

HOUSE BILL No. 6033

May 1, 2008, Introduced by Reps. Sak, Farrah, Virgil Smith, Shaffer, Wojno, Hammon, Amos, Pavlov, Knollenberg, Condino, Green, Meadows, Dean and Cushingberry and referred to the Committee on Regulatory Reform.

A bill to amend 1968 PA 251, entitled
"Cemetery regulation act,"
by amending the title and sections 2, 2a, 8, 9, 10, 12, 12a, 13, 15, 16, 18, 19, 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, 456.539, and 456.541), the title and sections 2, 8, 9, 10, 12, 12a, 13, 15, 16, 18, 19, and 21 as amended by 2004 PA 22 and section 2a as added by 1982 PA 132, and by adding sections 9a, 9b, 9c, and 16b; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to regulate the creation, **OWNERSHIP**, and management of cemeteries; to provide for a cemetery commissioner ~~—~~and to prescribe the powers and duties of the commissioner; to require the

1 registration, **INVESTIGATION**, and audit of cemeteries **AND LICENSURE**
2 **OF CEMETERY OWNERS**; to provide for long-term care of certain
3 cemeteries; to regulate persons selling burial, entombment, or
4 columbarium rights **AND CERTAIN MERCHANDISE; TO PROVIDE FOR IMMUNITY**
5 **AND INDEMNIFICATION TO CERTAIN PERSONS UNDER CERTAIN CIRCUMSTANCES;**
6 and to prescribe remedies and penalties.

7 Sec. 2. As used in this act:

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

10 (i) A burial ground for earth interments.

11 (ii) A mausoleum for crypt entombments.

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

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

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

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

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

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

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

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

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

1 cremated human remains.

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

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

6 (k) "Cemetery commissioner" or "commissioner" means the
7 director of the department of labor and economic growth or a
8 designee of the director.

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

12 (m) "Person" means an individual, group of individuals, sole
13 proprietorship, partnership, limited liability company,
14 association, corporation, government agency, cemetery, or a
15 combination of these legal entities.

16 (N) **"ENDOWMENT CARE" AND "PERPETUAL CARE" MEAN ALL GENERAL**
17 **WORK NECESSARY TO KEEP THE CEMETERY PROPERTY IN A PRESENTABLE**
18 **CONDITION AT ALL TIMES, INCLUDING, BUT NOT LIMITED TO, THE CUTTING**
19 **OF GRASS AT REASONABLE INTERVALS; RAKING, CLEANING, FILLING,**
20 **SEEDING, AND SODDING OF GRAVES; REPLACEMENT, PRUNING, OR REMOVAL OF**
21 **SHRUBS AND TREES IN ORDER TO ASSURE ACCESS TO INTERMENT RIGHTS; AND**
22 **THE REPAIR AND MAINTENANCE OF ENCLOSURES, BUILDINGS, DRIVES, WALKS,**
23 **AND THE VARIOUS MEMORIAL GARDENS.**

24 (O) "GOOD MORAL CHARACTER" MEANS THAT TERM AS DEFINED AND
25 DETERMINED UNDER 1974 PA 381, MCL 338.41 TO 338.47.

26 (P) "LICENSEE" MEANS A PERSON LICENSED UNDER THIS ACT.

27 (Q) "CEMETERY OWNER" OR "OWNER" MEANS THE PERSON WHO HAS TITLE

1 TO THE CEMETERY.

2 (R) "A PERSON DIRECTLY OR INDIRECTLY CONTROLLING THE CEMETERY
3 OWNER" MEANS ANY OF THE FOLLOWING:

4 (i) A PERSON, AN OFFICER OF A PERSON, A PARTNER OF A PERSON, OR
5 A MEMBER OR MANAGER OF A LIMITED LIABILITY COMPANY, WHO HOLDS MORE
6 THAN 50% VOTING RIGHTS IN A CEMETERY OWNER.

7 (ii) A PERSON WHO IS A MEMBER OF THE BOARD OF DIRECTORS OF A
8 CEMETERY OWNER, A PARTNER IN A CEMETERY OWNER, OR A MEMBER OR
9 MANAGER OF A LIMITED LIABILITY COMPANY THAT IS A CEMETERY OWNER.

10 (iii) AN ADMINISTRATIVE OFFICIAL OF THE CEMETERY OWNER OR THE
11 PERSON DESCRIBED IN SUBPARAGRAPH (i), COMPARABLE TO A CHIEF
12 ADMINISTRATIVE OFFICER, CHIEF EXECUTIVE OFFICER, OR CHIEF FINANCIAL
13 OFFICER.

14 Sec. 2a. The cemetery commissioner, or the commissioner's
15 spouse or child, shall not have a **DIRECT OR INDIRECT** financial
16 interest in a cemetery, **CEMETERY OPERATIONS**, a supplier of cemetery
17 services or cemetery memorials, or a funeral establishment as
18 defined in section 1801 of ~~Act No. 299 of the Public Acts of 1980,~~
19 ~~being section 339.1801 of the Michigan Compiled Laws~~ **THE**
20 **OCCUPATIONAL CODE, 1980 PA 299, MCL 339.1801.**

21 Sec. 8. The commissioner may promulgate rules ~~in accordance~~
22 ~~with and subject to~~ **UNDER** the administrative procedures act of
23 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement and
24 administer this act, including, **BUT NOT LIMITED TO**, rules regarding
25 all of the following:

26 (a) The maintenance of records relative to the financial
27 aspects of cemeteries.

(b) Requirements for applications for the granting of
 LICENSES, permits, and registrations required under this act,
 INCLUDING, BUT NOT LIMITED TO, THE GOOD MORAL CHARACTER AND
 FINANCIAL SECURITY AND STABILITY, AND RESPONSIBILITY, OF THE ACTUAL
 OR PROPOSED PERSON DIRECTLY OR INDIRECTLY CONTROLLING THE CEMETERY
 OWNER.

(c) The formal and informal procedures governing the conduct
 of contested cases under this act before the commissioner or an
 authorized hearing officer DESIGNATED BY THE COMMISSIONER.

(D) REQUIREMENTS FOR TRUST AGREEMENTS UNDER THIS ACT.

(E) THE ESTABLISHMENT, CONTROL, RECORD KEEPING, AND AUDITING
 OF ENDOWMENT CARE TRUST OR PERPETUAL CARE TRUST FUNDS UNDER THIS
 ACT, MERCHANDISE TRUST ACCOUNTS, MERCHANDISE ESCROW ACCOUNTS,
 SPECIAL CONSTRUCTION TRUST FUNDS, CEMETERY DEVELOPMENT FUNDS, AND
 FUNDS REGULATED UNDER THE PREPAID FUNERAL AND CEMETERY SALES ACT,
 1986 PA 255, MCL 328.211 TO 328.235.

(F) THE PROVISION OF PERPETUAL CARE.

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. ~~Upon the refusal of~~
~~a witness to appear, testify, or submit books and records after a~~
~~written request, the commissioner or a party to a contested case~~
~~may apply to the circuit court for Ingham county for a subpoena or~~
~~a subpoena duces tecum. The court shall issue a subpoena when~~
~~reasonable grounds are shown.~~

(2) IN FURTHERANCE OF THE COMMISSIONER'S INVESTIGATIVE POWERS,

1 THE COMMISSIONER MAY PETITION THE INGHAM COUNTY CIRCUIT COURT OR
2 ANOTHER COURT OF COMPETENT JURISDICTION TO ISSUE A SUBPOENA OR
3 SUBPOENA DUCES TECUM REQUIRING A PERSON TO APPEAR BEFORE THE
4 COMMISSIONER, OR A DESIGNEE, IN REFERENCE TO A MATTER WITHIN THE
5 SCOPE OF AN INVESTIGATION. THE COMMISSIONER MAY FURTHER PETITION
6 THE COURT FOR AN ORDER TO COMPEL COMPLIANCE OR AN ORDER OF CONTEMPT
7 OR ANY OTHER APPROPRIATE ORDER IN CONNECTION WITH ANY PERSON'S
8 REFUSAL OR NEGLECT TO COMPLY WITH A SUBPOENA.

