

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, 14, 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, 328.224,
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**

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

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

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

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

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

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

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

25 (i) A burial ground for earth interments.

26 (ii) A mausoleum for crypt entombments.

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

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

2 (e) ~~-(3)-~~ "Cemetery burial vault or other outside container"

3 means a box or container ~~which is~~ used solely at the place of
4 interment to permanently surround or enclose a casket and to
5 support the earth above the casket after burial. Cemetery burial
6 vault or other outside container ~~shall~~ **does** not include a
7 catafalque, a combination unit, or any product ~~which is~~
8 designed or intended to be used with a catafalque or combination
9 unit. ~~If a cemetery burial vault or other outside container is~~
10 ~~intended for use as a permanent burial receptacle for the remains~~
11 ~~of an adult human body, its inside dimensions shall be at least~~
12 ~~28 inches wide by 82 inches long by 24 inches high.~~

13 (f) **"Cemetery services" means cremations, grave openings and**
14 **closings, and installation of grave memorials.**

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

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

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

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

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

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

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

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

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

26 (n) ~~(10)~~ "Department" means the department of ~~licensing~~
27 ~~and regulation~~ **consumer and industry services.**

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

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

14 **(b)** ~~-(2)-~~ "Escrow agent" means a person who holds, invests,
15 and disburses principal and income from the funds received under
16 a prepaid ~~funeral~~ contract.

17 **(c)** ~~-(3)-~~ "Funds" means all money or other consideration
18 actually received from a contract buyer by a contract seller or
19 provider or an assignee from the contract buyer in connection
20 with any aspect of the sale of a prepaid ~~funeral~~ contract,
21 including finance charges, but does not include late payment
22 penalties, payments required to be made to a governmental agency
23 at the time the contract is entered into, or a commission
24 authorized by section 12(1).

25 ~~-(4)- "Funeral goods" means items of merchandise sold or~~
26 ~~offered for sale or lease to consumers which will be used in~~
27 ~~connection with a funeral or an alternative to a funeral or final~~

~~1 disposition of human remains including, but not limited to,~~
~~2 caskets, combination units, and catafalques. Funeral goods shall~~
~~3 not include land or interests in land, crypts, lawn crypts,~~
~~4 mausoleum crypts, or niches that are sold by a cemetery which~~
~~5 complies with the endowment care fund requirements of the~~
~~6 cemetery regulation act, Act No. 251 of the Public Acts of 1968,~~
~~7 being sections 456.521 to 456.543 of the Michigan Compiled Laws.~~
~~8 In addition, funeral goods shall not include cemetery burial~~
~~9 vaults or other outside containers, markers, monuments, urns, and~~
~~10 merchandise items used for the purpose of memorializing a~~
~~11 decedent and placed on or in proximity to a place of interment or~~
~~12 entombment of a casket, catafalque, or vault or to a place of~~
~~13 inurnment which are sold by a cemetery which deposits at least~~
~~14 130% of the cost of these items in a merchandise trust account~~
~~15 established and operated in accordance with the cemetery~~
~~16 regulation act, Act No. 251 of the Public Acts of 1968, being~~
~~17 sections 456.521 to 456.543 of the Michigan Compiled Laws.~~

~~18 (d) —(5)— "Funeral services" means services customarily~~
~~19 performed by a mortuary science licensee who is licensed pursuant~~
~~20 to —sections 1801 to 1812— **article 18** of the occupational code,~~
~~21 —Act No. 299 of the Public Acts of 1980, being sections 339.1801~~
~~22 to 339.1812 of the Michigan Compiled Laws— **1980 PA 299,**~~
~~23 **MCL 339.1801 to 339.1812.** —Further, funeral— **Funeral** services~~
~~24 —includes— **include**, but —is— **are** not limited to, care of dead~~
~~25 human remains, embalming, preparation of dead human remains for~~
~~26 final disposition, professional services relating to a funeral or~~
~~27 an alternative to a funeral or final disposition of dead human~~

1 remains, transportation of dead human remains, limousine
2 services, use of facilities or equipment for viewing dead human
3 remains, visitation, memorial services, or services which are
4 used in connection with a funeral or alternative to a funeral,
5 coordinating or conducting funeral rites or ceremonies,
6 **cremations**, and other services provided in connection with a
7 funeral, alternative to a funeral, or final disposition of dead
8 human remains.

9 **(e) "Grave memorial" means a stone or other structure or item**
10 **used for the purpose of memorializing a decedent and placed on or**
11 **in proximity to a place of burial, interment, or entombment of a**
12 **casket, catafalque, or vault or on or in proximity to a place of**
13 **inurnment.**

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

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

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

7 (i) "Mausoleum" means a building or other aboveground
8 structure that is affixed to land and is a permanent repository
9 for human remains.

