



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bills 512 and 513 (as enrolled)
Sponsor: Senator Laura M. Toy
Senate Committee: Local, Urban and State Affairs
House Committee: Commerce

PUBLIC ACTS 21 & 22 of 2004

Date Completed: 4-4-05

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, the average cost of an adult funeral exceeds \$5,000. 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, had been regulated under two different statutes. As a result, the treatment customers received depended on which services and merchandise they purchased, and from whom. This treatment evidently was unsatisfactory at times, particularly in situations involving sales by cemeteries.

Public Act 255 of 1986 enacted the Prepaid Funeral Contract Funding Act to govern the sale of funeral goods and funeral services under prepaid funeral contracts, and regulate these contracts, their sellers, and the providers of the funeral goods and services. That Act originally excluded crypts, niches, and cemetery burial vaults and other outside containers and merchandise sold by a cemetery. Under the Act, 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. The Act originally required a cemetery and an agent authorized to sell cemetery merchandise or services on a cemetery's behalf to establish a merchandise trust account and deposit in it a percentage of the price, as determined by the Cemetery Commissioner. Although cemeteries and their agents have been authorized to sell cemetery products and services on a preneed basis, the Cemetery Regulation Act, unlike the Act governing prepaid funeral contracts, 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 were denied refunds or alternative arrangements when they decided to change their plans, or their survivors were charged additional amounts when the time came to use the prepaid arrangements. It was suggested 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 apply regardless of whether prepaid funeral and/or cemetery services and products are purchased from a cemetery or from a funeral home.

CONTENT

Senate Bill 512 amended the Prepaid Funeral Contract Funding Act, which the bill renamed the "Prepaid Funeral and Cemetery Sales Act", to do all of the following:

- Extend the Act to the provision of cemetery services and merchandise.
- Provide for a cemetery to escrow 80% of the money received from the sale of cemetery merchandise under prepaid contracts, after a four-year phase-in period.
- 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 previously required) or under the Cemetery Regulation Act.
- Require a person registered under the Prepaid Funeral and Cemetery Sales Act to have an annual statement or record of its fiscal year available for examination by the Department of Labor and Economic Growth (DLEG).
- Require a registrant to secure a special report prepared by a certified public accountant (CPA) pertaining to prepaid funds annually, rather than once every three years (as previously required).
- Allow DLEG 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.

Senate Bill 513 amended the Cemetery Regulation Act to do all of the following:

- Provide that any preneed contracts for cemetery merchandise or services entered into on or after January 1, 2005, are subject to the Prepaid Funeral and Cemetery Sales Act.
- Increase from \$100 to \$1,000 the maximum amount the State may charge a cemetery for audits and inspections of books.
- 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 are 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 Cemetery Regulation Act.

The bills were tie-barred and took effect January 1, 2005.

Senate Bill 512

Cemetery Merchandise & Services

Previously, a person could not sell, provide, or agree to provide funeral goods or funeral services pursuant to a prepaid funeral contract unless the person was registered with DLEG and had received a certificate of registration. The bill prohibits a person from selling, providing, or agreeing to provide merchandise, funeral services, or cemetery services pursuant to a prepaid contract unless that person is registered with DLEG.

"Funeral goods" had been defined as items of merchandise sold or offered for sale or lease to consumers that were used in connection with a funeral, alternative to a funeral, or final disposition of human remains. Funeral goods did 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 deleted that definition. Under the bill, "merchandise" means 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 will 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" does not include land, interests in land, or interests in mausoleums or columbariums that are sold by a cemetery that complies with the Cemetery Regulation Act's endowment care trust fund requirements.

Under the Prepaid Funeral and Cemetery Sales Act, "funeral services" means services customarily performed by a mortuary science licensee and includes 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 defines "cemetery services" as cremations, grave openings and closings, and installation of grave memorials.

"Prepaid funeral contract" previously meant 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" has the same definition, but refers 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. Under the bill, the form also must include either 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 (as previously required) or, if the registrant is or intends to be an escrow agent for funds received in connection with a nonguaranteed price contract, a statement that the registrant complies 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 requires an applicant to submit copies of all escrow or trust agreements between a registrant and an escrow agent.

The Department may deny a registration under certain circumstances. The bill also allows denial if DLEG determines that the registrant or applicant has violated the Act, Article 18 of the Occupational Code, or the Cemetery Regulation Act, or lacks 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

Under the Prepaid Funeral and Cemetery Sales Act, a prepaid contract 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 merchandise or funeral or cemetery services (previously funeral goods or funeral services) specified in the contract, upon the death of the contract beneficiary. If the designated provider is not the contract seller, 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.

