

## **CEMETERY REGULATION ACT Act 251 of 1968**

AN ACT to regulate the creation and management of cemeteries; to regulate the sale of cemetery services and merchandise; to provide for a cemetery commissioner, and to prescribe the powers and duties of the commissioner; to require the registration and audit of cemeteries; to regulate persons selling burial, entombment, or columbarium rights, cemetery services, or cemetery merchandise; and to prescribe penalties.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at S 338.3501 of the Michigan Compiled Laws.

### **The People of the State of Michigan enact:**

#### **456.521 Cemetery regulation act; short title.**

Sec. 1. This act shall be known and may be cited as the "cemetery regulation act".

History: 1968, Act 251, Eff. Sept. 15, 1968.

#### **456.522 Definitions.**

Sec. 2. As used in this act:

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

- (i) A burial ground for earth interments.
- (ii) A mausoleum for crypt entombments.
- (iii) A crematory for the cremation for human remains.
- (iv) A columbarium for the deposit of cremated remains.

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

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

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

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

(f) "Mausoleum" means a structure used, or intended to be used, for the entombment in a crypt or crypts in the structure of the remains of deceased persons.

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

(h) "Columbarium" means a structure or room or other space in a building or structure used or intended to be used for the inurnment or deposit of cremated remains.

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

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

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

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

(m) "Cemetery commissioner" or "commissioner" means the director of licensing and regulation or a designee of the director.

History: 1968, Act 251, Eff. Sept. 15, 1968;--Am. 1972, Act 290, Imd. Eff. Oct. 30, 1972;--Am. 1978, Act 290, Eff. July 10, 1978;--Am. 1982, Act 132, Imd. Eff. Apr. 20, 1982.

#### **456.522a Commissioner, spouse, or child; financial interest in cemetery, supplier, or funeral establishment prohibited.**

Sec. 2a. The cemetery commissioner, or the commissioner's spouse or child, shall not have a financial interest in a cemetery, a supplier of cemetery services or cemetery memorials, or a funeral establishment as defined in section 1801 of Act No. 299 of the Public Acts of 1980, being section 339.1801 of the Michigan Compiled Laws.

History: Add. 1982, Act 132, Imd. Eff. Apr. 20, 1982.

#### **456.523 C 456.527 Repealed.**

History: 1982, Act 132, Imd. Eff. Apr. 20, 1982.

Compiler's note: The repealed sections pertained to the creation and membership of the state cemetery commission.

#### **456.528 Commissioner; rules.**

Sec. 8. The commissioner may promulgate rules in accordance with and subject to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to implement and administer this act, including rules regarding:

(a) The maintaining of records relative to the financial aspects of cemeteries.

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

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

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

History: 1968, Act 251, Eff. Sept. 15, 1968;--Am. 1972, Act 290, Imd. Eff. Oct. 30, 1972;--Am. 1982, Act 132, Imd. Eff. Apr. 20, 1982.

Administrative rules: R 456.101 et seq. of the Michigan Administrative Code.

**456.529 Commissioner; hearings; oaths; testimony; witnesses; production of books and records; subpoena; violation of act, rule, or order; cease and desist order; assurance of discontinuance; action to enforce compliance; injunction or restraining order; appointment of receiver or conservator; bond not required; denial of application; suspension or revocation of permit or registration.**

Sec. 9. (1) The commissioner may hold hearings, administer oaths, take testimony under oath, and request in writing the appearance and testimony of witnesses, including the production of books and records. Upon the refusal of a witness to appear, testify, or submit books and records after a written request, the commissioner or a party to a contested case may apply to the circuit court for Ingham county for a subpoena or a subpoena duces tecum. The court shall issue a subpoena when reasonable grounds are shown.

(2) When it appears to the commissioner that a person or registrant has violated this act or a rule promulgated or order issued under this act, the commissioner may do 1 or more of the following:

(a) Issue a cease and desist order.

(b) Accept an assurance of discontinuance.

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

(3) Upon a proper showing regarding an action brought under subsection (2)(c), a permanent or temporary injunction or a restraining order may be granted and a receiver or conservator may be appointed by the court. A receiver or conservator appointed by the court may take possession of the assets and may sell, assign, transfer, or convey the cemetery to a municipal corporation or other person other than the holder of a license for the practice of mortuary science, or a person who owns, manages, supervises, operates, or maintains, either directly or indirectly, a funeral establishment, under conditions prescribed by the court, in order to discharge outstanding contractual obligations. The court may allow the receiver or conservator to file for protection under the bankruptcy code.

(4) In the order of sale of the cemetery, the court shall make provision for notice to creditors and the filing of claims against the receivership or conservatorship. Any remaining funds held by the cemetery in escrow under this act belong to the contract buyers or beneficiaries of the contract buyers and shall not be distributed to the general creditors of the cemetery. This section does not prohibit the court from allowing the sale of the cemetery to a person other than the holder of a license for the practice of mortuary science or a person who owns, manages, supervises, operates, or maintains, either directly or indirectly, a funeral establishment or municipal corporation.

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

(6) As used in this section, "municipal corporation" means that term as defined in section 1 of 1927 PA 10, M.C.L. 456.181.

History: 1968, Act 251, Eff. Sept. 15, 1968;--Amended. 1978, Act 102, Imd. Eff. Apr. 6, 1978;--Amended 1982, Act 132, Imd. Eff. Apr. 20, 1982.; Amended 2002, PA 550. Effective 7-26-2002.

**456.530 Commissioner; auditing trust funds; registration of cemeteries; exemptions; municipal ordinances.**

Sec. 10. (1) The commissioner shall institute and maintain a system of auditing trust funds required by this act and of registering each cemetery authorized to be created, maintained, and operated under Act No. 12 of the Public Acts of 1869, as amended, being sections 456.101 to 456.119 of the Michigan Compiled Laws, and Act No. 87 of the Public Acts of 1855, as amended, being sections 456.1 to 456.36 of the Michigan Compiled Laws, as well as any other cemetery operating under state law or local ordinance. A cemetery owned and operated by a municipality, church, or religious institution shall be exempt from this act. However, a municipality may pass ordinances necessary for regulating that municipality's cemeteries.

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

History: 1968, Act 251, Eff. Sept. 15, 1968;--Amended. 1978, Act 102, Imd. Eff. Apr. 6, 1978;--Amended. 1982, Act 132, Imd. Eff. Apr. 20, 1982;--Amended. 1982, Act 289, Immediate Effect Oct. 7, 1982.

**456.531 Commissioner; registration fee; renewal blank and notice.**

Sec. 11. The commissioner shall charge an annual registration fee of \$20.00 per year for each cemetery registered. Not less than 90 days before the expiration date prescribed in section 15, the commissioner shall cause a renewal blank to be mailed to each registrant, together with a notice advising the registrant of the time and procedures for renewal of a registration.

History: 1968, Act 251, Eff. Sept. 15, 1968;--Am. 1982, Act 132, Imd. Eff. Apr. 20, 1982.

**456.532 Permit for registration required; acquisition of controlling interest in cemetery company; application for certificate of approval; contents; issuance; fee; "controlling interest" defined; noncompliance; hearing; action to insure compliance.**

Sec. 12. (1) A person or business entity shall not establish a cemetery without a valid permit or operate an existing cemetery except under a valid registration under this act.

(2) If a person or business entity proposes to purchase or otherwise acquire a controlling interest in an existing cemetery company, that person or business entity shall first make application to the commissioner for a certificate of approval of a proposed change of control of a cemetery company. The application shall contain the name and address of the proposed new owner or operator and other information as the commissioner requires. The commissioner shall issue a certificate of approval only after he or she is satisfied that the proposed new owner is qualified by character, experience, and financial responsibility to control and operate the cemetery in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in ownership and management. The application for a purchase or change of control must be accompanied by an initial filing or investigation fee of \$500.00. As used in this section, "controlling interest" means the capability to decide the operating and financial policies of the cemetery company or to select a majority of the officers or directors of the cemetery company. In deciding whether a person or business entity has or proposes to acquire a controlling interest, the percentage of the stock, assets, or other indicia of ownership which a person or business entity acquires or proposes to acquire need not be the only factor considered by the commissioner. If a person or business entity fails to comply with this section, the commissioner shall order that a hearing be held. If a transfer of controlling interest is found to have taken place without prior commissioner approval, the commissioner in his or her discretion may suspend or revoke the registration of the cemetery or take other appropriate action to insure compliance with this section.

History: 1968, Act 251, Eff. Sept. 15, 1968;--Am. 1972, Act 290, Imd. Eff. Oct. 30, 1972;--Am. 1978, Act 102, Imd. Eff. Apr. 6, 1978;--Am. 1982, Act 132, Imd. Eff. Apr. 20, 1982.

#### **456.532a Examining affairs of cemetery or business entity; inspection or audit of books, papers, records, and documents; audit charges.**

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

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

History: Add. 1978, Act 102, Imd. Eff. Apr. 6, 1978;--Am. 1982, Act 132, Imd. Eff. Apr. 20, 1982.

**456.533 Establishment of cemetery; application for permit; investigation fee.**

Sec. 13. Any person or business entity desiring to establish a cemetery shall file with the commissioner, on forms furnished by the commissioner, an application for a permit to establish a cemetery. The application shall be accompanied by an investigation fee of \$500.00. After a receipt of an application, the commissioner shall make an investigation pertaining to the physical plans, the community need for the planned cemetery, and pertinent information pertaining to the applicant's experience, financial stability, ability, and integrity. If the applicant is other than a natural person, the same investigation shall be made of the general manager and principal owners.

History: 1968, Act 251, Eff. Sept. 15, 1968;--Am. 1982, Act 132, Imd. Eff. Apr. 20, 1982.

**456.534 Granting or refusing to grant permit; denial of application; procedures.**

Sec. 14. After receipt of the investigation fee and application, and after investigation, the commissioner shall grant or refuse to grant the permit. If the commissioner decides to deny the application for a permit, he or she shall follow the procedure set forth in section 19.

History: 1968, Act 251, Eff. Sept. 15, 1968;--Am. 1982, Act 132, Imd. Eff. Apr. 20, 1982.

**456.535 Registration of cemetery; time; application; form; fee; expiration; procedure for denying registration; late penalty filing fee.**

Sec. 15. Each individual or business entity operating a cemetery shall register the cemetery by filing with the commissioner a registration application before June 2 of each year, on a form furnished by the commissioner, and accompanied by the registration fee. Registrations shall expire on July 1 of each year. If the commissioner intends to deny registration, the procedure set forth in section 19 shall be followed. The commissioner may impose a late penalty filing fee of \$10.00 per day on an individual or business entity which filed a registration application after June 1 or on an individual or business entity which files a trust fund report after the due date set forth in this act.

History: 1968, Act 251, Eff. Sept. 15, 1968;--Am. 1978, Act 102, Imd. Eff. Apr. 6, 1978;--Am. 1982, Act 132, Imd. Eff. Apr. 20, 1982.

**456.535a Witness fee; prohibition.**

Sec. 15a. A registrant shall not charge a fee for witnessing the lowering of a casket into the ground.

History: Add. 1996, Act 112, Imd. Eff. Mar. 5, 1996.

**456.536 Irrevocable endowment care fund; establishment and maintenance; annual report; application for care fund deposit modification or waiver; expenses; agent or seller; deposit requirements; merchandise trust account; deposit for sale of burial vaults or containers; repayment; installation of vault; contents of cemetery merchandise and services contract; annual report by cemetery or agent; deficit in amount of required deposits; penalty; hearing; additional penalty; disposition of fees, charges, and penalties.**

Sec. 16. (1) The commissioner shall require each cemetery to establish and maintain an irrevocable endowment care fund as required by section 35a of Act No. 87 of the Public Acts of 1855, being section 456.35a of the Michigan Compiled Laws, or section 7a of Act No. 12 of the Public Acts of 1869, as amended, being section 456.107a of the Michigan Compiled Laws, and to report annually before July 1 of each year, on forms approved and furnished by the commissioner, care fund information required to be reported to the commissioner by other statutes and information regarding the funds as the commissioner considers pertinent in the public interest. A cemetery applying to the commissioner as authorized by other statutes for a care fund deposit modification or waiver shall be assessed the actual expenses for an examination or investigation by the commissioner. The commissioner shall require each person engaged as agent or seller, as a means of livelihood either part time or full time, in the selling of burial rights, entombment rights, or columbarium rights owned by a party other than a cemetery or corporation subject to the care fund requirements of other laws, to deposit 15% of all gross proceeds received from the sales of those rights into the irrevocable care fund of the cemetery in which the rights are located if an irrevocable care fund exists for that cemetery. Excess sums on deposit in the fund can be applied by a cemetery against future deposits. A deposit required to be made by those persons shall be modified or waived if the cemetery has received a care fund deposit modification or waiver approved by the commissioner. The total deposit for a single adult burial right sale or assignment shall not be less than \$20.00.

(2) A cemetery which is required to register pursuant to this act and an agent which is authorized by a cemetery or acting on its behalf under an agreement or sales contract to sell cemetery merchandise or cemetery services shall establish a merchandise trust account and deposit a percentage of the gross proceeds received from the sales as determined by the commissioner. The merchandise trust account shall be maintained exclusively for the deposit of the money into a bank or trust company located in this state under the terms of a written trust agreement approved by the commissioner. The funds shall be deposited not later than the month following their receipt.

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

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

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

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

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

History: 1968, Act 251, Eff. Sept. 15, 1968;--Am. 1972, Act 290, Imd. Eff. Oct. 30, 1972;--Am. 1978, Act 102, Imd. Eff. Apr. 6, 1978;--Am. 1982, Act 132, Imd. Eff. Apr. 20, 1982.

### **456.537 Repealed.**

History: 1982, Act 132, Imd. Eff. Apr. 20, 1982.

Compiler's note: The repealed section pertained to the licensing of salesmen and trainees.

**456.538 Denial, suspension, or revocation of permit or registration, and other disciplinary action; grounds; effect; fulfillment of contractual obligations and agreements.**

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

(a) Made a false statement of a material fact in the application.

(b) Not complied with this act.

(c) Been guilty of a fraudulent act in connection with selling or otherwise dealing in cemetery lots, burial rights, or services of a type required to be registered under this act.

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

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

(f) Adopted, enforced, or attempted to enforce a regulation of the cemetery which prohibits the installation of a grave memorial or burial vault unless the grave memorial or burial vault was purchased from the cemetery. However, this subdivision shall not prohibit a cemetery from adopting and enforcing consistent rules and regulations to be followed by both the cemetery and outside vendors as to the quality, size, shape, type, installation, and maintenance of the grave memorial or burial vault.

(2) If the commissioner denies an application for a permit or registration, or suspends or revokes an existing permit or registration required by this act, the denial, revocation, or suspension shall revoke the cemetery operation as to the sale or assignment of burial rights, entombment rights, columbarium rights, cemetery merchandise, or cemetery services after the date of the suspension, revocation, or denial. The corporation shall fulfill all contractual obligations and agreements entered into before the date of the suspension, revocation, or denial, and shall make required interments for the owners of burial rights, entombment rights, or columbarium rights purchased before the date of suspension, revocation, or denial.

Apr. 20, 1982.

**456.539 Denial, suspension, or revocation of permit or registration; notice of intent; hearing; decision.**

Sec. 19. If the commissioner intends to deny an application for a permit to establish a cemetery, to refuse registration of an existing cemetery, or to suspend or revoke a registration, the commissioner shall give written notice to the person or business involved of that intent. The notice shall state a time and a place for hearing before the commissioner or a designated hearing officer, and a summary statement of the reasons for the proposed action. The notice of intent shall be mailed by certified mail to the applicant at least 15 days before the scheduled hearing date. The commissioner shall hold a hearing pursuant to the notice in the manner required by Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, and the rules of procedure adopted by the commissioner, and shall make a written decision.

History: 1968, Act 251, Eff. Sept. 15, 1968;--Am. 1978, Act 102, Imd. Eff. Apr. 6, 1978;--Am. 1982, Act 132, Imd. Eff. Apr. 20, 1982.

**456.540 Appeal.**

Sec. 20. Any person aggrieved by the decision of the commissioner rendered under section 19 may appeal to the circuit court as provided in chapter 6 of Act No. 306 of the Public Acts of 1969, as amended, being sections 24.301 to 24.306 of the Michigan Compiled Laws.

History: 1968, Act 251, Eff. Sept. 15, 1968;--Am. 1982, Act 132, Imd. Eff. Apr. 20, 1982.

**456.541 Violations; penalties.**

Sec. 21. A person, firm, partnership, association, or corporation who violates this act is guilty of a misdemeanor, and, if a natural person, the first offense shall be punishable by a fine of not more than \$100.00 or imprisonment for not more than 90 days, and a second offense shall be punishable by a fine of not more than \$500.00 or imprisonment for not more than 1 year, or both. If the violator is other than a natural person, the first offense shall be punishable by a fine of not more than \$100.00 and the second offense shall be punishable by a fine of not more than \$1,000.00.

History: 1968, Act 251, Eff. Sept. 15, 1968;--Am. 1978, Act 215, Imd. Eff. June 5, 1978;--Am. 1982, Act 132, Imd. Eff. Apr. 20, 1982.

**456.542 Repeal.**

Sec. 22. Act No. 337 of the Public Acts of 1966, being sections 456.501 to 456.514 of the Compiled Laws of 1948, is repealed.

History: 1968, Act 251, Eff. Sept. 15, 1968.

**456.543 Effective date of act.**

Sec. 23. This act shall take effect September 15, 1968.

History: 1968, Act 251, Eff. Sept. 15, 1968.

## DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

### DIRECTOR'S OFFICE

#### CEMETERIES

(By authority conferred on the director of the department of consumer and industry services by section 528 of Act No. 251 of the Public Acts of 1968, as amended, and Executive Reorganization Order No. 1996-2, being "456.528 and 445.2001 of the Michigan Compiled Laws)

#### PART 1. GENERAL PROVISIONS

##### R 456.101 Definitions.

Rule 1. As used in these rules:

(a) "Act" means Act No. 251 of the Public Acts of 1968, as amended, being '456.521 to 456.543 of the Michigan Compiled Laws.

(b) "Cemetery" means a cemetery or entity subject to the act.

(c) "Commission" means the state cemetery commission created by the act.

(d) "Remains" means human remains.

(e) "Memorials" means any object on which is inscribed the name and generally the inclusive dates of life of the deceased that is used to identify a grave.

(f) "Trainee" means a person who has not been previously licensed by the commission to sell interment rights, cemetery merchandise or services.

(g) "Business entity" means a group of persons formed into a corporation, association, organization, partnership or copartnership.

(h) "Agent" means a person who acts with authority for or in the place of another person in the sale of interment rights or cemetery merchandise and services.

(i) "Seller" means a person who offers for sale interment rights, cemetery merchandise or services.

(j) "Cemetery lots" means an area for earth interment.

(k) "Pre-need" or "advance of need" means interment rights, cemetery merchandise or services sold to a purchaser before time of death.

(l) "Turf top crypts" means a section of a cemetery in which preconstructed underground outside containers have been installed for use of interments.

(m) "Vendor" means a cemetery company or its authorized agents.

(n) "Interment right" means 1 of the following:

(i) Burial right (earth burial).

(ii) Entombment right (crypt).

(iii) Columbarium right (inurnment).

(o) "Escrow" means an unallocated account held pursuant to the terms of a written trust agreement.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

**R 456.111 Rescission.**

Rule 11. The general rules of the predecessor state cemetery commission, being R 456.1 to R 456.52 of the Michigan Administrative Code and appearing on pages 4821 to 4823 of the 1968 Annual Supplement to the Code, are rescinded.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

**PART 2. PERMITS, REGISTRATIONS, LICENSES, AND RECORDS**

**R 456.121 Permits, registrations, and licenses.**

Rule 21. A permit, registration or license issued pursuant to the act is valid from July 1 to June 30. An application for a permit, registration or license shall be filed with the commission at least 30 days before July 1 of each year.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

**R 456.122 Rescinded.**

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC; rescinded 1996 MR 12, Eff. Dec. 24, 1996.

**R 456.123 Property and unit descriptions.**

Rule 23. (1) A cemetery shall file with the commission:

(a) A map containing a legal description of all land that has been purchased for cemetery purposes and adopted as part of the plan or design of the cemetery.

(b) Platted maps designating all locations of burial rights developed and completed for burial.

(2) A cemetery shall not sell or assign burial rights in a section or part of the cemetery which has not been developed and completed for burial unless a certified copy of the platted map designating burial rights contained in the section has been filed with the commission.

(3) In case of a mausoleum, a burial structure or a columbarium, a cemetery shall file with the commission a substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevations and other divisions with descriptive names and numbers. If a structure has not been completed for entombment or inurnment as of the effective date of this rule, the map shall be filed before any rights in this structure are sold.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

**R 456.124 Ownership and location records.**

Rule 24. (1) A cemetery shall keep a record of the ownership of all interment, entombment and inurnment rights in the cemetery.

(2) A cemetery shall keep record of all interments, entombments and inurnments showing the name, age, date of service, cemetery sections, lot numbers, grave number and, in case of a mausoleum or columbarium, all information necessary to easily locate an interment, entombment or inurnment.

(3) A cemetery shall keep a record of remains cremated in the cemetery and whether or not the cremated remains are interred, entombed or inurned on the premises.

(4) A cemetery shall keep records either in duplicate forms in separate buildings or in single copies within a container which has at least 1 hour fire proof rating. These records shall be available at all reasonable times to official inspection by the commission or any of its officers or agents.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

**R 456.125 Records of future obligations.**

Rule 25. On December 31 of each year a cemetery shall have available for examination by the commission, an annual statement or record as of its most recent fiscal year which ended at least 6 months prior to the December 31 date, certified to by the owners, or in case of a corporation by 2 directors or trustees, showing the financial status of all contractual liabilities and obligations for future performance of services by the cemetery corporation or the organization so obligated which is affiliated with the cemetery. This statement or record shall contain the following information:

(a) Complete description of the future performance obligations involved.

