

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 512

A bill to amend 1986 PA 255, entitled
"Prepaid funeral contract funding act,"
by amending the title and sections 1, 3, 4, 5, 6, 7, 8, 9, 10,
11, 12, 13, 15, 16, 18, 19, 20, 21, 22, 23, and 24 (MCL 328.211,
328.213, 328.214, 328.215, 328.216, 328.217, 328.218, 328.219,
328.220, 328.221, 328.222, 328.223, 328.225, 328.226, 328.228,
328.229, 328.230, 328.231, 328.232, 328.233, and 328.234),
section 19 as amended by 2002 PA 325.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2

An act to regulate the sale and providing of ~~certain~~

3

funeral ~~goods or funeral~~ **and cemetery merchandise** and services

4

and other related interests; to regulate the use of funds

5

received by sellers and providers of ~~funeral goods or~~ **certain**

6

merchandise, funeral and cemetery services, **land or interests in**

1 **land, and related other interests;** to prescribe **certain** powers
 2 and duties of ~~the~~ **certain** departments ~~of licensing and~~
 3 ~~regulation, mental health, and social services~~ and certain other
 4 state and local officers; to provide for the promulgation of
 5 rules and establishment of fees; and to provide ~~certain~~ **for**
 6 penalties and remedies.

7 Sec. 1. This act shall be known and may be cited as the
 8 "prepaid funeral ~~contract funding~~ **and cemetery sales** act".

9 Sec. 3. ~~(1)~~ **As used in this act:**

10 **(a) "Burial right" means a right of earth interment.**

11 **(b) "Casket" means any box or container consisting of 1 or**
 12 **more parts in which a dead human body is placed** ~~prior to~~ **before**
 13 **interment, entombment, or cremation** ~~which~~ **that** may or may not
 14 be permanently interred, entombed, or cremated with the dead
 15 human body. ~~A Casket includes a permanent interment or~~
 16 ~~entombment receptacle which is~~ designed or intended for use
 17 without a vault. ~~shall also be considered a casket.~~

18 **(c)** ~~(2)~~ "Catafalque" means an ornamental or decorative
 19 object or structure ~~which is~~ placed beneath, over, or around a
 20 casket, vault, or a dead human body ~~prior to~~ **before** final
 21 disposition of the dead human body.

22 **(d) "Cemetery" means 1, or a combination of more than 1, of**
 23 **the following:**

24 **(i) A burial ground for earth interments.**

25 **(ii) A mausoleum for crypt entombments.**

26 **(iii) A crematory for the incineration of human remains.**

27 **(iv) A columbarium for the inurnment of cremated remains.**

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1 (e) ~~-(3)-~~ "Cemetery burial vault or other outside container"
2 means a box or container ~~which is~~ used solely at the place of
3 interment to permanently surround or enclose a casket and to
4 support the earth above the casket after burial. Cemetery burial
5 vault or other outside container ~~shall~~ **does** not include a
6 catafalque, a combination unit, or any product ~~which is~~
7 designed or intended to be used with a catafalque or combination
8 unit. ~~If a cemetery burial vault or other outside container is~~
9 ~~intended for use as a permanent burial receptacle for the remains~~
10 ~~of an adult human body, its inside dimensions shall be at least~~
11 ~~28 inches wide by 82 inches long by 24 inches high.~~

12 (f) "[Cemetery] merchandise" means merchandise described in
13 section 4(1)(k)(i).

14 (g) "Cemetery services" means cremations, grave openings and
15 closings, and installation of grave memorials.

16 (h) "Columbarium" means a building or other aboveground
17 structure that is affixed to land and is a permanent repository
18 for cremated human remains.

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

23 (j) ~~-(5)-~~ "Consideration" or "contract price" means money and
24 other property to be paid as total compensation to a contract
25 seller or provider for the funeral **or cemetery** services ~~and~~
26 ~~funeral goods~~ **or merchandise, or both,** to be performed or
27 furnished under a prepaid ~~funeral~~ contract, ~~but does not~~

1 ~~include finance charges,~~ late payment penalties, payments
 2 required to be made to a governmental agency at the time the
 3 contract is entered into, and income earned on the funds.
 4 ~~Further, consideration or contract price shall not include a~~
 5 ~~commission as authorized by section 12(1).~~ Money paid for the
 6 services to be performed under a prepaid ~~funeral~~ contract may
 7 be paid in a lump sum or in installments.

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

15 **(k)** ~~(7)~~ "Contract beneficiary" means an individual
 16 specified or implied in a prepaid ~~funeral~~ contract for whom the
 17 funeral **or cemetery** services or ~~funeral goods~~ **merchandise** shall
 18 be performed or furnished after death.

19 **(l)** ~~(8)~~ "Contract buyer" means an individual, including a
 20 contract beneficiary, who purchases ~~funeral goods~~ **merchandise**
 21 or funeral **or cemetery** services pursuant to a prepaid ~~funeral~~
 22 contract.

23 **(m)** ~~(9)~~ "Contract seller" means a person who sells, makes
 24 available, or provides prepaid ~~funeral~~ contracts.

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

27 **(o)** ~~(10)~~ "Department" means the department of ~~licensing~~

1 ~~and regulation~~ **labor and economic growth.**

2 Sec. 4. (1) **As used in this act:**

3 **(a)** "Depository" means a state or ~~national bank which is a~~
4 ~~member of the federal deposit insurance corporation, a state or~~
5 ~~federal savings and loan association which is a member of the~~
6 ~~federal savings and loan insurance corporation, or a state or~~
7 ~~federally chartered credit union which is insured by the national~~
8 ~~credit union administration, or a trust company authorized to do~~
9 ~~business in this state~~ **nationally chartered bank or state or**
10 **federally chartered savings and loan association, savings bank,**
11 **or credit union whose deposits are insured by an agency of the**
12 **United States government under the laws of this state or the**
13 **United States.** Depository includes the trust department, if any,
14 of an entity referred to in this subsection.

15 **(b)** "Detroit consumer price index" means the index for all
16 urban wage earners for the Detroit statistical area from the
17 United States department of labor, bureau of labor statistics.

18 **(c)** ~~-(2)-~~ "Escrow agent" means a person who holds, invests,
19 and disburses principal and income from the funds received under
20 a prepaid ~~funeral~~ contract.

21 **(d)** ~~-(3)-~~ "Funds" means all money or other consideration
22 actually received from a contract buyer by a contract seller or
23 provider or an assignee from the contract buyer in connection
24 with any aspect of the sale of a prepaid ~~funeral~~ contract,
25 including finance charges, but does not include late payment
26 penalties, payments required to be made to a governmental agency
27 at the time the contract is entered into, or a commission

1 authorized by section 12(1).

2 ~~(4) "Funeral goods" means items of merchandise sold or~~
 3 ~~offered for sale or lease to consumers which will be used in~~
 4 ~~connection with a funeral or an alternative to a funeral or final~~
 5 ~~disposition of human remains including, but not limited to,~~
 6 ~~caskets, combination units, and catafalques. Funeral goods shall~~
 7 ~~not include land or interests in land, crypts, lawn crypts,~~
 8 ~~mausoleum crypts, or niches that are sold by a cemetery which~~
 9 ~~complies with the endowment care fund requirements of the~~
 10 ~~cemetery regulation act, Act No. 251 of the Public Acts of 1968,~~
 11 ~~being sections 456.521 to 456.543 of the Michigan Compiled Laws.~~
 12 ~~In addition, funeral goods shall not include cemetery burial~~
 13 ~~vaults or other outside containers, markers, monuments, urns, and~~
 14 ~~merchandise items used for the purpose of memorializing a~~
 15 ~~decedent and placed on or in proximity to a place of interment or~~
 16 ~~entombment of a casket, catafalque, or vault or to a place of~~
 17 ~~inurnment which are sold by a cemetery which deposits at least~~
 18 ~~130% of the cost of these items in a merchandise trust account~~
 19 ~~established and operated in accordance with the cemetery~~
 20 ~~regulation act, Act No. 251 of the Public Acts of 1968, being~~
 21 ~~sections 456.521 to 456.543 of the Michigan Compiled Laws.~~

22 ~~(e) -(5)-~~ "Funeral services" means services customarily
 23 performed by a mortuary science licensee who is licensed pursuant
 24 to ~~sections 1801 to 1812~~ **article 18** of the occupational code,
 25 ~~Act No. 299 of the Public Acts of 1980, being sections 339.1801~~
 26 ~~to 339.1812 of the Michigan Compiled Laws~~ **1980 PA 299,**
 27 **MCL 339.1801 to 339.1812.** ~~Further, funeral~~ **Funeral** services

1 ~~includes~~ **include**, but ~~is~~ **are** not limited to, care of dead
 2 human remains, embalming, preparation of dead human remains for
 3 final disposition, professional services relating to a funeral or
 4 an alternative to a funeral or final disposition of dead human
 5 remains, transportation of dead human remains, limousine
 6 services, use of facilities or equipment for viewing dead human
 7 remains, visitation, memorial services, or services which are
 8 used in connection with a funeral or alternative to a funeral,
 9 coordinating or conducting funeral rites or ceremonies,
 10 **cremations**, and other services provided in connection with a
 11 funeral, alternative to a funeral, or final disposition of dead
 12 human remains.

