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REVISE CEMETERY REGULATION ACT

House Bill 5833

Sponsor: Rep. Ilona Varga

Committee: Regulatory Affairs

Complete to 6-10-98

A SUMMARY OF HOUSE BILL 5833 AS INTRODUCED 5-7-98

The bill is part of a package of bills that would amend various acts that regulate the cemetery and funeral home industries and that are tie-barred to each other. House Bill 5833 would amend the Cemetery Regulation Act to, among other things, add definitions, require more detailed reporting, require that 70 percent of the value of pre-need cemetery services and merchandise be placed in trust accounts, 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 all persons to register under the act to either establish or operate a cemetery.

* To establish or operate a crematory, a person would have to be registered under the bill or licensed as a funeral establishment under Article 18 of the Occupational Code (MCL 339.1801 to 339.1811). A registrant could have an interest in a funeral home or a contractual relationship with a funeral home as long as the contractual relationship was disclosed to potential customers.

* Only those registered as cemeteries under the act or licensed under the Prepaid Funeral Contract Funding Act (MCL 328.211 to 328.235) could sell or provide (or attempt to do so) cemetery merchandise and services.

* "Cemetery merchandise" would be defined under the bill as all goods sold by a cemetery, and would include combination units and other goods of any type that were directly or indirectly related to a funeral. The term would also include vaults or other outside containers of any type, monuments, markers, urns, caskets, catafalques, or any other goods connected to the final disposition of a deceased person.

* "Cemetery services" would be defined as all services offered by a cemetery including services related to the final disposition of dead human remains and use of facilities for visitation, memorial services, grave openings and closings, flowers, cremations, foundation installations, transportation, and other services provided by a person licensed under Article 18 of the Occupational Code.

* "Physical delivery and retention" would mean the actual control and possession of cemetery merchandise that was permanently relinquished by a contract seller or provider to the contract buyer or the contract beneficiary. Physical delivery and retention would not be

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considered to have occurred if the contract seller or provider arranged or induced the buyer to arrange for the storage or warehousing of cemetery merchandise regardless of evidence that legal title had passed, or acquired or reacquired possession of cemetery merchandise after its initial delivery to the contract buyer or beneficiary.

* Funds held in a merchandise trust account could be deposited into a depository in this state or a nonprofit corporation that consisted of at least 25 cemeteries. A provision pertaining to the deposits for the sale of cemetery burial vaults would be deleted. The bill would require that 70 percent of the retail cost of all pre-need cemetery services and merchandise be deposited into a merchandise trust account. A pre-arrangement fee of not more than 10 percent of the retail cost of all pre-need cemetery services and merchandise could be charged.

* The bill would establish new regulations and reporting criteria pertaining to deposits in endowment care funds and merchandise trust accounts and with trustees, including requiring the triennial report to be prepared by a certified public accountant.

* The bill would define "contract" as a written pre-need cemetery contract in which the contract 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, and provide a procedure by which contracts could be canceled. In addition, the bill would specify that if a contract were canceled, the contract buyer would receive 100 percent of the contract price paid to the person furnishing the services or merchandise. 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 performance bond would have to be posted in an amount determined sufficient to cover the costs of development and liability for failure to satisfy pre-need sales before a cemetery was developed or built.

* The names of all owners of a funeral home, such as a cemetery, another funeral home, or an entity made up of a group of cemeteries or funeral homes, would have to be disclosed on all contracts and stationery.

* 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.

* Cemeteries would have to report to the commissioner every third year instead of annually. The report for cemeteries doing more than \$50,000 in cemetery merchandise and service liabilities would have to be signed by an independent 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 trust funds in compliance with the act. Failure to comply with trusting requirements would be considered a felony offense.

The bill is tie-barred to House Bill 5831, which would amend the Public Health Code; House Bill 5832, which would amend the Occupational Code; and House Bill 5834, which would amend the Prepaid Funeral Contract Funding Act.

MCL 456.529 et al.

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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.