

# HOUSE BILL No. 5834

May 7, 1998, Introduced by Reps. Varga, Alley, Brackenridge, Vaughn and Scranton and referred to the Committee on Regulatory Affairs.

A bill to amend 1986 PA 255, entitled  
"Prepaid funeral contract funding act,"  
by amending sections 4, 5, 6, 8, 12, 13, 15, 18, 19, and 24 (MCL  
328.214, 328.215, 328.216, 328.218, 328.222, 328.223, 328.225,  
328.228, 328.229, and 328.234) and by adding sections 12a, 12b,  
12c, 12d, 12e, and 12f.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 4. (1) "Depository" means a state or national bank  
2 which is a member of the federal deposit insurance corporation, a  
3 state or federal savings and loan association which is a member  
4 of the federal savings and loan insurance corporation, or a state  
5 or federally chartered credit union which is insured by the  
6 national credit union administration, or a trust company  
7 authorized to do business in this state. Depository includes the

1 trust department, if any, of an entity referred to in this  
2 subsection.

3 (2) "Escrow agent" means a person who holds, invests, and  
4 disburses principal and income from the funds received under a  
5 prepaid funeral contract.

6 (3) "Funds" means all money or other consideration actually  
7 received from a contract buyer by a contract seller or provider  
8 or an assignee from the contract buyer in connection with any  
9 aspect of the sale of a prepaid funeral contract including  
10 finance charges, but does not include late payment penalties,  
11 payments required to be made to a governmental agency at the time  
12 the contract is entered into, or a commission authorized by sec-  
13 tion 12(1).

14 (4) "Funeral goods" means ~~items of merchandise sold or~~  
15 ~~offered for sale or lease to consumers which will be used in con-~~  
16 ~~nection with a funeral or an alternative to a funeral or final~~  
17 ~~disposition of human remains including, but not limited to, cas-~~  
18 ~~kets, combination units, and catafalques. Funeral goods shall~~  
19 ~~not include land or interests in land, crypts, lawn crypts, mau-~~  
20 ~~soleum crypts, or niches that are sold by a cemetery which com-~~  
21 ~~plies with the endowment care fund requirements of the cemetery~~  
22 ~~regulation act, Act No. 251 of the Public Acts of 1968, being~~  
23 ~~sections 456.521 to 456.543 of the Michigan Compiled Laws. In~~  
24 ~~addition, funeral goods shall not include cemetery burial vaults~~  
25 ~~or other outside containers, markers, monuments, urns, and mer-~~  
26 ~~chandise items used for the purpose of memorializing a decedent~~  
27 ~~and placed on or in proximity to a place of interment or~~

~~1 entombment of a casket, catafalque, or vault or to a place of~~  
~~2 inurnment which are sold by a cemetery which deposits at least~~  
~~3 130% of the cost of these items in a merchandise trust account~~  
~~4 established and operated in accordance with the cemetery regula-~~  
~~5 tion act, Act No. 251 of the Public Acts of 1968, being sections~~  
~~6 456.521 to 456.543 of the Michigan Compiled Laws.~~ ALL GOODS SOLD  
7 TO THE PUBLIC BY A MORTUARY SCIENCE LICENSEE INCLUDING CASKETS,  
8 CATAFALQUES, COMBINATION UNITS, OR OTHER FUNERAL RELATED GOODS OF  
9 ANY TYPE DIRECTLY OR INDIRECTLY RELATED TO A FUNERAL AND VAULTS  
10 OR OTHER OUTSIDE CONTAINERS OF ANY TYPE, MONUMENTS, MARKERS,  
11 URNS, CASKETS, CATAFALQUES, CEMETERY MERCHANDISE THAT MAY BE SOLD  
12 BY A CEMETERY REGISTERED UNDER THE CEMETERY REGULATION ACT, 1968  
13 PA 251, MCL 456.521 TO 456.543, OR ANY OTHER GOODS DIRECTLY OR  
14 INDIRECTLY CONNECTED TO THE FINAL DISPOSITION OF DEAD HUMAN  
15 REMAINS.

16 (5) "Funeral services" means ~~services customarily performed~~  
17 ~~by a mortuary science licensee who is licensed pursuant to sec-~~  
18 ~~tions 1801 to 1812 of the occupational code, Act No. 299 of the~~  
19 ~~Public Acts of 1980, being sections 339.1801 to 339.1812 of the~~  
20 ~~Michigan Compiled Laws. Further, funeral services includes, but~~  
21 ~~is not limited to, care of dead human remains, embalming, prepa-~~  
22 ~~ration of dead human remains for final disposition, professional~~  
23 ~~services relating to a funeral or an alternative to a funeral or~~  
24 ~~final disposition of dead human remains, transportation of dead~~  
25 ~~human remains, limousine services, use of facilities or equipment~~  
26 ~~for viewing dead human remains, visitation, memorial services, or~~  
27 ~~services which are used in connection with a funeral or~~

~~1 alternative to a funeral, coordinating or conducting funeral~~  
~~2 rites or ceremonies, and other services provided in connection~~  
~~3 with a funeral, alternative to a funeral, or final disposition of~~  
~~4 dead human remains.~~ ALL SERVICES OFFERED TO THE PUBLIC BY A MOR-  
5 TUARY SCIENCE LICENSEE, INCLUDING, BUT NOT LIMITED TO, THE CARE  
6 OR PREPARATION OF DEAD HUMAN REMAINS FOR FINAL DISPOSITION,  
7 EMBALMING, USE OF FACILITIES OR EQUIPMENT FOR VIEWING DEAD HUMAN  
8 REMAINS, VISITATION, MEMORIAL SERVICES, OR SERVICES USED DIRECTLY  
9 OR INDIRECTLY IN CONNECTION TO A FUNERAL OR ALTERNATIVE TO A  
10 FUNERAL AND GRAVE OPENINGS AND CLOSINGS, CREMATIONS, FOUNDATION  
11 INSTALLATIONS, FLOWERS, TRANSPORTATION, AND OTHER SERVICES  
12 DIRECTLY OR INDIRECTLY CONNECTED TO THE FINAL DISPOSITION OF DEAD  
13 HUMAN REMAINS BY A CEMETERY REGISTERED UNDER THE CEMETERY REGULA-  
14 TION ACT, 1968 PA 251, MCL 456.521 TO 456.543.

15 (6) "Guaranteed price contract" means a prepaid funeral con-  
16 tract under which funds received are held pursuant to an escrow  
17 agreement. The contract has a guaranteed fixed price for which  
18 specified funeral goods or funeral services are required to be  
19 sold to or made available for a contract buyer or for a contract  
20 beneficiary, regardless of the cost or value of the funeral goods  
21 or funeral services at the time of death of the contract  
22 beneficiary. Under the guaranteed price contract additional con-  
23 sideration shall not be charged for the originally contracted for  
24 funeral goods and funeral services at the time of delivery of the  
25 funeral goods and funeral services contracted for.

26 (7) "Income" means the money earned by the investment of the  
27 principal, including, but not limited to, interest, dividends,

1 and gains or losses on the sale of, deposit of, or exchange of,  
2 property using invested principal amounts.

3       Sec. 5. (1) "Nonguaranteed price contract" means a prepaid  
4 funeral contract under which funds received are held pursuant to  
5 an escrow agreement between a contract seller or provider and a  
6 contract buyer ~~— Under the terms of this contract, a contract~~  
7 ~~seller or provider agrees to apply the principal and income to~~  
8 AND ARE APPLIED the cost of the funeral goods or funeral services  
9 ~~, which funeral goods and funeral services~~ THAT may be selected  
10 by the contract buyer at the time the contract is signed or as  
11 selected by a person legally authorized to procure funeral goods  
12 and funeral services at the time of death of the contract  
13 beneficiary. ~~However, this~~ A NONGUARANTEED PRICE contract  
14 ~~shall~~ DOES not obligate the contract beneficiary's estate or  
15 the person ~~who is~~ legally entitled to make funeral arrangements  
16 for a deceased contract beneficiary to purchase specific FUNERAL  
17 goods and FUNERAL services ~~which were~~ selected before the con-  
18 tract beneficiary's death ~~, nor shall this contract~~ AND DOES  
19 NOT obligate either the contract beneficiary's estate or the  
20 person ~~who is~~ entitled to make funeral arrangements for a  
21 deceased contract beneficiary to expend a specific amount OF  
22 MONEY on funeral goods or funeral services.

