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Senate Bill 512 (Substitute S-1 as passed by the Senate)
Senate bill 513 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Laura M. Toy
Committee: Local, Urban and State Affairs

Date Completed: 8-14-03

RATIONALE

Dealing with the expense of a funeral and interment, including all of the accompanying goods and services, can be both financially and emotionally trying. Reportedly, in 2001, the average cost of an adult funeral was \$5,180. To make funerals and the disposition of remains more affordable, and to allow advance planning for the expense, both funeral homes and cemeteries offer preplanning services and prepayment options. Prepaid funeral contracts and the sale of cemetery goods and services on a preneed basis, however, are regulated under two different statutes. As a result, the treatment customers receive depends on which services and merchandise they purchase, and from whom. This treatment evidently is unsatisfactory at times, particularly in situations involving sales by cemeteries.

The Prepaid Funeral Contract Funding Act governs the sale of funeral goods and funeral services under prepaid funeral contracts, and regulates these contracts, their sellers, and the providers of the funeral goods and services. That Act specifically excludes land or interest in land, crypts, niches, and cemetery burial vaults and other outside containers and merchandise sold by a cemetery. All funds received in connection with a prepaid funeral contract (except for a maximum additional 10% of the contract price, which may be charged as a commission) must be held in escrow by an escrow agent for the benefit of the contract beneficiary (the individual for whom the goods will be furnished or the services performed after death). A contract buyer may cancel a prepaid contract before the contract beneficiary's death. After receiving notice of cancellation, the escrow agent must disburse at least 90% of the principal and income in the escrow account to the contract buyer.

The Cemetery Regulation Act governs the creation and management of cemeteries; requires the registration and audit of cemeteries; and regulates the sale of burial, entombment, or columbarium rights, cemetery services, and cemetery merchandise. Under the Act, a cemetery and an agent authorized to sell cemetery merchandise or services on a cemetery's behalf must establish a merchandise trust account and deposit in it a percentage of the price, as determined by the Cemetery Commissioner (the Director of the Department of Consumer and Industry Services or the Director's designee). Money deposited in connection with a sale must be repaid within 30 days, upon written demand of a purchaser. Although cemeteries and their agents may sell cemetery products and services on a preneed basis, the Cemetery Regulation Act, unlike the Prepaid Funeral Contract Funding Act, does not require that the proceeds of those sales be held in escrow or that the principal and income be refundable to a contract buyer.

Reportedly, many customers of cemetery preneed sales have been denied refunds or alternative arrangements when they have decided to change their plans, or their survivors were charged additional amounts when the time came to use the prepaid arrangements. Some people believe that the Prepaid Funeral Contract Funding Act should govern the advance sale of both funeral and cemetery services and merchandise, so that Act's consumer protection measures would be available regardless of whether prepaid funeral and/or cemetery services and products were purchased from a cemetery or from a funeral home.

CONTENT

Senate Bill 512 (S-1) would amend the Prepaid Funeral Contract Funding Act to do all of the following:

- Extend the Act to the provision of cemetery services and merchandise.
- Require a provider of merchandise or services under a prepaid contract to be licensed or registered under Chapter 18 (Mortuary Science) of the Occupational Code (as currently required) or under the Cemetery Regulation Act.
- Require a person registered under the Prepaid Funeral Contract Funding Act to have an annual statement or record of its fiscal year available for examination by the Department of Consumer and Industry Services (DCIS).
- Require a registrant to secure a special report prepared by a certified public accountant pertaining to prepaid funds annually, rather than once every three years (as is currently required).
- Allow the DCIS to charge a registrant up to \$1,000 for the actual expenses of an examination, review, or audit.
- Make the purchaser of a business registered under the Act responsible for complying with notice requirements.
- Prohibit certain business activities.
- Make failure to place funds in escrow or trust a felony.
- Revise receivership provisions.

The bill also would rename the Act the "Prepaid Funeral and Cemetery Sales Act".