9 (3) IN FURTHERANCE OF A HEARING OR OTHER ADMINISTRATIVE
10 PROCEEDING HELD UNDER THIS ACT, THE COMMISSIONER MAY ISSUE A
11 SUBPOENA TO REQUIRE A PERSON TO APPEAR OR TESTIFY OR PRODUCE
12 RELEVANT DOCUMENTARY MATERIAL FOR EXAMINATION AT THE HEARING OR
13 PROCEEDING. THE COMMISSIONER MAY PETITION THE INGHAM COUNTY CIRCUIT
14 COURT OR ANOTHER COURT OF COMPETENT JURISDICTION FOR AN ORDER TO
15 COMPEL COMPLIANCE OR ANY OTHER APPROPRIATE ORDER IN CONNECTION WITH
16 ANY PERSON'S REFUSAL OR NEGLECT TO APPEAR AT THE HEARING OR
17 PROCEEDING AFTER BEING SUBPOENAED. IF A PERSON FAILS TO APPEAR,
18 REFUSES TO TESTIFY, OR REFUSES TO PRODUCE DOCUMENTS AFTER AN ORDER
19 IS ENTERED BY THE COURT, ANY FAILURE TO OBEY THE ORDER MAY BE
20 PUNISHABLE BY THE COURT AS CONTEMPT.

21 (4) THE COMMISSIONER MAY DO THE FOLLOWING:

22 (A) CONDUCT INVESTIGATIONS REASONABLE AND NECESSARY TO
23 DETERMINE WHETHER ANY PERSON HAS VIOLATED OR IS ABOUT TO VIOLATE
24 ANY PROVISION OF THIS ACT OR ANY RULE PROMULGATED OR ORDER ISSUED
25 UNDER THIS ACT.

26 (B) REQUIRE OR ALLOW A PERSON TO FILE A STATEMENT IN WRITING,
27 UNDER OATH OR OTHERWISE AS THE COMMISSIONER DETERMINES, AS TO THE

1 FACTS AND CIRCUMSTANCES CONCERNING THE MATTER INVESTIGATED.

2 (5) THE COMMISSIONER SHALL HAVE THE AUTHORITY TO CONTROL,
3 MANAGE, AND DISPOSE OF OR TRANSFER AN ABANDONED CEMETERY, OR TO
4 REQUIRE ACCEPTANCE OF RESPONSIBILITY FOR AN ABANDONED CEMETERY,
5 ACCORDING TO LAW. THE COMMISSIONER MAY PROMULGATE RULES THAT ARE
6 NECESSARY TO CARRY OUT HIS OR HER POWERS AND DUTIES UNDER THIS
7 SUBSECTION.

8 (6) FOR THE PURPOSE OF ANY INVESTIGATION OR PROCEEDING UNDER
9 THIS ACT, AN AUTHORIZED EMPLOYEE OR AGENT OF THE DEPARTMENT, WHO IS
10 AN ATTORNEY, MAY REPRESENT THE COMMISSIONER OR THE DEPARTMENT IN
11 SUCH INVESTIGATION OR PROCEEDING BROUGHT UNDER THIS ACT.

12 (7) ANY PERSON REQUIRED BY THIS ACT TO TAKE ANY OATH OR
13 AFFIRMATION AND WHO MAKES ANY FALSE OATH OR AFFIRMATION IS
14 CONSIDERED TO HAVE COMMITTED PERJURY.

15 (8) ~~(2)~~When it REASONABLY appears to the commissioner that a
16 person ~~or registrant~~ has ~~violated~~ ENGAGED IN, OR IS ABOUT TO ENGAGE
17 IN, ANY ACT OR PRACTICE CONSTITUTING A VIOLATION OF this act or a
18 rule promulgated or order issued under this act, the commissioner
19 may do 1 or more of the following:

20 (a) Issue a cease and desist order. A PERSON ORDERED TO CEASE
21 AND DESIST IS ENTITLED TO A HEARING BEFORE THE COMMISSIONER OR
22 DESIGNATED HEARING OFFICER IF A WRITTEN REQUEST FOR A HEARING IS
23 FILED WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF THE ORDER. AT THE
24 OPTION OF THE AFFECTED PERSON, THE HEARING SHALL BE HELD WITHIN 30
25 DAYS AFTER THE WRITTEN REQUEST.

26 (b) AFTER AN INVESTIGATION, ISSUE A FORMAL COMPLAINT OR AN
27 ORDER, PLACING A LIMITATION ON THE USE OF A LICENSE, REGISTRATION

1 OR PERMIT.

2 (C) ~~(b)~~ Accept an assurance of discontinuance OF THE
3 VIOLATION.

4 (D) ~~(e)~~ Bring an action in the circuit court for the county in
5 which the person resides OR HAS ITS PRINCIPAL PLACE OF BUSINESS, or
6 in the circuit court for the county of Ingham, to enforce
7 compliance with this act or a rule promulgated or order issued
8 under this act.

9 (E) ASSESS ADMINISTRATIVE FINES UNDER SECTION 18 AFTER A
10 CONTESTED CASE HEARING IS HELD RESULTING IN FINDINGS OF A VIOLATION
11 OF THIS ACT OR A RULE PROMULGATED OR ORDER ISSUED UNDER THIS ACT.

12 (F) ISSUE AN ORDER TO REPLENISH A DEFICIT IN TRUST FUND
13 ACCOUNTS.

14 (G) ISSUE AN ORDER PROHIBITING THE WITHDRAWAL OR TRANSFER OF
15 ANY TRUST FUND MONEY.

16 (9) IN CONNECTION WITH SUBSECTION (8) (B), (E), (F), OR (G),
17 THE COMMISSIONER SHALL PROVIDE THE RESPONDENT WITH AN OPPORTUNITY
18 TO MEET AND CONFER WITH A DESIGNATED DEPARTMENT EMPLOYEE TO ALLOW
19 THE RESPONDENT TO SHOW COMPLIANCE WITH THIS ACT OR A RULE
20 PROMULGATED OR ORDER ISSUED UNDER THIS ACT PRIOR TO A CONTESTED
21 CASE HEARING. THE RESPONDENT MUST ELECT AND REQUEST A CONFERENCE
22 WITHIN 15 DAYS AFTER THE ISSUANCE OF AN ORDER OR A NOTICE OF INTENT
23 TO CONDUCT A CONTESTED CASE HEARING. SETTLEMENT DISCUSSIONS MAY
24 TAKE PLACE AT A CONFERENCE SUBJECT TO FINAL APPROVAL OF THE
25 COMMISSIONER.

26 (10) ~~(3) Upon a proper showing regarding~~ IN CONNECTION WITH an
27 action brought under subsection ~~(2)(e), a permanent or temporary~~

1 ~~injunction or a restraining order may be granted and~~ (8) (D) , THE
2 COURT MAY GRANT INJUNCTIVE RELIEF AND MAY APPOINT a receiver or
3 conservator ~~may be appointed by the court~~ OVER A CEMETERY, CEMETERY
4 OWNER, OR OTHER PERSON WHO ACTIVELY PARTICIPATED IN, AND BENEFITED
5 FROM, THE VIOLATION OF THIS ACT, RULE, OR ORDER AND WHO IS THE
6 SUBJECT OF THE ACTION. NOTWITHSTANDING THE PROVISION OF ANY OTHER
7 STATUTE TO THE CONTRARY, THE QUALIFICATIONS OF THE RECEIVER OR
8 CONSERVATOR SHALL BE DETERMINED BY THE COURT AFTER RECOMMENDATIONS
9 BY THE COMMISSIONER. A receiver or conservator appointed by the
10 court may OPERATE THE CEMETERY AND take possession of the assets,
11 INCLUDING ALL TRUST ACCOUNTS OF THE CEMETERY, CEMETERY OWNER, OR
12 OTHER PERSON WHO ACTIVELY PARTICIPATED IN, AND BENEFITED FROM, THE
13 VIOLATION OF THIS ACT, RULE, OR ORDER AND WHO IS THE SUBJECT OF THE
14 ACTION, and may sell, assign, transfer, or convey the ASSETS OF A
15 cemetery, ~~including a cemetery in receivership on the July 26, 2002~~
16 ~~date of the amendatory act that amended this subsection,~~ CEMETERY
17 OWNER, OR OTHER PERSON WHO ACTIVELY PARTICIPATED IN, AND BENEFITED
18 FROM, THE VIOLATION OF THIS ACT, RULE, OR ORDER, AND WHO IS THE
19 SUBJECT OF THE ACTION, to a municipal corporation or other person
20 other than the holder of a license for the practice of mortuary
21 science or a person who owns, manages, supervises, operates, or
22 maintains, either directly or indirectly, a funeral establishment,
23 under conditions prescribed by the court, in order to discharge
24 outstanding contractual obligations. A receiver OR CONSERVATOR
25 appointed under this section has all the powers, authority, and
26 remedies of an assignee for the benefit of creditors under chapter
27 52 of the revised judicature act of 1961, 1961 PA 236, MCL 600.5201

1 to 600.5265. The court may allow the receiver or conservator to
2 file for protection under the bankruptcy code.

