

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 513

A bill to amend 1968 PA 251, entitled
"Cemetery regulation act,"
by amending the title and sections 2, 8, 9, 10, 12, 12a, 13, 15,
16, 18, 19, and 21 (MCL 456.522, 456.528, 456.529, 456.530,
456.532, 456.532a, 456.533, 456.535, 456.536, 456.538, 456.539,
and 456.541), the title and sections 2, 8, 12, 12a, 13, 15, 18,
19, and 21 as amended by 1982 PA 132, section 9 as amended by
2003 PA 289, section 10 as amended by 1982 PA 289, and section 16
as amended by 2003 PA 89, and by adding section 16a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2

An act to regulate the creation and management of

3

cemeteries; ~~to regulate the sale of cemetery services and~~

4

~~merchandise;~~ to provide for a cemetery commissioner, and to

5

prescribe the powers and duties of the commissioner; to require

1 the registration and audit of cemeteries; **to provide for**
 2 **long-term care of certain cemeteries;** to regulate persons selling
 3 burial, entombment, or columbarium rights; ~~—, cemetery services,~~
 4 ~~or cemetery merchandise;~~ and to prescribe **remedies and**
 5 penalties.

6 Sec. 2. As used in this act:

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

9 (i) A burial ground for earth interments.

10 (ii) A mausoleum for crypt entombments.

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

12 (iv) A columbarium for the ~~deposit~~ **inurnment** of cremated
 13 remains.

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

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

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

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

21 (f) "Mausoleum" means a ~~structure used, or intended to be~~
 22 ~~used, for the entombment in a crypt or crypts in the structure of~~
 23 ~~the remains of deceased persons~~ **building or other aboveground**
 24 **structure that is affixed to land and is a permanent repository**
 25 **for human remains.**

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

1 (h) "Columbarium" means a ~~structure or room or other space~~
2 ~~in a~~ building or **other aboveground** structure ~~used or intended~~
3 ~~to be used for the inurnment or deposit of~~ **that is affixed to**
4 **land and is a permanent repository for** cremated **human** remains.

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

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

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

13 ~~—— (l) "Cemetery merchandise" means all merchandise sold to the~~
14 ~~public by a cemetery, including vaults, concrete boxes,~~
15 ~~monuments, memorials, and foundations.~~

16 (k) ~~(m)~~ "Cemetery commissioner" or "commissioner" means the
17 director of ~~licensing and regulation~~ **the department of labor**
18 **and economic growth** or a designee of the director.

19 (l) "Municipal corporation" means that term as defined in
20 section 1 of 1927 PA 10, MCL 456.181.

21 (m) "Person" means an individual, group of individuals, sole
22 proprietorship, partnership, limited liability company,
23 association, corporation, government agency, cemetery, or a
24 combination of these legal entities.

25 Sec. 8. The commissioner may promulgate rules in accordance
26 with and subject to ~~Act No. 306 of the Public Acts of 1969, as~~
27 ~~amended, being sections 24.201 to 24.315 of the Michigan Compiled~~

1 ~~Laws~~ **the administrative procedures act of 1969, 1969 PA 306, MCL**
2 **24.201 to 24.328**, to implement and administer this act, including
3 rules regarding **all of the following**:

4 (a) The ~~maintaining~~ **maintenance** of records relative to the
5 financial aspects of cemeteries.

6 (b) Requirements for applications for the granting of permits
7 and registrations required under this act.

8 (c) The formal and informal procedures governing the conduct
9 of contested cases under this act before the commissioner or an
10 authorized hearing officer.

11 ~~(d) Requirements for the establishment and maintenance of~~
12 ~~special trust funds to provide for the future performance~~
13 ~~obligations and special care or decoration obligations of~~
14 ~~cemeteries.~~

15 Sec. 9. (1) The commissioner may hold hearings, administer
16 oaths, take testimony under oath, and request in writing the
17 appearance and testimony of witnesses, including the production
18 of books and records. Upon the refusal of a witness to appear,
19 testify, or submit books and records after a written request, the
20 commissioner or a party to a contested case may apply to the
21 circuit court for Ingham county for a subpoena or a subpoena
22 duces tecum. The court shall issue a subpoena when reasonable
23 grounds are shown.

24 (2) When it appears to the commissioner that a person or
25 registrant has violated this act or a rule promulgated or order
26 issued under this act, the commissioner may do 1 or more of the
27 following:

1 (a) Issue a cease and desist order.

2 (b) Accept an assurance of discontinuance.

3 (c) Bring an action in the circuit court for the county in
4 which the person resides or in the circuit court for the county
5 of Ingham, to enforce compliance with this act or a rule
6 promulgated or order issued under this act.

