



# HOUSE BILL No. 5189

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 3, 4, 8, 20, and 22 of Act No. 255 of the Public Acts of 1986, entitled "Prepaid funeral contract funding act," being sections 328.213, 328.214, 328.218, 328.230, and 328.232 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 3, 4, 8, 20, and 22 of Act No. 255 of  
2 the Public Acts of 1986, being sections 328.213, 328.214,  
3 328.218, 328.230, and 328.232 of the Michigan Compiled Laws, are  
4 amended to read as follows:

5 Sec. 3. (1) "Casket" means any box or container consisting  
6 of 1 or more parts in which a dead human body is placed ~~prior~~  
7 ~~to~~ BEFORE interment, entombment, or cremation which may or may  
8 not be permanently interred, entombed, or cremated with the dead  
9 human body. A permanent interment or entombment receptacle

1 ~~which~~ THAT is designed or intended for use without a vault  
2 shall also be considered a casket.

3 (2) "Catafalque" means an ornamental or decorative object or  
4 structure ~~which~~ THAT is placed beneath, over, or around a  
5 casket, vault, or a dead human body ~~prior to~~ BEFORE final dis-  
6 position of the dead human body.

7 (3) "Cemetery burial vault or other outside container" means  
8 a box or container ~~which~~ THAT is used solely at the place of  
9 interment to permanently surround or enclose a casket and to sup-  
10 port the earth above the casket after burial. Cemetery burial  
11 vault or other outside container ~~shall~~ DOES not include a cata-  
12 falque, a combination unit, or any product ~~which~~ THAT is  
13 designed or intended to be used with a catafalque or combination  
14 unit. If a cemetery burial vault or other outside container is  
15 intended for use as a permanent burial receptacle for the remains  
16 of an adult human body, its inside dimensions shall be at least  
17 28 inches wide by 82 inches long by 24 inches high.

18 (4) "Combination unit" means any product consisting of a  
19 unit or a series of units ~~which~~ THAT are designed or intended  
20 to be used together as both a casket and as a permanent burial  
21 receptacle.

22 (5) "Consideration" or "contract price" means money and  
23 other property to be paid as total compensation to a contract  
24 seller or provider for the funeral services and funeral goods to  
25 be performed or furnished under a prepaid funeral contract. ~~but~~  
26 CONSIDERATION OR CONTRACT PRICE does not include finance charges,  
27 late payment penalties, payments required to be made to a

1 governmental agency at the time the contract is entered into, and  
2 income earned on the funds. Further, consideration or contract  
3 price ~~shall~~ DOES not include a commission as authorized by sec-  
4 tion 12(1). Money paid for the services to be performed under a  
5 prepaid funeral contract may be paid in a lump sum or in  
6 installments.

7 (6) "Contract" means a written, prepaid funeral contract and  
8 all documents pertinent to the terms of the contract under which,  
9 for consideration paid to a contract seller or a provider by or  
10 on behalf of a contract buyer ~~prior to~~ BEFORE the death of the  
11 contract beneficiary, a person promises to furnish, make avail-  
12 able, or provide funeral services or funeral goods after the  
13 death of a contract beneficiary.

14 (7) "Contract beneficiary" means an individual specified or  
15 implied in a prepaid funeral contract for whom the funeral serv-  
16 ices or funeral goods shall be performed or furnished after  
17 death.

18 (8) "Contract buyer" means an individual, including a con-  
19 tract beneficiary, who purchases funeral goods or funeral serv-  
20 ices pursuant to a prepaid funeral contract.

21 (9) "Contract seller" means a person who sells, makes avail-  
22 able, or provides prepaid funeral contracts.

23 (10) "Department" means the department of ~~licensing and~~  
24 ~~regulation~~ COMMERCE.

25 Sec. 4. (1) "Depository" means a state or national bank  
26 ~~which~~ THAT is a member of the federal deposit insurance  
27 corporation, a state or federal savings and loan association

1 ~~which~~ THAT is a member of the federal savings and loan  
2 insurance corporation, or a state or federally chartered credit  
3 union ~~which~~ THAT is insured by the national credit union admin-  
4 istration, or a trust company authorized to do business in this  
5 state. Depository includes the trust department, if any, of an  
6 entity referred to in this subsection.

7 (2) "Escrow agent" means a person who holds, invests, and  
8 disburses principal and income from the funds received under a  
9 prepaid funeral contract.

