

Act No. 513
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**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Senator Allen

ENROLLED SENATE BILL No. 1534

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending section 2080 (MCL 500.2080), as amended by 1986 PA 318.

The People of the State of Michigan enact:

Sec. 2080. (1) It is unlawful for any life or accident insurer authorized to do business in this state to own, manage, supervise, operate, or maintain a mortuary or undertaking establishment, or to permit its officers, agents, or employees to own or maintain any such funeral or undertaking establishment.

(2) Except as otherwise provided in subsection (6), it is unlawful for any life insurance, sick or funeral benefit company, or any company, corporation, or association engaged in a similar business to contract or agree with any

funeral director, undertaker, or mortuary to the effect that the funeral director, undertaker, or mortuary conducts the funeral of any person insured by the company, corporation, or association.

(3) A funeral establishment, cemetery, or seller shall not be licensed as an insurance producer under chapter 12 other than as a limited licensee pursuant to this subsection and chapter 12. A funeral establishment, cemetery, or seller shall not be a limited life insurance producer unless that funeral establishment, cemetery, or seller provides a written assurance to the commissioner at the time of application for the limited licensure and with each license renewal that he or she has read and understands the conditions contained in subsection (9) and agrees to comply with those conditions. A person licensed as a limited life insurance producer under this subsection and chapter 12 is authorized and licensed to sell only an associated life insurance policy or annuity contract and is not authorized or licensed to sell any other type of insurance policy or annuity contract. A person licensed as a limited life insurance producer under this subsection and chapter 12 to sell associated life insurance policies or annuity contracts shall not sell cemetery goods or services or funeral goods or services unless all of the conditions provided in subsection (9) are met. A person licensed as a life insurance producer, other than a limited life insurance producer, shall not sell cemetery goods or services or funeral goods or services or be associated with a funeral establishment, cemetery, or seller. Notwithstanding any other provision in this act, a funeral establishment, cemetery, or seller may advise customers or potential customers of the availability of life insurance, the proceeds of which may be assigned pursuant to subsection (6), and may provide application forms and other information in regard to that life insurance. If an application form is provided, the funeral establishment, cemetery, or seller shall also provide to the person a list annually prepared by the commissioner setting forth the life insurance companies offering in Michigan associated life insurance policies or annuity contracts. The list shall include the name, address, and telephone number of a producer for each of the life insurance companies listed. The list also shall include a statement that a person who is insured under any life insurance policy or annuity contract may assign all or a portion of the proceeds, not to exceed the amount provided in subsection (6)(g), of the existing life insurance policy or annuity contract for the payment of funeral services or goods or cemetery services or goods to any funeral establishment, cemetery, or seller that has accepted any other assignment of an associated life insurance policy or annuity contract during that calendar year. The funeral establishment, cemetery, or seller shall accept an assignment on the proceeds from any associated or nonassociated life insurance policy or annuity contract pursuant to subsection (6), and this requirement on the funeral establishment, cemetery, or seller shall be set forth in the statement prepared by the commissioner. The assignor or the person or persons legally entitled to make funeral arrangements for the person whose life was insured may contract with the funeral establishment, cemetery, or seller of his or her choice for the rendering of the funeral goods or services or cemetery goods or services. Except as otherwise provided in this subsection, each associated life insurance policy or annuity contract delivered or issued for delivery in this state shall have a death benefit that is sufficient to cover the initial contract price of the cemetery goods or services or funeral goods or services and that increases at an annual rate of not less than the consumer price index. However, a life insurer may provide an associated life insurance policy or annuity contract with a limited death benefit to an insured who does not meet insurance requirements for a policy that provides immediate full coverage or who chooses not to answer medical questions required for a policy that provides immediate full coverage. An associated life insurance policy or annuity contract with a limited death benefit shall disclose in boldfaced type that the death benefit will not be sufficient to cover the initial contract price for the cemetery goods and services or funeral goods and services for a period of up to 2 years if the premium is not paid in full and that during this period the price for those goods and services may increase at a rate higher than the increase in the consumer price index for this period.