Senate Bill 513 (S-1) would amend the Cemetery Regulation Act to do all of the following:

- Require the Cemetery Commissioner to inspect cemetery facilities and grounds at least every three years, and allow him or her to charge up to \$1,000 for an inspection.
- Increase from \$100 to \$1,000 the maximum amount the State may charge a cemetery for audits and inspections of books.
- Delete a requirement that a cemetery establish a merchandise trust account for the deposit of a percentage of the

gross proceeds of the sale of cemetery merchandise and services.

- Prohibit the development or construction of a mausoleum or columbarium, and the preconstruction sale of crypts or niches in a mausoleum or columbarium, unless certain criteria were met.
- Expand the circumstances under which the Cemetery Commissioner may take disciplinary action against a registrant or applicant, and allow the Commissioner to impose an administrative fine of up to \$5,000 for each violation of the Act.

The bills are tie-barred.

Senate Bill 512 (S-1)

Cemetery Merchandise & Services

Currently, a person may not sell, provide, or agree to provide funeral goods or funeral services pursuant to a prepaid funeral contract unless the person is registered with the DCIS and has received a certificate of registration. The bill, instead, would prohibit a person from selling, providing, or agreeing to provide "merchandise", funeral services, or "cemetery services" pursuant to a "prepaid contract" unless that person was registered with the DCIS.

Under the Act, "funeral goods" means items of merchandise sold or offered for sale or lease to consumers that are used in connection with a funeral, alternative to a funeral, or final disposition of human remains. Funeral goods may not include land or interest in land, crypts, or niches sold by a cemetery or cemetery burial vaults or other outside containers, markers, monuments, urns, or merchandise used for the purpose of memorializing a decedent and placed on or in proximity to a place of interment, entombment, or inurement and sold by a cemetery. The bill would delete that definition. Under the bill, "merchandise" would mean both cemetery burial vaults or other outside containers, grave memorials, and urns, and items of merchandise sold or offered for sale or lease to consumers that would be used in connection with a funeral, an alternative to a funeral, or the final disposition of human remains, including caskets, combination units, and catafalques. "Merchandise" would not include land, interests in land, or interests in mausoleums

or columbariums that were sold by a cemetery that complied with the Cemetery Regulation Act's endowment care trust fund requirements.

The Act defines "funeral services" as services customarily performed by a mortuary science licensee and include such things as care of human remains, embalming, preparation of remains for final disposition, memorial services, and other services relating to a funeral or other final disposition of human remains. The bill would define "cemetery services" as cremations, grave openings and closings, and installation of grave memorials.

"Prepaid funeral contract" currently means a contract requiring payment in advance for funeral services or funeral goods, delivery of which would occur after death under either a guaranteed price contract or nonguaranteed price contract. Under the bill, "prepaid contract" would have the same definition, but would refer to funeral or cemetery services or merchandise, rather than funeral services or funeral goods.

Registration

The Act requires an application form for original or renewal registration to contain certain information, as well as a statement made under oath that the registrant has an agreement that complies with the Act with each escrow agent with which it has deposited funds. Under the bill, an application would have to contain either this statement or, if the registrant were or intended to be an escrow agent for funds received in connection with a nonguaranteed price contract, a statement that the registrant would comply with the Act's escrow agent requirements (which involve agreeing to allow inspection and copying of records under certain circumstances).

An application must contain a list of the names and addresses of escrow agents in which funds have been or will be deposited. The bill also would require an applicant to submit copies of all escrow or trust agreements between a registrant and an escrow agent.

The DCIS may deny a registration under certain circumstances. The bill also would allow denial if the Department determined that the registrant or applicant had violated the Act, Article 18 of the Occupational Code, or the Cemetery Regulation Act, or lacked good moral character as defined and determined

under Public Act 381 of 1974. (That Act prescribes the use of the term "good moral character" as a requirement for an occupational or professional license. The term means "the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner".)

