

1 HOUSE OF REPRESENTATIVES
2 COMMONWEALTH OF PENNSYLVANIA

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4 Informational Meeting on Senate Bill 874

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6 House Consumer Affairs Committee

7 Main Capitol Building
8 Room 140, Majority Caucus Room
9 Harrisburg, Pennsylvania

10 Tuesday, January 26, 2016 - 9:25 a.m.

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12 COMMITTEE MEMBERS PRESENT:

13 Honorable Robert Godshall, Majority Chairman
14 Honorable Stephen Barrar
15 Honorable Sheryl M. Delozier
16 Honorable Frank A. Farry
17 Honorable Warren Kampf
18 Honorable Thomas H. Killion
19 Honorable Kurt A. Masser
20 Honorable Carl Walker Metzgar
21 Honorable Tina Pickett
22 Honorable Thomas Quigley
23 Honorable Todd Stephens
24 Honorable Marcy Toepel
25 Honorable Ryan Bizzarro
Honorable Frank Burns
Honorable Tina Davis
Honorable Marty Flynn
Honorable Mark A. Longietti
Honorable Robert Matzie
Honorable Brandon Neuman
Honorable Pam Snyder

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1 STAFF MEMBERS PRESENT:

2

Amanda Rumsey, Esquire, Counsel
3 Majority Executive Director

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Jane Hugendubler
5 Majority Legislative Administrative Assistant

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Ned Smith
6 Majority Legislative Aide

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Barb Schlieff
7 Majority Legislative Aide

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Elizabeth Rosentel
8 Minority Executive Director

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Jerry Livingston
10 Minority Research Analyst

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Brett Biggica
11 Minority Research Analyst

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28	Counsel	
29	International Cemetery, Cremation & Funeral	
30	Association	
31		
32	(See submitted written testimony and handouts	
33	online.)	

1 MAJORITY CHAIRMAN GODSHALL: I'd like to
2 call the meeting to order. The hearing is being
3 recorded, the hearing on Senate Bill 874 sponsored
4 by Senator McGarrigle. The bill amends the
5 Cemetery and Funeral Merchandise Trust Fund Law to
6 modify the process governing the sale of cemetery
7 and funeral merchandise, and prohibits the pre-need
8 delivery except in certain limited situations.

9 I'm not going to go through another roll
10 call. We did that on the previous meeting.

11 I'd like to remind the members and
12 presenters that today is a session day, but that
13 was delayed now to 1 o'clock. I ask the presenters
14 to please keep their presentations within the
15 allowed 10 to 15 minutes. We said 10 before, but
16 with the extra time, you know, we want to give you
17 the time that's required to present your positions.

18 So, with that, the first presenter is
19 Norman Shropshire, President of Pennsylvania
20 Funeral Directors Association and Minshall
21 Shropshire-Bleyler Funeral Home. And I apologize
22 for mispronouncing, but I did my best.

23 MR. SHROPSHIRE: That's okay, Mr.
24 Chairman.

25 MAJORITY CHAIRMAN GODSHALL: Whenever

1 you're ready, you may proceed.

2 MR. SHROPSHIRE: Good morning, Mr.
3 Chairman, members of the committee. My name is
4 Norm Shropshire, and I'm president of the
5 Pennsylvania Funeral Directors Association, PFDA.

6 Sitting with me today is the executive
7 director of PFDA, Kathleen Ryan, Esquire.

8 I'm also president of the Chester Rural
9 Cemetery Association, which is located in Chester,
10 PA.

11 PFDA represents 1,100 of the 1,600
12 licensed funeral homes in Pennsylvania. We're the
13 oldest and largest association of funeral directors
14 in the United States, and there are well over 2,500
15 funeral directors who are employed by our member
16 firms.

17 I'm also the owner of the Minshall
18 Shropshire-Bleyler Funeral Home in Media,
19 Pennsylvania, and I have been a licensed funeral
20 director for 43 years. I remain active seeing
21 families on a regular basis on both pre-need and
22 at-need arrangements.

23 PFDA is here to support Senate Bill 874.
24 We believe that this legislation will improve the
25 protection afforded consumers who purchase prepaid

1 burial vaults, caskets and other merchandise.

2 If passed and signed by Governor Wolf,
3 Senate Bill 874 would require cemeteries to provide
4 consumers with price lists, similar to what funeral
5 directors are required to provide, ensuring
6 consumers are aware of their choices and prices.

7 Prohibit constructive delivery, the
8 practice of burying vaults pre-need or allowing
9 them to deteriorate in fields. There are roughly
10 10,000 cemeteries in this Commonwealth, the
11 overwhelming majority of which are exempted from
12 the Future Interment Act because they are
13 religiously or municipally owned, such as Chester
14 Rural Cemetery, of which I'm the president. Many
15 of the remaining 400 or so cemeteries which are
16 regulated are small privately-owned establishments.

17 To the best of my knowledge, a very
18 small percentage of cemetery companies in this
19 Commonwealth use the practice which is known as
20 constructive delivery. These companies represent
21 seven-tenths of a percent of all cemeteries and 17
22 percent of those regulated.

23 The Future Interment Act, which is
24 Senate Bill 874, proposes to amend, requires that
25 cemeteries trust 70 percent of the purchase price

1 of the merchandise. However, the practice of
2 constructive delivery allows cemeteries to access
3 monies beyond the 30 percent that they're already
4 legally entitled to. A simple example to
5 illustrate:

6 If a consumer pays for a vault and
7 opening and closing, and the pre-need price is a
8 thousand dollars, the cemetery is required to trust
9 70 percent, or \$700. The cemetery doing
10 constructive delivery takes from the trust the cost
11 of the vault, \$300. The cemetery also takes an
12 opening and closing fee for the pre-installation of
13 the vault of \$200. The balance left in the trust
14 for at-need opening and closing is \$200.

15 This withdrawal of the additional \$500
16 from the trust was never the intent of the Future
17 Interment Law and merely feeds the cash flow of the
18 cemetery owners to the detriment of the consumer.
19 Consumers are getting a used and potentially
20 damaged product. This process of constructive
21 delivery leaves little cash in the trust to replace
22 the damaged vault. This is not what the consumer
23 purchased or paid for.

24 Shortly you will hear testimony from
25 Paul Evans, Vice President of Evans Eagle Vault

1 Company. His company manufactures vaults, and he
2 will explain why constructive delivery is bad and
3 show the evidence to prove the deterioration.

4 Is the consumer aware this is happening?
5 Many times they are not. The sale of this
6 merchandise is frequently to an aged and infirm
7 population, often spending down their last dollars
8 in order to go into a nursing home. They are
9 easily confused and misled when their only goal is
10 to ensure their final resting place is arranged.

11 Is the consumer getting what they paid
12 for, or is it used or damaged? The photographs
13 will speak for themselves. Paul Evans will tell
14 you the consumer is getting a used and, in some
15 cases, a damaged product.

16 Would you want a loved one buried in one
17 of these? You will see the photos to answer the
18 questions for yourself.

19 The opposition to Senate Bill 874 will
20 claim this bill is a turf war between cemeteries
21 and funeral directors, and that funeral directors
22 are upset because they are losing sales. The truth
23 is that funeral directors, we have had competition
24 from third-party sales with regard to caskets and
25 vaults over the years.

1 The FTC, in its October 20th, 2015
2 letter to Chairman Godshall, indicated that the
3 proposed legislation could lessen competition. The
4 reality is that very few cemeteries would be
5 affected; only those practicing constructive
6 delivery, if this legislation were to pass, and
7 competition would not be affected in any way merely
8 by prohibiting constructive delivery.

9 Will decrease competition in the market
10 place and would be bad for consumers? There's
11 nothing in this legislation that prevents
12 cemeteries from selling merchandise. The
13 overwhelming majority of cemeteries in this
14 Commonwealth will not even be affected by this
15 reasonable and simple bill. They will continue to
16 sell, trust and provide funeral merchandise as they
17 always have.

18 The second amendment to Senate Bill 874
19 requires cemeteries to adhere to the FTC mandates
20 regarding the provision of detailed price lists.

21 The FTC has declined to include
22 cemeteries in their oversight despite excoriating
23 testimony offered by the executive director of the
24 Funeral Consumers Alliance, Incorporated before a
25 House subcommittee in July of 2009 urging them to

1 do so. There are numerous examples of fraud, theft
2 and abuse of consumer money by cemeteries both
3 inside and outside of Pennsylvania.

4 Many of these cases involve consumers
5 spending thousands of dollars and not even realize
6 what they bought. No person should be subjected to
7 this kind of sales tactic, let alone vulnerable
8 elderly senior citizens. There is nowhere else in
9 the commercial community where one goes that they
10 cannot see the particulars of what they are buying
11 and how much it costs.

12 This bill's requirement to provide a
13 simple listing of what is being sold, the details
14 of each product being offered is not onerous -- is
15 not an onerous demand and would go a long way
16 towards informing the consumers of what they are
17 getting. This is a requirement that the FTC has
18 had for funeral directors for decades and is
19 certainly not unreasonable for elderly citizens who
20 are often spending down their last dollars to bury
21 themselves.

22 In summary, this legislation is simple,
23 straightforward and solidifies the intent of the
24 Future Interment Law that 70 percent of the
25 consumer money to be placed in trust and remain

1 there for the consumer's benefit; not added to the
2 coffers of large corporations' enterprises.

3 FTC supports Senate Bill 874 and would
4 request, Mr. Chairman, that you move it through the
5 committee for the benefit of the consumers in the
6 Commonwealth.

7 At this time, I'm happy to take any
8 questions of the chairman or the committee.

9 MAJORITY CHAIRMAN GODSHALL:
10 Representative Evankovich.

11 REPRESENTATIVE EVANKOVICH: Thank you,
12 Mr. Chairman.

13 Just very briefly, the Funeral Directors
14 Association supports the bill. Are there any
15 elements within the Funeral Directors Association
16 that oppose the bill? Members, individual members?

17 MR. SHROPSHIRE: No, we haven't heard
18 from any at all, sir.

19 MAJORITY CHAIRMAN GODSHALL:
20 Representative Pickett.

21 REPRESENTATIVE PICKETT: Thank you, Mr.
22 Chairman.

23 Just to be clear on it for myself, then,
24 the 30 percent the associations allow -- the
25 cemetery is allowed to take to take care of ongoing

1 costs, they're allowed to use that to cover their
2 current cost of 70 percent --

3 MR. SHROPSHIRE: That's correct.

4 REPRESENTATIVE PICKETT: -- would be to
5 go in the trust?

6 MR. SHROPSHIRE: That's correct.

7 Funeral directors have the fiduciary responsibility
8 of trusting 100 percent of the funds. So those
9 funds are not released, nor do the funeral director
10 receive those funds until the death actually
11 occurs.

12 By constructive delivery, the delivery
13 of burial vaults and the opening of the graves can
14 be performed prior to the death, and the proceeds
15 from those sales can be then received by the
16 cemetery prior to the actual death of the
17 individual.

18 REPRESENTATIVE PICKETT: Thank you.

19 MAJORITY CHAIRMAN GODSHALL:

20 Representative Matzie.

21 REPRESENTATIVE MATZIE: Thank you, Mr.
22 Chairman.

23 Thank you for your testimony. In your
24 testimony you talked about the approximate 10,000
25 cemeteries, many of which are either religious or

1 municipally exempt, and there are, what? About 400
2 that are not?

3 MR. SHROPSHIRE: Correct.

4 REPRESENTATIVE MATZIE: 400 are not.

5 Now, they don't fall under the same
6 rules and regs, correct?

7 MS. RYAN: No.

8 MR. SHROPSHIRE: No.

9 REPRESENTATIVE MATZIE: So they would be
10 -- they would be separate relative to that?

11 MR. SHROPSHIRE: That's correct. Only
12 seven-tenths of a percent of all cemeteries because
13 of being religiously-owned or affiliated or
14 municipally-owned.