7 (3) Upon a proper showing regarding an action brought under
8 subsection (2)(c), a permanent or temporary injunction or a
9 restraining order may be granted and a receiver or conservator
10 may be appointed by the court. A receiver or conservator
11 appointed by the court may take possession of the assets and may
12 sell, assign, transfer, or convey the cemetery, including a
13 cemetery in receivership on the July 26, 2002 date of the
14 amendatory act that amended this subsection, to a municipal
15 corporation or other person other than the holder of a license
16 for the practice of mortuary science or a person who owns,
17 manages, supervises, operates, or maintains, either directly or
18 indirectly, a funeral establishment, under conditions prescribed
19 by the court, in order to discharge outstanding contractual
20 obligations. **A receiver appointed under this section has all the**
21 **powers, authority, and remedies of an assignee for the benefit of**
22 **creditors under chapter 52 of the revised judicature act of 1961,**
23 **1961 PA 236, MCL 600.5201 to 600.5265.** The court may allow the
24 receiver or conservator to file for protection under the
25 bankruptcy code.

26 (4) In the order of sale of the cemetery, the court shall
27 make provision for notice to creditors and the filing of claims

1 against the receivership or conservatorship. Any remaining funds
2 held by the cemetery in escrow under this act belong to the
3 contract buyers or beneficiaries of the contract buyers and shall
4 not be distributed to the general creditors of the cemetery.

5 This section does not prohibit the court from allowing the sale
6 of the cemetery to a person other than the holder of a license
7 for the practice of mortuary science or a person who owns,
8 manages, supervises, operates, or maintains, either directly or
9 indirectly, a funeral establishment or municipal corporation.

10 (5) In addition to an action taken under this section, the
11 commissioner may deny an application or may suspend or revoke a
12 permit or registration after a hearing as set forth in this act.

13 ~~(6) As used in this section, "municipal corporation" means~~
14 ~~that term as defined in section 1 of 1927 PA 10, MCL 456.181.~~

15 Sec. 10. (1) The commissioner shall institute and maintain
16 a system of auditing trust funds required by this act and of
17 registering each cemetery authorized to be created, maintained,
18 and operated under ~~Act No. 12 of the Public Acts of 1869, as~~
19 ~~amended, being sections 456.101 to 456.119 of the Michigan~~
20 ~~Compiled Laws 1869 PA 12, MCL 456.101 to 456.119, and Act~~
21 ~~No. 87 of the Public Acts of 1855, as amended, being sections~~
22 ~~456.1 to 456.36 of the Michigan Compiled Laws 1855 PA 87, MCL~~
23 **456.1 to 456.36, and conducting sales under the prepaid funeral**
24 **and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235, as**
25 well as any other cemetery operating under state law or local
26 ordinance. A cemetery owned and operated by a ~~municipality~~
27 **municipal corporation**, church, or religious institution ~~shall~~

1 ~~be~~ **is** exempt from this act. However, a ~~municipality~~ **municipal**
2 **corporation** may pass ordinances necessary for regulating that
3 ~~municipality's~~ **municipal corporation's** cemeteries.

4 (2) A cemetery for earth interment of 10 acres or less in
5 size, which is owned and operated entirely and exclusively by an
6 existing nonprofit entity and in which a burial has taken place
7 before September 15, 1968, ~~shall be~~ **is** exempt from the fee
8 provisions of this act, ~~That cemetery~~ shall have ~~its~~ **the**
9 trust fund required by this act audited at the discretion of the
10 commissioner, ~~It shall also be~~ **and is** exempt from the
11 **endowment** care **trust** fund requirements of section 16, except ~~as~~
12 ~~to the care fund~~ **for the** report requirements if the cemetery
13 maintains care or memorial funds.

14 Sec. 12. (1) A person ~~or business entity~~ shall not
15 establish a cemetery without a valid permit or operate an
16 existing cemetery except under a valid registration **issued** under
17 this act.

