

## CEMETERIES AND FUNERAL HOMES

**House Bill 5831 as introduced**  
**Sponsor: Rep. Judith Scranton**

**House Bill 5832 (Substitute H-2)**  
**House Bill 5833 (Substitute H-2)**  
**House Bill 5834 (Substitute H-2)**  
**Sponsor: Rep. Ilona Varga**

**Committee: Regulatory Affairs**  
**First Analysis (6-17-98)**

### ***THE APPARENT PROBLEM:***

The laws regulating the funeral home and cemetery industries and sales of pre-need funeral contracts have been scarcely changed for over a decade, despite many changes in the industries on a national level and other changes in the economy of the state and in the needs of Michigan residents. Some people feel that the laws should be updated, made more consistent between the two industries, and should include more consumer protections. Further, Public Act 284 of 1996 allowed a "person with authority to make [funeral] arrangements" for a deceased person to petition to have a deceased person disinterred over the objections of those with ownership rights over the place of repose, but neglected to define the term. Legislation addressing these concerns and to clarify who would be a "person with authority" to make funeral arrangements has been proposed.

### ***THE CONTENT OF THE BILLS:***

The bills are part of a package that would amend various acts that regulate the cemetery and funeral home industries and they are tie-barred to each other. More specifically, the bills would do the following:

Public Act 284 of 1996 added provisions to the Public Health Code to specify that someone with authority to make decisions regarding the funeral arrangements of a person who had died and been buried or otherwise interred could request a permit to have the body disinterred over the objections of someone with ownership rights over the present place of interment. House Bill 5831 would further amend the code (MCL 333.2851) to clarify who would have authority to make funeral and burial arrangements and to establish procedures for when disputes arise between survivors as to the arrangements for a deceased person.

"Arrangements" would be defined as "all funeral arrangements for, or the final disposition, disinterment, or the right to possess and make decisions regarding the handling or disposition of, a dead human body," and would include cremation and the disposal of cremated remains.

Unless family and friends knew that the deceased had made funeral and burial arrangements on a pre-need basis, persons over the age of 18 would have the right under the bill to make arrangements in the following order of priority:

- \* A surviving spouse.
- \* A surviving son or daughter.
- \* A surviving parent.
- \* A surviving brother or sister.
- \* A surviving grandchild.
- \* A surviving child of a deceased brother or sister.
- \* A surviving grandparent.
- \* A surviving aunt or uncle.
- \* A surviving first cousin.

The right to make arrangements would be forfeited if a person did not exercise it within 48 hours of being contacted, or if the person could not be located, and the right would fall to the next person on the list. If two or more persons had the same priority, then the majority would have the right to make the

arrangements. In case of a dispute as to the arrangements, any person on the list or the provider (a funeral establishment or cemetery and its owners, employees, and agents) who had custody of the body could file a petition in probate court requesting the court to settle the matter. A hearing would have to be held within seven business days, and the bill would specify notice requirements. Providers would not be required to bring an action and would not be civilly or criminally liable for not doing so, and would not have to accept or inter the deceased's remains until the dispute was settled. The estate would have to reimburse a provider for costs incurred in bringing the action if the petition was filed by the provider. The court, in making its decision, would have to consider the following factors:

- \* The expressed desires of the deceased.
- \* The reasonableness and practicality of the arrangements.
- \* The relative personal affinity of the person to the deceased.
- \* The desires of the person or persons ready, willing, and able to pay the costs of the arrangements.
- \* A presumption in favor of allowing maximum participation by all wishing to pay respects to the deceased.
- \* The convenience and needs of other family and friends of the deceased wishing to pay respects.

Further, a person could also file a petition requesting that he or she be permitted to make the arrangements if the petitioner alleged that it would be a grave injustice to allow those on the list to do so, or that another person not on the priority list had a "closer personal affinity" to the deceased and so should be permitted to make the arrangements. If such a petition was filed, the provider would have to suspend the arrangements authorized by the person who had priority under the bill until the probate court issued an order. The court, in making a decision under such a petition, would have to consider the expressed desires of the deceased and the desires of those ready, willing, and able to pay the costs of the arrangements. The bill would also establish a protocol for situations in which no survivors exist or can be found. A person would not enjoy any greater rights to make decisions regarding the arrangements for the deceased by paying

- \* Funds held in a merchandise trust account could be deposited into a depository in this state or a nonprofit

or agreeing to pay all or part of the cost of the arrangements.

