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BILL ANALYSIS

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Senate Bill 674 (as enacted)

House Bill 6036 (as enacted)

Sponsor: Senator Jud Gilbert, II (S.B. 674)

Representative Michael Sak (H.B. 6036)

Senate Committee: Economic Development and Regulatory Reform

House Committee: Regulatory Reform

PUBLIC ACT 478 of 2008

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Date Completed: 1-20-09

CONTENT

Senate Bill 674 amended the Cemetery Regulation Act to do the following:

- Require the Cemetery Commissioner to promulgate rules governing endowment care trusts, merchandise trust accounts, and related trust funds.
- Require a cemetery to establish an endowment and perpetual care trust fund with at least one regulated financial institution with trust powers that will be the trustee of the portion of the fund allocated to it.
- Require a cemetery to enter into irrevocable trust agreements with each trustee.
- Require at least \$50,000 to be deposited into a trust fund before any burial or entombment rights are sold.
- Require notice to the Commissioner before 30% of perpetual care funds are moved from an account or involved in a financial transaction.
- Require money in a merchandise trust account to be deposited into a regulated financial institution, and require records to be kept in Michigan.
- Increase from \$500 to \$1,500 the investigation or filing fee for a permit to establish a cemetery or for a certificate of approval for a change of control or purchase of a cemetery.
- Require the endowment and perpetual care trust fund for a

cemetery to be escrowed for six months after its sale, transfer, purchase, or acquisition.

- Specify circumstances, including criminal convictions, that may make a person ineligible to become a cemetery owner or hold a controlling interest in a cemetery.
- Require the Commissioner to consider certain factors, including bankruptcy, tax delinquency, and past compliance with cemetery-related licensing requirements, in determining whether to allow a person to become a cemetery owner.
- Expand the actions the Commissioner may take for noncompliance with requirements for a certificate of approval for the purchase or change of control of a cemetery.
- Require cemeteries' annual reports to include sworn statements and specified information; and authorize the Commissioner to impose an administrative fine for failure to report in a timely manner.
- Provide for the investigation of a person directly or indirectly controlling a cemetery, when a permit application is submitted.
- Require the registration of each person owning or managing a cemetery, and include actions taken by cemetery owners, directors, members, and affiliated persons among the grounds for administrative sanctions.

- **Authorize the Commissioner to control, dispose of, transfer, or require acceptance of responsibility for, abandoned cemeteries.**
- **Authorize the Commissioner to petition for a court order to issue subpoenas to any person in regard to an investigation or hearing.**
- **Expand the authority of a receiver or conservator appointed for a cemetery.**
- **Increase criminal penalties for a violation of the Act.**

The bill also repealed sections of 1855 and 1869 cemetery corporation statutes governing cemetery corporations' endowment funds.

House Bill 6036 amended the Revised Judicature Act to authorize circuit court judges to appoint receivers and conservators in matters relating to cemeteries and other entities regulated under the Cemetery Regulation Act and the 1855 and 1869 cemetery corporation statutes.

The bills were tie-barred and took effect on January 12, 2009.

Senate Bill 674

Rules

The Cemetery Commissioner is the Director of the Department of Energy, Labor, and Economic Growth or the Director's designee. The Cemetery Regulation Act previously allowed the Commissioner to promulgate rules to implement and administer the Act, including rules regarding the maintenance of records relative to the financial aspects of cemeteries; requirements for permit and registration applications; and procedures governing the conduct of contested cases under the Act.

The bill requires the Commissioner to promulgate these rules, as well as rules regarding the following:

- The establishment, control, record-keeping, and auditing of endowment care trusts, merchandise trust accounts, and related trust funds.
- Requirements for trust agreements, endowment care trusts, and merchandise trust accounts.

- The full disclosure of the source, nature, and amount of consideration to be used in the sale or transfer of a cemetery.
- Submission of annual reports as required by the Act, including requests for extensions.

Also, the rules for permit and registration applications must include the good moral character and financial security, responsibility, and stability of people having an interest in a cemetery and all people with decision-making authority who are employed by an applicant, registrant, or permittee. (Under the bill, "good moral character" means that term as defined and determined under Public Act 381 of 1974, which concerns occupational licenses for former offenders. In that Act, the term refers to the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.)

Within 12 months after the bill's effective date, the Commissioner must update any existing rules that have to be changed due to the bill's amendments.