10 (j) Subject to subsection (2), "merchandise" means both of
11 the following:

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

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

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

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

25 (a) "Nonguaranteed price contract" means a prepaid ~~funeral~~
26 contract under which funds received are held pursuant to an
27 escrow agreement between a contract seller or provider and a

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

20 (b) ~~(2)~~ "Person" means an individual, group of individuals,
 21 sole proprietorship, partnership, **limited liability company,**
 22 association, corporation, ~~a governmental~~ **government** agency,
 23 **cemetery,** or a combination of these legal entities.

24 (c) "Physical delivery and retention" means actual control
 25 and possession of merchandise that has been permanently
 26 relinquished by a contract seller or a provider, or the agent of
 27 either, to the contract buyer or the contract beneficiary. In

1 the case of a grave memorial or urn, physical delivery and
2 retention means that the grave memorial or urn has been
3 permanently inscribed with the name of the person being
4 memorialized. Physical delivery and retention does not occur if
5 the contract seller or provider takes either of the following
6 actions:

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

10 (ii) Acquires or reacquires actual or constructive possession
11 or control of merchandise after initial delivery to the contract
12 buyer or contract beneficiary.

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

23 (e) ~~-(4)-~~ "Principal" means the money ~~, finance charges,~~ or
24 other consideration actually deposited in the escrow **or trust**
25 accounts required by ~~section 12~~ **this act**.

26 (f) ~~-(5)-~~ "Provider" means any person who furnishes or agrees
27 to furnish ~~funeral goods~~ **merchandise** or funeral **or cemetery**

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

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

17 (h) "Urn" means a container used to preserve the ashes of a
18 dead human body.

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

24 (2) A person desiring to receive a certificate of
25 registration under this section shall ~~make application~~ **apply**
26 upon forms provided by the department and pay an application fee
27 of \$120.00. The original registration may be renewed. A

1 certification of registration ~~shall be~~ **is** valid for 3 years
2 from the date of its issuance. An application form for original
3 registration or renewal shall contain the following:

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

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

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

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

21 (e) A statement made under oath that the registrant has an
22 agreement with each escrow agent with which it has deposited
23 funds which complies with the requirements of section 7, **or if**
24 **the registrant is or intends to be an escrow agent for funds**
25 **received in connection with a nonguaranteed price contract, a**
26 **statement that the registrant will comply with the requirements**
27 **of section 7.**

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

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

16 (a) That the person was previously registered with the
17 department and that registration was revoked or suspended within
18 2 years ~~prior to~~ **before** the date of the current application for
19 registration.

20 (b) That the person was or is presently an owner with a
21 substantial interest in the entity, partner, or employee of a
22 person whose registration was revoked or suspended within 2 years
23 ~~prior to~~ **before** the date of the current application for
24 registration and the person engaged or participated in or
25 authorized the misconduct ~~which~~ **that** was the basis for the
26 revocation or suspension.

27 (c) **That the person lacks good moral character as defined and**

1 determined under 1974 PA 381, MCL 338.41 to 338.47.

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

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

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

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

21 (a) Upon the request by the department, to inspect or copy
22 records pertaining to any or all funds held or managed by the
23 escrow agent.

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

27 (c) Upon the request of a contract buyer or a contract

1 beneficiary to inspect or copy records pertaining to funds held
2 or managed by the escrow agent pursuant to a prepaid ~~funeral~~
3 contract to which the contract buyer is a party or for whose
4 benefit it was entered into.

5 (d) Upon order of a court of ~~proper~~ **competent**
6 jurisdiction.

7 Sec. 8. (1) A registrant shall keep, in this state,
8 accurate accounts, books, and records of all transactions and
9 accounts regulated by this act. Records shall include copies of
10 all prepaid ~~funeral~~ contracts, the dates and amounts of
11 payments made and accepted under these **prepaid** contracts, the
12 name and address of each contract buyer, the name and address of
13 the contract beneficiaries, the name and address of each escrow
14 agent, and any other records as the department may require to
15 enable it to determine whether the registrant is complying with
16 the requirements of this act. Records shall be kept for at least
17 36 months after performance of all obligations of each prepaid
18 ~~funeral~~ contract or after the filing of the final special
19 report ~~which~~ **that** includes a **prepaid** contract ~~which~~ **that** has
20 been performed. **On December 31 of each year, a registrant shall**
21 **have available for examination by the department an annual**
22 **statement or record as of its most recent fiscal year which ended**
23 **at least 6 months prior to the December 31 date, certified to by**
24 **the owners, or in case of a corporation by 2 directors or**
25 **trustees, showing the financial status of all contractual**
26 **liabilities and obligations for future performance of services by**
27 **the registrant or the organization so obligated that is**

1 affiliated with the registrant. This statement or record shall
2 contain the following information:

3 (a) Complete description of the future performance
4 obligations involved.

