

Approved Ivan Sand 3/31/86
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by REPRESENTATIVE IVAN SAND at
Chairperson

1:30 ~~a.m.~~ p.m. on MARCH 26, 19 86 in room 521-S of the Capitol

All members were present except: Rep. George Dean, excused

Committee staff present: Ms. Mary Hack, Revisor of Statutes Office
Mr. Mike Heim, Legislative Research Dept.
Ms. Gloria M. Leonhard, Committee Secretary

Conferees appearing before the committee:

Mr. Peter Brown, Admin. Ass't., City of Salina
SB 582
Mr. Jim Kaup, League of Kansas Municipalities,
SB 582
Mr. Larry McElwain, Ks. Funeral Directors
Assn., SB 499
Mr. Clyde Chapman, Director, Consumer Affairs,
SB 499
Mr. Craig Stancliff, President, State Board
of Mortuary Arts, SB 499
Mr. John Wassberg, Attorney, Funeral Security
Plans, Kansas City, SB 499
Mr. John Wine, Legal Counsel, Sec. of State's
Office, SB 499
Mr. John Peterson, Kansas Cemetery Assn.,
SB 499
Mr. John Miller, American Assn. of Retired
Persons, SB 499
Mr. David Newcomber, D. W. Newcomber & Sons,
Johnson County, SB 499
Mr. Hap Blodsoe, Resthaven Gardens, Wichita,
SB 499
Mr. Bob McCracken, President, Kansas Cemetery
Assn., SB 499
Mr. Bill Smith, President, Kansas Funeral
Directors Assn., SB 499

Chairman Sand called for hearings on the following bills:

SB 582, concerning cities; relating to the boundary lines thereof;

Mr. Mike Heim, Staff, explained background and intent of SB 582. (See Supplemental Note, Attachment I.) Mr. Heim confirmed that the bill has statewide implication.

Mr. Peter Brown, Administrative Assistant, City of Salina, appeared in support of SB 582. Mr. Brown said a change from "resolution" to "ordinance" would save Salina about \$800 per year.

Mr. Jim Kaup, League of Kansas Municipalities, said the League has no argument against the proposal of SB 582; that there would be a substantial savings by avoiding newspaper publication.

The hearing on SB 582 was closed.

SB 499, concerning cemetery merchandise contracts;

Mr. Mike Heim, Staff, explained background and intent of SB 499. See

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,
room 521-S, Statehouse, at 1:30 ~~a.m.~~ p.m. on MARCH 26, 1986

Supplemental Note. Attachment II.)

Mr. Larry McElwain, representing the Kansas Funeral Directors Assn., appeared in support of SB 499. (See Attachment III and Attachment IV.) Mr. McElwain said the Association opposes the "110% trust level"; that the Association feels SB 499 is a good sound law for Funeral Home Directors and for the consumer.

Mr. McElwain clarified the function of the "Kansas Funeral Trust" available through the Highland Park Bank, Topeka, as an option. Mr. McElwain said the trust amounts to \$8,000,000 with 81 out of 292 firms participating.

Committee members asked: (1) Is the 100% provision on all funeral merchandise? Mr. McElwain affirmed that it does not just apply to caskets and cemetery merchandise. (2) Are the monies of people on public assistance handled differently than those of people not on public assistance? Mr. McElwain said irrevocable trusts are used for such funds. (3) Do funeral directors make reports on these funds? Mr. McElwain said they are audited by a reporting procedure to the State Board of Mortuary Arts.

Mr. Clyde Chapman, Director, Consumer Affairs, Lawrence, Kansas, appeared as a consumer and urged passage of SB 499. (See Attachment V.)

Mr. Craig Stancliff, President, State Board of Mortuary Arts, appeared in support of SB 499. Mr. Stancliff said the State Board is in favor of the 100% trust. (See Attachment VI which describes reporting requirements by funeral homes of prefinanced funeral agreements.) Mr. Stancliff said that "solicitation" is the real question. A committee member asked how one becomes a member of the Kansas Board of Mortuary Arts. Mr. Stancliff said members are appointed by the Governor.

Mr. John Wassberg, Attorney, Funeral Security Plans, Kansas City, appeared in opposition to SB 499. Mr. Wassberg explained pre-need law and cemetery law. Mr. Wassberg pointed out that decisions are made under stress at time of death and can be influenced by funeral directors. Mr. Wassberg said the question is "Are cemeterians going to keep on getting to sell caskets which they do now or are we going to give the privilege to funeral home directors only?" (Mr. Wassberg distributed materials. See Attachment VII.)

A committee member asked if Funeral Home Directors sell pre-need services. Mr. Wassberg said their volume of sales is very low.

Mr. John Wine, Legal Counsel, Secretary of State's office said the Secretary of State has no position regarding SB 499 but has some great concerns. Mr. Wine read a letter, dated 3/26/86, signed by the Secretary of State. (See Attachment VIII.)

Mr. John Peterson, representing the Kansas Cemetery Association, distributed copies of HB 2818 from the 1982 Legislative Session. (See Attachment IX.) Mr. Peterson said the law has been in effect for 3½ years and has worked well; that there haven't been abuses; that Legislative Post audit felt KSA 16-301 didn't protect the public. Mr. Peterson said that passing SB 499 this year without looking at certain implications would not be good public policy.

Mr. John Miller, representing American Assn. of Retired Persons, presented testimony for Mr. Morton F. Ewing, Chairman, Kansas State Legislative Committee. Mr. Miller said the AARP supports an interim study on SB 499 and HB 2715 and related issues. (See Morton F. Ewing letter, Attachment X.)

Mr. David Newcomber, D. W. Newcomber & Sons, Johnson County, stated he opposes SB 499.

Mr. Hap Blodsoe, Resthaven Gardens, Wichita, stated he opposes SB 499.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,
room 521-S, Statehouse, at 1:30 ~~a.m.~~ ^{p.m.} on March 26, 1986

Mr. Bob McCracken, President, Kansas Cemetery Association, stated he opposes SB 499.

The hearing was closed on SB 499.

The minutes were approved as presented for the meeting of March 25, 1986.

The meeting was adjourned.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

DATE 3/26/86

NAME ADDRESS REPRESENTING

NAME	ADDRESS	REPRESENTING
WJ Newcomer	Topeka	KFDA
Pete McNeil	Topeka	KFDA
Amelia McGill	"	"
Clyde Chapman	Lawrence	CONSUMER AFFAIRS
CEIG A. FRANKLIFE	LAWRENCE	BO. OF MORT. ARTS.
Beleasa Crenshaw	Topeka	Cemetery Assn
DAVE Newcomer IV	Prairie Village	K.C.A.
John Peterson	Topeka	Ks Cemetery Assn
John Wassberg	Kansas City, Mo	Funeral Security Plans
John Brown	Salina, KS	City of Salina
John Karp	Topeka	League of Municipalities
Ray E. Johnson	Topeka	AARP
John O. Miller	Topeka	AARP
John P. Walker	TOPEKA	KCA
John Wine	Topeka	Sec. of St.
Sam McElwain	Lawrence	KFDA
Bill Smith	Derby	Ks. Fun. Div. Assoc.
JIM SOYDER	TOPEKA	KFDA
Alfred DeBevoise	Wichita KAN.	KANSAS Cemeteries -

SESSION OF 1986

SUPPLEMENTAL NOTE ON SENATE BILL NO. 582

**As Amended by Senate Committee on
Governmental Organization**

Brief of Bill*

S.B. 582, as amended by the Senate Committee, would direct cities to use a resolution rather than an ordinance to define the entire boundary of the city, if any territory had been annexed or deannexed during the calendar year preceding December 31. Currently, cities are required to adopt before the end of December an ordinance which declares the entire boundary of the city, if any changes have occurred in the prior 12 months. The Senate Committee amendment would require cities to declare by resolution the entire boundary of the city, if any changes occurred in that boundary during the calendar year preceding December 31.

Background

Representatives from the city of Salina explained that ordinances are required by law to be published and that resolutions do not have to be published after adoption, thus resulting in monetary savings if publication were no longer required. The League of Municipalities supported the bill as amended.

* Bill briefs are prepared by the Legislative Research Department and do not express legislative intent.

ATTACHMENT I

3/26/86

HS. LOCAL GOV.

SESSION OF 1986

SUPPLEMENTAL NOTE ON SENATE BILL NO. 499

**As Recommended by Senate Committee on
Financial Institutions and Insurance**

Brief of Bill*

S.B. 499 concerns cemetery merchandise contracts and would amend K.S.A. 1985 Supp. 16-320 to add caskets to the list of items that are not cemetery merchandise.

Background

The proponents of S.B. 499 explained that the effect of declaring caskets not to be cemetery merchandise will be to require sellers of caskets on a preneed basis, funeral directors and cemeterians, to place 100 percent of the selling price of the casket in trust as required by K.S.A. 1985 Supp. 16-301 et seq. rather than to continue such sales by cemeterians at a trust level of 110 percent of the wholesale cost to the cemetery corporation as set out in K.S.A. 1985 Supp. 16-320 et seq. This change in the trust requirement, the proponents argued, would protect the consumer, while opponents contended the change would unnecessarily restrict preneed sales of such merchandise.

* Bill briefs are prepared by the Legislative Research Department and do not express legislative intent.

*Hs. LOCAL GOV.
ATTACHMENT II
3/26/86*

POSITION PAPER ON SENATE BILL 499

--submitted by The Kansas Funeral Directors Association

There has been much discussion regarding this proposed legislation with opponents doing their best to cloud the issue. HOWEVER, THE ISSUE IS VERY CLEAR. This bill does NOTHING to restrict the selling of preneed. It addresses how much of the consumer's money will be placed in escrow if the preneed item is a casket.

1. FUNERAL DIRECTORS LAW VS CEMETERY MERCHANDISE TRUST LAW. If a consumer makes a prefinanced contract with a funeral director, 100% of ALL monies collected go into escrow. If the contract is revocable and cancelled, the consumer will get back all money paid in PLUS any interest that has accumulated. In addition, if after the funeral has been performed and any money is left in the account, the balance goes to the estate of the deceased.

If a consumer purchases a casket from a cemetery representative, only 110% of the wholesale price is escrowed. And, if they cancel, they only receive 85% of the 110% of wholesale price back. (See schedule 1).

2. IRREVOCABLE TRUSTING OF MONEY. The Funeral Directors Law provides that the first \$2,000 of a contract may be made irrevocable. The money must stay in a financial institution, but the consumer can change funeral homes if they wish. The vast majority of people using this type of contract are going on public assistance, SSI, Medicare, etc. and this money in an irrevocable contract will NOT count as a resource against them.

3. TAX LIABILITY. The consumer is liable for taxes on earnings. However, in the case of a revocable contract, the money is still theirs and they should be responsible. In the case of irrevocable contracts as stated in #2, because of their age or earning power, nearly all consumers with irrevocable contracts are not going to have to pay taxes any way.

4. MODERN LAW. 36 States have 100% prefinancing laws. The ones surrounding Kansas--Missouri, Oklahoma and Colorado do not, but they are in the vast minority. The Kansas Funeral Profession believes that 100% retail trusting is the safest for the consumer. Kansas' Funeral Directors law was originally enacted in 1954 but has been amended often by the Legislature--the most recent being in 1983, the same year the Cemetery Merchandise Trust law was finally enacted.

