

## MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Ray Cox at 3:30 P.M. on March 7, 2005 in Room 527-S of the Capitol.

All members were present except:

Tom Burroughs- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department

Michele Alishahi, Kansas Legislative Research Department

Bruce Kinzie, Revisor of Statutes Office

Patti Magathan, Committee Secretary

Conferees appearing before the committee:

Scott Strasburg, Byrd Memorial, Atchison

Bill Wright, Kansas Cemetery Association, Hutchinson

Lavanta Hall, Lawrence

Bill Stalter, Stewart Enterprises, Kansas City

Warren (Ren) Newcomer, Newcomer Funeral Service Group, Topeka

Mark Tomb, League of Kansas Municipalities

Judi Stork, Office of State Bank Commissioner

Doug Wareham, Kansas Bankers Association

Kathy Olsen - Kansas Bankers Association

Others attending:

See attached list.

Chairman Cox opened the floor to work SB 57 - Consumer protection; exemption for occasional sale of certain repossessed collateral.

Melissa Calderwood, Kansas Legislative Research Department, provided overviews of SB 57 and SB 104. SB 57 amends the Kansas Consumer Protection Act by providing a definition of a supplier under the act. SB 104 authorizes the State Bank Commissioner to examine the fiduciary affairs of any officer or employee of any bank or trust company serving in a fiduciary capacity specifically related to the safety and soundness of that company, without receiving authorization from the State Banking Board.

Representative O'Malley made a motion to pass SB 57 favorably. Motion was seconded by Representative George. The motion passed.

Chairman Cox opened the floor to work SB 104 - Banks and banking; examination of certain business entities affiliated with banks or trust companies. Representative Dillmore made a motion to pass SB 104 favorably. The motion was seconded by Representative Olson. The motion passed.

Chairman Cox opened the floor to hear SB 101 - Banks and banking; prohibition of employment of officers or directors who have been removed for cause.

Proponent **Judi Stork**, Office of the State Bank Commissioner, explained that this bill gives the State Banking Board the authority to prohibit officers or directors who have been removed from their position from serving in another state bank or trust company in Kansas. (**Attachment 1**)

Proponent **Kathy Olsen**, Kansas Bankers Association, said that the KBA wants to register their support for this bill which empowers the state banking board to not just remove an officer or director from employment at the particular state bank or trust company, but to also prohibit the further participation in any other state bank or trust company in Kansas. (**Attachment 2**)

Chairman Cox closed the floor for hearing on SB 101 and opened the floor to hear SB 114 - Banks and banking; civil penalty authority for state bank commissioner.

CONTINUATION SHEET

MINUTES OF THE House Financial Institutions Committee at 3:30 P.M. on March 7, 2005 in Room 527-S of the Capitol.

Proponent **Judi Stork**, Office of the State Bank Commissioner, opened by saying that this bill creates a new statute in the banking code which provides adequate enforcement tools for the Office of the State Bank Commissioner to ensure compliance with state banking laws. **(Attachment 3)**

**Doug Wareham**, Kansas Bankers Association, stated that his organization was neutral on this bill. They appreciate that a strong majority of other states, as well as the Federal Deposit Insurance Corporation and Federal Reserve, already possess this authority. They also acknowledge that a fine is a better tool than "cease and desist" orders, which is the tool they now have, but they are not entirely happy with a civil money penalty. **(Attachment 4)**

Written testimony was provided by proponents **Renee Murray**, Community Bankers Association, **(Attachment 5)**, **Richard Rucker**, Home Bank & Trust Co., Eureka, **(Attachment 6)** and Conference of State Bank Supervisors **(Attachment 7)**.

Chairman Cox closed the hearing on **SB 114** and opened the floor to work **SB 101**. Representative George made a motion that the bill be passed favorably which was seconded by Representative Vickery. Motion passed.

Chairman Cox opened the floor to work **SB 114**. Representative Olson made a motion to pass the bill favorably. Representative Grant seconded the motion. Motion passed.

Chairman Cox opened the floor for hearings on **HB 2275 - Cemetery companies, monument companies, prohibitions, penalties.**

**Proponents:**

**Scott Strasburg**, Byrd Memorial, Atchison, testified that **HB 2275** would provide Kansas consumers protection against unethical and illegal business practices currently being used by some Kansas cemeteries. **HB 2275** will not have any effect on properly managed cemeteries. Mr. Strasburg provided information on related Federal case law and results of an informal poll of three Kansas cemetery's fees. **(Attachment 8)**

Representative Grant asked Mr. Strasburg how often this happens. Mr. Strasburg replied that approximately ten to twelve times a year he becomes aware of situations where the cemetery either charges higher fees for their customers who want to set their own stones, or is not cooperative with these customers.

Representative Faust-Goudeau asked if these were the majority or were they isolated incidents. Mr. Strasburg replied that he is not talking about all cemeteries, but he does encounter some level of difficulty with approximately one-half of the cemeteries he deals with.

**Lavanta Hall**, Lawrence, recounted difficulties she had while arranging for interment of her son. They included sloppy records, unexpected fees, and exploitive methods. She asked the committee to pass **HB 2275** to protect consumers, like herself, from being taken advantage of at a vulnerable time while trying to deal with the loss of a loved one. **(Attachment 9)**

**Opponents:**

**Bill Wright**, representing Fairlawn Cemetery, Hutchinson and the Kansas Cemetery Association, spoke about how his cemetery treats third party monument clients, dealers, and installers, and how the industry deals fairly with third party providers. He also explained the Fairlawn Cemetery fee structure and explained that fee structures are unique to each cemetery. Mr. Wright informed the committee that the Cemetery Consumer Service Council is a process already in place which allows consumers to obtain recourse in the advent of problems. **(Attachment 10)**

**Bill Stalter**, Stewart Enterprises, Kansas City, voiced his opposition to the provision in this bill that would prohibit a cemetery from "bundling" property and services for sale. The bill also fails to recognize the cemetery's rights to ensure the installer is qualified and that the installation is done properly. **(Attachment 11)**

CONTINUATION SHEET

MINUTES OF THE House Financial Institutions Committee at 3:30 P.M. on March 7, 2005 in Room 527-S of the Capitol.

11)

**Warren (Ren) Newcomer**, Newcomer Funeral Service Group, Topeka, explained that his cemeteries allow the placement of monuments and markers which are not purchased from them. They ask that those companies who wish to enter their grounds to set monuments abide by the rules applicable to all and promise through insurance that they are responsible. They require that the third party supplier apply on standard forms so that they may see that the monuments comply with their rules. They require that the foundation future care fees are paid, and that the costs the cemetery incurs are compensated. **HB 2275** would eliminate any responsibility on the part of the monument seller and place the entire burden of future care of the marker upon the cemetery, without any consideration for that service. **(Attachment 12)**

**Mark Tomb**, League of Kansas Municipalities spoke as a representative of the many cities across the state who own and operate cemeteries as a public service to the residents of their communities. HB 2275 would dramatically impact the ability of municipally owned cemeteries to impose reasonable fees on any monument vendor. It would also increase the operational costs of cemeteries owned and operated by local governments, without the added liability protection awarded to third party suppliers under this bill. **(Attachment 13)**

Representative Dillmore asked if publically owned cemeteries could be exempt from the bill. Mr. Tomb replied that they could. Representative Dillmore then inquired if there are known specifications for monuments and if they are disclosed at purchase. Mr. Wright replied that there are specifications and they are disclosed. Representative Dillmore then asked if there is protection of the "memorial care fund" if the cemetery is transferred to a new owner. Mr. Wright replied that there is not.

Representative Faust-Goudeau asked for clarification on future upkeep fees, and whether they would apply to markers purchased from a third party. Mr. Wright replied that the actual grounds are maintained thru the perpetual care trust fund which is mandated and audited by the State. Any improvement, such as a memorial, flower bed, or tree, is not included in the perpetual care fee. Improvements are covered under the memorial care fund.

Representative Hummerickhouse asked Mr. Wright if the memorial care fund is a requirement of the State of Kansas. Mr. Wright stated that it is not. Representative Hummerickhouse also asked if a third party supplier bears responsibility for care of a monument once it is placed. Mr. Wright stated that, in his cemetery, care of all monuments is assumed by the cemetery once it is placed.

Representative Brown asked if there are specifications provided to third party suppliers and if there are inspections once a monument is placed. There are specifications provided by the cemetery and there may be inspections at the discretion of the cemetery, although it is not a common practice in Kansas.

Representative Grant asked how common it is for problems to arise similar to those described by Mrs. Hall. Mr. Newcomer replied that problems similar to Mrs. Hall's are rare. He is familiar with the cemetery with which she was dealing and it is falling into disrepair due to a lack of funds.

Representative Dillmore asked about memorial care (monument) funds and how excess funds are distributed and how future rates are adjusted. Mr. Newcomer replied that the memorial care funds are voluntary on the part of the cemetery. He stated that the funds are utilized by most modern cemeteries.

Representative Cox closed the hearings on **HB 2275** and adjourned the meeting at 4:50 P.M.

Next meeting will be March 14, 2005.

# FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: 3-07-05

NAME	REPRESENTING
Sonya Allen	OSBC
Judi Stork	OSBC
Les Burchett	Burd Memorial (consumer)
KAVANTA HALL	Consumer
Scott Alexander	Consumer
D.S. Koch	PSWS
Sueh Newsome	Federico Consulting
REN Newsome	KS Funeral Director Assoc
John Peterson	KS Cemetery Assn
Bill Brady	" " "
Kathy Sachs	KS Sec of State
Pam Scott	KS Funeral Directors Assn
David Ison	KS Cemetery Assoc.
Mack Smith	KS ST Board of Mortuary Arts
Ed TUGGLE	PENWELL OAKS Memorial Park FH.

