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## REVISE CEMETERY LAWS

House Bills 5187 - 5189

Sponsor: Rep. Robert Brackenridge

Committee: Business & Finance

Complete to 1-25-94

### A SUMMARY OF HOUSE BILLS 5187 - 5189 AS INTRODUCED 11-4-93

The bills would substantially revise the laws governing cemetery and funeral operators and their business practices. Among other things, the bills would impose more stringent rules governing so-called "pre-need" funeral contracts offered by persons licensed under the Cemetery Regulation Act, revise the standards governing trusts established to pay for cemetery goods and services, require sellers of cemetery/funeral contracts to provide a refund of up to 100 percent on these purchases in certain situations, increase enforcement duties of the director of the Department of Commerce--the current regulator of licensees--and provide for the commissioner of the Financial Institutions Bureau to audit those licensed under the acts. The bills would take effect January 1, 1994, and none of them could be enacted unless all of them were. The following is a brief summary of the major provisions of House Bill 5187 and a more detailed discussion of House Bills 5188 and 5189.

House Bill 5187 would amend the Cemetery Regulation Act (MCL 456.522 et al.) to do the following:

**\*\* Revise requirements for applying and qualifying for a license to establish, obtain a controlling interest in, or operate a cemetery.** Currently, to obtain a cemetery license, a person must submit with an application a \$500 fee, and the commerce department director must approve the application if he or she believes the applicant is qualified "by character, experience, and financial responsibility to control and operate the cemetery in a legal and proper manner" and that the public interest will not be jeopardized if the license is granted. The bill, instead, specifies that a cemetery license would have to be issued to a person who 1) completed an application and paid a nonrefundable application processing fee of \$500; 2) could prove he or she had an endowed care trust fund balance of at least \$25,000; 3) demonstrated the financial responsibility of each owner, officer, partner or shareholder owning ten percent or more of the stock; 4) could prove that all trust fund obligations under the act or the Prepaid Funeral Contract Funding Act had been fully met or, if not, that a plan to cure deficiencies had been approved by the department; 5) provided a statement of "good moral character" for each owner, officer, subsequent officer, partner or shareholder owning ten percent or more of the stock; 6) and provided a signed copy of each applicable trust fund agreement.

**\*\* Replace current provisions governing deposit requirements pertaining to a cemetery merchandise trust fund account.** At present, a licensed seller of "cemetery goods" (generally, burial containers) must deposit into a trust fund account not less than \$100 per vault or outside container or 130 percent of the total costs of the containers covered by a trust. Certain restrictions apply in establishing such trusts and to the way deposits into them

may be used. After the bill's effective date, cemetery services sold on a pre-need basis would be subject to a trust requirement of 100 percent of retail price, while cemetery merchandise sold on a pre-need basis would be subject to a trust requirement of at least 150 percent of the wholesale costs of the merchandise. In cases where both goods and services were sold as part of the same transaction or series of transactions, the relative prices of both would have to reflect their actual cost and could not be manipulated so as to allocate a disproportionate share of the total price to cemetery goods. The bill also would establish new rules governing the use by licensees of both trust fund deposits and the earnings on them.

**\*\* Require, beginning July 1, 1994, and no later than July 1 annually thereafter, that persons who must maintain an endowed care trust fund or merchandise trust fund under the act would have to provide to the Department of Commerce a report of limited review prepared by an independent certified public accountant covering the prior calendar year. The report would have to contain an acknowledgement by the cemetery owner or other person that he or she had complied with the act's provisions governing deposits, investment uses, withdrawal procedures and any other requirements. The report would have to contain certain specific information, such as the total amount required to be deposited into a trust fund by the act and the actual amount received into it during a report year; how much had been received from buyers of cemetery goods and services but not deposited as of the end of the immediately preceding report year and during the current report year; names and addresses of the persons involved in the sales as well as of the financial institutions in which trust funds were deposited; and dates and amounts of withdrawals and how much interest was earned.**