3 (11) SUBJECT TO COURT APPROVAL, A RECEIVER OR CONSERVATOR
4 APPOINTED UNDER THIS ACT MAY DO ANY OF THE FOLLOWING:

5 (A) TAKE POSSESSION OF THE BOOKS, RECORDS, AND ASSETS OF THE
6 CEMETERY, CEMETERY OWNER, OR OTHER PERSON WHO ACTIVELY PARTICIPATED
7 IN, AND BENEFITED FROM, THE VIOLATION OF THIS ACT, RULE, OR ORDER
8 AND WHO IS THE SUBJECT OF AN ACTION UNDER SUBSECTION (8) (D) .

9 (B) EMPLOY EMPLOYEES AND AGENTS, LEGAL COUNSEL, ACTUARIES,
10 ACCOUNTANTS, APPRAISERS, CONSULTANTS, AND SUCH OTHER PERSONNEL AS
11 HE OR SHE CONSIDERS NECESSARY.

12 (C) FIX THE REASONABLE COMPENSATION OF EMPLOYEES AND AGENTS,
13 LEGAL COUNSEL, ACTUARIES, ACCOUNTANTS, APPRAISERS, AND CONSULTANTS.

14 (D) COLLECT ALL DEBTS AND MONEY DUE OR CLAIMS BELONGING TO THE
15 CEMETERY, CEMETERY OWNER, OR OTHER PERSON WHO ACTIVELY PARTICIPATED
16 IN, AND BENEFITED FROM, THE VIOLATION OF THIS ACT, RULE, OR ORDER
17 AND WHO IS THE SUBJECT OF AN ACTION UNDER SUBSECTION (8) (D) .

18 (E) SUE, DEFEND, COMPROMISE, AND SETTLE ALL DEBTS AND MONEY
19 DUE OR CLAIMS INVOLVING THE CEMETERY, CEMETERY OWNER, OR OTHER
20 PERSON WHO ACTIVELY PARTICIPATED IN, AND BENEFITED FROM, THE
21 VIOLATION OF THIS ACT, RULE, OR ORDER AND WHO IS THE SUBJECT OF AN
22 ACTION UNDER SUBSECTION (8) (D) .

23 (F) SELL ANY AND ALL REAL AND PERSONAL PROPERTY.

24 (G) BORROW MONEY ON THE SECURITY OF THE ASSETS OF THE
25 CEMETERY, CEMETERY OWNER, OR OTHER PERSON WHO ACTIVELY PARTICIPATED
26 IN, AND BENEFITED FROM, THE VIOLATION OF THIS ACT, RULE, OR ORDER
27 AND WHO IS THE SUBJECT OF THE ACTION UNDER SUBSECTION (8) (D) OR

1 BORROW MONEY WITHOUT SECURITY AND EXECUTE AND DELIVER ALL DOCUMENTS
2 NECESSARY FOR THAT TRANSACTION.

3 (H) EXERCISE ALL FIDUCIARY FUNCTIONS OF THE CEMETERY, CEMETERY
4 OWNER, OR OTHER PERSON WHO ACTIVELY PARTICIPATED IN, AND BENEFITED
5 FROM, THE VIOLATION OF THIS ACT, RULE, OR ORDER AND WHO IS THE
6 SUBJECT OF THE ACTION UNDER SUBSECTION (8) (D) AS OF THE DATE OF THE
7 COMMENCEMENT OF THE RECEIVERSHIP OR CONSERVATORSHIP.

8 (I) EXERCISE OTHER POWERS AND DUTIES AS MAY BE PROVIDED BY THE
9 COURT UNDER THE LAWS OF THIS STATE APPLICABLE TO THE APPOINTMENT OF
10 RECEIVERS OR CONSERVATORS.

11 (J) PAY ALL EXPENSES OF THE RECEIVERSHIP OR CONSERVATORSHIP,
12 INCLUDING ANY EXPENSES INCURRED BY THE STATE OF MICHIGAN, WHICH
13 EXPENSES SHALL BE A FIRST CHARGE UPON THE ASSETS OF THE CEMETERY,
14 CEMETERY OWNER, OR OTHER PERSON WHO ACTIVELY PARTICIPATED IN, AND
15 BENEFITED FROM, THE VIOLATION OF THIS ACT, RULE, OR ORDER AND WHO
16 IS THE SUBJECT OF THE ACTION UNDER SUBSECTION (8) (D), AND BE FULLY
17 PAID BEFORE ANY FINAL DISTRIBUTION OR PAYMENT TO CREDITORS,
18 SHAREHOLDERS, OR INVESTORS.

19 (K) PAY PRO RATA ANY AND ALL DEBTS OF THE CEMETERY, CEMETERY
20 OWNER, OR OTHER PERSON WHO ACTIVELY PARTICIPATED IN, AND BENEFITED
21 FROM, THE VIOLATION OF THIS ACT, RULE, OR ORDER AND WHO IS THE
22 SUBJECT OF THE ACTION UNDER SUBSECTION (8) (D), EXCEPT THAT DEBTS
23 NOT EXCEEDING \$50.00 IN AMOUNT MAY BE PAID IN FULL, WITHOUT
24 INTEREST.

25 (L) BORROW MONEY AS NECESSARY OR EXPEDIENT IN AIDING THE
26 LIQUIDATION OF THE CEMETERY, CEMETERY OWNER, OR OTHER PERSON WHO
27 ACTIVELY PARTICIPATED IN, AND BENEFITED FROM, THE VIOLATION OF THIS

1 ACT, RULE, OR ORDER AND WHO IS THE SUBJECT OF THE ACTION UNDER
2 SUBSECTION (8) (D), AND SECURE THE BORROWINGS BY THE PLEDGE,
3 HYPOTHECATION, OR MORTGAGE OF ASSETS OF THE CEMETERY, CEMETERY
4 OWNER, OR OTHER PERSON WHO ACTIVELY PARTICIPATED IN, AND BENEFITED
5 FROM, THE VIOLATION OF THIS ACT, RULE, OR ORDER AND WHO IS THE
6 SUBJECT OF THE ACTION UNDER SUBSECTION (8) (D).

7 (M) USE ASSETS OF THE CEMETERY, CEMETERY OWNER, OR OTHER
8 PERSON WHO ACTIVELY PARTICIPATED IN, AND BENEFITED FROM, THE
9 VIOLATION OF THIS ACT, RULE, OR ORDER AND WHO IS THE SUBJECT OF THE
10 ACTION PURSUANT TO SUBSECTION (8) (D) UNDER A LIQUIDATION ORDER TO
11 TRANSFER OBLIGATIONS.

12 (N) ENTER INTO CONTRACTS NECESSARY TO CARRY OUT THE ORDER TO
13 LIQUIDATE AND AFFIRM OR DISAVOW ANY CONTRACTS TO WHICH THE
14 CEMETERY, CEMETERY OWNER, OR OTHER PERSON WHO ACTIVELY PARTICIPATED
15 IN, AND BENEFITED FROM, THE VIOLATION OF THIS ACT, RULE, OR ORDER
16 AND WHO IS THE SUBJECT OF THE ACTION IS A PARTY.

17 (O) DELAY THE SALE OF THE ASSETS OF THE CEMETERY, CEMETERY
18 OWNER, OR OTHER PERSON WHO ACTIVELY PARTICIPATED IN, AND BENEFITED
19 FROM, THE VIOLATION OF THIS ACT, RULE, OR ORDER AND WHO IS THE
20 SUBJECT OF THE ACTION UNDER SUBSECTION (8) (D) IF THE RECEIVER OR
21 CONSERVATOR DETERMINES A DELAY IN THE SALE WOULD BE PRUDENT IN
22 ORDER TO OBTAIN A MORE FAVORABLE RATE OF RETURN ON THE SALE OF THE
23 ASSETS.