(4) A person shall not be designated as the beneficiary in any policy of life or accident insurance whereby the beneficiary, directly or indirectly, shall, in return for all or a part of the proceeds of the policy of insurance, furnish cemetery services or goods or funeral services or goods in connection therewith.

(5) Except as otherwise provided in subsection (6), it shall be unlawful for any life or accident, or sick or funeral benefit company, or any person, company, corporation, or association, to offer or furnish goods or services or anything but money to its insureds or to his or her heirs, representatives, attorneys, relatives, associates, or assigns in any connection with, or by way of encumbrance, assignment, payment, settlement, satisfaction, discharge, or release of any insurance policy. However, this subsection does not prohibit any company, corporation, or association from furnishing medical, surgical, or hospital service.

(6) Notwithstanding any other provision in this act, a life insurer may write a life insurance policy or annuity contract that is subject to an assignment of the proceeds of the insurance policy or annuity contract as payment for cemetery services or goods or funeral services or goods as provided in this subsection regardless of the relationship between the life insurer and the assignee. An assignment of the proceeds of the insurance policy or annuity contract pursuant to this subsection shall be in writing on a form approved by the commissioner. A predeath assignment of the proceeds of a life insurance policy or annuity contract as payment for cemetery services or goods or funeral services or goods is void unless all of the following conditions and criteria are met:

(a) The assignment is an inseparable part of the contract for the cemetery services or goods or funeral services or goods for which the assigned proceeds serve as payment.

(b) The assignment is revocable by the assignor, assignor's successor, or if the assignor is the insured by the representative of the insured's estate prior to the provision of the cemetery services or goods or funeral services or goods.

(c) The contract for funeral services or goods or cemetery services or goods and the assignment provide that upon revocation of the assignment, the contract for the cemetery services or goods or funeral services or goods is revoked and cemetery services or goods or funeral services or goods may be obtained from any cemetery, funeral establishment, or seller.

(d) The assignment contains the following disclosure in boldfaced type:

"This assignment may be revoked by the assignor or assignor's successor or, if the assignor is also the insured and deceased, by the representative of the insured's estate before the rendering of the cemetery services or goods or funeral services or goods. If the assignment is revoked, the death benefit under the life insurance policy or annuity contract shall be paid in accordance with the beneficiary designation under the insurance policy or annuity contract."

(e) The assignment provides for all of the following:

(i) That the actual price of the cemetery services or goods or funeral services or goods delivered at the time of death may be more than or less than the price set forth in the assignment.

(ii) For the assignment of an associated life insurance policy or annuity contract, that any increase in the price of the cemetery services or goods or funeral services or goods does not exceed the ultimate death benefit under the life insurance policy or annuity contract. This requirement does not apply to an insurance policy or annuity contract with a limited death benefit during the period that the limited death benefit is in effect. During this period, neither the beneficiary nor the seller is obligated to fulfill the terms of the contract for the cemetery services or goods or funeral services or goods for which the assigned proceeds serve as payment and the assignment of the associated life insurance policy or annuity contract may be revoked.

(iii) For the assignment of a nonassociated life insurance policy or annuity contract, that any increase in the price of the cemetery services or goods or the funeral services or goods shall not exceed the consumer price index or the retail price list in effect when the death occurs, whichever is less.

(iv) That if the ultimate death benefit under a life insurance policy or annuity contract exceeds the price of the cemetery services or goods or funeral services or goods at the time of performance, the excess amount shall be distributed to the beneficiary designated under the life insurance policy or annuity contract or the insured's estate.

(v) That any addition to or modification of the contract for cemetery services or goods or funeral services or goods does not revoke the assignment or the contract for the cemetery services or goods or funeral services or goods that are not affected by the addition or modification for which the assigned proceeds are payment unless the assignment is revoked.

(f) The assignment is limited to that portion of the proceeds of the life insurance policy or annuity contract that is needed to pay for the cemetery services or goods or funeral services or goods for which the assignor has contracted.

(g) For an associated life insurance policy or annuity contract, the death benefit of the life insurance policy or annuity contract subject to the assignment does not exceed \$5,000.00 when the first premium payment is made on the life insurance policy or annuity contract. For a nonassociated life insurance policy or annuity contract, the initial amount of proceeds assigned does not exceed \$5,000.00. The maximum amounts in this subdivision shall be adjusted annually in accordance with the consumer price index.

