

SUBSTITUTE FOR
SENATE BILL NO. 674

A bill to amend 1968 PA 251, entitled
"Cemetery regulation act,"
by amending the title and sections 2, 2a, 8, 9, 10, 12, 12a, 13,
15, 16, 18, and 21 (MCL 456.522, 456.522a, 456.528, 456.529,
456.530, 456.532, 456.532a, 456.533, 456.535, 456.536, 456.538, and
456.541), the title and sections 2, 8, 9, 10, 12, 12a, 13, 15, 16,
18, and 21 as amended by 2004 PA 22 and section 2a as added by 1982
PA 132, and by adding sections 9a, 9b, and 13a; and to repeal acts
and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to regulate the creation and management of cemeteries;
3 to provide for a cemetery commissioner ~~—~~and to prescribe the

1 powers and duties of the commissioner; to require the registration
2 and audit of cemeteries; to provide ~~for~~ **STANDARDS REGARDING THE**
3 long-term care of certain cemeteries **AND TRUSTING OF CERTAIN FUNDS;**
4 to regulate persons selling burial, entombment, or columbarium
5 rights **AND CERTAIN MERCHANDISE; TO PROVIDE FOR QUALIFICATIONS FOR**
6 **OWNERS, OPERATORS, EMPLOYEES, AND TRANSFEREES OF CEMETERIES UNDER**
7 **CERTAIN CIRCUMSTANCES;** and to prescribe remedies and penalties.

8 Sec. 2. As used in this act:

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

11 (i) A burial ground for earth interments.

12 (ii) A mausoleum for crypt entombments.

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

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

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

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

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

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

22 (f) "Mausoleum" means a building or other aboveground
23 structure that is affixed to land and is a permanent repository for
24 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 building or other aboveground

1 structure that is affixed to land and is a permanent repository for
2 cremated human remains.

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

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

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

10 (l) "ENDOWMENT AND PERPETUAL CARE" MEANS ALL GENERAL WORK
11 NECESSARY TO KEEP THE CEMETERY PROPERTY IN A PRESENTABLE CONDITION
12 AT ALL TIMES, INCLUDING, BUT NOT LIMITED TO, THE CUTTING OF GRASS
13 AT REASONABLE INTERVALS; THE RAKING, CLEANING, FILLING, SEEDING,
14 AND SODDING OF GRAVES; THE REPLACEMENT, PRUNING, OR REMOVAL OF
15 SHRUBS AND TREES IN ORDER TO ASSURE ACCESS TO INTERMENT RIGHTS; AND
16 THE REPAIR AND MAINTENANCE OF ENCLOSURES, BUILDINGS, DRIVES, WALKS,
17 AND THE VARIOUS MEMORIAL GARDENS.

18 (M) "MERCHANDISE TRUST" MEANS TRUSTS REQUIRED BY SECTION 16,
19 COMPOSED OF DEPOSITS MADE IN CONNECTION WITH MERCHANDISE AND
20 SERVICE SALES MADE PRIOR TO JANUARY 1, 2005.

21 (N) ~~(l)~~ "Municipal corporation" means ~~that term as defined in~~
22 ~~section 1 of 1927 PA 10, MCL 456.181~~ A COUNTY, CITY, VILLAGE, OR
23 TOWNSHIP.

24 (O) "REGULATED FINANCIAL INSTITUTION" MEANS A STATE OR
25 NATIONALLY CHARTERED BANK, SAVINGS AND LOAN ASSOCIATION OR SAVINGS
26 BANK, CREDIT UNION, OR OTHER STATE OR FEDERALLY CHARTERED LENDING
27 INSTITUTION OR A REGULATED AFFILIATE OR REGULATED SUBSIDIARY OF ANY

1 OF THESE ENTITIES.

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

6 (Q) "GOOD MORAL CHARACTER" MEANS THAT TERM AS DEFINED AND
7 DETERMINED UNDER 1974 PA 381, MCL 338.41 TO 338.47.

8 (R) "CEMETERY OWNER" MEANS THE PERSON WHO HAS TITLE TO THE
9 CEMETERY.

10 (S) "OPERATOR" MEANS ANY OF THE FOLLOWING:

11 (i) A PERSON, AN OFFICER OF A PERSON, A PARTNER OF A PERSON, OR
12 A MEMBER OR MANAGER OF A LIMITED LIABILITY COMPANY, WHO HOLDS MORE
13 THAN 50% VOTING RIGHTS IN A CEMETERY OWNER.

14 (ii) A PERSON WHO IS A MEMBER OF THE BOARD OF DIRECTORS OF A
15 CEMETERY OWNER, A PARTNER IN A CEMETERY OWNER, OR A MEMBER OR
16 MANAGER OF A LIMITED LIABILITY COMPANY THAT IS A CEMETERY OWNER.

17 (iii) AN ADMINISTRATIVE OFFICIAL OF THE CEMETERY OWNER OR THE
18 PERSON DESCRIBED IN SUBPARAGRAPH (i), COMPARABLE TO A CHIEF
19 ADMINISTRATIVE OFFICER, CHIEF EXECUTIVE OFFICER, OR CHIEF FINANCIAL
20 OFFICER.

21 (T) "AFFILIATED PERSON" MEANS A PERSON DIRECTLY OR INDIRECTLY
22 CONTROLLING THE CEMETERY AND INCLUDES ALL OF THE FOLLOWING:

23 (i) A PERSON WHO HOLDS AT LEAST A 50% INTEREST IN A CEMETERY.

24 (ii) A PERSON WHO IS A MEMBER OF THE BOARD OF DIRECTORS OR A
25 CEMETERY OWNER, A PARTNER IN A CEMETERY OWNER, OR A MEMBER OR
26 MANAGER OF A LIMITED LIABILITY COMPANY THAT IS A CEMETERY OWNER.

