



January 22, 2016

The Honorable Robert W. Godshall
Chairman, House Committee on Consumer Affairs
Pennsylvania House of Representatives
150 Main Capitol Building
PO Box 202053
Harrisburg, PA 17120-2053

Re: SB 874, to Prohibit the Pre-Installation/Constructive Delivery
of Vaults and to Extend the FTC Funeral Rule to Cemeteries

Dear Chairman Godshall:

On behalf of the International Cemetery, Cremation and Funeral Association (ICCFA), I respectfully submit for your consideration the following comments regarding Senate Bill 874.

The ICCFA is the only national trade association that represents all segments of the deathcare industry including funeral homes, nonprofit, for-profit, religious and municipal cemeteries, crematories, and related third-party retailers. Founded in 1887, ICCFA's activities include tracking federal and state legislation affecting the death care industry and promoting education through its publications, and by holding seminars, conferences, annual conventions and trade shows. ICCFA also takes an active role in advancing the public interest on funeral and cemetery industry issues. ICCFA promotes consumer choice, the prearrangement of funeral and burial decisions, and open competition among providers of death care services. We currently serve over 9,000 members, including nearly 300 corporations and individuals in the Commonwealth of Pennsylvania.

The ICCFA is concerned that our cemetery members in Pennsylvania will be significantly and adversely impacted should the provisions of SB 874 become law. We note that some observers have described this proposal as a "turf war" between funeral directors and cemetery owners/managers. We feel this characterization trivializes the issues. If the "war" analogy is applicable then there is likely "collateral damage" to Pennsylvania consumers who will have fewer choices and will pay higher prices for vaults and grave liners as the result of this bill.

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It is well-documented that consumers widely favor options to prearrange and prefund their funeral and burial wishes (collectively known as “preneed”). Nationally-conducted survey data has consistently found that an overwhelming number of consumers, ranging from 66 percent to at least 74 percent, view making prearrangements favorably. (See Wirthlin Worldwide survey, prepared for Funeral and Memorialization Information Council [FAMIC], *Study of American Attitudes Toward Ritualization and Memorialization, Executive Summary* 22 [Jan. 2005; report of 2004 survey]. FAMIC commissioned the first study of consumer attitudes in 1990, and follow-up studies were conducted in 1995, 1999, 2004, and 2010 [Harris Interactive conducted the 2010 study]. Harris Interactive, prepared for FAMIC, *Study of American Attitudes Toward Ritualization and Memorialization* at 22–26, Survey Questions and Responses 14, 14B, 15B, 15B2, 15C [Apr. 2010].)

Cemeteries often install outer burial containers, that is, vaults and grave liners, at the gravesite following their purchase and well prior to the death of the contract beneficiary. This practice has been commonplace for decades throughout the United States and provides the preneed purchaser with immediate ownership of this merchandise. We are not aware of consumer complaints or issues with this practice. In 1998, the ICCFA authorized the publication of 28 model guidelines for state laws and regulation. (See ICCFA Model Guidelines, *Constructive Delivery/Warehousing*. <https://www.iccfa.com/government-legal/model-guidelines/alternatives-trusting-constructive-deliverywarehousing>). Our model guideline concerning the constructive delivery of outer burial containers, including their pre-installation, has been used by many state legislatures over the years. At present, we understand that 21 states permit the pre-installation of this cemetery merchandise and we are unaware of any related consumer problems in these jurisdictions, including Pennsylvania.

The U.S. Department of Veterans Affairs (VA) through its National Cemetery Administration currently operates 134 cemeteries in 40 states, thus making it one of the largest cemetery operators in the world. By adopting a Preplaced Burial Vault Program, the VA states, “Preplaced vaults are now specified in all federal veterans’ cemeteries and federally funded state veterans’ cemeteries.” The cost savings and increased efficiency of cemetery operations have been cited among the compelling reasons for adopting this practice. Indeed, we understand that it was by studying private sector cemetery management practices that the VA decided to establish this policy. See National Cemetery Administration, Department of Veterans Affairs, 2012 *GreenGov Presidential Award Nomination for NCA Preplaced Burial Vault Program*, at 4).

Likewise, the traditional cemetery practice of warehousing durable merchandise such as markers and outer burial containers has generated few if any problems over the decades. Ownership

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documents are provided to purchasers, thus making a constructive delivery of these items to consumers. Among the advantages of this practice is to lock in the purchase price and protect both the cemetery and consumers from future cost increases. Physical delivery is also assured because the merchandise has already been manufactured and inventoried. In short, there is no downside to this practice for either the consumer or the cemetery. The ICCFA model guideline on constructive delivery recommends safeguards to protect the parties from any potential risk of damage or loss.

Finally, we have serious concerns with Section 2.1 of SB 874 requiring that cemeteries “must adhere to the Federal Trade Commission’s Funeral Industry Practices Revised Rules regarding the sale of the merchandise.” This language presumably refers to the FTC Funeral Industry Practices Rule at 16 CFR §453. Aside from the constitutional issue of whether a state can extend the jurisdiction of a federal law without the consent of the federal government, section 2.1 raises practical concerns. Ever since the Funeral Rule was enacted in 1982, there have been calls to tack cemeteries on to it. The FTC has repeatedly addressed this issue in depth, most recently in 2008, explaining how administratively, legally, and practically, cemeteries and other sellers cannot simply be shoehorned into the Rule. (See *Regulatory Review of the Trade Regulation Rule on Funeral Industry Practices*, 73 FR 13740, March 14, 2008).

Simply stated, shoving cemeteries into the Funeral Rule, which was designed and developed specifically for funeral homes, makes as much sense as adding gas stations to the FTC Used Car Rule on the basis that both dealerships and gas stations work with automobiles. Section 2.1 would not obligate the FTC to enforce the Funeral Rule against cemeteries nor does the language of this section provide any state agency with this authority. In any event, the FTC has announced a review of the Funeral Rule in 2018 where many issues, including the expansion of the Rule’s scope, will be examined.

For the reasons stated above, the ICCFA urges the members of the House Committee on Consumer Affairs to reject SB 874 because its provisions are anti-competitive, anti-consumer, and would skew the market for cemetery merchandise to the advantage of a segment of the funeral profession that refuses to adapt its marketing practices to the needs of consumers.

Thank you for considering our comments.

Very truly yours,

Robert M. Fells
Executive Director and General Counsel