23       (2) "Person" means an individual, group of individuals, sole  
24 proprietorship, partnership, association, corporation, LIMITED  
25 LIABILITY COMPANY, a governmental agency, or a combination of  
26 these legal entities.

1       (3) BEGINNING THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT  
2 ADDED THIS SUBSECTION, "PHYSICAL DELIVERY AND RETENTION" MEANS  
3 ACTUAL CONTROL AND POSSESSION OF FUNERAL GOODS THAT HAVE BEEN  
4 PERMANENTLY RELINQUISHED BY A CONTRACT SELLER OR A PROVIDER, OR  
5 THE AGENT OF EITHER, TO THE CONTRACT BUYER OR THE CONTRACT  
6 BENEFICIARY. PHYSICAL DELIVERY AND RETENTION DOES NOT OCCUR IF  
7 THE CONTRACT SELLER OR PROVIDER TAKES EITHER OF THE FOLLOWING  
8 ACTIONS:

9       (A) ARRANGES OR INDUCES THE BUYER TO ARRANGE FOR THE STORAGE  
10 OR WAREHOUSING OF FUNERAL GOODS ORDERED PURSUANT TO A PREPAID  
11 FUNERAL CONTRACT, WITH OR WITHOUT EVIDENCE THAT LEGAL TITLE HAS  
12 PASSED.

13       (B) ACQUIRES OR REACQUIRES ACTUAL OR CONSTRUCTIVE POSSESSION  
14 OR CONTROL OF FUNERAL GOODS AFTER THEIR INITIAL DELIVERY TO THE  
15 CONTRACT BUYER OR CONTRACT BENEFICIARY.

16       (4) ~~-(3)-~~ "Prepaid funeral contract" means a contract  
17 requiring payment in advance for funeral services or for funeral  
18 goods, physical delivery and retention of which would occur after  
19 death OF A CONTRACT BENEFICIARY under a guaranteed price contract  
20 or a nonguaranteed price contract. ~~-Prepaid-~~ A PREPAID funeral  
21 ~~contracts shall~~ CONTRACT DOES not include a contract for the  
22 sale of funeral goods or funeral services ~~which is~~ entered into  
23 after the death of the ~~person for whose benefit the goods or~~  
24 ~~services are acquired~~ CONTRACT BENEFICIARY. BEGINNING THE  
25 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION,  
26 PREPAID FUNERAL CONTRACT INCLUDES A CONTRACT WHERE PHYSICAL

1 DELIVERY AND RETENTION OF THE FUNERAL GOODS HAS NOT BEEN MADE  
2 BEFORE THE DEATH OF THE CONTRACT BENEFICIARY.

3 (5) ~~-(4)-~~ "Principal" means the money, finance charges, or  
4 other consideration actually deposited in the escrow accounts  
5 required by section 12.

6 (6) ~~-(5)-~~ "Provider" means any person who furnishes or  
7 agrees to furnish funeral goods or funeral services pursuant to a  
8 prepaid funeral contract, whether or not that person is the con-  
9 tract seller. In the case of funeral goods, provider ~~shall~~  
10 ~~mean~~ MEANS the person who arranges for delivery of the funeral  
11 goods at the time of the death of the contract beneficiary ~~and~~  
12 BUT DOES not INCLUDE the manufacturer of the FUNERAL goods. In  
13 the case of funeral services, provider ~~shall mean~~ MEANS a  
14 person licensed pursuant to section 1806(3) of the occupational  
15 code, ~~Act No. 299 of the Public Acts of 1980, being section~~  
16 ~~339.1806(3) of the Michigan Compiled Laws~~ 1980 PA 299, MCL  
17 339.1806.

18 (7) ~~-(6)-~~ "Registrant" means a person who has registered  
19 with the department pursuant to section 6.

20 Sec. 6. (1) A person shall not sell, provide, or agree to  
21 provide funeral goods or funeral services pursuant to a prepaid  
22 funeral contract unless that person IS OF GOOD MORAL CHARACTER AS  
23 DEFINED AND DETERMINED UNDER 1974 PA 381, MCL 338.41 TO 338.47,  
24 is registered with the department as provided in this section,  
25 and has received a certificate of registration. THIS SUBSECTION  
26 DOES NOT REQUIRE REGISTRATION UNDER THIS ACT OF A PERSON SELLING

1 ONLY PREPAID CEMETERY CONTRACTS AND REGISTERED UNDER THE CEMETERY  
2 REGULATION ACT, 1968 PA 251, MCL 456.521 TO 456.535.

3 (2) A person desiring to receive a certificate of registra-  
4 tion under this section shall ~~make application~~ APPLY upon forms  
5 provided by the department and pay an application fee of  
6 \$120.00. The original registration may be renewed. A certifica-  
7 tion of registration ~~shall be~~ IS valid for 3 years from the  
8 date of its issuance. An application form for original registra-  
9 tion or renewal shall contain the following:

10 (a) The name and business address of the entity  
11 registering.

12 (b) The names and addresses of persons owning 10% or more  
13 interest in the entity applying for registration.

14 (c) The business address where books and records pertaining  
15 to prepaid funeral contracts shall be maintained for inspection  
16 by the department.

17 (d) A list of the names and addresses of any escrow agents  
18 in which funds have been or will be deposited by the registrant  
19 which after registration shall be constantly updated. The regis-  
20 trant shall inform the department of any change in this list  
21 within 30 days of the change by adding to the list the name and  
22 address of any new escrow agent or by deleting from the list an  
23 escrow agent whose services are no longer being used by the  
24 registrant.

25 (e) ~~A~~ IF APPLICABLE, A statement made under oath that the  
26 registrant has an agreement with each escrow agent with which it



1 has deposited funds which complies with the requirements of  
2 section 7.

3 (3) The department shall renew the registration of a person  
4 who applies for renewal upon a form provided by the department  
5 and pays an application fee of \$30.00 provided that the person  
6 has submitted the sworn statement as required by ~~this section~~  
7 SUBSECTION (2)(E) and the special report or sworn statement as  
8 required by section 8 at least 60 days ~~prior to~~ BEFORE the  
9 expiration date printed on the certificate of registration. The  
10 certificate of registration of a person who fails to file the  
11 sworn statement or special report required by ~~this section shall~~  
12 ~~expire~~ SUBSECTION (2)(E) EXPIRES on the date printed on the cer-  
13 tificate of registration. A registrant may reinstate the regis-  
14 tration within 60 days of its expiration by submitting the sworn  
15 statement or special report and paying a fee of \$120.00.

16 (4) The department may deny the registration of a person if  
17 it determines THAT any of the following OCCURRED:

18 (a) ~~That the~~ THE person was previously LICENSED OR regis-  
19 tered with the department UNDER THIS ACT, THE CEMETERY REGULATION  
20 ACT, 1968 PA 251, MCL 456.521 TO 456.535, OR ARTICLE 18 OF THE  
21 OCCUPATIONAL CODE, 1980 PA 299, MCL 339.1801 TO 339.1811, and  
22 that LICENSE OR registration was revoked or suspended within 2  
23 years ~~prior to~~ BEFORE the date of the current application for  
24 registration IF THAT PERSON IS CURRENTLY EMPLOYED BY THE SAME  
25 REGISTRANT OR LICENSEE. THE DEPARTMENT SHALL MAKE A SPECIFIC  
26 DETERMINATION FOR EACH DENIAL UNDER THIS SUBDIVISION.

1       (b) ~~That the~~ THE person was or is presently an owner with  
2 a substantial interest in the entity, partner, or employee of a  
3 person whose LICENSE OR registration was revoked or suspended  
4 UNDER THIS ACT, THE CEMETERY REGULATION ACT, 1968 PA 251, MCL  
5 456.521 TO 456.535, OR ARTICLE 18 OF THE OCCUPATIONAL CODE, 1980  
6 PA 299, MCL 339.1801 TO 339.1811, within 2 years ~~prior to~~  
7 BEFORE the date of the current application for registration and  
8 the person engaged, ~~or~~ participated in, or authorized the mis-  
9 conduct which was the basis for the revocation or suspension.

10       (5) ~~An applicant who registers with the~~ THE department  
11 shall not ~~receive~~ ISSUE a certificate of registration ~~unless~~  
12 ~~the applicant complies~~ TO AN APPLICANT NOT IN COMPLIANCE with  
13 the conditions in this section.

