

Approved February 19, 1986  
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by Sen. Neil H. Arasmith at  
Chairperson

9:00 a.m./~~p.m.~~ on February 18, 1986 in room 529-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research  
Bruce Kinzie, Revisor of Statutes

Conferees appearing before the committee:

Don Horttter, Delta Dental Plan  
Jerry Banaka, Kansas Farm Bureau  
Sen. Roy Ehrlich  
Larry McElwain, Kansas Funeral Directors Association, Lawrence  
Fred Rowley, Kansas Funeral Directors Association, Lebo  
Jim McGilley, Kansas Funeral Directors Association, Overland Park  
Ren Newcomer, Kansas Funeral Directors Association, Topeka  
Hap Bledsoe, Kansas Cemetery Association, Wichita  
Mack Smith, State Board of Mortuary Arts  
Craig Stancliff, President, State Board of Mortuary Arts  
Sam McDonough, Kansas Cemetery Association, Hutchinson

The minutes of February 14 were approved.

Don Horttter, Delta Dental Plan, presented his request for the introduction of a bill which is a clean-up bill to bring dental plans up to the same level with other non-profit organizations. (See Attachment I).

Sen. Burke made a motion to introduce the bill and refer it back to committee. Sen. Warren seconded, and the motion carried.

Jerry Banaka, Kansas Farm Bureau, requested the introduction of a bill which amends the UCC and amends the investments statutes for insurance companies. (See Attachment II).

Sen. Strick made a motion to introduce the bill and refer it back to committee. Sen. Burke seconded, and the motion carried.

The hearing began on SB 499 dealing with excluding caskets from the definition of "cemetery merchandize" under the cemetery merchandize act. Sen. Roy Ehrlich, one of the authors of the bill, testified briefly. He said the bill was requested by morticians from his district and noted that "caskets" is the key word in the bill.

Jim Snyder, Kansas Funeral Directors Association, introduced conferees from his organization in support of the bill. Larry McElwain of Lawrence testified first. (See Attachment III). Fred Rowley of Lebo followed with his testimony. (See Attachment IV). Jim McGilley of Overland Park testified using statistics to illustrate his comparison of funeral directors' version of trusts as opposed to the cemetary's procedure for trusts. (See Attachment V). Ren Newcomer of Topeka also testified for the association. He distributed pictures of a casket to committee members as an aid in illustrating the approach used by cemetery salesmen selling preneed plans which he said results in a loss for the consumer. (See Attachment VI).

Hap Bledsoe, Kansas Cemetery Association, and of Resthaven Cemetery in Wichita testified in opposition to SB 499. He distributed statistics to support his statements. (See Attachment VII). He said this is not a battle between cemeteries and funeral directors but concerns a philosophy as to whether or not individuals should or should not pre-arrange funeral plans. He stressed that preneed is what the public wants.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,  
room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on February 18, 1986.

Mack Smith, State Board of Mortuary Arts, followed with testimony in support of SB 499. He supports the trust protection of 100% and said that if a person must move from an area, he will be able to get a refund.

Craig Stancliff, State Board of Mortuary Arts, testified in support of the bill. He told the committee that he is a consumer member of the board and is not paid but merely serves as a consumer advocate for the board. He supports 100% trust for consumers for all preneed provisions. He said that this is the only area where money is taken before delivery of goods. The casket is one-third of the cost of dying, and the bill deals with whether that one-third remains in the 100% trust or not. He feels it is a poor investment because giving someone money to keep and also allowing him to keep the money earned on the trust is not wise and not necessary. It also leaves the money subject to the potential business failure of the person holding the money. In addition, it is not a good policy to take advantage of people in their elderly years by putting their money into something that does not make them money.

Last to testify was Sam McDonough of the Kansas Cemetery Association in Hutchinson.  
(See Attachment VIII.)

There being no further time, the chairman announced that the hearing on SB 499 would be continued until tomorrow to assure that all who want to testify will be given an opportunity to do so.

The meeting was adjourned..

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS  
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
18 FEB 86	DOUG MARTIN	KS JUDICIAL CENTER	—
"	Linda McGill	Topeka Ka. Fun. Dir. Assn	→
"	Pete McBee	Topeka	Kansas Fun Director
18 Feb	Don Hatcher	"	
18 Feb	DAN BELDEN JR	LEAVENWORTH	KS Funeral Dir
18 Feb	WJ Newcomb	Topeka, KS	"
Feb 18	Bill Smith	Derby	KS Funeral Div
"	JIM SYDNER	Topeka	KFDA
2-18	J. M. McGill JR	Leawood, KS	K.F.D.A.
2-18	Bruce Entner	Topeka, KS	Governor's Office
2-18	Fred Rowley, Jr.	Leho, Ks.	Kansas Funeral Director
2-18	Chp Wheeler	Topeka	Funeral Directors Assn
"	Mack Smith	KS Stbd of Mortuary	Arts - Topeka
2-18	CRAG A. STANCLIFFE	"	TOPEKA
	Hap Bledsoe Reschman 11800 W. Hwy #34 Wichita 67209		
2-18	RE. M. CRACKEN	TOPEKA	RES. KANSAS CEMETERY ASSN
2-18	Earl L. Jackson	Topeka	Entitery
2-18	Mrs. Robert E. McCracken, Sr.	Topeka KS	
2/18/86	Sparrow F. McDonough	Hutchinson, KS	William Deerial Park
2/18-86	Sam McDonough	Hutchinson, KS	Fairlane Burial Park
2/18/86	DAVID L. MILLER	K.C. KS	HIGHLAND PARK.
2/18/86	Kent Docking	KC, KS.	"
2/18/86	John Wassberg	KC, Mo	Funeral Security Plans, Inc.
	John Peters		KS Con Assn

