDER OWNING 10% OR MORE OF THE
24 STOCK.

25 (D) PROVIDES EVIDENCE, IF THE APPLICANT HOLDS ANOTHER REGIS-
26 TRATION UNDER THIS ACT OR THE PREPAID FUNERAL CONTRACT FUNDING
27 ACT, ACT NO. 255 OF THE PUBLIC ACTS OF 1986, BEING

1 SECTIONS 328.211 TO 328.235 OF THE MICHIGAN COMPILED LAWS, THAT
2 ALL TRUST FUND OBLIGATIONS UNDER THESE ACTS HAVE BEEN FULLY MET
3 OR, IN THE CASE OF DEFICIENCY, PROOF THAT A PLAN TO CURE THE
4 DEFICIENCY HAS BEEN APPROVED BY THE DEPARTMENT.

5 (E) PROVIDES A STATEMENT OF GOOD MORAL CHARACTER FOR EACH
6 OWNER, OFFICER, SUBSEQUENT OFFICER, PARTNER, OR SHAREHOLDER
7 OWNING 10% OR MORE OF THE STOCK.

8 (F) PROVIDES A SIGNED COPY OF EACH APPLICABLE TRUST FUND
9 AGREEMENT.

10 (3) BEFORE THE COMMISSIONER SHALL APPROVE AN APPLICATION FOR
11 A CHANGE OF CONTROLLING INTEREST IN A CEMETERY, AN AUDIT SHALL BE
12 PERFORMED OF THE CEMETERY'S TRUST ACCOUNTS.

13 (4) THE COMMISSIONER MAY DENY AN APPLICATION IF THE APPLI-
14 CANT HAS BEEN FOUND BY THE DEPARTMENT OR A COURT OF COMPETENT
15 JURISDICTION TO HAVE VIOLATED THIS ACT, ARTICLE 18 OF THE OCCUPA-
16 TIONAL CODE, ACT NO. 299 OF THE PUBLIC ACTS OF 1980, BEING
17 SECTIONS 339.1801 TO 339.1812 OF THE MICHIGAN COMPILED LAWS, ACT
18 NO. 255 OF THE PUBLIC ACTS OF 1986, BEING SECTIONS 328.211 TO
19 328.235 OF THE MICHIGAN COMPILED LAWS, OR WHOSE LICENSE OR REGIS-
20 TRATION HAS BEEN SUSPENDED OR REVOKED.

21 (5) If a person or business entity fails to comply with this
22 section, the commissioner shall order that a hearing be held. If
23 a transfer of controlling interest is found to have taken place
24 without prior commissioner approval, the commissioner in his or
25 her discretion may suspend or revoke the registration of the cem-
26 etery or take other appropriate action to ~~insure~~ ENSURE
27 compliance with this section.

1 Sec. 16. (1) ~~The commissioner shall require each~~ A
 2 cemetery ~~to~~ SHALL establish and maintain an ~~irrevocable endow-~~
 3 ~~ment care fund~~ ENDOWED CARE TRUST as required by section 35a of
 4 Act No. 87 of the Public Acts of 1855, being section 456.35a of
 5 the Michigan Compiled Laws, or section 7a of Act No. 12 of the
 6 Public Acts of 1869, as amended, being section 456.107a of the
 7 Michigan Compiled Laws, and ~~to~~ SHALL report annually ON OR
 8 before July 1 of each year ~~, on forms approved and furnished by~~
 9 ~~the commissioner,~~ care fund information required ~~to be reported~~
 10 ~~to the commissioner~~ by THIS SECTION AND other statutes. ~~and~~
 11 ~~information regarding the funds as the commissioner considers~~
 12 ~~pertinent in the public interest.~~ A cemetery applying to the
 13 commissioner as authorized by other statutes for a care fund
 14 deposit modification or waiver shall be assessed the actual
 15 expenses for an examination or investigation by the
 16 commissioner. ~~The commissioner shall require each~~

17 (2) EXCEPT IN THE CASE OF A MODIFICATION OR WAIVER BY THE
 18 COMMISSIONER PURSUANT TO THIS SECTION, A CEMETERY OR OTHER person
 19 ~~engaged as agent or seller, as a means of livelihood either~~
 20 ~~part time or full time, in the selling of~~ THAT SELLS burial
 21 rights, entombment rights, or columbarium rights ~~owned by a~~
 22 ~~party other than a cemetery or corporation subject to the care~~
 23 ~~fund requirements of other laws, to~~ SHALL deposit 15% of all
 24 gross proceeds received from the sales of those rights into ~~the~~
 25 ~~irrevocable care fund~~ AN ENDOWED CARE TRUST FUND of the cemetery
 26 in which the rights are located if an ~~irrevocable care fund~~
 27 ENDOWED CARE TRUST FUND exists for that cemetery. Excess sums

1 ~~on deposit~~ DEPOSITED in the fund ~~can~~ MAY be applied by a
2 cemetery against future deposits. BEGINNING ON THE EFFECTIVE
3 DATE OF THE 1993 AMENDATORY ACT THAT AMENDED THIS SECTION, CAPI-
4 TAL GAINS AND PRIVATE CONTRIBUTIONS ARE NOT CONSIDERED EXCESS
5 FUNDS ON DEPOSIT. A deposit required ~~to be made by those~~
6 ~~persons~~ UNDER THIS SUBSECTION shall be modified or waived ONLY
7 if the cemetery has received a care fund deposit modification or
8 waiver approved by the commissioner. The total deposit for a
9 single adult burial right sale or assignment shall not be less
10 than \$20.00.