Endowment & Perpetual Care Trust Fund

Previously, the Cemetery Commissioner had to require each cemetery to establish and maintain an irrevocable endowment care fund, as required by Section 35a of Public Act 87 of 1855 (which provides for cemetery corporations) or Section 7a of Public Act 12 of 1869 (which deals with rural cemetery corporations). Under the bill, the Commissioner must require each cemetery to establish and maintain an irrevocable endowment and perpetual care trust fund.

By January 1, 2010, the trust fund must be established or reestablished with one or more regulated financial institutions with trust powers that will be the trustee of the portion of the fund allocated to it. The fees and costs associated with the regulated financial institution may be paid from the principal of the trust according to the terms of the trust agreement.

The cemetery must enter into irrevocable trust agreements with each trustee. The agreements must provide that the investing of the assets is subject to the Michigan Prudent Investor Rule as set forth in Sections 1501 to 1511 and Section 7302 of the Estates and Protected Individuals Code

(EPIC), except that the agreements may not be modified or amended, as allowed under Sections 1502(2) and 7302, to provide less than the standard of care in the prudent investor rule.

(Sections 1501 to 1511 of EPIC contain the Michigan Prudent Investor Rule, which requires a fiduciary to invest and manage assets held in a fiduciary capacity as a prudent investor would, taking into account the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate. To satisfy this standard, the fiduciary must exercise reasonable care, skill, and caution. Under Section 1502(2), the rule may be expanded, restricted, eliminated, or otherwise altered by the provisions of the governing instrument.

Section 7302 requires a trustee, except as otherwise provided by the terms of the trust, to act as a prudent person would in dealing with the property of another, including following the standards of the Michigan Prudent Investor Rule. If the trustee has special skills or is named trustee on the basis of representation of special skills or expertise, the trustee is under a duty to use those skills.)

The cemetery must give the Commissioner written notice at least 14 days before the appointment of a trustee. The cemetery may remove and replace a trustee at any time, subject to the consent of the Commissioner and the terms of the cemetery's agreement with the trustee.

If a cemetery establishes its irrevocable endowment and perpetual care trust fund with one or more regulated financial institutions with trust powers, and does not reserve, retain, or otherwise exercise any power of direction of specific investments, the cemetery will not be liable for any deficiencies in the trust caused by the performance of the investments.

A cemetery may reserve the right to recommend to a trustee an investment advisor, registered with the Securities and Exchange Commission under the Federal Investment Advisers Act, to advise the trustee in its decisions on asset allocation, investment managers, and investments. A trustee is not required to heed that advice. Alternatively, and at all times subject to the

Michigan Prudent Investor Rule, a cemetery may direct the trustee to make certain investments, provided the trust is a named beneficiary of fiduciary liability insurance covering the cemetery's or other fiduciaries' actions in an amount equal to 100% of the amount directed by the cemetery. The Commissioner must be given proof of that coverage at least annually, before any direction is given. The Commissioner or the Attorney General may prosecute a claim against the fiduciary liability insurance on behalf of the trust. The trustee will not be liable, or otherwise punishable, for complying with the direction of investments but must retain custody of them.

Beginning on the bill's effective date, an endowment and perpetual care trust fund must be created by the deposit of at least \$50,000 into the fund before any sale of burial rights, entombment rights, or columbarium rights is made.

The amounts deposited must be held in perpetuity by the trustee, and may be distributed to the cemetery only upon a court order following petition by the Commissioner. Interest or income may be used only for endowment care. Except as provided below, money in the trust fund may not be commingled with any other money or trust accounts.

Bundling of funds held in trust or escrow for each cemetery or among cemeteries with common ownership is permissible only under the following circumstances:

- Each cemetery maintains separate trust and escrow account records pursuant to statutory and rule requirements for endowed care, merchandise, or prepaid funeral and cemetery sales.
- A cemetery, or cemeteries with common ownership, has all of its trust or escrow accounts on deposit with one or more regulated financial institutions with trust powers in Michigan.
- The trustee, or the trustee's trading block nominee, holds title in the name of each individual trust or escrow account for that trust or account assets, and the assets are promptly settled back to the individual accounts by the trustee in the ordinary course of business.

Other comparable methods of bundling or pooling of trust or escrow funds for

investment purposes may be permissible upon terms and conditions approved in writing by the Commissioner, after he or she is reasonably satisfied that the title to, character of, and accounting for the funds held in trust or escrow are preserved.

