

# HOUSE BILL No. 5833

May 7, 1998, Introduced by Reps. Varga, Alley, Brackenridge, Vaughn and Scranton and referred to the Committee on Regulatory Affairs.

A bill to amend 1968 PA 251, entitled "Cemetery regulation act," by amending sections 2, 9, 12, 12a, 16, 18, and 21 (MCL 456.522, 456.529, 456.532, 456.532a, 456.536, 456.538, and 456.541), as amended by 1982 PA 132, and by adding sections 2b, 2c, 2d, 12b, 16a, 16b, 16c, 16d, 16e, 16f, 16g, 16h, 16i, and 16j.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1       Sec. 2. As used in this act:
- 2       (a) "Cemetery" means 1 or a combination of more than 1 of
- 3 the following:
- 4       (i) A burial ground for earth interments.
- 5       (ii) A mausoleum for crypt entombments.
- 6       (iii) A crematory for the cremation for human remains.
- 7       (iv) A columbarium for the deposit of cremated remains.

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

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

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

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

8 (f) "Mausoleum" means a structure used, or intended to be  
9 used, for the entombment in a crypt or crypts in the structure of  
10 the remains of deceased persons.

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

13 (h) "Columbarium" means a structure or room or other space  
14 in a building or structure used or intended to be used for the  
15 inurnment or deposit of cremated remains.

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

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

21 (k) "Cemetery services" means all services offered to the  
22 public ~~—, including grave opening, closings, and foundation~~  
23 ~~installation~~ BY A CEMETERY INCLUDING, BUT NOT LIMITED TO, GRAVE  
24 OPENINGS AND CLOSINGS, CREMATIONS, FOUNDATION INSTALLATIONS,  
25 FLOWERS, TRANSPORTATION, AND OTHER SERVICES DIRECTLY OR INDI-  
26 RECTLY CONNECTED TO THE FINAL DISPOSITION OF DEAD HUMAN REMAINS  
27 AND USE OF FACILITIES OR EQUIPMENT FOR VIEWING DEAD HUMAN

1 REMAINS, VISITATION, MEMORIAL SERVICES, OR SERVICES USED DIRECTLY  
2 OR INDIRECTLY IN CONNECTION TO A FUNERAL OR ALTERNATIVE TO A  
3 FUNERAL CONDUCTED BY A PERSON LICENSED UNDER ARTICLE 18 OF THE  
4 OCCUPATIONAL CODE, 1980 PA 299, MCL 339.1801 TO 339.1812.

5 (l) "Cemetery merchandise" means all merchandise sold to the  
6 public by a cemetery ~~, including vaults, concrete boxes, monu-~~  
7 ~~ments, memorials, and foundations~~ INCLUDING VAULTS OR OTHER OUT-  
8 SIDE CONTAINERS OF ANY TYPE, MONUMENTS, MARKERS, URNS, CASKETS,  
9 CATAFALQUES, OR OTHER CEMETERY OR NONCEMETERY MERCHANDISE  
10 DIRECTLY OR INDIRECTLY CONNECTED TO THE FINAL DISPOSITION OF DEAD  
11 HUMAN REMAINS AND CASKETS, CATAFALQUES, COMBINATION UNITS, OR  
12 OTHER GOODS OF ANY TYPE DIRECTLY OR INDIRECTLY RELATED TO A  
13 FUNERAL.

14 (m) "Cemetery commissioner" or "commissioner" means the  
15 director of ~~licensing and regulation~~ CONSUMER AND INDUSTRY  
16 SERVICES or a designee of the director.

17 SEC. 2B. AS USED IN THIS ACT:

18 (A) "CONSIDERATION" OR "CONTRACT PRICE" MEANS MONEY AND  
19 OTHER PROPERTY TO BE PAID AS TOTAL COMPENSATION TO A CONTRACT  
20 SELLER OR PROVIDER FOR THE CEMETERY SERVICES AND CEMETERY MER-  
21 CHANDISE TO BE PERFORMED OR FURNISHED UNDER A CONTRACT BUT DOES  
22 NOT INCLUDE FINANCE CHARGES, LATE PAYMENT PENALTIES, AND PAYMENTS  
23 REQUIRED TO BE MADE TO A GOVERNMENTAL AGENCY AT THE TIME THE CON-  
24 TRACT IS ENTERED INTO. CONSIDERATION OR CONTRACT PRICE DOES NOT  
25 INCLUDE A COMMISSION AS AUTHORIZED BY THIS ACT. MONEY PAID FOR  
26 THE SERVICES TO BE PERFORMED UNDER A CONTRACT MAY BE PAID IN A  
27 LUMP SUM OR IN INSTALLMENTS.

1 (B) "CONTRACT" MEANS A WRITTEN, PRENEED CEMETERY CONTRACT  
2 AND ALL DOCUMENTS PERTINENT TO THE TERMS OF THE CONTRACT UNDER  
3 WHICH, FOR CONSIDERATION PAID TO A CONTRACT SELLER OR A PROVIDER  
4 BY OR ON BEHALF OF A CONTRACT BUYER BEFORE THE DEATH OF THE CON-  
5 TRACT BENEFICIARY, A PERSON PROMISES TO FURNISH, MAKE AVAILABLE,  
6 OR PROVIDE CEMETERY SERVICES OR CEMETERY MERCHANDISE AFTER THE  
7 DEATH OF A CONTRACT BENEFICIARY. THE CONTRACT HAS A GUARANTEED  
8 FIXED PRICE FOR WHICH SPECIFIED CEMETERY GOODS OR CEMETERY SERV-  
9 ICES ARE REQUIRED TO BE SOLD TO OR MADE AVAILABLE FOR A CONTRACT  
10 BUYER OR FOR A CONTRACT BENEFICIARY, REGARDLESS OF THE COST OR  
11 VALUE OF THE CEMETERY MERCHANDISE OR CEMETERY SERVICES AT THE  
12 TIME OF DEATH OF THE CONTRACT BENEFICIARY. ADDITIONAL CONSIDERA-  
13 TION IS NOT CHARGED FOR THE ORIGINALLY CONTRACTED-FOR CEMETERY  
14 MERCHANDISE AND CEMETERY SERVICES AT THE TIME OF DELIVERY OF THE  
15 CEMETERY MERCHANDISE AND CEMETERY SERVICES. A CONTRACT DOES NOT  
16 INCLUDE AN AGREEMENT FOR THE SALE OF CEMETERY MERCHANDISE OR CEM-  
17 ETERY SERVICES ENTERED INTO AFTER THE DEATH OF THE CONTRACT  
18 BENEFICIARY. BEGINNING THE EFFECTIVE DATE OF THE AMENDATORY ACT  
19 THAT ADDED THIS SUBDIVISION, CONTRACT INCLUDES A CONTRACT WHERE  
20 PHYSICAL DELIVERY AND RETENTION OF THE CEMETERY MERCHANDISE HAS  
21 NOT BEEN MADE BEFORE THE DEATH OF THE CONTRACT BENEFICIARY.

22 (C) "CONTRACT BENEFICIARY" MEANS AN INDIVIDUAL SPECIFIED OR  
23 IMPLIED IN A CONTRACT FOR WHOM THE CEMETERY SERVICES OR CEMETERY  
24 MERCHANDISE IS TO BE PERFORMED OR FURNISHED AFTER DEATH.

25 (D) "CONTRACT BUYER" MEANS AN INDIVIDUAL, INCLUDING A CON-  
26 TRACT BENEFICIARY, WHO PURCHASES CEMETERY MERCHANDISE OR CEMETERY  
27 SERVICES PURSUANT TO A CONTRACT.

1 (E) "CONTRACT SELLER" MEANS A PERSON WHO SELLS, MAKES  
2 AVAILABLE, OR PROVIDES CONTRACTS.