5 (b) The face value of all contracts as written.

6 (c) Complete information on the means, provision, trust, or
7 other vehicle that will assure fulfillment of all obligations,
8 stating ledger and market values of the vehicle, its location,
9 nature of investments and trustees including fees paid to
10 trustees.

11 (2) ~~At least once every 3 years~~ **Annually**, a registrant
12 which serves as an escrow agent or which has deposited funds with
13 an escrow agent pursuant to section 12 shall secure a special
14 report of limited review prepared by a licensed ~~independent~~
15 certified public accountant pertaining to ~~prepaid funeral~~
16 ~~contract~~ funds. The special report shall be on forms provided
17 by the department or in any other format considered appropriate
18 by the ~~independent~~ **licensed** certified public accountant. The
19 special report shall be prepared and dated within 90 days before
20 the expiration of the registrant's certificate of registration
21 and shall be furnished to the department with the registrant's
22 application for renewal or, if an application for renewal is not
23 filed, before the expiration of the certificate of registration.
24 In preparing the special report, the ~~independent~~ **licensed**
25 certified public accountant shall not be required to review all
26 prepaid ~~funeral~~ contracts, escrow agreements, escrow accounts,
27 or records of the registrant, nor shall the ~~independent~~

1 **licensed** certified public accountant be required to review any
2 receipts or deposits by the registrant of ~~prepaid funeral~~
3 ~~contract~~ funds. The special report of the ~~independent~~
4 **licensed** certified public accountant shall provide the following
5 assurances:

6 (a) That, based either upon a review of the registrant's
7 agreements with escrow agents or depositories which limit
8 investments of the escrow funds by the escrow agents or
9 depositories to those investments permitted by this act, or upon
10 a review of the investments of the escrow accounts, the
11 investment requirements of section ~~12(4)~~ **12** have been complied
12 with.

13 (b) In the case of escrow accounts where the registrant
14 serves as the escrow agent, that withdrawals, as detailed in the
15 periodic statements of the depositories in which the escrow
16 accounts are maintained, have been made in ~~accordance~~
17 **compliance** with this act.

18 (c) That no matters have come to the attention of the
19 independent certified public accountant during the review of
20 escrow account investments and withdrawals that gave cause to
21 believe that the registrant has not complied with this act, or if
22 any matters have come to his or her attention, the independent
23 certified public accountant shall include an explanation of the
24 matters which caused the belief that the registrant has not
25 complied with this act.

26 (3) The department may examine each special report required
27 by this section and if the department determines on the basis of

1 its review that the registrant or its agent has not held or
2 invested funds in accordance with the requirements of this act or
3 has failed to file a special report as required, the department
4 shall take any appropriate corrective or penal action authorized
5 by this act.

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

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

26 Sec. 9. ~~A registrant who discontinues its business~~
27 ~~operations shall notify the department and the contract buyer of~~

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

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

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

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

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

13 Sec. 12. (1) All funds received in connection with a
14 prepaid ~~funeral~~ contract shall be held in escrow by an escrow
15 agent for the benefit of the ~~person for whom the funeral goods~~
16 ~~or funeral services have been purchased~~ **contract beneficiary.**
17 However, a prepaid ~~funeral~~ contract may authorize the contract
18 seller or provider to charge an additional commission of not more
19 than 10% of the contract price which shall not be subject to the
20 depository requirements of this section. If the contract price
21 is paid in installments, the commission retained by the contract
22 seller or the provider shall not exceed the rate of the
23 commission charged in the **prepaid contract for each installment.**
24 A contract buyer upon cancellation ~~shall be~~ **is** entitled to a
25 refund as provided in section 13(1).

26 (2) Only the following persons may serve as the escrow agent
27 of ~~prepaid funeral~~ funds:

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

(b) In the case of either a guaranteed or nonguaranteed price contract, a ~~state or national bank, a state or federal savings and loan association, a state or federally chartered credit union~~ **depository**, a trust company, ~~or~~ a Michigan nonprofit corporation in which the majority interest is held by 250 or more funeral establishments licensed ~~pursuant to sections 1801 to 1812 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.1801 to 339.1812 of the Michigan Compiled Laws~~ **under article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812**, or a Michigan nonprofit corporation in which the majority interest is held by ~~250~~ **50** or more cemeteries licensed and operated pursuant to the cemetery regulation act, ~~Act No. 251 of the Public Acts of 1968, being sections 456.521 to 456.543 of the Michigan Compiled Laws~~ **1968 PA 251, MCL 456.521 to 456.543**. If the prepaid ~~funeral~~ contract is a guaranteed price contract, the contract seller or the provider shall not serve as the escrow agent.