(b) Total cost of full performance of all obligations as of the date of statement.

(c) Complete information on the means, provision, trust or other vehicle which will assure fulfillment of all obligations, stating ledger and market values of the vehicle, its location, nature of investments and trustees including fees paid to trustees.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

**R 456.126 Financial statements.**

Rule 26. A cemetery shall have available each year for examination by the commission, an annual statement or record as of its most recent fiscal year. The statement shall be available 6 months after the end of the fiscal year. The statement or record shall be certified to by the owners, or in case of a corporation, by 2 directors or trustees, as to the financial condition of the cemetery entity or corporation. This statement or record shall contain substantially all of the following information:

- (a) List of all assets, current and fixed, showing costs and depreciation.
- (b) List of all liabilities, current and long term.
- (c) Stockholders' equity.
- (d) Statement of income and expenses.
- (e) Information on all insurance coverage of cemetery assets and

responsibilities.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

### **PART 3. ENDOWED CARE FUND, MERCHANDISE FUND, AUDITS, REPORTS, AND SALES**

#### **R 456.131 Sales of interment rights, cemetery merchandise or services.**

Rule 31. (1) A contract or agreement in which payments are to be made as consideration toward the purchase or option to purchase of interment rights, cemetery merchandise or services and which is signed by a purchaser and a vendor constitutes a sale as referred to in subsection (2) of section 7a of Act No. 12 of the Public Acts of 1869, as amended, being '456.107a of the Michigan Compiled Laws; in subsection (2) of section 35a of Act No. 87 of the Public Acts of 1855, as amended, being '456.35a of the Michigan Compiled Laws; and in subsections (1), (2), and (3) of section 16 of Act No. 251 of the Public Acts of 1968, as amended, being '456.536 of the Michigan Compiled Laws.

(2) If a cemetery uses sales contracts or purchase agreements that include interment rights, burial vaults, grave memorials or cemetery services, payments made by a purchaser in event of a death of either spouse shall apply first on the amount shown as charged for interment rights.

(3) All vendors shall comply with Act No. 227 of the Public Acts of 1971, being "445.111 to 445.117 of the Michigan Compiled Laws, if sales are made at residences of purchasers.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

#### **R 456.132 Gross proceeds from sales.**

Rule 32. Gross proceeds received from a sale of interment rights, cemetery merchandise or services is the total of all funds received or credited to the vendor as payments from a purchaser or lending institution on behalf of a purchaser before an amount is deducted as security for an uncollectible account or an amount is deducted which is due the trust funds by contract which is charged the purchaser in addition to the purchase price. A record of monthly gross proceeds of sales shall be kept by a vendor. An interest or carrying charge payment or sales tax shall not be considered part of gross proceeds from sales if the interest, carrying charge or sales tax is separately stated in the purchase agreement and is recorded separately as a payment is made.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

**R 456.133 Endowed care funds.**

Rule 33. (1) An irrevocable endowed care fund, as referred to in section 16 of the act, shall be a trust fund administered by a trustee or trustees under the terms of a written trust instrument which specifies the statutory and regulatory responsibilities of the trustee or trustees. The endowed care trust fund shall be kept separate and apart from all other funds, property or securities of the cemetery, cemetery corporation, association or trustee or trustees. The net income of the endowed care trust fund shall be paid only to the entity in possession, management, operation and control of the cemetery grounds and structures for the sole purpose of maintenance of the cemetery grounds or structures. Capital gains from the sale of an asset in the endowed care trust fund shall be considered a deposit to the principal or the corpus of the trust and as such shall not be considered a part of net income.

(2) The required funds due the endowed care trust fund shall be deposited only in an account which is a legal depository of the corpus of the endowed care trust fund.

(3) Assets of the endowed care trust fund shall be deposited with a bank or trust company located in this state.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

**R 456.134 Trust fund audits and records.**

Rule 34. (1) If an audit of a trust fund obligation is made by the commission, an audit report shall be furnished to the party audited. The audit report shall contain the following information:

- (a) Deposits made to the trust fund for the period of audit.
- (b) Required deposits as per audit.
- (c) Deficit or overage, if any.

(2) Deposit deficits shall be paid within 30 days from the date of the audit unless other arrangements are authorized in writing by the commission. Certification of the deposit shall be forwarded to the commission.

(3) A party in disagreement with a commission audit report may appeal for an adjustment by:

(a) Furnishing the commission with the party's contention of adequate proof of error.

(b) Requesting an informal hearing with the commission.

(c) Requesting a formal hearing with the commission.

(4) A cemetery shall have available in its registered office for examination by the commission, all records pertinent to the maintenance, establishment and reporting of its required trust funds.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

**R 456.135 Rescinded.**

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC; rescinded 1998 MR 5, Eff. June 6, 1998.

**R 456.136 Sales tactics.**

Rule 36. An organization or person selling interment rights, cemetery merchandise or services, pursuant to R 456.131 shall:

(a) Not use a sales presentation or advertisement which conceals or misstates a material fact.

(b) Fully disclose to a purchaser in a conspicuous manner on the purchase agreement or contract that there will be a future cost for interment fees or installation of cemetery merchandise unless these costs are included in the sales price and so stated on the contract or agreement.

(c) Not mislead prospects to believe that the seller is in any way connected with an organization other than the entity which is selling the interment rights, cemetery merchandise or services.

(d) Not offer free interment rights, installation or care deposits to an organization, group or person if the free offer is accompanied by a requirement that other interment rights, cemetery merchandise or services be purchased or that the free offer is accompanied by the option of purchase of adjoining interment rights at a price which is inflated above regular comparable prices within the cemetery.

(e) Not sell interment rights supposedly at a substantial discount where in fact the actual price of the rights has been increased to cover the supposed discount.

(f) Not represent that the price of interment rights to a purchaser is a special price to him only, if another purchaser would be given the same price.

(g) Not use sales presentations which lead a purchaser to believe that interment rights, cemetery merchandise or services are being acquired at no cost and that the money required to be contributed by the purchaser is for maintenance or other expenses, whereas a different result follows.

(h) Not induce a purchaser to buy interment rights with promises or representations that future price increases will enable a purchaser to realize profits from the sale of his rights.

(i) Not promise, represent or agree as a condition of an interment right's sale, or sale of cemetery merchandise or services, to resell for, or repurchase from a purchaser, any right, cemetery merchandise or services.

(j) Not sell interment rights unless the specific location and description of the rights coinciding with the official platted records of the cemetery is specified in the sales agreement.

(k) Not sell interment rights in an earth interment section which is not completed for interment including lawn and landscaping, unless there is a comparable section completed for interment including lawn and landscaping in the same cemetery that is available at no additional cost to the purchaser in case of need, to which the purchaser agrees to transfer.

(l) Not sell interment rights in an earth interment section which is not developed as provided in subrule (7) of R 456.137, 48 months after the date of the first sale of rights in such section. If the section is not developed by that date, except for national emergency, all moneys paid by the purchaser shall be refunded on written request by the purchaser.

(m) Not accept a pre-need sales contract unless a minimum down payment of \$10.00 is received from the purchaser at the time of sale.

(n) Not take a negotiable instrument, other than cash or a currently dated check or draft, as evidence of the obligation of the purchaser as a down payment.

(o) Not pay the down payment for the purchaser, or make an agreement with the purchaser that the down payment can be paid at a later date. This practice is commonly known in the cemetery industry as "fronting a sale"

(p) Not present a sales presentation and obtain purchaser's signature to a sales contract if the purchaser cannot read or speak English unless there is a disinterested person present who can explain fully to the purchaser what he is buying. The name and address of the disinterested person shall appear in his handwriting somewhere on the contract.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

### **R 456.137 Incomplete structures.**

Rule 37. (1) A vendor who sells an interment right in a structure which is not then completed for interment shall:

(a) Stipulate in the sales agreement a specific period of time within which the structure shall be completed and ready for interment which shall be not more than 48 months after the date of the sales agreement, and that if the structure is not completed by that date, except for a national emergency, all moneys paid by the purchaser pursuant to the agreement shall be refunded.

(b) Determine the total construction cost of the structure.

(c) Determine the construction cost of the unit being sold and divide it by the amount of gross proceeds to be derived from the sale of the unit which figure shall be multiplied by 100 to obtain the construction cost percentage.

(d) Place the construction cost percentage of any gross proceeds payment in a special construction trust fund in a bank or trust company located in this state within 30 days after the date of the payment.

(2) The sum of construction costs of all units in a subrule (1) structure shall equal the total construction cost of the subrule (1) structure.

(3) Withdrawals from the construction fund can be made only to pay current construction costs as the construction of the structure progresses to the final completion.

(4) All vendors shall submit to the commission for approval, and before such sales are made, the following:

(a) Copy of contracts or purchase agreements.

- (b) Maps required by subrule (2) of R 456.123.
  - (c) Estimated cost of the structure, including features and embellishments.
  - (d) Estimated amount of gross proceeds to be derived from the sale of the interment rights.
  - (e) A copy of sales brochures, promotional pamphlets and artist's rendering of the proposed structure if such items are used in the sales program.
  - (f) A copy of all proposed sales advertising or radio and television scripts used in these sales promotions.
- (5) A vendor shall not sell or assign burial rights in any undeveloped part of the cemetery, unless 15% of the gross proceeds received from the sales is deposited in a special fund under a written agreement in a bank or trust company located in this state. The fund shall be designated as a cemetery development fund, naming the new area. A copy of the written agreement shall be forwarded to the commission. Withdrawals from the development fund can be made only to pay current development costs as the development progresses to final completion. Upon final completion any undisbursed funds including earned income may be withdrawn by the vendor from the development fund.
- (6) A vendor selling turf top crypts in an area that is not developed or ready for interments shall deposit all of the cost of each crypt sold into a special fund, under a written agreement, in a bank or trust company located in this state. The fund shall be designated as a cemetery development fund, naming the new area. A copy of the written agreement shall be forwarded to the commission. Withdrawals from the development fund can be made only to pay current development costs as the development progresses to the final completion. Upon final completion any undisbursed funds including earned income may be withdrawn by the vendor from the development fund. Vendors contemplating selling in an undeveloped cemetery area or undeveloped turf top crypt area shall submit to the commission the following information before sales are made:
- (a) Estimated cost of the development, including features and all embellishments.
  - (b) Plat maps required by subrule (2) of R 456.123.
  - (c) A copy of sales brochures, promotional pamphlets and artist's rendering of the proposed developed area if such items are used in the sales programs.
  - (d) A copy of all proposed sales advertising or radio and television scripts used in these sales promotions.
- (7) A developed cemetery area means an area containing grass or sod and landscaping of sufficient quality to present a good appearance and section markers of durable material used to identify the location of interment rights in that area including any and all cemetery features promised the purchaser for that area. Deposits will be made to the development fund until an inspection of the area so developed is made by the commission. The inspection shall be made within 30 days after receipt of written request from the vendor. If the inspection is not made within 30 days, the vendor may terminate deposits to the

development fund as required under subrule (5) and may withdraw any funds remaining in development fund. The commission shall approve or disapprove the area as ready for interment and the commission's failure to do so in writing within 30 days constitutes approval of the area.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

**R 456.138 Permitting violations of R 456.136.**

Rule 38. An organization including its officers which knowingly permits a person under employment, contract or sales control, either directly or indirectly, to violate any provision of R 456.136 is also guilty of the same violation.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

**R 456.139 New cemeteries.**

Rule 39. (1) In determining community need for a proposed new cemetery as required by section 13 of the act, the commission shall use a 25-mile radius as a potential sales and service area in making a survey to determine the number of cemeteries, type of ownership and burial rights available to the public in that area.

(2) The commission shall require the applicant for a new proposed cemetery to have title in fee to at least 40 acres before final approval is granted.

(3) A newly established cemetery shall not sell or assign burial rights in any areas of the cemetery until at least 2 acres are developed, as required by subrule (7) of R 456.137 which development shall be located at the front or near the initial entrance of the proposed cemetery.

History: 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

**PART 4. CASKETS, EARTH BURIALS, ENTOMBMENTS, AND  
CREMATIONS**

**R 456.141 Rescinded.**

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC; rescinded 1998 MR 5, Eff. June 6, 1998.

**R 456.142 Rescinded.**

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC; rescinded 1998 MR 5, Eff. June 6, 1998.

**R 456.143 Rescinded.**

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC; rescinded 1998 MR 5, Eff. June 6, 1998.

**R 456.144 Earth burials.**

Rule 44. (1) A cemetery shall not make an interment unless a legally executed burial transit permit is received.

(2) A cemetery shall make an interment immediately following the committal service or receipt of remains if it does not interfere with the dignity of any other committal service. If weather conditions prevent an immediate interment, the cemetery shall obtain written authorization for delayed interment signed by the next of kin or authorized agent. The authorization shall specify the approximate hour and date of interment and place of temporary storage.

(3) Immediately following the committal service and interment, a cemetery shall fill a grave and as soon as settling is reasonably complete and weather conditions permit, shall sod, seed or adequately cover a grave with limestone chips, gravel or other suitable material.

(4) A cemetery shall cover a grave in which an unsealed outside container is used with at least 16 inches of earth over the outside container.

(5) A cemetery shall remove all equipment used in the committal service and in the interment immediately following the service and interment.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

#### **R 456.145 Entombments.**

Rule 45. (1) A cemetery shall not make an entombment unless a legally executed burial transit permit is received.

(2) A cemetery shall entomb the remains and permanently seal the crypt immediately following the committal services or receipt of the remains.

(3) If circumstances do not permit immediate entombment following a committal service or receipt of remains, the cemetery shall obtain written authorization for delayed entombment signed by the next of kin or authorized agent. The authorization shall specify the approximate hour and date of entombment and place of temporary storage of the remains.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

#### **R 456.146 Cremations.**

Rule 46. (1) A crematory shall not cremate remains unless it has:

(a) A legally executed burial transit permit authorizing the cremation.

(b) A written authorization from a person representing himself as being legally qualified to make the authorization and who in the opinion of the crematory authority is legally qualified to make the authorization and is 1 of the following:

(i) The surviving spouse.

(ii) A surviving child or parent.

(iii) A next of kin.

(iv) A person who has acquired the right to control disposition of the remains.

(2) A crematory shall cremate remains as soon as reasonably possible, but if cremation does not take place within a reasonable time after receipt of the remains, the crematory shall obtain written authorization for delayed cremation signed by the next of kin or authorized agent. The authorization shall specify the approximate hour and date of cremation and place of temporary storage.

(3) A crematory shall place cremated remains in a container properly marked as to the name of the deceased and date of cremation.

(4) A crematory at all times shall handle cremated remains with dignity, respect and utmost care.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

## **PART 5. GROUNDS, FACILITIES, AND BUILDINGS**

### **R 456.151 Grounds.**

Rule 51. (1) A cemetery grounds shall be maintained with a general cemetery care program at required intervals to assure an acceptable appearance.

(2) A cemetery grounds including maintenance service areas shall be kept free of trash and debris. Trash receptacles shall be provided.

(3) A pond, lake, waterway, fountain and other body of water on a cemetery shall be kept reasonably free of trash and odors.

(4) A cemetery's trees and shrubs shall be trimmed at regular intervals.

(5) An undeveloped cemetery property shall be screened by fencing or shrubs, or it shall be mowed or maintained in an attractive manner.

(6) A cemetery road shall be kept accessible and in reasonably good repair as the normal operation of the cemetery dictates.

(7) A grave which has settled shall be refilled its soon as reasonably possible.

(8) A grave marker or a monument shall be reset and trimmed as necessary.

(9) A dangerous condition in the cemetery shall be corrected immediately.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

### **R 456.152 Facilities.**

Rule 52. (1) The name of the cemetery shall appear near the entrance on a permanent type sign, at least 3 square feet in size, and if the office is not located on the grounds, the location of the office shall be noted on the sign.

(2) A cemetery fence shall be kept in good repair.

(3) Identifying features or section markers of durable material shall be placed permanently in the ground to identify the named or numbered sections of the cemetery which shall coincide with a cemetery map.

(4) A grave shall be located by a permanent lot survey marker which shall be located in the ground within a reasonable distance of the grave and coinciding with a cemetery section on the map. Each grave in a single grave section shall be located by a permanent numbered grave marker.

(5) A lot survey marker shall be kept reasonably visible under normal weather conditions.

(6) A cemetery's grave decorations rules shall be posted or made available in printed form.

(7) Maintenance equipment not in use shall be stored in the maintenance service areas.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

### **R 456.153 Buildings.**

Rule 53. A building, including a mausoleum, shall be kept in good repair.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

### **R 456.154 Rest rooms and public accommodations.**

Rule 54. A cemetery shall maintain reasonable and acceptable rest rooms and public accommodations deemed necessary by the commission after inspection is made by a field investigator and a report submitted.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

## **PART 6. MERCHANDISE TRUSTS**

### **R 456.161 Merchandise trust agreements.**

Rule 61. (1) A vendor shall submit 2 copies of a written merchandise trust agreement to the commission for approval. In addition to other requirements, a merchandise trust agreement shall provide all of the following:

(a) That deposits made to the merchandise trust account by a vendor shall be invested by the trustee only in accordance with Act No. 177 of the Public Acts of 1937, as amended, being "555.201 to 555.203 of the Michigan Compiled Laws, except that funds shall not be invested in life insurance policies on any person or invested in a company owned or operated by a cemetery or its authorized agent or in loans to any person directly connected with or employed by a cemetery or its agents.

(b) That deposits to the merchandise trust account shall be certified by an officer of the vendor or agents authorized by a vendor to act in its behalf.

(c) That withdrawals from the merchandise trust account shall be made on the presentation to the trustee of an affidavit certified by the vendor that the cemetery merchandise or services have been installed, delivered, performed or terminated. Withdrawals shall not be made in excess of the allocated deposit and vendor shall so certify. The trustee shall retain the affidavit as a permanent part of the trust records and the vendor shall keep a copy.

(d) That at least an annual accounting period shall be established and the trustee shall furnish to the vendor an accounting which shall contain the following information:

(i) A separate listing of all assets held by cost and fair market value with totals.

(ii) Total deposits made to the trust account during the reporting period and total to date.

(iii) Total withdrawals from the merchandise trust account during the reporting period and total to date.

(iv) A certification by the vendor to the trustee that the total assets of the merchandise trust account are at least equal to the total obligations as determined by the current deposits as required by subrule (1) of R 456.162.

(v) Net income including ordinary income and capital gains paid to vendor during the accounting period.

(e) That at any time the commission makes a determination that the merchandise trust account is underfunded to meet the total current obligations, the commission may order the vendor to deposit all future trust income, as of the date of the order, to the principal of the merchandise trust account to be allocated in accordance with subdivision (b) until the total assets of the corpus of the merchandise trust account equal the total obligations as determined by the current deposits as required by subrule (1) of R 456.162.

(f) That the purpose of the merchandise trust account is to protect the purchaser and the commission may inspect the records of the vendor and trustee relating thereto.

(2) Assets of the merchandise trust funds established by a vendor or its authorized agents shall be deposited with a bank or trust company located in this state.

History: 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

#### **R 456.162 Required deposits to merchandise trust account.**

Rule 62. (1) When cemetery merchandise or services are sold to a purchaser, a vendor or an agent authorized by a vendor or acting on its behalf under an agreement or sales contract to sell cemetery merchandise or services shall deposit, on or before the last day of the month following the month of collection, the following amounts to a merchandise trust account and maintain such deposits until such time as the cemetery merchandise or services are installed, delivered, performed or terminated:

(a) One hundred thirty percent of the cost of each grave memorial that the vendor is obligated to furnish and install. A vendor representing more than 1 memorial manufacturer may take the average cost of all manufacturers the vendor represents in determining the 130% of cost if all manufacturers meet the specifications as contained in the purchase or sales agreement. At all times the total amount required to be on deposit in the merchandise trust account for

obligations concerning grave memorials shall be not less than the current cost of all such obligations.

(b) The greater amount of either 70% of the gross proceeds received from the sale of each burial vault or 130% of the cost of each burial vault that the vendor is obligated to furnish and install. At all times the total amount required to be on deposit in the merchandise trust account for obligations concerning burial vaults shall be not less than 130% of the current costs of all such obligations.

(c) The greater amount of either 100% of the gross proceeds received from the sale of cremations, grave openings and closings or \$100.00 for each cremation, grave opening and closing that the vendor is obligated to furnish.

(2) A vendor may withdraw from the merchandise trust account only after the cemetery merchandise or services are delivered, stored, installed, performed or terminated. The vendor may withdraw from the merchandise trust account only the current cost of grave memorials which are ordered by him and stored by the vendor or cast and stored by a memorial company. He may withdraw the balance only when the grave memorial is installed. A vendor may withdraw from the merchandise trust account only the current cost of a burial vault if he orders and stores the vault. He may withdraw the balance only when the vault is installed.

(3) A vendor storing grave memorials or burial vaults until time of need shall insure the memorials and vaults against fire and theft in an amount in excess of their total replacement cost. A current certificate of insurance coverage shall be filed with the commission annually.

(4) A vendor shall make deposits to the merchandise trust account as required by the act and when he does any of the following:

(a) Makes a pre-need cash sale.

(b) Sells the sale contract to a bank or lending institution.

(c) Receives prorated payments direct from a purchaser, generally referred to as a house account, unless the vendor has an approved merchandise escrow account as provided in R 456.163. The deposit required on a house account payment shall be as provided in R 456.163.

History: 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

#### **R 456.163 Merchandise escrow account.**

Rule 63. (1) A vendor may establish a merchandise escrow account in a bank or trust company located in this state under a written trust agreement approved by the commission into which he shall deposit payments on house accounts.

