

Act No. 478
Public Acts of 2008
Approved by the Governor
January 9, 2009
Filed with the Secretary of State
January 12, 2009
EFFECTIVE DATE: January 12, 2009

STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008

Introduced by Senator Gilbert

ENROLLED SENATE BILL No. 674

AN ACT to amend 1968 PA 251, entitled "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," 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:

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 standards regarding the long-term care of certain cemeteries and trusting of certain funds; to regulate persons selling burial, entombment, or columbarium rights and certain merchandise; to provide for qualifications for owners, operators, employees, and transferees of cemeteries under certain circumstances; to allow the cemetery commissioner to conduct certain investigations; and to prescribe administrative and civil 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) "Endowment and perpetual 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; the raking, cleaning, filling, seeding, and sodding of graves; the 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.

(m) "Merchandise trust" means trusts required by section 16, composed of deposits made in connection with merchandise and service sales made prior to January 1, 2005.

(n) "Municipal corporation" means a county, city, village, or township.

(o) "Regulated financial institution" means a state or nationally chartered bank, savings and loan association or savings bank, credit union, trust company, or other state or federally chartered lending institution or a regulated affiliate or regulated subsidiary of any of these entities.

(p) "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.

(q) "Good moral character" means that term as defined and determined under 1974 PA 381, MCL 338.41 to 338.47.

(r) "Cemetery owner" means the person who has title to the cemetery.

(s) "Operator" means any of the following:

(i) A person, an officer of a person, a partner of a person, or a member or manager of a limited liability company, who holds more than 50% voting rights in a cemetery owner.

(ii) A person who is a member of the board of directors of a cemetery owner, a partner in a cemetery owner, or a member or manager of a limited liability company that is a cemetery owner.

(iii) An administrative official of the cemetery owner or the person described in subparagraph (i), comparable to a chief administrative officer, chief executive officer, or chief financial officer.

(t) "Affiliated person" means a person directly or indirectly controlling the cemetery and includes all of the following:

(i) A person who holds at least a 50% interest in a cemetery.

(ii) A person who is a member of the board of directors or a cemetery owner, a partner in a cemetery owner, or a member or manager of a limited liability company that is a cemetery owner.

(iii) A person who is an officer of the person who holds at least a 10% interest in a cemetery corporation or other entity having control of the cemetery.

Sec. 2a. The cemetery commissioner, or the commissioner's spouse or child, shall not have a direct or indirect financial interest in a cemetery, cemetery operations, a supplier of cemetery services or cemetery memorials, or a funeral establishment as defined in section 1801 of the occupational code, 1980 PA 299, MCL 339.1801.

Sec. 8. (1) The commissioner shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement and administer this act, including, but not limited to, 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, including, but not limited to, the good moral character and financial security, responsibility, and stability of persons having an interest in the cemetery and all persons with decision-making authority that are employed by the applicant, registrant, or permittee.

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

(d) The establishment, control, record keeping, and auditing of endowment care trusts, merchandise trust accounts, and related trust funds.

(e) Requirements for trust agreements, endowment care trusts, and merchandise trust accounts.

(f) The full disclosure of the source, nature, and amount of consideration to be used in the sale or transfer of a cemetery.

(g) Submission of annual reports in accordance with section 16(12) and (13), including requests for extensions.

(2) The commissioner shall update any existing rules that must be changed due to the amendatory act that added this subsection within 12 months after the effective date of the amendatory act that added this subsection.

Sec. 9. (1) The commissioner may hold hearings, conduct investigations, administer oaths, take testimony under oath, and request in writing the appearance and testimony of witnesses, including the production of books and records. The commissioner may petition the circuit court for Ingham county for an order to issue, as part of the commissioner's general investigative and enforcement authority, a subpoena or a subpoena duces tecum relating to any person's appearance and testimony and for the production, examination, or copying of books, papers, or other documents pertaining to an investigation or hearing that is within the scope of the commissioner's authority under this act. The court shall issue an order for the issuance of subpoenas when reasonable grounds are shown.

(2) The commissioner has the authority to control, manage, and dispose of or transfer abandoned cemeteries or to require acceptance of responsibility for an abandoned cemetery according to law. The commissioner may promulgate rules that are necessary for the department to carry out its powers and duties under this subsection.

(3) Failure to obey a subpoena issued to any person by the commissioner through an order of the circuit court may subject the person to punishment by the circuit court as a contempt of court.