**\*\* Provide for the commerce department to review reports of limited review of each licensee examined and, if potential violations existed, for the department director to have a report audited by the Financial Institutions Bureau (FIB). Provision would be made for the FIB to both audit and, if evidence existed, penalize a licensee suspected of committing violations; penalties could include suspension of a permit, registration or certificate of approval. The bill also would provide for the FIB to review the books and records of cemeteries or other persons pertaining to funds received from consumers that must be deposited into a special fund. Persons audited by the bureau would have to reimburse it for its actual costs in any audit, examination or review of its books and records, and fees imposed for such audits would have to be earmarked for the FIB.**

**\*\* Establish a refund policy covering purchases of pre-need cemetery/funeral goods and services. Currently, licensees are not obligated to refund the purchase price of goods and services under any circumstances. Under the bill, a buyer of pre-need cemetery services could cancel a contract at any time after it had been executed. Within ten days after a contract for services--which would include burial rights--was sold, a purchaser could cancel it for any reason and receive a 100 percent refund of its purchase price; after ten days, a buyer could cancel a services contract that had not been performed and receive a 90 percent refund of the purchase price plus any earnings on the amount deposited. When cemetery merchandise was bought under a pre-need contract, a purchaser would have an unrestricted right to cancel the contract with respect to any goods that had not been delivered up to 48 hours before the contract beneficiary had died and receive a refund of 90 percent of the**

purchase price plus amounts earned on deposit. This provision, however, would not apply to contracts involving the purchase of a cemetery marker if the seller had delivered and surrendered control over the marker to an independent third party who issued a receipt to the buyer. Further, a seller would have to deposit a specific percentage of the retail purchase price of cemetery goods either into a merchandise trust fund or a cancellation reserve fund (or would have to provide an irrevocable letter of credit for a portion of retail sales), and the seller could have access to these deposits as specified in the bill.

**\*\* Prohibit someone licensed under the act from 1) making a false or misleading statement, oral or written, regarding the sale of cemetery goods or services to induce a purchase; 2) advertising or offering goods or services for sale in a false, misleading, deceptive or unfair way; 3) practicing fraud or deception in obtaining an agreement to purchase goods or services; 4) refusing to disclose books and records as specified in the bill; 5) sponsoring or engaging in solicitations that were intimidating, vexatious, fraudulent, or misleading or that took unfair advantage of someone's "ignorance or emotional vulnerability"; 6) charging a marker installment fee except when the fee was charged to all persons and at the same rate; or 7) violating the act or a rule promulgated under it. The bill would require a licensee to furnish to anyone who inquired in person about burial rights or cemetery goods or services--before any discussion or selection of specific items occurred--a printed or typewritten list specifying the range of retail prices for all burial rights, cemetery goods or services. A licensee also would have to provide additional information to a purchaser such as the terms of payment on a contract, the name and address of the licensee, and other information.**

**\*\* Increase the penalties and fines that could be levied against violators of the act. A person or business who violated the act would be guilty of a felony (instead of a misdemeanor) and could be fined up to \$10,000 (rather than up to \$100) or imprisoned up to five years (instead of up to 90 days). For a second or subsequent violation, a person or business could be fined up to \$25,000 (instead of up to \$500) or imprisoned up to ten years (rather than up to one year), or both.**

**House Bill 5188 would amend the Occupational Code (MCL 339.1804 et al.) to revise provisions governing the ownership or operation of a funeral home by a person who owns or operates a cemetery. Currently, the act specifically prohibits a person who owns or operates, either directly or indirectly, a cemetery from owning, managing, supervising, operating or maintaining--directly or indirectly--a funeral home, nor may he or she permit an officer, agent or employee to own or maintain one. The bill, instead, would specifically authorize a person to own, manage, operate, etc. both a funeral home and a cemetery concurrently. However, the Department of Commerce could not issue a funeral home license to someone who owned, operated, had a controlling interest in, or was an officer, agent, or employee of a cemetery unless the person could show the department that all trust fund obligations (including those relating to an endowment care fund or merchandise trust account, an account funding prepaid funeral goods or services, a construction trust fund, or a development trust fund) had been fully met or unless any deficiency had been resolved to the department's satisfaction.**