14       (6) A person ~~who is~~ denied registration by the department  
15 pursuant to this section may ~~petition~~ REQUEST the department  
16 for reconsideration. A person seeking reconsideration ~~shall be~~  
17 IS entitled to a hearing conducted in compliance with the admin-  
18 istrative procedures act of 1969, ~~Act No. 306 of the Public Acts~~  
19 ~~of 1969, being sections 24.201 to 24.328 of the Michigan Compiled~~  
20 ~~Laws~~ 1969 PA 306, MCL 24.201 TO 24.328.

21       Sec. 8. (1) A registrant shall keep, in this state, accu-  
22 rate accounts, books, and records of all transactions and  
23 accounts regulated by this act. Records shall include copies of  
24 all prepaid funeral contracts, the dates and amounts of payments  
25 made and accepted under these contracts, the name and address of  
26 each contract buyer, the name and address of the contract  
27 beneficiaries, the name and address of each escrow agent, and any

1 other records as the department may require to enable it to  
2 determine whether the registrant is complying with the require-  
3 ments of this act. NOT LATER THAN 6 MONTHS AFTER THE EFFECTIVE  
4 DATE OF THE AMENDATORY ACT THAT AMENDED THIS SUBSECTION, THE  
5 DEPARTMENT SHALL PROMULGATE RULES TO REQUIRE RECORD KEEPING AND  
6 REPORTING SIMILAR TO THAT REQUIRED FOR CEMETERIES REGULATED BY  
7 THE DEPARTMENT. Records shall be kept for at least 36 months  
8 after performance of all obligations of each prepaid funeral con-  
9 tract or after the filing of the final special report which  
10 includes a contract which has been performed.

11 (2) ~~At least once every 3 years,~~ ANNUALLY a registrant  
12 which serves as an escrow agent or which has deposited funds with  
13 an escrow agent pursuant to section 12 shall secure a special  
14 ATTESTATION report ~~of limited review~~ prepared by a licensed  
15 independent certified public accountant pertaining to prepaid  
16 funeral contract funds. The special report shall be on forms  
17 provided by the department or in any other format considered  
18 appropriate by the independent certified public accountant AND  
19 THE DEPARTMENT. The special report shall be prepared ~~and~~ BY A  
20 MICHIGAN LICENSED CERTIFIED PUBLIC ACCOUNTANT, dated within 90  
21 days before the expiration of the registrant's certificate of  
22 registration, and shall be furnished to the department with the  
23 registrant's application for renewal or, if an application for  
24 renewal is not filed, before the expiration of the certificate of  
25 registration. ~~In preparing the special report, the independent~~  
26 ~~certified public accountant shall not be required to review all~~  
27 ~~prepaid funeral contracts, escrow agreements, escrow accounts, or~~

1 ~~records of the registrant, nor shall the independent certified~~  
2 ~~public accountant be required to review any receipts or deposits~~  
3 ~~by the registrant of prepaid funeral contract funds.~~ The special  
4 report of the independent certified public accountant shall pro-  
5 vide the following assurances:

6 (a) That, based either upon a review of the registrant's  
7 agreements with escrow agents or depositories which limit invest-  
8 ments of the escrow funds by the escrow agents or depositories to  
9 those investments permitted by this act, or upon a review of the  
10 investments of the escrow accounts, the investment requirements  
11 of section 12(4) have been complied with.

12 (b) In the case of escrow accounts where the registrant  
13 serves as the escrow agent, that withdrawals, as detailed in the  
14 periodic statements of the depositories in which the escrow  
15 accounts are maintained, have been made in accordance with this  
16 act.

17 (c) That no matters have come to the attention of the inde-  
18 pendent certified public accountant during the review of escrow  
19 account investments and withdrawals that gave cause to believe  
20 that the registrant has not complied with this act, or if any  
21 matters have come to his or her attention, the independent certi-  
22 fied public accountant shall include an explanation of the mat-  
23 ters which caused the belief that the registrant has not complied  
24 with this act.

25 (3) A REGISTRANT SHALL MAINTAIN A LIST OF ALL FUTURE PER-  
26 FORMANCE OBLIGATIONS. THIS LIST WILL BE CURRENT AT ALL TIMES AND  
27 SHALL INCLUDE:

1 (A) COMPLETE DESCRIPTION OF THE FUTURE PERFORMANCE  
2 OBLIGATIONS INVOLVED. THESE OBLIGATIONS SHALL SEGREGATE VAULTS,  
3 MEMORIALS, SERVICES BY TYPE, AND CASKETS BY MODEL. THE LIST  
4 SHALL BE TOTALED BY ITEM TYPE AND MODEL.

5 (B) TOTAL COST OF FULL PERFORMANCE OF ALL OBLIGATIONS AS OF  
6 THE DATE OF STATEMENT.

7 (C) COMPLETE INFORMATION ON THE MEANS, PROVISION, TRUST, OR  
8 OTHER VEHICLE WHICH WILL ASSURE FULFILLMENT OF ALL OBLIGATIONS,  
9 STATING LEDGER AND MARKET VALUES OF THE VEHICLE, ITS LOCATION,  
10 NATURE OF INVESTMENTS, AND TRUSTEES INCLUDING FEES PAID TO  
11 TRUSTEES.

12 (4) ~~—(3)—~~ The department may examine each special report  
13 required by this section and if the department determines on the  
14 basis of its review that the registrant or its agent has not held  
15 or invested funds in accordance with the requirements of this act  
16 or has failed to file a special report as required, the depart-  
17 ment shall take any appropriate corrective or penal action autho-  
18 rized by this act.

19 (5) ~~—(4)—~~ The department may examine, review, or audit the  
20 books and records of a contract seller or provider pertaining to  
21 funds received in payment for prepaid funeral contracts AND ALLOW  
22 THE DEPARTMENT TO MAKE COPIES OF THOSE RECORDS. An audit may  
23 include an examination of the books and financial records of the  
24 registrant as well as books and financial records of escrow  
25 agents used by the registrant. A registrant shall authorize  
26 escrow agents to open their records of the registrant accounts to  
27 the department upon request AND TO ALLOW THE COPYING OF RELEVANT

1 RECORDS. THE DEPARTMENT MAY REQUEST THE ADVICE AND AID OF THE  
2 FINANCIAL INSTITUTIONS BUREAU IN CARRYING OUT THE AUDIT AND  
3 INVESTIGATION FUNCTION UNDER THIS ACT.

4 (6) ~~—(5)—~~ For the purposes of complying with the require-  
5 ments of this section, a registrant who has not sold, provided,  
6 or agreed to provide funeral goods or funeral services in accord-  
7 ance with a prepaid funeral contract and who has no obligations  
8 with respect to an outstanding prepaid funeral contract may  
9 submit a sworn statement that a prepaid funeral contract has not  
10 been sold, provided, or agreed to and there are no obligations  
11 outstanding. THE STATEMENT SHALL BE ACCOMPANIED BY A LETTER FROM  
12 A CERTIFIED PUBLIC ACCOUNTANT STATING THAT NO PREPAID FUNERAL  
13 CONTRACTS WERE SOLD BASED UPON A REVIEW OF THE REGISTRANT'S BUSI-  
14 NESS RECORDS. This statement shall be accepted in lieu of the  
15 special report.

16 (7) THE DEPARTMENT MAY PROVIDE A FORM FOR A COMBINED REPORT  
17 REGARDING A REGISTRANT THAT ALSO OWNS AN INTEREST IN A CEMETERY  
18 REGULATED UNDER THE CEMETERY REGULATION ACT, 1968 PA 251,  
19 MCL 456.521 TO 456.543.

20 Sec. 12. (1) ~~All funds~~ SUBJECT TO SECTION 12A, FUNDS  
21 received in connection with a prepaid funeral contract shall be  
22 held in escrow by an escrow agent for the benefit of the ~~person~~  
23 ~~for whom the funeral goods or funeral services have been~~  
24 ~~purchased. However, a prepaid funeral contract may authorize the~~  
25 ~~contract seller or provider to charge an additional commission of~~  
26 ~~not more than 10% of the contract price which shall not be~~  
27 ~~subject to the depository requirements of this section~~ CONTRACT

1 BENEFICIARY. If the contract price is paid in installments, the  
 2 commission retained by the contract seller or the provider shall  
 3 not exceed the rate of the commission charged in the contract. A  
 4 contract buyer upon cancellation ~~shall be~~ IS entitled to a  
 5 refund as provided in section 13(1).

