

# SENATE BILL No. 674

August 1, 2007, Introduced by Senator GILBERT and referred to the Committee on Economic Development and Regulatory Reform.

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, and 18 (MCL 456.522, 456.522a, 456.528, 456.529, 456.530,  
456.532, 456.532a, 456.533, 456.535, 456.536, and 456.538), the  
title and sections 2, 8, 9, 10, 12, 12a, 13, 15, 16, and 18 as  
amended by 2004 PA 22 and section 2a as added by 1982 PA 132, and  
by adding sections 9a and 9b; 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 provide for a cemetery commissioner ~~—~~and to prescribe the  
powers and duties of the commissioner; to require the registration

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

7 Sec. 2. As used in this act:

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

10 (i) A burial ground for earth interments.

11 (ii) A mausoleum for crypt entombments.

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

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

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

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

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

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

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

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

26 (h) "Columbarium" means a building or other aboveground  
27 structure that is affixed to land and is a permanent repository for

1   cremated human remains.

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

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

6           (k) "Cemetery commissioner" or "commissioner" means the  
7   ~~director of the department of labor and economic growth~~  
8   **COMMISSIONER OF FINANCIAL AND INSURANCE SERVICES** or a designee of  
9   the ~~director~~ **COMMISSIONER**.

10          (l) "DEPOSITORY" MEANS A STATE OR NATIONALLY CHARTERED BANK OR  
11   A STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN ASSOCIATION,  
12   SAVINGS BANK, OR CREDIT UNION, WHOSE DEPOSITS ARE INSURED BY AN  
13   AGENCY OF THE UNITED STATES GOVERNMENT UNDER THE LAWS OF THIS STATE  
14   OR THE UNITED STATES. DEPOSITORY INCLUDES THE TRUST DEPARTMENT, IF  
15   ANY, OF AN ENTITY REFERRED TO IN THIS SUBDIVISION. DEPOSITORY DOES  
16   NOT INCLUDE AN ENTITY DESCRIBED IN THIS SUBDIVISION THAT IS  
17   DIRECTLY OR INDIRECTLY OWNED OR CONTROLLED BY A PERSON WHO OWNS OR  
18   OPERATES A CEMETERY.

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

22          (n) "OFFICE OF CEMETERY REGULATION" MEANS THE OFFICE CREATED  
23   WITHIN THE OFFICE OF FINANCIAL AND INSURANCE SERVICES IN SECTION  
24   **2A.**

25          (o) ~~(m)~~ "Person" means an individual, group of individuals,  
26   sole proprietorship, partnership, limited liability company,  
27   association, corporation, government agency, cemetery, or a

1 combination of these legal entities.

2 (P) "GOOD MORAL CHARACTER" MEANS THAT TERM AS DEFINED AND  
3 DETERMINED UNDER 1974 PA 381, MCL 338.41 TO 338.47.

4 (Q) "MICHIGAN FINANCIAL INSTITUTION" MEANS A STATE OR  
5 FEDERALLY CHARTERED BANK, SAVINGS BANK, SAVINGS AND LOAN  
6 ASSOCIATION, OR CREDIT UNION THAT HAS ITS MAIN OR BRANCH OFFICES IN  
7 MICHIGAN. MICHIGAN FINANCIAL INSTITUTION DOES NOT INCLUDE AN ENTITY  
8 DESCRIBED IN THIS SUBDIVISION THAT IS DIRECTLY OR INDIRECTLY OWNED  
9 OR CONTROLLED BY A PERSON WHO OWNS OR OPERATES A CEMETERY.

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

18 Sec. 2a. (1) THERE IS CREATED AN OFFICE OF CEMETERY REGULATION  
19 WITHIN THE OFFICE OF FINANCIAL AND INSURANCE SERVICES. THE  
20 COMMISSIONER OF FINANCIAL AND INSURANCE SERVICES SHALL DESIGNATE AN  
21 INDIVIDUAL AS THE CEMETERY COMMISSIONER. ALL RECORDS, PERSONNEL,  
22 PROPERTY, AND UNEXPENDED BALANCE OF APPROPRIATIONS, ALLOCATIONS,  
23 AND OTHER FUNDS USED, HELD, AVAILABLE, OR TO BE MADE AVAILABLE TO  
24 THE DIRECTOR OF THE DEPARTMENT OF LABOR AND ECONOMIC GROWTH FOR HIS  
25 OR HER ACTIVITIES AND RESPONSIBILITIES IN ADMINISTERING THIS ACT  
26 SHALL BE TRANSFERRED TO THE OFFICE OF FINANCIAL AND INSURANCE  
27 SERVICES.

