

Sec. 2. Minnesota Statutes 1986, section 93.55, is amended by adding a subdivision to read:

Subd. 1a. If the owner of a severed mineral interest fails to file the verified statement required by section 93.52 before the dates specified in subdivision 1, the commissioner of natural resources may lease the mineral interest as provided in this subdivision and subdivision 3 before completing the procedures set forth in subdivision 2. In any lease issued under this subdivision, the commissioner shall cite, as authority for issuing the lease, this subdivision, subdivision 3, and the United States Supreme Court decision in *Texaco, Inc., et al. v. Short, et al.*, 454 U.S. 516 (1982), where the Supreme Court determined, under Amendment XIV to the Constitution of the United States, that enactment of a state law requiring an owner of severed mineral interests to timely file a statement of claim to the mineral interests was constitutional, without individual advance notice of operation of the law, before the owner loses the mineral interests for failing to timely file the statement of claim. A lessee holding a lease issued under this subdivision may not mine under the lease until the commissioner completes the procedures set forth in subdivision 2 and a court has adjudged the forfeiture of the mineral interest to be absolute. "Mine" for the purposes of this subdivision is defined to exclude exploration activities, exploratory boring, trenching, test pitting, test shafts and drifts, and related activities.

Sec. 3. Minnesota Statutes 1986, section 93.55, subdivision 3, is amended to read:

Subd. 3. After the forfeiture of the mineral interest is adjudged to be absolute, the mineral interest may be leased. The commissioner may lease severed mineral interests described in subdivision 1 in the same manner as provided in section 93.335, for the lease of minerals and mineral rights becoming the absolute property of the state under the tax laws, except that no permit or lease issued pursuant to this section shall afford the permittee or lessee any of the rights of condemnation provided in section 93.05, as to overlying surface interests.

Sec. 4. **EFFECTIVE DATE.**

This act is effective the day following final enactment.

Approved April 13, 1988

CHAPTER 509—S.F.No. 1867

An act relating to cemeteries; mausoleums, prearranged funeral services; consumer protection; requiring the establishment of a construction performance bond; requiring a permanent care account for any mausoleum; providing reporting requirements; broadening the powers of the county auditors and state auditor; amending Minnesota Statutes 1986,

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sections 149.11; 149.13; 306.03; 306.04; 306.37; 306.761; 306.77; and 306.773, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 306.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 149.11, is amended to read:

149.11 PREARRANGED FUNERAL PLANS; CONTRACTS; TRUST FUNDS.

(a) When prior to the death of any person, that person or another enters into any transaction, makes a contract, or any series or combination of transactions or contracts with another person, partnership, association or corporation, other than an insurance company licensed to do business in the state of Minnesota, by the terms of which, certain personal property related to the funeral services or the burial, cremation, or other disposition of human remains will be used upon the death of the person for whom the property is to be used, or when the professional services of a funeral director or embalmer will then be furnished, or both, then the total of all money paid by the terms of the transaction, contract or series or combination of transactions or contracts shall be held in trust for the purpose for which it has been paid until the death of the person for whose benefit the money was paid, or refunded to the person who made the payment or payments, upon demand. Accruals of interest or dividends declared upon the sum of money held in trust are subject to the same trust. The person, partnership, association or corporation holding the money in trust shall inform the person on whose behalf the money is held that all money paid plus all accrued earnings will be held in trust until the death of that person or until a request for a refund is made if made prior to death. The location of the trust account including the name and address of the institution in which the money is being held and any identifying account numbers, and any subsequent changes in that information must be disclosed in writing to the person on whose behalf the money is being held, at the time the funds are deposited into the trust account and at the time of any subsequent changes in the information. The personal property shall include but not be limited to a casket, burial vault not interred in a grave, combination casket-vault or other receptacle not described in paragraph (b) for the interment, entombment, cremation, or other disposition of human remains.