(2) The deposit required on a home account payment received from the sale of a grave memorial shall be a percentage of each payment made by a purchaser computed by dividing the sale price of the grave memorial into 130% of the cost of the memorial. Sales tax, finance or carrying charges and memorial maintenance trust deposits are not considered a part of the sale price in determining the percentage.

(3) The deposit required on a house account payment received from the sale of a burial vault is the greater of either 70% of each payment made by a purchaser or 130% of the cost of the burial vault. The deposit shall be computed as provided in subrule (2) for grave memorials.

(4) A vendor may make payments to a merchandise escrow account until the purchaser makes payment in full at which time the vendor shall transfer the deposit to the merchandise trust account.

(5) A vendor may withdraw from the merchandise escrow account only after the cemetery merchandise or services are delivered, stored, installed, performed or terminated.

(6) Merchandise escrow account deposits and withdrawals shall be certified to by the vendor as to their regularity and accuracy.

History: 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

#### **R 456.164 Pre-existing merchandise trust accounts.**

Rule 64. (1) A vendor having a merchandise trust, escrow or other depository account pre-dating the effective date of this rule, shall take appropriate measures to demonstrate annually to the satisfaction of the commission the assurance of fiduciary responsibility in the maintenance of the account and the financial integrity of the account to meet the current cost of the merchandise for which deposits were made to the pre-existing merchandise trust. If the total amount in a pre-existing account is inadequate to meet current obligations, the vendor shall present to the commission a satisfactory plan of good faith affirmative action to restore the deficit. R 456.162 does not apply to any contractual obligations entered into prior to the effective date of this rule except for withdrawal requirement as stated in subrule (2).

(2) A vendor continuing a pre-existing merchandise trust, escrow or other depository account shall furnish the commission an annual accounting on forms acceptable to the commission which shall contain the information required by R 456.125 and a certification that the total deposits are adequate to meet the total current cost of the merchandise for which deposits were made to the pre-existing merchandise trust, escrow or other depository account.

(3) Instead of complying with subrules (1) and (2) a vendor having a pre-existing merchandise trust, escrow or other depository account may close the account and deposit its assets in a merchandise trust under R 456.161 subject to all the terms and conditions of the trust except that the vendor shall not be required to deposit an amount in excess of that necessary to meet current cost

of total contractual obligations. If the amount deposited is inadequate to meet current obligations, the vendor shall present to the commission a satisfactory plan of good faith affirmative action to restore the deficit. The election in this section shall be made in writing with a copy to the commission.

History: 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

**R 456.165 Record keeping, inspection, audit, and hearings.**

Rule 65. A vendor shall maintain a monthly accounting record which indicates separately all cash proceeds received from the sale of interment rights, burial vaults, grave memorials or cemetery services. The vendor shall also maintain a monthly accounting record setting forth in detail all deposits to the merchandise trust account. This record shall include:

- (a) Name and contract number of the purchaser.
- (b) A description of the cemetery merchandise or services purchased.
- (c) Amount to be credited to the purchaser's account.

(2) A vendor shall also maintain a monthly accounting record setting forth in detail all withdrawals from the merchandise trust account. This record shall include:

- (a) Name and contract number of the purchaser.
- (b) A description of the cemetery merchandise or services purchased.
- (c) Amount withdrawn.
- (d) Whether the cemetery merchandise or services were installed, delivered, performed or terminated.

(3) The records shall be available for inspection or audit at any time during regular business hours by the commission or its authorized agents. The records shall be maintained within the state either by the cemetery or in the office of its authorized agent.

(4) The commission may order a hearing on the current status of the merchandise trust account if it determines that one of the following has occurred:

- (a) The trust is underfunded to meet current obligations.
- (b) Required deposits were not made.

History: 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

**R 456.166 Required reporting; financial statement.**

Rule 66. (1) A vendor shall submit to the commission, 60 days after the accounting date established as required by R 456.161, on forms provided by the commission, all information deemed necessary by the commission to assure that the merchandise trust account is adequate to provide all of the cemetery merchandise and services the vendor is obligated to provide. A vendor shall submit a current financial statement when requested by the commission as provided in R 456.126.

History: 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

**R 456.167 Sales contracts or agreements.**

Rule 67. (1) Purchase agreements or sales contracts made with a purchaser of grave memorials shall contain at least the following descriptive information:

- (a) Size of memorial.
- (b) Material and specifications.
- (c) Number of vases.
- (d) Type of base.

(2) Purchase agreements or sales contracts made with a purchaser of burial vaults shall contain at least the following descriptive information:

- (a) Size.
- (b) Type (concrete, steel, plastic, etc.).
- (c) Approximate weight.
- (d) Approximate load strength specifications.

(3) The descriptive information may be contained in a separate certification attached to the sales contract or agreement.

History: 1954 ACS 79, Eff. Apr. 11, 1974; 1979 AC.

**PART 9. HEARINGS**

**R 456.191 Statements of facts and appearances.**

Rule 91. (1) A party requesting a hearing shall submit in writing a fair and accurate statement of the facts to the commission and all interested parties.

(2) An appearance at a hearing shall be made in person, by a duly authorized representative, or by counsel.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

**R 456.192 Defaults.**

Rule 92. If a person who has been properly served with a notice of hearing fails to appear at a noticed hearing, the commission or designated hearing officer may proceed with a hearing of the case brought before them and, on evidence presented, may make a decision.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

**R 456.193 Answers, arguments, and briefs.**

Rule 93. A person who has been served with a notice of hearing may file a written answer before the date of the hearing, and at the hearing may appear and present an oral statement on the charges contained in the notice of hearing. If a written argument or brief is presented, a copy shall be served on the secretary of the commission and all interested parties, at least 5 days before the date for the hearing.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

**R 456.194 Adjournments and continuances.**

Rule 94. A hearing shall not be adjourned or continued except on an order of the commission. A motion or request for an adjournment or a continuance shall be in writing, and shall state concisely the reasons why the adjournment or continuance is necessary. The motion or request shall not be considered unless it is filed with the secretary of the commission at least 5 days before the date assigned for the hearing, except on a showing that, for reasons not within the control of the person or party making the motion or request, the motion or request could not be filed within the time limited.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

**R 456.195 Stipulations.**

Rule 95. The parties to a hearing, by a stipulation in writing filed with the secretary of the commission, may agree on the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence in the hearing. Parties are requested to agree on the facts when practicable.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

**R 456.196 Depositions.**

Rule 96. A deposition shall be taken only on written authority of the commission if it is proved in writing to the commission that it is impractical or impossible to otherwise obtain the evidence. If a deposition is permitted, it shall be taken according to the rules for taking a deposition in a civil action in this state.

History: 1954 ACS 63, Eff. Aug. 14, 1970; 1979 AC.

## CEMETERY CORPORATIONS

### Act 87 of 1855

AN ACT relative to burying grounds; and to impose certain duties upon the department of commerce.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--Am. 1982, Act 103, Imd. Eff. Apr. 19, 1982 .

*The People of the State of Michigan enact:*

#### **456.1 Cemetery corporation; incorporators. [M.S.A. 21.821 ]**

Sec. 1.

That any 5 or more persons of lawful age, may organize themselves into a corporation, by such name as they shall adopt, for the purpose of acquiring land for a burial ground for the dead, to dispose of rights of burial therein, and to fence, improve, ornament and keep the same in suitable condition, in the manner hereinafter provided.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1717 ;--CL 1871, 3373 ;--How. 4728 ;--CL 1897, 8362 ;--CL 1915, 11122 ;--CL 1929, 10401 ;--CL 1948, 456.1 .

#### **456.2 Cemetery corporation; acquisition of land, encumbrance, payment; lease, restriction. [M.S.A. 21.822 ]**

Sec. 2.

Such corporation shall have power to acquire and hold in fee, or for a term of years, so much land as may be necessary for their burying ground: Provided, That no land thus held shall be in any way encumbered by such corporation: And provided further, That the purchase price thereof, and interest thereon, or the rent reserved therefor, and the costs of fencing, improving and platting the same, shall be paid out of the funds first realized from the sale of rights of burial: And provided, further, That any lease of land to such corporations, shall contain a covenant on the part of the lessor, that the land thus leased shall never be used by him, his heirs or assigns, for any other than burial purposes, and that all rights of burial acquired under such corporation, shall remain unimpaired, although such lease may expire, or such corporation may forfeit the rights acquired under such lease, by reason of non-compliance with the conditions thereof.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1718 ;--Am. 1865, Act 282, Imd. Eff. Mar. 20, 1865 ;--CL 1871, 3374 ;--How. 4729 ;--CL 1897, 8363 ;--CL 1915, 11123 ;--CL 1929, 10402 ;--CL 1948, 456.2 .

### **456.3 Right of burial; definition. [M.S.A. 21.823 ]**

Sec. 3.

A right of burial under this act shall be, in respect to any corporation organized under this act, the right to bury the dead in and upon a parcel of land of the size specified in the by-laws of any corporation organized under this act.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1719 ;--CL 1871, 3375 ;--How. 4730 ;--CL 1897, 8364 ;--CL 1915, 11124 ;--CL 1929, 10403 ;--CL 1948, 456.3 .

### **456.3a Right of burial; granting in tax delinquent lands prohibited. [M.S.A. 21.823(1) ]**

Sec. 3a.

No rights of burial shall at any time be granted or sold by such corporation upon any lands which are delinquent for taxes or special assessments.

**History:** Add. 1941, Act 168, Eff. Jan. 10, 1943 ;--CL 1948, 456.3a .

### **456.4 Right of burial; disposal by member. [M.S.A. 21.824 ]**

Sec. 4.

Any member of any corporation organized under this act, wishing to dispose of any right of burial owned by him, shall procure for the purchaser a grant of such right from said corporation; and at the same time such member shall also relinquish to such corporation all claim he may have to such right of burial.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1720 ;--CL 1871, 3376 ;--How. 4731 ;--CL 1897, 8365 ;--Am. 1903, Act 65, Eff. Sept. 17, 1903 ;--CL 1915, 11125 ;--CL 1929, 10404 ;--CL 1948, 456.4 .

### **456.5 Member; right to vote. [M.S.A. 21.825 ]**

Sec. 5.

Any person owning a right of burial in ground controlled by a corporation organized under this act, and having the right to use the same, shall be deemed a member of the corporation, and shall have the right to vote at all corporate meetings unless in arrears for assessments.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1721 ;--Am. 1867, Act 99, Imd. Eff. Mar. 25, 1867 ;--CL 1871, 3377 ;--How. 4732 ;--CL 1897, 8366 ;--Am. 1903, Act 65, Eff. Sept. 17, 1903 ;--CL 1915, 11126 ;--CL 1929, 10405 ;--CL 1948, 456.5 .

#### **456.6 Meeting to incorporate; warrant. [M.S.A. 21.826 ]**

Sec. 6.

Upon application in writing of any 3 of the persons aforesaid to the district or municipal court of the judicial district or municipality in which such burying ground is to be situated, the court shall issue a warrant to either one of the applicants, directing him or her to call a meeting of the persons wishing to become incorporated, which warrant shall contain the substance of the application, and shall state the time and place of holding the meeting. The meeting shall be called in obedience to such warrant, by posting up notice containing the substance of the warrant in at least 2 public places in the township, city, or village, in which such burying ground is to be situated at least 10 days before the time of holding such meeting.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1722 ;--CL 1871, 3379 ;--How. 4733 ;--CL 1897, 8367 ;--CL 1915, 11127 ;--CL 1929, 10406 ;--CL 1948, 456.6 ;--Am. 1991, Act 153, Imd. Eff. Nov. 25, 1991 .

#### **456.7 Meeting to incorporate; affidavit of notice. [M.S.A. 21.827 ]**

Sec. 7.

The person to whom the aforesaid warrant is directed shall, after having called said meeting, attach to said warrant a copy of the notice accompanied by his affidavit showing that it is a true copy of the notice posted up by him, and also showing when and where such notices were posted, and the same shall be presented to such meeting and filed by the clerk elected thereat.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1723 ;--CL 1871, 3380 ;--How. 4734 ;--CL 1897, 8368 ;--CL 1915, 11128 ;--CL 1929, 10407 ;--CL 1948, 456.7 .

#### **456.8 Board of trustees; election; terms. [M.S.A. 21.828 ]**

Sec. 8.

Any 7 or more persons who meet in pursuance of the notice described in section 7 may elect by ballot a board of trustees consisting of at least 9 but not more than 12 members. The first trustees elected shall be divided as nearly as possible into 3 equal groups with terms of each group as follows:

- (a) 1 group for 1 year.
- (b) 1 group for 2 years.
- (c) 1 group for 3 years.

Upon expiration of the terms of the members first elected, successors shall be elected in a like manner for terms of 3 years each and shall serve until their successors are elected and have filed their acceptance. However, if any corporation now organized under this act has any trustees whose term of office does not expire at the date of its next annual meeting, it shall then elect only the number of trustees that will increase its board to at least 9 but not more than 12 members. At the election, the persons having the highest number of votes for trustee shall be considered elected.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1724 ;--CL 1871, 3381 ;--Am. 1873, Act 128, Imd. Eff. Apr. 22, 1873 ;--Am. 1881, Act 105, Imd. Eff. Apr. 22, 1881 ;--How. 4735 ;--CL 1897, 8369 ;--CL 1915, 11129 ;--CL 1929, 10408 ;--CL 1948, 456.8 ;--Am. 1996, Act 407, Imd. Eff. Oct. 21, 1996 .

#### **456.9 Officers; election; sexton or superintendent, appointment. [M.S.A. 21.829 ]**

Sec. 9.

The board of trustees shall meet within 10 days after each annual meeting, and elect from their own number a president, vice-president, clerk, and treasurer, and from time to time may appoint a sexton or superintendent of grounds, and such other officers as may be deemed necessary.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1725 ;--CL 1871, 3382 ;--Am. 1873, Act 128, Imd. Eff. Apr. 22, 1873 ;--Am. 1881, Act 105, Imd. Eff. Apr. 22, 1881 ;--How. 4736 ;--CL 1897, 8370 ;--CL 1915, 11130 ;--CL 1929, 10409 ;--CL 1948, 456.9 .

#### **456.10 Officers; vacancies. [M.S.A. 21.830 ]**

Sec. 10.

A majority of the officers required to be chosen by ballot, in any corporation organized under this act, shall have power to fill any vacancy in office by appointment.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1726 ;--CL 1871, 3383 ;--How. 4737 ;--CL 1897, 8371 ;--CL 1915, 11131 ;--CL 1929, 10410 ;--CL 1948, 456.10 .

#### **456.11 Officers; acceptance of office, bond. [M.S.A. 21.831 ]**

Sec. 11.

All persons elected or appointed to any office under any corporation organized under this act shall, within 10 days after such election or appointment, file with the clerk a written acceptance of the office together with a bond, if required, or said office will be vacant.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1727 ;--CL 1871, 3384 ;--How. 4738 ;--CL 1897, 8372 ;--CL 1915, 11132 ;--CL 1929, 10411 ;--CL 1948, 456.11 .

#### **456.12 Officers; notice of election. [M.S.A. 21.832 ]**

Sec. 12.

Any person attending any meeting for the election of officers of any corporation organized under this act, and elected thereat, to any office, shall be deemed to have been duly notified of his election; the clerk of such corporation shall, within 2 days after the election of any person to office, who was not present at the election, notify such person of his election.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1728 ;--CL 1871, 3385 ;--How. 4739 ;--CL 1897, 8373 ;--CL 1915, 11133 ;--CL 1929, 10412 ;--CL 1948, 456.12 .

#### **456.13 Treasurer; bond. [M.S.A. 21.833 ]**

Sec. 13.

The treasurer shall give a bond to the corporation, with sufficient sureties, to be approved by the president thereof, for the faithful discharge of his duties, which bond shall be filed with the clerk.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1729 ;--CL 1871, 3386 ;--How. 4740 ;--CL 1897, 8374 ;--CL 1915, 11134 ;--CL 1929, 10413 ;--CL 1948, 456.13 .

#### **456.14 Officers; compensation. [M.S.A. 21.834 ]**

Sec. 14.

The president, clerk, treasurer and superintendent of grounds of any corporation organized under this act shall receive such a compensation for their services as shall be allowed by a majority of the members of the corporation present at a corporate meeting, and no more: Provided, That if the members neglect to fix such compensation, the same may be fixed, from time to time, by the board of trustees.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1730 ;--CL 1871, 3387 ;--How. 4741 ;--Am. 1885, Act 119, Imd. Eff. May 27, 1885 ;--CL 1897, 8375 ;--Am. 1903, Act 65, Eff. Sept. 17, 1903 ;--CL 1915, 11135 ;--CL 1929, 10414 ;--CL 1948, 456.14 .

#### **456.15 By-laws, rules and regulations. [M.S.A. 21.835 ]**

Sec. 15.

The board of trustees of any corporation organized under this act, shall have the power, by a 2/3 vote of the members elect, to make all needful by-laws, rules, and regulations, not inconsistent with this act, that may be necessary to the proper management of the affairs of such corporation, and may by a like vote amend the same.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1731 ;--CL 1871, 3388 ;--Am. 1881, Act 39, Imd. Eff. Mar. 18, 1881 ;--How. 4742 ;--CL 1897, 8376 ;--CL 1915, 11136 ;--CL 1929, 10415 ;--CL 1948, 456.15 .

**456.16 Certificate of organization; contents; signature; filing certificate with department of commerce. [M.S.A. 21.836 ]**

Sec. 16.

Within 1 week after the organization of any corporation organized under this act, the clerk shall make out a certificate of the organization of such corporation, specifying the corporate name thereof, the officers chosen at the first meeting; which certificate shall be signed by the president and clerk of such corporation, and forthwith file such certificate with the corporation and securities bureau of the department of commerce.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1732 ;--CL 1871, 3389 ;--How. 4743 ;--CL 1897, 8377 ;--CL 1915, 11137 ;--CL 1929, 10416 ;--CL 1948, 456.16 ;--Am. 1982, Act 103, Imd. Eff. Apr. 19, 1982 .

**456.17 Laying out burial grounds; maps; filing map with department of commerce; certificate. [M.S.A. 21.837 ]**

Sec. 17.

Before any corporation organized under the provisions of this act shall issue certificates of rights of burial, they shall cause their burial ground to be laid out in such form as they may choose, and cause 2 maps thereof to be made, which maps shall accurately describe the land belonging to such burying ground, its boundaries and location, with the lots or subdivisions named or numbered thereon, and also their size, situation and extent, with the width extent, and location of all the streets, alleys, or walks in such burying ground, which maps shall be prepared under the supervision and direction of the president and clerk of such corporation, and certified by them to be a correct map of their burying ground. One of the above maps shall be filed with the clerk of the corporation, and the other with the corporation and securities bureau of the department of commerce. The department of commerce shall give said corporation a certificate under the seal of the department of commerce, showing that such map has been received and duly filed, which certificate shall be filed with the clerk of said corporation.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1733 ;--CL 1871, 3390 ;--How. 4744 ;--CL 1897, 8378 ;--CL 1915, 11138 ;--CL 1929, 10417 ;--CL 1948, 456.17 ;--Am. 1982, Act 103, Imd. Eff. Apr. 19, 1982 .

**456.18 Actions and suits; common seal. [M.S.A. 21.838 ]**

Sec. 18.

All corporations organized under this act, shall be capable in their corporate name, of suing and being sued, appealing, prosecuting, and defending, to final judgment and execution, in any of the courts of this state or elsewhere, and to have a common seal which they may alter at pleasure.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1734 ;--CL 1871, 3391 ;--How. 4745 ;--CL 1897, 8379 ;--CL 1915, 11139 ;--CL 1929, 10418 ;--CL 1948, 456.18 .

**456.19 Reincorporation under act; lot owners in public burying ground, incorporation; transfer of rights from municipalities. [M.S.A. 21.839 ]**

Sec. 19.

Any burying ground corporation heretofore organized under any law of this state, upon complying with the provisions of the preceding sections of this act, shall possess all the powers, and be subject to all the restrictions of corporations originally organized under this act; and the owners of lots in any public burying ground in this state may associate together and organize themselves into a corporation under the provisions of this act, whenever a majority of such owners shall take the proceedings provided by sections 5, 6, 7 and 8, and thereafter other owners may become members of such corporation by a vote of the board of officers of the corporation, on application to be admitted to membership. Cities, villages and towns may transfer to any corporation, organized under this act, all rights remaining to them in any public burying ground.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1735 ;--Am. 1867, Act 99, Eff. June 27, 1867 ;--CL 1871, 3392 ;--How. 4746 ;--CL 1897, 8380 ;--CL 1915, 11140 ;--CL 1929, 10419 ;--CL 1948, 456.19 .

**456.20 Saving clause. [M.S.A. 21.840 ]**

Sec. 20.

Any right that may have accrued to any member, stockholders or lot owner of any burial ground corporation, or public burying ground heretofore existing in this state, shall not be affected or impaired by reason of this act.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1736 ;--Am. 1867, Act 99, Eff. June 27, 1867 ;--CL 1871, 3393 ;--How. 4747 ;--CL 1897, 8381 ;--CL 1915, 11141 ;--CL 1929, 10420 ;--CL 1948, 456.20 .

**456.21 Vacation of burying ground; procedure. [M.S.A. 21.841 ]**

Sec. 21.

Whenever it may become necessary to vacate any burying ground, the property of any corporation organized under this act, such corporation may, by a majority of its members present at any corporate meeting, direct the president and clerk of such corporation to petition the circuit court for the county in which such burying ground is situated, for leave to vacate the same; and such circuit court may make such order in the premises as shall be just and proper: Provided, No final order shall be made within 6 months from the time of filing such petition, and without due proof of publication of notice of such petition, for 12 successive weeks, in such newspaper as may have been designated by said court for that purpose.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1737 ;--CL 1871, 3394 ;--How. 4748 ;--CL 1897, 8382 ;--Am. 1903, Act 65, Eff. Sept. 17, 1903 ;--CL 1915, 11142 ;--CL 1929, 10421 ;--CL 1948, 456.21 .

