

HOUSE BILL No. 5203

October 23, 2003, Introduced by Rep. LaSata and referred to the Committee on Commerce.

A bill to amend 1986 PA 255, entitled
"Prepaid funeral contract funding act,"
by amending sections 4, 5, 6, 8, 11, and 20 (MCL 328.214,
328.215, 328.216, 328.218, 328.221, and 328.230).

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~~ **nationally chartered**
8 **bank or state or federally chartered savings and loan**
9 **association, savings bank, or credit union whose deposits are**
10 **insured by an agency of the United States government under the**

1 laws of this state or the United States. Depository includes the
 2 trust department, if any, of an entity referred to in this
 3 subsection.

4 (2) "Designee" means an employee of the registrant who is
 5 authorized to receive principal and income held by the escrow
 6 agent on behalf of the registrant.

7 (3) ~~-(2)-~~ "Escrow agent" means a person who holds, invests,
 8 and disburses principal and income from the funds received under
 9 a prepaid funeral contract.

10 (4) ~~-(3)-~~ "Funds" means all money or other consideration
 11 actually received from a contract buyer by a contract seller or
 12 provider or an assignee ~~from~~ of the contract buyer in
 13 connection with any aspect of the sale of a prepaid funeral
 14 contract including finance charges. ~~-, but does-~~ **Funds do** not
 15 include late payment penalties, payments required to be made to a
 16 governmental agency at the time the contract is entered into, or
 17 a commission authorized by section 12(1).

18 (5) ~~-(4)-~~ "Funeral goods" means items of merchandise sold or
 19 offered for sale or lease to consumers ~~which~~ **that** will be used
 20 in connection with a funeral or an alternative to a funeral or
 21 final disposition of human remains ~~including~~ **and include**, but
 22 **are** not limited to, caskets, combination units, and catafalques.
 23 Funeral goods ~~shall~~ **do** not include ~~and~~ **the following:**

24 (a) **Land** or interests in land, crypts, lawn crypts, mausoleum
 25 crypts, or niches that are sold by a cemetery ~~which~~ **that**
 26 complies with the endowment care fund requirements of the
 27 cemetery regulation act, ~~Act No. 251 of the Public Acts of 1968,~~

1 ~~being sections 456.521 to 456.543 of the Michigan Compiled Laws~~
 2 ~~1968 PA 251, MCL 456.521 to 456.543. In addition, funeral goods~~
 3 ~~shall not include cemetery~~

4 **(b) Cemetery** burial vaults or other outside containers,
 5 markers, monuments, urns, ~~and~~ **or** merchandise items used for the
 6 purpose of memorializing a decedent and placed on or in proximity
 7 to a place of interment or entombment of a casket, catafalque, or
 8 vault or to a place of inurnment which are sold ~~by a cemetery~~
 9 ~~which deposits at least 130% of the cost of these items in a~~
 10 ~~merchandise trust account established and operated~~ **and deposited**
 11 **in a trust account** in accordance with the cemetery regulation
 12 act, ~~Act No. 251 of the Public Acts of 1968, being sections~~
 13 ~~456.521 to 456.543 of the Michigan Compiled Laws~~ **1968 PA 251,**
 14 **MCL 456.521 to 456.543.**

15 **(6)** ~~(5)~~ "Funeral services" means services customarily
 16 performed by a mortuary science licensee who is licensed pursuant
 17 to ~~sections 1801 to 1812~~ **article 18** of the occupational code,
 18 ~~Act No. 299 of the Public Acts of 1980, being sections 339.1801~~
 19 ~~to 339.1812 of the Michigan Compiled Laws~~ **1980 PA 299, MCL**
 20 **339.1801 to 339.1812.** ~~Further, funeral~~ **Funeral** services
 21 ~~includes~~ **include**, but ~~is~~ **are** not limited to, **the** care of dead
 22 human remains, embalming, preparation of dead human remains for
 23 final disposition, professional services relating to a funeral or
 24 an alternative to a funeral or final disposition of dead human
 25 remains, transportation of dead human remains, limousine
 26 services, use of facilities or equipment for viewing dead human
 27 remains, visitation, memorial services, or services ~~which~~ **that**

1 are used in connection with a funeral or **an** alternative to a
2 funeral, coordinating or conducting funeral rites or ceremonies,
3 and other services provided in connection with a funeral,
4 alternative to a funeral, or final disposition of dead human
5 remains.

