

SUBSTITUTE FOR
SENATE BILL NO. 513

<<A bill to amend 1968 PA 251, entitled
"Cemetery regulation act,"
by amending the title and sections 2, 8, 9, 10, 12, 12a, 13, 15,
16, 18, 19, and 21 (MCL 456.522, 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, 12, 12a, 13, 15, 16,
18, 19, and 21 as amended by 1982 PA 132, section 9 as amended by
2002 PA 550, section 10 as amended by 1982 PA 289, and by adding section
16a.>>

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2

An act to regulate the creation and management of

3

cemeteries; ~~to regulate the sale of cemetery services and~~

4

~~merchandise;~~ to provide for a cemetery commissioner, and to

5

prescribe the powers and duties of the commissioner; to require

6

the registration and audit of cemeteries; **to provide for**

1 **long-term care of certain cemeteries;** to regulate persons selling
 2 burial, entombment, or columbarium rights; ~~—, cemetery services,~~
 3 ~~or cemetery merchandise;~~ and to prescribe **remedies and**
 4 penalties.

5 Sec. 2. As used in this act:

6 (a) "Cemetery" means 1 or a combination of more than 1 of the
 7 following:

8 (i) A burial ground for earth interments.

9 (ii) A mausoleum for crypt entombments.

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

11 (iv) A columbarium for the ~~deposit~~ **inurnment** of cremated
 12 remains.

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

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

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

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

20 (f) "Mausoleum" means a ~~structure used, or intended to be~~
 21 ~~used, for the entombment in a crypt or crypts in the structure of~~
 22 ~~the remains of deceased persons~~ **building or other aboveground**
 23 **structure that is affixed to land and is a permanent repository**
 24 **for human remains.**

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

27 (h) "Columbarium" means a ~~structure or room or other space~~

1 ~~in a~~ building or **other aboveground** structure ~~used or intended~~
 2 ~~to be used for the inurnment or deposit of~~ **that is affixed to**
 3 **land and is a permanent repository for** cremated human remains.

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

7 (j) "Cremation" means the incineration of the body of the
 8 deceased person.

9 ~~(k) "Cemetery services" means all services offered to the~~
 10 ~~public, including grave opening, closings, and foundation~~
 11 ~~installation.~~

12 ~~(l) "Cemetery merchandise" means all merchandise sold to the~~
 13 ~~public by a cemetery, including vaults, concrete boxes,~~
 14 ~~monuments, memorials, and foundations.~~

15 (k) ~~(m)~~ "Cemetery commissioner" or "commissioner" means the
 16 director of ~~licensing and regulation~~ **the department of consumer**
 17 **and industry services** or a designee of the director.

18 (l) "Municipal corporation" means that term as defined in
 19 section 1 of 1927 PA 10, MCL 456.181.

20 (m) "Person" means an individual, group of individuals, sole
 21 proprietorship, partnership, limited liability company,
 22 association, corporation, government agency, cemetery, or a
 23 combination of these legal entities.

24 Sec. 8. The commissioner may promulgate rules in accordance
 25 with and subject to ~~Act No. 306 of the Public Acts of 1969, as~~
 26 ~~amended, being sections 24.201 to 24.315 of the Michigan Compiled~~
 27 ~~Laws~~ **the administrative procedures act of 1969, 1969 PA 306, MCL**

1 24.201 to 24.328, to implement and administer this act, including
2 rules regarding **all of the following**:

3 (a) The ~~maintaining~~ **maintenance** of records relative to the
4 financial aspects of cemeteries.

5 (b) Requirements for applications for the granting of permits
6 and registrations required under this act.

7 (c) The formal and informal procedures governing the conduct
8 of contested cases under this act before the commissioner or an
9 authorized hearing officer.

10 ~~(d) Requirements for the establishment and maintenance of~~
11 ~~special trust funds to provide for the future performance~~
12 ~~obligations and special care or decoration obligations of~~
13 ~~cemeteries.~~

14 Sec. 9. (1) The commissioner may hold **administrative**
15 hearings, administer oaths, take testimony under oath, and
16 request in writing the appearance and testimony of witnesses,
17 including the production of books and records **pursuant to the**
18 **administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to**
19 **24.328**. Upon the refusal of a witness to appear, testify, or
20 submit books and records after a written request, the
21 commissioner or a party to a contested case may apply to the
22 circuit court for Ingham county for a subpoena or a subpoena
23 duces tecum. The court shall issue a subpoena when reasonable
24 grounds are shown.