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS  
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
2-18-86	David W. Newcomer	2424 W 71 <sup>st</sup> Pk, KS	D W Newcomer's Sons & (KCA)
2-18-86	Craig Cramer	1201 LENNOX Dr. Dlatko KS	FUNERAL SEC. PLANS
2-18-86	Gerald J Dime	149.5 W Wash Pk Top.	AARP
"	Rebecca Crenshaw	Topeka	Ks. Cemetery Assn



AN ACT

Relating to the Number, Qualifications and Selection of the Members of the Board of Directors of a Nonprofit Dental Service Corporation and to the Authority of Such a Corporation to Contract.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. K.S.A. 40-19a03 is hereby amended to read as follows: 40-19a03. Membership of corporation; participating agreements from dentists; board of directors. The membership of a nonprofit dental service corporation organized under this act shall be comprised of the dentists who have executed participating agreements with the corporation. The affairs of the corporation shall be managed by a board of directors, the number of which shall be as is specified in the bylaws of the corporation but shall not be less than ten (10). Six (6) members of such board of directors shall be appointed from among the general public of the state of Kansas, with four (4) of such general public members being appointed by the commissioner of insurance and two (2) of such general public members being appointed by the governor of the state of Kansas. The remaining members of the board of directors shall be selected as is provided in the bylaws of the corporation: Provided, however, that no more than forty percent (40%) of the total board membership shall be dentists who have executed participating agreements with the corporation. The terms of office of all directors shall be as defined in the bylaws of the corporation. The directors shall take the oath of office as in other corporations and duplicates of such subscribed oaths shall be forwarded to the commissioner of insurance for filing in his office. The bylaws shall specify the number of directors necessary to constitute a quorum which shall be not less than one more than one-half of the number of directors.

Section 2. K.S.A. 40-19a04 is hereby amended to read as follows: 40-19a04. Contracts; authorization. Corporations organized under the provisions of this act are empowered and authorized to enter into contracts with groups and individuals to provide professional service through their participating dentists and to indemnify covered persons who obtain professional services through nonparticipating dentists. The services covered under such contracts shall be of such type and kind as such corporation, through its board of directors, may determine. Such contracts shall constitute direct obligations of the participating dentists to the corporation's contract purchasers. Nothing in any contract to be

made by any such corporation with a participating dentist or contract purchaser shall have the effect of imposing upon any participating dentist any obligation or liability for any act, omission or default of any other participating dentist or such corporation. Such corporations may also enter into contracts with any health maintenance organization, preferred provider organization, partnership, domestic or foreign corporation or association in the state of Kansas or in other states or possessions of the United States or Canada, or with any local, state, or federal governments, or units thereof, so that:

(a) Reciprocity of benefits may be provided to subscribers of such corporations.

(b) Transfer of subscribers from one corporation to another may be effected, if authorized under the contract with the group or the subscriber, in order to conform to the subscriber's place of residence.

(c) Uniform benefits may be provided for all employees and the dependents of such employees of corporations and other organizations transacting business in Kansas and elsewhere, and a composite rate, a rate representing predicted, or actual, composite experience, of the areas involved may be charged for such employees and their dependents.

(d) Service or indemnity benefits for dental care for the subscribers, members or policyholders of such corporations or associations may be provided but not to exceed reasonable and customary charges that a subscriber may incur for these services, or the ceding or accepting of reinsurance may be done.

(e) Administrative, accounting, data processing, cost control, marketing, claims processing, fiscal and other services may be provided for a dental care or other health service plan with any agency, instrumentality or political subdivision of the United States or the state of Kansas, or with any person, corporation, health maintenance organization, preferred provider organization, partnership, group or association providing such dental care or other health service plan under any applicable state or federal law. Such contract may authorize such corporation to accept, receive and administer in trust, funds directly or indirectly made available for the purposes set forth in the contract.

(f) Administrative, accounting, data processing, cost control, marketing, claims processing, fiscal and other services may be provided to employers or voluntary employees' beneficiary associations where such employers or voluntary employees' beneficiary associ-

ations provide indemnity for dental care or other health services to their employees or members under the terms of a plan of indemnification. Such contract may authorize such corporation to accept, receive and administer in trust, funds directly or indirectly made available for the purposes set forth in the contract. Contracts entered into pursuant to the provisions of this subsection shall provide for recoupment of all expenses incurred by the corporation in performing the services required by the contract and shall not adversely affect the interests of subscribers. Such corporation may enter into contracts with participating dentists to provide professional services and other health services for such employees or members.

(g) Experimental or demonstration projects may be undertaken to determine the relative advantages or disadvantages of various alternative methods of providing service or indemnity benefits for health services. Such projects may include payment systems to providers designed to encourage providers to use their facilities and personnel more efficiently and thereby to reduce the total costs of professional services and other health services involved without adversely affecting the quality of such services.

Section 3. This act shall take effect and be in force from and after its publication in the statute book.

## SENATE BILL NO. \_\_\_\_\_

By Committee on Financial Institutions and Insurance

AN ACT relating to insurance; concerning the holding of securities of an insurance company; amending K.S.A. 40-2a20 and 84-8-108 and K.S.A. 1985 Supp. 40-2b20 and repealing the existing sections.