(h) The assignment shall contain the dispute resolution rights in subsection (8). After the death of the insured but before the cemetery services or goods or funeral services or goods are provided, the funeral establishment, cemetery, or seller shall provide to a representative of the insured's estate a separate document entitled, "dispute resolution disclosure statement," which shall clearly set forth the dispute resolution rights in subsection (8). The dispute resolution disclosure statement shall be filed with the commissioner and shall be considered approved unless disapproved within 30 days after the submission. The language used to set forth the dispute resolution rights in subsection (8) shall be written in a manner calculated to be understood by a person of ordinary intelligence.

(i) The assignor and not the assignee is responsible for making the premium payments due on the life insurance policy or annuity contract. This subdivision does not apply to an insurance producer when acting as a fiduciary pursuant to section 1207.

(j) After the death of the insured but before the cemetery services or goods or funeral services or goods are provided, the representative of the insured's estate is provided with a current price list for the cemetery services or goods or funeral services or goods provided pursuant to the assignment.

(k) At the time the assignment is made, the assignee complies with the price disclosure rules of the federal trade commission prescribed in 16 CFR part 453 whether or not the rules by their own terms apply to the offering.

(l) At the time the assignment is made, the assignor certifies that the insured does not have in effect other life insurance policies or annuity contracts that have been assigned as payment for cemetery goods or services or funeral goods or services which together with the additional assignment would have an aggregate face value in excess of the limitation provided in subdivision (g).

(m) For the assignment of a nonassociated life insurance policy or annuity contract, the assignment complies with both of the following:

(i) The assignment is sufficient to cover the initial contract price of the cemetery goods or services or funeral goods or services.

(ii) The assignment provides that any increase in the price of the cemetery services or goods or the funeral services or goods shall not exceed the consumer price index or the retail price list in effect when the death occurs, whichever is less.

(7) An insurer or an insurance producer shall not make a false or misleading statement, oral or written, regarding an assignment subject to subsection (6) or regarding the rights or obligations of any party or prospective party to the assignment. An insurer or an insurance producer shall not advertise or promote an assignment subject to subsection (6) in a manner that is false, misleading, deceptive, or unfair. The commissioner shall promulgate rules regulating the solicitation of plans promoting assignments subject to subsection (6) to protect against solicitations that are intimidating, vexatious, fraudulent, or misleading, or which take unfair advantage of a person's ignorance or emotional vulnerability.

(8) After the cemetery services or goods or funeral services or goods are provided, the funeral establishment, cemetery, or seller shall provide to a representative of the insured's estate a statement to be signed by the representative of the insured's estate authorizing the release of the assignment proceeds for the payment of the cemetery services or goods or funeral services or goods. The insurer shall release to the funeral establishment, cemetery, or seller the assignment proceeds upon receipt of the authorization statement signed by a representative of the insured's estate. If a representative of the insured's estate fails to sign the authorization statement, the following shall take place:

(a) The funeral establishment, cemetery, or seller shall provide the representative of the insured's estate with a dispute resolution notice, a copy of which is to be sent to the insurer and the commissioner that states all of the following:

(i) That the funeral establishment, cemetery, or seller has provided the cemetery services or goods or funeral services or goods.

(ii) That a representative of the insured's estate has refused to authorize the insurer to release the assignment proceeds for the payment of the cemetery services or goods or funeral services or goods.

(iii) That a representative of the insured's estate may seek arbitration to resolve the payment dispute.

(b) Upon the receipt of the dispute resolution notice described in subdivision (a), the insurer shall retain the assignment proceeds for 30 days. The insurer shall release the assignment proceeds to the funeral establishment, cemetery, or seller if after the expiration of the 30 days the insurer is not informed that arbitration proceedings have been commenced, or pursuant to the award of the arbitrator.

(c) The funeral establishment, cemetery, seller, or a representative of the insured's estate may commence arbitration proceedings to determine the disposition of the assignment proceeds. Arbitration shall be conducted pursuant to the rules and procedures of the American arbitration association. Expenses of the arbitration shall be shared equally by the insured's estate and the assignee unless otherwise ordered by the arbitrator.