6 (7) ~~(6)~~ "Guaranteed price contract" means a prepaid funeral
7 contract under which funds received are held pursuant to an
8 escrow agreement. ~~The~~ **A guaranteed price** contract has a
9 guaranteed fixed price for which specified funeral goods or
10 funeral services are required to be sold to or made available
11 ~~for~~ **to** a contract buyer or for a contract beneficiary,
12 regardless of the cost or value of the funeral goods or funeral
13 services at the time of death of the contract beneficiary. Under
14 the guaranteed price contract, additional consideration ~~shall~~
15 **is** not ~~be~~ charged for ~~the originally contracted for~~ **those**
16 funeral goods and funeral services. ~~at the time of delivery of~~
17 ~~the funeral goods and funeral services contracted for.~~

18 (8) ~~(7)~~ "Income" means the money earned by the investment
19 of the principal, including, but not limited to, interest,
20 dividends, and gains or losses on the sale of, deposit of, or
21 exchange of, property using invested principal amounts.

22 Sec. 5. (1) "Nonguaranteed price contract" means a prepaid
23 funeral contract under which funds received are held pursuant to
24 an escrow agreement between a contract seller or provider and a
25 contract buyer. Under the terms of ~~this~~ **a nonguaranteed price**
26 contract, a contract seller or provider agrees to apply the
27 principal and income to the cost of the funeral goods or funeral

1 services ~~which funeral goods and funeral services~~ **that** may be
 2 selected by the contract buyer at the time the contract is signed
 3 or as selected by a person legally authorized to procure funeral
 4 goods and funeral services at the time of death of the contract
 5 beneficiary. ~~However, this~~ **A nonguaranteed price** contract
 6 ~~shall~~ **does** not obligate the contract beneficiary's estate or
 7 the person ~~who is~~ legally entitled to make funeral arrangements
 8 for a deceased contract beneficiary to purchase specific goods
 9 and services ~~which were~~ selected before the contract
 10 beneficiary's death ~~, nor shall this contract~~ **and does not**
 11 obligate either the contract beneficiary's estate or the person
 12 ~~who is~~ **legally** entitled to make funeral arrangements for a
 13 deceased contract beneficiary to expend a specific amount **of**
 14 **money** on funeral goods or funeral services.

15 (2) "Person" means an individual, group of individuals, sole
 16 proprietorship, partnership, association, **limited liability**
 17 **corporation**, corporation, a governmental agency, or a combination
 18 of these legal entities.

19 (3) "Prepaid funeral contract" means a contract requiring
 20 payment in advance for funeral services or for funeral goods,
 21 physical delivery and retention of which would occur after death
 22 **of the contract beneficiary** under a guaranteed price contract or
 23 a nonguaranteed price contract. Prepaid funeral ~~contracts~~
 24 ~~shall~~ **contract does** not include a contract for the sale of
 25 funeral goods or funeral services ~~which is~~ entered into after
 26 the death of the ~~person for whose benefit the goods or services~~
 27 ~~are acquired~~ **contract beneficiary**.

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

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

15 (6) "Registrant" means a person ~~who has~~ registered with the
 16 department pursuant to section 6.

17 (7) "**Successor**" **means the succeeding registrant who has**
 18 **agreed to accept the assignment of prepaid funeral contracts**
 19 **written under the previous registration.**

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 registered with the
 23 department as provided in this section and has received a
 24 certificate of registration.

25 (2) ~~A person desiring to~~ **To** receive a certificate of
 26 registration under this section, **a person** shall ~~make application~~
 27 ~~upon~~ **apply on** forms provided by the department and pay an

1 application fee of \$120.00. The original registration may be
2 renewed. ~~A certification of registration shall be valid for 3~~
3 ~~years from the date of its issuance.~~ **A registration expires on**
4 **September 30 and is valid for a 3-year period.** An application
5 form for original registration or renewal shall contain the
6 following:

7 (a) The name and business address of the ~~entity registering~~
8 **person applying for registration.**

9 (b) The names and addresses of persons owning 10% or more
10 interest in the ~~entity~~ **person** applying for registration.

11 (c) The business address where books and records pertaining
12 to prepaid funeral contracts ~~shall be~~ **are** maintained for
13 inspection by the department.

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

23 (e) A **sworn** statement ~~made under oath~~ **indicating** that the
24 registrant has an agreement with each escrow agent with ~~which~~
25 **whom** it has deposited funds ~~which~~ **that** complies with the
26 requirements of section 7.