24 (P) REPORT TO THE COMMISSIONER AT TIME INTERVALS REQUESTED BY
25 THE COMMISSIONER WITH RESPECT TO ALL OF HIS OR HER ACTS AND
26 PROCEEDINGS IN CONNECTION WITH THE RECEIVERSHIP OR CONSERVATORSHIP.

27 (Q) OTHER REASONABLE AND NECESSARY ACTIONS AND POWERS

1 **PERMITTED BY LAW.**

2 (12) ~~(4)~~—In the order of sale of the cemetery, the court shall
 3 make provision for notice to creditors and the filing of claims
 4 against the receivership or conservatorship. ~~Any remaining funds~~
 5 **FUNDS** held ~~by~~ **IN TRUST OR ESCROW FOR** the cemetery ~~in escrow under~~
 6 ~~this act belong to the contract buyers or beneficiaries of the~~
 7 ~~contract buyers and~~ **BY THE CEMETERY OWNER, TRUSTEE, OR CUSTODIAN OF**
 8 **THOSE FUNDS** shall not be distributed to the general creditors of
 9 the cemetery **OWNER**. This section does not prohibit the court from
 10 allowing the sale of the cemetery to a person other than the holder
 11 of a license for the practice of mortuary science or a person who
 12 owns, manages, supervises, operates, or maintains, either directly
 13 or indirectly, a funeral establishment, or **FROM ALLOWING THE SALE**
 14 **OF THE CEMETERY TO A** municipal corporation.

15 (13) ~~(5)~~—In addition to an action taken under this section,
 16 the commissioner may deny an application or may suspend or revoke a
 17 **LICENSE**, permit, or registration after a ~~an~~ **ADMINISTRATIVE** hearing
 18 as ~~set forth~~ **PROVIDED FOR** in ~~this act~~ **SECTION 19**.

19 (14) **IF IT APPEARS FROM AN AUDIT OR OTHER INVESTIGATION MADE**
 20 **BY THE COMMISSIONER UNDER THIS ACT, OR FROM A REPORT MADE TO THE**
 21 **COMMISSIONER, THAT A CRIME HAS BEEN COMMITTED IN VIOLATION OF A**
 22 **PROVISION OF THIS ACT OR OTHER LAW OF THE STATE, THE COMMISSIONER**
 23 **SHALL IMMEDIATELY REPORT THE CRIME TO THE ATTORNEY GENERAL OR THE**
 24 **PROPER PROSECUTING ATTORNEY IN WRITING, AND THE ATTORNEY GENERAL OR**
 25 **PROSECUTING ATTORNEY SHALL TAKE SUCH ACTION ON THE REPORT AS THE**
 26 **FACTS WARRANT.**

27 **SEC. 9A. ALL DEPARTMENTS, STATE AGENCIES, PUBLIC BODIES**

1 CORPORATE, COMMITTEES, COMMISSIONERS, OR OFFICERS OF THIS STATE,
2 AND ANY POLITICAL SUBDIVISION OF THIS STATE, SO FAR AS IS
3 COMPATIBLE WITH THEIR DUTIES, SHALL GIVE THE COMMISSIONER OR HIS OR
4 HER DESIGNEE ANY NECESSARY ASSISTANCE REQUIRED BY THE COMMISSIONER
5 IN THE PERFORMANCE OF THE DUTIES OF THE COMMISSIONER. ALL
6 DEPARTMENTS, STATE AGENCIES, PUBLIC BODIES CORPORATE, COMMITTEES,
7 COMMISSIONERS, OR OFFICERS OF THIS STATE, AND ANY POLITICAL
8 SUBDIVISION OF THIS STATE, SHALL PROVIDE THE COMMISSIONER FREE
9 ACCESS TO ANY BOOK, RECORD, OR DOCUMENT IN THEIR CUSTODY RELATING
10 TO THE MATTERS WITHIN THE SCOPE OF THE COMMISSIONER IN THE
11 PERFORMANCE OF HIS OR HER DUTIES.

12 SEC. 9B. (1) THE COMMISSIONER MAY APPOINT DEPUTY COMMISSIONERS
13 OR ASSISTANTS TO PERFORM ANY DUTY, ACT, OR FUNCTION OR TO TAKE
14 CHARGE DURING THE COMMISSIONER'S ABSENCE, INCLUDING THE FOLLOWING
15 DISTINCT ACTIVITIES:

16 (A) AUDIT.

17 (B) LEGAL AFFAIRS.

18 (C) LICENSING OR REGISTRATION.

19 (D) INVESTIGATION.

20 (2) THE COMMISSIONER MAY APPOINT AND EMPLOY ACCOUNTANTS,
21 AUDITORS, APPRAISERS, AND OTHER NECESSARY ASSISTANTS OR SUPPORT
22 STAFF. THE COMMISSIONER MAY DESIGNATE SPECIAL DEPUTIES FROM
23 AVAILABLE PERSONNEL TO PERFORM SPECIFIED DUTIES, INCLUDING
24 SUPERVISION OF OFFICE OPERATIONS DURING THE ABSENCE OF THE
25 COMMISSIONER AND DEPUTY COMMISSIONERS.

26 (3) THE COMMISSIONER MAY ENTER INTO CONTRACTS TO ACCOMPLISH
27 REQUIREMENTS UNDER THIS ACT, INCLUDING FOR THE ENGAGEMENT OF

1 CONSULTANTS.

2 (4) THE COMMISSIONER MAY SELECT AND APPOINT A RECEIVER OR
3 CONSERVATOR IN THE MANNER PROVIDED FOR IN SECTION 9(10), SUBJECT TO
4 APPROVAL BY A COURT OF COMPETENT JURISDICTION.

5 (5) THE COMMISSIONER MAY REVOKE APPOINTMENTS, DESIGNATIONS,
6 AND DELEGATIONS OF AUTHORITY MADE PURSUANT TO THIS SECTION, AT HIS
7 OR HER DISCRETION. APPOINTEES AND DESIGNEES PROVIDED FOR IN THIS
8 SECTION SHALL BE PAID IN THE MANNER PRESCRIBED BY LAW OR CIVIL
9 SERVICE CLASSIFICATION.

10 SEC. 9C. (1) THE COMMISSIONER OR HIS OR HER REPRESENTATIVES
11 ARE IMMUNE FROM CIVIL LIABILITY, BOTH PERSONALLY AND
12 PROFESSIONALLY, FOR ANY OF THEIR ACTS OR OMISSIONS IF THE FOLLOWING
13 CONDITIONS ARE MET:

14 (A) THE COMMISSIONER OR HIS OR HER REPRESENTATIVES ACTED, OR
15 REASONABLY BELIEVED HE OR SHE ACTED, WITHIN THE SCOPE OF HIS OR HER
16 AUTHORITY.

17 (B) THE COMMISSIONER'S OR HIS OR HER REPRESENTATIVES' CONDUCT
18 DID NOT AMOUNT TO GROSS NEGLIGENCE THAT WAS THE PROXIMATE CAUSE OF
19 THE INJURY OR DAMAGES SUFFERED.

20 (2) THE COMMISSIONER OR HIS OR HER REPRESENTATIVES SHALL NOT
21 BE PERSONALLY LIABLE FOR THE ACTS OR OMISSIONS OF OTHERS, UNLESS
22 THE CONDITIONS CONTAINED IN SUBSECTION (1) ARE NOT MET.

23 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, DEFENSE AND
24 INDEMNIFICATION OF THE COMMISSIONER OR HIS OR HER REPRESENTATIVES
25 FOR AN ACT OR OMISSION UNDER THIS ACT SHALL BE CONDUCTED IN
26 ACCORDANCE WITH THE GOVERNMENT LIABILITY FOR NEGLIGENCE ACT, 1964
27 PA 170, MCL 691.1401 TO 691.1419.

1 (4) IF A CLAIM IS MADE OR A CIVIL ACTION IS COMMENCED AGAINST
2 THE COMMISSIONER OR HIS OR HER REPRESENTATIVES, EITHER PERSONALLY
3 OR PROFESSIONALLY, FOR AN ACT OR OMISSION OCCURRING WITHIN THE
4 COURSE OF EMPLOYMENT AS IT PERTAINS TO THIS ACT, OR ANY SUCCESSOR
5 ACT, LEGAL REPRESENTATION SHALL BE PROVIDED BY THE ATTORNEY GENERAL
6 OR A SPECIAL ASSISTANT ATTORNEY GENERAL APPOINTED TO PROVIDE SUCH
7 REPRESENTATION, UNLESS THE CONDITIONS CONTAINED IN SUBSECTION (1)
8 ARE NOT MET.