*Hs. LOCAL GOV.
ATTACHMENT III
3/26/86*

SALES OF PRENEED NOT STIFLED. Prefinanced funerals are available in each and every funeral home in Kansas. A recent survey of funeral homes in Kansas illustrated (by projection) that around \$40,000,000 (40 million dollars) in prefinanced funerals are in effect. And this has been done with advertising and word of mouth--not with uninvited knocks at the door or uninvited phone calls. We do not believe direct solicitation is welcomed by today's populace and support the position of the Kansas State Board of Mortuary Arts in preventing solicitation by licensees.

6. MYTH---PEOPLE SPEND LESS BEFORE NEED THAN AT NEED ON FUNERALS. Like anything else in life, some do...some don't. The study referred to is an average across the United States. However, one large organization with funeral homes in many states, including Kansas, shows figures that belie this statement as an overall authority for Kansas. The fact is, most consumers do make responsible choices whether before or at need and comments otherwise are erroneous.

7. FEDERAL TRADE COMMISSION TAKES NO STAND ON 100% LAWS. In a letter dated November 15, 1985 from Mr. Lee J. Plave, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, he stated, "In staff's opinion, the Funeral Rule does not affect the percentage of preneed funds that must be put in trust under state law. To my knowledge, neither the Commission or its staff have expressed any opinion on this issue."

8. POST AUDIT REPORT OF 7 YEARS AGO. An antiquated Post Audit report of 7 years ago during the "Sunset" hearings on the Board of Embalming has been quoted. Just a reminder...the Legislature that year not only REJECTED TOTALLY that report but included the Embalming Board with the other fee agencies in removing them from the "Sunset" process altogether.

9. REGULATORY AGENCY OVERVIEW. The Kansas State Board of Mortuary Arts requires each funeral home to file with their renewal license a list of preneed accounts and in which financial institution the money is placed.

REMEMBER, THE ISSUE IS NOT WHO SELLS CASKETS FOR ANYONE CAN SELL THEM NOW AND WILL BE ABLE TO IN THE FUTURE. THE ISSUE IS WHETHER OR NOT THE CONSUMER WILL BE PROTECTED ON PRENEED CASKET SALES BY THE PLACING OF "ALL" THE MONIES IN TRUST. SENATE BILL 499 WILL PROVIDE THIS CONSUMER PROTECTION.

THANK YOU FOR YOUR CONSIDERATION OF SENATE BILL 499. WE HOPE YOU WILL GIVE IT FAVORABLE CONSIDERATION.

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	CUMMULATIVE 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	345	345	345	0	0	345
2	345	690	714	714	0	345	690	259	86	73	641
3	345	1035	1109	1109	0	345	1035	0	431	366	743
4	345	1380	1532	1532	0	345	1380	0	776	660	872
5	345	1725	1984	1984	0	345	1725	246	875	744	1240
6	0	1725	2123	2123	0	0	1725	0	913	776	1346
7	0	1725	2271	2271	0	0	1725	0	956	812	1459
8	0	1725	2430	2430	0	0	1725	0	1000	850	1581
9	0	1725	2601	2601	0	0	1725	0	1046	889	1712
10	0	1725	2783	2783	0	0	1725	0	1094	930	1853
11	0	1725	2977	2977	0	0	1725	0	1144	973	2005
12	0	1725	3186	3186	0	0	1725	0	1197	1017	2168
13	0	1725	3409	3409	0	0	1725	0	1252	1064	2344
14	0	1725	3648	3648	0	0	1725	0	1310	1113	2534
15	0	1725	3903	3903	0	0	1725	0	1370	1165	2738
16	0	1725	4176	4176	0	0	1725	0	1434	1218	2958
17	0	1725	4468	4468	0	0	1725	0	1500	1275	3194

Funeral Directors 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.

PRESENTATION ON SENATE BILL 499

--Larry McElwain, Lawrence

I feel that it is necessary to first review the recent history of trusting funeral and cemetery monies to better understand where we are today. Kansas Funeral directors are governed by trust laws that date back to about 1953 with various amendments along the way. The most recent amendment being in 1983. The legislature has amended this law to allow for the co-mingling of funds in a trust and providing irrevocable trusts for the benefit of those people going into public assistance (SRS) with the peace of mind knowing that the funds are secure for the time of need. This law requires that I as a funeral director must trust 100% of the retail cost of services and merchandise. Should the consumer move out of the area or desire to cancel the contract, they are given 100% of principal and 100% of the interest that has accrued on the account. These accounts are placed in federally insured banks, trust institutions, credit unions or savings and loans. Also, if after providing the designated services and merchandise there are funds left in the account, they are then considered part of the decedent's estate and distributed to the heirs as such. In my 14 years of experience in Kansas, I know of no family that we served that was unhappy with this arrangement. Our firm has approximately \$150,000 of trusted money at this time drawing interest in Kansas financial institutions. The revocable and irrevocable trusts have been very beneficial in allowing consumers the flexibility of locking money into the institution if they wish. In an irrevocable trust the money cannot be moved but the client can change beneficiaries of the trust at any time they desire without penalty.

The cemetery law was enacted about three years ago to allow the trusting of 110% of wholesale cost on cemetery merchandise. We did not oppose that bill since up to that time there were no real trust laws on cemetery merchandise. It was not until about seven months ago we realized the loop hole in the law allowing two firms operating in Kansas to trust less than 100% of the merchandise retail cost. The cemetery law contained a general phrase at the end of the law that stated "all merchandise commonly sold or used in cemeteries" could be

Hs. Local Gov.

*ATTACHMENT IV
3/26/86*

trusted at the 110% of wholesale cost. K.F.D.A. asked the Secretary of State's office for a legal opinion from the Kansas Attorney General's Office. His opinion stated that the general statement "all merchandise commonly sold...." did not exclude caskets so therefore was legal. During this legal opinion process we felt that we showed adequate proof that the intent was not to include caskets implicitly or explicitly.

This difference of business practice and opinion has brought us to the legislature this year to correct the inequity in trusting funeral and burial merchandise. Senate Bill 499 deals specifically with this issue. The consumer cannot best be served when there are two laws governing the trusting of monies of the same piece of merchandise--especially one that cannot be preset such as a grave marker or even a vault.

Although with us today are several colleagues, their testimony is included in the distributed material. We wish through this testimony to make several points. I list these now for your information and as a basis for questions that you may have.

POINT #1 KFDDA, its Board of Directors and these colleagues support the passage of Senate Bill 499.

POINT #2 KFDDA, its Board of Directors and these colleagues feel that the cemetery laws that allow caskets to be trusted at the 110% of wholesale are not in the best interest of the consumer or the funeral director or the cemeterian. We intend to show you through example the dangers inherent in this imprudent trusting of consumer's money.

POINT #3 We do not wish to restrict who can sell any merchandise but rather how the money will be trusted to insure it is there when it is needed or if the consumer desires to cancel the contract prior to death. We want the money, regardless of the seller, to be trusted at the 100% of retail level. The money must be accounted for and the funeral director or other seller must be accountable for the consumer's funds.

POINT #4 When the funeral merchandise is trusted under 100% retail trust laws,

Kansas will be able to preserve their stringent control of in-person solicitation. Cemetery corporations presently do not have any provisions in their law to control what methods can be used in selling their merchandise. We feel that the U.S. Supreme Court case of Ohralik vs. Ohio State Bar Association decided in 1978 has as much validity now as it did then. It stated it was appropriate for states to regulate in-person solicitation. In Kansas we can now advertise in the media and through the mail but we cannot solicit in-person (ie. knocking on doors or making hospital or nursing home visits to secure business).

POINT #5 We believe that after seeing the actual comparison of the two laws, you will see the problems that are inherent. The opponents quite obviously are opposing this bill so they can quite clearly operate under the more liberal cemetery laws. We desire to operate within the current funeral merchandise laws that protect the money and therefore protect our relationship with the consumer at need or upon cancellation.

POINT #6 You will no doubt have heard the argument from the opponents of this bill that this "rake off provision" is needed to see that they are adequately compensated up front for their time and expenses in making a pre-arrangement. For the average funeral home or cemetery, pre-arrangements are made at a convenient time for both parties. Time spent in making pre-arrangements will proportionately diminish the time at-need to make arrangements. For the unusual operation where there are staff accountants, computer operators, door-to-door sellers, money managers, etc., there is not enough money on the front end to run the operation.

POINT #7 Funeral directors are eager to write pre-arrangements to secure future business. We are not eager though to enter into an agreement (110% wholesale) that will not insure adequate money at need or a satisfied consumer when only a portion of his/her money is returned upon cancellation of the contract.

POINT #8 If you allow for the passage of S.B. 499, you will probably only effect 2-5 firms initially. You will not be effecting any municipal and township cemetery operation. Not one non-profit cemetery (which most cemeteries are) is involved in the passage of this legislation.

NT #9 When the smoke and dust settles after this meeting today, the real issue will remain that of protecting peoples' money and the integrity of the funeral director and the cemeterian. I urge you to support S.B. 499.

THANK YOU

Jones Funeral Home, Inc.

Phone 256-6522

Lebo, Kansas 66856

In 1965, Mrs. C. Harvey Smith of Lebo, Kansas was living in Kansas City, Mo. At that time she was approached and subsequently purchased a \$950 prearranged funeral plan for herself from a company known as "Funeral Security Plans". During March of 1984 (19 yrs. later), she attempted to have this prearrangement transferred to the Jones Funeral Home of Lebo, Kansas and was told that only a portion of her original investment could be transferred and that there were no interest earnings on her behalf in the account. The amount that could be transferred was \$760. Mrs. Smith was shocked and disgusted and withdrew her \$760 from the account immediately and put it into an account of her own that would earn interest for her.

She had been told at the time of her original purchase that the account was transferrable and that it would provide the type of funeral service that she had selected.

Had Mrs. Smith purchased this same plan under the existing 100% trusted law that Kansas has at this time, she could have had an account worth approx. \$4,300 to transfer, anywhere she wished.

Wouldn't you agree that there is quite some difference between \$4,300 and \$760?

Mrs. Smith has given her consent to be contacted at 316-256-6554 for this to be verified, if need be.

This is not an isolated instance, but is the only one recently verifiable.

WHOSE NEED IS

Taken from "Mortuary Management" magazine dated November, 1985

All of funeral service is now entranced with that which is called the advent of preneed.

Suddenly every aspect of the profession has come alive over the prospect of generating dollars with the development of preneed funeralization.

Just as quickly everyone has become confused over what constitutes the effective marketing of this type of product.

Fear not though, because this matter of funerals is not much different than any other American enterprise today.

With dreams of possible expansion and dollar bills dancing in the eyes of thousands of funeral entrepreneurs, the potential of development in funeral preneed seems limitless.

So too, now, do the plethora of preneed programs; legitimate, suspect, and down-right awful, being introduced by companies, organizations, and others anxious over the prospect of making a dollar.

Not only are funeral directors drooling over the prospect of nailing down additional clients and dollars in advance, those who market ideas in preneed are leading the parade of encouragement with enticing concepts to make it all a reality.