27 (3) **An application shall be accompanied by the appropriate**

1 **ownership documentation as required by the department.**

2 (4) ~~-(3)-~~ The department shall renew the registration of a
3 person who applies for renewal upon a form provided by the
4 department and ~~pays an~~ **does the following:**

5 (a) **Pays the renewal** application fee of \$30.00. ~~provided~~
6 ~~that the person has submitted the~~

7 (b) **Submits a** sworn statement as required by ~~this section~~
8 ~~and the~~ **subsection (2)(e).**

9 (c) **Submits a** special report or sworn statement as required
10 by section ~~8 at least 60 days prior to the expiration date~~
11 ~~printed on the certificate of registration~~ **8(4) or (8).**

12 (5) The certificate of registration of a person who fails to
13 file the sworn statement or special report required by ~~this~~
14 ~~section shall expire~~ **subsection (4) expires** on the date printed
15 on the certificate of registration. A registrant may reinstate
16 the registration within 60 days of its expiration by submitting
17 the sworn statement or special report and paying a **renewal** fee of
18 ~~-\$120.00-~~ **\$30.00 and a late fee of \$20.00.** A registrant may
19 **reinstate the registration within 60 days after its expiration by**
20 **submitting a special report and paying an application fee of**
21 **\$120.00 and a \$20.00 late fee.**

22 (6) ~~-(4)-~~ The department may deny the registration of a
23 person if it determines any of the following:

24 (a) That the person was previously registered with the
25 department and that registration was revoked or suspended within
26 2 years ~~prior to~~ **before** the date of the current application.
27 ~~for registration.~~

1 (b) That the person was or is presently an owner with a
 2 substantial interest in the entity, partner, or employee of a
 3 person whose registration was revoked or suspended within 2 years
 4 ~~prior to~~ **before** the date of the current application ~~for~~
 5 ~~registration~~ and the person engaged or participated in or
 6 authorized the misconduct which was the basis for the revocation
 7 or suspension.

8 (c) That the person has violated this act or article 18 of
 9 the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, or
 10 has a license that has been suspended or revoked.

11 (7) ~~(5) An applicant who registers with the~~ **The** department
 12 shall not ~~receive~~ **issue** a certificate of registration ~~unless~~
 13 ~~the~~ **to an** applicant ~~complies~~ **who fails to comply** with ~~the~~
 14 ~~conditions in~~ this section.

15 (8) ~~(6) A person who is~~ denied registration by the
 16 department ~~pursuant to~~ **under the grounds described in** this
 17 section may ~~petition~~ **request** the department ~~for~~
 18 ~~reconsideration~~ **to reconsider the denial**. A person ~~seeking~~
 19 **requesting** reconsideration ~~shall be~~ **is** entitled to a hearing
 20 conducted in compliance with the administrative procedures act of
 21 1969, ~~Act No. 306 of the Public Acts of 1969, being sections~~
 22 ~~24.201 to 24.328 of the Michigan Compiled Laws~~ **1969 PA 306, MCL**
 23 **24.201 to 24.328**.

24 Sec. 8. (1) A registrant shall ~~keep,~~ **maintain** in this
 25 state ~~—~~ accurate accounts, books, and records of all
 26 transactions and accounts regulated by this act. ~~Records shall~~
 27 ~~include copies of all prepaid funeral contracts, the dates and~~

~~1 amounts of payments made and accepted under these contracts, the~~
~~2 name and address of each contract buyer, the name and address of~~
~~3 the contract beneficiaries, the name and address of each escrow~~
~~4 agent, and any other records as the department may require to~~
~~5 enable it to determine whether the registrant is complying with~~
~~6 the requirements of this act. Records~~ Beginning January 1,
7 2004, the registrant shall keep copies of all prepaid funeral
8 contracts and the numbers of those contracts, which shall be
9 sequential, including all prepaid funeral contracts that have not
10 been fully executed, prepaid funeral contracts that have been
11 canceled, and prepaid funeral contracts that have been revoked.
12 Beginning January 1, 2004, the registrant shall establish and
13 maintain a record for each prepaid funeral contract sold that
14 includes the following:

- 15 (a) The name and address of the buyer.
- 16 (b) The name and address of the contract beneficiary.
- 17 (c) The name of the escrow agent.
- 18 (d) The date the funds are received for funeral goods and
19 funeral services.
- 20 (e) The date the funds are deposited into escrow.
- 21 (f) The contract number with a description of whether the
22 contract is guaranteed or nonguaranteed.
- 23 (g) The contract's total price exclusive of commission.
- 24 (h) The total commission charged on the contract.
- 25 (i) The date the contract is performed, canceled, or
26 revoked.
- 27 (j) The amount of the refund paid to the contract buyer if

1 canceled or revoked and the date of the refund.