27 (iii) A PERSON WHO IS AN OFFICER OF THE PERSON WHO HOLDS AT

1 **LEAST A 10% INTEREST IN A CEMETERY CORPORATION OR OTHER ENTITY**
 2 **HAVING CONTROL OF THE CEMETERY.**

3 Sec. 2a. The cemetery commissioner, or the commissioner's
 4 spouse or child, shall not have a **DIRECT OR INDIRECT** financial
 5 interest in a cemetery, **CEMETERY OPERATIONS**, a supplier of cemetery
 6 services or cemetery memorials, or a funeral establishment as
 7 defined in section 1801 of ~~Act No. 299 of the Public Acts of 1980,~~
 8 ~~being section 339.1801 of the Michigan Compiled Laws~~ **THE**
 9 **OCCUPATIONAL CODE, 1980 PA 299, MCL 339.1801.**

10 Sec. 8. (1) The commissioner ~~may~~ **SHALL** promulgate rules ~~in~~
 11 ~~accordance with and subject to~~ **UNDER** the administrative procedures
 12 act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement and
 13 administer this act, including, **BUT NOT LIMITED TO**, rules regarding
 14 all of the following:

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

17 (b) Requirements for applications for the granting of permits
 18 and registrations required under this act, **INCLUDING, BUT NOT**
 19 **LIMITED TO, THE GOOD MORAL CHARACTER AND FINANCIAL SECURITY,**
 20 **RESPONSIBILITY, AND STABILITY OF PERSONS HAVING AN INTEREST IN THE**
 21 **CEMETERY AND ALL PERSONS WITH DECISION-MAKING AUTHORITY THAT ARE**
 22 **EMPLOYED BY THE APPLICANT, REGISTRANT, OR PERMITTEE.**

23 (c) The formal and informal procedures governing the conduct
 24 of contested cases under this act before the commissioner or ~~an~~
 25 ~~authorized~~ **A DESIGNATED** hearing officer.

26 (D) **THE ESTABLISHMENT, CONTROL, RECORD KEEPING, AND AUDITING**
 27 **OF ENDOWMENT CARE TRUSTS, MERCHANDISE TRUST ACCOUNTS, AND RELATED**

1 TRUST FUNDS.

2 (E) REQUIREMENTS FOR TRUST AGREEMENTS, ENDOWMENT CARE TRUSTS,
3 AND MERCHANDISE TRUST ACCOUNTS.

4 (F) THE FULL DISCLOSURE OF THE SOURCE, NATURE, AND AMOUNT OF
5 CONSIDERATION TO BE USED IN THE SALE OR TRANSFER OF A CEMETERY.

6 (G) SUBMISSION OF ANNUAL REPORTS IN ACCORDANCE WITH SECTION
7 16(11) AND (12), INCLUDING REQUESTS FOR EXTENSIONS.

8 (2) THE COMMISSIONER SHALL UPDATE ANY EXISTING RULES THAT MUST
9 BE CHANGED DUE TO THE AMENDATORY ACT THAT ADDED THIS SUBSECTION
10 WITHIN 12 MONTHS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
11 THAT ADDED THIS SUBSECTION.

12 Sec. 9. (1) The commissioner may hold hearings, **CONDUCT**
13 **INVESTIGATIONS**, administer oaths, take testimony under oath, and
14 request in writing the appearance and testimony of witnesses,
15 including the production of books and records. Upon the refusal of
16 a witness to appear, testify, or submit books and records after a
17 written request, the commissioner ~~or a party to a contested case~~
18 ~~may apply to~~ **MAY PETITION** the circuit court for Ingham county for
19 **AN ORDER TO ISSUE, AS PART OF THE COMMISSIONER'S GENERAL**
20 **INVESTIGATIVE AND ENFORCEMENT AUTHORITY**, a subpoena or a subpoena
21 duces tecum **RELATING TO ANY PERSON'S APPEARANCE AND TESTIMONY AND**
22 **FOR THE PRODUCTION, EXAMINATION, OR COPYING OF BOOKS, PAPERS, OR**
23 **OTHER DOCUMENTS PERTAINING TO AN INVESTIGATION OR HEARING THAT IS**
24 **WITHIN THE SCOPE OF THE COMMISSIONER'S AUTHORITY UNDER THIS ACT.**
25 The court shall issue ~~a subpoena~~ **AN ORDER FOR THE ISSUANCE OF**
26 **SUBPOENAS** when reasonable grounds are shown.

27 (2) THE COMMISSIONER HAS THE AUTHORITY TO CONTROL, MANAGE, AND

1 DISPOSE OF OR TRANSFER ABANDONED CEMETERIES OR TO REQUIRE
2 ACCEPTANCE OF RESPONSIBILITY FOR AN ABANDONED CEMETERY ACCORDING TO
3 LAW. THE COMMISSIONER MAY PROMULGATE RULES THAT ARE NECESSARY FOR
4 THE DEPARTMENT TO CARRY OUT ITS POWERS AND DUTIES UNDER THIS
5 SUBSECTION.

6 (3) FAILURE TO OBEY A SUBPOENA ISSUED TO ANY PERSON BY THE
7 COMMISSIONER THROUGH AN ORDER OF THE CIRCUIT COURT MAY SUBJECT THE
8 PERSON TO PUNISHMENT BY THE CIRCUIT COURT AS A CONTEMPT OF COURT.

9 (4) ANY PERSON REQUIRED BY THIS ACT TO TAKE ANY OATH OR
10 AFFIRMATION AND WHO KNOWINGLY MAKES ANY FALSE OATH OR AFFIRMATION
11 IS CONSIDERED TO HAVE COMMITTED THE CRIME OF PERJURY.

12 (5) ~~(2)~~—When it appears to the commissioner that a person or
13 registrant has ~~violated~~ **ENGAGED IN, OR IS ABOUT TO ENGAGE IN, ANY**
14 **ACT OR PRACTICE CONSTITUTING A VIOLATION OF** this act or a rule
15 promulgated or order issued under this act, the commissioner may do
16 1 or more of the following:

17 (a) Issue a cease and desist order.

18 (b) Accept an assurance of discontinuance **OF THE VIOLATION.**

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

23 (6) ~~(3)~~—Upon a proper showing regarding an action brought
24 under subsection ~~(2)(e)~~ **(5) (C)**, a permanent or temporary injunction
25 or a restraining order may be granted and a receiver or conservator
26 may be appointed by the court. A receiver or conservator appointed
27 by the court **SHALL RECEIVE COMPENSATION FROM THE CEMETERY AS**

1 DETERMINED BY THE COURT. THE RECEIVER OR CONSERVATOR may OPERATE
2 THE CEMETERY AND take possession of the assets. THE RECEIVER OR
3 CONSERVATOR SHALL HAVE THE RIGHTS AND OBLIGATIONS OF THE CEMETERY
4 AS TO ALL TRUST AND ESCROW ACCOUNTS and may sell, assign, transfer,
5 or convey the cemetery ~~, including a cemetery in receivership on~~
6 ~~the July 26, 2002 date of the amendatory act that amended this~~
7 ~~subsection, AND ANY OF THE ASSETS~~ to a municipal corporation or
8 other person other than the holder of a license for the practice of
9 mortuary science or a person who owns, manages, supervises,
10 operates, or maintains, either directly or indirectly, a funeral
11 establishment, under conditions prescribed by the court, in order
12 to discharge outstanding contractual obligations. A receiver OR
13 CONSERVATOR appointed under this section has all the powers,
14 authority, and remedies of an assignee for the benefit of creditors
15 under chapter 52 of the revised judicature act of 1961, 1961 PA
16 236, MCL 600.5201 to 600.5265. The court may allow the receiver or
17 conservator to file for protection under the bankruptcy code.