6 (2) Only the following persons may serve as the escrow agent  
 7 of FUNDS OF A prepaid funeral ~~funds~~ CONTRACT:

8 (A) If the ~~prepared~~ PREPAID funeral contract is a nonguar-  
 9 anteed price contract, the contract seller or provider of that  
 10 nonguaranteed price contract. ~~, or in~~

11 (B) IN the case of either a guaranteed or nonguaranteed  
 12 price contract, a state or national bank, a state or federal sav-  
 13 ings and loan association, a state or federally chartered credit  
 14 union, a trust company, ~~or~~ a Michigan nonprofit corporation in  
 15 which the majority interest is held by ~~250~~ 100 or more funeral  
 16 establishments licensed pursuant to ~~sections 1801 to 1812~~  
 17 ARTICLE 18 of the occupational code, ~~Act No. 299 of the Public~~  
 18 ~~Acts of 1980, being sections 339.1801 to 339.1812 of the Michigan~~  
 19 ~~Compiled Laws~~ 1980 PA 299, MCL 339.1801 TO 339.1811, or a  
 20 Michigan nonprofit corporation in which the majority interest is  
 21 held by ~~250~~ 25 or more cemeteries licensed and operated pursu-  
 22 ant to the cemetery regulation act, ~~Act No. 251 of the Public~~  
 23 ~~Acts of 1968, being sections 456.521 to 456.543 of the Michigan~~  
 24 ~~Compiled Laws~~ 1968 PA 251, MCL 456.521 TO 456.543. ~~If the pre-~~  
 25 ~~paid funeral contract is a guaranteed price contract, the con-~~  
 26 ~~tract seller or the provider shall not serve as the escrow~~  
 27 ~~agent.~~

1 (3) If the escrow agent is not the contract seller or  
2 provider, ~~of a nonguaranteed price contract,~~ the escrow agent  
3 shall be selected as follows:

4 (a) If the contract is a nonguaranteed price contract, the  
5 escrow agent may be selected by either the contract seller or the  
6 provider.

7 (b) If the contract is a guaranteed price contract, the  
8 escrow agent shall be selected by the provider who has been des-  
9 ignated to furnish the funeral goods or funeral services.

10 (4) If the escrow agent is a person other than the ~~person~~  
11 ~~to whom the funds have been paid by the contract buyer~~ CONTRACT  
12 SELLER OR PROVIDER, the funds shall be deposited with the escrow  
13 agent ~~within 30 days after the receipt~~ by the person to whom  
14 the funds are paid NOT LATER THAN THE MONTH FOLLOWING THEIR  
15 RECEIPT.

16 (5) Funds held by an escrow agent shall be held and invested  
17 only as specified in the prepaid contract. A prepaid contract  
18 may authorize investments only as follows:

19 (a) If the contract is a nonguaranteed price contract, the  
20 funds shall be invested in 1 or more federally insured  
21 interest-bearing accounts in a depository.

22 (b) If the contract is a guaranteed price contract, the  
23 principal and income may be invested only in accordance with ~~Act~~  
24 ~~No. 177 of the Public Acts of 1937, being sections 555.201 to~~  
25 ~~555.203 of the Michigan Compiled Laws~~ 1937 PA 177, MCL 555.201  
26 TO 555.203, except that funds shall not be invested in a company  
27 owned or operated by a contract seller or provider or their



1 authorized agents ~~—~~ or in loans to any person directly  
2 connected with or employed by a contract seller or provider or  
3 their authorized agents.

4 (6) Income shall be held and invested by the escrow agent in  
5 the same manner as the principal except that the income may be  
6 utilized to pay reasonable fees and expenses of the escrow agent  
7 in addition to other costs specifically authorized by this act.  
8 The expenses and fees paid to the escrow agent shall not exceed  
9 1% of the aggregate balance of principal and prior earned income  
10 from each account annually. If a fee is charged for reasonable  
11 expenses for the administration costs under an escrow agreement,  
12 the amount may be paid to the escrow agent periodically or may be  
13 accumulated in the account and paid at the time of death or upon  
14 cancellation of the contract.

15 (7) Amounts of principal and income held by an escrow agent  
16 other than the contract seller or provider of a nonguaranteed  
17 price contract may be commingled with principal and income  
18 derived from other prepaid funeral accounts. However, a separate  
19 accounting of principal and income shall be maintained for each  
20 prepaid funeral contract under the name of the contract  
21 beneficiary.

22 (8) The contract ~~—buyer—~~ SELLER shall ~~—be sent—~~ SEND TO THE  
23 CONTRACT BUYER a notice stating the date, amount of the deposit,  
24 and the name of the escrow agent with whom the funds are  
25 deposited.

26 (9) Upon the death of the contract beneficiary and upon  
27 performance by the provider of its obligation to furnish funeral

1 goods and funeral services pursuant to the prepaid funeral  
2 contract, funds held by the escrow agent shall be disbursed as  
3 follows:

4       (a) If the prepaid funeral contract is a nonguaranteed price  
5 contract, the principal and income shall first be disbursed by  
6 the escrow agent to the provider of the funeral goods or funeral  
7 services in payment of all reasonable charges. Thereafter, not  
8 less than 90% of the remaining balance of principal and income,  
9 if any, shall be disbursed to the person, other than the provider  
10 or the contract seller, designated in the contract or authorized  
11 by law to receive the surplus, and the remainder, if any, shall  
12 be disbursed to the provider as final compensation for its  
13 services. The amount paid to the person entitled to receive the  
14 surplus shall be as follows:

15       (i) If no commission has been charged pursuant to this sec-  
16 tion, at least 90% of the remaining balance of principal and  
17 income in the escrow account.

18       (ii) If a commission of 5% or less of the contract price has  
19 been charged, at least 95% of the remaining principal and income  
20 in the escrow account.

21       (iii) If a commission of greater than 5% of the contract  
22 price has been charged, 100% of the remaining principal and  
23 income in the escrow account.

24       (b) If the prepaid funeral contract is a guaranteed price  
25 contract, the principal and income held by the escrow agent shall  
26 be disbursed to the provider, its designee, or its successor.

1 (c) If the escrow agent is notified that there is a dispute  
2 as to whether the provider has performed all its obligations  
3 under the prepaid funeral contract, the escrow agent shall file  
4 an action for interpleader or shall obtain an impartial arbitra-  
5 tor to determine the rights of the parties. Expenses of arbitra-  
6 tion shall be shared equally by the parties unless otherwise  
7 ordered by the arbitrator.

8 (10) A Michigan nonprofit corporation in which the majority  
9 interest is held by ~~250~~ 100 or more funeral establishments or  
10 by ~~250~~ 25 or more cemeteries may be designated as the escrow  
11 agent only if the contract buyer has expressly authorized such  
12 designation in writing. If the contract buyer authorizes the  
13 appointment as escrow agent of any such nonprofit corporation in  
14 the prepaid funeral contract, the authorization shall be set  
15 forth in a separate paragraph which shall not be effective unless  
16 separately signed or initialed by a contract buyer and which  
17 shall state that the buyer may elect to require that a state or  
18 national bank, or state or federal savings and loan association,  
19 a state or federally chartered credit union, or a trust company  
20 be designated as the escrow agent.

21 (11) If a prepaid contract is canceled, the escrow agent  
22 shall disburse the principal and income in accordance with sec-  
23 tion 13.

24 (12) At least annually, unless waived in writing by a con-  
25 tract buyer, a contract buyer shall be furnished a statement  
26 indicating the current balance, the income earned since the last  
27 statement, the fees or expenses charged since the last statement,

1 and the name and address of the person from whom additional  
2 information may be obtained relative to the account. The cost of  
3 the statement required by this subsection may be paid from the  
4 income and may be in addition to any other fee or charge autho-  
5 rized by this act.

6       SEC. 12A. (1) A REGISTRANT RECEIVING FUNDS FROM A CONTRACT  
7 SELLER ACTING ON THE BEHALF OR AT THE DIRECTION OF A REGISTRANT  
8 SHALL DEPOSIT INTO AN ESCROW ACCOUNT 70% OF THE RETAIL COST OF  
9 ALL PRENEED FUNERAL SERVICES AND 70% OF THE RETAIL COST OF ALL  
10 PRENEED FUNERAL GOODS. A CONTRACT SELLER MAY ALSO CHARGE A  
11 PRE-ARRANGEMENT FEE NOT TO EXCEED 10% OF THE RETAIL COST OF ALL  
12 PRENEED FUNERAL GOODS AND FUNERAL SERVICES.

