PREPAID FUNERAL AND CEMETERY SALES ACT

Act 255 of 1986

AN ACT to regulate the sale and providing of funeral and cemetery merchandise and services and other related interests; to regulate the use of funds received by sellers and providers of certain merchandise, funeral and cemetery services, land or interests in land, and related other interests; to prescribe certain powers and duties of certain departments and certain other state and local officers; to provide for the promulgation of rules and establishment of fees; and to provide for penalties and remedies.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

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The People of the State of Michigan enact:

328.211 Short title.

Sec. 1.

This act shall be known and may be cited as the "prepaid funeral and cemetery sales act".

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

328.212 Meanings of words and phrases.

Sec. 2.

For the purposes of this act, the words and phrases defined in sections 3 to 5 have the meanings ascribed to them in those sections.

History: 1986, Act 255, Eff. July 1, 1987
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

328.213 Definitions; B to D.

Sec. 3.

As used in this act:

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

(b) "Casket" means any box or container consisting of 1 or more parts in which a dead human body is placed before interment, entombment, or cremation that may or may not be permanently interred, entombed, or cremated with the dead human body. Casket includes a permanent interment or entombment receptacle designed or intended for use without a vault.

(c) “Catafalque” means an ornamental or decorative object or structure placed beneath, over, or around a casket, vault, or a dead human body before final disposition of the dead human body.

(d) “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 incineration of human remains.

(iv) A columbarium for the inurnment of cremated remains.

(e) “Cemetery burial vault or other outside container” means a box or container used solely at the place of interment to permanently surround or enclose a casket and to support the earth above the casket after burial. Cemetery burial vault or other outside container does not include a catafalque, a combination unit, or any product designed or intended to be used with a catafalque or combination unit.

(f) “Cemetery merchandise” means merchandise described in section 4(1)(k)(i).

(g) “Cemetery services” means cremations, grave openings and closings, and installation of grave memorials.

(h) “Columbarium” means a building or other aboveground structure that is affixed to land and is a permanent repository for cremated human remains.

(i) “Combination unit” means any product consisting of a unit or a series of units designed or intended to be used together as both a casket and as a permanent burial receptacle.

(j) “Consideration” or “contract price” means money and other property to be paid as total compensation to a contract seller or provider for the funeral or cemetery services or merchandise, or both, to be performed or furnished under a prepaid contract, late payment penalties, payments required to be made to a governmental agency at the time the contract is entered into, and income earned on the funds. Money paid for the services to be performed under a prepaid contract may be paid in a lump sum or in installments.

(k) “Contract beneficiary” means an individual specified or implied in a prepaid contract for whom the funeral or cemetery services or merchandise shall be performed or furnished after death.

(l) “Contract buyer” means an individual, including a contract beneficiary, who purchases merchandise or funeral or cemetery services pursuant to a prepaid contract.

(m) “Contract seller” means a person who sells, makes available, or provides prepaid contracts.

(n) “Crypt” means a chamber in a mausoleum of sufficient size to entomb the uncremated remains of a deceased person.

(o) “Department” means the department of labor and economic growth.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005

Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

328.214 Definitions; D to M.

Sec. 4.

(1) As used in this act:

(a) “Depository” means a state or nationally chartered bank or state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an

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agency of the United States government under the laws of this state or the United States. Depository includes the trust department, if any, of an entity referred to in this subsection.

(b) "Detroit consumer price index" means the index for all urban wage earners for the Detroit statistical area from the United States department of labor, bureau of labor statistics.

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

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

(e) "Funeral services" means services customarily performed by a mortuary science licensee who is licensed pursuant to article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812. Funeral services include, but are not limited to, care of dead human remains, embalming, preparation of dead human remains for final disposition, professional services relating to a funeral or an alternative to a funeral or final disposition of dead human remains, transportation of dead human remains, limousine services, use of facilities or equipment for viewing dead human remains, visitation, memorial services, or services which are used in connection with a funeral or alternative to a funeral, coordinating or conducting funeral rites or ceremonies, cremations, and other services provided in connection with a funeral, alternative to a funeral, or final disposition of dead human remains.

(f) "Grave memorial" means a stone or other structure or item used for the purpose of memorializing a decedent and placed on or in proximity to a place of burial, interment, or entombment of a casket, catafalque, or vault or on or in proximity to a place of inurnment.

(g) "Guaranteed price contract" means a prepaid contract under which funds received are held pursuant to an escrow agreement. A guaranteed price contract has a guaranteed fixed price for which specified merchandise or funeral or cemetery services are required to be sold to or made available for a contract buyer or for a contract beneficiary, regardless of the cost or value of the merchandise or funeral or cemetery services at the time of death of the contract beneficiary. Under the guaranteed price contract, additional consideration is not charged for the originally contracted for merchandise or funeral or cemetery services at the time of delivery of the merchandise or funeral and cemetery services.

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

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

(j) "Mausoleum" means a building or other aboveground structure that is affixed to land and is a permanent repository for human remains.

(k) Subject to subsection (2), "merchandise" means both of the following:

(i) Cemetery burial vaults or other outside containers, grave memorials, and urns.