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

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

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

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

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

23           **(D) REQUIREMENTS FOR THIRD-PARTY TRUSTEES.**

24           **(E) THE ESTABLISHMENT, CONTROL, RECORD KEEPING, AND AUDITING**  
25 **OF ENDOWMENT CARE TRUSTS, MERCHANDISE TRUST ACCOUNTS, AND RELATED**  
26 **TRUST FUNDS.**

27           **(F) REQUIREMENTS FOR TRUST AGREEMENTS, ENDOWMENT CARE TRUSTS,**

1 AND MERCHANDISE TRUST ACCOUNTS.

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

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

23 (2) THE COMMISSIONER HAS THE AUTHORITY TO CONTROL, MANAGE, AND  
24 DISPOSE OF OR TRANSFER ABANDONED CEMETERIES OR TO REQUIRE  
25 ACCEPTANCE OF RESPONSIBILITY FOR AN ABANDONED CEMETERY ACCORDING TO  
26 LAW. THE COMMISSIONER MAY PROMULGATE RULES THAT ARE NECESSARY FOR  
27 THE DEPARTMENT TO CARRY OUT ITS POWERS AND DUTIES UNDER THIS

1 SUBSECTION.

2 (3) FAILURE TO OBEY A SUBPOENA ISSUED TO ANY PERSON BY THE  
3 COMMISSIONER OR THE CIRCUIT COURT MAY SUBJECT THE PERSON TO  
4 PUNISHMENT BY THE CIRCUIT COURT AS A CONTEMPT OF COURT.

5 (4) ANY PERSON REQUIRED BY THIS ACT TO TAKE ANY OATH OR  
6 AFFIRMATION AND WHO MAKES ANY FALSE OATH OR AFFIRMATION IS  
7 CONSIDERED TO HAVE COMMITTED THE CRIME OF PERJURY.

8 (5) ~~(2)~~—When it appears to the commissioner that a person or  
9 registrant has ~~violated~~ **ENGAGED IN, OR IS ABOUT TO ENGAGE IN, ANY**  
10 **ACT OR PRACTICE CONSTITUTING A VIOLATION OF** this act or a rule  
11 promulgated or order issued under this act, the commissioner may do  
12 1 or more of the following:

13 (a) Issue a cease and desist order.

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

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

19 (6) ~~(3)~~—Upon a proper showing regarding an action brought  
20 under subsection ~~(2)(e)~~ **(5) (C)**, a permanent or temporary injunction  
21 or a restraining order may be granted and a receiver or conservator  
22 may be appointed by the court. A receiver or conservator appointed  
23 by the court **SHALL RECEIVE COMPENSATION FROM THE CEMETERY AS**  
24 **DETERMINED BY THE COURT. THE RECEIVER OR CONSERVATOR** may **OPERATE**  
25 **THE CEMETERY AND** take possession of the assets. **THE RECEIVER OR**  
26 **CONSERVATOR SHALL HAVE THE RIGHTS AND OBLIGATIONS OF THE CEMETERY**  
27 **AS TO ALL TRUST AND ESCROW ACCOUNTS** and may sell, assign, transfer,

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

14 (7) **SUBJECT TO COURT APPROVAL, A RECEIVER OR CONSERVATOR MAY**  
 15 **DO ANY OF THE FOLLOWING:**

16 (A) **TAKE POSSESSION OF THE BOOKS, RECORDS, AND ASSETS OF THE**  
 17 **CEMETERY OR CEMETERY ENTITY.**

18 (B) **EMPLOY EMPLOYEES AND AGENTS, LEGAL COUNSEL, ACTUARIES,**  
 19 **ACCOUNTANTS, APPRAISERS, CONSULTANTS, AND SUCH OTHER PERSONNEL AS**  
 20 **HE OR SHE CONSIDERS NECESSARY.**

