

Act No. 398
Public Acts of 2014
Approved by the Governor
December 24, 2014
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Reps. McBroom and Nathan

ENROLLED HOUSE BILL No. 4890

AN ACT to amend 1968 PA 251, entitled “An act to regulate the creation and management of cemeteries; to provide for a cemetery commissioner and to prescribe the powers and duties of the commissioner; to require the registration and audit of cemeteries; to provide standards regarding the long-term care of certain cemeteries and trusting of certain funds; to regulate persons selling burial, entombment, or columbarium rights and certain merchandise; to provide for qualifications for owners, operators, employees, and transferees of cemeteries under certain circumstances; to allow the cemetery commissioner to conduct certain investigations; and to prescribe administrative and civil remedies and penalties,” (MCL 456.521 to 456.543) by amending the title and by adding section 17.

The People of the State of Michigan enact:

TITLE

An act to regulate the creation and management of cemeteries; to provide for a cemetery commissioner and to prescribe the powers and duties of the commissioner; to require the registration and audit of cemeteries; to provide standards regarding the long-term care of certain cemeteries and trusting of certain funds; to regulate persons selling burial, entombment, or columbarium rights and certain merchandise; to provide for qualifications for owners, operators, employees, and transferees of cemeteries under certain circumstances; to provide for the abandonment of interment rights; to allow the cemetery commissioner to conduct certain investigations; and to prescribe administrative and civil remedies and penalties.

Sec. 17. (1) A person possessing a right to a space within a cemetery is presumed to have abandoned the right if all of the following apply:

(a) During the past 60 years, the person possessing the right to the space or the person’s authorized representative has not provided the cemetery owner or operator with an updated address for purposes of contacting the person.

(b) During the past 60 years, the person possessing the right to the space or the person’s authorized representative has not contacted the cemetery owner or operator and affirmed possession of the right in any of the following ways:

(i) Requesting an interment or notifying the cemetery owner or operator of an interment under the right to the space.

(ii) Requesting the installation of a memorial or notifying the cemetery owner or operator of the installation of a memorial under the right to the space.

(iii) Indicating or requesting a transfer of the right to the space to another person.

(iv) Making a payment to the cemetery owner or operator relating to the right to the space.

(v) Affirming in writing the possession of the right to the space.

(c) A memorial has not been installed at the cemetery under the right to the space.

(d) Remains have not been interred at the cemetery under the right to the space.

(2) If, after a right to a space is presumed to be abandoned under subsection (1), all of the following requirements are met, the cemetery owner or operator may under subsection (4) certify the right as abandoned:

(a) The cemetery owner or operator posts on the space for 120 consecutive days a written notice of intent to certify the right to the space as abandoned.

(b) If the cemetery owner or operator has a mailing address for the person possessing the right to the space or the person's authorized representative, the cemetery owner or operator sends to that address a written notice of intent to certify the right to the space as abandoned. The notice shall be sent by certified mail with a return receipt requested.

(c) If any of the following conditions apply, the cemetery owner or operator publishes once a week for 2 consecutive weeks a notice of intent to certify the right to the space as abandoned in a newspaper circulated in the county in which the cemetery is located:

(i) The cemetery owner or operator does not have a mailing address for the person possessing the right to the space or the person's authorized representative.

(ii) Whether or not a written notice mailed under subdivision (b) is returned as undeliverable, the person possessing the right to the space or the person's authorized representative has not contacted the cemetery owner or operator and affirmed the person's possession of the right within 60 days after the notice was mailed.

(d) If publication is required under subdivision (c), 60 days have elapsed since the cemetery owner or operator published the second notice and the person possessing the right to the space or the person's authorized representative has not contacted the cemetery owner or operator and affirmed the person's possession of the right.

(3) A notice required under subsection (2) shall state all of the following:

(a) A description of the right to a space affected.

(b) If known to the cemetery owner or operator, the name of the person possessing the right to the space and the person's authorized representative, if any.