**456.22 Forfeited right of burial; disposal. [M.S.A. 21.842 ]**

Sec. 22.

It shall be lawful for any corporation organized under this act, to dispose of that part of any forfeited right of burial, which has not been actually used as a repository of the dead, in like manner as if the same had never been granted.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1738 ;--CL 1871, 3395 ;--How. 4749 ;--CL 1897, 8383 ;--CL 1915, 11143 ;--CL 1929, 10422 ;--CL 1948, 456.22 .

**456.23 Unused burial rights; sale on non-payment of assessment; reconveyance. [M.S.A. 21.843 ]**

Sec. 23.

Any corporation organized under this act may be authorized by the circuit or district court of the county, upon the like petition as is required in the twenty-first section of this act, and after 6 months from the filing of such petition, to redispense of unused burial rights on which assessment shall have remained unpaid for 7 years or more: Provided, That if personal service is not made on the owner or owners of the burial right then the same procedure as is provided by law for substituted service in circuit courts shall be used.

At any time during the period of 2 years from and after the entering of the order of termination and forfeiture, the owner of any burial space or spaces shall be entitled to a reconveyance to him by the board of trustees on the payment of the costs and expenses incurred in said proceeding, and not exceeding \$15.00 for the care and maintenance of such space or spaces. If such reconveyance is not sought and obtained during said 2 year period, then and thereupon the board of trustees shall be authorized and empowered to offer such spaces for sale in accordance with the rules and regulations of said board governing the sale of lots and spaces in the cemetery concerned. The proceeds derived therefrom shall be used to defray the expenses incurred in accordance with the provisions of this act.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1739 ;--CL 1871, 3396 ;--How. 4750 ;--CL 1897, 8384 ;--CL 1915, 11144 ;--CL 1929, 10423 ;--Am. 1947, Act 153, Eff. Oct. 11, 1947 ;--CL 1948, 456.23 .

**456.24 Assessment; voting; notice of meeting. [M.S.A. 21.844 ]**

Sec. 24.

At any corporate meeting of the members, after notice as provided by its bylaws, those members present, when they deem it necessary, may vote an assessment upon the members of such corporation by a majority vote of the members present, which assessment shall be made by the board of trustees of such corporation, as near as may be in proportion to the value of the respective rights of burial owned by such members. Notice of a proposed assessment setting forth the date and place of meeting and the

method of assessment and amount thereof shall be sent by certified mail to all known addresses of living members at least 30 days before date set for the meeting.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1740 ;--Am. 1867, Act 99, Eff. June 27, 1867 ;--CL 1871, 3397 ;--How. 4751 ;--CL 1897, 8385 ;--Am. 1903, Act 65, Eff. Sept. 17, 1903 ;--CL 1915, 11145 ;--CL 1929, 10424 ;--CL 1948, 456.24 ;--Am. 1958, Act 41, Eff. Sept. 13, 1958 .

#### **456.25 Assessment; record. [M.S.A. 21.845 ]**

Sec. 25.

After an assessment has been made, as provided for in the next preceding section, such corporation shall cause a record to be made of such assessment, showing the day when the same is made, with a list of the names of all the members of such corporation, and the amount assessed to each member; a copy of the assessment shall be furnished by the clerk to the treasurer of such corporation.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1741 ;--CL 1871, 3398 ;--How. 4752 ;--CL 1897, 8386 ;--Am. 1903, Act 65, Eff. Sept. 17, 1903 ;--CL 1915, 11146 ;--CL 1929, 10425 ;--CL 1948, 456.25 .

#### **456.26 Assessment; notice; payment, enforcement. [M.S.A. 21.846 ]**

Sec. 26.

Within 1 month from the time of making any assessment, the clerk of the corporation making the same, shall cause public notice of the same to be given, in such manner as the board of trustees shall direct, directing each member of such corporation to pay his assessment to the treasurer of such corporation within 30 days from the date of such notice; and such assessment shall be, and hereby is declared, a personal liability against such member and the payment thereof may be enforced by action of debt or assumpsit in the name of such corporation.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1742 ;--Am. 1867, Act 99, Eff. June 27, 1867 ;--CL 1871, 3399 ;--How. 4753 ;--CL 1897, 8387 ;--Am. 1899, Act 216, Eff. Sept. 23, 1899 ;--Am. 1903, Act 65, Eff. Sept. 17, 1903 ;--CL 1915, 11147 ;--CL 1929, 10426 ;--CL 1948, 456.26 .

#### **456.27 Duties of officers defined by by-laws. [M.S.A. 21.847 ]**

Sec. 27.

The powers and duties of all officers holding office under any corporation organized under this act, shall be defined by the by-laws of such corporation, except so far as they are defined in this act.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1743 ;--CL 1871, 3400 ;--How. 4754 ;--CL 1897, 8388 ;--CL 1915, 11148 ;--CL 1929, 10427 ;--CL 1948, 456.27 .

**456.28 Treasurer; duties. [M.S.A. 21.848 ]**

Sec. 28.

It shall be the duty of the treasurer of any corporation organized under this act, to receive and safely keep all moneys belonging to such corporation, and pay them out on the order of the clerk, countersigned by the president of such corporation.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1744 ;--CL 1871, 3401 ;--How. 4755 ;--CL 1897, 8389 ;--CL 1915, 11149 ;--CL 1929, 10428 ;--CL 1948, 456.28 .

**456.29 Records of rights of burial; form. [M.S.A. 21.849 ]**

Sec. 29.

A record shall be kept by each corporation organized under this act, of the rights of burial disposed of by such corporation, in the following form:

No. The ..... for ....., to them paid by ....., of ....., hereby grant unto ..... right of burial in their grounds, and embracing in reference to this map, ....., subject, nevertheless, to assessment and forfeiture, as provided by law.

Dated, ..... 18..... .

Countersigned, ....., President. .... Clerk.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1745 ;--CL 1871, 3402 ;--How. 4756 ;--CL 1897, 8390 ;--CL 1915, 11150 ;--CL 1929, 10429 ;--CL 1948, 456.29 .

**456.30 Records of rights of burial; bound blanks, index. [M.S.A. 21.850 ]**

Sec. 30.

It shall be the duty of every corporation organized under this act, to procure a sufficient number of blanks of the form above prescribed, bound in convenient form, with an index in which shall be entered alphabetically the names of the purchasers of rights of burial in the grounds of such corporation.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1746 ;--CL 1871, 3403 ;--How. 4757 ;--CL 1897, 8391 ;--CL 1915, 11151 ;--CL 1929, 10430 ;--CL 1948, 456.30 .

**456.31 Price of lots or rights of burial. [M.S.A. 21.851 ]**

Sec. 31.

The price of lots or rights of burial in any grounds belonging to such corporation may be, from time to time, determined and fixed by a 2/3 vote of the board of trustees.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1747 ;--CL 1871, 3404 ;--Am. 1881, Act 39, Imd. Eff. Mar. 18, 1881 ;--How. 4758 ;--CL 1897, 8392 ;--CL 1915, 11152 ;--CL 1929, 10431 ;--CL 1948, 456.31 .

#### **456.32 Price of lots or rights of burial; payment receipt. [M.S.A. 21.852 ]**

Sec. 32.

Upon payment to the treasurer of any corporation organized under this act, the price of any right of burial determined as above, it shall be the duty of such treasurer to give to the purchaser a receipt therefor, which receipt shall accurately describe the premises on which payment has been made.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1748 ;--CL 1871, 3405 ;--How. 4759 ;--CL 1897, 8393 ;--CL 1915, 11153 ;--CL 1929, 10432 ;--CL 1948, 456.32 .

#### **456.33 Certificate of right of burial. [M.S.A. 21.853 ]**

Sec. 33.

Upon presenting to the clerk of any corporation organized under this act, a receipt from the treasurer thereof, in the form prescribed in the next preceding section of this act, it shall be the duty of such clerk to issue a certificate of right of burial, signed by such clerk and countersigned by the president of such corporation, in the form prescribed in the twenty-ninth section of this act.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1749 ;--CL 1871, 3406 ;--How. 4760 ;--CL 1897, 8394 ;--CL 1915, 11154 ;--CL 1929, 10433 ;--CL 1948, 456.33 .

#### **456.34 Potter's field. [M.S.A. 21.854 ]**

Sec. 34.

Any corporation organized under this act, shall have power to set off a part of their burial ground as a potter's field, and under proper regulations permit the dead to be buried therein.

**History:** 1855, Act 87, Imd. Eff. Feb. 12, 1855 ;--CL 1857, 1750 ;--CL 1871, 3407 ;--How. 4761 ;--CL 1897, 8395 ;--CL 1915, 11155 ;--CL 1929, 10434 ;--CL 1948, 456.34 .

#### **456.34a Witness fee; prohibition.**

Sec. 34a.

A corporation organized under this act shall not charge a fee for witnessing the lowering of a casket into the ground.

**History:** Add. 1996, Act 111, Imd. Eff. Mar. 5, 1996 .

**456.35 Improvement or memorial fund; use; investment; corporate trustees; accounts. [M.S.A. 21.855 ]**

Sec. 35.

(1) The board of trustees of any corporation organized under this act shall provide for and establish an improvement or memorial fund, the income or proceeds from which shall be perpetually devoted:

First, To care for any assessments levied, to keeping clean and in good order the lots of the several contributors thereto, and any monuments on said contributors' lots in good repair; and,

Second, To improving and beautifying any portion of the grounds of such corporation, reserved from sale and set apart for ornamental purposes.

(2) Contributions, subscriptions or bequests to such fund, whether made by owners of lots, or rights of burial, or by other persons, shall be invested in such safe and productive securities as the said board of trustees shall determine, or deposited in the savings department of any state, national bank, or state or federally chartered savings and loan association and only the annual interest thereon shall be used for the purposes above prescribed.

(3) Any corporation organized under this act may also be named and constituted and may act as trustee of any gift, grant, bequest or conveyance of personal property, to said corporation, in trust for the perpetual care, maintenance and preservation of, and the planting and cultivation of trees, shrubs, flowers and plants upon any cemetery lot or lots, or part of the cemetery owned or held and maintained by said corporation, and the care, preservation, repair, upkeep and replacement of any monument, tomb, mausoleum, fence or other structure thereon, or for any or all the above purposes upon such terms and conditions as may be provided in the instrument or writing creating such trust, and no such trust shall be invalid because contravening any statute or rule of law forbidding accumulations of income, but shall be valid notwithstanding such statute or rule.

(4) On or before June 30 of each year an account of all proceeds received during the preceding calendar year from sales of interment rights, entombment rights or columbarium rights made after the effective date of this 1966 amendatory act, shall be filed with the state cemetery commission of the department of commerce, along with an account, certified to by the trustee or trustees, of all amounts deposited the calendar year previous, into the irrevocable endowment fund.

**History:** Add. 1881, Act 39, Imd. Eff. Mar. 18, 1881 ;--How. 4762 ;--CL 1897, 8396 ;--CL 1915, 11156 ;--Am. 1917, Act 308, Eff. Aug. 10, 1917 ;--CL 1929, 10435 ;--CL 1948, 456.35 ;--Am. 1966, Act 338, Eff. Mar. 10, 1967 .

**456.35a Endowment care fund; creation; minimum requirements; administration; investment; prohibited use; legal remedies. [M.S.A. 21.855(1) ]**

Sec. 35a.

(1) The fund required to be set aside under section 35 for the purpose of keeping and maintaining the grounds of cemeteries established after the effective date of this 1966 amendatory act, or mausoleums which are not located in the confines of a dedicated cemetery and are established after the effective date of this 1966 amendatory act, shall be created by the deposit of \$25,000.00 into the fund before any sale of burial rights, entombment rights or columbarium rights is made.

(2) With respect to all cemeteries or mausoleums, whether established before or after the effective date of this 1966 act, the fund shall be added to by payment, perpetually, into the same each month of not less than 15% of all proceeds received during the previous month from the sales of burial rights, entombment rights or columbarium rights made after the effective date of this 1966 amendatory act. No total deposit for a single adult burial right sale or assignment shall be less than \$20.00. Notwithstanding the minimum amount required to be paid into such endowment fund from the proceeds of sales of lots or burial rights, as provided herein, any cemetery which has an endowment fund of more than \$125,000.00 and exceeding \$10,000.00 per acre of the developed portion of such cemetery, may make application to the cemetery commission for a waiver of the 15% or \$20.00 minimum requirement. The cemetery commission shall take such testimony and make such investigation as it deems advisable pursuant to such application. If the cemetery commission determines that the applicant has an endowment fund of more than \$125,000.00 and exceeding \$10,000.00 per acre of the developed portion of such cemetery and that the income from such fund is sufficient to meet the then current cost of keeping the applicant's cemetery in good condition, it shall grant a waiver of the 15% and \$20.00 minimum requirement, and it shall grant such modifications with respect to contributions to such fund as it deems advisable.

(3) The endowment care fund may be administered by the board of directors itself, or by such trustees, individual or corporate, as it may select under the terms of a trust instrument or declaration. If it selects trustees to administer the fund, its liability shall be limited to reasonable care in the selection. Directors may serve as trustees if at least 2 members of the board are selected.

(4) The funds established under this section shall be invested subject to the provisions of sections 1 and 2 of Act No. 177 of the Public Acts of 1937, as amended, being sections 555.201 and 555.202 of the Compiled Laws of 1948, and the investment of any fund for endowment care heretofore or hereafter made which meets the requirements of said act is ratified and confirmed.

(5) No portion of the funds required to be set aside under section 35 shall be used directly or indirectly for salaries of the officers or directors of the cemetery association or corporation, only the earnings from such funds shall be used to keep the grounds and graves in good condition.

(6) In addition to all other remedies at law or in equity which any interested party may have, the attorney general and the circuit court of the county in which the cemetery is located shall have all the powers and jurisdiction granted to the attorney general and court as to trusts covered by Act No. 280 of the Public Acts of 1915, as amended, being sections 554.351 to 554.353 of the Compiled Laws of 1948. The remedies granted shall include all such endowment care fund trusts without regard to uncertainty or indefiniteness of the beneficiaries thereof.

**History:** Add. 1966, Act 338, Eff. Mar. 10, 1967 .

**456.35b Endowment care fund; exemption from care fund requirements. [M.S.A. 21.855(2) ]**

Sec. 35b.

Earth interment cemeteries of 10 acres or less in size which are owned and operated exclusively by nonprofit entities existing prior to March 10, 1967 and in which burials have taken place prior to such date, shall be exempt from the care fund requirements of sections 35 and 35a, except that reports shall be made as required by such sections if the cemetery owners maintain care or memorial funds.

**History:** Add. 1968, Act 254, Imd. Eff. July 1, 1968 .

**456.36 Additional land; taxation; conveyance. [M.S.A. 21.856 ]**

Sec. 36.

Any corporation organized or to be organized under this act may own and hold land heretofore or hereafter acquired for additional burial grounds and such other land heretofore or hereafter acquired as may be needed for the convenient or proper operation of its burial grounds. Land heretofore or hereafter acquired by said corporation and not being a part of its burial grounds shall not be exempt from taxation. Any corporation organized under this act shall not convey any part or portions of land owned by it if such land is part of the plan or design of the cemetery adopted and recorded as provided in section 17 of this act or secured for the purpose of becoming part of such plan or design unless at least \$5,000.00 for each acre so conveyed is allocated to the improvement or memorial fund provided for by section 35 of this act.

**History:** Add. 1897, Act 75, Eff. Aug. 30, 1897 ;--CL 1897, 8397 ;--CL 1915, 11157 ;--CL 1929, 10436 ;--CL 1948, 456.36 ;--Am. 1964, Act 53, Eff. Aug. 28, 1964 .

## CEMETERY CORPORATIONS; EXTENSION OF CORPORATE LIFE

### Act 185 of 1929

AN ACT to provide for the extension in perpetuity or for a term of years, of the term of existence of corporations or associations, organized under Act No. 87 of the Public Acts of 1855, as amended, being sections 456.1 to 456.36, the corporate term of existence of which has heretofore expired, or may hereafter expire by limitation; to fix the duties and liabilities of such renewed corporations or associations; to impose certain duties upon the department of commerce; and to repeal certain acts and parts of acts.

**History:** 1929, Act 185, Eff. Aug. 28, 1929 ;--Am. 1982, Act 108, Imd. Eff. Apr. 19, 1982 .

*The People of the State of Michigan enact:*

#### **456.51 Continuance of corporate existence. [M.S.A. 21.861 ]**

##### Sec. 1.

It shall be lawful for any corporation or association under Act No. 87 of the Public Acts of 1855, as amended, being sections 456.1 to 456.36, whose corporate term of existence has expired, or may hereafter expire by limitation, at a special meeting of the trustees de jure or de facto of said corporation or association, called for that purpose, to direct by resolution the continuance of its corporate existence in perpetuity or for such further term as they may determine, which resolution or direction shall express the date of the commencement and the termination of said extended term, if said extension be for a term of years. Such special meeting may be called by the president or clerk of the corporation or association, whose term of existence has not expired, or by either of the persons acting as president or clerk of the corporation or association, whose term of corporate existence has expired by limitation, and notice of such meeting shall be given to all the de jure or de facto trustees of said corporation or association at least 10 days prior to the date of such meeting by delivering to each of said trustees, personally, a written or printed notice of such meeting, or by leaving such notice at the residence of such trustee. The trustees de jure or de facto of any corporation or association, the same being either a de jure or a de facto corporation, organized under Act No. 87 of the Public Acts of 1855, as amended, and which corporation or association has heretofore acquired and held and still holds, or which may hereafter acquire and hold land conveyed or leased to it in its corporate name, may at such special meeting determine by resolution to reorganize such corporation, or association and thereby such reorganization shall take, assume, and keep the name of such corporation or association as the same has before been known, and such reorganization of such corporation or association so directed and made shall be and remain a corporation with all powers, duties, and obligations of a corporation or association newly made or incorporated under said act and its amendments. Upon the adoption of such resolution, which said resolution shall have the concurrence of 2/3 of such trustees in cases where the term of existence of such corporation shall not have expired, and of 4/5 of such trustees in case the term of existence thereof shall have expired, it shall be the duty of the de jure or de facto president and clerk of such corporation or association, together

with a sufficient number of the other trustees to constitute the number of trustees above required for the adoption of such resolution, to make, sign, and acknowledge duplicate articles of reorganization or incorporation, in which shall be set forth the name, the object, and the number and names of the trustees of the new organization, and which shall be the same as in the corporation or association to be reorganized and which shall set forth further that the purpose is to hold, keep, and retain the corporate name and continue the corporate existence of the corporation in perpetuity or for a specified term when its pending term shall have expired, or in case the term of existence of such corporation or association has already expired, that the purpose is to organize anew and to take up, renew, and continue the corporate existence of such corporation or association in perpetuity, or for a specified term to commence from the time of such expiration. One of such articles of reorganization shall be filed with the corporation and securities bureau of the department of commerce, and the other to be kept by said corporation or association. Either of said duplicate articles of reorganization or a certified copy of the record of the same shall be prima facie evidence of the facts therein recited and of the validity and existence of the said corporation or association. The corporation or association so made, reorganized, or renewed, shall be a corporation to all intents and purposes, having all the powers, and being subject to all the restrictions of corporations originally organized under the said act or under said act as amended, and the same shall succeed to, own, and hold all the property or rights of action held, owned, and had by the corporation or association which is reorganized, prior to its renewal or reorganization, and shall be liable for all its debts, liabilities, and obligations as fully and completely as if it had not been reorganized and its corporate existence had been beyond any question, both de jure and de facto: Provided, however, That no greater or additional rights, powers, or privileges shall be conferred by the continuance or reorganization of any corporation or association hereunder in perpetuity than would be conferred upon such corporation or association continued or reorganized for a term of years, it being the legislative intent in permitting organizations hereunder in perpetuity to relieve such corporations or associations from the necessity of continuing or reorganizing after a limited term of years but not to confer any other or additional vested right. The officers and trustees of the corporation or association renewed or reorganized shall hold and continue in their offices until their successors shall be duly elected or appointed and qualified.

**History:** 1929, Act 185, Eff. Aug. 28, 1929 ;--CL 1929, 10437 ;--CL 1948, 456.51 ;--Am. 1982, Act 108, Imd. Eff. Apr. 19, 1982 .

**Former Law:** See Act 154 of 1893.

#### **456.52 Extension of term of existence of corporation. [M.S.A. 21.862 ]**

##### **Sec. 2.**

It shall be lawful for any corporation heretofore reorganized or hereafter reorganized under the provisions of this act, to amend its articles of reorganization from time to time as to the extension of the term of existence of such corporation, at a special meeting of the trustees of said corporation called for that purpose, to direct by resolution the extension of its corporate existence, which resolution shall express such extension to be

in perpetuity or the date of the commencement and termination of said term. Such special meeting shall be called and notice thereof given in the same manner as is provided in section 1 of this act for the calling and giving of notice of the special meeting mentioned in said section. Upon the adoption of such resolution, which shall have the concurrence of 2/3 of such trustees, it shall be the duty of the president and clerk of such corporation or association, together with a sufficient number of the other trustees to make 2/3 of a full board of trustees, to make, sign, and acknowledge in duplicate amended articles of reorganization, in which shall be set forth the name, the object, and the number and names of the trustees of the corporation; and which shall further set forth that the purpose of the reorganization is to hold, keep, and retain the corporate name and continue the existence of the corporation in perpetuity or for a specified term when its pending term shall have expired. One of such duplicate articles of reorganization shall be filed in the corporation and securities bureau of the department of commerce. The other duplicate shall be kept by said corporation or association. Either of said duplicate articles or a certified copy of the record of the same shall be prima facie evidence of the facts therein recited and of the validity and existence of said corporation or association. The corporation whose term of existence is so extended shall be a corporation to all intents and purposes, having all the powers and being subject to all the restrictions of corporations originally organized under Act No. 87 of the Public Acts of 1855, as amended, and the same shall succeed to, own, and hold all the property or rights of action held, owned, or had by the corporation or association, whose term of existence is so extended, prior to the extension of its existence, and shall be liable for all its debts, liabilities, and obligations.