(ii) Items of merchandise sold or offered for sale or lease to consumers that will be used in connection with a funeral or an alternative to a funeral or the final disposition of human remains, including, but not limited to, caskets, combination units, and catafalques.

(2) Merchandise does not include land, interests in land, or interests in mausoleums or columbariums that are sold by a cemetery that complies with the endowment care trust fund requirements of the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543.

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History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

328.215 Definitions; N to U.

Sec. 5.

As used in this act:

(a) "Nonguaranteed price contract" means a prepaid contract under which funds received are held pursuant to an escrow agreement between a contract seller or provider and a contract buyer and are applied to the cost of the merchandise or funeral or cemetery services, which merchandise or funeral or cemetery services may be selected by the contract buyer at the time the contract is signed or as selected by a person legally authorized to procure merchandise or funeral or cemetery services at the time of death of the contract beneficiary. A nonguaranteed price contract does not obligate the contract beneficiary's estate or the person who is legally entitled to make funeral or cemetery arrangements for a deceased contract beneficiary to purchase specific merchandise or funeral or cemetery services which were selected before the contract beneficiary's death and does not obligate either the contract beneficiary's estate or the person who is entitled to make funeral or cemetery arrangements for a deceased contract beneficiary to expend a specific amount on merchandise or funeral or cemetery services.

(b) "Person" means an individual, group of individuals, sole proprietorship, partnership, limited liability company, association, corporation, government agency, cemetery, or a combination of these legal entities.

(c) "Physical delivery and retention" means actual control and possession of merchandise that has been permanently relinquished by a contract seller or a provider, or the agent of either, to the contract buyer or the contract beneficiary. In the case of a grave memorial or urn, physical delivery and retention means that the grave memorial or urn has been permanently inscribed with the name of the person being memorialized. Physical delivery and retention does not occur if the contract seller or provider takes either of the following actions:

(i) Arranges or induces the buyer to arrange for the storage or warehousing of merchandise ordered pursuant to a prepaid contract, with or without evidence that legal title has passed.

(ii) Acquires or reacquires actual or constructive possession or control of merchandise after initial delivery to the contract buyer or contract beneficiary.

(d) "Prepaid contract" means a contract requiring payment in advance for funeral or cemetery services or merchandise, physical delivery and retention of which would occur after death under a guaranteed price contract or a nonguaranteed price contract. Prepaid contracts do not include a contract for the sale of merchandise or funeral or cemetery services entered into after the death of the contract beneficiary.

(e) "Principal" means the money or other consideration actually deposited in the escrow or trust accounts required by this act.

(f) "Provider" means any person who furnishes or agrees to furnish merchandise or funeral or cemetery services pursuant to a prepaid contract, whether or not that person is the contract seller. In the case of merchandise, provider means the person who arranges for delivery of the merchandise at the time of the death of the contract beneficiary and not the manufacturer of the merchandise. In the case of funeral services, provider means a person who possesses all licenses necessary to perform the funeral services specified in the prepaid contract. In the case

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of cemetery services, provider means a person who possesses all licenses and registrations necessary to provide the cemetery services specified in the prepaid contract.

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

(h) "Urn" means a container used to preserve the ashes of a dead human body.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

328.216 Certificate of registration to sell, provide, or agree to provide merchandise or services pursuant to prepaid contract; application; fee; duration of certificate; contents of application form; renewal of registration; sworn statement or special report; expiration of certificate; reinstatement of registration; grounds for denial of registration; compliance; petition for reconsideration; hearing.

Sec. 6.

(1) A person shall not sell, provide, or agree to provide merchandise or funeral or cemetery services pursuant to a prepaid contract unless that person is registered with the department as provided in this section and has received a certificate of registration.

(2) A person desiring to receive a certificate of registration under this section shall apply upon forms provided by the department and pay an application fee of $120.00. The original registration may be renewed. A certification of registration is valid for 3 years from the date of its issuance. An application form for original registration or renewal shall contain the following:

(a) The name and business address of the person registering.

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

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

(d) A list of the names and addresses of any escrow agents in which funds have been or will be deposited by the registrant as well as copies of all escrow or trust agreements between a registrant and an escrow agent. The list and copies required by this subdivision shall be constantly updated. The registrant shall inform the department of any change in this list within 30 days of the change by adding to the list the name and address of any new escrow agent or by deleting from the list an escrow agent whose services are no longer being used by the registrant.

(e) A statement made under oath that the registrant has an agreement with each escrow agent with which it has deposited funds which complies with the requirements of section 7, or if the registrant is or intends to be an escrow agent for funds received in connection with a nonguaranteed price contract, a statement that the registrant will comply with the requirements of section 7.

(3) The department shall renew the registration of a person who applies for renewal upon a form provided by the department and pays an application fee of $30.00 provided that the person has submitted the sworn statement as required by this section and the special report or sworn statement as required by section 8 at least 60 days before the expiration date printed on the certificate of registration. The certificate of registration of a person who fails to file the sworn statement or special report required by this section shall expire on the date printed on

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the certificate of registration. A registrant may reinstate the registration within 60 days of its expiration by submitting the sworn statement or special report and paying a fee of $120.00.