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

Section 1. K.S.A. 40-2a20 is hereby amended to read as follows: 40-2a20. Any insurance company other than life heretofore or hereafter organized under any law of this state, with the direction or approval of a majority of its board of directors or authorized committee thereof ~~and approval of the commissioner of insurance may designate a state or national bank having trust powers as trustee to make any investment authorized by article 2a of chapter 40 of the Kansas Statutes Annotated, or acts amendatory thereof or supplemental thereto, in the name of such trustee or such trustee's nominee,~~ may:

(a) Adopt a nominee name unique to such insurance company in which such insurance company's securities may be registered;

(b) designate a state or national bank having trust powers to obtain a nominee name for such insurance company in which such insurance company's securities may be registered; or

(c) designate a state or national bank having trust powers as trustee to make any investment authorized by this act in the name of such trustee or such trustee's nominee.

Under the provisions of subsections (b) and (c), the designated state or national bank, in accordance with the provisions of K.S.A. 84-8-108, and amendments thereto, may arrange for such securities to be held in a clearing corporation. Such arrangement must be in accordance with a written agreement, approved by the commissioner of insurance, between the insurance

S. FII 2/18/86  
Attachment II



company and its designated bank and must impose the same degree of responsibility on the bank as if such securities were held in definitive form by such bank.

Sec. 2. K.S.A. 1985 Supp. 40-2b20 is hereby amended to read as follows: 40-2b20. Any life insurance company heretofore or hereafter organized under any law of this state, with the direction or approval of a majority of its board of directors and ~~approval of the commissioner of insurance may designate a state or national bank, having trust powers as trustee to make any investment authorized by this act in the name of the trustee or nominee as a trustee or nominee,~~ may:

(a) Adopt a nominee name unique to such insurance company in which such insurance company's securities may be registered;

(b) designate a state or national bank having trust powers to obtain a nominee name for such insurance company in which such insurance company's securities may be registered; or

(c) designate a state or national bank having trust powers as trustee to make any investment authorized by this act in the name of such trustee or such trustee's nominee.

Under the provisions of subsections (b) and (c), the designated state or national bank, in accordance with the provisions of K.S.A. 84-8-108, and amendments thereto, may arrange for such securities to be held in a clearing corporation. Such arrangement must be in accordance with a written agreement, approved by the commissioner of insurance, between the insurance company and its designated bank and must impose the same degree of responsibility on the bank as if such securities were held in definitive form by such bank.

Sec. 3. K.S.A. 84-8-108 is hereby amended to read as follows: 84-8-108. (a) Notwithstanding any other provisions of law, any bank or trust company, when acting as fiduciary, and any bank or trust company, when holding securities as custodian for a fiduciary, is authorized to deposit or arrange for the deposit of such securities in a clearing corporation, as defined in subsection (3) of K.S.A. 84-8-102(3) 84-8-102, and amendments

thereto, which clearing corporation is either a member of a federal reserve bank or subject to supervision or regulation, pursuant to the provisions of the banking laws of the state of Kansas. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities: ---Provided, however, ~~That this section shall not apply to any securities held in a fiduciary capacity for any insurance company heretofore or hereafter organized under any law of this state.~~

(b) The term "security" whenever used in this act is defined in subsection (1) of K.S.A. 84-8-102~~(1)~~ 84-8-102, and amendments thereto.

(c) This section shall apply to any bank or trust company when acting as fiduciary, and any bank or trust company, when holding securities as custodian for a fiduciary, acting on the effective date of this section or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless of whether or not such fiduciary or custodian owns capital stock of such clearing corporation.

Sec. 4. K.S.A. 40-2a20 and 84-8-108 and K.S.A. 1985 Supp. 40-2b20 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

PRESENTATION ON SENATE BILL 499

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 amended about two 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 that we realized the loop hole in the law that was allowing two firms that are operating in Kansas to trust less than 100% of the merchandise.

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Attachment III

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 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 you to correct by legislation this inequity in trusting funeral merchandise. We cannot best serve the consumer when there are two sets of laws governing the same merchandise.

We have with us today several colleagues who will address our areas of concern. 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 K.F.D.A., its Board of Directors and these colleagues support the removal of caskets from the Kansas cemetery laws.

POINT #2 Senate Bill 499 does not restrict the sale of caskets nor do we desire to restrict who can sell. The pure intent is to see that all merchandise regardless of the seller is trusted at the 100% of retail level to insure adequate money will be there at the time of need or cancellation of the contract. The money must be accounted for and the funeral director or other seller must be accountable for the consumer's funds.

POINT #3 Keeping funeral merchandise trusted under 100% retail trust laws will preserve Kansas stringent control of in-person solicitation. 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 advertise in the media and through the mail but we cannot solicit business in-person (ie. knocking on doors or making hospital or nursing home visits to secure business).  
(The cemetery law contains no provisions that prohibit any type of solicitation.)



e Ohralik vs. Ohio State

Bar Association decision contains four points that clearly separate free speech from solicitation. I have those available if you desire the information, otherwise I will not take further time to elaborate.

POINT #4 We believe that after seeing the actual comparison of the two laws, you will see the problems that are inherent. Mr. Ren Newcomer of Topeka, Kansas will demonstrate this to you. The figures speak for themselves.

POINT #5 You will hear the argument from the opposition to this bill that funeral directors are not adequately compensated up front for their time in making a pre-arrangement with a family. For the average funeral home operation, pre-need arrangements are made at a convenient time for both the funeral director and the consumer. Time spent in making arrangements in advance will proportionately diminish the time necessary at need to carry out the arrangements. The fee comes at need rather than in advance. For the unusual operation where there are staff accountants, computer operators, door to door sellers, money managers etc., then there is not enough money on the front end to run the operation.