9 (5) IF A JUDGMENT IS AWARDED OR A SETTLEMENT IS ENTERED INTO
10 IN A CIVIL ACTION AGAINST THE COMMISSIONER OR HIS OR HER
11 REPRESENTATIVES FOR AN ACT OR OMISSION PERTAINING TO THIS ACT, OR
12 ANY SUCCESSOR ACT, THE STATE SHALL INDEMNIFY THE COMMISSIONER OR
13 HIS OR HER REPRESENTATIVES, UNLESS THE CONDITIONS CONTAINED IN
14 SUBSECTION (1) ARE NOT MET.

15 (6) THIS SECTION DOES NOT APPLY TO THOSE PERSONS APPOINTED ON
16 A CONTRACTUAL BASIS AS A CONSERVATOR, RECEIVER, CONSULTANT,
17 ATTORNEY, OR APPRAISER, OR ACTING AS THE COMMISSIONER'S AGENT
18 PURSUANT TO A CONTRACTUAL AGREEMENT.

19 (7) AS USED IN THIS SECTION:

20 (A) "GROSS NEGLIGENCE" MEANS CONDUCT SO RECKLESS AS TO
21 DEMONSTRATE SUBSTANTIAL LACK OF CONCERN FOR WHETHER INJURY RESULTS.

22 (B) "REPRESENTATIVE" MEANS ANY EMPLOYEE ASSIGNED BY, OR UNDER
23 THE SUPERVISION OF, THE COMMISSIONER OR ANY PERSON EXERCISING POWER
24 DELEGATED BY THE COMMISSIONER IN ACCORDANCE WITH THIS ACT, BUT DOES
25 NOT INCLUDE ACCOUNTANTS, CONSULTANTS, CONSERVATORS, RECEIVERS,
26 APPRAISERS, OR ATTORNEYS RETAINED AS INDEPENDENT CONTRACTORS AND
27 ACTING IN THEIR PROFESSIONAL CAPACITY.

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

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

22 Sec. 12. (1) A person shall not establish a cemetery without a
 23 valid permit ~~or operate~~ **AND SHALL NOT OWN** an existing cemetery
 24 except under a valid ~~registration~~ **LICENSE** issued under this act **AND**
 25 **A REGISTRATION FOR EACH CEMETERY.**

26 (2) If a person proposes to purchase or otherwise acquire a
 27 controlling interest ~~in~~ **REGARDING** an existing cemetery ~~company~~ **OR**

1 CEMETERY OWNER, that person shall first apply to the commissioner
 2 for a certificate of approval of a proposed change of control ~~of a~~
 3 ~~ceemetery company~~ OR APPROVAL AS A SUCCESSOR BEFORE ACQUIRING A
 4 CONTROLLING INTEREST IN AN EXISTING CEMETERY OR CEMETERY OWNER AND
 5 BEFORE PURCHASING OR OTHERWISE ACQUIRING A CEMETERY OR CEMETERY
 6 OWNER. The application shall BE IN A FORM APPROVED BY THE
 7 COMMISSIONER AND contain the FOLLOWING:

8 (A) THE name and address of the proposed new owner. ~~or~~
 9 ~~operator and~~

10 (B) THE NAME AND ADDRESS OF THE PROPOSED SUCCESSOR.

11 (C) A LISTING OF THE ASSETS AND LIABILITIES RELATED TO THE
 12 CEMETERY, INCLUDING ALL TRUST ACCOUNTS AND THE VALUE OF THE TRUST
 13 ACCOUNTS, AND A STATEMENT OF WHO WILL ASSUME THOSE ASSETS AND
 14 LIABILITIES.

15 (D) A STATEMENT THAT THE PRINCIPAL FROM THE ENDOWMENT CARE
 16 TRUST OR PERPETUAL CARE TRUST ACCOUNTS WILL BE HELD IN ESCROW FOR 6
 17 MONTHS FROM THE LATER OF THE FOLLOWING:

18 (i) THE COMMISSIONER'S APPROVAL OF THE APPLICATION.

19 (ii) THE CLOSE OF THE SALE OF A CONTROLLING INTEREST IN THE
 20 CEMETERY OWNER OR THE SALE OF A SUBSTANTIAL PORTION OF THE ASSETS
 21 OF THE CEMETERY OWNER.

22 (iii) THE TRANSFER OF TITLE OF THE CEMETERY.

23 (E) PROOF THAT THE PROPOSED NEW OWNER HAS, OR WILL HAVE, TITLE
 24 TO THE CEMETERY OR, IF LEASED PURSUANT TO SECTION 2 OF 1855 PA 87,
 25 MCL 456.2, A COPY OF THE LEASE.

26 (F) THE NAME AND ADDRESS OF THE TRUSTEES AND CONSENT TO
 27 SERVICE OF PROCESS FOR THE TRUSTEES.

1 (G) A \$1,500.00 NONREFUNDABLE PROCESSING AND INVESTIGATION
2 FEE.

3 (H) ANY other information as the commissioner requires.

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

14 (4) IF THE APPLICANT IS NOT AN INDIVIDUAL, THE INVESTIGATION
15 DESCRIBED IN SUBSECTION (3) MAY BE MADE OF ANY PERSON DIRECTLY OR
16 INDIRECTLY CONTROLLING THE CEMETERY OWNER. THE INVESTIGATION
17 DESCRIBED IN SUBSECTION (3) MAY BE MADE OF ANY PROPOSED TRUSTEES OF
18 FUNDS REGULATED UNDER THIS ACT FOR THE PURPOSE OF DETERMINING PAST
19 CRIMINAL ACTIVITY AND COMPLIANCE WITH THIS ACT, RELATED ACTS, RULE,
20 OR ORDER AND ANY SIMILAR RELEVANT INFORMATION.

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

26 (A) SUSPEND or revoke the LICENSE OF THE CEMETERY OWNER OR
27 registration of the cemetery, or ~~take BOTH.~~

1 (B) ISSUE A CEASE AND DESIST ORDER OR OTHER ORDER REQUIRING A
2 PERSON TO IMMEDIATELY TAKE CURATIVE OR REMEDIAL ACTION.

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

5 (D) TAKE other appropriate action ~~until it demonstrates~~
6 ~~compliance with this section~~ **AUTHORIZED UNDER THIS ACT.**

7 (6) ~~(3)~~ As used in this section, "controlling interest" means
8 the capability to decide the operating and financial policies of
9 the cemetery ~~company~~ **OWNER** or to select the officers or directors
10 with majority control of the cemetery ~~company~~ **OWNER.**

11 Sec. 12a. (1) The commissioner or an examiner, investigator,
12 or other person the commissioner may appoint, may visit and examine
13 the affairs of any **OF THE FOLLOWING:**

14 (A) A cemetery or ~~person required to register under~~ **CEMETERY**
15 **OWNER SUBJECT TO** this act. ~~and~~

16 (B) **TRUSTEES OF FUNDS REGULATED UNDER THIS ACT AS THEY PERTAIN**
17 **TO CEMETERY TRUST FUNDS.**

18 (2) **THE COMMISSIONER** shall have free access to the books,
19 papers, records, and documents that relate to the business of the
20 cemetery ~~corporation,~~ **OR CEMETERY OWNER OR person, or agent, OR**
21 **TRUSTEE** acting on its behalf **FOR MATTERS RELATED TO THIS ACT.**

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

1 DETERMINED BY THE COMMISSIONER, NOT TO EXCEED THE ACTUAL COST OF
2 THE INSPECTION OR AUDIT.

3 Sec. 13. (1) Any person desiring to establish a cemetery shall
4 file with the commissioner, on forms furnished by the commissioner,
5 an application for a permit to establish a cemetery. The
6 application shall be accompanied by ~~an~~ **A NONREFUNDABLE**
7 investigation fee of ~~\$500.00~~ **\$1,500.00**.