11 (3) ~~(2)~~ A cemetery ~~which~~ THAT is required to register
12 pursuant to this act, ~~and~~ an agent ~~which~~ THAT is authorized
13 by a cemetery or acting on its behalf under an agreement or sales
14 contract to sell cemetery merchandise or cemetery services, AND
15 ANY OTHER PERSON THAT SELLS CEMETERY MERCHANDISE OR CEMETERY
16 SERVICES shall establish a merchandise trust ~~account~~ FUND and
17 deposit a percentage of the gross proceeds received from the
18 sales as ~~determined by the commissioner~~ PROVIDED FOR IN THIS
19 ACT. The merchandise trust ~~account~~ FUND shall be maintained
20 exclusively for the deposit of the money into a ~~bank~~ FINANCIAL
21 INSTITUTION or trust company ~~located~~ AUTHORIZED TO DO BUSINESS
22 in this state under the terms of a written trust agreement
23 approved by the commissioner AND PROVIDING THAT THE FINANCIAL
24 INSTITUTION OR TRUST COMPANY BE CONSIDERED THE TRUSTEE OF THE
25 PROCEEDS IN THE ACCOUNT. The funds shall be deposited not later
26 than ~~the month following their receipt~~ 15 DAYS AFTER THE END OF
27 THE MONTH DURING WHICH THE FUNDS WERE RECEIVED. EXCEPT AS

1 OTHERWISE PROVIDED IN SUBSECTION (4), FUNDS AND ALL APPLICABLE
2 EARNINGS SHALL REMAIN IN THE MERCHANDISE TRUST FUND UNTIL TIME OF
3 DELIVERY OF THE CEMETERY SERVICES OR CEMETERY MERCHANDISE AND AT
4 TIME OF DELIVERY SHALL BE DISBURSED IN ACCORDANCE WITH RULES
5 PROMULGATED BY THE DEPARTMENT.

6 ~~(3) The total deposits to a merchandise trust for the sale~~
7 ~~of cemetery burial vaults or other outside containers, other than~~
8 ~~crypts installed underground and sold as part of a cemetery lot,~~
9 ~~shall at all times be not less than the greater of \$100.00 per~~
10 ~~vault or outside container or 130% of the total costs of the con-~~
11 ~~tainers covered by the trust. Money deposited in connection with~~
12 ~~a sale shall be repaid within 30 days upon written demand of~~
13 ~~purchaser. A burial vault shall be installed only at need or by~~
14 ~~separate written authorization of the purchaser. The cemetery~~
15 ~~shall have the right to withdraw the amount on deposit for the~~
16 ~~delivered vault or outside container.~~

17 ~~(4) A contract or agreement made with a purchaser of ceme-~~
18 ~~tery merchandise and services shall contain a complete descrip-~~
19 ~~tion of the cemetery merchandise purchased and of the services to~~
20 ~~be rendered.~~

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

26 ~~(6) If, after an audit by the commissioner's staff, a~~
27 ~~deficit in the amount of required deposits to the trust funds is~~

~~1 found, the commissioner may assess a penalty not to exceed 10% of
2 the amount of the deficit. The cemetery or entity of a cemetery
3 may request a hearing before the commissioner within 30 days
4 after being notified of a deficit by the commissioner. If, fol-
5 lowing the hearing, the commissioner determines that a deficit
6 does exist, an additional penalty not to exceed 1.5% may be
7 assessed each month on the unpaid monthly balance until the defi-
8 cit is paid in full.~~

9 (4) BEGINNING ON THE EFFECTIVE DATE OF THE 1993 AMENDATORY
10 ACT THAT ADDED THIS SUBSECTION, CEMETERY SERVICES SOLD ON A
11 PRENEED BASIS AFTER THE EFFECTIVE DATE OF THAT AMENDATORY ACT ARE
12 SUBJECT TO A TRUST REQUIREMENT OF 100% OF RETAIL PRICE. CEMETERY
13 MERCHANDISE SOLD ON A PRENEED BASIS IS SUBJECT TO A TRUST
14 REQUIREMENT OF AT LEAST 150% OF THE WHOLESALE COSTS OF THE MER-
15 CHANDISE AS DETERMINED PURSUANT TO SUBSECTION (5). IN THE CASE
16 OF THE SALE OF BOTH CEMETERY SERVICES AND CEMETERY MERCHANDISE
17 SOLD AS PART OF THE SAME TRANSACTION OR AS PART OF A SERIES OF
18 TRANSACTIONS, THE RELATIVE PRICES OF CEMETERY SERVICES AND CEME-
19 TERY MERCHANDISE SHALL REFLECT THEIR ACTUAL COST AND SHALL NOT BE
20 MANIPULATED SO AS TO ALLOCATE A DISPROPORTIONATE SHARE OF THE
21 TOTAL PRICE TO CEMETERY MERCHANDISE. BEGINNING ON THE EFFECTIVE
22 DATE OF THE 1993 AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE
23 TOTAL AMOUNT OF MONEY DEPOSITED BY THE SELLER AND MERCHANDISE
24 TRUST FUND AS OF THE BEGINNING OF EACH QUARTER IS CONSIDERED THE
25 BASE AMOUNT. AT THE END OF EACH QUARTER, THE SELLER OF CEMETERY
26 SERVICES AND CEMETERY MERCHANDISE MAY WITHDRAW FROM TRUST ANY
27 INCOME EARNED DURING THAT QUARTER THAT IS IN EXCESS OF THE BASE