POINT #6 In light of Point #5, funeral directors are eager to write pre-arrangements to help secure future business but at the same time, they want to assure that adequate funds are there at the time of need to provide services and merchandise. If the consumer changes their mind, then they will be much better served by a law that allows them the return of 100% of their total investment *+ interest.*

POINT #7 If you allow for the passage of Senate Bill 499, you will not be effecting more than two known funeral establishments in Kansas. You will not be effecting any municipal cemetery operations or any known church or fraternal organizations.

POINT #8 When the smoke and dust settles after this meeting today, the real issue will remain <sup>that</sup> of protecting peoples' money and the integrity of the funeral director and cemeterian.

Thank you.

OHRALIK vs. OHIO STATE BAR ASSOCIATION

This case dealt with an attorney who made in-person solicitation of business. The Supreme Court made it quite clear that there was no entitlement to in-person solicitation of clients protected by the first amendment and distinguished it from a long line of cases permitting advertising in general. The Supreme Court of the United States indicated that it was appropriate for the various states to regulate in-person solicitation. Some of the language of the Court is interesting as the differences between free speech and solicitation are pointed out and some of the principals referred to by the Court in permitting this restriction are as follows:

1. In-person solicitation may exert pressure and often demands immediate response without providing an opportunity for comparison or reflection.
2. The aim and effect of in-person solicitation may be to provide a one-sided presentation and to encourage speedy and perhaps uninformed decision making. There is no opportunity for intervention for counter education by any agency in the affected industry to provide information to the solicited individual.
3. In-person solicitation is as likely as not to discourage persons needing a service from engaging in a critical comparison of the availability, nature and prices of services and may actually disserve the individual and societal interest identified to justify advertising of the "informed and reliable decision making."
4. Potential harm to the solicited client in the form of over-reaching, over-charging and under-representation and mis-representation.

*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.

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Attachment IV

# WHOSE NEED IS

*Taken from "Mortuary Management" magazine  
dated November, 1985*

**A**ll 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 at all 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 upon 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 yearly by the trust company and the funeral director.

Finally the account would be revokable.

A second ideal situation is the institution of PAID 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

**T**here 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 a detailed pre-planning of a person's 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**

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)

S. F. I. 2/18/86  
Attachment V



# 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.

S. FII 2/18/86  
Attachment VI

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

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

CONSUMER'S		CUMMULATIVE		CONSUMER'S	CONSUMER'S		CEMETERY	MERCHANDISE	CONSUMER'S	
ANNUAL	TOTAL	AMOUNT	STATUTORY	ECONOMIC	ANNUAL	TOTAL	(SELLER'S)	TRUST	STATUTORY	ECONOMIC
PAYMENT	RECEIVED	TRUSTED @ 7%	REFUND	LOSS	PAYMENT	RECEIVED	RETENTION	REQUIREMENT	REFUND	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



C47-802-QRH SILVER ROSE  
NATURAL REGAL VELVET

Copyright © 1979 Batesville Casket Co. Inc.



# 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 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."





# Resthaven GARDENS OF MEMORY

11800 West Highway 54

• Wichita, Kansas 67209

• Phone (316) 722-2100

Dear Senator:

The enclosed, is a list of the burials made in Resthaven Gardens of Memory during the month of December, 1985. (We have omitted the names for the preservation of privacy, but have retained the account numbers for verification.)

These records show that:

1. 78%, or 37 of the 47 burials during December had purchased cemetery property, vaults and markers (or parts thereof) in advance of need.
2. These 37 families saved a total of \$66,344.00 by purchasing in advance of need rather than at today's prices..
3. The 37 families who purchased in advance of need saved an average of \$1,793.08 per family.

Resthaven was founded in 1958, and now has over 7600 burials - but because of our before need sales program, 13,000 families own 34,000 spaces in our cemetery - - - JUST IMAGINE WHAT THEIR TOTAL SAVINGS WOULD BE.

People do, when properly approached and educated, buy in advance of need.

Senate Bill #499 would literally eliminate pre-sale of funerals and eliminate these savings by families.

PREPARED BY

DATE

Burials made in December, 1985  
 Resthaven Gardens of Memory  
 Wichita, Kansas

Acct. #	NAME	1		2			3	4	5	6
		PRE-NEED	AT-NEED	Orig	Wal	Mem	Cost TOTAL	TODAY'S Cost TOTAL	SAVINGS	
1	10219	X		X	X	X	1595.00	2245.00		650.00
2	6118	X		X			300.00	1400.00		1100.00
3	2923		X	X				500.00		
4	175	X		X	X	X	1135.00	5595.00		4460.00
5	237	X		X	X	X	1190.00	5595.00		4405.00
6	464	X		X	X	X	805.00	3450.00		2645.00
7	5633	X		X	X	X	985.00	3250.00		2265.00
8	12394		X			X		475.00		
9	10348	X		X	X	X	1782.00	2995.00		1213.00
10	12600	X		X				1400.00		
11	12648		X	X		X		1975.00		
12	12647		X	X		X		2535.00		
13	4150	X		X			580.00	2800.00		2220.00
14	10489	X		X	X	X	455.00	1715.00		1260.00
15	9521	X		X	X	X	1495.00	2245.00		750.00
16	7266	X		X	X	X	1395.00	2245.00		850.00
17	3362	X		X			240.00	1500.00		1260.00
18	981	X		X			390.00	3200.00		3410.00
19	12203	X		X	X	X	2505.00	2995.00		490.00
20	10521	X		X	X		1160.00	1555.00		395.00
21	7696	X		X	X	X	1740.00	4315.00		2575.00
22	1752	X		X	X	X	975.00	3750.00		2775.00
23	5488	X		X	X	X	990.00	3250.00		2260.00
24	1149	X		X			323.00	2250.00		1927.00
25	2660	X		X		X	725.00	2230.00		3105.00
26	5408	X		X			300.00	1400.00		1100.00
27	4940	X		X	X	X	1093.00	2915.00		1822.00
28	8516	X		X	X	X	1295.00	2245.00		950.00
29	12643		X	X	X	X		2595.00		
30	12641		X	X		X		2405.00		
31	4197	X		X			300.00	1500.00		1200.00
32	3272	X		X	X		555.00	2520.00		1965.00
33	7752	X		X	X	X	1090.00	2245.00		1155.00
34	2075	X		X			430.00	3800.00		3370.00
35	5083	X		X			300.00	1400.00		1100.00
36	555	X		X	X	X	825.00	3450.00		2625.00
37	12638		X	X	X			1060.00		
38	12635		X	X				1500.00		
39	9523	X		X	X	X	1495.00	2245.00		750.00
40	12594		X	X				2000.00		
41	11375	X		X	X	X	2008.00	2245.00		237.00
42	12633		X					750.00		
43										