10 (3) "Funds" means all money or other consideration actually  
11 received from a contract buyer by a contract seller or provider  
12 or an assignee from the contract buyer in connection with any  
13 aspect of the sale of a prepaid funeral contract including  
14 finance charges. ~~but~~ FUNDS does not include late payment pen-  
15 alties, payments required to be made to a governmental agency at  
16 the time the contract is entered into, or a commission authorized  
17 by section 12(1).

18 (4) "Funeral goods" means items of merchandise sold or  
19 offered for sale or lease to consumers ~~which~~ THAT will be used  
20 in connection with a funeral or an alternative to a funeral or  
21 final disposition of human remains including, but not limited to,  
22 caskets, combination units, and catafalques. Funeral goods  
23 ~~shall~~ DO not include land or interests in land, crypts, lawn  
24 crypts, mausoleum crypts, or niches that are sold by a cemetery  
25 ~~which~~ THAT complies with the endowment care fund requirements  
26 of the cemetery regulation act, Act No. 251 of the Public Acts of  
27 1968, being sections 456.521 to 456.543 of the Michigan Compiled

1 Laws. In addition, funeral goods ~~shall~~ DO not include cemetery  
 2 burial vaults or other outside containers, markers, monuments,  
 3 urns, ~~and~~ OR merchandise items used for the purpose of memori-  
 4 alizing a decedent and placed on or in proximity to a place of  
 5 interment or entombment of a casket, catafalque, or vault or to a  
 6 place of inurnment which are sold ~~by a cemetery which deposits~~  
 7 ~~at least 130% of the cost of these items in a merchandise trust~~  
 8 ~~account established and operated~~ AND DEPOSITED IN A TRUST  
 9 ACCOUNT in accordance with the cemetery regulation act, Act  
 10 No. 251 of the Public Acts of 1968, being sections 456.521 to  
 11 456.543 of the Michigan Compiled Laws.

12 (5) "Funeral services" means services customarily performed  
 13 by a mortuary science licensee who is licensed pursuant to  
 14 ~~sections 1801 to 1812~~ ARTICLE 18 of the occupational code, Act  
 15 No. 299 of the Public Acts of 1980, being sections 339.1801 to  
 16 339.1812 of the Michigan Compiled Laws. ~~Further, funeral~~  
 17 FUNERAL services ~~includes~~ INCLUDE, but ~~is~~ ARE not limited to,  
 18 THE care of dead human remains, embalming, preparation of dead  
 19 human remains for final disposition, professional services relat-  
 20 ing to a funeral or an alternative to a funeral or final disposi-  
 21 tion of dead human remains, transportation of dead human remains,  
 22 limousine services, use of facilities or equipment for viewing  
 23 dead human remains, visitation, memorial services, or services  
 24 ~~which~~ THAT are used in connection with a funeral or AN alterna-  
 25 tive to a funeral, coordinating or conducting funeral rites or  
 26 ceremonies, and other services provided in connection with a

1 funeral, alternative to a funeral, or final disposition of dead  
2 human remains.

3 (6) "Guaranteed price contract" means a prepaid funeral con-  
4 tract under which funds received are held pursuant to an escrow  
5 agreement. The contract has a guaranteed fixed price for which  
6 specified funeral goods or funeral services are required to be  
7 sold to or made available for a contract buyer or for a contract  
8 beneficiary, regardless of the cost or value of the funeral goods  
9 or funeral services at the time of death of the contract  
10 beneficiary. Under the guaranteed price contract, additional  
11 consideration ~~shall~~ IS not ~~be~~ charged for ~~the originally~~  
12 ~~contracted for~~ THOSE funeral goods and funeral services. ~~at the~~  
13 ~~time of delivery of the funeral goods and funeral services con-~~  
14 ~~tracted for.~~

15 (7) "Income" means the money earned by the investment of the  
16 principal, including, but not limited to, interest, dividends,  
17 and gains or losses on the sale of, deposit of, or exchange of,  
18 property using invested principal amounts.