15 REPRESENTATIVE MATZIE: In your packet
16 of testimony, you had some pictures of -- examples
17 of constructive delivery. Is that common? Or, I
18 mean, is that one or two? It seems like there is a
19 --

20 MR. SHROPSHIRE: That's going to be
21 addressed by Mr. Evans --

22 REPRESENTATIVE MATZIE: Okay.

23 MR. SHROPSHIRE: -- who owns a burial
24 vault company.

25 REPRESENTATIVE MATZIE: The one thing,

1 as a policy maker, in the last week or so that has
2 been troubling for me, quite frankly, and I'm
3 thankful that the chairman called the hearing
4 today, is the abundance of e-mails that I've
5 received as a member of this Committee from both
6 sides of the issue. And, in some cases, the
7 e-mails have been very bland and have just said
8 vote no; no explanation why. Some have said vote
9 yes; no explanation why. So, I'm glad you came
10 today with your testi --

11 MR. SHROPSHIRE: It doesn't give you
12 much direction, does it?

13 REPRESENTATIVE MATZIE: Not at all.

14 So, I'm glad you agreed to come for
15 testimony. I'm glad everybody, both sides of the
16 issue, have come to agree to testify today.

17 But it seems that there are -- You know,
18 when there are so many people on each side of the
19 issue, hopefully we can come to some kind of
20 compromise or we can find some -- find some
21 compromise. I know that's not always an easy thing
22 to say when you're under this dome, quite frankly.

23 But, again, I appreciate you coming out
24 today and hearing your testimony, and look forward
25 to the rest of the testimony.

1 MR. SHROPSHIRE: Thank you for the
2 opportunity.

3 REPRESENTATIVE MATZIE: Thank you.

4 MAJORITY CHAIRMAN GODSHALL:
5 Representative Masser.

6 REPRESENTATIVE MASSER: Thank you, Mr.
7 Chairman.

8 Funeral directors can do the same thing
9 through a third party; is that correct?

10 MR. SHROPSHIRE: I'm sorry. I don't
11 quite understand your question.

12 REPRESENTATIVE MASSER: With the putting
13 the vaults in early, can the funeral director do
14 the same thing, just through a different party,
15 now, the way it is; the pre-installation?

16 MR. SHROPSHIRE: No, I'm not familiar
17 with any funeral directors who are involved as far
18 as -- in vault sales and installing them prior to
19 the actual need? Is that the question?

20 REPRESENTATIVE MASSER: Yeah.

21 MR. SHROPSHIRE: No, I'm not familiar
22 with any funeral directors who are currently doing
23 that.

24 REPRESENTATIVE MASSER: Okay. All
25 right.

1 MR. SHROPSHIRE: Maybe Mr. Evans can
2 address that, but I'm not aware of any funeral
3 directors that do that.

4 REPRESENTATIVE MASSER: Okay.

5 MR. SHROPSHIRE: Like I said, we are --
6 by law, we have to trust a hundred percent of the
7 pre-needed funds, and those funds -- We have the
8 fiduciary responsibility to make sure those funds
9 are available at the time of death, so we can't
10 touch those funds at all.

11 REPRESENTATIVE MASSER: I guess that's
12 -- my next question would be, going off of
13 Representative Matzie's, like, trying to find a
14 compromise here that would be beneficial, why not
15 look at making the funeral directors the same way,
16 where they could get to that 70 percent, and look
17 at it that way for a compromise?

18 MR. SHROPSHIRE: We tried and it failed.

19 REPRESENTATIVE MASSER: Was tried where?
20 I mean, how was it tried? Would you explain --

21 MR. SHROPSHIRE: There was discussions
22 -- Let me have our counsel address that kind of
23 question, because she was aware of it. I was not.

24 REPRESENTATIVE MASSER: Okay.

25 MS. RYAN: There were discussions --

1 MAJORITY CHAIRMAN GODSHALL: Identify
2 yourself, please.

3 MS. RYAN: Yes. My name is Kathleen
4 Ryan. I am the executive director of the Funeral
5 Directors Association.

6 There were discussions, when the bill
7 was still in the Senate, about that being a
8 possibility, and it just was not something that was
9 agreed to.

10 REPRESENTATIVE MASSER: By both parties
11 or --

12 MS. RYAN: Well, we certainly didn't
13 agree with it. And, moreover, this really isn't
14 about the trusting. It's about the practice of
15 constructive delivery.

16 REPRESENTATIVE MASSER: Okay. And I
17 look forward to the next -- to the next testimony.
18 I'm just concerned because, you see, I've read a
19 lot of things on this issue in preparation for
20 this. And when you see, like, Arlington doing it
21 and the national cemeteries doing it, and they're
22 getting awards for this. So I'm looking forward to
23 the testimony of the next presenter to see --

24 MS. RYAN: What you're going to hear,
25 sir, is the distinction between a burial vault and

1 a burial crypt; two very different things.

2 REPRESENTATIVE MASSER: Okay.

3 MS. RYAN: And Mr. Evans will explain
4 that.

5 REPRESENTATIVE MASSER: All right.

6 Thank you, Mr. Chairman.

7 MAJORITY CHAIRMAN GODSHALL:

8 Representative Longietti.

9 REPRESENTATIVE LONGIETTI: Thank you for
10 being here today and for offering your testimony.

11 I just want to focus in on, I think
12 constructive delivery seems to be one of the big
13 concerns that is out there. I read at least the
14 bulk of the FTC's letter to Chairman Godshall.

15 And if I understand it correctly, they
16 talk about, in their view, that this is a hedge
17 against inflation. In other words, cemeteries are
18 going out and they're purchasing the product prior
19 to death and taking away the risk of inflation; and
20 also that it can lead to certain efficiencies. In
21 their view, they say that that is something that
22 could be an acceptable practice.

23 And then they go on to talk about
24 alternatives to just prohibiting constructive
25 delivery. And I think those alternatives fall in

1 the category of saying that there could be forms
2 that are used by a cemetery that clearly states
3 that they are responsible for the integrity of the
4 product. And if they purchase it in advance and
5 warehouse it or store it on the grounds and there's
6 some deterioration over time, that they have that
7 responsibility, as well as presenting the
8 purchaser, the consumer, with an option; an option
9 to understand, is it okay for the cemetery to have
10 constructive delivery, or is it required that they
11 wait until the time of death.

12 What is your reaction to those
13 observations by the FTC, as well as the
14 alternatives that they suggest?

15 MR. SHROPSHIRE: Well, the first thing
16 that you addressed as far as the trusting of it,
17 when you've taken the monies beforehand, or
18 pre-need, and those funds are trusted, those --
19 that material or that merchandise should be there
20 for the delivery at the time of death. Really,
21 that doesn't pertain to constructive delivery in
22 the sense that constructive delivery is taking more
23 than the 70 percent and placing the burial vault in
24 the ground so they can receive more than what was
25 originally trusted just for the vault.

1 By that I mean, trusting the funds and
2 making sure that the funds are there is one thing.
3 Constructive delivery is taking those funds that
4 have been trusted for pre-need; taking them out
5 now, placing the vault in the ground so you can
6 receive those funds prior to the actual death. We
7 all have the responsibility of trusting the funds
8 responsibly, and I believe the cemeteries,
9 hopefully, would do the same.

10 So the constructive delivery is
11 basically a way not of pre-needing. It is
12 pre-need, but it's a way of taking the proceeds
13 from the sale of that merchandise and using it now.

14 REPRESENTATIVE LONGIETTI: But, if I
15 understand -- Maybe I misunderstand, but if I
16 understand correctly, the idea is, not that I'm not
17 going to deliver the services that I promised, but
18 I'm going to go ahead and deliver a good part of
19 those services now as opposed to sometime down the
20 road.

21 MR. SHROPSHIRE: Correct.

22 REPRESENTATIVE LONGIETTI: So, with that
23 in mind -- And the FTC, if I understand their
24 letter, they're saying there are reasons why that
25 could make sense in a business model because,

1 inflation, we don't know what the cost of goods is
2 going to be 10 years from now, and sometimes
3 certain --

4 MR. SHROPSHIRE: Well, but that's two
5 separate issues in the sense that, you've
6 guaranteed those goods and services at a set price
7 at the time the prearrangement is made. Okay? So,
8 taking that out of the equation, all right, you've
9 already secured that pre-need monies, so that's the
10 guard against inflation, okay?

11 REPRESENTATIVE LONGIETTI: That may or
12 may not be because --

13 MR. SHROPSHIRE: Well, it depends --

14 REPRESENTATIVE LONGIETTI: -- there
15 are --

16 MR. SHROPSHIRE: It depends on the
17 policy of the individual cemetery. But, normally,
18 if things are guaranteed, it's stated plainly in a
19 statement of goods and services, which they don't
20 currently use, that those costs or goods are
21 guaranteed.

22 So when you purchase the burial vault
23 pre-need, prior to the need, those costs are
24 guaranteed. Okay? It has nothing to do -- So,
25 that cost of the vault is not going to go up to you

1 as a consumer.

2 REPRESENTATIVE LONGIETTI: Right.

3 MR. SHROPSHIRE: Okay. But, as the
4 cemetery taking that vault and putting those vaults
5 in the ground, they can -- Now, instead of just
6 taking 30 percent, they can take the cost of the
7 vault and the opening of the grave.

8 REPRESENTATIVE LONGIETTI: But, I guess
9 my point is, I think what the FTC is saying is
10 that, as a cemetery, if I have to take on the risk
11 of inflation, then I may need to increase my price
12 structure.

13 MR. SHROPSHIRE: Well, they normally do,
14 but --

15 REPRESENTATIVE LONGIETTI: If I can't do
16 constructive delivery and, therefore, I'm going to
17 take on that risk, then I need to build that into
18 my pricing structure to make sure that I don't eat
19 it later on.

20 I guess what I'm ask -- what I really
21 want to focus in on, what about their alternatives?
22 They suggest two alternatives to protect consumers.
23 One is that, if there's a concern about the
24 integrity of the product over time, then the
25 cemetery could guarantee that and take on that

1 risk. And, number 2, that they could give the
2 option to the consumer. Is it okay if we do
3 constructive delivery or, no, it's not okay.

4 MS. RYAN: I think we have to start with
5 the premise that, whatever the FTC has to say about
6 this really doesn't matter, because what we're
7 trying to do here is take a look at language that's
8 already in the current law. And, under our
9 opinion, we believe that it's been misused or
10 misconstrued by certain cemeteries in performing
11 the act of constructive delivery.

12 That was not the intent of the language
13 when the Future Interment Law was written. They're
14 taking advantage of it to improve the cash flow of
15 their corporate entities, for whatever reason. If
16 that's an inflation fighter, you know, that's fine,
17 whatever they're going to do, but the problem is
18 that that is not what the law intended.

19 And so, whether the FTC thinks it's
20 appropriate or inappropriate really doesn't matter.
21 It's a matter of interpretation of Pennsylvania law
22 and, moreover, what's appropriate for the consumer.

23 REPRESENTATIVE LONGIETTI: I don't want
24 to take up too much time or belabor the point.

25 I'm just asking -- They're hearing that

1 concern, if I understand what they put in their
2 letter, and they're saying, here's an alternative
3 to address that concern. If the concern is a
4 deteriorated product, another way to address that
5 concern is a guarantee by the cemetery company
6 that, if there's a deterioration, that they will
7 make the consumer whole.

8 Another issue that was raised was, maybe
9 people don't understand that there's going to be
10 constructive delivery. So the FTC said, well,
11 another alternative to deal with that is to put
12 that notice in front of the consumer at the time of
13 the contract and say, we'd like to do constructive
14 delivery. Do you agree to that or do you not agree
15 to that?

16 I'm just asking whether those are
17 alternatives that you all have thought about and
18 have a reaction to it.

19 MS. RYAN: We have thought about them
20 and rejected them, and I think once you hear from
21 Mr. Evans, you may understand why we've taken that
22 position.

23 REPRESENTATIVE LONGIETTI: Okay. All
24 right.

25 Thank you, Mr. Chairman.

1 MAJORITY CHAIRMAN GODSHALL: Are there
2 any further questions?

3 (No response).

4 MAJORITY CHAIRMAN GODSHALL: Then that's
5 -- Thank you very much for your presentation.

6 The next presenter was Sam Saxton, who's
7 the legislative chairman of the Cemetery, Cremation
8 and Funeral Association. I understand Sam is out
9 on 22 in some kind of a highway problem at this
10 point.

11 And you're -- Identify yourself. You're
12 going to present his testimony.

13 MR. KERNAN: Yes, I am. I'm a little
14 shaky here, so -- This is my first time, so be good
15 with me, all right?

16 MAJORITY CHAIRMAN GODSHALL: Yeah.

17 MR. KERNAN: I'm sorry. I'm a little
18 nervous. I don't mean to be. I will read Sam's
19 testimony, his statement, But before I do that, I
20 will introduce myself.