18 (7) SUBJECT TO COURT APPROVAL, A RECEIVER OR CONSERVATOR MAY
19 DO ANY OF THE FOLLOWING:

20 (A) TAKE POSSESSION OF THE BOOKS, RECORDS, AND ASSETS OF THE
21 CEMETERY OR CEMETERY ENTITY.

22 (B) EMPLOY EMPLOYEES AND AGENTS, LEGAL COUNSEL, ACTUARIES,
23 ACCOUNTANTS, APPRAISERS, CONSULTANTS, AND SUCH OTHER PERSONNEL AS
24 HE OR SHE CONSIDERS NECESSARY.

25 (C) FIX THE REASONABLE COMPENSATION OF EMPLOYEES AND AGENTS,
26 LEGAL COUNSEL, ACTUARIES, ACCOUNTANTS, APPRAISERS, AND CONSULTANTS
27 WITH THE COURT'S APPROVAL.

1 (8) ~~(4)~~—In the order of sale of the cemetery, the court shall
 2 make provision for notice to creditors and the filing of claims
 3 against the receivership or conservatorship. ~~Any remaining funds~~
 4 **MONEY** held by the cemetery **IN TRUST OR** in escrow ~~under this act~~
 5 ~~belong to the contract buyers or beneficiaries of the contract~~
 6 ~~buyers and shall not be distributed to the general creditors of the~~
 7 cemetery. This section does not prohibit the court from allowing
 8 the sale of the cemetery to a person other than the holder of a
 9 license for the practice of mortuary science or a person who owns,
 10 manages, supervises, operates, or maintains, either directly or
 11 indirectly, a funeral establishment, or **FROM ALLOWING THE SALE OF**
 12 **THE CEMETERY TO A** municipal corporation.

13 (9) ~~(5)~~—In addition to an action taken under this section, the
 14 commissioner may deny an application or may suspend or revoke a
 15 permit or registration after a ~~an~~ **ADMINISTRATIVE** hearing as ~~set~~
 16 ~~forth~~ **PROVIDED FOR** in this act.

17 **SEC. 9A. ALL DEPARTMENTS, STATE AGENCIES, PUBLIC BODIES**
 18 **CORPORATE, COMMITTEES, COMMISSIONERS, OR OFFICERS OF THIS STATE,**
 19 **AND ANY POLITICAL SUBDIVISION OF THIS STATE, SO FAR AS IS**
 20 **COMPATIBLE WITH THEIR DUTIES, SHALL GIVE THE COMMISSIONER OR HIS OR**
 21 **HER DESIGNEE ANY NECESSARY ASSISTANCE REQUIRED BY THE COMMISSIONER**
 22 **IN THE PERFORMANCE OF THE DUTIES OF THE COMMISSIONER. ALL**
 23 **DEPARTMENTS, STATE AGENCIES, PUBLIC BODIES CORPORATE, COMMITTEES,**
 24 **COMMISSIONERS, OR OFFICERS OF THIS STATE, AND ANY POLITICAL**
 25 **SUBDIVISION OF THIS STATE, SHALL PROVIDE THE COMMISSIONER FREE**
 26 **ACCESS TO ANY BOOK, RECORD, OR DOCUMENT IN THEIR CUSTODY RELATING**
 27 **TO THE MATTERS WITHIN THE SCOPE OF THE COMMISSIONER IN THE**

1 PERFORMANCE OF HIS OR HER DUTIES.

2 SEC. 9B. THE COMMISSIONER MAY ENTER INTO CONTRACTS TO
3 ACCOMPLISH REQUIREMENTS UNDER THIS ACT, INCLUDING FOR THE
4 ENGAGEMENT OF CONSULTANTS.

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

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

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

1 (2) If a person proposes to purchase or otherwise acquire a
2 controlling interest in an existing cemetery company, that person
3 shall first apply to the commissioner for a certificate of approval
4 of a proposed change of control of a cemetery company. The
5 application shall contain **ALL OF** the **FOLLOWING**:

6 **(A) THE** name and address of the proposed new owner or
7 operator. ~~and~~

8 **(B) A SWORN STATEMENT ATTESTING TO THE ASSETS AND LIABILITIES**
9 **RELATED TO THE CEMETERY, INCLUDING ALL TRUST ACCOUNTS AND THE VALUE**
10 **OF THE TRUST ACCOUNTS, AND A SWORN STATEMENT OF WHO WILL ASSUME**
11 **THOSE ASSETS AND LIABILITIES.**

12 **(C) A SWORN STATEMENT THAT THE PRINCIPAL FROM THE ENDOWMENT**
13 **AND PERPETUAL CARE TRUST ACCOUNTS WILL BE HELD IN ESCROW FOR 6**
14 **MONTHS FROM THE LATER OF THE FOLLOWING:**

15 **(i) THE COMMISSIONER'S APPROVAL OF THE APPLICATION.**

16 **(ii) THE CLOSE OF THE SALE OF A CONTROLLING INTEREST IN THE**
17 **CEMETERY OWNER OR THE SALE OF A SUBSTANTIAL PORTION OF THE ASSETS**
18 **OF THE CEMETERY OWNER.**

19 **(iii) THE TRANSFER OF TITLE OF THE CEMETERY.**

20 **(D) ANY** other information ~~as~~ the commissioner requires.

21 (3) The commissioner shall issue a certificate of approval **FOR**
22 **A CHANGE OF CONTROL** only after he or she is satisfied that the
23 proposed new **CEMETERY** owner **OR OPERATOR** is qualified by **GOOD MORAL**
24 character, experience, and financial **STABILITY**, responsibility, **AND**
25 **SECURITY** to control and operate the cemetery in a legal and proper
26 manner, and that the interest of the public generally will not be
27 jeopardized by the proposed change in ownership and management. The

1 application for a purchase or change of control must be accompanied
2 by an initial filing or investigation fee of ~~\$500.00~~ **\$1,500.00**.

