

Approved _____ Date 2-14-91

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs

The meeting was called to order by Sen. Edward F. Reilly, Jr. at
Chairperson

11:00 a.m./~~pm~~ on February 12, 1991 in room 254-E of the Capitol.

All members were present ~~except~~:

Committee staff present:

Emalene Correll, Legislative Research
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Mr. Gene Yockers, Real Estate Commission
Mr. Larry McElwain, Kansas Funeral Directors
Mr. David Newcomer, Kansas Cemetery Association
Mr. Mack Smith, Board of Mortuary Arts

An outline was submitted from the Kansas Racing Commission which defined seven legislative proposals. It was stated that the desire is to incorporate all measures into one bill, with the exception of IV, relating to simulcasting. (Attachment 1)

A motion was made by Senator Strick and seconded by Senator Yost that a bill be introduced incorporating all items except IV. The motion carried.

Bill draft 1 RS 0132, which had been requested by Senator Oleen, was presented for consideration for introduction. It is an act concerning public institutions of postsecondary education; relating to exceptions to state residence duration requirements for student tuition and fee purposes; amending K.S.A. 76-729 and K.S.A. 1990 Supp. 71-302, and repealing the existing sections.

Staff said the request would affect who would be counted as out-of-state residents. Any person who was present in the state for at least two years during active military service, who established residency within 30 days of discharge would be considered "in state."

A motion was made by Senator Bond and seconded by Senator Strick that the bill be introduced. The motion carried.

Bill draft 1 RS 0556, requested by the Real Estate Commission, was presented for consideration for introduction. It is an act amending the real estate brokers' and salespersons' licensure act; amending K.S.A. 1990 Supp. 58-3037, 58-3046a, 58-3050, 58-3061 and 58-3062 and repealing the existing sections.

Mr. Gene Yockers, Real Estate Commission, said the bill would provide for changes in the continuing education hours and would give the commission authority past the one year statute of limitations in revoking, suspending or restricting the license of a licensee.

A motion was made by Senator Ehrlich and seconded by Senator Walker that the bill be introduced. The motion carried.

Hearing on: SB 39 - prearranged funeral arrangements

Staff said this bill had been requested by the Kansas Funeral Directors. It amends two statutes and repeals one that deal

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 Senate COMMITTEE ON Federal and State Affairs,
room 254-E, Statehouse, at 11:00 a.m./~~p.m.~~ on February 12, 1991.

with funeral directors and prearranged funerals. SRS has indicated that the fiscal impact to the state would be minimal, perhaps \$50,000 per year, as people can also shelter money with prepaid caskets, vaults, etc.

The chairman read a copy of a letter from the office of the Secretary of State, stating that transferring sole audit duties to the Board of Mortuary Arts is not objectionable to Secretary Graves. (Attachment 2)

Mr. Larry McElwain, Kansas Funeral Directors Association, presented testimony in support of SB 39, saying it is primarily to clean up some language in the Kansas Funeral Pre-Need Law and to repeal a section that has been found to be a duplicating process. (Attachment 3)

Mr. David Newcomer, Kansas Cemetery Association, presented testimony in opposition to the proposed change to KSA 16-303(b) and KSA 16310. (Attachment 4)

Regarding the statement that the Secretary of State is not doing any auditing, he said that the law provides for an independent audit, that the official has the option if he wishes to use it.

He stated that they do not make a commission for selling credit life and they are excluded from licensure requirements of life insurance agents.

Mr. McElwain said that for the last three years, life insurance proceeds can be earmarked for prearranged funeral arrangements. Since then, the number of persons making preneed arrangements has doubled or tripled. The legal advice given the Kansas Funeral Directors was that credit life could not be offered on preneed plans as no debt is incurred by the seller until the death of the purchaser.

Mr. Newcomer said the 1973 legislature enacted the credit life provision so that people who couldn't pay in a lump sum for preneed arrangements could guarantee that their families didn't have to pay a balance at the time of death.

