

SENATE BILL No. 39

January 21, 2003, Introduced by Senator JACOBS and referred to the Committee on Local, Urban and State Affairs.

A bill to amend 1855 PA 87, entitled

"An act relative to burying grounds; and to impose certain duties upon the department of commerce,"

by amending sections 35 and 35a (MCL 456.35 and 456.35a).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 35. (1) The board of trustees of any corporation
2 organized under this act shall provide for and establish an
3 ~~improvement or memorial~~ **endowment care** fund, the income or
4 proceeds from which shall be perpetually devoted ~~—~~ **for**
5 **endowment care.**

6 ~~First, To care for any assessments levied, to keeping clean~~
7 ~~and in good order the lots of the several contributors thereto,~~
8 ~~and any monuments on said contributors' lots in good repair; and,~~
9 ~~— Second, To improving and beautifying any portion of the~~
10 ~~grounds of such corporation, reserved from sale and set apart for~~
11 ~~ornamental purposes.~~

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1 (2) Contributions, subscriptions, or bequests to ~~such~~ **an**
 2 **endowment care** fund, whether made by owners of lots, or rights of
 3 burial, or by other persons, shall be invested in ~~such~~ safe and
 4 productive securities as the ~~said~~ board of trustees ~~shall~~
 5 ~~determine~~ **determines**, or deposited in the savings department of
 6 any state, national bank, or state or federally chartered savings
 7 and loan association and only the annual interest ~~thereon~~ shall
 8 be used for ~~the purposes above prescribed~~ **endowment care**.

9 (3) Any corporation organized under this act may also be
 10 named and constituted and may act as trustee of any gift, grant,
 11 bequest, or conveyance of personal property, to ~~said~~ **the**
 12 corporation, in trust for the perpetual care, maintenance and
 13 preservation of, and the planting and cultivation of trees,
 14 shrubs, flowers and plants upon any cemetery lot or lots, or part
 15 of the cemetery owned or held and maintained by ~~said~~ **the**
 16 corporation, and the care, preservation, repair, upkeep, and
 17 replacement of any monument, tomb, mausoleum, fence, or other
 18 structure, ~~thereon~~, or for any ~~or all~~ **of** the ~~above~~ purposes
 19 ~~upon such terms and conditions as may be~~ **described in this**
 20 **section that are** provided in the instrument or writing creating
 21 ~~such~~ **the** trust. ~~—, and no such~~ **A** trust shall **not** be **considered**
 22 invalid because contravening any statute or rule of law
 23 forbidding accumulations of income. ~~—, but shall be valid~~
 24 ~~notwithstanding such statute or rule.~~

25 (4) On or before June 30 of each year an account of all
 26 proceeds received during the preceding calendar year from sales
 27 of interment rights, entombment rights, or columbarium rights

1 made after ~~the effective date of this 1966 amendatory act~~ **March**
2 **10, 1967**, shall be filed with the ~~state~~ cemetery commission,
3 ~~of the department of commerce,~~ along with an account, certified
4 to by the trustee or trustees, of all amounts deposited the
5 calendar year previous, into the ~~irrevocable~~ endowment **care**
6 fund.

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

16 Sec. 35a. (1) The **endowment care** fund required to be set
17 aside under section 35 for the purpose of keeping and maintaining
18 the grounds of cemeteries established after ~~the effective date~~
19 ~~of this 1966 amendatory act~~ **March 10, 1967**, or mausoleums ~~which~~
20 ~~are~~ not located in the confines of a dedicated cemetery and are
21 established after ~~the effective date of this 1966 amendatory~~
22 ~~act~~ **March 10, 1967**, shall be created by the deposit of
23 \$25,000.00 into the fund before any sale of burial rights,
24 entombment rights, or columbarium rights. ~~is made.~~

25 (2) With respect to all cemeteries or mausoleums, whether
26 established before or after ~~the effective date of this 1966 act~~
27 **March 10, 1967**, the fund shall be added to by payment,

