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House Bill 4890 (Substitute H-3 as passed by the House)
Sponsor: Representative Edward McBroom
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform

Date Completed: 9-18-14

CONTENT

The bill would amend the Cemetery Regulation Act to do the following:

- **Create a presumption that a cemetery space was abandoned if the person possessing a right to it had not, after 60 years, provided an updated address and affirmed possession to the space by taking certain actions; a memorial had not been installed; and remains had not been interred.**
- **Allow a cemetery owner or operator to certify the right to a space that was presumed abandoned, if the owner or operator posted a notice in the cemetery for 120 days, mailed a notice to the person possessing the right, and, under certain circumstances, published a notice.**
- **Specify information the notice would have to state.**
- **Allow a cemetery owner or operator to create and maintain a record after the requirements for certification were met.**
- **Specify limited remedies of a person asserting contractual rights to an abandoned space, after a record was created.**
- **Allow a person possessing a right to a space, after receiving notice, to transfer the right back to the cemetery owner or operator for an agreed upon amount, if the person did not want to keep the right.**
- **Require a contract for the sale of a right to a space to contain a notice of the presumption of abandonment, and allow a contract to impose a legal duty to keep the cemetery owner or operator informed of a person's residence address.**
- **Allow a cemetery owner or operator to publish on the internet a notice of intent to certify a right to a space as abandoned.**
- **Describe situations in which the bill's provisions would not apply.**

"Right to a space" would mean a burial right, columbarium right, or entombment right within a cemetery.

The bill would take effect on January 1, 2015.

Presumption of Abandonment

A person possessing a right to a space within a cemetery would be presumed to have abandoned the right to the space if all of the following applied:

- During the past 60 years, the person or his or her authorized representative had not given the cemetery owner or operator an updated address for purposes of contacting the person.

- During the past 60 years, the person or his or her authorized representative had not contacted the cemetery owner or operator and affirmed possession of the right to the space in one of the ways listed below.
- A memorial had not been installed at the cemetery under the right to the space.
- Remains had not been interred at the cemetery under the right to the space.

The person could affirm possession of the right to the space in any of the following ways:

- Requesting a burial or notifying the cemetery owner or operator of a burial under the right to the space.
- Requesting an installation of a memorial or notifying the owner or operator of an installation of a memorial under the right to the space.
- Indicating or requesting a transfer of the right to the space to another person.
- Making a payment to the owner or operator relating to the right to the space.
- Affirming in writing the possession of the right to the space.

Notice

After a right to a cemetery space was presumed to be abandoned, the cemetery owner or operator could certify the right to the space as abandoned, if all of the requirements described below were met.

The owner or operator would have to post on the space within the cemetery for 120 consecutive days a written notice of intent to certify the right to the space as abandoned.

If the owner or operator had a mailing address for the person possessing the right to the space or his or her authorized representative, the owner or operator would have to send to that address a written notice of intent to certify the right to the space as abandoned. The notice would have to be sent by certified mail with a return receipt requested.

At least 60 days after mailing that notice, the owner or operator would have to publish for two consecutive weeks a notice of intent to certify the right to the space as abandoned, in a newspaper in the county where the cemetery was located, if either of the following applied:

- The owner or operator did not have a mailing address for the person possessing the right to the space or his or her authorized representative.
- Whether or not the notice was returned as undeliverable, the person possessing the right to the space or his or her authorized representative had not contacted the cemetery owner or operator and affirmed the person's possession of the right within 60 days after the notice was mailed.

If publication were required, 60 days would have to pass after the owner or operator published the second notice in a newspaper and the person possessing the right to a space or his or her authorized representative had not contacted the owner or operator and affirmed the person's possession of the right.

A notice mailed, posted, or published would have to state all of the following:

- A description of the right to the space affected.
- The names of the person and his or her authorized representative, if any, if known to the cemetery owner or operator.
- The time frame within which the person or his or her authorized representative would have to contact the owner or operator and affirm the person's possession of the right to the space, to prevent the right from being certified as abandoned.
- That, if the right to the space were certified as abandoned, a person who possessed a right to it could be entitled to the remedies set forth in the bill.

- The name, address, electronic mail address, and telephone number of the cemetery owner or operator.

Certification; Limited Remedies

After satisfying the requirements described above, to certify the right to a cemetery space as abandoned, the cemetery owner or operator could create, sign, and maintain a record that stated all of the following:

- A description of the right to the space affected.
- The names of any people possessing the right to the space, if known to the owner or operator.
- That the right to the space was presumed to be abandoned under the criteria set forth in the bill.
- That the owner or operator provided notice in compliance with the bill.
- That the owner or operator had not received a response to the notice from a person possessing the right to the space or his or her authorized representative affirming the person's possession of the right.

After the record was signed, the right to the space would be certified as abandoned by people previously possessing the right to the space, and a person later asserting a contractual right to the space would be limited to the remedies described below.

If the original contractual right had not been resold or otherwise transferred to another person, the person asserting a contractual right to the space would be entitled to reinstatement of the right.

If the original contractual right to the space had been resold, the person asserting the right would be entitled to either of following, at his or her option:

- A different right to a space of comparable value within the cemetery.
- Compensation in the amount he or she paid for the right or an amount equal to 65% of the price for which the right was resold or otherwise transferred by the cemetery owner or operator, whichever was greater.

Transfer of Right back to Owner or Operator

If a person possessing a right to a space within a cemetery or the person's authorized representative were notified by the cemetery owner or operator of the intent to certify the space as abandoned, and the person or authorized representative did not seek to retain possession of the right, the person or representative could transfer the right back to the owner or operator for an amount agreed to by the parties.

Notice in Contract & on Internet

A contract for the sale of a right to a space entered into by a cemetery owner or operator after the bill's effective date would have to contain a written notice of the presumption of abandonment of a right to a space. The contract could impose a legal duty to keep the owner or operator informed in writing of a current residence address of the person possessing the right to the space or of his or her authorized representative.

A cemetery owner or operator could publish on one or more internet websites a notice of intent to certify a right to a space as abandoned. An owner also could use an internet search to attempt to identify the current mailing address of a person possessing a right to a space.

Exceptions

The bill's provisions would not apply to a right to a space if one or more of the following applied:

- An inscribed memorial was located on the space.
- The space immediately adjoined an inscribed memorial and that side of the memorial displayed a family surname, and the space was purchased with another space on which the inscribed memorial displaying the family surname was located.
- The space immediately adjoined both an inscribed memorial and a space that was purchased with the right to a space and included interred remains.

"Inscribed memorial" would mean one or both of the following:

- A stone or other structure or item that is used for the purpose of memorializing a decedent on a place of interment and that displays the name of a decedent.
- A stone or other structure or item that identifies an area of a cemetery dedicated for the interment of members of a family and that displays a family surname.

Proposed MCL 456.537

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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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.