(b) Nothing in this section shall prevent the sale and delivery of cemetery lots, graves, burial vaults preinterred in a grave, cremation urns, crypt spaces, niches, ~~columbaria~~, or grave or lot markers or monuments before their use is required. Nothing in this section prevents the preconstruction sale of crypt spaces to be permanently installed except that any seller of mausoleum space or columbarium space, selling burial space in a mausoleum or columbarium that is not completely constructed and usable, must comply with section 10.

(c) It is the intent of the legislature that the provisions of this section shall be construed as a limitation upon the manner in which a person or legal entity is permitted to accept funds in prepayment of funeral services to be performed

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in the future or in prepayment of funeral or burial goods to be used in connection with the funeral or final disposition of human remains. It is further intended to allow members of the public to arrange and pay for funerals, final dispositions, funeral services, and funeral and burial goods for themselves and their families in advance of need while at the same time providing all possible safeguards so that the prepaid funds cannot be dissipated, whether intentionally or not, so as to be available for the payment of the services and goods selected.

Sec. 2. Minnesota Statutes 1986, section 149.13, is amended to read:

149.13 REPORTS.

Subdivision 1. ~~If a banking institution, a savings, building and loan association or a credit union receives money in trust, under section 149.12, it shall report the amount received and held in trust to the probate court of the county wherein the cestui que trust resides, within 30 days thereafter. This report shall show the name and address of each trustee and cestui que trust, the principal amount remaining, and the current interest rate applicable to the account.~~

Every funeral establishment which is subject to the trust requirement in section 149.11 and is licensed by the commissioner of health to practice embalming or funeral directing must make a complete annual report to the commissioner of health, disclosing the state of the trust fund including all deposits and withdrawals of principal amounts and all receipts and disbursements. The report shall be filed on forms prescribed by the state auditor by March 31. The report shall be signed and notarized under oath. There shall be paid to the commissioner of health a filing fee of \$15 for each report. The state commissioner of health shall review these reports for indications of violations of this chapter.

Subd. 2. Any person, firm, partnership, association, or corporation which is subject to the trust requirement in section 149.11, but which is not licensed by the commissioner of health to practice embalming or funeral directing, must make a complete written annual report to the county auditor of the county in which the establishment operates. If the establishment is located outside of Minnesota, the report must be filed with the Minnesota county auditor in the county in which the funeral services or personal property is to be delivered. The report must disclose the state of the fund, including all deposits and withdrawals of principal amounts and receipts and disbursements. The report shall be filed on forms prescribed by the state auditor by March 31 for any person, firm, partnership, association, or corporation operating on a calendar year basis and by 90 days after the end of the fiscal year for any person, firm, partnership, association, or corporation operating on a fiscal year basis. The report shall be signed and notarized under oath. There shall be paid to the county auditor a filing fee of \$15 for each report. The county auditor shall review these reports for indications of violations of this chapter.

Subd. 3. Any person, firm, partnership, association, or corporation subject to subdivision 1 or 2 when changing the trustee must file a notice of change of trustee of the trust fund. If subdivision 1 applies, the trustee change must be filed with the commissioner of health 30 days after the change of trustee. If subdivision 2 applies, the trustee change must be filed with the county auditor 30 days after the change of trustee.

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Subd. 4. The county auditor and the commissioner of health must, if they have reason to believe violations of this chapter may exist, report that belief to the state auditor in a timely manner. Every county auditor and the commissioner of health must also file an annual letter by May 31 with the state auditor's office disclosing whether they have detected any indications of violations of this chapter. If the county auditor or commissioner of health has not detected, from the information supplied to them, indications of violations of this chapter, that fact must be reported to the state auditor in the annual letter.