13 (f) "Grave memorial" means a stone or other structure or item
 14 used for the purpose of memorializing a decedent and placed on or
 15 in proximity to a place of burial, interment, or entombment of a
 16 casket, catafalque, or vault or on or in proximity to a place of
 17 inurnment.

18 (g) ~~(6)~~ "Guaranteed price contract" means a prepaid
 19 ~~funeral~~ contract under which funds received are held pursuant
 20 to an escrow agreement. ~~The~~ **A guaranteed price** contract has a
 21 guaranteed fixed price for which specified ~~funeral goods~~
 22 **merchandise** or funeral **or cemetery** services are required to be
 23 sold to or made available for a contract buyer or for a contract
 24 beneficiary, regardless of the cost or value of the ~~funeral~~
 25 ~~goods~~ **merchandise** or funeral **or cemetery** services at the time of
 26 death of the contract beneficiary. Under the guaranteed price
 27 contract, additional consideration ~~shall~~ **is** not ~~be~~ charged

1 for the originally contracted for ~~funeral goods and merchandise~~
2 or funeral or cemetery services at the time of delivery of the
3 ~~funeral goods and merchandise~~ or funeral and cemetery services.
4 ~~contracted for.~~

5 (h) ~~-(7)-~~ "Income" means the money earned by the investment
6 of the principal, including, but not limited to, interest,
7 dividends, and gains or losses on the sale of, deposit of, or
8 exchange of, property using invested principal amounts.

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

11 (j) "Mausoleum" means a building or other aboveground
12 structure that is affixed to land and is a permanent repository
13 for human remains.

14 (k) Subject to subsection (2), "merchandise" means both of
15 the following:

16 (i) Cemetery burial vaults or other outside containers, grave
17 memorials, and urns.

18 (ii) Items of merchandise sold or offered for sale or lease
19 to consumers that will be used in connection with a funeral or an
20 alternative to a funeral or the final disposition of human
21 remains, including, but not limited to, caskets, combination
22 units, and catafalques.

23 (2) Merchandise does not include land, interests in land, or
24 interests in mausoleums or columbariums that are sold by a
25 cemetery that complies with the endowment care trust fund
26 requirements of the cemetery regulation act, 1968 PA 251, MCL
27 456.521 to 456.543.

1 Sec. 5. ~~-(1)-~~ **As used in this act:**

2 **(a)** "Nonguaranteed price contract" means a prepaid ~~funeral~~
3 contract under which funds received are held pursuant to an
4 escrow agreement between a contract seller or provider and a
5 contract buyer ~~— Under the terms of this contract, a contract~~
6 ~~seller or provider agrees to apply the principal and income and~~
7 **are applied** to the cost of the ~~funeral goods~~ **merchandise** or
8 funeral **or cemetery** services, which ~~funeral goods and~~
9 **merchandise or funeral or cemetery** services may be selected by
10 the contract buyer at the time the contract is signed or as
11 selected by a person legally authorized to procure ~~funeral goods~~
12 ~~and merchandise or funeral or cemetery~~ services at the time of
13 death of the contract beneficiary. ~~However, this~~ **A**
14 **nonguaranteed price** contract ~~shall~~ **does** not obligate the
15 contract beneficiary's estate or the person who is legally
16 entitled to make funeral **or cemetery** arrangements for a deceased
17 contract beneficiary to purchase specific ~~goods and merchandise~~
18 **or funeral or cemetery** services which were selected before the
19 contract beneficiary's death ~~—, nor shall this contract and does~~
20 **not** obligate either the contract beneficiary's estate or the
21 person who is entitled to make funeral **or cemetery** arrangements
22 for a deceased contract beneficiary to expend a specific amount
23 on ~~funeral goods~~ **merchandise** or funeral **or cemetery** services.

24 **(b)** ~~-(2)-~~ "Person" means an individual, group of individuals,
25 sole proprietorship, partnership, **limited liability company**,
26 association, corporation, ~~a governmental~~ **government** agency,
27 **cemetery**, or a combination of these legal entities.

1 (c) "Physical delivery and retention" means actual control
2 and possession of merchandise that has been permanently
3 relinquished by a contract seller or a provider, or the agent of
4 either, to the contract buyer or the contract beneficiary. In
5 the case of a grave memorial or urn, physical delivery and
6 retention means that the grave memorial or urn has been
7 permanently inscribed with the name of the person being
8 memorialized. Physical delivery and retention does not occur if
9 the contract seller or provider takes either of the following
10 actions:

11 (i) Arranges or induces the buyer to arrange for the storage
12 or warehousing of merchandise ordered pursuant to a prepaid
13 contract, with or without evidence that legal title has passed.

14 (ii) Acquires or reacquires actual or constructive possession
15 or control of merchandise after initial delivery to the contract
16 buyer or contract beneficiary.

17 (d) ~~-(3)-~~ "Prepaid ~~funeral~~ contract" means a contract
18 requiring payment in advance for funeral **or cemetery** services or
19 ~~for funeral goods~~ **merchandise**, physical delivery and retention
20 of which would occur after death under a guaranteed price
21 contract or a nonguaranteed price contract. Prepaid ~~funeral~~
22 contracts ~~shall~~ **do** not include a contract for the sale of
23 ~~funeral goods~~ **merchandise** or funeral **or cemetery** services
24 ~~which is~~ entered into after the death of the ~~person for whose~~
25 ~~benefit the goods or services are acquired~~ **contract**
26 **beneficiary.**

27 (e) ~~-(4)-~~ "Principal" means the money ~~, finance charges,~~ or

1 other consideration actually deposited in the escrow **or trust**
2 accounts required by ~~section 12~~ **this act**.

3 **(f)** ~~-(5)-~~ "Provider" means any person who furnishes or agrees
4 to furnish ~~funeral goods~~ **merchandise** or funeral **or cemetery**
5 services pursuant to a prepaid ~~funeral~~ contract, whether or not
6 that person is the contract seller. In the case of ~~funeral~~
7 ~~goods~~ **merchandise**, provider ~~shall mean~~ **means** the person who
8 arranges for delivery of the ~~funeral goods~~ **merchandise** at the
9 time of the death of the contract beneficiary and not the
10 manufacturer of the ~~goods~~ **merchandise**. In the case of funeral
11 services, provider ~~shall mean~~ **means** a person ~~licensed pursuant~~
12 ~~to section 1806(3) of the occupational code, Act No. 299 of the~~
13 ~~Public Acts of 1980, being section 339.1806(3) of the Michigan~~
14 ~~Compiled Laws~~ **who possesses all licenses necessary to perform**
15 **the funeral services specified in the prepaid contract.** In the
16 case of cemetery services, provider means a person who possesses
17 all licenses and registrations necessary to provide the cemetery
18 services specified in the prepaid contract.

19 **(g)** ~~-(6)-~~ "Registrant" means a person who has registered with
20 the department pursuant to section 6.

21 **(h)** "Urn" means a container used to preserve the ashes of a
22 dead human body.

