

HB

264

271

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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, Governor

POUCH K - STATE CAPITOL

JUNEAU 99801

April 25, 1975

*File under
HB 271*

The Honorable Robert Bradley
Chairman
Commerce Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

RE: Funeral Industry
Legislation

Dear Mr. Bradley:

Your letter requesting comment by this department on the preparation of funeral industry legislation has been received.

This department has developed a basic comprehensive funeral industry bill which will be transmitted to the Governor prior to the next legislative session for his consideration as to its inclusion in his legislative package. Portions of the proposed bill are being reviewed, and additional information from experts and interested parties would certainly be useful in their finalization.

Kain:
The preparation of such a bill does not appear to be extremely complex. However, since your letter indicates that you view the bill otherwise, it might be wise for us to discuss this matter personally in greater detail. Please contact me at 465-3692 or 465-3695 if you wish to arrange for a meeting on this matter.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: *Theresa L. Bannister*
Theresa L. Bannister
Assistant Attorney General
Consumer Protection Section

*Set up a
conference with this
gal. ple.*

TLB:nnk

cc: Art Peterson

BOB BRADLEY

state house



CHAIRMAN, COMMERCE COMMITTEE
POUCH V
JUNEAU, ALASKA 99811
465-3824

VICE CHAIRMAN, JUDICIARY
601 N. BRAGAW
ANCHORAGE, ALASKA 99504
272-0275

April 14, 1975

Mr. Avrum Gross
Attorney General
State of Alaska

Dear Avrum,

I have before my committee two bills, HB264 and HB271 dealing with funeral homes in one capacity or another. It's been my impression through conversations with Representative Helen Beirne and others, and through talks with industry representatives that the Hammond administration prior to the session had been discussing submission of an administrator bill on the total subject matter of funeral homes.

It's my feeling that because of the complexity, personal impact, and exceptional consumer considerations that it would be in the best interests of the state for the administration over the summer to convene a study group to submit legislation to the second session of this legislature. Members should be representatives of your office from the law sense and the Consumer Protection Division, representatives of the medical profession, representatives from the Department of Commerce, representatives of Health and Social Services, along with possibly the representatives of industry.

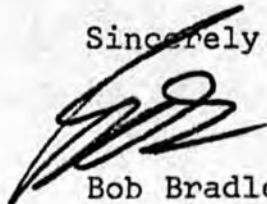
The reason why I bring this to your attention is because, frankly, the subject is of such a complex nature but of such an unusual concern and impact, that it's my feeling that the administration is best

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Avrum Gross
Attorney General
State of Alaska

equipped to study this problem and to propose standards and regulations and guidelines regarding the overall practices of funeral homes.

I would appreciate a reply on this matter prior to adjournment, and if I can be of any further help through personal contact with your office or otherwise, please let me know.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Bob Bradley', written in a cursive style.

Bob Bradley

BB/mr



Bruce Funeral Home

P.O. Box 2351
Anchorage, Alaska 99510

April 5, 1975

Representative Bob Bradley
State House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Mr. Bradley:

I want to thank you for taking time from your busy schedule, especially on a Sunday, to listen to my concerns on House Bills 264 and 271 - and for allowing me to speak before the Commerce Committee while I was in Juneau.

I would welcome the opportunity to discuss these, or any other bills pertaining to funeral legislation with you at greater length. As you suggested, the whole area might bear some study and scrutiny during the recess between sessions.

I wish I could return to Juneau when House Bill 271 is again studied, but presently that doesn't seem possible. I will, however, keep in touch by phone.

Thanks again for your consideration and kind assistance. If I can provide you with any other information that might be helpful, I will be happy to do so.

Sincerely,

MARGARET (PEGGY) WITZLEBEN

POSITION PAPER

An act relating to the practice of mortuary science and providing for an effective date.

This proposed legislation is being sought and proposed for reasons stemming from several different situations. First and foremost of which is a desire by the proposers to give the Alaskan public protection from the unscrupulous and unethical operator and a reason to have confidence in the ethical Alaskan Mortician.