13       (2) NOTWITHSTANDING SUBSECTION (1), INSCRIBED MARKERS MAY BE  
14 STORED UNTIL THE TIME OF NEED SO LONG AS THEY ARE INSURED IN AN  
15 AMOUNT IN EXCESS OF THEIR TOTAL REPLACEMENT COST. THE REGISTRANT  
16 SHALL ANNUALLY FILE WITH THE DEPARTMENT A CURRENT CERTIFICATE OF  
17 INSURANCE COVERAGE.

18       SEC. 12B. (1) A FUNERAL ESTABLISHMENT THAT MAINTAINS AN  
19 ESCROW ACCOUNT SHALL PROVIDE A REPORT PREPARED BY A CERTIFIED  
20 PUBLIC ACCOUNTANT FOR EACH FUND OR ACCOUNT WHICH SHALL COVER THE  
21 IMMEDIATELY PRECEDING 3 CALENDAR YEARS. THE REPORT SHALL BE ON  
22 FORMS PROVIDED BY THE DEPARTMENT OR IN ANY OTHER FORMAT CONSID-  
23 ERED APPROPRIATE BY THE CERTIFIED PUBLIC ACCOUNTANT AND APPROVED  
24 BY THE DEPARTMENT. THE CERTIFIED PUBLIC ACCOUNTANT IS REQUIRED  
25 TO UTILIZE GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. THE REPORT  
26 SHALL PROVIDE A DETERMINATION OF WHETHER THE FUNERAL

1 ESTABLISHMENT HAS APPARENTLY COMPLIED WITH ALL OF THE FOLLOWING  
2 AND SHALL INDICATE AREAS OF NONCOMPLIANCE, IF APPLICABLE:

3 (A) THE DEPOSIT REQUIREMENTS.

4 (B) THE INVESTMENT REQUIREMENTS.

5 (C) THE WITHDRAWAL PROCEDURES AND REQUIREMENTS.

6 (D) OTHER REQUIREMENTS OF THIS ACT OR OTHER ACTS WITHIN THE  
7 KNOWLEDGE OF THE CERTIFIED PUBLIC ACCOUNTANT AND READILY APPARENT  
8 FROM REVIEW OF THE RECORDS AND INFORMATION USED TO COMPILE THE  
9 REPORT.

10 (2) THE DEPARTMENT SHALL EXAMINE EACH REPORT REQUIRED BY  
11 THIS SECTION AND IF THE DEPARTMENT DETERMINES FROM THAT EXAMINA-  
12 TION THAT THE FUNERAL ESTABLISHMENT HAS NOT DEPOSITED, INVESTED,  
13 OR WITHDRAWN FUNDS IN ACCORDANCE WITH THIS OR OTHER ACTS OR HAS  
14 FAILED TO FILE A REPORT COMPLYING WITH THE REQUIREMENTS OF THIS  
15 ACT, THE DEPARTMENT SHALL TAKE ANY APPROPRIATE ACTION AUTHORIZED  
16 BY SECTION 24.

17 SEC. 12C. A REGISTRANT WHO DEPOSITS FUNDS WITH AN ESCROW  
18 AGENT UNDER THIS ACT SHALL HAVE IN EFFECT AT ALL TIMES AN AGREE-  
19 MENT UNDER WHICH THE ESCROW AGENT HAS, UNDER THE FOLLOWING CIR-  
20 CUMSTANCES, AGREED TO ALLOW INSPECTION AND COPYING OF RECORDS  
21 MAINTAINED BY IT PERTAINING TO FUNDS HELD OR MANAGED BY IT:

22 (A) UPON THE REQUEST BY THE DEPARTMENT, TO INSPECT OR COPY  
23 RECORDS PERTAINING TO ANY OR ALL FUNDS HELD OR MANAGED BY THE  
24 ESCROW AGENT.

25 (B) UPON THE REQUEST OF THE REGISTRANT OR ITS AGENT, TO  
26 INSPECT OR COPY RECORDS PERTAINING TO ANY OR ALL FUNDS DEPOSITED  
27 BY THE REGISTRANT WITH THE ESCROW AGENT.

1 (C) UPON THE REQUEST OF A CONTRACT BUYER OR A CONTRACT  
2 BENEFICIARY TO INSPECT OR COPY RECORDS PERTAINING TO FUNDS HELD  
3 OR MANAGED BY THE ESCROW AGENT PURSUANT TO A CONTRACT TO WHICH  
4 THE CONTRACT BUYER IS A PARTY OR FOR WHOSE BENEFIT IT WAS ENTERED  
5 INTO.

6 (D) UPON ORDER OF A COURT OF COMPETENT JURISDICTION.

7 SEC. 12D. (1) A REGISTRANT SHALL KEEP, IN THIS STATE, ACCU-  
8 RATE ACCOUNTS, BOOKS, AND RECORDS OF ALL TRANSACTIONS AND  
9 ACCOUNTS REGULATED BY THIS ACT. RECORDS INCLUDE COPIES OF ALL  
10 CONTRACTS, THE DATES AND AMOUNTS OF PAYMENTS MADE AND ACCEPTED  
11 UNDER THESE CONTRACTS, THE NAME AND ADDRESS OF EACH CONTRACT  
12 BUYER, THE NAME AND ADDRESS OF THE CONTRACT BENEFICIARIES, THE  
13 NAME AND ADDRESS OF EACH ESCROW AGENT, AND ANY OTHER RECORDS AS  
14 THE DEPARTMENT MAY REQUIRE TO ENABLE IT TO DETERMINE WHETHER THE  
15 REGISTRANT IS COMPLYING WITH THE REQUIREMENTS OF THIS ACT. THE  
16 REGISTRANT SHALL KEEP RECORDS FOR AT LEAST 36 MONTHS AFTER PER-  
17 FORMANCE OF ALL OBLIGATIONS OF EACH CONTRACT OR AFTER THE FILING  
18 OF THE FINAL SPECIAL REPORT WHICH INCLUDES A CONTRACT WHICH HAS  
19 BEEN PERFORMED.

20 (2) EVERY THIRD YEAR, A REGISTRANT WHICH SERVES AS AN ESCROW  
21 AGENT OR WHICH HAS DEPOSITED FUNDS WITH AN ESCROW AGENT SHALL  
22 SECURE A SPECIAL REPORT OF LIMITED REVIEW PREPARED BY A LICENSED  
23 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT PERTAINING TO FUNDS. THE  
24 SPECIAL REPORT SHALL BE ON FORMS PROVIDED BY THE DEPARTMENT OR IN  
25 ANY OTHER FORMAT CONSIDERED APPROPRIATE BY THE INDEPENDENT CERTI-  
26 FIED PUBLIC ACCOUNTANT AND APPROVED BY THE DEPARTMENT. THE  
27 SPECIAL REPORT SHALL BE PREPARED AND DATED WITHIN 90 DAYS BEFORE

1 THE EXPIRATION OF THE REGISTRANT'S CERTIFICATE OF REGISTRATION  
2 AND SHALL BE FURNISHED TO THE DEPARTMENT WITH THE REGISTRANT'S  
3 APPLICATION FOR RENEWAL OR, IF AN APPLICATION FOR RENEWAL IS NOT  
4 FILED, BEFORE THE EXPIRATION OF THE CERTIFICATE OF REGISTRATION.  
5 IN PREPARING THE SPECIAL REPORT, THE INDEPENDENT CERTIFIED PUBLIC  
6 ACCOUNTANT IS NOT REQUIRED TO REVIEW ALL CONTRACTS, TRUST AGREE-  
7 MENTS, TRUST ACCOUNTS, OR RECORDS OF THE REGISTRANT AND THE INDE-  
8 PENDENT CERTIFIED PUBLIC ACCOUNTANT IS NOT REQUIRED TO REVIEW ANY  
9 RECEIPTS OR DEPOSITS BY THE REGISTRANT OF CONTRACT FUNDS. THE  
10 SPECIAL REPORT OF THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT  
11 SHALL PROVIDE THE FOLLOWING ASSURANCES:

12 (A) BASED EITHER UPON A REVIEW OF THE REGISTRANT'S AGREEMENT  
13 WITH ESCROW AGENTS OR DEPOSITORIES WHICH LIMIT INVESTMENTS OF THE  
14 FUNDS BY THE ESCROW AGENTS OR DEPOSITORIES TO THOSE INVESTMENTS  
15 PERMITTED BY THIS ACT, OR UPON A REVIEW OF THE INVESTMENTS OF THE  
16 ESCROW ACCOUNTS, THAT THE REGISTRANT HAS COMPLIED WITH THE  
17 INVESTMENT REQUIREMENTS OF THIS ACT.