21 My name is Tim Kernan. I am the senior
22 vice president and sales director of CMS East. I
23 am also a past president of the Pennsylvania
24 Cemetery Funeral Association (sic).

25 I started in this business when I was 23

1 years old. My wife talked me into this business,
2 and I work for my wife in many (sic) ways than one.
3 But we have six kids. In fact, representative over
4 there, I think his wife taught a couple of our kids
5 over in James Buchanan High School in Mercersburg,
6 Pennsylvania.

7 MAJORITY CHAIRMAN GODSHALL: Before you
8 get into your testimony, could you spell your last
9 name?

10 MR. KERNAN: Yes. It's K-E-R-N-A-N.
11 K-E-R-N-A-N.

12
13 MAJORITY CHAIRMAN GODSHALL: Thank you,
14 sir.

15 MR. KERNAN: Timothy Kernan.

16 We have cemeteries throughout the
17 Commonwealth, 15 of them; many of them in your
18 backyards. We have one in Pottstown. We have one
19 in Donora. We have in Greensburg. We have in
20 Scranton. We have Wilkes-Barre.

21 I, for 23 years -- about 40 years have
22 trained salespeople to go out and promote pre-need
23 because I believe it. We are on the right side of
24 the equation of pre-need. This is what this is all
25 about; this pre-need selling.

1 How we get most of our business is
2 recommendations. We don't prey on the elderly. We
3 don't do those kind of things. If we do -- If we
4 find salespeople that do that, we'd get rid of 'em.
5 We hire bad apples once in a while, but do you
6 think we want to hurt the consumer? That's our
7 business. This is what we do. We want to satisfy
8 our consumer.

9 And the funeral directors have the
10 opportunity to sell and operate under 70 percent
11 trusting. They voted themselves to take themselves
12 out of the equation because they want to limit
13 competition amongst their own ranks, because there
14 are pre-need funeral directors who want to sell
15 like us. We want you to sell under the 70 percent
16 provision. It helps the consumer.

17 I ask you folks if there's any
18 complaints in your backyard about cemeteries. I
19 don't think you'll find any. I've asked various
20 representatives that I've met with, Representative
21 Kauffman a few years ago, and senators who voted on
22 this bill last year, Eichelberger, Wozniak, both
23 sides of the aisle; people who voted for this thing
24 initially; the guy in Chambersburg; Alloway.

25 I've never been involved in the

1 political process, but this business -- this whole
2 thing forced me to, because I was out in Colorado
3 visiting my son two years ago when I found out that
4 this thing got pushed through. Ridiculous. And by
5 the time I got home, it was already passed in the
6 Senate. I won't tell you what Tommy Tomlinson
7 called me to my face. But that's it.

8 I'll read, now, Mr. Saxton's
9 testimony.

10 MAJORITY CHAIRMAN GODSHALL: Please go
11 ahead with the testimony.

12 MR. KERNAN: I just wanted to introduce
13 myself, okay? I'm sorry to be passionate, but this
14 is what I do for a living. She told me not to get
15 angry. I'm sorry. All right. Well, I'll read my
16 testimony now.

17 Sam is not here. I think he was the
18 right person to talk about this. He's a
19 respectable gentleman, 93 years old. I love him.
20 This is his testimony.

21 I have been in the cemetery business all
22 of my working life as a licensed salesman,
23 employee, owner, corporate officer, broker and
24 contractor. I come to you here in opposition to
25 Senate Bill 874, and so forth and so forth.

1 When the original Merchandise Trust Fund
2 Act was passed in 1963 with strong support from
3 cemeteries, there were sales groups going to
4 various states selling cemetery goods and services
5 in advance of need, as we were in the state
6 cemetery companies, without any legally-required
7 trusting of proceeds. This law, which was passed
8 back in 1963, first passed in Pennsylvania, became
9 one of the very first of pre-need statutes enacting
10 consumer protection for pre-need sales.

11 Today there is some version of the
12 Pennsylvania law in all 50 states. The
13 Pennsylvania statute required accountability to the
14 courts, and trusting of 70 percent of funds in
15 Pennsylvania domiciled -- in Pennsylvania domiciled
16 banks. Other regulatory requirements include
17 control, oversight by licensing of salespeople,
18 brokers and cemeteries under the state Real Estate
19 Commission, which has licensed cemeteries since
20 1929. There is a special seat on the Real Estate
21 Commission reserved for an experienced cemetery
22 commissioner. We're proud to have him there. He
23 does a great job.

24 There are thousands of cemeteries in
25 Pennsylvania located in every city, town and

1 hamlet. Cemeteries actively serving their
2 communities have to be current with respect to all
3 state and federal contract and financing laws.
4 They employ thousands of men and women serving
5 the 67 counties in Pennsylvania; a lot of them are
6 right back here. Under the cemetery permanent lot
7 care law, they invest hundreds of millions of
8 dollars collectively.

9 Consumers, even if they haven't bought
10 pre-need, think it's a good idea. They have shown
11 overwhelmingly with their checkbooks that they
12 support purchasing pre-need cemetery and
13 merchandise -- or, pre-need cemetery merchandise.
14 They purchase vaults. They purchase lawn crypts.
15 They purchase mausoleum spaces, memorials;
16 identifying family names, these memorials. They do
17 this on a prearranged basis, because that's the way
18 it should be done; not one person on the worst day
19 of their life.

20 A cemetery purchase, in most instances,
21 is a thought-out generational plan that includes a
22 few grave spaces to all of the things that I've
23 just mentioned. Ninety percent of cemetery goods
24 are sold pre-need, when families are younger,
25 healthier; much like insurance.

1 I've personally sold families 23 years
2 old in Bedford County, Pennsylvania, which is where
3 I got started. I'm proud of that.

4 This is the inverse of the funeral
5 business, which consist mostly of sales at the time
6 of death. Funeral directors hold remains up to
7 five days, deliver the remains to the cemetery in a
8 casket, receive payment for their goods and
9 services, and are ready for the next case.

10 The 1963 law requires the trusting of 70
11 percent of the funds for cemetery merchandise and
12 services but also allows 30 percent of such
13 proceeds -- or sale proceeds to be used for the
14 cost of doing cemetery business. That's how we pay
15 our people. This bill will affect their employment
16 and all of our administrators--we have many of
17 them--and maintenance personnel.

18 This law has worked perfectly for both
19 consumers and cemeteries for 53 years. Funeral
20 directing is an honorable, vital profession, and
21 funeral directors and cemeteries should work
22 together to provide the best care they can for
23 families at time of need. I want to work with
24 funeral directors. Many of them do work with us.
25 Some of them don't because we sell pre-need.

1 A number of Pennsylvania funeral
2 directors are members of our association. We have
3 members in our own ranks. Hence, the word funeral
4 in the name of Pennsylvania Cemetery, Cremation and
5 Funeral Association.

6 Here's the issue at stake and why I have
7 gone into this detail--Again, this is Sam--the
8 introduction of Senate Bill 874 and its precursor,
9 House Bill 2458, in the last session, which this
10 committee also held a hearing on in September of
11 2014.

12 The word being put on the street by
13 certain sources is that, there's deceptive and
14 misleading television and -- Rather, excuse me.
15 Let me start again. I'll slow down. I'm sorry.
16 I'm a little nervous.

17 The word being put on the street by
18 certain sources and deceptive and misleading
19 television and newspaper advertising says -- say
20 that people are not receiving their cemetery
21 products or are receiving damaged products. This
22 is a great untruth. I've included, again Sam, in
23 my packet three letters from three real estate
24 commissioners; one who's a sitting commissioner on
25 the Real Estate Commission. Together they

1 constitute about 30 years of time on the
2 commission. All state, all state, there are no
3 instances which have arisen to the commission level
4 where the lot owner did not receive cemetery
5 merchandise purchased in advance of need.

6 The Pennsylvania Cemetery, Cremation and
7 Funeral Association has had for many years in the
8 state a phone number supplied for legislators and
9 others regarding cemetery complaints. We want to
10 hear about complaints. We want to fare out if
11 there's any problem in our industry. We're
12 proactive in that. We don't need any bad actors,
13 and we -- because it's a reputation. Our
14 reputation is at stake.

15 Ms. Morgan Plant, our registered
16 lobbyist for 27 years, fields any complaint back to
17 our complaint system. It is quickly addressed by
18 members of our board and, in some instances,
19 reported to the Real Estate Commission for formal
20 action.

21 The man currently receiving complaints
22 reports to the board of our state association. His
23 name is Harry Neel, a good friend of mine; runs a
24 cemetery in Pittsburgh, Jefferson Memorial Park;
25 been around a long time; great family. His

1 business has been around for two or three
2 generations.

3 What is strange about this legislation
4 is that no one complained for 53 years until the
5 Roman Catholic Archdiocese of Philadelphia, whose
6 cemeteries were not able to make ends meet
7 financially, advertised for one of the national
8 companies that specialized in contracting with
9 churches and communities to provide the expertise
10 and personnel necessary to provide sales and
11 services for the church or their communities.

12 StoneMor Corporation was chosen due to
13 not only being an expert in providing the necessary
14 help to the church but because it is domiciled in
15 southeastern Pennsylvania. Their CEO is a
16 Pennsylvania -- is a Philadelphia boy. One of
17 their officers is a past president of our
18 Pennsylvania Cemetery, Cremation and Funeral
19 Association, and two currently sit on our board.

20 The StoneMor Corporation was able to
21 provide \$53 million upfront to the Philadelphia
22 Archdiocese, with an additional 35 million to come
23 during a 60-year lease--They needed the money to
24 help take care of their properties. Who benefits?
25 The consumer--providing cash flow to the

1 Archdiocese from sales to the parishioner over that
2 period. Of course, StoneMor is only able to do
3 this by using and complying with the existing
4 Merchandise Trust Fund Act of 1963.

5 As additional comment, other sellers are
6 welcome to sell merchandise to these same Catholic
7 families, including funeral directors, both in
8 advance of need and at time of death. StoneMor's
9 contract does not give the company a monopoly. The
10 consumer has a choice. In fact, independent
11 memorial dealers, vault dealers and other
12 independent contractors also sell or are free to
13 sell the same product StoneMor now sells.

14 Strangely, after 53 years of providing
15 protection to the Pennsylvania residents and a lack
16 of consumer complaints, this law is now being
17 challenged by a leading Bucks County funeral
18 director and a few others whose trading area
19 includes some of the cemeteries owned by the
20 Catholic Church that the StoneMor Corporation is
21 now serving.

22 This Bucks County funeral director also
23 happens to be a 20-year senior state senator--these
24 are Sam's words, okay?--who is one of the main --
25 be mine too -- who is one of the main sponsors of

1 Senate Bill 874. Perhaps proponents of this
2 legislation should focus more on competing with
3 StoneMor rather than trying to shut them down and
4 taking the rest of the whole state down with them.

5 You will hear the Senate sponsors say,
6 we have fixed the bill now; it should have no
7 opposition. Nothing is further from the truth.
8 The Senate amendments were so ineptly drafted that
9 even in (sic) some good intent prompted them --
10 even if some good intent prompted them, they
11 generally have made this bill even more confusing.

12 Provisions in Senate Bill 874 require
13 cemeteries to adhere to the Federal Trade
14 Commission's Funeral Industry Practices Revised
15 Rules imposed on funeral directors by the federal
16 government because of their adverse, unfair
17 practices starting 25 years ago. Even the FTC, in
18 its October 20th, 2015 letter to Chairman Godshall,
19 makes it clear it was never their intention to
20 include cemeteries under the federal rule--It's
21 there in black and white--because they sell in
22 advance of need. I could go into detail, but the
23 intent of the sponsor of this bill is so
24 egregiously evident that I don't have to say much
25 more.

1 The only object here is to destroy
2 Pennsylvania cemeteries' ability to sell these
3 products in advance in need, eliminating the
4 majority of their cash flow, which they need to
5 operate their cemeteries, and to pay their bills
6 and to pay the people that work for them and to
7 take care of their cemeteries.

8 What is at stake here is the disasterous
9 effect on all of Pennsylvania's cemeteries caused
10 by a few disgruntled funeral directors in the
11 southeast corner of the state and a senior state
12 senator who wants the whole pie. You would think
13 that this legitimate and normal contractual
14 agreement between the Archdiocese and StoneMor was
15 going to put the funeral directors out of business.
16 Nothing is further from the truth. The church and
17 StoneMor are not acting or setting themselves up as
18 funeral directors.

