



HOUSE BILL No. 6006

September 10, 1996, Introduced by Rep. Brackenridge and referred to the Committee on Commerce.

A bill to amend sections 2, 16, and 18 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, 456.536, and 456.538 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 2, 16, and 18 of Act No. 251 of the Public Acts of 1968, as amended by Act No. 132 of the Public Acts of 1982, being sections 456.522, 456.536, and 456.538 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 2. As used in this act:

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

(i) A burial ground for earth interments.

(ii) A mausoleum for crypt entombments.

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

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

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

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

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

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

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

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

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

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

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

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

1 (l) "Cemetery merchandise" means all merchandise sold to the
2 public by a cemetery, including vaults, concrete boxes, monu-
3 ments, memorials, and foundations.

4 (m) "Cemetery commissioner" or "commissioner" means the
5 director of ~~licensing and regulation~~ THE DEPARTMENT OF CONSUMER
6 AND INDUSTRY SERVICES or a designee of the director.

7 (N) "REGISTRANT" MEANS AN INDIVIDUAL, SOLE PROPRIETORSHIP,
8 PARTNERSHIP, ASSOCIATION, CORPORATION, COMMON LAW TRUST, OR A
9 COMBINATION OF THOSE LEGAL OR BUSINESS ENTITIES.

10 Sec. 16. (1) The commissioner shall require each cemetery
11 to establish and maintain an irrevocable endowment care fund as
12 required by section 35a of Act No. 87 of the Public Acts of 1855,
13 being section 456.35a of the Michigan Compiled Laws, or section
14 7a of Act No. 12 of the Public Acts of 1869, ~~as amended,~~ being
15 section 456.107a of the Michigan Compiled Laws, and to report
16 annually before July 1 of each year, on forms approved and fur-
17 nished by the commissioner, ENDOWMENT care fund information
18 required to be reported to the commissioner by ~~other statutes~~
19 LAW and information regarding the funds as the commissioner con-
20 siders pertinent in the public interest. A cemetery applying to
21 the commissioner as authorized by ~~other statutes~~ LAW for ~~a~~ AN
22 ENDOWMENT care fund deposit modification or waiver shall be
23 assessed the actual expenses for an examination or investigation
24 by the commissioner. The commissioner shall require each person
25 engaged as agent or seller, ~~as a means of livelihood~~ either
26 part time or full time, in the selling of burial rights,
27 entombment rights, or columbarium rights owned by a party other

1 than a cemetery or corporation subject to the ENDOWMENT care fund
2 requirements of other laws, to deposit 15% of all gross proceeds
3 received from the sales of those rights into the ~~irrevocable~~
4 ENDOWMENT care fund of the cemetery in which the rights are
5 located if an ~~irrevocable~~ ENDOWMENT care fund exists for that
6 cemetery. Excess sums on deposit in the ENDOWMENT CARE fund
7 ~~can~~ MAY be applied by a cemetery against future deposits. A
8 deposit required to be made by those persons shall be modified or
9 waived if the cemetery has received ~~a~~ AN ENDOWMENT care fund
10 deposit modification or waiver approved by the commissioner. The
11 total deposit for a single adult burial right sale or assignment
12 shall not be less than \$20.00.

13 (2) A cemetery which is required to register pursuant to
14 this act and an agent ~~which is~~ authorized by a cemetery or
15 acting on its behalf under an agreement or sales contract to sell
16 cemetery merchandise or cemetery services shall establish a mer-
17 chandise trust account and deposit a percentage of the gross pro-
18 ceeds received from the sales as determined by the commissioner.
19 The merchandise trust account shall be maintained exclusively for
20 the deposit of the money into a bank or trust company located in
21 this state under the terms of a written trust agreement approved
22 by the commissioner. The funds shall be deposited not later than
23 the month following their receipt.

24 (3) The total deposits to a merchandise trust for the sale
25 of cemetery burial vaults or other outside containers, other than
26 crypts installed underground and sold as part of a cemetery lot,
27 shall at all times be not less than the greater of \$100.00 per

1 vault or outside container or 130% of the total costs of the
2 containers covered by the MERCHANDISE trust. Money deposited in
3 connection with a sale shall be repaid within 30 days upon writ-
4 ten demand of purchaser. A burial vault shall be installed only
5 at need or by separate written authorization of the purchaser.
6 The cemetery shall have the right to withdraw the amount on
7 deposit for the delivered vault or outside container.

8 (4) A contract or agreement ~~made~~ with a purchaser of ceme-
9 tery merchandise and services shall contain a complete descrip-
10 tion of the cemetery merchandise purchased and of the services to
11 be rendered.

12 (5) The commissioner shall require each cemetery or ~~agent~~
13 authorized ~~by it acting on its behalf~~ AGENT to FILE A report
14 annually before July 1 of each year on forms provided by the
15 commissioner. The ~~reports~~ REPORT shall contain information
16 ~~as~~ the commissioner considers necessary to ascertain ~~that~~
17 COMPLIANCE WITH this act.

18 (6) If, after an audit by the commissioner's staff, a defi-
19 cit in the amount of required deposits to the trust funds is
20 found, the commissioner may assess a penalty not to exceed 10% of
21 the amount of the deficit. The cemetery ~~or entity of a~~
22 ~~cemetery~~ may request a hearing before the commissioner within 30
23 days after being notified of a deficit by the commissioner. ~~if,~~
24 ~~following the~~ AFTER NOTICE AND OPPORTUNITY FOR A hearing, IF the
25 ~~commissioner determines that~~ FINDING OF a deficit ~~does exist,~~
26 IS NOT REVERSED OR MODIFIED, THE COMMISSIONER MAY ASSESS an
27 additional penalty not to exceed 1.5% ~~may be assessed each~~

1 ~~month~~ on the unpaid monthly balance FOR EACH MONTH until the
2 deficit is paid in full.