25 (2) ~~When~~ **If** it appears to the commissioner that a person or
26 registrant has violated this act or a rule promulgated or order
27 issued under this act, the commissioner may do 1 or more of the

1 following:

2 (a) Issue a cease and desist order.

3 (b) Accept an assurance of discontinuance.

4 (c) Bring an action in the circuit court for the county in
5 which the person resides or in the circuit court for the county
6 of Ingham, to enforce compliance with this act or a rule
7 promulgated or order issued under this act.

8 (3) Upon a proper showing regarding an action brought under
9 subsection (2)(c), a permanent or temporary injunction or a
10 restraining order may be granted and a receiver or conservator
11 may be appointed by the court. A receiver or conservator
12 appointed by the court may take possession of the assets and may
13 sell, assign, transfer, or convey the cemetery to a municipal
14 corporation or other person other than the holder of a license
15 for the practice of mortuary science or a person who owns,
16 manages, supervises, operates, or maintains, either directly or
17 indirectly, a funeral establishment, under conditions prescribed
18 by the court — in order to discharge outstanding contractual
19 obligations. **A receiver appointed under this section has all the**
20 **powers, authority, and remedies of an assignee for the benefit of**
21 **creditors under chapter 52 of the revised judicature act of 1961,**
22 **1961 PA 236, MCL 600.5201 to 600.5265.** The court may allow the
23 receiver or conservator to file for protection under the
24 bankruptcy code.

25 (4) In the order of sale of the cemetery, the court shall
26 make provision for notice to creditors and the filing of claims
27 against the receivership or conservatorship. Any remaining funds

1 held by the cemetery in escrow under this act belong to the
2 contract buyers or beneficiaries of the contract buyers and shall
3 not be distributed to the general creditors of the cemetery.
4 This section does not prohibit the court from allowing the sale
5 of the cemetery to a person other than the holder of a license
6 for the practice of mortuary science or a person who owns,
7 manages, supervises, operates, or maintains, either directly or
8 indirectly, a funeral establishment, or **to a municipal**
9 corporation.

10 (5) In addition to an action taken under this section, the
11 commissioner may deny an application or may suspend or revoke a
12 permit or registration after a hearing as set forth in this act.

13 ~~(6) As used in this section, "municipal corporation" means~~
14 ~~that term as defined in section 1 of 1927 PA 10, MCL 456.181.~~

15 Sec. 10. (1) The commissioner shall institute and maintain
16 a system of auditing trust funds required by this act and of
17 registering each cemetery authorized to be created, maintained,
18 and operated under ~~Act No. 12 of the Public Acts of 1869, as~~
19 ~~amended, being sections 456.101 to 456.119 of the Michigan~~
20 ~~Compiled Laws 1869 PA 12, MCL 456.101 to 456.119, and Act~~
21 ~~No. 87 of the Public Acts of 1855, as amended, being sections~~
22 ~~456.1 to 456.36 of the Michigan Compiled Laws 1855 PA 87, MCL~~
23 **456.1 to 456.36, and conducting sales under the prepaid funeral**
24 **and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235, as**
25 well as any other cemetery operating under state law or local
26 ordinance. A cemetery owned and operated by a ~~municipality~~
27 **municipal corporation**, church, or religious institution ~~shall~~

1 ~~be~~ **is** exempt from this act. However, a ~~municipality~~ **municipal**
2 **corporation** may pass ordinances necessary for regulating that
3 ~~municipality's~~ **municipal corporation's** cemeteries.

4 (2) A cemetery for earth interment of 10 acres or less in
5 size, which is owned and operated entirely and exclusively by an
6 existing nonprofit entity and in which a burial has taken place
7 before September 15, 1968, ~~shall be~~ **is** exempt from the fee
8 provisions of this act, ~~That cemetery~~ shall have ~~its~~ **the**
9 trust fund required by this act audited at the discretion of the
10 commissioner, ~~It shall also be~~ **and is** exempt from the
11 **endowment** care **trust** fund requirements of section 16, except ~~as~~
12 ~~to the care fund~~ **for the** report requirements if the cemetery
13 maintains care or memorial funds.

