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Bill seeks to protect cemetery trusts

Legislation awaits governor's signature

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Many cemetery owners in Indiana see the concept as simple enough. Trusts holding payments for prepaid burials and money to keep up the grounds shouldn't be treated as slush funds.

Cemetery bill

Recent fraud cases spurred state legislators to toughen restrictions on cemetery trust funds meant to cover grounds maintenance and prepaid contracts for burial services. House Bill 1026, which has passed both chambers of the General Assembly, now heads to Gov. Mitch Daniels' desk.

But outdated Indiana laws didn't account for the fraud that local and state investigators say Indianapolis-based Memory Gardens Management Corp. pulled off, draining as much as \$27 million from its trusts.

A bill aiming to tighten restrictions in the law is headed to Gov. Mitch Daniels' desk after unanimously passing both chambers of the General Assembly.

Some of its provisions:

Restrictions: Classifies funeral, cemetery and burial trusts as charitable trusts; tightens standards for their use; and establishes fiduciary responsibilities for institutions holding them. Gives the state attorney general tools to go after abuses of a trust in court, including restraining orders, restitution and appointment of a receiver.

The changes would put cemetery and funeral trusts on par with charitable trusts and charge those who oversee them with more responsibility for monitoring their use. A lawyer for the Indiana Cemetery Association said most of its members supported the changes as long overdue.

Abuse: Makes knowingly or intentionally paying out money for an improper purpose a Class C felony, giving prosecutors and regulators the ability to go after owners and bankers. Establishes fines for other violations.

"The people who own the trusts could do almost what they wanted," said Bill Keown, the association's general counsel, who helped draft the bill. "We've given the trust companies the incentive not to pull the wool over their eyes."

Verification: A trustee must verify a person's death before releasing money held in a burial or funeral trust for a prepaid contract and must confirm the services were provided. Trustees of funds created after June 30 cannot be affiliated with the cemetery owner.

The governor's spokeswoman, Jane Jankowski, said Friday that Daniels had not reviewed the bill.

Restoration: Compels owners who abuse trust funds to restore the lost principal.

The author, Rep. Dave Cheatham, D-North Vernon, understands the worry felt by thousands of Hoosiers with prepaid contracts or family members buried at Memory Gardens' half-dozen properties.

Disclosure: Requires owners to disclose in writing that a vault is not airtight or watertight.

He began drafting the bill before he knew of the Memory Gardens case, spurred by allegations of fraud at Grandview Memorial Gardens near Madison. State officials are investigating \$3 million to \$4 million in misused trust money, as well as problems with flooding in crypts, he said.

"I lived in Madison and grew up in Madison," Cheatham said. "I knew a lot of the people calling me. My dad was buried there."

Study: Charges the Probate Code Study Commission with reviewing cemetery and funeral

The Memory Gardens case broke in January, with criminal charges filed in Marion Superior Court against Robert E. Nelms, its owner, and Debora Johnson, his estranged partner.

The Indiana securities commissioner and the attorney general's office have joined a lawsuit filed by Memory Gardens' previous owners, the Meyer family, in Johnson Circuit Court.

A judge appointed a receiver to oversee Memory Gardens' daily operations and locate missing trust money.

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trust laws to determine whether additional changes should be made in Indiana. Its report is due by November.

Sources: House Bill 1026, Legislative Services Agency.

The company is still honoring contracts, but it is too early to tell whether there will be long-term damage to its finances. The receiver, Franklin attorney Lynette Gray, says it is stable for now.

Supporters of Cheatham's bill said the Memory Gardens case and other recent cemetery fraud cases in Tennessee and Michigan have exposed weaknesses in many states' laws, adding urgency to the effort. Sen. James W. Merritt Jr., R-Indianapolis, was the lead sponsor in that chamber.

Attorney General Steve Carter, whose office added provisions to the bill, said it would give him the power to seek recovery of lost money in the same way as other consumer protection laws.

That's important for cemetery customers, Carter said. "People assume there is a higher level of protection and that there's nothing that can go wrong here."

In the Memory Gardens case, current law limited the scope of the investigation, allowing the secretary of state's office to focus only on alleged securities fraud in the company's transactions.

Nelms and Johnson each face nine counts, including theft and violations of a cemetery perpetual-care fund. If convicted, they could face up to 10 years in prison. Marion County prosecutors have said the investigation could result in more charges.

Memory Gardens has countered with filings in the Johnson County court, claiming the Meyers also abused the trusts and that Nelms relied on advisers to make what he thought were legal transactions.

Keown, with the cemetery association, said many members were aghast to learn of the case because they did not understand the extent that the current law left cemetery trusts vulnerable.

"People really weren't aware," he said.

Call Star reporter Jon Murray at (317) 444-2752.

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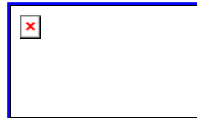
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