18 (2) If a person ~~or business entity~~ proposes to purchase or
19 otherwise acquire a controlling interest in an existing cemetery
20 company, that person ~~or business entity~~ shall first ~~make~~
21 ~~application~~ **apply** to the commissioner for a certificate of
22 approval of a proposed change of control of a cemetery company.
23 The application shall contain the name and address of the
24 proposed new owner or operator and other information as the
25 commissioner requires. The commissioner shall issue a
26 certificate of approval only after he or she is satisfied that
27 the proposed new owner is qualified by character, experience, and

1 financial responsibility to control and operate the cemetery in a
2 legal and proper manner, and that the interest of the public
3 generally will not be jeopardized by the proposed change in
4 ownership and management. The application for a purchase or
5 change of control must be accompanied by an initial filing or
6 investigation fee of \$500.00. ~~As used in this section,~~
7 ~~"controlling interest" means the capability to decide the~~
8 ~~operating and financial policies of the cemetery company or to~~
9 ~~select a majority of the officers or directors of the cemetery~~
10 ~~company. In deciding whether a person or business entity has or~~
11 ~~proposes to acquire a controlling interest, the percentage of the~~
12 ~~stock, assets, or other indicia of ownership which a person or~~
13 ~~business entity acquires or proposes to acquire need not be the~~
14 ~~only factor considered by the commissioner. If a person or~~
15 ~~business entity fails to comply with this section, the~~
16 commissioner shall order that ~~a~~ **an administrative** hearing be
17 held. If a transfer of controlling interest is found to have
18 taken place without prior commissioner approval, the commissioner
19 ~~in his or her discretion~~ may suspend or revoke the registration
20 of the cemetery or take other appropriate action ~~to insure~~
21 **until it demonstrates** compliance with this section.

22 (3) **As used in this section, "controlling interest" means the**
23 **capability to decide the operating and financial policies of the**
24 **cemetery company or to select the officers or directors with**
25 **majority control of the cemetery company.**

26 Sec. 12a. (1) The commissioner or an examiner,
27 investigator, or other person the commissioner may appoint, may

1 visit and examine the affairs of any cemetery or ~~business~~
2 ~~entity~~ **person** required to register under this act and shall have
3 free access to the books, papers, records, and documents that
4 relate to the business of the cemetery corporation, ~~business~~
5 ~~entity~~ **person**, or agent acting on its behalf.

6 (2) The books, papers, records, and documents shall be
7 available for inspection or audit at any time during regular
8 business hours with reasonable notice. One **or more** qualified
9 ~~person~~ **persons** shall conduct the audit whose services shall be
10 charged to and paid by the cemetery at the rate of \$10.00 per
11 hour, but not more than ~~\$100.00~~ **\$1,000.00** total.

12 Sec. 13. (1) Any person ~~or business entity~~ desiring to
13 establish a cemetery shall file with the commissioner, on forms
14 furnished by the commissioner, an application for a permit to
15 establish a cemetery. The application shall be accompanied by an
16 investigation fee of \$500.00.

17 (2) After a receipt of an application, the commissioner shall
18 ~~make~~ **conduct** an investigation pertaining to the physical plans,
19 the community need for the planned cemetery, and pertinent
20 information pertaining to the applicant's experience, financial
21 stability, ability, and integrity. If the applicant is ~~other~~
22 ~~than~~ **not** a natural person, the same investigation shall be made
23 of the general manager and principal owners.

24 Sec. 15. (1) Each ~~individual or business entity~~ **person**
25 operating a cemetery shall register the cemetery by filing with
26 the commissioner a registration application before June 2 of each
27 year, on a form furnished by the commissioner, and accompanied by

1 the registration fee. ~~Registrations shall expire~~ **A**

2 **registration expires** on July 1 of each year.

3 (2) If the commissioner intends to deny registration, the
4 procedure set forth in section 19 shall be followed. The
5 commissioner may impose a late penalty filing fee of \$10.00 per
6 day on ~~an individual or business entity~~ **a person** which filed a
7 registration application after June 1. ~~or on an individual or~~
8 ~~business entity which files a trust fund report after the due~~
9 ~~date set forth in this act.~~

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 1855 PA 87, MCL 456.35a, or section 7a
13 of 1869 PA 12, MCL 456.107a, and to report annually before July 1
14 of each year, on forms approved and furnished by the
15 commissioner, care fund information required to be reported to
16 the commissioner by other statutes and information regarding the
17 funds as the commissioner considers pertinent in the public
18 interest. A cemetery applying to the commissioner as authorized
19 by other statutes for a care fund deposit modification or waiver
20 shall be assessed the actual expenses for an examination or
21 investigation by the commissioner. The commissioner shall
22 require each person engaged as agent or seller, as a means of
23 livelihood either part time or full time, in the selling of
24 burial rights, entombment rights, or columbarium rights owned by
25 a party other than a cemetery or corporation subject to the
26 irrevocable endowment care fund requirements of other laws, to
27 deposit 15% of all gross proceeds received from the sales of

1 those rights into the irrevocable endowment care fund of the
2 cemetery in which the rights are located if an irrevocable
3 endowment care fund exists for that cemetery. Excess sums on
4 deposit in the fund can be applied by a cemetery against future
5 deposits. A deposit required to be made by those persons shall
6 be modified or waived if the cemetery has received an irrevocable
7 endowment care fund deposit modification or waiver approved by
8 the commissioner. The total deposit for a single adult burial
9 right sale or assignment shall not be less than \$20.00.