Prepaid Contracts

A prepaid contract under the Prepaid Funeral Contract Funding Act must be either a nonguaranteed price contract or a guaranteed price contract and may be made and executed only pursuant to the Act. A guaranteed price contract must designate a provider who has agreed to furnish funeral goods or funeral services (or, under the bill, merchandise or funeral or cemetery services) specified in the contract, upon the death of the contract beneficiary. If the designated provider is not the contract seller, the Act requires either of the following:

- The provider must have previously contracted with the contract seller to provide the goods and services specified in the contract and the contract must indicate the contractual relationship.
- The provider must be made a party to the contract before any consideration is paid and the contract may not be binding on the contract buyer until the provider has been made a party to the contract.

The bill would delete the first of those options.

In addition to registration under the Act, a provider in a guaranteed price contract must be licensed to provide funeral services under Chapter 18 of the Occupation Code. The bill would require that a provider be licensed under that chapter or registered under the Cemetery Regulation Act. If a provider were required to possess a license or registration in order to provide the services included in a prepaid contract, a contract seller who did not possess a license or registration would have to disclose to the contract buyer that it could not perform activities that required licensure or registration.

(A guaranteed price contract has a guaranteed fixed price for which specified funeral goods or services must be sold to or made available for a contract buyer or a contract beneficiary, regardless of the cost or value of the goods or services at the time of the contract beneficiary's death. Additional consideration

may not be charged when the goods or services are delivered.

Under a nonguaranteed price contract, the funds received by an escrow agent are applied to the cost of funeral goods or services, which may be selected by the contract buyer when the contract is signed or by a person legally authorized to procure the goods or services when the contract beneficiary dies. A nonguaranteed price contract does not obligate the contract beneficiary's estate or the person who is legally entitled to make funeral arrangements to purchase specific goods or services that were selected before the beneficiary's death, or to spend a specific amount on funeral goods or services.

The bill essentially would retain the current definitions but apply them to merchandise or funeral or cemetery services.)

Cancellation/Refund

The Act allows a contract buyer to cancel a prepaid contract at any time before the contract beneficiary's death, upon 30 days' written notice to the contract seller or the provider. The escrow agent then must disburse principal and income in the escrow account to the contract buyer in the following amounts:

- If no commission has been charged, at least 90% of the balance.
- If a commission of 5% or less has been charged, at least 95% of the balance.
- If a commission of more than 5% has been charged, 100% of the balance.

Any balance remaining after disbursement to the contract buyer must be disbursed to the contract seller or the provider.

The bill would prohibit the cancellation or refund of a prepaid contract after the contract beneficiary's death, unless there were no remains or the remains could not be recovered. This prohibition would not prevent the transfer of a contract from one provider to another upon the request of the those entitled to make funeral arrangements. Also, a contract could be upgraded after the contract beneficiary's death by a person acting on behalf of the estate or by someone entitled to make funeral or cemetery arrangements.

Annual Examination & Special Report

A registrant must keep, in this State, accurate accounts, books, and records of all transactions and accounts regulated under the Act. The records must be kept for at least 36 months after either the performance of all obligations of each prepaid contract or the filing of the final special report that includes a performed prepaid contract.

The bill would require that, on December 31 of each year, a registrant have available for examination by the DCIS an annual statement or record of its most recent fiscal year ending at least six months before December 31. The statement or record would have to be certified by the owners or, in the case of a corporation, by two directors or trustees, and would have to show the financial status of all contractual liability and obligations for future performance of services by the registrant or its affiliate. The statement or record would have to contain all of the following:

- A complete description of the future performance obligations involved.
- The face value of all contracts as written.
- Complete information on the means, provision, trust, or other vehicle that would assure fulfillment of all obligations, stating ledger and market values of the vehicle, its location, nature of investments, and trustees, including fees paid to trustees.

In addition, the Act requires a registrant, at least once every three years, to secure a special report of limited review prepared by an independent licensed certified public accountant (CPA). The bill would require the special report annually, rather than at least once every three years, and would delete the requirement that the licensed CPA be "independent".

Audit Expense

Under the Act, the DCIS may examine, review, or audit the books and records of a contract seller or a provider pertaining to payments received for prepaid contracts. Under the bill, the DCIS could charge a registrant for the actual expenses of the examination, review, or audit, but not more than \$1,000.