Funeral directors are being told, correctly, that the world of financial services is changing rapidly.

Then the message is that there are millions of people in our society who are interested in preneed their funerals.

Certainly that assumption can be ratified since we now have an abundance of aging people who obviously are ripe for marketers of preneed funerals.

To further interest morticians, those people who have developed preneed programs need only to point to the advent of HMO'S in health-care and medicine.

That always pricks up the ears of those who are caregivers: It gives greater credibility to be placed in the company of medicine and doctors.

So in what is being termed an "exciting" new age of funeral service, we're seeing a tremendous amount of maneuvering in the market place of death.

Frankly much of it is unpleasant to watch, and could be potentially dangerous to participate in by all of the parties involved.

One fact must be addressed.

Preneed funeral arrangements in an abundance of programs have been around for a long time.

For years the west coast, the south-west, and the deep south with the gulf states have matured programs.

Their markets, (the people in their areas) have been saturated with all kinds of potential for pre-arrangements.

Some have been excellent, others good, and any number of them have been awesome failures which have resulted in grim law-suits.

These failures didn't result only because monies were not placed in trust accounts; or because a particular state law did not have laws which demanded 100% trust account funding.

There have been large-scale failures of insurance companies who pinned their hopes and dreams on funeral preneed dollars.

There were those organizations who promised specific merchandise to consumers, received monies then could not deliver for a variety of reasons.

Funeral preneed monies have been placed in financial institutions which were speculative; then collapsed.

The list goes on and on.

The history of these monetary debaucheries is not a distant past.

One only has to read any professional journal monthly, or for that matter digest the contents of the daily media, to know that continued abuse of preneed funeral funds is still alive and well.

Our drive for success in business too often has overshadowed the ability of some funeral people to retain a modicum of common sense in this area of preneed.

Presently it almost appears that funeral directors are their potential as purveyors of preneed dollars are looked upon by experienced marketers as virgins ready to be plucked in an unviolated territory.

That is wrong.

It is wrong because there have been too many violations of trust in the past, and we just can't be certain that all of the preneed programs now thrust at us will be fail-safe.

Certainly the ideal preneed program is simple perception and execution.

Money would be given to the funeral director under contract ratified by a given state's security commission, would be executed, and one hundred per-cent of the money would be placed in trust at an FDIC bank.

The account would be governed and monitored by the individual state security commission, which would have an accounting of all trust monies made to the trust company and the funeral director.

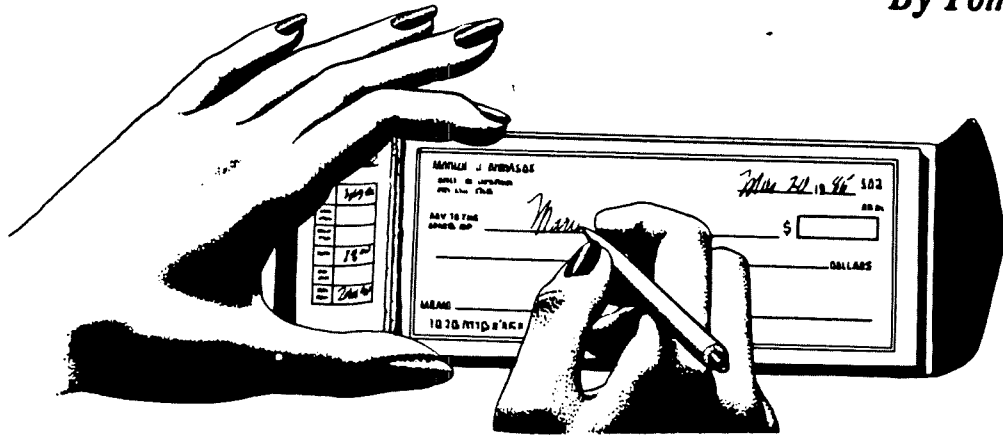
Finally the account would be revokable.

A second ideal situation is the institution of PAY ON DEATH certificates of deposits. The monies and/or interest belongs solely to the person who instituted a preneed contract, and proceeds can be paid to the funeral director only at the death of the holder.

It is therefore unfortunate today that many people

PRENEED, ANYWAY!

By Tom Fisher



interested in marketing preneed funerals do not find these programs ideal.

To listen to them, better plans are available.

A better word for the hundreds of other different plans on the market today would be "speculative".

Suddenly morticians are about to become money managers, financial service advisors, even to and for the consumers.

There is entirely too much emphasis placed on **MAKING MONEY** in funeral service with preneed funding.

That, to the surprise of many, is not a **NEW THEME**.

It has been around a long time, and any number of people, mostly the consumers themselves, have gotten burned badly.

This is not a blanket condemnation of every preneed plan on funerals currently available.

Some are good.

Most preneed plans now available to us however need some fine tuning, and certainly demand prudence by the funeral director before embarking on a commitment that will affect the ultimate destiny of a given firm.

The greatest number of morticians today are a long way from being money managers.

A potentially large number of practitioners of funerals could suffer grave consequences to their business, and hurt whatever image the industry has by engaging in preneed funeralization which is less than ideal.

A rather frightening area today in preneed sales is represented by the mortician who will guarantee particular merchandise to clients at a price set when the preneed contract is signed.

One only has to recall the inflation period of 1979 - 1981 to know that merchandise in funeral service was given a blast that resulted in 50% to 100% increases in merchandise cost.

It does not take a mathematician to figure out that 10%, or even 15% interest on investments over the short term can cover that type of bump.

Then there is the matter of supply of the

merchandise.

How sound is the company? What is their history of style changes in what they supply? How is that treated in the program they offer to funeral directors? What alternative options are available within the contract offered the consumer? Can a merchandiser and/or funeral director use preneed contracts as leverage for borrowing power?

These are salient points that must be recognized by funeral directors before investing time and dollars in public relations and sales expense by joining a specific preneed group marketing funeral service today.

Damage to prestige and public confidence to funeral directors is on the line today more than at any other time in the history of American funeral service.

We do little to build confidence levels as funeral directors when we engage ourselves in the frivolous pursuit of looking to preneed as a quick fix for generating money directly into our business.

That type of thinking is permeating itself through the entire industry today.

It is far better to offer and even promote preneed service that take funeral directors and/or their agents out of the role of middle-men.

From the largest organization to the smallest funeral home in this nation today, there still is not one that can offer a program that even touches the protections offered the consumer by 100% preneed trusted funds.

For those who indicate that companies like Sears are going to enter the market-place with their own program, there is an answer.

Right now that company, along with several others who entered the financial service markets a number of years ago, have enough problems keeping their existing service going.

Be careful.

That is the best advice that can be given to funeral directors now.

Join the preneed movement, but join cautiously and with programs that will be a help, not a hindrance to you and your clients in the future.

The exercise of caution after all, is the exercise of good judgement. ■

COMMENTARY

By Bud Noakes

Taken from "Mortuary Management" magazine dated January, 1986

WHY MAKE EASY CHOICES RIDICULOUSLY COMPLICATED

There are those people in business who appear to find it easy to brush aside all religious and humanistic concepts of social responsibility and proclaim, without suffering noticeable pangs of conscience, that making a profit is not only the proper objective of conducting business but is the only worthwhile objective, no matter the kind of business.

Supposedly those who assume the roll of professionals, or lay some claim to being at least semi-professionals, have traditionally been bound to a rather strictly imposed set of obligations called ethics. While each profession may specify rules and standards of conduct governing their own particular field of endeavor, in all such codes of practice one may observe statements articulating a body of moral principals and values to which its members must freely and willingly agree to be bound.

I have never heard of any funeral director's organization that did not have a code of ethics, usually printed on parchment, for its members to subscribe to and pledge to follow. That seems well and good. The trouble is that we are now seeing, in all too many instances, examples of what may be defined as 'ethical relativism,' which is the view that moral standards and principals are relative to the nature of the particular situation in which they exist and allow no outside criticism or evaluation.

I am particularly distressed by the corrosion of ethical standards we now see in our profession with regard to preneed financing. If there is one thing practically all funeral directors agree upon it is that making preneed funeral arrangements is a very good thing for both funeral service as a whole and the public in general. But beyond that basic point of agreement the road becomes rocky in the extreme. Too many funeral director/business people have rationalized their ethical standards to the point where they now feel quite

comfortable doing some perfectly horrible things with other people's money.

Many states have laws requiring that every cent of money paid toward mortuary expenses in advance of need, be 100% trusted. THAT IS GOOD! I believe this is exactly as it should be. But there are states that are considering various regulations and legislation that would allow funeral directors accepting preneed money to bleed off ALL the interest funeral funds entrusted to them earn.

THAT IS EVIL! Needless to say, such funds do not grow along with the forces of inflation and when the trustor dies several years in the future, the money left in the trust has remained the same as to the number of dollars; dollars which have lost a good deal of the buying power they were worth when the money was originally deposited 6, 8, 10, 12, or more years previously.

In order to gain access to the earnings of the pre-paid funeral funds, the funeral director has to go through the motions of claiming to guarantee to provide the items of service and merchandise at some future date. When the death occurs, these specified services and merchandise (as outlined in the Federal Trade Commission-mandated general Price List) must be provided. Of course, there is a serious question as to whether any funeral director can provide on a regular basis, services and merchandise at prices that had been in effect 6, 8, 10, 12, or more years earlier.

If they find this financially impossible, the original trustor, in all probability will not receive the services and merchandise he or she had paid for in good faith many years ago. And in many cases there will be no one for the bereaved family to turn to for satisfaction.

In California, with the largest population of any of the fifty states, we have the fewest number of mortuaries per capita. We have lost about three
(Continued on page 16)

EDITORIAL

Continued from page 5

service business to sustain. Many owners are now faced with the challenge to fairly evaluate their property, and make the decision to continue in funeral service knowing of the inequity, or make changes which will be more cost/profit effective.

Fairness in wages to staff members can be a constant challenge. Moving from full time personnel, and the respective obligations of appropriate health insurance and other benefits, to part-time, at-need call-in assistance is being utilized more often than in the past. Professional services, such as embalming, is being utilized on a per case basis with noted economical benefits.

The challenge for 1986 is to become keenly aware of property and equipment values, growth potential, and profitability. A well supported understanding of where we are in 1986 may well be a primary factor in making wise decisions towards a successful future. **M**

COMMENTARY

Continued from page 7

mortuaries per month during each of last four years. There are many reasons for this phenomena; some mortuary property has simply gotten too valuable to operate as a funeral home. Getting qualified employees has proved to be so difficult some funeral directors have just decided to quit trying to run a business 24 hours a day with employees that want to work forty hour-weeks. The increase in not only direct cremation, but simplified funeral services, has had severe consequences in gross income. Then there are mergers, acquisitions, and deaths of owners/operators among other reasons for business terminating or at least changing their form of operation. All of which means that very very few mortuaries can be assured of continuing to be in

business many years in the future. And if the owners themselves cannot be so assured, how could it be possible to guarantee people making and pre-paying for their own funeral services that they may rest assured they will eventually get what they paid for? In my opinion they can't unless the money is deposited in Federally insured Savings and Loan Association Trust accounts and all of the interest is allowed to accrue to the original corpus as a hedge against

inflation. The consultation detailed pre-planning of a per. funeral services requires the time and expertise of very well qualified funeral service personnel. It seems reasonable to me that a mortuary should at least have the option of making a charge for the services involved at the time of making detailed pre-arrangements but, other than that, all the earnings of the trust should be left intact.