**History:** 1929, Act 185, Eff. Aug. 28, 1929 ;--CL 1929, 10438 ;--CL 1948, 456.52 ;--Am. 1982, Act 108, Imd. Eff. Apr. 19, 1982 .

## RURAL CEMETERY CORPORATIONS

### Act 12 of 1869

AN ACT to authorize and encourage the formation of corporations to establish rural cemeteries; to provide for the care and maintenance thereof; to provide for the revision and codification of the laws relating to cemeteries, mausoleums, crypts, vaults, crematoriums, and other means of disposing of the dead; to make an appropriation therefor; and to impose certain duties upon the department of commerce.

**History:** 1869, Act 12, Imd. Eff. Feb. 19, 1869 ;--Am. 1929, Act 215, Eff. Aug. 28, 1929 ;--Am. 1982, Act 110, Imd. Eff. Apr. 19, 1982 .

*The People of the State of Michigan enact:*

#### **456.101 Cemetery corporations; incorporators, name. [M.S.A. 21.871 ]**

##### Sec. 1.

That any number of persons not less than 10, who shall by articles of agreement in writing, associate themselves according to the provisions of this act, under any name assumed by them, for the purpose of purchasing land for a cemetery in this state, and for fencing, laying out, improving, maintaining and establishing the same and who shall comply with sections 2 and 3 of this act, shall, with their successors and assigns, constitute a body politic or corporate, under the name assumed by them in their articles of association: Provided, however, That no 2 corporations shall assume the same name.

**History:** 1869, Act 12, Imd. Eff. Feb. 19, 1869 ;--CL 1871, 3408 ;--How. 4763 ;--CL 1897, 8399 ;--CL 1915, 11160 ;--CL 1929, 10440 ;--CL 1948, 456.101 .

#### **456.102 Articles; signing, acknowledgment, contents. [M.S.A. 21.872 ]**

##### Sec. 2.

The articles of agreement of every such association shall be signed by the persons associating in the first instance, and acknowledged before some person authorized by the laws of this state, to take the acknowledgment of deeds, and shall state --

1st The amount of land which it is proposed to purchase for such cemetery, and the town and county in which it is situated.--

2nd The amount of capital which it is estimated will be required to make such purchase, and to fence and improve the grounds, and the number of shares into which the same shall be divided.--

3rd The name by which such corporation shall be known.--

4th The number of persons who shall constitute the board of directors, being not less than 5 nor more than 13.--

5th The names of those who shall constitute the first board of directors, and the name of the first treasurer.--

6th The names of the subscribers to the articles of association, and the number of shares subscribed by each, towards the required capital.--

7th The term of duration of such corporation, which shall not exceed 30 years.

**History:** 1869, Act 12, Imd. Eff. Feb. 19, 1869 ;--CL 1871, 3409 ;--How. 4764 ;--CL 1897, 8400 ;--CL 1915, 11161 ;--CL 1929, 10441 ;--CL 1948, 456.102 .

### **456.103 Payment by subscribers to articles of association. [M.S.A. 21.873 ]**

Sec. 3.

The subscribers to such articles of association, shall at the time of subscription thereto, severally pay to the treasurer named therein at least 20 per cent of the amount subscribed by each, and when the whole amount of capital mentioned in said articles shall be subscribed and said portion thereof actually paid in, the directors shall cause a copy of their articles of association, together with an affidavit of such treasurer that 20 per cent of the amount of capital subscribed has actually been paid in, to be filed in the corporation and securities bureau of the department of commerce.

**History:** 1869, Act 12, Imd. Eff. Feb. 19, 1869 ;--CL 1871, 3410 ;--Am. 1875, Act 219, Imd. Eff. May 3, 1875 ;--How. 4765 ;--CL 1897, 8401 ;--CL 1915, 11162 ;--CL 1929, 10442 ;--CL 1948, 456.103 ;--Am. 1953, Act 167, Eff. Oct. 2, 1953 ;--Am. 1982, Act 110, Imd. Eff. Apr. 19, 1982 .

### **456.104 Annual meeting; election of board of directors; right to vote; special meetings. [M.S.A. 21.874 ]**

Sec. 4.

The annual meeting of every such corporation shall be held on the second Monday of May in each year, unless some other day shall be fixed by the by-laws thereof, and in such case, it shall be held upon the day so fixed. Such meeting shall elect a board of directors, who shall serve for the ensuing year, and until their successors shall be chosen, and transact such other business of the corporation, as may properly come before it. At such meeting the owners of scrip, hereinafter provided for, shall have the right to vote, either in person or by proxy, in proportion to the amount of scrip held by them respectively, each owner thereof being entitled to 1 vote for each 10 dollars of scrip. Special meetings of any such corporation may be provided for by the by-laws thereof, and shall be held when called in accordance with such provision.

**History:** 1869, Act 12, Imd. Eff. Feb. 19, 1869 ;--CL 1871, 3411 ;--How. 4766 ;--CL 1897, 8402 ;--Am. 1899, Act 126, Imd. Eff. June 15, 1899 ;--CL 1915, 11163 ;--CL 1929, 10443 ;--CL 1948, 456.104 .

**456.105 Board of directors; selection of officers. [M.S.A. 21.875 ]**

Sec. 5.

It shall be the duty of said board of directors to choose from their own number a president and vice-president, and also to elect suitable persons as treasurer and secretary of such corporation, and from time to time to appoint a superintendent and such other subordinate officers as may be required by the by-laws.

**History:** 1869, Act 12, Imd. Eff. Feb. 19, 1869 ;--CL 1871, 3412 ;--How. 4767 ;--CL 1897, 8403 ;--CL 1915, 11164 ;--CL 1929, 10444 ;--CL 1948, 456.105 .

**456.106 Board of directors; powers. [M.S.A. 21.876 ]**

Sec. 6.

The board of directors shall have the general management of such corporation and shall have the power,--

To purchase land for the use of such association, but for no other purpose, and not exceeding in all 300 acres;

To levy assessments upon the subscribers to the articles of association, not exceeding the amount severally subscribed by them, payable at such times as the directors shall determine, and to enforce the collection thereof either by suit or forfeiture;

To cause to be prepared a plan or design for laying out such lands so purchased by them for cemetery purposes; and when such plan or design is adopted by them, it shall be their duty to cause the same to be recorded in a book to be kept by them for that purpose, and it shall not thereafter be altered or modified, unless by a 2/3 vote of all the directors, after a special notice of such proposed change shall have been given, and after said proposition shall have been submitted in writing to the board at a meeting thereof, to be held prior to the one at which the vote upon such proposed change shall be taken; Provided, That no such alteration shall be made which shall interfere with rights of burial already granted;

To dispose of rights of burial, fix the prices thereof, make conditions in relation to burials within the cemetery grounds, and guarantee to grantees of burial rights the care and preservation of the grounds;

To establish such rules and regulations for the control and management of the grounds and all matters and things incident thereto, as they shall deem for the best interests of the corporation;

To sell any part or portion of the lands owned by such corporation, in case the same shall not be occupied or required for burial purposes, or for the uses of such cemetery;

To invest the moneys received from the sale of burial rights, and to prescribe, from time to time the interest or dividends which shall be paid to holders of the scrip of such corporation, subject to the restrictions hereinafter named.

**History:** 1869, Act 12, Imd. Eff. Feb. 19, 1869 ;--CL 1871, 3413 ;--How. 4768 ;--CL 1897, 8404 ;--CL 1915, 11165 ;--CL 1929, 10445 ;--CL 1948, 456.106 .

#### **456.106a Conveyance of land. [M.S.A. 21.876(1)]**

Sec. 6a.

The corporation shall not convey any part or portions of land owned by it if the land is part of the plan or design of the cemetery adopted and recorded as provided in section 6 unless at least \$5,000.00 for each acre so conveyed is allocated to the irrevocable endowment fund established in section 7 of this act.

**History:** Add. 1964, Act 54, Eff. Aug. 28, 1964 .

#### **456.107 Board of directors; duties, reports, endowment funds, accounting. [M.S.A. 21.877 ]**

Sec. 7.

The board of directors shall preserve good order in the grounds of such cemetery; provide for the laying out and embellishing of the same, and see that they are well-kept and in good condition; establish an irrevocable endowment fund or funds to produce income for future use in the keeping of the grounds and niches, crypts and mausoleum space of such cemeteries in good condition. The fund shall be governed by the terms and provisions of section 7a; cause to be issued scrip or certificates to each subscriber to the articles of the association, which certificates shall specify the amount paid into the capital stock by such subscriber, such scrip to be personal property and transferable by the holder thereof, under such regulations as the board of directors may adopt; and make a report to the annual meeting of the condition of the association, and its receipts and disbursements for the previous year. On or before June 30 of each year an account of all adult burial rights sold and all proceeds received during the preceding calendar year from sales of interment rights, entombment rights or columbarium rights made after the effective date of this 1966 amendatory act, shall be filed with the state cemetery commission of the department of commerce, along with an account, certified to by the trustee or trustees, of all amounts deposited the calendar year previous, into the irrevocable endowment fund.

**History:** 1869, Act 12, Imd. Eff. Feb. 19, 1869 ;--CL 1871, 3414 ;--Am. 1875, Act 219, Imd. Eff. May 3, 1875 ;--How. 4769 ;--CL 1897, 8405 ;--CL 1915, 11166 ;--CL 1929, 10446 ;--Am. 1941, Act 330, Eff. Jan. 10, 1942 ;--CL 1948, 456.107 ;--Am. 1956, Act 207, Eff. Aug. 11, 1956 ;--Am. 1966, Act 339, Eff. Mar. 10, 1967 .

**456.107a Endowment care funds; minimum requirements, administration, investment, prohibited use; legal remedies. [M.S.A. 21.877(1) ]**

Sec. 7a.

(1) The fund required to be set aside under section 7 for the purpose of keeping and maintaining the grounds of such cemeteries established after the effective date of this 1966 amendatory act, or mausoleums which are not located in the confines of a dedicated cemetery and are established after the effective date of this 1966 amendatory act, shall be created by the deposit of \$25,000.00 into the fund before any sale of burial rights, entombment rights or columbarium rights is made.

(2) With respect to all cemeteries or mausoleums, whether established before or after the effective date of this 1966 act, the fund shall be added to by payment, perpetually, into the same each month of not less than 15% of all proceeds received during the previous month from the sales of burial rights, entombment rights or columbarium rights made after the effective date of this 1966 amendatory act. No total deposit for a single adult burial right sale or assignment shall be less than \$20.00. Notwithstanding the minimum amount required to be paid into such endowment fund from the proceeds of sales of lots or burial rights, as provided herein, any cemetery which has an endowment fund of more than \$125,000.00 and exceeding \$10,000.00 per acre of the developed portion of such cemetery, may make application to the cemetery commission for a waiver of the 15% or \$20.00 minimum requirement. The cemetery commission shall take such testimony and make such investigation as it deems advisable pursuant to such application. If the cemetery commission determines that the applicant has an endowment fund of more than \$125,000.00 and exceeding \$10,000.00 per acre of the developed portion of such cemetery and that the income from such fund is sufficient to meet the then current cost of keeping the applicant's cemetery in good condition, it shall grant a waiver of the 15% and \$20.00 minimum requirement, and it shall grant such modifications with respect to contributions to such fund as it deems advisable.

(3) No portion of the funds required to be set aside under section 7 shall be used directly or indirectly for salaries of the officers or directors of the cemetery association or corporation, only the earnings from such funds shall be used to keep the grounds and graves in good condition.

(4) The endowment care fund may be administered by the board of directors itself, or by such trustees, individual or corporate, as it may select under the terms of a trust instrument or declaration. If it selects trustees to administer the fund, its liability shall be limited to reasonable care in such selection. Directors may serve as trustees if at least 2 members of the board are selected.

(5) The funds established under this section shall be invested subject to the provisions of sections 1 and 2 of Act No. 177 of the Public Acts of 1937, as amended, being sections 555.201 and 555.202 of the Compiled Laws of 1948, and the investment of any fund for endowment care heretofore or hereafter made which meets the requirements of said act is ratified and confirmed.

(6) In addition to all other remedies at law or in equity which any interested party may have, the attorney general and the circuit court of the county in which the cemetery is located shall have all the powers and jurisdiction granted to the attorney general and court as to trusts covered by Act No. 280 of the Public Acts of 1915, as amended, being sections 554.351 to 554.353 of the Compiled Laws of 1948. The remedies granted shall include all such endowment care fund trusts without regard to uncertainty or indefiniteness of the beneficiaries thereof.

**History:** Add. 1956, Act 207, Eff. Aug. 11, 1956 ;--Am. 1966, Act 339, Eff. Mar. 10, 1967 .

#### **456.108 Tax exemption. [M.S.A. 21.878 ]**

Sec. 8.

All the lands of said corporation enclosed and set apart for cemetery purposes, and all rights of burial therein, shall be wholly exempt from taxation of any kind whatsoever.

**History:** 1869, Act 12, Imd. Eff. Feb. 19, 1869 ;--CL 1871, 3415 ;--How. 4770 ;--CL 1897, 8406 ;--CL 1915, 11167 ;--CL 1929, 10447 ;--CL 1948, 456.108 .

#### **456.109 Burial rights; granting in lands subject to lien or tax delinquent lands prohibited. [M.S.A. 21.879 ]**

Sec. 9.

No mortgage, or other lien or incumbrance, shall be executed upon any of the lands of such corporation, actually used for burial purposes, and no rights of burial upon any mortgaged lands of such corporation, lands which are delinquent for taxes or special assessments or lands to which such corporation does not have title in fee, shall at any time be granted or sold by it.

**History:** 1869, Act 12, Imd. Eff. Feb. 19, 1869 ;--CL 1871, 3416 ;--How. 4771 ;--CL 1897, 8407 ;--CL 1915, 11168 ;--CL 1929, 10448 ;--Am. 1941, Act 169, Eff. Jan. 10, 1942 ;--CL 1948, 456.109 .

**456.110 Highways, sewers or other public thoroughfares through grounds; right to purchase additional property. [M.S.A. 21.880 ]**

Sec. 10.

No streets, highways, railways, sewers or canals shall be opened or constructed through the grounds of such corporation, without the assent of the board of directors, granted at a meeting of such board, called for the purpose of considering the propriety of granting such assent: Provided, That such assent shall not be required when lands owned, used or controlled by said corporation are taken under condemnation proceedings by the state, or any county, city or village for the purpose of widening an established street or highway: Provided further, That any such corporation whose property has been so condemned, shall have the right to purchase additional property for cemetery purposes within the corporate limits of any such village or city.

**History:** 1869, Act 12, Imd. Eff. Feb. 19, 1869 ;--CL 1871, 3417 ;--How. 4772 ;--CL 1897, 8408 ;--CL 1915, 11169 ;--Am. 1921, Act 177, Eff. Aug. 18, 1921 ;--Am. 1925, Act 32, Eff. Aug. 27, 1925 ;--CL 1929, 10449 ;--CL 1948, 456.110 .

**456.111 Saloons and amusements prohibited. [M.S.A. 21.881 ]**

Sec. 11.

After any such corporation shall have been formed, and their cemetery site shall have been purchased, no saloon or place of entertainment shall thereafter be set up or established for the sale of intoxicating drinks, and no sporting festival shall be held within 1/4 of a mile of the entrance to the grounds of such corporation.

**History:** 1869, Act 12, Imd. Eff. Feb. 19, 1869 ;--CL 1871, 3418 ;--How. 4773 ;--CL 1897, 8409 ;--CL 1915, 11170 ;--CL 1929, 10450 ;--CL 1948, 456.111 .

**456.112 Burial rights; transfer, rights of surviving spouse and next of kin. [M.S.A. 21.882 ]**

Sec. 12.

All rights of burial granted by such corporation shall be transferable and as fully alienable as any other personal property in this state, subject only to such conditions in reference thereto as shall be prescribed by the board of directors and subject to rights of the surviving spouse and next of kin now existing at law or in equity as to any individual burial space or grave in which there is an actual interment.

**History:** 1869, Act 12, Imd. Eff. Feb. 19, 1869 ;--CL 1871, 3419 ;--How. 4774 ;--CL 1897, 8410 ;--CL 1915, 11171 ;--CL 1929, 10451 ;--CL 1948, 456.112 ;--Am. 1956, Act 207, Eff. Aug. 11, 1956 .

**456.113 Repealed. 1977, Act 67, Imd. Eff. July 20, 1977. [M.S.A. 21.883 ]**

**Compiler's Note:** The repealed section pertained to arrests by employees of cemetery corporation.

**456.114 Use of firearms in cemetery; entering over fence; penalty. [M.S.A. 21.884 ]**

Sec. 14.

No person shall use firearms upon the grounds of any cemetery owned and inclosed by any such corporation, nor hunt game therein. No person shall enter into such inclosed cemetery by climbing or leaping over or through any fence or wall around the same, nor direct or cause any animal to enter therein in any such manner. Any person offending against any of the provisions of this section shall be punished by a fine not exceeding 50 dollars or by imprisonment not exceeding 3 months, or by both, in the discretion of the court.

**History:** 1869, Act 12, Imd. Eff. Feb. 19, 1869 ;--CL 1871, 3421 ;--Am. 1875, Act 218, Eff. Aug. 3, 1875 ;--How. 4776 ;--CL 1897, 8412 ;--CL 1915, 11173 ;--CL 1929, 10453 ;--CL 1948, 456.114 .

**456.114a Witness fee; prohibition.**

Sec. 14a.

A corporation established under the provisions of this act shall not charge a fee for witnessing the lowering of a casket into the ground.

**History:** Add. 1996, Act 110, Imd. Eff. Mar. 5, 1996 .

**456.115 Perpetual care fund; receipts; investment; bond; account. [M.S.A. 21.886 ]**

Sec. 15.

All corporations established under the provisions of this act may receive and hold any grant, donation or bequest made to them for the purpose of perpetually caring for and maintaining the lots of said donors, and may apply the income thereof under the direction of the board of directors for the improvement, embellishment and care of the ground, and the different lots, tombs and monuments. Such funds so received by grant, donation or bequest shall be kept in a separate fund and shall constitute a perpetual care or repair fund, the income of which shall be devoted to the perpetual keeping of the lots, monuments, markers and tombs of the donors in order. Such funds shall be held in trust and the principal shall not be encroached upon or the income be used for any purpose except that to which it is devoted. Any and all funds received by grant, donation or bequest by any corporation or association formed under the provisions of this act shall be invested by the board of directors in any of the investments authorized in section 7 hereof. From this fund so created there shall be drawn annually and credited to each donor, such an amount of the total income as the amount donated by the donor bears to the income of the entire amount contributed for the purposes of this section. The treasurer of every association or corporation formed under the provisions of this act, shall furnish annually to the board of directors a bond in double the amount of all moneys received under the provisions of this section, which bond shall provide for the safekeeping of all money, bonds, mortgages or securities, that the said treasurer shall

render an account annually of all moneys received by him under the provisions hereof and pay and deliver all moneys, bonds and securities to his successor in office, said bond to be approved by a majority vote of and members-elect of the board of directors.

**History:** Add. 1903, Act 209, Eff. Sept. 17, 1903 ;--CL 1915, 11175 ;--CL 1929, 10455 ;--Am. 1941, Act 330, Eff. Jan. 10, 1942 ;--CL 1948, 456.115 .

#### **456.116 Non-profit corporation. [M.S.A. 21.887(1) ]**

Sec. 16.

Any corporation organized under this act may, by suitable provision in its articles of association, or by suitable amendment thereto filed in the same manner as required hereunder for the filing of the articles of association, provide that it is a non-profit corporation and may operate and conduct business as such.

**History:** Add. 1953, Act 167, Eff. Oct. 2, 1953 .

**Former Law:** See section 16 of Act 12 of 1869 and section 16 of Act 215 of 1929.

#### **456.117 Charter not deemed forfeited; filing articles; affidavit, report. [M.S.A. 21.887(2) ]**

Sec. 17.

Notwithstanding the provisions of any other laws, the charter of any corporation organized under this act shall not be deemed to be forfeited and the existence of such corporation shall not be deemed to be terminated because of its failure to file annual reports with any state official and/or to pay annual fees as required by any law of this state, provided that prior to July 1, 1954, such corporation shall file, or cause to be filed, with the corporation and securities commission true copies of its articles of association, any amendments thereto, and the affidavit of its treasurer, as required by section 3 hereof, duly authenticated by the clerk of the county in which such instruments were filed, and shall file therewith an affidavit of 1 of its officers setting forth that it has continued to exist and function as a corporation since its organization under the provisions of this act, and shall also file therewith the current annual report and pay such fee as is required by law, and thereafter such corporation shall file all annual reports and pay such fees as shall be required by any applicable law.

**History:** Add. 1953, Act 167, Eff. Oct. 2, 1953 .

**Compiler's Note:** Original section 17 of Act 12 of 1869, which attempted to confer the power of eminent domain, was held unconstitutional in *Portage Township Board of Health v. Van Hoesen*, 87 Mich. 533, 535 N.W. 894 (1891).

#### **456.118 Corporate name. [M.S.A. 21.887(3) ]**

Sec. 18.

Prior to the filing by any corporation, in accordance with section 17, of the instruments thereby required with the corporation and securities commission, the corporation shall ascertain from the commission whether its corporate name is in conflict with that of any other corporation whose articles of association or articles of incorporation have previously been filed with the commission. If, in the judgment of the commission, there shall be a conflict in corporate names, then the corporation filing under the provisions of the section shall amend its name by adding thereto the name of the locality in which it is organized or operating, or in such other manner as shall be approved by the corporation and securities commission to distinguish it from any corporation whose articles have previously been filed as aforesaid.