However, a funeral home could not condition the sale of any funeral goods or services upon the purchase of any interment rights or cemetery goods or services from an affiliated cemetery. Further, the prices charged by a funeral home would have to be the same for all customers regardless of which funeral home or cemetery a customer did business with. The price for funeral or cemetery goods or services could provide for a discount for groupings of goods and services within separate categories of funeral or cemetery goods and services only, but discounts for goods and services could not be provided for both cemetery and funeral goods and services.

In addition, a funeral home that was owned in whole or in part by a cemetery or by a person who owned a cemetery could not offer any funeral goods or services unless the funeral home disclosed in a conspicuous manner to a customer on its general price list 1) that the customer was not obligated to do business with or purchase any funeral goods or services from a cemetery affiliated with the funeral home and 2) that a cemetery could not obligate a customer to do business with or purchase any funeral goods or services from a funeral home.

The bill would include a provision requiring each owner, officer or partner of a funeral home to be "of good moral character," and would apply this requirement to each owner, each officer and shareholder in a corporation who owned ten percent or more of the stock, and each partner in a partnership. The commerce department would have to deny an application for or renewal of a license for a funeral home unless its operator (who had an ownership interest in it) was a member of a funeral home's board of directors and was licensed to practice mortuary science.

The act currently lists a number of activities which, if committed, subject a violator to various penalties. The bill would add to this list the following:

- \* Being under the influence of an intoxicating liquor, controlled substance, or a combination of both in the presence of a dead human body or within immediate earshot or presence of the preceding's family or relatives.

- \* Failing, if a licensee under the act, to properly supervise activities regulated by the act that were performed by a resident trainee working under the licensee's supervision, or failing to prevent a nonlicensed person with whom the licensee was affiliated from performing activities requiring licensure under the act.

- \* Charging a casket handling fee except under circumstances where the casket fee was charged to all persons and at the same rate.

- \* Directly or indirectly contacting individuals or persons in hospitals, rest homes, nursing homes or similar institutions in order to solicit preneed funeral contracts or to make funeral or final disposition arrangements without first specifically being requested to do so by an individual. The direct or indirect hiring of others to do this would also be prohibited. The bill specifies, however, that general advertising or preneed solicitation--except where specifically prohibited by the act--would not be prohibited.

\* Failing to prove that all trust fund obligations under the Cemetery Regulation Act had been fully met or resolved to the department's satisfaction.

House Bill 5189 would amend the Prepaid Funeral Contract Funding Act (MCL 328.213 et al.) to revise provisions that require a special report to be prepared by an independent certified public accountant and submitted by certain licensees to the Department of Commerce to conform with the provisions of House Bill 5187 (regarding submission of such reports by July 1 of each year, examination of them by the department, auditing of licensees by the Financial Institutions Bureau, etc.). The bill also would revise the definition of "funeral goods" to make it consistent with the changes proposed in House Bill 5187.

When an alleged violation is committed by a licensee, the department currently must either refer the matter to the attorney general for civil or criminal prosecution or enforcement, or institute proceedings in compliance with the Administrative Procedures Act; under the bill, it also could issue a cease and desist order. A person who converts funds paid pursuant to a prepaid funeral contract to his or her own use or benefit is guilty of a felony and may, for each violation, be fined \$5,000 or imprisoned up to five years, or both. The bill would increase penalties for violations to a maximum fine of \$25,000, imprisonment for up to 10 years, or both. Other violations are misdemeanors punishable by fines of up to \$1,000, imprisonment for up to one year, or both. The bill would make these violations felonies, punishable by fines of up to \$10,000, imprisonment for up to five years, or both.