19 I can show you many such contracts
20 across the country, to California and back,
21 especially with the Catholic Church. There's one
22 over in Pittsburgh right now. The Catholic
23 dioceses are engaging in pre-need sales over there.
24 How come we haven't heard any issues over there?
25 They're doing fine. And Catholic families are

1 being served with pre-need services.

2 To say this is a turf war, as some call
3 it, is far too trite an expression for a travesty
4 of this magnitude. The reality is, if this bill is
5 to pass, it would hurt not only cemeteries but,
6 more importantly, consumers in Pennsylvania.

7 That's what hurts.

8 We want to help the consumers with
9 pre-need. It will curtail their opportunity to buy
10 pre-need from cemeteries and will surely increase
11 their costs by removing competition from funeral
12 directors.

13 We, the opposition to this bill, and the
14 International Cemetery, Cremation and Funeral
15 Association, comprised of international cemeteries
16 and cemeteries across the nation, including several
17 thousand enlightened funeral directors, are very
18 concerned about the outcome of this legislation and
19 its possible ramifications on the national level,
20 if passed. The Pennsylvania Cemetery and Funeral
21 Association -- Pennsylvania Cemetery, Cremation and
22 Funeral Association and the Pennsylvania cemeteries
23 affected by this calamitous action seeks your
24 sincere understanding and ask that you defeat
25 Senate Bill 874.

Key Reporters

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1 This testimony was on behalf of Sam
2 Saxton. I added a little bit of myself there to
3 it. I apologize, but this is -- I'm open for any
4 questions. Thank you for your time.

5 Any questions anybody?

6 MAJORITY CHAIRMAN GODSHALL: Thank you.

7 I do want to announce that we did have a
8 couple members join us, specifically Stephens and
9 Farry, I think, since we took first roll call.

10 We have questions from Representative
11 Killion.

12 REPRESENTATIVE KILLION: Thank you, Mr.
13 Chairman.

14 You mentioned having any complaints. I
15 have to tell you that I've had three folks in my
16 district office. And I went to high school in
17 Carlisle, right across the street from St. Peter
18 and Paul.

19 MR. KERNAN: Where was that, sir? I'm
20 sorry.

21 REPRESENTATIVE KILLION: St. Peter and
22 Paul Cemetery in Marple Township, Delaware County,
23 and I've had three complaints in my district office
24 where individuals went to visit the grave of a
25 loved one just to drop flowers off or put a flag,

1 and next thing they knew, they were in a conference
2 room being sold their own plots and felt immense,
3 immense pressure and were very, very uncomfortable
4 with it.

5 The other issue, I noticed in the bill
6 that there's -- it requires the funeral directors
7 provide a full list of from the cheapest casket to
8 the most expensive casket. Do you do -- Do the
9 cemeteries do that? Are you in favor of that? Do
10 you think that's a good idea, a good pro-consumer
11 idea?

12 MR. KERNAN: To address the first thing
13 is that, if that family had a complaint about how
14 they were treated by their salesperson, they should
15 go to management, and management should have dealt
16 with that complaint. And if management doesn't
17 deal with it, then they should go to the person
18 above them. They should not have been badgered
19 like that. That's wrong.

20 REPRESENTATIVE KILLION: And I've
21 talked to some of my colleagues from --

22 MR. KERNAN: That's wrong. It does
23 happen.

24 REPRESENTATIVE KILLION: But it's not
25 just my office getting those calls. You need to

1 understand that. A number of my colleagues from
2 Delaware County have gotten the same calls in their
3 office with different folks, and that's something
4 to be concerned about.

5 MR. KERNAN: I agree, sir, and I can't
6 -- We can't regulate what goes on with an
7 individual with a -- But when we find out there's a
8 complaint -- There's two sides of the story to
9 that, too, and we got to be careful who we fire, if
10 they do, because then they can come back and sue us
11 because they said they didn't do that. So we have
12 to get to the bottom of any issue that comes to our
13 attention. We don't want to have consumers to be
14 treated that way. That's wrong.

15 REPRESENTATIVE KILLION: Okay.

16 MR. KERNAN: Okay? I'm just saying.

17 Your second question as far as the FTC,
18 maybe I shouldn't say this, but I'll say this.
19 Maryland -- The State of Maryland operates -- We
20 have cemeteries in Maryland, North Carolina, South
21 Carolina. They require the FTC -- We falter the
22 FTC in the State of Maryland. It's foolish. All
23 we do is consume -- confuse the consumer when we go
24 out there and offer the different variations. It's
25 just confusing.

1 We do have a price list. We show our
2 price list to the consumer. We show what they are
3 buying. We show them what they're not buying.

4 Having one extra piece of paper that we
5 carry with them is unnecessary. The dynamics
6 between funeral homes dealing at-need and dealing
7 with us pre-need is different. But we have our
8 complete price list. We show it right in front of
9 them, and we show them a detail as to what they
10 have purchased and what they have.

11 REPRESENTATIVE KILLION: So then you're
12 okay with that part of the --

13 MR. KERNAN: I'm not okay with it
14 because it's foolish. It's foolish. All it
15 does --

16 REPRESENTATIVE KILLION: It's foolish to
17 give people pricing?

18 MR. KERNAN: We give our pricing on a
19 price list.

20 REPRESENTATIVE KILLION: Then you're
21 okay with that part of the bill?

22 MR. KERNAN: Absolutely. It doesn't
23 have to be mandated by the Federal Trade Commission
24 is what I'm saying. We don't need to fall under
25 the Federal Trade Commission's guideline. They say

1 we don't need to. It was overkill by the State of
2 Maryland.

3 But all it does is con -- Believe me.
4 I've been in people's homes showing it, and they
5 ask me, what is this for? I said, this is because
6 we're required by law to do it, but here's our
7 price sheet. Do you want to see any of our prices?
8 It's black and white. We have nothing to hide.

9 REPRESENTATIVE KILLION: Well, then why
10 would you be opposed to that part of the bill?

11 MR. KERNAN: Because it's confusing,
12 like I said. It's confusing to the family --

13 REPRESENTATIVE KILLION: Mr. Chairman --

14 MR. KERNAN: -- multiple --

15 REPRESENTATIVE KILLION: Mr. Chairman,
16 I'm done.

17 MR. KERNAN: Okay.

18 MAJORITY CHAIRMAN GODSHALL:
19 Representative Matzie.

20 MR. KERNAN: You get an honest answer.

21 REPRESENTATIVE MATZIE: Thank you for
22 your testimony. Plain English: Explain to me and
23 to anybody that might be watching, the way the
24 current law is written, what happens? How does
25 this work? How does it all work?

1 Consumer is in search of the opportunity
2 for a prepaid situation, and do they come directly
3 to you?

4 MR. KERNAN: Um-hm.

5 REPRESENTATIVE MATZIE: Do you
6 advertise? How does that work currently? And
7 then, how would it change under the current rule
8 relative to who can and cannot, and how it would be
9 reported, et cetera?

10 MR. KERNAN: If what you're asking me is
11 how do we market ourselves?

12 REPRESENTATIVE MATZIE: Yes.

13 MR. KERNAN: Okay. We have used various
14 avenues to market ourselves. One was
15 telemarketing. Well, the federal government took
16 care of that with the do-not-call list, so we don't
17 telemarket anymore. We have to comply under the
18 do-not-call list.

19 We do a lot of mailings. We do a lot of
20 referral work. We follow in behind on a funeral.
21 When there's a funeral follow-up, we want to make
22 certain that the family was serviced properly;
23 whether they're in need of additional space. We
24 don't pressure. I mean, we've --

25 Yeah, a lot of people want to talk to

1 us. So we go out there and actively promote
2 pre-need on a grassroots level. As I said, I've
3 knocked on doors in downtown Wilkes-Barre. This is
4 what we do. So, it takes -- Who likes to talk
5 about this? It's a very tough sale. So, that's
6 what we do. We try to get people to listen, at
7 least get educated, and then from there we present
8 them and we show them. A lot of our business comes
9 from recommendations and spin-off. So that's how
10 we market.

11 How does this bill affect that? This
12 bill is -- it's unnecessary. There's no consumer
13 complaints whatsoever.

14 This thing about constructive delivery,
15 the federal government does it right in their own
16 backyard, right in Tommy Tomlinson's backyard. The
17 federal government -- When you install your product
18 ahead of time, doesn't that guarantee its delivery,
19 it's gonna be there, which protects the consumer.

20 Now, as far as deterioration, I think
21 there's been many government studies done on that,
22 and people much more smarter than me that says that
23 -- maybe this gentleman here is going to address it
24 that says there's no problem with that. So, I
25 don't see the problem with constructive delivery.

1 Should we follow the Federal Trade
2 Commission? They said we shouldn't fall under this
3 law.

4 REPRESENTATIVE MATZIE: So if this bill
5 were to pass -- And I go back to my comment on the
6 previous testifier. Some of the e-mails basically
7 were talking very plain English that, if this bill
8 passes, doom and gloom, jobs will be lost, et
9 cetera, services will be interrupted and
10 interfered.

11 MR. KERNAN: I see where you're going on
12 this. I'm sorry.

13 REPRESENTATIVE MATZIE: What happens in
14 that regard --

15 MR. KERNAN: In that regard --

16 REPRESENTATIVE MATZIE: -- if it were to
17 pass?

18 MR. KERNAN: If it were to pass, it
19 would increase our costs. We would have to do
20 certain things to increase our costs to fall under
21 the provisions of this bill. We're going to have
22 to pass our costs onto the consumer. Either we do
23 one or two things as a business: Increase our
24 costs to the consumer or cut back in certain areas.
25 We've already cut back in the possibility -- in

1 case we lost somebody; in case we lost this, but I
2 don't want to.

3 We've got employees out there that we
4 care about, and we want them to remain employed.
5 Many of our employees have reached out to you folks
6 and have reached out to senators in our district,
7 saying, hey, this bill will affect us, and it will.
8 It will affect their jobs. We don't want it to.
9 But when you increase costs, any business has to
10 react to that in one of two ways: Trim their
11 budgets or raise their prices, or both.

12 REPRESENTATIVE MATZIE: Okay. Thank
13 you, Mr. Chairman. Thank you.

14 MAJORITY CHAIRMAN GODSHALL:
15 Representative Masser.

16 REPRESENTATIVE MASSER: Thank you, Mr.
17 Chairman.

18 Can you tell me what a lawn crypt is?

19 MR. KERNAN: There? Where are you?

20 REPRESENTATIVE MASSER: What is a lawn
21 crypt?

22 MR. KERNAN: You're up in Danville,
23 right?

24 REPRESENTATIVE MASSER: I am.

25 MR. KERNAN: We have a cemetery in your

1 backyard.

2 A lawn crypt is a pre-installed crypt in
3 the ground. It is a double-depth or single;
4 single-compartment crypt or double. They're
5 installed --

6 When we install ours, we put crushed
7 gravel at the base of the excavation site. We
8 excavate a large site in our cemetery, and we
9 install 200, 300, all at one time, so we save money
10 by doing it that way. Our expense goes -- it all
11 incurs at one time. It's a much better economical
12 means for us. And the fact -- The way we install
13 them on the crushed gravel and the -- And we also
14 install a system inside. It's called a French
15 drain system. It has a --

16 Each crypt has an opening on the bottom
17 that allows for the seepage into the crushed
18 gravel, and we have piping that lasts -- Common
19 French drain system is what it's called. My
20 brother-in-law has put these in for years. He can
21 probably better explain it to you than I can.

22 We have been providing them to the
23 consumer for 40 years. It's a much more economical
24 means of burial. You're utilizing one burial space
25 rather than two because of your double-depth crypt.

1 Some people call them stackables, but we don't call
2 them that. They're a very dignified for of
3 inter -- And that's probably one of our biggest
4 sales, because consumers like them. We show that
5 as an economical option.

6 REPRESENTATIVE MASSER: Have you had
7 instances where -- when you went to bury someone
8 and there was damage to the vault?

9 MR. KERNAN: If there are (sic) damage
10 to vaults, we replace or we repair them, or we get
11 them to select another site. Very rarely does that
12 ever happen, that we have to do that.

13 REPRESENTATIVE MASSER: Okay.

14 MR. KERNAN: I can't say that it hasn't
15 happened. I've not been around -- I've only been
16 around for 40 years. I can tell you, we've had in
17 our case maybe one incident, and we do about 2,500
18 interments a year in five states.

