

SB-0674, As Passed Senate, December 19, 2008

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**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 674**

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, 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, and 456.541), the title and sections 2, 8, 9, 10, 12, 12a, 13, 15, 16, 18, and 21 as amended by 2004 PA 22 and section 2a as added by 1982 PA 132, and by adding sections 9a, 9b, and 13a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to regulate the creation and management of cemeteries; to provide for a cemetery commissioner and to prescribe the powers and duties of the commissioner; to require the registration

OR CONVICTED, HAS PLEADED GUILTY OR NOLO CONTENDERE, OR HAS FORFEITED BAIL CONCERNING ANY CRIMINAL OFFENSE UNDER THE LAWS OF ANY JURISDICTION, EITHER FELONY OR MISDEMEANOR, NOT INCLUDING TRAFFIC VIOLATIONS, UNLESS THE OFFENSE HAS BEEN EXPUNGED, PARDONED, OR REVERSED ON APPEAL OR OTHERWISE NULLIFIED AS DETERMINED BY THE COMMISSIONER.

(C) WHETHER THE PERSON HAS FILED, OR HAD FILED AGAINST IT, A PROCEEDING FOR BANKRUPTCY OR HAS EVER BEEN INVOLVED IN ANY FORMAL PROCESS TO ADJUST, DEFER, SUSPEND, OR OTHERWISE WORK OUT THE PAYMENT OF ANY DEBT.

(D) WHETHER THE PERSON HAS BEEN SERVED WITH A COMPLAINT OR OTHER NOTICE FILED WITH ANY PUBLIC BODY REGARDING A PAYMENT OF ANY TAX REQUIRED UNDER FEDERAL, STATE, OR LOCAL LAW THAT HAS BEEN DELINQUENT FOR 1 OR MORE YEARS.

(E) THE PERSON HAS A HISTORY OF NONCOMPLIANCE WITH ANY REGULATORY REQUIREMENTS IN THIS STATE, ANY OTHER JURISDICTION, OR THE FEDERAL GOVERNMENT.

Sec. 15. (1) Each person **OWNING, MANAGING, OR** operating a cemetery shall register the cemetery by filing with the commissioner a registration application before June 2 of each year, on a form furnished by the commissioner, and accompanied by the registration fee. A registration expires on July 1 of each year.

(2) If the commissioner intends to deny registration, the procedure set forth in section 19 shall be followed. The commissioner may impose a late penalty filing fee of \$10.00 per day on a person which filed a registration application after June 1.

Sec. 16. (1) The commissioner shall require each cemetery to

establish and maintain an irrevocable endowment **AND PERPETUAL** care **TRUST** fund. ~~as required by section 35a of 1855 PA 87, MCL 456.35a, or section 7a of 1869 PA 12, MCL 456.107a, and to~~ **THE AMOUNTS DEPOSITED INTO AN ENDOWMENT AND PERPETUAL CARE TRUST FUND PURSUANT TO SUBSECTION (5) SHALL BE HELD IN PERPETUITY BY THE TRUSTEE AND MAY ONLY BE DISTRIBUTED TO THE CEMETERY UPON ORDER OF A COURT FOLLOWING PETITION BY THE COMMISSIONER. INTEREST OR INCOME SHALL BE USED ONLY FOR ENDOWMENT CARE. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), MONEY IN THE ENDOWMENT AND PERPETUAL CARE TRUST FUND SHALL NOT BE COMMINGLED WITH ANY OTHER MONEY OR TRUST ACCOUNTS. THE CEMETERY SHALL** report annually before July 1 of each year, on forms approved and furnished by the commissioner, **ENDOWMENT AND PERPETUAL** care **TRUST** fund information required to be reported to the commissioner by other statutes and information regarding the funds as the commissioner considers pertinent in the public interest. A cemetery applying to the commissioner as authorized by other statutes for ~~a~~ **AN ENDOWMENT AND PERPETUAL** care **TRUST** fund deposit modification or waiver shall be assessed the actual expenses for an examination or investigation by the commissioner.