Alaska's present laws concerning the licensing and control of embalmers are among the lowest in the 50 states, and license's embalmers^{only}. It is generally true that most people do not differentiate between the funeral director and an embalmer. We find that the public is best served when the person who comes to their home to remove the remains, embalms the body, makes the funeral arrangements, directs the services, assists them in receiving the necessary legal documents and advises and counsels them in many different ways.

When you begin to divide up these tasks and assign them to different individuals it becomes very confusing for those we are serving and adds to their grief. The funeral loses its personal touch and becomes very cross and commercial.

These are but very few institutions in the country that educate just the funeral director or just the embalmer. The direction of funeral service education today is that of educating and training the "whole man." This education ~~unless~~^{centers} on a college or university program which leads to an Associates Degree or a Bachelor's Degree in Mortuary Science. These programs have come about because the public has recognized that it is not enough to train a man to embalm, or to train him to direct a funeral. Other areas of education such as ethics, morals, counseling, law and the humanities need to be approached and considered.

While ~~not~~ one can guarantee that a graduate of an institution with higher educational standards is going to be more ethical or competent, past performance indicates that

those states which educate and license the "whole man", have morticians with excellent reputation and few consumer complaints.

Some states have replaced the dual license law, others have never had it, and still others are currently replacing the dual law with a single license law. The ^{NATIONAL Funeral Directors Asso.} Nal F D A. strongly endorses the single license as being in the best interest of the public and the profession. A dual law is cumbersome to administer and confusing in many ways compared with a single license.

The proposed legislation is drawn from basically four sources. One, from the ^dNEFA proposed law, two; from the Minnesota law, ~~and~~ three; from Oregon law and four, from our present Alaska law.

It is somewhat more stringent in requirements for licensure - basically an increase in educational requirements and a period of apprenticeship. (resident trainee) It is also more stringent in its control of the licenses man as set out in our Revocation of license section.

Reciprocity section grants licensure to any person licensed in another state who basically meets our requirements, and of course, ~~or~~ a grandfather clause grants the new license to those now holding a valid Alaska embalmers license.

Section 08:42.020 #3 sets out the requirements for a permit in areas (bush) not serviced by a licensed mortician, but allows that no person need have a permit in these areas unless he is helping families for compensation.

Section 08.42.110 requires that all funeral establishments must have a permit to operate. This is aimed at corporat^ely held businesses whose owners may not be licensed morticians, and therefore not covered by the Revocation or suspension portions of the bill. The funeral home permit could be revoked if the business is found guilty of any misdeeds as act out in the Revocation section. This was also recommended by the A.G.'s office as an item to include in new legislation.

Section 08.42.120 Preneed Funeral Legislation of this type was recommended by the Consumer Protection Section of the A.G.'s office. This type of legislation is included to give control over funds paid to funeral homes, or preneed promoters, in advance of the death of an individual. The Council of Better Business Bureau's have several pamphlets prepared on Prearranged and Prefinanced funeral plans. The general consensus of these plans say that these plans, unless closely controlled, are fraught with the possibilities of fraud. Any time you pay someone a sum of money for service and merchandise to be provided at a time possibly many years after the payment, make the opportunities for fraud great, and risk of insolvency, with consequent inability to perform, apparent. Forty-three out of the present 50 states have laws governing (some forbidding) ^{pre} ~~per~~ need funeral plans. Of these 43 states 25 states require 100% of the funds received by placed in trust until service are performed or until the money is refunded to the buyer. Twenty-nine states require that all interest or income from the trust becomes our part of the trust and, 21 states require that the buyer can withdraw 100% of the funds in the trust.

The proposed section provides that 100% of the funds received go into a trust. That all interest or income accrued becomes a part of the trust ^{and} ~~of~~ that 100% of the trust must be returned to the buyer on his demand.

At present, Alaska has no law concerning Preneed Funeral Plans. We ^{feel} ~~felt~~ it is imperative, especially in these "boom" times that these controls be instituted. This is not a restraint of trade, but a protection of the consumer, and should be viewed in that light. Preneed plans are still very much open to the public, but the 30% commission salesman, not controlled by funeral ethics legislation, would be out of the picture. There are large corporations outside who have preneed sales forces operating in many states. The companies do, however, pay salesmen, not out of the funds paid by the preneed buyer, but from profits made in the legitimate operation of funeral homes which they

own. As long as the preneed funds are placed in trust until service are performed, and the buyer retains the option to end the plan and get all this money back with interest we feel this is legitimate. The state must provide this control.