(3) If the escrow agent is not the contract seller or provider of a nonguaranteed price contract, the escrow agent shall be selected as follows:

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

(b) If the **prepaid** contract is a guaranteed price contract,

1 the escrow agent shall be selected by the provider who has been
 2 designated to furnish the ~~funeral goods or~~ funeral services.
 3 **If the prepaid contract does not include funeral services, the**
 4 **escrow agent shall be selected by any provider.**

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

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

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

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

25 (6) Income shall be held and invested by the escrow agent in
 26 the same manner as the principal except that the income may be
 27 utilized to pay reasonable fees and expenses of the escrow agent

1 in addition to other costs specifically authorized by this act.
 2 The expenses and fees paid to the escrow agent shall not exceed
 3 1% of the aggregate balance of principal and prior earned income
 4 from each account annually. If a fee is charged for reasonable
 5 expenses for the administration costs under an escrow agreement,
 6 the amount may be paid to the escrow agent periodically or may be
 7 accumulated in the account and paid at the time of death or upon
 8 cancellation of the contract.

9 (7) Amounts of principal and income held by an escrow agent
 10 other than the contract seller or provider of a nonguaranteed
 11 price contract may be commingled with principal and income
 12 derived from other prepaid ~~funeral~~ accounts. However, a
 13 separate accounting of principal and income shall be maintained
 14 for each prepaid ~~funeral~~ contract under the name of the
 15 contract beneficiary.

16 (8) The ~~contract buyer~~ **escrow agent** shall ~~be sent~~ **send to**
 17 **the contract buyer** a notice stating the date, amount of the
 18 deposit, and the name of the escrow agent with whom the funds are
 19 deposited.

20 (9) Upon the death of the contract beneficiary and upon
 21 performance by the provider of its obligation to furnish ~~funeral~~
 22 ~~goods and~~ **merchandise or funeral or cemetery** services pursuant
 23 to the prepaid ~~funeral~~ contract, funds held by the escrow agent
 24 shall be disbursed as follows:

25 (a) If the prepaid ~~funeral~~ contract is a nonguaranteed
 26 price contract, the principal and income shall first be disbursed
 27 by the escrow agent to the provider of the ~~funeral goods~~

1 **merchandise** or funeral **or cemetery** services in payment of all
2 reasonable charges. Thereafter, not less than 90% of the
3 remaining balance of principal and income, if any, shall be
4 disbursed to the person, other than the provider or the contract
5 seller, designated in the **prepaid** contract or authorized by law
6 to receive the surplus, and the remainder, if any, shall be
7 disbursed to the provider as final compensation for its
8 services. The amount paid to the person entitled to receive the
9 surplus shall be as follows:

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

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

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

19 (b) If the prepaid ~~funeral~~ contract is a guaranteed price
20 contract, the principal and income held by the escrow agent shall
21 be disbursed to the provider, its designee, or its successor.

22 (c) If the escrow agent is notified that there is a dispute
23 as to whether the provider has performed all its obligations
24 under the prepaid ~~funeral~~ contract, the escrow agent shall file
25 an action for interpleader or shall obtain an impartial
26 arbitrator to determine the rights of the parties. Expenses of
27 arbitration shall be shared equally by the parties unless

1 otherwise ordered by the arbitrator.

2 (10) A Michigan nonprofit corporation in which the majority
3 interest is held by 250 or more funeral establishments or by
4 ~~250~~ 50 or more cemeteries may be designated as the escrow agent
5 only if the contract buyer has expressly authorized ~~such~~ **that**
6 designation in writing. If the contract buyer authorizes the
7 appointment as escrow agent of ~~any such~~ **a Michigan** nonprofit
8 corporation **described in this subsection** in the prepaid ~~funeral~~
9 contract, the authorization shall be set forth in a separate
10 paragraph which shall not be effective unless separately signed
11 or initialed by a contract buyer and which shall state that the
12 **contract** buyer may elect to require that a ~~state or national~~
13 ~~bank, or state or federal savings and loan association, a state~~
14 ~~or federally chartered credit union,~~ **depository** or a trust
15 company be designated as the escrow agent.

16 (11) If a prepaid contract is canceled, the escrow agent
17 shall disburse the principal and income in accordance with
18 section 13.