The choice is really quite simple. Do you believe in good or evil? **M**

Jensen's Business Sales

LICENSED REAL ESTATE BROKERS

'FLOYD'

'GENE'

OFFERS

35416 FIRLOK PARK BOULEVARD
St. HELENS, OREGON 97051
Telephone: (503) 397-5321

515 N. HUNTER STREET
STOCKTON, CALIFORNIA 95202
Telephone: (209) 466-0525

CALIFORNIA COAST: Long established mortuary on large valuable lot. Building extensively redorated recently. Living quarters within. Rentals included for a total price of \$695,000. Terms negotiable. Owner wishes to retire.

SMALL TOWN MORTUARY: Coastal community with NO competitor in the area. This 90 case business has good cash flow on high average sales. A very good building with an adjacent three bedroom home for \$350,000. Price includes the business, furnishings, car, caskets. Most of the balance assumable at only 9%.

INTERMOUNTAIN MORTUARY: Small town business with a branch in neighboring community. Low volume, but all quality sales. One of the two buildings has very good living quarters. All real property, equipment, cars, caskets and furnishings included in the asking price of \$295,000. No competitor in area.

NORTHWEST BUSINESS: A 75 case business for a total selling price of just \$110,000. Business includes furnishings, equipment, cars and lease with option on a very good building with a large 3 bedroom apartment. Parking & beautiful grounds surround the building. No competitor in area & great potential. Low down & terms.

METROPOLITAN MORTUARY: Predominately black business with good volume and cash flow. Good modern building with parking. Two small apartments included for living quarters. Selling price includes all equipment, cars, caskets and real property. This can be handled on an SAB loan.

WESTERN FUNERAL HOME: Only one in the area with good sales on a volume of 160+ cases a year. Extensive real property included in the sales price, so sellers are looking for a substantial down payments.

32 years experience selling mortuaries and cemeteries...it is our only business

DISCREET- CONFIDENT-PERSONAL SERVICE

A funeral home is part of the fabric of the community it serves. Most funeral homes remain in service to their community for generations. I, personally, am a fourth generation funeral director. This brings me to the basic inherent difference between Funeral Homes and Cemeteries. A funeral home is a provider of services to the community they serve. Funeral service and merchandise revenues are not recognized until the services and merchandise are required by the public. Contrary to this, Cemeteries are a ~~warehouse~~^{Supermarket} of inventory. As in any inventory intensive business, that inventory has to be sold and sold aggressively. A cemetery's revenues are recognized at the point of sale - not the delivery or servicing of that sale. Therefore, a cemetery is only as successful as its sales force. And recently a casket is another page in the cemetery salesman's presentation kit.

By applying the cemetery minimum funding requirement, which is the trusting of 110% of wholesale costs, any business' future solvency is precidated on the fact that you will be able to sustain future sales via an aggressive sales force to continue to push your future liability out in front of you. This type of business becomes a time bomb.

What If? -

The seller operating under the 110% of wholesale statute goes out of business? In today's volatile market and business environment that is a very real possibility and sobering thought. The consumer loses the vast majority, as much as 100% of the seller's commitment to provide a casket at some future date.

What If? -

The consumer moves? One of three things may happen...

- #1) The consumer will receive 85% of 110% of the wholesale cost of the casket, less administrative fees.
- #2) You can pick your casket up and take it to Sun City with you. Or pay the seller a delivery fee and they will ship it for you.
- #3) The seller may make a "Good Faith Effort" to transfer your account to another funeral home. Please refer to the "Wall Street Journal" middle column.

What If? -

The consumer perceives the quality of service, merchandise, or facilities

has diminished and wishes to select an alternate funeral home. The consumer loses. He or she has lost the freedom of choice.

Sell Each a casket!

"It is our wish that your loved ones be spared from anxiety, expense, and inconvenience at the time of your death."

That is the pitch!

PreNeed Saves Money!

PreNeed Reduces Costs!

In closing - don't allow a preneed salesman to sell the public an albatross.

FUNERAL DIRECTORS TRUST

Total Gross Sales

\$ 1987.00	Casket
<u>477.00</u>	Outer enclosure
2464.00	Selling cost
<u>x3</u>	Sales per week
7392.00	Sales per counselor each week
<u>x10</u>	Counselors
73,920.00	Gross sales a week
<u>x4</u>	Weeks
295,680.00	Gross sales a month
<u>x12</u>	months
3,548,160.00	Gross sales a year

CEMETERIANS TRUST

Trusted 110% of Wholesale

\$ 741.40	Casket
<u>256.30</u>	Outer enclosure
997.70	
<u>x3</u>	Sales per week
2993.10	
<u>x10</u>	Counselors
29,931.00	Trusted per week
<u>x4</u>	Weeks
119,724.00	Trusted per month
<u>x12</u>	Months
1,436,688.00	Trusted per year

(less 15% cancellation fee \$215,503.00 if all cancelled and/or wanted money back)

Difference \$1,081,872.00*

Less \$ 270,468.00

\$ 811,404.00

*Sales expenses would come out (average 25% or \$270,468.00)

Prepaid Funerals May Bring the Unwary A Lot More Grief Than Peace of Mind

YOUR MONEY MATTERS

By MARK ZIEMAN

Staff Reporter of THE WALL STREET JOURNAL

Prepaid funerals are becoming more popular, but unwary consumers are being buried by bad deals.

These plans, which allow people to pay funeral homes now for their eventual burial or cremation, are tempting for anyone who wants to spare survivors the task of making and paying for arrangements during a time of grief. The funeral industry has responded by setting up a variety of trusts and insurance programs to finance the plans.

The concept is simple and appealing: Money paid today fixes the cost of the funeral for the consumer and enables the funeral home to buy insurance or securities that will cover any cost increases.

In only a few years deposits in funeral trusts alone have reached at least \$4 billion, industry officials estimate. A fund in New Jersey is growing by nearly \$40,000 a week. Last year almost a half-million Texans were enrolled in such programs.

But while the theory may be simple and the plans popular, they aren't always safe—as 80-year-old Pauline Bagley of Lincoln City, Ore., discovered. Three years ago she paid a local mortician, Dale Omsberg, \$2,039 for her funeral arrangements. The money was supposed to earn 8% interest in a trust.

Pocketed Check

But Mr. Omsberg pocketed her check, according to local authorities. And instead of performing 50 prepaid cremations, they found that he had stacked some of the remains in the basement of his mortuary and buried others in mass graves. Mr. Omsberg pleaded guilty in January to 60 counts of theft and abuse of a corpse, was sentenced to 30 days in jail and was ordered to leave the county for five years. Mrs. Bagley got back half her money after threatening to sue him.

"Oh, it was a bitter, bitter experience," she says today. "I would like to have the assurance that my funeral expenses would be taken care of, but I would not do it that way again."

Such atrocities are the work of crooks, not the vast majority of undertakers. Yet funerals have always been expensive, and the industry has suffered repeated allegations of abuse. After decades of controversy, the federal government a year ago began regulating certain funeral costs and sales practices.

Funeral operators, including a few big, image-conscious companies, laud and de-

fend prepayment programs as a way to protect survivors when they are grieving and most vulnerable to abuse. "People have a great desire to have their funeral arrangements taken care of," says Donald Campbell, in charge of pre-arranged funerals for Houston-based Service Corp. International, the country's largest funeral-home operator. Adds David Bohardt, executive director of the National Funeral Directors Association: "You have to assume that a goodly portion of these people are probably taking money from CDs, money-markets and other accounts" to fund their funeral plans. "They must understand what's involved," he says.

But many people, particularly the elderly, don't always understand. Although most prepaid funeral trusts, insurance pro-

'I would like to have the assurance that my funeral expenses would be taken care of, but I would not do it that way again,' says a defrauded customer.

grams and installment plans are legal and safe, consumer groups note that hundreds of programs like the one that victimized Mrs. Bagley aren't controlled by state trust and insurance laws, creating the potential for fraud and abuse. And they say that subtle contract clauses and vague stipulations in prepaid funeral programs can shortchange the unwary as much as the basest scam.

Many plans, for instance, leave buyers in the lurch if the sponsoring funeral home is sold or closed. Other agreements aren't honored if the buyer dies before completing payments. Still others are canceled if the buyer relocates, which can result in big losses for the consumer. Even plans that promise a "good-faith effort" to transfer the accounts of relocated buyers to other morticians have a hitch: Undertakers in the new locations might not assume the accounts, since the original funeral homes usually retain the interest earned on them as "administrative fees."

And when the survivors don't know the terms of the plan, their loved one may wind up in a pine box instead of the oak casket that was paid for.

State trust and insurance laws governing these plans also don't adequately cover potential abuse, according to some state officials. For example, the Texas Banking Department is advocating a move to

strengthen the state's laws on prepaid funerals, claiming they have encouraged undertakers to switch money from trust funds into less-beneficial insurance policies. Through this maneuver, the department has found some operators are pocketing interest accumulated in trust funds and putting customers into policies subject to cancellation penalties often as high as 60%.

The department is also pursuing several lawsuits, including one against a mortician in Amarillo who used prepaid funeral funds as collateral for a personal loan, then defaulted and lost his customers' money to the bank.

State laws also vary greatly in what they allow. Some states, such as New York and New Jersey, permit buyers to withdraw 100% of their payments and interest if they cancel their contracts. These states also force operators to return any unspent funds following the burial or cremation. But other states let funeral homes write irrevocable contracts, or let them keep a huge share of the payments—up to 20% in Missouri and 50% in Mississippi, for instance—if the contract is canceled.

Even in states with strong regulations, consumers pay in other ways. In states with the 100%-refund provision, for example, funeral operators tend to charge much higher rates for prepaid services.

Lower Rates

Because of the confusion, the American Association of Retired Persons urges members to get advice from an attorney before signing any prepaid plan. But some other consumer groups advocate staying away from the plans. The contracts often accumulate value at much lower rates than certificates of deposit or money-market funds, and for decades can tie up money that may be needed elsewhere, says Carol Coile, director of the Continental Association of Funeral & Memorial Societies, a Washington-based watchdog and consumer-information group. Most people, she says, are better off opening their own interest-bearing accounts or buying more life-insurance.

Meanwhile, the new federal rules make planning for funerals easier. For instance, undertakers must disclose prices over the phone, making it easier for consumers to avoid strong-arm sales tactics.

Despite the new federal laws, critics contend that some operators don't provide the required itemized account of a funeral's expense, and other morticians have used itemization to raise prices on products and services that formerly cost consumers less when they were included in package deals.

"The rules were enacted for the benefit of consumers," Ms. Coile says, "but really and truly it remains to be seen."

It's Your Funeral!

Death is one of the most difficult topics to discuss, especially when you are talking about yourself or a loved one.

Planning for death is often a neglected part of life. It is easy to put off planning for the inevitable. As a matter of fact, planning a complete pre-arranged funeral is quite easy if you know the right people to consult. *And you DO have many choices.*

The Johnson County Funeral Homes listed below are capable of answering any and all questions pertaining to funeral arrangements.