(c) The time frame within which a person possessing the right to the space or the person's authorized representative must contact the cemetery owner or operator and affirm the person's possession of the right to the space to prevent the right from being certified as abandoned.

(d) That, if the right to the space is certified as abandoned, a person who possessed the right may be entitled to the remedies set forth in section 17 of the cemetery regulation act, 1968 PA 251, MCL 456.537.

(e) The name, address, electronic mail address, and telephone number of the cemetery owner or operator.

(4) A right to a space is certified as abandoned by any person possessing the right if, after satisfying the requirements of subsections (2) and (3), the cemetery owner or operator creates, signs, and maintains a record that states all of the following:

(a) A description of the right to a space affected.

(b) The names of any persons possessing the right to the space immediately before the right is certified as abandoned, if known to the cemetery owner or operator.

(c) That the right to the space is presumed to be abandoned under the criteria set forth in subsection (1).

(d) That the cemetery owner or operator provided notice in compliance with subsections (2) and (3).

(e) That the cemetery owner or operator has not received a response to a notice under subsection (2) from a person possessing the right to the space or the person's authorized representative affirming the person's possession of the right.

(5) A person whose right to a space was certified as abandoned under subsection (4) is entitled only to the following remedies:

(a) Reinstatement of the right to the space if the right has not been resold or otherwise transferred to another person by the cemetery owner or operator.

(b) If the right to the space has been resold or otherwise transferred to another person by the cemetery owner or operator, at the option of the person whose right was certified as abandoned, either of the following:

(i) A different right to a space of comparable value within the cemetery.

(ii) Compensation in the amount that the person whose right was certified as abandoned paid for the right or in an amount equal to 65% of the price for which the right was resold or otherwise transferred by the cemetery owner or operator, whichever amount is greater.

(6) If a person possessing a right to a space within a cemetery or the person's authorized representative is notified by the cemetery owner or operator under subsection (2) and the person or the person's authorized representative does not wish to retain possession of the right, the person or the person's authorized representative may transfer the right to the space back to the cemetery owner or operator for an amount as agreed by the parties.

(7) A contract for the sale of a right to a space entered into by a cemetery owner or operator after the effective date of this section shall contain a written notice of the presumption of abandonment of a right to a space under subsection (1).

(8) A cemetery owner or operator may publish on 1 or more internet websites a notice of intent to certify a right to a space as abandoned under subsection (2). A cemetery owner may use an internet search to attempt to identify for use under subsection (2) the current mailing address of a person possessing a right to a space or the person's authorized representative.

(9) Subsections (1) to (8) do not apply to a right to a space if 1 or more of the following apply:

(a) An inscribed memorial is located on the space to which the right applies.

(b) Both of the following apply to the space to which the right applies:

(i) The space immediately adjoins an inscribed memorial and the adjoining side of the inscribed memorial displays a family surname.

(ii) The space was purchased with another space on which the inscribed memorial that displays the family surname is located.

(c) Both of the following apply to the space to which the right applies:

(i) The space immediately adjoins an inscribed memorial.

(ii) The space immediately adjoins a space that was purchased with the right to a space and includes interred remains.

(10) This section is intended to advance the significant and legitimate public purpose of ensuring the availability and productive use of space within cemeteries and providing security in rights consistent with the health, safety, and welfare of the people of this state.

(11) As used in this section:

(a) "Inscribed memorial" means 1 or both of the following:

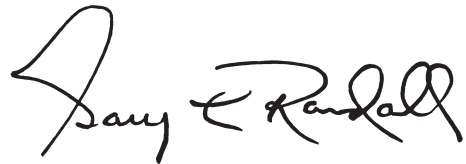
(i) A stone or other structure or item that is used for the purpose of memorializing a decedent on a place of interment and that displays the name of a decedent.

(ii) A stone or other structure or item that identifies an area of a cemetery dedicated for the interment of members of a family and that displays a family surname.

(b) "Right to a space" or "right" means the privilege, license, or right of interment in a space in a cemetery.

Enacting section 1. This amendatory act takes effect January 1, 2015.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

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Governor