21 (C) **FIX THE REASONABLE COMPENSATION OF EMPLOYEES AND AGENTS,**  
 22 **LEGAL COUNSEL, ACTUARIES, ACCOUNTANTS, APPRAISERS, AND CONSULTANTS**  
 23 **WITH THE COURT'S APPROVAL.**

24 (8) ~~(4)~~—In the order of sale of the cemetery, the court shall  
 25 make provision for notice to creditors and the filing of claims  
 26 against the receivership or conservatorship. ~~Any remaining funds~~  
 27 **FUNDS** held by the cemetery **IN TRUST OR** in escrow ~~under this act~~



1 ~~belong to the contract buyers or beneficiaries of the contract~~  
 2 ~~buyers and~~ shall not be distributed to the general creditors of the  
 3 cemetery. This section does not prohibit the court from allowing  
 4 the sale of the cemetery to a person other than the holder of a  
 5 license for the practice of mortuary science or a person who owns,  
 6 manages, supervises, operates, or maintains, either directly or  
 7 indirectly, a funeral establishment, or **FROM ALLOWING THE SALE OF**  
 8 **THE CEMETERY TO A** municipal corporation.

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

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

25 **SEC. 9B. THE COMMISSIONER MAY ENTER INTO CONTRACTS TO**  
 26 **ACCOMPLISH REQUIREMENTS UNDER THIS ACT, INCLUDING FOR THE**  
 27 **ENGAGEMENT OF CONSULTANTS.**

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

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

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

24       (2) If a person proposes to purchase or otherwise acquire a  
25 controlling interest in an existing cemetery company, that person  
26 shall first apply to the commissioner for a certificate of approval  
27 of a proposed change of control of a cemetery company. The

1 application shall contain the **FOLLOWING:**

2 (A) THE name and address of the proposed new owner or  
3 operator. and

4 (B) A STATEMENT THAT THE PROPOSED NEW OWNER OR OPERATOR AGREES  
5 TO ASSUME THE LIABILITIES OF THE CEMETERY AND TO PRESERVE THE  
6 ASSETS OF ANY PREPAID MERCHANDISE OR SERVICE CONTRACTS AND ANY  
7 TRUST AND ENDOWMENT CARE TRUST ACCOUNTS. A COPY OF AN AGREEMENT TO  
8 ASSUME LIABILITIES SHALL BE ATTACHED TO THE APPLICATION SUBMISSION.

9 (C) ANY other information as the commissioner requires.

10 (3) The commissioner shall issue a certificate of approval **FOR**  
11 **A CHANGE OF CONTROL** only after he or she is satisfied that the  
12 proposed new owner **OR OPERATOR** is qualified by **GOOD MORAL**  
13 character, experience, and financial **STABILITY**, responsibility, **AND**  
14 **SECURITY** to control and operate the cemetery in a legal and proper  
15 manner, and that the interest of the public generally will not be  
16 jeopardized by the proposed change in ownership and management. The  
17 application for a purchase or change of control must be accompanied  
18 by an initial filing or investigation fee of ~~\$500.00~~ **\$5,000.00**.

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

24 (A) **SUSPEND** or revoke the registration of the cemetery. ~~or~~  
25 ~~take~~

26 (B) **ISSUE A CEASE AND DESIST ORDER OR OTHER ORDER REQUIRING A**  
27 **PERSON TO IMMEDIATELY TAKE REMEDIAL ACTION AS PRESCRIBED BY THE**

1 COMMISSIONER.

2 (C) SEEK INJUNCTIVE OR OTHER EQUITABLE ACTION FROM A COURT OF  
3 COMPETENT JURISDICTION.

