

HOUSE BILL No. 4782

June 11, 1999, Introduced by Rep. LaSata and referred to the Committee on Family and Civil Law.

A bill to amend 1968 PA 251, entitled
"Cemetery regulation act,"
by amending sections 2, 16, and 18 (MCL 456.522, 456.536, and
456.538), as amended by 1982 PA 132.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

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

4 (i) A burial ground for earth interments.

5 (ii) A mausoleum for crypt entombments.

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

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

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

- 1 (c) "Burial right" means a right of earth interment.
- 2 (d) "Entombment right" means the right of crypt entombment
3 in a mausoleum or in an aboveground vault.
- 4 (e) "Columbarium right" means the right of inurnment in a
5 columbarium for cremated remains.
- 6 (f) "Mausoleum" means a structure used, or intended to be
7 used, for the entombment in a crypt or crypts in the structure of
8 the remains of deceased persons.
- 9 (g) "Crypt" means a chamber in a mausoleum of sufficient
10 size to entomb the uncremated remains of a deceased person.
- 11 (h) "Columbarium" means a structure or room or other space
12 in a building or structure used or intended to be used for the
13 inurnment or deposit of cremated remains.
- 14 (i) "Crematory" means a building or structure, within which
15 the remains of deceased persons are or are intended to be
16 cremated.
- 17 (j) "Cremation" means the incineration of the body of the
18 deceased person.
- 19 (k) "Cemetery services" means all services offered to the
20 public, including grave opening, closings, and foundation
21 installation.
- 22 (l) "Cemetery merchandise" means all merchandise sold to the
23 public by a cemetery, including vaults, concrete boxes, monu-
24 ments, memorials, and foundations.
- 25 (m) "Cemetery commissioner" or "commissioner" means the
26 director of ~~licensing and regulation~~ THE DEPARTMENT OF CONSUMER
27 AND INDUSTRY SERVICES or a designee of the director.

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

4 Sec. 16. (1) The commissioner shall require each cemetery
5 to establish and maintain an irrevocable endowment care fund as
6 required by section 35a of ~~Act No. 87 of the Public Acts of~~
7 ~~1855, being section 456.35a of the Michigan Compiled Laws 1855~~
8 ~~PA 87, MCL 456.35A, or section 7a of Act No. 12 of the Public~~
9 ~~Acts of 1869, as amended, being section 456.107a of the Michigan~~
10 ~~Compiled Laws 1869 PA 12, MCL 456.107A, and to report annually~~
11 ~~before July 1 of each year, on forms approved and furnished by~~
12 ~~the commissioner, ENDOWMENT care fund information required to be~~
13 ~~reported to the commissioner by other statutes~~ LAW and informa-
14 tion regarding the funds as the commissioner considers pertinent
15 in the public interest. A cemetery applying to the commissioner
16 as authorized by ~~other statutes~~ LAW for ~~a~~ AN ENDOWMENT care
17 fund deposit modification or waiver shall be assessed the actual
18 expenses for an examination or investigation by the
19 commissioner. The commissioner shall require each person engaged
20 as agent or seller, ~~as a means of livelihood~~ either part time
21 or full time, in the selling of burial rights, entombment rights,
22 or columbarium rights owned by a party other than a cemetery or
23 corporation subject to the ENDOWMENT care fund requirements of
24 other laws, to deposit 15% of all gross proceeds received from
25 the sales of those rights into the ~~irrevocable~~ ENDOWMENT care
26 fund of the cemetery in which the rights are located if an
27 ~~irrevocable~~ ENDOWMENT care fund exists for that cemetery.

1 Excess sums on deposit in the ENDOWMENT CARE fund ~~can~~ MAY be
2 applied by a cemetery against future deposits. A deposit
3 required to be made by those persons shall be modified or waived
4 if the cemetery has received ~~a~~ AN ENDOWMENT care fund deposit
5 modification or waiver approved by the commissioner. The total
6 deposit for a single adult burial right sale or assignment shall
7 not be less than \$20.00.

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

19 (3) The total deposits to a merchandise trust for the sale
20 of cemetery burial vaults or other outside containers, other than
21 crypts installed underground and sold as part of a cemetery lot,
22 shall at all times be not less than the greater of \$100.00 per
23 vault or outside container or 130% of the total costs of the con-
24 tainers covered by the MERCHANDISE trust. Money deposited in
25 connection with a sale shall be repaid within 30 days upon writ-
26 ten demand of purchaser. A burial vault shall be installed only
27 at need or by separate written authorization of the purchaser.