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

(a) That the person was previously registered with the department and that registration was revoked or suspended within 2 years before the date of the current application for registration.

(b) That the person was or is presently an owner with a substantial interest in the entity, partner, or employee of a person whose registration was revoked or suspended within 2 years before the date of the current application for registration and the person engaged or participated in or authorized the misconduct that was the basis for the revocation or suspension.

(c) That the person lacks good moral character as defined and determined under 1974 PA 381, MCL 338.41 to 338.47.

(d) That the person has violated this act, article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, or the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543.

(5) An applicant who registers with the department shall not receive a certificate of registration unless the applicant complies with the conditions in this section.

(6) A person who is denied registration by the department pursuant to this section may petition the department for reconsideration. A person seeking reconsideration is entitled to a hearing conducted in compliance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

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328.217 Deposit of funds with escrow agent; agreement to allow inspection and copying of records.

Sec. 7.

A registrant who deposits funds with an escrow agent under this act shall have in effect at all times an agreement under which the escrow agent has, under the following circumstances, agreed to allow inspection and copying of records maintained by it pertaining to funds held or managed by it:

(a) Upon the request by the department, to inspect or copy records pertaining to any or all funds held or managed by the escrow agent.

(b) Upon the request of the registrant or its agent, to inspect or copy records pertaining to any or all funds deposited by the registrant with the escrow agent.

(c) Upon the request of a contract buyer or a contract beneficiary to inspect or copy records pertaining to funds held or managed by the escrow agent pursuant to a prepaid contract to which the contract buyer is a party or for whose benefit it was entered into.

(d) Upon order of a court of competent jurisdiction.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

328.218 Accounts, books, and records; special report; examination; corrective or penal action; examination, review, or audit of books and records; authorization of escrow agents to open records; statement in lieu of special report.

Sec. 8.

(1) A registrant shall keep, in this state, accurate accounts, books, and records of all transactions and accounts regulated by this act. Records shall include copies of all prepaid contracts, the dates and amounts of payments made and accepted under these prepaid contracts, the name and address of each contract buyer, the name and address of the contract beneficiaries, the name and address of each escrow agent, the date and amount of each deposit made to an escrow agent, the total price of each contract exclusive of commission, any commission received for each contract, the date each contract is performed, canceled, or revoked, the date and amount of any refund paid to the contract buyer, and any other records as the department may require to enable it to determine whether the registrant is complying with the requirements of this act. Records shall be kept for at least 36 months after performance of all obligations of each prepaid contract or after the filing of the report that includes a prepaid contract that has been performed. Beginning on April 1, 2006 and each year thereafter, a registrant shall have available for examination by the department a statement, current as of the preceding December 31, disclosing the following information as to each unperformed prepaid funeral contract:

(a) The date of the contract and, if available, the contract number.

(b) The names of the contract buyer and the contract beneficiary.

(c) The face value of the contract. If the registrant is allowed to deposit less than the face value, the statement shall include the amount required to be on deposit with the escrow agent.

(d) Whether the contract is a guaranteed or nonguaranteed contract.

(e) Complete information on the means, provision, trust, or other vehicle that 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. A registrant who has placed funds in a commingled escrow account may satisfy this requirement by identifying the name of the escrow agent and the particular investment account or accounts in which the funds have been placed.

(2) Annually, a registrant which serves as an escrow agent or which has deposited funds with an escrow agent pursuant to section 12 shall secure a report prepared by a Michigan licensed certified public accountant pertaining to funds. The report shall be on forms provided by the department. The report shall be prepared and dated on or before July 1 of the year following the calendar year for which the report is prepared. In preparing the report, the Michigan licensed certified public accountant shall not be required to review all prepaid contracts, escrow agreements, escrow accounts, or records of the registrant, nor shall the Michigan licensed certified public accountant be required to review any receipts or deposits by the registrant of funds. The report of the Michigan licensed certified public accountant shall provide the following assurances:

(a) That, based either upon a review of the registrant's agreements with escrow agents or depositories which limit investments of the escrow funds by the escrow agents or depositories to those investments permitted by this act, or upon a review of the investments of the escrow accounts, the investment requirements of section 12 have been complied with.

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

(c) In the case of escrow accounts where the registrant does not serve as the escrow agent, that, based upon a representative test sample selected upon the basis of the professional judgment of the Michigan licensed certified public accountant after considering all risks, funds have been deposited with and held by the escrow agent in accordance with this act.

(d) That no matters have come to the attention of the Michigan licensed certified public accountant during the review of escrow account investments and withdrawals that gave cause to believe that the registrant has not complied with this act, or if any matters have come to his or her attention, the Michigan licensed certified public accountant shall include an explanation of the matters which caused the belief that the registrant has not complied with this act.

(3) The department may examine each report required by this section and if the department determines on the basis of its review that the registrant or its agent has not held or invested funds in accordance with the requirements of this act or has failed to file a report as required, the department shall take any appropriate corrective or penal action authorized by this act.

