



# HOUSE BILL No. 5188

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 1804, 1809, 1810, 1811, and 1812 of Act No. 299 of the Public Acts of 1980, entitled as amended "Occupational code," section 1810 as amended by Act No. 15 of the Public Acts of 1990, being sections 339.1804, 339.1809, 339.1810, 339.1811, and 339.1812 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1804, 1809, 1810, 1811, and 1812 of Act  
2 No. 299 of the Public Acts of 1980, section 1810 as amended by  
3 Act No. 15 of the Public Acts of 1990, being sections 339.1804,  
4 339.1809, 339.1810, 339.1811, and 339.1812 of the Michigan  
5 Compiled Laws, are amended to read as follows:

6 Sec. 1804. (1) An individual whose name appears in  
7 connection with that of a funeral establishment ~~shall be~~ IS  
8 considered as actively engaged in the practice of funeral

1 directing or the practice of mortuary science and ~~shall be~~ is  
2 the holder of a license for the practice of mortuary science.  
3 ~~If a funeral establishment is a corporation or partnership, each~~  
4 ~~active member of the corporation or partnership, together with~~  
5 ~~each individual whose name appears or is used in connection with~~  
6 ~~the name of the corporation or partnership, shall be the holder~~  
7 ~~of a license for the practice of mortuary science.~~

8 (2) ~~This article shall not prevent a funeral establishment~~  
9 ~~from using or continuing to use an otherwise lawful corporate or~~  
10 ~~partnership name after the death or retirement of a member if~~  
11 ~~each active member or employee is properly licensed under this~~  
12 ~~article.~~ THE NAME OF AN INDIVIDUAL WHO IS NOT A MORTUARY SCIENCE  
13 LICENSEE SHALL NOT BE USED IN CONNECTION WITH A FUNERAL ESTAB-  
14 LISHMENT EXCEPT THAT A FUNERAL ESTABLISHMENT MAY USE OR CONTINUE  
15 TO USE THE NAME OF A MORTUARY SCIENCE LICENSEE IN AN OTHERWISE  
16 LAWFUL CORPORATE OR PARTNERSHIP NAME AFTER THE DEATH OR RETIRE-  
17 MENT OF THE LICENSEE OR AFTER SALE OF A BUSINESS.

18 Sec. 1809. (1) A funeral establishment shall be operated by  
19 a person who is the holder of a license for the practice of mor-  
20 tuary science. The FUNERAL establishment shall have conspicu-  
21 ously displayed at its entrance the name of the person OR PERSONS  
22 licensed to conduct the establishment. The name of the person OR  
23 PERSONS owning the funeral establishment shall be registered with  
24 the department. Failure to make full and complete disclosure of  
25 the owners shall be grounds for the revocation of the FUNERAL  
26 establishment license. EACH OWNER, OFFICER, OR PARTNER SHALL BE  
27 OF GOOD MORAL CHARACTER. THIS REQUIREMENT APPLIES TO EACH OWNER;

1 EACH OFFICER AND EACH SHAREHOLDER WHO OWNS 10% OR MORE OF THE  
2 STOCK IN THE CASE OF A CORPORATION; AND EACH PARTNER IN THE CASE  
3 OF A PARTNERSHIP. THE DEPARTMENT SHALL DENY THE APPLICATION FOR  
4 OR RENEWAL OF A LICENSE FOR A FUNERAL ESTABLISHMENT UNLESS THE  
5 OPERATOR OF THE FUNERAL ESTABLISHMENT WHO HAS AN OWNERSHIP INTER-  
6 EST IN THE FUNERAL ESTABLISHMENT IS A MEMBER OF THE BOARD OF  
7 DIRECTORS OF A FUNERAL ESTABLISHMENT AND IS A HOLDER OF A LICENSE  
8 FOR THE PRACTICE OF MORTUARY SCIENCE.