19 (12) At least annually, unless waived in writing by a
20 contract buyer, a contract buyer shall be furnished a statement
21 indicating the current balance, the income earned since the last
22 statement, the fees or expenses charged since the last statement,
23 and the name and address of the person from whom additional
24 information may be obtained relative to the account. The cost of
25 the statement required by this subsection may be paid from the
26 income and may be in addition to any other fee or charge
27 authorized by this act.

Senate Bill No. 512 as amended June 18, 2003

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Senate Bill No. 512 as amended June 18, 2003

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Sec. 13. (1) A contract buyer may cancel a prepaid
~~funeral~~ contract **at any time** before the death of the contract
beneficiary upon 30 days' prior written notice to the contract
seller of a nonguaranteed price contract or to the provider
designated to furnish ~~funeral goods~~ **merchandise** or funeral **or**
cemetery services pursuant to a guaranteed price contract. The
contract seller or provider shall promptly notify the escrow
agent of the cancellation and of its effective date, if the
escrow agent is other than the contract seller or the provider.
After receipt of the notice of cancellation, the escrow agent
shall disburse ~~principal~~ **not less than 90% of the contract**
price and income in the escrow account to the contract buyer
pursuant to this subsection and shall disburse the remainder of
the principal and income, if any, to the contract seller or the
provider. The ~~amounts disbursed~~ **refund** to the contract buyer

1 shall be determined as follows:

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

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

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

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

21 (3) After the death of the contract beneficiary, if the
22 escrow account established pursuant to a prepaid ~~funeral~~
23 contract is not used by persons legally entitled to make funeral
24 **or cemetery** arrangements, **or both**, for the contract beneficiary,
25 the escrow agent shall disburse the principal and income in the
26 escrow account pursuant to subsection (1) within 30 days after
27 receipt of a request for payment from the contract seller of a

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1 nonguaranteed price contract, or the provider designated to
2 furnish ~~funeral goods~~ **merchandise** or funeral **or cemetery**
3 services pursuant to a guaranteed price contract, or the contract
4 buyer or the contract buyer's estate.

5 (4) A contract seller or a provider ~~which~~ **that** assigns or
6 transfers its obligations under a prepaid ~~funeral~~ contract to
7 another provider shall notify the contract buyer of the
8 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). An assignment or transfer of a
13 provider's obligations under a prepaid ~~funeral~~ contract ~~which~~
14 **that** is made in connection with the sale of a business ~~shall be~~
15 **is** subject to this subsection only if more than 50% of the
16 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**
27 **>> subsection does not apply to**

1 **burial rights or other land interests, crypts, inscribed grave**
 2 **memorials, or niches, for which no refunds are available.**

3 Sec. 14. (1) Payments of principal and income by a
 4 depository or an escrow agent made in good faith pursuant to the
 5 terms of this act shall relieve that depository or escrow agent
 6 of any further liability for that principal and income.

7 (2) An escrow agent shall invest funds held or managed under
 8 this act only as expressly authorized by this act and shall not
 9 invest funds by purchasing life insurance or annuities the
 10 proceeds of which are not payable in full until the happening of
 11 some event including, but not limited to, death of the contract
 12 beneficiary.

13 (3) A provider or an escrow agent may, without approval of
 14 any other party, change the depository of any escrow account,
 15 with or without cause, at any time. A contract buyer shall be
 16 notified if the escrow agent or depository is changed.

17 Sec. 15. (1) All prices or quotations of prices contained
 18 in a prepaid ~~funeral~~ contract, offer, or solicitation shall be
 19 stated in compliance with applicable federal and state laws and
 20 regulations. In addition, a person who offers either ~~funeral~~
 21 ~~goods~~ **merchandise** or funeral **or cemetery** services ~~for sale~~
 22 ~~before the death of the intended user or contract beneficiary on~~
 23 **a preneed or at-need basis** shall comply with the price disclosure
 24 rules of the federal trade commission, code of federal
 25 regulations, 16 C.F.R., part 453, whether or not the rules by
 26 their own terms apply to the offering. ~~Nothing in this~~ **This**
 27 subsection ~~shall~~ **does not** apply to the sale of any interest ~~in~~

1 ~~land~~ covered by the endowment care **trust** requirements of
2 ~~section 35a of Act No. 87 of the Public Acts of 1855, being~~
3 ~~section 456.35a of the Michigan Compiled Laws~~ **the cemetery**
4 **regulation act, 1968 PA 251, MCL 456.521 to 456.543.**

5 (2) A person who sells or offers to sell both funeral goods
6 or services and nonfuneral goods or services as part of the same
7 transaction or series of transactions shall not manipulate the
8 relative prices of the goods or services so as to allocate a
9 disproportionate share of the total price to nonfuneral property
10 or services.

