

SENATE BILL No. 512

May 21, 2003, Introduced by Senators TOY and GARCIA and referred to the Committee on Local, Urban and State Affairs.

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, and
by adding sections 12a and 12b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to regulate the sale and providing of ~~certain~~
~~funeral goods or funeral~~ **and cemetery merchandise**, services,
land or interests in land, and other related interests; to
regulate the use of funds received by sellers and providers of

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

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

23 **(f)** ~~—(7)—~~ "Income" means the money earned by the investment
24 of the principal, including, but not limited to, interest,
25 dividends, and gains or losses on the sale of, deposit of, or
26 exchange of, property using invested principal amounts.

27 **(g)** "Interment" means the disposition of human remains by

1 earth interment, entombment, or inurnment.

2 (h) "Marker" means a merchandise item, other than a monument,
3 used for the purpose of memorializing a decedent and placed on or
4 in proximity to a place of burial, interment, or entombment of a
5 casket, catafalque, or vault or to a place of inurnment.

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

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

11 (i) Cemetery burial vaults or other outside containers,
12 markers, monuments, and urns.

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

18 (k) "Monument" means a stone or other structure used for the
19 purpose of memorializing a decedent and placed on or in proximity
20 to a place of burial.

21 (2) Merchandise does not include land, interests in land, or
22 interests in mausoleums or columbariums that are sold by a
23 cemetery or funeral establishment that complies with the
24 endowment care trust fund requirements of this act.

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

26 (a) "Nonguaranteed price contract" means a prepaid ~~funeral~~
27 contract under which funds received are held pursuant to an

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

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

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

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

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

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

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

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

27 (f) ~~-(5)-~~ "Provider" means any person who furnishes or agrees

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

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

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

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

25 (2) A person desiring to receive a certificate of
26 registration under this section shall ~~make application~~ **apply**
27 upon forms provided by the department and pay an application fee

1 of \$120.00. The original registration may be renewed. A
2 certification of registration ~~shall be~~ **is** valid for 3 years
3 from the date of its issuance. An application form for original
4 registration or renewal shall contain the following:

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

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

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

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

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

27 (3) The department shall renew the registration of a person

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

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

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

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

26 (c) **That the person has violated this act, article 18 of the**
27 **occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, or the**

1 cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543.

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

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

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

18 (a) Upon the request by the department, to inspect or copy
19 records pertaining to any or all funds held or managed by the
20 escrow agent.

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

24 (c) Upon the request of a contract buyer or a contract
25 beneficiary to inspect or copy records pertaining to funds held
26 or managed by the escrow agent pursuant to a prepaid ~~funeral~~
27 contract to which the contract buyer is a party or for whose

1 benefit it was entered into.

2 (d) Upon order of a court of ~~proper~~ **competent**
3 jurisdiction.

4 Sec. 8. (1) A registrant shall keep, in this state,
5 accurate accounts, books, and records of all transactions and
6 accounts regulated by this act. Records shall include copies of
7 all prepaid ~~funeral~~ contracts, the dates and amounts of
8 payments made and accepted under these **prepaid** contracts, the
9 name and address of each contract buyer, the name and address of
10 the contract beneficiaries, the name and address of each escrow
11 agent, and any other records as the department may require to
12 enable it to determine whether the registrant is complying with
13 the requirements of this act. Records shall be kept for at least
14 36 months after performance of all obligations of each prepaid
15 ~~funeral~~ contract or after the filing of the final special
16 report ~~which~~ **that** includes a **prepaid** contract ~~which~~ **that** has
17 been performed.

18 (2) At least once every 3 years, a registrant which serves as
19 an escrow agent or which has deposited funds with an escrow agent
20 pursuant to section 12 shall secure a special report of limited
21 review prepared by a licensed independent certified public
22 accountant pertaining to ~~prepaid funeral contract~~ funds. The
23 special report shall be on forms provided by the department or in
24 any other format considered appropriate by the independent
25 certified public accountant. The special report shall be
26 prepared and dated within 90 days before the expiration of the
27 registrant's certificate of registration and shall be furnished

1 to the department with the registrant's application for renewal
2 or, if an application for renewal is not filed, before the
3 expiration of the certificate of registration. In preparing the
4 special report, the independent certified public accountant shall
5 not be required to review all prepaid ~~funeral~~ contracts, escrow
6 agreements, escrow accounts, or records of the registrant, nor
7 shall the independent certified public accountant be required to
8 review any receipts or deposits by the registrant of ~~prepaid~~
9 ~~funeral contract~~ funds. The special report of the independent
10 certified public accountant shall provide the following
11 assurances:

12 (a) That, based either upon a review of the registrant's
13 agreements with escrow agents or depositories which limit
14 investments of the escrow funds by the escrow agents or
15 depositories to those investments permitted by this act, or upon
16 a review of the investments of the escrow accounts, the
17 investment requirements of section ~~12(4)~~ **12** have been complied
18 with.