(4) Any person required by this act to take any oath or affirmation and who knowingly makes any false oath or affirmation is considered to have committed the crime of perjury.

(5) When it appears to the commissioner that a person or registrant has engaged in, or is about to engage in, any act or practice constituting a violation of 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 of the violation.

(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.

(6) Upon a proper showing regarding an action brought under subsection (5)(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 shall receive compensation from the cemetery as determined by the court. The receiver or conservator may operate the cemetery and take possession of the assets. The receiver or conservator shall have the rights and obligations of the cemetery as to all trust and escrow accounts and may sell, assign, transfer, or convey the cemetery and any of the assets 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 or conservator appointed under this section or section 2926a of the revised judiciary act of 1961, 1961 PA 236, MCL 600.2926a, has all the powers, authority, and remedies of an assignee for the benefit of creditors under chapter 52 of the revised judiciary 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.

(7) Subject to court approval, a receiver or conservator may do any of the following:

(a) Take possession of the books, records, and assets of the cemetery or cemetery entity.

(b) Employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as he or she considers necessary.

(c) Fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants with the court's approval.

(8) 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. Money held by the cemetery in trust or in escrow 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 from allowing the sale of the cemetery to a municipal corporation.

(9) 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 an administrative hearing as provided for in this act.

Sec. 9a. All departments, state agencies, public bodies corporate, committees, commissioners, or officers of this state, and any political subdivision of this state, so far as is compatible with their duties, shall give the commissioner or his or her designee any necessary assistance required by the commissioner in the performance of the duties of the commissioner. All departments, state agencies, public bodies corporate, committees, commissioners, or officers of this state, and any political subdivision of this state, shall provide the commissioner free access to any book, record, or document in their custody relating to the matters within the scope of the commissioner in the performance of his or her duties.

Sec. 9b. The commissioner may enter into contracts to accomplish requirements under this act, including for the engagement of consultants. The commissioner may use an authorized employee or agent, who is an attorney, to represent the commissioner or the department in a contested case proceeding brought under 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 in this state, 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 endowment and perpetual care trust 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 all of the following:

(a) The name and address of the proposed new owner or operator.

(b) A sworn statement from the seller attesting to the assets and liabilities related to the cemetery, including all trust accounts and the value of those accounts.

(c) Sworn statements from both the seller and the purchaser stating who will assume the assets and liabilities related to the cemetery.

(d) A sworn statement that the principal from the endowment and perpetual care trust accounts will be held in escrow for 6 months from the later of the following:

(i) The commissioner's approval of the application.

(ii) The close of the sale of a controlling interest in the cemetery owner or the sale of a substantial portion of the assets of the cemetery owner.

(iii) The transfer of title of the cemetery.

(e) Any other information the commissioner requires.

(3) The commissioner shall issue a certificate of approval for a change of control only after he or she is satisfied that the proposed new cemetery owner or operator is qualified by good moral character, experience, and financial stability, responsibility, and security 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 \$1,500.00.

(4) If a person fails to comply with this section, the commissioner may do any of the following if a transfer of controlling interest is found to have taken place without prior commissioner approval:

(a) Suspend or revoke the registration of the cemetery.

(b) Issue a cease and desist order or other order requiring a person to immediately take remedial action as prescribed by the commissioner.

(c) Seek injunctive or other equitable action from a court of competent jurisdiction.

(d) Take other appropriate action until the person purchasing or otherwise acquiring a controlling interest in an existing cemetery, purchasing an existing cemetery, or otherwise acquiring the cemetery demonstrates compliance with this section or divests itself of any interest or control of the cemetery.

(5) After the sale, transfer, purchase, or acquisition of a controlling interest in a cemetery is completed, the endowment and perpetual care trust fund for the cemetery shall be escrowed into an account for the first 6 months of the new ownership. This subsection shall not be construed to prevent or prohibit the cemetery from receiving interest or income from the endowment and perpetual care trust fund to maintain the cemetery.

(6) The endowment and perpetual care trust funds of a cemetery being sold shall not be used by the new owner of an existing cemetery in any manner to purchase or otherwise finance the purchase of that cemetery from the previous owner.

(7) 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 of the cemetery corporation, person, affiliated person, or agent acting on its behalf that relate to the business of the cemetery or person required to register under this act.

(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 designated by the commissioner shall conduct the audit, whose services shall be charged to and paid by the cemetery.

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 a nonrefundable investigation fee of \$1,500.00.