Subd. 5. Upon notification from the county auditor or the commissioner of health of indications of violations of this chapter, the state auditor shall make an independent determination of whether a violation of the provisions in this chapter is occurring, or is about to occur. If the state auditor finds such evidence, the state auditor shall conduct an independent audit of the entity in accordance with generally accepted auditing standards and shall inform the appropriate agency of any finding of misconduct. The person, firm, partnership, association, or corporation audited under this section by the state auditor shall reimburse the state auditor for expenses incurred in conducting the audit within 30 days after the state auditor submits its expenses. Interest at the rate established in section 549.09 shall accrue on the outstanding balance starting on the 31st day after the state auditor's office submits its request for expenses.

Subd. 6. Any person, firm, partnership, association, or corporation required to hold money in trust under section 149.11 must retain records within Minnesota until three years after the death of the person for whose benefit the money was paid or the money is refunded or delivery occurs pursuant to section 149.11. The records must state on whose behalf the money is held, the location of the money, including any identifying numbers, and the name and address of the institution in which the money is held.

Subd. 7. Unless the data is summary data, data on individuals collected and maintained under this section is private data on individuals and shall not be disclosed except: (1) pursuant to court order; or (2) for law enforcement purposes. Individual is defined as in section 13.02, subdivision 8.

Subd. 8. Any person, firm, partnership, association, or corporation knowingly violating the provisions of this section shall be guilty of a misdemeanor and for a second offense shall be guilty of a gross misdemeanor.

Sec. 3. Minnesota Statutes 1986, section 306.03, is amended to read:

306.03 ACTUARY; RECORDS; REPORTS.

Every such corporation, including any person, firm, partnership, association, or corporation owning or operating a mausoleum or columbarium, in addition to its ordinary corporate officers, shall annually appoint an actuary, or provide by its bylaws that its secretary shall perform the duties of such office. The actuary shall keep a register of burials, entering the date of burial, entombment, or cremation, the name, age, sex, nativity, and cause of death of every

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person interred or cremated in such cemetery, so far as such facts can be ascertained from the friends, attending physician, or undertaker in charge, and in case of a pauper, stranger, or criminal, from the public official directing the burial. Such record shall be open to public inspection, and the actuary shall furnish to the state commissioner of health and to local health officers, when so requested, an accurate summary of such record during any specified year.

Sec. 4. Minnesota Statutes 1986, section 306.04, is amended to read:

306.04 FAILURE TO KEEP REGISTER; FORFEITURE.

Every actuary, or secretary performing the duties of an actuary, failing to keep such register of burials and to record therein all interments and cremations, for every such offense shall forfeit not less than \$2 nor more than \$10 for the benefit of the school fund of the district in which such cemetery, mausoleum, or crematory is situated.

Sec. 5. Minnesota Statutes 1986, section 306.37, is amended to read:

306.37 CARE AND IMPROVEMENT FUND.

Subdivision 1. Twenty percent of the proceeds of all sales of cemetery lots and ten percent of the proceeds of all sales of burial space in a mausoleum or columbarium made after the vote of the board of trustees of the association to establish said care and improvement fund shall be paid over to such trustee or trustees of the fund, on January 1, April 1, July 1, and October 1, in each year. Until so paid over, the foregoing amounts shall be held in trust by the cemetery association for payment thereof to the trustee or trustees of such fund. "Proceeds" includes any installment payment made towards the purchase of a cemetery lot or burial space in a mausoleum or columbarium.

Subd. 2. Any other income or funds of the association, in excess of its liabilities, may be added to such fund by a two-thirds vote of the members of its board of trustees. The principal of such fund shall not be subject to any minimum or maximum amount.

Subd. 3. The words "cemetery lots" as used in this section shall not be construed to include burial space in a mausoleum or columbarium. The term "burial space" as used herein shall include private rooms, crypts, niches or other designated space in which the bodies or ashes cremated remains of deceased persons are placed for permanent burial in a mausoleum or columbarium.

Subd. 4. Any person, firm, partnership, association, or corporation knowingly violating the provisions of this section shall be guilty of a misdemeanor and for a second offense shall be guilty of a gross misdemeanor.