19 (b) In the case of escrow accounts where the registrant
20 serves as the escrow agent, that withdrawals, as detailed in the
21 periodic statements of the depositories in which the escrow
22 accounts are maintained, have been made in ~~accordance~~
23 **compliance** with this act.

24 (c) That no matters have come to the attention of the
25 independent certified public accountant during the review of
26 escrow account investments and withdrawals that gave cause to
27 believe that the registrant has not complied with this act, or if

1 any matters have come to his or her attention, the independent
2 certified public accountant shall include an explanation of the
3 matters which caused the belief that the registrant has not
4 complied with this act.

5 (3) The department may examine each special report required
6 by this section and if the department determines on the basis of
7 its review that the registrant or its agent has not held or
8 invested funds in accordance with the requirements of this act or
9 has failed to file a special report as required, the department
10 shall take any appropriate corrective or penal action authorized
11 by this act.

12 (4) The department may examine, review, or audit the books
13 and records of a contract seller or provider pertaining to funds
14 received in payment for prepaid ~~funeral~~ contracts. An audit
15 may include an examination of the books and financial records of
16 the registrant as well as books and financial records of escrow
17 agents used by the registrant. A registrant shall authorize
18 escrow agents to open their records of the registrant accounts to
19 the department upon request.

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

1 **shall accept the** statement ~~shall be accepted~~ in lieu of the
2 special report.

3 Sec. 9. A registrant who discontinues its business
4 operations shall notify the department and the contract buyer of
5 each existing prepaid ~~funeral~~ contract and shall provide
6 written documentation that it has arranged for an assignment of
7 these **prepaid** contracts to another provider who satisfies the
8 requirements of section 6.

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

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

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

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

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

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

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

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

26 (a) If the **prepaid** contract is a nonguaranteed price
27 contract, the escrow agent may be selected by either the contract

1 seller or the provider.

2 (b) If the **prepaid** contract is a guaranteed price contract,
 3 the escrow agent shall be selected by the provider who has been
 4 designated to furnish the ~~funeral goods or~~ funeral services.
 5 **If the prepaid contract does not include funeral services, the**
 6 **escrow agent shall be selected by any provider.**

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

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

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

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

27 (6) Income shall be held and invested by the escrow agent in

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

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

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

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

27 (a) If the prepaid ~~funeral~~ contract is a nonguaranteed

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

10 services. The amount paid to the person entitled to receive the
11 surplus shall be as follows:

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

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

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

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

24 (c) If the escrow agent is notified that there is a dispute
25 as to whether the provider has performed all its obligations
26 under the prepaid ~~funeral~~ contract, the escrow agent shall file
27 an action for interpleader or shall obtain an impartial

1 arbitrator to determine the rights of the parties. Expenses of
2 arbitration shall be shared equally by the parties unless
3 otherwise ordered by the arbitrator.

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

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

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

1 income and may be in addition to any other fee or charge
2 authorized by this act.

3 Sec. 12a. (1) A cemetery shall establish and maintain an
4 irrevocable endowment care trust fund. The endowment care trust
5 fund shall be administered by a trustee that must be a depository
6 or a trust company. A cemetery shall deposit with the trustee
7 not less than 15% of the proceeds received during the previous
8 month from the sale of burial, entombment, or columbarium
9 rights. The principal and interest in the trust shall be held in
10 compliance with section 7302 of the estates and protected
11 individuals code, 1998 PA 386, MCL 700.7302. Earnings from the
12 trust shall be used only for the purpose of maintaining the
13 grounds, graves, mausoleums, columbariums, and other facilities
14 and beautifying the grounds of the cemetery and principal shall
15 remain invested. The trustee shall report annually before July 1
16 of each year on forms approved and furnished by the department
17 information regarding the endowment care trust funds as the
18 department considers pertinent in the public interest. Each
19 person engaged as agent or seller in the selling of burial
20 rights, entombment rights, or columbarium rights owned by a party
21 other than a cemetery or person subject to the trust fund
22 requirements of other laws must deposit 15% of all gross proceeds
23 received from the sales of those rights into the irrevocable
24 endowment care trust fund of the cemetery in which the rights are
25 located if an irrevocable endowment care trust fund exists for
26 that cemetery.