Section 08.42.130 disclosure of costs. This is an answer to the Federal Fair Trade laws which will require the itemization of funeral costs. This is a form recommended by the NFA^d and I believe taken from the Oregon laws. It is tight enough that the public is made aware of what they are paying for, and how they must pay for it yet loose enough to give a funeral home some leeway in sensibly pricing their services and merchandise. It has been found in states with extremely detailed itemization requirements that funeral costs have gone up for the consumer. New York is a good example. This law as written is excellent and should not be further detailed.

Chapter 44, Section 08.44.010 is the enabling legislation for our present ^{rules} ~~rules~~ governing embalmers. Totally inadequate, and I'm sure that the rules and regulations promulgated by the Department of Health and Social Services in Regulation 37, Title 7, Chapter 89 would have difficulty in standing under legal pressures. Red Morely of the Division of Environmental Health, Health and Social Services has given an un-official vote of confidence to this new proposed bill. ^{He} ~~His~~ is not, however, in a position to give an official endorsement.

The licensing of morticians and their examination should fall under the Commerce Department as do most professions. The promulgation of rules and regulations and the general health portions of this bill should remain with Health and Social Services.

We are currently licensed by Department of Revenue.

Respectfully,

R.D. Rome
Evergreen Memorial Chapel Inc.

Representing: R.D. Rome, R.J. Franke, Dale Rosenberg, Lee Moeglein, Gregory Jerich,
Bob Britt and Gary Rook - all currently licensed embalmers in the State of Alaska.

In reference to H.B. 271

Testimony by: Margaret E. (Peggy) Witzleben
Owner - Bruce Funeral Home
P.O. Box 2351
Anchorage, Alaska 99510
279-1963 or 279-7786

ARTICLE 4 - FUNERALS
Sec. 45.45.120 Disclosure of Costs

I would like to begin by saying that I am in total and complete agreement with the need of cost disclosure legislation to more fully protect the consumer. It is, and has been, our company's policy to provide the families we serve with an itemized funeral purchase order that lists all services, merchandise and accommodations, as suggested by the Federal Trade Commission. A copy of our purchase order is attached.

I do feel that House Bill 271, as presently written, does not go far enough. Please note that Section 45.45.120. (1) still allows lump sum pricing as opposed to itemized categorized pricing. No where does it require a separate item category for casket specifications and price.

I would like to suggest the following changes and additions to House Bill 271 (See attachment).

RATIONAL:

In addition to our wish to better inform and serve families, there are some unique problems in funeral service that, I feel, bear consideration.

The words "of rendering the service" in lines 4 and 5 of the present bill, place the funeral establishment in an impossible position. Some service MUST, in fact, be rendered by a funeral establishment

BEFORE the completion of arrangements by the survivor(s) if, as is frequently the case, the survivor(s): 1. cannot be immediately notified of the death or 2. is not immediately available to complete the necessary arrangements. These services include removal of the remains from the place of death to the funeral home and the embalming of the remains as specified by the State Administrative Code.

If enacted as presently written, I can foresee the following abuse. The State administrative code says that a funeral establishment must not hold a remains if the person entitled to its custody (the survivor) has requested its release to another establishment. We have no quarrel with this. However, it has been our experience that a certain funeral establishment, when belatedly selected by a family, refuses to pay the first funeral establishment for its services - and has instructed the family that it is not their duty to do so either. The second funeral home then charges the family a full lump sum service charge, including those services actually performed by another establishment. The cost of those services, in terms of staff time, facility and equipment usage are not insignificant.