Escrow Agents

Under the Act, all funds received in connection

with a prepaid contract must be held in escrow by an escrow agent for the benefit of the contract beneficiary. If the prepaid contract is a nonguaranteed price contract, the contract seller or provider may serve as the escrow agent. In the case of either a guaranteed or a nonguaranteed price contract, any of the following may serve as an escrow agent:

- A depository (a State- or nationally chartered bank or a State- or Federally chartered savings and loan association, savings bank, or credit union, whose deposits are Federally insured).
- A trust company.
- A Michigan nonprofit corporation in which the majority interest is held by 250 or more funeral establishments licensed under Chapter 18 of the Occupational Code.
- A Michigan nonprofit corporation in which the majority interest is held by 250 or more cemeteries licensed and operated under the Cemetery Regulation Act. (The bill would reduce this number to 50.)

If the prepaid contract is a nonguaranteed price contract, either the contract seller or the provider may select the escrow agent. If the prepaid contract is a guaranteed price contract, the escrow agent must be selected by the provider who has been designated to furnish funeral goods or services. Under the bill, the provider designated to furnish funeral services would have to select the escrow agent in a guaranteed price contract. If the prepaid contract did not include funeral services, any provider could select the escrow agent.

Assignment or Transfer of Obligations

The Act requires a registrant who discontinues its business operations to notify the DCIS and the contract buyer of a prepaid funeral contract, and to provide written documentation that it has arranged for an assignment of the contract to another provider. The bill would delete that requirement. Instead, the purchaser or assignee of a registrant's business operations would have to notify the DCIS and the contract buyers of the purchase or assignment of the prepaid contracts.

In addition, the Act requires a contract seller or provider to notify the contract buyer in writing if the seller or provider assigns or transfers its obligations under a prepaid contract to another provider. If the contract

buyer cancels the contract within 30 days of the notification, the buyer is entitled to a refund of 100% of the remaining principal and income, plus any commission charged. An assignment or transfer of a provider's obligations under a prepaid contract that is made in connection with the sale of a business is subject to the notice and refund provisions only if more than 50% of the ownership interest in the business is transferred within a 12-month period.

The bill specifies that, upon sale of the business, the notice requirement would be the responsibility of the purchaser. The bill also provides that these requirements would not apply to burial rights or other land interests, crypts, inscribed monuments, inscribed markers, or niches, for which no refunds were available.

Violations & Penalties

A person selling or offering to sell goods or services under the Act, whether registered or not, is prohibited from engaging in certain activities. The bill also would prohibit both of the following:

- Refusing the use of merchandise bought from another vendor or discriminating by price, burial fee, or otherwise for not purchasing merchandise from or under the direction of the funeral establishment or cemetery.
- Requiring the purchase of a cemetery burial vault or other outside container from a particular person as a condition to burial in a Michigan cemetery (although this prohibition would not limit the right of a cemetery to require the use of a crematory burial vault or other outside container).

If the violator is not a registrant, the DCIS must refer the matter to the Attorney General or a prosecuting attorney for criminal or civil action. If the violator is a registrant, the DCIS must either refer the matter or institute administrative proceedings. The DCIS may impose certain sanctions, including suspension or revocation of registration, civil fines, and probation, on a registrant. Under the bill, the DCIS or the Department of Attorney General could petition a court of competent jurisdiction to issue a subpoena requiring a person to appear and testify or produce relevant documentary material for examination at a criminal, civil, or administrative proceeding.

Under the Act, converting funds paid pursuant to a prepaid contract for a person's own use or benefit, other than as authorized by the Act, is a felony punishable by a fine of \$5,000 and/or up to five years' imprisonment for each violation. The bill would extend that penalty to failure "to escrow or trust funds" according to the Act.

Receivership

If the DCIS determines that a registrant has not complied with the Act's investment and depositing requirements and that insufficient funds are available to meet the obligations of prepaid contracts, the Department may petition the circuit court of the county of the registrant's principal place of business, or of Ingham County, for appointment of a receiver. After notice to the registrant and a hearing, and upon concurring in the DCIS's findings, the court must appoint a receiver.