Sec. 6. Minnesota Statutes 1986, section 306.761, is amended to read:

306.761 PERMANENT CARE AND IMPROVEMENT FUNDS; MINIMUM AMOUNTS; REPORTING; PENALTIES.

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Subdivision 1. Any cemetery association which operates a cemetery larger than ten acres shall establish a permanent care and improvement fund and all cemetery associations operating a cemetery larger than ten acres and having a permanent care and improvement fund shall file annually as part of the report required in subdivision 2 a notice with the county auditor of the county in which the cemetery is situated. The notice shall include the names and addresses of each person or entity owning a five percent or greater interest in the cemetery, and the names and addresses of all officers if any change has taken place since the previous notice. The term "association" as used in this section shall include any person, firm, partnership, association or corporation.

Subd. 2. Any cemetery association which operates a cemetery larger than ten acres and having any person, firm, partnership, association, or corporation owning or operating a mausoleum or columbarium, or constructing or selling space in a mausoleum or columbarium to be built, which has a permanent care and improvement fund shall make a ~~full and~~ complete written annual report to the county auditor of the county in which the cemetery or mausoleum or columbarium or future site of the mausoleum or columbarium is situated on the ~~condition and~~ state of the fund, including all deposits and withdrawals of principal amounts and all receipts and disbursements. The report shall be filed on forms prescribed by the ~~county state~~ auditor by March 31 for any ~~cemetery association operating a cemetery larger than ten acres and operating entity described in this subdivision which operates on a calendar year basis and by 90 days after the end of the fiscal year for any cemetery association operating a cemetery larger than ten acres and operating entity described in this subdivision which operates on a fiscal year basis.~~ The report shall be signed and notarized under oath. There shall be paid to the county auditor a filing fee of ~~\$40~~ \$15 for each report.

Subd. 3. Any person, firm, partnership, association, or corporation holding money in trust under this section shall provide notice to the person purchasing the cemetery lot, or the burial space in a mausoleum or columbarium, at the time of the first payment. The notice shall be in writing, and shall identify the location where the money will be held in trust including any identifying account numbers and the name and address of the institution in which the money is held. Any person, firm, partnership, association, or corporation holding money in trust under this section shall notify the county auditor receiving the annual report if there is a change in the identifying account numbers or location of the fund within seven days of the change.

Subd. 4. Any person, firm, partnership, association, or corporation subject to this section must file a notice of change of trustee of any trust funds with the same county auditor who should receive the annual report required by this section within 30 days after the change of trustees.

Subd. 5. Any person, firm, partnership, association, or corporation knowingly violating the provisions of this section shall be guilty of a misdemeanor and for a second offense shall be guilty of a gross misdemeanor.

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Subd. 4 6. This section shall not apply to cemeteries, mausoleums, or columbariums owned and operated by a municipality, church, religious corporation or religious association.

Sec. 7. [306.762] **PERMANENT RETENTION OF RECORDS.**

Subdivision 1. Any cemetery association and any person, firm, partnership, association, and corporation owning or operating a mausoleum or columbarium, or constructing or selling space in a mausoleum or columbarium to be built, required to deposit trust money in a permanent care and improvement fund must, in Minnesota, permanently retain records of the trust account. The records of the trust account must include the name of the person purchasing the cemetery lot or burial space, the name of the living representative of that person if one was designated, and the location of the money including any identifying numbers and the name and address of the institution in which the money is held.

Subd. 2. Any person, firm, partnership, association, or corporation knowingly violating the provisions of this section shall be guilty of a misdemeanor and for a second offense shall be guilty of a gross misdemeanor.

Subd. 3. This section shall not apply to cemeteries, mausoleums, or columbariums owned and operated by a municipality, church, religious corporation, or religious association.