23 Sec. 6. (1) A person shall not sell, provide, or agree to
24 provide ~~funeral goods~~ **merchandise** or funeral **or cemetery**
25 services pursuant to a prepaid ~~funeral~~ contract unless that
26 person is registered with the department as provided in this
27 section and has received a certificate of registration.

1 (2) A person desiring to receive a certificate of
2 registration under this section shall ~~make application~~ **apply**
3 upon forms provided by the department and pay an application fee
4 of \$120.00. The original registration may be renewed. A
5 certification of registration ~~shall be~~ **is** valid for 3 years
6 from the date of its issuance. An application form for original
7 registration or renewal shall contain the following:

8 (a) The name and business address of the ~~entity~~ **person**
9 registering.

10 (b) The names and addresses of persons owning 10% or more
11 interest in the entity applying for registration.

12 (c) The business address where books and records pertaining
13 to prepaid ~~funeral~~ contracts shall be maintained for inspection
14 by the department.

15 (d) A list of the names and addresses of any escrow agents in
16 which funds have been or will be deposited by the registrant
17 ~~which after registration~~ **as well as copies of all escrow or**
18 **trust agreements between a registrant and an escrow agent. The**
19 **list and copies required by this subdivision** shall be constantly
20 updated. The registrant shall inform the department of any
21 change in this list within 30 days of the change by adding to the
22 list the name and address of any new escrow agent or by deleting
23 from the list an escrow agent whose services are no longer being
24 used by the registrant.

25 (e) A statement made under oath that the registrant has an
26 agreement with each escrow agent with which it has deposited
27 funds which complies with the requirements of section 7, **or if**

1 the registrant is or intends to be an escrow agent for funds
2 received in connection with a nonguaranteed price contract, a
3 statement that the registrant will comply with the requirements
4 of section 7.

5 (3) The department shall renew the registration of a person
6 who applies for renewal upon a form provided by the department
7 and pays an application fee of \$30.00 provided that the person
8 has submitted the sworn statement as required by this section and
9 the special report or sworn statement as required by section 8 at
10 least 60 days ~~prior to~~ **before** the expiration date printed on
11 the certificate of registration. The certificate of registration
12 of a person who fails to file the sworn statement or special
13 report required by this section shall expire on the date printed
14 on the certificate of registration. A registrant may reinstate
15 the registration within 60 days of its expiration by submitting
16 the sworn statement or special report and paying a fee of
17 \$120.00.

18 (4) The department may deny the registration of a person if
19 it determines any of the following:

20 (a) That the person was previously registered with the
21 department and that registration was revoked or suspended within
22 2 years ~~prior to~~ **before** the date of the current application for
23 registration.

24 (b) That the person was or is presently an owner with a
25 substantial interest in the entity, partner, or employee of a
26 person whose registration was revoked or suspended within 2 years
27 ~~prior to~~ **before** the date of the current application for

1 registration and the person engaged or participated in or
2 authorized the misconduct ~~which~~ **that** was the basis for the
3 revocation or suspension.

4 (c) That the person lacks good moral character as defined and
5 determined under 1974 PA 381, MCL 338.41 to 338.47.

6 (d) That the person has violated this act, article 18 of the
7 occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, or the
8 cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543.

9 (5) An applicant who registers with the department shall not
10 receive a certificate of registration unless the applicant
11 complies with the conditions in this section.

12 (6) A person who is denied registration by the department
13 pursuant to this section may petition the department for
14 reconsideration. A person seeking reconsideration ~~shall be~~ **is**
15 entitled to a hearing conducted in compliance with the
16 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
17 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
18 ~~Compiled Laws~~ **1969 PA 306, MCL 24.201 to 24.328.**

19 Sec. 7. A registrant who deposits funds with an escrow
20 agent ~~pursuant to~~ **under** this act shall have in effect at all
21 times an agreement under which the escrow agent has, under the
22 following circumstances, agreed to allow inspection and copying
23 of records maintained by it pertaining to funds held or managed
24 by it:

25 (a) Upon the request by the department, to inspect or copy
26 records pertaining to any or all funds held or managed by the
27 escrow agent.

1 (b) Upon the request of the registrant or its agent, to
2 inspect or copy records pertaining to any or all funds deposited
3 by the registrant with the escrow agent.

4 (c) Upon the request of a contract buyer or a contract
5 beneficiary to inspect or copy records pertaining to funds held
6 or managed by the escrow agent pursuant to a prepaid ~~funeral~~
7 contract to which the contract buyer is a party or for whose
8 benefit it was entered into.

9 (d) Upon order of a court of ~~proper~~ **competent**
10 jurisdiction.

11 Sec. 8. (1) A registrant shall keep, in this state,
12 accurate accounts, books, and records of all transactions and
13 accounts regulated by this act. Records shall include copies of
14 all prepaid ~~funeral~~ contracts, the dates and amounts of
15 payments made and accepted under these **prepaid** contracts, the
16 name and address of each contract buyer, the name and address of
17 the contract beneficiaries, the name and address of each escrow
18 agent, **the date and amount of each deposit made to an escrow**
19 **agent, the total price of each contract exclusive of commission,**
20 **any commission received for each contract, the date each contract**
21 **is performed, canceled, or revoked, the date and amount of any**
22 **refund paid to the contract buyer,** and any other records as the
23 department may require to enable it to determine whether the
24 registrant is complying with the requirements of this act.
25 Records shall be kept for at least 36 months after performance of
26 all obligations of each prepaid ~~funeral~~ contract or after the
27 filing of the ~~final special~~ report ~~which~~ **that** includes a

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1 prepaid contract ~~which~~ that has been performed. Beginning on
2 April 1 [, 2006 and each year thereafter], a registrant shall have
available for

3 examination by the department a statement, current as of the
4 preceding December 31, disclosing the following information as to
5 each unperformed prepaid funeral contract:

6 (a) The date of the contract and, if available, the contract
7 number.

8 (b) The names of the contract buyer and the contract
9 beneficiary.

10 (c) The face value of the contract. If the registrant is
11 allowed to deposit less than the face value, the statement shall
12 include the amount required to be on deposit with the escrow
13 agent.

14 (d) Whether the contract is a guaranteed or nonguaranteed
15 contract.

16 (e) Complete information on the means, provision, trust, or
17 other vehicle that will assure fulfillment of all obligations,
18 stating ledger and market values of the vehicle, its location,
19 nature of investments and trustees including fees paid to
20 trustees. A registrant who has placed funds in a commingled
21 escrow account may satisfy this requirement by identifying the
22 name of the escrow agent and the particular investment account or
23 accounts in which the funds have been placed.

24 (2) ~~At least once every 3 years~~ Annually, a registrant
25 which serves as an escrow agent or which has deposited funds with
26 an escrow agent pursuant to section 12 shall secure a ~~special~~
27 report ~~of limited review~~ prepared by a Michigan licensed

1 ~~independent~~ certified public accountant pertaining to ~~prepaid~~
2 ~~funeral contract~~ funds. The ~~special~~ report shall be on forms
3 provided by the department. ~~or in any other format considered~~
4 ~~appropriate by the independent certified public accountant.~~ The
5 ~~special~~ report shall be prepared and dated ~~within 90 days~~
6 ~~before the expiration of the registrant's certificate of~~
7 ~~registration and shall be furnished to the department with the~~
8 ~~registrant's application for renewal or, if an application for~~
9 ~~renewal is not filed, before the expiration of the certificate of~~
10 ~~registration~~ **on or before July 1 of the year following the**
11 **calendar year for which the report is prepared.** In preparing the
12 ~~special~~ report, the ~~independent~~ **Michigan licensed** certified
13 public accountant shall not be required to review all prepaid
14 ~~funeral~~ contracts, escrow agreements, escrow accounts, or
15 records of the registrant, nor shall the ~~independent~~ **Michigan**
16 **licensed** certified public accountant be required to review any
17 receipts or deposits by the registrant of ~~prepaid funeral~~
18 ~~contract~~ funds. The ~~special~~ report of the ~~independent~~
19 **Michigan licensed** certified public accountant shall provide the
20 following assurances:

21 (a) That, based either upon a review of the registrant's
22 agreements with escrow agents or depositories which limit
23 investments of the escrow funds by the escrow agents or
24 depositories to those investments permitted by this act, or upon
25 a review of the investments of the escrow accounts, the
26 investment requirements of section ~~12(4)~~ **12** have been complied
27 with.