11 (3) All prepaid ~~funeral~~ contracts shall provide that a
12 contract buyer may revoke the **prepaid** contract within 10 business
13 days after entering into the **prepaid** contract and that upon
14 revocation, all funds paid to the contract seller or provider
15 shall be refunded. This provision shall be conspicuously set
16 forth in the **prepaid** contract at a place immediately before the
17 place where the contract buyer is to sign his or her name.

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

23 "This contract may be canceled either before death or after
24 death by the buyer or, if the buyer is deceased, by the person or
25 persons legally authorized to make funeral **or cemetery**
26 arrangements. If the contract is canceled, the buyer or the
27 buyer's estate is entitled to receive a refund of ____% of the

1 contract price and any income earned from investment of the
 2 principal less administrative or escrow fees."
 3 In addition, if a commission is charged pursuant to section 12,
 4 the amount of the commission and the fact that it is a charge
 5 which is in addition to the contract price shall be stated in the
 6 prepaid funeral contract. If a printed contract form is used,
 7 the disclosures required by this subsection shall be stated in
 8 ~~bold-faced~~ **boldfaced** type.

9 (5) ~~Nothing in this~~ **This** act ~~shall~~ **does not** authorize a
 10 contract seller or provider to perform or offer to perform
 11 services for which a mortuary science license or funeral
 12 establishment licensed is required by ~~sections 1801 to 1812~~
 13 **article 18** of the occupational code, ~~Act No. 299 of the Public~~
 14 ~~Acts of 1980, being sections 339.1801 to 339.1812 of the Michigan~~
 15 ~~Compiled Laws 1980 PA 299, MCL 339.1801 to 339.1812~~, unless that
 16 person holds the required license or licenses ~~— However, this~~
 17 ~~act shall~~ **and does** not ~~be construed as requiring~~ **require** a
 18 contract seller or a provider to possess this license or any
 19 other license to engage in an activity covered under this act for
 20 which a license is not required by any other act.

21 (6) A prepaid ~~funeral~~ contract shall provide that the
 22 contract buyer may designate a new contract beneficiary any time
 23 before the death of the contract beneficiary originally specified
 24 in the prepaid ~~funeral~~ contract by providing written notice to
 25 the contract seller of a nonguaranteed price contract or the
 26 provider designated to furnish ~~funeral goods~~ **merchandise** or
 27 funeral **or cemetery** services pursuant to a guaranteed price

1 contract. Notwithstanding any other provisions of law, a
 2 contract buyer may designate the estate of a deceased person as
 3 the contract beneficiary, or provide that the contract
 4 beneficiary ~~shall be~~ **is** the first of 2 or more designated
 5 persons to die.

6 (7) A prepaid ~~funeral~~ contract that is a nonguaranteed
 7 price contract shall have it indicated clearly on the **prepaid**
 8 contract that it is a nonguaranteed price contract and that the
 9 actual costs of the ~~funeral goods and~~ **merchandise or funeral or**
 10 **cemetery** services delivered at the time of death may be greater
 11 or less than the amount of principal and income in the escrow
 12 account, and that the buyer, the buyer's estate, or the person or
 13 persons legally entitled to make funeral **or cemetery**
 14 arrangements, **or both**, are not obligated to purchase specific
 15 ~~goods~~ **merchandise** and services which were selected before the
 16 death of the contract beneficiary or to expend a specific amount
 17 on ~~funeral goods~~ **merchandise** or funeral **or cemetery** services.

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

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

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

Senate Bill No. 512 as amended June 19, 2003

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

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

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

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

<<(5) A prepaid contract may not be canceled or refunded after the death of the contract beneficiary except under circumstances where there are no remains of the deceased contract beneficiary or if the remains of the deceased contract beneficiary cannot be recovered. Contracts may be upgraded after the death of the contract beneficiary by a person on behalf of the contract beneficiary's estate or by a person entitled to make funeral or cemetery arrangements. This does not prevent the transfer of a contract from 1 provider to another provider upon the request of those entitled to make funeral arrangements.>>

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

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

(b) Make a false or misleading statement, oral or written, regarding the sale of ~~funeral goods~~ **merchandise** or funeral **or cemetery** services pursuant to a prepaid ~~funeral~~ contract or regarding the rights or obligations of any party or prospective

1 party to a prepaid ~~funeral~~ contract for the purpose of inducing
2 a person to purchase the ~~funeral goods~~ **merchandise** or funeral
3 **or cemetery** services or a prepaid ~~funeral~~ contract.