(d) Nothing in this subsection limits the right of any party involved in the payment dispute to seek other recourse permitted by law.

(9) A life insurance producer shall not sell or solicit the sale of a life insurance policy or annuity contract with the intention of having the purchaser assign the proceeds of the policy or contract to a funeral establishment, cemetery, or seller with which the producer is associated unless all of the following conditions are met:

(a) The producer discloses in writing to the purchaser the nature of his or her association with the funeral establishment, cemetery, or seller and that both the funeral establishment, cemetery, or seller and the producer will or may profit from the transaction, if that is the case.

(b) A funeral establishment, cemetery, or seller that accepts assignments pursuant to subsection (6) shall also offer to sell or provide cemetery goods or services or funeral goods or funeral services pursuant to prepaid funeral contracts as provided in the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235, or pursuant to the trust provisions of the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543.

(c) If the contemplated assignment is to be made to pay the cost of cemetery goods or services or funeral goods or funeral services, the producer shall disclose in writing to the purchaser that the cemetery goods or services or funeral goods or services may also be purchased prior to death by making payment directly to a funeral establishment, cemetery, or seller who will hold funds in escrow for the benefit of the purchaser pursuant to the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235, or in trust pursuant to the provisions of the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543. The written disclosure shall also state that upon cancellation of the prepaid funeral contract, the purchaser is entitled to a refund of at least 90% of the principal and income earned.

(d) The sale of cemetery goods or services or funeral goods or services shall not be conditioned on the purchaser buying or agreeing to buy a life insurance policy or annuity contract or on the assignment of the proceeds of the policy or contract to that funeral establishment, cemetery, or seller.

(e) The sale of a life insurance policy or annuity contract shall not be conditioned on the purchaser buying or agreeing to buy cemetery goods or services or funeral goods or services from the funeral establishment, cemetery, or seller with which the producer is associated or on the assignment of the proceeds of the policy or contract to that funeral establishment, cemetery, or seller.

(f) A discount from the current price of cemetery goods or services or funeral goods or services shall not be offered as an inducement to purchase or assign a life insurance policy or annuity contract.

(g) The life insurance policy or annuity contract sold by the producer may be canceled by the purchaser within 10 days after the receipt of the policy or annuity contract, in which event a full refund of all premiums shall be paid to the purchaser.

(h) The producer shall disclose in writing to the purchaser that the funeral establishment, cemetery, or seller with which the producer is associated will accept assignments of life insurance policies or annuity contracts sold by any other licensed producer.

(10) The commissioner or any other person, in order to force compliance with subsection (6) or (7), may bring an action in a circuit court in any county in which the assignee or insurance producer or any other person has solicited or sold a life insurance policy or annuity contract that is assigned pursuant to subsection (6), whether or not that person has purchased the life insurance policy or annuity contract or is personally aggrieved by a violation of this section. The court may award damages and issue equitable orders in accordance with the Michigan court rules to restrain conduct in violation of this section.

(11) Any person violating any of the provisions of this section is guilty of a misdemeanor, and each violation shall be a separate offense and upon conviction shall be punished by a fine not exceeding \$1,000.00 or by imprisonment for not more than 6 months, or both such fine and imprisonment within the discretion of the courts.

(12) In addition to the penalty provided in subsection (11), if, after a hearing conducted pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commissioner determines a person has violated this section, the commissioner may order the person to pay a civil fine of not more than \$10,000.00 for each violation and may also impose other sanctions provided pursuant to chapter 12. The money collected under this subsection shall be deposited in the funeral consumers education and advocacy fund. The funeral consumers education and advocacy fund is created within the office of financial and insurance regulation. The fund shall be administered by the commissioner. The money in the fund shall be used to do both of the following:

(a) To promote the education of consumers concerning the prearrangement and purchase of cemetery or funeral services or goods through the purchase and assignment of life insurance or annuity contracts.

(b) To provide legal assistance to persons who were injured as a result of a violation of this section.