1 (b) In the case of escrow accounts where the registrant
2 serves as the escrow agent, that withdrawals, as detailed in the
3 periodic statements of the depositories in which the escrow
4 accounts are maintained, have been made in ~~accordance~~
5 **compliance** with this act.

6 (c) In the case of escrow accounts where the registrant does
7 not serve as the escrow agent, that, based upon a representative
8 test sample selected upon the basis of the professional judgment
9 of the Michigan licensed certified public accountant after
10 considering all risks, funds have been deposited with and held by
11 the escrow agent in accordance with this act.

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

21 (3) The department may examine each ~~special~~ report required
22 by this section and if the department determines on the basis of
23 its review that the registrant or its agent has not held or
24 invested funds in accordance with the requirements of this act or
25 has failed to file a ~~special~~ report as required, the department
26 shall take any appropriate corrective or penal action authorized
27 by this act.

1 (4) The department may examine, review, or audit the books
2 and records of a contract seller or provider pertaining to funds
3 received in payment for prepaid ~~funeral~~ contracts. An audit
4 may include an examination of the books and financial records of
5 the registrant as well as books and financial records of escrow
6 agents used by the registrant. A registrant shall authorize
7 escrow agents to open their records of the registrant accounts to
8 the department upon request. **The department may charge the**
9 **registrant for the actual expenses of the examination, review, or**
10 **audit but not more than \$1,000.00.**

11 (5) For the purposes of complying with the requirements of
12 this section, a registrant who has not sold, provided, or agreed
13 to provide ~~funeral goods~~ **merchandise** or funeral **or cemetery**
14 services in accordance with a prepaid ~~funeral~~ contract and who
15 has no obligations with respect to an outstanding prepaid
16 ~~funeral~~ contract may submit a sworn statement that a prepaid
17 ~~funeral~~ contract has not been sold, provided, or agreed to and
18 there are no obligations outstanding. ~~This~~ **The department**
19 **shall accept the** statement ~~shall be accepted~~ in lieu of the
20 ~~special~~ report.

21 (6) **Any books or records regarding any prepaid contract**
22 **entered into before the effective date of the amendatory act that**
23 **added this subsection that were in compliance with applicable law**
24 **are considered in compliance with this act.**

25 Sec. 9. ~~A registrant who discontinues its business~~
26 ~~operations shall notify the department and the contract buyer of~~
27 ~~each existing prepaid funeral contract and shall provide written~~

1 ~~documentation that it has arranged for an assignment of these~~
 2 ~~contracts to another provider who satisfies the requirements of~~
 3 ~~section 6.~~ **The purchaser or assignee of a registrant's business**
 4 **operations shall notify the department and the contract buyers of**
 5 **the purchase or assignment of the prepaid contracts.**

6 Sec. 10. All prepaid ~~funeral~~ contracts provided for under
 7 this act shall be either a nonguaranteed price contract or a
 8 guaranteed price contract and shall be made and executed pursuant
 9 only to this act.

10 Sec. 11. (1) A guaranteed price contract shall designate a
 11 provider who has agreed to furnish the ~~funeral goods~~
 12 **merchandise** or funeral **or cemetery** services specified in the
 13 contract upon the death of the contract beneficiary. If the
 14 provider designated is not the **prepaid** contract seller of the
 15 contract, ~~the provider shall have previously contracted with the~~
 16 ~~contract seller to provide the goods and services specified in~~
 17 ~~the contract and the contract shall indicate this contractual~~
 18 ~~relationship or~~ the provider shall be made a party to the
 19 **prepaid** contract before any consideration is paid and the **prepaid**
 20 contract ~~shall~~ **is** not ~~be~~ binding on the contract buyer until
 21 the provider has been made a party to the **prepaid** contract.

22 (2) In addition to the registration otherwise required by the
 23 terms of this act, the provider which has agreed to ~~furnish~~
 24 ~~funeral goods~~ **provide merchandise** or funeral **or cemetery**
 25 services pursuant to a guaranteed price contract shall, at the
 26 time the **prepaid** contract is entered into, possess any license **or**
 27 **registration** required in order to provide **the** funeral ~~goods or~~

1 ~~funeral or cemetery~~ services, pursuant to ~~sections 1801 to~~
 2 ~~1812~~ **article 18** of the occupational code, ~~Act No. 299 of the~~
 3 ~~Public Acts of 1980, being sections 339.1801 to 339.1812 of the~~
 4 ~~Michigan Compiled Laws~~ 1980 PA 299, MCL 339.1801 to 339.1812, or
 5 the cemetery regulation act, 1968 PA 251, MCL 456.521 to
 6 456.543. If a provider is required to possess a license or
 7 registration to provide the services included in a prepaid
 8 contract, a contract seller who does not possess a license or
 9 registration to provide the services must disclose to the
 10 contract buyer or prospective contract buyer that it cannot
 11 perform those activities required to be registered or licensed.

12 Sec. 12. (1) ~~All~~ **Except as otherwise provided in**
 13 **subsection (2), all** funds received in connection with a prepaid
 14 ~~funeral~~ contract shall be held in escrow by an escrow agent for
 15 the benefit of the ~~person for whom the funeral goods or funeral~~
 16 ~~services have been purchased~~ **contract beneficiary.** ~~However, a~~

17 **(2) Funds received by a cemetery registered under the**
 18 **cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543, for**
 19 **cemetery merchandise may, in lieu of subsection (1), be escrowed**
 20 **as follows:**

21 **(a) For the first 12 months after the effective date of the**
 22 **amendatory act that added this subdivision, 60% of the funds**
 23 **received during that period from the sale of cemetery merchandise**
 24 **pursuant to prepaid contracts.**

25 **(b) For the thirteenth through twenty-fourth month after the**
 26 **effective date of the amendatory act that added this subdivision,**
 27 **65% of the funds received during that period from the sale of**

1 cemetery merchandise pursuant to prepaid contracts.

2 (c) For the twenty-fifth through the thirty-sixth month after
3 the effective date of the amendatory act that added this
4 subdivision, 70% of the funds received during that period from
5 the sale of cemetery merchandise pursuant to prepaid contracts.

6 (d) For the thirty-seventh through the forty-eighth month
7 after the effective date of the amendatory act that added this
8 subdivision, 75% of the funds received during that period from
9 the sale of cemetery merchandise pursuant to prepaid contracts.

10 (e) For the forty-ninth month after the effective date of the
11 amendatory act that added this subdivision and thereafter, 80% of
12 the funds received from the sale of cemetery merchandise pursuant
13 to prepaid contracts.

14 (3) A prepaid ~~funeral~~ contract may authorize the contract
15 seller or provider to charge an additional commission of not more
16 than 10% of the contract price which shall not be subject to the
17 depository requirements of this section. If the contract price
18 is paid in installments, the commission retained by the contract
19 seller or the provider shall not exceed the rate of the
20 commission charged in the **prepaid** contract **for each installment**.

21 A contract buyer upon cancellation ~~shall be~~ **is** entitled to a
22 refund as provided in section 13(1) **or (2)**.