Each month, at least 15% of all proceeds received during the previous month from the sales of burial, entombment, or columbarium rights must be deposited with the trustee for inclusion in the endowment and perpetual care trust fund. No total deposit for a single burial right sale or assignment may be less than \$20. A cemetery may apply to the Commissioner for a modification of the minimum deposit requirement. The Commissioner must take testimony and investigate as he or she considers necessary. If the Commissioner determines that the applicant's endowment and perpetual care trust fund will generate sufficient interest to meet all current costs of keeping the applicant's cemetery in good condition, the Commissioner may modify the minimum deposit requirement. A cemetery applying for modification must be assessed the actual costs for the Commissioner's examination and investigation. Excess sums on deposit in the fund may be applied by the cemetery against future deposits and must be reported annually to the Commissioner.

Interest or income from the money in an endowment and perpetual care trust fund must be used exclusively for endowment and perpetual care. No portion of the interest or income may be used directly or indirectly for salaries or other payments to the officers, directors, partners, members, or managers of the entity owning the cemetery. Withdrawals of accumulated interest or income from the trust fund may be authorized by the trustee, and must be documented as provided by rule of the Commissioner. A cemetery must maintain records showing that interest from the trust fund is used exclusively for endowment and perpetual care. The trustee is not responsible for ascertaining that amounts paid over to the cemetery are spent for these limited purposes.

At least seven days before 30% of the funds in an endowment and perpetual care or perpetual care fund are moved from an account or otherwise engaged in some type of financial transaction or investment, the cemetery owner or operator must notify the

Commissioner of the transaction. Failure to comply with this requirement will be considered a violation of the Act.

The bill defines "regulated financial institution" as a State or nationally chartered bank, savings and loan association or savings bank, credit union, trust company, or other State or federally chartered lending institution, or a regulated affiliate or regulated subsidiary of any of those entities.

"Cemetery owner" means the person who has title to the cemetery.

The bill defines "operator" as any of the following:

- A person, an officer of a person, a partner of a person, or a member or manager of a limited liability company (LLC), who holds more than 50% voting rights in a cemetery owner.
- A person who is a member of the board of directors of a cemetery owner, a partner in a cemetery owner, or a member or manager of an LLC that is a cemetery owner.
- An administrative official of a cemetery owner or the person holding more than 50% voting rights in a cemetery owner, comparable to a chief administrative officer, chief executive officer, or chief financial officer.

The bill defines "endowment and perpetual care" as all general work necessary to keep the cemetery property in a presentable condition at all times, including the cutting of grass at reasonable intervals; the raking, cleaning, filling, seeding, and sodding of graves; the replacement, pruning, or removal of shrubs and trees in order to assure access to interment rights; and the repair and maintenance of enclosures, buildings, drives, walks, and the various memorial gardens. Previously, this definition applied to "endowment care".

Permit to Establish a Cemetery

Under the Act, a person who wishes to establish a cemetery must file an application for a permit with the Commissioner, and the application must be accompanied by an investigation fee. The bill increased the fee from \$500 to \$1,500, and describes it as nonrefundable.

The Act requires the Commissioner to conduct an investigation after receiving an application. Previously, the investigation had to pertain to the physical plans, the community need for the planned cemetery, and pertinent information concerning the applicant's experience, financial stability, ability, and integrity. If the applicant was not an individual, the general manager and principal owners had to be investigated. Under the bill, the investigation must pertain to the physical plans, the community need, and the applicant's experience, financial security, responsibility, and stability, ability, and good moral character. If the applicant is not an individual, the Commissioner must investigate the directors, officers, partners, members, or any person occupying a similar status or performing similar functions, or an affiliated person.

The bill requires a cemetery corporation to give the Commissioner immediate notice of any change in its directors, officers, partners, members, affiliated persons, or any people occupying a similar status or performing similar functions. If the Commissioner determines, after investigation, that any director, officer, partner, member, affiliated person, or similar person does not have suitable experience, ability, good moral character, and financial security, responsibility, and stability, the Commissioner must order the cemetery company to void the appointment of that person.

The bill defines "affiliated person" as a person directly or indirectly controlling a cemetery. The term includes all of the following:

- A person who holds at least a 50% interest in a cemetery.
- A person who is a member of the board of directors or a cemetery owner, a partner in a cemetery owner, or a member or manager of a limited liability company that is a cemetery owner.
- A person who is an officer of the person who holds at least a 10% interest in a cemetery corporation or other entity having control of the cemetery.

Cemetery Purchase or Change of Control

Certificate of Approval. Under the Act, if a person proposes to purchase or otherwise acquire a controlling interest in an existing

cemetery company, the person must apply to the Commissioner for a certificate of approval of a proposed change of control of the company. The application must include the name and address of the proposed new owner or operator and other information the Commissioner requires.

Under the bill, the application also must contain a sworn statement from the seller attesting to the assets and liabilities related to the cemetery, including all trust accounts and their value, as well as sworn statements from both the seller and the purchaser stating who will assume those assets and liabilities. In addition, the application must include a sworn statement that the principal from the endowment and perpetual care trust accounts will be held in escrow for six months from the latest of the following:

- The Commissioner's approval of the application.
- The close of the sale of a controlling interest in the cemetery owner or the sale of a substantial portion of the owner's assets.
- The transfer of title of the cemetery.

The Commissioner must issue a certificate of approval for a change of control only after he or she is satisfied that the proposed new owner or operator is qualified by good moral character, experience, and financial stability, responsibility, and security to control and operate the cemetery in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in ownership and management. (Previously, the Commissioner had to be satisfied that the proposed new cemetery owner was qualified by character, experience, and financial responsibility and that the public interest would not be jeopardized.)

The Act requires the application for a purchase or change of control to be accompanied by an initial filing or investigation fee. The bill increased the fee from \$500 to \$1,500.

Sanctions. Previously, if a transfer of controlling interest was found to have taken place without prior Commissioner approval, the Commissioner could suspend or revoke the registration of the cemetery, and take other appropriate action until it demonstrated compliance with these

requirements. Under the bill, the Commissioner may do any of the following:

- Suspend or revoke the cemetery's registration.
- Issue a cease and desist order or other order requiring a person immediately to take remedial action as prescribed by the Commissioner.
- Seek injunctive or other equitable action from a court of competent jurisdiction.

The Commissioner also may take other appropriate action until the person purchasing or otherwise acquiring a controlling interest in an existing cemetery, purchasing an existing cemetery, or otherwise acquiring the cemetery demonstrates compliance or divests itself of any interest or control of the cemetery.

("Controlling interest" means the capability to decide the operating and financial policies of the cemetery company or to select the officers or directors with majority control of the company.)

Escrow Account. Under the bill, after the sale, transfer, purchase, or acquisition of a controlling interest in a cemetery is completed, the endowment and perpetual care trust fund for it must be escrowed into an account for the first six months of the new ownership. This requirement may not be construed to prevent or prohibit the cemetery from receiving interest or income from the trust fund to maintain the cemetery.

Use of Trust Fund. The bill prohibits the new owner of an existing cemetery from using the endowment and perpetual care trust fund of a cemetery being sold in any manner to purchase or otherwise finance the purchase of that cemetery from the previous owner.

Eligibility

Under the bill, notwithstanding any other provisions governing eligibility as a cemetery owner, a person may be ineligible to become a cemetery owner or hold a controlling interest in a cemetery company if any of the following circumstances exist:

- The person has been convicted of a felony under the laws of this State, any other state, or the United States.

- The person has been convicted of a misdemeanor involving gambling, theft, dishonesty, or fraud in any state, or has been convicted under a local ordinance in any state involving gambling, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in Michigan.
- The person has knowingly submitted an application for a license under the Act that contains false information.
- The person lacks the requisite character, experience, and financial responsibility to control and operate the cemetery in a legal and proper manner, as determined by the Commissioner, and the proposed ownership or change in ownership and management is likely to jeopardize the public.

The bill requires the Commissioner, in determining whether to allow a person to become a cemetery owner, also to consider all of the following:

- The past and present compliance of the person and its affiliated person with cemetery or cemetery-related licensing requirements, cemetery-related arrangements, or compacts with the State of Michigan or any other jurisdiction.
- Whether the person has filed, or had filed against it, a bankruptcy proceeding or ever has been involved in any formal process to adjust, defer, suspend, or otherwise work out the payment of any debt.
- Whether the person has been served with a complaint or other notice filed with any public body regarding a payment of any tax required under Federal, State, or local law that has been delinquent for one year or more.
- Whether the person has a history of noncompliance with any regulatory requirements in this State, any other jurisdiction, or the Federal government.

In addition, the Commission must consider whether the person has been indicted, charged, arrested, or convicted, has pleaded guilty or no contest, or has forfeited bail concerning any felony or misdemeanor offense under the laws of any jurisdiction, excluding traffic violations, unless the offense has been expunged, pardoned, or reversed on appeal or otherwise nullified as determined by the Commissioner.

Merchandise Trust Account

Under the Act, a cemetery that is required to register, and an agent who is authorized by a cemetery or acting on its behalf under an agreement or sales contract to sell cemetery merchandise or services, must establish a merchandise trust account and deposit a percentage of the gross proceeds received from sales, as determined by the Commissioner.

Previously, the account had to be maintained exclusively for the deposit of the money into a State or national bank, a State or federally chartered savings and loan association, or a trust company. Under the bill, the account must be maintained exclusively for the deposit of money into a regulated financial institution. The bill also requires that all documents, reports, and records regarding the trust be kept in Michigan.

The bill defines "merchandise trust" as trusts required by Section 16 of the Act (which contains these provisions), composed of deposits made in connection with merchandise and service sales made before January 1, 2005.

Investigations; Remedies

The Act authorizes the Commissioner to hold hearings, administer oaths, take testimony under oath, and make written requests for the appearance and testimony of witnesses and the production of documents. The bill also authorizes the Commissioner to conduct investigations.

Previously, upon a witness's refusal to appear, testify, or submit documents after a written request, the Commissioner or a party to a contested case could apply to the Ingham County Circuit Court for a subpoena or a subpoena duces tecum (ordering a person to appear and produce documents). The bill deleted this language.

The bill authorizes the Commissioner to petition the Ingham County Circuit Court for an order to issue, as part of his or her general investigative and enforcement authority, a subpoena or a subpoena duces tecum relating to any person's appearance and testimony and for the production, examination, or copying of books, papers, or other documents pertaining to an

investigation or hearing within the scope of the Commissioner's authority under the Act.

Under the bill, the failure to obey a subpoena issued to any person by the Commissioner through a court order may subject the person to punishment by the court as contempt of court. Also, any person who is required by the Act to take any oath or affirmation and who knowingly makes any false oath or affirmation will be considered to have committed the crime of perjury. (Under the Michigan Penal Code, any person who is required by law to take an oath, and who swears falsely, is guilty of the felony of perjury, which is punishable by up to 15 years' imprisonment (MCL 750.423).)

Previously, when it appeared to the Commissioner that a person or registrant had violated the Act or a rule promulgated or order issued under it, the Commissioner could issue a cease and desist order; issue an assurance of discontinuance; and/or bring a circuit court action to enforce compliance. Under the bill, the Commissioner may take these actions when a person or registrant has engaged in, or is about to engage in, any act or practice constituting a violation of the Act or a rule or order.

Receiver or Conservator

The Act allows a permanent or temporary injunction or restraining order to be granted and a receiver or conservator to be appointed by the court, upon a proper showing regarding an action brought for a violation. An appointed receiver or conservator may take possession of the assets and may sell, assign, transfer, or convey the cemetery to a municipal corporation or other person, except the holder of a license for the practice of mortuary science or a person who owns, manages, supervises, operates, or maintains a funeral establishment, in order to discharge contractual obligations.

Under the bill, a receiver or conservator may operate the cemetery, as well as take possession of the assets, and may sell, assign, transfer, or convey the assets, as well as the cemetery. The receiver or conservator will have the rights and obligations of the cemetery as to all trust and escrow accounts, and will receive

compensation from the cemetery as determined by the court.

The bill allows the receiver or conservator, subject to court approval, to take possession of the books, records, and assets of the cemetery or cemetery entity. The receiver or conservator also may employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel as he or she considers necessary, and set their reasonable compensation, with the court's approval.

The Act requires the court, in the order of sale of the cemetery, to provide for notice to creditors and the filing of claims against the receivership or conservatorship. Previously, any remaining funds held by the cemetery in escrow belonged to the contract buyers or their beneficiaries, and could not be distributed to the general creditors of the cemetery. The bill provides, instead, that any remaining funds held by the cemetery in trust or in escrow may not be distributed to the general creditors of the cemetery.

Abandoned Cemeteries

The bill authorizes the Commissioner to control, manage, and dispose of or transfer abandoned cemeteries or to require acceptance of responsibility for an abandoned cemetery according to law. The Commissioner may promulgate rules necessary for the Department to carry out its powers and duties under this provision.

Annual Reports

Previously, the Commissioner had to require each cemetery or its agent to report annually before July 1, and the reports had to include information the Commissioner considered necessary to ascertain that the Act was being implemented. Under the bill, the Commissioner must require each cemetery owner or operator to report annually by July 1, and the reports must include information the Commissioner considers necessary to ascertain that the requirements of the Act and rules promulgated under it are being implemented. Subject to the Department's approval, the owner or operator may ask for an extension of up to 90 days to submit the report.

The bill requires each report to include a sworn statement by the cemetery owner or operator that contains the following:

- A certification that the signing owner or operator has reviewed the report.
- Based on the owner's or operator's knowledge, that the report does not contain any untrue statement of material fact related to the financial condition of the endowment and perpetual care trust fund or merchandise trust accounts.
- Based on the owner's or operator's knowledge, that the report fairly presents all material information regarding the financial condition of the trust fund or trust accounts.

The sworn statement also must state that the signing owner or operator is responsible for establishing and maintaining internal controls; designed those controls to ensure the accuracy of material information relating to the condition of the endowment and perpetual care trust fund or merchandise trust accounts; evaluated the effectiveness of the internal controls within 90 days before the report was issued; and included information evaluating the controls' effectiveness.

In addition, at a minimum, the Commissioner must require the following information concerning the endowment and perpetual care trust fund, and the accuracy of the information must be certified by a certified public accountant:

- Beginning and ending balances.
- Receipts from the sale of burial, entombment, and columbarium rights.
- Deposits to the trust fund.
- Itemized payments of interest or income.
- Documentation that interest was used solely for endowment care.

Upon finding, after notice and an opportunity for a hearing, that a cemetery owner or operator has not timely submitted a required report, regardless of whether the owner or operator acted alone or through an employee or agent, the Commissioner may impose an administrative fine, payable to the Commissioner, for the enforcement of the Act. If the Commissioner finds that a violation occurred despite the exercise of due care, he or she may issue a warning instead of imposing a fine.

Examination & Audit

The Act authorizes the Commissioner, or an examiner, investigator, or other person he or she appoints, to visit and examine the affairs of any cemetery or person required to register under the Act. The Commissioner or other person is to have free access to the books, papers, records, and documents that relate to the business of the cemetery corporation, person, or agent acting on its behalf. The bill also requires free access to the documents relating to the business of an affiliated person.

The Act requires that the books, papers, records, and documents be available for inspection or audit at any time during regular business hours, and requires one or more qualified people to conduct the audit. Under the bill, these people must be designated by the Commissioner. As previously required, their services must be charged to and paid by the cemetery, but the bill deleted a requirement that the rate be \$10 per hour and not total more than \$1,000.

Under the Act, if, after an audit by the Commissioner's staff, a deficit is found in the amount of required deposits to the trust funds, the Commissioner may assess a penalty. The cemetery may request an administrative hearing within 30 days after being notified of a deficit. If the Commissioner determines, after the hearing, that a deficit does exist, an additional penalty may be assessed each month on the unpaid monthly balance until the deficit is paid in full.

Previously, the penalty could not exceed 10% of the amount of the deficit, and the additional penalty was limited to 1.5%. The bill allows the Commissioner to assess a penalty in the amount allowed under the Act, and deleted the limit on the additional penalty.

Administrative Sanctions

The bill requires the Commissioner to advise the Attorney General of a person's failure to pay an administrative fine. The Attorney General may bring an action in a court of competent jurisdiction for the failure to pay a fine.

The Act authorizes the Commissioner to impose various administrative sanctions, including the denial of a permit or registration, when he or she finds that an applicant, its officer, or its general manager has made a false statement of material fact in the application, been guilty of an unlawful or fraudulent act in connection with selling or otherwise dealing in cemetery lots and burial rights, failed to comply with the Act, or committed other specified violations.

Under the bill, the sanctions also apply if a cemetery owner, director, member, or affiliated person engages in this conduct. In addition, the grounds for disciplinary action include conduct that demonstrates a lack of good moral character.

Criminal Penalties

A violation of the Act is a misdemeanor. Previously, if the violator was an individual, the first offense was punishable by a maximum fine of \$100 or imprisonment for up to 90 days, and the second offense was punishable by a maximum fine of \$500 and/or imprisonment for up to one year. If the violator was not an individual, the maximum fine was \$100 for a first offense and \$1,000 for a second offense.