He said that a trust is opened for the benefit of one purchasing a preneed arrangement; the trust would receive proceeds from the credit life policy. The funeral provider would submit a death certificate and billing for services and would be reimbursed. Interest accrues to the trust and would be payable to the beneficiary or returned with all monies paid if the purchaser cancels the plan.

Mr. Mack Smith, Board of Mortuary Arts, said they receive a list of all preneed funeral arrangements biannually from funeral establishments when their licenses are renewed. When a complaint is received, records are subpoenaed. He said the board wears a consumer hat. It is composed of five members appointed by the Governor, three licensees and two consumers. The matter of deleting the financial institution on lines 19 and 20 is not a board issue.

Staff asked the representative from the Secretary of State's office if an audit would be done if consumers requested one. Mr. Joe de la Torre will check into it.

The minutes of the February 7, 1991, meeting were approved.

The meeting was adjourned at 11:55 a.m.

KANSAS RACING COMMISSION
1991 LEGISLATIVE OUTLINE

- I. K.S.A. 74-8810(i)(5), housekeeping amendment changing "mechanical hare" to "mechanical lure."

Racetracks do not limit their mechanical lures to representations of rabbits, nor does the commission believe they should be required to do so.

- II. K.S.A. 74-8815(i), amendment allowing commission to fine a facility owner or facility manager licensee.

Compare provision cited above with organization licensee provision K.S.A. 74-8813(j) and (k).

While the section of the racing act applicable to organization licensees authorizes penalties in the form of a fine (to \$5,000), a suspension or a revocation, or both fine and suspension, the section of the racing act applicable to facility owner and manager licensees authorizes penalties only in the form of a suspension or revocation. The commission must be authorized to fine facility owner and manager licensees in order to effectively enforce the racing act. The closing of a racetrack by suspension or revocation is simply too serious a penalty for many violations.

- III. K.S.A. 74-8816, amendment of hearing procedures for stewards and racing judges, exempting them from certain KAPA requirements.

A racetrack is a small dynamic community. Each individual working in this community is issued an occupation license by the commission. Commission stewards and racing judges help ensure licensee compliance with racing law and regulations through the use of administrative hearings and penalties, K.S.A. 74-8816. Effective regulation depends to a large degree on quick resolution of problems so the racetrack community has a clear impression that violations of the law or regulations are not tolerated.

At present, violations by occupation licensees must be adjudicated by stewards or racing judges under the provision of the Kansas administrative procedure act (KAPA). Upon the conclusion of a KAPA formal hearing, the stewards or racing judges issue an initial order containing their ruling. Pursuant to KAPA the initial order does not become effective for 30 days. Therefore, any fine or license suspension is not enforceable for approximately one month. Within the confines of the ever-changing racetrack community this period of delayed

adjudication and enforcement gives the impression that the commission takes no action regarding racing violations.

Proposed amendment: Grant stewards and racing judges original jurisdiction to conduct simplified administrative hearings regarding racing violations. This amendment should grant stewards and racing judges authority to assess a fine of no more than \$250 or to suspend an occupation license no more than 15 days, or both. Cases that deserve penalties greater than these, as with cases that are appealed, should be referred to the commission for a formal hearing in accordance with KAPA.

IV. **K.S.A. 74-8819, amendment to allow simulcasting of parimutuel races.**

The commission will be conducting a public hearing on simulcasting January 13, 1991. They also have asked their newly-appointed executive director to make recommendations to them concerning this issue. Though he will attend the commission's hearing, the executive director is not expected to begin his employment until his KBI background is completed in late February. Therefore, commissioners would like to reserve their comments on simulcasting until they have discussed the information presented during the hearing and the recommendations made by the executive director.

