

PREPAID FUNERAL AND CEMETERY SALES ACT (EXCERPT)
Act 255 of 1986

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.
- (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.