William A. Wight

Faunum Cemetery, Topeka, KS  
MT HOPE CEMETERY, TOPEKA, KS

Lee M. Bonds

Rich L. Kuehl

Mt. Hope Cemetery, Topeka, KS

Mark Tomb

League of Kansas Municipalities

Bill Stalker

AW Newsome Sr Inc

Melissa Wangemann

Sec of State



# KANSAS

KATHLEEN SEBELIUS, GOVERNOR

OFFICE OF THE STATE BANK COMMISSIONER  
*CLARENCE W. NORRIS, Bank Commissioner*

March 7, 2005

## HOUSE FINANCIAL INSTITUTIONS COMMITTEE

Chairman Cox and Members of the Committee:

I am Judi Stork, the Deputy Bank Commissioner for the Office of the State Bank Commissioner. I am here today to testify in support of **Senate Bill 101**. This bill amends K.S.A. 9-1805, which is the statute that currently allows the state banking board to remove an officer or director from a bank or trust company. The main purpose of this bill, found beginning on line 22 of the bill, is to give the banking board the additional authority to prohibit officers or directors who have been removed from their position from serving in another state bank or trust company in Kansas. The thought behind the amendment is if the person's actions are serious enough to remove them from one institution, they should be kept from working at another institution.

I ask for your support of this bill.

House Financial Institutions  
March 7, 2005  
Attachment 1



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

March 7, 2005

To: House Committee on Financial Institutions and Insurance

From: Kathleen Taylor Olsen, Kansas Bankers Association

**Re: SB 101: Removal of Officers and Directors for Cause**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **SB 101**, which amends K.S.A. 9-1805, the provision in the banking code which currently allows the state banking board to remove an officer or director from any state bank or trust company upon a finding of dishonesty, recklessness or incompetence in performing duties entrusted to such officer or director.

The KBA supports the Office of the State Bank Commissioner's efforts to empower the state banking board to not just remove such officer or director from employment at that particular state bank or trust company, but to also prohibit the further participation in any other state bank or trust company in Kansas.

Experience has shown that the Commissioner's office has not acted with haste in the past when making a recommendation of removal of an officer or director. We support the notion that if there is enough evidence to support removal of a person from the bank so that the state banking board agrees and approves the case for removal, the members of the state banking board would not want to see that person employed or serving as a director in another state chartered institution over which they have responsibility to ensure its safety and soundness for the people of Kansas.

Thank you and we hope that the Committee will act favorably on **SB 101**.

House Financial Institutions  
March 7, 2005  
Attachment 2



# KANSAS

OFFICE OF THE STATE BANK COMMISSIONER  
CLARENCE W. NORRIS, *Bank Commissioner*

KATHLEEN SEBELIUS, GOVERNOR

March 7, 2005

## HOUSE FINANCIAL INSTITUTIONS COMMITTEE

Chairman Cox and Members of the Committee:

I am Judi Stork, the Deputy Bank Commissioner for the Office of the State Bank Commissioner. I am here today to testify in support of **Senate Bill 114**. This bill creates a new statute in the state banking code, authorizing the commissioner, with the approval of the state banking board, to impose civil money penalties on state banks or trust companies, or the officers, directors, employees or agents of state banks or trust companies, who engage in unsafe or unsound practices or other activities which constitute violations of the banking code. The entities or individuals who are assessed such penalties, which are limited to a maximum of \$1,000.00 per day, are given a right to a hearing pursuant to the Kansas Administrative Procedure Act, and any final order of a penalty would be subject to review by the district court under the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions.

The Office of the State Bank Commissioner has as a primary goal the safety and soundness of the institutions we regulate for the protection of Kansas consumers. In order to accomplish this goal, the commissioner should have adequate enforcement tools to ensure compliance with state laws. We think that the existence of a potential civil money penalty will deter both individual officers/employees and banks/trust companies from habitually violating a law or from engaging in egregious misconduct. 36 states have the power to levy a civil money penalty, including Nebraska, Colorado, Missouri, Iowa, and Arkansas. Our office views the imposition of a civil money penalty as a last resort to force compliance or address egregious conduct. This legislation has built-in safeguards against the improper use of the power, in that anyone who is assessed a penalty is given a right to a hearing to dispute the charges and the imposition of the penalty.

I would ask for your support of this bill.

House Financial Institutions  
March 7, 2005  
Attachment 3



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

Date: March 7, 2005  
To: House Financial Institutions & Insurance Committee  
From: Doug Wareham, Vice President-Government Affairs  
Re: Senate Bill 114

Mr. Chairman and members of the Committee, I am Doug Wareham appearing on behalf of the Kansas Bankers Association (KBA). KBA's membership includes 360 Kansas banks, which operate more than 1,300 banking facilities in 440 towns and cities across the state. KBA appreciates the opportunity to appear on S.B. 114.

S.B. 114 authorizes the State Bank Commissioner, with the approval of the State Banking Board, to assess and collect civil money penalties. The bill outlines that penalties can be applied to banks or trust companies that engage or participate in unsafe or unsound practices in connection with a bank or trust company or for violations of the state banking code, rules and regulations pertaining to the state banking code and also for violation of any lawful order of the commissioner or the state banking board.

KBA's formal position on S.B. 114 is neutral. While granting civil money penalty authority creates some degree of trepidation on the part of Kansas bankers, we understand that a strong majority of other state banking regulatory agencies, as well as the Federal Deposit Insurance Corporation and Federal Reserve, already possess this authority. We also agree that civil penalty authority will provide the Commissioner and State Banking Board with another enforcement tool to ensure compliance and that in certain circumstances a fine may be a more appropriate enforcement tool than a cease and desist order or the threat of pulling a banks charter.

We would also like to comment on the amendment adopted by the Senate Financial Institutions & Insurance Committee, which prohibits the State Bank Commissioner from imposing fines if another government agency has taken similar action against a bank. This amendment was requested by KBA and has been agreed to by the Office of the State Bank Commissioner. Our comfort level with S.B. 114 increased significantly with the adoption of this language.

Thank you for the opportunity to appear on this issue and I would be happy to stand for questions.

House Financial Institutions  
March 7, 2005  
Attachment 4



Date: March 7, 2005

To: House Financial Institutions Committee

From: Renee Murray, Community Bankers Association (CBA)

Re: Support of SB114

Mr. Chairman, and Members of the Committee, thank you for accepting written testimony on behalf of the Community Bankers Association (CBA) on Senate Bill No. 114. As the bill stands after the amendment added on the Senate floor, we feel the modification is a positive change to the law for Kansas bankers. The addition of the language, *“No civil money penalty shall be assessed for the same act or practice if another government agency has taken similar action against the bank, trust company or person to be assessed such civil money penalty”*, protects the financial institution from “stacking” or “piling” of fines from the Office of the State Bank Commissioner and a federal regulator. The CBA supports SB114 and asks the Committee to support it as well. Thank you.

House Financial Institutions  
March 7, 2005  
Attachment 5



HOUSE COMMITTEE ON FINANCIAL  
INSTITUTIONS

March 7, 2005

Chairperson Cox and Members of the Committee:

My name is Richard D. Rucker. I'm currently the President/Chairman of Home Bank & Trust Company of Eureka. I have been in the banking business for 35 years. I currently serve on the State Bank Commission Board and in 2004 I was the Chairperson of that Board. I would like to express my support for Senate Bill 114.

In my opinion, the State Bank Commissioner needs the authority to impose civil money penalties on state banks and trust companies and/or the officers, directors, employees or agents of the state banks and trust companies that engage in unsafe or unsound practices or other activities, which constitute violations of the banking code.

Per the OSBC comments obtaining this authority, the OSBC is not looking to piling on additional penalties involving other assessments by other Bank Regulators and this proposed legislation has built-in safeguards against the improper use of this power. I assure you Bank Commissioner Norris and Deputy Commissioner Judi Stork will see this power is used in a fair and just manner.

I urge you to support Senate Bill 114.

Respectfully,

Richard D. Rucker  
President/Chairman  
Home Bank & Trust Company  
PO Box 620  
Eureka Kansas 67045

217 N. Main  
Eureka, KS  
67045  
620-583-5516



101 S. Main  
Eureka, KS  
67045  
620-583-7570



108 N. Kansas  
Severy, KS  
67137  
620-736-2241



741 N. 4th  
Clearwater, KS  
67026  
620-584-5000



10421 W. Central  
Wiebira, KS  
67212  
316-773-6000



**Testimony of Neil Milner**  
**Chairman and CEO**  
**Conference of State Bank Supervisors**  
**On State Examination Authority**

The Conference of State Bank Supervisors (CSBS) is the professional association of state officials who charter, regulate and supervise the nation's approximately 6,000 state-chartered commercial and savings banks, and more than 400 state-licensed foreign banking offices nationwide.

We appreciate the opportunity to submit testimony on the importance of a viable state banking system with appropriate supervisory and enforcement authority. The legislation being considered by the Committee on Financial Institutions and Insurance will give the Kansas Office of the State Bank Commissioner the additional tools they need to supervise a dynamic industry, serve the public needs and convenience, protect consumers from unscrupulous practices, and foster economic development and prevent economic instability. It is important to empower your state regulator in order to put them in a better position to defend against federal intervention. The Kansas Office of the State Bank Commissioner should have available to it powers similar to those of the federal agencies; otherwise it could be considered an abdication of appropriate state rights to the federal government.

Individual markets vary widely from state to state, or even from community to community. State banking laws and state enforcement allow state policymakers to determine how best to serve and protect their citizens. Chartering of financial institutions at the state level promotes the availability of capital in all communities, and local enforcement allows the state regulators to take into consideration conditions in the local markets before taking action. Without the appropriate tools at the state level, critical decisions are left to the federal bank regulators in Washington.

CSBS, through its accreditation program, has created a list of best practices for state banking departments, including the types of enforcement authority that should be available to the department. Included in the list of supervisory practices are:

- The department must have the authority and a sufficient number of qualified examiners to examine all specialty areas including bank holding companies.
- The department should also have the authority to remove officers, directors and employees; and to prohibit such individuals from serving in any capacity in any other financial institution that the department regulates.
- The department must also have the ability to assess civil money penalties sufficient to deter violations of laws and regulations and/or violations of orders or agreements. Civil money penalties should be per violation per day.