V. **K.S.A. 74-8820(a), amendment clarifying whether the 4/18 and 6/18 minimum purse may be paid in a stakes race.**

K.S.A. 74-8820(a) states:

"An organization licensee shall be required to pay a minimum purse equal to at least 4/18 of the total takeout on all parimutuel pools from greyhound races and 6/18 of the takeout on all parimutuel horse races, computed weekly. None of the minimum purse shall be withheld for stakes races or for any other reason."

What are the ingredients of the "minimum purse" (that must be equal to or greater than 4/18th or 6/18th of the takeout).

Generally, there are two types of races--overnight races and stakes races--and the money won in those races is derived from the sources described below.

1. Overnight races--races for which entries are taken within 72 hours of the first race of the day when the race is to be run. There are no entry fees with this type of race.

Funding:

- a. Money from the track.
 - b. Added money from race sponsors (advertisers).
 - c. Breed purse supplements (Kansas horse or greyhound breeding development funds).
2. Stakes races--races for which a fee must be paid.

Funding:

- a. Nomination, subscription, entry or starting fees from the owners.
- b. Money from the track.
- c. Added money from race sponsors (advertisers).
- d. Stakes award supplements from state breed programs (Kansas horse or greyhound breeding development funds).
- e. Stakes award supplements from national breeders' programs (e.g. Breeder's Cup Program).

Notes: It is not unusual for the owner of the winner of a stakes race to receive a check made up of funds from three or four of the sources listed above.

Stakes races commonly involve trial heats. However, the stakes program does not normally fund prize money for the winners of a trial heat. The winners of trials may advance to the finals of the stakes race and participate in the stakes awards there. Where time, not placement, is the determining factor, though, not all winners advance to the finals. For this reason, tracks often pay purses for trial heats. In some high-dollar stakes races a consolation race is run, and the participants receive a share of the stakes award pool.

Does the last sentence of K.S.A. 74-8820(a) preclude including stakes awards in calculating the minimum purse? If it does, are trial heats and consolation races part of the stakes race? If it does not, does the source of the purse award affect what is included in the minimum purse calculation? Finally, does the source of funds paid for overnight purses affect calculation of the minimum purse?

(Additional notes concerning distinctions between "purse" and "stakes" races and between the purse distribution

systems used by the horse and greyhound industries will be provided.)

- VI. K.S.A. 74-8829, amendment allowing horse breeders awards to be paid to owners of stallions or mares whose offspring finish in win or win, place or show position--not just win position.

At the Woodlands alone the commission paid \$254,928.79 in breeder's awards for 1990. These awards were paid to breeders for the 92 wins secured by Kansas-bred horses. The KHA believes that (1) participation in the breeder's program will increase if awards are spread out over the membership and that (2) greater participation among breeders means enhancing the quality of Kansas-bred horses.

- VII. K.S.A. 74-8818, 74-8805(f), amendments defining the positions of steward and racing judge as unclassified employees of the commission.

At present, the commission appoints individuals to the positions of steward and racing judge for the duration of each race meeting, K.S.A. 1989 Supp. 74-8818. Kansas race meetings vary in length from 3 race days to approximately 300 race days. The parimutuel racing act does not define the employment relationship between the commission and stewards and racing judges. Attempting to define that relationship has created numerous problems for both the commission and the stewards and racing judges. Because steward and racing judge service is a highly specialized profession requiring serving in Kansas for irregular periods of time and is already tied the duration of each race meeting, these positions seem to be ideal for inclusion as unclassified employees serving at the pleasure of the commission.

91JAC2-cd

Bill Graves
Secretary of State



2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

February 11, 1991

Senator Edward F. Reilly, Jr., Chairman
Federal and State Affairs Committee
Room 255-E, State Capitol
Topeka, KS 66612

Dear Senator Reilly:

Secretary Graves will not be able to attend the hearing tomorrow on S.B. 39, but asked me to comment on the portion of the bill relevant to this office.

This bill would repeal K.S.A. 1990 Supp.16-310 which authorizes this office to conduct audits of prearranged funeral agreements.