27 (2) In addition to all other remedies at law or in equity

1 which any interested party may have, the attorney general and the
2 circuit court of the county in which the cemetery is located have
3 all the powers and jurisdiction granted to the attorney general
4 and court for trusts covered by 1915 PA 280, MCL 554.351 to
5 554.353. The remedies granted include all endowment care trust
6 funds without regard to uncertainty or indefiniteness of the
7 beneficiaries of those funds.

8 (3) If, after an audit by the department's staff, a deficit
9 in the amount of required deposits to the endowment care trust
10 fund is found, the department shall order replenishment of the
11 deficit and may assess a penalty not to exceed 10% of the amount
12 of the deficit. The cemetery or entity of a cemetery may request
13 an administrative hearing before the department within 30 days
14 after being notified of a deficit by the department. If,
15 following notice and an opportunity for a hearing, the department
16 determines that a deficit does exist, an additional penalty not
17 to exceed 1.5% may be assessed each month on the unpaid monthly
18 balance until the deficit is paid in full.

19 (4) A cemetery for earth interment of 10 acres or less in
20 size which is owned and operated entirely and exclusively by an
21 existing nonprofit entity and in which a burial has taken place
22 before September 15, 1968 is exempt from the endowment care trust
23 fund requirements of this section except as to the endowment care
24 trust fund report requirements if the cemetery maintains care or
25 memorial funds.

26 Sec. 12b. (1) A person shall not develop or build a
27 mausoleum or columbarium and engage in preconstruction sales of

1 crypts or niches unless that person does all of the following:

2 (a) Places at least 50% of the funds received pursuant to
3 preconstruction sales into a trust fund, and reports annually
4 before July 1 of each year, on forms approved and furnished by
5 the department, trust fund information that the department
6 considers pertinent in the public interest.

7 (b) Presents a performance bond to the department in an
8 amount equivalent to 100% of the funds received pursuant to such
9 preconstruction sales minus that percentage of funds trusted
10 under subdivision (a).

11 (c) Begins construction once 50% of the interment rights are
12 sold.

13 (2) The trust fund established pursuant to this section shall
14 be administered by a depository or a trust company. The funds
15 placed into the trust fund shall be held in compliance with
16 section 7302 of the estates and protected individuals code, 1998
17 PA 386, MCL 700.7302.

18 (3) Construction of a mausoleum or columbarium shall be
19 completed within 4 years after the date of sale of the first sale
20 of an entombment or inurnment right of the proposed mausoleum or
21 columbarium. If construction or development of the mausoleum or
22 columbarium has not been completed within 4 years after the date
23 of the first sale of an entombment or inurnment right of the
24 proposed mausoleum or columbarium, or if the person for whom the
25 interment right was purchased dies before completion of
26 construction or development of the mausoleum or columbarium, the
27 purchaser or his or her estate shall immediately be given a

1 refund of 100% of the proceeds of that sale, including interest
2 as determined by the adjusted prime rate, compounded annually
3 since the year the money was deposited. Principal and income in
4 a trust account established under this subsection may be
5 withdrawn only upon completion of construction or development of
6 the mausoleum or columbarium or to make a refund required under
7 this subsection.

8 (4) As used in this section, "adjusted prime rate" means that
9 term as defined and determined under section 23 of 1941 PA 122,
10 MCL 205.23.

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

27 (a) If no commission has been charged pursuant to section

1 12(1), at least 90% of the remaining balance of principal and
2 income in the escrow account or held by the trustee.

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

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

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

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

1 services pursuant to a guaranteed price contract, or the contract
2 buyer or the contract buyer's estate.