1 AMOUNT AS MULTIPLIED BY THE DETROIT CONSUMER PRICE INDEX FOR THAT
2 QUARTER. ALL USUAL AND CUSTOMARY EXPENSES FOR THE OPERATION OF
3 THE TRUST FUND, INCLUDING, BUT NOT LIMITED TO, TRUSTEE FEES, CUS-
4 TODIAN FEES, APPLICABLE TAXES, INVESTMENT ADVISER FEES, AND
5 ACCOUNTING FEES SHALL BE PAID FROM THE EXCESS MERCHANDISE TRUST
6 FUND EXCEPT FOR CAPITAL GAINS TAXES WHICH SHALL BE PAID FROM THE
7 PRINCIPAL OF THE TRUST FUND. AS USED IN THIS SUBSECTION,
8 "DETROIT CONSUMER PRICE INDEX" MEANS THE MOST COMPREHENSIVE INDEX
9 OF CONSUMER PRICES AVAILABLE FOR THE DETROIT AREA FROM THE BUREAU
10 OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF LABOR, AS
11 DETERMINED BY THE COMMISSIONER.

12 (5) BEFORE JULY 1 OF EACH YEAR, EACH CEMETERY SHALL COMPILE
13 AND SUBMIT TO THE DEPARTMENT A LIST OF THE WHOLESALE COST OF EACH
14 ITEM OF MERCHANDISE THAT THE CEMETERY WILL OFFER FOR SALE ON A
15 PRENEED BASIS DURING THE NEXT 12-MONTH PERIOD. THE LISTED PRICE
16 SHALL BE USED TO DETERMINE THE AMOUNT TO BE DEPOSITED INTO THE
17 CEMETERY'S PRENEED TRUST ACCOUNT FOR PRENEED MERCHANDISE SALES.
18 THE LIST SHALL BE COMPILED AS FOLLOWS:

19 (A) THE LISTED WHOLESALE COST SHALL BE THE AMOUNT CHARGED BY
20 A SUPPLIER TO THE CEMETERY ON AN INVOICE FOR THE ITEM OF MERCHAN-
21 DISE AS OF JUNE 1 OF THE CURRENT YEAR.

22 (B) IF THE CEMETERY MANUFACTURES THE MERCHANDISE, THE LISTED
23 WHOLESALE COST OF THAT MERCHANDISE SHALL BE THE AVERAGE COST
24 CHARGED BY THE MANUFACTURER TO OTHER CEMETERIES IN THE IMMEDIATE
25 VICINITY.

26 (C) IF AN INVOICE IS NOT AVAILABLE, THE LISTED WHOLESALE
27 COST SHALL BE THE MANUFACTURER'S PUBLISHED CATALOG PRICE OR THE

1 MANUFACTURER'S WRITTEN STATEMENT OF THE WHOLESALE PRICE AS OF
2 JUNE 1 OF THE CURRENT YEAR.

3 INVOICES AND OTHER DOCUMENTATION USED TO ESTABLISH THE LISTED
4 WHOLESALE COST SHALL BE MAINTAINED AT THE CEMETERY'S PLACE OF
5 BUSINESS FOR NOT LESS THAN 3 YEARS.

6 (6) SUBJECT TO CERTAIN INTERESTS OF SOCIETY, THE LEGISLATURE
7 FINDS THAT EVERY COMPETENT ADULT HAS THE RIGHT TO CONTROL THE
8 DECISIONS RELATING TO THAT PERSON'S OWN FUNERAL AND CEMETERY
9 ARRANGEMENTS. ACCORDINGLY, UNLESS OTHERWISE STATED IN THIS ACT,
10 IT IS THE EXPRESS INTENT OF THE LEGISLATURE THAT THIS ACT SHALL
11 NOT BE CONSTRUED TO SUBJECT INDIVIDUALS WHO PURCHASE CEMETERY
12 SERVICES OR CEMETERY MERCHANDISE ON A PRENEED BASIS TO FEDERAL
13 INCOME TAXATION UNDER THE GRANTOR TRUST RULES CONTAINED IN SUB-
14 PART E OF PART I OF SUBCHAPTER J OF CHAPTER 1 OF SUBTITLE A OF
15 THE INTERNAL REVENUE CODE OF 1986, 26 U.S.C. 671 TO 679.

