

Act No. 22
Public Acts of 2004
Approved by the Governor
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Senator Toy

ENROLLED SENATE BILL No. 513

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 the title and sections 2, 8, 9, 10, 12, 12a, 13, 15, 16, 18, 19, and 21 (MCL 456.522, 456.528, 456.529, 456.530, 456.532, 456.532a, 456.533, 456.535, 456.536, 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 2003 PA 289, section 10 as amended by 1982 PA 289, and section 16 as amended by 2003 PA 89, and by adding section 16a.

The People of the State of Michigan enact:

TITLE

An act to regulate the creation and management of cemeteries; 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 provide for long-term care of certain cemeteries; to regulate persons selling burial, entombment, or columbarium rights; and to prescribe remedies and penalties.

Sec. 2. As used in this act:

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

(i) A burial ground for earth interments.

(ii) A mausoleum for crypt entombments.

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

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

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

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

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

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

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

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

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

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

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

(k) "Cemetery commissioner" or "commissioner" means the director of the department of labor and economic growth or a designee of the director.

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

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

Sec. 8. The commissioner may promulgate rules in accordance with and subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement and administer this act, including rules regarding all of the following:

(a) The maintenance of records relative to the financial aspects of cemeteries.

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

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

Sec. 9. (1) The commissioner may hold hearings, administer oaths, take testimony under oath, and request in writing the appearance and testimony of witnesses, including the production of books and records. Upon the refusal of a witness to appear, testify, or submit books and records after a written request, the commissioner or a party to a contested case may apply to the circuit court for Ingham county for a subpoena or a subpoena duces tecum. The court shall issue a subpoena when reasonable grounds are shown.

(2) When it appears to the commissioner that a person or registrant has violated this act or a rule promulgated or order issued under this act, the commissioner may do 1 or more of the following:

(a) Issue a cease and desist order.

(b) Accept an assurance of discontinuance.

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

(3) Upon a proper showing regarding an action brought under subsection (2)(c), a permanent or temporary injunction or a restraining order may be granted and a receiver or conservator may be appointed by the court. A receiver or conservator appointed by the court may take possession of the assets and may sell, assign, transfer, or convey the cemetery, including a cemetery in receivership on the July 26, 2002 date of the amendatory act that amended this subsection, to a municipal corporation or other person other than the holder of a license for the practice of mortuary science or a person who owns, manages, supervises, operates, or maintains, either directly or indirectly, a funeral establishment, under conditions prescribed by the court, in order to discharge outstanding contractual obligations. A receiver appointed under this section has all the powers, authority, and remedies of an assignee for the benefit of creditors under chapter 52 of the revised judicature act of 1961, 1961 PA 236, MCL 600.5201 to 600.5265. The court may allow the receiver or conservator to file for protection under the bankruptcy code.

(4) In the order of sale of the cemetery, the court shall make provision for notice to creditors and the filing of claims against the receivership or conservatorship. Any remaining funds held by the cemetery in escrow under this act belong to the contract buyers or beneficiaries of the contract buyers and shall not be distributed to the general creditors of the cemetery. This section does not prohibit the court from allowing the sale of the cemetery to a person other than the holder of a license for the practice of mortuary science or a person who owns, manages, supervises, operates, or maintains, either directly or indirectly, a funeral establishment or municipal corporation.

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

Sec. 10. (1) The commissioner shall institute and maintain a system of auditing trust funds required by this act and of registering each cemetery authorized to be created, maintained, and operated under 1869 PA 12, MCL 456.101 to 456.119, and 1855 PA 87, MCL 456.1 to 456.36, and conducting sales under the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235, as well as any other cemetery operating under state law or local ordinance. A cemetery owned and operated by a municipal corporation, church, or religious institution is exempt from this act. However, a municipal corporation may pass ordinances necessary for regulating that municipal corporation's cemeteries.

(2) A cemetery for earth interment of 10 acres or less in size, which is owned and operated entirely and exclusively by an existing nonprofit entity and in which a burial has taken place before September 15, 1968, is exempt from the fee provisions of this act, shall have the trust fund required by this act audited at the discretion of the commissioner, and is exempt from the endowment care trust fund requirements of section 16, except for the report requirements if the cemetery maintains care or memorial funds.

Sec. 12. (1) A person shall not establish a cemetery without a valid permit or operate an existing cemetery except under a valid registration issued under this act.