4 (D) TAKE other appropriate action until ~~it~~ **THE PERSON**  
5 **PURCHASING OR OTHERWISE ACQUIRING A CONTROLLING INTEREST IN AN**  
6 **EXISTING CEMETERY, PURCHASING AN EXISTING CEMETERY, OR OTHERWISE**  
7 **ACQUIRING THE CEMETERY** demonstrates compliance with this section OR  
8 **DIVESTS ITSELF OF ANY INTEREST OR CONTROL OF THE CEMETERY.**

9 (5) ~~(3)~~ As used in this section, "controlling interest" means  
10 the capability to decide the operating and financial policies of  
11 the cemetery company or to select the officers or directors with  
12 majority control of the cemetery company.

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

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

25 Sec. 13. (1) Any person desiring to establish a cemetery shall  
26 file with the commissioner, on forms furnished by the commissioner,  
27 an application for a permit to establish a cemetery. The

1 application shall be accompanied by ~~an~~ **A NONREFUNDABLE**  
2 investigation fee of ~~\$500.00~~ **\$5,000.00**.

3 (2) After a receipt of an application, the commissioner shall  
4 conduct an investigation pertaining to the physical plans, the  
5 community need for the planned cemetery, and pertinent information  
6 pertaining to the applicant's experience, financial **SECURITY,**  
7 **RESPONSIBILITY, AND** stability, ability, and ~~integrity~~ **GOOD MORAL**  
8 **CHARACTER**. If the applicant is not ~~a natural person~~ **AN INDIVIDUAL,**  
9 the same investigation shall be made of the ~~general manager and~~  
10 ~~principal owners,~~ **DIRECTORS, OFFICERS, PARTNERS, MEMBERS, OR ANY**  
11 **PERSON OCCUPYING A SIMILAR STATUS OR PERFORMING SIMILAR FUNCTIONS,**  
12 **OR ANY PERSON DIRECTLY OR INDIRECTLY CONTROLLING THE CEMETERY**  
13 **ENTITY.**

14 (3) **A PERSON DIRECTLY OR INDIRECTLY CONTROLLING THE CEMETERY**  
15 **INCLUDES ALL OF THE FOLLOWING:**

16 (A) **A PERSON WHO HOLDS AT LEAST A 50% INTEREST IN A CEMETERY.**

17 (B) **A PERSON WHO IS AN OWNER, DIRECTOR, PARTNER, MEMBER, OR**  
18 **MANAGER OF THE CEMETERY.**

19 (C) **AN INDIVIDUAL WHO IS AN OFFICER OF THE PERSON WHO HOLDS AT**  
20 **LEAST A 10% INTEREST IN A CEMETERY CORPORATION OR OTHER ENTITY**  
21 **HAVING CONTROL OF THE CEMETERY.**

22 (4) **A CEMETERY COMPANY SHALL IMMEDIATELY NOTIFY THE**  
23 **COMMISSIONER OF ANY CHANGE IN ITS DIRECTORS, OFFICERS, PARTNERS,**  
24 **MEMBERS, OR ANY PERSONS OCCUPYING A SIMILAR STATUS OR PERFORMING**  
25 **SIMILAR FUNCTIONS. IF AFTER INVESTIGATION THE COMMISSIONER**  
26 **DETERMINES THAT ANY NEW DIRECTOR, OFFICER, PARTNER, MEMBER, OR A**  
27 **PERSON OCCUPYING A SIMILAR STATUS OR PERFORMING A SIMILAR FUNCTION**

1 DOES NOT HAVE SUITABLE EXPERIENCE, FINANCIAL SECURITY,  
2 RESPONSIBILITY, AND STABILITY, ABILITY, AND GOOD MORAL CHARACTER,  
3 THE COMMISSIONER SHALL ORDER THE CEMETERY COMPANY TO SEVER ITS  
4 RELATIONSHIP WITH THAT PERSON.