16 (7) BEGINNING JULY 1, 1994 AND NOT LATER THAN JULY 1 OF EACH
17 SUCCEEDING YEAR, A CEMETERY OR OTHER PERSON THAT IS REQUIRED BY
18 THIS ACT TO MAINTAIN AN ENDOWED CARE TRUST FUND OR MERCHANDISE
19 TRUST FUND SHALL PROVIDE A REPORT OF LIMITED REVIEW PREPARED BY
20 AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT WHICH SHALL COVER THE
21 IMMEDIATELY PRECEDING CALENDAR YEAR. COPIES OF ALL CONTRACTS
22 ENTERED INTO FOR PRENEED CEMETERY SERVICES OR MERCHANDISE DURING
23 THE PRECEDING YEAR SHALL BE MAINTAINED AND MADE AVAILABLE TO THE
24 COMMISSIONER UPON REQUEST. THE REPORT SHALL BE ON FORMS PROVIDED
25 BY THE COMMISSIONER OR IN ANY OTHER FORMAT CONSIDERED APPROPRIATE
26 BY THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT AND APPROVED BY
27 THE COMMISSIONER. THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT IS

1 NOT REQUIRED TO REVIEW ALL CONTRACTS ENTERED INTO BY THE CEMETERY
2 OR OTHER PERSON SINCE JANUARY 1 OF THE IMMEDIATELY PRECEDING YEAR
3 THAT REQUIRE THE CEMETERY OR OTHER PERSON TO MAKE A DEPOSIT IN
4 ITS ENDOWED CARE TRUST FUND OR MERCHANDISE TRUST FUND. THE
5 REPORT SHALL CONTAIN AN ACKNOWLEDGMENT BY THE CEMETERY OWNER OR
6 OTHER PERSON THAT HE OR SHE HAS COMPLIED WITH THE DEPOSIT
7 REQUIREMENTS, THE INVESTMENT REQUIREMENTS, THE WITHDRAWAL PROCE-
8 DURES AND REQUIREMENTS, AND ANY OTHER REQUIREMENTS OF THIS ACT OR
9 OTHER LAW. THE REPORT SHALL CONTAIN ALL OF THE FOLLOWING:

10 (A) THE TOTAL AMOUNT OF MONEY DEPOSITED INTO THE TRUST FUNDS
11 REQUIRED BY THIS ACT AT THE END OF THE IMMEDIATELY PRECEDING
12 REPORT YEAR AND THE TOTAL AMOUNT OF MONEY RECEIVED INTO THE TRUST
13 ACCOUNTS DURING THAT REPORT YEAR.

14 (B) THE TOTAL AMOUNT OF MONEY RECEIVED FROM THE PURCHASERS
15 OF CEMETERY SERVICES AND MERCHANDISE BUT NOT DEPOSITED AS OF THE
16 END OF THE IMMEDIATELY PRECEDING REPORT YEAR AND DURING THE CUR-
17 RENT REPORT YEAR.

18 (C) THE NAMES AND ADDRESSES OF ALL PERSONS ENGAGED IN THE
19 SALE OF CEMETERY SERVICES AND MERCHANDISE DURING THE IMMEDIATELY
20 PRECEDING CALENDAR YEAR.

21 (D) THE NAMES AND ADDRESSES OF THE FINANCIAL INSTITUTIONS
22 INTO WHICH THE TRUST FUNDS ARE DEPOSITED AND THE ACCOUNT
23 NUMBERS.

24 (E) DATES AND AMOUNTS OF WITHDRAWAL AND AMOUNT OF INTEREST
25 EARNED.

26 (8) THE COMMISSIONER SHALL HAVE THE DEPARTMENT EXAMINE EACH
27 REPORT REQUIRED BY THIS SECTION, AND IF THE DEPARTMENT DETERMINES

1 FROM THAT EXAMINATION THAT A POTENTIAL VIOLATION EXISTS, THE
2 COMMISSIONER SHALL HAVE ANY REPORT IN QUESTION AUDITED BY THE
3 FINANCIAL INSTITUTIONS BUREAU. IF THE COMMISSIONER OF THE FINAN-
4 CIAL INSTITUTIONS BUREAU DETERMINES FROM THAT AUDIT THAT THE CEM-
5 ETERY OR OTHER PERSON HAS NOT DEPOSITED, INVESTED, OR WITHDRAWN
6 FUNDS IN ACCORDANCE WITH THIS ACT OR AS OTHERWISE PROVIDED BY LAW
7 OR HAS FAILED TO FILE A REPORT COMPLYING WITH THE REQUIREMENTS OF
8 SUBSECTION (3), THE COMMISSIONER OF THE FINANCIAL INSTITUTIONS
9 BUREAU SHALL RECOMMEND THE SUSPENSION, AND THE COMMISSIONER SHALL
10 SUSPEND THE PERMIT, REGISTRATION, OR CERTIFICATE OF APPROVAL
11 UNTIL EACH FUND IS MADE WHOLE OR UNTIL THE DEFICIENCY IS OTHER-
12 WISE RESOLVED TO THE SATISFACTION OF THE COMMISSIONER. THE COM-
13 MISSIONER SHALL TAKE ANY ADDITIONAL ACTION AUTHORIZED BY
14 SECTION 18.