**History:** Add. 1953, Act 167, Eff. Oct. 2, 1953 .

**Compiler's Note:** Original section 18 of Act 12 of 1869, which attempted to confer the power of eminent domain, was held unconstitutional in *Portage Township Board of Health v. Van Hoesen*, 87 Mich. 533, 535 N.W. 894 (1891).

#### **456.119 List of corporations; compilation; forwarding to corporation and securities commission. [M.S.A. 21.887(4) ]**

Sec. 19.

Upon instructions from the corporation and securities commission, every county clerk shall forthwith compile a list of corporations whose articles have been filed in his office in accordance with the provisions of this act, and shall forthwith forward such list, together with the last known address of the corporations, to the corporation and securities commission, which shall forthwith notify every such corporation of the provisions and requirements of this act, as amended, by mailing such notice addressed to the corporation at its last known address as given by the county clerk.

**History:** Add. 1953, Act 167, Eff. Oct. 2, 1953 .

**Compiler's Note:** Original section 19 of Act 12 of 1869, which attempted to confer the power of eminent domain, was held unconstitutional in *Portage Township Board of Health v. Van Hoesen*, 87 Mich. 533, 535 N.W. 894 (1891).

## RURAL CEMETERY CORPORATIONS; EXTENSION OF CORPORATE LIFE

### Act 14 of 1903

AN ACT to provide for the extension of the term of existence of corporations or associations organized under Act No. 12 of the Public Acts of 1869, as amended, being sections 456.101 to 456.119 of the Michigan Compiled Laws, the corporate term of which has heretofore expired or which may hereafter expire by limitation; to fix the duties and liabilities of such renewed corporations or associations; and to impose certain duties upon the department of commerce.

**History:** 1903, Act 14, Imd. Eff. Mar. 26, 1903 ;--Am. 1982, Act 111, Imd. Eff. Apr. 19, 1982 .

*The People of the State of Michigan enact:*

#### **456.151 Continuance of corporate existence. [M.S.A. 21.891 ]**

##### Sec. 1.

It shall be lawful for any corporation or association organized under Act No. 12 of the Public Acts of 1869, as amended, being sections 456.101 to 456.119 of the Michigan Compiled Laws, whose corporate term of existence has expired or may hereafter expire by limitation, at a special meeting of the board of directors of said corporation or association called for that purpose, to direct the continuance of its corporate existence for a further term not exceeding 30 years from the expiration of its former term, which resolution or direction shall express the date of the commencement and the termination of said extended term. Such special meeting may be called by the president, vice-president, treasurer, or secretary of the corporation or association whose term of existence is about to expire, or by either of the persons acting as president, vice-president, treasurer, or secretary of the corporation or association whose term of corporate existence has expired by limitation, and notice of such meeting shall be given to all the directors of said corporation or association at least 10 days prior to the date of such meeting, by delivering to each of said directors, then living, personally, a written or printed notice of such meeting, or by leaving such notice at the residence of such director, or in lieu of such personal service, by publishing notice of such meeting once in each week for 3 weeks in succession, in a newspaper printed, published, and circulating in the county in which said corporation or association cares for and maintains a cemetery. The board of directors of any corporation or association, the same being either a de jure or a de facto corporation, organized under said act as amended, and which corporation or association has heretofore acquired and held and still holds land conveyed or leased to it in its corporate name, may at such special meeting determine by resolution to reorganize such corporation or association and thereby such reorganization shall take, assume, and keep the name of such corporation or association as the same has before been known, and such reorganization of such corporation or association so made and directed, shall be and remain a corporation with all the powers, duties, and obligations of a corporation or association newly made or organized under said act and its amendments. Upon the adoption of such resolution,

which said resolution shall have the concurrence of a majority of such directors in cases where the term of existence of such corporation shall not have expired, and the concurrence of a majority of the directors present at such meeting and not less than 3 in number in case the term of the existence thereof shall have expired, it shall be the duty of the officers of such corporation or association present at such meeting, together with a sufficient number of other directors to constitute the above required number, to make, sign, and acknowledge duplicate articles of association or incorporation, in which shall be set forth the amount of land owned by such corporation or association whose term of existence is about to expire or has expired by limitation, and the county or town in which it is situated, the amount of capital theretofore subscribed for and the number of shares into which the same is divided, the name of the new organization, which shall be the same as that of the corporation or association to be replaced or succeeded, the number of persons who shall constitute the board of directors thereafter, being not less than 5 nor more than 13, the names of those who shall constitute the first board of directors, and the name of the first treasurer, the names of those owning shares in such former corporation or association by subscription, assignment, or otherwise, and the number of shares owned by each, as far as shown by the books of the old corporation or association. Said articles shall further set forth that the corporation is to hold, keep, and retain the corporate name and continue the corporate existence of the corporation whose term is about to expire, or in case the term of existence of such corporation or association has already expired, that the purpose is to organize anew, and to take up, renew and continue the corporate existence of such corporation or association for a term not exceeding 30 years from the date of such expiration. One of such articles of reorganization shall be filed with the corporation and securities bureau of the department of commerce, and the other to be kept by such corporation or association. Either of said duplicate articles of reorganization, or a certified copy of the record of the same shall be prima facie evidence of the facts therein recited, and of the validity and existence of the said corporation or association. The corporation or association so made, reorganized, or renewed, shall be a corporation to all intents and purposes, having all the powers, and being subject to all the restrictions of the corporation originally organized under said act, or under said act as amended, and the same shall succeed to, own and hold all the property or rights of action held, owned, and had by the corporation or association which it succeeds prior to its renewal or reorganization, and shall be liable for all its debts, liabilities, and obligations as fully and completely as if its former corporate term had not expired, and its corporate existence had been beyond any question, both de jure and de facto. The officers and directors of the corporation or association renewed or reorganized shall hold and continue in their offices until their successors shall be duly elected and qualified.

**History:** 1903, Act 14, Imd. Eff. Mar. 26, 1903 ;--CL 1915, 11176 ;--CL 1929, 10457 ;--CL 1948, 456.151 ;--Am. 1982, Act 111, Imd. Eff. Apr. 19, 1982 .

# CEMETERY CORPORATIONS; TRANSFER OF RIGHTS TO MUNICIPAL CORPORATION

## Act 10 of 1927

AN ACT to authorize cemetery corporations, partnerships, limited liability companies, and other legal entities to sell, assign, or convey property rights, franchises, and liabilities to a municipal corporation.

**History:** 1927, Act 10, Eff. Sept. 5, 1927 ;--Am. 2002, Act 551, Imd. Eff. July 26, 2002 .

*The People of the State of Michigan enact:*

### **456.181 Cemetery corporations; sale to municipal corporation; definitions.**

#### Sec. 1.

(1) A legal entity organized under any law of this state for the purpose of establishing or maintaining a cemetery may sell, assign, transfer, or convey to any municipal corporation in which the cemetery is located or to any municipal corporation within 10 miles of the municipal corporation in which that cemetery is located all or any part of its assets, rights, franchises, and liabilities. The sale, assignment, transfer, or conveyance may also be as a result of the disposition of the cemetery and its assets and liabilities under a receivership or conservatorship action under section 9 of the cemetery regulation act, 1968 PA 251, MCL 456.529.

(2) The sale, assignment, transfer, or conveyance under subsection (1) may be according to terms as are ordered or mutually agreed upon, under either of the following circumstances:

(a) The owner, partner, or a majority of the owners, stockholders, partners, or members of the stock or other evidence of ownership or control issued by the legal entity present and voting at a special meeting called for that purpose.

(b) Pursuant to an order of a court of competent jurisdiction as described in subsection (1).

(3) As used in this act:

(a) "Legal entity" means a sole proprietorship, partnership, corporation, limited liability company, or any other entity.

(b) "Municipal corporation" means a county, township, city, or village.

**History:** 1927, Act 10, Eff. Sept. 5, 1927 ;--CL 1929, 10458 ;--Am. 1933, Act 185, Eff. Oct. 17, 1933 ;--Am. 1945, Act 345, Eff. Sept. 6, 1945 ;--Am. 1947, Act 268, Imd. Eff. June 27, 1947 ;--CL 1948, 456.181 ;--Am. 2002, Act 551, Imd. Eff. July 26, 2002 .

#### **456.182 Resolution of directors; special meeting; transfer of cemetery to municipal corporation.**

##### **Sec. 2.**

(1) Except as otherwise provided in subsection (2), the governing board of the legal entity, as applicable, may at a regular meeting pass a resolution containing the substance of the contract of conveyance proposed to be entered into between the legal entity and a municipal corporation and calling a special meeting of the owners, partners, members, or stockholders for the purpose of authorizing that transfer.

(2) A cemetery may be transferred to a municipal corporation in which the cemetery is located pursuant to a court order issued as a result of a receivership or conservatorship action conducted under section 9 of the cemetery regulation act, 1968 PA 251, MCL 456.529, without a resolution executed by the governing board of the legal entity under subsection (1).

**History:** 1927, Act 10, Eff. Sept. 5, 1927 ;--CL 1929, 10459 ;--CL 1948, 456.182 ;--Am. 2002, Act 551, Imd. Eff. July 26, 2002 .

#### **456.183 Notice of special meeting; publication.**

##### **Sec. 3.**

(1) Except as otherwise provided for in subsection (2), notice of a meeting pursuant to section 2 shall be given by publication of a notice for 6 consecutive weeks previous to the time of holding the meeting in a newspaper published and circulated in the county in which the legal entity has its principal office or place of business. The notice shall state the time and place of the meeting, its purpose, and the substance of the proposed contract of conveyance. Proof of publication shall be filed with the secretary of the legal entity, as applicable, on or before the date of meeting.

(2) This section does not apply if the sale, assignment, transfer, or conveyance is the result of the disposition of the cemetery and its assets and liabilities under a receivership or conservatorship under section 9 of the cemetery regulation act, 1968 PA 251, MCL 456.529.

**History:** 1927, Act 10, Eff. Sept. 5, 1927 ;--CL 1929, 10460 ;--Am. 1933, Act 185, Eff. Oct. 17, 1933 ;--CL 1948, 456.183 ;--Am. 2002, Act 551, Imd. Eff. July 26, 2002 .

**456.184 Legal rights and privileges unaffected by sale; duties of municipal corporation.**

Sec. 4.

(1) The legal rights and privileges, statutory or otherwise, of the owners, stockholders, partners, or members are not affected by the contract or conveyance by which the cemetery property is transferred to a municipal corporation. The municipal corporation shall assume and perform all liabilities, charges, and duties, statutory or otherwise, imposed upon or assumed by the municipal corporation, fully perform all existing contracts or agreements of the cemetery, and carry out and perform all provisions as to maintenance whether imposed upon the legal entity by statute or assumed by its bylaws or other originating documentation.

(2) Any fund for maintenance as provided by statute or by the bylaws or other originating documentation of the legal entity shall be turned over to the municipal corporation and preserved, applied, and used as required under statute or under bylaws or other originating documents.

**History:** 1927, Act 10, Eff. Sept. 5, 1927 ;--CL 1929, 10461 ;--CL 1948, 456.184 ;--Am. 2002, Act 551, Imd. Eff. July 26, 2002 .

## CREMATION COMPANIES

### Act 58 of 1915

AN ACT to provide for the incorporation of cremation companies and associations; and to impose certain duties upon the department of commerce.

**History:** 1915, Act 58, Eff. Aug. 24, 1915 ;--Am. 1982, Act 114, Imd. Eff. Apr. 19, 1982 .

*The People of the State of Michigan enact:*

#### **456.201 Cremation companies; incorporators, purposes. [M.S.A. 21.911 ]**

Sec. 1.

Five or more persons, who shall, by articles of agreement in writing, associate themselves according to the provisions of this act, under any name assumed by them, for the purpose of providing the necessary appliances for the disposal by cremation of the bodies of the dead, and for the purpose of purchasing land for a crematorium or columbarium, or both, in this state, and for fencing, laying out, improving, establishing and maintaining said land, and who shall comply with sections 2, 3 and 4 of this act, shall, with their successors and assigns, constitute a body politic or corporate, under the name assumed by them in their articles of association: Provided, however, That no 2 corporations shall assume the same name.

**History:** 1915, Act 58, Eff. Aug. 24, 1915 ;--CL 1915, 11177 ;--CL 1929, 10462 ;--CL 1948, 456.201 .

#### **456.202 Articles of agreement; signing, acknowledgment, contents. [M.S.A. 21.912 ]**

Sec. 2.

The articles of agreement of every corporation formed under the provisions of this act shall be signed by the persons associating in the first instance, and acknowledged before some person authorized by the laws of this state to take the acknowledgment of deeds, and shall state:

1. The object for which it is organized.
2. The amount of land which it owns or proposes to purchase, and the town and county in which the same is situated.
3. The amount of its capital stock and the number of shares into which the same shall be divided.
4. The name by which such corporation shall be known.
5. The names of those who shall constitute the first board of directors, and the name of the first treasurer.

6. The names of the subscribers to the articles of association, and the number of shares subscribed by each, toward the required capital.

7. The term of duration of such corporation, which shall not exceed 30 years.

**History:** 1915, Act 58, Eff. Aug. 24, 1915 ;--CL 1915, 11178 ;--CL 1929, 10463 ;--CL 1948, 456.202 .

#### **456.203 Certificate of organization; signatures; filing certificate with department of commerce. [M.S.A. 21.913 ]**

Sec. 3.

Within 1 week after the organization of any corporation organized under this act, the secretary shall make out a certificate of the organization of such corporation, giving the information referred to in section 2, which certificate shall be signed by the president and secretary of such corporation, and shall forthwith file such certificate with the corporation and securities bureau of the department of commerce.

**History:** 1915, Act 58, Eff. Aug. 24, 1915 ;--CL 1915, 11179 ;--CL 1929, 10464 ;--CL 1948, 456.203 ;--Am. 1982, Act 114, Imd. Eff. Apr. 19, 1982 .

#### **456.204 Holding of land. [M.S.A. 21.914 ]**

Sec. 4.

Such corporation shall have power to acquire by gift, devise or purchase, and hold in fee simple so much land as may be necessary and appropriate for its purposes: Provided, That no land thus held shall be in any way encumbered by such corporation.

**History:** 1915, Act 58, Eff. Aug. 24, 1915 ;--CL 1915, 11180 ;--CL 1929, 10465 ;--CL 1948, 456.204 .

#### **456.205 Tax exemption; exception. [M.S.A. 21.915 ]**

Sec. 5.

All the lands of said corporation enclosed and set apart for crematorium or columbarium purposes, and all the buildings erected thereon, used for such purposes as well as all rights of inurnment therein, shall be wholly exempt from taxation of any kind whatsoever except special assessments for public improvements: Provided, That all stock owned by said stockholders shall be taxed in the manner provided by law.

**History:** 1915, Act 58, Eff. Aug. 24, 1915 ;--CL 1915, 11181 ;--CL 1929, 10466 ;--CL 1948, 456.205 .

**456.206 Encumbrance of certain property prohibited. [M.S.A. 21.916 ]**

Sec. 6.

No mortgage or other lien or encumbrance, shall be executed upon the lands or buildings of such corporation actually used for the disposal of the dead as specified in the provisions of this act.

**History:** 1915, Act 58, Eff. Aug. 24, 1915 ;--CL 1915, 11182 ;--CL 1929, 10467 ;--CL 1948, 456.206 .

**456.207 Annual meeting; election of directors, term; right to vote; special meetings. [M.S.A. 21.917 ]**

Sec. 7.

The annual meeting of every such corporation shall be held on the second Monday of May in each year, unless some other day shall be fixed by the by-laws thereof, and in such case it shall be held upon the day so fixed. The participants at the initial annual meeting shall elect a board of directors of 7, of which 3 shall serve for 1 year and 4 for 2 years, their successors at subsequent annual meetings being elected in each case for a period of 2 years. These directors shall hold office until their term expires and their successors shall be chosen, and shall transact such business relating to the affairs of the corporation as may properly come before them. At such meetings the owners of stock shall have the right to vote, either in person or by proxy, in proportion to the amount of stock held by them respectively, each owner thereof being entitled to 1 vote for each share of stock. Special meetings of any such corporation may be provided for by the by-laws thereof, and shall be held when called in accordance with such provision.

**History:** 1915, Act 58, Eff. Aug. 24, 1915 ;--CL 1915, 11183 ;--CL 1929, 10468 ;--CL 1948, 456.207 .

**456.208 Officers; selection. [M.S.A. 21.918 ]**

Sec. 8.

It shall be the duty of said board of directors to choose from their own number a president and vice-president, and also to elect suitable persons as treasurer and secretary of such corporation, and from time to time to appoint a superintendent and such other subordinate officers as may be required by the by-laws.

**History:** 1915, Act 58, Eff. Aug. 24, 1915 ;--CL 1915, 11184 ;--CL 1929, 10469 ;--CL 1948, 456.208 .

**456.209 Directors; powers. [M.S.A. 21.919 ]**

Sec. 9.

The board of directors shall have the general management of such corporation, and shall have the power: To purchase land for such company or association, but for no other purpose; to levy assessments upon the subscribers to the articles of association, not exceeding the amount severally subscribed by them payable at such times as the directors shall determine, and to enforce the collection thereof either by suit or forfeiture;

to maintain and operate a crematorium or columbarium, or both, and to dispose of niches in the aforesaid urn-hall, fix the prices thereof and to guarantee to the owners of niches the perpetual maintenance and care of said columbarium. To invest the moneys received from incinerations or the sale of niches or both, and to prescribe, from time to time, the interest or dividends which shall be paid to holders of the stock of such corporation, subject to the restrictions hereinafter named.

**History:** 1915, Act 58, Eff. Aug. 24, 1915 ;--CL 1915, 11185 ;--CL 1929, 10470 ;--CL 1948, 456.209 .

#### **456.210 Records of cremations; contents. [M.S.A. 21.920 ]**

Sec. 10.

It shall be the duty of any company or association incorporated under this act, to keep a record showing the name, age, and last place of residence of every person incinerated in the crematorium maintained by said corporation, as well as the number of the cremation permit and name of the officiating undertaker.

**History:** 1915, Act 58, Eff. Aug. 24, 1915 ;--CL 1915, 11186 ;--CL 1929, 10471 ;--CL 1948, 456.210 .

#### **456.211 Records of niches. [M.S.A. 21.921 ]**

Sec. 11.

Corporations organized under this act and operating a columbarium shall also keep a record of the names and addresses of the owners of niches, as well as the numbers of the niches to which they hold title and names of deceased whose remains are inurned therein.

**History:** 1915, Act 58, Eff. Aug. 24, 1915 ;--CL 1915, 11187 ;--CL 1929, 10472 ;--CL 1948, 456.211 .

#### **456.212 Grounds; laying out, improvement. [M.S.A. 21.922 ]**

Sec. 12.

It shall be the duty of such board of directors to lay out and embellish the grounds, and to see that they are well kept and in good condition.

**History:** 1915, Act 58, Eff. Aug. 24, 1915 ;--CL 1915, 11188 ;--CL 1929, 10473 ;--CL 1948, 456.212 .

**456.213 Sale of niches; trust fund, investment and use. [M.S.A. 21.923 ]**

Sec. 13.

One-half of the moneys received from the sale of niches shall be transferred to a trust fund until a sufficient amount has accumulated to insure the perpetual maintenance, and care of the columbarium, in which case they may be diverted to the treasury of the corporation. Moneys received for the trust fund shall only be invested in such securities as are considered legal investments for banks and trust companies in the state of Michigan. All interest received from such investments, however, shall be payable to the treasurer of the corporation and be used as aforesaid.

**History:** 1915, Act 58, Eff. Aug. 24, 1915 ;--CL 1915, 11189 ;--CL 1929, 10474 ;--CL 1948, 456.213 .

## VAULT ASSOCIATIONS

### Act 13 of 1882 (Ex. Sess.)

AN ACT to authorize the formation of vault associations in the state of Michigan for the purpose of preserving and protecting bodies of deceased persons before burial; and to impose certain duties upon the department of commerce.

**History:** 1882, Ex. Sess., Act 13, Imd. Eff. Mar. 14, 1882 ;--Am. 1982, Act 112, Imd. Eff. Apr. 19, 1982 .

*The People of the State of Michigan enact:*

#### **456.251 Articles of agreement; execution, acknowledgment, and filing; signers of articles and associates as body politic and corporate. [M.S.A. 21.931 ]**

Sec. 1.

That any 5 or more persons desirous to organize an association for the purpose of preserving and protecting bodies of deceased persons before burial, may execute under their hands and acknowledge before some person authorized to take the acknowledgment of deeds, the duplicate articles of agreement, as hereinafter specified, 1 copy whereof shall be filed with the corporation and securities bureau of the department of commerce, and upon the execution and acknowledgment of such articles and the filing thereof, the signers thereof, and those who may hereafter become associated with them, shall become a body politic and corporate for the purpose set forth in said articles.

**History:** 1882, Ex. Sess., Act 13, Imd. Eff. Mar. 14, 1882 ;--How. 4789a ;--CL 1897, 8413 ;--CL 1915, 11200 ;--CL 1929, 10475 ;--CL 1948, 456.251 ;--Am. 1982, Act 112, Imd. Eff. Apr. 19, 1982 .

#### **456.252 Vault associations; articles of association, contents. [M.S.A. 21.932 ]**

Sec. 2.

The articles of association shall contain:

First, The full names of the persons associating in the first instance, and the place of residence of each person,

Second, The name of such corporation, and the place where its office for the transaction of business is located and the period for which it is incorporated, not exceeding 30 years,

Third, The object for which it is organized,

Fourth, The number and names of its trustees, if any, and regular officers, and the time and place of holding its annual meeting,

Fifth, The terms and conditions of membership therein,

Sixth, Amount of capital stock, number of shares, by whom taken, value of each share, and amount paid in on each share.