There are many decisions to be made

regarding funeral arrangements. Not only is there a special payment plan to fit any budget, but the money you invest in your funeral is placed in a Trust Account which can and does collect interest. *There are never any finance charges, and at any time before you die you can remove all of your money and the acquired interest.*

MAKE SURE you know what you are buying before signing anything. Call one of these Johnson County Funeral Homes and see what they can do for you. Make an appointment. No salesman will call or come by without you contacting them first.

Being confident in knowing you have made the right choice is what we want. Remember, there does come a time when it is too late with no more options to choose, but

It's Your Funeral.

**THE AMOS FAMILY
FUNERAL HOME**

10901 Johnson Drive
Shawnee, Kansas

631-5566

**McGilley & Hoge
Johnson County
Memorial Chapel**

8024 Santa Fe Drive
Overland Park, Kansas

642-3565

**W. L. Frye and Son
Funeral Home**

Loula & Cherry Streets
Olathe, Kansas

782-0582

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.

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

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

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

STATEMENT OF CLYDE CHAPMAN
BEFORE THE COMMITTEE ON LOCAL GOVERNMENT
OF THE KANSAS HOUSE OF REPRESENTATIVES

MARCH 26, 1986

I am Clyde Chapman, Director of the Consumer Affairs Association of Lawrence, Kansas and I serve as a National Panelist and Chairman of Region VII of ThanaCAP, a consumer arbitration program for funeral service. I come here today not in either of those capacities, I am here as a consumer advocate and a consumer. Nor I am I here to represent the interests of either funeral directors or cemetarians, but instead the interests of the individuals that may to be at risk in these proceedings -- consumers.

It appears that somewhere conventional wisdom failed with the passage of two different laws governing the sale of the same or similar merchandise, which allows on the one hand a consumer's investment to be fully protected, while on the other hand, a consumers investment is only protected up to 110% of the wholesale cost of the merchandise purchased. Under the cemetary merchandise law, a consumer wishing to cancel a pre-need contract would receive a refund of only 85% of 110% of wholesale, which would be a refund of \$655 on a initial investment of \$1500, where the wholesale cost of the merchandise was \$700, accounting for a lost to the consumer of \$855. Had a consumer made the same merchandise purchase under the funeral merchandise law and later revoked their contract they would have received a refund of \$1500 plus accumulated interest.

I think that we must stop here and ask a couple of very important questions. Under which law is the consumer's investment most protected? Under which law is a consumer's investment most subject to speculation and abuse?

A fair amount of the discussion around this issue has been dollars and cents, there seems to be an equally important issue that bears some consideration. Specifically, who are the consumers that most often make pre-need arrangements? From all reports, it appears that the elderly account for 80 to 90 percent of all consumers making pre-need arrangements. Therefore, we also need to take a look at this issue with that class of consumers in mind. As harmful as inflation is to the purchasing power of the general public, its effects on the elderly are even more dramatic. An elderly individual whose income is fixed or partially-fixed is clearly being forced to spend more to survive. With a reduced income, the burden of fraud, deception, and failures of the marketplace create an intolerable situation for the older consumer. While the elderly contend with many of the consumer problems which beset the general population (e.g. auto repairs and home improvement), other problems are unique to the older population accentuated by characteristics of age-related vulnerability. Abuses in the nursing home industry are a clear instance of age-specific problems, but other health care problems also affect the elderly. Inadequate availability of health care due to restrictions on physician supply or limitation on the use of para-medicals is a crucial problem for the elderly who have greater health care needs. Insurance sales techniques may be

targeted at the elderly who fear having inadequate resources when debilitating illnesses strike. Home repair abuses may be more frequently perpetrated on the elderly since they are more often home owners yet frequently are unable to verify supposed leaks or to inspect completed work. Even problems with auto repair affect the elderly differently since they may be unable, due to physical disabilities or barriers, to resort to public transportation when work is not performed as promised.

The basic services and goods which the elderly consume from health care to housing to funerals all have attendant problems, some of which are age-specific. Other problems with basic services and goods are not age-specific but are exacerbated by the factors associated with old age. The elderly consumer may or may not have proportionately more problems than the non-elderly consumer, but she/he does have different problems and, with substantially reduced income and increased vulnerability, the potential for injury is far greater.

While clear data does not exist on the volume of pre-need sales to the elderly or the level of abuses, several specific types of problems can be identified. Funerals purchased in advance of need may not be delivered as contracted for. Contracts may fail to specify prices or may contain escalation clauses which permit funeral merchandise providers to increase the charges at the time of delivery. Inadequate trusting requirements may permit the merchandise provider to use a portion of the consumer's money as well as accumulated interest prior to providing the goods and services. Extensive misuse of pre-need funds which are inadequately protected may result in a firm going

bankrupt before providing the contracted service. If death occurs prior to payment in full, refunds may not be available and survivors may be forced either to forfeit the amount paid or pay up the difference between the amount paid and contract price.

Generally, it may be argued that most consumers who make pre-need arrangements do so because they want the comfort and assurance that those final arrangements have been taken care of and that they have made a sound investment for the future, for both themselves and their families.

Death and dying is a very sensitive and personal issue for most us. Therefore it would seem that it is not an issue we would want to subject to over-commercialization, which may take the form of high pressure sales tactics, such as intrusive and coercive door-to-door sales and telephone solicitations, or other over zealous marketing practices that may be employed by some pre-need promoters.

One of the advantages of pre-need arrangements is that they can be made without the added pressure of bereavement and are generally made by the individuals who will directly receive the benefits. As well, many consumers may feel that they will make better spending choices if they pre-arrange. At the bottom line of this pre-need issue is what is fair to the consumer and who is to benefit from the pre-need arrangement? Surely with pre-need arrangements as with many other consumer transactions, the seller and the purchaser of consumer goods and services both derive benefit when those goods and services are delivered. The security of a consumer's investment should not be based upon the

wise or unwise speculation of the merchandise or service provider. There is no sound reason why a consumer's pre-need funds should be available to finance the operation or ventures of a pre-need provider's business before the goods and/or services purchased have been delivered.

Therefore, I strongly urge the swift passage of SB 499, which will insure that those Kansas consumers, especially the elderly, desiring to make pre-need arrangements can do so with a sense of confidence and security that their investment is fully protected and will remain safe.

KANSAS STATE BOARD OF MORTUARY ARTS

REPORTING OF PREFINANCED FUNERAL AGREEMENTS

In accordance with K.A.R. 63-3-20, the following information concerning prefinanced funeral agreements entered into pursuant to K.S.A. 16-301 et. seq. shall accompany each funeral home's biennial application for renewal of its establishment license, as required by K.A.R. 63-3-19.

*** This first report shall include all such prefinanced funeral agreements for which any merchandise or service has not yet been rendered.

Failure of any funeral home to report as required by K.A.R. 63-3-20 shall be grounds for refusal or revocation of its establishment license.

EXAMPLE:

<u>Fun. Home Agreement #</u>	<u>Institution of Deposit</u>	<u>City</u>	<u>Bank Account #</u>	<u>Purchase Amount</u>	<u>Date</u>
1	First National Bank	Topeka	5112-367	\$1,500.00	1/1/74

The funeral home agreement shall be an individual number available at the funeral home for each separate agreement. Please list each prefinanced agreement separately as in the above example.

Extra forms are available upon request.

63-3-20. Reporting of prefinanced funeral agreement. (a) Each funeral home licensed in the state of Kansas shall report to the state board of mortuary arts, on forms provided by the board, the following information concerning prefinanced funeral agreements entered into pursuant to K.S.A. 16-301 et. seq.:

(1) The numbers which identify the accounts, in the records of the funeral home, of each purchaser of merchandise and services pursuant to those agreements.

(2) The name of each bank, trust company, savings and loan association or credit union into which each purchaser's funds were deposited and the number of each named account.

(3) The amounts of each purchase pursuant to those agreements; and

(4) The dates of those purchases.

(b) These reports shall accompany each funeral home's biennial application for renewal or its establishment license, as requires by K.A.R. 63-3-19, and any notification of the secretary of the board made pursuant to K.A.R. 6302-7(b). The reports shall include all prefinanced funeral agreements entered into by each funeral home since the last issuance of its license or since the last reports submitted under K.A.R. 63-2-7(b). The first report of each funeral home due after the effective date of this regulation shall include all such prefinanced funeral agreements for which any merchandise or service has not yet been rendered.

(c) Upon written complaint, the state board may require that a funeral home report the name and address of any purchaser and the corresponding account number described in (a) (1) above. The funeral home shall report such additional information within 10 days of having received a written request therefor by the board.

(d) Failure of any funeral home to report as required by this regulation shall be grounds for refusal or revocation of its establishment license.

*Hs. LOCAL GOV.
ATTACHMENT III
3/26/86*

The Wichita
Eagle-Beacon

FEBRUARY 4, 1986

Editorials/Opinion

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Planning Ahead on Funeral Costs

NO one likes to think about death, but sooner or later, all families are touched by it. It makes sense, then, to plan ahead in making funeral arrangements.

The Kansas Funeral Directors Association is pushing legislation in Topeka, however, that would restrict all pre-need sales of caskets and other funeral materials. Currently, pre-need casket sales by funeral directors are regulated by a 1953 law that requires the consumer to put the entire retail cost of the casket in trust. The consumer must pay taxes on the trust earnings, and there is no state audit of the trust account. This law actually discourages pre-need casket sales because it often can end up costing the consumer more than buying at the time of the death of a loved one.

Cemetery owners also are involved in pre-need casket sales. They're regulated by a 1984 law that's less restrictive: 110 percent of the wholesale cost of the casket must be put in trust, and the seller — not the con-

sumer — must pay the trust tax. Further, the trust is audited by the secretary of state. The benefits to consumers — in cost, convenience and security — are much greater.

Now the funeral directors association is trying to get all pre-need casket sales regulated under the earlier, more restrictive law. This would discourage competition within the funeral industry — and consumers would pay the cost.

"We encourage pre-planning," says a Federal Trade Commission official, "because at time of need, decisions must be made in a hurry, when people are under emotional stress." Studies show families pay 20-25 percent more on funeral arrangements at the time of death.

Instead of discouraging pre-planning, the Legislature should support H.B. 2715, which was introduced at cemetery owners' request. It wisely would bring all funeral sellers under the 1984 regulations, and give consumers the incentive to plan ahead.

*Hs. LOCAL GOV.
ATTACHMENT VII
3/26/86*

The Kansas City Times

Tuesday, February 18, 1986

Funeral Law in Kansas

Passion for a new funeral law has developed in Kansas. Specifically at issue are caskets and at least several million dollars a year in the state in pre-need funeral sales.

As legislative committees begin examining two proposals offered by competing interests in the battle, members must stubbornly return to a simple question: What is in the best interests of the public. "Our bill," claim both the funeral home lobby and the cemetery lobby. But any moderately sophisticated consumer would be uneasy about items on both sides. Lawmakers must do the serious study; they must make the objective judgments about what the figures and the fine print will do to people 20 years hence.