9 (2) A person whose license has been revoked under this  
10 article; THE CEMETERY REGULATION ACT, ACT NO. 251 OF THE PUBLIC  
11 ACTS OF 1968, BEING SECTIONS 456.521 TO 456.543 OF THE MICHIGAN  
12 COMPILED LAWS; OR THE PREPAID FUNERAL CONTRACT FUNDING ACT, ACT  
13 NO. 255 OF THE PUBLIC ACTS OF 1986, BEING SECTIONS 328.211 TO  
14 328.235 OF THE MICHIGAN COMPILED LAWS, shall not operate either  
15 directly or indirectly or hold an interest in a funeral  
16 establishment. This subsection ~~shall~~ DOES not prohibit a  
17 person whose license has been revoked from leasing property owned  
18 by the person for use as a funeral establishment if the person  
19 does not participate in the control or profit of the funeral  
20 establishment ~~otherwise~~ OTHER than as a lessor of the premises  
21 for a fixed rental not dependent upon earnings.

22 (3) A branch establishment shall be operated by a person who  
23 is the holder of a license for the practice of mortuary science.

24 (4) The department and the board may inspect the premises in  
25 which funeral directing is conducted, ~~or~~ where embalming is  
26 practiced, or where an applicant proposes to practice.

1 (5) A funeral establishment shall contain a preparation room  
2 equipped with tile, cement, or composition floor and necessary  
3 drainage and ventilation, and contain each necessary instrument  
4 or supply for the preparation and embalming of a dead human body  
5 for burial, transportation, or other disposition.

6 (6) A branch establishment shall comply with each require-  
7 ment or rule relating to a funeral establishment.

8 Sec. 1810. (1) A person ~~shall be~~ IS subject to the penal-  
9 ties of article 6 if the person commits 1 OR MORE of the  
10 following:

11 (a) Solicitation of a dead human body by a licensed person  
12 or an agent, assistant, representative, employee, or a person  
13 acting on behalf and with the knowledge and consent, express or  
14 implied, of the licensed person, whether the solicitation occurs  
15 after death or while death is impending; or the procuring or  
16 allowing directly or indirectly of a person to call upon an  
17 institution or individual by whose influence a dead human body  
18 may be turned over to the licensed person or funeral  
19 establishment.

20 (b) Procuring a person known as capper, steerer, or solici-  
21 tor to obtain funeral directing or embalming; or allowing or per-  
22 mitting a capper, steerer, or solicitor to obtain funeral direct-  
23 ing or embalming for a licensed person or funeral establishment.

24 (c) The direct or indirect payment or offer of payment of a  
25 commission by a licensed person or an agent, representative,  
26 assistant, or employee of the licensed person for the purpose of  
27 securing business.

1 (d) Aiding or abetting an unlicensed person to engage in the  
2 practice of funeral directing or embalming.

3 (e) Using profane, indecent, or obscene language OR BEING  
4 UNDER THE INFLUENCE OF AN INTOXICATING LIQUOR, A CONTROLLED SUB-  
5 STANCE, OR A COMBINATION OF INTOXICATING LIQUOR OR CONTROLLED  
6 SUBSTANCE in the presence of a dead human body, or within the  
7 immediate hearing OR PRESENCE of the family or relatives of a  
8 deceased, whose body has not yet been interred or otherwise dis-  
9 posed of.

10 (f) Solicitation or acceptance by a licensed person of a  
11 commission, ~~or~~ bonus, or rebate in consideration of recommend-  
12 ing or causing a dead human body to be disposed of in a cremato-  
13 ry, mausoleum, or cemetery.

14 (g) Using a casket or part of a casket ~~which~~ THAT has been  
15 previously used as a receptacle for, or in connection with, the  
16 burial or other disposition of a dead human body.

17 (h) A violation of a state law or municipal or county ordi-  
18 nance or regulation affecting the handling, custody, care, or  
19 transportation of a dead human body.

20 (i) Refusing to promptly surrender the custody of a dead  
21 human body ~~—~~ upon the express order of the person lawfully  
22 entitled to the custody.

23 (j) Failure to secure a permit for removal or burial of a  
24 dead human body before interment or disposal.

25 (k) Obtaining possession or embalming a dead human body  
26 without first being expressly directed or authorized to do so by  
27 ~~a relative~~ THE IMMEDIATE NEXT OF KIN of the deceased person or

1 a person entitled to custody WHICH, WHERE NO IMMEDIATE NEXT OF  
2 KIN IS IDENTIFIED, INCLUDES THE PERSONAL REPRESENTATIVE OF THE  
3 ESTATE OF THE DECEASED.

4 (l) Knowingly making a false statement on a certificate of  
5 death.