3 (4) A contract seller or a provider ~~which~~ **that** assigns or
4 transfers its obligations under a prepaid ~~funeral~~ contract to
5 another provider shall notify the contract buyer of the
6 assignment in writing. If the contract buyer cancels the
7 contract within 30 days of the notification of the assignment,
8 the buyer shall be entitled to a refund of 100% of the remaining
9 principal and income plus the commission, if any, charged in
10 accordance with section 12(1). An assignment or transfer of a
11 provider's obligations under a prepaid ~~funeral~~ contract ~~which~~
12 **that** is made in connection with the sale of a business ~~shall be~~
13 **is** subject to this subsection only if more than 50% of the
14 ownership interest in the business is transferred to another
15 person or persons within a 12-month period. ~~Nothing in this~~
16 **Upon sale of the business, the notice requirement of this**
17 **subsection is the responsibility of the purchaser. This**
18 subsection ~~shall~~ **does not** apply to an assignment of a financial
19 interest in an installment contract to a financial institution.
20 At the time that the contract seller or provider receives payment
21 in exchange for selling or assigning its financial interest in an
22 installment contract to a financial institution, the contract
23 seller or provider shall be required to place in escrow the ~~full~~
24 ~~contract price~~ **amount required by this act. Except as otherwise**
25 **provided in section 12b(3), this subsection does not apply to**
26 **burial rights or other land interests, crypts, inscribed**
27 **monuments, inscribed markers, or niches, for which no refunds are**

1 available.

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

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

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

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

1 ~~section 35a of Act No. 87 of the Public Acts of 1855, being~~
2 ~~section 456.35a of the Michigan Compiled Laws~~ **this act.**

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

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

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

21 "This contract may be canceled either before death or after
22 death by the buyer or, if the buyer is deceased, by the person or
23 persons legally authorized to make funeral **or cemetery**
24 arrangements. If the contract is canceled, the buyer or the
25 buyer's estate is entitled to receive a refund of ____% of the
26 contract price and any income earned from investment of the
27 principal less administrative or escrow fees."

1 In addition, if a commission is charged pursuant to section 12,
 2 the amount of the commission and the fact that it is a charge
 3 which is in addition to the contract price shall be stated in the
 4 prepaid funeral contract. If a printed contract form is used,
 5 the disclosures required by this subsection shall be stated in
 6 ~~bold-faced~~ **boldfaced** type.

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

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

1 the contract beneficiary, or provide that the contract
2 beneficiary ~~shall be~~ **is** the first of 2 or more designated
3 persons to die.

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

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

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

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

26 (a) A prepaid ~~funeral~~ contract made under this act shall
27 not provide for a rate of interest added or deducted in advance.

1 Interest shall be computed from time to time only on the basis of
2 unpaid balances.

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

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

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

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

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

22 (b) Make a false or misleading statement, oral or written,
23 regarding the sale of ~~funeral goods~~ **merchandise** or funeral **or**
24 **cemetery** services pursuant to a prepaid ~~funeral~~ contract or
25 regarding the rights or obligations of any party or prospective
26 party to a prepaid ~~funeral~~ contract for the purpose of inducing
27 a person to purchase the ~~funeral goods~~ **merchandise** or funeral

1 or cemetery services or a prepaid ~~funeral~~ contract.

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

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

8 (e) Engage in door-to-door canvassing at a private residence
9 for the purpose of selling merchandise or funeral or cemetery
10 services without advance written consent of the occupants.

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

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

20 (h) ~~-(e)-~~ Violate this act or rules promulgated under this
21 act.

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

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

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

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

7 (4) Any administrative action brought under this act shall be
 8 ~~handled pursuant to~~ **in compliance with** the administrative
 9 procedures act **of 1969**, ~~Act No. 306 of the Public Acts of 1969,~~
 10 ~~being sections 24.201 to 24.328 of the Michigan Compiled laws~~
 11 **1969 PA 306, MCL 24.201 to 24.328.**

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

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

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

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

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

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

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

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

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

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

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

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

21 (2) If, after a hearing, the department determines that a
 22 registrant has violated the provisions of this act or any rule
 23 promulgated pursuant to this act, the department shall do 1 or
 24 more of the following:

25 (a) Suspend or revoke the registration.

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

1 paid.

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

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

9 (e) Impose restrictions upon the registrant's prepaid
10 ~~funeral~~ business activities which require additional
11 accountability to the department.

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

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

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

1 more than 5 years, or both, for each violation.

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

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

1 of funds paid by the contract buyers and shall not be available
2 to general creditors of the estate. **Under appropriate**
3 **circumstances, the receiver may file for protection under the**
4 **bankruptcy code.**

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

15 Enacting section 1. This amendatory act does not take
16 effect unless Senate Bill No. 513
17 of the 92nd Legislature is enacted
18 into law.