18 (B) IN THE CASE OF ESCROW ACCOUNTS WHERE THE REGISTRANT  
19 SERVES AS THE ESCROW AGENT, THAT WITHDRAWALS, AS DETAILED IN THE  
20 PERIODIC STATEMENTS OF THE DEPOSITORIES IN WHICH THE ESCROW  
21 ACCOUNTS ARE MAINTAINED, HAVE BEEN MADE IN COMPLIANCE WITH THIS  
22 ACT.

23 (C) MATTERS HAVE NOT COME TO THE ATTENTION OF THE INDEPEN-  
24 DENT CERTIFIED PUBLIC ACCOUNTANT DURING THE REVIEW OF ESCROW  
25 ACCOUNT INVESTMENTS AND WITHDRAWALS THAT GAVE CAUSE TO BELIEVE  
26 THAT THE REGISTRANT HAS NOT COMPLIED WITH THIS ACT. IF ANY  
27 MATTERS HAVE COME TO HIS OR HER ATTENTION, THE INDEPENDENT

1 CERTIFIED PUBLIC ACCOUNTANT SHALL INCLUDE AN EXPLANATION OF THE  
2 MATTERS WHICH CAUSED THE BELIEF THAT THE REGISTRANT HAS NOT COM-  
3 PLIED WITH THIS ACT.

4 (3) THE DEPARTMENT MAY EXAMINE EACH SPECIAL REPORT REQUIRED  
5 BY THIS SECTION AND IF THE DEPARTMENT DETERMINES ON THE BASIS OF  
6 ITS REVIEW THAT THE REGISTRANT OR ITS AGENT HAS NOT HELD OR  
7 INVESTED FUNDS IN COMPLIANCE WITH THE REQUIREMENTS OF THIS ACT OR  
8 HAS FAILED TO FILE A SPECIAL REPORT AS REQUIRED, THE DEPARTMENT  
9 SHALL TAKE ANY APPROPRIATE CORRECTIVE OR PENAL ACTION AUTHORIZED  
10 BY THIS ACT.

11 (4) THE DEPARTMENT MAY EXAMINE, REVIEW, OR AUDIT THE BOOKS  
12 AND RECORDS OF A CONTRACT SELLER OR PROVIDER PERTAINING TO FUNDS  
13 RECEIVED IN PAYMENT FOR CONTRACTS. AN AUDIT MAY INCLUDE AN EXAM-  
14 INATION OF THE BOOKS AND FINANCIAL RECORDS OF THE REGISTRANT AS  
15 WELL AS BOOKS AND FINANCIAL RECORDS OF ESCROW AGENTS USED BY THE  
16 REGISTRANT. A REGISTRANT SHALL AUTHORIZE ESCROW AGENTS TO OPEN  
17 THEIR RECORDS OF THE REGISTRANT ACCOUNTS TO THE DEPARTMENT UPON  
18 REQUEST.

19 (5) FOR THE PURPOSES OF COMPLYING WITH THE REQUIREMENTS OF  
20 THIS SECTION, A REGISTRANT WHO HAS NOT SOLD, PROVIDED, OR AGREED  
21 TO PROVIDE FUNERAL MERCHANDISE OR FUNERAL SERVICES IN ACCORDANCE  
22 WITH A CONTRACT AND WHO HAS NO OBLIGATIONS WITH RESPECT TO AN  
23 OUTSTANDING CONTRACT MAY SUBMIT A SWORN STATEMENT ACCOMPANIED BY  
24 A LETTER FROM A MICHIGAN-LICENSED CERTIFIED PUBLIC ACCOUNTANT  
25 THAT NO FUNERAL MERCHANDISE OR FUNERAL SERVICES WERE SOLD OR PRO-  
26 VIDED BASED UPON A REVIEW OF THE REGISTRANT'S BUSINESS RECORDS  
27 THAT A CONTRACT HAS NOT BEEN SOLD, PROVIDED, OR AGREED TO AND



1 THERE ARE NO OBLIGATIONS OUTSTANDING. THE DEPARTMENT SHALL  
2 ACCEPT THIS STATEMENT IN LIEU OF THE SPECIAL REPORT.

3 SEC. 12E. A REGISTRANT WHO DISCONTINUES ITS BUSINESS OPERA-  
4 TIONS SHALL NOTIFY THE DEPARTMENT AND THE CONTRACT BUYER OF EACH  
5 EXISTING CONTRACT AND SHALL PROVIDE WRITTEN DOCUMENTATION THAT IT  
6 HAS ARRANGED FOR AN ASSIGNMENT OF THESE CONTRACTS TO ANOTHER PRO-  
7 VIDER WHO SATISFIES THE REQUIREMENTS OF SECTION 12B.

8 SEC. 12F. A CONTRACT SHALL DESIGNATE A PROVIDER WHO HAS  
9 AGREED TO FURNISH THE FUNERAL GOODS OR FUNERAL SERVICES SPECIFIED  
10 IN THE CONTRACT UPON THE DEATH OF THE CONTRACT BENEFICIARY. IF  
11 THE PROVIDER DESIGNATED IS NOT THE CONTRACT SELLER OF THE CON-  
12 TRACT, THE PROVIDER SHALL HAVE PREVIOUSLY CONTRACTED WITH THE  
13 CONTRACT SELLER TO PROVIDE THE GOODS AND SERVICES SPECIFIED IN  
14 THE CONTRACT AND THE CONTRACT SHALL INDICATE THIS CONTRACTUAL  
15 RELATIONSHIP OR THE PROVIDER SHALL BE MADE A PARTY TO THE CON-  
16 TRACT BEFORE ANY CONSIDERATION IS PAID AND THE CONTRACT IS NOT  
17 BINDING ON THE CONTRACT BUYER UNTIL THE PROVIDER HAS BEEN MADE A  
18 PARTY TO THE CONTRACT.

19 Sec. 13. (1) A contract buyer may cancel a prepaid funeral  
20 contract before the death of the contract beneficiary upon ~~30~~  
21 ~~days~~ prior written notice to the contract seller of a nonguar-  
22 anteed price contract or to the provider designated to furnish  
23 funeral goods or funeral services pursuant to a guaranteed price  
24 contract. The contract seller or provider shall promptly notify  
25 the escrow agent of the cancellation and of its effective date,  
26 if the escrow agent is other than the contract seller or the  
27 provider. After receipt of the notice of cancellation, the

1 escrow agent shall disburse principal ~~and income in the escrow~~  
2 ~~account~~ to the contract buyer pursuant to this subsection and  
3 shall disburse the remainder of the principal and income, if any,  
4 to the contract seller or the provider. The amounts disbursed to  
5 the contract buyer shall be 100% OF THE CONTRACT PRICE PAID TO  
6 THE PROVIDER. ~~determined as follows:~~

7 ~~(a) If no commission has been charged pursuant to section~~  
8 ~~12(1), at least 90% of the remaining balance of principal and~~  
9 ~~income in the escrow account or held by the trustee.~~

10 ~~(b) If a commission of 5% or less of the contract price has~~  
11 ~~been charged, at least 95% of the remaining principal and income~~  
12 ~~in the escrow account.~~

13 ~~(c) If a commission of greater than 5% of the contract price~~  
14 ~~has been charged, 100% of the remaining principal and income in~~  
15 ~~the escrow account.~~

16 (2) A contract seller of a nonguaranteed price contract or a  
17 provider designated to furnish funeral goods or funeral services  
18 pursuant to a guaranteed price contract may cancel a prepaid  
19 funeral contract only if the contract buyer of a guaranteed price  
20 contract is more than 90 days delinquent in making any install-  
21 ment payment or partial payment, or the contract buyer is other-  
22 wise in default as to any other obligation under the contract.  
23 Upon cancellation, the contract buyer shall receive a refund as  
24 determined pursuant to subsection (1).