15 (9) THE COMMISSIONER MAY CAUSE TO BE EXAMINED, REVIEWED, OR
16 AUDITED BY THE FINANCIAL INSTITUTIONS BUREAU THE BOOKS AND
17 RECORDS OF CEMETERIES OR OTHER PERSONS PERTAINING TO FUNDS
18 RECEIVED FROM CONSUMERS THAT REQUIRE A DEPOSIT INTO AN ENDOWMENT
19 CARE FUND OR MERCHANDISE TRUST FUND. AN AUDIT MAY INCLUDE AN
20 EXAMINATION OF THE BOOKS AND RECORDS OF THE CEMETERY OR OTHER
21 PERSON AS WELL AS BOOKS AND RECORDS OF THE TRUSTEE AND CUSTODIAN
22 USED BY THE CEMETERY OR OTHER PERSON. A CEMETERY OR OTHER PERSON
23 SHALL AUTHORIZE THE TRUSTEES AND CUSTODIANS TO OPEN THEIR RECORDS
24 OF THE CEMETERY'S TRUST FUNDS TO THE COMMISSIONER OF THE FINAN-
25 CIAL INSTITUTIONS BUREAU UPON REQUEST. AN INDIVIDUAL OR HIS OR
26 HER HEIR WHO HAS A DIRECT FINANCIAL INTEREST IN AN ENDOWED CARE
27 TRUST FUND OR MERCHANDISE TRUST FUND OR BEING AN HEIR TO A PERSON

1 WHO IS INTERRED, ENTOMBED, OR INURNED IN THE CEMETERY MAY HAVE
2 ACCESS TO EXISTING REPORTS OF THE ENDOWED CARE FUND AND MERCHAN-
3 DISE TRUST FUND THROUGH THE COMMISSIONER, THE CEMETERY, OR BOTH.

4 (10) A CEMETERY OR OTHER PERSON THAT HAS NOT SOLD, PROVIDED,
5 OR AGREED TO SELL OR PROVIDE CEMETERY MERCHANDISE OR SERVICES ON
6 A PREPAID BASIS DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR
7 AND THAT HAS NO OBLIGATIONS WITH RESPECT TO ANY OUTSTANDING PRE-
8 PAID CONTRACT FOR CEMETERY MERCHANDISE OR SERVICES SHALL SUBMIT A
9 SWORN STATEMENT INDICATING DURING THE IMMEDIATELY PRECEDING CAL-
10 ENDAR YEAR A LACK OF ANY OUTSTANDING PREPAID OBLIGATIONS OR CON-
11 TRACTS THAT WOULD REQUIRE A DEPOSIT INTO A TRUST FUND OR
12 ACCOUNT. THIS STATEMENT SATISFIES THE MERCHANDISE TRUST ACCOUNT
13 REPORTING REQUIREMENTS IMPOSED IN SUBSECTION (7).

14 (11) A CEMETERY OR OTHER PERSON WHOSE BOOKS AND RECORDS HAVE
15 BEEN AUDITED BY THE FINANCIAL INSTITUTIONS BUREAU SHALL REIMBURSE
16 THE COMMISSIONER OF THE FINANCIAL INSTITUTIONS BUREAU FOR THE
17 ACTUAL COST OF ANY AUDIT, EXAMINATION, OR REVIEW OF BOOKS AND
18 RECORDS CONDUCTED UNDER THIS ACT.

19 (12) ~~-(7)-~~ All fees, charges, and penalties collected under
20 this act, other than fines prescribed in section 21, shall be
21 paid to the commissioner. Upon receipt, the commissioner shall
22 remit funds received to the department of treasury for deposit in
23 the general fund of the state. THE FEES IMPOSED FOR THE AUDIT,
24 EXAMINATION, OR REVIEW OF RECORDS UNDER THIS ACT CONDUCTED BY THE
25 FINANCIAL INSTITUTIONS BUREAU ARE EARMARKED FOR THE FINANCIAL
26 INSTITUTIONS BUREAU.

1 (13) A REPORT SUBMITTED IN COMPLIANCE WITH THIS SECTION
2 SUPERSEDES THE REQUIREMENTS OF SECTION 10(1).

3 SEC. 16A. (1) SUBJECT TO SUBSECTION (4), A CEMETERY OR
4 OTHER PERSON IS CONSIDERED TO HAVE SATISFIED THE TRUST FUND
5 REQUIREMENTS OF THIS ACT WHEN IT HAS DEPOSITED FUNDS IN ACCORD-
6 ANCE WITH THE REQUIREMENTS SET FORTH IN THIS ACT, AND THE CEME-
7 TERY OR OTHER PERSON DOES NOT INCUR ANY ADDITIONAL TRUST FUND
8 LIABILITY OR BECOME OBLIGATED TO MAKE ANY ADDITIONAL DEPOSITS TO
9 THE TRUST FUND DUE TO THE INVESTMENT PERFORMANCE OF THE TRUST
10 FUNDS OR ANY INDIVIDUAL SECURITIES HELD IN THE TRUST FUND OR DUE
11 TO THE FLUCTUATION IN MARKET VALUE OF THE TRUST FUND OR ANY INDI-
12 VIDUAL SECURITIES HELD IN THE TRUST FUND.