We have been informed that the Board of Mortuary Arts has concurrent authority to conduct such audits. It does not seem necessary for two agencies to have the same duties. This office has not yet conducted any funeral audits and does not have personnel or equipment devoted to this duty.

Therefore, transferring sole audit duties to the Board of Mortuary Arts is not objectionable to Secretary Graves.

If this office may be of further assistance to you, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Wine, Jr.".

JOHN R. WINE, JR.
Assistant Secretary of State

jw

Senate F&SA
2-12-91
Att. 2

SENATE BILL #39
REMARKS BY LARRY MC ELWAIN
KANSAS FUNERAL DIRECTORS ASSOCIATION
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
FEBRUARY 12, 1991

Mr. Chairman, members of the Committee. My name is Larry McElwain, of Lawrence, Kansas. I am the Legislative Chairman of the Kansas Funeral Directors Association and a past president of that organization. We represent more than 95% of the funeral homes in Kansas.

I am here to request your support in the passage of Senate Bill #39. This legislation primarily was requested to clean up some language in the Kansas Funeral Pre-Need Law and to repeal a section of the law that has been found to be a duplicating process--the deletion of which has been approved by the Secretary of State and his representatives.

We have a copy of the bill in balloon form before you. The first change, on line 19 and 20, clarifies language which originally was meant to have financial institutions named on the contract so that the purchaser would know exactly where their money was placed. However, it has been construed by some to mean placing the banks' name on the Certificate of Deposit--an act that provides no benefit whatsoever and has only caused confusion. It is our understanding that the Kansas Bankers Association has no objection to this action.

Subparagraph 'b' on lines 31 through 37 has been proven to be needless language and since we are in that section of the law, it seemed to be an excellent time to remove it. We have found since 1974, that no debt occurs and therefore no credit life insurance is possible.

Line 39 would raise the limit of irrevocable money to be placed aside by people. This primarily is used by those anticipating or

actually going on some type of assistance--public assistance, medicaid, or medicare. Irrevocable monies, as well as money used to pre-purchase merchandise such as vaults and caskets, is excluded as an eligibility asset for those people entering these programs. Since this legislation was originally enacted, more than 8 years ago, those expenses falling under this area (i.e. Services of funeral director and staff, use of facilities, automotive equipment, embalming, opening and closing grave, flowers, etc.) have increased more than 50% so this change is necessary. Legislation of this type passed the Senate in 1986 but was not acted upon in the House because of our request that the increase was premature at that time. Now, five years later, this change is needed.

Some of you may have heard from concerned people regarding the proposed repeal of KSA 16-310 as listed in Sec. 3 (line 3 at the bottom of our page, or page 2, line 3 if you are looking at a regular copy of the bill). We have included a copy of this section with our testimony. Please note that it refers **ONLY** to services and merchandise prearranged and prefinanced under the Kansas FUNERAL Trust law. It has **NOTHING** whatsoever to do with Cemetery Merchandise or monies trusted under that law (K.S.A. 16-320 et seq). In fact, it was the **Secretary of State's Office** which requested this change be made, as the Board of Mortuary Arts has been responsible for, and has done, this auditing for a number of years. This proposed change would in no way change the present responsibility of the Board of Mortuary Arts in working for the consumer. And, I believe those of you who are familiar with their Executive Secretary, Mack Smith, recognize his efforts and those of his board--which consists of consumers as well as licensed funeral personnel--in representing the public in all matters dealing with funerals.

We disagree with the included letter sent by the Kansas Cemetery Association's president, Mr. Jon Baird, of the Resthaven Mortuary/Cemetery in Wichita, in his assessment of this proposed change in the law. It does remove a permissive audit function of

Funeral prefinanced from the Secretary of States Office, but only because it is duplicating. The Board of Mortuary Arts already has this responsibility and, this change will NOT alter this. We do not understand why Mr. Baird opposes this section. Double auditing seems to be a bit of overkill and unnecessary. In this case, we feel Mr. Baird's letter is misguided and, at the least, misleading. We know it has caused confusion in the ranks of his Association, even among those who do not have combined cemetery/mortuaries, and in some cases do not even participate in preneed or any type--funeral or cemetery.