19 REPRESENTATIVE MASSER: Thank you, Mr.
20 Chairman.

21 MAJORITY CHAIRMAN GODSHALL:
22 Representative Davis.

23 REPRESENTATIVE DAVIS: Hi. I'm not sure
24 if you're the one I should ask, so -- When someone
25 pre-buys and, say, a big company brings down these,

1 what are they called, vaults? The vaults --

2 MR. KERNAN: Okay.

3 REPRESENTATIVE DAVIS: -- delivered to
4 your area, your cemetery, how does it work? See,
5 we're not funeral guys, so what are the phrases?

6 MR. KERNAN: Most people aren't. But go
7 ahead. I'm sorry. Let me try to answer your
8 question.

9 REPRESENTATIVE DAVIS: I've had
10 complaints where they left them out for a long
11 period of time. And my question is, if I deliver
12 these, if I'm the vault owner/manufacture, I
13 deliver them to a cemetery, is there anything
14 written that they have to be in the ground by a
15 certain time? Or, are they allowed to be above
16 ground?

17 MR. KERNAN: There are provisions now
18 for mausoleum construction. Once you start that,
19 what -- I can't answer for --

20 REPRESENTATIVE DAVIS: Well, I've had
21 complaints where neighbors have said, I don't want
22 to look at these every day.

23 MR. KERNAN: We've had that ourselves at
24 Bedford County Memorial Park. What we do --
25 Because our cemetery is up on a hill, and you can

1 see it pretty prominently.

2 We excavate that site, and we bring in a
3 shipment at a time. We only -- You know, we have
4 one truck. We'll bring in 12. Then we bring in
5 another 12. And sometimes it can be sitting up
6 there for about until two or three months until --
7 you know, above ground until we have them all there
8 that we need to install at one time.

9 So, yeah, they could go two or three
10 months, but normally, that's it. They go into the
11 ground. And while they're above ground, they're
12 not being deteriorated.

13 REPRESENTATIVE DAVIS: Well, that's not
14 the point. It's an eye -- Some people consider it
15 an eyesore. My ques -- So there's nothing saying
16 they have to be in the ground by a certain time?

17 MR. KERNAN: There's nothing that says
18 that, and as far as complaints, we haven't gotten
19 any complaints from our consumers. I mean, one or
20 two that they're an eyesore. But, once we explain
21 to them what we're doing, they're fine with it.
22 They think they're going to stay above ground and
23 stay there when they see them for a period of time,
24 and they're not going to stay there. We don't want
25 our cemeteries looking like eyesores. We want to

1 sell them.

2 MAJORITY CHAIRMAN GODSHALL: There being
3 no further questions, we appreciate your --

4 FEMALE VOICE: You have one more
5 question over there.

6 MAJORITY CHAIRMAN GODSHALL:
7 Representative Stephens, I didn't see you sitting
8 over there. I'm sorry.

9 REPRESENTATIVE STEPHENS: Thank you, Mr.
10 Chairman.

11 How are you, sir? Thank you for coming
12 in this morning.

13 MR. KERNAN: I'm nervous, but go ahead.

14 REPRESENTATIVE STEPHENS: No worries.

15 MR. KERNAN: I can't wait to use the
16 restroom.

17 REPRESENTATIVE STEPHENS: Well, thank
18 you for sharing.

19 The illustration that was laid out
20 earlier about the removal of funds from the trust,
21 you know, where we started at 70 percent, and then
22 we were left with -- We started with the thousand
23 dollars and we were left with \$200, I think, at the
24 end. I mean, is that practice exercised where
25 there's money removed -- so, money removed from the

1 vault, and then the -- I think there was the
2 pre-opening -- I don't have the sheet in front of
3 me, but you have these pre-opening/closing costs
4 and everything that are deducted, and then you're
5 left with something less than 70 percent in the
6 trust.

7 Is that regularly practiced in the
8 cemetery industry that is engaged in the pre-need
9 sales?

10 MR. KERNAN: I know each state is a
11 little different, I think. Some states the
12 requirement is less. It's less than 70 percent,
13 the trust. I'm trying to answer your question.
14 Let me see if I'm --

15 REPRESENTATIVE STEPHENS: Sure. And
16 maybe I'm not asking it clearly enough. What I'm
17 asking is -- So we have 70 percent in PA --

18 (Document handed to Representative
19 Stephens).

20 REPRESENTATIVE STEPHENS: Thank you,
21 Representative.

22 So the illustration that was given was
23 that the consumer pays a thousand dollars for the
24 vault and opening/closing pre-need. Then the
25 cemetery is required to trust 70 percent of that,

1 so \$700 would go into the trust.

2 MR. KERNAN: Yes.

3 REPRESENTATIVE STEPHENS: And then, the
4 cemetery doing constructive delivery would take
5 from the trust \$300 for the cost of the vault, and
6 then \$200 for the opening/closing fee for
7 pre-installation of the vault, so now we're down to
8 just \$200 of the thousand that's left in the trust.

9 Did you follow the --

10 MR. KERNAN: I do.

11 REPRESENTATIVE STEPHENS: -- follow the
12 illustration?

13 MR. KERNAN: I do.

14 REPRESENTATIVE STEPHENS: Is that a
15 common practice in the cemetery industry in
16 Pennsylvania; to deduct those costs out and be left
17 with something in the neighborhood of 20 percent of
18 the initial amount that was provided by the
19 consumer?

20 MR. KERNAN: The illustration -- I'll
21 try to provide what I understand to answer your
22 question.

23 REPRESENTATIVE STEPHENS: Sure. That's
24 fine. That's fair.

25 MR. KERNAN: Those numbers are a little

1 confusing to me because, personally, when we sell
2 any product that's undelivered, we have to trust 70
3 percent of that product.

4 Now, when we sell our lawn crypts, we
5 don't have to trust that 70 percent. The crypt is
6 already delivered. It's in the ground. So we use
7 the money, the proceeds, to maintain our
8 cemeteries; to take care of the upkeep. Yeah,
9 we'll take the money to -- to the hundred percent
10 of that money, and we will use it to take care of
11 our cemeteries.

12 And we still are required -- Anything
13 that's undelivered, like vaults, like a memorial,
14 we have to set aside 70 percent to make certain
15 it's there. But once it's delivered, we still have
16 to require -- our cemeteries require the trust
17 money for perpetual care on everything to maintain
18 the cemetery.

19 But as far as the 70 percent trusting on
20 the crypt that's installed in the ground, no.
21 That's -- Why do we have to trust the money? We
22 fall under a provision we have to trust 15 percent
23 of every lot sale. We have to trust 15 percent of
24 that crypt sale for perpetual care.

25 Now, most cemeteries put extra money in

1 there to maintain their cemeteries, okay, because
2 -- You know, we're fighting inflation and bills.
3 It's bills like everybody else; our health costs
4 and our employees. But, the product is delivered,
5 and we provide a good product, and we use the money
6 to throw back into our cemeteries, pay our
7 employees or do more promoting of pre-need sales.

8 REPRESENTATIVE STEPHENS: So, I guess my
9 question then becomes, is in terms of the -- I get
10 it that you're delivering that particular vault,
11 but the consumer doesn't get that actual vault? I
12 mean, the cemetery is still -- something could
13 happen where the cemetery -- the consumer doesn't
14 benefit from that particular vault. It may be
15 damaged --

16 MR. KERNAN: No, he picks out the space.

17 REPRESENTATIVE STEPHENS: I'm sorry?

18 MR. KERNAN: He picks the space out.

19 REPRESENTATIVE STEPHENS: Sure.

20 MR. KERNAN: The space is selected and
21 the crypt -- And they get a deed. Okay. Am I
22 answering your question?

23 REPRESENTATIVE STEPHENS: Yeah. I mean,
24 I guess my concern is, it seems like the original
25 intent -- Obviously, I wasn't around when this bill

1 came up. It seems like the original intent of the
2 legislation was to ensure that there were
3 sufficient funds set aside for the consumer to be
4 protected down the road when they actually are
5 going to need that particular space and those
6 products.

7 And the example that was given just
8 concerned me a little bit when we are going from 70
9 percent and then, in reality, we end up with what
10 is 20 percent left. And I just wonder -- I
11 wondered if that was a common practice, and it
12 seems like that is the case across Pennsylvania.

13 MR. KERNAN: That's what the law allowed
14 us to do. That's been in existence since 1963.

15 REPRESENTATIVE STEPHENS: I wasn't
16 suggesting anyone was doing anything illegal or
17 improper if --

18 MR. KERNAN: No, I understand.

19 REPRESENTATIVE STEPHENS: If they were,
20 we wouldn't have to change the law in order to
21 address it.

22 MR. KERNAN: Well, a lot of this is
23 educating, really, and I'm trying my best to do
24 that. That is under provisions right now. It's
25 been there in existence since 1963, and we have

1 been using --

2 The money that we set aside that we're
3 able to use, we set aside -- we have to fall under
4 the perpetual care trust funds and the merchandise
5 trust funds, and there's enough there to maintain
6 to make certain the consumer is going to get what
7 they want and their cemetery is going to be taken
8 care of.

9 REPRESENTATIVE STEPHENS: Is there a
10 floor under which you can't go in terms of a
11 percentage? I mean, could you extract every dollar
12 from the trust based on these provisions?

13 MR. KERNAN: No.

14 REPRESENTATIVE STEPHENS: What's the
15 floor?

16 MR. KERNAN: Again, we have a perpetual
17 care trust fund that requires 15 percent of every
18 lot sale has to be put into the trust. We can't
19 touch that money.

20 REPRESENTATIVE STEPHENS: 15 percent?

21 MR. KERNAN: 15 percent. That's also
22 crypt, too. Any lot sale, any mausoleum sale, any
23 crypt sale, we require 15 percent we can't touch.
24 That's automatically gone.

25 REPRESENTATIVE STEPHENS: So, you have

1 to set aside 70 at the outset. You could withdraw
2 all the way down to -- You could take out all the
3 way down to 15 percent?

4 MR. KERNAN: When it's delivered, yes;
5 when it's delivered. Now, if it's not delivered,
6 we have to provide 70 percent. We can't touch it.

7 REPRESENTATIVE STEPHENS: Okay.

8 MR. KERNAN: Then it's delivered, we can
9 take the money out of trust, and the family gets a
10 deed or certificate of ownership. They have their
11 property. They can sell it if they want. It's
12 their property.

13 REPRESENTATIVE STEPHENS: Okay. Thank
14 you for taking the time to be with us today. I
15 appreciate it.

16 MR. KERNAN: I hope I answered your
17 question.

18 REPRESENTATIVE STEPHENS: No, you did.
19 I appreciate it. Thank you.

20 MR. KERNAN: All right. I'm sorry if
21 I --

22 MAJORITY CHAIRMAN GODSHALL: Thank you,
23 Representative Stephens. I didn't see you over
24 there a little while ago.

25 That concludes the questions, and we

1 appreciate it.

2 MR. KERNAN: Thank you. All right.
3 Thank you very much. I appreciate your time.

4 MAJORITY CHAIRMAN GODSHALL: At this
5 point we call Paul Evans, Vice President of Evans
6 Burial Vault.

7 MR. EVANS: My name is R. Paul Evans,
8 and I'm vice president and owner of Evans Burial
9 Vaults. Evans Burial Vaults serves --

10 A VOICE: Could you pull the mike
11 closer, please?

12 MR. EVANS: Oh, okay. Apologize.

13 My name is R. Paul Evans, and I am vice
14 president and owner of Evans Burial Vaults. Evans
15 Burial Vaults services the burial vault needs of
16 120 funeral homes in central Pennsylvania, northern
17 Maryland, northern Delaware, and in 2016, marks our
18 100 years of business for our firm. We operate
19 four burial vault plants located in Leola, which is
20 in Lancaster County, Schaefferstown, which is in
21 Lebanon County, Harrisburg and Gettysburg,
22 Pennsylvania.

23 Prior to my current position, I worked
24 for 15 years in the consulting engineering field
25 managing a wide range of projects. My educational

1 background includes a B.S. in geology from
2 Dickinson College and an MS from the College of
3 Engineering Environmental Pollution Control program
4 from the Pennsylvania State University.

5 The burial vault industry follows very
6 specific standards and specifications for the
7 construction, delivery and installation of concrete
8 burial vaults. These standards and specifications
9 are provided by the National Concrete Burial Vault
10 Association, as well as by the national burial
11 vault franchises, including Wilbert, Doric, Trigard
12 and Eagle.