25 (3) AFTER THE DEATH OF THE CONTRACT BENEFICIARY, THE PREPAID  
26 CONTRACT MAY BE CANCELED ONLY BY A COURT ORDER ISSUED PURSUANT TO

1 SECTION 2851 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL  
2 333.2851.

3 (4) ~~-(3)-~~ After the death of the contract beneficiary, if  
4 the escrow account ~~established pursuant to a prepaid funeral~~  
5 ~~contract~~ is not used by persons legally entitled to make funeral  
6 arrangements for the contract beneficiary, the escrow agent shall  
7 disburse the principal and income in the escrow account pursuant  
8 to subsection (1) within 30 days after receipt of a request for  
9 payment from the contract seller of a nonguaranteed price con-  
10 tract, or the provider designated to furnish funeral goods or  
11 funeral services pursuant to a guaranteed price contract, or the  
12 contract buyer or the contract buyer's estate.

13 (5) ~~-(4)-~~ A contract seller or a provider which assigns or  
14 transfers its obligations under a prepaid funeral contract to  
15 another provider shall notify the contract buyer of the assign-  
16 ment in writing. If the contract buyer cancels the contract  
17 within 30 days of the notification of the assignment, the buyer  
18 shall be entitled to a refund of 100% of the remaining principal  
19 and income. ~~plus the commission, if any, charged in accordance~~  
20 ~~with section 12(1).~~ An assignment or transfer of a provider's  
21 obligations under a prepaid funeral contract which is made in  
22 connection with the sale of a business shall be subject to this  
23 subsection only if more than 50% of the ownership interest in the  
24 business is transferred to another person or persons within a  
25 12-month period. Nothing in this subsection shall apply to an  
26 assignment of a financial interest in an installment contract to  
27 a financial institution. At the time that the contract seller or

1 provider receives payment in exchange for selling or assigning  
2 its financial interest in an installment contract to a financial  
3 institution, the contract seller or provider shall be required to  
4 place in escrow the ~~full contract price~~ AMOUNT REQUIRED BY THIS  
5 ACT.

6       Sec. 15. (1) All prices or quotations of prices contained  
7 in a prepaid funeral contract, offer, or solicitation shall be  
8 stated in compliance with applicable federal and state laws and  
9 regulations. In addition, a person who offers either funeral  
10 goods or funeral services ~~for sale before the death of the~~  
11 ~~intended user or contract beneficiary~~ ON A PRENEED OR AT-NEED  
12 BASIS shall comply with the price disclosure rules of the federal  
13 trade commission, code of federal regulations, 16 C.F.R., part  
14 453, whether or not the rules by their own terms apply to the  
15 offering. Nothing in this subsection shall apply to the sale of  
16 any interest in land covered by the endowment care requirements  
17 of section 35a of ~~Act No. 87 of the Public Acts of 1855, being~~  
18 ~~section 456.35a of the Michigan Compiled Laws~~ 1855 PA 87,  
19 MCL 456.35A.

20       (2) A person who sells or offers to sell both funeral goods  
21 or services and nonfuneral goods or services as part of the same  
22 transaction or series of transactions shall not manipulate the  
23 relative prices of the goods or services so as to allocate a dis-  
24 proportionate share of the total price to nonfuneral property or  
25 services.

26       (3) All prepaid funeral contracts shall provide that a  
27 contract buyer may revoke the contract within 10 business days

1 after entering into the contract and that upon revocation, all  
 2 funds paid to the contract seller or provider shall be refunded.  
 3 This provision shall be conspicuously set forth in the contract  
 4 at a place immediately before the place where the contract buyer  
 5 is to sign his or her name.

6 (4) A prepaid funeral contract shall disclose the contract  
 7 buyer's right to cancel the contract and the amount of the refund  
 8 to which the contract buyer ~~or that person's estate~~ is entitled  
 9 upon cancellation. ~~The disclosure shall be stated substantially~~  
 10 ~~as follows: "This contract may be canceled either before death~~  
 11 ~~or after death by the buyer or, if the buyer is deceased, by the~~  
 12 ~~person or persons legally authorized to make funeral~~  
 13 ~~arrangements. If the contract is canceled, the buyer or the~~  
 14 ~~buyer's estate is entitled to receive a refund of \_\_\_\_% of the~~  
 15 ~~contract price and any income earned from investment of the prin-~~  
 16 ~~cipal less administrative or escrow fees." In addition, if IF a~~  
 17 commission is charged pursuant to section 12, the amount of the  
 18 commission and the fact that it is a charge which is in addition  
 19 to the contract price shall be stated in the prepaid funeral  
 20 contract. If a printed contract form is used, the disclosures  
 21 required by this subsection shall be stated in bold-faced type.

22 (5) Nothing in this act shall authorize a contract seller or  
 23 provider to perform or offer to perform services for which a mor-  
 24 tuary science license or funeral establishment ~~licensed~~ LICENSE  
 25 is required by ~~sections 1801 to 1812 of the occupational code,~~  
 26 ~~Act No. 299 of the Public Acts of 1980, being sections 339.1801~~  
 27 ~~to 339.1812 of the Michigan Compiled Laws~~ ARTICLE 18 OF THE

1 OCCUPATIONAL CODE, 1980 PA 299, MCL 339.1801 TO 339.1811, unless  
2 that person holds the required license or licenses. However,  
3 this act shall not be construed as requiring a contract seller or  
4 a provider to possess this license or any other license to engage  
5 in an activity covered under this act for which a license is not  
6 required by any other act.

7       (6) A prepaid funeral contract shall provide that the con-  
8 tract buyer may designate a new contract beneficiary any time  
9 before the death of the contract beneficiary originally specified  
10 in the prepaid funeral contract by providing written notice to  
11 the contract seller of a nonguaranteed price contract or the pro-  
12 vider designated to furnish funeral goods or funeral services  
13 pursuant to a guaranteed price contract. Notwithstanding any  
14 other provisions of law, a contract buyer may designate the  
15 estate of a deceased person as the contract beneficiary, or pro-  
16 vide that the contract beneficiary shall be the first of 2 or  
17 more designated persons to die.

18       (7) A prepaid funeral contract that is a nonguaranteed price  
19 contract shall have it indicated clearly on the contract that it  
20 is a nonguaranteed price contract and that the actual costs of  
21 the funeral goods and services delivered at the time of death may  
22 be greater or less than the amount of principal and income in the  
23 escrow account, and that the buyer, the buyer's estate, or the  
24 person or persons legally entitled to make funeral arrangements  
25 are not obligated to purchase specific goods and services which  
26 were selected before the death of the contract beneficiary or to  
27 expend a specific amount on funeral goods or funeral services.

1       Sec. 18. (1) Notwithstanding any other law to the contrary,  
2 a contract seller, provider, agent, employee, or person acting on  
3 behalf of a contract seller or provider, whether a registrant or  
4 not, shall not DO ANY OF THE FOLLOWING:

5       (a) Solicit a specific person for the purpose of providing  
6 funeral goods or funeral services for a prospective contract ben-  
7 eficiary knowing that the death of the prospective contract bene-  
8 ficiary has already occurred or is probably imminent.

9       (b) Make a false or misleading statement, oral or written,  
10 regarding the sale of funeral goods or funeral services pursuant  
11 to a prepaid funeral contract or regarding the rights or obliga-  
12 tions of any party or prospective party to a prepaid funeral con-  
13 tract for the purpose of inducing a person to purchase the  
14 funeral goods or funeral services or a prepaid funeral contract.

15       (c) Advertise or offer funeral goods or funeral services for  
16 sale before the death of a prospective contract beneficiary in a  
17 manner which is false, misleading, deceptive, or unfair.

18       (d) Fail to refund principal or principal and income paid  
19 for a prepaid funeral contract in violation of this act.

20       (E) SOLICIT FUNERAL GOODS OR FUNERAL SERVICES DOOR-TO-DOOR  
21 WITHOUT PRIOR CONSENT.

22       (F) FAIL TO DISCLOSE TO A CONTRACT BUYER THAT THE CONTRACT  
23 SELLER OR PROVIDER HAS A CONTRACTUAL RELATIONSHIP WITH A  
24 CEMETERY.

25       (G) REFUSE THE USE OF FUNERAL GOODS BOUGHT FROM ANOTHER  
26 VENDOR.

1 (H) FAIL TO ESCROW FUNDS AS PROVIDED UNDER THIS ACT.

2 (I) SELL OR OFFER TO SELL GOODS OR SERVICES NOT DIRECTLY  
3 RELATED TO FUNERAL GOODS OR FUNERAL SERVICES OR GOODS OR SERVICES  
4 OF ANY KIND AT BELOW THEIR ACTUAL COST.

5 (J) ~~(e)~~ Violate this act or rules promulgated under this  
6 act.