(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 security, responsibility, and stability, ability, and good moral character and the source, nature, and amount of consideration to be used in the purchase of the cemetery. If the applicant is not an individual, the same investigation shall be made of the owners, directors, officers, partners, members, or any person occupying a similar status or performing similar functions, or any affiliated person.

(3) A cemetery company shall immediately notify the commissioner of any change in its directors, officers, partners, members, affiliated persons, or any persons occupying a similar status or performing similar functions. If after investigation the commissioner determines that any new director, officer, partner, member, affiliated person, or a person occupying a similar status or performing a similar function does not have suitable experience, financial security, responsibility, and stability, ability, and good moral character, the commissioner shall order the cemetery company to void the appointment of the director, officer, partner, member, affiliated person, or any persons occupying a similar status or performing a similar function.

Sec. 13a. (1) Notwithstanding any other provisions governing eligibility as a cemetery owner, a person may be ineligible to become a cemetery owner or hold a controlling interest in a cemetery company if any of the following circumstances exist:

(a) The person has been convicted of a felony under the laws of this state, any other state, or the United States.

(b) The person has been convicted of a misdemeanor involving gambling, theft, dishonesty, or fraud in any state, or has been convicted under a local ordinance in any state involving gambling, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in this state.

(c) The person has knowingly submitted an application for a license under this act that contains false information.

(d) The person lacks the requisite character, experience, and financial responsibility to control and operate the cemetery in a legal and proper manner, as determined by the commissioner, and the proposed ownership or change in ownership and management is likely to jeopardize the public.

(2) In determining whether to allow a person to become a cemetery owner, the commissioner shall also consider all of the following:

(a) The past and present compliance of the person and its affiliated person with cemetery or cemetery-related licensing requirements, cemetery-related agreements, or compacts with the state of Michigan or any other jurisdiction.

(b) Whether the person has been indicted, charged, arrested, or convicted, has pleaded guilty or nolo contendere, or has forfeited bail concerning any criminal offense under the laws of any jurisdiction, either felony or misdemeanor, not including traffic violations, unless the offense has been expunged, pardoned, or reversed on appeal or otherwise nullified as determined by the commissioner.

(c) Whether the person has filed, or had filed against it, a proceeding for bankruptcy or has ever been involved in any formal process to adjust, defer, suspend, or otherwise work out the payment of any debt.

(d) Whether the person has been served with a complaint or other notice filed with any public body regarding a payment of any tax required under federal, state, or local law that has been delinquent for 1 or more years.

(e) The person has a history of noncompliance with any regulatory requirements in this state, any other jurisdiction, or the federal government.

Sec. 15. (1) Each person owning, managing, or 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 and perpetual care trust fund. The amounts deposited into an endowment and perpetual care trust fund pursuant to subsection (5) shall be held in perpetuity by the trustee and may only be distributed to the cemetery upon order of a court following petition by the commissioner. Interest or income shall be used only for endowment care. Except as otherwise provided in subsection (2), money in the endowment and perpetual care trust fund shall not be commingled with any other money or trust accounts. The cemetery shall report annually before July 1 of each year, on forms approved and furnished by the commissioner, endowment and perpetual care trust 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 an endowment and perpetual care trust fund deposit modification or waiver shall be assessed the actual expenses for an examination or investigation by the commissioner.

(2) Notwithstanding subsection (1), bundling of funds held in trust or escrow, for each cemetery or among cemeteries with common ownership, is permissible only under the following circumstances:

(a) Each cemetery maintains separate trust and escrow account records pursuant to statutory and rule requirements for endowed care, merchandise, or prepaid funeral and cemetery sales.

(b) A cemetery, or cemeteries with common ownership, has all its trust or escrow accounts on deposit with 1 or more regulated financial institutions with trust powers in this state.

(c) The trustee, or the trustee's trading block nominee, holds title in the name of each individual trust or escrow account for that trust or escrow account assets and the assets are promptly settled back to the individual accounts by the trustee in the ordinary course of business.

(3) Notwithstanding subsection (2), other comparable methods of bundling or pooling of trust or escrow funds for investment purposes may be permissible upon terms and conditions approved in writing by the commissioner and only after the commissioner is reasonably satisfied that the title to, character of, and accounting for funds held in trust or escrow is preserved.