19 Sec. 8. (1) A registrant shall keep ~~—~~ in this state ~~—~~  
20 accurate accounts, books, and records of all transactions and  
21 accounts regulated by this act. Records ~~shall~~ include copies  
22 of all prepaid funeral contracts, the dates and amounts of pay-  
23 ments made and accepted under these contracts, the name and  
24 address of each contract buyer, the name and address of the con-  
25 tract beneficiaries, the name and address of each escrow agent,  
26 and any other records as the department may require to enable it  
27 to determine whether the registrant is complying with the

1 requirements of this act. Records shall be kept for at least 36  
2 months after performance of all obligations of each prepaid  
3 funeral contract or after the filing of the final special report  
4 which includes a contract ~~which~~ THAT has been performed.

5 (2) ~~At least once every 3 years~~ BEGINNING JULY 1, 1994 AND  
6 NOT LATER THAN JULY 1 OF EACH SUCCEEDING YEAR, a registrant  
7 ~~which~~ THAT serves as an escrow agent or ~~which~~ THAT has depos-  
8 ited funds with an escrow agent pursuant to section 12 shall  
9 secure a special report of limited review prepared by a licensed  
10 independent certified public accountant pertaining to prepaid  
11 funeral contract funds. The special report shall be on forms  
12 provided by the department or in any other format considered  
13 appropriate by the independent certified public accountant. The  
14 special report shall be prepared and dated within 90 days before  
15 the expiration of the registrant's certificate of registration  
16 and shall be furnished to the department with the registrant's  
17 application for renewal or, if an application for renewal is not  
18 filed, before the expiration of the certificate of registration.  
19 In preparing the special report, the independent certified public  
20 accountant ~~shall~~ IS not ~~be~~ required to review all prepaid  
21 funeral contracts, escrow agreements, escrow accounts, or records  
22 of the registrant, nor ~~shall~~ IS the independent certified  
23 public accountant ~~be~~ required to review ~~any~~ receipts or  
24 deposits by the registrant of prepaid funeral contract funds.  
25 The special report of the independent certified public accountant  
26 shall provide ALL OF the following assurances:

1 (a) That, based either upon a review of the registrant's  
2 agreements with escrow agents or depositories ~~which~~ THAT limit  
3 investments of the escrow funds by the escrow agents or deposito-  
4 ries to those investments permitted by this act ~~or~~ or ~~upon~~ a  
5 review of the investments of the escrow accounts, the investment  
6 requirements of section 12(4) have been complied with.

7 (b) In the case of escrow accounts where the registrant  
8 serves as the escrow agent, that withdrawals, as detailed in the  
9 periodic statements of the depositories in which the escrow  
10 accounts are maintained, have been made in accordance with this  
11 act.

12 (c) That no matters have come to the attention of the inde-  
13 pendent certified public accountant during the review of escrow  
14 account investments and withdrawals that gave cause to believe  
15 that the registrant has not complied with this act, or if any  
16 matters have come to his or her attention, the independent certi-  
17 fied public accountant shall include an explanation of the mat-  
18 ters ~~which~~ THAT caused the belief that the registrant has not  
19 complied with this act.

20 (3) The department ~~may~~ SHALL examine each special report  
21 required by this section and if the department determines on the  
22 basis of its review that THERE IS REASON TO BELIEVE the regis-  
23 trant or its agent has not held or invested funds in accordance  
24 with the requirements of this act or has failed to file a special  
25 report as required, THE DEPARTMENT SHALL HAVE ANY REPORT IN QUES-  
26 TION AUDITED BY THE FINANCIAL INSTITUTIONS BUREAU. IF THE  
27 COMMISSIONER OF THE FINANCIAL INSTITUTIONS BUREAU DETERMINES FROM



1 THAT AUDIT THAT A VIOLATION OF THIS ACT HAS OCCURRED, THE  
2 COMMISSIONER OF THE FINANCIAL INSTITUTIONS BUREAU SHALL RECOMMEND  
3 THAT the department ~~shall~~ take any appropriate corrective or  
4 penal action authorized by this act.

5 (4) The department may ~~examine, review, or audit~~ CAUSE TO  
6 BE EXAMINED, REVIEWED, OR AUDITED BY THE FINANCIAL INSTITUTIONS  
7 BUREAU the books and records of a contract seller or provider  
8 pertaining to funds received in payment for prepaid funeral  
9 contracts. An audit may include an examination of the books and  
10 financial records of the registrant as well as books and finan-  
11 cial records of escrow agents used by the registrant. A regis-  
12 trant shall authorize escrow agents to open their records of the  
13 registrant accounts to the department OR THE COMMISSIONER OF THE  
14 FINANCIAL INSTITUTIONS BUREAU upon request.