23 (4) ~~(2)~~ Only the following persons may serve as the escrow
24 agent of ~~prepaid funeral~~ funds:

25 (a) If the ~~prepared funeral~~ **prepaid** contract is a
26 nonguaranteed price contract, the contract seller or provider of
27 that nonguaranteed price contract. ~~—, or in~~

1 **(b) In** the case of either a guaranteed or nonguaranteed price
 2 contract, a ~~state or national bank, a state or federal savings~~
 3 ~~and loan association, a state or federally chartered credit~~
 4 ~~union~~ **depository**, a trust company, or a Michigan nonprofit
 5 corporation **or association**, in which the majority interest is
 6 held by 250 or more funeral establishments licensed ~~pursuant to~~
 7 ~~sections 1801 to 1812 of the occupational code, Act No. 299 of~~
 8 ~~the Public Acts of 1980, being sections 339.1801 to 339.1812 of~~
 9 ~~the Michigan Compiled Laws~~ **under article 18 of the occupational**
 10 **code, 1980 PA 299, MCL 339.1801 to 339.1812**, or a Michigan
 11 nonprofit corporation **or association**, in which the majority
 12 interest is held by ~~250~~ **30** or more cemeteries ~~licensed~~
 13 **registered** and operated pursuant to the cemetery regulation act,
 14 ~~Act No. 251 of the Public Acts of 1968, being sections 456.521~~
 15 ~~to 456.543 of the Michigan Compiled Laws~~ **1968 PA 251,**
 16 **MCL 456.521 to 456.543.** If the prepaid ~~funeral~~ contract is a
 17 guaranteed price contract, the contract seller or the provider
 18 shall not serve as the escrow agent.

19 **(5)** ~~-(3)-~~ If the escrow agent is not the contract seller or
 20 provider of a nonguaranteed price contract, the escrow agent
 21 shall be selected as follows:

22 (a) If the **prepaid** contract is a nonguaranteed price
 23 contract, the escrow agent may be selected by either the contract
 24 seller or the provider.

25 (b) If the **prepaid** contract is a guaranteed price contract,
 26 the escrow agent shall be selected by the provider who has been
 27 designated to furnish the ~~funeral goods or~~ funeral services.

1 If the prepaid contract does not include funeral services, the
2 escrow agent shall be selected by any provider.

3 (6) ~~-(4)-~~ If the escrow agent is a person other than the
4 person to whom the funds have been paid by the contract buyer,
5 the funds shall be deposited with the escrow agent within 30 days
6 after the receipt by the person to whom the funds are paid.

7 (7) ~~-(5)-~~ Funds held by an escrow agent shall be held and
8 invested only as specified in the prepaid contract. A prepaid
9 contract may authorize investments only as follows:

10 (a) If the **prepaid** contract is a nonguaranteed price
11 contract, the funds shall be invested in 1 or more ~~federally~~
12 ~~insured~~ interest-bearing accounts in a depository.

13 (b) If the **prepaid** contract is a guaranteed price contract,
14 the principal and income may be invested only in accordance with
15 ~~Act No. 177 of the Public Acts of 1937, being sections 555.201~~
16 ~~to 555.203 of the Michigan Compiled Laws~~ **section 7302 of the**
17 **estates and protected individuals code, 1998 PA 386,**
18 **MCL 700.7302**, except that funds shall not be invested in a
19 company owned ~~or~~ **by, operated by, or affiliated in any way with**
20 a contract seller or provider or their authorized agents, or in
21 loans to any person directly connected with or employed by a
22 contract seller or provider or their authorized agents.

23 (8) ~~-(6)-~~ Income shall be held and invested by the escrow
24 agent in the same manner as the principal except that the income
25 may be utilized to pay reasonable fees and expenses of the escrow
26 agent in addition to other costs specifically authorized by this
27 act. The expenses and fees paid to the escrow agent shall not

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1 exceed 1% of the aggregate balance of principal and prior earned
2 income from each account annually. If a fee is charged for
3 reasonable expenses for the administration costs under an escrow
4 agreement, the amount may be paid to the escrow agent
5 periodically or may be accumulated in the account and paid at the
6 time of death or upon cancellation of the contract. **A cemetery**
7 **that has elected the escrowing option for cemetery merchandise**
8 **provided in subsection (2) may provide by written agreement with**
9 **the escrow agent to be paid accumulated income [generated solely by the**
10 **investment of funds received for the cemetery merchandise]. Such**
11 **payments to**

12 **a cemetery may not be made more frequently than once in a**
13 **12-month period and shall not exceed the net amount of income**
14 **earned in the previous 12 months less any amounts paid to the**
15 **escrow agent for expenses and fees described in this subsection**
16 **and an amount equal to any increase in the Detroit consumer price**
17 **index.**

18 **(9) —(7)—** Amounts of principal and income held by an escrow
19 agent other than the contract seller or provider of a
20 nonguaranteed price contract may be commingled with principal and
21 income derived from other prepaid ~~funeral~~ accounts. However, a
22 separate accounting of principal and income shall be maintained
23 for each prepaid ~~funeral~~ contract under the name of the
24 contract beneficiary.

25 **(10) —(8)—** The ~~contract buyer~~ **escrow agent** shall ~~be sent~~
26 **send to the contract buyer** a notice stating the date, amount of
27 the deposit, and the name of the escrow agent with whom the funds
are deposited.

(11) —(9)— Upon the death of the contract beneficiary and

1 upon performance by the provider of its obligation to furnish
2 ~~funeral goods and~~ **merchandise or** funeral **or cemetery** services
3 pursuant to the prepaid ~~funeral~~ contract, funds held by the
4 escrow agent shall be disbursed as follows:

5 (a) If the prepaid ~~funeral~~ contract is a nonguaranteed
6 price contract, the principal and income shall first be disbursed
7 by the escrow agent to the provider of the ~~funeral goods~~
8 **merchandise** or funeral **or cemetery** services in payment of all
9 reasonable charges. Thereafter, not less than 90% of the
10 remaining balance of principal and income, if any, shall be
11 disbursed to the person, other than the provider or the contract
12 seller, designated in the **prepaid** contract or authorized by law
13 to receive the surplus, and the remainder, if any, shall be
14 disbursed to the provider as final compensation for its
15 services. The amount paid to the person entitled to receive the
16 surplus shall be as follows:

17 (i) If no commission has been charged pursuant to this
18 section, at least 90% of the remaining balance of principal and
19 income in the escrow account.

20 (ii) If a commission of 5% or less of the contract price has
21 been charged, at least 95% of the remaining principal and income
22 in the escrow account.

23 (iii) If a commission of greater than 5% of the contract
24 price has been charged, 100% of the remaining principal and
25 income in the escrow account.

26 (b) If the prepaid ~~funeral~~ contract is a guaranteed price
27 contract, the principal and income held by the escrow agent shall

1 be disbursed to the provider, its designee, or its successor.

2 (c) If the escrow agent is notified that there is a dispute
3 as to whether the provider has performed all its obligations
4 under the prepaid ~~funeral~~ contract, the escrow agent shall file
5 an action for interpleader or shall obtain an impartial
6 arbitrator to determine the rights of the parties. Expenses of
7 arbitration shall be shared equally by the parties unless
8 otherwise ordered by the arbitrator.

9 (12) ~~-(10)-~~ A Michigan nonprofit corporation **or association**,
10 in which the majority interest is held by 250 or more funeral
11 establishments or by ~~250~~ **30** or more cemeteries **registered and**
12 **operated under the cemetery regulation act, 1968 PA 251, MCL**
13 **456.521 to 456.543**, may be designated as the escrow agent only if
14 the contract buyer has expressly authorized ~~such~~ **that**
15 designation in writing. If the contract buyer authorizes the
16 appointment as escrow agent of ~~any such~~ **a Michigan** nonprofit
17 corporation **or association** in the prepaid ~~funeral~~ contract, the
18 authorization shall be set forth in a separate paragraph which
19 shall not be effective unless separately signed or initialed by a
20 contract buyer and which shall state that the **contract** buyer may
21 elect to require that a ~~state or national bank, or state or~~
22 ~~federal savings and loan association, a state or federally~~
23 ~~chartered credit union,~~ **depository** or a trust company be
24 designated as the escrow agent.

25 (13) ~~-(11)-~~ If a prepaid contract is canceled, the escrow
26 agent shall disburse the principal and income in accordance with
27 section 13.

1 **(14)** ~~—(12)—~~ At least annually, unless waived in writing by a
 2 contract buyer, a contract buyer shall be furnished a statement
 3 indicating the current balance, ~~the income earned since the last~~
 4 ~~statement,~~ the fees or expenses charged since the last
 5 statement, **the amount of the refund to which a buyer is entitled**
 6 **in the event the contract is canceled,** and the name and address
 7 of the ~~person~~ **escrow agent** from whom additional information may
 8 be obtained relative to the account. The cost of the statement
 9 required by this subsection may be paid from the income and may
 10 be in addition to any other fee or charge authorized by this
 11 act.