The bill specifies that the court would have to appoint "a qualified person" as a receiver. The bill would delete requirements that the receiver, under conditions prescribed by the court, take possession of the registrant's assets for the purpose of liquidation, and that the court provide for notice to creditors, filing of claims, and all other details necessary for an estate in receivership. Instead, the bill specifies that a receiver would have all the powers, authority, and remedies of an assignee for the benefit of creditors under Chapter 52 (Assignments for the Benefit of Creditors) of the Revised Judicature Act. Also, under appropriate circumstances, a receiver could file for protection under the Bankruptcy Code.

Senate Bill 513 (S-1)

Commissioner Responsibilities

The Cemetery Regulation Act requires the Cemetery Commissioner to institute and maintain a system of auditing trust funds required by the Act and of registering each cemetery authorized to be created, maintained, and operated under Public Act 12 of 1869 and Public Act 87 of 1855 (which regulate cemetery corporations), as well as any other cemetery operating under State law or local ordinance. The bill would extend that provision to cemeteries conducting sales under the "Prepaid Funeral and Cemetery Sales Act".

The bill also would require the Commissioner to inspect the facilities and grounds of a cemetery on a periodic basis that he or she determined appropriate, but not less than once every three years. The Commissioner could charge the cemetery for the actual expenses of the inspection, but not more than \$1,000.

Inspection or Audit Charge

The Act requires that a cemetery's books, papers, records, and documents be available for inspection or audit by the Commissioner, or a person he or she appointed, at any time during regular business hours with reasonable notice. One or more qualified people must conduct the audit, and their services must be charged to and paid by the cemetery at the rate of \$10 per hour, but not more than \$100 total. The bill would increase the total allowable charge to \$1,000.

Disciplinary Action

Under the Act, a person must apply to the Commissioner for a permit to establish a cemetery or a registration to operate a cemetery. The Commissioner may deny an application and refuse to issue a permit or registration, suspend or revoke a permit or registration, or reprimand, place on probation, or take other disciplinary action against an applicant if the Commissioner makes certain findings, including a finding that the applicant or its officers or general manager has been guilty of a fraudulent act in connection with selling or otherwise dealing in cemetery lots, burial rights, or services of a type required to be registered under the Act. The bill, instead, would allow the Commissioner to take action if he or she found that an applicant or its officers or general manager had been guilty of an unlawful or fraudulent act in connection with selling or otherwise dealing in funeral or cemetery merchandise or services regulated by the Prepaid Funeral and Cemetery Sales Act.

The Commissioner also could take action if he or she found that the applicant or its officers or general manager had done any of the following:

- Violated Article 18 of the Occupational Code.
- Violated the Prepaid Funeral and Cemetery Sales Act.
- Failed to comply with Section 2080 of the

Insurance Code (which regulates the relationship between insurance companies and funeral service providers and generally prohibits a funeral establishment or cemetery from being licensed as an insurance agent).

In addition, the bill would allow the Commissioner to impose an administrative fine of up to \$5,000 for each separate violation of the Act.

Merchandise Trust Account

The bill would delete a requirement that a cemetery registered under the Act that is authorized to sell cemetery merchandise or services establish a merchandise trust account and deposit in it a percentage of the gross proceeds of the sales of merchandise and services. That provision also prescribes the minimum amount of total deposits in a merchandise trust account; requires money to be repaid upon demand of a purchaser; and authorizes a cemetery to withdraw the amount on deposit for a delivered vault or outside container.

Mausoleum/Columbarium Construction

The bill would prohibit a person from developing or building a mausoleum or columbarium and engaging in the preconstruction sale of crypts or niches in a mausoleum or columbarium unless that person did both of the following:

- Agreed to complete the mausoleum or columbarium within four years after the date of the first sale of an entombment or inurnment right in the proposed mausoleum or columbarium or, if construction were not completed within that time and upon the request of the purchaser, agreed to offer to the purchaser a refund of 100% of the purchase price with interest calculated at 4% annually.
- Agreed that if the person for whom the entombment or inurnment right was purchased died before the mausoleum or columbarium was completed, an alternative disposition of the remains would be provided until completion of the mausoleum or columbarium or until a refund was made of 100% of the purchase price with interest calculated at 4% annually.