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

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

14 Sec. 16. (1) The commissioner shall require each cemetery to  
15 establish and maintain an irrevocable endowment care **TRUST** fund, ~~as~~  
16 ~~required by section 35a of 1855 PA 87, MCL 456.35a, or section 7a~~  
17 ~~of 1869 PA 12, MCL 456.107a, and to~~ **THE INCOME OR PROCEEDS FROM**  
18 **WHICH SHALL BE PERPETUALLY DEVOTED FOR ENDOWMENT CARE. MONEY IN THE**  
19 **ENDOWMENT CARE TRUST FUND SHALL NOT BE COMMINGLED WITH ANY OTHER**  
20 **MONEY, INCLUDING ENDOWMENT CARE TRUST FUNDS FROM OTHER CEMETERIES.**  
21 **THE CEMETERY SHALL** report annually before July 1 of each year, on  
22 forms approved and furnished by the commissioner, **ENDOWMENT** care  
23 fund information required to be reported to the commissioner by  
24 other statutes and information regarding the funds as the  
25 commissioner considers pertinent in the public interest. A cemetery  
26 applying to the commissioner as authorized by other statutes for a  
27 **AN ENDOWMENT** care fund deposit modification or waiver shall be

1 assessed the actual expenses for an examination or investigation by  
2 the commissioner.

3 (2) THE IRREVOCABLE ENDOWMENT CARE TRUST FUND SHALL BE  
4 ESTABLISHED WITH A SINGLE MICHIGAN FINANCIAL INSTITUTION THAT SHALL  
5 AGREE TO SERVE AS A TRUSTEE. MONEY IN THE ENDOWMENT CARE TRUST FUND  
6 SHALL BE INVESTED BY THE TRUSTEE IN 1 OR MORE INTEREST-BEARING  
7 ACCOUNTS IN A DEPOSITORY. DOCUMENTS, REPORTS, AND RECORDS REGARDING  
8 THE FUND SHALL BE KEPT IN A MICHIGAN FINANCIAL INSTITUTION.

9 (3) BEGINNING THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT  
10 ADDED THIS SUBSECTION, AN IRREVOCABLE ENDOWMENT CARE TRUST FUND  
11 SHALL BE CREATED BY THE DEPOSIT OF AT LEAST \$150,000.00 INTO THE  
12 FUND BEFORE ANY SALE OF BURIAL RIGHTS, ENTOMBMENT RIGHTS, OR  
13 COLUMBARIUM RIGHTS IS MADE.

14 (4) EACH MONTH, NOT LESS THAN 15% OF ALL PROCEEDS RECEIVED  
15 DURING THE PREVIOUS MONTH FROM THE SALES OF BURIAL RIGHTS,  
16 ENTOMBMENT RIGHTS, OR COLUMBARIUM RIGHTS SHALL BE DEPOSITED WITH  
17 THE TRUSTEE FOR INCLUSION IN THE ENDOWMENT CARE TRUST FUND. NO  
18 TOTAL DEPOSIT FOR A SINGLE BURIAL RIGHT SALE OR ASSIGNMENT SHALL BE  
19 LESS THAN \$20.00. A CEMETERY MAY APPLY TO THE COMMISSIONER FOR A  
20 MODIFICATION OF THE MINIMUM DEPOSIT REQUIREMENT. THE COMMISSIONER  
21 SHALL TAKE TESTIMONY AND INVESTIGATE AS HE OR SHE CONSIDERS  
22 NECESSARY. IF THE COMMISSIONER DETERMINES THAT THE APPLICANT'S  
23 ENDOWMENT CARE TRUST FUND WILL GENERATE SUFFICIENT INTEREST TO MEET  
24 ALL CURRENT AND FUTURE COSTS OF KEEPING THE APPLICANT'S CEMETERY IN  
25 GOOD CONDITION, THE COMMISSIONER MAY MODIFY THE MINIMUM DEPOSIT  
26 REQUIREMENT. A CEMETERY APPLYING TO THE COMMISSIONER FOR A  
27 MODIFICATION OF THE ENDOWMENT CARE TRUST FUND DEPOSIT REQUIREMENTS