3 SEC. 2C. AS USED IN THIS ACT:

4 (A) "FUNDS" MEANS ALL MONEY OR OTHER CONSIDERATION ACTUALLY  
5 RECEIVED FROM A CONTRACT BUYER BY A CONTRACT SELLER OR PROVIDER  
6 OR AN ASSIGNEE FROM THE CONTRACT BUYER IN CONNECTION WITH ANY  
7 ASPECT OF THE SALE OF A CONTRACT INCLUDING FINANCE CHARGES, BUT  
8 DOES NOT INCLUDE LATE PAYMENT PENALTIES, PAYMENTS REQUIRED TO BE  
9 MADE TO A GOVERNMENTAL AGENCY AT THE TIME THE CONTRACT IS ENTERED  
10 INTO, OR A COMMISSION AUTHORIZED BY THIS ACT.

11 (B) "GOOD MORAL CHARACTER" MEANS GOOD MORAL CHARACTER AS  
12 DEFINED IN 1974 PA 381, MCL 338.41 TO 338.47.

13 (C) "INCOME" MEANS THE MONEY EARNED BY THE INVESTMENT OF THE  
14 PRINCIPAL, INCLUDING, BUT NOT LIMITED TO, INTEREST, DIVIDENDS,  
15 AND GAINS OR LOSSES ON THE SALE OF, DEPOSIT OF, OR EXCHANGE OF,  
16 PROPERTY USING INVESTED PRINCIPAL AMOUNTS.

17 SEC. 2D. AS USED IN THIS ACT:

18 (A) "PERSON" MEANS AN INDIVIDUAL, GROUP OF INDIVIDUALS, SOLE  
19 PROPRIETORSHIP, PARTNERSHIP, ASSOCIATION, CORPORATION, LIMITED  
20 LIABILITY COMPANY, A GOVERNMENTAL AGENCY, OR OTHER LEGAL ENTITY  
21 OR COMBINATION OF THESE LEGAL ENTITIES.

22 (B) BEGINNING THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT  
23 ADDED THIS SUBDIVISION, "PHYSICAL DELIVERY AND RETENTION" MEANS  
24 ACTUAL CONTROL AND POSSESSION OF CEMETERY MERCHANDISE THAT HAS  
25 BEEN PERMANENTLY RELINQUISHED BY A CONTRACT SELLER OR A PROVIDER,  
26 OR THE AGENT OF EITHER, TO THE CONTRACT BUYER OR THE CONTRACT  
27 BENEFICIARY. PHYSICAL DELIVERY AND RETENTION DOES NOT OCCUR IF

1 THE CONTRACT SELLER OR PROVIDER TAKES EITHER OF THE FOLLOWING  
2 ACTIONS:

3 (i) ARRANGES OR INDUCES THE BUYER TO ARRANGE FOR THE STORAGE  
4 OR WAREHOUSING OF CEMETERY MERCHANDISE ORDERED PURSUANT TO A CON-  
5 TRACT, WITH OR WITHOUT EVIDENCE THAT LEGAL TITLE HAS PASSED.

6 (ii) ACQUIRES OR REACQUIRES ACTUAL OR CONSTRUCTIVE POSSES-  
7 SION OR CONTROL OF CEMETERY MERCHANDISE AFTER ITS INITIAL DELIV-  
8 ERY TO THE CONTRACT BUYER OR CONTRACT BENEFICIARY.

9 (C) "PRENEED" MEANS BEFORE THE DEATH OF A CONTRACT BENEFI-  
10 CIARY WHEN USED IN CONJUNCTION WITH CEMETERY MERCHANDISE OR CEME-  
11 TERY SERVICES.

12 (D) "PRINCIPAL" MEANS THE MONEY, FINANCE CHARGES, OR OTHER  
13 CONSIDERATION ACTUALLY DEPOSITED IN THE TRUST ACCOUNTS REQUIRED  
14 BY SECTION 16A.

15 (E) "PROVIDER" MEANS ANY PERSON WHO FURNISHES OR AGREES TO  
16 FURNISH CEMETERY MERCHANDISE OR CEMETERY SERVICES PURSUANT TO A  
17 CONTRACT, WHETHER OR NOT THAT PERSON IS THE CONTRACT SELLER. IN  
18 THE CASE OF CEMETERY MERCHANDISE, PROVIDER MEANS THE PERSON WHO  
19 ARRANGES FOR DELIVERY OF THE CEMETERY MERCHANDISE AT THE TIME OF  
20 THE DEATH OF THE CONTRACT BENEFICIARY BUT DOES NOT INCLUDE THE  
21 MANUFACTURER OF THE CEMETERY MERCHANDISE. IN THE CASE OF CEME-  
22 TERY SERVICES, PROVIDER MEANS A PERSON REGISTERED PURSUANT TO  
23 SECTION 12.

24 (F) "REGISTRANT" MEANS A PERSON WHO HAS REGISTERED WITH THE  
25 COMMISSIONER PURSUANT TO SECTION 12.

1 (G) "TRUSTEE" MEANS A PERSON WHO HOLDS, INVESTS, AND  
2 DISBURSES PRINCIPAL AND INCOME FROM THE FUNDS RECEIVED UNDER A  
3 PREPAID CEMETERY CONTRACT.

4 Sec. 9. (1) The commissioner may hold ADMINISTRATIVE hear-  
5 ings, administer oaths, take testimony under oath, and request in  
6 writing the appearance and testimony of witnesses, including the  
7 production of books and records PURSUANT TO THE ADMINISTRATIVE  
8 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328. Upon  
9 the refusal of a witness to appear, testify, or submit books and  
10 records after a written request, the commissioner or a party to a  
11 contested case may apply to the circuit court for Ingham county  
12 for a subpoena or a subpoena duces tecum. The court shall issue  
13 a subpoena when reasonable grounds are shown.

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

18 (a) Issue a cease and desist order.

19 (b) Accept an assurance of discontinuance.

20 (c) Bring an action in the circuit court for the county in  
21 which the person resides or in the circuit court for the county  
22 of Ingham, to enforce compliance with this act or a rule promul-  
23 gated or order issued under this act. Upon a proper showing, a  
24 permanent or temporary injunction or a restraining order may be  
25 granted and THE COURT MAY APPOINT THE CEMETERY COMMISSIONER OR  
26 OTHER QUALIFIED PERSON AS a receiver or conservator ~~may be~~  
27 ~~appointed~~ for the defendant or the defendant's assets. The

1 court shall not require the commissioner to post a bond. A  
2 RECEIVER APPOINTED UNDER THIS SECTION HAS ALL THE POWERS, AUTHOR-  
3 ITY, AND REMEDIES OF AN ASSIGNEE FOR THE BENEFIT OF CREDITORS  
4 UNDER CHAPTER 52 OF THE REVISED JUDICATURE ACT OF 1961, 1961  
5 PA 236, MCL 600.5201 TO 600.5265. THE RECEIVER MAY FILE FOR PRO-  
6 TECTION UNDER THE BANKRUPTCY CODE.

7 (3) In addition to an action taken under this section, the  
8 commissioner may deny an application or may suspend or revoke a  
9 permit or registration after ~~a~~ AN ADMINISTRATIVE hearing as set  
10 forth in this act AND UPON THE SHOWING OF A VIOLATION OF THIS  
11 ACT.

12 Sec. 12. (1) A person ~~or business entity~~ shall not estab-  
13 lish a cemetery ~~without a valid permit~~ or operate an existing  
14 cemetery except under a valid registration ISSUED under this  
15 act.

16 (2) BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT  
17 THAT ADDED THIS SUBSECTION, A PERSON SHALL NOT ESTABLISH OR OPER-  
18 ATE A CREMATORY UNLESS REGISTERED AS A CEMETERY UNDER THIS ACT OR  
19 LICENSED AS A FUNERAL ESTABLISHMENT UNDER ARTICLE 18 OF THE OCCU-  
20 PATIONAL CODE, 1980 PA 299, MCL 339.1801 TO 339.1811. THE COM-  
21 MISSIONER SHALL PROMULGATE RULES UNDER THE ADMINISTRATIVE PROCE-  
22 DURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328, TO SET  
23 STANDARDS OF OPERATION OF CREMATORIES. THE COMMISSIONER MAY  
24 ADOPT STANDARDS OR PARTS OF STANDARDS ESTABLISHED BY 1 OR MORE  
25 INDUSTRY OR TRADE ASSOCIATIONS DETERMINED APPROPRIATE BY THE  
26 COMMISSIONER.