8 (2) After a receipt of an application, the commissioner shall
9 conduct an investigation pertaining to the physical plans, the
10 community need for the planned cemetery, and pertinent information
11 pertaining to the applicant's experience, financial ~~stability,~~
12 **SECURITY AND STABILITY, RESPONSIBILITY,** ability, ~~and integrity, AND~~
13 **GOOD MORAL CHARACTER.** If the applicant is not ~~a natural person~~ **AN**
14 **INDIVIDUAL,** the same investigation shall be made of ~~the general~~
15 ~~manager and principal owners~~ **ANY PERSON DIRECTLY OR INDIRECTLY**
16 **CONTROLLING THE CEMETERY OWNER. AN INVESTIGATION MAY BE MADE OF ANY**
17 **PROPOSED TRUSTEES OF FUNDS REGULATED UNDER THIS ACT FOR THE PURPOSE**
18 **OF DETERMINING PAST CRIMINAL ACTIVITY AND COMPLIANCE WITH THIS ACT,**
19 **RELATED ACT, RULE, OR ORDER, AND ANY SIMILAR RELEVANT INFORMATION.**

20 Sec. 15. (1) Each ~~person operating a cemetery~~ **LICENSEE** shall
21 register ~~the~~ **EACH** cemetery **IT OWNS** by filing with the commissioner
22 a registration application ~~before June 2 of each year,~~ on a form
23 furnished by the commissioner ~~, and accompanied by the registration~~
24 ~~fee. A registration expires on July 1 of each year.~~

25 ~~—— (2) If the commissioner intends to deny registration, the~~
26 ~~procedure set forth in section 19 shall be followed. The~~
27 ~~commissioner may impose a late penalty filing fee of \$10.00 per day~~

1 ~~on a person which filed a registration application after June 1.~~

2 (2) A LICENSE AND REGISTRATION ISSUED UNDER THIS ACT EXPIRES
3 ON JULY 1 OF EACH YEAR AND SHALL BE RENEWED ANNUALLY UNLESS THE
4 COMMISSIONER DETERMINES THAT, UNDER THE PROVISIONS OF THIS ACT, THE
5 CEMETERY OWNER DOES NOT QUALIFY FOR LICENSURE OR THAT THE CEMETERY
6 DOES NOT QUALIFY FOR REGISTRATION.

7 (3) THE COMMISSIONER SHALL CHARGE AN ANNUAL FEE OF \$100.00 PER
8 YEAR FOR EACH CEMETERY REGISTERED. NOT LESS THAN 90 DAYS BEFORE THE
9 EXPIRATION DATE OF THE LICENSE AND REGISTRATION, THE COMMISSIONER
10 SHALL MAIL A RENEWAL APPLICATION TO EACH LICENSEE, TOGETHER WITH A
11 NOTICE ADVISING OF THE TIME AND PROCEDURES FOR RENEWAL OF THE
12 LICENSE AND REGISTRATION. THE COMMISSIONER MAY IMPOSE A LATE
13 PENALTY FILING FEE OF \$25.00 PER DAY ON A LICENSEE WHICH FILED A
14 RENEWAL APPLICATION AFTER JUNE 1.

15 (4) IF THE NAME OF THE CEMETERY IS DIFFERENT FROM THE NAME OF
16 THE CEMETERY OWNER, THE CEMETERY SHALL SUBMIT A COPY OF THE
17 CERTIFICATE OF ASSUMED NAME TO THE COMMISSIONER. A CEMETERY OWNER
18 MAY TRANSACT BUSINESS UNDER AN ASSUMED NAME AFTER THE CERTIFICATE
19 HAS BEEN FILED WITH THE APPROPRIATE FILING OFFICIAL AND A COPY
20 SUBMITTED TO THE COMMISSIONER.

21 Sec. 16. (1) ~~The commissioner shall require each~~ EACH cemetery
22 ~~to~~ OWNER SHALL establish and maintain an irrevocable endowment CARE
23 TRUST FUND OR PERPETUAL care TRUST fund ~~as required by section 35a~~
24 ~~of 1855 PA 87, MCL 456.35a, or section 7a of 1869 PA 12, MCL~~
25 ~~456.107a, and to~~ FOR EACH CEMETERY UNDER ITS OWNERSHIP OR CONTROL,
26 THE INCOME OR PROCEEDS FROM WHICH SHALL BE PERPETUALLY DEVOTED FOR
27 ENDOWMENT CARE OR PERPETUAL CARE OF THAT PARTICULAR CEMETERY. EACH

1 CEMETERY OWNER SHALL report annually before July 1 of each year, on
2 forms approved and furnished by the commissioner, care fund
3 information required to be reported to the commissioner by **THIS**
4 **ACT**, other statutes, and information regarding the funds as the
5 commissioner considers pertinent in the public interest. ~~A cemetery~~
6 ~~applying to the commissioner as authorized by other statutes for a~~
7 ~~care fund deposit modification or waiver shall be assessed the~~
8 ~~actual expenses for an examination or investigation by the~~
9 ~~commissioner. The commissioner shall require each~~ **THE REPORT SHALL**
10 **BE CERTIFIED TO BY THE CEMETERY OWNER AND THE TRUSTEES OF FUNDS.**
11 **FINANCIAL INFORMATION FOR THE CEMETERY OWNER OR TRUSTEES NOT**
12 **RELATED TO THE CEMETERY OR CEMETERY OPERATIONS IS EXEMPT FROM**
13 **DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL**
14 **15.231 TO 15.246.**

15 (2) ALL RECORDS PERTINENT TO THE MAINTENANCE, ESTABLISHMENT,
16 AND REPORTING OF A CEMETERY OWNER'S REQUIRED TRUST FUNDS SHALL BE
17 AVAILABLE FOR INSPECTION BY THE COMMISSIONER AT THE CEMETERY
18 OWNER'S REGISTERED OFFICE IN MICHIGAN OR AT ANOTHER MICHIGAN
19 LOCATION ON FILE WITH THE DEPARTMENT. THE COMMISSIONER SHALL BE
20 IMMEDIATELY NOTIFIED OF ANY CHANGE IN THE LOCATION OF THE RECORDS.

21 (3) AN IRREVOCABLE ENDOWMENT CARE TRUST FUND OR PERPETUAL CARE
22 TRUST FUND SHALL BE CREATED BY THE DEPOSIT OF AT LEAST \$75,000.00
23 INTO THE FUND BEFORE ANY SALE OF BURIAL RIGHTS, ENTOMBMENT RIGHTS,
24 OR COLUMBARIUM RIGHTS IS MADE.

25 (4) EACH MONTH, THE CEMETERY OWNER SHALL ADD TO THE ENDOWMENT
26 CARE TRUST OR PERPETUAL CARE TRUST FUND FOR EACH CEMETERY BY
27 PAYMENT OF NOT LESS THAN 15% OF ALL PROCEEDS RECEIVED DURING THE

1 PREVIOUS MONTH FROM THE SALES OF BURIAL RIGHTS, ENTOMBMENT RIGHTS,
2 OR COLUMBARIUM RIGHTS. NO TOTAL DEPOSIT FOR A SINGLE ADULT BURIAL
3 RIGHT SALE OR ASSIGNMENT SHALL BE LESS THAN \$20.00. EXCESS SUMS ON
4 DEPOSIT IN THE FUND CAN BE APPLIED BY A CEMETERY OWNER AGAINST
5 FUTURE DEPOSITS, BUT SHALL NOT BE WITHDRAWN.

6 (5) EACH person engaged as agent or seller, as a means of
7 livelihood either part time or full time, in the selling of burial
8 rights, entombment rights, or columbarium rights owned by a party
9 other than a cemetery OWNER or ~~corporation~~ OTHER PERSON subject to
10 the irrevocable endowment CARE OR PERPETUAL care TRUST fund
11 requirements of THIS ACT AND other laws, ~~to~~ SHALL deposit 15% of
12 all gross proceeds received from the sales of those rights into the
13 irrevocable endowment CARE OR PERPETUAL care TRUST fund of the
14 cemetery in which the rights are located if an irrevocable
15 endowment CARE OR PERPETUAL care TRUST fund exists for that
16 cemetery. ~~Excess sums on deposit in the fund can be applied by a~~
17 ~~cemetery against future deposits. THE TOTAL DEPOSIT FOR A SINGLE~~
18 ADULT BURIAL, ENTOMBMENT, OR COLUMBARIUM RIGHT SALE OR ASSIGNMENT
19 SHALL BE NOT LESS THAN \$20.00.