12 Sec. 13. (1) A contract buyer may cancel a prepaid
 13 ~~funeral~~ contract **at any time** before the death of the contract
 14 beneficiary upon 30 days' prior written notice to the contract
 15 seller of a nonguaranteed price contract or to the provider
 16 designated to furnish ~~funeral goods~~ **merchandise** or funeral **or**
 17 **cemetery** services pursuant to a guaranteed price contract. The
 18 contract seller or provider shall promptly notify the escrow
 19 agent of the cancellation and of its effective date, if the
 20 escrow agent is other than the contract seller or the provider.
 21 After receipt of the notice of cancellation, **except as otherwise**
 22 **provided in subsection (2),** the escrow agent shall disburse **not**
 23 **less than 90% of the** principal and income in the escrow account
 24 to the contract buyer pursuant to this subsection and shall
 25 disburse the remainder of the principal and income, if any, to
 26 the contract seller or the provider. The ~~amounts disbursed~~
 27 **refund** to the contract buyer shall be determined as follows:

1 (a) If no commission has been charged pursuant to section
2 12(1), at least 90% of the remaining balance of principal and
3 income in the escrow account or held by the trustee.

4 (b) If a commission of 5% or less of the contract price has
5 been charged, at least 95% of the remaining principal and income
6 in the escrow account.

7 (c) If a commission of greater than 5% of the contract price
8 has been charged, 100% of the remaining principal and income in
9 the escrow account.

10 (2) In the case of funds received for cemetery merchandise by
11 a cemetery that has elected the escrowing option in section
12 12(2), the escrow agent shall disburse the principal and income
13 in the account to the cemetery and the cemetery shall disburse to
14 the contract buyer 100% of the amount of the contract price paid
15 by the contract buyer plus an amount equal to any increase in the
16 Detroit consumer price index since the contract was executed.

17 (3) ~~-(2)-~~ A contract seller of a nonguaranteed price contract
18 or a provider designated to furnish ~~funeral goods~~ merchandise
19 or funeral or cemetery services pursuant to a guaranteed price
20 contract may cancel a prepaid ~~funeral~~ contract only if the
21 contract buyer of a guaranteed price contract is more than 90
22 days delinquent in making any installment payment or partial
23 payment, or the contract buyer is otherwise in default as to any
24 other obligation under the contract. Upon cancellation, the
25 contract buyer shall receive a refund as determined pursuant to
26 subsection (1).

27 (4) ~~-(3)-~~ After the death of the contract beneficiary, ~~if~~

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1 ~~the escrow account established pursuant to a prepaid funeral~~
2 ~~contract is not used by persons legally entitled to make funeral~~
3 ~~arrangements for the contract beneficiary, the escrow agent shall~~
4 ~~disburse the principal and income in the escrow account pursuant~~
5 ~~to subsection (1) the contract buyer or the contract buyer's~~
6 ~~estate may cancel the prepaid contract only where there are no~~
7 ~~remains of the deceased; where the remains of the deceased cannot~~
8 ~~be recovered; or where~~ [a prepaid contract was not utilized due to] ~~lack~~
of knowledge by the person
9 or persons entitled to make funeral arrangements of the existence
10 of the prepaid contract. After such a cancellation, the contract
11 buyer or the contract buyer's estate shall receive a refund in
12 accordance with subsection (1) or (2) within 30 days after
13 receipt by the contract seller or the provider of a request for
14 payment from ~~the contract seller of a nonguaranteed price~~
15 ~~contract, or the provider designated to furnish funeral goods or~~
16 ~~funeral services pursuant to a guaranteed price contract, or the~~
17 contract buyer or the contract buyer's estate. Contracts may be
18 upgraded after the death of the contract beneficiary by a person
19 on behalf of the contract beneficiary's estate or by a person
20 entitled to make funeral or cemetery arrangements. This
21 subsection does not prevent the transfer of a contract from 1
22 provider to another provider upon the request of those entitled
23 to make funeral arrangements.

24 (5) Prior to the death of the contract beneficiary and in the
25 case of a prepaid contract or multiple prepaid contracts
26 containing any of the merchandise or services escrowed under
27 section 12(1) together with cemetery merchandise escrowed under

1 section 12(2), the buyer may cancel that portion of the contract
2 pertaining to the cemetery merchandise alone, without canceling
3 the remaining portions. Such cancellation is subject to refund
4 pursuant to section 13(2).

5 (6) ~~(4)~~ A contract seller or a provider ~~which~~ **that**
6 assigns or transfers its obligations under a prepaid ~~funeral~~
7 contract to another provider shall notify the contract buyer of
8 the assignment in writing. If the contract buyer cancels the
9 contract within 30 days of the notification of the assignment,
10 the buyer shall be entitled to a refund of 100% of the remaining
11 principal and income plus the commission, if any, charged in
12 accordance with section 12(1) **or (2)**. An assignment or transfer
13 of a provider's obligations under a prepaid ~~funeral~~ contract
14 ~~which~~ **that** is made in connection with the sale of a business
15 ~~shall be~~ **is** subject to this subsection only if more than 50% of
16 the ownership interest in the business is transferred to another
17 person or persons within a 12-month period. ~~Nothing in this~~
18 **Upon sale of the business, the notice requirement of this**
19 **subsection is the responsibility of the purchaser. This**
20 subsection ~~shall~~ **does not** apply to an assignment of a financial
21 interest in an installment contract to a financial institution.
22 At the time that the contract seller or provider receives payment
23 in exchange for selling or assigning its financial interest in an
24 installment contract to a financial institution, the contract
25 seller or provider shall be required to place in escrow the ~~full~~
26 ~~contract price~~ **amount required by this act. This subsection**
27 **does not apply to burial rights or other land interests, crypts,**

1 inscribed grave memorials, or niches, for which no refunds are
2 available.

3 Sec. 15. (1) All prices or quotations of prices contained
4 in a prepaid ~~funeral~~ contract, offer, or solicitation shall be
5 stated in compliance with applicable federal and state laws and
6 regulations. In addition, a person who offers either ~~funeral~~
7 ~~goods~~ **merchandise** or funeral **or cemetery** services ~~for sale~~
8 ~~before the death of the intended user or contract beneficiary on~~
9 **a preneed or at-need basis** shall comply with the price disclosure
10 rules of the federal trade commission, code of federal
11 regulations, 16 C.F.R., part 453, whether or not the rules by
12 their own terms apply to the offering. ~~Nothing in this~~ **This**
13 subsection ~~shall~~ **does not** apply to the sale of any interest ~~in~~
14 ~~land~~ covered by the endowment care **trust** requirements of
15 ~~section 35a of Act No. 87 of the Public Acts of 1855, being~~
16 ~~section 456.35a of the Michigan Compiled Laws~~ **the cemetery**
17 **regulation act, 1968 PA 251, MCL 456.521 to 456.543.**

18 (2) A person who sells or offers to sell both funeral goods
19 or services and nonfuneral goods or services as part of the same
20 transaction or series of transactions shall not manipulate the
21 relative prices of the goods or services so as to allocate a
22 disproportionate share of the total price to nonfuneral property
23 or services.

24 (3) All prepaid ~~funeral~~ contracts shall provide that a
25 contract buyer may revoke the **prepaid** contract within 10 business
26 days after entering into the **prepaid** contract and that upon
27 revocation, all funds paid to the contract seller or provider

1 shall be refunded. This provision shall be conspicuously set
 2 forth in the **prepaid** contract at a place immediately before the
 3 place where the contract buyer is to sign his or her name.