1 (3) A PERSON SHALL NOT SELL, PROVIDE, OR ATTEMPT TO SELL OR  
2 PROVIDE CEMETERY MERCHANDISE, CEMETERY SERVICES, OR BOTH, UNLESS  
3 THE CEMETERY POSSESSES A VALID REGISTRATION ISSUED UNDER THIS ACT  
4 OR UNDER THE PREPAID FUNERAL CONTRACT FUNDING ACT, 1986 PA 255,  
5 MCL 328.211 TO 328.235.

6 (4) ~~(2)~~ If a person ~~or business entity~~ proposes to pur-  
7 chase or otherwise acquire a controlling interest in an existing  
8 cemetery company, that person ~~or business entity~~ shall first  
9 ~~make application~~ APPLY to the commissioner for a certificate of  
10 approval of a proposed change of control of a cemetery company.  
11 The application shall contain the name and address of the pro-  
12 posed new owner or operator and other information as the commis-  
13 sioner requires. The commissioner shall issue a certificate of  
14 approval only after he or she is satisfied that the proposed new  
15 owner is qualified by character, experience, and financial  
16 responsibility to control and operate the cemetery in a legal and  
17 proper manner, and that the interest of the public generally will  
18 not be jeopardized by the proposed change in ownership and  
19 management. The application for a purchase or change of control  
20 must be accompanied by an initial filing or investigation fee of  
21 \$500.00. As used in this section, "controlling interest" means  
22 the capability to decide the operating and financial policies of  
23 the cemetery company or to select a majority of the officers or  
24 directors of the cemetery company. In deciding whether a person  
25 ~~or business entity~~ has or proposes to acquire a controlling  
26 interest, the percentage of the stock, assets, or other indicia  
27 of ownership which a person ~~or business entity~~ acquires or

1 proposes to acquire need not be the only factor considered by the  
2 commissioner. If a person ~~or business entity~~ fails to comply  
3 with this section, the commissioner shall order that ~~a~~ AN  
4 ADMINISTRATIVE hearing be held.

5 (5) A PERSON SHALL NOT DEVELOP OR BUILD A CEMETERY UNLESS  
6 THE PERSON PRESENTS A PERFORMANCE BOND TO THE COMMISSIONER IN AN  
7 AMOUNT DETERMINED SUFFICIENT BY THE COMMISSIONER TO COVER THE  
8 COSTS OF DEVELOPMENT AS WELL AS AN AMOUNT DETERMINED SUFFICIENT  
9 BY THE COMMISSIONER TO COVER ANY LIABILITY FOR FAILURE TO SATISFY  
10 ANY PRENEED SALES IN THE EVENT THE DEVELOPMENT IS NOT COMPLETED.

11 (6) If a transfer of controlling interest is found to have  
12 taken place without prior commissioner approval, the commissioner  
13 in his or her discretion may suspend or revoke the registration  
14 of the cemetery or take other appropriate action to insure com-  
15 pliance with this section.

16 (7) THE COMMISSIONER MAY DENY AN APPLICATION IF THE APPLI-  
17 CANT LACKS GOOD MORAL CHARACTER OR HAS BEEN FOUND BY THE COMMIS-  
18 SIONER OR A COURT OF COMPETENT JURISDICTION TO HAVE VIOLATED THIS  
19 ACT, ARTICLE 18 OF THE OCCUPATIONAL CODE, 1980 PA 299,  
20 MCL 339.1801 TO 339.1811, OR THE PREPAID FUNERAL CONTRACT FUNDING  
21 ACT, 1986 PA 255, MCL 328.211 TO 328.235, OR WHOSE LICENSE OR  
22 REGISTRATION HAS BEEN SUSPENDED OR REVOKED.

23 (8) THIS ACT DOES NOT PREVENT A REGISTRANT FROM OWNING AN  
24 INTEREST IN A FUNERAL HOME AND DOES NOT PREVENT A REGISTRANT FROM  
25 HAVING A CONTRACTUAL RELATIONSHIP WITH A FUNERAL HOME SO LONG AS  
26 THIS CONTRACTUAL RELATIONSHIP IS DISCLOSED TO POTENTIAL  
27 CUSTOMERS.

1 (9) A REGISTRANT SELLING CEMETERY MERCHANDISE OR SERVICES  
2 SHALL DISCLOSE ON ALL CONTRACTS AND STATIONERY THE NAME OF ANY  
3 OTHER ENTITY THAT OWNS AN INTEREST IN THE CEMETERY INCLUDING, BUT  
4 NOT LIMITED TO, A FUNERAL HOME, ANOTHER CEMETERY, OR AN ENTITY  
5 CONSISTING OF A GROUP OF FUNERAL HOMES OR CEMETERIES.

6 Sec. 12a. (1) The commissioner or an examiner, investiga-  
7 tor, or other person the commissioner may appoint, may visit and  
8 examine the affairs of any cemetery or ~~business entity~~ PERSON  
9 required to register under this act and shall have free access to  
10 the books, papers, records, and documents that relate to the  
11 business of the cemetery corporation, ~~business entity~~ PERSON,  
12 or agent acting on its behalf. THE COMMISSIONER OR AN EXAMINER  
13 MAY MAKE PHOTOCOPIES OF ANY RELEVANT DOCUMENTS, RECORDS, BOOKS,  
14 AND PAPERS.

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 qualified person  
18 shall conduct the audit whose services shall be charged to and  
19 paid by the cemetery at the rate of \$10.00 per hour, but not more  
20 than \$100.00 total.

21 (3) THE COMMISSIONER MAY REQUEST THE ADVICE AND AID OF THE  
22 FINANCIAL INSTITUTIONS BUREAU IN CARRYING OUT THE AUDIT AND  
23 INVESTIGATION FUNCTION UNDER THIS ACT.

24 SEC. 12B. A CEMETERY SHALL MAINTAIN A LIST OF ALL FUTURE  
25 PERFORMANCE OBLIGATIONS. THIS LIST WILL BE CURRENT AT ALL TIMES  
26 AND SHALL INCLUDE THE FOLLOWING:

1 (A) A COMPLETE DESCRIPTION OF THE FUTURE PERFORMANCE  
2 OBLIGATIONS INVOLVED. THESE OBLIGATIONS SHALL SEGREGATE VAULTS,  
3 MEMORIALS, SERVICES BY TYPE, AND CASKETS BY MODEL. THE LIST  
4 SHALL BE TOTALED BY ITEM TYPE AND MODEL.

5 (B) A TOTAL COST OF FULL PERFORMANCE OF ALL OBLIGATIONS AS  
6 OF THE DATE OF STATEMENT.

7 (C) COMPLETE INFORMATION ON THE MEANS, PROVISION, TRUST, OR  
8 OTHER VEHICLE WHICH WILL ASSURE FULFILLMENT OF ALL OBLIGATIONS,  
9 STATING LEDGER AND MARKET VALUES OF THE VEHICLE, ITS LOCATION,  
10 NATURE OF INVESTMENTS, AND TRUSTEES INCLUDING FEES PAID TO  
11 TRUSTEES.