20 (6) NOTWITHSTANDING THE MINIMUM AMOUNT REQUIRED TO BE PAID
21 INTO THE IRREVOCABLE ENDOWMENT CARE TRUST OR PERPETUAL CARE TRUST
22 FUND FROM THE PROCEEDS OF SALES OF LOTS OR BURIAL RIGHTS, THE OWNER
23 OF ANY CEMETERY THAT HAS AN IRREVOCABLE ENDOWMENT CARE TRUST OR
24 PERPETUAL CARE TRUST FUND OF MORE THAN \$750,000.00 AND EXCEEDING
25 \$60,000.00 PER ACRE OF THE DEVELOPED PORTION OF THE CEMETERY MAY
26 APPLY TO THE COMMISSIONER FOR A WAIVER OF THE 15% OR \$20.00 MINIMUM
27 REQUIREMENT FOR FUTURE CONTRIBUTIONS. A CEMETERY OWNER APPLYING TO

1 THE COMMISSIONER AS AUTHORIZED BY THIS ACT AND OTHER STATUTES FOR
2 AN IRREVOCABLE ENDOWMENT CARE TRUST OR PERPETUAL CARE TRUST FUND
3 DEPOSIT MODIFICATION OR WAIVER SHALL BE ASSESSED THE ACTUAL
4 EXPENSES FOR AN EXAMINATION OR INVESTIGATION BY THE COMMISSIONER.
5 THE COMMISSIONER, OR HIS OR HER DESIGNEE, MAY TAKE TESTIMONY AND
6 INVESTIGATE AS HE OR SHE CONSIDERS ADVISABLE PURSUANT TO THE
7 APPLICATION FOR MODIFICATION OR WAIVER.

8 (7) A deposit required to be made ~~by these persons~~ PURSUANT TO
9 SUBSECTION (4) shall be modified or waived if the cemetery OWNER
10 has received an irrevocable endowment CARE TRUST OR PERPETUAL care
11 TRUST 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.~~

14 (8) ~~(2)~~ Subject to subsection ~~(8)~~ (14), a cemetery ~~which is~~
15 OWNER required to ~~register~~ BE LICENSED pursuant to this act ~~and an~~
16 ~~agent which is authorized by a cemetery or acting on its behalf~~
17 ~~under an agreement or sales contract to sell cemetery merchandise~~
18 ~~or cemetery services~~ shall establish a merchandise trust account
19 FOR EACH CEMETERY and deposit a percentage of the gross proceeds
20 received from the sales as determined by the commissioner. The
21 merchandise trust account shall be maintained exclusively for the
22 deposit of the money into a state or national bank, a state or
23 federally chartered savings and loan association, or a trust
24 company under the terms of a written trust agreement approved by
25 the commissioner. ~~It shall be the responsibility of each registrant~~
26 ~~under this act to assure that documents relating to the merchandise~~
27 ~~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 regardless of the \$100.00 charge limitation contained in section 12a(2). The funds shall be deposited not later than the month following their receipt.~~

(9) ~~(3)~~ Subject to subsection ~~(8)~~ **(14)**, 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.

(10) ~~(4)~~ Subject to subsection ~~(8)~~ **(14)**, 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.

(11) ~~(5) The commissioner shall require each~~ **EACH** cemetery ~~or agent authorized by it acting on its behalf to~~ **OWNER SHALL** 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 LICENSEE IS COMPLYING WITH** this act ~~is being implemented~~ **AND RULES PROMULGATED**

1 UNDER THIS ACT. INDIVIDUAL REPORTS SHALL BE SUBMITTED FOR EACH
2 CEMETERY. ALL DOCUMENTS, REPORTS, AND RECORDS REGARDING ANY TRUST
3 ACCOUNTS REQUIRED UNDER THIS ACT SHALL BE KEPT AT THE CEMETERY
4 OWNER'S REGISTERED OFFICE IN MICHIGAN OR AT ANOTHER MICHIGAN
5 LOCATION ON FILE WITH THE DEPARTMENT. THE CEMETERY OWNER SHALL
6 IMMEDIATELY NOTIFY THE COMMISSIONER OF ANY CHANGE IN THE LOCATION
7 OF THE RECORDS. IT IS THE RESPONSIBILITY OF EACH CEMETERY OWNER
8 REQUIRED TO BE LICENSED UNDER THIS ACT TO ASSURE THAT DOCUMENTS
9 RELATING TO ANY ACCOUNTS REQUIRED UNDER THIS ACT ARE PROVIDED TO
10 THE COMMISSIONER UPON REQUEST. IF A SUBPOENA IS ISSUED TO OBTAIN
11 THESE DOCUMENTS, THE CEMETERY OWNER SHALL PAY ALL COSTS RELATED TO
12 OBTAINING THE DOCUMENTS.

13 (12) ~~(6)~~ If, after an audit by the commissioner's staff, a
14 deficit in the amount of required deposits to the trust funds is
15 found, the commissioner may assess a penalty ~~not to exceed 10% of~~
16 **UP TO** the amount ~~of the deficit~~ **ALLOWED UNDER THIS ACT.** The
17 cemetery ~~or entity of a cemetery~~ **OWNER** may request an
18 administrative hearing before the commissioner **OR A HEARING OFFICER**
19 **DESIGNATED BY THE COMMISSIONER** within 30 days after being notified
20 ~~of a deficit~~ by the commissioner. If, following the administrative
21 hearing, the commissioner determines that a deficit does exist, an
22 additional penalty not to exceed 1.5% may be assessed each month on
23 the unpaid monthly balance until the deficit is paid in full.

24 (13) ~~(7)~~ All fees, charges, and penalties, **OR OTHER MONEY FROM**
25 **ANY SOURCE**, collected under this act, other than fines prescribed
26 in ~~section 21~~ **THIS ACT**, shall be paid to the commissioner **AND**
27 **DEPOSITED INTO THE CEMETERY REGULATION FUND CREATED WITHIN THE**

1 STATE TREASURY. Upon receipt OF FUNDS, the commissioner shall remit
 2 THE funds received to the department of treasury for deposit in the
 3 general fund. of the state. THE FUND SHALL BE USED SOLELY BY THE
 4 COMMISSIONER IN CARRYING OUT REQUIREMENTS OF THIS ACT. MONEY
 5 REMAINING AT THE END OF THE FISCAL YEAR SHALL BE CARRIED FORWARD TO
 6 THE NEXT FISCAL YEAR AND SHALL NOT REVERT TO THE GENERAL FUND. ANY
 7 INTEREST OR EARNINGS FROM THE FUND SHALL BE CREDITED TO THE FUND.
 8 THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF THE FUND. THE
 9 DEPARTMENT OF LABOR AND ECONOMIC GROWTH SHALL BE THE ADMINISTRATOR
 10 OF THE FUND FOR AUDITING PURPOSES.

11 (14) ~~(8)~~ Any preneed contracts for cemetery merchandise or
 12 services entered into on or after January 1, 2005 are subject to
 13 the prepaid funeral and cemetery sales act, 1986 PA 255, MCL
 14 328.211 to 328.235.

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

23 (15) NO PORTION OF THE IRREVOCABLE ENDOWMENT CARE TRUST OR
 24 PERPETUAL CARE TRUST FUNDS OR MERCHANDISE TRUST FUNDS REQUIRED TO
 25 BE SET ASIDE UNDER THIS SECTION SHALL BE USED DIRECTLY OR
 26 INDIRECTLY FOR SALARIES OF A PERSON WHO IS A MEMBER OF THE BOARD OF
 27 DIRECTORS OF A CEMETERY OWNER, A PARTNER IN A CEMETERY OWNER, OR A

1 MEMBER OR MANAGER OF A LIMITED LIABILITY COMPANY THAT IS A CEMETERY
2 OWNER, AND ONLY THE EARNINGS FROM ENDOWMENT CARE TRUST OR PERPETUAL
3 CARE TRUST FUNDS SHALL BE USED FOR ENDOWMENT CARE OR PERPETUAL
4 CARE.

5 (16) EACH TRUST FUND REQUIRED UNDER THIS ACT SHALL BE UNDER
6 THE CONTROL OF AT LEAST 2 TRUSTEES. AT LEAST 1 OF THE TRUSTEES
7 SHALL BE A RESIDENT OF MICHIGAN, AND AT LEAST 1 OF THE TRUSTEES
8 SHALL BE LICENSED IN THE STATE OF MICHIGAN AS A CERTIFIED PUBLIC
9 ACCOUNTANT, ATTORNEY, INVESTMENT ADVISOR, OR SECURITIES BROKER OR
10 DEALER.