15 (5) For ~~the~~ purposes of complying with the requirements of  
16 this section, a registrant who has not sold, provided, or agreed  
17 to provide funeral goods or funeral services in accordance with a  
18 prepaid funeral contract and who has no obligations with respect  
19 to an outstanding prepaid funeral contract may submit a sworn  
20 statement that a prepaid funeral contract has not been sold, pro-  
21 vided, or agreed to and THAT there are no obligations  
22 outstanding. ~~THIS~~ THE DEPARTMENT SHALL ACCEPT THIS statement  
23 ~~shall be accepted in lieu~~ INSTEAD of the special report.

24 (6) A REGISTRANT WHOSE BOOKS AND RECORDS HAVE BEEN AUDITED  
25 BY THE FINANCIAL INSTITUTIONS BUREAU SHALL REIMBURSE THE COMMIS-  
26 SIONER OF THE FINANCIAL INSTITUTIONS BUREAU FOR THE ACTUAL COST

1 OF ANY AUDIT, EXAMINATION, OR REVIEW OF BOOKS AND RECORDS  
2 CONDUCTED UNDER THIS ACT.

3       Sec. 20. (1) Upon A complaint made by ~~any~~ A person, or  
4 upon its own initiative, the department may investigate alleged  
5 violations of this act or rules promulgated under this act by a  
6 registrant or any other person. The department may examine  
7 books, records, contracts, and other documents in possession of  
8 or under the control of ~~any~~ A registrant with or without the  
9 consent of that registrant and with or without a warrant autho-  
10 rizing the examination, or of any other person if that person  
11 consents to an examination or if the department obtains a warrant  
12 authorizing an examination. If the department determines that  
13 reasonable cause exists to believe that a violation has occurred,  
14 it shall do 1 of the following:

15       (a) If the alleged violation was committed by a person other  
16 than a registrant, the department shall refer the matter to the  
17 attorney general or a prosecuting attorney for criminal or civil  
18 action as provided in sections 23 and 24.

19       (b) If the alleged violation was committed by a registrant,  
20 the department shall do either of the following:

21       (i) Refer the matter to the attorney general for civil or  
22 criminal prosecution or enforcement.

23       (ii) Institute proceedings in compliance with the adminis-  
24 trative procedures act of 1969, Act No. 306 of the Public Acts of  
25 1969, being sections 24.201 to 24.328 of the Michigan Compiled  
26 Laws.

1 (iii) ISSUE A CEASE AND DESIST ORDER.

2 (2) If, after a hearing, the department determines that a  
3 registrant has violated the provisions of this act or ~~any~~ A  
4 rule promulgated pursuant to this act, the department shall do 1  
5 or more of the following:

6 (a) Suspend or revoke the registration.

7 (b) Impose a civil fine not to exceed \$5,000.00 for each  
8 violation and may suspend the registration until the fine is  
9 paid.

10 (c) Require restitution of funds paid pursuant to a prepaid  
11 funeral contract and restitution may include suspending the reg-  
12 istration until restitution is made.

13 (d) Impose a period of probation during which the registrant  
14 is required to comply with additional conditions imposed by the  
15 department in lieu of or in addition to the imposition of other  
16 penalties provided under this act.

17 (e) Impose restrictions upon the registrant's prepaid  
18 funeral business activities ~~which~~ THAT require additional  
19 accountability to the department.

20 (f) Issue a written warning to the registrant.

21 Sec. 22. (1) A person who converts funds paid pursuant to a  
22 prepaid funeral contract to his or her own use or benefit, other  
23 than as authorized by this act, ~~shall be~~ IS guilty of a felony  
24 ~~—~~ punishable by a fine of ~~\$5,000.00~~ NOT MORE THAN \$25,000.00,  
25 or imprisonment of not more than ~~5~~ 10 years, or both, for each  
26 violation.

1 (2) A person who violates any other provision of this act  
2 ~~shall be~~ IS guilty of a ~~misdemeanor,~~ FELONY punishable by a  
3 fine of not more than ~~\$1,000.00~~ \$10,000.00, or imprisonment for  
4 not more than ~~1 year~~ 5 YEARS, or both, for each violation.

5 Section 2. This amendatory act shall take effect January 1,  
6 1994.

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

10 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 5188  
11 (request no. 00739'93 \*).

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