(4) Not later than January 1, 2010, the irrevocable endowment and perpetual care trust fund shall be established, or reestablished, with 1 or more regulated financial institutions with trust powers that shall be the trustee of the portion of the fund allocated to it. The cemetery shall enter into agreements of irrevocable trust agreements with each trustee. Those agreements shall provide that the investing of the assets are subject to the Michigan prudent investor rule as set forth in sections 1501 to 1511 and 7302 of the estates and protected individuals code, 1998 PA 386, MCL 700.1501 to 700.1511 and 700.7302, except that the agreement shall not be modified or amended, as allowed under sections 1502(2) and 7302 of the estates and protected individuals code, 1998 PA 386, MCL 700.1502 and 700.7302, to provide less than the standard of care in the prudent investor rule. The cemetery shall notify the commissioner, in writing, not later than 14 days prior to the effective date of an appointment of a trustee. The cemetery may remove and replace a trustee at any time, subject to the consent of the commissioner, and subject to the terms of the cemetery's agreement with the trustee. The fees and costs of the trustee may, in accordance with the terms of the trust agreement, be paid from the principal of the trust. A cemetery that establishes its irrevocable endowment and perpetual care trust with 1 or more regulated financial institutions with trust powers, and which cemetery does not reserve, retain, or otherwise exercise any power of direction of specific investments, shall not be liable for any deficiencies in the irrevocable endowment and perpetual care trust caused by performance of the investments. A cemetery may reserve the right to recommend, to a trustee, an investment advisor, registered with the securities and exchange commission under the investment advisers act of 1940, 15 USC 80b-1 to 80b-21, or under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, to advise the trustee in the trustee's decisions on asset allocation, investment managers, and investments, except that a trustee is not required to heed such advice. Alternatively, and notwithstanding any other provisions of this section, and at all times subject to the Michigan prudent investor rule, a cemetery may direct the trustees to make certain investments, provided that the trust is a named beneficiary of fiduciary liability insurance covering the cemetery's or other fiduciaries' actions in an amount equal to 100% of the amount so directed. Proof of such fiduciary liability coverage shall be provided not less than annually to the commissioner, in a form to be determined by the commissioner, prior to any direction being given. The commissioner or the attorney general may prosecute a claim against the fiduciary liability insurance on behalf of the trust. The trustees shall not be liable, or otherwise punishable, for complying with such direction of investments except that the trustees shall retain custody of all such investments.

(5) Beginning the effective date of the amendatory act that added this subsection, an irrevocable endowment and perpetual care trust fund shall be created by the deposit of at least \$50,000.00 into the fund before any sale of burial rights, entombment rights, or columbarium rights is made.

(6) Each month, not less than 15% of all proceeds received during the previous month from the sales of burial rights, entombment rights, or columbarium rights shall be deposited with the trustee for inclusion in the endowment and perpetual care trust fund. No total deposit for a single burial right sale or assignment shall be less than \$20.00. A cemetery may apply to the commissioner for a modification of the minimum deposit requirement. The commissioner shall take testimony and investigate as he or she considers necessary and if the commissioner determines that the applicant's endowment and perpetual care trust fund will generate sufficient income to meet all current costs of keeping

the applicant's cemetery in good condition, the commissioner may modify the minimum deposit requirement. A cemetery applying to the commissioner for a modification of the endowment and perpetual care trust fund deposit requirements shall be assessed the actual costs for the commissioner's examination and investigation. Excess sums on deposit in the fund may be applied by a cemetery against future deposits and shall be annually reported to the commissioner in a manner prescribed by the commissioner.

(7) The commissioner shall require each person engaged as agent or seller 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 and perpetual care trust fund requirements of this act and other laws, to deposit 15% of all gross proceeds received from the sales of those rights into the irrevocable endowment and perpetual care trust fund of the cemetery in which the rights are located if an irrevocable endowment and perpetual care trust fund exists for that cemetery. A deposit required to be made by those persons shall be modified or waived if the cemetery has received an irrevocable endowment and perpetual care trust 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.

(8) Interest or income from the money in the endowment and perpetual care trust fund shall be used exclusively for endowment and perpetual care. No portion of the interest or income may be used directly or indirectly for salaries or other payments to the officers, directors, partners, members, or managers of the entity owning the cemetery. Withdrawals of accumulated interest or income from the endowment and perpetual care trust fund may be authorized by the trustee, and such withdrawals shall be documented in the manner provided by rule of the commissioner. A cemetery shall maintain records showing that interest from the endowment and perpetual care trust fund is used exclusively for endowment and perpetual care. The trustees shall not be responsible for ascertaining that such amounts paid over to the cemetery are expended for the limited purposes permitted by this subsection.