10 (2) ~~A~~ **Subject to subsection (8),** a cemetery which is
11 required to register pursuant to this act and an agent which is
12 authorized by a cemetery or acting on its behalf under an
13 agreement or sales contract to sell cemetery merchandise or
14 cemetery services shall establish a merchandise trust account and
15 deposit a percentage of the gross proceeds received from the
16 sales as determined by the commissioner. The merchandise trust
17 account shall be maintained exclusively for the deposit of the
18 money into a state or national bank, a state or federally
19 chartered savings and loan association, or a trust company under
20 the terms of a written trust agreement approved by the
21 commissioner. It shall be the responsibility of each registrant
22 under this act to assure that documents relating to the
23 merchandise trust account are provided to the commissioner upon
24 request. If a subpoena is issued to obtain these documents, the
25 registrant shall pay all costs related to obtaining the documents
26 regardless of the \$100.00 charge limitation contained in section
27 12a(2). The funds shall be deposited not later than the month

1 following their receipt.

2 (3) ~~The~~ **Subject to subsection (8), the** total deposits to a
3 merchandise trust for the sale of cemetery burial vaults or other
4 outside containers, other than crypts installed underground and
5 sold as part of a cemetery lot, shall at all times be not less
6 than the greater of \$100.00 per vault or outside container or
7 130% of the total costs of the containers covered by the trust.
8 Money deposited in connection with a sale shall be repaid within
9 30 days upon written demand of purchaser. A burial vault shall
10 be installed only at need or by separate written authorization of
11 the purchaser. The cemetery shall have the right to withdraw the
12 amount on deposit for the delivered vault or outside container.

13 (4) ~~A~~ **Subject to subsection (8), a** contract or agreement
14 made with a purchaser of cemetery merchandise and cemetery
15 services shall contain a complete description of the cemetery
16 merchandise purchased and of the cemetery services to be
17 rendered.

18 (5) The commissioner shall require each cemetery or agent
19 authorized by it acting on its behalf to report annually before
20 July 1 of each year on forms provided by the commissioner. The
21 reports shall contain information as the commissioner considers
22 necessary to ascertain that this act is being implemented.

23 (6) If, after an audit by the commissioner's staff, a deficit
24 in the amount of required deposits to the trust funds is found,
25 the commissioner may assess a penalty not to exceed 10% of the
26 amount of the deficit. The cemetery or entity of a cemetery may
27 request ~~a~~ **an administrative** hearing before the commissioner

1 within 30 days after being notified of a deficit by the
2 commissioner. If, following the **administrative** hearing, the
3 commissioner determines that a deficit does exist, an additional
4 penalty not to exceed 1.5% may be assessed each month on the
5 unpaid monthly balance until the deficit is paid in full.

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

11 (8) **Any preneed contracts for cemetery merchandise or**
12 **services entered into on or after January 1, 2005 are subject to**
13 **the prepaid funeral and cemetery sales act, 1986 PA 255, MCL**
14 **328.211 to 328.235.**

15 (9) ~~(8)~~ As used in this section, "endowment care" means all
16 general work necessary to keep the cemetery property in a
17 presentable condition at all times, including, but not limited
18 to, the cutting of grass at reasonable intervals; raking,
19 cleaning, filling, seeding, and sodding of graves; replacement,
20 pruning, or removal of shrubs and trees in order to assure access
21 to interment rights; and the repair and maintenance of
22 enclosures, buildings, drives, walks, and the various memorial
23 gardens.

24 **Sec. 16a. A person shall not develop or build a mausoleum**
25 **or columbarium and engage in preconstruction sales of crypts or**
26 **niches in a mausoleum or columbarium unless that person does both**
27 **of the following:**

1 (a) Agrees to complete the mausoleum or columbarium within 4
2 years after the date of the first sale of an entombment or
3 inurnment right in the proposed mausoleum or columbarium or, if
4 construction is not completed within that time and upon the
5 request of the purchaser, agrees to offer to the purchaser a
6 refund of 100% of the purchase price with interest calculated at
7 the rate of 4% per annum.

8 (b) Agrees that if the person for whom the entombment or
9 inurnment right in the proposed mausoleum or columbarium dies
10 before completion of the mausoleum or columbarium, an alternative
11 disposition of the remains shall be provided until completion of
12 the mausoleum or columbarium or until a refund is made of 100% of
13 the purchase price with interest calculated at the rate of 4% per
14 annum.