(4) The department may examine, review, or audit the books and records of a contract seller or provider pertaining to funds received in payment for prepaid contracts. An audit may include an examination of the books and financial records of the registrant as well as books and financial records of escrow agents used by the registrant. A registrant shall authorize escrow agents to open their records of the registrant accounts to the department upon request. The department may charge the registrant for the actual expenses of the examination, review, or audit but not more than $1,000.00.

(5) For the purposes of complying with the requirements of this section, a registrant who has not sold, provided, or agreed to provide merchandise or funeral or cemetery services in accordance with a prepaid contract and who has no obligations with respect to an outstanding prepaid contract may submit a sworn statement that a prepaid contract has not been sold, provided, or agreed to and there are no obligations outstanding. The department shall accept the statement in lieu of the report.

(6) Any books or records regarding any prepaid contract entered into before the effective date of the amendatory act that added this subsection that were in compliance with applicable law are considered in compliance with this act.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

328.219 Notice of purchase or assignment of business operations or prepaid contracts.

Sec. 9.

The purchaser or assignee of a registrant's business operations shall notify the department and the contract buyers of the purchase or assignment of the prepaid contracts.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

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328.220 Nonguaranteed or guaranteed price contracts; execution.

Sec. 10.

All prepaid contracts provided for under this act shall be either a nonguaranteed price contract or a guaranteed price contract and shall be made and executed pursuant only to this act.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

328.221 Guaranteed price contract; requirements.

Sec. 11.

(1) A guaranteed price contract shall designate a provider who has agreed to furnish the merchandise or funeral or cemetery services specified in the contract upon the death of the contract beneficiary. If the provider designated is not the prepaid contract seller of the contract, the provider shall be made a party to the prepaid contract before any consideration is paid and the prepaid contract is not binding on the contract buyer until the provider has been made a party to the prepaid contract.

(2) In addition to the registration otherwise required by the terms of this act, the provider which has agreed to provide merchandise or funeral or cemetery services pursuant to a guaranteed price contract shall, at the time the prepaid contract is entered into, possess any license or registration required in order to provide the funeral or cemetery services, pursuant to article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, or the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543. If a provider is required to possess a license or registration to provide the services included in a prepaid contract, a contract seller who does not possess a license or registration to provide the services must disclose to the contract buyer or prospective contract buyer that it cannot perform those activities required to be registered or licensed.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

328.222 Funds to be held in escrow by escrow agent; additional commission not subject to depository requirements; commission if contract price paid in installments; refund; qualifications and selection of escrow agent; authorized investments; fees and expenses; commingling; separate accounting of principal and income; notice to contract buyer; disbursement of funds; nonprofit corporation or association as escrow agent; furnishing statement to contract buyer.

Sec. 12.

(1) Except as otherwise provided in subsection (2), all funds received in connection with a prepaid contract shall be held in escrow by an escrow agent for the benefit of the contract beneficiary.

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(2) Funds received by a cemetery registered under the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543, for cemetery merchandise may, in lieu of subsection (1), be escrowed as follows:

(a) Before January 1, 2006, 60% of the funds received during that period from the sale of cemetery merchandise pursuant to prepaid contracts.

(b) After December 31, 2005 and before January 1, 2007, 65% of the funds received during that period from the sale of cemetery merchandise pursuant to prepaid contracts.

(c) After December 31, 2006 and before January 1, 2008, 70% of the funds received during that period from the sale of cemetery merchandise pursuant to prepaid contracts.

(d) After December 31, 2007 and before January 1, 2009, 75% of the funds received during that period from the sale of cemetery merchandise pursuant to prepaid contracts.

(e) After December 31, 2008, 80% of the funds received from the sale of cemetery merchandise pursuant to prepaid contracts.

(3) A prepaid contract may authorize the contract seller or provider to charge an additional commission of not more than 10% of the contract price which shall not be subject to the depository requirements of this section. If the contract price is paid in installments, the commission retained by the contract seller or the provider shall not exceed the rate of the commission charged in the prepaid contract for each installment. On cancellation, a contract buyer is entitled to a refund as provided in section 13(1) or (2).

(4) Only the following persons may serve as the escrow agent of funds under this section:

(a) If the prepaid contract is a nonguaranteed price contract, the contract seller or provider of that nonguaranteed price contract.

(b) If the prepaid contract is either a guaranteed or nonguaranteed price contract, a depository, a trust company, or a Michigan nonprofit corporation or association, in which the majority interest is held by 250 or more funeral establishments licensed under article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, or a Michigan nonprofit corporation or association, in which the majority interest is held by 30 or more cemeteries registered and operated pursuant to the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543. If the prepaid contract is a guaranteed price contract, the contract seller or the provider shall not serve as the escrow agent.

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

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

(b) If the prepaid contract is a guaranteed price contract, the escrow agent shall be selected by the provider who has been designated to furnish the funeral services. If the prepaid contract does not include funeral services, the escrow agent shall be selected by any provider.

(6) If the escrow agent is a person other than the person to whom the funds have been paid by the contract buyer, the funds shall be deposited with the escrow agent within 30 days after the receipt by the person to whom the funds are paid.