13 (2) WHEN EXAMINING ANY TRUST ACCOUNT MAINTAINED PURSUANT TO
14 THIS ACT, THE COMMISSIONER'S EXAMINATION IS LIMITED TO DETERMIN-
15 ING WHETHER THE CEMETERY MADE DEPOSITS AND WITHDRAWALS IN ACCORD-
16 ANCE WITH THIS ACT AND WHETHER THE TRUST FUNDS ARE INVESTED IN
17 ACCORDANCE WITH THIS ACT. THE COMMISSIONER HAS NO BASIS FOR
18 EVALUATING THE MARKET VALUE OF ANY TRUST ACCOUNT OR OF ANY INDI-
19 VIDUAL SECURITIES HELD IN ANY TRUST ACCOUNT UNLESS THE COMMIS-
20 SIONER HAS DETERMINED THAT A PARTICULAR INVESTMENT OR SECURITY IS
21 NOT PERMITTED BY SECTION 1 OF ACT NO. 177 OF THE PUBLIC ACTS OF
22 1937, BEING SECTION 555.201 OF THE MICHIGAN COMPILED LAWS.

23 (3) FOR ALL FUNDS HELD IN TRUST PURSUANT TO THIS ACT, THE
24 CEMETERY OR OTHER PERSON, WITHOUT THE NECESSITY OF HAVING TO
25 OBTAIN PRIOR APPROVAL FROM ANY COURT IN THIS STATE, MAY DESIGNATE
26 A NEW TRUSTEE AND DEPOSITORY IN ACCORDANCE WITH THIS ACT; MAY
27 INVEST THE FUNDS IN ACCORDANCE WITH SECTION 1 OF ACT NO. 177 OF

1 THE PUBLIC ACTS OF 1937; AND MAY DESIGNATE AN INVESTMENT ADVISER
2 REGISTERED PURSUANT TO THE INVESTMENT ADVISERS ACT OF 1940, TITLE
3 II OF CHAPTER 686, 54 STAT. 847, 15 U.S.C. 80b-1 TO 80b-21, TO
4 DIRECT THE INVESTMENT OF THE FUNDS; NOTWITHSTANDING ANY CONTRARY
5 LIMITATION CONTAINED IN THE TRUST AGREEMENT.

6 (4) IF THE COMMISSIONER HAS DETERMINED THAT A PARTICULAR
7 INVESTMENT OR SECURITY HELD IN A TRUST FUND IS NOT PERMITTED BY
8 SECTION 1 OF ACT NO. 177 OF THE PUBLIC ACTS OF 1937, THEN THE
9 COMMISSIONER MAY REQUIRE THE CEMETERY OR OTHER PERSON TO SELL THE
10 SECURITY OR INVESTMENT AND MAY IMPOSE AN ADDITIONAL TRUST FUND
11 DEPOSIT LIABILITY ON THE CEMETERY OR OTHER PERSON BASED UPON THE
12 DIFFERENCE BETWEEN THE PURCHASE PRICE AND THE SALES PRICE OF THAT
13 SECURITY OR INVESTMENT. ANY ACTION BY THE COMMISSIONER UNDER
14 THIS SUBSECTION IS NOT OPERABLE UNTIL ALL APPEALS HAVE BEEN
15 EXHAUSTED OR UNTIL THE TIME PERIODS FOR APPEALS AS OF RIGHT HAVE
16 RUN.

17 SEC. 16B. (1) A PURCHASER OF PRENEED CEMETERY SERVICES MAY
18 CANCEL A CONTRACT FOR THOSE SERVICES THAT HAVE NOT BEEN PERFORMED
19 AND RECEIVE A REFUND EQUAL TO 90% OF THE PURCHASE PAID PLUS ANY
20 APPLICABLE EARNINGS HELD IN TRUST. THE CANCELLATION MAY OCCUR AT
21 ANY TIME AFTER EXECUTION OF THE CONTRACT.

22 (2) A PURCHASER HAS AN UNRESTRICTED RIGHT TO CANCEL A
23 PRENEED CONTRACT, INCLUDING A CONTRACT FOR BURIAL RIGHTS, WITHIN
24 10 DAYS AFTER THE DATE OF SALE AND RECEIVE A REFUND OF 100% OF
25 THE PURCHASE PAID.