12 Sec. 16. (1) The commissioner shall require each cemetery  
13 to establish and maintain an irrevocable endowment care fund as  
14 required by section 35a of ~~Act No. 87 of the Public Acts of~~  
15 ~~1855, being section 456.35a of the Michigan Compiled Laws~~ 1855  
16 PA 87, MCL 456.35A, or section 7a of ~~Act No. 12 of the Public~~  
17 ~~Acts of 1869, as amended, being section 456.107a of the Michigan~~  
18 ~~Compiled Laws~~ 1869 PA 12, MCL 456.107A, and to report annually  
19 before July 1 of each year, on forms approved and furnished by  
20 the commissioner, care fund information required to be reported  
21 to the commissioner by other statutes and information regarding  
22 the funds as the commissioner considers pertinent in the public  
23 interest. ~~A cemetery applying to the commissioner as authorized~~  
24 ~~by other statutes for a care fund deposit modification or waiver~~  
25 ~~shall be assessed the actual expenses for an examination or~~  
26 ~~investigation by the commissioner.~~ The commissioner shall  
27 require each person engaged as agent or seller, as a means of

1 livelihood either part time or full time, in the selling of  
2 burial rights, entombment rights, or columbarium rights owned by  
3 a party other than a cemetery or corporation subject to the care  
4 fund requirements of other laws, to deposit 15% of all gross pro-  
5 ceeds received from the sales of those rights into the irrevoca-  
6 ble care fund of the cemetery in which the rights are located if  
7 an irrevocable care fund exists for that cemetery. Excess sums  
8 on deposit in the fund can be applied by a cemetery against  
9 future deposits. A deposit required to be made by those persons  
10 shall be modified or waived if the cemetery has received a care  
11 fund deposit modification or waiver approved by the  
12 commissioner. The total deposit for a single adult burial right  
13 sale or assignment shall not be less than ~~-\$20.00-~~ \$50.00. THE  
14 COMMISSIONER SHALL ADJUST THIS DEPOSIT AMOUNT TO REFLECT THE  
15 DETROIT CONSUMER PRICE INDEX AS PROVIDED BY THE UNITED STATES  
16 DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.

17 (2) A cemetery which is required to register pursuant to  
18 this act and an agent which is authorized by a cemetery or acting  
19 on its behalf under an agreement or sales contract to sell ceme-  
20 tery merchandise or cemetery services shall establish a merchan-  
21 dise trust account WITH A TRUSTEE and deposit a percentage of the  
22 gross proceeds received from the sales as determined by the  
23 commissioner. The merchandise trust account shall be maintained  
24 exclusively for the deposit of the money into a ~~bank or trust~~  
25 ~~company~~ DEPOSITORY located in this state OR A NONPROFIT CORPORA-  
26 TION CONSISTING OF AT LEAST 25 CEMETERIES under the terms of a  
27 written trust agreement approved by the commissioner. The funds

1 shall be deposited not later than the month following their  
2 receipt.

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

14 (3) ~~-(4)~~ A contract or agreement made with a purchaser of  
15 cemetery merchandise and CEMETERY services shall contain a com-  
16 plete description of the cemetery merchandise purchased and of  
17 the CEMETERY services to be rendered.

18 (4) ~~-(5)~~ The commissioner shall require each cemetery or  
19 agent authorized by it acting on its behalf to report ~~annually~~  
20 EVERY THIRD YEAR before July 1 of ~~each~~ THAT year on forms pro-  
21 vided by the commissioner. The reports shall contain information  
22 as the commissioner considers necessary to ascertain that this  
23 act is being implemented. THE REPORT FOR A CEMETERY WITH GREATER  
24 THAN \$50,000.00 IN CEMETERY MERCHANDISE AND CEMETERY SERVICE  
25 LIABILITIES SHALL BE SIGNED BY AN INDEPENDENT CERTIFIED PUBLIC  
26 ACCOUNTANT.

1           (5) ~~(6)~~ If, after an audit by the commissioner's staff, a  
2 deficit in the amount of required deposits to the trust funds is  
3 found, the commissioner may assess a penalty not to exceed 10% of  
4 the amount of the deficit. The cemetery or ~~entity of a~~ OTHER  
5 PERSON ACTING ON BEHALF OF THE cemetery may request ~~a hearing~~  
6 AN INFORMAL COMPLIANCE AND SETTLEMENT CONFERENCE before the com-  
7 missioner within 30 days after being notified of a deficit by the  
8 commissioner. If, following the hearing, the commissioner deter-  
9 mines that a deficit does exist, an additional penalty not to  
10 exceed 1.5% may be assessed each month on the unpaid monthly bal-  
11 ance until the deficit is paid in full.

12           (6) ~~(7)~~ All fees, charges, and penalties collected under  
13 this act, other than fines prescribed in section 21, shall be  
14 paid to the commissioner. Upon receipt, the commissioner shall  
15 remit funds received to the department of treasury for deposit in  
16 the general fund of the state.

17           SEC. 16A. (1) A REGISTRANT RECEIVING FUNDS FROM A CONTRACT  
18 SELLER ACTING ON THE BEHALF OF OR AT THE DIRECTION OF A REGIS-  
19 TRANT SHALL DEPOSIT INTO A MERCHANDISE TRUST ACCOUNT 70% OF THE  
20 RETAIL COST OF ALL PRENEED CEMETERY SERVICES AND 70% OF THE  
21 RETAIL COST OF ALL PRENEED CEMETERY MERCHANDISE. A CONTRACT  
22 SELLER MAY ALSO CHARGE A PRE-ARRANGEMENT FEE NOT TO EXCEED 10% OF  
23 THE RETAIL COST OF ALL PRENEED CEMETERY SERVICES AND CEMETERY  
24 MERCHANDISE.

25           (2) NOTWITHSTANDING SUBSECTION (1), INSCRIBED MARKERS MAY BE  
26 STORED UNTIL THE TIME OF NEED, SO LONG AS THE MERCHANDISE IS  
27 INSURED IN AN AMOUNT IN EXCESS OF THEIR TOTAL REPLACEMENT COST.

1 THE REGISTRANT SHALL ANNUALLY FILE WITH THE COMMISSIONER A  
2 CURRENT CERTIFICATE OF INSURANCE COVERAGE.

3 SEC. 16B. (1) A CEMETERY THAT MAINTAINS AN ENDOWMENT CARE  
4 FUND OR A MERCHANDISE TRUST ACCOUNT SHALL PROVIDE A REPORT PRE-  
5 PARED BY A CERTIFIED PUBLIC ACCOUNTANT FOR EACH FUND OR ACCOUNT  
6 WHICH SHALL COVER THE IMMEDIATELY PRECEDING 3 CALENDAR YEARS.  
7 THE REPORT SHALL BE ON FORMS PROVIDED BY THE COMMISSIONER OR IN  
8 ANY OTHER FORMAT CONSIDERED APPROPRIATE BY THE CERTIFIED PUBLIC  
9 ACCOUNTANT AND APPROVED BY THE COMMISSIONER. THE CERTIFIED  
10 PUBLIC ACCOUNTANT IS REQUIRED TO UTILIZE ACCEPTED ACCOUNTING  
11 PRINCIPLES. THE REPORT SHALL PROVIDE A DETERMINATION OF WHETHER  
12 THE CEMETERY HAS APPARENTLY COMPLIED WITH ALL OF THE FOLLOWING  
13 AND SHALL INDICATE AREAS OF NONCOMPLIANCE, IF APPLICABLE:

14 (A) THE DEPOSIT REQUIREMENTS.

15 (B) THE INVESTMENT REQUIREMENTS.

16 (C) THE WITHDRAWAL PROCEDURES AND REQUIREMENTS.

17 (D) OTHER REQUIREMENTS OF THIS ACT OR OTHER ACTS WITHIN THE  
18 KNOWLEDGE OF THE CERTIFIED PUBLIC ACCOUNTANT AND READILY APPARENT  
19 FROM REVIEW OF THE RECORDS AND INFORMATION USED TO COMPILE THE  
20 REPORT.

21 (2) THE COMMISSIONER SHALL EXAMINE EACH REPORT REQUIRED BY  
22 THIS SECTION AND IF THE COMMISSIONER DETERMINES FROM THAT EXAMI-  
23 NATION THAT THE CEMETERY HAS NOT DEPOSITED, INVESTED, OR WITH-  
24 DRAWN FUNDS IN ACCORDANCE WITH THIS OR OTHER ACTS OR HAS FAILED  
25 TO FILE A REPORT COMPLYING WITH THE REQUIREMENTS OF SECTION  
26 16(4), THE COMMISSIONER SHALL TAKE ANY APPROPRIATE ACTION  
27 AUTHORIZED BY SECTION 18.