11 (17) FOR THE PURPOSES OF THE STATUTORY AUTHORIZATION REQUIRED
12 BY SECTION 1105(2)(E) OF THE BANKING CODE OF 1999, 1999 PA 276, MCL
13 487.11105, TO ACT AS A FIDUCIARY IN THIS STATE, IF THE COMMISSIONER
14 APPROVES A PROFIT OR NONPROFIT CORPORATION ORGANIZED UNDER THE LAWS
15 OF THIS STATE OR FORMED IN ANOTHER JURISDICTION WITH A CERTIFICATE
16 OF AUTHORITY TO TRANSACT BUSINESS IN THIS STATE TO SERVE IN A
17 FIDUCIARY CAPACITY UNDER THIS ACT, THE NONBANKING CORPORATION IS
18 AUTHORIZED TO ACT IN THAT FIDUCIARY CAPACITY. THE AUTHORIZATION
19 UNDER THIS SUBSECTION CONFERS THE FIDUCIARY CAPACITY ONLY TO THE
20 EXTENT NECESSARY REGARDING THE PARTICULAR APPROVED CEMETERY AND
21 TRUST FUNDS AND IS NOT A GENERAL GRANT OF FIDUCIARY AUTHORITY. A
22 NONBANKING CORPORATION IS NOT AUTHORIZED TO ACT IN ANY OTHER
23 FIDUCIARY CAPACITY.

24 (18) THE COMMISSIONER MAY APPROVE TRUSTEES, NOTWITHSTANDING
25 THE REQUIREMENTS OF SUBSECTION (16), IF AN APPROVED SURETY BOND IS
26 PLACED ON FILE WITH THE COMMISSIONER EQUAL TO, OR GREATER THAN, THE
27 SUM OF THE TRUST MONEY REQUIRED, OR IF THE TOTAL TRUST MONEY DOES

1 NOT EXCEED \$150,000.00.

2 (19) THE ASSETS OF EACH TRUST FUND REGULATED UNDER THIS ACT
3 SHALL BE INVESTED PURSUANT TO SECTION 7302 OF THE ESTATES AND
4 PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.7302.

5 SEC. 16B. (1) SEPARATE ACCOUNTS SHALL BE ESTABLISHED FOR EACH
6 CEMETERY FOR ALL ENDOWMENT CARE TRUST OR PERPETUAL CARE TRUST
7 ACCOUNTS, MERCHANDISE TRUST ACCOUNTS, MERCHANDISE ESCROW ACCOUNTS,
8 CONSTRUCTION ACCOUNTS, DEVELOPMENT ACCOUNTS, AND PREPAID FUNERAL
9 AND CEMETERY SALES TRUST ACCOUNTS RELATED TO THAT PARTICULAR
10 CEMETERY.

11 (2) BUNDLING OR POOLING OF TRUST FUNDS, FROM EACH CEMETERY OR
12 AMONG CEMETERIES WITH COMMON OWNERSHIP, IS NOT PERMISSIBLE EXCEPT
13 UPON THE TERMS AND CONDITIONS APPROVED IN WRITING BY THE
14 COMMISSIONER AND ONLY AFTER THE COMMISSIONER IS REASONABLY
15 SATISFIED THAT THE TITLE TO, CHARACTER OF, AND ACCOUNTING FOR EACH
16 TRUST FUND IS PRESERVED.

17 (3) A SEPARATE DEVELOPMENT TRUST ACCOUNT SHALL BE ESTABLISHED
18 FOR EACH DEVELOPMENT PROJECT INDIVIDUALLY.

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

1 commissioner finds that the applicant **OR LICENSEE** or its officers,
2 **OWNERS, DIRECTORS, MEMBERS,** or general manager has done 1 or more
3 of the following:

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

6 (b) Not complied with this act.

7 (c) Been ~~guilty~~ **CONVICTED** of an unlawful or fraudulent act in
8 connection with selling or otherwise dealing in cemetery lots and
9 burial rights regulated by this act or funeral or cemetery
10 merchandise and services regulated by the prepaid funeral and
11 cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

12 (d) ~~Been guilty in the judgment of the commissioner of other~~
13 **DEMONSTRATED A LACK OF GOOD MORAL CHARACTER OR ENGAGED IN** conduct,
14 whether of the same or different character than specified in this
15 act, ~~which~~ **THAT** constitutes dishonest and unfair dealing.

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

18 (f) Violated the terms of an assurance of discontinuance
19 entered into with the commissioner pursuant to section ~~9(2)~~ **9(6)**.

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

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

24 (i) Adopted, enforced, or attempted to enforce a regulation of
25 the cemetery that prohibits the installation of a grave memorial or
26 burial vault unless the grave memorial or burial vault was
27 purchased from the cemetery. This subdivision does not prohibit a

~~cemetery~~ **LICENSEE** 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, **LICENSE**, or registration, or suspends or revokes an existing permit, **LICENSE**, or registration required by this act, the denial, revocation, or suspension shall ~~revoke~~ **PROHIBIT** the ~~cemetery~~ operation as to **APPLICANT OR LICENSEE FROM CONDUCTING CEMETERY OPERATIONS INCLUDING, BUT NOT LIMITED 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 **EXCEPT TO THE EXTENT EXPRESSLY PERMITTED IN THE ORDER OF DENIAL, SUSPENSION, OR REVOCATION**. The ~~corporation~~ **CEMETERY OWNER** 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~~ **\$10,000.00** for each separate violation of this act.

Sec. 19. If the commissioner intends to deny, **SUSPEND, OR REVOKE** an application for a permit, ~~to establish a cemetery, to refuse registration of an existing cemetery, or to suspend or revoke a registration~~ **LICENSE, OR REGISTRATION**, the commissioner shall give written notice to the person involved of that intent.

1 The notice shall state a time and a place for hearing before the
 2 commissioner or a designated hearing officer, and a summary
 3 statement of the reasons for the proposed action. The notice of
 4 intent shall be mailed by certified mail to the applicant,
 5 **LICENSEE, PERMITTEE, OR REGISTRANT** at least 15 days before the
 6 scheduled hearing date. The ~~commissioner~~**HEARING** shall hold a
 7 ~~hearing~~**BE HELD** pursuant to the notice in the manner required by
 8 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
 9 to 24.328, and the rules of procedure adopted by the commissioner.
 10 The commissioner shall issue a written decision.

11 Sec. 21. (1) ~~A~~**EXCEPT AS OTHERWISE PROVIDED FOR IN SUBSECTIONS**
 12 **(2) AND (3), A** person who violates this act is guilty of a
 13 misdemeanor ~~, and, if a natural person, the first offense shall be~~
 14 punishable by a fine of not more than ~~\$100.00 or imprisonment for~~
 15 ~~not more than 90 days, and a second offense shall be punishable by~~
 16 ~~a fine of not more than \$500.00 or imprisonment for not more than 1~~
 17 ~~year, or both \$10,000.00.~~

18 (2) If the violator is ~~other than a natural person~~**AN**
 19 **INDIVIDUAL**, the ~~first offense shall be~~**IS** punishable by a fine of
 20 not more than ~~\$100.00~~**\$10,000.00** and the ~~second offense shall be~~
 21 ~~punishable by a fine of not more than \$1,000.00~~**IMPRISONMENT FOR**
 22 **NOT MORE THAN 1 YEAR, OR BOTH.**

23 (3) **A VIOLATION OF SECTION 18 INVOLVING THE MISUSE OF TRUST**
 24 **ACCOUNTS IS SUBJECT TO SECTION 180A OF THE MICHIGAN PENAL CODE,**
 25 **1931 PA 328, MCL 750.180A.**

26 Enacting section 1. Section 11 of the cemetery regulation act,
 27 1968 PA 251, MCL 456.531, is repealed.

1 Enacting section 2. This amendatory act does not take effect
2 unless all of the following bills of the 94th Legislature are
3 enacted into law:

4 (a) Senate Bill No. _____ or House Bill No. 6036 (request no.
5 03314'07 **).

6 (b) Senate Bill No. _____ or House Bill No. 6037 (request no.
7 03315'07 **).