CSBS strongly endorses the legislation you have before you that improves the enforcement authority of your Office of the State Bank Commissioner. As the primary regulator of state institutions, the Office of the State Bank Commissioner should have the same remedies that the federal agencies have in order to have the flexibility, credibility and the power to adequately supervise the industry. Civil money penalties can effectively encourage correction of violations and serve as a deterrent to future violations, reckless or unsound practices and breaches of fiduciary duty. Being able to remove or suspend a person participating in the affairs of a financial institution gives the Office of the State Bank Commissioner the power to remove a problem without penalizing the entire institution. The authority to review holding company and bank affiliate activities helps to insure compliance with both state and federal laws and gives the Office of the State Bank Commissioner a better picture of the overall health of the bank itself.

Thank you again for this opportunity to submit testimony on what is a very important matter.

## HB 2275

Good afternoon, my name is Scott Strasburg. I would like to share a complaint frequently expressed by persons wishing to purchase and place a memorial for their deceased loved ones.

*As recently as last Saturday, I was contacted by a woman who currently lives in Lawrence. She wrote to me because she was concerned that her **consumer rights were being violated** in regards to purchasing and installing a memorial at a local cemetery.*

*She and her family have used this particular cemetery for years and were in the process of placing a memorial for yet another loved one. This is her story...*

*...Last fall we bought a grave stone for my husband's parents. Because the cemetery management took **MONTHS** to place a memorial stone for us in the past, my husband decided to purchase the stone elsewhere and to set the stone himself.*

*The cemetery management agreed to let us set the stone ourselves but informed us we would still have to pay the cemetery's "setting fee" of \$305. This expensive "fee" was over half the cost we paid for the stone itself!*

*Because we were led to believe we had to pay their "setting fee" anyway, we just let them set the stone after all. We felt bullied by the cemetery management and wondered why there weren't laws to protect us during this vulnerable time.*

This particular story I just shared with you is just one of many. I am a trusted monument retailer and continue to be shocked by the increased use of scare tactics by cemetery management companies.

Unfortunately, these complaints come from people like you and me who feel there is nothing they can do, after all, "**it is a standard fee**" and "**everyone pays it**". None of us want to be taken advantage of during our time of grief, but it is happening more and more all over the state.

Let me explain how this is happening:

- ◆ A grieving consumer goes to the local cemetery where they have purchased a burial plot to make arrangements for a loved one's memorial. It doesn't matter whether they purchased the memorial from the cemetery or a third party.
- ◆ The memorial is 48" x 14" x 4" (a standard size), its cost is \$750.00. Now, the cemetery adds a \$100 administrative fee, an "early care" fee (for grass seed and ground work) of 30 cents per square inch or \$201.60. And finally, a "future care" fee of 35 cents per square inch or \$235.20.
- ◆ The cemetery has just added \$536.80 to the price of the memorial. Usually, this extra money for "care for your memorial" is not put into a trusted fund for future memorial care. It goes directly to the cemetery's general fund to increase the bottom line for the cemetery.
- ◆ The consumer usually doesn't realize the State of Kansas requires cemeteries to put 15% of the cost of the lot's purchase price into a trusted perpetual care fund that can only be used for care and maintenance of the cemetery. The consumer has just paid twice, maybe three times for the "care of their lot and marker".
- ◆ If consumers question these fees, they are often told that their memorial stone will not be cared for and maintained. The consumers are also often told the cemetery will not cover any damages to the memorial stone if the fees are not paid. Some consumers are even told their memorial stone can't even be placed by a third party until the fees are paid. As you can imagine, these "scare tactics" are quite effective.

**House Bill 2275 will provide Kansas consumers protection against unethical and illegal business practices currently being used by some Kansas cemeteries. House Bill 2275 will not have any effect on properly-managed cemeteries.**

I have attached further information about this issue and information about Federal Case Law that relates to this problem. Please let me know if you have any further questions. You can contact me at:  
[monument\\_man@hotmail.com](mailto:monument_man@hotmail.com) or 1-913-367-0103.

## Phone survey of 3 Kansas cemeteries during the week of March 1st 2005

Question	Cemetery #1	Cemetery #2	Cemetery #3
What is the cost of a double gray marker?	36"x12"x4" \$900-\$1200 including perpetual care	48"x14"x4" \$1400 incl. installation/ perpetual care	72"x14"x4" \$1300 includes perpetual care
If I buy from another company, who sets it?	The cemetery set ALL markers no outside companies	Either company may set it	Either company may set it
If another company sets the marker are there any fees & what are they for?	the cemetery would charge the monument co., not the customer.	monument co., can set. cemetery would charge .70 cents psi but would incl. perpetual care	monument co., can set & cemetery would bill monument co.
What charge if cemetery sets marker?	.39 psi to set .10 cents psi for perpetual care	.70 cents psi & incl. perpetual care	incl. in price of the marker
if marker not purch. from you do I still get perpetual care	no response	Yes, by law	no we will not

Items in red denote a violation of Federal case law attached in following section.



ATTACHMENT (A) Federal case law

Monument retailers have had varying degrees of success in challenging these practices as *per se* illegal tying arrangements over the years. Recently, on July 24, 1998, in *Stephens v. Springdale Cemetery, Inc., et al.*, Case No. 98 CH 156, the Tenth Judicial Circuit Court in Peoria County, Illinois, entered a preliminary injunction against the cemetery after finding the cemetery was unlawfully tying the sale of burial lots to the sale, installation, repair and engraving of markers. In reaching its decision, the court reasoned: "When the largest cemetery in the market demands as a precondition to the sale of cemetery lots that its customers purchase installation services exclusively from it, the substantial effect on commerce in that product and the restraint of trade in that product is patent." Further, "The common law right of the deceased person's descendants and loved ones to bury, visit, mark the final resting place, and honor the dead is an independent basis for enjoining the [cemetery's] practices. The common law right, known as the right of sepulture, cannot be abridged by cemetery authority's unreasonable rules, regulations and procedures. Any unreasonable limitation on the rights of sepulture can be enjoined by the deceased one's family." Specifically, the cemetery was enjoined from requiring its then current application form; a mail application process; a \$75 application fee; a \$75 administration fee; a \$25 work order permit; a \$100 foundation inspection fee; a \$75 completion inspection fee; payment by cashier's check only, a work order for each job; a board in/board out requirement; an indemnification agreement; certain policies and procedures for a contractor's application; certain memorial specification and installation requirements; and a \$75 road use fee. *See also e.g., Moore v. Jas. H. Matthews & Co.*, 550 F.2d 1207 (9th Cir. 1977); *Rosebrough Monument Co. v. Memorial Park Cemetery Ass'n*, 666 F.2d 1130 (8th Cir. 1982), *cert. denied*, 457 U.S. 111 (1982), *cert. denied*, 457 U.S. 1111 (1982); *Monument Builders of Greater Kansas City v. American Cemetery Ass'n of Kansas*, 891 F.2d 1473 (10th Cir. 1989), *cert. denied*, 495 U.S. 930 (1990); *Baxley-DeLamar Monuments vs. American Cemetery Ass'n*, 938 F.2d 846 (8th Cir. 1991); and *Florida Monument Builders v. All Faiths Memorial Gardens*, 605 F.Supp. 1320 (S.D. Fla. 1984). When the *Rosebrough* case came back before the Eight Circuit in 1984, 736 F.2d 441, *cert. denied*, 469 U.S. 981 (1984), the court approved certain rules or guidelines imposed on the cemeteries by the district court to remedy the illegal tying. These include:

- (1) the cemetery may establish specifications for the foundation of each type of memorial which it permits in the cemetery. These specifications shall be the same as the cemetery itself utilizes in preparing foundations for particular type memorials;
- (2) the cemetery may schedule, upon reasonable notice, all installations, taking into account weather and ground conditions, cemetery burial services, availability of personnel, etc.;
- (5) the cemetery may require removal of excavated dirt and cleanup of the installation site;
- (6) the cemetery may require
  - (a) evidence that the installer's employees are covered by workman's compensation insurance and that the installer carries adequate public liability insurance in which the cemetery is a named insured, and
  - (b) a bond insure compliance with the rules and regulations
- (7) the cemetery may charge a fee based on the actual labor costs to inspect the finished work product of third party memorial foundation services; and
- (8) the cemetery may require that the installer expeditiously correct any deviations from the specifications. If after notice, any deviations is not corrected the cemetery may make

such corrections at the installer's expenses. All such rules and regulations which the cemetery may hereinafter adopt are to be reasonable in nature and application.

The Eighth Circuit deleted three rules imposed by the district court. The first two would have allowed cemeteries to require the foundation site be laid out by cemetery personnel and the cemetery to supervise the foundation and installation process and to require the installation meet specifications after inspection and prior to placement of the memorial. The court noted that "By requiring that foundation sites be laid out by cemetery personnel and that the work of third party installers be supervised at a fee...the cemeteries could gain an unfair competitive advantage over the third party installers and thus maintain the market control achieved through illegal tying arrangements." The Court also deleted a rule that would have allowed a cemetery which contributes separately to a fund for the care of memorials to require a third party installer to contribute to such fund the same percentage of the charge by the installer as is contributed by the cemetery from its own installation charge. The court, after noting that Missouri law required endowed care cemeteries, such as those involved in the case, to set aside and deposit in a trust fund a percentage of the sales price of each grave sold to be used only for the care and maintenance of the cemetery said, "A cemetery is not statutorily required to set aside any amount from the price of its installation service. Whether a cemetery chooses to do so should not obligate a third party installer to contribute to a fund to cover the costs of what remains the cemetery's responsibility, i.e., care and maintenance of the cemetery."

The Eighth Circuit's handling of these rules is instructive vis-à-vis the potential detrimental effect on consumers, not only of tying of goods and services, but of imposing burdensome rules that can have the same effect.

