

Act No. 89
Public Acts of 2003
Approved by the Governor
July 24, 2003
Filed with the Secretary of State
July 24, 2003
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003**

Introduced by Senator Jacobs

ENROLLED SENATE BILL No. 37

AN ACT to amend 1968 PA 251, entitled "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 the registration and audit of cemeteries; to regulate persons selling burial, entombment, or columbarium rights, cemetery services, or cemetery merchandise; and to prescribe penalties," by amending section 16 (MCL 456.536), as amended by 1982 PA 132.

The People of the State of Michigan enact:

Sec. 16. (1) The commissioner shall require each cemetery to establish and maintain an irrevocable endowment care fund as required by section 35a of 1855 PA 87, MCL 456.35a, or section 7a of 1869 PA 12, MCL 456.107a, and to report annually before July 1 of each year, on forms approved and furnished by the commissioner, care fund information required to be reported to the commissioner by other statutes and information regarding the funds as the commissioner considers pertinent in the public interest. A cemetery applying to the commissioner as authorized by other statutes for a care fund deposit modification or waiver shall be assessed the actual expenses for an examination or investigation by the commissioner. The commissioner shall require each person engaged as agent or seller, as a means of livelihood either part time or full time, in the selling of burial rights, entombment rights, or columbarium rights owned by a party other than a cemetery or corporation subject to the irrevocable endowment care fund requirements of other laws, to deposit 15% of all gross proceeds received from the sales of those rights into the irrevocable endowment care fund of the cemetery in which the rights are located if an irrevocable endowment care fund exists for that cemetery. Excess sums on deposit in the fund can be applied by a cemetery against future deposits. A deposit required to be made by those persons shall be modified or waived if the cemetery has received an irrevocable endowment care fund deposit modification or waiver approved by the commissioner. The total deposit for a single adult burial right sale or assignment shall not be less than \$20.00.

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

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

(4) A contract or agreement made with a purchaser of cemetery merchandise and cemetery services shall contain a complete description of the cemetery merchandise purchased and of the cemetery services to be rendered.

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

(6) If, after an audit by the commissioner's staff, a deficit in the amount of required deposits to the trust funds is found, the commissioner may assess a penalty not to exceed 10% of the amount of the deficit. The cemetery or entity of a cemetery may request a hearing before the commissioner within 30 days after being notified of a deficit by the commissioner. If, following the hearing, the commissioner determines that a deficit does exist, an additional penalty not to exceed 1.5% may be assessed each month on the unpaid monthly balance until the deficit is paid in full.

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

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

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

- (a) Senate Bill No. 38.
- (b) Senate Bill No. 39.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Dany E. Randall

Clerk of the House of Representatives

Approved _____

Governor