3 (7) IF THE COMMISSIONER FINDS THAT A REGISTRANT HAS VIOLATED
4 THIS ACT OR A RULE PROMULGATED UNDER THIS ACT REGARDING THE OPER-
5 ATION OR MAINTENANCE OF AN ENDOWMENT CARE FUND INCLUDING, BUT NOT
6 LIMITED TO, VIOLATIONS REGARDING DEPOSITS TO AND WITHDRAWALS FROM
7 AN ENDOWMENT CARE FUND REGULATED BY THIS ACT, THE COMMISSIONER
8 MAY INVESTIGATE ANY ENDOWMENT CARE FUND MAINTAINED OR OPERATED
9 UNDER ACT NO. 87 OF THE PUBLIC ACTS OF 1855, BEING SECTIONS 456.1
10 TO 456.36 OF THE MICHIGAN COMPILED LAWS, OR ACT NO. 12 OF THE
11 PUBLIC ACTS OF 1869, BEING SECTIONS 456.101 TO 456.119 OF THE
12 MICHIGAN COMPILED LAWS, AND ORDER THE REGISTRANT TO PLACE THAT
13 ENDOWMENT CARE FUND UNDER THE CONTROL OF A FINANCIAL INSTITUTION
14 OR TRUST COMPANY, ACCEPTABLE TO THE COMMISSIONER, AS TRUSTEE OF
15 THE FUND. CONTROL OF THE ENDOWMENT CARE FUND BY THE FINANCIAL
16 INSTITUTION OR TRUST COMPANY SHALL BE AUTHORIZED PURSUANT TO A
17 WRITTEN TRUST AGREEMENT APPROVED BY THE COMMISSIONER AND SHALL
18 PROVIDE THAT THE AGREEMENT OPERATE UNTIL FURTHER ORDER OF THE
19 COMMISSIONER.

20 (8) ~~-(7)-~~ All fees, charges, and penalties collected under
21 this act, other than fines prescribed in section 21, shall be
22 paid to the commissioner. Upon receipt, the commissioner shall
23 remit funds received to the department of treasury for deposit in
24 the general fund of the state.

25 Sec. 18. (1) The commissioner may deny an application filed
26 under this act, ~~and refuse to issue a permit or registration,~~
27 ~~or~~ may suspend or revoke a permit or registration, or may

1 reprimand, place on probation, or take other disciplinary action
2 against the applicant OR REGISTRANT if the commissioner's inves-
3 tigation reveals facts which, with reference to the establishment
4 of a cemetery, show ~~inappropriate~~ ANY OF THE FOLLOWING:

5 (A) INAPPROPRIATE physical plans. ~~lack~~

6 (B) LACK of community need. ~~inadequate~~

7 (C) INADEQUATE experience, financial stability, or integrity
8 to protect the public welfare. ~~or when the commissioner finds~~
9 ~~that the~~

10 (D) THE applicant OR REGISTRANT or its officers or general
11 manager has done 1 or more of the following:

12 (i) ~~(a)~~ Made a false statement of a material fact in the
13 application.

14 (ii) ~~(b) Not complied~~ FAILED TO COMPLY with this act.

15 (iii) ~~(c)~~ Been FOUND guilty of a fraudulent act in connec-
16 tion with selling or otherwise dealing in cemetery lots, burial
17 rights, or services of a type required to be registered under
18 this act.

19 (iv) ~~(d)~~ Been FOUND guilty ~~in the judgment of the~~
20 ~~commissioner~~ of other conduct, whether of the same or different
21 character, than specified in this act which constitutes dishonest
22 and unfair dealing AS DETERMINED BY THE COMMISSIONER.

23 (v) ~~(e)~~ Violated the terms of an assurance of discontinu-
24 ance entered into with the commissioner pursuant to section
25 9(2).

26 (vi) ~~(f)~~ Adopted, enforced, or attempted to enforce, a
27 regulation of the cemetery which prohibits the installation of a

1 grave memorial or burial vault unless the grave memorial or
 2 burial vault was purchased from the cemetery. However, this sub-
 3 division ~~shall~~ DOES not prohibit a cemetery from adopting and
 4 enforcing consistent rules and regulations to be followed by both
 5 the cemetery and outside vendors as to the quality, size, shape,
 6 type, installation, and maintenance of the grave memorial or
 7 burial vault.

8 (2) If the commissioner denies an application for a permit
 9 or registration, or suspends or revokes an existing permit or
 10 registration required by this act, the denial, revocation, or
 11 suspension shall ~~revoke~~ OPERATE AS A REVOCATION OF the cemetery
 12 operation as to the sale or assignment of burial rights, entomb-
 13 ment rights, columbarium rights, cemetery merchandise, or ceme-
 14 tery services after the date of the suspension, revocation, or
 15 denial. The corporation shall fulfill all contractual obliga-
 16 tions and agreements entered into before the date of the suspen-
 17 sion, revocation, or denial, and shall make required interments
 18 for the owners of burial rights, entombment rights, or columbar-
 19 ium rights purchased before the date of suspension, revocation,
 20 or denial.

21 Section 2. This amendatory act shall not take effect unless
 22 both of the following bills of the 88th Legislature are enacted
 23 into law:

24 (a) Senate Bill No. _____ or House Bill No. 6007 (request
 25 no. 07697'96 a).

26 (b) Senate Bill No. _____ or House Bill No. 6008 (request
 27 no. 07697'96 b).