The casket question arises under how pre-arranged funeral packages will be sold. Will they remain the province of funeral directors or will the market be opened to others selling such packages, including cemetery firms? The latter must be allowed, contend proponents, if real competition is to exist. That can happen, they say, only if the amount of money required to be kept in trust is changed.

The Senate bill, S.B. 499, requires that a casket be identified as an item for which 100 percent of the retail price be set aside in trust. The income would stay in the trust until the casket is needed. The buyer pays tax due on earnings. No outside audit is required.

The House bill, H.B. 2715, identifies caskets as an item requiring that 110 percent of the wholesale price be put in trust. The seller takes the earnings, pays the taxes, and uses the difference between the trust figure and the retail price paid. The secretary of state audits the trust.

One obvious compromise that would promote competition, yet limit more reasonably how much of the consumer's money the seller can use, would be to require trusting 75 or 80 percent of the retail cost.

Lawmakers don't have to rush into a new law. Not just because enormous sums of money are involved, which they are, but because no family will escape the consequences of what the Legislature does on this.

People must demand restraint of their representatives. Ask questions. Tell personal experiences in making final arrangements. Let people quit pretending about death so someone else can make too much money from grief. Blind buying is usual because death is a most painful time for families. But it's big business for those in the industry.

Profit-making should be managed equitably so it takes the least advantage of hurting families, while doing the greatest service. Any new Kansas statute must be grounded in that principle.

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

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 Taxable Earnings</u>	<u>Tax Bracket</u>	<u>Tax Paid in 10 Years on \$1,000</u>	<u>Years for Tax to 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 KFDA would restrict competition and limit choices for Kansas consumers.

- "They (the KFDA) 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.

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SUNSET AUDIT REPORT

STATE BOARD OF EMBALMING

Legislative Division of Post Audit
State of Kansas
Topeka

Prohibitions on Soliciting

Embalmers and funeral directors are prohibited from soliciting business (such as contacting individuals personally, by letter, or by telephone when such contact has not been requested), from allowing someone to solicit business on their behalf, and from paying a commission or gratuity to secure business.

The Board has also adopted administrative regulations placing further restrictions on solicitation by embalmers and funeral directors. Under K.A.R. 63-1-7 and 63-2-8 an embalmer's or a funeral director's license may be suspended or revoked for employing a person to call upon individuals or institutions "by whose influence dead human bodies may be turned over" to a particular embalmer, funeral director, or funeral establishment. The same penalties may be imposed for using burial insurance—or agents of companies offering such insurance—to solicit business.

During fiscal years 1975 through 1979, the Board received two complaints concerning solicitation. The Board found one of these complaints to be valid. In fiscal year 1975, a Kansas funeral director complained that a funeral home located at a cemetery had sent letters to cemetery lot and crypt owners pointing out the advantages of obtaining services and merchandise from one central location. The only action taken by the Board was a letter to the funeral director requesting the matter be corrected. This complaint did not suggest that any harm to the public had occurred as a result of the solicitation.

In its study of the funeral industry, the Federal Trade Commission also examined the regulation of competitive practices in the funeral industry. The Commission concluded that while some laws and regulations appear to be necessary, others operate to inhibit both competition among funeral directors and competition between funeral directors and other businesses. The Commission pointed out that "...obviously, certain kinds of solicitation by funeral directors are unethical and advertising can be deceptive; however, it appears that blanket prohibitions on these activities are unnecessarily restrictive."

In the 1980 Kansas legislative session, Senate Bill 542 was introduced to replace existing statutory provisions regulating solicitation by various professions and occupations in Kansas. The bill would replace all previous restrictions and would permit the use of public communication and solicitation by practitioners of occupations or professions licensed by, or under the jurisdiction of State regulatory agencies, provided that the solicitation is not false, fraudulent, misleading, or deceptive. The bill specifically removed the prohibitions against solicitations in the form of furnishing free services for the purpose of inducing future business. Such free services could include the loaning of wheelchairs to nursing home patients, for example. The bill did not pass.

Tasteful and truthful solicitation of business (for example, sending letters advertising cost advantages to consumers) directed to persons who are not susceptible to exploitation or facing impending death could give funeral directors an additional marketing tool and enable consumers to be aware of any advantages of using one establishment's services over another's. The letters sent to the cemetery lot owners, for example, could have resulted in cost savings or at least some comparison-shopping by the recipients. Thus, the blanket restriction on solicitation appears to be a restraint of trade that is not designed to protect the public and that is an unreasonable exercise of the State's police power.

Restrictive Pre-Need Trust Law

Prearranged funeral service contracts--or "pre-need" funeral agreements--are regulated by Kansas law. These contracts include any agreement in which money is paid by individuals before their death for funeral services and merchandise. The auditors identified several advantages to the public of entering into pre-need funeral agreements. 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. Finally, consumers with such agreements have the opportunity to reconsider their decisions during the time prior to their death.

Under Kansas law, all moneys paid for prearranged funeral contracts--either by installment or in a lump sum--must be placed in a trust account by the funeral director. By administrative regulation, the Board requires that pre-need agreements be revocable both by the purchaser before death and by the family after death.

In its study of the funeral industry, the Federal Trade Commission found two ways in which state laws and regulations restrict pre-need sales of funeral services and arrangements. The first is state laws and regulations that require 100 percent of the total payment to be deposited in a trust fund (all payments and interest must remain in a trust account until the death of the purchaser or until the contract is revoked) and the second is laws and regulations that prohibit personal solicitation of pre-need arrangements. Both situations exist in Kansas. The Commission also found that these laws and regulations are strongly supported by the funeral industry. The reasons given by the industry for supporting them are that solicitation restrictions protect consumers, and that trust fund requirements ensure the sellers' ability to deliver the services.

Restrictions on solicitation appear to be disadvantageous not only for consumers, but also for funeral directors who offer pre-need arrangements. With restrictions on solicitation and the 100 percent trust fund requirement, these funeral directors have less incentive to promote prearrangement contracts. Funeral directors must rely completely on consumers to contact them about pre-need contracts, and they cannot use any of a client's payment for profit and operating expenses until the client's death.

The Board does not collect information on the number of pre-need sales made in Kansas, nor could the auditors determine from any other source how many such sales have been made. Moreover, the auditors could not identify how many consumers would take advantage of such arrangements if information were readily available to the public. However, the auditors compared Kansas' 100 percent trust fund law with those of six other states—Colorado, Iowa, Missouri, Nebraska, Oklahoma, and Texas. Nebraska is the only one of these states that also requires 100 percent of the funds to be maintained in the trust. Texas and Oklahoma require 90 percent, Colorado requires 85 percent, and Iowa and Missouri require only 80 percent.

Based on the auditors' findings in this area, Legislative Post Audit concluded that Kansas' funeral prearrangement laws requiring 100 percent trust funds and prohibiting soliciting 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.

Restrictive Licensing Requirements for Embalmers and Funeral Directors

To become licensed in Kansas, embalmers and funeral directors must meet several requirements set out by statute or by the regulations adopted by the Board. These requirements involve a number of steps, as shown in the figure on the next page.

To determine if any of these requirements are unnecessarily restrictive, the auditors compared the licensing requirements in Kansas with those of other states. The auditors found that Kansas' education requirements appeared more restrictive than those of most other states for both embalmers and funeral directors.

Embalmers in all but one state are required to have graduated from an approved program of mortuary science. However, 20 states, including Kansas, require 60 hours, or two years, of college credit before entering an embalming school. The remaining 30 states have lower requirements, calling for a high school education or one year of college. Kansas does offer the option of earning an Associate of Arts degree in mortuary science from an accredited college—a two-year program option chosen by approximately 95 percent of the applicants for a Kansas license. However, the remaining Kansas applicants who choose the other option must devote an additional



1985-1986
KANSAS STATE LEGISLATIVE COMMITTEE

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Lawrence, KS 66044
(913) 843-7613

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.

STATE OF KANSAS

JACK H. BRIER
SECRETARY OF STATE



OFFICE OF SECRETARY OF STATE

2ND FLOOR, STATE CAPITOL

TOPEKA, KS 66612-1594

(913) 296-2236

February 12, 1986

Mr. Gary L. Stotts
Acting Director of the Budget
1st Floor, Capitol
Topeka, Kansas 66612

Dear Mr. Stotts:

You have requested the assistance of this office in the preparation of a fiscal note for Senate Bill 499.

Senate Bill 499 would specify that caskets are not cemetery merchandise under the provisions of K.S.A. 16-320 et seq. As a result, the financial records of cemetery merchandise trust accounts audited by the Secretary of States' office would not contain any information concerning casket sales.

Cemeteries now sell caskets under the provisions of K.S.A. 16-320 et seq. which provides audit provisions for amounts held in trust under that statute. The deletion of casket sales under the provisions of K.S.A. 16-320 et seq. would not prohibit cemeteries from selling caskets, but would require them to do so under the provisions of K.S.A. 16-301 et seq. which does not have audit provisions.

It is our opinion that no preneed sales of caskets should occur without an audit of the entrusted amount, to protect the purchaser/consumer.

SB 499 would have no fiscal impact and would only marginally decrease the amount of audit work the agency does under K.S.A. 16-320 et seq.

Please allow me to respond if there are amendments to this bill.

Sincerely,

WILLIAM P. GRAVES
Assistant Secretary of State

WPG:dw

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.

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

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

FUNERAL PRENEED PLAN K.S.A. 16-301 et seq					CEMETERY PRENEED PLAN K.S.A. 16-320 et seq					
CONSUMER'S ANNUAL PAYMENT	TOTAL RECEIVED	CUMMULATIVE 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
345	345	369	369	0	345	345	345	0	0	345
345	690	714	714	0	345	690	259	86	73	641
345	1035	1109	1109	0	345	1035	0	431	366	743
345	1380	1532	1532	0	345	1380	0	776	660	872
345	1725	1984	1984	0	345	1725	246	875	744	1240
0	1725	2123	2123	0	0	1725	0	913	776	1346
0	1725	2271	2271	0	0	1725	0	956	812	1459
0	1725	2430	2430	0	0	1725	0	1000	850	1581
0	1725	2601	2601	0	0	1725	0	1046	889	1712
0	1725	2783	2783	0	0	1725	0	1094	930	1853
0	1725	2977	2977	0	0	1725	0	1144	973	2005
0	1725	3186	3186	0	0	1725	0	1197	1017	2168
0	1725	3409	3409	0	0	1725	0	1252	1064	2344
0	1725	3648	3648	0	0	1725	0	1310	1113	2534
0	1725	3903	3903	0	0	1725	0	1370	1165	2738
0	1725	4176	4176	0	0	1725	0	1434	1218	2958
0	1725	4468	4468	0	0	1725	0	1500	1275	3194

**IRREVOCABLE FUNERAL TRUST AGREEMENT
THE KANSAS FUNERAL TRUST FUND**

_____, Kansas

_____, 19____

I, _____ of _____,
_____ Social Security Number _____, do hereby enter into this irrevocable

trust agreement as settlor with _____
of _____, Kansas, as BENEFICIARY, whose Kansas Funeral Home License
Number is: _____.

TRUSTEE: Highland Park Bank & Trust
2100 S.E. 29th Street
Topeka, Kansas 66605

In consideration of the sum of _____ Dollars paid by the
Settlor as consideration for prepaid funeral services to Beneficiary, and for delivery into trust with Trustee, the
parties agree as stated herein.