1 (3) ANY MERCHANDISE TRUST ACCOUNTS IN EXISTENCE ON THE  
2 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION  
3 MAY REMAIN IN EFFECT UNDER THE TERMS AND CONDITIONS UNDER WHICH  
4 THEY WERE CREATED SO LONG AS THEY COMPLY WITH THE STANDARDS IN  
5 EFFECT BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED  
6 THIS SUBSECTION.

7 SEC. 16C. A REGISTRANT WHO DEPOSITS FUNDS WITH A TRUSTEE  
8 UNDER THIS ACT SHALL HAVE IN EFFECT AT ALL TIMES AN AGREEMENT  
9 UNDER WHICH THE TRUSTEE HAS, UNDER THE FOLLOWING CIRCUMSTANCES,  
10 AGREED TO ALLOW INSPECTION AND COPYING OF RECORDS MAINTAINED BY  
11 IT PERTAINING TO FUNDS HELD OR MANAGED BY IT:

12 (A) UPON THE REQUEST BY THE COMMISSIONER, TO INSPECT OR COPY  
13 RECORDS PERTAINING TO ANY OR ALL FUNDS HELD OR MANAGED BY THE  
14 TRUSTEE.

15 (B) UPON THE REQUEST OF THE REGISTRANT OR ITS AGENT, TO  
16 INSPECT OR COPY RECORDS PERTAINING TO ANY OR ALL FUNDS DEPOSITED  
17 BY THE REGISTRANT WITH THE TRUSTEE.

18 (C) UPON THE REQUEST OF A CONTRACT BUYER OR A CONTRACT BENE-  
19 FICIARY TO INSPECT OR COPY RECORDS PERTAINING TO FUNDS HELD OR  
20 MANAGED BY THE TRUSTEE PURSUANT TO A CONTRACT TO WHICH THE CON-  
21 TRACT BUYER IS A PARTY OR FOR WHOSE BENEFIT IT WAS ENTERED INTO.

22 (D) UPON ORDER OF A COURT OF COMPETENT JURISDICTION.

23 SEC. 16D. (1) A REGISTRANT SHALL KEEP, IN THIS STATE, ACCU-  
24 RATE ACCOUNTS, BOOKS, AND RECORDS OF ALL TRANSACTIONS AND  
25 ACCOUNTS REGULATED BY THIS ACT. RECORDS INCLUDE COPIES OF ALL  
26 CONTRACTS, THE DATES AND AMOUNTS OF PAYMENTS MADE AND ACCEPTED  
27 UNDER THESE CONTRACTS, THE NAME AND ADDRESS OF EACH CONTRACT

1 BUYER, THE NAME AND ADDRESS OF THE CONTRACT BENEFICIARIES, THE  
2 NAME AND ADDRESS OF EACH TRUSTEE, AND ANY OTHER RECORDS AS THE  
3 COMMISSIONER MAY REQUIRE TO ENABLE IT TO DETERMINE WHETHER THE  
4 REGISTRANT IS COMPLYING WITH THE REQUIREMENTS OF THIS ACT. THE  
5 REGISTRANT SHALL KEEP RECORDS FOR AT LEAST 36 MONTHS AFTER PER-  
6 FORMANCE OF ALL OBLIGATIONS OF EACH CONTRACT OR AFTER THE FILING  
7 OF THE FINAL SPECIAL REPORT WHICH INCLUDES A CONTRACT WHICH HAS  
8 BEEN PERFORMED.

9 (2) EVERY THIRD YEAR A REGISTRANT WHICH SERVES AS A TRUSTEE  
10 OR WHICH HAS DEPOSITED FUNDS WITH AN ESCROW AGENT PURSUANT TO  
11 SECTION 16H SHALL SECURE A SPECIAL REPORT OF LIMITED REVIEW PRE-  
12 PARED BY A LICENSED INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT PER-  
13 TAINING TO CONTRACT FUNDS. THE SPECIAL REPORT SHALL BE ON FORMS  
14 PROVIDED BY THE COMMISSIONER OR IN ANY OTHER FORMAT CONSIDERED  
15 APPROPRIATE BY THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT AND  
16 APPROVED BY THE COMMISSIONER. THE SPECIAL REPORT SHALL BE PRE-  
17 PARED AND DATED WITHIN 90 DAYS BEFORE THE EXPIRATION OF THE  
18 REGISTRANT'S CERTIFICATE OF REGISTRATION AND SHALL BE FURNISHED  
19 TO THE COMMISSIONER WITH THE REGISTRANT'S APPLICATION FOR RENEWAL  
20 OR, IF AN APPLICATION FOR RENEWAL IS NOT FILED, BEFORE THE EXPI-  
21 RATION OF THE CERTIFICATE OF REGISTRATION. IN PREPARING THE SPE-  
22 CIAL REPORT, THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT IS NOT  
23 REQUIRED TO REVIEW ALL CONTRACTS, MERCHANDISE TRUST AGREEMENTS,  
24 MERCHANDISE TRUST ACCOUNTS, OR RECORDS OF THE REGISTRANT AND THE  
25 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT IS NOT REQUIRED TO REVIEW  
26 ANY RECEIPTS OR DEPOSITS BY THE REGISTRANT OF CONTRACT FUNDS.

1 THE SPECIAL REPORT OF THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT  
2 SHALL PROVIDE THE FOLLOWING ASSURANCES:

3 (A) BASED EITHER UPON A REVIEW OF THE REGISTRANT'S AGREE-  
4 MENTS WITH TRUSTEES OR DEPOSITORIES WHICH LIMIT INVESTMENTS OF  
5 THE FUNDS BY THE TRUSTEES OR DEPOSITORIES TO THOSE INVESTMENTS  
6 PERMITTED BY THIS ACT, OR UPON A REVIEW OF THE INVESTMENTS OF THE  
7 MERCHANDISE TRUST ACCOUNTS, THAT THE REGISTRANT HAS COMPLIED WITH  
8 THE INVESTMENT REQUIREMENTS OF THIS ACT.

9 (B) IN THE CASE OF MERCHANDISE TRUST ACCOUNTS WHERE THE REG-  
10 ISTRANT SERVES AS THE TRUSTEE, THAT WITHDRAWALS, AS DETAILED IN  
11 THE PERIODIC STATEMENTS OF THE DEPOSITORIES IN WHICH THE TRUST  
12 ACCOUNTS ARE MAINTAINED, HAVE BEEN MADE IN COMPLIANCE WITH THIS  
13 ACT.

14 (C) MATTERS HAVE NOT COME TO THE ATTENTION OF THE INDEPEN-  
15 DENT CERTIFIED PUBLIC ACCOUNTANT DURING THE REVIEW OF MERCHANDISE  
16 TRUST ACCOUNT INVESTMENTS AND WITHDRAWALS THAT GAVE CAUSE TO  
17 BELIEVE THAT THE REGISTRANT HAS NOT COMPLIED WITH THIS ACT. IF  
18 ANY MATTERS HAVE COME TO HIS OR HER ATTENTION, THE INDEPENDENT  
19 CERTIFIED PUBLIC ACCOUNTANT SHALL INCLUDE AN EXPLANATION OF THE  
20 MATTERS WHICH CAUSED THE BELIEF THAT THE REGISTRANT HAS NOT COM-  
21 PLIED WITH THIS ACT.