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

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

(b) If the prepaid contract is a guaranteed price contract, the principal and income may be invested only in accordance with section 7803 of the estates and protected individuals code, 1998 PA 386, MCL 700.7803, except that funds shall not be invested in a company owned by, operated by, or affiliated in any way with a contract seller or provider or an authorized agent

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of a contract seller or provider or in loans to any person directly connected with or employed by a contract seller or provider or an authorized agent of a contract seller or provider.

(8) Income shall be held and invested by the escrow agent in the same manner as the principal except that the income may be utilized to pay reasonable fees and expenses of the escrow agent in addition to other costs specifically authorized by this act. The expenses and fees paid to the escrow agent shall not exceed 1% of the aggregate balance of principal and prior earned income from each account annually. If a fee is charged for reasonable expenses for the administration costs under an escrow agreement, the amount may be paid to the escrow agent periodically or may be accumulated in the account and paid at the time of death or upon cancellation of the contract. A cemetery that has elected the escrowing option for cemetery merchandise provided in subsection (2) may provide by written agreement with the escrow agent to be paid accumulated income generated solely by the investment of funds received for the cemetery merchandise. Such payments to a cemetery may not be made more frequently than once in a 12-month period and shall not exceed the net amount of income earned in the previous 12 months less any amounts paid to the escrow agent for expenses and fees described in this subsection and an amount equal to any increase in the Detroit consumer price index.

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

(10) The escrow agent shall send to the contract buyer a notice stating the date, amount of the deposit, and the name of the escrow agent with whom the funds are deposited.

(11) Upon the death of the contract beneficiary and upon performance by the provider of its obligation to furnish merchandise or funeral or cemetery services pursuant to the prepaid contract, funds held by the escrow agent shall be disbursed as follows:

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

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

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

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

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

(c) If the escrow agent is notified that there is a dispute as to whether the provider has performed all its obligations under the prepaid contract, the escrow agent shall file an action for interpleader or shall obtain an impartial arbitrator to determine the rights of the parties. Expenses of arbitration shall be shared equally by the parties unless otherwise ordered by the arbitrator.

(12) A Michigan nonprofit corporation or association, in which the majority interest is held by 250 or more funeral establishments or by 30 or more cemeteries registered and operated

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under the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543, may be designated as the escrow agent under this section only if the contract buyer has expressly authorized that designation in writing. If the contract buyer authorizes the appointment as escrow agent of a Michigan nonprofit corporation or association in the prepaid contract, the authorization shall be set forth in a separate paragraph which shall not be effective unless separately signed or initialed by a contract buyer and which shall state that the contract buyer may elect to require that a depository or a trust company be designated as the escrow agent.

(13) If a prepaid contract is canceled, the escrow agent shall disburse the principal and income in accordance with section 13.

(14) At least annually, unless waived in writing by a contract buyer, a contract buyer shall be furnished a statement indicating the current balance, the fees or expenses charged since the last statement, the amount of the refund to which a buyer is entitled if the contract is canceled, and the name and address of the escrow agent from whom additional information may be obtained about the account. The cost of the statement required by this subsection may be paid from the income and may be in addition to any other fee or charge authorized by this act.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005 ;-- Am. 2010, Act 327, Imd. Eff. Dec. 21, 2010

Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

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328.223 Cancellation of prepaid contract by contract buyer; notice; disbursement of principal and income; cancellation of contract by contract seller or provider; failure to use escrow account to make funeral arrangements; assignment or transfer of obligations.

Sec. 13.

(1) A contract buyer may cancel a prepaid contract at any time before the death of the contract beneficiary upon 30 days' prior written notice to the contract seller of a nonguaranteed price contract or to the provider designated to furnish merchandise or funeral or cemetery services pursuant to a guaranteed price contract. The contract seller or provider shall promptly notify the escrow agent of the cancellation and of its effective date, if the escrow agent is other than the contract seller or the provider. After receipt of the notice of cancellation, except as otherwise provided in subsection (2), the escrow agent shall disburse not less than 90% of the principal and income in the escrow account to the contract buyer pursuant to this subsection and shall disburse the remainder of the principal and income, if any, to the contract seller or the provider. The refund to the contract buyer shall be determined as follows:

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

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

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

(2) In the case of funds received for cemetery merchandise by a cemetery that has elected the escrowing option in section 12(2), the escrow agent shall disburse the principal and income in the account to the cemetery and the cemetery shall disburse to the contract buyer 100% of the amount of the contract price paid by the contract buyer plus an amount equal to any increase in the Detroit consumer price index since the contract was executed.

(3) A contract seller of a nonguaranteed price contract or a provider designated to furnish merchandise or funeral or cemetery services pursuant to a guaranteed price contract may cancel a prepaid contract only if the contract buyer of a guaranteed price contract is more than 90 days delinquent in making any installment payment or partial payment, or the contract buyer is otherwise in default as to any other obligation under the contract. Upon cancellation, the contract buyer shall receive a refund as determined pursuant to subsection (1).