7 (2) Further, a registrant or a person acting on behalf of a  
8 registrant, including an agent or employee of a registrant, shall  
9 not do EITHER OR BOTH OF the following:

10 (a) Practice fraud, or deception in obtaining registration.

11 (b) Refuse to disclose books and records required to be  
12 maintained and disclosed under this act.

13 (3) The department may promulgate rules regulating the  
14 solicitation of prepaid funeral contracts by registrants to pro-  
15 tect against solicitations which are intimidating, vexatious,  
16 fraudulent, or misleading, or which take unfair advantage of a  
17 person's ignorance or emotional vulnerability.

18 (4) Any administrative action brought under this act shall  
19 be handled pursuant to the administrative procedures act OF 1969,  
20 ~~Act No. 306 of the Public Acts of 1969, being sections 24.201 to~~  
21 ~~24.328 of the Michigan Compiled laws~~ 1969 PA 306, MCL 24.201 TO  
22 24.328.

23 (5) A REGISTRANT SELLING FUNERAL GOODS OR FUNERAL SERVICES  
24 SHALL DISCLOSE ON ALL CONTRACTS AND STATIONERY THE NAME OF ANY  
25 OTHER ENTITY THAT OWNS AN INTEREST IN THE FUNERAL HOME INCLUDING,  
26 BUT NOT LIMITED TO, A CEMETERY, ANOTHER FUNERAL HOME, OR AN  
27 ENTITY CONSISTING OF A GROUP OF CEMETERIES OR FUNERAL HOMES.



1 (6) A REGISTRANT HAVING A CONTRACTUAL RELATIONSHIP WITH A  
2 CEMETERY SHALL DISCLOSE TO ANY POTENTIAL CONTRACT BUYER THAT  
3 RELATIONSHIP.

4 (7) A PERSON THAT SELLS OR OFFERS TO SELL EITHER CEMETERY  
5 MERCHANDISE OR SERVICES OR FUNERAL MERCHANDISE OR SERVICES AS  
6 PART OF THE SAME TRANSACTION OR SERIES OF TRANSACTIONS SHALL DO  
7 ALL OF THE FOLLOWING:

8 (A) REFRAIN FROM MANIPULATING THE RELATIVE PRICES OF THE  
9 MERCHANDISE OR SERVICES SO AS TO ALLOCATE A DISPROPORTIONATE  
10 SHARE OF THE TOTAL PRICE TO ANY OF THE MERCHANDISE OR SERVICES.

11 (B) CHARGE THE SAME PRICES TO ALL CUSTOMERS WITHOUT REGARD  
12 TO WHETHER THE CUSTOMER DOES BUSINESS WITH BOTH A FUNERAL ESTAB-  
13 LISHMENT AND AN AFFILIATED CEMETERY. HOWEVER, THE PRICE FOR  
14 FUNERAL OR CEMETERY GOODS AND SERVICES MAY PROVIDE FOR A DISCOUNT  
15 FOR GROUPINGS OF THOSE GOODS AND SERVICES WITHIN THE SEPARATE  
16 CATEGORIES OF FUNERAL OR CEMETERY GOODS AND SERVICES ONLY.  
17 DISCOUNTS FOR GOODS AND SERVICES SHALL NOT BE PROVIDED FOR BOTH  
18 CEMETERY AND FUNERAL GOODS AND SERVICES.

19 (C) REFRAIN FROM BASING ANY BENEFIT, DISCOUNT, OR OTHER  
20 PREFERENTIAL PRICE OR TREATMENT ON THE CONDITION THAT THE CUS-  
21 TOMER AGREES TO DO BUSINESS WITH BOTH A FUNERAL ESTABLISHMENT AND  
22 ITS AFFILIATED CEMETERY.

23 Sec. 19. (1) A prepaid funeral contract may be made with an  
24 applicant for or recipient of assistance under the social welfare  
25 act, ~~Act No. 280 of the Public Acts of 1939, being sections~~  
26 ~~400.1 to 400.121 of the Michigan Compiled Laws~~ 1939 PA 280, MCL  
27 400.1 TO 400.119B, or a patient or a legal guardian of a patient

1 in a mental health care facility under the jurisdiction of the  
2 department of ~~mental~~ COMMUNITY health. If the ~~department of~~  
3 ~~social services~~ FAMILY INDEPENDENCE AGENCY or department of  
4 ~~mental~~ COMMUNITY health determines that the contract is a fully  
5 paid guaranteed price contract of not more than ~~\$2,000.00~~ THAT  
6 AMOUNT ALLOWED UNDER SECTION 2080(6)(G) OF THE INSURANCE CODE OF  
7 1956, 1956 PA 218, MCL 500.2080, exclusive of income, and that  
8 the state will not be liable for the funeral goods or funeral  
9 services, excluding an outside receptacle when required by the  
10 chosen cemetery, of the applicant for or recipient of assistance  
11 or patient allowable under contracts under this act, the prepaid  
12 funeral contract shall be made irrevocable at the request of the  
13 applicant for or recipient of assistance, or the patient or a  
14 legal guardian of a patient. The ~~department of social services~~  
15 FAMILY INDEPENDENCE AGENCY or department of ~~mental~~ COMMUNITY  
16 health shall advise the applicant for or recipient of assistance,  
17 or the patient or a legal guardian of a patient that additional  
18 funeral goods or funeral services subject to contract under this  
19 act will not be paid by the ~~department of social services~~  
20 FAMILY INDEPENDENCE AGENCY or department of ~~mental~~ COMMUNITY  
21 health but shall not specify or require approval of particular  
22 funeral goods or funeral services selected by the applicant for  
23 or recipient of assistance, or patient or a legal guardian of a  
24 patient.

25 (2) A prepaid funeral contract approved by the ~~department~~  
26 ~~of social services~~ FAMILY INDEPENDENCE AGENCY or department of  
27 ~~mental~~ COMMUNITY health shall not be revoked or canceled by the

1 contract seller, contract provider, contract buyer, or their  
 2 successors, or the estate of the contract beneficiary either  
 3 before or after the death of the contract beneficiary. ~~However,~~  
 4 ~~nothing in this~~ THIS subsection ~~shall~~ DOES NOT prevent those  
 5 legally entitled to make arrangements for a contract beneficiary  
 6 from reallocating the amount paid under the prepaid contract to  
 7 different funeral services and funeral goods. An irrevocable  
 8 contract shall not be considered in determining the eligibility  
 9 of an applicant or recipient for assistance given under ~~Act~~  
 10 ~~No. 280 of the Public Acts of 1939~~ THE SOCIAL WELFARE ACT, 1939  
 11 PA 280, MCL 400.1 TO 400.119B. An irrevocable prepaid funeral  
 12 contract made under this section ~~shall~~ IS not ~~be~~ subject to  
 13 the cancellation provision of section 13 or to section 15(6).

14 (3) Notwithstanding any other provisions of this act, funds  
 15 paid in connection with an irrevocable prepaid funeral contract  
 16 may, at the option of the provider, be held and deposited in the  
 17 manner prescribed for a nonguaranteed price contract.

18 (4) The ~~department of social services~~ FAMILY INDEPENDENCE  
 19 AGENCY and department of ~~mental~~ COMMUNITY health may promulgate  
 20 rules under the administrative procedures act of 1969, ~~Act~~  
 21 ~~No. 306 of the Public Acts of 1969, being sections 24.201 to~~  
 22 ~~24.328 of the Michigan Compiled Laws~~ 1969 PA 306, MCL 24.201 TO  
 23 24.328, to provide for the uniform administration of this  
 24 section.

25 Sec. 24. The department or ~~any other person~~ A CONTRACT  
 26 BENEFICIARY OR HIS OR HER REPRESENTATIVE, in order to force  
 27 compliance with this act, may bring an action in a circuit court

1 in any county in which the registrant or any other person has  
2 solicited or sold prepaid funeral contracts, whether or not that  
3 person has purchased a prepaid funeral contract or is personally  
4 aggrieved by a violation of this act. The court may award dam-  
5 ages AND REASONABLE ATTORNEY FEES and issue equitable orders in  
6 accordance with the Michigan court rules to restrain conduct in  
7 violation of this act.

8 Enacting section 1. This amendatory act does not take  
9 effect unless all of the following bills of the 89th Legislature  
10 are enacted into law:

11 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
12 no. 05006'97 a \*).

13 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
14 no. 05007'97 \*).

15 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
16 no. 05214'97 \*\*\*).