

Prepared remarks of:

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PA House Consumer Affairs Committee Informational Hearing

Thursday, September 18, 2014

Re: Opposition to HB 2458

Ladies and Gentlemen, I appreciate the opportunity to appear before you today and offer testimony on my strong opposition to HB 2458. My opposition to this proposed change to the more than 50 year old Cemetery and Funeral Merchandise Trust Act is based on a career in the cemetery profession that began in 1970. In the intervening years I have been a cemetery executive, active state associate member, past president of the state cemetery association and for over 5 years, I was the cemetery member of the PA State Real Estate Commission, the licensing authority for the Commonwealth's many cemeteries.

Make no mistake, this is not a pro-consumer bill and it is not a new issue, the only new aspect of it is that the Diocese of Philadelphia has entered into a contractual agreement with a company to operate their cemeteries and to market cemetery merchandise. This has created panic among the other sellers of these products – the funeral directors of Delaware County and surrounding areas. To prevent this new competition they are promoting this bill in the hopes that it will prevent consumers from selecting cemetery merchandise in the advance of need. As I said, this is not a pro-consumer bill but rather a market battle by a competing trade group that is masquerading as consumer protection. If this bill's language reflected its true consequences, it would read more correctly, "following enactment of this provision, Pennsylvania consumers will not be permitted to pre-select and pre-pay for cemetery merchandise of their choice." It is also not a new concept as there have been at least two other bills with strikingly similar language and intent backed by exactly the same trade group – the PFDA or Pennsylvania Funeral Directors Association. This is a trade battle wherein the consumers of Pennsylvania will be caught in the crossfire and their right to make thoughtful arrangements in advance of need will be collateral damage.

So why is there a battle? Simply, cemeteries and funeral homes operate on two very different business models. The average cemetery in Pennsylvania that is offering merchandise to their property owners derives three quarters or more of its income from the prearrangement of property and related merchandise from their client families. Funeral homes on the other hand, operate on the opposite premise. The vast majority of their income is derived from selling goods and services to client families at the time of death. Cemeteries do not (and cannot by PA law) offer or deliver funeral services like

embalming, cosmetology, transportation of the deceased, viewing and the like. Funeral Directors do not generally sell cemetery graves but it is in the middle ground of shared merchandise that trade competition and friction exist. The merchandise in dispute is the concrete burial vaults installed at the cemetery to receive the casket at time of burial, monuments and bronze markers and caskets and other similar goods. Again, cemeteries have historically offered these products to families in advance of need while funeral directors have done so at the time of death.

Ironically, the Cemetery and Funeral Merchandise Trust Act was created in 1963 with strong cemetery support and involvement. Our industry recognized that families did want to enjoy the important advantages to them that prearrangement and purchase of inevitable expenses represented: inflation protection, once purchased prices could not be increased; the opportunity to make the decision together as a family rather than force the surviving spouse to make these necessary choices at the time of death; and the ability to budget for this expense rather than the need to pay it entirely at the most financially vulnerable time for most families – at death. At the time, in 1963, funeral directors and their trade association had the opportunity to include themselves in this regulatory proposal and because of their prevailing reliance on the selling of their goods and services at the time of death they clearly opted out. Interestingly, in the intervening 50 years, there were some funeral directors who sought to participate in prearranged sales utilizing the 70% trusting requirement of the current law and it was their own trade association acting through their licensing board that took them to court and denied them the opportunity to compete using the law. What is astonishing to me is that this proposed change to a 50 year old statute would normally be precipitated by a significant number and pattern of failures to deliver to customers their prefunded merchandise by cemeteries. Ladies and gentlemen this has simply not been the case. This law as originally created is working in Pennsylvania and during my over 5 years of service on the Pennsylvania Real Estate Commission not one disciplinary hearing or action was taken relative to a Pennsylvania cemetery not delivering merchandise. Further, during my time as president of the cemetery association, I did not have to deal with any issue of non-delivery of cemetery merchandise. Frankly this is a misguided suggested solution in search of a problem.

So what are the merits of HB 2458? Frankly I cannot offer you even one. The bill requires 100% trusting of all merchandise purchases thus effectively destroying the legitimate incentive for any cemetery to enter into such a transaction. The current requirement of 70% allows the cemetery to make a trust deposit that has proven adequate for more than half a century while retaining 30% to cover the cost of acquiring and administering the contract. Further, the bill provides that any contract can be cancelled at any time for any reason and all funds returned. I am not an attorney but an agreement that is this one sided cannot be correctly called a contract. Also, since all money must be retained in the trust fund, the cemetery must not only bear all costs of acquiring and servicing these new non-contracts but must also bear the expense of paying trustee fees. Ladies and gentlemen, this is not a new and improved method to regulate prearranged sales in Pennsylvania, it is a poison pill designed to thwart and prevent these contracts. While thousands of Pennsylvania consumers choose to enter into these arrangements annually with PA cemeteries there are very vulnerable consumers who need to enter into these arrangements, many of our elderly and medical assistance neighbors who need to make these

arrangements to sequester these arrangements from their personal assets when they are applying for help.

So Ladies and Gentlemen, in the final analysis what we have in HB 2458 is thinly disguised attempt to prevent trade by a group who prefer to not directly deal with legitimate competition. They urge you to replace a working system, the current 70% requirement, with their scheme, 100% funding. You only need to Google a search for Pennsylvania funeral director licensees who have been arrested to find three instances in the last 18 months alone of the failure of their 100% formula. I urge you to reject this change to the Cemetery and Funeral Merchandise Trust Act.

I thank you for your time and attention.

End comments#