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

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

10 (e) Refuse the use of merchandise bought from another vendor
11 or discriminate by price, burial fee, or otherwise for not
12 purchasing merchandise from or under the direction of the funeral
13 establishment or cemetery.

14 (f) Require the purchase of a cemetery burial vault or other
15 outside container from a particular person as a condition to
16 burial in a cemetery in this state. However, this subsection
17 does not limit the right of a cemetery to require the use of a
18 crematory burial vault or other outside container.

19 (g) ~~(e)~~ Violate this act or rules promulgated under this
20 act.

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

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

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

27 (3) The **director of the** department may promulgate rules

1 regulating the solicitation of prepaid ~~funeral~~ contracts by
 2 registrants to protect against solicitations which are
 3 intimidating, vexatious, fraudulent, or misleading ~~—~~ or which
 4 take unfair advantage of a person's ignorance or emotional
 5 vulnerability.

6 (4) Any administrative action brought under this act shall be
 7 ~~handled pursuant to~~ **in compliance with** the administrative
 8 procedures act **of 1969**, ~~Act No. 306 of the Public Acts of 1969,~~
 9 ~~being sections 24.201 to 24.328 of the Michigan Compiled laws~~
 10 **1969 PA 306, MCL 24.201 to 24.328.**

11 Sec. 19. (1) A prepaid ~~funeral~~ contract may be made with
 12 an applicant for or recipient of assistance under the social
 13 welfare act, 1939 PA 280, MCL 400.1 to 400.119b, or a patient or
 14 a legal guardian of a patient in a community health care facility
 15 under the jurisdiction of the department of community health. If
 16 the family independence agency or department of community health
 17 determines that the contract is a fully paid guaranteed price
 18 contract, ~~which when added to~~ **and that the proceeds of the**
 19 **contract and** the amount of ~~a~~ **any** death benefit from an
 20 insurance policy or annuity contract ~~—, the proceeds of which~~
 21 ~~have~~ **that has** been assigned pursuant to section 2080(6) of the
 22 insurance code of 1956, 1956 PA 218, MCL 500.2080, as payment for
 23 ~~funeral goods~~ **merchandise** or funeral **or cemetery** services for
 24 the contract beneficiary ~~that~~ are not more than that amount
 25 allowed under section 2080(6)(g) of the insurance code of 1956,
 26 1956 PA 218, MCL 500.2080, plus \$2,000.00, exclusive of income,
 27 and that the state will not be liable for the ~~funeral goods~~

1 **merchandise** or funeral **or cemetery** services, excluding an outside
2 receptacle when required by the chosen cemetery, of the applicant
3 for or recipient of assistance or patient allowable under
4 contracts under this act, the prepaid ~~funeral~~ contract shall be
5 made irrevocable at the request of the applicant for or recipient
6 of assistance, or the patient or a legal guardian of a patient.
7 Nothing in this section shall be construed as increasing the
8 amount of excludable burial assets for family independence agency
9 or medicaid program eligibility above that allowed under existing
10 family independence agency standards, including any increases
11 ~~therein~~ **in those standards**. The family independence agency or
12 department of community health shall advise the applicant for or
13 recipient of assistance, or the patient or a legal guardian of a
14 patient that additional ~~funeral goods~~ **merchandise** or funeral **or**
15 **cemetery** services subject to contract under this act will not be
16 paid by the family independence agency or department of community
17 health but shall not specify or require approval of particular
18 ~~funeral goods~~ **merchandise** or funeral **or cemetery** services
19 selected by the applicant for or recipient of assistance, or
20 patient or a legal guardian of a patient.

21 (2) A prepaid ~~funeral~~ contract approved by the family
22 independence agency or department of community health shall not
23 be revoked or canceled by the contract seller, contract provider,
24 contract buyer, or their successors, or the estate of the
25 contract beneficiary either before or after the death of the
26 contract beneficiary. This subsection does not prevent those
27 legally entitled to make arrangements for a contract beneficiary

1 from reallocating the amount paid under the prepaid contract to
2 different funeral **or cemetery** services and ~~funeral goods~~
3 **merchandise**. A contract seller or provider shall assign an
4 irrevocable prepaid ~~funeral~~ contract to another provider upon
5 the written request of the contract beneficiary, his or her
6 successor, or those legally entitled to make arrangements for the
7 contract beneficiary so long as the written request is received
8 before a provider's obligations have been performed. An
9 irrevocable contract shall not be considered in determining the
10 eligibility of an applicant or recipient for assistance given
11 under the social welfare act, 1939 PA 280, MCL 400.1 to
12 400.119b. An irrevocable prepaid ~~funeral~~ contract made under
13 this section is not subject to the cancellation provision of
14 section 13 or to the provisions of section ~~15(5)~~ **15(6)**.