MARCH 7, 2005

My name is Lavanta Hall and I live at 1914 Maine Street in Lawrence, Kansas and have lived there since 1976. I have been a Realtor for over 31 years. Having been a Realtor, I have experienced the purchasing of land for cemeteries...acquiring acreage for a good price and selling it off at a little square footage for a nice price and profit. The marketing involves this fantasy of green grass beautifully maintained with maybe a fountain or pond to add to the serenity and appeal of the last resting place of your loved ones. It normally remains a fantasy as the real picture emerges of amenities ignored and allowed to deteriorate, of lawns mowed only when someone complains or makes it uncomfortable for the present owner, whoever that might be...as it seems to be sold through the years to another owner and then another. Meanwhile, the so-called rules or guidelines on the front have long been ignored or changed at the whim of the new owners leaving a confused group of families tending to their loved ones graves as they obviously have been neglected. They might have a vague memory of "perpetual care" somewhere on the front, but they are not sure and they do the best they can whenever they have time.

My son expressed his wish to be buried at Memorial Park before he died. He knew several people that had been interred there. My heart sank. I had ignored the obvious neglect and contradictions starting with the first owners that I had observed through the years, telling myself that I would never have cause to use that cemetery. I started encountering difficulties right away. First at the funeral home, I became aware of extra fees required by the cemetery and when I arrived at the cemetery, it was clear that this would not be easy. What I thought would be simple turned into another painful and confusing situation with selection of a site (sites) then fees and more fees with the words "perpetual care" thrown in for extra clarification. I needed to use my credit card and the manager (Steve Paris) jumped up and started only to discover that the equipment was disconnected or didn't work. I told him I would bring him a check tomorrow. My youngest son Steve took the check out for me and discovered they had already changed my selection of the burial site and Mr. Paris had changed the amount required in payment, although I never got an itemized bill or statement. Of course, you are in such pain that you don't care and just accept the situation in an attempt to go on.

In a little while, I needed to for personal reasons to disinter my son and inter him for the second time. That added a new fee...a new vault and interment fees which is a legitimate charge, but I would be willing to bet the old vault was recycled and probably cost as much as though it were new. In 2002, I felt that I could proceed and establish a marker or stone on my son's grave. Once again, I ran into difficulties. I was disappointed in my options, so I went to Ottawa and talked to the owner there. When expressing my desire to have the stone placed correctly with footings, they politely told me they would have to have special permission by the people at Memorial Park as they insisted they place the stone. I had already observed they didn't do this correctly so I couldn't accept this. I visited more monument makers and ran into the same litany, until I went to Atchison and met Scott Strasberg. He immediately understood my plight and told me that they

House Financial Institutions  
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Attachment 9

always put footings under their markings. He carefully explained the fees and there would be an extra fee at Memorial Park to reimburse them for locating the site. When they placed the stone, they were expecting the manager to be there which they were not. I insisted the stone be placed and they called the manager and she gave the go ahead. I do not remember the fee quoted me but I remember being shocked at the amount, especially inasmuch as I saw no markings and they were not there to reassure Mr. Strasberg that he had the right spot.

In a few days, I had a call from the manager to remove the stone. They didn't like my idea of a bench. They threatened me with legal action and I stood my ground for once. In a little while, I had an odd call from a new manager who wanted to know if I were someone else. "All the files were a mess" which I had heard before from the previous manager. They change managers often.

Needless to say after all the inconsistencies I had observed and personally witnessed, I wanted to record the papers for the lots (like a deed). This so surprised Mr. Paris that he told me he had never done that before and could not justify the expense. I told him there would be no expense and took him to my office where there were lots of notaries.

In closing, I want to point out that I knew more than the average consumer, but I still was a victim of their exploitative methods. Most people don't question them and accept that they don't have options, and when they complain about their stone or marker being damaged by mowers or sinking for lack of footings, they submissively pay again the charges for "fixing" the problem. A few people have stopped to talk to me at the cemetery and talk about "the neglect, etc. and mutter at some point about thinking there was "perpetual care". It is my belief that cemeteries should never be privately owned. If they were owned by the local government, which of course is us, we would have a place to go for accountability.

Thank you for this opportunity to help stop at least one of the problems inherent in the act of dying. It is hard enough to experience the loss of loved ones without also experiencing being taken advantage of.

House Financial Institutions Committee

HB2275

Monday, March 7, 2005

William L. Wright, CCE

Representing Fairlawn Cemetery, Hutchinson, Kansas, and the  
Kansas Cemetery Association

Mr. Chairman, Mr. Vice Chairman and honorable members of the committee. I want to thank you for the opportunity to appear today for the purpose of discussing House Bill 2275. My name is Bill Wright and I am the Vice President of Fairlawn Cemetery and the Heritage Funeral Home in Hutchinson. Fairlawn was founded in 1918 and my parents purchased the cemetery in 1977. Fairlawn will perform 180 to 200 burials a year and the funeral home 60 to 65 funerals a year. I am a Past President of the Kansas Cemetery Association, a Past President of the International Cemetery and Funeral Association (ICFA) with over 6500 members from 30 countries. I am currently a member of ICFA's Government and Legislative Affairs Committee and the Chairman of the Political Action Committee.

Specifically I will discuss how my cemetery treats third party monument dealers and installers who sell and install memorials to our property owners and how the industry deals fairly with third party providers, to insure good public relations and consumer protection. I will discuss how the cemetery industry assists consumers who may be having a problem with a cemetery

At Fairlawn we are typical with most privately owned cemeteries in Kansas in that we charge a care and installation fee. We charge the same non-discriminatory amount for customers who purchase memorials from monument dealers as we do for our own customers. Our charge is based on the size of the memorial and is calculated at 60 cents per square inch. From the 60 cents, 20 cents is applied for the installation and 40 cents is applied towards the care fund. When a third party installer installs a memorial we do not charge an installation fee, but we do require a the payment for the non-discriminatory memorial care fee

The care portion is paid to take care of ongoing maintenance and upkeep on installed memorials. At Fairlawn we have the responsibility to maintain well over 16,000 memorials and monuments, and this number increases nearly every day. Care includes raising and leveling, keeping the area around the memorials clean and free from grass, replacing and repairing memorials that have been damaged. This is an ongoing process and will take place forever.

We have always allowed third party installers the right to install memorials and we do not require a setting fee. However, we would require them to produce evidence of Workers Compensation as is required by state law, and they must show current proof of liability insurance. They must also agree to repair damages to the cemetery, if any should occur. In addition, we would require the installation to be completed properly. Ultimately it is the consumer who must be satisfied. HB2275 relieves the responsibility and liability of the cemetery for mistakes made by third party installers, however, it does not provide remedy or redress for the consumer.

At Fairlawn we do not charge an installation fee when third parties install memorials even if we incur a cost, but not all cemeteries are alike. In the State of Kansas as with most states you will find, privately owned cemeteries like Fairlawn, city and township cemeteries, church cemeteries, religious cemeteries, and veterans cemeteries. If Reno County is typical of the other 103

counties in the state you will find 69 cemeteries in my county. This adds up to a very large number of cemeteries that are potentially or will be directly effected by HB2275.

In Reno County as with all counties in the state, a very high percentage of cemeteries are City or Township Cemeteries. The primary source of operating income for these cemeteries is subsidized through tax dollars from the general funds of the city, county, and townships in which they are located. Only in rare cases are cemeteries of this nature self supporting. In short, taking away the ability for these cemeteries to charge a nominal fee for the work they do would further and forever increase the burden on the tax payers. As HB2275 seeks to do.

I think it is important to note that the two major national associations, the International Cemetery and Funeral Association and the North American Monument Builders Association in 1986 agreed to recommended installation guidelines. I have included this attachment for your review.

By practice and definition, perpetual care charges are placed in a fund to help maintain the cemetery grounds and infrastructure This can include mowing of the cemetery, repairing and replacing trees and shrubs, maintaining the roads and water system and providing an office providing services to the community. Monies paid by the consumer are placed in the fund and the funds invested using prudent investor rules of investment. Only the interest can come back to the cemetery for the purposes explained above. The principle is never touched and the corpus stays intact. All privately owned cemeteries in the state have a Perpetual Care Fund and the fund, is tied to the property sale. The minimum amount that must be deposited is fixed by the state at a minimum of 15% of the property sale. There is another very important distinction to make concerning the Perpetual Care Funds of privately owned cemeteries in the state of Kansas. A privately owned cemetery must be in compliance with the statutory requirements as set out by Kansas statute and enforced by the Secretary of State and the Attorneys Generals office. However, the primary purpose of perpetual care is to insure the property owners that the cemetery will be properly maintained by local standards when all income generating properties are sold. In other words, the perpetual care fund will not be fully funding for its intended purpose until such time as all the property is sold. As for the reasons mentioned above it was never the intent of the law that the perpetual care funds of the cemetery be required to maintain memorials and or monuments installed in the cemetery.

By contrast, since memorials and monuments are the personal property of person or persons who purchase them memorial care fees are paid to the cemetery by the consumer to insure the care of their particular memorial. For an example, and using the fee schedule that I previously outlined, a standard size single granite memorial installed at Fairlawn is 24 inches by 12 inches. The monies dedicated to the care fund would be \$115.20. This is a one time non- discriminatory charge to help off set the overall cost associated with the maintaining or replacement cost of the memorial if damaged. We can agree that in this state all cemeteries be properly maintained by local standards forever, the fact that cemeteries have a Memorial Care Fund is not only a prudent business practice, but it is also protects the consumer. A strong argument can be made to support

the concept that all cemeteries in the state should be encouraged to establish a Memorial Care Fund.

Furthermore, the courts have long recognized the authority of cemeteries to determine the size, style, color, placement, material, and allowable inscriptions for memorials installed in the cemetery. This is not unlike home owners associations. The cemetery has a vested interest in the overall look of the cemetery, in the longevity of materials used in memorial manufacturing to insure they will last forever, a vested interest for the safety of the employees that work at the cemetery and for the public that visits the cemetery. Finally and perhaps most importantly cemeteries have a responsibility to protect the interest of all the property owners of the cemetery. Cemeteries insure the rights of all through the writing, establishment, and the lawful enforcement of reasonable rules and regulations that are always available for review, and upon request we make copies for anyone who inquires.