6 (m) Removing or embalming a dead human body if there is  
7 information indicating crime or violence in connection with the  
8 cause of death, unless permission of the county medical examiner  
9 has first been obtained.

10 (n) If a public officer or employee, an official of a public  
11 institution, convalescent home, private nursing home, maternity  
12 home, public or private hospital, physician or surgeon, or any  
13 other person having a professional relationship with a decedent,  
14 or county medical examiner or other public official having tempo-  
15 rary custody of the decedent, sending or causing to be sent to a  
16 person or establishment licensed under this article the remains  
17 of a deceased person without having first ~~made inquiry~~ INQUIRED  
18 as to the desires of the next of kin and of the person who may be  
19 chargeable with the funeral expenses of the decedent. If kin is  
20 found, the person's authority and directions shall govern the  
21 disposal of the remains of the decedent.

22 (o) If a licensee, receiving remains in violation of the  
23 requirements of subdivision (n) and ~~making a charge~~ CHARGING  
24 for a service in connection with the remains before the delivery  
25 of the remains as stipulated by the kin. This subdivision  
26 ~~shall~~ DOES not prevent a person or FUNERAL establishment  
27 licensed under this article from charging and being reimbursed

1 for services rendered in connection with the removal of the  
2 remains of a deceased person in case of accidental or violent  
3 death, and rendering necessary services required until the next  
4 of kin or the person who is chargeable with the funeral expenses  
5 is notified.

6 (p) If a funeral establishment or a licensee, entering  
7 ~~upon~~ INTO an agreement, directly or indirectly, in which  
8 SERVICES INVOLVING the practice of ~~embalming or funeral direct~~  
9 ~~ing is~~ ACTIVITIES REGULATED BY THIS ARTICLE ARE to be rendered  
10 in consideration for the funeral establishment, licensed person  
11 or an agent, assistant, or representative of the establishment or  
12 licensed person, being designated as beneficiary in an insurance  
13 policy or certificate. This subdivision ~~shall~~ DOES not govern  
14 or limit the authority of an administrator or executor, trustee,  
15 or other person having a fiduciary relationship with the  
16 deceased.

17 (q) Failure to comply with part 138 of the public health  
18 code, Act No. 368 of the Public Acts of 1978, being sections  
19 333.13801 to 333.13819 of the Michigan Compiled Laws.

20 (R) IF A LICENSEE UNDER THIS ARTICLE, FAILING TO PROPERLY  
21 SUPERVISE ACTIVITIES REGULATED BY THIS ARTICLE THAT ARE PERFORMED  
22 BY A RESIDENT TRAINEE WORKING UNDER THE LICENSEE'S SUPERVISION OR  
23 FAILURE TO PREVENT A NONLICENSED PERSON WITH WHOM THE LICENSEE IS  
24 AFFILIATED FROM PERFORMING ACTIVITIES REQUIRING LICENSURE UNDER  
25 THIS ARTICLE.

1 (S) CHARGES A CASKET HANDLING FEE EXCEPT UNDER CIRCUMSTANCES  
2 WHERE THE CASKET FEE IS CHARGED TO ALL PERSONS AND AT THE SAME  
3 RATE.

4 (T) DIRECTLY OR INDIRECTLY CONTACTING INDIVIDUALS OR PERSONS  
5 IN HOSPITALS, REST HOMES, NURSING HOMES, OR SIMILAR INSTITUTIONS  
6 FOR THE PURPOSE OF SOLICITING PRENEED FUNERAL CONTRACTS OR MAKING  
7 FUNERAL OR FINAL DISPOSITION ARRANGEMENTS WITHOUT FIRST HAVING  
8 BEEN SPECIFICALLY REQUESTED BY THE PERSON TO DO SO.

9 (U) DIRECTLY OR INDIRECTLY EMPLOYING ANY AGENT, ASSISTANT,  
10 EMPLOYEE, INDEPENDENT CONTRACTING PERSON, OR ANY OTHER PERSON TO  
11 CALL UPON INDIVIDUALS OR PERSONS IN HOSPITALS, REST HOMES, NURS-  
12 ING HOMES, OR SIMILAR INSTITUTIONS FOR THE PURPOSE OF SOLICITING  
13 PRENEED FUNERAL CONTRACTS OR MAKING FUNERAL OR FINAL DISPOSITION  
14 ARRANGEMENTS WITHOUT FIRST HAVING BEEN SPECIFICALLY REQUESTED BY  
15 THE PERSON TO DO SO.