14 (3) On a periodic basis determined appropriate by the
15 commissioner but not less than once every 3 years, the commission
16 shall inspect the facilities and grounds of a cemetery. The
17 commission may charge the cemetery for the actual expenses for
18 the inspection but not more than \$1,000.00.

19 Sec. 12. (1) A person ~~or business entity~~ shall not
20 establish a cemetery without a valid permit or operate an
21 existing cemetery except under a valid registration **issued** under
22 this act.

23 (2) If a person ~~or business entity~~ proposes to purchase or
24 otherwise acquire a controlling interest in an existing cemetery
25 company, that person ~~or business entity~~ shall first ~~make~~
26 ~~application~~ **apply** to the commissioner for a certificate of
27 approval of a proposed change of control of a cemetery company.

1 The application shall contain the name and address of the
2 proposed new owner or operator and other information as the
3 commissioner requires. The commissioner shall issue a
4 certificate of approval only after he or she is satisfied that
5 the proposed new owner is qualified by character, experience, and
6 financial responsibility to control and operate the cemetery in a
7 legal and proper manner, and that the interest of the public
8 generally will not be jeopardized by the proposed change in
9 ownership and management. The application for a purchase or
10 change of control must be accompanied by an initial filing or
11 investigation fee of \$500.00. ~~As used in this section,~~
12 ~~"controlling interest" means the capability to decide the~~
13 ~~operating and financial policies of the cemetery company or to~~
14 ~~select a majority of the officers or directors of the cemetery~~
15 ~~company. In deciding whether a person or business entity has or~~
16 ~~proposes to acquire a controlling interest, the percentage of the~~
17 ~~stock, assets, or other indicia of ownership which a person or~~
18 ~~business entity acquires or proposes to acquire need not be the~~
19 ~~only factor considered by the commissioner. If a person or~~
20 ~~business entity fails to comply with this section, the~~
21 commissioner shall order that ~~a~~ **an administrative** hearing be
22 held. If a transfer of controlling interest is found to have
23 taken place without prior commissioner approval, the commissioner
24 ~~in his or her discretion~~ may suspend or revoke the registration
25 of the cemetery or take other appropriate action ~~to insure~~
26 **until it demonstrates** compliance with this section.

27 (3) As used in this section, "controlling interest" means the

1 capability to decide the operating and financial policies of the
2 cemetery company or to select the officers or directors with
3 majority control of the cemetery company.

4 Sec. 12a. (1) The commissioner or an examiner,
5 investigator, or other person the commissioner may appoint, may
6 visit and examine the affairs of any cemetery or ~~business~~
7 ~~entity~~ **person** required to register under this act and shall have
8 free access to the books, papers, records, and documents that
9 relate to the business of the cemetery corporation, ~~business~~
10 ~~entity~~ **person**, or agent acting on its behalf.

11 (2) The books, papers, records, and documents shall be
12 available for inspection or audit at any time during regular
13 business hours with reasonable notice. One **or more** qualified
14 ~~person~~ **persons** shall conduct the audit whose services shall be
15 charged to and paid by the cemetery at the rate of \$10.00 per
16 hour, but not more than ~~\$100.00~~ **\$1,000.00** total.

17 Sec. 13. (1) Any person ~~or business entity~~ desiring to
18 establish a cemetery shall file with the commissioner, on forms
19 furnished by the commissioner, an application for a permit to
20 establish a cemetery. The application shall be accompanied by an
21 investigation fee of \$500.00.

22 (2) After a receipt of an application, the commissioner shall
23 ~~make~~ **conduct** an investigation pertaining to the physical plans,
24 the community need for the planned cemetery, and pertinent
25 information pertaining to the applicant's experience, financial
26 stability, ability, and integrity. If the applicant is ~~other~~
27 ~~than~~ **not** a natural person, the same investigation shall be made

1 of the general manager and principal owners.

2 Sec. 15. (1) Each ~~individual or business entity~~ **person**
3 operating a cemetery shall register the cemetery by filing with
4 the commissioner a registration application before June 2 of each
5 year, on a form furnished by the commissioner, and accompanied by
6 the registration fee. ~~Registrations shall expire~~ **A**
7 **registration expires** on July 1 of each year.