Sec. 8. Minnesota Statutes 1986, section 306.77, is amended to read:

306.77 FUNDS, IN CARE OF TRUST COMPANY.

The board of trustees of any such association shall, by a resolution adopted by a vote of at least two-thirds of its members, designate and appoint one or more trust companies organized under the laws of this state, or a board consisting of at least three individuals, to act as trustee or trustees of such fund. In case more than one trust company shall at any time be so designated and appointed, the board of trustees shall, from time to time, apportion all moneys available for the fund between these trust companies in such proportion as such board by vote may direct or determine. This designation and appointment shall be evidenced by a written instrument duly executed by the proper officers of the association under its corporate seal. Each trust company and individual so designated and appointed shall qualify as such trustee by filing written acceptance of such designation and appointment with the secretary of the association. All instruments of designation and appointment, and any revocation of the same, and the written acceptances shall be recorded at length by the secretary of the association in its corporate records. The appointment of any such trustee may be revoked by the board of trustees of the association at any time by a vote of two-thirds of its members. No trustee of such fund shall be liable as such except for neglect or willful default in the discharge of duties.

Seven days before any portion of the principal of a permanent care and improvement fund is transferred or withdrawn from its present location, the

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board of trustees must, in writing, notify the county auditor of such activity and of the destination of the funds. Any person, firm, partnership, association, or corporation knowingly violating the provisions of this section shall be guilty of a misdemeanor and for a second offense shall be guilty of a gross misdemeanor.

Sec. 9. Minnesota Statutes 1986, section 306.773, subdivision 1, is amended to read:

Subdivision 1. Every cemetery association heretofore or hereafter organized under the laws of this state which has provided for a permanent care and improvement fund administered by one or more trust companies acting as trustee or trustees of such fund, pursuant to the provisions of section 306.77, may, when the principal of such fund remaining after withdrawals therefrom for purposes authorized by law shall have reached an amount exceeding \$100,000 \$350,000, by resolution adopted by a vote of at least two-thirds of the members of its board of trustees at any authorized meeting of the board, authorize the trust company or trust companies acting as such trustee or trustees, in investing, reinvesting, exchanging, and managing such fund, to acquire every kind of investment, specifically including, but not by way of limitation, bonds, debentures, and other corporate obligations, and corporate stocks, which any ordinarily prudent person of discretion and intelligence, who is a trustee of the property of others, would acquire as such trustee.

Sec. 10. [306.90] CONSTRUCTION PERFORMANCE BOND.

Subdivision 1. Any person, firm, partnership, association, or corporation selling burial space in a mausoleum or columbarium before the mausoleum or columbarium is completed and usable shall obtain a performance bond in an amount sufficient to cover all construction costs associated with building the mausoleum or columbarium as promised at the time of sale. The bond shall be executed by an insurance company authorized to do business in Minnesota which has sufficient net worth to satisfy the amount of the bond and which has given consent to be sued in Minnesota.

Subd. 2. The bond shall be in favor of the state for the benefit of any purchaser who suffers a loss due to failure of the seller to deliver the promised structure. Any person claiming against the bond may file a claim with the surety, and if the claim is not paid, may maintain an action based on the bond and recover against the surety. The attorney general may file a claim with the surety on behalf of any purchaser. The surety shall pay the amount of the claims to the attorney general for distribution to the claimants entitled to restitution and shall be relieved of liability to that extent. If the claim is not paid, the attorney general may maintain an action against the surety on behalf of the claimants.

Subd. 3. The aggregate liability of the surety to all persons buying space in the mausoleum or columbarium shall not exceed the amount of the bond.

Subd. 4. Any person, firm, partnership, association, or corporation selling

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burial space in a mausoleum or columbarium before the mausoleum or columbarium is completed and usable shall file a copy of the performance bond with the county auditor of the county in which the mausoleum or columbarium will be built 30 days before the entity may sell space and begin construction. There shall be paid to the county auditor a filing fee of \$15 for each copy of the bond.