22 (3) THE COMMISSIONER MAY EXAMINE EACH SPECIAL REPORT  
23 REQUIRED BY THIS SECTION AND IF THE COMMISSIONER DETERMINES ON  
24 THE BASIS OF ITS REVIEW THAT THE REGISTRANT OR ITS AGENT HAS NOT  
25 HELD OR INVESTED FUNDS IN COMPLIANCE WITH THE REQUIREMENTS OF  
26 THIS ACT OR HAS FAILED TO FILE A SPECIAL REPORT AS REQUIRED, THE

1 COMMISSIONER SHALL TAKE ANY APPROPRIATE CORRECTIVE OR PENAL  
2 ACTION AUTHORIZED BY THIS ACT.

3 (4) THE COMMISSIONER MAY EXAMINE, REVIEW, OR AUDIT THE BOOKS  
4 AND RECORDS OF A CONTRACT SELLER OR PROVIDER PERTAINING TO FUNDS  
5 RECEIVED IN PAYMENT FOR CONTRACTS. AN AUDIT MAY INCLUDE AN EXAM-  
6 INATION OF THE BOOKS AND FINANCIAL RECORDS OF THE REGISTRANT AS  
7 WELL AS BOOKS AND FINANCIAL RECORDS OF TRUSTEES USED BY THE  
8 REGISTRANT. A REGISTRANT SHALL AUTHORIZE TRUSTEES TO OPEN THEIR  
9 RECORDS OF THE REGISTRANT ACCOUNTS TO THE COMMISSIONER UPON  
10 REQUEST.

11 (5) FOR THE PURPOSES OF COMPLYING WITH THE REQUIREMENTS OF  
12 THIS SECTION, A REGISTRANT WHO HAS NOT SOLD, PROVIDED, OR AGREED  
13 TO PROVIDE CEMETERY MERCHANDISE OR CEMETERY SERVICES IN ACCORD-  
14 ANCE WITH A CONTRACT AND WHO HAS NO OBLIGATIONS WITH RESPECT TO  
15 AN OUTSTANDING CONTRACT MAY SUBMIT A SWORN STATEMENT ACCOMPANIED  
16 BY A LETTER FROM A MICHIGAN-LICENSED CERTIFIED PUBLIC ACCOUNTANT  
17 THAT NO CEMETERY MERCHANDISE OR CEMETERY SERVICES WERE SOLD OR  
18 PROVIDED BASED UPON A REVIEW OF THE REGISTRANT'S BUSINESS RECORDS  
19 THAT A CONTRACT HAS NOT BEEN SOLD, PROVIDED, OR AGREED TO AND  
20 THERE ARE NO OBLIGATIONS OUTSTANDING. THE COMMISSIONER SHALL  
21 ACCEPT THIS STATEMENT IN LIEU OF THE SPECIAL REPORT.

22 SEC. 16E. A REGISTRANT WHO DISCONTINUES ITS BUSINESS OPERA-  
23 TIONS SHALL NOTIFY THE COMMISSIONER AND THE CONTRACT BUYER OF  
24 EACH EXISTING CONTRACT AND SHALL PROVIDE WRITTEN DOCUMENTATION  
25 THAT IT HAS ARRANGED FOR AN ASSIGNMENT OF THESE CONTRACTS TO  
26 ANOTHER PROVIDER WHO SATISFIES THE REQUIREMENTS OF SECTION 16B.

1           SEC. 16F. A CONTRACT SHALL DESIGNATE A PROVIDER WHO HAS  
2 AGREED TO FURNISH THE CEMETERY MERCHANDISE OR CEMETERY SERVICES  
3 SPECIFIED IN THE CONTRACT UPON THE DEATH OF THE CONTRACT  
4 BENEFICIARY. IF THE PROVIDER DESIGNATED IS NOT THE CONTRACT  
5 SELLER OF THE CONTRACT, THE PROVIDER SHALL HAVE PREVIOUSLY CON-  
6 TRACTED WITH THE CONTRACT SELLER TO PROVIDE THE MERCHANDISE AND  
7 SERVICES SPECIFIED IN THE CONTRACT AND THE CONTRACT SHALL INDI-  
8 CATE THIS CONTRACTUAL RELATIONSHIP OR THE PROVIDER SHALL BE MADE  
9 A PARTY TO THE CONTRACT BEFORE ANY CONSIDERATION IS PAID AND THE  
10 CONTRACT IS NOT BINDING ON THE CONTRACT BUYER UNTIL THE PROVIDER  
11 HAS BEEN MADE A PARTY TO THE CONTRACT.

12           SEC. 16G. (1) A CONTRACT BUYER MAY CANCEL A CONTRACT BEFORE  
13 THE DEATH OF THE CONTRACT BENEFICIARY UPON WRITTEN NOTICE TO THE  
14 PROVIDER DESIGNATED TO FURNISH CEMETERY MERCHANDISE OR CEMETERY  
15 SERVICES. THE CONTRACT SELLER OR PROVIDER SHALL PROMPTLY NOTIFY  
16 THE TRUSTEE OF THE CANCELLATION AND OF ITS EFFECTIVE DATE, IF THE  
17 TRUSTEE IS OTHER THAN THE CONTRACT SELLER OR THE PROVIDER. AFTER  
18 RECEIPT OF THE NOTICE OF CANCELLATION, THE TRUSTEE SHALL DISBURSE  
19 PRINCIPAL AND INCOME TO THE CONTRACT BUYER PURSUANT TO THIS SUB-  
20 SECTION AND SHALL DISBURSE THE REMAINDER OF THE PRINCIPAL AND  
21 INCOME, IF ANY, TO THE CONTRACT SELLER OR THE PROVIDER. THE  
22 AMOUNTS DISBURSED TO THE CONTRACT BUYER SHALL BE 100% OF THE CON-  
23 TRACT PRICE PAID TO THE PROVIDER.

24           (2) A PROVIDER DESIGNATED TO FURNISH CEMETERY MERCHANDISE OR  
25 CEMETERY SERVICES MAY CANCEL A CONTRACT ONLY IF THE CONTRACT  
26 BUYER IS MORE THAN 90 DAYS' DELINQUENT IN MAKING ANY INSTALLMENT  
27 PAYMENT OR PARTIAL PAYMENT OR IF THE CONTRACT BUYER IS OTHERWISE

1 IN DEFAULT AS TO ANY OTHER OBLIGATION UNDER THE CONTRACT. UPON  
2 CANCELLATION, THE CONTRACT BUYER SHALL RECEIVE A REFUND AS DETER-  
3 MINED PURSUANT TO SUBSECTION (1).

4 (3) AFTER THE DEATH OF THE CONTRACT BENEFICIARY, THE MER-  
5 CHANDISE TRUST MAY BE CANCELED OR CHANGED ONLY BY A COURT ORDER  
6 ISSUED PURSUANT TO SECTION 2851 OF THE PUBLIC HEALTH CODE, 1978  
7 PA 368, MCL 333.2851.

8 (4) AFTER THE DEATH OF THE CONTRACT BENEFICIARY, IF THE MER-  
9 CHANDISE TRUST ACCOUNT IS NOT USED BY PERSONS LEGALLY ENTITLED TO  
10 MAKE FUNERAL ARRANGEMENTS FOR THE CONTRACT BENEFICIARY, THE  
11 TRUSTEE SHALL DISBURSE THE PRINCIPAL AND INCOME IN THE TRUST  
12 ACCOUNT PURSUANT TO SUBSECTION (1) WITHIN 30 DAYS AFTER RECEIPT  
13 OF A REQUEST FOR PAYMENT FROM THE PROVIDER DESIGNATED TO FURNISH  
14 CEMETERY MERCHANDISE OR CEMETERY SERVICES PURSUANT TO THE CON-  
15 TRACT, THE CONTRACT BUYER, OR THE CONTRACT BUYER'S ESTATE.