2 (2) Beginning January 1, 2004, the registrant shall also
3 establish and maintain a receipts journal that includes the
4 following relative to the funds received by the registrant:

5 (a) A chronological sequence regarding funds received.

6 (b) The date funds are received.

7 (c) The amount of funds received for funeral goods and
8 funeral services.

9 (d) The date funds are deposited into escrow.

10 (e) The name of the contract buyer.

11 (f) The contract number.

12 (3) The registrant shall ~~be kept~~ maintain the records
13 described in subsections (1) and (2) for at least 36 months after
14 performance of all obligations of each prepaid funeral contract
15 or for at least 36 months after the filing of the ~~final~~ special
16 report ~~which~~ that includes ~~a contract which has~~ all prepaid
17 funeral contracts that have been performed.

18 (4) ~~(2) A least once every 3 years~~ Beginning July 1, 2004
19 and not later than July 1 of each succeeding year, a registrant
20 ~~which~~ that serves as an escrow agent or ~~which~~ that has
21 deposited funds with an escrow agent pursuant to section 12 shall
22 ~~secure a special report of limited review prepared by a licensed~~
23 ~~independent certified public accountant pertaining to prepaid~~
24 ~~funeral contract funds. The special report shall be on forms~~
25 ~~provided by the department or in any other format considered~~
26 ~~appropriate by the independent certified public accountant. 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 shall not be required to review all prepaid funeral~~
7 ~~contracts, escrow agreements, escrow accounts, or records of the~~
8 ~~registrant, nor shall the independent certified public accountant~~
9 ~~be required to review any receipts or deposits by the registrant~~
10 ~~of prepaid funeral contract funds. The special report of the~~
11 ~~independent certified public accountant shall provide the~~
12 ~~following assurances—~~ **submit a special report on a form provided**
13 **by the department. The special report shall contain all of the**
14 **following:**

15 (a) ~~That, based either upon a review of the registrant's~~
16 ~~agreements with escrow agents or depositories which limit~~
17 ~~investments of the escrow funds by the escrow agents or~~
18 ~~depositories to those investments permitted by this act, or upon~~
19 ~~a review of the investments of the escrow accounts, the~~
20 ~~investment requirements of section 12(4) have been complied~~
21 ~~with.—~~ **Information necessary to determine compliance with the**
22 **requirements of this act regarding the escrowing of funds.**

23 (b) ~~In the case of escrow accounts where the registrant~~
24 ~~serves as the escrow agent, that withdrawals, as detailed in the~~
25 ~~periodic statements of the depositories in which the escrow~~
26 ~~accounts are maintained, have been made in accordance with this~~
27 ~~act.—~~ **The names and address of the depositories into which the**

1 funds are deposited, the account numbers, and escrow dates.

2 (c) ~~That no matters have come to the attention of the~~
3 ~~independent certified public accountant during the review of~~
4 ~~escrow account investments and withdrawals that gave cause to~~
5 ~~believe that the registrant has not complied with this act, or if~~
6 ~~any matters have come to his or her attention, the independent~~
7 ~~certified public accountant shall include an explanation of the~~
8 ~~matters which caused the belief that the registrant has not~~
9 ~~complied with this act.~~ A signed statement of a licensed
10 independent certified public accountant providing reasonable
11 assurance that the escrow information contained in the special
12 report is fairly presented based upon tests of the records and
13 such other procedures as the independent certified public
14 accountant considers necessary under the circumstances.

15 (5) If an application for renewal is not filed, a registrant
16 shall submit the report before the expiration of the certificate
17 of registration.

18 (6) ~~(3)~~ The department ~~may~~ shall examine each special
19 report required by ~~this section and if~~ subsection (4). If the
20 department determines on the basis of its review that **there is**
21 **reason to believe** the registrant or its agent has not held or
22 invested funds in accordance with the requirements of this act or
23 has failed to file a special report as required **by subsection**
24 **(4)**, the department shall audit the report in question. If the
25 department determines from that audit that a registrant has
26 **violated this act**, the department shall take any appropriate
27 corrective **administrative** or penal action authorized by this

1 act.

2 **(7) —(4)—** The department may, **at any time and for any reason,**
3 examine, review, or audit the books and records of a contract
4 seller or provider pertaining to funds received in payment for
5 prepaid funeral contracts. An audit may include an examination
6 of the books and financial records of the registrant as well as
7 books and financial records of escrow agents used by the
8 registrant. A registrant shall authorize escrow agents to open
9 their records of the registrant accounts to the department upon
10 request.