4 (4) A prepaid ~~funeral~~ contract shall disclose the contract
 5 buyer's right to cancel the **prepaid** contract and the amount of
 6 the refund to which the contract buyer or that person's estate is
 7 entitled upon cancellation. The disclosure shall be stated
 8 substantially as follows:

9 "This contract may be canceled either before death or after
 10 death by the buyer or, if the buyer is deceased, by the person or
 11 persons legally authorized to make funeral **or cemetery**
 12 arrangements. If the contract is canceled, the buyer or the
 13 buyer's estate is entitled to receive a refund of ____% of the
 14 contract price and any income ~~earned from investment of the~~
 15 ~~principal less administrative or escrow fees~~ **as required by**
 16 **law.**"

17 In addition, if a commission is charged pursuant to section 12,
 18 the amount of the commission and the fact that it is a charge
 19 which is in addition to the contract price shall be stated in the
 20 prepaid funeral contract. If a printed contract form is used,
 21 the disclosures required by this subsection shall be stated in
 22 ~~bold-faced~~ **boldfaced** type.

23 (5) ~~Nothing in this~~ **This** act ~~shall~~ **does not** authorize a
 24 contract seller or provider to perform or offer to perform
 25 services for which a mortuary science license or funeral
 26 establishment licensed is required by ~~sections 1801 to 1812~~
 27 **article 18** of the occupational code, ~~Act No. 299 of the Public~~

1 ~~Acts of 1980, being sections 339.1801 to 339.1812 of the Michigan~~
 2 ~~Compiled Laws 1980 PA 299, MCL 339.1801 to 339.1812,~~ unless that
 3 person holds the required license or licenses ~~— However, this~~
 4 ~~act shall~~ **and does** not ~~be construed as requiring~~ **require** a
 5 contract seller or a provider to possess this license or any
 6 other license to engage in an activity covered under this act for
 7 which a license is not required by any other act.

8 (6) A prepaid ~~funeral~~ contract shall provide that the
 9 contract buyer may designate a new contract beneficiary any time
 10 before the death of the contract beneficiary originally specified
 11 in the prepaid ~~funeral~~ contract by providing written notice to
 12 the contract seller of a nonguaranteed price contract or the
 13 provider designated to furnish ~~funeral goods~~ **merchandise** or
 14 funeral **or cemetery** services pursuant to a guaranteed price
 15 contract. Notwithstanding any other provisions of law, a
 16 contract buyer may designate the estate of a deceased person as
 17 the contract beneficiary, or provide that the contract
 18 beneficiary ~~shall be~~ **is** the first of 2 or more designated
 19 persons to die.

20 (7) A prepaid ~~funeral~~ contract that is a nonguaranteed
 21 price contract shall have it indicated clearly on the **prepaid**
 22 contract that it is a nonguaranteed price contract and that the
 23 actual costs of the ~~funeral goods and~~ **merchandise or funeral or**
 24 **cemetery** services delivered at the time of death may be greater
 25 or less than the amount of principal and income in the escrow
 26 account, and that the buyer, the buyer's estate, or the person or
 27 persons legally entitled to make funeral **or cemetery**

1 arrangements, **or both**, are not obligated to purchase specific
2 ~~goods~~ **merchandise** and services which were selected before the
3 death of the contract beneficiary or to expend a specific amount
4 on ~~funeral goods~~ **merchandise** or funeral **or cemetery** services.

5 Sec. 16. (1) ~~All~~ **A** prepaid ~~funeral contracts~~ **contract**
6 **that is** not in writing ~~are~~ **is** voidable by any party to the
7 **prepaid** contract.

8 (2) A prepaid ~~funeral~~ contract made in violation of this
9 act or with a person who is not registered pursuant to section 6
10 ~~shall be~~ **is** voidable by the contract buyer or by a personal
11 representative of the contract beneficiary.

12 (3) The parties to a prepaid ~~funeral~~ contract may agree in
13 writing for the payment of a rate of interest not to exceed 10.5%
14 per annum with the following conditions:

15 (a) A prepaid ~~funeral~~ contract made under this act shall
16 not provide for a rate of interest added or deducted in advance.
17 Interest shall be computed from time to time only on the basis of
18 unpaid balances.

19 (b) A prepaid ~~funeral~~ contract made under this act shall
20 not provide that the rate of interest initially effective may be
21 increased for any reason.

22 (c) A contract seller shall not impose any fees or charges in
23 addition to interest in connection with the financing of a
24 prepaid ~~funeral~~ contract.

25 (4) A contract seller shall not offer financing or offer to
26 obtain financing of a prepaid ~~funeral~~ contract under terms and
27 conditions other than allowed by this section.

1 Sec. 18. (1) Notwithstanding any other law to the contrary,
2 a ~~contract seller, provider, agent, employee, or person acting~~
3 ~~on behalf of a contract seller or provider,~~ **person selling or**
4 **offering to sell merchandise or funeral or cemetery services,**
5 whether a registrant or not, shall not **do any of the following:**

6 (a) Solicit a specific person for the purpose of providing
7 ~~funeral goods~~ **merchandise** or funeral **or cemetery** services for a
8 prospective contract beneficiary knowing that the death of the
9 prospective contract beneficiary has already occurred or is
10 probably imminent.

11 (b) Make a false or misleading statement, oral or written,
12 regarding the sale of ~~funeral goods~~ **merchandise** or funeral **or**
13 **cemetery** services pursuant to a prepaid ~~funeral~~ contract or
14 regarding the rights or obligations of any party or prospective
15 party to a prepaid ~~funeral~~ contract for the purpose of inducing
16 a person to purchase the ~~funeral goods~~ **merchandise** or funeral
17 **or cemetery** services or a prepaid ~~funeral~~ contract.

18 (c) Advertise or offer ~~funeral goods~~ **merchandise** or funeral
19 **or cemetery** services for sale before the death of a prospective
20 contract beneficiary in a manner which is false, misleading,
21 deceptive, or unfair.

22 (d) Fail to refund principal or principal and income paid for
23 a prepaid ~~funeral~~ contract in violation of this act.

24 (e) **Refuse the use of merchandise bought from another vendor**
25 **or discriminate by price, burial fee, or otherwise for not**
26 **purchasing merchandise from or under the direction of the funeral**
27 **establishment or cemetery. This subdivision does not prohibit a**

1 cemetery from adopting and enforcing consistent rules and
2 regulations to be followed by both the cemetery and outside
3 vendors as to the quality, size, shape, type, installation, and
4 maintenance of a grave memorial or a cemetery burial vault or
5 other outside container or urn, except that such regulations may
6 not limit as to supplier or vendor.

7 (f) Require the purchase of a cemetery burial vault or other
8 outside container from a particular person as a condition to
9 burial in a cemetery in this state. However, this subsection
10 does not limit the right of a cemetery to require the use of a
11 cemetery burial vault or other outside container.

12 (g) ~~-(e)-~~ Violate this act or rules promulgated under this
13 act.

14 (2) ~~Further, a~~ A registrant or a person acting on behalf of
15 a registrant, including an agent or employee of a registrant,
16 shall not do **any of** the following:

17 (a) Practice fraud, or deception in obtaining registration.

18 (b) Refuse to disclose books and records required to be
19 maintained and disclosed under this act.

20 (3) The **director of the** department may promulgate rules
21 regulating the solicitation of prepaid ~~funeral~~ contracts by
22 registrants to protect against solicitations which are
23 intimidating, vexatious, fraudulent, or misleading ~~—~~ or which
24 take unfair advantage of a person's ignorance or emotional
25 vulnerability.