(4) After the death of the contract beneficiary, the contract buyer or the contract buyer's estate may cancel the prepaid contract only where there are no remains of the deceased; where the remains of the deceased cannot be recovered; or where a prepaid contract was not utilized due to lack of knowledge by the person or persons entitled to make funeral arrangements of the existence of the prepaid contract. After such a cancellation, the contract buyer or the contract buyer's estate shall receive a refund in accordance with subsection (1) or (2) within 30 days after receipt by the contract seller or the provider of a request for payment from the contract buyer or the contract buyer's estate. Contracts may be upgraded after the death of the contract beneficiary by a person on behalf of the contract beneficiary's estate or by a person entitled to make funeral or cemetery arrangements. This subsection does not prevent the transfer of a contract from 1 provider to another provider upon the request of those entitled to make funeral arrangements.

(5) Prior to the death of the contract beneficiary and in the case of a prepaid contract or multiple prepaid contracts containing any of the merchandise or services escrowed under section 12(1) together with cemetery merchandise escrowed under section 12(2), the buyer may cancel that portion of the contract pertaining to the cemetery merchandise alone, without canceling the remaining portions. Such cancellation is subject to refund pursuant to section 13(2).

(6) A contract seller or a provider that assigns or transfers its obligations under a prepaid contract to another provider shall notify the contract buyer of the assignment in writing. If the contract buyer cancels the contract within 30 days of the notification of the assignment, the buyer shall be entitled to a refund of 100% of the remaining principal and income plus the commission, if any, charged in accordance with section 12(1) or (2). An assignment or transfer of a provider's obligations under a prepaid contract that is made in connection with the sale of a business is subject to this subsection only if more than 50% of the ownership interest in the business is transferred to another person or persons within a 12-month period. Upon sale of the business, the notice requirement of this subsection is the responsibility of the purchaser. This subsection does not apply to an assignment of a financial interest in an installment contract to a financial institution. At the time that the contract seller or provider receives payment in exchange for selling or assigning its financial interest in an installment contract to a financial institution, the contract seller or provider shall be required to place in escrow the amount required by this act. This subsection does not apply to burial rights or other land interests, crypts, inscribed grave memorials, or niches, for which no refunds are available.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

328.224 Liability for principal and income; investment of funds; changing escrow agent or depository.

Sec. 14.

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(1) Payments of principal and income by a depository or an escrow agent made in good faith pursuant to the terms of this act shall relieve that depository or escrow agent of any further liability for that principal and income.

(2) An escrow agent shall invest funds held or managed under this act only as expressly authorized by this act and shall not invest funds by purchasing life insurance or annuities the proceeds of which are not payable in full until the happening of some event including, but not limited to, death of the contract beneficiary.

(3) A provider or an escrow agent may, without approval of any other party, change the depository of any escrow account, with or without cause, at any time. A contract buyer shall be notified if the escrow agent or depository is changed.

History: 1986, Act 255, Eff. July 1, 1987
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

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328.225 Prices or quotations of prices; requirements; exception; manipulation of prices prohibited; provision for revocation of contract; refund; disclosure of right to cancel contract and amount of refund; disclosure of commissions; services requiring mortuary science license or funeral establishment license; construction of act; designation of new contract beneficiary; notice; clear indication of nonguaranteed price contract, actual costs, and obligations.

Sec. 15.

(1) All prices or quotations of prices contained in a prepaid contract, offer, or solicitation shall be stated in compliance with applicable federal and state laws and regulations. In addition, a person who offers either merchandise or funeral or cemetery services on a preneed or at-need basis shall comply with the price disclosure rules of the federal trade commission, code of federal regulations, 16 C.F.R., part 453, whether or not the rules by their own terms apply to the offering. This subsection does not apply to the sale of any interest covered by the endowment care trust requirements of the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543.

(2) A person who sells or offers to sell both funeral goods or services and nonfuneral goods or services as part of the same transaction or series of transactions shall not manipulate the relative prices of the goods or services so as to allocate a disproportionate share of the total price to nonfuneral property or services.

(3) All prepaid contracts shall provide that a contract buyer may revoke the prepaid contract within 10 business days after entering into the prepaid contract and that upon revocation, all funds paid to the contract seller or provider shall be refunded. This provision shall be conspicuously set forth in the prepaid contract at a place immediately before the place where the contract buyer is to sign his or her name.

(4) A prepaid contract shall disclose the contract buyer's right to cancel the prepaid contract and the amount of the refund to which the contract buyer or that person's estate is entitled upon cancellation. The disclosure shall be stated substantially as follows:

"This contract may be canceled either before death or after death by the buyer or, if the buyer is deceased, by the person or persons legally authorized to make funeral or cemetery arrangements. If the contract is canceled, the buyer or the buyer's estate is entitled to receive a refund of ____% of the contract price and any income as required by law."

In addition, if a commission is charged pursuant to section 12, the amount of the commission and the fact that it is a charge which is in addition to the contract price shall be stated in the prepaid funeral contract. If a printed contract form is used, the disclosures required by this subsection shall be stated in boldfaced type.

(5) This act does not authorize a contract seller or provider to perform or offer to perform services for which a mortuary science license or funeral establishment licensed is required by article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, unless that person holds the required license or licenses and does not require a contract seller or a provider to possess this license or any other license to engage in an activity covered under this act for which a license is not required by any other act.