House Bill 5832 would make several amendments to Article 18 of the Occupational Code, entitled "Mortuary Science" (MCL 339.1804, 339.1809, and 339.1811). As under current law, a funeral establishment would still have to be operated by a person who holds a license for the practice of mortuary science, but the establishment would have to conspicuously display the names of all persons licensed to conduct the business and the names of all of the owners would have to be registered with the Department of Consumer and Industry Services (CIS).

Currently, a person cannot operate a funeral establishment, either directly or indirectly, if his or her license had been revoked for a violation of Article 18; the bill would extend that prohibition to violations of the Cemetery Regulation Act (MCL 456.521 to 456.543) and the Prepaid Funeral Contract Funding Act (MCL 328.211 to 328.235), and would also exclude persons who had been determined by CIS or a court to have engaged in activities regulated by any of these acts without first being licensed or registered. The bill would also specify that CIS would have to deny an application or renewal of a license for a funeral establishment unless the operator of the establishment was a holder of a license for the practice of mortuary science.

In addition, each owner, officer and shareholder who owned 10 percent or more of stock in an establishment that was a corporation or who was a partner in a funeral establishment would have to be of good moral character. (A definition of "good moral character" is contained in Public Act 381 of 1974 [MCL 338.41] which regulates occupational licensing for former offenders).

House Bill 5833 would amend the Cemetery Regulation Act (MCL 456.529 et al.) to, among other things, add definitions, require more detailed reporting, regulate discounting of cemetery merchandise and services, and revise regulations pertaining to merchandise trust accounts and endowment care funds. Significant changes include:

- \* The bill would require registration of all persons wishing to either establish or operate a cemetery. Only those registered under the act could sell or provide (or attempt to do so) cemetery merchandise and services.

corporation that consisted of at least 250 funeral establishments. "Depository" would be defined as a state or national bank which was a member of the

Federal Deposit Insurance Corporation (FDIC), savings and loan association with membership in the Federal Savings and Loan Insurance Corporation (FSLC), chartered credit union insured by the National Credit Union Administration, or trust company authorized to do business in the state. Trust departments would be included.

\* The bill would define "contract" as a written pre-need cemetery contract in which a person promised to furnish, make available, or provide cemetery services or merchandise after the death of the person specified in the contract. The bill would specify various components that a contract would have to contain, including interest rates, and provide a procedure by which contracts could be canceled. All prices or quotations of prices contained in a contract, offer, or solicitation would have to comply with federal and state laws and regulations, and the price disclosure rules of the Federal Trade Commission would have to be complied with by those offering cemetery merchandise and services on a pre-need or at-need basis.

\* The bill would prohibit a person from manipulating prices of either cemetery or funeral merchandise and services in order to shift a disproportionate share of the total price to any of the merchandise or services. Customers would have to be charged the same prices regardless of whether they did business with both a funeral establishment and an affiliated cemetery. Discounts could be provided for groupings of goods and services within the separate categories of either funeral or cemetery goods and services. A person selling such goods and services could not base a benefit or discount on the condition that a customer agreed to do business with both a funeral establishment and its affiliated cemetery, nor could he or she sell goods or services of any kind at below their actual cost.

\* A registrant that sells cemetery merchandise or services would have to identify its manager on all signage, stationery, advertising, and disclosures required by the Federal Trade Commission.

\* A price list of costs associated with the foundation, placement, and maintenance of markers and monuments would have to be provided to consumers.

other things, add definitions, require more detailed reporting, regulate discounting of funeral goods and

\* A cemetery registered under the act would have to maintain a list of all future performance obligations. The list would have to be kept current and would have to include a complete description of the future performance obligations involved (such as vaults, memorials, services by type, and caskets by model); total cost of full performance of all obligations as of the date of statement; and complete information on the means, provision, trust, or other vehicle that would assure fulfillment of all obligations.

\* The minimum total deposit for a single adult burial right sale or assignment would be raised from \$20 to \$50, and the bill would specify that the commissioner (the director of the Department of Consumer and Industry Services or his or her designee) would have to adjust the deposit amount based on the Detroit Consumer Price Index as provided by the U.S. Department of Labor, Bureau of Labor Statistics.

\* An annual report for cemeteries doing more than \$50,000 in cemetery merchandise and service liabilities would have to be signed by a licensed Michigan certified public accountant.