(2) NOTWITHSTANDING SUBSECTION (1), BUNDLING OF FUNDS HELD IN TRUST OR ESCROW, FOR EACH CEMETERY OR AMONG CEMETERIES WITH COMMON OWNERSHIP, IS PERMISSIBLE ONLY UNDER THE FOLLOWING CIRCUMSTANCES:

(A) EACH CEMETERY MAINTAINS SEPARATE TRUST AND ESCROW ACCOUNT RECORDS PURSUANT TO STATUTORY AND RULE REQUIREMENTS FOR ENDOWED CARE, MERCHANDISE, OR PREPAID FUNERAL AND CEMETERY SALES.

(B) A CEMETERY, OR CEMETERIES WITH COMMON OWNERSHIP, HAS ALL

ITS TRUST OR ESCROW ACCOUNTS ON DEPOSIT WITH 1 OR MORE REGULATED FINANCIAL INSTITUTIONS WITH TRUST POWERS IN THIS STATE.

(C) THE TRUSTEE, OR THE TRUSTEE'S TRADING BLOCK NOMINEE, HOLDS TITLE IN THE NAME OF EACH INDIVIDUAL TRUST OR ESCROW ACCOUNT FOR THAT TRUST OR ESCROW ACCOUNT ASSETS AND THE ASSETS ARE PROMPTLY SETTLED BACK TO THE INDIVIDUAL ACCOUNTS BY THE TRUSTEE IN THE ORDINARY COURSE OF BUSINESS.

(3) NOTWITHSTANDING SUBSECTION (2), OTHER COMPARABLE METHODS OF BUNDLING OR POOLING OF TRUST OR ESCROW FUNDS FOR INVESTMENT PURPOSES MAY BE PERMISSIBLE UPON TERMS AND CONDITIONS APPROVED IN WRITING BY THE COMMISSIONER AND ONLY AFTER THE COMMISSIONER IS REASONABLY SATISFIED THAT THE TITLE TO, CHARACTER OF, AND ACCOUNTING FOR FUNDS HELD IN TRUST OR ESCROW IS PRESERVED.

(4) NOT LATER THAN JANUARY 1, 2010, THE IRREVOCABLE ENDOWMENT AND PERPETUAL CARE TRUST FUND SHALL BE ESTABLISHED, OR REESTABLISHED, WITH 1 OR MORE REGULATED FINANCIAL INSTITUTIONS WITH TRUST POWERS THAT SHALL BE THE TRUSTEE OF THE PORTION OF THE FUND ALLOCATED TO IT. THE CEMETERY SHALL ENTER INTO AGREEMENTS OF IRREVOCABLE TRUST AGREEMENTS WITH EACH TRUSTEE. THOSE AGREEMENTS SHALL PROVIDE THAT THE INVESTING OF THE ASSETS ARE SUBJECT TO THE MICHIGAN PRUDENT INVESTOR RULE AS SET FORTH IN SECTIONS 1501 TO 1511 AND 7302 OF THE ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.1501 TO 700.1511 AND 700.7302, EXCEPT THAT THE AGREEMENT SHALL NOT BE MODIFIED OR AMENDED, AS ALLOWED UNDER SECTIONS 1502(2) AND 7302 OF THE ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.1502 AND 700.7302, TO PROVIDE LESS THAN THE STANDARD OF CARE IN THE PRUDENT INVESTOR RULE. THE CEMETERY