House Bill 2275 alludes to the practice of tying the monument or memorial sale to the purchase of the land or the practice of telling a customer that they are required to purchase the same at the cemetery. All of us here today, and everyone that I know of in the industry nation wide knows that this practice is not legal. The manner in which we sell memorials at Fairlawn is the same as all privately owned cemeteries that I am aware of in this country. We offer the opportunity for families to purchase their cemetery property, vaults, and memorials all at the same time. This often times saves money due to inflation, and pre-arrangement discounts, and it eliminates emotional over spending at the time of a death. More importantly it gives people a voice in the selection of the family memorial while they are alive, and it seems the consumers that we work with find it to be more convenient.

We allow everyone the choice to purchase these items all at once, or one at a time. We present and make the customers aware of the choices one at a time, and we itemize the choices they make on our purchase agreements. In no way, shape, or form does any cemetery that I am aware of force a consumer to purchase a memorial exclusively from the cemetery.

In addition to government agencies where can a consumer turn to if they are having a problem with the cemetery? I can say with out question that all roads lead to the International Cemetery and Funeral Association (ICFA)..... Cemetery Consumer Service Counsel (CCSC). In 1979 this organization was formed, and it is where industry people volunteer their time and experience to help resolve disputes. Historically this method of mediating disputes has worked very well.

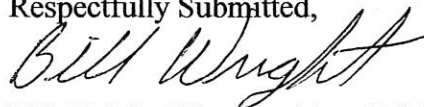
The CCSC is an arbitration arm of the ICFA. Most state cemetery associations including Kansas has a state CCSC Chairman. In this state that chairperson is Sharon McDonough. She owns Fairlawn Cemetery and the Heritage Funeral Home in Hutchinson. I have attached the information describing how the program works for your review.

Most consumers would not be aware of this program, but most Better Business Bureau and Attorneys General's office, should be familiar with the program, and channels all inquiries to the ICFA, which in turns provides the State Chairman with the information.



Mr. Chairman, There exists a long history of harmonious relationship between cemeteries and memorial dealers. There have been times when disputes arise, however, by and large, they have been resolved in a manner that satisfies everyone involved including the consumer. Current laws exist that govern the practices associated with the issue before your committee. Therefore, for the reasons I mention with this written testimony and that current laws clearly address the issues at hand. I strongly urge the committee to report House Bill 2275 unfavorable.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Bill Wright". The signature is written in black ink and is positioned below the typed name.

Bill Wright, Vice President Fairlawn Cemetery and The Heritage Funeral

# RECOMMENDED INSTALLATION GUIDELINES AGREED TO BY THE INTERNATIONAL CEMETERY AND FUNERAL ASSOCIATION AND THE MONUMENT BUILDERS OF NORTH AMERICA

## Memorandum of understanding between the International Cemetery and Funeral Association\* and the Monument Builders of North America

In jointly approving and disseminating to their respective members the "Recommended Installation Guidelines," the American Cemetery Association and the Monument Builders of North America wish to clarify the purpose and intention of developing these guidelines:

- a. the "Recommended Installation Guidelines" provide a vehicle to avoid unfair trade practices and to resolve disputes involving the installation of markers and memorials;
- b. the guidelines are recommended by the associations to their respective membership to better serve the consumer, enhance retail competition, and to promote a better working relationship within the interment and memorialization industry;
- c. it is recognized that the "Recommended Installation Guidelines" may require modification from time to time as the result of statutory changes and court decisions;
- d. the associations shall establish a joint committee to meet as needed, but not less than once per year, to:
  - 1. Review, study, and recommend changes in the "Recommended Installation Guidelines";
  - 2. Receive and review complaints or charges of violations of the "Recommended Installation Guidelines" and make recommendations of suitable action to the respective associations;
- e. the associations shall not provide financial aid or other assistance to an association member causing a dispute through failure to comply with these "Recommended Installation Guidelines." However, nothing in this document shall require that either association lend any type of assistance to a member other than that enumerated in the "Recommended Installation Guidelines."

It is so understood and Agreed.

Thomas J. Gardner, Sr.  
President  
American Cemetery Association

Date — November 7, 1986

Sherwood K. Snyder  
President  
Monument Builders of North America

Date — November 7, 1986

Formerly the American Cemetery Association

### INTRODUCTION

These guidelines concerning the installation of memorials are intended to protect the respective interests of cemetery lot owners, cemeteries, independent sellers and installers of memorials, and the general public.

#### 1. GENERAL

The following provisions shall govern generally the activities of independent sellers and installers ("seller/installer") of markers, memorials and monuments ("memorials") in connection with the preparation and installation of memorials in managed cemeteries. Employees of a seller/installer shall be expected to provide a level of installation service and performance not less than that of the staff of the cemetery in which the installation is taking place.

- a. The seller/installer will be responsible to the cemetery for any actions he has committed which cause damage to the cemetery grounds, including roadways, other than normal use.
- b. All work in connection with the preparation and installation of a memorial or the cutting of an inscription will cease while a funeral is in procession or a committal service is being conducted nearby.
- c. All installation work and the cutting of inscriptions will be done during cemetery normal weekly working hours or at such other times as may be arranged by the cemetery.
- d. The seller/installer of memorials will not sell or install any memorial that is not in accordance with the lawful published specifications, guidelines and instructions provided by the cemetery, for quality and design of memorials, and quality and method of installing memorials. If the seller/installer of a memorial should sell and install a memorial that is not in accordance with the lawful published specifications, guidelines and instructions of the cemetery, then the seller/installer must remove the memorial at the seller's expense and shall pay any reasonable expenses incurred by the cemetery in connection with the removal. The cemetery will give lot locations and any other information from its records without charge to the seller/installer of memorials which is essential for the

seller/installer to locate the proper grave. The cemetery may require that its personnel certify the location prior to any work by an installer.

Cemeteries and the sellers/installers of memorials shall resolve disputes concerning installations through binding arbitration.

#### 2. AUTHORITY

- a. The lot owner and his agent, next-of-kin, or personal representative shall have the right to purchase a memorial and/or installation service from any seller/installer of memorials provided that the memorial and installation service is in accordance with the lawful published specifications, guidelines and instructions of the cemetery.
- b. The cemetery is entitled to determine that the person ordering the memorial and installation service is authorized to do so, to the extent this may be determined by the records the cemetery is obligated to keep, as consistent with rules and regulations of the cemetery.
- c. The seller/installer of memorials may be authorized by the lot purchaser or his agent, next-of-kin, or personal representative to perform all necessary work related to preparation and installation of the memorial.
- d. The cemetery shall provide lot owners, next-of-kin, their families and their agents or personal representatives, including sellers/installers of memorials, without charge, the locations of graves from cemetery records.
- e. The seller/installer of memorials, acting on behalf of the memorial purchaser, shall give seven (7) days prior written notice, or such lesser notice as the cemetery will accept, to the cemetery of any installation(s) the seller/installer intends to make in the cemetery, for the cemetery's administrative needs. This notice should contain the full name, address and relationship of the memorial purchaser to the decedent for whom the memorial is being installed. The written notice must also contain the type and size memorial, the material (such as granite, marble or bronze), and the full name(s) and dates of the person(s) interred in the grave.
- f. The cemetery will notify the seller/installer within two working days if there are any errors in the written notice.

### 3. SPECIFICATIONS

- a. Cemeteries may have different installation specifications and practices due to different climatic conditions, different soil conditions and different types and sizes of memorials.
  - i. The cemetery shall provide reasonable written specifications and instructions governing installation of memorials which shall apply to all installations whether performed by the cemetery or by an independent seller/installer of memorials. These written specifications shall include provisions governing hours of installation or any other administrative requirement of the cemetery.
- c. A copy of these written guidelines shall be provided upon request, without charge, to the lot owner, next-of-kin and personal representative or agent, including a seller/installer.
- d. The seller/installer shall comply with the cemetery's lawful written installation specifications and instructions.

### 4. INSTALLATION PERFORMANCE

- a. In addition to following the cemetery's lawful written installation specifications and instructions, the seller/installer shall observe the following recommended installation practices:
  - i. The seller/installer shall locate the grave space as outlined on the cemetery plot plan, which plan shall be provided, without charge by the cemetery.
  - ii. The seller/installer shall follow the cemetery's instructions regarding positioning of the marker or memorial.
  - iii. All sod and dirt removed during excavation will be carefully removed. None will be left on the cemetery lot except that needed to fill the space between the memorial and the adjacent lawn.
  - iv. The memorial will be transported to the cemetery lot in a manner which will not cause damage to the cemetery lawn.
  - v. The center line of the memorial will be aligned laterally and longitudinally with the center of the grave in accordance with the cemetery's written instructions.
  - vi. The seller/installer will carefully fill in any areas around the memorial with topsoil or sand, in accordance with the cemetery's written instructions.
  - vii. The seller/installer will remove equipment and any type of debris which may have accumulated in the process of installing the memorial.
  - viii. The seller/installer will also check to see if any adjacent memorials have become soiled or dirty due to his work of installing his memorial and, if so, will clean such memorials.
    - i. If the seller/installer should accidentally damage any cemetery property, he shall first notify the cemetery of the damage. He shall then repair such damage as soon as possible upon approval by the cemetery. The seller/installer must show current proof of Workers Compensation as required by state laws and must also show current proof of liability insurance in the amount of \$300,000 to \$500,000 to indemnify the cemetery against claims resulting from installation. Evidence of the above limits of liability insurance precludes the requirement for any type of performance bond unless required by special project or by governmental statute. Further, that any conditions and/or obligations imposed on the seller/installer be similarly imposed on other providers of goods and services to the cemetery.
  - x. When the seller/installer has completed the installation of all memorials in that cemetery that he plans to install that day, he must go to the cemetery office and give notice of work completed on that date.
- b. Following notice by the seller/installer that the installation(s) work is completed, the cemetery may, but is not required to, inspect the installation. Further, if during installation, the cemetery personnel determines that specifications are not being followed, they may cause work to be stopped until the infraction is corrected.
- c. If the cemetery believes a memorial has not been installed correctly, or that the seller/installer has damaged the cemetery grounds or property, the cemetery must, within seven (7) days, notify the seller/installer in writing of such errors.
- d. If the cemetery should find any debris, equipment, or any other undesirable thing that the seller/installer has left in the cemetery, then the cemetery should call the seller/installer immediately upon discovery and the seller/installer will then be required to remove such items.
- e. If a memorial should sink, tilt or become misaligned within twelve (12) months and the cemetery believes this is due to faulty installation, the cemetery shall notify the seller/installer in writing so that the seller/installer can correct it. The seller/installer would not be responsible if the damage were caused by the cemetery, including but not limited to inadequate written specifications and instructions, running a backhoe over the memorial, carrying a vault or other heavy equipment, or opening or closing a grave adjacent to the memorial.