Acct #	NAME	1		2			3	4	5	6	
		PRE-NEED	AT-NEED	LOTS	YHT	MIC	ORIGINAL COST TOTAL	TODAY'S COST TOTAL	SAVINGS		
1 8747		X		X			112500	210000	97500		
2 5743		X		X	X	X	127000	405000	338000		
3 6650		X		X	X	X	99000	335000	236000		
4 10377		X		X			45000	150000	105000		
5 4238		X		X	X	X	96000	335000	229000		
6											
7											
8											
9											
10											
11	Total Advance-of-Need Sales: 37										
12											
13	Total At Time of Need Sales: 10										
14											
15											
16	Total Amount Saved by Purchasing In-Advance-of-Need: \$66344.00										
17											
18	Average Amount Saved per Family by Purchasing In-Advance-of-Need: \$1793.08										
19											
20											
21											
22											
23											
24											
25											
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43											



# Four Basic Reasons for Pre-need Planning



- 1 Difference between pre-need and at need cost
- 2 INFLATION . . . prices fixed today
- 3 Emotional overspending completely eliminated
- 4 Peace of Mind

# When You Need It



## ADVANTAGES

**NONE**

## DISADVANTAGES

1. HIGHER PRICES
2. REQUIRES CASH
3. GREAT EMOTIONAL STRAIN
4. HASTY DECISION
5. LIMITED SELECTION

SOMEDAY EVERYONE WILL HAVE TO FACE THE PROBLEM OF PURCHASING THEIR BURIAL ESTATE.

IT IS CERTAINLY **EASIER, KINDER** AND MORE **ECONOMICAL** TO DO IT TOGETHER...BEFORE THE NEED OCCURS.

# Before You Need It



## ADVANTAGES

1. LOWER PRICES
2. CHOICE SELECTION
3. TERMS TO SUIT
4. SELECTION MADE TOGETHER
5. PROTECTION FOR YOUR LOVED ONES AND THE PERSONAL SATISFACTION OF HAVING SOLVED THIS DIFFICULT PROBLEM



**WHY** should so many wives be compelled to perform a major business transaction when they are . . . alone and confused . . . weary from loss of sleep . . . burdened with unusual expenditures . . . faced with new and strange responsibilities . . . often in inclement weather.

At every man's death, the proper disposition of his mortal remains becomes someone's responsibility. If he has not previously accepted this obligation himself, someone (usually his wife) must accept it for him. Is it not a question **WHETHER** it will be done but rather **WHEN** and **BY WHOM** for it must be done. Shall it be the **WRONG** way or—

1-Emotional Overspending

2-Too Late for Husband and Wife to Make Decision Together

3-Burden and Expense in Most Cases Placed on Widow

4-Business Judgement Not Good in Time of Grief

**QUESTION! WHO SHOULD MAKE THIS DECISION?**

## *FTC closes lid on retail casket firm*

By LORI DODGE  
Associated Press Writer

SPRINGFIELD, Mo. (AP) — Danny Morley thought he'd come up with a novel business enterprise when he opened what he believes was the only retail casket store in the country.

But the lid slammed shut on his business after just six months, Morley said, thanks to area funeral homes and the Federal Trade Commission.

Morley said resistance from the funeral home industry and a policy switch by the FTC were to blame for the failure of Family First, the funeral accessory store he opened last summer in a shopping mall here.

Hard feelings in the industry toward Morley's business venture have also caused a sharp

decrease in sales for his 10-year-old casket-making business in nearby Republic, Mo., Morley said.

"I'm afraid people are going to hold a grudge for a long time," he said, adding that Countryside Casket Co.'s average annual casket sales had dropped from 7,000 to 2,500.

Morley's casket retail store idea came after an FTC order two years ago attempted to regulate the funeral industry, in part by requiring funeral homes to itemize their costs for customers. The FTC also said that a customer could purchase an item from a third party.

"That is the part that made it worthwhile to me," Morley said, adding that he could sell caskets for less than funeral homes did. "It was just good business. We

weren't trying to set the world on fire — just taking advantage of an opportunity."

When Family First opened, Morley expected to sell eight to ten caskets a month.

"We started off real well," he said. "Then it slowed way down and we started seeing a lot of opposition. We sat around the third and fourth months saying 'What is wrong?'"

