

HOUSE BILL No. 6254

June 21, 2006, Introduced by Reps. Gaffney, Waters, McConico, Virgil Smith, Cushingberry and Cheeks and referred to the Committee on Commerce.

A bill to amend 1968 PA 251, entitled
"Cemetery regulation act,"
by amending section 16 (MCL 456.536), as amended by 2004 PA 22.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16. (1) The commissioner shall require each cemetery to
2 establish and maintain an irrevocable endowment care fund as
3 required by section 35a of 1855 PA 87, MCL 456.35a, or section 7a
4 of 1869 PA 12, MCL 456.107a, and to report annually before July 1
5 of each year, on forms approved and furnished by the commissioner,
6 care fund information required to be reported to the commissioner
7 by other statutes and information regarding the funds as the
8 commissioner considers pertinent in the public interest. A cemetery
9 applying to the commissioner as authorized by other statutes for a

1 care fund deposit modification or waiver shall be assessed the
2 actual expenses for an examination or investigation by the
3 commissioner. The commissioner shall require each person engaged as
4 agent or seller, as a means of livelihood either part time or full
5 time, in the selling of burial rights, entombment rights, or
6 columbarium rights owned by a party other than a cemetery or
7 corporation subject to the irrevocable endowment care fund
8 requirements of other laws, to deposit 15% of all gross proceeds
9 received from the sales of those rights into the irrevocable
10 endowment care fund of the cemetery in which the rights are located
11 if an irrevocable endowment care fund exists for that cemetery.
12 Excess sums on deposit in the fund can be applied by a cemetery
13 against future deposits. **EARNINGS IN THE FORM OF CAPITAL GAINS FROM
14 THE SALE OF AN ASSET IN THE ENDOWED CARE TRUST FUND SHALL BE
15 CONSIDERED A DEPOSIT TO THE PRINCIPAL OR THE CORPUS OF THE TRUST
16 AND SHALL NOT BE CONSIDERED A PART OF NET INCOME OR EARNINGS TO BE
17 USED FOR ENDOWMENT CARE. HOWEVER, NOT MORE THAN 50% OF THE
18 ACCUMULATED NET CAPITAL GAINS AS OF DECEMBER 31, 2005, AND,
19 THEREAFTER, NOT MORE THAN 50% OF THE ACCUMULATED ANNUAL NET CAPITAL
20 GAINS, MAY BE WITHDRAWN FROM THE PRINCIPAL OR CORPUS OF THE FULLY
21 FUNDED ENDOWMENT CARE TRUST FUND AND USED FOR THE SOLE PURPOSE OF
22 ENDOWMENT CARE.** A deposit required to be made by those persons
23 shall be modified or waived if the cemetery has received an
24 irrevocable endowment care fund deposit modification or waiver
25 approved by the commissioner. The total deposit for a single adult
26 burial right sale or assignment shall not be less than \$20.00.

27 (2) Subject to subsection (8), a cemetery which is required to

1 register pursuant to this act and an agent which is authorized by a
2 cemetery or acting on its behalf under an agreement or sales
3 contract to sell cemetery merchandise or cemetery services shall
4 establish a merchandise trust account and deposit a percentage of
5 the gross proceeds received from the sales as determined by the
6 commissioner. The merchandise trust account shall be maintained
7 exclusively for the deposit of the money into a state or national
8 bank, a state or federally chartered savings and loan association,
9 or a trust company under the terms of a written trust agreement
10 approved by the commissioner. It shall be the responsibility of
11 each registrant under this act to assure that documents relating to
12 the merchandise trust account are provided to the commissioner upon
13 request. If a subpoena is issued to obtain these documents, the
14 registrant shall pay all costs related to obtaining the documents
15 regardless of the \$100.00 charge limitation contained in section
16 12a(2). The funds shall be deposited not later than the month
17 following their receipt.

18 (3) Subject to subsection (8), the total deposits to a
19 merchandise trust for the sale of cemetery burial vaults or other
20 outside containers, other than crypts installed underground and
21 sold as part of a cemetery lot, shall at all times be not less than
22 the greater of \$100.00 per vault or outside container or 130% of
23 the total costs of the containers covered by the trust. Money
24 deposited in connection with a sale shall be repaid within 30 days
25 upon written demand of purchaser. A burial vault shall be installed
26 only at need or by separate written authorization of the purchaser.
27 The cemetery shall have the right to withdraw the amount on deposit

1 for the delivered vault or outside container.

2 (4) Subject to subsection (8), a contract or agreement made
3 with a purchaser of cemetery merchandise and cemetery services
4 shall contain a complete description of the cemetery merchandise
5 purchased and of the cemetery services to be rendered.

6 (5) The commissioner shall require each cemetery or agent
7 authorized by it acting on its behalf to report annually before
8 July 1 of each year on forms provided by the commissioner. The
9 reports shall contain information as the commissioner considers
10 necessary to ascertain that this act is being implemented.

11 (6) If, after an audit by the commissioner's staff, a deficit
12 in the amount of required deposits to the trust funds is found, the
13 commissioner may assess a penalty not to exceed 10% of the amount
14 of the deficit. The cemetery or entity of a cemetery may request an
15 administrative hearing before the commissioner within 30 days after
16 being notified of a deficit by the commissioner. If, following the
17 administrative hearing, the commissioner determines that a deficit
18 does exist, an additional penalty not to exceed 1.5% may be
19 assessed each month on the unpaid monthly balance until the deficit
20 is paid in full.

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

26 (8) Any preneed contracts for cemetery merchandise or services
27 entered into on or after January 1, 2005 are subject to the prepaid

1 funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to
2 328.235.

3 (9) As used in this section: ~~—, "endowment~~

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

12 (B) "NET CAPITAL GAINS" MEANS THE AMOUNT BY WHICH CUMULATIVE
13 CAPITAL GAINS OF THE FULLY FUNDED ENDOWMENT CARE TRUST FUND EXCEED
14 THE SUM OF CAPITAL LOSSES OF THE TRUST FUND.