### 5. CONTRIBUTION TO A TRUST FUND

- a. In states/provinces where applicable state/provincial statutes now, or in the future, authorize or do not prohibit a perpetual care trust fund a cemetery may require each memorial purchaser to contribute a reasonable, nondiscriminatory amount to a perpetual care trust fund the principal of which shall not be withdrawn. The reasonable, nondiscriminatory amount per memorial shall be the same for memorials purchased from the cemetery or an independent seller/installer. This fund shall be subject to existing state/provincial statutes. In states/provinces without perpetual care statutes, cemeteries may establish a trust fund with the same purposes and limitations as a perpetual care fund and the principal of which may not be withdrawn. These funds shall be subject to existing state/provincial statutes governing trust funds.
- b. A cemetery shall provide proof of said deposit to the trust fund to each memorial purchaser who requests it. The records for this fund shall be open at any time for inspection by each memorial purchaser, or purchaser's agent. The said trust fund records shall be sufficiently detailed to establish that the correct contributions have been made to the trust fund on all memorials installed, in a timely manner.
- c. The income from this fund shall be used for the purpose of resetting, repairing and replacing damaged memorials and related general maintenance.

### 6. BINDING ARBITRATION

These specifications for installation of memorials are intended to protect the respective interest of cemetery lot owners, and their next-of-kin or personal representative and agents, cemeteries and monument seller/installers. To resolve disputes concerning adequacy of installations and compliance with cemetery installations specifications and instructions, binding arbitration shall be utilized by the parties.

- a. If the cemetery management believes in good faith that the seller/installer has not followed the cemetery's written specifications, and if the seller/installer refuses to correct the errors after they are pointed out in writing by the cemetery, the cemetery and seller/installer will resolve the dispute by binding arbitration. The cemetery and the seller/installer will each select an arbitrator, and such arbitrators will then select a third arbitrator. These three will then comprise the arbitration panel.
- b. The arbitration panel will use the cemetery's lawfully published specifications and in the presence of the two parties (if they so desire) shall inspect the installation which is in question. In addition, the three arbitrators will inspect a sample of not less than three and not more than twelve memorials which the cemetery has recently installed and compare them with the specifications.
- c. The arbitrators shall decide if the disputed memorial was installed by the seller/installer in accordance with the cemetery's written instructions, and whether the installation is at least equivalent to the cemetery's own memorial installations. The arbitrators shall also decide whether the installation may be repaired, and at whose expense.
- d. The cemetery management and the seller/installer of memorials agree to abide by the decision of the arbitrators, and judgment upon the award may be entered in any state court having jurisdiction.
- e. In addition to agreeing to abide by the arbitrators' decision, both parties agree that the losing party will pay all of the expenses of the arbitrators for arbitrating the dispute.
- f. If the arbitrators' decision is in favor of the cemetery, then the seller/installer of the memorial, in addition to paying the cost of arbitration, will also correct the installation of the memorial at his own expense.

### 7. CEMETERY FEES

The cemetery may charge a fee based on its actual labor costs to inspect the finished work product of sellers/installers of memorial foundation and installation services.

Actual labor costs, in accordance with general accounting practices, are defined as the hourly compensation including fringe benefits of those employees whose normal duty is to inspect memorials installed.

Normal inspection time will vary with different types of memorials and conditions. General administrative and overhead costs and any other functions not related to actual inspection time shall be excluded from inspection fees.

### CEMETERY CONSUMER SERVICE COUNCIL COMPLAINT AND INQUIRY FORM

1. Person Making Complaint:

2. Cemetery Involved:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

3. Describe in reasonable detail the nature of your complaint or inquiry. To the maximum extent possible, try to be specific about such things as appropriate dates, the names of people involved and the nature of the problem. Also, please indicate if you spoke to responsible officers of the cemetery. Your complaint or inquiry *will* be processed, even if you do not remember specific details, such as the names of the persons involved. However, we will be better able to assist you if this information is provided. Attach copies of any documents or material that you feel might be relevant and helpful.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Signature of person making complaint or inquiry: \_\_\_\_\_

5. Date this form is mailed: \_\_\_\_\_

6. The complaint has/has not (strike out incorrect phrase) been satisfactorily resolved.

Signature of person making complaint or inquiry and date:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

7. If you have any questions, our telephone number is 703-391-8407.

8. COMPLETE AND RETURN THIS FORM TO:

**Cemetery Consumer Service Council**  
PO Box 2028  
Reston, VA 20195-0028

## OUTLINE OF PROCEDURES

1. A copy of the complaint or inquiry shall be sent to the cemetery operator involved within ten days of receipt.
2. The cemetery operator has twenty days from the date the notice of the complaint was mailed to him to resolve the matter to your satisfaction. (It is anticipated that many disputes will be resolved as a result of discussions between the cemetery operator and the consumer.)
3. If the state cemetery consumer service committee has not received notification that the complaint or inquiry has been satisfactorily resolved, then it shall initiate conciliation efforts within twenty days after notice was mailed to the cemetery operator. The state committee shall have thirty days thereafter within which to resolve the complaint or inquiry. If the matter is not so resolved, the committee shall issue a report containing its recommendations on the matter within ten days thereafter, a copy of which shall be provided to you.
4. If the person making the complaint or inquiry or the cemetery operator is not satisfied, such person shall have the right to appeal the recommendation of the state committee to the national Cemetery Consumer Service Council (CCSC) within fifteen days after receipt of the state report. Additional written statements may be filed with the CCSC by the consumer or cemetery operator within ten days after receiving notice from the CCSC that the issue has been appealed. The CCSC will appoint at least one representative to review the record (written submissions) and render a recommendation within ten days after the deadline for submitting additional written statements. The consumer or cemetery operator may appeal the recommendation to the full CCSC within ten days of receipt of such recommendation. The decision of the full CCSC will be the final step in the process.
5. If, at any stage, the person making the complaint or inquiry is satisfied with the recommendation of the state committee or the CCSC, and the cemetery operator refuses to accept such recommendation, the state committee or the CCSC, as the case may be, shall make available its recommendation and the testimony of its personnel in any proceeding which the person making the complaint or inquiry desires to bring.
6. It shall be the responsibility of the cemetery operator to obtain written acknowledgment from the person filing the complaint or inquiry that the complaint or inquiry has been resolved satisfactorily if such agreement is reached within twenty days after receipt of the notice of complaint. It shall be the responsibility of the state committee to obtain the written acknowledgment once its conciliation efforts have been initiated. However, if no appeal is filed with the CCSC within the periods of time set forth above, the CCSC believes that the matter has been satisfactorily resolved in the absence of notification to the contrary. Such letter shall be accompanied by a written reply postcard for the person filing the complaint or inquiry to indicate whether additional action is or is not required.
7. Any of the time periods may be extended by agreement of all of the parties.
8. Upon request of the cemetery and the consumer that they wish to submit the matter to binding arbitration, the state committee will assist in efforts or arbitrate the dispute in accordance with the rules of the American Arbitration Association.

**Examples of Permit-Setting Charges**  
For Cemeteries in Select Communities

<b>Eastside Cemetery, Hutchinson</b>	<b>\$0.20 per square inch</b>
<b>McPherson</b>	<b>\$20</b>
<b>Sterling</b>	<b>\$10 for single memorial \$15 for companion</b>
<b>Halstead</b>	<b>\$10</b>
<b>Kingman</b>	<b>\$5</b>
<b>Pratt</b>	<b>\$10</b>
<b>Newton</b>	<b>\$20</b>
<b>Ellsworth</b>	<b>\$10</b>
<b>Derby</b>	<b>\$25</b>
<b>Loredo</b>	<b>\$25</b>
<b>North Inman</b>	<b>\$10</b>
<b>Greensburg</b>	<b>\$5</b>
<b>Danville</b>	<b>\$25</b>
<b>Great Bend</b>	<b>\$15</b>
<b>Hoisington</b>	<b>\$5</b>

Analysis of Impact of HB 2275 on Legal Issues addressed by Settlement and Arbitration  
Agreement and other Authorities

1. Anti-tying Sales

(b) No person authorized to sell grave space may tie the purchase of any grave space to the purchase of a monument from or through the seller of any other designated person or corporation.

The bill language would prohibit any “tie” or combination of property and merchandise for sale by a cemetery. The language fails to recognize that companies are allowed to combine products for sale under a discounted arrangement. What is prohibited is the requirement that items be purchased together within a context where the consumer has no choice (i.e. a requirements sale). The SAA permits “tie sales” under ¶9(j).

(c) Noncemetery persons and firms shall have the right to sell monuments and to perform or provide on cemetery property foundation, preparation and installation services for monuments.

The bill language attempts to address another tie issue: the sale of a monument and the installation. However, the bill fails to recognize the cemetery’s rights to ensure the installer is qualified, and that the installation is done properly. The SAA addresses this issue in various subparagraphs of ¶9.

2. Reasonable Cemetery Rules and Regulations

However, a cemetery company or any other entity owning and operating a cemetery may establish reasonable rules regarding the style and size of a monument or its foundation, provided such rules are applicable to all monuments from whatever source obtained and are enforced uniformly as to all monuments.