3 (4) If a person fails to comply with this section, the
4 commissioner ~~shall order that an administrative hearing be held. If~~
5 **MAY DO ANY OF THE FOLLOWING IF** a transfer of controlling interest
6 is found to have taken place without prior commissioner approval: ~~7~~
7 ~~the commissioner may suspend~~

8 (A) **SUSPEND** or revoke the registration of the cemetery. ~~or~~
9 ~~take~~

10 (B) **ISSUE A CEASE AND DESIST ORDER OR OTHER ORDER REQUIRING A**
11 **PERSON TO IMMEDIATELY TAKE REMEDIAL ACTION AS PRESCRIBED BY THE**
12 **COMMISSIONER.**

13 (C) **SEEK INJUNCTIVE OR OTHER EQUITABLE ACTION FROM A COURT OF**
14 **COMPETENT JURISDICTION.**

15 (D) **TAKE** other appropriate action until ~~it~~ **THE PERSON**
16 **PURCHASING OR OTHERWISE ACQUIRING A CONTROLLING INTEREST IN AN**
17 **EXISTING CEMETERY, PURCHASING AN EXISTING CEMETERY, OR OTHERWISE**
18 **ACQUIRING THE CEMETERY** demonstrates compliance with this section **OR**
19 **DIVESTS ITSELF OF ANY INTEREST OR CONTROL OF THE CEMETERY.**

20 (5) **AFTER THE SALE, TRANSFER, PURCHASE, OR ACQUISITION OF A**
21 **CONTROLLING INTEREST IN A CEMETERY IS COMPLETED, THE ENDOWMENT AND**
22 **PERPETUAL CARE TRUST FUND FOR THE CEMETERY SHALL BE ESCROWED INTO**
23 **AN ACCOUNT FOR THE FIRST 6 MONTHS OF THE NEW OWNERSHIP. THIS**
24 **SUBSECTION SHALL NOT BE CONSTRUED TO PREVENT OR PROHIBIT THE**
25 **CEMETERY FROM RECEIVING INTEREST OR INCOME FROM THE ENDOWMENT AND**
26 **PERPETUAL CARE TRUST FUND TO MAINTAIN THE CEMETERY.**

27 (6) **THE ENDOWMENT AND PERPETUAL CARE TRUST FUNDS OF A CEMETERY**

1 BEING SOLD SHALL NOT BE USED BY THE NEW OWNER OF AN EXISTING
2 CEMETERY IN ANY MANNER TO PURCHASE OR OTHERWISE FINANCE THE
3 PURCHASE OF THAT CEMETERY FROM THE PREVIOUS OWNER.

4 (7) ~~(3)~~As used in this section, "controlling interest" means
5 the capability to decide the operating and financial policies of
6 the cemetery company or to select the officers or directors with
7 majority control of the cemetery company.

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

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

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

26 (2) After a receipt of an application, the commissioner shall
27 conduct an investigation pertaining to the physical plans, the

1 community need for the planned cemetery, and pertinent information
2 pertaining to the applicant's experience, financial SECURITY,
3 RESPONSIBILITY, AND stability, ability, and integrity-GOOD MORAL
4 CHARACTER. If the applicant is not ~~a natural person~~ AN INDIVIDUAL,
5 the same investigation shall be made of the ~~general manager and~~
6 ~~principal owners~~, DIRECTORS, OFFICERS, PARTNERS, MEMBERS, OR ANY
7 PERSON OCCUPYING A SIMILAR STATUS OR PERFORMING SIMILAR FUNCTIONS,
8 OR ANY AFFILIATED PERSON.

9 (3) A CEMETERY COMPANY SHALL IMMEDIATELY NOTIFY THE
10 COMMISSIONER OF ANY CHANGE IN ITS DIRECTORS, OFFICERS, PARTNERS,
11 MEMBERS, AFFILIATED PERSONS, OR ANY PERSONS OCCUPYING A SIMILAR
12 STATUS OR PERFORMING SIMILAR FUNCTIONS. IF AFTER INVESTIGATION THE
13 COMMISSIONER DETERMINES THAT ANY NEW DIRECTOR, OFFICER, PARTNER,
14 MEMBER, AFFILIATED PERSON, OR A PERSON OCCUPYING A SIMILAR STATUS
15 OR PERFORMING A SIMILAR FUNCTION DOES NOT HAVE SUITABLE EXPERIENCE,
16 FINANCIAL SECURITY, RESPONSIBILITY, AND STABILITY, ABILITY, AND
17 GOOD MORAL CHARACTER, THE COMMISSIONER SHALL ORDER THE CEMETERY
18 COMPANY TO VOID THE APPOINTMENT OF THE DIRECTOR, OFFICER, PARTNER,
19 MEMBER, AFFILIATED PERSON, OR ANY PERSONS OCCUPYING A SIMILAR
20 STATUS OR PERFORMING A SIMILAR FUNCTION.

21 SEC. 13A. (1) NOTWITHSTANDING ANY OTHER PROVISIONS GOVERNING
22 ELIGIBILITY AS A CEMETERY OWNER, A PERSON MAY BE INELIGIBLE TO
23 BECOME A CEMETERY OWNER OR HOLD A CONTROLLING INTEREST IN A
24 CEMETERY COMPANY IF ANY OF THE FOLLOWING CIRCUMSTANCES EXIST:

25 (A) THE PERSON HAS BEEN CONVICTED OF A FELONY UNDER THE LAWS
26 OF THIS STATE, ANY OTHER STATE, OR THE UNITED STATES.

27 (B) THE PERSON HAS BEEN CONVICTED OF A MISDEMEANOR INVOLVING

1 GAMBLING, THEFT, DISHONESTY, OR FRAUD IN ANY STATE, OR HAS BEEN
2 CONVICTED UNDER A LOCAL ORDINANCE IN ANY STATE INVOLVING GAMBLING,
3 DISHONESTY, THEFT, OR FRAUD THAT SUBSTANTIALLY CORRESPONDS TO A
4 MISDEMEANOR IN THIS STATE.

5 (C) THE PERSON HAS KNOWINGLY SUBMITTED AN APPLICATION FOR A
6 LICENSE UNDER THIS ACT THAT CONTAINS FALSE INFORMATION.

7 (D) THE PERSON LACKS THE REQUISITE CHARACTER, EXPERIENCE, AND
8 FINANCIAL RESPONSIBILITY TO CONTROL AND OPERATE THE CEMETERY IN A
9 LEGAL AND PROPER MANNER, AS DETERMINED BY THE COMMISSIONER, AND THE
10 PROPOSED OWNERSHIP OR CHANGE IN OWNERSHIP AND MANAGEMENT IS LIKELY
11 TO JEOPARDIZE THE PUBLIC.

