

House Consumer Affairs Committee

Hearing on Senate Bill 874

January 26, 2016

Mr. Samuel B. Saxton, CCE

Past President and Chairman of Legislative Committee

Pennsylvania Cemetery, Cremation and Funeral Association

Good morning Chairman Godshall and Chairman Daley, members of the Consumer Affairs Committee, staff and those in attendance.

My name is Samuel B. Saxton. I am from Allentown, Pennsylvania. I have been in the cemetery business all of my working life as a licensed salesman, employee, owner, corporate officer, broker and contractor. I come to you here in opposition to Senate Bill 874 Printer No. 1334, which amends the Act of August 14, 1963, Public Law 1059, No. 459.

When the original Merchandise Trust Fund Act was passed in 1963, with strong support from cemeteries, there were sales groups going to various states and selling cemetery goods and services in advance of need, as were in-state cemetery companies, without any legally required trusting of proceeds. This law, first passed in Pennsylvania, became one of the very first of the pre-need statutes enacting consumer protections for pre-need sales. Today there is some version of that Pennsylvania law in all 50 states. The Pennsylvania statute required accountability to the court, and trusting of 70% of the funds in Pennsylvania domiciled banks. Other regulatory requirements include control and oversight by licensing of sales people,

brokers and cemeteries under the State Real Estate Commission, which has licensed cemeteries since 1929. There is a special seat on the Real Estate Commission reserved for an experienced cemetery commissioner.

There are thousands of cemeteries in Pennsylvania located in every city, town and hamlet. Cemeteries actively serving their communities have to be current with respect to all state and federal contract and financing laws; they employ thousands of men and women serving the 67 counties in Pennsylvania. Under the cemetery permanent lot care law, they invest hundred of millions of dollars collectively.

Consumers, even if they haven't bought pre-need, think it is a good idea. They have shown overwhelmingly, with their checkbooks, that they support purchasing pre-need cemetery merchandise. They purchase vaults, lawn crypts, mausoleum spaces, memorials identifying the family names, etc. A cemetery purchase in most instances is a thought out generational plan that can include a few grave spaces to all of the things I have just mentioned. Ninety percent of cemetery goods are sold pre-need, when families are younger and healthier, much like insurance. Unlike insurance, pre-need cemetery goods cannot expire, and increase in value every year at no additional cost to the consumer. This is the inverse of the funeral business, which consists mostly of sales at the time of death. Funeral directors hold remains for up to five days, deliver the remains to the cemetery in a casket, receive payment for their goods and services and are ready for the next case. This 1963 law requires the trusting of 70% of the funds for cemetery merchandise and services but also allows 30% of such

sale proceeds can be used for the cost of doing cemetery business, administration, and payment of sales persons. This law has worked perfectly for both consumers and cemeteries for 53 years. Funeral directing is an honorable, vital profession, and funeral directors and cemeteries work together to provide the best care they can for families at their time of need. A number of Pennsylvania funeral directors are members of our association. Hence the word "Funeral" in the name of the Pennsylvania Cemetery, Cremation and Funeral Association.

Here is the issue at stake and why I have gone into this detail – the introduction of SB 874 and its precursor (HB 2458) in the last session, which this committee also held a hearing on in September of 2014.

The word being put on the street by certain sources and deceptive and misleading television and newspaper advertising says that people are not receiving their cemetery products or are receiving damaged products and that is a great untruth. I have included in my packet three letters from three Real Estate Commissioners, one of whom is the sitting Commissioner on the Real Estate Commission. Together they constitute about 30 years of time on the Commission. All state there are no instances which have risen to the Commission level, where the lot owner did not receive cemetery merchandise purchased in advance of need. The Pennsylvania Cemetery, Cremation and Funeral Association has had for many years in the state a phone number supplied to legislators and others regarding cemetery complaints. Ms. Morgan Plant, our registered lobbyist for 27 years, fields any complaint back to our complaint system. It is quickly addressed by

members of our board and in some instances reported to the Real Estate Commission for formal action. The man currently receiving complaints reports to the Board of the state association. His name is Harry Neel from Jefferson Memorial Park and Cemetery in Pittsburgh where four generations of the Neel family have operated that cemetery. He is with us today and can also take questions.

What is strange about this legislation is that no one complained for 53 years until the Roman Catholic Archdiocese of Philadelphia, whose cemeteries were not able to make ends meet financially, advertised for one of the national companies that specialized in contracting with churches and communities to provide the expertise and personnel necessary to provide sales and services for the church or communities. StoneMor Corporation was chosen due to being not only an expert in providing the necessary help to the church but because it is domiciled in southeast Pennsylvania. They own and operate cemeteries across the United States, including a number of cemeteries and funeral homes in Pennsylvania. One of their officers is a past president of our Pennsylvania Cemetery, Cremation and Funeral Association and two currently sit on our Board. The StoneMor Corporation was able to provide \$53 million dollars up front to the Philadelphia Archdiocese, with an additional \$35 million to come during a 60 year lease, providing cash flow to the Archdiocese from sales to the parishioners over that period. Of course, StoneMor is only able to do this by using and complying with the Merchandise Trust Fund Act of 1963.