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

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

23 Sec. 20. (1) Upon complaint made by any person, or upon its
24 own initiative, the department may investigate alleged violations
25 of this act or rules promulgated under this act by a registrant
26 or any other person. The department may examine books, records,
27 contracts, and other documents in possession of or under the

1 control of any registrant with or without the consent of that
2 registrant and with or without a warrant authorizing the
3 examination, or of any other person if that person consents to an
4 examination or if the department obtains a warrant authorizing an
5 examination. If the department determines that reasonable cause
6 exists to believe that a violation has occurred, it shall do 1 of
7 the following:

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

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

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

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

20 (2) The department or the department of the attorney general
21 may petition a court of competent jurisdiction for issuance of a
22 subpoena requiring the person subpoenaed to appear to testify or
23 produce relevant documentary material for examination at a
24 proceeding conducted under subsection (1)(a) or (b).

25 (3) ~~-(2)-~~ If, after a hearing, the department determines that
26 a registrant has violated the provisions of this act or any rule
27 promulgated pursuant to this act, the department shall do 1 or

1 more of the following:

2 (a) Suspend or revoke the registration.

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

6 (c) Require restitution of funds paid pursuant to a prepaid
7 ~~funeral~~ contract. ~~and restitution~~ **Restitution** may include
8 suspending the registration until restitution is made.

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

13 (e) Impose restrictions upon the registrant's prepaid
14 ~~funeral~~ business activities which require additional
15 accountability to the department.

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

17 Sec. 21. A violation of this act by a person who is
18 licensed ~~pursuant to~~ **under** article 18 of the occupational code,
19 ~~Act No. 299 of the Public Acts of 1980, being sections 339.1801~~
20 ~~to 339.1812 of the Michigan Compiled Laws~~ **1980 PA 299,**
21 **MCL 339.1801 to 339.1812,** or the cemetery regulation act, ~~Act~~
22 ~~No. 251 of the Public Acts of 1968, being sections 456.521 to~~
23 ~~456.543 of the Michigan Compiled Laws, shall also constitute~~
24 **1968 PA 251, MCL 456.521 to 456.543, is considered** a violation of
25 the respective licensing act, and the violator ~~shall be~~ **is**
26 subject to penalties available under those acts.

27 Sec. 22. (1) A person who converts funds paid pursuant to a

1 prepaid ~~funeral~~ contract to his or her own use or benefit —
 2 other than as authorized by this act ~~—shall be—~~ **or who fails to**
 3 **escrow or trust funds according to this act is** guilty of a felony
 4 ~~—~~ punishable by a fine of \$5,000.00 ~~—~~ or imprisonment of not
 5 more than 5 years, or both, for each violation.

6 (2) A person who violates any other provision of this act
 7 ~~—shall be—~~ **is** guilty of a misdemeanor ~~—~~ punishable by a fine of
 8 not more than \$1,000.00 ~~—~~ or imprisonment for not more than 1
 9 year, or both, for each violation.

10 Sec. 23. If the department determines that a registrant has
 11 not complied with the investment and depositing requirements of
 12 this act and that insufficient funds are available in **trust or**
 13 escrow accounts to meet the obligations of prepaid ~~funeral~~
 14 contracts, the department may petition the circuit court of the
 15 county of the registrant's principal place of business or the
 16 county of Ingham for appointment of a receiver. After notice to
 17 the registrant and a hearing and upon its concurrence in the
 18 findings of the department, the court shall appoint a **qualified**
 19 **person as a receiver.** ~~—who shall, under conditions as may be~~
 20 ~~prescribed by the court, take into possession the assets of the~~
 21 ~~registrant for the purpose of liquidation. In the order of~~
 22 ~~liquidation, the court shall make provision for notice to~~
 23 ~~creditors, filing of claims, and all other details necessary for~~
 24 ~~an estate in receivership.~~ **A receiver appointed under this**
 25 **section has all the powers, authority, and remedies of an**
 26 **assignee for the benefit of creditors under chapter 52 of the**
 27 **revised judicature act of 1961, 1961 PA 236, MCL 600.5201 to**

1 **600.5265.** Any remaining funds held in escrow pursuant to this act
2 shall be regarded as belonging to contract buyers or contract
3 beneficiaries according to their interests and shall be
4 distributed to these entities pro rata on the basis of the amount
5 of funds paid by the contract buyers and shall not be available
6 to general creditors of the estate. **Under appropriate**
7 **circumstances, the receiver may file for protection under the**
8 **bankruptcy code.**

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

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