For these reasons, we feel that you should seriously consider the amendments and additions we have suggested. We feel that they will provide more comprehensive legislation that:

1. Protects the consumer by requiring more complete itemization as suggested by the Federal Trade Commission;
2. Requires that the funeral establishment maintain a copy of the written contract in its files along with other records for a period of five years as is required by the Alaska Vital Statistics Act - AS 18.50.340.(d);

Bruce Funeral Home

P.O. Box 2351
Anchorage, Alaska 99510

DATE:

FUNERAL EXPENSES FOR:

ORDERED BY:

FUNERAL PURCHASE ORDER

CASKET SELECTION	\$	
PROFESSIONAL & PERSONAL SERVICES		
USE OF MORTUARY FACILITIES & EQUIPMENT		
CEMETERY EXPENSES:		
GRAVE SPACE(s)		
OPENING & CLOSING OF GRAVE		
VAULT, LINER, OTHER.		
MARKER SETTING FEE		
GRAVE MARKER: DESIGN # _____, SIZE _____ x _____, NAME _____		
TRANSPORTATION (OUTSIDE LOCAL ZONE).		
CERTIFIED COPIES OF DEATH CERTIFICATE (# _____).		
ACKNOWLEDGEMENTS (Minister)(Organist)(Vocalist).		
MISCELLANEOUS.		
TOTAL CHARGES.	\$	
LESS: (Deposit _____)(Soc. Sec. _____)(Vet. Ben. _____)(Other _____)		
BALANCE DUE ON ACCOUNT	\$	

I (we) hereby authorize the above Funeral Expenses, and I (we) hereby represent that I (we) have sufficient resources or that the estate of the above-named deceased has resources legally available to Alaska Memorial Services, Inc, dba Bruce Funeral Home, for the payment of the aforesaid sum, and I (we) hereby covenant and agree to pay the same. Terms of the contract shall be Net in 30 days, followed by finance charges applying Periodic Rates of 1.5% of that portion of the adjusted balance up to \$1,000.00 and 1% to any excess over \$1,000.00 (subject to a minimum charge of 50 cents on balance of \$5.00 to \$33.00), with an ANNUAL PERCENTAGE RATE OF 18% on that portion of the Adjusted Balance up to \$1,000.00 and 12% on any excess over \$1000.00. ESTATE PAYMENT (including filing of claim for payment within 12 months) \$ _____. This reflects a 12% finance charge or \$ _____. Annual percentage rate is 12%.

I (we) acknowledge receipt of a completed copy of this statement at the time of execution.

REPRESENTATIVE OF FUNERAL HOME: _____

Testimony on House Bill 271
By Margaret E. Witzleben
Page 3

3. Discloses costs to the family when more than one funeral establishment is involved and protects the initial funeral establishment's right to receive compensation for services rendered.

If you have any further questions, please feel free to contact me either by phone or mail.

MARGARET E. WITZLEBEN

2 Attachments:

- 1 - Copy of present Funeral Purchase Order by Bruce Funeral Home
- 1 - Suggested Amendments and Additions to House Bill 271

LIST OF WHAT IS INCLUDED IN REFERENCED CATEGORIES:

1. PROFESSIONAL AND PERSONAL SERVICES -

- a. Preparation of the remains (disinfection, preservation and restoration) and other specialized care.
- b. Staff assistance from place of death, at mortuary, at place of service and cemetery, crematory or common carrier terminal.
- c. Procurement and recording of all vital statistics, certified copies and permits.
- d. Notification of Newspapers, both locally and out of town.
- e. 24 hour response to wishes of family or legal authorities for the removal of human remains from place of death.
- f. 24 hour attention to all details and supervision of all arrangements pertaining to services, clergy, cemetery, crematory or common carrier.
- g. Assistance with legal authorities in the investigation of deaths (autopsies) at funeral establishment.
- h. Assistance with insurance, social security benefits, veterans administration benefits, labor organizations benefits and the direction of families to the necessary offices regarding legal procedures.