12 (2) IN DETERMINING WHETHER TO ALLOW A PERSON TO BECOME A
13 CEMETERY OWNER, THE COMMISSIONER SHALL ALSO CONSIDER ALL OF THE
14 FOLLOWING:

15 (A) THE PAST AND PRESENT COMPLIANCE OF THE PERSON AND ITS
16 AFFILIATED PERSON WITH CEMETERY OR CEMETERY-RELATED LICENSING
17 REQUIREMENTS, CEMETERY-RELATED AGREEMENTS, OR COMPACTS WITH THE
18 STATE OF MICHIGAN OR ANY OTHER JURISDICTION.

19 (B) WHETHER THE PERSON HAS BEEN INDICTED, CHARGED, ARRESTED,
20 OR CONVICTED, HAS PLEADED GUILTY OR NOLO CONTENDERE, OR HAS
21 FORFEITED BAIL CONCERNING ANY CRIMINAL OFFENSE UNDER THE LAWS OF
22 ANY JURISDICTION, EITHER FELONY OR MISDEMEANOR, NOT INCLUDING
23 TRAFFIC VIOLATIONS, UNLESS THE OFFENSE HAS BEEN EXPUNGED, PARDONED,
24 OR REVERSED ON APPEAL OR OTHERWISE NULLIFIED AS DETERMINED BY THE
25 COMMISSIONER.

26 (C) WHETHER THE PERSON HAS FILED, OR HAD FILED AGAINST IT, A
27 PROCEEDING FOR BANKRUPTCY OR HAS EVER BEEN INVOLVED IN ANY FORMAL

1 PROCESS TO ADJUST, DEFER, SUSPEND, OR OTHERWISE WORK OUT THE
2 PAYMENT OF ANY DEBT.

3 (D) WHETHER THE PERSON HAS BEEN SERVED WITH A COMPLAINT OR
4 OTHER NOTICE FILED WITH ANY PUBLIC BODY REGARDING A PAYMENT OF ANY
5 TAX REQUIRED UNDER FEDERAL, STATE, OR LOCAL LAW THAT HAS BEEN
6 DELINQUENT FOR 1 OR MORE YEARS.

7 (E) THE PERSON HAS A HISTORY OF NONCOMPLIANCE WITH ANY
8 REGULATORY REQUIREMENTS IN THIS STATE, ANY OTHER JURISDICTION, OR
9 THE FEDERAL GOVERNMENT.

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

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

19 Sec. 16. (1) The commissioner shall require each cemetery to
20 establish and maintain an irrevocable endowment **AND PERPETUAL** care
21 **TRUST** fund. ~~as required by section 35a of 1855 PA 87, MCL 456.35a,~~
22 ~~or section 7a of 1869 PA 12, MCL 456.107a, and to~~ **THE AMOUNTS**
23 **DEPOSITED INTO AN ENDOWMENT AND PERPETUAL CARE TRUST FUND PURSUANT**
24 **TO SUBSECTION (5) SHALL BE HELD IN PERPETUITY BY THE TRUSTEE.**
25 **INTEREST OR INCOME SHALL BE USED ONLY FOR ENDOWMENT CARE. EXCEPT AS**
26 **OTHERWISE PROVIDED IN SUBSECTION (2), MONEY IN THE ENDOWMENT AND**
27 **PERPETUAL CARE TRUST FUND SHALL NOT BE COMMINGLED WITH ANY OTHER**

Senate Bill No. 674 as amended May 28, 2008

1 **MONEY OR TRUST ACCOUNTS. THE CEMETERY SHALL** report annually before
2 July 1 of each year, on forms approved and furnished by the
3 commissioner, **ENDOWMENT AND PERPETUAL** care **TRUST** fund information
4 required to be reported to the commissioner by other statutes and
5 information regarding the funds as the commissioner considers
6 pertinent in the public interest. A cemetery applying to the
7 commissioner as authorized by other statutes for ~~a~~**AN ENDOWMENT AND**
8 **PERPETUAL** care **TRUST** fund deposit modification or waiver shall be
9 assessed the actual expenses for an examination or investigation by
10 the commissioner.

11 **<<(2) BUNDLING OR POOLING OF TRUST FUNDS, FROM EACH CEMETERY OR**
12 **AMONG CEMETERIES WITH COMMON OWNERSHIP, IS NOT PERMISSIBLE EXCEPT UPON**
13 **TERMS AND CONDITIONS APPROVED IN WRITING BY THE COMMISSIONER AND ONLY**
14 **AFTER THE COMMISSIONER IS REASONABLY SATISFIED THAT THE TITLE TO,**
15 **CHARACTER OF, AND ACCOUNTING FOR EACH TRUST FUND IS PRESERVED.**

16
17
18
19 **>>**

20 **(3) THE IRREVOCABLE ENDOWMENT AND PERPETUAL CARE TRUST FUND**
21 **SHALL BE ESTABLISHED WITH 1 OR MORE REGULATED FINANCIAL**
22 **INSTITUTIONS THAT SHALL BE TRUSTEES OF THE FUND. THE CEMETERY SHALL**
23 **ENTER INTO IRREVOCABLE TRUST AGREEMENTS WITH THE TRUSTEES. THOSE**
24 **AGREEMENTS MUST PROVIDE THAT THE INVESTMENTS OF THE TRUST ARE**
25 **SUBJECT TO SECTION 7302(1) OF THE ESTATES AND PROTECTED INDIVIDUALS**
26 **CODE, 1998 PA 386, MCL 700.7302. A CEMETERY MAY DIRECT THE**
27 **MANAGEMENT AND INVESTMENT OF THE TRUSTS BY THE TRUSTEES IF THE**