8 (2) If the commissioner intends to deny registration, the
9 procedure set forth in section 19 shall be followed. The
10 commissioner may impose a late penalty filing fee of \$10.00 per
11 day on ~~an individual or business entity~~ **a person** which filed a
12 registration application after June 1. ~~or on an individual or~~
13 ~~business entity which files a trust fund report after the due~~
14 ~~date set forth in this act.~~

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

1 shall be assessed the actual expenses for an examination or
2 investigation by the commissioner. The commissioner shall
3 require each person engaged as agent or seller, as a means of
4 livelihood either part time or full time, in the selling of
5 burial rights, entombment rights, or columbarium rights owned by
6 a party other than a cemetery or corporation subject to the care
7 fund requirements of other laws, to deposit 15% of all gross
8 proceeds received from the sales of those rights into the
9 irrevocable care fund of the cemetery in which the rights are
10 located if an irrevocable care fund exists for that cemetery.
11 Excess sums on deposit in the fund can be applied by a cemetery
12 against future deposits. A deposit required to be made by those
13 persons shall be modified or waived if the cemetery has received
14 a care fund deposit modification or waiver approved by the
15 commissioner. The total deposit for a single adult burial right
16 sale or assignment shall not be less than \$20.00.

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~~
20 ~~cemetery merchandise or cemetery services shall establish a~~
21 ~~merchandise trust account and deposit a percentage of the gross~~
22 ~~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 located in this state under the terms of a written trust~~
26 ~~agreement approved by the commissioner. The funds shall be~~
27 ~~deposited not later than the month following their receipt.~~

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

12 ~~—— (4) A contract or agreement made with a purchaser of cemetery~~
13 ~~merchandise and services shall contain a complete description of~~
14 ~~the cemetery merchandise purchased and of the services to be~~
15 ~~rendered.~~

16 (2) ~~—(5)—~~ The commissioner shall require each cemetery or
17 agent authorized by it acting on its behalf to report annually
18 before July 1 of each year on forms provided by the
19 commissioner. The reports shall contain information as the
20 commissioner considers necessary to ascertain that this act is
21 being implemented.

22 (3) ~~—(6)—~~ If, after an audit by the commissioner's staff, a
23 deficit in the amount of required deposits to the trust funds is
24 found, the commissioner may assess a penalty not to exceed 10% of
25 the amount of the deficit. The cemetery or entity of a cemetery
26 may request ~~a~~ **an administrative** hearing before the commissioner
27 within 30 days after being notified of a deficit by the

1 commissioner. If, following the **administrative** hearing, the
2 commissioner determines that a deficit does exist, an additional
3 penalty not to exceed 1.5% may be assessed each month on the
4 unpaid monthly balance until the deficit is paid in full.

5 (4) ~~(7)~~ All fees, charges, and penalties collected under
6 this act, other than fines prescribed in section 21, shall be
7 paid to the commissioner. Upon receipt, the commissioner shall
8 remit funds received to the department of treasury for deposit in
9 the general fund of the state.

<<Sec. 16a. A person shall not develop or build a mausoleum or
columbarium and engage in preconstruction sales of crypts or niches in a
mausoleum or columbarium unless that person does both of the following:

(a) Agrees to complete the mausoleum or columbarium within 4 years
after the date of the first sale of an entombment or inurnment right in
the proposed mausoleum or columbarium or, if construction is not
completed within that time and upon the request of the purchaser, agrees
to offer to the purchaser a refund of 100% of the purchase price with
interest calculated at the rate of 4% per annum.

(b) Agrees that if the person for whom the entombment or inurnment
right in the proposed mausoleum or columbarium dies before completion of
the mausoleum or columbarium, an alternative disposition of the remains
shall be provided until completion of the mausoleum or columbarium or
until a refund is made of 100% of the purchase price with interest
calculated at the rate of 4% per annum.>>

10 Sec. 18. (1) The commissioner may deny an application filed
11 under this act and refuse to issue a permit or registration, or
12 may suspend or revoke a permit or registration, or may reprimand,
13 place on probation, or take other disciplinary action against the
14 applicant if the commissioner's investigation reveals facts
15 which, with reference to the establishment of a cemetery, show
16 inappropriate physical plans; lack of community need; inadequate
17 experience, financial stability, or integrity to protect the
18 public welfare; or when the commissioner finds that the applicant
19 or its officers or general manager has done 1 or more of the
20 following:

21 (a) Made a false statement of a material fact in the

22 application.