2. USE OF MORTUARY FACILITIES AND EQUIPMENT -

- a. All mortuary facilities:
 - (1) Operating Room to include: Embalming Equipment (Tables and machines); Embalming Fluids; Other Embalming Chemicals; Specialized instruments; Cosmetics; Hair styling equipment and supplies; and other necessary materials (i.e. gloves, aprons, cotton, thread, cleaning disinfecting solutions and sanitary equipment).
 - (2) Chapel: For use during services and/or visitations to include all its furnishings.
 - (3) All equipment used in chapel, church, lodge and/or graveside services.
 - (4) Music before and after services and throughout the period of visitation.
 - (5) Equipment necessary for the care, placement and transportation of flowers
- b. Service Car with cot(s) and funeral coach with driver (supplied only within the limits of our local zone).
- c. Other specialized equipment for handling of remains (i.e. disaster pouches and sealers).
- d. Office equipment and supplies (i.e. desk, filing cabinet, chairs, typewriter, and other office equipment; paper materials, manuals, trade journals, postage, public information and utilities necessary to the maintenance and operation of the business.)
- e. Building maintenance and building and grounds maintenance equipment and supplies. (i.e. carpentry, electrical or plumbing; light bulbs, cleaning supplies, paint, brooms, snow shovels, lawnmower, ladder, tools, etc.)
- f. Memorial Ensemble (Register Book, Service Folders, Acknowledgement Cards and Clergy Record.

3. CASKETS - A diverse inventory of both adult and children caskets for the benefit of the families served.

4. TYPICAL ITEMS OF CASH ADVANCEMENTS -

Family Car; Special Music; Clergymen's, Organist and/or Vocalist Honorarium; Toll Calls and Telegrams; Cemetery Charges; Common Carrier Charges; Certified Copies of Death Certificate, Crematory Charges, Obituaries (if charged by newspapers) and Clothing.

SUGGESTED AMENDMENTS AND ADDITIONS TO HOUSE BILL 271

Sec. 45.45.120. DISCLOSURE OF COSTS. 1. Every person performing services or providing merchandise relating to the disposition of a dead human body shall give to the person arranging for the disposition, at the time the arrangements are completed, and before the time of providing the merchandise, a written statement (contract) itemizing all merchandise, services and all accommodations by the way of cash advancement on behalf of the purchaser in connection with the care of the decedent(s). Such contractual itemization shall include the following minimum categories:

- (A) Professional services, Use of facilities and equipment.
- (B) Casket Manufacture, manufacturer's description and retail price.
- (C) Supplemental items of service or merchandise, and the price of each item.
- (D) If known, the cost of the items or services for which funds will be advanced as an accommodation.
- (E) Terms and method of payment.

2. The written contract shall be dated and signed by the purchaser and by the person providing services and merchandise or his agents. The original contract shall be retained by the person operating the funeral establishment for at least five years and shall be open to inspection of the State. A duplicate of the written contract shall be given to the purchaser at the time of its execution.

3. No funeral establishment shall ever interfere when another funeral establishment has been called to take charge of a decedent. Under no circumstances shall one funeral establishment take charge of a decedent until the funeral establishment first called upon has been compensated for his services, has issued an itemized receipt for services rendered to the second funeral establishment and then has withdrawn. This paid receipt will then become part of the funeral records on said decedent(s).

In reference to H.B. 264

Testimony by: Margaret E. (Peggy) Witzleben
Owner - Bruce Funeral Home
P. O. Box 2351
Anchorage, Alaska 99510
279-1963 or 279-7786

Section 1. AS45.50.471 (22)

This bill supports to protect the consumer by insuring that any money paid by him/her into a pre-need funeral arrangement be secured in a trust account "in a financial institution whose deposits are insured by an instrumentality of the federal government as a separate account in the name of the person benefitted" (lines 5-8). This purpose of this bill is NOT protection of the consumer however, but rather the protection of a small special-interest group controlled by a large Anchorage funeral establishment. The owner of that establishment has sworn to spend his last dollar seeing that pre-need plans are outlawed in Alaska. And why? Not because of the potential for fraud that he so nobly proclaims is his motivation - but because funeral home traditionally make larger sales and hence, larger profits, at-need (or the actual time of death) than they do if dealing with families who are planning for future eventualities at an unemotional, un grief laden time. These are hard words, not ment to be taken as a general indictment of the funeral service industry, but only of those elements who have earned them by their statements and actions.