1 DIRECTION IS CONSISTENT WITH THE RECOMMENDATIONS OF AN INVESTMENT
2 ADVISER REGISTERED WITH THE SECURITY EXCHANGE COMMISSION UNDER THE
3 INVESTMENT ADVISERS ACT OF 1940 OR UNDER THE UNIFORM SECURITIES
4 ACT, 1964 PA 265, MCL 451.501 TO 451.808, AND SUCH INVESTMENTS ARE
5 SUBJECT TO SECTION 7302(1) OF THE ESTATES AND PROTECTED INDIVIDUALS
6 CODE, 1998 PA 386, MCL 700.7302. THE DETERMINATION AS TO WHETHER
7 ANY SUCH DIRECTION COMPLIES WITH THE PRUDENT INVESTOR RULE SHALL BE
8 MADE SOLELY BY THE TRUSTEE. THE CEMETERY MAY CHANGE TRUSTEES OR
9 REGISTERED INVESTMENT ADVISERS AT ANY TIME, SUBJECT TO ITS
10 AGREEMENT WITH THE TRUSTEE OR REGISTERED INVESTMENT ADVISOR AND THE
11 APPROVAL OF THE COMMISSIONER. THE CEMETERY SHALL NOTIFY THE
12 COMMISSIONER, IN WRITING, WITHIN 30 DAYS AFTER THE APPOINTMENT AS
13 TRUSTEE OF EITHER REGULATED FINANCIAL INSTITUTIONS OR REGISTERED
14 INVESTMENT ADVISERS. THE FEES AND COSTS ASSOCIATED WITH THE
15 REGULATED FINANCIAL INSTITUTION MAY BE PAID FOR FROM THE PRINCIPAL
16 OF THE TRUST.

17 (4) BEGINNING THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
18 ADDED THIS SUBSECTION, AN IRREVOCABLE ENDOWMENT AND PERPETUAL CARE
19 TRUST FUND SHALL BE CREATED BY THE DEPOSIT OF AT LEAST \$150,000.00
20 INTO THE FUND BEFORE ANY SALE OF BURIAL RIGHTS, ENTOMBMENT RIGHTS,
21 OR COLUMBARIUM RIGHTS IS MADE.

22 (5) EACH MONTH, NOT LESS THAN 15% OF ALL PROCEEDS RECEIVED
23 DURING THE PREVIOUS MONTH FROM THE SALES OF BURIAL RIGHTS,
24 ENTOMBMENT RIGHTS, OR COLUMBARIUM RIGHTS SHALL BE DEPOSITED WITH
25 THE TRUSTEE FOR INCLUSION IN THE ENDOWMENT AND PERPETUAL CARE TRUST
26 FUND. NO TOTAL DEPOSIT FOR A SINGLE BURIAL RIGHT SALE OR ASSIGNMENT
27 SHALL BE LESS THAN \$20.00. A CEMETERY MAY APPLY TO THE COMMISSIONER

1 FOR A MODIFICATION OF THE MINIMUM DEPOSIT REQUIREMENT. THE
2 COMMISSIONER SHALL TAKE TESTIMONY AND INVESTIGATE AS HE OR SHE
3 CONSIDERS NECESSARY AND IF THE COMMISSIONER DETERMINES THAT THE
4 APPLICANT'S ENDOWMENT AND PERPETUAL CARE TRUST FUND WILL GENERATE
5 SUFFICIENT INTEREST TO MEET ALL CURRENT AND FUTURE COSTS OF KEEPING
6 THE APPLICANT'S CEMETERY IN GOOD CONDITION, THE COMMISSIONER MAY
7 MODIFY THE MINIMUM DEPOSIT REQUIREMENT. A CEMETERY APPLYING TO THE
8 COMMISSIONER FOR A MODIFICATION OF THE ENDOWMENT AND PERPETUAL CARE
9 TRUST FUND DEPOSIT REQUIREMENTS SHALL BE ASSESSED THE ACTUAL COSTS
10 FOR THE COMMISSIONER'S EXAMINATION AND INVESTIGATION.

11 (6) The commissioner shall require each person engaged as
12 agent or seller ~~, as a means of livelihood either part time or full~~
13 ~~time,~~ in the selling of burial rights, entombment rights, or
14 columbarium rights owned by a party other than a cemetery or
15 corporation subject to the irrevocable endowment **AND PERPETUAL** care
16 **TRUST** fund requirements of **THIS ACT AND** other laws, to deposit 15%
17 of all gross proceeds received from the sales of those rights into
18 the irrevocable endowment **AND PERPETUAL** care **TRUST** fund of the
19 cemetery in which the rights are located if an irrevocable
20 endowment **AND PERPETUAL** care **TRUST** fund exists for that cemetery.
21 Excess sums on deposit in the fund can be applied by a cemetery
22 against future deposits. A deposit required to be made by those
23 persons shall be modified or waived if the cemetery has received an
24 irrevocable endowment **AND PERPETUAL** care **TRUST** fund deposit
25 modification or waiver approved by the commissioner. The total
26 deposit for a single adult burial right sale or assignment shall
27 not be less than \$20.00.

1 (7) INTEREST OR INCOME FROM THE MONEY IN THE ENDOWMENT AND
2 PERPETUAL CARE TRUST FUND SHALL BE USED EXCLUSIVELY FOR ENDOWMENT
3 AND PERPETUAL CARE. NO PORTION OF THE INTEREST OR INCOME MAY BE
4 USED DIRECTLY OR INDIRECTLY FOR SALARIES OR OTHER PAYMENTS TO THE
5 OFFICERS, DIRECTORS, PARTNERS, MEMBERS, OR MANAGERS OF THE ENTITY
6 OWNING THE CEMETERY. WITHDRAWALS OF ACCUMULATED INTEREST OR INCOME
7 FROM THE ENDOWMENT AND PERPETUAL CARE TRUST FUND MAY BE AUTHORIZED
8 BY THE TRUSTEE, AND SUCH WITHDRAWALS SHALL BE DOCUMENTED IN THE
9 MANNER PROVIDED BY RULE OF THE COMMISSIONER. A CEMETERY SHALL
10 MAINTAIN RECORDS SHOWING THAT INTEREST FROM THE ENDOWMENT AND
11 PERPETUAL CARE TRUST FUND IS USED EXCLUSIVELY FOR ENDOWMENT AND
12 PERPETUAL CARE.