Rules

The bill would delete a provision allowing the Commissioner to promulgate rules regarding requirements for the establishment and maintenance of special trust funds to provide for cemeteries' future performance obligations and special care or decorations obligations.

MCL 328.211 et al. (S.B. 512)
456.522 et al. (S.B. 513)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By including prepaid sales of cemetery services and merchandise in the statute that governs prepaid funeral contracts, the bills would extend to people who buy preneed cemetery goods and services the same consumer protections that currently exist for prepaid funeral contract purchasers, and would treat funeral homes and cemeteries equally with respect to the sale of services and merchandise. Presently, when a person buys a prepaid *funeral* contract, he or she is protected by the requirements that the proceeds of the sale be placed in escrow and that a refund of at least 90% of the principal and income of that escrow account be provided upon request. Those who purchase *cemetery* goods and services on a preneed basis have much more limited assurances that their funds will be used as they intend, and have little or no guarantee that their money will be refunded if they opt out of a cemetery preneed plan.

Evidently, some consumers have been taken advantage of in their transactions with cemeteries. For example, a Lansing area man testified before the Senate Committee on Local, Urban and State Affairs that he and his wife bought two cremation packages from a cemetery in 1970, with the understanding that the contract would cover all their postmortem needs. When his father-in-law, who had an identical cremation package, died in the 1990s, the man and his wife discovered that additional services were needed, and costs payable, upon death. Subsequently, the man and his wife decided to cancel their more-than-20-year-old contracts. They initially were told that they were not entitled to any

refund, but eventually received \$2,100 of the \$6,200 fee that they had paid in 1970.

Another man who testified lives in Maine but was raised in Michigan. His parents, who had lived most of their lives in Michigan but retired to Florida, had purchased burial plots, caskets, burial vaults, and markers from an Oakland County cemetery in 1965. When the man's father died in Florida last year, the family decided that he should be buried in Maine, near the home of his children and grandchildren. The Oakland County cemetery did honor the preneed purchase of the casket, and shipped it to Florida for the transfer of the remains to Maine, and eventually agreed to ship the grave marker to Maine, but refused to refund the family the cost of the burial plots or burial vaults. Michigan's Cemetery Commissioner notified the Maine resident that, under this State's Cemetery Regulation Act, a cemetery is not required to offer a refund for unused burial rights or services, and advised him to try to sell the burial plots and vaults by advertising them in local newspapers.

Consumers should have the same protections regardless of whether they buy funeral and cemetery services and merchandise from a funeral home or from a cemetery operator. Those safeguards should be based on what goods and services are purchased, not from whom they are bought.

Response: Cemeteries and funeral service operations already are subject to the same requirements with respect to advance sales of products and services that are regulated under the Prepaid Funeral Contract Funding Act. Although funeral homes and cemeteries generally offer different products and services, some merchandise and services (such as caskets and cremations) may be sold by either type of establishment.

In addition, requiring 100% of preneed cemetery sale proceeds to be placed in escrow would not necessarily afford consumers greater protection. According to written testimony of the Cemetery Commissioner, the DCIS's experience shows that the *level* of the current trust requirement has not been responsible for cemeteries' failure to provide merchandise or services. Instead, in some cases, the money was never placed in trust at all.

Opposing Argument

While the average person might think of funeral homes and cemeteries as similar

operations, they actually are very different businesses. A funeral operator must be licensed in the profession of mortuary science under the Occupational Code and provides goods and services related to the preparation of the corpse (such as embalming) and the funeral ceremony (such as providing a facility for viewing and visitation, a memorial service, and transportation). Cemeteries, on the other hand, provide services and merchandise relating to interment (such as grave openings and closings, burial plots and vaults, crypts and mausoleums, urns and columbariums, and markers and monuments).

