

# SENATE BILL No. 38

January 21, 2003, Introduced by Senator JACOBS and referred to the Committee on Local, Urban and State Affairs.

A bill to amend 1869 PA 12, entitled

"An act to authorize and encourage the formation of corporations to establish rural cemeteries; to provide for the care and maintenance thereof; to provide for the revision and codification of the laws relating to cemeteries, mausoleums, crypts, vaults, crematoriums, and other means of disposing of the dead; to make an appropriation therefor; and to impose certain duties upon the department of commerce,"

by amending sections 7a and 15 (MCL 456.107a and 456.115).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 7a. (1) The fund required to be set aside under  
2 section 7 for ~~the purpose of keeping and maintaining the grounds~~  
3 ~~of such cemeteries established after the effective date of this~~  
4 ~~1966 amendatory act~~ **perpetual care regarding cemeteries**  
5 **established after March 10, 1967**, or mausoleums which are not  
6 located in the confines of a dedicated cemetery and are  
7 established after ~~the effective date of this 1966 amendatory~~  
8 ~~act~~ **March 10, 1967**, shall be created by the deposit of

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1 \$25,000.00 into the fund before any sale of burial rights,  
2 entombment rights or columbarium rights is made.

3 (2) With respect to all cemeteries or mausoleums, whether  
4 established before or after ~~the effective date of this 1966 act~~  
5 **March 10, 1967**, the fund shall be added to by payment,  
6 perpetually, ~~into the same~~ each month of not less than 15% of  
7 all proceeds received during the previous month from the sales of  
8 burial rights, entombment rights, or columbarium rights made  
9 after the ~~effective date of this 1966 amendatory act~~ **March 10,**  
10 **1967**. No total deposit for a single adult burial right sale or  
11 assignment shall be less than \$20.00. Notwithstanding the  
12 minimum amount required to be paid into ~~such~~ **the** endowment fund  
13 from the proceeds of sales of lots or burial rights, ~~as provided~~  
14 ~~herein,~~ any cemetery ~~which~~ **that** has an endowment fund of more  
15 than \$125,000.00 and exceeding \$10,000.00 per acre of the  
16 developed portion of ~~such~~ **the** cemetery, may ~~make application~~  
17 **apply** to the cemetery commission for a waiver of the 15% or  
18 \$20.00 minimum requirement. The cemetery commission shall take  
19 ~~such~~ testimony and ~~make such investigation~~ **investigate** as it  
20 ~~deems~~ **considers** advisable pursuant to ~~such~~ **the** application.  
21 If the cemetery commission determines that the applicant has an  
22 endowment fund of more than \$125,000.00 and exceeding \$10,000.00  
23 per acre of the developed portion of ~~such~~ **the** cemetery and that  
24 the income from ~~such~~ **the** fund is sufficient to meet the then  
25 current cost of keeping the applicant's cemetery in good  
26 condition, it shall grant a waiver of the 15% and \$20.00 minimum  
27 requirement ~~,~~ and it shall grant ~~such~~ **appropriate**

1 modifications with respect to contributions to ~~such~~ **the** fund.  
2 ~~as it deems advisable.~~

3 (3) No portion of the funds required to be set aside under  
4 section 7 shall be used directly or indirectly for salaries of  
5 the officers or directors of the cemetery association or  
6 corporation ~~—~~ **and** only the earnings from ~~such~~ **the** funds shall  
7 be used ~~to keep the grounds and graves in good condition~~ **for**  
8 **perpetual care.**

9 (4) The endowment care fund may be administered by the board  
10 of directors, ~~itself,~~ or by ~~such~~ **the** trustees, individual or  
11 corporate, as ~~it~~ **the fund** may select under the terms of a trust  
12 instrument or declaration. If ~~it~~ **the fund** selects trustees to  
13 administer the fund, ~~its~~ **the fund's** liability shall be limited  
14 to reasonable care in ~~such~~ **the** selection. Directors may serve  
15 as trustees if at least 2 members of the board are selected.