13 In general, these standards and
14 specifications require that burial vaults are
15 constructed with a 5,000 psi concrete mix with
16 specific types of reinforcement including rebar,
17 wire mesh and polystyrene vault liners. Vaults are
18 to be allowed to cure for a minimum of 28 days and
19 then delivered to cemeteries for burial. NCBVA
20 provides a certification for vault companies which
21 follow these industry standards.

22 At Evans Burial Vaults, we have learned
23 that the best practice to ensure a high-quality
24 product is to follow the NCBVA manufacturing
25 specifications and carefully rotate stock somewhere

1 between 60 and 90 days. Vaults with polystyrene
2 liners should be stored indoor to limit changes in
3 temperature which can cause damage to the liners as
4 they expand and contract.

5 When installing the vault, it is
6 important to keep the box and the lid as dry as
7 possible and limit any soil material from impacting
8 the seal area. The best way to properly seal a
9 burial vault is to use a Wilbert Way above-ground
10 sealing system in which the box and lid are sealed
11 above ground and then lowered together in the grave
12 as a complete unit.

13 I'm now going to present to you a slide
14 show that demonstrates examples of how corporate
15 cemeteries in this Commonwealth hold inventory
16 pursuant to the practice of constructive delivery.

17 (Slide-show presentation occurred).

18 In viewing that, I see a number of
19 problems with the concept of constructive delivery
20 of burial vaults. First, concrete will deteriorate
21 over time when exposed to changes in temperature,
22 freeze and thaw, and acidic rain. And you can see
23 that on concrete bridges, retaining walls and other
24 pre-cast concrete products.

25 Of particular concern would be the

1 condition of any sealer material, i.e., rubber
2 neck, et cetera. This material becomes very
3 brittle over time when not stored in a moist and
4 temperature-controlled area, resulting in poor
5 vault-sealing performance.

6 I am also aware that some cemeteries use
7 a constructive delivery strategy where vaults are
8 interred when purchased pre-need. I want to
9 clarify this. I'm referring to burial vaults.
10 These are vaults that are sealed. They are not
11 necessarily grave liners or when we talked about
12 lawn crypts, which are never sold as sealed units.

13 At the time of need, then, the vault is
14 exhumed and the cover is removed for burial. I see
15 problems with this strategy. When the cover is
16 removed, the seal is broken, which, in most
17 instances, damages the tongue and groove sealing
18 structure, as well as the polymer liners.

19 Also, from a practical perspective, it
20 is impossible to keep soil material from
21 interfering with seal when the cover is placed back
22 on the vault. In most instances, the result is a
23 damaged product that is full of water and mud.
24 This would not result in a dignified manner of
25 burial.

1 I support Bill 874 because I don't
2 believe that constructive delivery is consistent
3 with industry standards and does not provide any
4 benefits to consumers. I sincerely request the
5 bill be moved through the committee.

6 I'll be happy to entertain any questions
7 that you might have.

8 MAJORITY CHAIRMAN GODSHALL:
9 Representative Masser.

10 REPRESENTATIVE MASSER: Thank you, Mr.
11 Chairman.

12 Where were those pictures taken from?

13 (Pause).

14 REPRESENTATIVE MASSER: I'm sorry.

15 MAJORITY CHAIRMAN GODSHALL: There is a
16 question from Representative Masser pertaining to
17 where the --

18 REPRESENTATIVE MASSER: Can you tell me
19 where those pictures were taken from, where we saw
20 those vaults all lined up?

21 MR. EVANS: I'm not -- I didn't actually
22 take those pictures. They were the various -- I
23 believe it's from a vault plant out in the western
24 part of the state, but I --

25 REPRESENTATIVE MASSER: So that's the

1 vault plant and not the cemetery that is holding
2 the vaults like that?

3 MR. EVANS: In that case, yes. I will
4 tell you that you can travel around central
5 Pennsylvania, and you can see similar sites at some
6 cemeteries.

7 REPRESENTATIVE MASSER: That many?

8 MR. EVANS: Not that many.

9 REPRESENTATIVE MASSER: Okay. All
10 right. That was one of my questions to -- Do some
11 of the -- While you're -- You don't store them like
12 that; you turn your product over, let's say, 60 to
13 90 days?

14 MR. EVANS: There are some other
15 examples that we have. These are not from the
16 plant itself.

17 (Slide-show presentation continues).

18 This is where you get into issues. When
19 vaults are stored above ground over time, they do
20 deteriorate. It's just a simple matter of chemical
21 processes.

22 REPRESENTATIVE MASSER: I too want to
23 see a dignified burial. Is there a proper way to
24 pre-deliver these units and make sure that it's got
25 a proper seal when it's put back in?

1 MR. EVANS: I can only speak to the
2 vaults that we manufacture. Now, we manufacture
3 individual vaults. We do not manufacture double
4 crypts, lawn crypts, that kind of stuff. But as
5 far as I'm concerned, single units, I can't see how
6 you would do that.

7 REPRESENTATIVE MASSER: My main concern
8 with this entire bill is consumer and consumer
9 pricing and making sure we do have a dignified
10 process for those. I mean, unfortunately, I just
11 went through it. I buried my mother right after
12 Thanksgiving. But I'll tell you, when you're at
13 the funeral home and you're picking out these
14 prices, you're not even thinking about it. So I
15 don't want to put my son through this when I pass.
16 I want to have it pre-arranged and not put him
17 through that.

18 But my concern is that, say I do the
19 pre-arrange and I have it pre-delivered. I only
20 have X amount of years left on this earth. I'm
21 going to have a whole lot more years in that box
22 than I am above ground. Does that seal -- How long
23 does that seal last when I --

24 MR. EVANS: Well, the vaults -- Again,
25 we're discussing burial vaults. These are

1 individual units that are franchised nationally by
2 Wilbert or Doric, Trigard, Eagle. Those units all
3 have with warranties with them. So they're talking
4 a hundred years, 75 years kind of situation.

5 I will say this: The vaults that are
6 manufactured that follow the National Concrete
7 Burial Vault Association, NCBVA standards, and that
8 are delivered within -- you know, within the 60-to-
9 90-day time period, those are excellent products,
10 and they do withstand --

11 I mean, we do lots of dis-interments,
12 and we see what works and really what doesn't work.
13 Like I said, those warranted units that are
14 polystyrene lined, we've had great successes with
15 them.

16 REPRESENTATIVE MASSER: All right.
17 Thank you.

18 MAJORITY CHAIRMAN GODSHALL:
19 Representative Longietti.

20 REPRESENTATIVE LONGIETTI: Thank you for
21 your testimony. So, if I understood you correctly,
22 there are at least some vault manufacturers that
23 store products above ground after they manufacture
24 them?

25 MR. EVANS: Most vault manufacturers,

1 companies like ours, we will store them for -- They
2 have to be stored at least 28 days to cure before
3 they should be loaded on a truck and delivered.
4 Certainly, we need enough inventory to operate, so
5 we'll probably have 60 to 90 days' worth of
6 inventory.

7 But you wouldn't see companies like ours
8 keeping inventory over long periods of time. I
9 mean, we want to match our inventory with our
10 sales, and we want to try to keep the product as
11 fresh as possible.

12 REPRESENTATIVE LONGIETTI: Why would a
13 cemetery want to have a vault on their property for
14 a period of years without utilizing it?

15 MR. EVANS: I would not -- myself, would
16 not understand why they would want to do that.

17 I will say this: A lot of cemeteries
18 that sell vaults, they do purchase vaults and they
19 also rotate their stock. I mean, it isn't like
20 this is what every cemetery does. Absolutely not.
21 But, there are instances where they are stored out
22 in the back, and there's quite a lot of them. It's
23 always been -- I'm not sure. I don't know if that
24 has to do with the constructive delivery process or
25 not, but I do see it in a fair amount of

1 cemeteries.

2 REPRESENTATIVE LONGIETTI: It seems that
3 they would have a similar interest to your
4 company's interest to, perhaps, have a number of
5 them. I don't know if they want to order them one
6 by one. There's probably inefficiencies to doing
7 that.

8 MR. EVANS: No. Most cemeteries will
9 order a fairly large -- I mean, they'll order 10 at
10 a time or something like that, but they'll use them
11 up.

12 I think there's a difference between
13 cemeteries that merchandise vaults and cemeteries
14 that use this process of constructive delivery.

15 REPRESENTATIVE LONGIETTI: Now, when a
16 vault is placed into the ground, are there -- I
17 understand ground temperatures don't change,
18 perhaps, as much as above-ground temperatures. But
19 are there changes in temperatures when a vault is
20 placed in the ground over a period of a year, for
21 example?

22 MR. EVANS: No. Actually, a burial
23 vault is very happy in the ground. I mean, it's a
24 pretty constant temperature. And, truthfully,
25 concrete does harden over time. So, I mean, if

1 it's in the ground and it's left undisturbed, it
2 will stay intact.

3 Some of the questions that were brought
4 up here about vaults and what they're doing at the
5 national cemeteries, the national cemeteries are
6 burying double crypts, but they're being sold as
7 what's called grave liners or nonsealed products,
8 so the consumer knows that to begin with.

9 Now, the issue gets into -- When you get
10 into the higher-quality sealed vaults, that's where
11 the issue of this constructive delivery becomes a
12 question.

13 REPRESENTATIVE LONGIETTI: Does it make
14 sense to, perhaps, carve out those products instead
15 of having a blanket policy that affects every
16 product if, really, the only concern or the major
17 concern is high-quality seal products?

18 MR. EVANS: The vaults that are sold as
19 burial vaults that are sealed, I have an issue with
20 the whole concept of constructive delivery.

21 REPRESENTATIVE LONGIETTI: Tell me about
22 -- You indicated that most manufacturing companies
23 have a 75 or even a hundred-year warranty. How
24 does -- You know, if a vault is purchased and is
25 not immediately placed in the ground -- Let's say

1 that it's on a cemetery property for a year. How
2 was -- how does -- how is that vault effective
3 given that we have a 75 or a hundred-year warranty?

4 MR. EVANS: That is a good question. I
5 actually did -- Because I anticipated that question
6 being asked, I actually did speak to --

7 We're a multiple-franchise company, so
8 we have multiple franchises, which is not all that
9 unusual. I did speak to my representative for
10 Wilbert Funeral Services, which is probably the
11 largest national franchisee. His attitude was that
12 Wilbert will back their own licensee, which we
13 would be the licensee.

14 So, if we choose to warranty that
15 product, then they would back us. If we do not
16 choose to warranty that product, then they would
17 not back it either. So they're very -- The idea of
18 constructive delivery, in their minds, is suspect,
19 I would say.

20 REPRESENTATIVE LONGIETTI: So what are
21 you currently doing? Are you -- We're hearing that
22 there's a fair amount of constructive delivery
23 that's going on? Are you currently warranting
24 those products? What are you doing?

25 MR. EVANS: In our company, almost all

1 of our products are sold individually through
2 funeral homes. We do a little bit of bulk sales,
3 but very limited. And all of the bulk sales we do
4 are grave liners.

5 REPRESENTATIVE LONGIETTI: Thank you,
6 Mr. Chairman.

7 MAJORITY CHAIRMAN GODSHALL: Thank you.
8 That concludes the questions. Thank you
9 for your presentation.

10 Final presenter today is Lawrence
11 Miller, President and CEO of StoneMor Partners.
12 You may proceed.

13 MR. MILLER: Thank you, Chairman
14 Godshall, and thank you, members of the committee.
15 Unfortunately, I'm battling a cold for a couple
16 weeks, so I apologize; and also, an erratic contact
17 lens, so if I start to squint, please forgive me.

18 Just introduction: My name is Lawrence
19 Miller. I'm president and chief operating
20 executive of StoneMor Partners. And it's fair to
21 say that we're at the eye of the storm. And I
22 think most of my testimony, actually, is gonna talk
23 about StoneMor and the issues.

24 But, I think it's important that you
25 understand, we're very proud of our company. We're

1 a public company. So, I have an independent board
2 of directors. We use all high-quality
3 professionals, auditing firms, legal firms. So,
4 everything we do is under a lot of scrutiny; things
5 like Sarbanes-Oxley and all the disclosure
6 requirements. So this is a company that has
7 extreme amount of governance. We are very proud of
8 the reputation that we have, despite a lot of the
9 negative things that have been said.