(9) Subject to subsection (17), a cemetery that is required to register pursuant to this act and an agent 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 regulated financial institution under the terms of a written trust agreement approved by the commissioner. All documents, reports, and records regarding the trust shall be kept in this state. 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. The funds shall be deposited not later than the month following their receipt.

(10) Subject to subsection (17), 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.

(11) Subject to subsection (17), 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.

(12) The commissioner shall require the cemetery owner or operator 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 the requirements of this act and rules promulgated under this act are being implemented. Subject to approval of the department, the cemetery owner or operator may ask for an extension not to exceed 90 days to submit the report required by this subsection. All reports required by this subsection and subsection (13) shall include a sworn statement by the cemetery owner or operator that includes the following:

(a) A certification that the signing cemetery owner or operator has reviewed the report.

(b) Based on the operator's or owner's knowledge, that the report does not contain any untrue statement of material fact related to the financial condition of the endowment and perpetual care trust fund or merchandise trust accounts.

(c) Based on the operator's or owner's knowledge, that the report fairly presents all material information regarding the financial condition of the endowment and perpetual care trust fund or merchandise trust accounts.

(d) That the signing operators or owners are responsible for establishing and maintaining internal controls; have designed those internal controls to ensure the accuracy of material information relating to the condition of the endowment and perpetual care trust fund or merchandise trust accounts; have evaluated the effectiveness of the internal controls within 90 days prior to the issuance of the report; and have included information evaluating the effectiveness of those internal controls.

(13) At a minimum, the commissioner shall require the following information concerning the endowment and perpetual care trust fund, the accuracy of which shall be certified by a certified public accountant:

- (a) Beginning and ending balances.
- (b) Receipts from the sale of burial, entombment, and columbarium rights.
- (c) Deposits to the endowment and perpetual care trust fund.
- (d) Itemized payments of interest or income.
- (e) Documentation that interest was utilized solely for endowment care.

(14) 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 in the amount allowed under this act. The cemetery entity may request an administrative hearing before the commissioner or a hearing officer designated by 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 may be assessed each month on the unpaid monthly balance until the deficit is paid in full.

(15) In addition to all other remedies at law or in equity, the attorney general and the circuit court of the county in which the cemetery is located shall have all the powers and jurisdiction granted to the attorney general and court as to trusts covered by 1915 PA 280, MCL 554.351 to 554.353. The remedies granted include all endowment and perpetual care trust funds without regard to uncertainty or indefiniteness of beneficiaries.

(16) All fees, charges, and penalties, or other money from any source, 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.

(17) 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.

(18) Not less than 7 days before 30% of the endowment and perpetual care or perpetual care funds established under this act are moved from an account or otherwise engaged in some type of financial transaction or investment, the cemetery owner or operator shall notify the commissioner of the transaction on appropriate forms that the commissioner shall authorize. The commissioner may allow the submission of a notification up to 7 days after the transaction, for good cause shown. Failure to comply with this subsection is considered a violation of this act.

(19) The commissioner, upon finding after notice and an opportunity for a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that a cemetery owner or operator has failed to timely submit a report required under subsections (12) and (13), regardless of whether he or she acted alone or through an employee or agent, may impose an administrative fine, payable to the commissioner, for the enforcement of this act. If the commissioner finds that a violation occurred despite the exercise of due care, the commissioner may issue a warning instead of imposing an administrative fine.

(20) The commissioner shall advise the attorney general of the failure of a person to pay an administrative fine imposed under this section. The attorney general may bring an action in a court of competent jurisdiction for the failure to pay an administrative fine imposed under this section.

(21) Applicable provisions of the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948, apply to civil actions filed pursuant to this section.

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 cemetery owner, operator, or applicant or the officers, cemetery owners, directors, members, affiliated persons, or general manager of those entities 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 or a demonstration of lack of good moral character.

- (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(5).

(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 cemetery owner or operator 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) Except as otherwise provided for in subsection (2), a person who violates this act is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00.

(2) If the violator is an individual, the offense is punishable by a fine of not more than \$10,000.00 or imprisonment for not more than 1 year, or both.

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

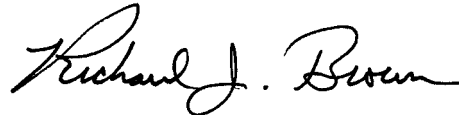
(2) Sections 35 and 35a of 1855 PA 87, MCL 456.35 and 456.35a, are repealed.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 6036 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor