

HOUSE BILL No. 4890

June 20, 2013, Introduced by Reps. McBroom and Nathan and referred to the Committee on Regulatory Reform.

A bill to amend 1968 PA 251, entitled
"Cemetery regulation act,"
(MCL 456.521 to 456.543) by adding section 17.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 17. (1) A PERSON POSSESSING THE RIGHT TO A SPACE WITHIN A
2 CEMETERY IS PRESUMED TO HAVE ABANDONED THE RIGHT TO A SPACE IF ALL
3 OF THE FOLLOWING APPLY:

4 (A) DURING THE PAST 50 YEARS, THE PERSON POSSESSING THE RIGHT
5 TO A SPACE OR THE PERSON'S AUTHORIZED REPRESENTATIVE HAS NOT
6 PROVIDED THE CEMETERY OWNER OR OPERATOR WITH AN UPDATED ADDRESS FOR
7 PURPOSES OF CONTACTING THE PERSON.

8 (B) DURING THE PAST 50 YEARS, THE PERSON POSSESSING THE RIGHT
9 TO A SPACE OR THE PERSON'S AUTHORIZED REPRESENTATIVE HAS NOT
10 CONTACTED THE CEMETERY OWNER OR OPERATOR AND AFFIRMED POSSESSION OF
11 THE RIGHT TO A SPACE IN ANY OF THE FOLLOWING WAYS:

1 (i) REQUESTING A BURIAL OR NOTIFYING THE CEMETERY OWNER OR
2 OPERATOR OF A BURIAL UNDER THE RIGHT TO A SPACE.

3 (ii) REQUESTING AN INSTALLATION OF A MEMORIAL OR NOTIFYING THE
4 CEMETERY OWNER OR OPERATOR OF AN INSTALLATION OF A MEMORIAL UNDER
5 THE RIGHT TO A SPACE.

6 (iii) INDICATING OR REQUESTING A TRANSFER OF THE RIGHT TO A
7 SPACE TO ANOTHER PERSON.

8 (iv) MAKING A PAYMENT TO THE CEMETERY OWNER OR OPERATOR
9 RELATING TO THE RIGHT TO A SPACE.

10 (v) AFFIRMING IN WRITING THE POSSESSION OF THE RIGHT TO A
11 SPACE.

12 (C) A MEMORIAL HAS NOT BEEN INSTALLED AT THE CEMETERY UNDER
13 THE RIGHT TO A SPACE.

14 (D) REMAINS HAVE NOT BEEN INTERRED AT THE CEMETERY UNDER THE
15 RIGHT TO A SPACE.

16 (2) IF THE RIGHT TO A SPACE WITHIN A CEMETERY IS PRESUMED TO
17 BE ABANDONED UNDER SUBSECTION (1) AND THE CEMETERY OWNER OR
18 OPERATOR SATISFIES THE REQUIREMENTS UNDER SUBSECTIONS (3) AND (4)
19 FOR NOTICE TO THE PERSON POSSESSING THE RIGHT TO A SPACE, THE
20 CEMETERY OWNER OR OPERATOR MAY UNDER SUBSECTION (5) CERTIFY THE
21 RIGHT TO A SPACE AS ABANDONED.

22 (3) BEFORE CERTIFYING A RIGHT TO A SPACE WITHIN A CEMETERY AS
23 ABANDONED, A CEMETERY OWNER OR OPERATOR SHALL POST ON THE SPACE
24 WITHIN THE CEMETERY FOR 60 CONSECUTIVE DAYS A WRITTEN NOTICE OF
25 INTENT TO CERTIFY THE RIGHT TO A SPACE AS ABANDONED. IF THE
26 CEMETERY OWNER OR OPERATOR HAS AN ADDRESS FOR THE PERSON POSSESSING
27 THE RIGHT TO A SPACE OR THE PERSON'S AUTHORIZED REPRESENTATIVE, THE

1 CEMETERY OWNER OR OPERATOR SHALL ALSO SEND TO THAT ADDRESS A
2 WRITTEN NOTICE OF INTENT TO CERTIFY THE RIGHT TO A SPACE AS
3 ABANDONED. THE NOTICE SHALL BE SENT BY CERTIFIED MAIL WITH A RETURN
4 RECEIPT REQUESTED. A NOTICE UNDER THIS SUBSECTION OR SUBSECTION (4)
5 SHALL BE IN A FORM PRESCRIBED BY THE CEMETERY COMMISSIONER.

6 (4) THE CEMETERY OWNER OR OPERATOR SHALL ALSO PUBLISH A NOTICE
7 OF INTENT TO CERTIFY THE RIGHT TO A SPACE AS ABANDONED IN A
8 NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE
9 CEMETERY IS LOCATED IF ANY OF THE FOLLOWING APPLY:

10 (A) THE CEMETERY OWNER OR OPERATOR DOES NOT HAVE AN ADDRESS
11 FOR THE PERSON POSSESSING THE RIGHT TO A SPACE OR THE PERSON'S
12 AUTHORIZED REPRESENTATIVE.

13 (B) WHETHER OR NOT A WRITTEN NOTICE MAILED UNDER SUBSECTION
14 (3) IS RETURNED AS UNDELIVERABLE, THE PERSON POSSESSING THE RIGHT
15 TO A SPACE OR THE PERSON'S AUTHORIZED REPRESENTATIVE DOES NOT
16 CONTACT THE CEMETERY OWNER OR OPERATOR AND AFFIRM THE PERSON'S
17 POSSESSION RIGHTS WITHIN 60 DAYS AFTER THE NOTICE IS MAILED.

18 (5) IF MORE THAN 60 DAYS HAVE ELAPSED SINCE THE CEMETERY OWNER
19 OR OPERATOR PUBLISHED A NOTICE IN A NEWSPAPER UNDER SUBSECTION (4)
20 AND THE PERSON POSSESSING THE RIGHT TO A SPACE OR THE PERSON'S
21 AUTHORIZED REPRESENTATIVE HAS NOT CONTACTED THE CEMETERY OWNER OR
22 OPERATOR AND AFFIRMED THE PERSON'S POSSESSION RIGHTS, THE CEMETERY
23 OWNER OR OPERATOR MAY FILE A CERTIFIED NOTICE OF ABANDONMENT OF A
24 RIGHT TO A SPACE WITH THE CEMETERY COMMISSIONER ON A FORM
25 PRESCRIBED BY THE CEMETERY COMMISSIONER. THE NOTICE SHALL INCLUDE A
26 DESCRIPTION OF THE RIGHT TO A SPACE AFFECTED AND THE NAMES OF ANY
27 PERSONS POSSESSING THE RIGHT TO THE SPACE KNOWN TO THE CEMETERY

1 OWNER OR OPERATOR. THE FORM SHALL REQUIRE THAT THE CEMETERY OWNER
2 OR OPERATOR CERTIFY ALL OF THE FOLLOWING WITH RESPECT TO THE RIGHT
3 TO A SPACE:

4 (A) THAT THE RIGHT TO A SPACE IS PRESUMED TO BE ABANDONED
5 UNDER THE CRITERIA SET FORTH IN SUBSECTION (1).

6 (B) THAT THE CEMETERY OWNER OR OPERATOR PROVIDED NOTICE IN
7 COMPLIANCE WITH SUBSECTIONS (3) AND (4).

8 (C) THAT THE CEMETERY OWNER OR OPERATOR HAS NOT RECEIVED A
9 RESPONSE TO A NOTICE UNDER SUBSECTION (3) OR (4) FROM A PERSON
10 POSSESSING A RIGHT TO A SPACE OR THE PERSON'S AUTHORIZED
11 REPRESENTATIVE AFFIRMING THE PERSON'S POSSESSION RIGHTS.

12 (6) ALL OF THE FOLLOWING APPLY UPON FILING OF A CERTIFIED
13 NOTICE UNDER SUBSECTION (5):

14 (A) THE RIGHT TO A SPACE IS CERTIFIED AS ABANDONED BY PERSONS
15 PREVIOUSLY POSSESSING THE RIGHT.

16 (B) A PERSON LATER ASSERTING ANY CONTRACTUAL RIGHTS TO THE
17 RIGHT TO A SPACE MAY ONLY SEEK A REMEDY UNDER SUBSECTION (8).

18 (7) IF A PERSON POSSESSING A RIGHT TO A SPACE WITHIN A
19 CEMETERY OR THE PERSON'S AUTHORIZED REPRESENTATIVE IS NOTIFIED BY
20 THE CEMETERY OWNER OR OPERATOR UNDER SUBSECTION (3) OR (4) AND THE
21 PERSON OR THE PERSON'S AUTHORIZED REPRESENTATIVE DOES NOT SEEK TO
22 RETAIN POSSESSION OF THE RIGHT TO A SPACE, THE PERSON OR THE
23 PERSON'S AUTHORIZED REPRESENTATIVE MAY TRANSFER THE RIGHT TO A
24 SPACE BACK TO THE CEMETERY OWNER OR OPERATOR FOR AN AMOUNT AS
25 AGREED BY THE PARTIES.

26 (8) AFTER A CERTIFIED NOTICE IS FILED UNDER SUBSECTION (5), A
27 PERSON WITH A CONTRACTUAL RIGHT TO A SPACE IS ENTITLED ONLY TO THE

1 FOLLOWING REMEDIES FOR ANY BREACH OF THE CONTRACTUAL RIGHT:

2 (A) THE CEMETERY OWNER OR OPERATOR SHALL REINSTATE THE RIGHT
3 TO A SPACE IF THE ORIGINAL CONTRACTUAL RIGHT TO A SPACE HAS NOT
4 BEEN RESOLD OR OTHERWISE TRANSFERRED TO ANOTHER PERSON.

5 (B) IF THE ORIGINAL CONTRACTUAL RIGHT TO A SPACE HAS BEEN
6 RESOLD, THE CEMETERY OWNER OR OPERATOR, AT THE OPTION OF THE PERSON
7 WITH THE ORIGINAL CONTRACTUAL RIGHT TO A SPACE, SHALL DO EITHER OF
8 THE FOLLOWING:

9 (i) PROVIDE AT NO COST A DIFFERENT RIGHT TO A SPACE OF A
10 COMPARABLE VALUE WITHIN THE CEMETERY.

11 (ii) PAY THE PERSON WITH THE ORIGINAL CONTRACTUAL RIGHT TO A
12 SPACE AN AMOUNT NOT EXCEEDING 65% OF THE PRICE FOR WHICH THE
13 ORIGINAL CONTRACTUAL RIGHT TO A SPACE WAS RESOLD OR OTHERWISE
14 TRANSFERRED.

15 (9) A CONTRACT FOR THE SALE OF A RIGHT TO A SPACE ENTERED INTO
16 BY A CEMETERY OWNER OR OPERATOR AFTER THE EFFECTIVE DATE OF THIS
17 SECTION SHALL CONTAIN A WRITTEN NOTICE OF THE PRESUMPTION OF
18 ABANDONMENT OF A RIGHT TO A SPACE UNDER SUBSECTION (1) AND MAY
19 IMPOSE A LEGAL DUTY TO KEEP THE CEMETERY OWNER OR OPERATOR INFORMED
20 IN WRITING OF A CURRENT RESIDENCE ADDRESS OF THE PERSON POSSESSING
21 THE RIGHT TO A SPACE UNDER THE CONTRACT OR OF THE PERSON'S
22 AUTHORIZED REPRESENTATIVE.

23 (10) IF THE CEMETERY COMMISSIONER DETERMINES THAT A PROCESS
24 FOR SATISFYING LEGAL REQUIREMENTS FOR THE PROVISION OF NOTICE USING
25 AN INTERNET SEARCH HAS BEEN RECOGNIZED BY THE COURTS OF THIS STATE
26 AND IS PRACTICABLE, THE CEMETERY COMMISSIONER SHALL PROMULGATE
27 RULES UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,

1 MCL 24.201 TO 24.328, FOR THE PROVISION OF NOTICE UNDER THIS
2 SECTION USING AN INTERNET SEARCH AND, IN ADDITION TO THE PROVISION
3 OF NOTICE BY MAIL UNDER SUBSECTION (3), A CEMETERY OWNER OR
4 OPERATOR SEEKING TO CERTIFY A RIGHT TO A SPACE WITHIN THE CEMETERY
5 AS ABANDONED ALSO SHALL PROVIDE NOTICE AS PROVIDED UNDER THE
6 ADMINISTRATIVE RULES.

7 (11) THE PURPOSE OF THIS SECTION IS INTENDED TO ADVANCE THE
8 SIGNIFICANT AND LEGITIMATE PUBLIC PURPOSE OF ASSURING THE
9 AVAILABILITY AND PRODUCTIVE USE OF SPACE WITHIN CEMETERIES AND
10 PROVIDING SECURITY IN CONTRACTUAL RIGHTS CONSISTENT WITH THE
11 HEALTH, SAFETY, AND WELFARE OF THE PEOPLE OF THIS STATE.

12 (12) AS USED IN THIS SECTION, "RIGHT TO A SPACE" MEANS A
13 BURIAL RIGHT, COLUMBARIUM RIGHT, OR ENTOMBMENT RIGHT WITHIN A
14 CEMETERY.

15 Enacting section 1. This amendatory act takes effect January
16 1, 2014.