There are, in fact, precedents for pre-need plans in other states. They are operating successfully, and to the benefit of the consumer, in Hawaii, Colorado, Utah, Kansas, Texas, Missouri and Nevada (this is not a full list).

What is pre-need and how did it come about here?

Pre-need is a program whereby an individual can select the kind of final

services he/she would like (be that a traditional funeral, a memorial service, burial or cremation), and pay for it at current contract prices in installments that fit his budget, when he is working and best able to pay for it. It provides a hedge against inflation as no burial insurance policy can, because the sum survivors receive from burial insurance is only as good as the inflated market at the time of death. A pre-need plan provides a paid-up final service and burial or cremation no matter what inflation has done to at-need costs. The individual purchasing the plan can feel confident that a grief stricken survivor will not be pressured into an expensive contract that must be paid off in thirty to ninety days. Cash on hand can then be used by the survivors to pay other necessary day to day expenses.

A pre-need plan covers all normal funeral expenses: local transportation of the remains, embalming, specified casket, all services of the funeral home, final services, grave space (plus opening and closing costs) in a perpetual care cemetery, concrete burial vault and marker, or cremation. Incidental expenses such as minister, organist, vocalist honorariums, flowers and certified copies of the death certificate are not, however, included. Plans that cover just burial costs, excluding funeral home charges, can also be purchased at the discretion of the consumer.

The plan that is presently operating in Anchorage evolved from the requests of families for a better, more comprehensive plan. One of the Valley Memory Gardens trustees began selling only cemetery lots in 1955. In 1962, at the request of families he began selling burial plans which included all cemetery costs - grave space, opening and closing costs,

Testimony on House Bill 264
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concrete burial vaults and markers. In 1967, again at the request of families, he began selling complete pre-need funeral plans as I have described earlier.

In the thirteen years since his program began, over two thousand contracts have been sold in the Anchorage area. Approximately 47 of those contracts have been serviced - both in and out of Alaska (one in New York at a sizable additional expense which was absorbed by the Trust). A survey of families has indicated overwhelming satisfaction with the way plans have been sold and serviced.

A word about the selling of plans - high pressure salesmanship is definitely not encouraged. Cards are sent out an area at a time asking if the receiver would be interested in hearing about the plans available. If he returns the card with an affirmative reply, a salesman is sent out to contact him. Personal referrals are also contacted.

No one has ever lost money on the plans being sold by the Valley Memory Gardens Trust. If, for some reason, the actual cost to the Trust has been more than anticipated, the Trust has absorbed the difference - with the exception, that if a survivor prefers to purchase a more expensive casket, he must pay that difference himself.

There are additional cost-free benefits to families holding Valley Memory Gardens plans. If the head of the household dies before he has completed paying for the contract, the balance is liquidated and absorbed by the Trust with full benefits provided.

Also, if a family loses one or more children under the age of eighteen,

Testimony on House Bill 265
by: Margaret E. Witzleben
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the full services of the plan they carry are provided for the dependent FREE OF CHARGE. Those services are provided in addition to the services for the family members specifically covered by the plan (the parents). The additional cost is absorbed by the Trust. No burial insurance plan, that I know of, does this, nor individual plans as would be set up under this bill.

In closing, let me say this, the people who oppose pre-need plans and who seek to get House Bill 264 passed, are not concerned with benefit to the consumer. They say, that in addition to the potential for fraud, they feel that no one who is not a funeral director should earn a commission on any part of funeral service. They call it solicitation. I won't even deal with that argument because I feel that the brief prepared by a knowledgeable Illinois law firm* which I have given the committee chairman does a far better job than I can of refuting that cry. What they hope to accomplish with this bill is to eliminate the part of the Trust earnings (the interest) that enable the Trust to:

1. Pay the necessary operating expenses of the plan (salesmen's commissions, office costs, etc.);
2. Publicize the benefits of pre-need funeral plans to the public; and
3. Provide the extra benefits I have already mentioned.

The basic question, I guess is this: Can a small special interest group FORCE the public, by this Bill, to buy funeral services only at-need?

MARGARET E. WITZLEBEN

* Fiffer & D'Angelo, Suite 1100-209
S. LaSalle Street, Chicago, Ill 60604