

SENATE BILL No. 513

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

A bill to amend 1968 PA 251, entitled "Cemetery regulation act," by amending the title and sections 2, 8, 9, 10, 12, 12a, 13, 15, 18, 19, and 21 (MCL 456.522, 456.528, 456.529, 456.530, 456.532, 456.532a, 456.533, 456.535, 456.538, 456.539, and 456.541), the title and sections 2, 8, 12, 12a, 13, 15, 18, 19, and 21 as amended by 1982 PA 132, section 9 as amended by 2002 PA 550, and section 10 as amended by 1982 PA 289; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to regulate the creation and management of cemeteries; ~~to regulate the sale of cemetery services and merchandise;~~ to provide for a cemetery commissioner, and to prescribe the powers and duties of the commissioner; to require

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1 the registration and audit of cemeteries; to regulate persons
 2 selling burial, entombment, or columbarium rights; ~~—, cemetery~~
 3 ~~services, or cemetery merchandise;~~ and to prescribe **remedies and**
 4 penalties.

5 Sec. 2. As used in this act:

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

8 (i) A burial ground for earth interments.

9 (ii) A mausoleum for crypt entombments.

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

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

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

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

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

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

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

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

27 (h) "Columbarium" means a ~~structure or room or other space~~

1 ~~in a~~ building or **other aboveground** structure ~~used or intended~~
 2 ~~to be used for the inurnment or deposit of~~ **that is affixed to**
 3 **land and is a permanent repository for** cremated **human** remains.

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

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

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

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

15 (k) ~~(m)~~ "Cemetery commissioner" or "commissioner" means the
 16 director of ~~licensing and regulation~~ **the department of consumer**
 17 **and industry services** or a designee of the director.

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

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

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

1 24.201 to 24.328, to implement and administer this act, including
2 rules regarding **all of the following**:

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

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

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

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

14 Sec. 9. (1) The commissioner may hold **administrative**
15 hearings, administer oaths, take testimony under oath, and
16 request in writing the appearance and testimony of witnesses,
17 including the production of books and records **pursuant to the**
18 **administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to**
19 **24.328**. Upon the refusal of a witness to appear, testify, or
20 submit books and records after a written request, the
21 commissioner or a party to a contested case may apply to the
22 circuit court for Ingham county for a subpoena or a subpoena
23 duces tecum. The court shall issue a subpoena when reasonable
24 grounds are shown.

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

1 following:

2 (a) Issue a cease and desist order.

3 (b) Accept an assurance of discontinuance.

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

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

25 (4) In the order of sale of the cemetery, the court shall
26 make provision for notice to creditors and the filing of claims
27 against the receivership or conservatorship. Any remaining funds

1 held by the cemetery in escrow under this act belong to the
2 contract buyers or beneficiaries of the contract buyers and shall
3 not be distributed to the general creditors of the cemetery.
4 This section does not prohibit the court from allowing the sale
5 of the cemetery to a person other than the holder of a license
6 for the practice of mortuary science or a person who owns,
7 manages, supervises, operates, or maintains, either directly or
8 indirectly, a funeral establishment, or **to a municipal**
9 corporation.

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

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

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

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

4 (2) A cemetery for earth interment of 10 acres or less in
5 size, which is owned and operated entirely and exclusively by an
6 existing nonprofit entity and in which a burial has taken place
7 before September 15, 1968, ~~shall be~~ **is** exempt from the fee
8 provisions of this act, ~~That cemetery~~ shall have ~~its~~ **the**
9 trust fund required by this act audited at the discretion of the
10 commissioner, ~~It shall also be~~ **and is** exempt from the
11 **endowment** care **trust** fund requirements of section ~~16~~ **12a of the**
12 **prepaid funeral and cemetery sales act, 1986 PA 255, MCL**
13 **328.222a**, except ~~as to the care fund~~ **for the** report
14 requirements if the cemetery maintains ~~care or memorial~~ funds.

15 (3) On a periodic basis determined appropriate by the
16 commissioner but not less than once every 3 years, the commission
17 shall inspect the facilities and grounds of a cemetery. The
18 commission may charge the cemetery for the actual expenses for
19 the inspection but not more than \$1,000.00.

20 Sec. 12. (1) A person ~~or business entity~~ shall not
21 establish a cemetery without a valid permit or operate an
22 existing cemetery except under a valid registration **issued** under
23 this act.

24 (2) If a person ~~or business entity~~ proposes to purchase or
25 otherwise acquire a controlling interest in an existing cemetery
26 company, that person ~~or business entity~~ shall first ~~make~~
27 ~~application~~ **apply** to the commissioner for a certificate of

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

1 (3) A cemetery that operates under a name other than the name
2 under which it is registered pursuant to this act shall include
3 the name under which it is registered in all printed matter or
4 marketing material created by, at the direction of, or on behalf
5 of the cemetery. In addition, the name of the person having a
6 controlling interest in the cemetery shall appear as the owner in
7 all printed matter or marketing material created by, at the
8 direction of, or on behalf of the cemetery. If the cemetery has
9 a sales office, the name of the person having a controlling
10 interest in the cemetery shall be conspicuously displayed in the
11 lobby of that office.

12 (4) As used in this section, "controlling interest" means the
13 capability to decide the operating and financial policies of the
14 cemetery company or to select the officers or directors with
15 majority control of the cemetery company or the right to receive
16 more than 50% of the dividends or profits.

17 Sec. 12a. (1) The commissioner or an examiner,
18 investigator, or other person the commissioner may appoint, may
19 visit and examine the affairs of any cemetery or ~~business~~
20 ~~entity~~ **person** required to register under this act and shall have
21 free access to the books, papers, records, and documents that
22 relate to the business of the cemetery corporation, ~~business~~
23 ~~entity~~ **person**, or agent acting on its behalf.