Overhead costs apparently are much higher for a cemetery than for a funeral home. According to testimony before the Senate Committee by a cemetery operator, the revenue earned from burial plots and grave opening and closing fees is inadequate to sustain the financial needs of a cemetery business, and sales of cemetery products, often conducted on a preneed basis, provide cemeteries with the cash flow necessary to keep their businesses afloat. Under the Cemetery Regulation Act, cemeteries may use part of the proceeds of those sales, as well as income generated from the portion of sales revenue deposited in trust, to help maintain their business. If cemeteries had to deposit in escrow the entire proceeds from preneed sales agreements, and could not use the income generated from the account as it was earned, they would not have the financial resources necessary to maintain their facilities and pay for other operating expenses, such as salaries and advertising. According to the trustee of a large southeastern Michigan cemetery, that cemetery would lose more than \$500,000 a year in cash flow as a result of this change, although it presently maintains a healthy merchandise trust fund surplus of approximately \$1,250,000.

By eliminating the merchandise trust fund provisions, and applying the Prepaid Funeral Contract Funding Act's escrow and refund requirements to the sale of cemetery goods and services, the bills likely would drive some cemeteries out of the preneed business and enable funeral service operators to capture a much larger share of the preneed market. Consumers then would have fewer choices, and less competition in the market would drive up prices on services and merchandise.

Response: Cemeteries should not rely on the revenue stream from preneed sales to meet current cash flow needs. Doing so

leaves the customer with no guarantee that the products and services he or she pays for today will be available in the future. Proceeds from those sales should be protected by escrow and refund requirements, as is the amount paid for prepaid funeral goods and services. As expressed in a *Detroit Free Press* editorial, if cemeteries decided to stop selling goods and services on a preneed basis, prices could rise, but the "benefits of these bills are more important to consumers than the possibility of losing some competition in the marketplace" ("Prepaid Funerals: Subject Cemeteries to Same Rules As Funeral Homes", 6-4-03).

Opposing Argument

The bills actually could diminish consumer protection. According to DCIS officials, the Prepaid Funeral Contract Funding Act has major regulatory flaws. While Senate Bill 512 (S-1) proposes some helpful consumer protection measures, such as refunds, a better way to address the situation from a regulatory perspective, would be to add those provisions to the Cemetery Regulation Act, rather than bringing cemetery sales into the weaker regulatory framework of the Prepaid Funeral Contract Funding Act.

Moreover, the Cemetery Commissioner believes that requiring inspections of cemetery grounds and facilities, as Senate Bill 513 (S-1) proposes, is unnecessary since cemeteries and crematories are open to the public. In addition, the proposed \$1,000 fee for such inspections may be excessive.

Response: Senate Bill 512 (S-1) addresses some of the regulatory deficiencies of the Prepaid Funeral Contract Funding Act. For instance, under the bill, those who engaged in the sale of prepaid funeral or cemetery goods and services would have to report annually to the DCIS, rather than once every three years, as is currently required.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 512 (S-1)

The bill could increase some of the regulatory responsibilities of the Department of Consumer and Industry Services regarding the licensure of prepaid contract providers, but the license fee revenue would be used to offset any additional costs. Also, the Department would be able to charge an

annual fee for the cost of auditing the contract seller or provider of the prepaid contacts.

Senate Bill 513 (S-1)

The bill would increase the existing audit fee from \$100 to up to \$1,000 and create an inspection fee once every three years up to \$1,000, as well as create a \$5,000 administrative fine for violations.

In FY 2001-02, the Department licensed 147 cemeteries in the State. The increased audit fee could generate a maximum of \$132,300 in new revenue if every cemetery were audited in one year. The inspection fee could generate up to \$147,000 every three years. This revenue would be used to offset the costs of regulating this industry. The amount of revenue that would be generated through the administrative fine is indeterminate as the number and severity of violations are not known.

Fiscal Analyst: Maria Tyszkiewicz

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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.