10 In the past couple years, we have been
11 brought in from four different states--Michigan,
12 Indiana, Ohio and Tennessee--to help them bail out
13 problem cemeteries. And actually, during the past
14 couple of years, my organization, my company, has
15 put over \$50 million into trust funds where the
16 money had been illegally stolen from, you know,
17 just bad actors. And that's the kind --

18 If there's a problem in the United
19 States with a cemetery, I can almost guarantee my
20 company will get a phone call and asked to come in
21 and help bail them out. So we're very proud of who
22 we are and what we are.

23 In Pennsylvania, what you're being asked
24 to do is to get involved in a turf war. And I know
25 Sam said it was trite, but the reality is, it is a

1 turf war. And the bill is not designed to protect
2 the consumer but, rather, to protect a handful of
3 funeral directors, most of whom reside in southeast
4 Pennsylvania, who, prior to our company entering
5 into the lease with the Archdiocese of Philadelphia
6 had a monopoly, and it's that simple.

7 The church never sold merchandise. So
8 the two key items where we conflict is the casket
9 and the vault. Funeral directors generally don't
10 sell lawn crypts, obviously. They don't sell
11 markers and a few other things. It's the vault and
12 the casket. And up until the time we entered into
13 that lease, they had -- they essentially sold a
14 hundred percent of all of those products.

15 Now, we come along and we offer them
16 both on a pre-need and at-need basis--primarily on
17 a pre-need basis--so there's competition, and it's
18 that simple. I mean, it truly is that simple.
19 It's a handful of people that have had this
20 monopoly, and they're losing that.

21 The tax on StoneMor -- I mean, they talk
22 about us. And when you read a lot of the negative
23 advertising that's gone on, they make it sound like
24 it was all after the fact; that somehow they have
25 evidence. And remember, I think it's important for

1 people to understand, nothing here in the state is
2 broke. The 1963 act is not broken. You cannot
3 find evidence.

4 Will you find, occasionally, a complaint
5 from a family? Of course. Our job is to take care
6 of that and satisfy that family. But go to the
7 Real Estate Commission. Go to the Federal Trade
8 Commission. Go to the Attorney General's Office.
9 This is not something that has to be fixed.

10 What's happening is -- And if you go
11 back -- When the Archdiocese announced the deal,
12 before anything happened -- It was over a year
13 before we could actually close the transaction.
14 The funeral directors, particularly those in the
15 southeast part of the state, started an attack.
16 You can talk to the Archdioceses. They will tell
17 you, the phone calls, the letters that they were
18 getting that were saying all these bad things about
19 StoneMor in the hopes that the Archdioceses did not
20 go through with the deal.

21 Unfortunately, they were facing
22 bankruptcy. And as you heard earlier, my company
23 committed almost \$90 million to the Archdioceses to
24 help them avoid bankruptcy. Along with the other
25 things they did, they have been fortunate to avoid

1 the bankruptcy.

2 After the deal, the attacks became
3 almost unbearable, and they continue to this day.
4 I actually should have brought -- I didn't realize
5 we'd have a PowerPoint. One of the -- head of
6 the--I'm not sure he's currently, but he was last
7 year--of the Philadelphia Funeral Directors
8 Association, his funeral home in Philadelphia; if
9 you go to their website and you bring up their
10 website--this is supposed to be offering benefit
11 value to families--all you see under the name of
12 the funeral home is consumer alert. Right away you
13 must think something's wrong. Then it goes on to
14 talk about StoneMor and how bad a company we are
15 and the kinds of people we hire. I mean it's
16 almost --

17 You will find negative letters to
18 families. You'll find negative newspaper ads,
19 negative TV commercials; negative comments on
20 individual funeral home websites; negative comments
21 on local and state funeral association websites;
22 and negative comments to grieving families, and
23 it's all directed at StoneMor.

24 What you're trying to hear is that
25 somehow this bill is a consumer benefit. Yet,

1 really, all it is, as you go through the past
2 couple years, listen to the testimony, review the
3 testimony from the prior hearings, and you'll see
4 it's an attack on StoneMor and, again, it's because
5 of the turf war.

6 We also have firsthand knowledge that
7 funeral directors -- And I'm talking about today.
8 I'm not talking about, you know, a year ago -- that
9 the funeral directors are being less than honest
10 with their customers. Attached in your paperwork
11 you have an executive report that was prepared by
12 an independent company that goes in, and they went
13 to 13 funeral homes that are part of this whole
14 issue and had conversations as if they were
15 purchasing a funeral.

16 What you'll see is negative comments
17 regarding StoneMor and a deliberate attempt to
18 direct families away from the Archdiocese
19 cemeteries. These are the same funeral directors
20 that are supposed to be supporting the Catholic
21 burial right, and they should be ashamed of
22 themselves for the commentary that they are making.
23 Here's two examples:

24 The Joseph A. Quinn Funeral Home of
25 Philadelphia told the shopper--And again, this is

1 an independent organization that was paid for--
2 that StoneMor had a very high pressure, unethical
3 sales team. Joe told me all the local funeral
4 homes were banning together and were doing
5 everything possible to make them fail; that's
6 StoneMor.

7 The shopper said he was told the
8 following during a visit with the Tomlinson Funeral
9 Home, Senator Tomlinson's funeral home: StoneMor
10 had conducted very bad business. He said that this
11 company had done something similar in Detroit, and
12 they actually went bankrupt. Now that's just a
13 total absolute lie.

14 We have a wonderful relationship with
15 the Archdiocese of Detroit. I think that I need to
16 take a minute and explain that transaction. They
17 also were having financial difficulties some years
18 ago, and we were invited in to see if somehow we
19 could help them. The Archbishop, who I met with
20 repeatedly, was -- felt terrible that he even had
21 to sit and talk to an outside organization.

22 The church, if you're Catholic and you
23 understand Catholicism, it's a very, very important
24 part of Catholicism. The body is the temple of the
25 spirit, and they feel the responsibility to take

1 care of that. The fact that he was going to
2 outsource that was very troubling. The Archbishop
3 continued to say, this is an issue of heart; this
4 is an issue of heart.

5 So what we did in that transaction
6 was -- They obviously needed help. They had a
7 financial deficit; they were losing money; is, that
8 we entered into a transaction where we took over
9 the management of their properties. They actually
10 paid us, and the commitment was for them to pay us
11 a certain amount of money to help offset our cost
12 until we could get the businesses functioning the
13 way they were supposed to function. They were
14 going to pay us. But, we said, at any point in
15 time, if you actually restore the financial
16 stability to the Archdiocese and you want to take
17 the cemeteries back, we built in a formula, a
18 30-day notice--it was that simple--calculated how
19 much we were entitled to. They paid us that; they
20 took the cemeteries back.

21 If the Archdiocese of Detroit -- If we
22 were such bad actors, you can talk to the
23 Archdiocese of Philadelphia to both the Archbishop,
24 and you can talk to their chief financial officer,
25 Tim O'Shaughnessy, and they will tell you that

1 during their due diligence process, when we were
2 one of the companies they were evaluating to take
3 over the cemeteries, they talked to their
4 counterpart in Detroit, and they got very, very
5 positive, favorable reviews on StoneMor. Why would
6 they have entered into a transaction with us if we
7 were such bad actors? So that whole -- That's
8 nothing more than a myth.

9 Actually, it's unfortunate that I have
10 to share this, but it's been clear from the
11 beginning that certain interests will stop at
12 nothing and say anything to kill competition, with
13 no regard whatsoever to consumer protection.
14 Frankly, I find it disturbing that a Senate
15 committee with the words consumer protection in its
16 name released this bill.

17 Please note, through this battle, the
18 negative references are directed almost exclusively
19 at StoneMor; not cemeteries in general; again,
20 reinforcing this is a turf war.

21 You know, I've operated -- I've been
22 involved in the Philadelphia area since 1972 with
23 cemeteries, doing exactly then what we do today.
24 Nothing's different. We haven't changed anything.
25 We've been delivering vaults. We've been

1 pre-installing vaults. We've been working with
2 funeral directors. It has never been a problem.
3 How come we didn't hear about this in the '70's,
4 the '80's, the '90's? It wasn't until we entered
5 into the deal with the Archdiocese.

6 We talked about the -- I mentioned
7 earlier in my conversation that, please go to the
8 Pennsylvania Real Estate Commission. Go to the
9 Attorney General's Office; talk to the Federal
10 Trade Commission before you decide and ask them
11 what's broke. And, again, I think you'll find that
12 nothing is broke.

13 The National Cemetery Administration,
14 which regulates, governs, is responsible for all of
15 the veterans cemeteries. They have determined --
16 And we included in your package, there's
17 information, I think it's a seven-page letter,
18 where they talk about the pre-installation of
19 burial vaults as a preferred practice, and they
20 give a host of reasons. There's economic reasons.
21 There's health and safety issues, but there's
22 absolutely no problem.

23 Actually, a few minutes from the
24 Philadelphia area where there's a newly-opened
25 veterans administration of Bucks County, they're in

1 the process of pre-installing 15,000 double-depth
2 burial crypts. That's 30,000 burials; years and
3 years and years of inventory is going in the
4 ground. And I think the gentleman acknowledged
5 that once the vault is in the ground, it doesn't --
6 there's nothing -- nothing happens to that vault.
7 We don't warrant a vault is going to last forever.
8 We don't seal a vault and then unseal a vault.

9 Our process is very simple. We put the
10 vault in the ground. If there's water issues, we
11 take care of that with additional drainage or
12 stone, whatever, to make sure that the vault is
13 protected. And our responsibility, what we
14 guarantee to the family is, at the time of need,
15 that vault will be in proper condition.

16 You know, they're making it sound like
17 -- And there are vaults -- And the gentleman
18 mentioned some of the different companies:
19 Wilbert, Doric, Trigard. We generally don't sell
20 those vaults. We sell more simple concrete box.
21 It may be painted. It's very simple. They sell
22 something that's much more eye-appealing,
23 aesthetic. I'm not sure why. It's going in the
24 ground.

25 The purpose is not eye appeal. The

1 purpose for a concrete vault, liner, whatever, is
2 to protect the stability of the grave because,
3 eventually, that casket will deteriorate. They're
4 wood or they're metal. It may take years and years
5 and years. But if you go into an older cemetery,
6 you better be very careful how you walk. Because
7 if they didn't have a mandatory vault requirement,
8 you're going to find lots of settling, lots of
9 holes, whatever, in the cemetery.

10 That's what a vault does; it protects
11 the integrity of the ground. So whether I put it
12 in the ground today or I put it in the ground 20
13 years from now, it doesn't matter. All I want to
14 do is ensure that I have a product just like the
15 foundations of our homes or bridges, whatever.
16 That's all that is. That's what it is. And it's
17 getting blown out of proportion that somehow the
18 consumer is looking for something with wonderful
19 eye appeal.

20 I would also suggest to you that, we've
21 all been to funerals. And funeral directors do a
22 wonderful job; very caring individuals who help us
23 particularly at that terrible time in our life.
24 They always have a representative at a funeral. I
25 know I have never been to a funeral where the two

1 most visible people are the priest or minister and
2 the funeral director. And believe me, they're
3 looking at that grave site. If there was a problem
4 with that burial vault, they're going to -- they're
5 not going to let their family, their loved one, be
6 buried in that grave.

7 Where are the complaints? Again, I keep
8 com -- There are no issues, there are no
9 complaints. There may be one here or one there.
10 They're taken care of.

11 They talk about that it's not a level
12 playing field. Well, that's their choice. I
13 welcome the competition. I do believe, and I've
14 been told by attorneys, that they can sell under
15 the pre-need, under the 63 act; that they can go
16 out and they can put together a sales force. They
17 can get them licensed the same way we get them
18 licensed; do the appropriate background checks and
19 they can sell. And if for some reason that's not
20 clear in the law, I can tell you, my company that
21 employs 800 people in the state--We have roughly 62
22 cemeteries, I believe--I would support it tomorrow.
23 If they don't think they have the right to do that,
24 it's not us.

25 Even Senator Tomlinson, some years ago,

1 and I think that testimony came up previously, he
2 started to sell pre-need, him and a handful of
3 funeral directors, and they were trusting at 70
4 percent. It wasn't the cemeteries that stopped
5 them. It was their own funeral board that stopped
6 them. I think, if they're honest, they'll tell you
7 they wanted to sell under the 70 percent law, and
8 they were shut down by their own funeral board.
9 But we welcome the competition and would be glad to
10 clarify that, but that's not how the law reads.