15 Sec. 18. (1) The commissioner may deny an application filed
16 under this act and refuse to issue a permit or registration, or
17 may suspend or revoke a permit or registration, or may reprimand,
18 place on probation, or take other disciplinary action against the
19 applicant if the commissioner's investigation reveals facts
20 which, with reference to the establishment of a cemetery, show
21 inappropriate physical plans; lack of community need; inadequate
22 experience, financial stability, or integrity to protect the
23 public welfare; or when the commissioner finds that the applicant
24 or its officers or general manager has done 1 or more of the
25 following:

26 (a) Made a false statement of a material fact in the
27 application.

1 (b) Not complied with this act.

2 (c) Been guilty of ~~a~~ **an unlawful or** fraudulent act in
3 connection with selling or otherwise dealing in cemetery lots ~~—~~
4 **and** burial rights ~~—~~ **regulated by this act or funeral or**
5 **cemetery merchandise and** services ~~of a type required to be~~
6 ~~registered under this~~ **regulated by the prepaid funeral and**
7 **cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.**

8 (d) Been guilty in the judgment of the commissioner of other
9 conduct whether of the same or different character than specified
10 in this act which constitutes dishonest and unfair dealing.

11 (e) **Violated article 18 of the occupational code, 1980 PA**
12 **299, MCL 339.1801 to 339.1812.**

13 (f) ~~(e)~~ Violated the terms of an assurance of
14 discontinuance entered into with the commissioner pursuant to
15 section 9(2).

16 (g) **Violated the prepaid funeral and cemetery sales act, 1986**
17 **PA 255, MCL 328.211 to 328.235.**

18 (h) **Failed to comply with section 2080 of the insurance code**
19 **of 1956, 1956 PA 218, MCL 500.2080.**

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

1 maintenance of the grave memorial or burial vault.

2 (2) If the commissioner denies an application for a permit or
3 registration, or suspends or revokes an existing permit or
4 registration required by this act, the denial, revocation, or
5 suspension shall revoke the cemetery operation as to the sale or
6 assignment of burial rights, entombment rights, **or** columbarium
7 rights, cemetery merchandise, or cemetery services after the date
8 of the suspension, revocation, or denial. The corporation shall
9 fulfill all contractual obligations and agreements entered into
10 before the date of the suspension, revocation, or denial, and
11 shall make required interments for the owners of burial rights,
12 entombment rights, or columbarium rights purchased before the
13 date of suspension, revocation, or denial.

14 (3) **The commissioner may impose an administrative fine of not**
15 **more than \$5,000.00 for each separate violation of this act.**

16 Sec. 19. If the commissioner intends to deny an application
17 for a permit to establish a cemetery, to refuse registration of
18 an existing cemetery, or to suspend or revoke a registration, the
19 commissioner shall give written notice to the person ~~or~~
20 ~~business~~ involved of that intent. The notice shall state a time
21 and a place for hearing before the commissioner or a designated
22 hearing officer, and a summary statement of the reasons for the
23 proposed action. The notice of intent shall be mailed by
24 certified mail to the applicant at least 15 days before the
25 scheduled hearing date. The commissioner shall hold a hearing
26 pursuant to the notice in the manner required by ~~Act No. 306 of~~
27 ~~the Public Acts of 1969, as amended, being sections 24.201 to~~

1 ~~24.315 of the Michigan Compiled Laws~~ **administrative procedures**
2 **act of 1969, 1969 PA 306, MCL 24.201 to 24.328**, and the rules of
3 procedure adopted by the commissioner. ~~—, and~~ **The commissioner**
4 shall ~~make~~ **issue** a written decision.

5 Sec. 21. **(1)** A person ~~, firm, partnership, association, or~~
6 ~~corporation~~ who violates this act is guilty of a misdemeanor,
7 and, if a natural person, the first offense shall be punishable
8 by a fine of not more than \$100.00 or imprisonment for not more
9 than 90 days, and a second offense shall be punishable by a fine
10 of not more than \$500.00 or imprisonment for not more than 1
11 year, or both.

12 **(2)** If the violator is other than a natural person, the first
13 offense shall be punishable by a fine of not more than \$100.00
14 and the second offense shall be punishable by a fine of not more
15 than \$1,000.00.

16 Enacting section 1. This amendatory act does not take
17 effect unless Senate Bill No. 512 of the 92nd Legislature is
18 enacted into law.

19 Enacting section 2. This amendatory act takes effect
20 January 1, 2005.