There is ample case law confirming a cemetery’s right to regulate all aspects of the markers or memorials installed on its burial spaces, including style, size, color, inscription, symbols, etc. By intent, or omission, the bill limits the cemetery to regulating style and size of the monuments, resulting in ambiguity over the cemetery’s authority over the other characteristics of the monuments.

3. Distribution of Cemetery Rules and Regulations

Such rules shall be conspicuously posted and readily accessible to inspection and copy by interested persons.

The bill would impose a new requirement on cemeteries to post their rules and regulations in a conspicuous manner. While similar requirements are often imposed on regulated entities, those requirements are detailed by regulations and rules promulgated by governmental entities. That doesn’t exist here. Consequently, the requirement is open to different interpretations, thus increasing the likelihood for litigation under the final paragraph of the bill.

Also, does the bill impose an obligation to provide any inquiring party the capability to copy the regulations? Is it not enough to make copies of the regulations available?

#### 4. Setting Fees

(d) No person who is authorized to sell grave space and no cemetery company or other entity owning and operating a cemetery may: (1) Require the payment of a setting or service charge, by whatever name known, from third party installers for the placement of a monument;

The bill would prohibit cemeteries from charging a setting fee or a service fee to any third party monument installer. The bill fails to recognize the time and resources required of the cemetery in either preparing the site for the installation or the selection and supervision of the site and the installations. Installation fees and inspection fees are recognized and permitted by the SAA (§9(b) and §9(g)).

#### 5. Perpetual Care

(d) No person who is authorized to sell grave space and no cemetery company or other entity owning and operating a cemetery may: (2) refuse to provide care or maintenance for any portion of a gravesite on which a monument has been placed;

The bill imposes a requirement of perpetual care for any gravesite on which a monument is placed. The bill gives rise to several ambiguities. Does the bill impose a care obligation with regard to the monument, or just the gravesite on which the monument is set? How is the bill to be interpreted in relationship to Kansas' existing perpetual care law? Does the bill impose perpetual care obligations on family cemeteries and public (municipal) cemeteries?

#### 6. Cemetery Liability

No cemetery company may be held liable for the improper installation of a monument where the monument is not installed by the cemetery company or its agents.

While the bill clears the cemetery of any liability for the monument company's installation errors, it does not provide the cemetery with any authority to redress such errors. The bill precludes the cemetery from charging fees in anticipation of such problems.

If any cemetery company violates the provisions of this section, the monument company may bring an action in any court of competent jurisdiction for damages sustained by such monument company as a consequence of the cemetery company's violation.

The bill creates a new cause of action that is solely in favor of one party to the transaction. Such causes of action are generally limited to parties (consumers) who are at bargaining disadvantage. That is not the case in this situation. With regard to this issue, the bill is inequitable on its face.



#6411.001

SETTLEMENT AND ARBITRATION AGREEMENTRECITALS

Plaintiff, Monument Builders of Greater Kansas City, Inc. (MBGKC), individually and as assignee of the claims of Bluhm Monument Works, Inc., Kansas City Monument Co., and Midwest Monument Company, Inc., and the assignors/members, Bluhm Monument Works, Inc., Kansas City Monument Co., and Midwest Monument Company, Inc., hereby enter into this Settlement and Arbitration Agreement in order to terminate the litigation now pending in the United States District Court for the District of Kansas in Civil Action Case No. 84-2469-S, without the admission of wrongdoing or liability on the part of any party.

Settling Defendants deny any wrongdoing or that they have in any way violated the antitrust laws of the United States. They are entering into this Settlement and Arbitration Agreement solely to terminate the litigation presently pending in the United States District Court for the District of Kansas in Civil Action No. 84-2469-S.

Neither the fact that this Settlement and Arbitration Agreement was entered into, nor its terms or conditions, shall infer or imply, or be used, in any way, as evidence of any wrongdoing or violation of any law, including the antitrust laws of the United States, on the part of any party to this agreement.

1. As used in this Settlement and Arbitration Agreement, "MBGKC" shall mean collectively the Plaintiff, Monument Builders of Greater Kansas City, Inc., and its assignors/members Bluhm Monument Works, Inc., Kansas City Monument Co. and Midwest Monument Company, Inc. The word "Dealer" as used in the agreement means collectively the plaintiffs in Case No. 84-2469-S.

2. As used in this Settlement and Arbitration Agreement, "Settling Defendants," "Cemeteries," or "the Cemeteries" shall mean those Defendants set forth in Exhibit 1.

3. As used in this Settlement and Arbitration Agreement, "person" shall mean any individual, sole proprietorship, partnership, firm, association, corporation, or any other legal or business entity.

4. As used in this Settlement and Arbitration Agreement, "memorial" shall mean a monument, memorial, grave marker or markers, whether made of bronze or granite, or any other product placed in a cemetery that serves as lasting evidence or reminder

of someone who is deceased, provided, however, nothing in this agreement shall include the sale of or construction of mausoleums, niches or urns sold by the cemetery or its agents.

5. This Settlement and Arbitration Agreement shall be binding upon MBGKC, its Assignors/Members, and their officers, directors, employees, successors and assigns.

6. This Settlement and Arbitration Agreement shall further be binding upon all Settling Defendants, their officers, directors, employees, successors and assigns, including, but not limited to, any parent company, subsidiary, division, or other corporate or business entity now or hereafter associated in any way with any of said Settling Defendants.

7. Promptly upon the execution of this Settlement and Arbitration Agreement, the parties shall seek court approval of an order dismissing the pending litigation with prejudice of all claims against Settling Defendants. The parties shall further apply to the court for dismissal of counterclaims, if any, including, but not limited to, any sanctions orders previously entered by that court against Plaintiff and/or its counsel, without any admission by Plaintiff that such counterclaims or sanctions orders are valid as of the date of this agreement.

#### AGREEMENTS

The foregoing Recitals are incorporated herein by reference.

8. In consideration of the terms of this Settlement and Arbitration Agreement, Plaintiff MBGKC and each of the Dealers agree that they will not:

- (a) Engage or participate in any plan, program or course of action in violation of the antitrust laws of the United States.
- (b) Adopt any rules or regulations or engage in any practices that:
  - (1) Involve non-compliance with rules and regulations of cemeteries relating to the installation of memorials which are uniform for both Cemeteries and Dealers.
  - (2) Schedule installments in a manner which involves giving less than three (3) working days notice of the installation to the Cemetery unless there are special and/or emergency situations agreed to by the Cemetery and the Dealer.

- (3) Recommend that fees imposed by Cemeteries permitted by the provisions of this agreement need not be paid by the Cemetery's lot owner.
- (4) Attempt installations of memorials where all fees and encumbrances owed to the Cemetery pertaining to the lot have not been paid.
- (5) Represent falsely to customers that they are affiliated in any way, directly or indirectly, with the Cemetery in which the customer owns a lot.
- (6) Refuse to indemnify the Cemetery or hold it harmless for any injuries suffered by Dealers' employees as a result of the negligence or carelessness of Dealers while on the Cemetery's premises. Dealers agree to indemnify Cemeteries and hold Cemeteries harmless from and against all loss, liability, damage and expense incurred by Cemetery resulting from Dealers' employees' tortious acts or omissions.
- (7) Prevent a Cemetery from charging a one time care fee in accordance with paragraph 10 hereof.

9. In consideration of the terms of this agreement, and the dismissal with prejudice of all claims against them, each of the Settling Defendants agree that they will not:

- (a) Prohibit Dealers from selling memorials to its customers, subject to Cemeteries' uniform rules and regulations.
- (b) Prevent Dealers with written authorization from lot owners from performing work necessary for the installation of the memorial, subject to the rules and regulations of the Cemetery. If a Dealer and Cemetery agree to have a memorial or a foundation installed by the Cemetery, each Settling Defendant agrees that the price charged to Dealers for performing work necessary for the installation of the memorial shall be no greater than that which would otherwise have been charged by the Cemetery to its own customers.
- (c) Establish specifications for Dealers for the foundation of each type of memorial which it permits in the Cemetery, which specifications are different from those the Cemetery utilizes in preparing foundations for each type of memorial.

- (d) Schedule installations by Dealers in a manner which is more stringent or burdensome than the manner in which installations are scheduled for performance by the Cemetery itself.
- (e) Require more than three (3) working days advance notice for installations.
- (f) Fail to promptly provide to Dealers, on written request, copies of written Cemetery rules and regulations governing specifications affecting the foundations, memorials or installation thereof, fees charged by the Cemetery (but not including Cemetery's prices for monuments or other property sold by Cemetery), and/or fail to provide accurate information concerning the location of grave sites.
- (g) Charge an inspection and layout fee, except a fee based upon a Cemetery's actual costs and overhead in accordance with generally accepted accounting principals, to inspect and lay-out where inspections and layouts are performed for the memorial foundation and installation service. The parties agree that in no event shall the inspection and layout fee be greater than \$25 in 1991, and that such amount may be adjusted for future increases or decreases in the Consumer Price Index (Urban Wage Earners and Clerical Workers 1982-84 = 100).
- (h) Require a performance or other bond to insure compliance with its rules and regulations when the Dealer maintains at least \$500,000 in liability insurance coverage. A Dealer may be prohibited from installation in each cemetery owned by a Settling Defendant (or by a corporation related to such Settling Defendant), if
  - (1) it has been established (by arbitration to the extent provided in paragraph 13) that the Dealer has violated cemetery rules or regulations, and
  - (2) Dealer does not comply with the arbitrator's decision within the time ordered by the arbitrator.
- (i) Charge the Dealer or its customer for fees of any nature in connection with the base foundation and/or memorial except as specifically provided in this Agreement where the installation thereof is performed by the Dealer.

