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REGULATING PREPAID FUNERAL CONTRACTS

House Bill 4581

Sponsor: Rep. Bob Brackenridge

Committee: Commerce

Complete to 7-9-97

A SUMMARY OF HOUSE BILL 4581 AS INTRODUCED 4-8-97

House Bill 4581 would amend the Prepaid Funeral Contract Funding Act, Public Act 255 of 1986. The bill would clarify registrants' rights and responsibilities under the act (particularly with regard to escrow accounts that are set up for guaranteed and nonguaranteed price contracts), up date the registration and regulatory oversight procedures of the Department of Consumer and Industry Services, and increase penalties for noncompliance with the act. The bill would take effect January 1, 1998.

Regulatory Oversight Update. Under current law, a person cannot sell, provide, or promise prepaid funeral contracts unless he or she is registered with the Department of Consumer and Industry Services. The bill would declare the expiration date of all registrations to be September 30, and make all certificates of registration valid for three years. The bill would require that applications for registration be accompanied by ownership documentation, including articles of incorporation, a corporate certificate of assumed name, a corporate certificate of copartnership, and a certificate of assumed name. The bill would retain the current registration renewal fee of \$30 and would clarify that renewal applications must be accompanied by the sworn statement or a special report. The bill would also specify registration renewal periods for those who did not file the required sworn statement or special report: \$30 with a \$20 late fee if filing within 60 days before the certificate expired, or \$120 with a \$20 late fee if filing within 60 days after the expiration of the certificate. Further, the bill would specify that the department could deny registration to those who violated the act or Article 18 of the Occupational Code, which regulates the practice of mortuary science.

Escrow Accounts. The bill would rewrite provisions requiring registrants to file a report each three years prepared by an independent certified public accountant. It specifies that beginning July 1, 1998 and then no later than July 1 of each succeeding year, registrants who serve as escrow agents or who deposit funds with escrow agents would be required to submit a special annual report on a prescribed form that would have to contain information that demonstrates compliance with the act regarding the escrowing of funds; the names and address of depositories, the account numbers, and escrow dates; and, a signed assurance statement by a licensed independent certified public accountant that the information is fairly presented. The bill would require that applicants submit the report before their certificate of registration expired (on September 30), even when they did not seek renewal of their registration. The bill would require the department to examine all special escrow reports, to audit any determined to be questionable,

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and it would require any audited registrant to reimburse the department for the actual cost of the audit, examination, or review of books and records.

Penalties. Under current law, if the department determines that a violation of the act has occurred, the department is required to refer the matter to the attorney general for prosecution or enforcement, or to institute administrative proceedings. Under the bill, the department also would be able to issue a cease and desist order. Further, House Bill 4581 would increase fines and penalties for violations of the act. Specifically, the bill states that a person who converts funds from a prepaid funeral contract to his or her own benefit would be guilty of a felony, punishable by a fine of up to \$25,000 (increased from \$5,000) or imprisonment of not more than ten years (increased from five years), or both. Those who violated other provisions of the act also would be guilty of a felony (instead of a misdemeanor) punishable by a fine of up to \$10,000 (increased from \$1,000) or imprisonment for not more than five years (instead of one year), or both.

MCL 328.214 et al.

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