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PREPAID FUNERAL CONTRACTS

House Bills 5172 and 5173
Sponsor: Rep. Gary L. Randall
Committee: Business & Finance

Complete to 1-10-94

A SUMMARY OF HOUSE BILLS 5172 AND 5173 AS INTRODUCED 11-2-93

The Cemetery Regulation Act regulates secular private cemeteries and, among other things, requires licensees and their agents who sell cemetery merchandise or services to establish a "merchandise trust account" and to deposit a portion of the gross proceeds received from the sale of burial containers into it. The amount deposited generally must be the greater of at least \$100 per container or 130 percent of the total costs of the containers covered by the trust. The act imposes various restrictions on the establishment of an account and provides for the use of amounts deposited into it. House Bill 5172 would delete this language from the act (MCL 328.214 and 328.215). House Bill 5173 would amend the Prepaid Funeral Contract Funding Act (MCL 456.536) to revise the definition of "funeral goods," make changes to provisions governing prepaid funeral contracts, and define the term "physical delivery and retention." Neither bill could take effect unless both were enacted.

Under House Bill 5173, funeral goods would include cemetery burial vaults or other outside containers, markers, monuments, urns and merchandise items used for the purpose of memorializing a decedent. (Currently, this term is defined as "items of merchandise sold or offered for sale or lease to consumers which will be used in connection with . . . [the] final disposition of human remains"; however, the act specifically excludes from the definition cemetery burial vaults or other outside containers, markers, etc. used for memorializing a decedent and placed on or in proximity to a place of interment, entombment or inurement which are sold by a cemetery--and a portion of their cost deposited into a merchandise trust account--under the provisions of the Cemetery Regulation Act.)

The act currently defines a "prepaid funeral contract" as a contract requiring payment in advance for funeral services or for funeral goods, "physical delivery and retention of which would occur after death under a guaranteed price contract or a nonguaranteed price contract." A prepaid funeral contract, however, does not include a contract for the sale of goods or services which is entered into after the death of "the person for whose benefit the goods or services are acquired." The bill would revise this to say that a prepaid funeral contract would not include a contract for the sale of goods or services which is entered into after the death of a "contract beneficiary." In addition, the bill specifies that a prepaid funeral contract would include a contract where physical delivery and retention of the funeral goods had not been made prior to the death of the contract beneficiary and, as such, the money paid pursuant to the contract would be "subject to [the] act."

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The bill would define "physical delivery and retention" to mean the actual control and possession of funeral goods that had been permanently relinquished by a contract seller or provider, or the agent of either, to the contract buyer or the contract beneficiary. Physical delivery and retention would not occur, however, if the contract seller or provider did either of the following:

- Arranged or induced the buyer to arrange for the storage or warehousing of funeral goods ordered pursuant to a prepaid funeral contract, with or without evidence that legal title had passed; or

- Acquired or reacquired actual or constructive possession or control of funeral goods after their initial delivery to the contract buyer or contract beneficiary.