\* In addition to the list of things in the act that can result in registration suspension, revocation, or other disciplinary action, the bill would add a violation of Article 18 of the Occupational Code (which pertains to funeral establishments) and failure to properly place funds in trust in compliance with the act. Failure to comply with trust requirements would be considered a felony offense.

\* The bill would establish requirements for depositing funds with a trustee and procedures for discontinuance of business operations by a registrant.

\* A contract seller, provider, or registrant (or his or her employee) could not go door-to-door selling cemetery merchandise or cemetery services without prior consent. (The bill does not specify whose consent would be required.)

\* Either the commissioner or a contract beneficiary (or his or her representative) could bring a cause of action in circuit court. The court could award damages and reasonable attorney fees and issue equitable orders in accordance with the Michigan Court Rules in order to restrain conduct that was in violation of the act.

House Bill 5834 would amend the Prepaid Funeral Contract Funding Act (MCL 328.214 et al.) to, among

services, and revise regulations pertaining to escrow funds. Significant changes include:

\* The bill would delete a prohibition on the contract seller or the provider of a guaranteed price contract from serving as the escrow agent for escrow accounts.

\* A registrant selling funeral goods or funeral services would have to identify its manager on all signage, stationery, advertising, and disclosures required by the Federal Trade Commission. Also, a person would have to disclose to a buyer of a pre-need contract that the contract seller or provider had a contractual relationship with a cemetery.

\* The bill would prohibit a person from manipulating prices of either cemetery or funeral merchandise and services in order to shift a disproportionate share of the total price to any of the merchandise or services. Customers would have to be charged the same prices regardless of whether the customer did business with both a funeral establishment and a specific cemetery. Discounts could be provided for groupings of goods and services within the separate categories of either funeral or cemetery goods and services. A person selling such goods and services could not base a benefit or discount on the condition that a customer agreed to do business with both a funeral establishment and a specific cemetery, sell goods or services of any kind at below their actual cost, refuse the use of funeral goods bought from another vendor, fail to escrow funds as required, or solicit funeral goods and services door-to-door without prior consent.

\* A person registered under the act would have to maintain a list of all future performance obligations. The list would have to be kept current and would have to include a complete description of the future performance obligations involved (such as vaults, memorials, services by type, and caskets by model); total cost of full performance of all obligations as of the date of statement; and complete information on the means, provision, trust, or other vehicle which would assure fulfillment of all obligations.

\* Currently, the act requires a registrant with escrowed funds to submit a special report prepared by an independent certified public accountant every third year. The bill would require a report to be submitted annually that had been prepared by a certified public accountant who was licensed in Michigan.

\* The Department of Consumer and Industry Services would have to promulgate rules within six months of the bill's effective date to require record keeping and reporting similar to that required of cemeteries.

\* Currently, applicants and recipients of assistance under the Social Welfare Act (MCL 400.1 et al.) or patients in a mental health facility under the jurisdiction

of the Department of Community Health may have a prepaid funeral contract with a fully paid guaranteed price contract of not more than \$2,000. The bill would change the amount of the contract to that amount allowed under the Insurance Code [MCL 500.2080(6)(g)], which currently is set at \$5,000 but which is adjusted annually according to the consumer price index.

### **FISCAL IMPLICATIONS:**

According to the House Fiscal Agency, neither House Bill 5831 or 5832 would have a fiscal impact on state or local government. House Bill 5833, which amends the Cemetery Act, could increase state oversight and enforcement costs and so may result in an indeterminate cost increase. House Bill 5834, which amends the Prepaid Funeral Contract Funding Act could result in a cost increase to the Department of Consumer and Industry Services because of its provision requiring the department to promulgate new record keeping and reporting rules. (6-10-98 and 6-16-98)

### **ARGUMENTS:**

#### **For:**

Public Act 284 of 1996 added a provision to the Public Health Code that authorized a person with "authority to make arrangements for a dead human body" to request a permit for its disinterment despite the lack of consent of, or objection by, someone who possessed ownership rights over the place of repose, such as a burial plot, crypt, and so on. However, Public Act 284 did not define "person with authority." House Bill 5831 would clarify who would have authority under the act to make decisions regarding disinterment and other funeral arrangements. In case of disagreements between family members, the bill would establish a procedure for settling disputes. The bill would also allow a person not included on the list of relatives to file a petition, too, especially if there were compelling reasons to believe that a person not on the list were better suited to make the arrangements or that allowing those on the list to make the arrangements would result in a "grave injustice." The bill would therefore acknowledge that there are cases in which a nonrelated person may be closer to the deceased and more aware of the deceased person's wishes than a relative.