The place of Settlor's funeral service is determined to be _____
with burial or other disposition at _____.

SETTLOR:

BENEFICIARY:

(Signature)

(Signature)

(Printed or typed)

(Printed or typed)

ADOPTION AGREEMENT

The undersigned, as the Settlor of this Funeral Trust Agreement, acknowledges that on the _____ day of _____, 19____ the Kansas Funeral Trust Fund was established under a Trust Agreement entered into between the Kansas Funeral Directors and Embalmers Association and The Highland Park Bank & Trust as Trustee.

I have received a summary copy of the Trust Agreement, understand its provisions and agree to become a participant and member of such Trust Agreement effective as of this date. I understand that the trust is irrevocable, that I am bound by all its provisions, and that I may receive a complete copy of the Trust Agreement on request at any time.

By signing this Agreement, I agree to become an Individual Settlor to the Trust Agreement which will be binding on all parties. It is my express intention that my signature to this Adoption Agreement binds me to all terms of the Trust Agreement in the same manner as if I had been an original party thereto.

IN WITNESS WHEREOF, I hereunto sign this Adoption Agreement this _____ day of _____, 19____.

Settlor

Witness

PURSUANT TO K.S.A. 16-303(c), AS AMENDED, THIS AGREEMENT IS IRREVOCABLE ONLY AS TO THE FIRST \$2,000.00 OF FUNDS PAID PLUS ANY INTEREST AND EARNINGS ACCUMULATED UNDER THIS AGREEMENT. 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.

ANY AMOUNT IN EXCESS OF \$2,000.00 DESIGNATED AS IRREVOCABLE FUNDS EXCEPT FOR INTEREST AND EARNINGS, SHALL RENDER THIS AGREEMENT NULL AND VOID.

This Irrevocable Funeral Trust Agreement (FTA) is entered into on the date and place stated by the Individual designated "Settlor" and the licensed funeral home designated as "Beneficiary" for the express purpose of prepaying the Settlor's funeral and burial expenses which are to be incurred by the Beneficiary in the performance of those services described herein. The Settlor is depositing money or property in trust with the Trustee which is to be held and invested by the Trustee until the Beneficiary performs the services described herein at which time the money or property deposited and all interest earned is to be paid to the Beneficiary as payment for the services to be provided under this FTA.

GOVERNING LAW

This FTA is governed by and established pursuant to Kansas Statutes Annotated 16-301, et seq., as amended, effective as of July 1, 1982, and as may later be amended, and will be construed in accordance with and governed by the laws of the State of Kansas.

TRUST AGREEMENT

The funds paid by Settlor will be delivered by the Beneficiary to the Trustee to be held under a Trust Agreement in effect with the Trustee and established on September 1, 1983. The Trust Agreement requires that a separate Sub-Trust Account will be established for each FTA between a Settlor and a Beneficiary; that the accounts of all Settlers establishing FTA's will be comingled and invested and that all income derived from investments will be added periodically on a prorata basis to each Sub-Trust Account; that the money originally deposited and interest earned thereon will be paid to the Beneficiary when it provides evidence satisfactory to the Trustee that it has performed the funeral and burial services described herein; and that the Trustee may receive from interest earned on the comingled funds, its reasonable compensation for services. Each Settlor is required to sign an Adoption Agreement which acknowledges that the Settlor has received a summary of the Trust Agreement and agrees to be a party and Individual Settlor to that Agreement.

IRREVOCABLE STATUS

It is agreed and understood that, except for a change in the designation of this Beneficiary or the provisions of additional services both as provided herein, both this Agreement and the Trust Agreement are irrevocable up to the first \$2,000 of the funds paid plus any interest and earnings accumulated under this Agreement and may not be revoked, altered, amended or terminated in any respect.

GENERAL CONDITIONS

1. DESCRIPTION OF SERVICES. The professional services, facilities, equipment and merchandise to be provided by the Beneficiary in the performance of this FTA and those as shown, attached, if applicable.

2. SUBSTITUTION OF MERCHANDISE. If the merchandise selected by Settlor is no longer available at the time the services are to be provided, the Beneficiary may substitute merchandise of equal or better quality.

3. ACKNOWLEDGEMENT OF IRREVOCABILITY. The Settlor understands that this Funeral Trust is irrevocable up to the first \$2,000 of the funds paid plus any interest and earnings accumulated under this Agreement.

4. PAYMENT. The payment made by Settlor as stated herein constitutes payment in full for all services to be provided by the Beneficiary. All interest on the money deposited to Settlor's Sub-Trust Account will accrue to it and shall inure to the Beneficiary to cover all costs incurred by the Beneficiary in the performance of the services required of it hereunder. In the event there is any excess amount remaining after funeral and burial services are fully performed, the excess amount is to be paid to the personal representative of Settlor's estate or those persons designated as Settlor's heirs-at-law by the court having jurisdiction of Settlor's estate. Further, in the event no personal representative of Settlor's estate is appointed within the period allowed by law, the Beneficiary shall deliver any excess amount to the Trustee to be placed in and held in the Excess Trust Account established in the Trust Agreement, and disposed of in accordance with the terms thereof.

5. CHANGE OF BENEFICIARY. By giving written notice to the Trustee and the Beneficiary, the Settlor may change the Beneficiary at any time by designating a funeral home licensed in Kansas or one licensed under applicable law of another state as Successor Beneficiary. In the event a designated Beneficiary becomes deceased, dissolved, terminated or otherwise loses Beneficiary status as a licensee of the Kansas State Board of Embalming and/or in the event Settlor, his guardian or personal representative fails to designate a Successor Beneficiary, then the Kansas Funeral Directors and Embalmers Association may so designate and appoint a Successor Beneficiary.

6. COMPLETE AGREEMENT. This FTA constitutes the complete agreement as between these parties and including, by execution of the Adoption Agreement, the Trust Agreement. By execution, Settlor acknowledges receipt of this Agreement and that no further notification concerning it is necessary or required.

INDIVIDUAL TRUST OF SETTLOR

It is agreed that the funeral trust established under this Agreement is the only funeral trust in existence, established by and for the benefit of only the Settlor and may not be assigned. Further, Settlor warrants that this Agreement exists only for the purpose of providing for a plan and method of prepayment of Settlor's funeral and burial expenses and not for any other reason including qualification for any statutory benefit existing by virtue of state or federal law.

CHANGE IN SERVICES

It is agreed that Settlor may, during his lifetime, change the description of the funeral or burial services to be provided by the Beneficiary, or may add to the principal of the Sub-Trust Account in Settlor's name such additional funds as are necessary to cover the cost of expanded funeral or burial services expressly selected by Settlor. Provided, however, the Settlor shall not have any right to withdraw income from or reduce the account balance of Settlor's Sub-Trust Account for any reason up to the first \$2,000 of the funds paid plus any interest and earnings accumulated under this Agreement. Any amounts over and above the first \$2,000 of the funds paid plus any interest and earnings accumulated are completely revocable. It is understood and agreed that any change in the description of services and/or expansion of services may only be instituted by the Settlor, and the Beneficiary may not solicit or on its own initiative, contact the Settlor in regard to the same.

MISCELLANEOUS

1. This FTA shall bind the heirs, successors and legal representatives of the parties.

2. If any provision hereof is for any reason declared invalid or illegal, such action shall not affect the remaining provisions hereof which shall remain in full force and effect.

IN WITNESS WHEREOF, the Settlor and the Beneficiary have executed this Irrevocable Funeral Trust Agreement at the place and on the date stated in the caption hereof.

THESE FORMS ARE TO BE USED ONLY IN CONJUNCTION WITH IRREVOCABLE FUNERAL TRUST AGREEMENTS ESTABLISHED UNDER THE KANSAS FUNERAL TRUST FUND. ANY MODIFICATION OF THESE DOCUMENTS OR USE IN CONJUNCTION WITH ANY TRUST OTHER THAN THE KANSAS FUNERAL TRUST FUND IS NOT AUTHORIZED BY EITHER THE HIGHLAND PARK BANK AND TRUST OR THE KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION AND THEY AND THEIR COUNSEL DO NOT ASSUME ANY RESPONSIBILITY FOR ANY USE OF THE DOCUMENTS IN A MANNER OTHER THAN INTENDED OR MODIFICATION THEREOF.

PRE-ARRANGED FUNERAL TRUST AGREEMENT

THIS Irrevocable TRUST AGREEMENT made and entered into this _____ day of _____, 19____, by and between _____ hereinafter referred to as "The Purchaser" and _____ of _____ hereinafter referred to as "The Home".

That in consideration of the payments provided for herein by Purchaser, the Home, its successors or assigns, will provide the casket specified below and will provide for other articles or professional services and facilities described below (REGARDLESS OF FUTURE PRICE INCREASES):

THE FUNERAL SERVICE AND MERCHANDISE PURCHASED UNDER THIS AGREEMENT

A. A funeral service which includes arrangements and supervision of details, local transfer of the body and transportation for interment within a 30 mile radius of the Home, professional care of the body, use of chapel, state room, preparatory room and other applicable facilities, use of funeral coach and other customary funeral vehicles, and other directional services \$ _____
Other remarks (_____)

C. An Outside Enclosure of General Description (_____) \$ _____

D. Other (_____) \$ _____

E. TOTAL (For Service and Merchandise) \$ _____

B. A Casket of General Description (_____) \$ _____

- 1. Total (For Service and Merchandise) \$ _____
- 2. Less Pre-Arranged Allowance \$ _____
- 3. Sub-Total (See General Conditions, Payment) \$ _____
- 4. Plus Non-Refundable Counselor's Commission (See Irrevocable Status, Paragraph III) \$ _____
- 5. Total Contract Price (Equals 'At-Need' Price at Date of Contract Line 1) \$ _____
- 6. Less Cash Downpayment \$ _____
- 7. Unpaid Balance Due (Contract Price) \$ _____

The Purchaser agrees to pay the Home for the foregoing a total contract price (Line 7) of \$ _____ payable in _____ consecutive minimum monthly installments of \$ _____ plus a final installment of \$ _____, the first installment being payable on _____, 19____, and all subsequent installments on the same day of each consecutive month. The Purchaser shall have a (30) thirty-day grace period within which to make any of the above payments.

In the event that the Purchaser fails to make the installment payments as required in the previous paragraph, then the Home may give the Purchaser written notice of such failure and if the required payments are not brought current within ten (10) days of such notice, the Home may notify the Purchaser that a default has been declared and that all portions of this agreement which would otherwise establish a maximum price for each casket or services shall be null and void and delivery of any casket or services described herein at the potential decedent's death shall be conditioned upon the receipt by the Home of an agreement from a responsible party to pay to the Home the difference between the amount on deposit and the trust amount, including accrued interest and/or dividends, and the price of the casket as of the date of such delivery plus applicable sales tax. Absent such an agreement, the total of the payments plus any interest or dividends paid on said payments by the Trustee will be returned to the Purchaser upon the potential decedent's death and no casket or services shall be required to be furnished by the Home to such potential decedent or decedents.