(13) For purposes of this section, a life insurance producer is associated with a funeral establishment, cemetery, or seller if any of the following apply:

(a) The producer is a funeral establishment, cemetery, or seller.

(b) The producer owns an interest, directly or indirectly, in a corporation or other entity that holds an interest in a funeral establishment, cemetery, or seller.

(c) The producer is an officer, employee, or agent of a funeral establishment, cemetery, or seller.

(d) The producer is an officer, employee, or agent of a corporation or other entity that holds an interest, either directly or indirectly, in a funeral establishment, cemetery, or seller, or in a corporation or other entity that holds an interest, directly or indirectly, in a corporation or other entity that holds an interest in a funeral establishment, cemetery, or seller.

(14) As used in this section:

(a) "Associated life insurance policy or annuity contract" is a life insurance policy or annuity contract that is marketed, designed, and intended to be assigned as payment for cemetery goods or services or funeral goods or services.

(b) "Casket" means any box or container consisting of 1 or more parts in which a dead human body is placed prior to interment, entombment, or cremation which may or may not be permanently interred, entombed, or cremated with the dead human body. A permanent interment or entombment receptacle designed or intended for use without a cemetery burial vault or other outside container shall also be considered a casket.

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

(d) "Cemetery" means that term as defined in but not necessarily regulated under section 2 of the cemetery regulation act, 1968 PA 251, MCL 456.522, or an officer, agent, or employee thereof.

(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.

(f) "Cemetery goods" means land or interests in land, crypts, lawn crypts, mausoleum crypts, or niches that are sold by a cemetery. In addition, cemetery goods include cemetery burial vaults or other outside containers, markers, monuments, urns, and merchandise items used for the purpose of memorializing a decedent and placed on or in proximity to a place of interment or entombment of a casket, catafalque, or vault or to a place of inurnment which are sold by a cemetery.

(g) "Cemetery services" means those services customarily performed by a cemetery.

(h) "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.

(i) "Consumer price index" means the annual average percentage increase in the Detroit consumer price index for all items for the prior 12-month period as reported by the United States department of labor and as certified by the commissioner.

(j) "Funeral establishment" means a funeral establishment or a person who is engaged in the practice of mortuary science as those terms are defined in section 1801 of the occupational code, 1980 PA 299, MCL 339.1801, or an officer, agent, or employee thereof.

(k) "Funeral goods" means items of merchandise which will be used in connection with a funeral or an alternative to a funeral or final disposition of human remains including, but not limited to, caskets, other burial containers, combination units, and catafalques. Funeral goods does not include cemetery goods.

(l) "Funeral services" means services customarily performed by a person who is licensed pursuant to sections 1801 to 1812 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812. Funeral services includes, but is not limited to, care of human remains, embalming, preparation of human remains for final disposition, professional services relating to a funeral or an alternative to a funeral or final disposition of human remains, transportation of human remains, limousine services, use of facilities or equipment for viewing human remains, visitation, memorial services, or services used in connection with a funeral or alternative to a funeral, coordinating or conducting funeral rites or ceremonies, and other services provided in connection with a funeral, alternative to a funeral, or final disposition of human remains.

(m) "Limited death benefit" means the sum payable upon the insured's death during not more than the first 2 years that an associated life insurance policy or annuity contract is in effect that is less than the amount necessary to cover the initial contract price of cemetery goods and services or funeral goods and services, but that provides for a minimum benefit as follows:

(i) During the first year of the contract, not less than 25% of the initial contract price of cemetery goods and services or funeral goods and services.

(ii) During the second year of the contract, not less than 50% of the initial contract price of cemetery goods and services or funeral goods and services.

(n) "Nonassociated life insurance policy or annuity contract" means a life insurance policy or annuity contract that is not marketed to be assigned, designed to be assigned, or intended to be assigned as payment for cemetery goods or services or funeral goods or services.

(o) "Representative of insured's estate" means the person or persons legally entitled to make the funeral arrangements for the person whose life was insured.

(p) "Seller" means a person who offers to sell cemetery goods or services or funeral goods or services or any agent, officer, or employee thereof.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Bowen

Clerk of the House of Representatives

Approved

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Governor