**History:** 1882, Ex. Sess., Act 13, Imd. Eff. Mar. 14, 1882 ;--How. 4789b ;--CL 1897, 8414 ;--CL 1915, 11201 ;--CL 1929, 10476 ;--CL 1948, 456.252 .

#### **456.253 Vault associations; corporate powers. [M.S.A. 21.933 ]**

Sec. 3.

Said association may purchase or take by devise or gift, hold, and convey, real estate not exceeding 3 acres of land, and may erect thereon, a vault and such other suitable buildings necessary to carry out the objects of said association.

**History:** 1882, Ex. Sess., Act 13, Imd. Eff. Mar. 14, 1882 ;--How. 4789c ;--CL 1897, 8415 ;--CL 1915, 11202 ;--CL 1929, 10477 ;--CL 1948, 456.253 .

## VACATING CEMETERY IN CITY OR VILLAGE

### Act 297 of 1929

AN ACT to provide for vacating private and public cemetery plats and cemetery grounds in the limits of incorporated cities and villages and to provide for the acquisition by said cities and villages of the cemetery grounds and plats vacated hereunder.

**History:** 1929, Act 297, Imd. Eff. May 23, 1929 .

*The People of the State of Michigan enact:*

#### **128.51 Circuit court in chancery; jurisdiction to vacate cemeteries. [M.S.A. 5.3091 ]**

##### Sec. 1.

That, whenever the trustees of an incorporated village, or the common council of any city, shall, by a resolution adopted by them, determine that the dead bodies buried in any private or public cemetery located in such city or village should be removed therefrom for the reason that such cemetery shall impede the establishment, maintenance, development or enhancement of any public improvement by such city or village, the circuit court in chancery of the county in which such cemetery is located, upon such findings, and under the conditions hereinafter set forth, is hereby authorized to vacate the same, or any part thereof, on petition made to such court, as hereinafter provided.

**History:** 1929, Act 297, Imd. Eff. May 23, 1929 ;--CL 1929, 2668 ;--CL 1948, 128.51 .

#### **128.52 Contract for sale of private cemetery to city, village; contents. [M.S.A. 5.3092 ]**

##### Sec. 2.

That, upon the adoption of such a resolution, it shall be competent for the board of directors, or board of trustees, of such cemetery association, as is the owner of such cemetery, to agree upon a contract for the sale of such cemetery to such city or village: Provided, however, That the validity and enforceability of such contract shall be conditioned upon the aforesaid circuit court authorizing the vacating of such cemetery under the terms hereof: Provided further, That such contract shall be approved by a 3/4 vote of the scrip holders or stockholders of such cemetery association, at a special meeting called for that purpose, notice of such meeting to be mailed to the last known place of residence of such scrip holders or stockholders: And provided further, That such contract shall provide that such cemetery association agrees to provide, within a reasonable distance from such city or village, a cemetery ground suitable for the reinterment of such dead bodies and remains as are ordered to be vacated: And provided further, That such contract shall provide that such cemetery association

agrees to reinter such dead bodies and remains, except as to such as are interred in the lots of objecting lot owners or grave owners, as hereinafter set forth.

**History:** 1929, Act 297, Imd. Eff. May 23, 1929 ;--CL 1929, 2669 ;--CL 1948, 128.52 .

### **128.53 Petition of trustees or council to vacate; filing, notice. [M.S.A. 5.3093 ]**

Sec. 3.

That, upon the execution of such contract, a petition shall be made in behalf of said village trustees, or common council, by an attorney, or agent, appointed by them for that purpose, who shall file a petition, signed and sworn to by him, in the office of the clerk of said court for the proper county, which petition shall set forth his authority, as attorney, or agent, the particular reasons for making and filing such petition, a copy of the aforesaid contract with the cemetery association, and a complete legal description of the premises on which said cemetery is located, which petition shall be filed as aforesaid, at least 30 days previous to the date for which such petition shall be noticed for hearing. That notice of the pendency and hearing of such petition shall be given by publishing the same in a newspaper circulated in the proper county, once in each week, for 4 successive weeks, prior to the date of the hearing.

**History:** 1929, Act 297, Imd. Eff. May 23, 1929 ;--CL 1929, 2670 ;--CL 1948, 128.53 .

### **128.54 Compensation to objecting lot owners; credit on contract; condition precedent. [M.S.A. 5.3094 ]**

Sec. 4.

That, should there appear at the hearing of such petition any objecting lot owner or grave owner of such cemetery, setting forth, by special petition, that he has not come to an agreement with said cemetery association in respect to the necessity for such removal under the terms of this act and in respect to compensation for the loss of burial rights, or for the removal of dead bodies interred on their lots, compensation shall be awarded to such lot owners and grave owners in the manner hereinafter set forth, and such compensation shall be paid by said city, or village, and shall, thereafter, be deducted from the purchase price theretofore agreed to be paid to said cemetery association: Provided, however, That as a condition precedent to the payment of such compensation, such objecting lot owner and grave owner shall remove and reinter the dead bodies and remains on his lot.

**History:** 1929, Act 297, Imd. Eff. May 23, 1929 ;--CL 1929, 2671 ;--CL 1948, 128.54 .

**128.55 Court proceedings; order to vacate, contents, recording; recorded under complete bar. [M.S.A. 5.3095 ]**

Sec. 5.

That the hearing of such petition may be continued from term to term, in the discretion of the court, without further notice; that all testimony may be taken in open court, or the taking of the same may be referred, in the discretion of the court, to a circuit court commissioner of the proper county; that, under direction of the court, proper issues may be made for the determination of all questions of law and fact, and all questions of compensation to any person, or persons, to be affected by such proceedings, and all issues of fact may be tried by a jury, if the court shall so order, and any person adversely interested may cause himself to be made defendant to such petition. In all cases where reference shall be made to a jury to determine the compensation to be paid to any person or persons, as aforesaid, the proceedings upon such reference shall, so far as practicable, be like those had in cases where a jury is empaneled to ascertain and determine the necessity of taking lands and other property as provided by the charter of the municipality or as provided in Act No. 149 of the Public Acts of 1911, as amended by Act No. 37 of the Public Acts of 1925, entitled "An act to provide for the condemnation by state agencies and public corporations of private property for the use or benefit of the public, and to define the terms 'public corporations,' 'state agencies' and 'private property' as used herein," being sections 353 to 373, inclusive, of the Compiled Laws of 1915, or such other appropriate provisions therefor as exist or shall be made by law, and to appraise the damages and compensation to be allowed therefor. If, upon the hearing of such petition, the petitioner shall produce satisfactory evidence to the court, that said trustees, or common council, have determined, as aforesaid, that the notice required by this act has been given; that the aforesaid contract between such city or village and said cemetery association has been executed in accordance with the terms hereof, and that such cemetery should be vacated, in whole or in part, as a place of burial, for the reasons given in this act for vacating cemeteries, such court shall thereupon order that such cemetery shall be vacated, in whole or in part, as a place of burial; upon this condition, however, that said city or village shall perform its obligations and agreements under the terms of the said contract. That a copy of such order certified by the register of such court under his seal shall be recorded by the petitioner in the office of the register of deeds of the proper county. That such order, when so recorded, shall be a complete bar to the rights of any person or persons, as lot owners and grave owners of such cemetery: Provided, however, That the rights of objecting lot owners and grave owners shall not be barred until the compensation awarded hereunder shall be paid by said city or village to the person or persons entitled to same or to the clerk of the county where such judgment was rendered.

**History:** 1929, Act 297, Imd. Eff. May 23, 1929 ;--CL 1929, 2672 ;--CL 1948, 128.55 .

**Compiler's Note:** For provisions of Act 149 of 1911, referred to in this section, see § 213.21 et seq.

**128.56 Appeal; bond. [M.S.A. 5.3096 ]**

Sec. 6.

Any lot owner or grave owner whose property may be taken, and any municipality or person, party to the proceedings under this act, considering himself aggrieved, may appeal from the order of the court confirming the verdict of the jury or order of the court made at the proceedings without a jury by filing in writing with the clerk of said court notice of such appeal within 5 days after the confirmation or order, and filing a bond in said court, to be approved by the judge thereof, conditioned for the prosecution of said appeal to judgment, and the payment of all costs, damages and expenses that may be awarded against him in case the judgment or confirmation shall be affirmed. Such appeal shall be perfected within the same time and prosecuted as far as practicable like an appeal in chancery.

**History:** 1929, Act 297, Imd. Eff. May 23, 1929 ;--CL 1929, 2673 ;--CL 1948, 128.56 .

## VACATING CEMETERY IN CITY OR VILLAGE

### Act 164 of 1871

AN ACT to provide for vacating cemetery plats and cemetery grounds in the limits of incorporated cities and villages.

**History:** 1871, Act 164, Eff. July 18, 1871 .

*The People of the State of Michigan enact:*

#### **128.41 Vacation of cemetery; jurisdiction of chancery court. [M.S.A. 5.3081 ]**

##### Sec. 1.

That whenever the trustees of any incorporated village, or the common council of any city, shall by resolution adopted by them, determine that the dead bodies buried in any public or private cemetery located in such city or village should be removed therefrom, for the reason that such cemetery shall have become commons, or has become neglected or abandoned by its owner or owners, or has become a public nuisance, or shall impede the growth of any such city or village, or shall endanger the health of the people living in the immediate vicinity thereof, the circuit court in chancery of the county in which such cemetery is located is hereby authorized to vacate the same, or any part thereof, on petition made to such court as hereinafter provided.

**History:** 1871, Act 164, Eff. July 18, 1871 ;--CL 1871, 3423 ;--How. 4790 ;--CL 1897, 3485 ;--CL 1915, 3481 ;--CL 1929, 2663 ;--Am. 1941, Act 149, Eff. Jan. 10, 1942 ;--CL 1948, 128.41 .

#### **128.42 Petition of trustees or council to vacate; notice. [M.S.A. 5.3082 ]**

##### Sec. 2.

That such petition shall be made in behalf of said trustees or common council by an attorney or agent appointed by them for that purpose, who shall file a petition signed and sworn to by him in the office of the register of said court for the proper county, which petition shall set forth his authority as attorney or agent, the particular reasons for making and filing such petition and a distinct description of the premises on which such cemetery is located, which petition shall be filed as aforesaid 30 days previous to the first day of the term for which such petition shall be noticed for hearing. That notice of the pendency and hearing of such petition shall be given for the same space of time by publishing the same in a newspaper published in the proper county once in each week for 4 successive weeks prior to the first day of the term when such case is noticed for hearing.

**History:** 1871, Act 164, Eff. July 18, 1871 ;--CL 1871, 3424 ;--How. 4791 ;--CL 1897, 3486 ;--CL 1915, 3482 ;--CL 1929, 2664 ;--CL 1948, 128.42 .

### **128.43 Court proceedings; order to vacate; recording. [M.S.A. 5.3083 ]**

#### **Sec. 3.**

That the hearing of such petition may be continued from term to term in the discretion of the court, without further notice, that all testimony may be taken in open court or the taking of the same may be referred in the discretion of the court to a circuit court commissioner of the proper county. That under direction of the court proper issues may be made for the determination of all questions of law and fact and all questions of compensation to any person or persons to be affected by such proceedings and all issues of fact may be tried by a jury if the court shall so order, and any person adversely interested may cause himself to be made defendant to such petition. In all cases where reference shall be made to a jury to determine the compensation to be paid to any person or persons as aforesaid, the proceedings upon such reference shall so far as practicable be like those had in cases where a jury is empaneled to ascertain and determine the necessity of taking lands, franchises and other property for the construction of railroads and to appraise the damages and compensation to be allowed therefor. If upon the hearing of such petition the petitioner shall produce satisfactory evidence to the court that said trustees or common council have determined as aforesaid, that the notice required by this act has been given, and that such cemetery should be vacated in whole or in part as a place of burial for any of the reasons given in this act for vacating cemeteries, such court shall thereupon order that such cemetery shall be vacated in whole or in part as a place of burial. That a copy of such order certified by the register of such court under his seal shall be recorded by the petitioner in the office of the register of deeds of the proper county.

**History:** 1871, Act 164, Eff. July 18, 1871 ;--CL 1871, 3425 ;--How. 4792 ;--CL 1897, 3487 ;--CL 1915, 3483 ;--CL 1929, 2665 ;--CL 1948, 128.43 .

### **128.44 Reinterment; time of year; expenses, payment. [M.S.A. 5.3084 ]**

#### **Sec. 4.**

That when any cemetery shall be vacated as provided in this act, the said trustees or common council shall cause all the dead bodies and remains buried in such cemetery to be re-interred in the cemetery of such city or village, if they have one, and if not, then in some suitable cemetery not more than 6 miles from the nearest corporate limits of said city or village in a prudent, careful and respectful manner, and shall cause to be removed and again erected over the proper remains, all permanent fences around graves and lots, all tombstones and monuments, with as little injury as the case will admit, Provided, That no removal of said bodies and remains shall be made during the months of June, July, August or September, such removal, and the costs of the proceedings under this act, shall be at the expense of and paid by the city or village in which such cemetery is located.

**History:** 1871, Act 164, Eff. July 18, 1871 ;--CL 1871, 3426 ;--How. 4793 ;--CL 1897, 3488 ;--CL 1915, 3484 ;--CL 1929, 2666 ;--CL 1948, 128.44 .

**128.45 Price of lots repaid. [M.S.A. 5.3085 ]**

Sec. 5.

In all cases where the title to the land vacated shall revert to such city or village, such city or village shall on demand and upon the conveyance of said lot (where conveyance may be necessary) to said city or village, repay to any owner the price he may have paid for his lot.

**History:** 1871, Act 164, Eff. July 18, 1871 ;--CL 1871, 3427 ;--How. 4794 ;--CL 1897, 3489 ;--CL 1915, 3485 ;--CL 1929, 2667 ;--CL 1948, 128.45 .

**DEPARTMENT OF COMMUNITY HEALTH  
BUREAU OF EPIDEMIOLOGY  
TRANSPORTATION AND DISPOSITION OF DEAD BODIES**

(By authority conferred on the state commissioner of health by section 1 of Act No. 343 of the Public Acts of 1925, being S326.1 of the Michigan Compiled Laws)

R325.1141 Preparation and transportation of bodies dead from certain causes; permission for public funeral.

Rule 1. (1) The bodies of those who have died of diphtheria, meningococcic infections, plague, poliomyelitis, scarlet fever, or smallpox shall not be transported or accepted for transportation unless they have been prepared for shipment by being thoroughly embalmed and disinfected by arterial and cavity injection with an accepted embalming fluid. This preparation must be effected by an embalmer licensed with the state of Michigan.

(2) When bodies are transported under this rule, notice must be sent by the shipping embalmer to the health officer of the jurisdiction where the body is to be received, advising the date and time of arrival.

(3) Public funerals may be conducted, provided that prior permission is obtained from the local health officer. When permission is granted, persons in isolated areas may be released for the purpose of accompanying the body to a funeral home, church, or cemetery, provided that they:

- (a) Use a separate car or means of conveyance.
- (b) Remain in a separate room or separate from the public and avoid proximity to others in attendance.
- (c) Return to the area of isolation and remain there until premises are released from isolation or quarantine.

History: 1944 ACS 30; 1954 AC; 1979 AC.

R325.1142 Transportation of certain bodies in sound shipping case; preparation for shipment; burial-transit or disinterment permit.

Rule 2. Bodies dead from a cause not named in R325.1141 which shall reach their destination within 48 hours from the time of death, or are addressed to the demonstrator of anatomy of a medical college or for other demonstration purposes, may be received for transportation when encased in a sound shipping case. If the body is not so addressed or cannot reach its destination within 48 hours it must be prepared for shipment as described in R325.1141. When dead bodies are shipped by common carrier, a burial-transit or disinterment permit shall be securely fastened upon the outside box, and a duplicate of such permit shall be supplied by the funeral director to the person escorting the body, or, if there be no escort, a duplicate of the permit shall be mailed to the receiving funeral director.

History: 1944 ACS 30; 1954 AC; 1979 AC.

R325.1143 Disinterment and removal; permit; transportation; container; responsibility of funeral director; receiving vaults; reinterment.

Rule 3. No body shall be disinterred for removal unless a permit has been issued by the local health officer upon request from a licensed funeral director. No disinterred body shall be accepted for transportation by common carrier unless it has been enclosed in a hermetically sealed metal container which will insure against leakage, offensive odors, and other menaces to the public health and safety to its destination. Disinterred bodies may be transported by private vehicle under the supervision of a licensed funeral director when enclosed in any suitable container which will insure against leakage, offensive odors, and other menaces to the public health and safety. The licensed funeral director in charge of disinterment shall be responsible for the proper conduct of the disinterment and removal. Bodies deposited in receiving vaults, or otherwise kept for 30 days after death, will be considered and treated the same as buried bodies. No permit is necessary when reinterment is to take place within the same cemetery.

History: 1944 ACS 30; 1954 AC; 1979 AC.

R325.1144 Burial-transit permit.

Rule 4. Permission is hereby given by the Michigan department of health to registrars, mortuary science and funeral director licensees to have full authority to make out and sign a new burial-transit permit where a dead human body is transferred beyond the destination point as given on the burial-transit permit which accompanies the body. The same applies to cases where bodies are placed in a cemetery vault and transferred at some later date. The original burial-transit permit which accompanies the body must be given to the registrar, mortuary science, or funeral director licensee before a new burial-transit permit is made by him authorizing the transfer. The person issuing the new permit must indicate the point of destination on the original burial-transit permit. When a mortuary science or funeral director licensee issues a new burial-transit permit, the original burial-transit permit must be filed within 72 hours with the registrar in whose jurisdiction the transfer was made.

History: 1944 ACS 30; 1954 AC; 1979 AC.

R325.1145 Removal of body from incorporated or unincorporated area; death or stillbirth certificate; burial-transit permit; duty of county clerk.

Rule 5. (1) When a mortuary science or funeral director licensee is called upon to remove a body from an incorporated or unincorporated area, the mortuary science or funeral director licensee may remove the body for the purpose of caring for it but is required to file a completed death or stillbirth certificate and secure a burial-transit permit within 72 hours from the local registrar of the incorporated or unincorporated area in which the death occurred.

(2) If a death occurs in an unincorporated area, when a Sunday or a holiday or both, or when an immediate interment, cremation, or shipment makes it impossible to obtain a burial-transit permit by mail, a mortuary science or funeral director licensee may issue a burial-transit permit to himself, provided that the envelope in which the completed death

or stillbirth certificate is mailed to the county clerk in whose jurisdiction the death occurred is postmarked within the 72 hours after the death occurred.

(3) If for any other reason a burial-transit permit has not been received by mail in time for the interment, cremation, or shipment, the mortuary science or funeral director licensee may issue a burial-transit permit to himself, provided that the envelope in which the completed death or stillbirth certificate was mailed to the county clerk in whose jurisdiction the death occurred is postmarked within the 72 hours after the death occurred.

(4) When a county clerk receives a death or stillbirth certificate from his primary registration district by mail, he shall enter on the certificate, as the date of filing, the date on which the certificate or certificates were received and shall also enter beneath the date of filing the postdate appearing on the envelope in which the certificate or certificates arrived.

History: 1944 ACS 30; 1954 AC; 1979 AC.

## VACATING CEMETERY IN TOWNSHIP

### Act 49 of 1895

AN ACT to provide for vacating cemeteries in townships.

**History:** 1895, Act 49, Eff. Aug. 30, 1895 .

*The People of the State of Michigan enact:*

#### **128.31 Removal of private cemetery; complaint; grounds; proceedings to vacate; power of circuit court. [M.S.A. 5.3071 ]**

Sec. 1.

When a complaint is made in writing to the board of trustees of a township in this state, by 10 or more residents of the township, setting forth the fact that a private cemetery within the bounds of the township should be removed for the reason that the cemetery has become commons, has become neglected or abandoned by its owner or owners, has become a public nuisance, or shall impede the growth of a city or village in the township, or when a private cemetery endangers the health of the people living in the immediate vicinity of the private cemetery, the township board of trustees immediately shall institute proceedings to vacate the cemetery in the manner provided in this act. The circuit court for the county in which the cemetery is located may vacate the private cemetery, or a part of the private cemetery, on petition made to the court as provided in this act.

**History:** 1895, Act 49, Eff. Aug. 30, 1895 ;--CL 1897, 2387 ;--CL 1915, 2163 ;--CL 1929, 2657 ;--CL 1948, 128.31 ;--Am. 1980, Act 367, Imd. Eff. Dec. 30, 1980 .

#### **128.32 Petition; filing; contents; notice; neglect or refusal to appoint attorney or agent; proceeding by freeholder resident; security for costs. [M.S.A. 5.3072 ]**

Sec. 2.

The petition shall be made by the board of trustees by an agent or attorney appointed by it for that purpose. The agent or attorney shall file a petition signed and sworn to by the agent or attorney, in the office of the register of the court for the proper county. The petition shall set forth his or her authority as attorney or agent, the particular reasons for making and filing the petition, and a distinct description of the premises on which the cemetery is located. The petition shall be filed 30 days before the first day of the term for which the petition shall be noticed for hearing. Notice of the pendency and hearing of the petition shall be given for the same space of time, by publishing the same in a newspaper, published in the proper county, once in each week for 4 successive weeks before the first day of the term when the case is noticed for hearing. If the board of trustees neglects or refuses to appoint an attorney or agent within 30 days after the complaint in writing has been filed with the board, then a freeholder resident of the township may file the petition and proceed in the same manner as though regularly appointed as an agent or attorney. The freeholder may be required, upon the order of the circuit court, to furnish security for costs should the petition be denied.