ADOPTION AGREEMENT

The undersigned, as the Purchaser of this Funeral Trust Agreement, acknowledges that on the 1st day of January, 1986, the Heartland Funeral Trust Fund was established under a Trust Agreement entered into between the Heartland Management Co. and The Highland Park Bank & Trust as Trustee, 2100 S.E. 29th Street, Topeka, Kansas 66605.

The undersigned has reviewed the terms and provisions of the Trust Agreement, and understands the provisions and agrees to become a participant and member of such Trust Agreement effective as of this date. The undersigned further understands that the Trust is irrevocable and that the undersigned is bound by all its provisions, and that upon request the undersigned may receive a complete copy of the Trust Agreement at any time.

By signing this Agreement, the undersigned agrees to become an Individual Settlor to the Trust Agreement which will be binding on all parties. It is the express intention of the undersigned that the signature to this Adoption Agreement binds the undersigned to the terms of the Trust Agreement in the same manner as if the undersigned had been an original party thereto.

THIS PLAN	INCLUDES (X)	DOES NOT INCLUDE (X)
Casket	_____	_____
Complete Service	_____	_____
Sales Tax	_____	_____
Clothing	_____	_____
Flowers	_____	_____
Grave Opening Charges	_____	_____
Outer Enclosure	_____	_____
Minister's Honorarium	_____	_____
Organist and Vocalist	_____	_____
Special Hairdressing	_____	_____

Signature _____ Date _____, 19____

Purchaser or Beneficiary Name _____

Purchaser or Beneficiary S.S. # _____

Street _____ Place of Birth _____

City _____ Date of Birth _____

State _____ Zip _____ Telephone _____

Counselor _____

Accepted: _____ Date _____

Funeral Home Name: _____

Address: _____

License No. _____

This Irrevocable Funeral Trust Agreement (FTA) is entered into on the date and place stated by the Individual designated as "The Purchaser" and the licensed funeral home designated as "The Home" for the express purpose of prepaying the Purchaser's funeral and burial expenses which are to be incurred by the Home in the performance of those services described herein. The Purchaser is depositing money or property in trust with the Trustee which is to be held and invested by the Trustee until the Home performs the services described herein at which time the money or property deposited and all interest earned is to be paid to the Home as payment for the services to be provided under this FTA.

GOVERNING LAW

The FTA is governed by and established pursuant to Kansas Statutes Annotated 16-301, et seq., as amended, effective as of July 1, 1982, and as may later be amended, and will be construed in accordance with and governed by the laws of the State of Kansas.

TRUST AGREEMENT

The funds paid by the Purchaser will be delivered by the Home to the Trustee to be held under a Trust Agreement in effect with the Trustee and established on the 1st day of January, 1986. The Trust Agreement requires that a separate Sub-Trust Account will be established for each FTA between The Heartland Funeral Trust and a Home; that the accounts of all Purchasers establishing FTA's will be comingled and invested and that all income derived from investments will be added periodically on a prorata basis to each Sub-Trust Account; that the money originally deposited and interest earned thereon will be paid to the Home when it provides evidence satisfactory to the Trustee that it has performed the funeral and burial services described herein; and that the Trustee may receive from interest earned on the comingled funds, its reasonable compensation for services.

IRREVOCABLE STATUS

It is agreed and understood that, except for a change in the designation of the Home or the provisions of additional services both as provided herein, both this Agreement and the Trust Agreement are irrevocable and may not be revoked, altered, amended or terminated in any respect. The monies received by the Home in payment of the contract price shall first be applied to the Non-Refundable Counselor's Commission until paid in full. The remaining installments and the monies paid will be irrevocable only as to the first \$2,000.00 of the funds so paid plus any interest and earnings accumulated thereafter. The Counselor's Commission

does not constitute payment for services or merchandise required to be furnished by the Home.

GENERAL CONDITIONS

1. **DESCRIPTION OF SERVICES.** The professional services, facilities, equipment and merchandise to be provided by the Home in the performance of this FTA and these as shown, attached, if applicable.

2. **SUBSTITUTION OF MERCHANDISE.** If the merchandise selected by the Purchaser is no longer available at the time the services are to be provided, the Home may substitute merchandise of equal or better quality.

3. **PAYMENT.** The payment made by the Purchaser for Services and Merchandise (Item 3.), constitutes payment in full for all services to be provided by the Home. All interest on the money deposited to Purchaser's Sub-Trust Account will accrue to it and shall inure to the Home to cover all costs incurred by the Home in the performance of the services required of it hereunder. In the event there is any excess amount remaining after funeral and burial services are fully performed, the excess amount is to be paid to the personal representative of the Purchaser's estate or those persons designated as the Purchaser's heirs-at-law by the court having jurisdiction of the Purchaser's estate. Further, in the event no personal representative of the Purchaser's estate is appointed within the period allowed by law, the Home shall deliver any excess amount to the Trustee to be placed in and held in the Excess Trust Account established in the Trust Agreement, and disposed of in accordance with the terms thereof.

4. **UNPAID BALANCE.** In the event the death of the Purchaser occurs before the total contract has been paid, the above services and merchandise will be provided by the Home upon payment of the remaining balance of the total contract or upon completion of satisfactory supplemental arrangements.

5. **COMPLETE AGREEMENT.** This FTA constitutes the complete agreement as between these parties and including, by execution of the Adoption Agreement, the Trust Agreement. By execution, the Purchaser acknowledges receipt of this Agreement and that no further notification concerning it is necessary or required.

It is understood by the parties hereto that if the costs of an individual casket increase, the Home may, at its option, increase the price of the casket, provided, however, that in the event the contract price has been paid in full and there has not been a default, any increase in the price of a casket shall not increase the contract price which has been

agreed to pursuant to the terms of this agreement; but any such increase in the price of a casket shall be deducted from the accumulated interest or dividends credited to the Trust Account.

In the event that a default has been declared, then the default provisions of this agreement shall govern and no maximum price shall be considered as having been established.

It is agreed that the funeral trust established under this Agreement is the only funeral trust in existence, established by and for the benefit of only the Purchaser and may not be assigned. Further, the Home warrants that this Agreement exists only for the purpose of providing for a plan and method of prepayment of the Purchaser's funeral and burial expenses and not for any other reason including qualification for any statutory benefit existing by virtue of state or federal law.

It is agreed that the Purchaser may, during his or her lifetime, change the description of the funeral or burial services to be provided by the Home, or may add to the principal of the Sub-Trust Account in the Purchaser's name such additional funds as are necessary to cover the cost of expanded funeral or burial services expressly selected by the Purchaser. Provided, however, the Home shall not have any right to withdraw income from or reduce the account balance of the Purchaser's Sub-Trust Account for any reason up to the first \$2,000.00 of the funds paid plus any interest and earnings accumulated under this Agreement. Any amounts over and above the first \$2,000.00 of the funds paid plus any interest and earnings accumulated are completely revocable.

If the death of the Purchaser or the designated Beneficiary occurs outside of the general area served by the Home, and the funeral is to be held at another city, then the Home agrees to either procure the furnishing of comparable services and merchandise by a mortuary selected or approved by the Purchaser's next-of-kin, or at the Home's option, payover to the Purchaser's legal representative the amount standing in the name and account of the Purchaser or Trustee.

If death occurs outside of the general area, but is to be returned to the Home for the funeral, then the next-of-kin or legal representative of the decedent is responsible for the charges made by the local funeral director and the transportation charges to the Home. The Home will reimburse the next-of-kin or the legal representative of decedent for the charges for the first call and the preparation of the remains for shipment to the Home (not to exceed \$100.00).

Home Name _____ Date _____
Purchaser Name _____
State _____
City _____
County _____
Zip _____
Home Address _____
Home Phone _____
Purchaser Address _____
Purchaser Phone _____
Funeral Director Name _____
Funeral Director Address _____
Funeral Director Phone _____

Rec 3/26/86



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 0111

3/26/86

Hs. LOCAL GOV^t

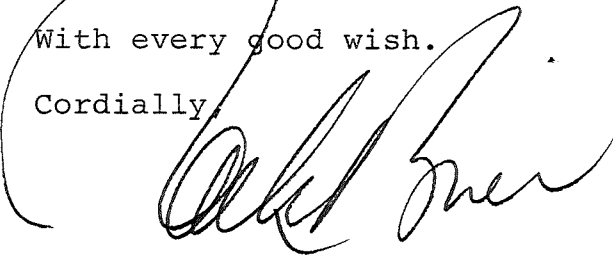
Page Two
The Honorable Ivan Sand
March 26, 1986

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

HOUSE BILL No. 2818

By Committee on Local Government

2-3

0021 AN ACT relating to cemetery corporations; concerning prepaid
0022 cemetery merchandise contracts; requiring the establishment
0023 of cemetery merchandise trust funds, auditing of those funds
0024 and provisions related to the delivery of such merchandise;
0025 concerning enforcement by the secretary of state and the
0026 attorney general.

0027 *Be it enacted by the Legislature of the State of Kansas:*

0028 Section 1. The following definitions shall apply to this act:

0029 (a) "Cemetery merchandise" means burial vaults, grave
0030 liners, grave boxes, urns, memorials, markers, vases, memorial
0031 vases, tombstones, lawn crypts, niches and mausoleum spaces
0032 and ~~similar~~ all merchandise commonly sold or used in cemeter-
0033 ies. Grave lots, grave spaces; burial or interment rights; and
0034 developed or existing lawn crypts, mausoleum spaces or niches
0035 are not cemetery merchandise.

0036 (b) "Purchase price" means the gross amount, less sales tax, if
0037 any, to be paid for cemetery merchandise under the provisions of
0038 a prepaid merchandise contract. The purchase price does not
0039 include finance charges, sales tax, charges for real property in-
0040 terests or charges for credit life insurance.

0041 (c) "Prepaid merchandise contract" means any agreement for
0042 the sale of cemetery merchandise by a cemetery corporation
0043 which requires payment of the purchase price, in whole or in
0044 part, prior to delivery of the cemetery merchandise, which agree-
0045 ment is entered into from and after the effective date of this act.

0046 (d) "Cemetery corporation" means any individual or entity
0047 required to maintain permanent maintenance funds under the
0048 provisions of K.S.A. 17-1312f, and any amendments thereto.

~~IX~~
ATTACHMENT
3/26/86
Hs. Local Gov



1985-1986
KANSAS STATE LEGISLATIVE COMMITTEE

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Mr. Morton F. Ewing
1806 Tracy Lane
Hutchinson, KS 67501
(316) 665-8767

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Satanta, KS 67870
(316) 649-2960

SECRETARY
Mr. Oscar M. Haugh
1512 University Drive
Lawrence, KS 66044
(913) 843-7613

March 26, 1986

The Honorable Ivan Sand
Chairman of Local Government
Room 183-West, Capitol Building
Topeka, Kansas 66612

Dear Chairman Sand:

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 and HB.2715 are 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 auditing duties, and (4) comply with the Federal Trade Commission regulations of sales, services, and merchandise.

AARP supports an interim study on SB.499 and HB.2715 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.

Sincerely,

Morton F. Ewing
Chairman, Kansas State
Legislative Committee

ME/clb

cc: James Snyder, KFDGA
John Peterson, CA

HS. LOCAL GOV.
ATTACHMENT *X*

3/26/86