(6) A prepaid contract shall provide that the contract buyer may designate a new contract beneficiary any time before the death of the contract beneficiary originally specified in the prepaid contract by providing written notice to the contract seller of a nonguaranteed price contract or the provider designated to furnish merchandise or funeral or cemetery services pursuant to a guaranteed price contract. Notwithstanding any other provisions of law, a contract buyer may designate the estate of a deceased person as the contract beneficiary, or provide that the contract beneficiary is the first of 2 or more designated persons to die.

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

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History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005

Compiler's Notes: In the first sentence of subsection (5), the phrase “for which a mortuary science license or funeral establishment licensed” evidently should read “for which a mortuary science license or funeral establishment license.”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 MCL 338.3501 of the Michigan Compiled Laws.

328.226 Prepaid funeral contract not in writing as voidable; agreement as to rate of interest; interest added or deducted in advance; computation of interest; financing of contract.

Sec. 16.

(1) A prepaid contract that is not in writing is voidable by any party to the prepaid contract.

(2) A prepaid contract made in violation of this act or with a person who is not registered pursuant to section 6 is voidable by the contract buyer or by a personal representative of the contract beneficiary.

(3) The parties to a prepaid contract may agree in writing for the payment of a rate of interest not to exceed 10.5% per annum with the following conditions:

(a) A prepaid contract made under this act shall not provide for a rate of interest added or deducted in advance. Interest shall be computed from time to time only on the basis of unpaid balances.

(b) A prepaid contract made under this act shall not provide that the rate of interest initially effective may be increased for any reason.

(c) A contract seller shall not impose any fees or charges in addition to interest in connection with the financing of a prepaid contract.

(4) A contract seller shall not offer financing or offer to obtain financing of a prepaid contract under terms and conditions other than allowed by this section.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

328.227 Rules generally.

Sec. 17.

The department may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to implement this act.

History: 1986, Act 255, Eff. July, 1 1987
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

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328.228 Prohibited conduct; rules; administrative action.

Sec. 18.

(1) Notwithstanding any other law to the contrary, a person selling or offering to sell merchandise or funeral or cemetery services, whether a registrant or not, shall not do any of the following:

(a) Solicit a specific person for the purpose of providing merchandise or funeral or cemetery services for a prospective contract beneficiary knowing that the death of the prospective contract beneficiary has already occurred or is probably imminent.

(b) Make a false or misleading statement, oral or written, regarding the sale of merchandise or funeral or cemetery services pursuant to a prepaid contract or regarding the rights or obligations of any party or prospective party to a prepaid contract for the purpose of inducing a person to purchase the merchandise or funeral or cemetery services or a prepaid contract.

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

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

(e) Refuse the use of merchandise bought from another vendor or discriminate by price, burial fee, or otherwise for not purchasing merchandise from or under the direction of the funeral establishment or cemetery. This subdivision does 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 a grave memorial or a cemetery burial vault or other outside container or urn, except that such regulations may not limit as to supplier or vendor.

(f) Require the purchase of a cemetery burial vault or other outside container from a particular person as a condition to burial in a cemetery in this state. However, this subsection

does not limit the right of a cemetery to require the use of a cemetery burial vault or other outside container.

(g) Violate this act or rules promulgated under this act.

(2) A registrant or a person acting on behalf of a registrant, including an agent or employee of a registrant, shall not do any of the following:

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

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

(3) The director of the department may promulgate rules regulating the solicitation of prepaid contracts by registrants to protect against solicitations which are intimidating, vexatious, fraudulent, or misleading or which take unfair advantage of a person's ignorance or emotional vulnerability.

(4) Any administrative action brought under this act shall be in compliance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

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328.229 Irrevocable prepaid contract approved by family independence agency or department of community health; rules.

Sec. 19.

(1) A prepaid contract may be made with an applicant for or recipient of assistance under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, or a patient or a legal guardian of a patient in a community health care facility under the jurisdiction of the department of community health. If the family independence agency or department of community health determines that the contract is a fully paid guaranteed price contract, and that the proceeds of the contract and the amount of any death benefit from an insurance policy or annuity contract that has been assigned pursuant to section 2080(6) of the insurance code of 1956, 1956 PA 218, MCL 500.2080, as payment for merchandise or funeral or cemetery services for the contract beneficiary are not more than that amount allowed under section 2080(6)(g) of the insurance code of 1956, 1956 PA 218, MCL 500.2080, plus $2,000.00, exclusive of income, and that the state will not be liable for the merchandise or funeral or cemetery services, excluding an outside receptacle when required by the chosen cemetery, of the applicant for or recipient of assistance or patient allowable under contracts under this act, the prepaid contract shall be made irrevocable at the request of the applicant for or recipient of assistance, or the patient or a legal guardian of a patient. Nothing in this section shall be construed as increasing the amount of excludable burial assets for family independence agency or medicaid program eligibility above that allowed under existing family independence agency standards, including any increases in those standards. The family independence agency or department of community health shall advise the applicant for or recipient of assistance, or the patient or a legal guardian of a patient that additional merchandise or funeral or cemetery services subject to contract under this act will not be paid by the family independence agency or department of community health but shall not specify or require approval of particular merchandise or funeral or cemetery services selected by the applicant for or recipient of assistance, or patient or a legal guardian of a patient.