**History:** 1895, Act 49, Eff. Aug. 30, 1895 ;--CL 1897, 2388 ;--CL 1915, 2164 ;--CL 1929, 2658 ;--CL 1948, 128.32 ;--Am. 1980, Act 367, Imd. Eff. Dec. 30, 1980 .

### **128.33 Hearing; burden of proof; order, recording. [M.S.A. 5.3073 ]**

#### Sec. 3.

That the hearing on such petition may be continued from term to term, in the discretion of the court, without further notice; that all testimony may be taken in open court, or the taking of the same may be referred, in the discretion of the court, to a circuit court commissioner of the proper county; that, under the discretion of the court, proper issues may be made for the determination of all questions of law and fact, and all questions of compensation to any person or persons to be affected by such proceedings, and all questions touching the compensation to be paid by the person or persons to whom said premises or any part thereof shall be sold after the same shall have been vacated as such cemetery, and all issues of fact may be tried by a jury, or 3 commissioners, if the court shall so order, and any person adversely interested may cause himself to be made defendant to such petition. In all cases where reference shall be made to a jury or commissioners to determine the compensation to be paid to or by any persons as aforesaid, the proceedings upon such reference, shall, so far as practicable, be like those had in cases where a jury is impaneled or commissioners are selected, to ascertain and determine the necessity of taking lands, franchises, and other property for the construction of railroads, and to appraise the damages and compensation to be allowed therefor. If upon hearing, such petitioner shall produce satisfactory evidence to the court that the notice required by this act has been given, and that such cemetery should be vacated in whole or in part, as a place of burial, for any of the reasons given in this act for vacating cemeteries, such court shall thereupon order that such cemetery shall be vacated, in whole or in part, as a place of burial. That a copy of such order, certified by the register of such court under his seal, shall be recorded by the petitioners in the office of the register of deeds of the proper county.

**History:** 1895, Act 49, Eff. Aug. 30, 1895 ;--CL 1897, 2389 ;--CL 1915, 2165 ;--CL 1929, 2659 ;--CL 1948, 128.33 .

### **128.34 Reinterment of dead bodies and remains; removal and erection of fences, tombstones, and monuments; removal during certain months prohibited; exception; costs. [M.S.A. 5.3074 ]**

#### Sec. 4.

(1) When a cemetery is vacated as provided in this act, the township board of trustees shall cause all the dead bodies and remains buried in the cemetery to be reinterred in the cemetery of the township, if it has a cemetery, and if not, then in some suitable cemetery in an adjoining township, in a prudent, careful, and respectful manner, and shall cause to be removed and again erected over the proper remains, permanent fences around graves and lots, tombstones, and monuments, with as little injury possible. If the cemetery vacated belongs to a religious society or church, and another suitable cemetery belonging to the same church or denominational society exists within the township or an adjoining township, then the removal may be made to that cemetery

instead of to the township cemetery. A removal of bodies and remains shall not be made during June, July, August, or September, except in the Upper Peninsula.

(2) The removal and the cost of the proceedings under this act shall be at the expense of, and paid by, the township in which the cemetery is situated. If the proceeding is instituted by an individual, without the consent of the township board of trustees, and the petition is denied by the court, the person instituting the proceeding shall be required to pay the costs allowed by order of the circuit court.

**History:** 1895, Act 49, Eff. Aug. 30, 1895 ;--CL 1897, 2390 ;--CL 1915, 2166 ;--CL 1929, 2660 ;--CL 1948, 128.34 ;--Am. 1980, Act 367, Imd. Eff. Dec. 30, 1980 .

### **128.35 Reimbursement of lot owner. [M.S.A. 5.3075 ]**

Sec. 5.

If the land vacated reverts to the township or to a person, the township, on demand, and upon the conveyance of the lot, if conveyance is necessary, to the township board of trustees or private person, shall repay to the owner the price the owner paid for the lot.

**History:** 1895, Act 49, Eff. Aug. 30, 1895 ;--CL 1897, 2391 ;--CL 1915, 2167 ;--CL 1929, 2661 ;--CL 1948, 128.35 ;--Am. 1980, Act 367, Imd. Eff. Dec. 30, 1980 .

### **128.36 Reversion to original owner; conditions. [M.S.A. 5.3076 ]**

Sec. 6.

In all cases where the land embraced in the cemetery so vacated shall not exceed 1 acre in area it shall revert to the original grantor or his heirs, or be so conveyed to him or them by the said township if necessary: Provided, said grantor or his heirs shall first pay to said township the value of said land based upon the market price of like land in the immediate vicinity.

**History:** 1895, Act 49, Eff. Aug. 30, 1895 ;--CL 1897, 2392 ;--CL 1915, 2168 ;--CL 1929, 2662 ;--CL 1948, 128.36 .

## VACATING CEMETERY IN CITY OR VILLAGE

### Act 164 of 1871

AN ACT to provide for vacating cemetery plats and cemetery grounds in the limits of incorporated cities and villages.

**History:** 1871, Act 164, Eff. July 18, 1871 .

*The People of the State of Michigan enact:*

#### **128.41 Vacation of cemetery; jurisdiction of chancery court. [M.S.A. 5.3081 ]**

Sec. 1.

That whenever the trustees of any incorporated village, or the common council of any city, shall by resolution adopted by them, determine that the dead bodies buried in any public or private cemetery located in such city or village should be removed therefrom, for the reason that such cemetery shall have become commons, or has become neglected or abandoned by its owner or owners, or has become a public nuisance, or shall impede the growth of any such city or village, or shall endanger the health of the people living in the immediate vicinity thereof, the circuit court in chancery of the county in which such cemetery is located is hereby authorized to vacate the same, or any part thereof, on petition made to such court as hereinafter provided.

**History:** 1871, Act 164, Eff. July 18, 1871 ;--CL 1871, 3423 ;--How. 4790 ;--CL 1897, 3485 ;--CL 1915, 3481 ;--CL 1929, 2663 ;--Am. 1941, Act 149, Eff. Jan. 10, 1942 ;--CL 1948, 128.41 .

#### **128.42 Petition of trustees or council to vacate; notice. [M.S.A. 5.3082 ]**

Sec. 2.

That such petition shall be made in behalf of said trustees or common council by an attorney or agent appointed by them for that purpose, who shall file a petition signed and sworn to by him in the office of the register of said court for the proper county, which petition shall set forth his authority as attorney or agent, the particular reasons for making and filing such petition and a distinct description of the premises on which such cemetery is located, which petition shall be filed as aforesaid 30 days previous to the first day of the term for which such petition shall be noticed for hearing. That notice of the pendency and hearing of such petition shall be given for the same space of time by publishing the same in a newspaper published in the proper county once in each week for 4 successive weeks prior to the first day of the term when such case is noticed for hearing.

**History:** 1871, Act 164, Eff. July 18, 1871 ;--CL 1871, 3424 ;--How. 4791 ;--CL 1897, 3486 ;--CL 1915, 3482 ;--CL 1929, 2664 ;--CL 1948, 128.42 .

### **128.43 Court proceedings; order to vacate; recording. [M.S.A. 5.3083 ]**

#### **Sec. 3.**

That the hearing of such petition may be continued from term to term in the discretion of the court, without further notice, that all testimony may be taken in open court or the taking of the same may be referred in the discretion of the court to a circuit court commissioner of the proper county. That under direction of the court proper issues may be made for the determination of all questions of law and fact and all questions of compensation to any person or persons to be affected by such proceedings and all issues of fact may be tried by a jury if the court shall so order, and any person adversely interested may cause himself to be made defendant to such petition. In all cases where reference shall be made to a jury to determine the compensation to be paid to any person or persons as aforesaid, the proceedings upon such reference shall so far as practicable be like those had in cases where a jury is empaneled to ascertain and determine the necessity of taking lands, franchises and other property for the construction of railroads and to appraise the damages and compensation to be allowed therefor. If upon the hearing of such petition the petitioner shall produce satisfactory evidence to the court that said trustees or common council have determined as aforesaid, that the notice required by this act has been given, and that such cemetery should be vacated in whole or in part as a place of burial for any of the reasons given in this act for vacating cemeteries, such court shall thereupon order that such cemetery shall be vacated in whole or in part as a place of burial. That a copy of such order certified by the register of such court under his seal shall be recorded by the petitioner in the office of the register of deeds of the proper county.

**History:** 1871, Act 164, Eff. July 18, 1871 ;--CL 1871, 3425 ;--How. 4792 ;--CL 1897, 3487 ;--CL 1915, 3483 ;--CL 1929, 2665 ;--CL 1948, 128.43 .

### **128.44 Reinterment; time of year; expenses, payment. [M.S.A. 5.3084 ]**

#### **Sec. 4.**

That when any cemetery shall be vacated as provided in this act, the said trustees or common council shall cause all the dead bodies and remains buried in such cemetery to be re-interred in the cemetery of such city or village, if they have one, and if not, then in some suitable cemetery not more than 6 miles from the nearest corporate limits of said city or village in a prudent, careful and respectful manner, and shall cause to be removed and again erected over the proper remains, all permanent fences around graves and lots, all tombstones and monuments, with as little injury as the case will admit, Provided, That no removal of said bodies and remains shall be made during the months of June, July, August or September, such removal, and the costs of the proceedings under this act, shall be at the expense of and paid by the city or village in which such cemetery is located.

**History:** 1871, Act 164, Eff. July 18, 1871 ;--CL 1871, 3426 ;--How. 4793 ;--CL 1897, 3488 ;--CL 1915, 3484 ;--CL 1929, 2666 ;--CL 1948, 128.44 .

**128.45 Price of lots repaid. [M.S.A. 5.3085 ]**

Sec. 5.

In all cases where the title to the land vacated shall revert to such city or village, such city or village shall on demand and upon the conveyance of said lot (where conveyance may be necessary) to said city or village, repay to any owner the price he may have paid for his lot.

**History:** 1871, Act 164, Eff. July 18, 1871 ;--CL 1871, 3427 ;--How. 4794 ;--CL 1897, 3489 ;--CL 1915, 3485 ;--CL 1929, 2667 ;--CL 1948, 128.45 .

## VACATING CEMETERY IN CITY OR VILLAGE

### Act 297 of 1929

AN ACT to provide for vacating private and public cemetery plats and cemetery grounds in the limits of incorporated cities and villages and to provide for the acquisition by said cities and villages of the cemetery grounds and plats vacated hereunder.

**History:** 1929, Act 297, Imd. Eff. May 23, 1929 .

*The People of the State of Michigan enact:*

#### **128.51 Circuit court in chancery; jurisdiction to vacate cemeteries. [M.S.A. 5.3091 ]**

##### Sec. 1.

That, whenever the trustees of an incorporated village, or the common council of any city, shall, by a resolution adopted by them, determine that the dead bodies buried in any private or public cemetery located in such city or village should be removed therefrom for the reason that such cemetery shall impede the establishment, maintenance, development or enhancement of any public improvement by such city or village, the circuit court in chancery of the county in which such cemetery is located, upon such findings, and under the conditions hereinafter set forth, is hereby authorized to vacate the same, or any part thereof, on petition made to such court, as hereinafter provided.

**History:** 1929, Act 297, Imd. Eff. May 23, 1929 ;--CL 1929, 2668 ;--CL 1948, 128.51 .

#### **128.52 Contract for sale of private cemetery to city, village; contents. [M.S.A. 5.3092 ]**

##### Sec. 2.

That, upon the adoption of such a resolution, it shall be competent for the board of directors, or board of trustees, of such cemetery association, as is the owner of such cemetery, to agree upon a contract for the sale of such cemetery to such city or village: Provided, however, That the validity and enforceability of such contract shall be conditioned upon the aforesaid circuit court authorizing the vacating of such cemetery under the terms hereof: Provided further, That such contract shall be approved by a 3/4 vote of the scrip holders or stockholders of such cemetery association, at a special meeting called for that purpose, notice of such meeting to be mailed to the last known place of residence of such scrip holders or stockholders: And provided further, That such contract shall provide that such cemetery association agrees to provide, within a reasonable distance from such city or village, a cemetery ground suitable for the reinterment of such dead bodies and remains as are ordered to be vacated: And provided further, That such contract shall provide that such cemetery association agrees to reinter such dead bodies and remains, except as to such as are interred in the lots of objecting lot owners or grave owners, as hereinafter set forth.

**History:** 1929, Act 297, Imd. Eff. May 23, 1929 ;--CL 1929, 2669 ;--CL 1948, 128.52 .

**128.53 Petition of trustees or council to vacate; filing, notice. [M.S.A. 5.3093 ]**

Sec. 3.

That, upon the execution of such contract, a petition shall be made in behalf of said village trustees, or common council, by an attorney, or agent, appointed by them for that purpose, who shall file a petition, signed and sworn to by him, in the office of the clerk of said court for the proper county, which petition shall set forth his authority, as attorney, or agent, the particular reasons for making and filing such petition, a copy of the aforesaid contract with the cemetery association, and a complete legal description of the premises on which said cemetery is located, which petition shall be filed as aforesaid, at least 30 days previous to the date for which such petition shall be noticed for hearing. That notice of the pendency and hearing of such petition shall be given by publishing the same in a newspaper circulated in the proper county, once in each week, for 4 successive weeks, prior to the date of the hearing.

**History:** 1929, Act 297, Imd. Eff. May 23, 1929 ;--CL 1929, 2670 ;--CL 1948, 128.53 .

**128.54 Compensation to objecting lot owners; credit on contract; condition precedent. [M.S.A. 5.3094 ]**

Sec. 4.

That, should there appear at the hearing of such petition any objecting lot owner or grave owner of such cemetery, setting forth, by special petition, that he has not come to an agreement with said cemetery association in respect to the necessity for such removal under the terms of this act and in respect to compensation for the loss of burial rights, or for the removal of dead bodies interred on their lots, compensation shall be awarded to such lot owners and grave owners in the manner hereinafter set forth, and such compensation shall be paid by said city, or village, and shall, thereafter, be deducted from the purchase price theretofore agreed to be paid to said cemetery association: Provided, however, That as a condition precedent to the payment of such compensation, such objecting lot owner and grave owner shall remove and reinter the dead bodies and remains on his lot.

**History:** 1929, Act 297, Imd. Eff. May 23, 1929 ;--CL 1929, 2671 ;--CL 1948, 128.54 .

**128.55 Court proceedings; order to vacate, contents, recording; recorded under complete bar. [M.S.A. 5.3095 ]**

Sec. 5.

That the hearing of such petition may be continued from term to term, in the discretion of the court, without further notice; that all testimony may be taken in open court, or the taking of the same may be referred, in the discretion of the court, to a circuit court commissioner of the proper county; that, under direction of the court, proper issues may be made for the determination of all questions of law and fact, and all questions of compensation to any person, or persons, to be affected by such proceedings, and all issues of fact may be tried by a jury, if the court shall so order, and any person adversely interested may cause himself to be made defendant to such petition. In all cases where reference shall be made to a jury to determine the compensation to be

paid to any person or persons, as aforesaid, the proceedings upon such reference shall, so far as practicable, be like those had in cases where a jury is empaneled to ascertain and determine the necessity of taking lands and other property as provided by the charter of the municipality or as provided in Act No. 149 of the Public Acts of 1911, as amended by Act No. 37 of the Public Acts of 1925, entitled "An act to provide for the condemnation by state agencies and public corporations of private property for the use or benefit of the public, and to define the terms 'public corporations,' 'state agencies' and 'private property' as used herein," being sections 353 to 373, inclusive, of the Compiled Laws of 1915, or such other appropriate provisions therefor as exist or shall be made by law, and to appraise the damages and compensation to be allowed therefor. If, upon the hearing of such petition, the petitioner shall produce satisfactory evidence to the court, that said trustees, or common council, have determined, as aforesaid, that the notice required by this act has been given; that the aforesaid contract between such city or village and said cemetery association has been executed in accordance with the terms hereof, and that such cemetery should be vacated, in whole or in part, as a place of burial, for the reasons given in this act for vacating cemeteries, such court shall thereupon order that such cemetery shall be vacated, in whole or in part, as a place of burial; upon this condition, however, that said city or village shall perform its obligations and agreements under the terms of the said contract. That a copy of such order certified by the register of such court under his seal shall be recorded by the petitioner in the office of the register of deeds of the proper county. That such order, when so recorded, shall be a complete bar to the rights of any person or persons, as lot owners and grave owners of such cemetery: Provided, however, That the rights of objecting lot owners and grave owners shall not be barred until the compensation awarded hereunder shall be paid by said city or village to the person or persons entitled to same or to the clerk of the county where such judgment was rendered.

**History:** 1929, Act 297, Imd. Eff. May 23, 1929 ;--CL 1929, 2672 ;--CL 1948, 128.55 .

**Compiler's Note:** For provisions of Act 149 of 1911, referred to in this section, see § 213.21 et seq.

### **128.56 Appeal; bond. [M.S.A. 5.3096 ]**

Sec. 6.

Any lot owner or grave owner whose property may be taken, and any municipality or person, party to the proceedings under this act, considering himself aggrieved, may appeal from the order of the court confirming the verdict of the jury or order of the court made at the proceedings without a jury by filing in writing with the clerk of said court notice of such appeal within 5 days after the confirmation or order, and filing a bond in said court, to be approved by the judge thereof, conditioned for the prosecution of said appeal to judgment, and the payment of all costs, damages and expenses that may be awarded against him in case the judgment or confirmation shall be affirmed. Such appeal shall be perfected within the same time and prosecuted as far as practicable like an appeal in chancery.

**History:** 1929, Act 297, Imd. Eff. May 23, 1929 ;--CL 1929, 2673 ;--CL 1948, 128.56 .

**128.57 Repealed. 1978, Act 368, Eff. Sept. 30, 1978. [M.S.A. 5.3097 ]**

**Compiler's Note:** The repealed section pertained to removal and reinterment of dead bodies.

**DEPARTMENT OF COMMUNITY HEALTH  
OFFICE OF THE STATE REGISTRAR  
DISINTERMENT--REINTERMENT**

(By authority conferred on the department of public health by section 2853 of Act No. 368 of the Public Acts of 1978, as amended, being S333.2853 of the Michigan Compiled Laws)

R325.8051 Discovery of remains; notification of police required; exception.  
Rule 1. A person who inadvertently discovers a burial or parts of a human skeleton shall immediately notify the police authority of the jurisdiction where the remains are found. If preliminary inspection by the police authority indicates that the remains are those of a prehistoric or historic native American, the state archaeologist of the Michigan history division, department of state, shall be immediately notified of the finding. This rule does not apply to archaeological excavations conducted by representatives of established scientific institutions or societies.

History: 1979 ACS 9, Eff. Mar. 13, 1982.

R325.8052 Disinterment permit; application; fee. Rule 2. (1) A request for a disinterment permit shall be made to the local health officer in whose district the cemetery is located, and the request shall be made on an affidavit which is signed by a licensed funeral director and by a person or persons as follows:

- (a) The surviving spouse.
- (b) If no surviving spouse, then by all surviving children.
- (c) If no surviving children, then by the surviving parents.
- (d) If no surviving parents, then by all surviving brothers and sisters.

(2) The request shall be accompanied by a fee established by the local health department pursuant to section 2444 of Act No. 368 of the Public Acts of 1978, as amended, being S333.2444 of the Michigan Compiled Laws.

History: 1979 ACS 9, Eff. Mar. 13, 1982.

R325.8053 Affidavit content.

Rule 3. An affidavit shall contain all of the following information:

- (a) The name and address of the licensed funeral director to whom the permit is to be issued.
- (b) The name and address of the person petitioning for the permit.
- (c) The name of the lot or the burial right owner.
- (d) The name of the deceased.
- (e) The present location of the grave, including the lot number, the section number, or other location, such as a location in a mausoleum.
- (f) Reinterment location.
- (g) Relationship of petitioner to deceased.

- (h) Reason for disinterment.
- (i) Approval of all persons who may have a claim for the deceased as specified in R 325.8052.
- (j) Written consent of the lot or burial space owner or owners, if other than petitioner.

History: 1979 ACS 9, Eff. Mar. 13, 1982.

#### R325.8054 Local health officer; duties.

Rule 4. The local health officer or his or her designated representative shall do all of the following:

- (a) Review the affidavit for disinterment-reinterment.
- (b) Issue the disinterment-reinterment permit if the consent required by R 325.8052(1) has been obtained, or deny the disinterment-reinterment permit if the consent required by R 325.8052(1) has not been obtained.
- (c) Provide instructions or guidance to the funeral director on the handling of the disintered body which is necessary to protect the health of the public and those handling the disintered body.
- (d) Retain the affidavit for a period of not less than 5 years.

History: 1979 ACS 9, Eff. Mar. 13, 1982.

#### R325.8055 Disinterment of cremated remains; opening casket; permit not required.

Rule 5. (1) A permit is not required to disinter cremated remains. A request to disinter cremated remains may be made to the cemetery by the next surviving kin, as designated in R 325.8052, on an affidavit described in R 325.8053. The affidavit shall be maintained as part of the permanent records of the cemetery from which the cremated remains are removed.

(2) A permit is not required to open a casket to remove an article or to place an article in a casket.

History: 1979 ACS 9, Eff. Mar. 13, 1982.

#### R325.8056 Cemetery retention of permit.

Rule 6. A duplicate copy of the permit shall be maintained as part of the permanent records of the cemetery from which the deceased was removed.

History: 1979 ACS 9, Eff. Mar. 13, 1982.

R 25.8057 Transportation of disinterred body.

Rule 7. A disinterred body shall not be accepted for transportation by common or contract carrier unless it has been enclosed in a container which insures against leakage, offensive odors, and other menaces to the public health and safety. A disinterred body may be transported by private vehicle, under the supervision of a licensed funeral director, if enclosed in any suitable container which insures against leakage, offensive odors, and other menaces to the public health and safety. The licensed funeral director in charge of disinterment shall be responsible for the proper conduct of the disinterment and removal.

History: 1979 ACS 9, Eff. Mar. 13, 1982.