24 (2) The books, papers, records, and documents shall be
25 available for inspection or audit at any time during regular
26 business hours with reasonable notice. One **or more** qualified
27 ~~person~~ **persons** shall conduct the audit whose services shall be

1 charged to and paid by the cemetery at the rate of \$10.00 per
2 hour, but not more than ~~-\$100.00-~~ **\$1,000.00** total.

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

8 **(2)** After a receipt of an application, the commissioner shall
9 ~~make~~ **conduct** an investigation pertaining to the physical plans,
10 the community need for the planned cemetery, and pertinent
11 information pertaining to the applicant's experience, financial
12 stability, ability, and integrity. If the applicant is ~~other~~
13 ~~than~~ **not** a natural person, the same investigation shall be made
14 of the general manager and principal owners.

15 Sec. 15. **(1)** Each ~~individual or business entity~~ **person**
16 operating a cemetery shall register the cemetery by filing with
17 the commissioner a registration application before June 2 of each
18 year, on a form furnished by the commissioner, and accompanied by
19 the registration fee. ~~Registrations shall expire~~ **A**
20 **registration expires** on July 1 of each year.

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

1 Sec. 18. (1) The commissioner may deny an application filed
2 under this act and refuse to issue a permit or registration, or
3 may suspend or revoke a permit or registration, or may reprimand,
4 place on probation, or take other disciplinary action against the
5 applicant if the commissioner's investigation reveals facts
6 which, with reference to the establishment of a cemetery, show
7 inappropriate physical plans; lack of community need; inadequate
8 experience, financial stability, or integrity to protect the
9 public welfare; or when the commissioner finds that the applicant
10 or its officers or general manager has done 1 or more of the
11 following:

12 (a) Made a false statement of a material fact in the
13 application.

14 (b) Not complied with this act.

15 (c) Been guilty of ~~a~~ **an unlawful or** fraudulent act in
16 connection with selling or otherwise dealing in ~~cemetery lots,~~
17 ~~burial rights,~~ **funeral or cemetery merchandise or services** ~~of a~~
18 ~~type required to be registered under this~~ **regulated by the**
19 **prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211**
20 **to 328.235.**

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

24 (e) **Violated article 18 of the occupational code, 1980 PA**
25 **299, MCL 339.1801 to 339.1812.**

26 (f) ~~(e)~~ Violated the terms of an assurance of
27 discontinuance entered into with the commissioner pursuant to

1 section 9(2).

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

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

6 (i) ~~(f)~~ Adopted, enforced, or attempted to enforce a
7 regulation of the cemetery ~~which~~ **that** prohibits the
8 installation of a grave memorial or burial vault unless the grave
9 memorial or burial vault was purchased from the cemetery.
10 ~~However, this~~ **This** subdivision ~~shall~~ **does** not prohibit a
11 cemetery from adopting and enforcing consistent rules and
12 regulations to be followed by both the cemetery and outside
13 vendors as to the quality, size, shape, type, installation, and
14 maintenance of the grave memorial or burial vault.

15 (2) If the commissioner denies an application for a permit or
16 registration, or suspends or revokes an existing permit or
17 registration required by this act, the denial, revocation, or
18 suspension shall revoke the cemetery operation as to the sale or
19 assignment of burial rights, entombment rights, **or** columbarium
20 rights, cemetery merchandise, or cemetery services after the date
21 of the suspension, revocation, or denial. The corporation shall
22 fulfill all contractual obligations and agreements entered into
23 before the date of the suspension, revocation, or denial, and
24 shall make required interments for the owners of burial rights,
25 entombment rights, or columbarium rights purchased before the
26 date of suspension, revocation, or denial.

27 (3) **The commissioner may impose an administrative fine of not**

1 more than \$5,000.00 for each separate violation of this act.

2 Sec. 19. If the commissioner intends to deny an application
3 for a permit to establish a cemetery, to refuse registration of
4 an existing cemetery, or to suspend or revoke a registration, the
5 commissioner shall give written notice to the person ~~or~~
6 ~~business~~ involved of that intent. The notice shall state a time
7 and a place for hearing before the commissioner or a designated
8 hearing officer, and a summary statement of the reasons for the
9 proposed action. The notice of intent shall be mailed by
10 certified mail to the applicant at least 15 days before the
11 scheduled hearing date. The commissioner shall hold a hearing
12 pursuant to the notice in the manner required by ~~Act No. 306 of~~
13 ~~the Public Acts of 1969, as amended, being sections 24.201 to~~
14 ~~24.315 of the Michigan Compiled Laws~~ **administrative procedures**
15 **act of 1969, 1969 PA 306, MCL 24.201 to 24.328**, and the rules of
16 procedure adopted by the commissioner. ~~—, and~~ **The commissioner**
17 shall ~~make~~ **issue** a written decision.

18 Sec. 21. (1) A person ~~, firm, partnership, association, or~~
19 ~~corporation~~ who violates this act is guilty of a misdemeanor,
20 and, if a natural person, the first offense shall be punishable
21 by a fine of not more than \$100.00 or imprisonment for not more
22 than 90 days, and a second offense shall be punishable by a fine
23 of not more than \$500.00 or imprisonment for not more than 1
24 year, or both.

25 (2) If the violator is other than a natural person, the first
26 offense shall be punishable by a fine of not more than \$100.00
27 and the second offense shall be punishable by a fine of not more

1 than \$1,000.00.

2 Enacting section 1. This amendatory act does not take

3 effect unless Senate Bill No. 512

4 of the 92nd Legislature is enacted into

5 law.

6 Enacting section 2. Section 16 of the cemetery regulation

7 act, 1968 PA 251, MCL 456.536, is repealed.