11 According to the FTC, the current rules
12 -- I mean, they're talking about -- The FTC, I
13 think, is a powerful document. It's a 14-page
14 document. But I think it addresses almost every
15 aspect of the bill. I don't think there's anything
16 in the bill that they feel is appropriate or would
17 benefit the consumer.

18 As they said, the current rules are
19 already too restrictive, and that's primarily the
20 70 percent trusting. You compare that to a place
21 like Florida that handles more deaths; is more
22 active with elderly people. In Florida, it's 110
23 percent of the cost. It's not 70 percent of the
24 retail. So that's what they're referring to when
25 they say that.

1 The proposed bill would appear to impose
2 additional restrictions and requirements on
3 cemeteries. These provisions could lessen
4 competition, resulting in potentially higher prices
5 and fewer options for consumers without
6 countervailing benefits of the consumers.

7 The funeral directors also want
8 cemeteries to follow the Federal Trade Commission
9 rules and regulations that govern funeral
10 directors. It's important to note that when these
11 rules were -- These rules were established because
12 the Federal Trade Commission found widespread,
13 unfair and deceptive practices by funeral homes.
14 Importantly, the FTC noted, it did not find
15 evidenced cemeteries, crematories and third-party
16 sellers engaged in these types of abuses.

17 During the most recent review when these
18 rules were promulgated -- I think they go up under
19 a sunset process every 10 years. It will happen in
20 2018 again. In 2008, when the FTC chose -- the FTC
21 again chose not to apply the rule to cemeteries
22 based on the rule review record. Why? Because the
23 Federal Trade Commission found insufficient
24 evidence that commercial cemeteries and third-party
25 sellers of funeral goods are engaged in widespread,

1 unfair or deceptive practices. The only ones
2 deemed unfair and deceptive by the FTC findings
3 were the funeral directors.

4 Each year the Federal Trade Commission
5 uses mystery shoppers to test the compliance of
6 their rule. In 2014, sadly, sadly, there were more
7 violations than when the rule was originally
8 enacted in the '80's. Twenty-seven percent of the
9 funeral homes were found to still be violating the
10 rules, and that's a fact.

11 The record of the funeral directors who
12 primarily serviced the Archdiocese of Philadelphia
13 cemeteries is not much better. Nine have been the
14 subject of disciplinary issues by the Pennsylvania
15 Funeral Board. I don't think you'll find nine
16 cemeteries that have been subject to any
17 disciplinary action.

18 The funeral directors are asking you to
19 ignore all of this and to make cemeteries pay for
20 their abuses. And make no mistake, Pennsylvania-
21 working families will pay for this abuse. The
22 immediate impact of the bill, addressing one of the
23 questions earlier, would be the loss of hundreds of
24 jobs alone in my company. I employ 800 people
25 currently in the state of Pennsylvania. If this

1 bill were to go in as it's enacted, I could tell
2 you, at least 200 people--Many of my employees are
3 sitting here today, and I thank all of you for
4 showing up--would lose their job. And that's the
5 reality of it.

6 And then, the consumer -- You have to
7 understand, and someone made the comment that --
8 which is so wrong, that we only sell to the aged
9 and the infirmed. That's what happens at the time
10 of death; not pre-need. I sell over a hundred
11 thousand contracts. We're in 28 states. Another
12 question was, is it common practice to do
13 constructive delivery? Absolutely. We do it
14 throughout the country. Pennsylvania is backwards
15 when it comes to the way it regulates death care.

16 In most states, many states today, it's
17 one industry. We work together. Funeral homes can
18 be owned by corporations. They hire licensed
19 individuals to operate those funeral homes. They
20 can sell pre-need. They're subject to the same
21 rules and regulations, the same trusting
22 requirements, and it's a level playing field, as it
23 should be, for everyone in this state.

24 There's also -- I think it's important
25 to think of the consumer. You have to understand

1 that, in pre-need -- We took 300,000 of our
2 contracts, which I can be happy to share with you,
3 and you'll find that 7 out of 10 of those
4 contracts, the family income was under \$75,000.
5 One out of two were under \$50,000. It's very, very
6 expensive to die. If you have not prearranged and
7 prepaid, for the average person throughout the
8 United States, but clearly in Pennsylvania, at the
9 time of death they cannot have a dignified funeral
10 or burial because they can't afford to get what
11 they would have liked to have. Maybe they wanted a
12 mausoleum. Maybe they wanted it to be over by the
13 lake. Maybe they wanted a specific type of altar
14 casket. They're not going to have it.

15 How many people do you know that can
16 write a check for \$20,000? When you add up all the
17 costs of the funeral and all the costs of the
18 cemetery, they can't do it at the time of death.
19 What pre-need does is give them a dignified way to
20 pick what they want, when they want, and to pay for
21 it over time. We give people seven, eight years to
22 pay for their products so that they have the luxury
23 of being able to do it.

24 Our average customer is in their '60's.
25 I'm 67. I don't think I'm aged or infirmed. So,

1 these are the people that we're targeting. The
2 people that buy pre-need are generally in their
3 '60's, and I can document that, if need be.

4 There was a study done recently. New
5 Jersey is similar to Pennsylvania in some of what I
6 would consider some backward rules. You will find,
7 a study was done in Pennsylvania (sic) by an
8 independent economist that -- in New Jersey. I'm
9 sorry.

10 Cemeteries in New Jersey aren't --
11 cemeteries are not allowed to sell the vault or the
12 casket; only the funeral directors and other third
13 -- monumenters can. The result of that was that
14 there's \$1,250 higher price the consumer pays.
15 That's a study. It's in your document that you can
16 feel free to look at.

17 Before I close, I want to kind of go off
18 the record here a little bit. There was a letter
19 -- Someone asked the question about, do any funeral
20 groups, any funeral constituents support the
21 cemetery position here, or our position in
22 opposition? As someone mentioned, the Pennsylvania
23 Cemetery and Funeral Organization has a number of
24 funeral homes that are members. They support us.
25 They're not against it.

1 There's a letter that was sent to you--I
2 believe you have it in your file--from Bob Fells,
3 who is the executive director of the International
4 Cemetery and Funeral Association. And the word
5 funeral, there are lots -- And hundreds of funeral
6 directors are part of that organization. And he's
7 writing his in opposition to 874 as head of that
8 organization. So, it's not a national issue. It's
9 not nationally you'll find funeral directors
10 supporting the bill. You'll find it's pretty much
11 limited here in Pennsylvania.

12 I talked about the age and the infirmed.

13 Oh. One of the things that hasn't come
14 up, and this is really, really important. If I
15 may, this one point. It's really important.

16 In the proposed bill is a provision
17 that, until the customer pays in full, if they
18 choose to walk away, we have to give them a hundred
19 percent of the money back. Now, I can't sell
20 pre-need under that basis. I can't sell you
21 something today, freeze the price so it never costs
22 you another penny; pay my operating cost of
23 approximately 30 percent, and six, seven, eight
24 years from now you walk in the door and say, I want
25 all my money back. I couldn't possibly sell

1 pre-need. No bank would accept it. It's not a
2 contract. We don't even have a legal sale because
3 of that provision. So, that would shut down --

4 When someone asked about what would be
5 the impact on pre-need, that would shut down
6 pre-need. There's no way we could offer pre-need
7 sales under those provisions.

8 In closing, and I do truly thank you for
9 your time, I would suggest that -- And I've had
10 conversations with Representative Santora. I would
11 like to work out a compromise so that all providers
12 of death care could be fair; could operate under
13 the same rules and regulations. I'd love to see --
14 I'd love to see the --

15 I would suggest that we either make the
16 rules uniform or we put something in -- and the
17 representative and I talked about performance
18 bonding. If you're really concerned about the
19 consumer, then just give us an alternative where we
20 can go to a Triple A rated insurance company.
21 Bonding is part of our heritage, part of our
22 culture here, certainly in the state and throughout
23 the country, and we could bond. That would clearly
24 give the consumer protection.

25 And with that, thank you very much, and

1 I'll take any questions.

2 MAJORITY CHAIRMAN GODSHALL:

3 Representative Longietti.

4 REPRESENTATIVE LONGIETTI: Thank you,
5 Mr. Chairman.

6 I'm interested to know what your
7 practice is in terms of ordering the vaults,
8 storing the vaults, putting the vaults in the
9 ground. What does that look like?

10 MR. MILLER: When we sell -- First of
11 all, we will not pre-install a vault without the
12 consumer signing a document saying that it's okay
13 to do that. We explain what the process is; why we
14 don't think it's harmful.

15 We warrant -- We don't warrant a hundred
16 years. I don't know how anybody could warrant
17 something in the ground for a hundred years. I
18 mean, that just is absurd. But we do warrant that,
19 at the time of death, that vault will be in the
20 condition that it's supposed to be in to do what
21 it's supposed to do, and that's to protect the
22 ground from settling.

23 If there's a problem at the time of
24 burial -- And we're very careful. When we put the
25 vault in the ground initially, before we backfill,

1 we put layers of sand so that, at the time the
2 equipment is actually beginning to redo the
3 digging, they'll hit the sand. They realize the
4 vault's close. They'll stop; they'll do it by
5 hand. They'll take the lid off. We put the casket
6 in the ground; we seal it up. If there's a
7 problem, it's taken care of immediately.

8 As I said, somebody has to come and show
9 me an example -- examples where this is a problem.
10 I've been doing it since 1972 in the state of
11 Pennsylvania. I'm doing it in Philadelphia since
12 1972, without issue. It's only because of the
13 competitive issue now.

14 REPRESENTATIVE LONGIETTI: But I'm
15 interested to know more about your ordering
16 practice; when do you order vaults, how long do you
17 store them, where do you store them, and when do
18 they go into the ground, generally speaking?

19 MR. MILLER: We manufacture -- We're not
20 -- I wouldn't say I'm an expert on vault
21 manufacturing. I'm not. I'm an accountant. We
22 have vault plants, but we manufacture almost 20,000
23 vaults a year. Most, I guess, the industry might
24 call them the liner because we're not selling --
25 we're not manufacturing units that are sealed and

1 have linings and what have you.

2 We do manufacture -- So what you might
3 have seen, that might have been one of our vault
4 plants where we had the vaults stored. They're
5 shipped into the cemeteries. There's usually
6 truckload quantities of maybe 22 vaults.

7 Obviously, we don't want an eyesore in the
8 cemetery. We don't want an aesthetic issue with
9 the cemetery. So, we're gonna --

10 When they come in, if the customer has
11 said it's okay to put that vault -- I want that
12 vault in the ground, and husband and wife sign off,
13 we will actually go ahead and install that vault in
14 the ground. And then we will -- Whatever the
15 appropriate amount is to take out of trust, we
16 will. We certainly leave more than enough money --

17 Just to give you the magnitude of how
18 onerous the 70 percent is, by putting 70 percent of
19 the retail price; in the state of Pennsylvania,
20 right now, right this minute, if I had to deliver
21 everything that I've sold, everything, I would have
22 \$42 million excess money. There's 42-million-
23 dollar cushion in our trust funds just in the state
24 of Pennsylvania for the merchandise.

25 Then as Tim Kernan talked about, there's

1 a perpetual care fund where 15 percent of all of
2 the selling price, so the consumer is well
3 protected. And again, you can't find evidence of
4 the consumer not getting the merchandise or service
5 they were promised.

6 REPRESENTATIVE LONGIETTI: So how long,
7 approximately, are vaults being stored on your
8 property before they're going into the ground?
9 That's what I'm interested to know.

10 MR. MILLER: I honestly don't know. I
11 doubt they are there very long. Again, we don't
12 want to sit there and tie up ground and have an
13 aesthetic issue, but I don't have the answer to
14 that.

15 REPRESENTATIVE LONGIETTI: Would it be
16 possible to give us a ballpark sometime in the
17 future of how long it is?

18 MR. MILLER: Sure. Absolutely.

19 REPRESENTATIVE LONGIETTI: Thank you.

20 MAJORITY CHAIRMAN GODSHALL: At this
21 point, there are no other questions, and that
22 concludes the hearing.

23 There are comments for the record: Lois
24 and Kathleen Ciampi, and Funeral Consumers Alliance
25 has submitted comments for the record. They will

1 be made part of the record and be made available to
2 the members.

3 At this time, I want to thank the
4 testifiers and the presenters in taking the time to
5 speak to us today on this important issue.

6 No further questions, the meeting is
7 adjourned. Thank you very much for your
8 participation and for the people that are just here
9 to observe.

10 (At 11:06 a.m., the hearing concluded).

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C E R T I F I C A T E

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