(2) A prepaid contract approved by the family independence agency or department of community health shall not be revoked or canceled by the contract seller, contract provider, contract buyer, or their successors, or the estate of the contract beneficiary either before or after the death of the contract beneficiary. This subsection does not prevent those legally entitled to make arrangements for a contract beneficiary from reallocating the amount paid under the prepaid contract to different funeral or cemetery services and merchandise. A contract seller or provider shall assign an irrevocable prepaid contract to another provider upon the written request of the contract beneficiary, his or her successor, or those legally entitled to make arrangements for the contract beneficiary so long as the written request is received before a provider's obligations have been performed. An irrevocable contract shall not be considered in determining the eligibility of an applicant or recipient for assistance given under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b. An irrevocable prepaid contract made under this section is not subject to the cancellation provision of section 13 or to the provisions of section 15(6).

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

(4) The family independence agency and department of community health may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the uniform administration of this section.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2002, Act 325, Imd. Eff. May 23, 2002 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005

Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

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328.230 Complaint; investigation; examination of books, records, contracts, and other documents; duties of department on determination of reasonable cause to believe in occurrence of violation; violation; hearing; duties of department on determination of violation.

Sec. 20.

(1) Upon complaint made by any person, or upon its own initiative, the department may investigate alleged violations of this act or rules promulgated under this act by a registrant or any other person. The department may examine books, records, contracts, and other documents in possession of or under the control of any registrant with or without the consent of that registrant and with or without a warrant authorizing the examination, or of any other person if that person consents to an examination or if the department obtains a warrant authorizing an examination. If the department determines that reasonable cause exists to believe that a violation has occurred, it shall do 1 of the following:

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

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

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

(ii) Institute proceedings in compliance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) The department or the department of the attorney general may petition a court of competent jurisdiction for issuance of a subpoena requiring the person subpoenaed to appear to testify or produce relevant documentary material for examination at a proceeding conducted under subsection (1)(a) or (b).

(3) If, after a hearing, the department determines that a registrant has violated the provisions of this act or any rule promulgated pursuant to this act, the department shall do 1 or more of the following:

(a) Suspend or revoke the registration.

(b) Impose a civil fine not to exceed $5,000.00 for each violation and may suspend the registration until the fine is paid.

(c) Require restitution of funds paid pursuant to a prepaid contract. Restitution may include suspending the registration until restitution is made.

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

(e) Impose restrictions upon the registrant's prepaid business activities which require additional accountability to the department.

(f) Issue a written warning to the registrant.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

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328.231 Violations; penalties.

Sec. 21.

A violation of this act by a person who is licensed under article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, or the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543, is considered a violation of the respective licensing act, and the violator is subject to penalties available under those acts.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

328.232 Conversion of funds as felony; violation as misdemeanor; penalties.

Sec. 22.

(1) A person who converts funds paid pursuant to a prepaid contract to his or her own use or benefit other than as authorized by this act or who fails to escrow or trust funds according to this act is guilty of a felony punishable by a fine of $5,000.00 or imprisonment of not more than 5 years, or both, for each violation.

(2) A person who violates any other provision of this act is guilty of a misdemeanor punishable by a fine of not more than $1,000.00 or imprisonment for not more than 1 year, or both, for each violation.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

328.233 Noncompliance with investment and depositing requirements; petition for appointment of receiver; notice; hearing; liquidation.

Sec. 23.

If the department determines that a registrant has not complied with the investment and depositing requirements of this act and that insufficient funds are available in trust or escrow accounts to meet the obligations of prepaid contracts, the department may petition the circuit court of the county of the registrant's principal place of business or the county of Ingham for appointment of a receiver. After notice to the registrant and a hearing and upon its concurrence in the findings of the department, the court shall appoint a qualified person as a receiver. A receiver appointed under this section has all the powers, authority, and remedies of an assignee for the benefit of creditors under chapter 52 of the revised judicature act of 1961, 1961 PA 236, MCL 600.5201 to 600.5265. Any remaining funds held in escrow pursuant to this act shall be regarded as belonging to contract buyers or contract beneficiaries according to their interests and shall be distributed to these entities pro rata on the basis of the amount of funds paid by the contract buyers and shall not be available to general creditors of the estate. Under appropriate circumstances, the receiver may file for protection under the bankruptcy code.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

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328.234 Action to force compliance; damages; orders.

Sec. 24.

The department or any other person, in order to force compliance with this act, may bring an action in a circuit court in any county in which the registrant or any other person has solicited or sold prepaid contracts, whether or not that person has purchased a prepaid contract or is personally aggrieved by a violation of this act. The court may award damages, issue equitable orders in accordance with the Michigan court rules to restrain conduct in violation of this act, and award reasonable attorney fees and costs to a prevailing party.

History: 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.

328.235 Effective date.

Sec. 25.

This act shall take effect on July 1, 1987.

History: 1986, Act 255, Eff. July 1, 1987
Compiler's Notes: 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 MCL 338.3501 of the Michigan Compiled Laws.