1 perpetually, ~~into the same~~ each month of not less than 15% of
 2 all proceeds received during the previous month from the sales of
 3 burial rights, entombment rights, or columbarium rights made
 4 after ~~the effective date of this 1966 amendatory act~~ **March 10,**
 5 **1967.** No total deposit for a single adult burial right sale or
 6 assignment shall be less than \$20.00. Notwithstanding the
 7 minimum amount required to be paid into ~~such~~ **the** endowment **care**
 8 fund, ~~from the proceeds of sales of lots or burial rights, as~~
 9 ~~provided herein,~~ any cemetery which has an endowment **care** fund
 10 of more than \$125,000.00 and exceeding \$10,000.00 per acre of the
 11 developed portion of ~~such~~ **the** cemetery ~~—~~ may ~~make~~
 12 ~~application~~ **apply** to the cemetery commission for a waiver of the
 13 15% or \$20.00 minimum requirement. The cemetery commission shall
 14 take ~~such~~ testimony and ~~make such investigation~~ **investigate**
 15 as it ~~deems~~ **considers** advisable pursuant to ~~such~~ **the**
 16 application. If the cemetery commission determines that the
 17 applicant has an endowment **care** fund of more than \$125,000.00 and
 18 exceeding \$10,000.00 per acre of the developed portion of ~~such~~
 19 **the** cemetery and that the income from ~~such~~ **the** fund is
 20 sufficient to meet the then current cost of keeping the
 21 applicant's cemetery in good condition, it shall grant a waiver
 22 of the 15% and \$20.00 minimum requirement ~~—~~ and ~~it shall~~
 23 ~~grant~~ **allow** such modifications with respect to contributions to
 24 ~~such~~ **the** fund as it ~~deems~~ **considers** advisable.

25 (3) The endowment care fund may be administered by the board
 26 of directors, ~~itself,~~ or by ~~such~~ **the fund's** trustees,
 27 individual or corporate, as ~~it~~ **the fund** may select under the

1 terms of a trust instrument or declaration. If ~~it~~ **the fund**
2 selects trustees to administer the **endowment care** fund, ~~its~~ **the**
3 **fund's** liability shall be limited to reasonable care in the
4 selection. Directors may serve as trustees if at least 2 members
5 of the board are selected.

6 (4) The funds established under this section shall be
7 invested subject to the provisions of ~~sections 1 and 2 of Act~~
8 ~~No. 177 of the Public Acts of 1937, as amended, being sections~~
9 ~~555.201 and 555.202 of the Compiled Laws of 1948, and the~~
10 ~~investment of any fund for endowment care heretofore or hereafter~~
11 ~~made which meets the requirements of said act is ratified and~~
12 ~~confirmed~~ **article VII of the estates and protected individuals**
13 **code, 1998 PA 386, MCL 700.7101 to 700.7511.**

14 (5) No portion of the funds required to be set aside under
15 section 35 shall be used directly or indirectly for salaries of
16 the officers or directors of the cemetery association or
17 corporation, only the earnings from ~~such~~ **the** funds shall be
18 used ~~to keep the grounds and graves in good condition~~ **for**
19 **endowment care.**

20 (6) In addition to all other remedies at law or in equity,
21 ~~which any interested party may have,~~ the attorney general and
22 the circuit court of the county in which the cemetery is located
23 shall have all the powers and jurisdiction granted to the
24 attorney general and court as to trusts covered by ~~Act No. 280~~
25 ~~of the Public Acts of 1915, as amended, being sections 554.351 to~~
26 ~~554.353 of the Compiled Laws of 1948~~ **1915 PA 280, MCL 554.351 to**
27 **554.353.** The remedies granted ~~shall~~ include all ~~such~~

1 endowment care fund trusts without regard to uncertainty or
2 indefiniteness of ~~the~~ **its** beneficiaries. ~~thereof.~~

3 Enacting section 1. This amendatory act does not take
4 effect unless all of the following bills of the 92nd Legislature
5 are enacted into law:

6 (a) Senate Bill No. 37.

7

8 (b) Senate Bill No. 38.

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