23 (b) Not complied with this act.

24 (c) Been guilty of ~~a~~ **an unlawful or** fraudulent act in
25 connection with selling or otherwise dealing in cemetery lots ~~—~~
26 **and** burial rights ~~—~~ **regulated by this act or funeral** or
27 **cemetery merchandise and** services ~~of a type required to be~~

1 ~~registered under this~~ **regulated by the prepaid funeral and**
2 **cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.**

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

6 (e) **Violated article 18 of the occupational code, 1980 PA**
7 **299, MCL 339.1801 to 339.1812.**

8 (f) ~~(e)~~ Violated the terms of an assurance of
9 discontinuance entered into with the commissioner pursuant to
10 section 9(2).

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

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

15 (i) ~~(f)~~ Adopted, enforced, or attempted to enforce a
16 regulation of the cemetery ~~which~~ **that** prohibits the
17 installation of a grave memorial or burial vault unless the grave
18 memorial or burial vault was purchased from the cemetery.

19 ~~However, this~~ **This** subdivision ~~shall~~ **does** not prohibit a
20 cemetery from adopting and enforcing consistent rules and
21 regulations to be followed by both the cemetery and outside
22 vendors as to the quality, size, shape, type, installation, and
23 maintenance of the grave memorial or burial vault.

24 (2) If the commissioner denies an application for a permit or
25 registration, or suspends or revokes an existing permit or
26 registration required by this act, the denial, revocation, or
27 suspension shall revoke the cemetery operation as to the sale or

1 assignment of burial rights, entombment rights, **or** columbarium
2 rights, cemetery merchandise, or cemetery services after the date
3 of the suspension, revocation, or denial. The corporation shall
4 fulfill all contractual obligations and agreements entered into
5 before the date of the suspension, revocation, or denial, and
6 shall make required interments for the owners of burial rights,
7 entombment rights, or columbarium rights purchased before the
8 date of suspension, revocation, or denial.

9 **(3) The commissioner may impose an administrative fine of not**
10 **more than \$5,000.00 for each separate violation of this act.**

11 Sec. 19. If the commissioner intends to deny an application
12 for a permit to establish a cemetery, to refuse registration of
13 an existing cemetery, or to suspend or revoke a registration, the
14 commissioner shall give written notice to the person ~~or~~
15 ~~business~~ involved of that intent. The notice shall state a time
16 and a place for hearing before the commissioner or a designated
17 hearing officer, and a summary statement of the reasons for the
18 proposed action. The notice of intent shall be mailed by
19 certified mail to the applicant at least 15 days before the
20 scheduled hearing date. The commissioner shall hold a hearing
21 pursuant to the notice in the manner required by ~~Act No. 306 of~~
22 ~~the Public Acts of 1969, as amended, being sections 24.201 to~~
23 ~~24.315 of the Michigan Compiled Laws~~ **administrative procedures**
24 **act of 1969, 1969 PA 306, MCL 24.201 to 24.328**, and the rules of
25 procedure adopted by the commissioner. ~~— and~~ **The commissioner**
26 shall ~~make~~ **issue** a written decision.

27 Sec. 21. **(1)** A person ~~—, firm, partnership, association, or~~

1 ~~corporation~~ who violates this act is guilty of a misdemeanor,
2 and, if a natural person, the first offense shall be punishable
3 by a fine of not more than \$100.00 or imprisonment for not more
4 than 90 days, and a second offense shall be punishable by a fine
5 of not more than \$500.00 or imprisonment for not more than 1
6 year, or both.

7 **(2)** If the violator is other than a natural person, the first
8 offense shall be punishable by a fine of not more than \$100.00
9 and the second offense shall be punishable by a fine of not more
10 than \$1,000.00.

11 Enacting section 1. This amendatory act does not take
12 effect unless Senate Bill No. 512 of the 92nd Legislature is
13 enacted into law.