#### **Response:**

House Bill 5831 does take an important step in acknowledging the fact that many couples do not marry; that remarriages create a different configuration of children, stepchildren, and so on; and that some friendships are closer than family relations. However,

the wording of the bill's language may be too broad. To allow any nonrelated person to file a petition to have a person other than those relatives listed in the bill make the arrangements could open the door to frivolous and vindictive actions, overburden the courts, and result in unnecessary delays in burying or cremating a deceased person. Under the bill's language, it is conceivable that even a total stranger could file a petition in court, which would cause the provider of the funeral services to halt the proceedings until the court issued an order. The language should be narrowed so that only persons with a legitimate interest in the funeral arrangements of the deceased could file a petition.

**For:**

House Bills 5833 and 5834 would require that all owners of a funeral home be registered with the Department of Consumer and Industry Services and all the names of all licensees be posted conspicuously. Further, the name of the manager of a funeral establishment and cemetery would have to be posted on any signs, stationery, advertisements, and Federal Trade Commission-required disclosures. In this way, consumers will know who they are doing business with.

**Response:**

The bills as introduced required the names of all the owners to be disclosed, but this provision was changed in the committee substitutes. Having the names of all the owners posted on signs, advertisements, and stationery would be more beneficial to those consumers wishing to know if they were dealing with an independently owned business or a mega-corporation. For instance, funeral homes have traditionally been family owned. During the last decade, though, there has been a trend for large corporations, referred to as consolidators, to buy up independently owned funeral homes but keep the name of the establishment and often keep the previous owner on as manager. Since, according to many recent media reports, prices may raise considerably (up to 35 percent or more in some locales) after a funeral establishment is bought by a consolidator, some people may want to know exactly who they are doing business with. Therefore, the bills should be amended to restore the provision that all owners be identified, not just the managers.

**For:**

House Bills 5833 and 5834 as reported from committee would primarily place department-requested reporting standards in the bills. In addition, the bills would provide more consistency between cemeteries and funeral establishments in the reporting that is required for the two industries.

**For:**

The bills contain a number of consumer protection provisions. For example, the bills would standardize provisions pertaining to refunds of pre-need contracts for funeral services and cemetery merchandise, codify certain Federal Trade Commission rules into Michigan statute and apply them to both cemeteries and funeral establishments, prohibit door-to-door solicitations, and specify what must be included in pre-need contracts. Where Michigan residents have not experienced the kinds of industry abuses reported in other states, the bills would further ensure protection for consumers.

**Against:**

The bills do not address many of the so-called hot topics in the funeral home/cemetery business today, such as whether to allow a person to own both a funeral home and a cemetery, trust requirements, and the warehousing of pre-sold cemetery or funeral goods. Many see the opportunity to own both a home and a cemetery as a chance to reduce the cost to consumers, as would the ability to buy certain goods at the time a person purchases a pre-need contract and store them until such time as needed. In that way, people would get exactly what they had picked out, rather than what was available at the time of death.

**Response:**

Reportedly, discussion on the above-mentioned topics is ongoing, and amendments addressing these concerns may be included in the future. For now, suffice it to say that there is disagreement on the best approach to take. Where some do see benefits in repealing the current prohibition on joint ownership of funeral homes and cemeteries, others see the current laws as protecting the public from the creation of monopolies. Also, since the prohibition has been in place so long, cemeteries may have the grounds on which to locate a funeral home, but few funeral homes could build a cemetery around the home. The main argument for such combinations, as they are referred to, is that the close proximity of a funeral establishment to a cemetery is what would result in savings to consumers. Therefore, many in the funeral home industry feel that a change in the law would disadvantage the funeral home owner over the cemetery owner. Besides, research has shown that such combinations do not necessarily result in lowered costs to consumers.

As to the issue of warehousing, some cemeteries get around the current ban by delivering the purchased goods to a warehouse and issuing a receipt to the contract beneficiary. However, a 1996 audit by the Department of Consumer and Industry Services reportedly found that not all the receipts issued by the cemeteries had a corresponding casket or other cemetery merchandise being stored. The ban, and

current trust requirements, are in place to protect the consumer and should be left intact.

***POSITIONS:***

The United Cemeterians of Michigan support the committee version of the bills. (6-15-98)

The Michigan Funeral Directors Association supports the bills with reservations. (6-15-98)

The Department of Consumer and Industry Services does not have a position on the bills at this time. (6-16-98)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.