As an additional comment, other sellers are welcome to sell merchandise to

these same Catholic families, including funeral directors, both in advance of need and at time of death. StoneMor's contract does not give the company a monopoly, in fact independent memorial dealers, vault dealers, and other independent contractors also sell or are free to sell the same products that StoneMor now sells. Strangely, after 53 years of providing protection to Pennsylvania residents and a lack of consumer complaints, this law is now being challenged by a leading Bucks County Funeral Director and a few others whose trading area includes some of the cemeteries owned by the Catholic Church that the StoneMor Corporation is now serving. This Bucks County Funeral Director also happens to be a 20 year senior State Senator, who is one of the main sponsors of Senate Bill 874. Perhaps proponents of this legislation should focus more on competing with StoneMor rather than trying to shut them down, and taking the rest of the whole state down with them.

You will hear Senate sponsors say, "We have fixed the bill now, it should have no opposition." Nothing, nothing is further from the truth. The Senate amendments were so ineptly drafted that, even if some good intent prompted them, they generally have made the bill even more confusing. Negative provisions are in place that would stop a bank from accepting a trust fund from a cemetery making pre-need sales and restrict families that own lots from installing the merchandise they purchase. An additional provision in SB 874 requires cemeteries to adhere to the Federal Trade Commission's Funeral Industry Practices Revised Rules, imposed on funeral directors by the Federal government because of their adverse, unfair practices starting 25 years ago. Even the FTC, in its October 20, 2015 letter

to Chairman Godshall, makes clear it was never their intention to include cemeteries under the Funeral Rule because they sell in advance of need. I could go on in detail but the intent of the sponsors of this bill is so egregiously evident that I don't have to say much more. The only object here is to destroy Pennsylvania cemeteries ability to sell these products in advance of need, eliminating the majority of their cash flow.

What is at stake here is the disasterous effect on all of Pennsylvania's cemeteries caused by a few disgruntled funeral directors in the southeast corner of the state and a senior State Senator who wants the whole pie. You would think that this legitimate and normal contractual agreement between the Archdiocese and StoneMor was going to put the funeral directors out of business. Nothing is further from the truth. The church and StoneMor are not acting or setting themselves up as funeral directors. I can show you many such contracts across the country to California and back, especially with the Catholic Church.

To say this is a turf war, as some call it, is far too trite an expression for a travesty of this magtitude. The reality is if this bill is to pass it will hurt not only cemeteries, but consumers in Pennsylvania. It will curtail their opportunity to buy pre-need from cemeteries and it will surely increase their costs by removing competition from funeral directors.

We, the opposition to this bill, and the International Cemetery, Cremation and Funeral Association -- comprised of international cemeteries and cemeteries across the nation, including several thousand enlightened funeral directors, are very concerned about the outcome of this legislation

and its possible ramifications on a national level if passed. The Pennsylvania Cemetery, Cremation and Funeral Association and the Pennsylvania cemeteries affected by this calamitous action seek your sincere understanding and ask that you defeat Senate Bill 874, of session 2015-16.

I thank you on behalf of the Pennsylvania cemeteries for your serious consideration of this legislative challenge. I am told I can answer questions from the Committee and would like to answer any at this time.

Samuel B. Saxton, CCE

Past President of Pennsylvania Cemetery, Cremation and Funeral Association

Past President of International Cemetery, Cremation and Funeral Association

Legislative Chairman, PCCFA

Attachments:

Statements by three Real Estate Commissioners

Letter from Funeral Consumers Alliance of Philadelphia

ICCFA letter from CEO Robert Fells

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July 22, 2015

To Whom It May Concern

Since 1929 cemeteries have been licensed by and under the jurisdiction of the Pennsylvania Real Estate Commission.

In 1964, I was appointed to the Pennsylvania Real Estate Commission by Governor William Scranton to serve in the position on that Board reserved for a person that qualified by tenure, experience, and licensure in the cemetery business. Little did I know that I would continue to serve under two additional Governors, Milton Schapp and Richard Thornburg, for a total of twenty years ending in 1984.

During that period many issues were adjudicated by the Pennsylvania Real Estate Commission involving the thousands of cemeteries and businesses in the Commonwealth of Pennsylvania. These issues with respect to cemeteries involved licensure violations, wrongful burials, cemetery upkeep, endowed care enforcement, entitlement to burial, co-mingling of funds, to name a few or them.

During that period as Chairman of the Commission and Commissioner, to the best of my knowledge, no disciplinary action or hearings reached the Commission level regarding a cemetery's failure to provide pre-purchased merchandise or services to its lot owners.

Sincerely yours,

Samuel B. Saxton, CCE

Past President of Pennsylvania Cemetery Funeral Association

Past President International Cemetery, Cremation and Funeral Association

Past President of Arlington Memorial Park, Cedar Hill Memorial Park, Northumberland Memorial Park, Vice President of Limerick Memorial Gardens

Recipient of Hall of Fame award by the International Cemetery, Cremation and Funeral Assoc.

Advisor to the building and establishment of Micurioma Memorial Park, Toyko, Japan. The first memorial park in the Far East.