1 The cemetery shall have the right to withdraw the amount on
2 deposit for the delivered vault or outside container.

3 (4) A contract or agreement ~~made~~ with a purchaser of ceme-
4 tery merchandise and CEMETERY services shall contain a complete
5 description of the cemetery merchandise purchased and of the
6 CEMETERY services to be rendered.

7 (5) The commissioner shall require each cemetery or ~~agent~~
8 authorized ~~by it acting on its behalf~~ AGENT to FILE A report
9 annually before July 1 of each year on forms provided by the
10 commissioner. The ~~reports~~ REPORT shall contain information
11 ~~as~~ the commissioner considers necessary to ascertain ~~that~~
12 COMPLIANCE WITH this act. ~~is being implemented.~~

13 (6) If, after an audit by the commissioner's staff, a defi-
14 cit in the amount of required deposits to the trust funds is
15 found, the commissioner may assess a penalty not to exceed 10% of
16 the amount of the deficit. The cemetery ~~or entity of a~~
17 ~~cemetery~~ may request a hearing before the commissioner within 30
18 days after being notified of a deficit by the commissioner. ~~If,~~
19 ~~following the~~ AFTER NOTICE AND OPPORTUNITY FOR A hearing, IF the
20 ~~commissioner determines that~~ FINDING OF a deficit ~~does exist,~~
21 IS NOT REVERSED OR MODIFIED, THE COMMISSIONER MAY ASSESS an addi-
22 tional penalty not to exceed 1.5% ~~may be assessed each month~~ on
23 the unpaid monthly balance FOR EACH MONTH until the deficit is
24 paid in full.

25 (7) IF THE COMMISSIONER FINDS THAT A REGISTRANT HAS VIOLATED
26 THIS ACT OR A RULE PROMULGATED UNDER THIS ACT REGARDING THE
27 OPERATION OR MAINTENANCE OF AN ENDOWMENT CARE FUND INCLUDING, BUT

1 NOT LIMITED TO, VIOLATIONS REGARDING DEPOSITS TO AND WITHDRAWALS
 2 FROM AN ENDOWMENT CARE FUND REGULATED BY THIS ACT, THE COMMIS-
 3 SIONER MAY INVESTIGATE ANY ENDOWMENT CARE FUND MAINTAINED OR
 4 OPERATED UNDER 1855 PA 87, MCL 456.1 TO 456.36, OR 1869 PA 12,
 5 MCL 456.101 TO 456.119, AND ORDER THE REGISTRANT TO PLACE THAT
 6 ENDOWMENT CARE FUND UNDER THE CONTROL OF A FINANCIAL INSTITUTION
 7 OR TRUST COMPANY, ACCEPTABLE TO THE COMMISSIONER, AS TRUSTEE OF
 8 THE FUND. CONTROL OF THE ENDOWMENT CARE FUND BY THE FINANCIAL
 9 INSTITUTION OR TRUST COMPANY SHALL BE AUTHORIZED PURSUANT TO A
 10 WRITTEN TRUST AGREEMENT APPROVED BY THE COMMISSIONER AND SHALL
 11 PROVIDE THAT THE AGREEMENT OPERATE UNTIL FURTHER ORDER OF THE
 12 COMMISSIONER.

13 (8) ~~-(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 Sec. 18. (1) The commissioner may deny an application filed
 19 under this act, ~~and refuse to issue a permit or registration,~~
 20 ~~or~~ may suspend or revoke a permit or registration, or may reprimand,
 21 place on probation, or take other disciplinary action
 22 against the applicant OR REGISTRANT if the commissioner's investigation reveals facts which, with reference to the establishment
 23 of a cemetery, show ~~inappropriate~~ ANY OF THE FOLLOWING:

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

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

1 (C) INADEQUATE experience, financial stability, or integrity
2 to protect the public welfare. ~~/ or when the commissioner finds~~
3 ~~that the~~

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

6 (i) ~~(a)~~ Made a false statement of a material fact in the
7 application.

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

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

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

17 (v) ~~(e)~~ Violated the terms of an assurance of discontinu-
18 ance entered into with the commissioner pursuant to section
19 9(2).

20 (vi) ~~(f)~~ Adopted, enforced, or attempted to enforce, a
21 regulation of the cemetery which prohibits the installation of a
22 grave memorial or burial vault unless the grave memorial or
23 burial vault was purchased from the cemetery. However, this sub-
24 division ~~shall~~ DOES not prohibit a cemetery from adopting and
25 enforcing consistent rules and regulations to be followed by both
26 the cemetery and outside vendors as to the quality, size, shape,

1 type, installation, and maintenance of the grave memorial or
2 burial vault.

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