26 (3) A PURCHASER OF CEMETERY MERCHANDISE HAS AN UNRESTRICTED
27 RIGHT TO CANCEL A PRENEED CONTRACT WITH RESPECT TO ANY

1 MERCHANDISE THAT HAS NOT BEEN DELIVERED UP TO 48 HOURS BEFORE THE
2 DEATH OF THE CONTRACT BENEFICIARY AND RECEIVE A REFUND EQUAL TO
3 90% OF THE PURCHASE PAID PLUS ALL APPLICABLE EARNINGS HELD IN THE
4 MERCHANDISE TRUST FUND. THIS SUBSECTION DOES NOT INCLUDE A CEME-
5 TERY MARKER UNDER CIRCUMSTANCES WHERE THE SELLER DELIVERS AND
6 SURRENDERS CONTROL OVER THE CEMETERY MARKER TO AN INDEPENDENT
7 THIRD PARTY WHO ISSUES A RECEIPT TO THE BUYER.

8 (4) A SELLER THAT ELECTS TO DEPOSIT LESS THAN 90% OF THE
9 RETAIL PRICE OF CEMETERY MERCHANDISE INTO A MERCHANDISE TRUST
10 FUND SHALL ESTABLISH A SEPARATE CANCELLATION RESERVE FUND AND
11 SHALL DEPOSIT INTO THAT FUND 10% OF THE RETAIL PRICE OF ALL CEME-
12 TERY MERCHANDISE SOLD THAT REQUIRES A TRUST DEPOSIT. THE DEPOS-
13 ITS SHALL BE MADE UNTIL THE FUND EQUALS 10% OF THE SELLER'S SALES
14 VOLUME FOR CEMETERY MERCHANDISE SALES FOR THE IMMEDIATELY PRECED-
15 ING CALENDAR YEAR, AND THE SELLER SHALL AGAIN MAKE SIMILAR DEPOS-
16 ITS AT ANY TIME THAT THE BALANCE IN THE FUND DROPS BELOW 10% OF
17 THE SELLER'S SALES VOLUME FOR CEMETERY MERCHANDISE SALES FOR THE
18 IMMEDIATELY PRECEDING CALENDAR YEAR. THE SELLER MAY WITHDRAW ALL
19 INCOME FROM THE FUND ON A QUARTERLY BASIS AFTER THE AMOUNT
20 REQUIRED TO BE DEPOSITED BY THIS SECTION HAS BEEN DEPOSITED.
21 INSTEAD OF MAINTAINING A CANCELLATION RESERVE ACCOUNT, A SELLER
22 MAY PROVIDE ON AN ANNUAL BASIS AN IRREVOCABLE LETTER OF CREDIT
23 EQUAL TO 10% OF THE SELLER'S SALES VOLUME FOR CEMETERY MERCHAN-
24 DISE SALES FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR.

25 SEC. 18A. A PERSON OR BUSINESS ENTITY HOLDING A PERMIT
26 UNDER THIS ACT, INCLUDING AN EMPLOYEE OR AGENT OF THE HOLDER,
27 SHALL NOT DO ANY OF THE FOLLOWING:

1 (A) MAKE A FALSE OR MISLEADING STATEMENT, ORAL OR WRITTEN,
2 REGARDING THE SALE OF CEMETERY MERCHANDISE OR CEMETERY SERVICES
3 FOR THE PURPOSE OF INDUCING A PERSON TO PURCHASE CEMETERY MER-
4 CHANDISE OR CEMETERY SERVICES.

5 (B) ADVERTISE OR OFFER CEMETERY MERCHANDISE OR CEMETERY
6 SERVICES FOR SALE IN A MANNER THAT IS FALSE, MISLEADING, DECEP-
7 TIVE, OR UNFAIR.

8 (C) PRACTICE FRAUD OR DECEPTION IN OBTAINING AN AGREEMENT TO
9 PURCHASE CEMETERY MERCHANDISE OR SERVICES.

10 (D) REFUSE TO DISCLOSE BOOKS AND RECORDS REQUIRED TO BE
11 MAINTAINED AND DISCLOSED UNDER THIS ACT.

12 (E) SPONSOR OR ENGAGE IN SOLICITATIONS THAT ARE INTIMIDAT-
13 ING, VEXATIOUS, FRAUDULENT, OR MISLEADING, OR THAT TAKE UNFAIR
14 ADVANTAGE OF A PERSON'S IGNORANCE OR EMOTIONAL VULNERABILITY.

15 (F) CHARGE A MARKER INSTALLMENT FEE EXCEPT UNDER CIRCUM-
16 STANCES WHERE THE INSTALLMENT FEE IS CHARGED TO ALL PERSONS AND
17 AT THE SAME RATE.

18 (G) VIOLATE THIS ACT OR A RULE PROMULGATED UNDER THIS ACT.

19 SEC. 18B. (1) A PERSON OR BUSINESS ENTITY THAT SELLS OR
20 OFFERS TO SELL EITHER CEMETERY MERCHANDISE OR SERVICES OR FUNERAL
21 MERCHANDISE OR SERVICES AS PART OF THE SAME TRANSACTION OR SERIES
22 OF TRANSACTIONS SHALL DO ALL OF THE FOLLOWING:

23 (A) REFRAIN FROM MANIPULATING THE RELATIVE PRICES OF THE
24 MERCHANDISE OR SERVICES SO AS TO ALLOCATE A DISPROPORTIONATE
25 SHARE OF THE TOTAL PRICE TO ANY OF THE MERCHANDISE OR SERVICES.