- (j) Offer any and all sales of the items hereinafter described in this paragraph j only upon the condition that the memorial or foundation be purchased from the cemetery, make such memorial or foundation sales without each item or service being priced separately in the contract, nor impose a condition that any one item or service may be purchased only if another item or service is purchased. This includes lettering on markers, monuments, and lawn crypts; and the sale of markers, monuments, lawn crypts, flower vases, and all other related memorialization to be placed in a cemetery, but does not include the sale of mausoleums, niches or urns sold by the Cemetery or its agents.
- (k) Prevent Dealers from selling and/or installing last date lettering and last date scrolls where otherwise permissible on the items described in paragraph (j). If the Dealer and the Cemetery agree to have the same done by the Cemetery, each Settling Defendant agrees that it will charge the Dealer or its customer no more than the fee charged to the Cemetery's customers for such service.
- (l) Require any size, brand, design or alloy of bronze memorials, or any size, brand, design, or kind of material of granite, marble or stone memorials that would not be equally available to the Dealer for offering to the customer in competition with the Cemetery.

Settling Defendants, and each of them, agree that they will:

- (m) Provide to Dealers, upon written request, copies of current Cemetery rules, regulations and prices for installation. Any proposed changes in the Cemetery's rules and regulations regarding memorials and foundations, and the installation of memorials, will be sent to each Dealer who had previously requested such rules and regulations, not less than thirty (30) days prior to the effective date of the proposed change. This shall include any proposed change in layout fees.
- (n) Adopt Cemetery rules and regulations pertaining to memorials, foundations, and installation of memorials which will be uniform for both the Cemetery and the Dealer.

10. Dealers agree that Settling Defendants may charge Dealers' customers (or Dealer) a one-time fee for the care and/or

resetting of a memorial (including its foundation) that is equal to such fee charged to Settling Defendants' customers, so long as such fee is deposited into a trust for the care and maintenance of memorials, foundations and the cemetery.

11. Settling defendants have agreed to pay the sum of Sixty-four Thousand Seven Hundred Fifty and no/100 Dollars (\$64,750.00) in settlement of the pending litigation. Said sum shall be paid to Ray Fachtel, P.C. Clients' Trust Account as counsel for the Plaintiff MEGKC to be distributed to Plaintiff and Dealers in accordance with an agreement previously entered into between them.

12. Dealers agree to maintain at least \$500,000 in liability insurance coverage. Dealers further agree to maintain statutory Workers Compensation insurance coverage on all their officers, partners, directors and employees who are actually involved in the installation of memorials in the cemetery. Written timely evidence confirming that all such coverage is in force and effect shall be provided by Dealer upon request of the Settling Defendant with which any business is hereinafter transacted hereunder. Dealers agree that each will guarantee all products for period of at least six (6) months, during which time (or during any longer guarantee period provided by the Dealer to its customer) the Dealer is obligated to make all repairs and corrections in materials and installation within 30 days after the receipt of a written notice from the Cemetery and within 120 days if the repairs or corrections involve defective bronze or granite. Unless corrected within such time, the Cemetery may make the repair and charge the dealer a reasonable fee, unless Cemetery has received a notice of intent to arbitrate under paragraph 13(b) hereof. This guarantee does not extend or apply to defects caused by the Cemetery or its employees after installation of the memorial.

13. The specifications for installation of memorials and guidelines set forth above are designed to protect the Cemeteries from careless installers and to protect Dealers and installers from Cemeteries who incorrectly assert that the memorials are not installed correctly or who charge excessive fees. In connection therewith, Plaintiff MEGKC, Dealers and Settling Defendants agree to binding arbitration to protect all parties, which arbitration agreement shall continue indefinitely. Terms of the arbitration portion of this agreement are:

- (a) The only issues subject to arbitration are: (1) whether the Cemetery's fees described in paragraphs 9(g) and 12 are reasonable; (2) whether any party to this agreement has violated a cemetery's rules or regulations which comply with this agreement; and (3) whether the Dealer has failed to correct defects in installation or materials as required by this Agreement.

- (b) In the event a Dealer and a Cemetery cannot mutually resolve an issue which is subject to arbitration, either party may initiate arbitration by sending the other a notice of its intent to arbitrate, stating the issue in dispute and the remedy requested and by otherwise complying with the applicable rules of the American Arbitration Association. Each of the Dealers and Settling Defendants agrees that the above-described issues subject to arbitration shall be settled by arbitration in accordance with this agreement and the applicable rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
- (c) The arbitrator will notify both the Cemetery and the Dealer in writing of when he/she will meet in sufficient time to allow the Cemetery and Dealer to respond in writing as to whether or not they wish to be present. The Cemetery and Dealer may each present at such meeting of the arbitrator such relevant and material evidence and arguments as such party deems appropriate. If the issues in dispute involve defects in materials or installation of a memorial, the arbitrator shall inspect the installation of the memorial in question and the installation of the last 12 memorials which the Cemetery has installed and compare those installations with the specifications the Dealer is required to follow.
- (d) The Cemetery and the Dealer agree to abide by the decision of the arbitrator.
- (e) By agreeing to abide by the arbitrator's decision, the Cemetery and the Dealer agree that the losing party will pay all of the fees and expenses of the arbitrator incurred in arbitration of the dispute.
- (f) In the event the arbitrator's decision is in favor of the Cemetery, then the Dealer, in addition to paying the costs of the arbitration, will also correct the installation at his own expense within the time ordered by the arbitrator.
- (g) This is a binding agreement for arbitration under which the loser pays the above costs of the arbitrator; and it is, therefore, intended to be a continuing protection to both the Cemetery and the Dealer.

14. In the event that, for any reason, the dismissal with

prejudice of Settling Defendants, and the dismissal of all counterclaims and/or prior sanctions orders against Plaintiff MBGKC and its attorneys by Settling Defendants is not obtained from the court, then this Settlement and Arbitration Agreement shall be of no force and effect, it may not be used as evidence for any purpose in said litigation, and the parties shall be restored to the same position they would have been in had this agreement never been entered into.

15. This Settlement and Arbitration Agreement may be executed in counterparts, all together constituting one agreement. The terms of this agreement are to be kept confidential by the parties and will not be disclosed by any of the parties unless required by law or legal process or arbitration.

16. All specifications and terms of binding arbitration contained in this Settlement and Arbitration Agreement shall be binding upon the heirs, transferees, successors and assigns of Plaintiff MBGKC, Dealers and Settling Defendants.

BY SIGNING THIS SETTLEMENT AND ARBITRATION AGREEMENT, THE PLAINTIFF ITS MEMBERS/ASSIGNORS AND SETTLING DEFENDANTS EACH AGREE TO THE TERMS AND CONDITIONS, SPECIFICATIONS, AND BINDING ARBITRATION PROVISIONS SET FORTH ABOVE THIS JANUARY 7, 1991.

PLAINTIFF - DEALERS:

MONUMENT BUILDERS OF GREATER KANSAS CITY, INC.  
 BLUHM MONUMENT WORKS, INC.  
 MIDWEST MONUMENT COMPANY, INC.  
 KANSAS CITY MONUMENT CO.

By *Daniel M. Bluhm*  
 Daniel M. Bluhm, as President of Bluhm  
 Monument Works, Inc., and as a Member/Assignor

By *Ralph J. Giudici*  
 Ralph Giudici, as former President Kansas  
 City Monument Co., and as a Member/Assignor

By *Orin F. Phillips*  
 Orin F. Phillips, as President Midwest  
 Monument Company, Inc. and as current Vice  
 President Kansas City Monument Co.,  
 and as a Member/Assignor



TESTIMONY OF WARREN J. NEWCOMER, JR.  
IN OPPOSITION TO HB 2275  
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS  
MARCH 8, 2005

Ladies and Gentlemen of the Committee:

I am Ren Newcomer of Newcomer Cemetery Company, which has owned and operated two private cemeteries in Kansas for some 15 years. HB 2275 seems to be nothing more than bestowing preferential competitive advantage to those in the independent monument business over those in the cemetery business.

We respect our colleagues, and indeed our suppliers, in the monument industry and do not wish them any business disadvantage. My cemeteries allow the sale and placement of monuments and markers which are not purchased from us, and will continue to do so. We ask that those companies who wish to enter our grounds to set their monuments abide by the rules applicable to all, promise through insurance that they are responsible, apply on standard forms so that we may see that the monuments comply with our rules, see that the foundation future care fees are paid, and that the costs the cemetery incurs are compensated.

This bill would seriously alter the arm's length business relationship we have in place with such companies by simply eliminating any responsibility on the part of the monument seller and placing the entire burden of future care for the emplaced marker upon the cemetery, without any consideration for that service.

When we install monuments and markers, a foundation future care fee is charged to the purchaser, which is the same as the fee charged for third party installations. We do charge an administrative fee in both instances, and for third parties it's a flat fee that covers the paperwork, inspections and labor involved. This bill would eliminate that administrative fee and require us to perform these services for free. The State should not be in the business of dictating terms of business to business.

Our system works and has worked for years. HB 2275 improperly interferes with it and should not be passed.

# Cemetery Without Marker Care Fund



# Cemetery With Marker Care Fund





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League of Kansas Municipalities

To: House Financial Institutions Committee  
From: Mark Tomb, LKM  
Date: March 7, 2005  
Re: Opposition to HB 2275

Thank you for allowing me to appear on behalf of the League of Kansas Municipalities and our member cities. We appear today in opposition to HB 2275, which establishes a mechanism to oversee certain cemetery operations and prohibits cemetery setting and service fees.

Cities across the state own and operate cemeteries as a public service to the residents of their communities.

While the intention of this legislation appears to center around the business relationship between privately held cemeteries and privately held monument companies, it would impose a "one size fits all" process that would dramatically impact the ability of municipally owned cemeteries to impose reasonable fees on any monument vendor.

This legislation would also provide liability protection for improperly installed monuments if the installation is performed by an outside vendor. This same protection is not provided if the installation is performed by the cemetery directly.

We believe this legislation would increase the operational costs of cemeteries owned and operated by local governments and limit the ability of cities to provide a cost effective service at a reasonable cost. For these reasons, the League of Kansas Municipalities opposes HB 2275 as written.

Again, thank you for allowing LKM to comment on this proposed legislation. I would be happy to stand for questions at the appropriate time.