We would urge you to act favorably on Senate Bill 39. I shall be happy to answer any questions.

SENATE BILL No. 39

By Committee on Public Health and Welfare

1-18

AN ACT relating to prearranged funeral agreements; audits; amending K.S.A. 1990 Supp. 16-302 and 16-303 and repealing the existing sections; also repealing K.S.A. 1990 Supp. 16-310.

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

Section 1. K.S.A. 1990 Supp. 16-302 is hereby amended to read as follows: 16-302. Except as authorized by K.S.A. 16-308, and amendments thereto, all such money shall be deposited in such bank, credit union or savings and loan association and shall be held by such bank, credit union or savings and loan association in a separate account in the name or names of the purchaser of the merchandise or services and the name of the seller and the financial institution concerned, until released as herein provided.

This removes some banks need to put their name on the CD (change recommended by KS Bankers Assn.)

Sec. 2. K.S.A. 1990 Supp. 16-303 is hereby amended to read as follows: 16-303. (a) Except as authorized by K.S.A. 16-308, and amendments thereto, all payments made under such agreement, contract or plan, and any earnings or interest thereon, shall remain with such bank, credit union or savings and loan association until the death of the person for whose service the funds were paid or, except as provided in subsection (e) (b), until demand for payment is made by the purchaser of the merchandise or services to the bank, credit union or savings and loan association, and upon such payment to the purchaser, the contract shall terminate.

(b) At the option of a purchaser, any installment contract may provide for additional payments by the purchaser for the cost of group credit life insurance at such rate as is approved from time to time by the insurance commissioner. In the event of the death of the purchaser, the proceeds shall be treated as funds in accordance with K.S.A. 16-304, and amendments thereto.

No way to get credit life as no debt occurs. Since worthless, might as well remove from statute.

(e) (b) At the option of the purchaser, such agreement, contract or plan may be made irrevocable as to the first \$2,000 \$3,000 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

Will raise irrevocable amount to \$3,000

such notification all documents and funds shall be transferred as necessary.

Sec. 3. K.S.A. 1990 Supp. 16-302, 16-303 and 16-310 are hereby repealed.

Repeals duplicate auditing of Secretary of States Office. Agreed to by Sec. of State.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

KANSAS CEMETERY ASSOCIATION

Cemeteries Working Together

OFFICERS

ROBERT ALEXANDER, PRESIDENT
WICHITA PARK CEMETERY
WICHITA, KS

JON BAIRD, VICE PRESIDENT
RESTHAVEN GARDENS OF MEMORY, INC.
WICHITA, KS

DARLENE HARRELL, SECRETARY/TREASURER
SHAWNEE MISSION MEMORY GARDENS
SHAWNEE, KS



SHARON McDONOUGH
FAIRLAWN BURIAL PARK
HUTCHINSON, KS

ROBERT MUCKACKEN
MOUNT HOPE CEMETERY
TOPEKA, KS

JON BAIRD
RESTHAVEN GARDENS OF MEMORY, INC.
WICHITA, KS

FRANK KARNES, JR.
LAWRENCE MEMORIAL PARK
LAWRENCE, KS

BOARD OF DIRECTORS

DON SHAW
OAK HILL CEMETERY
LAWRENCE, KS

LESTER KLINE
SERVICE CORPORATION INTERNATIONAL
CLAYTON, KS

JOSEPH W. HARRIS
FLORAL HILLS MEMORIAL GARDENS
KANSAS CITY, MO

January 28, 1990

Dear Fellow Cemeterian:

I have an urgent and important request to make.