Previously, if the designated provider was not the contract seller, the provider had to have contracted with the contract seller to provide the goods and services specified in the contract and the contract had to indicate the contractual relationship. The bill deleted this requirement.

Under the bill, 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 (as previously required) or registered under the Cemetery Regulation Act. If a provider is required to possess a license or registration in order to provide the services included in a prepaid contract, a contract seller who does not possess a license or registration must disclose to the contract buyer that it may not perform activities that require licensure or registration.

(A guaranteed price contract has a guaranteed fixed price for which specified merchandise or funeral or cemetery services (previously 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 merchandise or services at the time of the contract beneficiary's death. Additional consideration may not be charged when the merchandise or services are delivered.

Under a nonguaranteed price contract, the funds received by an escrow agent are applied to the cost of merchandise or funeral or cemetery services (previously 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 merchandise 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 merchandise or services that were selected before the beneficiary's death, or to spend a specific amount on merchandise or services.)

Escrow Requirements

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. The bill, however, allows 80% of the funds received by a cemetery registered under the Cemetery Regulation Act for cemetery merchandise to be escrowed after a four-year phase-in period, as shown in Table 1.

Table 1

Time Period After the Bill's Effective Date	% of the Funds Received From the Sale of Cemetery Merchandise Under Prepaid Contracts
First 12 months	60%
13th through 24th month	65%
25th through 36th month	70%
37th through 48th month	75%
49th month and later	80%

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 30 or more cemeteries registered and operated under

the Cemetery Regulation Act. (This number previously was 250.)

As previously provided, 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 services. (The Act formerly referred to funeral goods or services.) The bill specifies that, if the prepaid contract does not include funeral services, any provider may select the escrow agent.

The Act requires income to be held and invested by the escrow agent in the same manner as the principal, except that income may be used to pay the agent's reasonable fees and expenses in addition to other costs specifically authorized in the Act. The expenses and fees may not exceed 1% of the aggregate balance of principal and earned income from each account annually. Under the bill, a cemetery that has chosen the escrowing option for cemetery merchandise described in Table 1 may provide by written agreement with the escrow agent to be paid accumulated income generated solely by the investment of funds received for the cemetery merchandise. These payments may not be made more often than once in a 12-month period and may not exceed the net amount of income earned in the previous 12 months, less any amount paid to the escrow agent for expenses and fees and an amount equal to any increase in the Detroit consumer price index (CPI).

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.

Under the bill, in the case of funds received for cemetery merchandise by a cemetery that has elected the escrowing option in Table 1, the escrow agent must disburse the principal and income in the account to the cemetery. The cemetery then must disburse to the contract buyer 100% of the amount of the contract price paid by the buyer plus an amount equal to any increase in the Detroit CPI since the contract was executed.

Previously, if an escrow account established under the Act was not used by those legally entitled to make funeral arrangements for the contract beneficiary, the escrow agent was required to disburse the principal and income in the same manner as provided for a refund before the contract beneficiary's death. Under the bill, instead, the contract buyer or his or her estate may cancel a prepaid contract after the death of the contract beneficiary only if there are no remains of the deceased, the remains cannot be recovered, or a prepaid contract was not used because those entitled to make funeral arrangement did not know the contract existed. After such a cancellation, the contract buyer or his or her estate must receive a refund.

Under the bill, before the death of the contract beneficiary, for a prepaid contract or multiple prepaid contracts that include merchandise or services subject to the requirement that all funds be escrowed, together with cemetery merchandise subject to the escrow option in Table 1, the contract buyer may cancel the portion of the contract pertaining to cemetery merchandise alone, without canceling the remaining portions. In such a cancellation, the escrow agent must disburse the account's principal and income to the cemetery, which must give the contract buyer 100% of the contract price paid plus an amount equal to any increase in the Detroit CPI since the contract was executed.

The bill provides that a contract may be upgraded after the contract beneficiary's death by a person on behalf of the contract beneficiary's estate or by a person entitled to make funeral or cemetery arrangements.

Annual Examination & Special Report

The Act requires a registrant to keep, in this State, accurate accounts, books, and records of all transactions and accounts regulated by the Act. The records must include copies of all prepaid contracts, the dates and amounts of all payments made and accepted under those

contracts, the name and address of the contract beneficiaries, the name and address of each escrow agent, and any other records that DLEG requires. The bill also requires the records to include the date and amount of each deposit made to an escrow agent; the total price of each contract exclusive of commission; any commission received for each contract; the date each contract is performed, canceled, or revoked; and the date and amount of any refund paid to the contract buyer. As previously required, the records must be kept for at least 36 months after the performance of all obligations of each prepaid contract or after the filing of the report that includes a performed prepaid contract.

The bill requires that, beginning on April 1, 2006, and annually after that, a registrant make available for DLEG examination a statement, current as of the previous December 31, disclosing the following information regarding each unperformed prepaid funeral contract:

- The date of the contract and, if available, the contract number.
- The names of the contract buyer and the contract beneficiary.
- The contract's face value and, if the registrant is allowed to deposit less than face value, the amount required to be on deposit with the escrow agent.
- Whether the contract is a guaranteed or nonguaranteed contract.
- Complete information on the means, provision, trust, or other vehicle that will 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.

A registrant who has placed funds in a commingled escrow account may satisfy that last requirement by identifying the name of the escrow agent and the particular investment account or accounts in which the funds have been placed.

Previously, at least once every three years, a registrant that served as an escrow agent or had deposited funds with an escrow agent, had to secure a special report of limited review prepared by an independent licensed CPA. The bill, instead, requires such a registrant annually to secure a report prepared by a Michigan-licensed CPA.

The Act requires the CPA's report to provide certain assurances. Under the bill, in the case

of escrow accounts in which the registrant is not the escrow agent, the report also must include an assurance, upon a representative test sample selected on the basis of the CPA's professional judgment after considering all risks, that funds have been deposited with and held by the escrow agent in accordance with the Act.

The bill also specifies that any books or records regarding prepaid contracts entered into before the bill's effective date that were in compliance with applicable law are considered in compliance with the Act.

Audit Expense

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

Assignment or Transfer of Obligations

The Act previously required a registrant who discontinued its business operations to notify DLEG and the contract buyer of a prepaid funeral contract, and to provide written documentation that it had arranged for an assignment of the contract to another provider. The bill deleted that requirement. Instead, the purchaser or assignee of a registrant's business operations must notify DLEG 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 these 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 is the responsibility of the purchaser. The bill also provides that these requirements do not apply

to burial rights or other land interests, crypts, inscribed monuments, inscribed markers, or niches, for which no refunds are 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 prohibits such a person from 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. The bill states that this does not preclude a cemetery from adopting and enforcing consistent rules and regulations to be followed by both the cemetery and outside vendors regarding the quality, size, shape, type, installation, and maintenance of a grave memorial or a cemetery burial vault or other outside container or urn. Such regulations, however, may not limit as to supplier or vendor.

In addition, the bill prohibits a person from 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. The bill states that this does not limit the right of a cemetery to require the use of a crematory burial vault or other outside container.

Under the Act, if an alleged violator is not a registrant, DLEG must refer the matter to the Attorney General or a prosecuting attorney for criminal or civil action. If the violator is a registrant, DLEG must either refer the matter or institute administrative proceedings. The bill allows DLEG or the Department of Attorney General to petition a court of competent jurisdiction for issuance of 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 extended that penalty to failure "to escrow or trust funds" according to the Act.

The Act allows DLEG or any person, in order to force compliance with the Act, to bring an

action in the circuit court in any county in which a registrant or any other person has solicited or sold prepaid contracts. The court may award damages and issue equitable orders to restrain conduct in violation of the Act. Under the bill, the court also may award reasonable attorney fees and costs to a prevailing party.

Receivership

Under the Act, if DLEG 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 DLEG's findings, the court must appoint a receiver.

The bill specifies that the court must appoint "a qualified person" as a receiver. The bill deleted 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 has 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 may file for protection under the Bankruptcy Code.

Senate Bill 513

Commissioner Responsibilities

The Cemetery Regulation Act requires the Cemetery Commissioner (the Director of DLEG or his or her designee) 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 extended that provision to cemeteries conducting sales under the Prepaid Funeral and Cemetery Sales Act.

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 appoints, 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, under the bill, not more than \$1,000 total. The total allowable charge previously was \$100.

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. Previously, these included a finding that the applicant or its officers or general manager had 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, allows the Commissioner to take action if he or she finds that an applicant or its officers or general manager has been guilty of an unlawful or fraudulent act in connection with selling or otherwise dealing in cemetery lots and burial rights regulated by the Cemetery Regulation Act or funeral or cemetery merchandise or services regulated by the Prepaid Funeral and Cemetery Sales Act.

Under the bill, the Commissioner also may take action if he or she finds that the applicant or its officers or general manager has 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 allows the Commissioner to impose an administrative fine of up to \$5,000 for each separate violation of the Cemetery Regulation Act.

Merchandise Trust Account

Under the Act, a cemetery that is required to be registered and an agent that is authorized by a cemetery to sell cemetery merchandise or services must establish a merchandise trust account and deposit in it a percentage of the gross proceeds of the sales. The Act 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.

The bill states that any preneed contracts for cemetery merchandise or services entered into on or after January 1, 2005, are subject to the Prepaid Funeral and Cemetery Sales Act. The provisions of the Cemetery Regulation Act regarding merchandise trust accounts are subject to this provision of the bill.

Mausoleum/Columbarium Construction

The bill prohibits 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 does both of the following:

- Agrees 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 is not completed within that time and upon the request of the purchaser, agrees to offer to the purchaser a refund of 100% of the purchase price with interest calculated at 4% annually.
- Agrees that if the person for whom the entombment or inurnment right is purchased dies before the mausoleum or columbarium is completed, an alternative disposition of the remains will be provided until completion of the mausoleum or columbarium or until a refund is made of 100% of the purchase price with interest calculated at 4% annually.

Rules

The bill deleted 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 extend to people who buy preneed cemetery goods and services greater consumer protections than previously existed for those purchasers, and treat funeral homes and cemeteries similarly with respect to the sale of services and merchandise. 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 previously purchased *cemetery* goods and services on a preneed basis had much more limited assurances that their funds would be used as the purchasers intended, and had little or no guarantee that their money would be refunded if they opted out of a cemetery preneed plan.

Evidently, some consumers were 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 was from Maine but had been 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 in 2002, 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 was 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 sufficient protections regardless of whether they buy funeral and cemetery services and merchandise from a funeral home or from a cemetery operator. Under the bills, those safeguards will be based on what goods and services are purchased, not from whom they are bought.

Response: Cemeteries and funeral service operations already were subject to the same requirements with respect to advance sales of products and services that were regulated under the former 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 up to 80% of the proceeds from a cemetery's preneed sale of cemetery merchandise to be placed in escrow will not necessarily afford consumers greater protection. According to written testimony of the Cemetery Commissioner, the *level* of the previous trust requirement was not 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, have provided cemeteries with the cash flow necessary to keep their businesses afloat. Under the Cemetery Regulation Act, cemeteries previously could 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. After depositing in escrow 80% of the proceeds from preneed sales agreements, and being unable to use the income generated from the account as it is earned, cemeteries will not have the financial resources necessary to maintain their facilities and pay for other operating expenses, such as salaries and advertising.

By applying the prepaid funeral contract escrow and refund requirements to the sale of cemetery goods and services, the bills likely will drive some cemeteries out of the preneed business and enable funeral service operators to capture a larger share of the preneed market. Consumers then will have fewer choices, and less competition in the market will 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).

In addition, the bills regulate preneed cemetery sales under the Prepaid Funeral and Cemetery Sales Act only for contracts entered into after January 1, 2005, and phase in the escrow requirement over a four-year period. Even then, Senate Bill 512 requires only 80% of the funds received by cemeteries from the sale of cemetery merchandise under prepaid contracts to be held in escrow, compared with 100% of funds received by funeral operators for prepaid contracts. These provisions leave some revenue from preneed sales available to cemeteries and give them a four-year window to adjust their business and financial practices.

Opposing Argument

The bills actually may diminish consumer protection. According to State officials, the former Prepaid Funeral Contract Funding Act had major regulatory flaws. While Senate Bill 512 enacted some helpful consumer protection measures, such as refunds, a better way to address the situation from a regulatory perspective, would have been to add those provisions to the Cemetery Regulation Act.

Response: Senate Bill 512 addresses some of the regulatory deficiencies of the Prepaid Funeral Contract Funding Act. For instance, under the bill, those who engage in the sale of prepaid funeral or cemetery goods and services must report annually to DLEG, rather than once every three years.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 512

The bill may increase some of the regulatory responsibilities of the Department of Labor and Economic Growth regarding the licensure of prepaid contract providers, but the license fee revenue will be used to offset any additional costs. Also, the Department will be able to charge an annual fee for the cost of auditing the contract seller or provider of the prepaid contacts.

Senate Bill 513

The bill increases the audit fee from \$100 to up to \$1,000 and creates 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. This revenue will be used to offset the costs of regulating this industry. The amount of revenue to be generated through the administrative fine is indeterminate as the number and severity of violations are not known.

Fiscal Analyst: Maria Tyszkiewicz
Elizabeth Pratt

A0304\512ea

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.