The bill provides, instead, that a person who violates the Act is guilty of a misdemeanor punishable by a maximum fine of \$10,000. If the violator is an individual, the offense also is punishable by imprisonment for up to one year.

Other Provisions

The Act prohibits the Cemetery Commissioner, or his or her spouse or child, from having a financial interest in a cemetery, a supplier of cemetery services or memorials, or a funeral establishment. The bill refers to a "direct or indirect" financial interest, and also prohibits a financial interest in cemetery operations.

The Act requires each person operating a cemetery to register it by filing a registration application with the Commissioner each year. The bill extends this requirement to each person owning or managing a cemetery.

All fees, charges, and penalties collected under the Act, except criminal fines, must be

paid to the Commissioner for deposit in the State's General Fund. The bill extends this to other money from any source.

The bill provides that, in addition to all other remedies at law or in equity, the Attorney General and the circuit court of the county in which a cemetery is located have all the powers and jurisdiction granted to the Attorney General and the court as to trusts covered by Public Act 280 of 1915 (which governs gifts, grants, bequests, and devises for the care or maintenance of a cemetery or other purposes). These remedies include all endowment and perpetual care trust funds without regard to uncertainty or indefiniteness of beneficiaries.

The bill requires all departments, agencies, public bodies corporate, committees, commissioners, or officers of the State, and any political subdivision of the State, as far as compatible with their duties, to give the Cemetery Commissioner or his or her designee any necessary assistance required by the Commissioner in the performance of his or her duties. All of those entities and individuals also must give the Commissioner free access to any book, record, or document in their custody relating to the matters within the scope of the Commissioner in the performance of his or her duties.

The bill permits the Commissioner to enter into contracts to accomplish requirements under the Act, including contracts for the engagement of consultants. The Commissioner also may use an authorized employee or agent, who is an attorney, to represent the Commissioner or the Department in a contested case proceeding brought under the Act.

Repeals

The bill repealed Sections 35 and 35a of Public Act 87 of 1855. Section 35 required the board of trustees of a cemetery corporation to establish an endowment care fund, whose income or proceeds had to be devoted perpetually for endowment care. Contributions to an endowment fund had to be invested in securities as the board of trustees determined, or deposited in the savings department of a State or national bank, or State or federally chartered savings and loan association.

Section 35a required an endowment care fund to be created by the deposit of \$25,000 before the sale of any burial, entombment, or columbarium rights; required the monthly deposit into the fund of at least 15% of the proceeds of sales; provided that no deposit could be less than \$20; and allowed a cemetery with an endowment fund of more than \$125,000 and more than \$10,000 per acre of the developed portion of the cemetery to apply to the Cemetery Commissioner for a waiver of the 15% or \$20 minimum requirement. The endowment care fund could be administered by the board of directors or by the fund's individual or corporate trustees, as the fund selected under the terms of a trust instrument or declaration.

The bill also repealed Sections 107 and 107a of Public Act 12 of 1869. Section 107 prescribed the duties of the board of directors of a rural cemetery corporation, including the establishment of an irrevocable endowment fund to provide income for cemetery maintenance. Section 107a contained essentially the same requirements as Section 35a of the 1855 Act.

Under both Acts, endowment care funds had to be invested subject to Section 7302 of EPIC.

House Bill 6036

Previously, the Revised Judicature Act authorized circuit court judges in the exercise of their equitable powers, to appoint receivers in matters relating to cemeteries operating under Public Act 87 of 1855 and Public 12 of 1869. The bill, instead, authorizes circuit court judges to appoint receivers and conservators in matters relating to cemeteries or other entities operating under those Acts and the Cemetery Regulation Act.

The bill deleted a requirement that these appointments be limited to people with at least five years of experience in cemetery management. The bill also deleted a \$200 weekly limit on compensation for appointees, but retained a requirement that compensation and expenses be determined and approved by the appointing court.

MCL 456.522 et al. (S.B. 674)
600.2926a (H.B. 6036)

FISCAL IMPACT

Senate Bill 674

The Department of Labor, Energy, and Economic Growth, Bureau of Commercial Services will receive a minimal amount of additional fee revenue from the increased application and investigation fees in the bill, and will have the authority to recover the cost of audits.

The bill will have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders will be convicted of violating the Cemetery Regulation Act. To the extent that the bill results in increased incarceration time or convictions, local governments will incur increased costs of incarceration in local facilities, which vary by county. Additional penal fine revenue will benefit public libraries.

House Bill 6036

The bill will have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.