26 (B) CHARGE THE SAME PRICES TO ALL CUSTOMERS WITHOUT REGARD
27 TO WHETHER THE CUSTOMER DOES BUSINESS WITH BOTH A FUNERAL

1 ESTABLISHMENT AND AN AFFILIATED CEMETERY. HOWEVER, THE PRICE FOR
2 FUNERAL OR CEMETERY GOODS AND SERVICES MAY PROVIDE FOR A DISCOUNT
3 FOR GROUPINGS OF THOSE GOODS AND SERVICES WITHIN THE SEPARATE
4 CATEGORIES OF FUNERAL OR CEMETERY GOODS AND SERVICES ONLY.
5 DISCOUNTS FOR GOODS AND SERVICES SHALL NOT BE PROVIDED FOR BOTH
6 CEMETERY AND FUNERAL GOODS AND SERVICES.

7 (C) REFRAIN FROM BASING ANY BENEFIT, DISCOUNT, OR OTHER
8 PREFERENTIAL PRICE OR TREATMENT ON THE CONDITION THAT THE CUS-
9 TOMER AGREES TO DO BUSINESS WITH BOTH A FUNERAL ESTABLISHMENT AND
10 ITS AFFILIATED CEMETERY.

11 (2) A CEMETERY OR OTHER PERSON SHALL FURNISH, FOR RETENTION,
12 TO ANYONE WHO INQUIRES IN PERSON ABOUT BURIAL RIGHTS, CEMETERY
13 MERCHANDISE, OR CEMETERY SERVICES, BEFORE ANY DISCUSSION OR
14 SELECTION OF SPECIFIC ITEMS TAKES PLACE, A PRINTED OR TYPEWRITTEN
15 LIST SPECIFYING THE RANGE OF RETAIL PRICES FOR ALL BURIAL RIGHTS,
16 CEMETERY MERCHANDISE, AND CEMETERY SERVICES OFFERED. THE LIST
17 SHALL INCLUDE THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE CEM-
18 ETERY AND STATE THAT THE PURCHASER MAY CHOOSE ONLY THE ITEMS THAT
19 THE PURCHASER DESIRES.

20 (3) A CEMETERY OR OTHER PERSON SHALL FURNISH, FOR RETENTION,
21 TO EACH PURCHASER OF BURIAL RIGHTS, CEMETERY MERCHANDISE, OR CEM-
22 ETERY SERVICES A COPY OF THE CEMETERY'S RULE IF AVAILABLE AND A
23 WRITTEN AGREEMENT WHICH LISTS THE BURIAL RIGHTS, CEMETERY MER-
24 CHANDISE, AND CEMETERY SERVICES PURCHASED, TOGETHER WITH THE
25 PRICES FOR THE BURIAL RIGHTS, CEMETERY MERCHANDISE, AND CEMETERY
26 SERVICES PURCHASED; THE TERMS OF PAYMENT; THE NAME, ADDRESS, AND
27 TELEPHONE NUMBER OF THE CEMETERY; THE SIGNATURES OF THE PURCHASER

1 AND A REPRESENTATIVE OF THE CEMETERY; AND THE DATE THE AGREEMENT
2 WAS SIGNED.

3 (4) UPON REQUEST, A CEMETERY OR OTHER PERSON SHALL TELEPHON-
4 ICALLY PROVIDE INFORMATION REGARDING THE PRICES OF BURIAL RIGHTS,
5 CEMETERY MERCHANDISE, AND CEMETERY SERVICES TO A PROSPECTIVE
6 PURCHASER.

7 Sec. 21. (1) A person, firm, partnership, association, or
8 corporation who violates this act is guilty of a ~~misdemeanor~~
9 FELONY, and, if a natural person, the first offense ~~shall be~~ IS
10 punishable by a fine of not more than ~~\$100.00~~ \$10,000.00 or
11 imprisonment for not more than ~~90 days~~ 5 YEARS, and a second OR
12 SUBSEQUENT offense ~~shall be~~ IS punishable by a fine of not more
13 than ~~\$500.00~~ \$25,000.00 or imprisonment for not more than ~~+~~
14 ~~year~~ 10 YEARS, or both.

15 (2) If the violator is other than a natural person, the
16 first offense ~~shall be~~ IS punishable by a fine of not more than
17 ~~\$100.00~~ \$10,000.00, and ~~the~~ A second OR SUBSEQUENT offense
18 ~~shall be~~ IS punishable by a fine of not more than ~~\$1,000.00~~
19 \$25,000.00.

20 Section 2. This amendatory act shall take effect January 1,
21 1994.

22 Section 3. This amendatory act shall not take effect unless
23 all of the following bills of the 87th Legislature are enacted
24 into law:

25 (a) Senate Bill No. _____ or House Bill No. 5189 (request
26 no. 00738'93 **).

1 (b) Senate Bill No. _____ or House Bill No. 5188 (request
2 no. 00739'93 *).