Subd. 5. Any person, firm, partnership, association, or corporation which has begun selling burial space in a mausoleum or columbarium before the mausoleum or columbarium is complete and usable as promised at time of sale, and before the effective date of this section, shall file a copy of the performance bond 30 days after the effective date of this section or cease all sales. The performance bond must meet the criteria in this section except that if the structure is partially completed, the bond must cover only the remaining construction costs necessary to complete the structure as promised at time of sale. There shall be paid to the county auditor a filing fee of \$15 for each copy of the bond.

Subd. 6. This section shall not apply to cemeteries, mausoleums, or columbariums owned and operated by a municipality, church, religious corporation, or religious association.

Subd. 7. Any person, firm, partnership, association, or corporation knowingly violating the provisions of this section shall be guilty of a misdemeanor and for a second offense shall be guilty of a gross misdemeanor.

Sec. 11. [306.93] CERTIFIED LETTER.

Subdivision 1. Any person, firm, partnership, association, or corporation which is subject to section 306.761 is required to file, by March 31 if operating on a calendar year basis and by 90 days after the end of the fiscal year if operating on a fiscal year basis, either its independently audited financial statement or a certified letter prepared by a certified public accountant which reviews the permanent care and improvement fund and construction performance bond of the cemetery, mausoleum, or columbarium. The letter or audited financial statement must, at a minimum, review whether the amounts in the entity's permanent care and improvement fund and construction performance bond comply with the requirements of this chapter. The independently audited financial statement or the certified letter must be filed with the county auditor of the county in which the cemetery, mausoleum, or columbarium is situated. There shall be paid to the county auditor a filing fee of \$15 for each certified letter or independently audited financial statement.

Subd. 2. Any person, firm, partnership, association, or corporation knowingly violating the provisions of this section shall be guilty of a misdemeanor and for a second offense shall be guilty of a gross misdemeanor.

Sec. 12. [306.95] DUTIES OF THE COUNTY AUDITOR.

Subdivision 1. Any county auditor finding evidence of violations of this chapter when reviewing reports or bonds filed by any person, firm, partnership, association, or corporation operating a cemetery, mausoleum, or columbarium must notify the state auditor's office in a timely manner of such finding.

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Subd. 2. Every county auditor must file an annual letter by May 31 with the state auditor's office disclosing whether the county auditor has detected any indications of violations of this chapter in the reports or bonds which were filed or should have been filed. If the county auditor has not detected from the information supplied to the county auditor any such indications, that fact must be reported to the state auditor in the annual letter.

Sec. 13. [306.97] DUTIES OF THE STATE AUDITOR.

Upon notification from a county auditor of indications of violations of this chapter the state auditor shall make an independent determination of whether a violation of the provisions in this chapter is occurring or is about to occur, and in those instances in which the state auditor finds such evidence the state auditor shall conduct an independent audit of the cemetery, mausoleum, or columbarium in accordance with generally accepted auditing standards and shall inform the appropriate agency of any finding of misconduct. The person, firm, partnership, association, or corporation audited under this section by the state auditor shall reimburse the state auditor for expenses incurred in conducting the audit within 30 days after the state auditor's office submits its expenses. Interest at the rate established in section 549.09 shall accrue on the outstanding balance starting on the 31st day after the state auditor demands expenses.

Approved April 13, 1988

CHAPTER 510—S.F.No. 1882

An act relating to education; requiring school districts to make certain accommodations for lactose intolerant children, if requested; proposing coding for new law in Minnesota Statutes, chapter 124.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [124.646] LACTOSE REDUCED MILK.

If a nonpublic school or school district

(1) receives school lunch aid under section 124.646 or participates in the school breakfast program; and

(2) receives a written request from the parent of a pupil who is lactose intolerant, the nonpublic school or school district shall make available lactose reduced milk; milk fortified with lactace in liquid, tablet, granular or other form; or milk to which lactobacillus acidophilus has been added for the pupil. Notwithstanding any law, local ordinance, or local regulation to the contrary, a school may pour or serve portions of any product required by this section from a large container of the product at the time and place the pupil is being served.

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