



THE FACTS ABOUT SENATE BILLS 512 AND 513:

What You Need to Know About Michigan Cemeteries

INTRODUCTION

Until the HBO hit series “Six Feet Under,” no one wanted to talk about funeral homes or cemeteries – known as the death care profession. Even now, the profession is of most interest to those of us in our twilight years who are planning ahead – or those who are forced to plan NOW due to someone’s death. But like any profession, there are regulations and competition in the death care profession that create debate, concern, interest and confusion. This is especially true when the profession is divided into two primary segments – funeral homes and cemeteries – that are distinctly different and are regulated by different laws. Recent legislation has raised a number of important issues that deserve open debate and discussion.

BACKGROUND

Over the years, the Michigan Legislature has drafted laws to reflect the distinct differences between the operation of cemeteries and funeral homes. Michigan’s private cemeteries are strictly regulated by the Michigan Cemetery Regulation Act, the Cemetery Corporation Act, and the Rural Cemetery Act. The Acts spell out the legal requirements for creating, owning and operating a cemetery in Michigan, as well as selling burial, entombment/columbarium rights, cemetery services and cemetery merchandise. The Acts also require a portion of each cemetery lot sale to be dedicated to a perpetual care fund for future maintenance and upkeep of facilities. Cemeteries must be *registered* with the state Department of Consumer and Professional Services, must be *audited* every year and provide a detailed report to the Department, and must be *licensed* to sell certain pre-need merchandise. Surprisingly, Michigan funeral homes do not have the same strict financial oversight that cemeteries do. Funeral homes are only required to provide the state with an abbreviated financial report once every three years – significantly short of the consumer protection afforded by the financial reporting provided by cemeteries.



The cemetery profession has successfully established itself as a competitive provider of goods and services. As a result, the funeral home lobby has tried for years to limit the impact cemeteries have had on the funeral home profession.

Recent legislation pushed by the funeral home lobby would do little to enhance consumer protection. As discussed below, Senate Bills 512 and 513 would undermine one of the most important aspects of consumer protection by protecting *funeral homes* from competition from the cemetery profession. Real consumer protection would support a competitive market place while ensuring adequate protection.

ISSUES BEING DEBATED

PRE-NEED SALES. Pre-need sales – the selection and payment in advance of cemetery or funeral goods and services – give consumers the opportunity to choose and pay for those goods and services *without* the stress and demand of time and emotion at the time of death (at-need). Pre-need sales also give consumers the opportunity to avoid price increases and inflation by locking-in prices at purchase. Pre-need cemetery or funeral goods, which have been paid for but have not yet been used may be stored or “warehoused” by a third party. **Senate Bills 512 and 513 prohibit the use of warehousing as a legitimate method of storing funeral merchandise.**

The Michigan Cemetery Association supports pre-need sales as maximum consumer protection, eliminating more expensive at-need decision-making driven by grief and emotion.

ISSUES BEING DEBATED *CONTINUED*

TRUSTING. Trusting – setting aside a portion of money received in advance for services and/or merchandise to cover the provider's cost of their acquisition – ensures that funds necessary to obtain the purchased goods and services are available when they're needed. By law, cemeteries are required to trust *more than the amount* necessary to assure the acquisition. **Senate Bills 512 and 513 are an attempt by the funeral home industry to eliminate competition from cemeteries by requiring over-trusting and diminishing the cemetery's operating cash flow.**

The Michigan Cemetery Association supports the consumer protection already mandated by the Michigan Cemetery Regulation Act, which requires cemeteries to trust 130 percent of the current cost of all cemetery merchandise.

REPORTING. The state requires an annual audit of a cemetery's trust funds to ensure proper trusting levels. These detailed ten page audit reports are submitted to the Department of Consumer & Industry Services (CIS) annually and are available to the public. Unfortunately, the funeral home industry is not currently required to submit detailed annual audit reports. Instead, funeral homes only provide the state with a short, limited review report every three years. **Senate Bills 512 and 513 continue to support inadequate funeral home reporting procedures.**

The Michigan Cemetery Association supports stringent financial oversight of both cemeteries AND funeral homes to protect consumers and calls for detailed audited financial reporting by funeral homes.



REFUNDING. Refunding is the practice of returning funds paid by a consumer for any services and/or merchandise paid for in advance but that have not yet been delivered.

The Michigan Cemetery Association supports consumer protection requiring refunds of monies for funeral and cemetery merchandise and services that are not delivered.

COMBINED OR JOINT OWNERSHIP. Michigan is one of a handful of states that prohibit the ownership of both a funeral home and a cemetery (Wisconsin, New Jersey, New York and Delaware also prohibit "combination" ownership). Joint ownership allows the consumer the convenience of planning everything in one place if they choose to do so. **Senate Bills 512 and 513 do not address combined or joint ownership. Repeal of this prohibition would strengthen options for consumer protection.**

The Michigan Cemetery Association supports joint ownership of funeral homes and cemeteries and encourages the Michigan legislature to eliminate the current prohibition.

MICHIGAN FUNERAL CONSUMER PROTECTION FUND

To strengthen consumer protection for Michigan residents, the Michigan Cemetery Association also supports establishing the "Michigan Funeral Consumer Protection Fund" to cover the cost of providing merchandise and/or services to any pre-need customers whose contracts have been breached because of the provider. The Michigan Funeral Consumer Protection Fund would be supported – and paid for by the members of the death care industry – by a \$3 industry provider fee for every death certificate and for every burial and cremation permit. The Fund would be capped at \$3 million. Other states, such as Indiana and Florida, have established similar successful funds to assure that there's enough in trust to protect consumers in case the seller becomes insolvent. **Senate Bills 512 and 513 do not establish or address consumer protection through this type of fund.**

FOR MORE INFORMATION

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