11 **(8) —(5) For the purposes of complying with the requirements**
12 ~~of this section, a~~ **A** registrant who has not sold, provided, or
13 agreed to provide funeral goods or funeral services ~~in~~
14 ~~accordance with~~ **under** a prepaid funeral contract and who has no
15 obligations with respect to an outstanding prepaid funeral
16 contract may submit a sworn statement that a prepaid funeral
17 contract has not been sold, provided, or agreed to and **that** there
18 are no obligations outstanding. ~~This~~ **The department shall**
19 **accept this sworn** statement ~~shall be accepted in lieu~~ **instead**
20 of the special report **under subsection (4).**

21 **(9) A registrant whose books and records have been audited by**
22 **the department shall reimburse the department for the actual cost**
23 **of any audit, examination, or review of books and records**
24 **conducted under this act.**

25 Sec. 11. (1) A guaranteed **and nonguaranteed** price contract
26 shall designate a provider who has agreed to furnish the funeral
27 goods or funeral services specified in the contract upon the

1 death of the contract beneficiary. If the provider designated is
2 not the contract seller of the contract, the provider shall have
3 previously contracted with the contract seller to provide the
4 goods and services specified in the contract and the contract
5 shall indicate this contractual relationship or the provider
6 shall be made a party to the contract before any consideration is
7 paid and the contract shall not be binding on the contract buyer
8 until the provider has been made a party to the contract.

9 (2) In addition to the registration otherwise required by
10 the terms of this act, the provider ~~which~~ **that** has agreed to
11 furnish funeral goods or funeral services pursuant to a
12 guaranteed price contract shall, at the time the contract is
13 entered into, possess any license required in order to provide
14 funeral goods or funeral services, pursuant to ~~sections 1801 to~~
15 ~~1812~~ **article 18** of the occupational code, ~~Act No. 299 of the~~
16 ~~Public Acts of 1980, being sections 339.1801 to 339.1812 of the~~
17 ~~Michigan Compiled Laws~~ **1980 PA 299, MCL 339.1801 to 339.1812.**

18 Sec. 20. (1) Upon **a** complaint made by ~~any~~ **a** person, or
19 upon its own initiative, the department may investigate ~~alleged~~
20 violations of this act or rules promulgated under this act
21 **alleged to have been committed** by a registrant or any other
22 person. The department may examine books, records, contracts,
23 and other documents in possession of or under the control of
24 ~~any~~ **a** registrant with or without the consent of that registrant
25 and with or without a warrant authorizing the examination, or of
26 any other person if that person consents to an examination or if
27 the department obtains a warrant authorizing an examination. If

1 the department determines that reasonable cause exists to believe
2 that a violation has occurred, it shall do 1 of the following:

3 (a) If the alleged violation was committed by a person other
4 than a registrant, the department shall refer the matter to the
5 attorney general or a prosecuting attorney for criminal or civil
6 action as provided in sections 23 and 24.

7 (b) If the alleged violation was committed by a registrant,
8 the department shall do either of the following:

9 (i) Refer the matter to the attorney general for civil or
10 criminal prosecution or enforcement.

11 (ii) Institute **administrative** proceedings ~~in compliance~~
12 ~~with~~ **under** the administrative procedures act of 1969, ~~Act~~
13 ~~No. 306 of the Public Acts of 1969, being sections 24.201 to~~
14 ~~24.328 of the Michigan Compiled Laws~~ **1969 PA 306, MCL 24.201 to**
15 **24.328.**

16 (iii) **Issue a cease and desist order.**

17 (2) If, after a hearing, the department determines that a
18 registrant has violated the provisions of this act or ~~any~~ **a**
19 rule promulgated ~~pursuant to~~ **under** this act, the department
20 shall do 1 or more of the following:

21 (a) Suspend or revoke the registration.

22 (b) Impose ~~a civil~~ **an administrative** fine not to exceed
23 \$5,000.00 for each violation. ~~and~~ **The department** may suspend
24 the registration until the **administrative** fine is paid.

25 (c) Require restitution of funds paid pursuant to a prepaid
26 funeral contract. ~~and restitution~~ **The department** may ~~include~~
27 ~~suspending~~ **suspend** the registration until restitution is made.

1 (d) Impose a period of probation during which the registrant
2 is required to comply with additional conditions imposed by the
3 department in lieu of or in addition to the imposition of other
4 **sanctions or** penalties ~~provided~~ **available** under this act.

5 (e) Impose restrictions upon the registrant's prepaid funeral
6 business activities ~~which~~ **that** require additional
7 accountability to the department.

8 (f) Issue a written warning to the registrant.

9 Enacting section 1. This amendatory act takes effect
10 January 1, 2004.