13 (8) ~~(2)~~ Subject to subsection ~~(8)~~ **(16)**, a cemetery ~~which~~ **THAT**
14 is required to register pursuant to this act and an agent ~~which is~~
15 authorized by a cemetery or acting on its behalf under an agreement
16 or sales contract, **ENTERED INTO PRIOR TO JANUARY 1, 2005**, to sell
17 cemetery merchandise or cemetery services shall establish a
18 merchandise trust account and deposit a percentage of the gross
19 proceeds received from the sales as determined by the commissioner.
20 The merchandise trust account shall be maintained exclusively for
21 the deposit of the money into a ~~state or national bank, a state or~~
22 ~~federally chartered savings and loan association, or a trust~~
23 ~~company~~ **REGULATED FINANCIAL INSTITUTION** under the terms of a
24 written trust agreement approved by the commissioner. **ALL**
25 **DOCUMENTS, REPORTS, AND RECORDS REGARDING THE TRUST SHALL BE KEPT**
26 **IN THIS STATE.** It shall be the responsibility of each registrant
27 under this act to assure that documents relating to the merchandise

1 trust account are provided to the commissioner upon request. If a
 2 subpoena is issued to obtain these documents, the registrant shall
 3 pay all costs related to obtaining the documents. ~~regardless of the~~
 4 ~~\$100.00 charge limitation contained in section 12a(2).~~ The funds
 5 shall be deposited not later than the month following their
 6 receipt.

7 (9) ~~(3)~~ Subject to subsection ~~(8)~~ **(16)**, the total deposits to
 8 a merchandise trust for the sale of cemetery burial vaults or other
 9 outside containers, other than crypts installed underground and
 10 sold as part of a cemetery lot, shall at all times be not less than
 11 the greater of \$100.00 per vault or outside container or 130% of
 12 the total costs of the containers covered by the trust. Money
 13 deposited in connection with a sale shall be repaid within 30 days
 14 upon written demand of purchaser. A burial vault shall be installed
 15 only at need or by separate written authorization of the purchaser.
 16 The cemetery shall have the right to withdraw the amount on deposit
 17 for the delivered vault or outside container.

18 (10) ~~(4)~~ Subject to subsection ~~(8)~~ **(16)**, a contract or
 19 agreement made with a purchaser of cemetery merchandise and
 20 cemetery services shall contain a complete description of the
 21 cemetery merchandise purchased and of the cemetery services to be
 22 rendered.

23 (11) ~~(5)~~ The commissioner shall require ~~each~~ **THE** cemetery ~~or~~
 24 ~~agent authorized by it acting on its behalf~~ **OWNER OR OPERATOR** to
 25 report annually before July 1 of each year on forms provided by the
 26 commissioner. The reports shall contain information as the
 27 commissioner considers necessary to ascertain that **THE REQUIREMENTS**

1 OF this act ~~is~~ AND RULES PROMULGATED UNDER THIS ACT ARE being
2 implemented. SUBJECT TO APPROVAL OF THE DEPARTMENT, THE CEMETERY
3 OWNER OR OPERATOR MAY ASK FOR AN EXTENSION NOT TO EXCEED 90 DAYS TO
4 SUBMIT THE REPORT REQUIRED BY THIS SUBSECTION. ALL REPORTS REQUIRED
5 BY THIS SUBSECTION AND SUBSECTION (12) SHALL INCLUDE A SWORN
6 STATEMENT BY THE CEMETERY OWNER OR OPERATOR THAT INCLUDES THE
7 FOLLOWING:

8 (A) A CERTIFICATION THAT THE SIGNING CEMETERY OWNER OR
9 OPERATOR HAS REVIEWED THE REPORT.

10 (B) BASED ON THE OPERATOR'S OR OWNER'S KNOWLEDGE, THAT THE
11 REPORT DOES NOT CONTAIN ANY UNTRUE STATEMENT OF MATERIAL FACT
12 RELATED TO THE FINANCIAL CONDITION OF THE ENDOWMENT AND PERPETUAL
13 CARE TRUST FUND OR MERCHANDISE TRUST ACCOUNTS.

14 (C) BASED ON THE OPERATOR'S OR OWNER'S KNOWLEDGE, THAT THE
15 REPORT FAIRLY PRESENTS ALL MATERIAL INFORMATION REGARDING THE
16 FINANCIAL CONDITION OF THE ENDOWMENT AND PERPETUAL CARE TRUST FUND
17 OR MERCHANDISE TRUST ACCOUNTS.

18 (D) THAT THE SIGNING OPERATORS OR OWNERS ARE RESPONSIBLE FOR
19 ESTABLISHING AND MAINTAINING INTERNAL CONTROLS; HAVE DESIGNED THOSE
20 INTERNAL CONTROLS TO ENSURE THE ACCURACY OF MATERIAL INFORMATION
21 RELATING TO THE CONDITION OF THE ENDOWMENT AND PERPETUAL CARE TRUST
22 FUND OR MERCHANDISE TRUST ACCOUNTS; HAVE EVALUATED THE
23 EFFECTIVENESS OF THE INTERNAL CONTROLS WITHIN 90 DAYS PRIOR TO THE
24 ISSUANCE OF THE REPORT; AND HAVE INCLUDED INFORMATION EVALUATING
25 THE EFFECTIVENESS OF THOSE INTERNAL CONTROLS.

26 (12) AT A MINIMUM, THE COMMISSIONER SHALL REQUIRE THE
27 FOLLOWING INFORMATION CONCERNING THE ENDOWMENT AND PERPETUAL CARE

1 TRUST FUND, THE ACCURACY OF WHICH SHALL BE CERTIFIED BY A CERTIFIED
2 PUBLIC ACCOUNTANT:

3 (A) BEGINNING AND ENDING BALANCES.

4 (B) RECEIPTS FROM THE SALE OF BURIAL, ENTOMBMENT, AND
5 COLUMBARIUM RIGHTS.

6 (C) DEPOSITS TO THE ENDOWMENT AND PERPETUAL CARE TRUST FUND.

7 (D) ITEMIZED PAYMENTS OF INTEREST OR INCOME.

8 (E) DOCUMENTATION THAT INTEREST WAS UTILIZED SOLELY FOR
9 ENDOWMENT CARE.

10 (13) ~~(6)~~ If, after an audit by the commissioner's staff, a
11 deficit in the amount of required deposits to the trust funds is
12 found, the commissioner may assess a penalty ~~not to exceed 10%~~ of
13 ~~IN~~ the amount ~~of the deficit~~ **ALLOWED UNDER THIS ACT**. The cemetery
14 ~~or entity of a cemetery~~ may request an administrative hearing
15 before the commissioner **OR A DESIGNATED HEARING OFFICER** within 30
16 days after being notified of a deficit by the commissioner. If,
17 following the administrative hearing, the commissioner determines
18 that a deficit does exist, an additional penalty ~~not to exceed 1.5%~~
19 may be assessed each month on the unpaid monthly balance until the
20 deficit is paid in full.