1    **SHALL BE ASSESSED THE ACTUAL COSTS FOR THE COMMISSIONER'S**  
2    **EXAMINATION AND INVESTIGATION.**

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

19            (6) **INTEREST FROM THE MONEY IN THE ENDOWMENT CARE TRUST FUND**  
20    **SHALL BE USED EXCLUSIVELY FOR ENDOWMENT CARE. NO PORTION OF THE**  
21    **INTEREST MAY BE USED DIRECTLY OR INDIRECTLY FOR SALARIES OR OTHER**  
22    **PAYMENTS TO THE OFFICERS, DIRECTORS, PARTNERS, MEMBERS, OR MANAGERS**  
23    **OF THE ENTITY OWNING THE CEMETERY. WITHDRAWALS OF ACCUMULATED**  
24    **INTEREST FROM THE ENDOWMENT CARE TRUST FUND MAY BE AUTHORIZED BY**  
25    **THE TRUSTEE, AND SUCH WITHDRAWALS SHALL BE DOCUMENTED IN THE MANNER**  
26    **PROVIDED BY RULE OF THE COMMISSIONER. A CEMETERY SHALL MAINTAIN**  
27    **RECORDS SHOWING THAT INTEREST FROM THE ENDOWMENT CARE TRUST FUND IS**



1 **USED EXCLUSIVELY FOR ENDOWMENT CARE.**

2       (7) ~~(2)~~ Subject to subsection ~~(8)~~ **(14)**, a cemetery ~~which~~ **THAT**  
 3 is required to register pursuant to this act and an agent ~~which is~~  
 4 authorized by a cemetery or acting on its behalf under an agreement  
 5 or sales contract to sell cemetery merchandise or cemetery services  
 6 shall establish a merchandise trust account and deposit a  
 7 percentage of the gross proceeds received from the sales as  
 8 determined by the commissioner. The merchandise trust account shall  
 9 be maintained exclusively for the deposit of the money into a ~~state~~  
 10 ~~or national bank, a state or federally chartered savings and loan~~  
 11 ~~association, or a trust company~~ **MICHIGAN FINANCIAL INSTITUTION**  
 12 under the terms of a written trust agreement approved by the  
 13 commissioner. **ALL DOCUMENTS, REPORTS, AND RECORDS REGARDING THE**  
 14 **TRUST SHALL BE KEPT IN MICHIGAN.** It shall be the responsibility of  
 15 each registrant under this act to assure that documents relating to  
 16 the merchandise trust account are provided to the commissioner upon  
 17 request. If a subpoena is issued to obtain these documents, the  
 18 registrant shall pay all costs related to obtaining the documents.  
 19 ~~regardless of the \$100.00 charge limitation contained in section~~  
 20 ~~12a(2).~~ The funds shall be deposited not later than the month  
 21 following their receipt.

22       (8) ~~(3)~~ Subject to subsection ~~(8)~~ **(14)**, the total deposits to  
 23 a merchandise trust for the sale of cemetery burial vaults or other  
 24 outside containers, other than crypts installed underground and  
 25 sold as part of a cemetery lot, shall at all times be not less than  
 26 the greater of \$100.00 per vault or outside container or 130% of  
 27 the total costs of the containers covered by the trust. Money

1 deposited in connection with a sale shall be repaid within 30 days  
2 upon written demand of purchaser. A burial vault shall be installed  
3 only at need or by separate written authorization of the purchaser.  
4 The cemetery shall have the right to withdraw the amount on deposit  
5 for the delivered vault or outside container.

6 (9) ~~(4)~~—Subject to subsection ~~(8)~~—(14), a contract or  
7 agreement made with a purchaser of cemetery merchandise and  
8 cemetery services shall contain a complete description of the  
9 cemetery merchandise purchased and of the cemetery services to be  
10 rendered.

11 (10) ~~(5)~~—The commissioner shall require ~~each~~ **A cemetery or**  
12 ~~agent authorized by it acting on its behalf~~ to report annually  
13 before July 1 of each year on forms provided by the commissioner.  
14 The reports shall contain information as the commissioner considers  
15 necessary to ascertain that **THE REQUIREMENTS OF** this act ~~is~~ **AND**  
16 **RULES PROMULGATED UNDER THIS ACT ARE** being implemented. **IF FUNDS IN**  
17 **THE ENDOWMENT CARE TRUST FUND AND THE MERCHANDISE TRUST ACCOUNT**  
18 **EXCEED \$50,000.00, THE REPORT SHALL BE ACCOMPANIED BY A REPORT**  
19 **PREPARED BY A MICHIGAN CERTIFIED PUBLIC ACCOUNTANT EXPRESSING AN**  
20 **OPINION AS TO WHETHER THE REQUIREMENTS OF THIS SECTION HAVE BEEN**  
21 **MET. AT A MINIMUM, THE COMMISSIONER SHALL REQUIRE THE FOLLOWING**  
22 **INFORMATION CONCERNING THE ENDOWMENT CARE TRUST FUND:**

23 (A) BEGINNING AND ENDING BALANCES.