Morley said a loophole in the FTC regulation allowed funeral home directors to pressure Family First by charging a surcharge for using items bought from a third party.

The FTC first said it would allow the surcharge as long as it wasn't a penalty, and then said it would get involved only if there was evidence of price fixing by funeral home directors.

The surcharges ranged from \$50 to \$2,000, Morley said.

"It only took a couple of weeks for the funeral directors to start using the surcharges as a club . . . to influence customers," Morley said.

Morley said he lost a number of sales because of the possibility of excessive surcharges. Finally, he said, he decided to close down permanently on New Year's Eve.

"It was a business venture that had a lot of potential on paper," Morley said. "We raised enough eyebrows and we made enough sales and showed that it can be done."

"But it has put this company in a real financial strain," he said. "I need to conform to the thinking of the mainstream of this industry. The casket industry is still my livelihood."

Current funeral arrangements practices in Kansas force grieving families to go on a death shopping trip on the worst day of their lives.

Senate Bill #499 would entrench that same sad practice. It would rob consumers of the freedom of choice, eliminate competition, restrict trade, and return the sale of caskets to a monopoly for Funeral Directors.

I am absolutely certain this is not the intention of this legislative committee, but the good intentions often times fail to get the desired results.

Lets take a close look at the laws that regulate the sale of caskets before death in Kansas.

***Under the 1st law, the Pre-Need Funeral law of 1953 (K.S.A. 16-301) the sale of caskets by Funeral Directors is regulated.***

- \* 100% of the retail casket price must be placed in trust.
- \* The purchaser must report all income from the trust for personal income tax purposes, in directly increasing his cost of the casket.
- \* There are no provisions for an outsider to audit the trust funds.
- \* This regulation fails to stop inflation because any cost increase that occurs between the time the trust was initiated and the time the casket is actually used, must be borne by the purchaser.
- \* Since there is no cash available to the Funeral Director until such time that the casket is delivered, all administrative and sales cost incurred in handling these accounts must be subsidized by the parties who are purchasing at-need arrangements.

**These restrictions are unattractive to both buyer and seller.** The Funeral Director has no incentive to promote pre-need sale of caskets because there are no funds available to him until the need for his service is required. ---

Realistically, they oppose pre-need sales under any circumstances because according to studies by the National Funeral Directors Association, Funeral Directors do better --- 20% better --- when caskets are purchased under immediate and emotional circumstances.

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Attachment VIII

*Under the 2nd law, The Cemetery Merchandise Trust Law of 1983, (K.S.A. 16-320.) The sale of caskets by cemeterians is also regulated.*

- \* *The seller must trust 110% of the wholesale cost of the casket.*
- \* *The seller pays all income tax on the trusted money.*
- \* *The trust is audited by the Secretary of State annually and any increase in the wholesale cost of the casket that is not covered by the income generated from the trust must be added to the trust by the seller, thereby stopping inflation for the buyer.*
- \* *The Secretary of State can request the Attorney General to appoint a receiver for any cemetery that refuses to submit their records for audit.*

This Cemetery Merchandise Trust Law, K.S.A. 16-320 is a much better consumer protection law than the Pre-Need Funeral Law, K.S.A. 16-301, it guarantees the money will be there to purchase and deliver a casket when needed, at no additional cost to the consumer. It stops inflation, extends to the consumer the right to exercise his options between before-need and at-need planning, and will result in a lower casket cost due to competition and economic growth when the free enterprise system is permitted to operate in the market place.

The KFDA seeks to regulate all casket sales under the more restrictive 1953 Pre-Need Funeral Law. The Funeral Directors Association claims, publicly and loudly, that casket sales under the Cemetery Merchandise Act jeopardize the consumer, because 100% of the retail price is not held in trust. **This self-serving claim is completely and totally untrue.** It ignores the clear-cut advantages of Pre-Need casket sales for the benefit of the consumer in both dollar savings and consumer protection under the Cemetery Merchandise Trust Law.