The Kansas Funeral Directors Association is proposing state legislation that could ultimately be extremely detrimental to the cemetery industry and self-serving for the funeral directors in our state.

They are proposing the elimination of KSA 16-310, which provides for the audit of pre-need funeral trusts by the Secretary of State. In its place, they suggest that the State of Kansas rely on the Board of Mortuary Arts to provide this audit function.

Enclosed is a copy of the KFDA request presented to the Senate Public Health and Welfare Committee, and a list of the senators on the committee.

I strongly encourage you to write the members of this committee immediately, expressing your opposition and the reasons for your opposition to this legislative change. In my opinion we cannot build a strong argument against an independent audit function. We can, however, argue very effectively that the Board of Mortuary Arts, composed of three active funeral directors and two consumers, is certainly not an independent agency. To remove the audit function from the Secretary of State and place it in the hands of the Board of Mortuary Arts is, in my opinion, an open invitation to conflict of interest.

We need your help. Congress is in session now. Please use your own words and dictate your letters immediately.

Thank you very much.

Most Sincerely,

Jon P. Baird
President, Kansas Cemetery Association

A State-wide Association of Cemeteries

the name of
 or, That such
 at the funds in
 arate accounts
 enture may be
 maintained by
 capacity as such,
 equired by the
 t seq.; that all
 investment fund
 tionate interest
 ; that not less
 h period of six
 e shall deter-
 the fund; and
 ize the corpo-
 rable expenses
 ist the income
 imposed upon
 enses of audits
 lic accountants
 rurred in serv-
 l, but no com-
 ces performed
 e seller or by
 ith the seller:
 who has pres-
 he purpose of
 to 16-307, in-
 hereto, which
 able provisions
 riod of one (1)
 this act within
 ure applicable
 vestments and
 s necessary to

4; July 1.
 ness in state"
 personal serv-
 ociation, part-
 hall be doing
 re in any way
 he negotiation
 ntract as seller
 : services cov-
 ive, either as
 nt, any money
 ract; or solicit
 such resident
 nt person, as-
 corporation is
 , they shall be
 if process out-
 .S.A. 60-308.
 6; July 1.

16-310. Secretary of state to audit prear-
 ranged funeral agreements; redeposit of im-
 properly paid moneys; actions by attorney
 general; funds held under agreements not sub-
 ject to legal process; notice of intent to sell
 and engage in agreements; obstructing or re-
 fusing to submit to examination; audit fee. (a)
 The secretary of state, or the secretary's rep-
 resentative, may audit whenever and as often
 as deemed necessary by the secretary of state
 all accounts or trusts of each prearranged fu-
 neral agreement, plan or contract entered into
 pursuant to K.S.A. 16-301 *et seq.*, and amend-
 ments thereto. For such purposes, the secre-
 tary of state or the secretary's representative
 is authorized to administer oaths and to ex-
 amine under oath the directors, officers, em-
 ployees and agents of any seller of personal
 property or funeral or burial merchandise.
 Such examination may be reduced to writing
 by the person taking it and the examiner may
 make findings as to the condition of each ac-
 count or trust examined. Accounting records
 and information required by this section shall
 be maintained in a format approved by the
 secretary of state. For the purposes of such
 audits, the secretary of state may require any
 person or officer of a partnership, association,
 firm or corporation who sells such merchandise
 to furnish and submit the books, records, pa-
 pers and instruments of such partnership, as-
 sociation, firm or corporation for examination.

(b) In the event the secretary of state de-
 termines that moneys have been improperly
 obtained from the account or trust by the seller
 of personal property or funeral or burial mer-
 chandise during the period covered by the au-
 dit, then the secretary may order the seller of
 personal property or funeral or burial mer-
 chandise to redeposit to the account or trust
 such moneys improperly withdrawn within 60
 days.