16 (V) FAILING TO PROVE THAT ALL TRUST FUND OBLIGATIONS UNDER  
17 THE CEMETERY REGULATION ACT, ACT NO. 251 OF THE PUBLIC ACTS OF  
18 1968, BEING SECTIONS 456.521 TO 456.543 OF THE MICHIGAN COMPILED  
19 LAWS, AND THE PREPAID FUNERAL CONTRACT FUNDING ACT, ACT NO. 255  
20 OF THE PUBLIC ACTS OF 1986, BEING SECTIONS 328.211 TO 328.235 OF  
21 THE MICHIGAN COMPILED LAWS, HAVE BEEN FULLY MET OR RESOLVED TO  
22 THE SATISFACTION OF THE DEPARTMENT.

23 (2) The department, in consultation with the director of  
24 public health, shall promulgate rules to prescribe training stan-  
25 dards for licensees and nonlicensees who handle medical waste in  
26 a funeral establishment.

1 (3) A licensee who owns or operates a funeral establishment  
 2 shall train his or her employees pursuant to the rules  
 3 promulgated under subsection (2).

4 (4) THIS ARTICLE DOES NOT PROHIBIT GENERAL ADVERTISING OR  
 5 PRENEED SOLICITATION BY A LICENSEE EXCEPT WHERE SPECIFICALLY PRO-  
 6 HIBITED BY THIS SECTION.

7 Sec. 1811. (1) The purchase of a vault or similar recepta-  
 8 cle designed or intended to enclose or receive a casket, coffin,  
 9 or other similar container, OR ANY OTHER FUNERAL GOODS OR SERV-  
 10 ICES OR CEMETERY GOODS OR SERVICES from a particular individual,  
 11 partnership, association, or corporation ~~shall not be~~ IS NOT  
 12 required as a condition to burial in a cemetery in this state OR  
 13 TO THE PROVIDING OF FUNERAL OR CEMETERY GOODS OR SERVICES AVAIL-  
 14 ABLE AT A FUNERAL ESTABLISHMENT. There shall not be ~~a~~ discrim-  
 15 ination by price, burial fee, or otherwise by reason of a failure  
 16 to purchase the vault or similar receptacle OR ANY OTHER FUNERAL  
 17 GOODS OR SERVICES OR CEMETERY GOODS OR SERVICES from or under the  
 18 direction of the cemetery, ~~or~~ the owner of the cemetery, A  
 19 FUNERAL ESTABLISHMENT, OR A PERSON HOLDING A LICENSE FOR THE  
 20 PRACTICE OF AN ACTIVITY REGULATED BY THIS ARTICLE.

21 (2) This section ~~shall~~ DOES not limit the right of a ceme-  
 22 tery to require the use of a vault in a burial in the cemetery.

23 Sec. 1812. (1) An individual, partnership, association,  
 24 municipal corporation, body politic, or corporation ~~which~~ THAT  
 25 owns or ~~conducts~~ OPERATES, either directly or indirectly, a  
 26 cemetery or burial ground in this state ~~shall not~~ MAY  
 27 ESTABLISH, own, manage, supervise, operate, or maintain, either

1 directly or indirectly, a funeral establishment, or MAY permit an  
2 officer, agent, or employee to own, ESTABLISH, MANAGE, SUPERVISE,  
3 OPERATE, or maintain a funeral establishment. ~~This subsection~~  
4 ~~shall not apply to an elected official of a city, village, town-~~  
5 ~~ship, or county who serves as an ex officio member of a local~~  
6 ~~cemetery board as a result of holding that office.~~ THE DEPART-  
7 MENT SHALL NOT ISSUE A FUNERAL ESTABLISHMENT LICENSE TO AN OWNER  
8 OF, A PERSON HAVING CONTROLLING INTEREST IN, OR AN OFFICER,  
9 AGENT, OR EMPLOYEE OF A CEMETERY REGULATED BY THE CEMETERY REGU-  
10 LATION ACT, ACT NO. 251 OF THE PUBLIC ACTS OF 1968, BEING SEC-  
11 TIONS 456.521 TO 456.543 OF THE MICHIGAN COMPILED LAWS, UNLESS  
12 THAT PERSON HAS PROVIDED TO THE DEPARTMENT EVIDENCE THAT ALL  
13 TRUST FUND OBLIGATIONS, INCLUDING, BUT NOT LIMITED TO, OBLIGA-  
14 TIONS RELATING TO AN ENDOWMENT CARE FUND OR MERCHANDISE TRUST  
15 ACCOUNT, AN ACCOUNT FUNDING PREPAID FUNERAL GOODS OR SERVICES, A  
16 CONSTRUCTION TRUST FUND, OR A DEVELOPMENT TRUST FUND HAVE BEEN  
17 FULLY MET OR UNLESS ANY DEFICIENCY HAS BEEN RESOLVED TO THE SAT-  
18 ISFACTION OF THE DEPARTMENT.