--- Example of \$12,000 cadillac in 1980 --- \$27,000 in 1986 ---

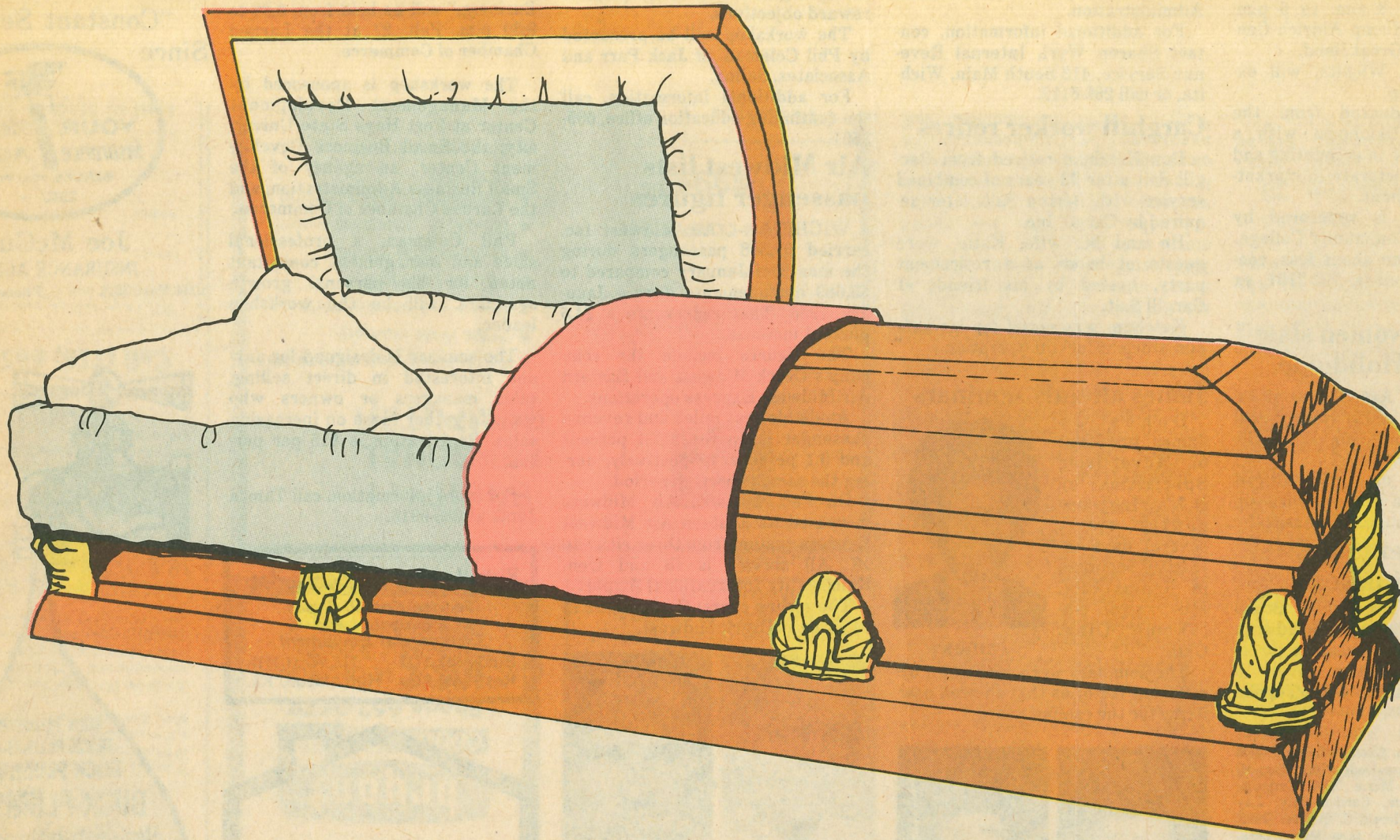
In 1982, when this Cemetery Merchandise Trust Bill was being heard before the Local Government Committee of the House of Representatives, the Attorney General's office supported the bill as did the Secretary of States office. Even the Kansas Funeral Directors Association didn't offer any opposition. --- As a matter of fact our Legislative Chairman and I met with the KFDA Secretary and their Legislative Chairman in Lawrence, Kansas prior to the time this bill was introduced. They agreed not to oppose this bill.... **Now, three years later they don't think caskets should be included in this previously acceptable law.** My question at this time is simply this. How can this law be good for all other cemetery merchandise but not good for caskets?

You may not realize it, but women are the purchasers of these caskets at the time of death in 7 out of 10 cases because men have a shorter life expectancy. Usually she has 24 hours or less to make all of the necessary decisions at a time when she is emotionally drained and often times under sedation due to her family doctor having provided her with a tranquilizer or sleeping pills to help her relax and sleep.

- \* **The attorney general has already ruled, on request from Funeral Directors, that caskets are properly sold under the Cemetery Merchandise Act.**
- \* **Since the cemeterian's cost is covered by the trust, the consumer is assured of getting the merchandise for which he has contracted.**
- \* **The balance of the trust, plus earnings, is needed for administrative costs if pre-need sales are to be made available to consumers.**
- \* **The Kansas Board of Embalmers and the Federal Trade Commission have acknowledged that the consumer benefits from prearranged sales.**

If legislative changes are to be made they should be made to open up competition, not restrict it. Expand the Pre-Need Funeral Law to allow anyone, willing to be audited, to sell caskets under K.S.A. 16-320, modernize Kansas's antiquated pre-need laws to provide consumers with a useful planning tool, and to allow them the benefits of competition.





## Funerals are this family's business

By Joan Duffy

United Press International

ZACHARY, La. — Five years ago, Cynthia Miller was afraid of dead bodies. Today, she buries them.

The licensed mortician is business partner with her father in Miller and Daughter Funeral Home. Together with her mother and sister, they arrange about 100 funerals a year in their small town north of Baton Rouge.

Miller's decision to overcome her aversion to the deceased enabled her father, John, to sell his 20-year fencing business five years ago and open a funeral parlor. Driving hearses had been a sideline for the elder Miller and he had been wanting to go into the business full time.

"But he was having problems finding reliable help," his 26-year-old daughter said. "He wanted someone he could depend on. He could depend on me."

It was her father's offer of a job at a time when she could not find work despite her sociology and psychology studies at Louisiana State University that finally pushed Miller to take required courses and complete an apprenticeship for her license.

"I was afraid of dead people," she said. "But just by being here, I realize there is nothing to be afraid of. I've come a long way. I can come here and go by myself and go to sleep and it doesn't bother me."

But Miller said she has nothing to do with preparing a body for burial and has no desire to learn the embalming trade.

## Legislature to settle funeral fury

*Funeral directors, cemeterians fight over casket sales*



## By Jerry Maxfield

The Hutchinson News  
Business Writer

Chances are you're going to have to select a casket one day, either for a loved one or for yourself as a matter of pre-planning.

Handled beforehand, it is a prudent business matter. Handled at the time of need, it can be costly.

This matter of casket sales has two separate but related groups battling in the Legislature for your business.

Both groups want to sell you caskets, but in a different manner, and the difference is significant.

On one hand is the Kansas Funeral Directors Association; on the other the Kansas Cemetery Association.