16 (5) A CONTRACT SELLER OR A PROVIDER WHICH ASSIGNS OR TRANS-  
17 FERS ITS OBLIGATIONS UNDER A CONTRACT TO ANOTHER PROVIDER SHALL  
18 NOTIFY THE CONTRACT BUYER OF THE ASSIGNMENT IN WRITING. IF THE  
19 CONTRACT BUYER CANCELS THE CONTRACT WITHIN 30 DAYS OF THE NOTIFI-  
20 CATION OF THE ASSIGNMENT, THE BUYER IS ENTITLED TO A REFUND OF  
21 100% OF THE REMAINING PRINCIPAL AND INCOME. THIS SUBSECTION DOES  
22 NOT APPLY TO AN ASSIGNMENT OF A FINANCIAL INTEREST IN AN INSTALL-  
23 MENT CONTRACT TO A FINANCIAL INSTITUTION. AT THE TIME THAT THE  
24 CONTRACT SELLER OR PROVIDER RECEIVES PAYMENT IN EXCHANGE FOR  
25 SELLING OR ASSIGNING ITS FINANCIAL INTEREST IN AN INSTALLMENT  
26 CONTRACT TO A FINANCIAL INSTITUTION, THE CONTRACT SELLER OR

1 PROVIDER IS REQUIRED TO PLACE IN TRUST THE AMOUNT REQUIRED BY  
2 THIS ACT.

3 SEC. 16H. (1) PAYMENTS OF PRINCIPAL AND INCOME BY A DEPOSI-  
4 TORY OR A TRUSTEE MADE IN GOOD FAITH UNDER THIS ACT RELIEVE THAT  
5 DEPOSITORY OR TRUSTEE OF ANY FURTHER LIABILITY FOR THAT PRINCIPAL  
6 AND INCOME.

7 (2) A TRUSTEE SHALL INVEST FUNDS HELD OR MANAGED UNDER THIS  
8 ACT ONLY AS EXPRESSLY AUTHORIZED BY THIS ACT AND SHALL NOT INVEST  
9 FUNDS BY PURCHASING LIFE INSURANCE OR ANNUITIES THE PROCEEDS OF  
10 WHICH ARE NOT PAYABLE IN FULL UNTIL THE HAPPENING OF SOME EVENT  
11 INCLUDING, BUT NOT LIMITED TO, DEATH OF THE CONTRACT  
12 BENEFICIARY.

13 (3) A PROVIDER OR TRUSTEE MAY, WITHOUT APPROVAL OF ANY OTHER  
14 PARTY, CHANGE THE DEPOSITORY OF ANY MERCHANDISE TRUST ACCOUNT,  
15 WITH OR WITHOUT CAUSE, AT ANY TIME. THE PROVIDER OR TRUSTEE  
16 SHALL NOTIFY THE CONTRACT BUYER IF THE TRUSTEE OR DEPOSITORY IS  
17 CHANGED.

18 SEC. 16I. (1) ALL PRICES OR QUOTATIONS OF PRICES CONTAINED  
19 IN A CONTRACT, OFFER, OR SOLICITATION SHALL BE STATED IN COMPLI-  
20 ANCE WITH APPLICABLE FEDERAL AND STATE LAWS AND REGULATIONS. IN  
21 ADDITION, A PERSON WHO OFFERS EITHER CEMETERY MERCHANDISE OR CEM-  
22 ETERY SERVICES ON A PRENEED OR AT-NEED BASIS SHALL COMPLY WITH  
23 THE PRICE DISCLOSURE RULES OF THE FEDERAL TRADE COMMISSION, CODE  
24 OF FEDERAL REGULATIONS, 16 C.F.R., PART 453, WHETHER OR NOT THE  
25 RULES BY THEIR OWN TERMS APPLY TO THE OFFERING. THIS SUBSECTION  
26 DOES NOT APPLY TO THE SALE OF ANY INTEREST IN LAND COVERED BY THE

1 ENDOWMENT CARE REQUIREMENTS OF SECTION 35A OF 1855 PA 87,  
2 MCL 456.35A.

3 (2) A PERSON WHO SELLS OR OFFERS TO SELL BOTH CEMETERY MER-  
4 CHANDISE OR SERVICES AND NONCEMETERY MERCHANDISE OR SERVICES AS  
5 PART OF THE SAME TRANSACTION OR SERIES OF TRANSACTIONS SHALL NOT  
6 MANIPULATE THE RELATIVE PRICES OF THE MERCHANDISE OR SERVICES SO  
7 AS TO ALLOCATE A DISPROPORTIONATE SHARE OF THE TOTAL PRICE TO  
8 NONCEMETERY MERCHANDISE OR SERVICES.

9 (3) ALL CONTRACTS SHALL ALLOW A CONTRACT BUYER TO REVOKE THE  
10 CONTRACT WITHIN 10 BUSINESS DAYS AFTER ENTERING INTO THE CONTRACT  
11 AND PROVIDE THAT, UPON REVOCATION, ALL FUNDS PAID TO THE CONTRACT  
12 SELLER OR PROVIDER SHALL BE REFUNDED. THIS PROVISION SHALL BE  
13 CONSPICUOUSLY SET FORTH IN THE CONTRACT AT A PLACE IMMEDIATELY  
14 BEFORE THE PLACE WHERE THE CONTRACT BUYER IS TO SIGN HIS OR HER  
15 NAME.

16 (4) A CONTRACT SHALL DISCLOSE THE CONTRACT BUYER'S RIGHT TO  
17 CANCEL THE CONTRACT AND THE AMOUNT OF THE REFUND TO WHICH THE  
18 CONTRACT BUYER IS ENTITLED UPON CANCELLATION. IF A COMMISSION IS  
19 CHARGED PURSUANT TO SECTION 16A, THE AMOUNT OF THE COMMISSION AND  
20 THE FACT THAT IT IS A CHARGE WHICH IS IN ADDITION TO THE CONTRACT  
21 PRICE SHALL BE STATED IN THE PREPAID CEMETERY CONTRACT. IF A  
22 PRINTED CONTRACT FORM IS USED, THE DISCLOSURES REQUIRED BY THIS  
23 SUBSECTION SHALL BE STATED IN BOLD-FACED TYPE.

24 (5) THIS ACT DOES NOT AUTHORIZE A CONTRACT SELLER OR PRO-  
25 VIDER TO PERFORM OR OFFER TO PERFORM SERVICES FOR WHICH A MORTU-  
26 ARY SCIENCE LICENSE OR FUNERAL ESTABLISHMENT LICENSED IS REQUIRED  
27 BY ARTICLE 18 OF THE OCCUPATIONAL CODE, 1980 PA 299, MCL 339.1801

1 TO 339.1811, UNLESS THAT PERSON HOLDS THE REQUIRED LICENSE OR  
2 LICENSES. THIS ACT DOES NOT REQUIRE A CONTRACT SELLER OR A PRO-  
3 VIDER TO POSSESS THIS LICENSE OR ANY OTHER LICENSE TO ENGAGE IN  
4 AN ACTIVITY REGULATED UNDER THIS ACT FOR WHICH A LICENSE IS NOT  
5 REQUIRED BY ANY OTHER ACT.

6 (6) A CONTRACT SHALL PROVIDE THAT THE CONTRACT BUYER MAY  
7 DESIGNATE A NEW CONTRACT BENEFICIARY ANY TIME BEFORE THE DEATH OF  
8 THE CONTRACT BENEFICIARY ORIGINALLY SPECIFIED IN THE CONTRACT BY  
9 PROVIDING WRITTEN NOTICE TO THE PROVIDER DESIGNATED TO FURNISH  
10 CEMETERY MERCHANDISE OR CEMETERY SERVICES PURSUANT TO THE  
11 CONTRACT. NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, A CON-  
12 TRACT BUYER MAY DESIGNATE THE ESTATE OF A DECEASED PERSON AS THE  
13 CONTRACT BENEFICIARY OR PROVIDE THAT THE CONTRACT BENEFICIARY BE  
14 THE FIRST OF 2 OR MORE DESIGNATED PERSONS TO DIE.

15 SEC. 16J. (1) A CONTRACT NOT IN WRITING IS VOIDABLE BY ANY  
16 PARTY TO THE CONTRACT.

17 (2) A CONTRACT MADE IN VIOLATION OF THIS ACT OR WITH A  
18 PERSON WHO IS NOT REGISTERED PURSUANT TO SECTION 16 IS VOIDABLE  
19 BY THE CONTRACT BUYER OR BY A PERSONAL REPRESENTATIVE OF THE CON-  
20 TRACT BENEFICIARY.