16 (5) The funds established under this section shall be  
17 invested subject to ~~the provisions of sections 1 and 2 of Act~~  
18 ~~No. 177 of the Public Acts of 1937, as amended, being sections~~  
19 ~~555.201 and 555.202 of the Compiled Laws of 1948, and the~~  
20 ~~investment of any fund for endowment care heretofore or hereafter~~  
21 ~~made which meets the requirements of said act is ratified and~~  
22 ~~confirmed~~ **article VII of the estates and protected individuals**  
23 **code, 1998 PA 386, MCL 700.7101 to 700.7511.**

24 (6) In addition to all other remedies at law or in equity  
25 ~~which~~ **that** any interested party may have, the attorney general  
26 and the circuit court of the county in which the cemetery is  
27 located shall have all the powers and jurisdiction granted to the

1 attorney general and court as to trusts covered by ~~Act No. 280~~  
 2 ~~of the Public Acts of 1915, as amended, being sections 554.351 to~~  
 3 ~~554.353 of the Compiled Laws of 1948~~ 1915 PA 280, MCL 554.351 to  
 4 554.353. The remedies granted ~~shall~~ include all ~~such~~  
 5 endowment care fund trusts without regard to uncertainty or  
 6 indefiniteness of ~~the~~ **its** beneficiaries. ~~thereof.~~

7 (7) As used in this section, "perpetual care" means all  
 8 general work necessary to keep the cemetery property in a  
 9 presentable condition at all times including, but not limited to,  
 10 the cutting of grass at reasonable intervals; raking, cleaning,  
 11 filling, seeding, and sodding of graves; replacement, pruning, or  
 12 removal of shrubs and trees in order to assure access to  
 13 interment rights; and the repair and maintenance of enclosures,  
 14 buildings, drives, walks, and the various memorial gardens.

15 Sec. 15. (1) All corporations established under the  
 16 provisions of this act may receive and hold any grant, donation,  
 17 or bequest made to them for the purpose of ~~perpetually caring~~  
 18 ~~for and maintaining~~ **perpetual care of** the lots of ~~said~~ **the**  
 19 donors — and may apply the income ~~thereof~~ under the direction  
 20 of the board of directors for the improvement, embellishment, and  
 21 care of the ground, ~~and the different~~ lots, tombs, and  
 22 monuments. ~~Such~~ **The** funds ~~so~~ received ~~by grant, donation or~~  
 23 ~~bequest~~ shall be kept in a separate fund and shall constitute a  
 24 perpetual care ~~or repair~~ fund, the income of which shall be  
 25 devoted to ~~the~~ perpetual ~~keeping of the lots, monuments,~~  
 26 ~~markers and tombs of the donors in order.~~ **Such care.**

27 (2) **The** funds shall be held in trust and the principal shall

1 not be encroached upon or the income be used for any purpose  
 2 except that to which it is devoted. Any ~~and all~~ funds received  
 3 by grant, donation, or bequest by any corporation or association  
 4 formed under the provisions of this act shall be invested by the  
 5 board of directors in any of the investments authorized in  
 6 section 7. ~~hereof.~~ From this fund, ~~so created~~ there shall be  
 7 drawn annually and credited to each donor ~~, such~~ an amount of  
 8 the total income ~~as~~ **proportional to** the amount donated by the  
 9 donor ~~bears~~ to the income of the entire amount. ~~contributed~~  
 10 ~~for the purposes of this section.~~

11 (3) The treasurer of ~~every~~ **an** association or corporation  
 12 formed under ~~the provisions of~~ this act ~~,~~ shall furnish  
 13 annually to the board of directors a bond in double the amount of  
 14 all ~~moneys~~ **money** received under ~~the provisions of~~ this  
 15 section ~~, which bond shall~~ **to** provide for the safekeeping of  
 16 all money, bonds, mortgages, or securities. ~~, that the said~~ **The**  
 17 treasurer shall render an account annually of all ~~moneys~~ **money**  
 18 received ~~by him under the provisions hereof~~ and pay and deliver  
 19 all ~~moneys~~ **money**, bonds, and securities to ~~his~~ **a** successor in  
 20 office. ~~, said~~ **The** bond ~~to~~ **shall** be approved by a majority  
 21 vote of and members-elect of the board of directors.

22 (4) As used in this section, "perpetual care" means all  
 23 general work necessary to keep the cemetery property in a  
 24 presentable condition at all times including, but not limited to,  
 25 the cutting of grass at reasonable intervals; raking, cleaning,  
 26 filling, seeding, and sodding of graves; replacement, pruning, or  
 27 removal of shrubs and trees in order to assure access to

1 interment rights; and the repair and maintenance of enclosures,  
2 buildings, drives, walks, and the various memorial gardens.

3 Enacting section 1. This amendatory act does not take  
4 effect unless all of the following bills of the 92nd Legislature  
5 are enacted into law:

6 (a) Senate Bill No. 37.

7

8 (b) Senate Bill No. 39.

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