21 (14) **IN ADDITION TO ALL OTHER REMEDIES AT LAW OR IN EQUITY,**
22 **THE ATTORNEY GENERAL AND THE CIRCUIT COURT OF THE COUNTY IN WHICH**
23 **THE CEMETERY IS LOCATED SHALL HAVE ALL THE POWERS AND JURISDICTION**
24 **GRANTED TO THE ATTORNEY GENERAL AND COURT AS TO TRUSTS COVERED BY**
25 **1915 PA 280, MCL 554.351 TO 554.353. THE REMEDIES GRANTED INCLUDE**
26 **ALL ENDOWMENT AND PERPETUAL CARE TRUST FUNDS WITHOUT REGARD TO**
27 **UNCERTAINTY OR INDEFINITENESS OF BENEFICIARIES.**

1 (15) ~~(7)~~ All fees, charges, and penalties, **OR OTHER MONEY FROM**
2 **ANY SOURCE**, collected under this act, other than fines prescribed
3 in ~~section 21~~ **THIS ACT**, shall be paid to the commissioner. Upon
4 receipt, the commissioner shall remit funds received to the
5 department of treasury for deposit in the general fund of the
6 state.

7 (16) ~~(8)~~ Any preneed contracts for cemetery merchandise or
8 services entered into on or after January 1, 2005 are subject to
9 the prepaid funeral and cemetery sales act, 1986 PA 255, MCL
10 328.211 to 328.235.

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

19 (17) **WITHIN 30 DAYS AFTER 30% OF THE ENDOWMENT AND PERPETUAL**
20 **CARE OR PERPETUAL CARE FUNDS ESTABLISHED UNDER THIS ACT ARE MOVED**
21 **FROM AN ACCOUNT OR OTHERWISE ENGAGED IN SOME TYPE OF FINANCIAL**
22 **TRANSACTION OR INVESTMENT, THE CEMETERY OWNER OR OPERATOR SHALL**
23 **NOTIFY THE COMMISSIONER OF THE TRANSACTION ON APPROPRIATE FORMS**
24 **THAT THE COMMISSIONER SHALL AUTHORIZE. FAILURE TO COMPLY WITH THIS**
25 **SUBSECTION IS CONSIDERED A VIOLATION OF THIS ACT.**

26 (18) **THE COMMISSIONER, UPON FINDING AFTER NOTICE AND AN**
27 **OPPORTUNITY FOR A HEARING PURSUANT TO THE ADMINISTRATIVE PROCEDURES**

1 ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328, THAT A CEMETERY
2 OWNER OR OPERATOR HAS FAILED TO TIMELY SUBMIT A REPORT REQUIRED
3 UNDER SUBSECTIONS (11) AND (12), REGARDLESS OF WHETHER HE OR SHE
4 ACTED ALONE OR THROUGH AN EMPLOYEE OR AGENT, MAY IMPOSE AN
5 ADMINISTRATIVE FINE, PAYABLE TO THE COMMISSIONER, FOR THE
6 ENFORCEMENT OF THIS ACT. IF THE COMMISSIONER FINDS THAT A VIOLATION
7 OCCURRED DESPITE THE EXERCISE OF DUE CARE, THE COMMISSIONER MAY
8 ISSUE A WARNING INSTEAD OF IMPOSING AN ADMINISTRATIVE FINE.

9 (19) THE DIRECTOR SHALL ADVISE THE ATTORNEY GENERAL OF THE
10 FAILURE OF A PERSON TO PAY AN ADMINISTRATIVE FINE IMPOSED UNDER
11 THIS SECTION. THE ATTORNEY GENERAL MAY BRING AN ACTION IN A COURT
12 OF COMPETENT JURISDICTION FOR THE FAILURE TO PAY AN ADMINISTRATIVE
13 FINE IMPOSED UNDER THIS SECTION.

14 (20) APPLICABLE PROVISIONS OF THE REVISED JUDICATURE ACT OF
15 1961, 1961 PA 236, MCL 600.101 TO 600.9948, APPLY TO CIVIL ACTIONS
16 FILED PURSUANT TO THIS SECTION.

17 Sec. 18. (1) The commissioner may deny an application filed
18 under this act and refuse to issue a permit or registration, or may
19 suspend or revoke a permit or registration, or may reprimand, place
20 on probation, or take other disciplinary action against the
21 applicant if the commissioner's investigation reveals facts which,
22 with reference to the establishment of a cemetery, show
23 inappropriate physical plans; lack of community need; inadequate
24 experience, financial stability, or integrity to protect the public
25 welfare; or when the commissioner finds that the **CEMETERY OWNER,**
26 **OPERATOR, OR** applicant or ~~its~~ **THE** officers, **CEMETERY OWNERS,**
27 **DIRECTORS, MEMBERS, AFFILIATED PERSONS,** or general manager **OF THOSE**

1 **ENTITIES** has done 1 or more of the following:

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

4 (b) Not complied with this act.

5 (c) Been guilty of an unlawful or fraudulent act in connection
6 with selling or otherwise dealing in cemetery lots and burial
7 rights regulated by this act or funeral or cemetery merchandise and
8 services regulated by the prepaid funeral and cemetery sales act,
9 1986 PA 255, MCL 328.211 to 328.235.

10 (d) Been guilty in the judgment of the commissioner of other
11 conduct whether of the same or different character than specified
12 in this act which constitutes dishonest and unfair dealing **OR A**
13 **DEMONSTRATION OF LACK OF GOOD MORAL CHARACTER.**

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

16 (f) Violated the terms of an assurance of discontinuance
17 entered into with the commissioner pursuant to section ~~9(2)~~ **9(5)**.

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

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

22 (i) Adopted, enforced, or attempted to enforce a regulation of
23 the cemetery that prohibits the installation of a grave memorial or
24 burial vault unless the grave memorial or burial vault was
25 purchased from the cemetery. This subdivision does not prohibit a
26 cemetery from adopting and enforcing consistent rules and
27 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 **CEMETERY** 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. 21. (1) ~~A-EXCEPT AS OTHERWISE PROVIDED FOR IN SUBSECTION (2), 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~~ **\$10,000.00.**

(2) If the violator is ~~other than a natural person~~ **AN INDIVIDUAL**, the ~~first offense shall be~~ **IS** 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~~ **\$10,000.00 OR IMPRISONMENT FOR**

1 NOT MORE THAN 1 YEAR, OR BOTH.

2 Enacting section 1. (1) Sections 107 and 107a of 1869 PA 12,
3 MCL 456.107 and 456.107a, are repealed.

4 (2) Sections 35 and 35a of 1855 PA 87, MCL 456.35 and 456.35a,
5 are repealed.