

Act No. 91
Public Acts of 2003
Approved by the Governor
July 24, 2003
Filed with the Secretary of State
July 24, 2003
EFFECTIVE DATE: July 24, 2003

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003**

Introduced by Senator Jacobs

ENROLLED SENATE BILL No. 39

AN ACT 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:

Sec. 35. (1) The board of trustees of any corporation organized under this act shall provide for and establish an endowment care fund, the income or proceeds from which shall be perpetually devoted for endowment care.

(2) Contributions, subscriptions, or bequests to an endowment care fund, whether made by owners of lots, or rights of burial, or by other persons, shall be invested in safe and productive securities as the board of trustees determines, or deposited in the savings department of any state, national bank, or state or federally chartered savings and loan association and only the annual interest shall be used for endowment care.

(3) Any corporation organized under this act may also be named and constituted and may act as trustee of any gift, grant, bequest, or conveyance of personal property, to the corporation, in trust for the perpetual care, maintenance and preservation of, and the planting and cultivation of trees, shrubs, flowers and plants upon any cemetery lot or lots, or part of the cemetery owned or held and maintained by the corporation, and the care, preservation, repair, upkeep, and replacement of any monument, tomb, mausoleum, fence, or other structure, or for any of the purposes described in this section that are provided in the instrument or writing creating the trust. A trust shall not be considered invalid because contravening any statute or rule of law forbidding accumulations of income.

(4) On or before June 30 of each year an account of all proceeds received during the preceding calendar year from sales of interment rights, entombment rights, or columbarium rights made after March 10, 1967, shall be filed with the cemetery commission, along with an account, certified to by the trustee or trustees, of all amounts deposited the calendar year previous, into the endowment care fund.

(5) As used in this section, "endowment 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; raking, cleaning, filling, seeding, and sodding of graves; 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.

Sec. 35a. (1) The endowment care fund required to be set aside under section 35 for the purpose of keeping and maintaining the grounds of cemeteries established after March 10, 1967, or mausoleums not located in the confines of a dedicated cemetery and are established after March 10, 1967, shall be created by the deposit of \$25,000.00 into the fund before any sale of burial rights, entombment rights, or columbarium rights.

(2) With respect to all cemeteries or mausoleums, whether established before or after March 10, 1967, the fund shall be added to by payment, perpetually, each month of not less than 15% of all proceeds received during the previous month from the sales of burial rights, entombment rights, or columbarium rights made after March 10, 1967. No total deposit for a single adult burial right sale or assignment shall be less than \$20.00. Notwithstanding the minimum amount required to be paid into the endowment care fund, any cemetery which has an endowment care fund of more than \$125,000.00 and exceeding \$10,000.00 per acre of the developed portion of the cemetery may apply to the cemetery commission for a waiver of the 15% or \$20.00 minimum requirement. The cemetery commission shall take testimony and investigate as it considers advisable pursuant to the application. If the cemetery commission determines that the applicant has an endowment care fund of more than \$125,000.00 and exceeding \$10,000.00 per acre of the developed portion of the cemetery and that the income from the fund is sufficient to meet the then current cost of keeping the applicant's cemetery in good condition, it shall grant a waiver of the 15% and \$20.00 minimum requirement and allow such modifications with respect to contributions to the fund as it considers advisable.

(3) The endowment care fund may be administered by the board of directors, or by the fund's trustees, individual or corporate, as the fund may select under the terms of a trust instrument or declaration. If the fund selects trustees to administer the endowment care fund, the fund's liability shall be limited to reasonable care in the selection. Directors may serve as trustees if at least 2 members of the board are selected.

(4) The funds established under this section shall be invested subject to the provisions of section 7302 of the estates and protected individuals code, 1998 PA 386, MCL 700.7302.

(5) No portion of the funds required to be set aside under section 35 shall be used directly or indirectly for salaries of the officers or directors of the cemetery association or corporation, only the earnings from the funds shall be used for endowment care.

(6) 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 care fund trusts without regard to uncertainty or indefiniteness of its beneficiaries.

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

- (a) Senate Bill No. 37.
- (b) Senate Bill No. 38.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

Approved

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Governor