(c) The attorney general, at the request of
 the secretary of state, may initiate an action
 to recover payments required to be redepos-
 ited to the account or trust under subsection
 (b), or to recover other moneys received or
 disbursed in violation of this act. In addition,
 the attorney general may seek to enjoin any
 violation of this act.

(d) In the absence of fraud, all funds held
 in an account or trust established pursuant to
 a prearranged funeral agreement, plan or con-
 tract shall not be subject to attachment, gar-
 nishment or other legal process, nor be seized,
 taken, appropriated or applied to pay any debt
 or liability of the seller of personal property

or funeral or burial merchandise, buyer or ben-
 efiary, by any legal or equitable process or
 by operation of law.

(e) No person, partnership, association,
 firm or corporation shall enter into any prear-
 ranged funeral agreement, plan or contract un-
 til such person, partnership, association, firm
 or corporation has filed with the secretary of
 state a notification of its intention to sell and
 engage in such prearranged agreements, plans
 or contracts. Such notice shall include the
 name of the person, partnership, association,
 firm or corporation, its principal place of busi-
 ness and the name and address of the bank,
 trust company or savings and loan association,
 trustee or trustees to be utilized under the
 provisions of this section.

(f) Whenever any person, partnership, as-
 sociation, firm or corporation refuses to submit
 the books, records, papers and instruments to
 the examination and inspection of the secretary
 of state, or of any of the secretary's represen-
 tatives, or in any manner obstruct or interfere
 with the examination or audit authorized by
 this section, or refuse to be examined under
 oath concerning any of the affairs of its prear-
 ranged funeral agreements, plans or contracts,
 the secretary of state may request the attorney
 general to institute proceedings for the ap-
 pointment of a receiver for such person, part-
 nership, association, firm or corporation.

(g) Any person, partnership, association,
 firm or corporation which refuses or neglects
 to comply with the requirements of this act for
 a period of 90 days after demand to do so is
 made upon it by the secretary of state shall be
 subject to the penalties provided in K.S.A. 16-
 305, and amendments thereto. The attorney
 general, upon the request of the secretary of
 state, shall then begin an action for the ap-
 pointment of a receiver for such person, part-
 nership, association, firm or corporation and to
 dissolve the same.

(h) Whenever an audit is made pursuant to
 this section, the person, partnership, associa-
 tion, firm or corporation so audited shall pay
 to the secretary of state such expenses as shall
 be assessed pursuant to K.S.A. 1988 Supp. 75-
 422.

History: L. 1987, ch. 77, § 2; L. 1988, ch.
 94, § 3; July 1.

16-311 to 16-319. Reserved.

CEMETERY MERCHANDISE CONTRACTS

16-320. Cemetery merchandise con-

tracts:
 shall a
 (a)
 vaults,
 orials,
 stones
 spaces
 used i
 spaces
 oped
 space:
 merch.
 (b)
 amount
 cemet
 a prep
 price
 tax, c
 charge
 (c)
 any ag
 chandi
 quires
 or in
 merch.
 from a
 (d)
 dividu
 maner
 provis
 ments
 (e)
 means
 to 110
 cemet
 chandi
 contrac
 by the
 such q
 to the
 Hist
 77, §
 Attorney
 Ceme
 Couns
16-3
 trust f
 (a) Any
 prepaid
 and m
 fund u
 paid m
 (b)
 prepaid
 to reta