21 (3) THE PARTIES TO A CONTRACT MAY AGREE IN WRITING FOR THE  
22 PAYMENT OF A RATE OF INTEREST NOT TO EXCEED 10.5% PER ANNUM WITH  
23 THE FOLLOWING CONDITIONS:

24 (A) A CONTRACT MADE UNDER THIS ACT SHALL NOT PROVIDE FOR A  
25 RATE OF INTEREST ADDED OR DEDUCTED IN ADVANCE. INTEREST SHALL BE  
26 COMPUTED FROM TIME TO TIME ONLY ON THE BASIS OF UNPAID BALANCES.

1 (B) A CONTRACT MADE UNDER THIS ACT SHALL NOT PROVIDE THAT  
2 THE RATE OF INTEREST INITIALLY EFFECTIVE MAY BE INCREASED FOR ANY  
3 REASON.

4 (C) A CONTRACT SELLER SHALL NOT IMPOSE ANY FEES OR CHARGES  
5 IN ADDITION TO INTEREST IN CONNECTION WITH THE FINANCING OF A  
6 CONTRACT.

7 (4) A CONTRACT SELLER SHALL NOT OFFER FINANCING OR OFFER TO  
8 OBTAIN FINANCING OF A CONTRACT UNDER TERMS AND CONDITIONS OTHER  
9 THAN ALLOWED BY THIS SECTION.

10 (5) AN AGENT OR EMPLOYEE OF A REGISTRANT SHALL NOT ENGAGE IN  
11 DOOR-TO-DOOR SALES OF CEMETERY MERCHANDISE OR CEMETERY SERVICES  
12 WITHOUT PRIOR CONSENT.

13 (6) A PERSON THAT SELLS OR OFFERS TO SELL EITHER CEMETERY  
14 MERCHANDISE OR SERVICES OR FUNERAL MERCHANDISE OR SERVICES AS  
15 PART OF THE SAME TRANSACTION OR SERIES OF TRANSACTIONS SHALL DO  
16 ALL OF THE FOLLOWING:

17 (A) REFRAIN FROM MANIPULATING THE RELATIVE PRICES OF THE  
18 MERCHANDISE OR SERVICES SO AS TO ALLOCATE A DISPROPORTIONATE  
19 SHARE OF THE TOTAL PRICE TO ANY OF THE MERCHANDISE OR SERVICES.

20 (B) CHARGE THE SAME PRICES TO ALL CUSTOMERS WITHOUT REGARD  
21 TO WHETHER THE CUSTOMER DOES BUSINESS WITH BOTH A FUNERAL ESTAB-  
22 LISHMENT AND AN AFFILIATED CEMETERY. HOWEVER, THE PRICE FOR  
23 FUNERAL OR CEMETERY GOODS AND SERVICES MAY PROVIDE FOR A DISCOUNT  
24 FOR GROUPINGS OF THOSE GOODS AND SERVICES WITHIN THE SEPARATE  
25 CATEGORIES OF FUNERAL OR CEMETERY GOODS AND SERVICES ONLY.  
26 DISCOUNTS FOR GOODS AND SERVICES SHALL NOT BE PROVIDED FOR BOTH  
27 CEMETERY AND FUNERAL GOODS AND SERVICES.

1 (C) REFRAIN FROM BASING ANY BENEFIT, DISCOUNT, OR OTHER  
2 PREFERENTIAL PRICE OR TREATMENT ON THE CONDITION THAT THE CUS-  
3 TOMER AGREES TO DO BUSINESS WITH BOTH A FUNERAL ESTABLISHMENT AND  
4 ITS AFFILIATED CEMETERY.

5 (7) A PERSON SELLING OR OFFERING TO SELL PRENEED CEMETERY  
6 MERCHANDISE OR CEMETERY SERVICES SHALL NOT SELL OR OFFER TO SELL  
7 MERCHANDISE OR SERVICES THAT ARE NOT DIRECTLY RELATED TO CEMETERY  
8 MERCHANDISE OR CEMETERY SERVICES OR MERCHANDISE OR SERVICES OF  
9 ANY KIND AT BELOW THEIR ACTUAL COST.

10 (8) THE COMMISSIONER OR A CONTRACT BENEFICIARY OR HIS OR HER  
11 REPRESENTATIVE, IN ORDER TO FORCE COMPLIANCE WITH THIS ACT, MAY  
12 BRING AN ACTION IN A CIRCUIT COURT IN ANY COUNTY IN WHICH THE  
13 REGISTRANT OR ANY OTHER PERSON HAS SOLICITED OR SOLD PRENEED CON-  
14 TRACTS, WHETHER OR NOT THAT PERSON HAS PURCHASED A PRENEED CON-  
15 TRACT OR IS PERSONALLY AGGRIEVED BY A VIOLATION OF THIS ACT. THE  
16 COURT MAY AWARD DAMAGES AND REASONABLE ATTORNEY FEES AND ISSUE  
17 EQUITABLE ORDERS IN ACCORDANCE WITH THE MICHIGAN COURT RULES TO  
18 RESTRAIN CONDUCT IN VIOLATION OF THIS ACT.

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

1 or its officers or general manager has done 1 or more of the  
2 following:

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

5 (b) Not complied with this act.

6 (c) Been guilty of a fraudulent act in connection with sell-  
7 ing or otherwise dealing in cemetery lots, burial rights, or  
8 services of a type required to be registered under ~~this act~~ THE  
9 PREPAID FUNERAL CONTRACT FUNDING ACT, 1986 PA 255, MCL 328.211 TO  
10 328.235.

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

14 (E) VIOLATED ARTICLE 18 OF THE OCCUPATIONAL CODE, 1980  
15 PA 299, MCL 339.1801 TO 339.1812.

16 (F) ~~(e)~~ Violated the terms of an assurance of discontinu-  
17 ance entered into with the commissioner pursuant to section  
18 9(2).

19 (G) FAILED TO PROPERLY TRUST FUNDS IN COMPLIANCE WITH THIS  
20 ACT.

21 (H) ~~(f)~~ Adopted, enforced, or attempted to enforce a regu-  
22 lation of the cemetery which prohibits the installation of a  
23 grave memorial or burial vault unless the grave memorial or  
24 burial vault was purchased from the cemetery. ~~However, this~~  
25 THIS subdivision ~~shall~~ DOES not prohibit a cemetery from adopt-  
26 ing and enforcing consistent rules and regulations to be followed  
27 by both the cemetery and outside vendors as to the quality, size,

1 shape, type, installation, and maintenance of the grave memorial  
2 or burial vault.

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

15 Sec. 21. (1) A person, firm, partnership, association, or  
16 corporation who violates this act is guilty of a misdemeanor. —  
17 ~~and, if a natural person,~~ IF THE VIOLATOR IS AN INDIVIDUAL, the  
18 first offense ~~shall be~~ IS punishable by a fine of not more than  
19 \$100.00 or imprisonment for not more than 90 days —, and a  
20 second OR SUBSEQUENT offense ~~shall be~~ IS punishable by a fine  
21 of not more than \$500.00 or imprisonment for not more than 1  
22 year, or both. If the violator is ~~other than a natural~~  
23 person BUT NOT AN INDIVIDUAL, the first offense ~~shall be~~ IS  
24 punishable by a fine of not more than \$100.00 and the second OR  
25 SUBSEQUENT offense ~~shall be~~ IS punishable by a fine of not more  
26 than \$1,000.00.

1 (2) A PERSON FOUND GUILTY OF VIOLATING SECTION 18(G) IS  
2 GUILTY OF A FELONY.

3 Enacting section 1. This amendatory act does not take  
4 effect unless all of the following bills of the 89th Legislature  
5 are enacted into law:

6 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
7 no. 05006'97 \*).

8 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
9 no. 05007'97 \*).

10 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
11 no. 05214'97 \*\*).