24 (B) RECEIPTS FROM THE SALE OF BURIAL, ENTOMBMENT, AND  
25 COLUMBARIUM RIGHTS.

26 (C) DEPOSITS TO THE ENDOWMENT CARE TRUST FUND.

27 (D) ITEMIZED WITHDRAWALS OF INTEREST.

1           **(E) DOCUMENTATION ESTABLISHING THAT WITHDRAWN INTEREST WAS**  
2 **UTILIZED SOLELY FOR ENDOWMENT CARE.**

3           (11) ~~(6)~~—If, after an audit by the commissioner's staff, a  
4 deficit in the amount of required deposits to the trust funds is  
5 found, the commissioner may assess a penalty ~~not to exceed 10% of~~  
6 **IN** the amount ~~of the deficit~~ **ALLOWED UNDER THIS ACT**. The cemetery  
7 ~~or entity of a cemetery~~ may request an administrative hearing  
8 before the commissioner **OR A DESIGNATED HEARING OFFICER** within 30  
9 days after being notified of a deficit by the commissioner. If,  
10 following the administrative hearing, the commissioner determines  
11 that a deficit does exist, an additional penalty not to exceed 1.5%  
12 may be assessed each month on the unpaid monthly balance until the  
13 deficit is paid in full.

14           (12) **IN ADDITION TO ALL OTHER REMEDIES AT LAW OR IN EQUITY,**  
15 **THE ATTORNEY GENERAL AND THE CIRCUIT COURT OF THE COUNTY IN WHICH**  
16 **THE CEMETERY IS LOCATED SHALL HAVE ALL THE POWERS AND JURISDICTION**  
17 **GRANTED TO THE ATTORNEY GENERAL AND COURT AS TO TRUSTS COVERED BY**  
18 **1915 PA 280, MCL 554.351 TO 554.353. THE REMEDIES GRANTED INCLUDE**  
19 **ALL ENDOWMENT CARE TRUST FUNDS WITHOUT REGARD TO UNCERTAINTY OR**  
20 **INDEFINITENESS OF BENEFICIARIES.**

21           (13) ~~(7)~~—All fees, charges, and penalties, **OR OTHER MONEY FROM**  
22 **ANY SOURCE**, collected under this act, other than fines prescribed  
23 in ~~section 21~~ **THIS ACT**, shall be paid to the commissioner. Upon  
24 receipt, the commissioner shall remit funds received to the  
25 department of treasury for deposit in the general fund of the  
26 state.

27           (14) ~~(8)~~—Any preneed contracts for cemetery merchandise or

1 services entered into on or after January 1, 2005 are subject to  
2 the prepaid funeral and cemetery sales act, 1986 PA 255, MCL  
3 328.211 to 328.235.

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

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

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

25 (b) Not complied with this act.

26 (c) Been guilty of an unlawful or fraudulent act in connection  
27 with selling or otherwise dealing in cemetery lots and burial

1 rights regulated by this act or funeral or cemetery merchandise and  
2 services regulated by the prepaid funeral and cemetery sales act,  
3 1986 PA 255, MCL 328.211 to 328.235.

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

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

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

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

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

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

24 (2) If the commissioner denies an application for a permit or  
25 registration, or suspends or revokes an existing permit or  
26 registration required by this act, the denial, revocation, or  
27 suspension shall revoke the cemetery operation as to the sale or

1 assignment of burial rights, entombment rights, or columbarium  
2 rights, cemetery merchandise, or cemetery services after the date  
3 of the suspension, revocation, or denial. The **CEMETERY** corporation  
4 shall fulfill all contractual obligations and agreements entered  
5 into before the date of the suspension, revocation, or denial, and  
6 shall make required interments for the owners of burial rights,  
7 entombment rights, or columbarium rights purchased before the date  
8 of suspension, revocation, or denial.

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

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

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