26 (4) Any administrative action brought under this act shall be
27 ~~handled pursuant to~~ **in compliance with** the administrative

1 procedures act **of 1969**, ~~Act No. 306 of the Public Acts of 1969,~~
 2 ~~being sections 24.201 to 24.328 of the Michigan Compiled laws~~
 3 **1969 PA 306, MCL 24.201 to 24.328.**

4 Sec. 19. (1) A prepaid ~~funeral~~ contract may be made with
 5 an applicant for or recipient of assistance under the social
 6 welfare act, 1939 PA 280, MCL 400.1 to 400.119b, or a patient or
 7 a legal guardian of a patient in a community health care facility
 8 under the jurisdiction of the department of community health. If
 9 the family independence agency or department of community health
 10 determines that the contract is a fully paid guaranteed price
 11 contract, ~~which when added to~~ **and that the proceeds of the**
 12 **contract and** the amount of ~~a~~ **any** death benefit from an
 13 insurance policy or annuity contract ~~, the proceeds of which~~
 14 ~~have~~ **that has** been assigned pursuant to section 2080(6) of the
 15 insurance code of 1956, 1956 PA 218, MCL 500.2080, as payment for
 16 ~~funeral goods~~ **merchandise** or funeral **or cemetery** services for
 17 the contract beneficiary ~~that~~ are not more than that amount
 18 allowed under section 2080(6)(g) of the insurance code of 1956,
 19 1956 PA 218, MCL 500.2080, plus \$2,000.00, exclusive of income,
 20 and that the state will not be liable for the ~~funeral goods~~
 21 **merchandise** or funeral **or cemetery** services, excluding an outside
 22 receptacle when required by the chosen cemetery, of the applicant
 23 for or recipient of assistance or patient allowable under
 24 contracts under this act, the prepaid ~~funeral~~ contract shall be
 25 made irrevocable at the request of the applicant for or recipient
 26 of assistance, or the patient or a legal guardian of a patient.
 27 Nothing in this section shall be construed as increasing the

1 amount of excludable burial assets for family independence agency
2 or medicaid program eligibility above that allowed under existing
3 family independence agency standards, including any increases
4 ~~therein~~ **in those standards**. The family independence agency or
5 department of community health shall advise the applicant for or
6 recipient of assistance, or the patient or a legal guardian of a
7 patient that additional ~~funeral goods~~ **merchandise** or funeral **or**
8 **cemetery** services subject to contract under this act will not be
9 paid by the family independence agency or department of community
10 health but shall not specify or require approval of particular
11 ~~funeral goods~~ **merchandise** or funeral **or cemetery** services
12 selected by the applicant for or recipient of assistance, or
13 patient or a legal guardian of a patient.

14 (2) A prepaid ~~funeral~~ contract approved by the family
15 independence agency or department of community health shall not
16 be revoked or canceled by the contract seller, contract provider,
17 contract buyer, or their successors, or the estate of the
18 contract beneficiary either before or after the death of the
19 contract beneficiary. This subsection does not prevent those
20 legally entitled to make arrangements for a contract beneficiary
21 from reallocating the amount paid under the prepaid contract to
22 different funeral **or cemetery** services and ~~funeral goods~~
23 **merchandise**. A contract seller or provider shall assign an
24 irrevocable prepaid ~~funeral~~ contract to another provider upon
25 the written request of the contract beneficiary, his or her
26 successor, or those legally entitled to make arrangements for the
27 contract beneficiary so long as the written request is received

1 before a provider's obligations have been performed. An
2 irrevocable contract shall not be considered in determining the
3 eligibility of an applicant or recipient for assistance given
4 under the social welfare act, 1939 PA 280, MCL 400.1 to
5 400.119b. An irrevocable prepaid ~~funeral~~ contract made under
6 this section is not subject to the cancellation provision of
7 section 13 or to the provisions of section ~~15(5)~~ **15(6)**.

8 (3) Notwithstanding any other provisions of this act, funds
9 paid in connection with an irrevocable prepaid ~~funeral~~ contract
10 may, at the option of the provider, be held and deposited in the
11 manner prescribed for a nonguaranteed price contract.

12 (4) The family independence agency and department of
13 community health may promulgate rules under the administrative
14 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to
15 provide for the uniform administration of this section.

16 Sec. 20. (1) Upon complaint made by any person, or upon its
17 own initiative, the department may investigate alleged violations
18 of this act or rules promulgated under this act by a registrant
19 or any other person. The department may examine books, records,
20 contracts, and other documents in possession of or under the
21 control of any registrant with or without the consent of that
22 registrant and with or without a warrant authorizing the
23 examination, or of any other person if that person consents to an
24 examination or if the department obtains a warrant authorizing an
25 examination. If the department determines that reasonable cause
26 exists to believe that a violation has occurred, it shall do 1 of
27 the following:

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

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

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

9 (ii) Institute proceedings in compliance with the
10 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
11 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
12 ~~Compiled Laws 1969 PA 306, MCL 24.201 to 24.328.~~

13 (2) The department or the department of the attorney general
14 may petition a court of competent jurisdiction for issuance of a
15 subpoena requiring the person subpoenaed to appear to testify or
16 produce relevant documentary material for examination at a
17 proceeding conducted under subsection (1)(a) or (b).

18 (3) ~~-(2)-~~ If, after a hearing, the department determines that
19 a registrant has violated the provisions of this act or any rule
20 promulgated pursuant to this act, the department shall do 1 or
21 more of the following:

22 (a) Suspend or revoke the registration.

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

26 (c) Require restitution of funds paid pursuant to a prepaid
27 ~~funeral contract. and restitution~~ **Restitution** may include

1 suspending the registration until restitution is made.

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

6 (e) Impose restrictions upon the registrant's prepaid
7 ~~funeral~~ business activities which require additional
8 accountability to the department.

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

10 Sec. 21. A violation of this act by a person who is
11 licensed ~~pursuant to~~ **under** article 18 of the occupational code,
12 ~~Act No. 299 of the Public Acts of 1980, being sections 339.1801~~
13 ~~to 339.1812 of the Michigan Compiled Laws~~ **1980 PA 299,**
14 **MCL 339.1801 to 339.1812,** or the cemetery regulation act, ~~Act~~
15 ~~No. 251 of the Public Acts of 1968, being sections 456.521 to~~
16 ~~456.543 of the Michigan Compiled Laws, shall also constitute~~
17 **1968 PA 251, MCL 456.521 to 456.543, is considered** a violation of
18 the respective licensing act, and the violator ~~shall be~~ **is**
19 subject to penalties available under those acts.

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

26 (2) A person who violates any other provision of this act
27 ~~shall be~~ **is** guilty of a misdemeanor ~~—, punishable by a fine of~~

1 not more than \$1,000.00 ~~—~~ or imprisonment for not more than 1
2 year, or both, for each violation.

3 Sec. 23. If the department determines that a registrant has
4 not complied with the investment and depositing requirements of
5 this act and that insufficient funds are available in **trust or**
6 escrow accounts to meet the obligations of prepaid ~~funeral~~
7 contracts, the department may petition the circuit court of the
8 county of the registrant's principal place of business or the
9 county of Ingham for appointment of a receiver. After notice to
10 the registrant and a hearing and upon its concurrence in the
11 findings of the department, the court shall appoint a **qualified**
12 **person as a** receiver. ~~who shall, under conditions as may be~~
13 ~~prescribed by the court, take into possession the assets of the~~
14 ~~registrant for the purpose of liquidation. In the order of~~
15 ~~liquidation, the court shall make provision for notice to~~
16 ~~creditors, filing of claims, and all other details necessary for~~
17 ~~an estate in receivership.~~ **A receiver appointed under this**
18 **section has all the powers, authority, and remedies of an**
19 **assignee for the benefit of creditors under chapter 52 of the**
20 **revised judicature act of 1961, 1961 PA 236, MCL 600.5201 to**
21 **600.5265.** Any remaining funds held in escrow pursuant to this act
22 shall be regarded as belonging to contract buyers or contract
23 beneficiaries according to their interests and shall be
24 distributed to these entities pro rata on the basis of the amount
25 of funds paid by the contract buyers and shall not be available
26 to general creditors of the estate. **Under appropriate**
27 **circumstances, the receiver may file for protection under the**

1 **bankruptcy code.**

2 Sec. 24. The department or any other person, in order to
3 force compliance with this act, may bring an action in a circuit
4 court in any county in which the registrant or any other person
5 has solicited or sold prepaid ~~funeral~~ contracts, whether or not
6 that person has purchased a prepaid ~~funeral~~ contract or is
7 personally aggrieved by a violation of this act. The court may
8 award damages, ~~and~~ issue equitable orders in accordance with
9 the Michigan court rules to restrain conduct in violation of this
10 act, **and award reasonable attorney fees and costs to a prevailing**
11 **party.**

12 Enacting section 1. This amendatory act does not take
13 effect unless Senate Bill No. 513 of the 92nd Legislature is
14 enacted into law.

15 Enacting section 2. This amendatory act takes effect
16 January 1, 2005.