19 (2) ~~An individual, partnership, association, municipal cor-~~  
20 ~~poration, body politic, or corporation which owns or conducts a~~  
21 ~~cemetery in this state shall not allow a funeral establishment to~~  
22 ~~be owned or conducted on property owned or leased by the cemetery~~  
23 ~~and used for cemetery purposes or designated as a cemetery.~~ A  
24 FUNERAL ESTABLISHMENT SHALL NOT CONDITION THE SALE OF ANY FUNERAL  
25 GOODS OR SERVICES UPON THE PURCHASE OF ANY INTERMENT RIGHTS OR  
26 CEMETERY GOODS OR SERVICES FROM ANY AFFILIATED CEMETERY.

1       (3) ~~This section shall not prohibit the owner of a private~~  
2 ~~burial ground used for the interment of the owner's family or the~~  
3 ~~owner's descendants to own or maintain a funeral establishment~~  
4 ~~under this article.~~ THE PRICES CHARGED BY A FUNERAL ESTABLISH-  
5 MENT SHALL BE THE SAME FOR ALL CUSTOMERS WITHOUT REGARD TO  
6 WHETHER THE CUSTOMER DOES BUSINESS WITH A PARTICULAR FUNERAL  
7 ESTABLISHMENT OR CEMETERY. THE PRICE FOR FUNERAL OR CEMETERY  
8 GOODS AND SERVICES MAY PROVIDE FOR A DISCOUNT FOR GROUPINGS OF  
9 THOSE GOODS AND SERVICES WITHIN THE SEPARATE CATEGORIES OF  
10 FUNERAL OR CEMETERY GOODS AND SERVICES ONLY. DISCOUNTS FOR GOODS  
11 AND SERVICES SHALL NOT BE PROVIDED FOR BOTH CEMETERY AND FUNERAL  
12 GOODS AND SERVICES.

13       (4) A FUNERAL ESTABLISHMENT THAT IS OWNED IN WHOLE OR IN  
14 PART BY A CEMETERY OR BY A PERSON WHO OWNS A CEMETERY SHALL NOT  
15 OFFER TO A POTENTIAL CUSTOMER ANY FUNERAL GOODS OR SERVICES  
16 UNLESS THAT FUNERAL ESTABLISHMENT DISCLOSES IN A CONSPICUOUS  
17 MANNER TO THE CUSTOMER ON ITS GENERAL PRICE LIST BOTH OF THE  
18 FOLLOWING:

19       (A) THAT THE CUSTOMER IS NOT OBLIGATED TO DO BUSINESS WITH  
20 OR PURCHASE ANY FUNERAL GOODS OR SERVICES FROM A CEMETERY AFFILI-  
21 ATED WITH THE FUNERAL ESTABLISHMENT.

22       (B) THAT A CEMETERY CANNOT OBLIGATE A CUSTOMER TO DO BUSI-  
23 NESS WITH OR PURCHASE ANY FUNERAL GOODS OR SERVICES FROM A  
24 FUNERAL ESTABLISHMENT.

25       Section 2. This amendatory act shall take effect January 1,  
26 1994.

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

4       (a) Senate Bill No. \_\_\_\_ or House Bill No. 5189 (request  
5 no. 00738'93 \*\*).

6       (b) Senate Bill No. \_\_\_\_ or House Bill No. 5187 (request  
7 no. 00739'93 a \*).