SHALL NOTIFY THE COMMISSIONER, IN WRITING, NOT LATER THAN 14 DAYS PRIOR TO THE EFFECTIVE DATE OF AN APPOINTMENT OF A TRUSTEE. THE CEMETERY MAY REMOVE AND REPLACE A TRUSTEE AT ANY TIME, SUBJECT TO THE CONSENT OF THE COMMISSIONER, AND SUBJECT TO THE TERMS OF THE CEMETERY'S AGREEMENT WITH THE TRUSTEE. THE FEES AND COSTS OF THE TRUSTEE MAY, IN ACCORDANCE WITH THE TERMS OF THE TRUST AGREEMENT, BE PAID FROM THE PRINCIPAL OF THE TRUST. A CEMETERY THAT ESTABLISHES ITS IRREVOCABLE ENDOWMENT AND PERPETUAL CARE TRUST WITH 1 OR MORE REGULATED FINANCIAL INSTITUTIONS WITH TRUST POWERS, AND WHICH CEMETERY DOES NOT RESERVE, RETAIN, OR OTHERWISE EXERCISE ANY POWER OF DIRECTION OF SPECIFIC INVESTMENTS, SHALL NOT BE LIABLE FOR ANY DEFICIENCIES IN THE IRREVOCABLE ENDOWMENT AND PERPETUAL CARE TRUST CAUSED BY PERFORMANCE OF THE INVESTMENTS. A CEMETERY MAY RESERVE THE RIGHT TO RECOMMEND, TO A TRUSTEE, AN INVESTMENT ADVISOR, REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE INVESTMENT ADVISERS ACT OF 1940, 15 USC 80B-1 TO 80B-21, OR UNDER THE UNIFORM SECURITIES ACT, 1964 PA 265, MCL 451.501 TO 451.818, TO ADVISE THE TRUSTEE IN THE TRUSTEE'S DECISIONS ON ASSET ALLOCATION, INVESTMENT MANAGERS, AND INVESTMENTS, EXCEPT THAT A TRUSTEE IS NOT REQUIRED TO HEED SUCH ADVICE. ALTERNATIVELY, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS SECTION, AND AT ALL TIMES SUBJECT TO THE MICHIGAN PRUDENT INVESTOR RULE, A CEMETERY MAY DIRECT THE TRUSTEES TO MAKE CERTAIN INVESTMENTS, PROVIDED THAT THE TRUST IS A NAMED BENEFICIARY OF FIDUCIARY LIABILITY INSURANCE COVERING THE CEMETERY'S OR OTHER FIDUCIARIES' ACTIONS IN AN AMOUNT EQUAL TO 100% OF THE AMOUNT SO DIRECTED. PROOF OF SUCH FIDUCIARY LIABILITY COVERAGE SHALL BE PROVIDED NOT LESS THAN ANNUALLY TO THE

COMMISSIONER, IN A FORM TO BE DETERMINED BY THE COMMISSIONER, PRIOR TO ANY DIRECTION BEING GIVEN. THE COMMISSIONER OR THE ATTORNEY GENERAL MAY PROSECUTE A CLAIM AGAINST THE FIDUCIARY LIABILITY INSURANCE ON BEHALF OF THE TRUST. THE TRUSTEES SHALL NOT BE LIABLE, OR OTHERWISE PUNISHABLE, FOR COMPLYING WITH SUCH DIRECTION OF INVESTMENTS EXCEPT THAT THE TRUSTEES SHALL RETAIN CUSTODY OF ALL SUCH INVESTMENTS.

(5) BEGINNING THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION, AN IRREVOCABLE ENDOWMENT AND PERPETUAL CARE TRUST FUND SHALL BE CREATED BY THE DEPOSIT OF AT LEAST \$50,000.00 INTO THE FUND BEFORE ANY SALE OF BURIAL RIGHTS, ENTOMBMENT RIGHTS, OR COLUMBARIUM RIGHTS IS MADE.

(6) EACH MONTH, NOT LESS THAN 15% OF ALL PROCEEDS RECEIVED DURING THE PREVIOUS MONTH FROM THE SALES OF BURIAL RIGHTS, ENTOMBMENT RIGHTS, OR COLUMBARIUM RIGHTS SHALL BE DEPOSITED WITH THE TRUSTEE FOR INCLUSION IN THE ENDOWMENT AND PERPETUAL CARE TRUST FUND. NO TOTAL DEPOSIT FOR A SINGLE BURIAL RIGHT SALE OR ASSIGNMENT SHALL BE LESS THAN \$20.00. A CEMETERY MAY APPLY TO THE COMMISSIONER FOR A MODIFICATION OF THE MINIMUM DEPOSIT REQUIREMENT. THE COMMISSIONER SHALL TAKE TESTIMONY AND INVESTIGATE AS HE OR SHE CONSIDERS NECESSARY AND IF THE COMMISSIONER DETERMINES THAT THE APPLICANT'S ENDOWMENT AND PERPETUAL CARE TRUST FUND WILL GENERATE SUFFICIENT INCOME TO MEET ALL CURRENT COSTS OF KEEPING THE APPLICANT'S CEMETERY IN GOOD CONDITION, THE COMMISSIONER MAY MODIFY THE MINIMUM DEPOSIT REQUIREMENT. A CEMETERY APPLYING TO THE COMMISSIONER FOR A MODIFICATION OF THE ENDOWMENT AND PERPETUAL CARE TRUST FUND DEPOSIT REQUIREMENTS SHALL BE ASSESSED THE ACTUAL COSTS