3-6

KANSAS CEMETERY ASSOCIATION

SUMMARY OF TESTIMONY

IN OPPOSITION

TO SB. 39

- **The Funeral Directors Association is systematically eliminating all forms of competition in the funeral industry.
- **Prior to 1986 consumers benefited from competition that existed between funeral homes and cemeteries: both could sell caskets.
- **In 1986, the Kansas Funeral Director's Association backed a Senate Bill (SB 499) which removed casket sales from the Kansas Cemetery Merchandise Law.
- **Governor Carlin vetoed SB. 499 because it restricted competition and removed the audit provisions of the cemetery merchandise law from caskets.
- **The next year a bill passed on the argument that it afforded more protection to consumers in the form of independent audits conducted by the Secretary of State.
- **The Kansas Funeral Director's Association supported independent audits by the Secretary of State.
- **This committee and the 1986 legislature found independent audits necessary for public protection.
- **Five years later the Funeral Directors now want to eliminate the independent audit without reinstating the competitive benefit provided by the laws of 1986.
- **The Funeral Directors Association also proposes to eliminate the availability of credit life insurance to persons who purchase their funerals in advance of need.
- **Credit life insurance has been available to Kansas pre-need purchasers since 1973.
- **Credit life insurance provides valuable protection to purchasers who cannot afford to pay for their pre-need funeral plans in a lump sum.
- **At least 2184 purchasers have relied on credit life.
- **The audit powers of the Secretary of State and the State Board of Mortuary Arts are not duplicated.
- **The State Board of Mortuary Arts is not an independent State Agency.
- **The State Board of Mortuary Arts does not have statutory authority to conduct random audits.

Senate F&SA
2-12-91
Att. 4

D.W. NEWCOMER'S SONS

KANSAS CITY

I am here today on behalf of the Kansas Cemetery Association, the KCA. Most of you will recall that when this committee last considered changes to the Kansas preneed funeral law, my association and the Kansas funeral director's Association were at odds. Little has changed in that regard.

Senate Bill 39 proposes to make four changes to the Kansas Preneed Law. The KCA believes two of those changes will actually benefit the consumer.

One of those changes, to remove financial institutions from KSA 16-302, will clarify who should be reflected as an owner of passbook accounts created for pre-arranged funerals.

Another change, to increase in KSA 16-303(c) the amount of irrevocable payments from \$2,000 to \$3,000, will permit Kansans to provide for an average-cost funeral and remain eligible for welfare or social security benefits.

However, the KCA strongly opposes the other two changes SB 39 proposes to make.

SB 39 proposes to delete KSA 16-303(b) and KSA 16-310.

The KFDA suggests that KSA 16-303(b) is impossible to figure out and should be deleted. This is not truthful. Credit life insurance is sold to Kansans who purchase preneed funeral plans on time payments. Credit life insurance assures these purchasers that their families will not have to pay the balance of any preneed purchase price should they die before the preneed contract is paid in full.

Since 1973, Funeral Security Plans has sold 2183 policies of credit life insurance to Kansas preneed purchasers. Accordingly, there is a real benefit in this provision. The KFDA would have you believe otherwise.

The KFDA also suggests that KSA 16-310 is duplicative legislation. Again the KFDA has been less than truthful.

Five years ago, Kansas consumers could purchase caskets from cemeteries of funeral homes. The KFDA argued to this committee greater protections for the public were needed in casket sales. To exclude casket sales from cemeteries, the KFDA backed a bill that required casket sales to be made under the Kansas Preneed Law, and that required Kansas preneed trusts to be subject to audits by an independent state agency: The Kansas Secretary of State.

Now the KFDA wants to eliminate these very same protections.

Contrary to what the KFDA has told you, the State Board of Mortuary Arts does not have duplicative audit powers. Nor is this State Board the independent, objective state agency contemplated by the Legislature when the Kansas Preneed Law was amended five years ago.

It is my understanding that 4 of the 5 State Board members are KFDA members.

Nor does the State Board of Mortuary Arts have the power to make random audits. While the Secretary of State already has auditors on staff for similarly required cemetery trust audits, the Mortuary Arts Board does not have the staff necessary for the random audits contemplated by KSA 16-303.

What the KFDA is really asking you to do is to eliminate the preneed funeral audit protections altogether.

The KFDA was successful in eliminating competition from cemeteries in casket sales. Now it wants to eliminate the sole reason for its argument for the 1986 changes: to afford greater protection to the consumer. If the protection is being eliminated. Why shouldn't the competition be restored?