(2) If a person proposes to purchase or otherwise acquire a controlling interest in an existing cemetery company, that person shall first apply to the commissioner for a certificate of approval of a proposed change of control of a cemetery company. The application shall contain the name and address of the proposed new owner or operator and other information as the commissioner requires. The commissioner shall issue a certificate of approval only after he or she is satisfied that the proposed new owner is qualified by character, experience, and financial responsibility to control and operate the cemetery in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in ownership and management. The application for a purchase or change of control must be accompanied by an initial filing or investigation fee of \$500.00. If a person fails to comply with this section, the commissioner shall order that an administrative hearing be held. If a transfer of controlling interest is found to have taken place without prior commissioner approval, the commissioner may suspend or revoke the registration of the cemetery or take other appropriate action until it demonstrates compliance with this section.

(3) As used in this section, "controlling interest" means the capability to decide the operating and financial policies of the cemetery company or to select the officers or directors with majority control of the cemetery company.

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

(2) The books, papers, records, and documents shall be available for inspection or audit at any time during regular business hours with reasonable notice. One or more qualified persons shall conduct the audit whose services shall be charged to and paid by the cemetery at the rate of \$10.00 per hour, but not more than \$1,000.00 total.

Sec. 13. (1) Any person desiring to establish a cemetery shall file with the commissioner, on forms furnished by the commissioner, an application for a permit to establish a cemetery. The application shall be accompanied by an investigation fee of \$500.00.

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

Sec. 15. (1) Each person operating a cemetery shall register the cemetery by filing with the commissioner a registration application before June 2 of each year, on a form furnished by the commissioner, and accompanied by the registration fee. A registration expires on July 1 of each year.

(2) If the commissioner intends to deny registration, the procedure set forth in section 19 shall be followed. The commissioner may impose a late penalty filing fee of \$10.00 per day on a person which filed a registration application after June 1.

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) Subject to subsection (8), 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) Subject to subsection (8), 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) Subject to subsection (8), 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 an administrative hearing before the commissioner within 30 days after being notified of a deficit by the commissioner. If, following the administrative 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) Any preneed contracts for cemetery merchandise or services entered into on or after January 1, 2005 are subject to the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

(9) 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.

Sec. 16a. A person shall not develop or build a mausoleum or columbarium and engage in preconstruction sales of crypts or niches in a mausoleum or columbarium unless that person does both of the following:

(a) Agrees to complete the mausoleum or columbarium within 4 years after the date of the first sale of an entombment or inurnment right in the proposed mausoleum or columbarium or, if construction is not completed within that time and upon the request of the purchaser, agrees to offer to the purchaser a refund of 100% of the purchase price with interest calculated at the rate of 4% per annum.

(b) Agrees that if the person for whom the entombment or inurnment right in the proposed mausoleum or columbarium dies before completion of the mausoleum or columbarium, an alternative disposition of the remains shall be provided until completion of the mausoleum or columbarium or until a refund is made of 100% of the purchase price with interest calculated at the rate of 4% per annum.

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

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

(b) Not complied with this act.

(c) Been guilty of an unlawful or fraudulent act in connection with selling or otherwise dealing in cemetery lots and burial rights regulated by this act or funeral or cemetery merchandise and services regulated by the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

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

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

(f) Violated the terms of an assurance of discontinuance entered into with the commissioner pursuant to section 9(2).

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

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

(i) Adopted, enforced, or attempted to enforce a regulation of the cemetery that prohibits the installation of a grave memorial or burial vault unless the grave memorial or burial vault was purchased from the cemetery. This subdivision does not prohibit a cemetery from adopting and enforcing consistent rules and regulations to be followed by both the cemetery and outside vendors as to the quality, size, shape, type, installation, and maintenance of the grave memorial or burial vault.

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

(3) The commissioner may impose an administrative fine of not more than \$5,000.00 for each separate violation of this act.

Sec. 19. If the commissioner intends to deny an application for a permit to establish a cemetery, to refuse registration of an existing cemetery, or to suspend or revoke a registration, the commissioner shall give written notice to the person involved of that intent. The notice shall state a time and a place for hearing before the commissioner or a designated hearing officer, and a summary statement of the reasons for the proposed action. The notice of intent shall be mailed by certified mail to the applicant at least 15 days before the scheduled hearing date. The commissioner shall hold a hearing pursuant to the notice in the manner required by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and the rules of procedure adopted by the commissioner. The commissioner shall issue a written decision.

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

(2) If the violator is other than a natural person, the first offense shall be punishable by a fine of not more than \$100.00 and the second offense shall be punishable by a fine of not more than \$1,000.00.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 512 of the 92nd Legislature is enacted into law.

Enacting section 2. This amendatory act takes effect January 1, 2005.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor