

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by REPRESENTATIVE ROBERT H. MILLER at  
Chairperson

1:30 a.m./p.m. on April 9, 1986 in room 526S of the Capitol.

All members were present except:

Representative Peterson

Committee staff present:

Lynda Hutfles, Secretary  
Russ Mills, Research  
Mary Torrance, Revisor's Office

Conferees appearing before the committee:

Ray Petty, Employment of Handicapped  
Michael Lechner, Employment of Handicapped  
Richard Robinson  
Janet Stubbs, Homebuilders Association  
George Barbee, Kansas Lodging Association  
Pete McGill, Kansas Funeral Directors  
Clyde Chapman  
John Wine, Secretary of State's Office  
John Peterson, Kansas Cemetery Association  
John Wassberg, Funeral Security Plans, Inc.

The meeting was called to order by Chairman Miller at 1:00. The Chairman pointed out the revised agenda and told the committee they needed to become familiar with the economic development package scheduled for hearings on Thursday. This is a big responsibility for this committee with little time to review it. More meetings on Thursday will probably have to be scheduled to take care of these bills.

Representative Roenbaugh made a motion, seconded by Representative Sallee to approve the minutes of the April 8 meeting as corrected. The motion carried.

HB3151 - Handicapped accessibility standards

Ray Petty, Advisory Committee on Employment of Handicapped, gave testimony explaining why this bill has been introduced. See attachment A.

Michael Lechner, Advisory Committee of the Employment of the Handicapped, gave testimony in support of HB3151 and the effect of the bill on the handicapped community. He compared the differences between the Uniform Building Code (UBC) and the American National Standards Institute (ANSI) in the area of accessibility requirements for the handicapped.

Richard Robinson, who works for an Architectural Engineering firm, gave testimony in support of the bill and explained problems with the present law. The proposed bill provided for enforcement. It makes kitchens and bathrooms ANSI accessible.

Janet Stubbs, Homebuilders Association, gave testimony in opposition to the bill. She explained that extensive hearings had been held on HB2660 (a similar bill) and that an interim study had been recommended. This bill is not something that can be discussed and understood in a few minutes. She told the committee they had never claimed to be in compliance with the 1978 statute; builders were not aware of the 10% accessibility for handicapped requirement. She suggested the committee read the audit report which clearly states lack of compliance. No date is available for the need of accessibility. She suggested an interim study be done on HB3151.

George Barbee, Kansas Lodging Association, gave testimony in opposition to the bill. He also suggested an interim study. See attachment B.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal & State Affairs  
room 526, Statehouse, at 1:00 a.m./p.m. on April 9, 1986

SB499 - Excluding caskets from definition of "cemetery merchandise" under cemetery merchandise act

Pete McGill, Kansas Funeral Directors, gave testimony in support of the bill. See attachment C.

Clyde Chapman, Director of Consumers Affairs, gave testimony in support of the bill. There are people in Kansas concerned about pre-need.

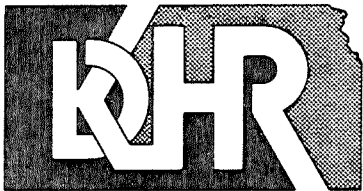
John Wine, Secretary of State's Office, read a letter to Rep. Ivan Sand from the Secretary of State which said that he did not support or oppose this bill, but would strongly recommend that an interim study into these issues be conducted. See attachment D.

John Peterson, Kanas Cemetery Association, gave testimony in oppoistion to the bill. He suggested to the committee that an interim study be conducted. See attachment E.

John Wassberg, Funeral Security Plans, Inc., gave testimony in opposition to the bill. Better buying decisions are made in advance of the need. This bill should be sent to an interim committee. there is no audit under this bill. The Secretary of State audits funeral laws under the cemetery merchandise Act. There are no actual audit provisions under KSA16-301 that are used by the funeral directors. There should be audits.

Hearings were concluded on SB499.

The meeting was adjourned.

ADVISORY COMMITTEE ON EMPLOYMENT  
OF THE HANDICAPPED1430 S.W. Topeka Avenue, Topeka, Kansas 66612-1877  
913-232-7828 (V/TDD) 567-0828 KANS-A-N

John Carlin, Governor

Larry E. Wolgast, Secretary

April 8, 1986

Mr. Chairman and Members of the House Federal and State Affairs Committee:

My name is Ray Petty, Legislative Liaison for the Advisory Committee on Employment of the Handicapped. I am here to testify in favor of House Bill 3151.

Today you will not be bombarded by disabled consumers. In the interests of time and clarity, we have not assembled an entourage of persons to bring their case to your attention. Instead we will continue to present information - developed by our office, by Post-Audit, and by the history of this legislative initiative in the hope that a reasonable, practical, and consumer-attentive housing policy will emerge.

Let me lay out the issue as it exists today: the Homebuilders, Realtors, and Lodging Association have powered their way to changing the current law from a requirement of 10% accessible dwelling units in apartment complexes and motels of over 20 units to VIRTUALLY 1%. At 21, one unit would be required; at 100, another; and so on.

We are not contesting this massive cut in quantity.

It should be remembered that this was ALL that these associations sought in Senate Bill 369 last session; that is, a change in the required number of accessible units, not in the construction requirements.

Today things are different.

1. The numbers are lower.
2. The construction standards are far weaker.
3. A lack of need waiver has been added - with no guidance given with regard to what constitutes an adequate demonstration of lack-of-need.
4. The Senate Local Government committee took out the requirement in the current law whereby waivers are reported to the director of architectural services in the Department of Administration.

ATTACHMENT A

H. F. 3151  
4/9/86

Ladies and gentlemen, things have gone too far. Not only is the quantity of accessible units being changed, but the quality of those units is in serious peril.

The hot-off-the-press Performance Audit Report entitled "Handicapped Accessibility in Kansas" concludes that "apartment complexes were not in compliance with the State's standards for handicapped accessibility . . . (h)owever, the auditors found that three of the 11 apartment complexes in their sample did not even have the number of accessible units required by the local code. Changing the State standards to reflect local requirements will not necessarily ensure compliance with the law."

Also: "The auditors found that none of the apartment buildings visited complied with both the 10% requirement and the Institute's (ANSI) specifications for handicapped accessibility."

Unfortunately, no comparable information are available on hotels and motels in Kansas.

Attached find the Conclusions and Recommendations sections of the Post Audit report, Appendix B which compares ANSI and UBC requirements for dwelling units, and a table of compliance with accessibility requirements in the 11 apartment complexes surveyed.

Also find preliminary findings from a KACEH Housing Survey completed just this month. These data are so recent that they have not been shared with any legislative committee.

Our office has also prepared an extended comparison of the ANSI and UBC standards which we would be glad to share with the committee.

House Bill 3151 is a compromise between the interests of the building industry and those of disabled Kansans. This issue clearly deserves to be voted upon on the floor of both chambers. We urge you to recommend House Bill 3151 favorable for passage.

Thank you for attending to this very important issue.

a:hfs3151

58-1310 to the Uniform Building Code requirements. That code requires a complex with 21 to 99 units to have one accessible unit, plus one accessible unit for each 100 additional units or fraction of 100 units.

**It is difficult to determine the level of need for handicapped accessible apartments.** To determine the actual level of need for handicapped accessible apartments, information is needed on the number of people with physical handicaps. The auditors found that there is no such current data available for Kansas. State agencies and advocacy groups have information on their clients, but it is not comprehensive. The 1980 U.S. Census reported that 7.6 percent of Kansans, age 16 to 64, identified themselves as having disabilities that limit the type of work they can do or that prevent them from working. This figure does not differentiate physical and mental disabilities, and does not include persons more than 64 years old. In 1977, the National Center for Health Statistics reported that 3.0 percent of the United States' population uses aids such as canes, special shoes, walkers, and wheelchairs. Even information like this does not indicate how many physically handicapped individuals are in the market for accessible apartments and the desired price range for accessible units.

Although it is difficult to determine the need for handicapped accessible apartments, State law currently requires 10 percent of apartment units to be accessible. Those accessible units must conform to the American National Standards Institute specifications for accessibility. The auditors found that none of the apartment buildings visited complied with both the 10 percent requirement and the Institute's specifications for handicapped accessibility. Also, despite State and local enforcement activities, many governmental buildings do not comply with all the handicapped accessibility requirements.

### Conclusion

State law requires all public and governmental buildings constructed since 1979 to be accessible to physically handicapped individuals. State law further requires 10 percent of apartment units, in complexes with at least 20 units, to be accessible. Buildings are required to conform to the American National Standards Institute specifications for handicapped accessibility. Various State and local agencies are responsible for enforcing these standards for handicapped accessibility, but the State does not have a mechanism for ensuring that localities enforce the requirements. As a result, local officials often enforce only local requirements for accessibility, rather than the State standards. These local requirements are generally less stringent and detailed than the State's standards. Further, many local officials apparently are not even aware of the State's requirements.

Despite the enforcement efforts of State and local officials, the auditors found that most governmental buildings and private apartment complexes did not meet all the requirements of State law. Only school buildings, reviewed by the Department of Education, were found to be in substantial compliance with all the requirements. Governmental buildings were generally in compliance with the requirements, but some problems were noted.

The auditors found that apartment complexes generally were not in compliance with the State's standards for handicapped accessibility. House Bill 2660, introduced in the 1986 Session, would provide separate accessibility requirements for apartments and reduce the number of required accessible units.

The bill would essentially amend State law to reflect the requirements adopted by many localities. However, the auditors found that three of the 11 apartment complexes in their sample did not even have the number of accessible units required by the local code. Changing the State standards to reflect local requirements will not necessarily ensure compliance with the law.

### Recommendations

1. To ensure that handicapped accessibility requirements are complied with in State buildings, the Department of Administration should ensure that the Division of Architectural Services conducts thorough reviews of such buildings during the planning and construction phases. Plans or sites not in compliance with the requirements should be brought-into compliance or waivers should be obtained.
2. To ensure that the State's handicapped accessibility requirements are enforced at the local level, the Department of Administration should uniformly inform local officials of their responsibility for enforcing the American National Standards Institute specifications.
3. To further ensure that the State's handicapped accessibility requirements are enforced at the local level, the Legislature should consider the following:
  - a. Amending K.S.A. 58-1304 to make local building inspectors responsible for enforcing the handicapped accessibility requirements during the planning and construction phases of local building projects. Such an amendment would conform with current local practices. It would also help ensure that local officials enforce the requirements during the planning and construction phases, rather than after a building is completed.
  - b. Amending State law to authorize a State agency to ensure that local units of government enforce the State's handicapped accessibility requirements. The Department of Administration, or any other appropriate agency, could be responsible for ensuring that localities enforce the State's requirements.

## APPENDIX B

### Comparison of Handicapped Accessibility Requirements

#### 1980 American National Standards Institute

##### Parking

- Parking spaces shall be 96 inches wide and have adjacent access aisles 60 inches wide. Two parking spaces may share a common access aisle.
- Parking spaces shall be marked with the accessibility symbol, and that symbol shall not be obscured by a vehicle parked in the space.

##### Entry/Exit

- One accessible route from public transportation stops, accessible parking spaces, and public streets and sidewalks shall be provided.
- The minimum clear width of a door open 90 degrees shall be 32 inches.
- Door handles shall not require tight grasping, pinching, or twisting of the wrist.
- Ramp slopes shall not be greater than 1 vertical to 12 horizontal.

##### Circulation

- At least one accessible route shall connect the building entrance with all accessible spaces, elements, and accessible dwelling units in the building or facility.
- Floor surfaces shall be stable, firm, and relatively nonslip.
- Elevators shall have visible, audible, and tactile signals, and the doors shall remain open at least three seconds.
- The highest operable part of a telephone shall be no more than 48 inches if a forward approach is necessary, or 54 inches if a parallel approach is possible.
- Drinking fountain spouts shall not be more than 36 inches from the floor, and the water shall flow in a trajectory nearly parallel to the front of the fountain at least four inches high.

#### 1985 Uniform Building Code

##### Parking

- No requirements (a).

##### Entry/Exit

- At least one primary entrance shall be accessible.
- Doorways shall have a clear, unobstructed width of not less than 32 inches
- Ramp slopes shall not be greater than 1 vertical to 12 horizontal.

##### Circulation

- At least one handicapped accessible entrance must be on a level that is accessible to elevators, where provided.
- Telephones shall be installed so that the handset, dial, and coin receiver are within 54 inches of the floor.
- Drinking fountains shall have spouts within 33 inches of the floor and have up-front, hand-operated controls.

## Bathrooms

- Doorways shall be at least 32 inches wide (clear floor space varies according to the type of door and angle of approach).
- Sinks shall be mounted to allow at least 29 inches of clearance from the floor.
- Hot water and drain pipes shall be insulated or covered.
- Faucets shall be lever-operated, push type, or electronically controlled.
- The bottom edge of a mirror shall not be more than 40 inches from the floor.
- Toilets shall be 17 to 19 inches high; urinal rims shall be no more than 17 inches above the floor.
- Flush controls shall be mounted on the wide side of the toilet, no more than 44 inches above the floor.
- \*•Toilet grab bars shall be 33 to 36 inches above and parallel to the floor.
- Bathtubs and shower stalls shall have grab bars.
- Bathtubs and shower stalls shall be equipped with seats.

## Kitchens

- Clear floor space of 30 inches by 48 inches shall be provided at all appliances.
- Base cabinets shall be removable for the full 30-inch frontage under the sink.
- At least one 30-inch section of counter space shall be adjustable to 28, 32, and 36 inches.
- One bowl of the sink shall be no deeper than six and one-half inches.
- Oven controls shall be located on the front panel.
- If laundry facilities are provided, washing machines and clothes dryers shall be front-loading.

- (a) Cities and counties may have separate requirements for handicapped accessible parking spaces.

## Bathrooms

- Doorways shall be at least 32 inches wide with 44 inches of clear space on each side of the door.
- Sinks shall be mounted to allow at least 29 inches of clearance from the floor.
- The bottom edge of a mirror shall not be more than 40 inches from the floor.
- Toilet grab bars shall be 33 to 36 inches above and parallel to the floor.

## Kitchens

- No requirements.

\*ANSI requires that bracing be installed in walls behind tubs and toilets to allow for bolt-on installation of grab bars: the bars need not be installed. UBC exempts apartment house bathrooms from grab bars. Bracing is not required. Adaptability is lost.



**Substantial Compliance with the 1980  
American National Standards Institute Specifications**

	<u>Parking</u>	<u>Entry &amp; Exit</u>	<u>Circu- lation</u>	<u>Bathroom</u>	<u>Kitchen</u>
<b><u>Apartments</u></b>					
Deerfield (Olathe)	Yes	Yes	Partial	No	No
Mur-Len Village (Olathe)	Partial	Partial	Partial	No	No
Parkview (Manhattan)	Yes	Yes	Yes	Partial	Partial
Westchester Park (Manhattan)	No	Yes	Partial	No	No
Drury Place (Topeka)	No	Yes	Partial	No	No
Willow Run (Topeka)	No	Yes	Partial	No	No
Kensington Park (Topeka)	Partial	Yes	Partial	Partial	Partial
Shores Apartments (Wichita)	No	Yes	Partial	No	Partial
Silver Springs (Wichita)	Partial	Yes	Yes	No	No
The Villas of Eastgate Village (Hutchinson)	This complex has no handicapped accessible units.				
Aspen West (Lawrence)	This complex has no handicapped accessible units.				

(a) Student bathrooms at Brougham Elementary were in substantial compliance with the American National Standards Institute specifications, but the public bathroom was only in partial compliance.

**KACEH HOUSING SURVEY  
PRELIMINARY RESULTS**

Follow-up questionnaires were mailed to all 150 respondents who use wheelchairs from last year's statewide disability concerns survey. Of those 150, 107 (71%) returned a completed survey. The results described below are germane to House Bill No. 3151.

**OWN OR RENT?**

25% of the respondents are renters

**TROUBLE WITH BATHROOMS OR KITCHENS?**

47% reported architectural barriers in their bathrooms  
21% reported architectural barriers in their kitchens

**CURRENTLY CONSIDERING MOVING?**

18% are currently considering moving; of those, 46% would rent.

**TROUBLE LOCATING ACCESSIBLE HOUSING IN THE PAST?**

47% Yes  
47% No  
6% Have not moved since becoming disabled or have not sought housing in the past

**PERSONAL APPRAISAL OF AVAILABLE ACCESSIBLE HOUSING IN COMMUNITY?**

1% felt there was too much to go around  
10% said availability was adequate  
86% did not know of available accessible housing  
3% said they knew there isn't any in their community

**HOTEL/MOTEL PROBLEMS?**

30% rarely have problems  
34% occasionally  
28% experience accessibility problems often  
8% said they always have problems

**SHOULD STATE LOWER ACCESSIBILITY REQUIREMENTS FOR APARTMENTS AND MOTELS?**

5% yes  
90% no  
5% don't know

**WHAT EFFECT WOULD LOWER ACCESSIBILITY STANDARDS PRESENT?**

10% none  
31% slightly  
17% moderately  
42% significant effect

**CURRENT RENT OR MORTGAGE?**

37% pay less than \$200 per month (includes owner-owned homes)  
33% pay between \$200 and \$300 per month  
17% pay between \$300 and \$400 per month  
4% pay between \$400 and \$500 per month  
9% pay more than \$500 per month

**IMPORTANCE OF SELECTED ACCESSIBILITY FEATURES?**

Toilet Grab Bars

41% not important  
27% important but not essential  
32% essential

Tub/Shower Grab Bars

28% not important  
26% important but not essential  
46% essential

Roll Under Kitchen Sink and Cabinets

41% not important  
41% important but not essential  
18% essential

Lowered Kitchen Shelves and Cabinets

28% not important  
41% important but not essential  
31% essential

a:housesur



DATE: April 9, 1986

TO: MEMBERS OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

FROM: George Barbee, Executive Director  
KANSAS LODGING ASSOCIATION

RE: HB-3151

Mr. Chairman and Members of the Committee:

My name is George Barbee and I am the Executive Director of the Kansas Lodging Association.

As we expressed to the Legislative Interim Study Committee this summer, members of the Kansas Lodging Association recognize the need to accommodate travelling handicapped persons as they seek lodging in Kansas.

Quite frankly, its not just a responsibility of our members to accommodate the handicapped, but it's an untapped market of some thirty-six million people that mean better business if we can intice them to stay at our establishments.

Of the thirty-six million handicapped persons in the U.S., five hundred thousand are reportedly in wheelchairs, while some fourteen million are handicapped by being either deaf or hearing impaired. With a population in this country of approximately 235 million people, the percentage of people confined to wheelchairs is approximately two tenths of a percent (0.2%). That low percentage of the total population explains why the members of the Lodging Association were concerned with the existing statute requiring that 10% of all hotel/motel units be handicapped accessible. In all our research, we have been unable to find any building codes or statistics that would substantiate a need for ten percent.

ATTACHMENT B

H. F. J. S. A.  
4/9/86

April 9, 1986

I would like for you to know that the industry itself is addressing the needs of the handicapped. Some examples of these are:

The Holiday Inns have a standard that requires one out of every seventy-five rooms be equipped for wheelchair access.

Howard Johnson's follows local and state codes regarding number of specially equipped rooms per property, but when there are no local codes, the company requires two percent (2%) of the rooms to be wheelchair accessible. That standard applies for franchises, as well as company-owned properties.

Luxury hotels, too, are committed to serving the needs of handicapped. The Sheraton Plaza Reina at Los Angeles International Airport boasts forty-eight of the 810 rooms which feature extra-wide entrances and closet rungs, light switches and environmental controls positioned conveniently for a guest in a wheelchair.

At the Mayflower Hotel in Washington, D.C., twelve out of 724 rooms are designed exclusively for people confined to wheelchairs.

And, the American Hotel & Motel Association (AH&MA), the national association with which the Kansas Lodging Association is affiliated, is working on a position paper on handicapped accessibility for newly constructed hotels and motels.

The interim study committee heard all these details this summer and as a result of this and other testimony, agreed that the existing 10% requirement was unreasonable.

There has been a great deal of discussion throughout the interim hearings and hearings on HB-2660 regarding the differences between the UBC requirements and the ANSI standards. We believe that if the bill is going to be at all effective, inclusion of the UBC requirements is a must. Anything else is not going to be familiar to building inspectors and is probably going to die the death of the 10% requirement by simply being ignored. The cities and towns in Kansas which have adopted a building code, for the most part, already use the UBC.

We still believe there may be an argument to be made for repealing the existing section of the statutes and leaving the standard-setting up to local units of government. Kansas is a small-town state and many of the hotel and motel owners live and run their businesses in those small towns.

The larger cities and the larger hotel chains already have standards comparable with those in this bill. We would like to avoid penalizing our small-town, small-business operators with this bill.

This bill addresses apartment complexes as well as hotels and motels. We ask you to consider that there is a difference. An apartment is a "home" where a person resides on a daily basis and probably spends the greater part of his or her leisure time. Whereas a hotel or motel is a temporary residence, usually for just one or two nights.

Hotels and Motels are privately owned. Those owners have a right to provide whatever facilities, in their opinion, the market will bear. Just as handicapped persons have the right to spend their travelling dollars where they wish.

Over and above the concerns of ANSI standards versus the Uniform Building Code, 10% versus 2%, and whether or not recreational facilities should be included in the accessibility requirement, the Lodging Industry would really like to for you to remember the famous quote from Thomas Jefferson that Government should do for the people only those things that the people can't do for themselves. The market for handicapped accessible lodging rooms will cause availability with commensurate cost. Supply and demand should be allowed to solve this problem.

April 9, 1986

TESTIMONY

to

FEDERAL AND STATE AFFAIRS

by

PETE MCGILL

Senate Bill 499

Mr. Chairman - Members of the Committee:

I am Pete McGill of Pete McGill and Associates. We represent the Kansas Funeral Directors and I appear here today in support of SB 499.

I am embarrassed and wish to apologize for taking up your valuable time at this point in the session. I know most of you are asking the same question I am asking - why is this bill here in this committee when the subject has already been discussed and debated on two separate occasions in the House Local Government Committee.

That Committee, as most of you know, recommended SB 499 favorable for passage. It was on the House calendar for several days but held down because one member had asked the Speaker not to permit the bill to come up for a vote. For whatever reason, it was re-referred to Federal State Affairs.

As each of you know, I once had the privilege of sitting on your side of the table, and served with some members of this committee. I am now a lobbyist very careful about clients we represent. In both capacities, I have never knowingly lied to anyone or knowingly misrepresented the facts. I don't intend to start now and I want to give you a little history of SB 499 and tell you why I am here this afternoon.

ATTACHMENT C  
H. FLSA  
4/9/86

Prior to the start of the session, Jim Snyder of the Kansas Funeral Directors Associations called to ask if we would assist them in guiding a bill through the legislature - a bill that is now SB 499, that adds one word to existing statutes.

Consistent with the established policies of our firm, I asked Snyder to give us a few days to consider it as I wanted time to check it out. We do not represent clients we are not proud of and we do not work on issues that we do not believe in.

We are pleased to represent the Kansas Funeral Directors and we firmly support SB 499.

We checked the history of the cemetery merchandise law, the date of enactment, the purpose and intent of the act. The act was passed in 1983. Senator Arasmith was chairman of the Senate Committee and Representative Ivan Sands was chairman of the House Committee. Both assured me that it was the intent of the legislature that caskets would not be a part of cemetery merchandise. Both agreed a bill should be passed in the 1986 session of the legislature to remove any doubt and carry out legislative intent.

SB 499 was introduced early in the session. You will note there are 21 Senators that sponsored the bill. All 21 Senators voted for the bill as did 10 additional Senators. The vote was 31 to 7 in the Senate. Senator Arasmith emphasized in the Committee and on the floor of the Senate that SB 499 did nothing more than the legislature thought it was doing and intended to do in 1983.

Chairman Ivan Sands told the House Committee very much the same thing when the House heard the bill several days ago.

The opponents of SB 499 have attempted to cloud and confuse the issue. The only issue here is one word to clarify legislative intent. It is just that simple and nothing more.

If the legislature should decide they want people to sell caskets and only put 110% of wholesale in trust, then I think you would agree



they should enact such legislations but not do it through an error or loophole in the law. It was not the intent of the legislature to do this in 1983 and I don't think it is the intent of the legislature to do this now.

You have all heard more about this issue than you care to know and again I apologize. But you have heard comments about stifling competition and what is best for the consumer.

I want to take just a minute to again address those two aspects of this issue.

SB 499 has no prohibitions against anyone selling caskets. What it does say is that anyone that sells caskets must put 100% of the money in trust.

What is the difference?

You all have received charts and examples but I know your busy schedule does not always permit you to thoroughly explore the mounds of printed material that lobbyists and special interest groups provide you.

Permit me to give you a simple example. If you bought a casket for \$1500 under the cemetery merchandise law, and the wholesale cost was \$500, the seller, under 110% of wholesale would only be required to put \$550 in trust. The seller could then take the other \$950 and do whatever he wanted. If you bought the same casket under the funeral director requirements, the consumer would have \$1500 in a federally insured financial institution in the state and that \$1500 would be drawing interest.

If you had bought this same merchandise under a revocable contract under the cemetery merchandise law, you would receive back 85% of the 110% of wholesale. As I mentioned 110% of wholesale was \$550, so you would receive \$467.50 of your original \$1500 investment. Under the funeral director statutes, you would receive your total \$1500 investment plus interest. Now which do you think best protects the consumer.

Time does not permit me to enemerate all that needs to be said but I want to make a few other points.

If the 100% trust requirement for Kansas Funeral Directors is not in the public interest as some of you have been told, why do 36 other states have similar 100% requirements.

Missouri has an 80%-20% trusting requirement. I suggest each of you might want to take particular note of the statement to this committee written by a resident of Lawrence on April 8th, 1986.

Mrs. Warnke was so disturbed and so upset she was willing to fly back from Atlanta, Georgia just to testify before this committee. Since no one was exactly certain of the time of the hearings, that was not possible.

As you know, each of us could go to any federally insured financial institution in Kansas and place money on deposit to take care of necessary funeral arrangements. We wouldn't have to go to a funeral director, a cemeterian or anyone else. We wouldn't do it as an investment but only to assure adequate funds for a proper burial. At the time of need, we would expect to have 100% of the money there plus interest. But perhaps more importantly, if we moved to another town or another state, we could withdraw or transfer the funds and expect 100% to be returned.

We can get that now under the funeral director law. Is that possible under the cemeterian arrangement. The answer is no.

The most you would get is 85% of the 110 of that casket. Does that seem to be in the public interest - the best for the consumer - your consitituents? I expect there are very few if any of the members of this committe that would make such a choice.

After SB 499 passed the Senate, Linda and I started working with members of the house. Chairman Sands specifically asked us not to work the members of the House Local Government Committee. We honored that request and specifically did not do so other than to respond to questions of committee members until after the bill had passed out of committee.

Consistent with our practice and policies on all issues of concern to our clients, we started contacting as many House members as time would permit. We want an opportunity to share our point of view with the members and attempt to determine the probabilities of a bill being passed or defeated.

To date, Linda had contacted more than 100 members of the House. Only six have said they would vote no on SB 499 given the opportunity. More than 90 have indicated they would vote yes. Some are undecided and several more remain to be contacted.

This is a clear indication the overwhelming majority of House members support this bill and deserve an opportunity to hear it debated and voted upon the floor.

I am told by some of the committee members there may be amendments or motions offered here in the committee to attempt to further avoid this issue getting out of this committee or coming to a vote on the floor.

One of those motions may be to request an interim study. Chairman Sands has already told his committee that he intends to request an interim study - but in the meantime, he stated, SB 499 needs to be passed to clarify legislative intent, - the only purpose of the bill.

Further, no one knows what interim study requests will be accepted by the leadership.

A motion to amend or table the bill would fall in the same category.

What would be the worst that could happen if you voted for SB 499 and it passed. The people - the consumers - that purchased caskets would have 100% of their money in a federally insured institution drawing interest. It is their money and rightfully so. The funeral director wouldn't get one dime until a service were performed.

You may hear something about an audit. The cemetery merchandise trust maybe audited by the Secretary of State only to see if 110% of wholesale is still there. Keep in mind - the balance is already gone.

The Senators condisered this - compared the safety of the funds - and determined the 100% in a trust in a federally insured financial institution that are regularly audited is every bit as safe.

Again Mr. Chairman and members of the committee, I apoligize for taking your time at this date. SB 499 is not as significant to the State as the revenue and expenditures measures you will be discussing in the days ahead, but it is important to an awful lot of people in this state.

I have long noted that legislaors do not respond to lobbyists or special interest groups but consistently vote to represent their constituents.

We respectfully request, Mr. Chairman and members of the committee, the hour is getting late, the session is repidly drawing to a close and the people of Kansas need this bill.

We join with the people in urging your favorable consideration.

TESTIMONY- SENATE BILL #499  
FEDERAL & STATE AFFAIRS COMMITTEE

April 8, 1986

Mr. Chairman and members of this committee, my name is Rhonda Warnke and I live in Lawrence, Kansas. I am employed as a computer and electronics buyer for the Kansas Union Bookstore. I want to thank you for the opportunity to present this testimony concerning our experiences. I represent myself, my sister, Elva Stout of Evans, Georgia and my brother, Arno Warnke of Wasilla, Alaska.

Our Mother, Gertrude Warnke died in Lawrence, Kansas on April 1, 1986. We had a pre-financed, pre-arranged funeral contract with the Floral Hills Chapel of D.W. Newcomer & Sons of Kansas City, Missouri which was written on May 2, 1974. The amount initially deposited in this account was \$874.00 which was to be used at the time of her death to pay funeral expenses. In the contract, 80% was trusted and 20% went directly to the Floral Hill Chapel. Since we now live in Lawrence and since most of our friends are there, we decided that we wanted to have the visitation and services in Lawrence if at all possible. We scheduled an appointment with the Floral Hills Chapel for the late afternoon on April 2, 1986. It was our purpose to see what arrangements could be worked out with the deposited money and what service options were available to us if we conducted the services in Lawrence. We met with a great deal of resistance along with very unprofessional comments from the Floral Hills representative. The first statement made to us was, "your trust account is worth \$874. and I hope that you know that you are not giving us much time to put this service together. Why don't we give you a check for \$874. and you can use a funeral home in Lawrence?" We asked the funeral director how much was actually in the trust account with interest and he did not give us that information. We asked the funeral director "what is this funeral worth today?" He did not give us that figure either. It was not until we used some rather strong words that he began to give us some information and options available to us. Our estimate was that

since they were able to use her money for about 12 years, then the trust account should contain approximately \$2000. - \$2500. The exact amount was never verbally disclosed to us but after looking at the final bill, we feel that \$2300. was roughly the amount that they reluctantly credited our account for. This was a very trying time for us and we were tired from traveling as far away as Georgia and Alaska. We met with a very unprofessional attitude that did not help us make decisions or work through our grief. We were made to feel that we were imposing.

My purpose in being here today is to ask that you support any bill (especially Senate Bill 499) which would keep all funeral merchandise including caskets (irregardless of who sells them) trusted at 100% of the retail cost. We have learned from our very unpleasant experience<sup>that</sup> there are enough difficult decisions to make after the death of a loved one without having to argue with the funeral director or cemeterian over how much money in the trust account is ours. It seems to us that it is important that the money be secure and clearly accounted for so that the consumer knows where they stand. I feel that if the consumer owns 100% of the funds and interest in the account (which is the case under current funeral merchandise laws), then there is much more flexibility to move to another area of the country or another funeral home without this great hassle. Every one of us will face this situation at some time in our lives. We had no choice but to use the services of a funeral home that did not really want to serve us in order to get our money back. They were only willing to refund the original \$874. We are glad as a family that we had the ability to communicate our thoughts and not let the funeral director intimidate us. Think of those in our society that do not have the education and/or the guts to make sure that they are not taken advantage of. I am here today to do what I can to prevent what happened to us from happening to others. I feel any form of trusting other than 100% of retail is suspect to abuse and out of the reach of the consumer. I also feel that any form of trusting should impose strict regulations against soliciting funeral business.

This same firm approached our 81 year old father several months ago to review his plan with them. Before the end of the visit they were talking with him about buying additional merchandise (ie. a burial vault). This visit was confusing to him and we do not know what additional liabilities that he may have incurred.

Thank you for this opportunity to express my feelings about the pressures, unprofessional conduct and hassles that we faced at a very difficult <sup>time</sup> in our lives.

Thank you.

Respectfully submitted,



Rhonda Warnke  
1325 Naismith Drive  
Lawrence, Kansas 66044

**Sloan**  
Enterprises, Inc.

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P. O. BOX 7966

KANSAS CITY, MO. 64129

923-0444

March 19, 1986

Mr. Ivan Sand, Chairman  
Local Government Committee  
House of Representatives  
State Capitol Building  
Topeka, Kansas 66612

Dear Mr. Sand:

Our company has been manufacturing Wilbert burial vaults for fifty years with Kansas facilities in Manhattan, Wichita, Topeka, Salina, Kinsley, Mead, Ft. Scott and Americus. Our subsidiary (Sunset Memory Gardens Management) also owns Kansas cemeteries in McPherson, Leavenworth, Chanute, Ft. Scott and Great Bend. We have always been concerned with the public's perception of the funeral industry including cemeteries and the consumers protection.

We feel that S.B. 499 corrects an oversight in the Kansas laws by excluding caskets as cemetery merchandise for the purpose of pre-need sales. This would appear to be a logical treatment which will eliminate a lot of possible confusion. For these reasons we as suppliers and cemeterians are hopeful that your committee will act favorably on this bill.

Very truly yours,

Courtney Y. Sloan  
President

RFR/kk



John wine



STATE OF KANSAS  
*Secretary of State*  
CAPITOL  
TOPEKA, KS 66612-1594  
PHONE (913) 296-2236

JACK H. BRIER  
SECRETARY OF STATE

March 26, 1986

The Honorable Ivan Sand, Chairman  
House Local Government Committee  
Room 183-W  
Topeka, KS 66612

Dear Representative Sand:

As elected public officials it is our responsibility to represent and defend the best interests of the general public. This may be achieved through the development of sound public policy fashioned by compromise and cooperation.

Such qualities are needed today as this committee debates the merits of Senate Bill 499. This bill has been proposed by the funeral directors for their benefit just as House Bill 2715 was proposed by the cemetery owners for their benefit.

I do not support or oppose either of these bills because each deals with a very narrow aspect of the respective industries. But I firmly believe that neither bill fully considers the best interests of the public.

For this reason, I strongly recommend that - no matter what action you take on this bill today - an interim study into these issues be conducted.

The approach taken in the neighboring state of Nebraska deserves our consideration. Legislation adopted this year was the result of a joint agreement between the two industries. The legislature required this compromise before considering any legislation.

ATTACHMENT D  
H. F+SA  
4/9/86

Page Two  
The Honorable Ivan Sand  
March 26, 1986

The Kansas Legislature would be better able to assess the needs of consumers if it is not caught up in refereeing a dispute between competing industries.

The funeral directors and cemetery owners have able spokesmen, who represent their interests most effectively. An interim study will assure the people that their interests are represented as well.

With every good wish.

Cordially,



JACK H. BRIER  
Secretary of State

JHB/jr

RE: "Refund Checks" under funeral vs. cemetery law  
FROM: John Peterson, Kansas Cemetery Association

In their testimony in opposition to HB 2715, the Funeral Directors Association handed out a \$4,468.00 check which a customer would be statutorily entitled to if they cancelled under 16-301 after 17 years on a \$1,725.00 initial purchase (his printout is attached).

Please note.

- 1) The difference occurs primarily because they use an inflation rate on the wholesale cost of merchandise much lower than the rate of interest return. If the cost of the merchandise increased at a higher rate than interest, one could well have a totally opposite result.
- 2) 16-301 et seq. does not require any refund on the first 2,000 principal plus interest earned (see below).
- 3) Since their example was for \$1,725.00 plus interest earned over 17 years the consumer has a guaranteed refund if they cancell of zero, not \$4,468.00.
- 4) Both laws provide mechanisms for the services to be provided by a different funeral home and for the merchandise to be delivered to a different location.
- 5) Even if the consumer were able to negotiate their funeral contract as a totally revocable one, they would have to pay taxes every year (when all they wanted to do was buy a casket now and have its availability assured).
- 6) In that case, over that same 17 years, assuming a 11% return, a consumer even in only a 22% tax bracket would have paid more in taxes than paid for the original purchase.
- 7) Customers do not buy pre-need funerals/merchandise as an investment. They buy because they want that planning taken care of. The rate of cancellation under either plan is exceedingly low. The public policy for entrusting funds is to assure that the merchandise purchased will be delivered.
- 8) If a funeral director has a better plan, they should tell the public about it. In our free economic system the consumer should be free to make these choices. Competition benefits the public and increases the availability of pre-need sales.

(c) At the option of the purchaser, such agreement, contract or plan may be made irrevocable as to the first \$2,000 of the funds paid plus any interest and earnings accumulated under the agreement, contract or plan. This option shall not prohibit the purchaser to designate a different funeral home at any time prior to death, after written notice to the current funeral home, and upon such notification all documents and funds shall be transferred as necessary.

ATTACHMENT E

H. FISA  
4/9/86

FUNERAL PRENEED PLAN  
K.S.A. 16-301 et seq

17 years.

CEMETERY PRENEED PLAN  
K.S.A. 16-320 et seq

YEAR	CONSUMER'S ANNUAL PAYMENT	TOTAL RECEIVED	CUMULATIVE AMOUNT TRUSTED @ 7%	STATUTORY REFUND	CONSUMER'S ECONOMIC LOSS	CONSUMER'S ANNUAL PAYMENT	TOTAL RECEIVED	CEMETERY (SELLER'S) RETENTION	MERCHANDISE TRUST REQUIREMENT	STATUTORY REFUND	CONSUMER'S ECONOMIC LOSS
1	345	345	369	369	0						
2	345	690	714	714	0	345	345	345	0	0	345
3	345	1035	1109	1109	0	345	690	259	86	73	641
4	345	1380	1532	1532	0	345	1035	0	431	366	743
5	345	1725	1984	1984	0	345	1380	0	776	660	872
6	0	1725	2123	2123	0	345	1725	246	875	744	1240
7	0	1725	2271	2271	0	0	1725	0	913	776	1346
8	0	1725	2430	2430	0	0	1725	0	956	812	1459
9	0	1725	2601	2601	0	0	1725	0	1000	850	1581
10	0	1725	2783	2783	0	0	1725	0	1046	889	1712
11	0	1725	2977	2977	0	0	1725	0	1094	930	1853
12	0	1725	3186	3186	0	0	1725	0	1144	973	2005
13	0	1725	3409	3409	0	0	1725	0	1197	1017	2168
14	0	1725	3648	3648	0	0	1725	0	1252	1064	2344
15	0	1725	3903	3903	0	0	1725	0	1310	1113	2534
16	0	1725	4176	4176	0	0	1725	0	1370	1165	2738
17	0	1725	4468	4468	0	0	1725	0	1434	1218	2958
							1725	0	1500	1275	3194

Funeral Director's Refund

Cemetery refund

SCHEDULE #1

EXPLANATION ON BACK-

## INDIVIDUAL PRE-NEED CASKET SALES FORECAST

General: This model is based on selling a casket only using the trust requirements of funeral director's K. S. A. 16-301 et seq. Briefly stated, all money as well as interest and earnings shall be held for the benefit of the purchaser. As compared to selling the identical merchandise under the same terms to the consumer, however applying the trust requirements of cemeterian's K. S. A. 16-320 et seq. Seller is allowed to retain the first 35% of collections on the account, then funding the trust requirement of 110% of wholesale cost, and retaining the balance of the contract.

Casket Sale--\$1725.                   Batesville C-47 Silver Rose  
Casket Cost--\$ 665.               Effective 02/03/86  
Length of Payout--5 years  
Rate of Return on Investments--7% Tax Free

### OTHER ASSUMPTIONS:

Average Age and Length of Maturity is based on industry average and national health statistics.

Average Consumer Age (Years) 62 / Longevity (Years) 17

Inflation Rate for Merchandise of 4.61% is based on 10 and 15 year cost history for Batesville Casket Company's 18 gauge casket wholesale cost.

The Statutory Refund is 100% of funds paid plus all accumulated earnings under Funeral Plan. The statutory refund applying the Cemetery Plan is 85% of 110% of wholesale cost of casket less administrative fees.

Consumers Economic Loss is determined as funds available from Funeral Trust based on a rate of return of investment of 7% tax free less the statutory amount of the refund upon cancellation, either Funeral Plan or Cemetery Plan.

**THE PRE-NEED FUNERAL LAW vs. THE CEMETERY MERCHANDISE ACT  
SOME POINTS TO CONSIDER . . . WITH SUPPORTING EVIDENCE**

\* \* \* \* \*

Pre-Need Funeral Law (1953)

Cemetery Merchandise Act (1984)

(Assume in both cases consumer has prepurchased a \$1,000 casket)

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>- \$1,000 placed in trust<br/>    (100% of retail price)</li> <li>- All income left in trust until death</li> <li>- Cost of pre-need sales born by all<br/>    by all customers of funeral home</li> <li>- Consumer pays tax on earnings</li> <li>- No audit provision</li> </ul> | <ul style="list-style-type: none"> <li>- \$550 placed in trust<br/>    (110% of wholesale price)</li> <li>- Seller uses trust income to cover<br/>    inflationary costs of merchandise</li> <li>- Seller is paid by those who purchase<br/>    pre-need</li> <li>- Seller pays tax on earnings</li> <li>- Secretary of state audits trust.</li> </ul> |
|--|--|

**The Kansas Funeral Directors Association (KFDA) has a major stake in maintaining a de facto monopoly on casket sales.**

- Caskets are the most expensive item in a funeral for the consumer and the most profitable for a funeral director.
- Casket sales make up about **40%** of the average funeral home's total charges.
- A National Funeral Directors survey of more than 100,000 deaths showed families spend **20% to 25% more** on merchandise — including caskets — bought at-need, than on merchandise purchased before death.

**Kansas consumers would be adversely affected by requiring all caskets to be presold under the restrictive Pre-Need Funeral Law the KFDA favors.**

- Trusts established under the Pre-Need Funeral Law are **not** audited. The Kansas secretary of state audits Cemetery Merchandise Act trusts.
- Frequently consumers actually pay **more** for caskets purchased under the Pre-Need Funeral Law, because the consumer — not the supplier — is taxed on trust earnings.

EXAMPLE:

<u>Individual</u> <u>Taxable Earnings</u>	<u>Tax Bracket</u>	<u>Tax Paid in</u> <u>10 Years on \$1,000</u>	<u>Years for Tax to</u> <u>Equal Purchase Price</u>
\$4,580-\$6,760	14%	\$257.52	21
\$8,850-\$11,240	16%	\$294.31	19
Joint			
<u>Taxable Earnings</u>			
\$21,020-\$25,600	22%	\$404.67	17
\$36,630-\$47,670	33%	\$607.01	14

Note: These are fairly modest incomes. In higher tax brackets, the buyer can end up paying **double** the casket price (original price plus tax on trust income) much sooner. Figures assume \$1,000 in trust, reinvested, with 11% earnings compounded annually.

**One effect of the proposed legislative changes would be to halt prearrangement of funerals in general and preselling of caskets in particular, despite consumer advantages identified in a 1980 audit report by the Kansas Legislature. The report said that prearrangement . . .**

- provides assurances to individuals that their funerals will be conducted according to their wishes
- protects survivors from making hasty decisions about funeral arrangements at a difficult time
- allows the consumer to investigate alternatives and compare prices.

**The Federal Trade Commission endorses the opening up of the funeral industry. Specifically it advocates more choices and more information for consumers.**

- "We encourage preplanning, because at time of need, decisions must be made in a hurry, when people are under emotional stress."  
Raouf M. Abdullah, FTC Staff Attorney, April 1984
- "Nobody likes to think about death, but we (the FTC) are trying to get people to think about making their decisions beforehand at a time when they won't be taken advantage of."  
— Lewis Rose, FTC Funeral Rule Coordinator, August 1984

**Legislative changes proposed by the KFSA would restrict competition and limit choices for Kansas consumers.**

- "They (the KFSA) portray this law as being a consumer protection, when in fact its purpose and effect is to stop pre-need sales."  
— Kansas Rep. Ginger Barr, 51st District
- Suppliers have less incentive — and no money — to offer prearrangement under the 100% trust requirement in the Pre-Need Funeral Law.
- 100% trusting serves " . . . to limit the availability of prearrangement and its advantages to interested consumers."  
— State Board of Embalming Legislative Audit Report, 1980

**Consumers favor prearrangement.**

- In a 1981 survey conducted by Northwestern University, 62% of respondents said they believed in prearrangement, but only \$13.5% had made any written plans. Although prearrangement is desired, apparently it needs to be sold.
- Kansans have not been offended by prearrangement solicitation. Between 1975 and 1979, only two complaints were lodged with the Board of Embalming. One was found to be invalid.

**Kansas consumers are already fully protected by the Cemetery Merchandise Act.**

- If a consumer prepurchases a casket, then moves, the casket can be delivered anywhere at time of death.
- If the cemetery who pre-sold the casket goes out of business, provisions in the Cemetery Merchandise Act protect the consumer.

###



1985-1986  
KANSAS STATE LEGISLATIVE COMMITTEE

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March 31, 1986

Dear Representative

The Kansas State Legislative Committee of the American Association of Retired Persons is concerned about legislation related to funeral agreements, cemetery merchandise, and pre-need sales.

AARP believes that competition within the funeral and cemetery industry will benefit the public. Further, we believe that the availability and access to information about funeral and cemetery prices and services is necessary to benefit the public.

AARP contends there are problems with how SB.499 is written. That provisions of legislation must be more than adequate to: (1) protect the consumer from fraudulent practices, (2) protect the consumers' money in pre-need sales, (3) establish a state authority with regulatory and audition duties, and (4) comply with the Federal Trade Commission regulations of sales, services and merchandise.

AARP supports an interim study on SB.499 and related issues of funeral, burial and cemetery sales and services. AARP will support action that benefits the consumer and a public policy designed to serve the public.

We understand that this is to come before the House soon and we urge that you study it closely.

Sincerely,

A handwritten signature in cursive script that reads "Morton F. Ewing".

Morton F. Ewing  
Chairman, Kansas State  
Legislative Committee





1985-1986  
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## AMERICAN ASSOCIATION OF RETIRED PERSONS

### Senate Bill 499

The American Association of Retired Persons has 49 chapters in Kansas and a total membership of 256,559. Our position on Senate Bill 499 is not on behalf of the cemetery industry, not on behalf of the funeral industry, but on behalf of Kansas consumers. Although the high costs of funerals falls most heavily on senior citizens, we believe that all Kansans should be concerned about these issues.

AARP believes that competition within the funeral and cemetery industry benefits the public. That competition can best aid the public through the availability of pre-need sales, when a consumer is able, both emotionally and timewise to shop around, to compare prices, to make rational, unemotional decisions and plans.

Several years ago, the Kansas Legislative Post Audit review of the State Board of Embalming cited advantages to pre-need sales:

Such agreements provide assurance to individuals that their funeral will be conducted according to their wishes. They allow individuals and their families to make these decisions without time pressures and disorientation, and they protect survivors from making hasty decisions about funeral arrangements at a difficult time. In addition, they allow the consumer the opportunity and the time to investigate alternatives and compare prices. It is also possible that consumers arranging their own services would be more inclined to "cut corners" than family members who might feel guilty about such cost savings.

That report concluded that the current Kansas funeral prearrangement laws, which were passed in the early 50s, requiring 100% trust funds:

appear to be an unnecessary exercise of the State's police power, potentially restricting pre-need sales of funeral arrangements, and do

not appear to protect the public. In fact, such restrictions serve to limit the availability of prearrangement and its advantages to interested consumers.

We agree. We oppose Senate Bill 499 because it would force all pre-need sales of caskets under the restrictive funeral directors law.

The cemetery merchandise law which was enacted four years ago protects the consumer without restricting either competition or the availability of pre-need sales. Everyone selling under the cemetery merchandise law is audited annually by the Secretary of State's office and must maintain in trust 110% of the then current wholesale cost of the merchandise sold.

If SB 499 passes, unless the funeral contract is made irrevocable, each year the consumer must pay income taxes on the interest earned by their funds in trust. Under the Cemetery Merchandise Act, all such taxes are paid by the trust.

In order to enhance competition, and to have that competition under equal and fair rules, we believe that a funeral home, marker company or any other company in this business should be allowed to file under the Cemetery Merchandise Act and sell under those same rules and protections for the consumer. Such a provision is currently contained in House Bill 2715 which was introduced by the House Committee on Local Government. We support such a change.

But SB 499 removes those protections for consumers, it removes any auditing or accountability and instead requires those sales to be made under a law which places an economic stranglehold on pre-need sales and competition.

We urge the legislature to vote not for one segment of an industry or another, but to vote for the consumer. Funeral directors may argue that all caskets should be sold by them. Cemeteries may argue that all vaults and markers should be sold by them. But even if you agreed with their argument, should the legislature make that decision? It is the consumer who should be free to make those decisions, in a free, open and competitive environment.

In the name of free enterprise and free competition, the legislature should not remove caskets as merchandise that can be sold under the Cemetery Merchandise Act. We oppose SB 499.