Currently two Kansas laws regulate the pre-death sale of caskets.

The Pre-Need Funeral Law of 1953 regulates the sale of caskets by funeral directors. Under this law the entire retail cost of a pre-sold casket must be placed in a trust account. This account is audited by the federal government. The buyer pays income tax on the trust earnings, and is liable for increases in casket prices from the time of purchase to the time of need.

In short, customers opting for pre-sold caskets are not buying a casket; they are merely es-

Merchandise Act of 1984, regulates the sale of caskets by cemetery operators, or cemeteterians.

Under this law the seller places 110 percent of the wholesale price of the casket in trust and pays the taxes on interest. The cemeteterian uses the difference between the wholesale cost and retail price for administrative costs.

The trust is audited annually by the Kansas secretary of state.

When the casket is needed, the cemeteterian delivers it.

Both sides are fighting for a bigger share of the market. The funeral directors are backing Senate Bill No. 499, which would prohibit cemeteterians from selling caskets.

The cemeteterians want to open the market further by requiring all casket sellers to operate under their present system. They are backing House Bill No. 2715.

Under the terms of this bill, anyone who agrees to place 110 percent of the casket wholesale purchase price in trust and to be audited annually can sell caskets. Sears could then sell caskets if it wished.

"Funeral directors supported the 1983 law until they realized it allowed cemeteterians to sell caskets in competition with them. Now they want to do battle," said Sam McDonough, 2401 Carey Boulevard.

McDonough and his wife, Shirley, own and operate Fair-

choice. If this passes, it will go back to the restrictive 1953 law. If this gets through, it's going to put caskets in the 1953 law that was designed by the funeral directors to prevent competition," Mrs. McDonough said.

Cemeteterians argue that the conditions of the 1953 law make the pre-selling of caskets unattractive for the buyer and provides no incentive for the funeral director to pre-sell.

Studies by the National Funeral Directors Association show that those buying under the emotional impact of immediate need spend an average of 20 percent more for a casket than those who have pre-purchased.

Cemeteterians say the last thing funeral directors want to do is pre-sell a casket.

"Previously they built a fence to keep the competition out. Now it's got them fenced in from the broader field of competition," McDonough said.

"We're outnumbered and out-funded. There are a lot more funeral directors than there are cemeteterians," he said.

Bruce Kelley, general manager of Johnson & Sons Funeral Home, 134 East Sherman, sees the issues differently.

The real issue, he says, is not casket sales but the way the money is handled under pre-sale conditions.

Kelley provided an example illustrating the differences in the

funeral director is placed into escrow 100 percent. If the account grows to \$1,500 through interest, and the purchaser cancels the contract, the entire \$1,500 is refunded.

Under the Cemetery Merchandise Law, the consumer pays the same \$1,000 for the casket. The cemeteterian places \$550 — or 110 percent of the wholesale price — into an escrow account.

The remaining \$450 can be used by the cemeteterian for administrative costs.

Each year the seller checks the wholesale cost. Any interest accumulated in the account could be removed by the seller.

If the purchaser makes a permanent change of residence to another state, the cemeteterian ships the casket. If the purchaser moves at least 150 miles from the cemetery and wishes to cancel, the cemetery is only obligated to refund 85 percent of the \$550, or \$467.50 of the \$1,000 purchase price.

It is this difference that irritates the funeral directors.

"The cemeteterians want to go door to door, and when you don't have a 100 percent law, they have that money available to pay a salesman to go from door to door. That doesn't benefit the consumer; it benefits the salesman," Kelley said.

Kelley discounts the charges that funeral directors don't want to pre-sell.

sales escrowed, and we certainly pre-sell at any time," he said, producing two file cabinet drawers full of signed pre-sale contracts.

Pamphlets and brochures advising pre-planning and pre-purchase are also available in the home's counseling room.

Kelley doesn't like the charge that funeral directors pressure people to buy more expensive caskets during time-of-need sales.

"That's not true. We break all charges down and show people what they are. Even under stress people will usually talk to other family members and decide what they want to spend. People can even make their own caskets if they want to," he said.

"A salesman can put more pressure on you in your own home than might happen here at time of need. It will be a stressful thing to deal with a commission salesman trying to make a sale," he said.

Regarding the monopoly aspect of the matter, Kelley says it isn't an issue.

"We're no more a monopoly than the cemeteterians with the (grave) space they have to sell and the opening and closing (of the grave) charges. That's a monopoly," he said.

"I was brought up in the funeral service business. The 100 percent law is how I operate and how I can counsel with a family with a clear conscience. I don't

director mixed up," she said. "They automatically think you embalm."

Myra Miller, Cynthia's 25-year-old sister who joined the business shortly after her big sister was licensed, was considering getting her embalming license.

Their mother, Shirley, went to college to get the 30 hours required credit for her funeral director's license to help out her daughters.

"I'm afraid myself," the 47-year-old grandmother of three said.

Cynthia Miller said her duties are directed more toward the survivors — helping them accept the loss and guiding them through the process of selecting a casket and deciding on services.

Her LSU studies in psychology and sociology have been put to use in the business.

"I talk to people a lot when I'm taking them to the casket for a final look; counseling them for the final goodbye," she said.

The counseling helped her overcome fears of dealing with death, she said.

"My mind is not on what's in the casket, but the person standing there with me. I'm totally focused in on that person."

The death of a child, however, was something all the Millers said they found most difficult to handle.

"The worst part of the job is burying a child," Cynthia said. "Each funeral is different and you handle each situation differently. You think ahead of what you can do