

HB

509

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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HB
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MEMORANDUM

November 20, 1975

SUBJECT: Meeting of Mortuary Science Subcommittee
TO: Interested Parties
FROM: Billy G. Berrier, Staff Attorney *BGB*

Senator Edward C. Willis, the Chairman of the Subcommittee on Mortuary Science, has announced a meeting of the subcommittee in Anchorage at the Legislative Information Office, Suite 701, 310 K Street, to be held December 2, 1975, commencing at 10:00 a.m. A further meeting will be held in Juneau at a date to be announced.

A copy of the revised CSHB 509 and a transcript of the previous workshop held on this bill is enclosed.

BGB:cb

Enclosures

cc: Sen. Willis
Rep. Beirne
Anchorage Legislative Information Office

MORTUARY SCIENCE SUBCOMMITTEE

MEETING

Anchorage, Alaska - September 27, 1975

Senator Willis: Well it's 2:00 p.m. We'll kick off this work session. I was appointed by the Legislative Council to start conducting work sessions and what other type of public information sessions that are needed on mortuary sciences. As you know, during the first session of the Legislature H.B. 509 was introduced by Representative Beirne at the request of a number of concerned people in the mortuary business. It was felt by the Legislative Council that some interim committee work should be done, and therefore I was assigned to handle it. Today we have just got to schedule it as a work session. There are a number of folks here, I guess quite candidly more than I expected that would be here. We will take the remarks of those of you that are prepared to let the committee share the benefit of your knowledge and experience and comments. So we will handle it more or less like we would a public hearing -- we'll let each and every one of you that want to testify, testify. Give us your name, perhaps a thumbnail sketch of your background, and whatever information that you feel would be beneficial to the Legislature. Now these testimonies from the work session will be transposed in the form of minutes. It will be made available to the other committee members. Representative Beirne in particular. She regrets she couldn't be here, she was detained outside. It will be made available to such of the legislative committees in the House and Senate that will probably conduct the formal hearings, if indeed we proceed to that particular point. Now this is an assignment that was made by the council. I'm not sitting here in a position of advocacy. I'm here to listen, take your testimony, and transmit it to the appropriate legislative committees for review. And with Mr. Berrier here, who is the attorney for the Legislative Council, together we will make our recommendations. Are there any questions before we proceed?

Bill Berrier: Could I make one procedural comment? Since this is being taped, each time you speak, not just the first time, if you could identify yourself so that the person transcribing will be able to tell who's talking. It makes things enormously easier.

Senator Willis: Okay, with that background, who would like to

be first? Shall we just start and proceed right around the table?

Lee Moeglein: My name is Lee Moeglein. I'm a graduate of the University of Minnesota in Minneapolis, Minnesota, class of 1964. I have a degree to practice mortuary science. I've been licensed to practice cremasorics in Minnesota since 1965, after one year of internship there. I moved to Alaska in 1970 after five years of practice with my father, who is also licensed and has two funeral homes in Minnesota. I've been at Evergreen Memorial Chapel since that time, for the past five and a half years. I'm the son of a funeral director, and I've spent all of my life living in or near a funeral home, and I think I'm accutely aware of some of the problems that exist in funeral service today.

My reason for being here this afternoon is that I'm here to answer questions and to testify to the best of my ability on H.B. 509. Since Richard Rome and I are largely responsible for its content, along with counsel. I'd like to confine my remarks to the licensing and the practice of mortuary science since I don't want to be redundant, and since Mr. Rome, who is on my left, is going to comment on some other aspects such as the pre-need trust agreements and disclosure of funeral costs. Since coming to Alaska in 1970 I've been aware of some of the shortcomings of the laws and the rules and the regulations that exist here because of some of the problems that come up here.

Such as the current law in embalming legislation which is on the books here in the state enables the Department of Health and Social Services to provide rules and regulations for the licensing of embalmers only. And there is a whole (inaudible) of funeral service which is left unregulated. The current law in the state enables the Department of Health and Social Services to provide rules and regulations. There is a Department of Revenue which issues the licenses, and there are no provisions for suspension or revocation of a license, only issuing them. The current law in the books establishes the lowest qualifications in the United States, even though the Alaska administrative codes sets other standards, 844.010 which is the current enabling legislation has a reciprocity cause which enables anyone from any other state in the union to receive an Alaskan license. While we in no way want to restrict competition, I think Alaskans deserve better than the lowest standards in the nation. And finally, there are currently no penalties for unethical practice in the current statutes.

The goals that we set when we sat down and began to work on this material were several. The first was that it be a single license. That it would be issued by the Department of Labor and administered and enforced by the Department of Health and Social Services, and that it cover all phases of funeral service and not just embalming. After some discussion with people in the Department of Health and Social Services and other people in the state government, since we wrote this I've become con-

vinced that perhaps the Department of Commerce, Division of Occupational Licensing would be the proper department to handle this sort of thing, since they are set up to do this sort of thing and they administer licenses in many other occupations.

Another of our goals was the issuance of that license to all current valid holders of Alaskan Embalmers Licenses and to others who can qualify under new regulations.

Our third goal was to protect the public interest and in no way attempt to restrain trade or restrict competition by qualified practitioners.

Another goal was the issuance of a funeral establishment permit by the state to qualified parties so that not only the people who are working in the establishment, but also the people who own the establishment, should come under regulation from the state.

And a final provision was for permits to handle human remains in those areas of the state not served by a funeral service practitioner excluding the practice of embalming. Many are doing so for hire or pay.

What we came up with is based on model legislation which is proposed by the National Funeral Director's Association and is patterned after laws in the states of Oregon and Minnesota, where the track record for such legislation is excellent, and it's tailored to meet some of Alaska's very unique problems. I think it's a good law, I think it's the best we could write with the limited experience that we have with such matters, and with the help of counsel. We had hoped a bill would be forthcoming from the administration and we were told last year that it would be. But as time went on we began to realize that nothing was going to happen in the last session of the legislature and probably would not in the next. We decided that if it was going to happen that we would have to do it ourselves. I'd like to thank you for your time this afternoon and for considering our proposal, and I'd be glad to try to answer any of your questions concerning it. Thank you.

Senator Willis: Thank you. I'd like to introduce Representative Susan Sullivan who is chairing the House Health, Education, and Welfare committee, and very likely a bill such as this would arise in her committee. Okay Mr. Moeglein, the bill then 509, as we probably have it, you support that bill pretty much as it's written then?

Lee Moeglein: Yes. There are a couple of small exceptions. It was rewritten slightly and there are a couple of small exceptions, but generally, yes.

Senator Willis: Susan do you have any questions at this time?

Representative Sullivan: I wondered if there was anyone here representing an (inaudible) who might explain why the Governor failed to introduce this legislation.

Lee Moeglein: I wasn't aware that the Governor would do it.

But we were told by the Department of Health and Social Services that they were working on it, and that they were going to do it -- and I don't know why it wasn't done.

Representative Sullivan: I had one other question. As far as regulation of the owners of establishments, what kind of regulations did you envision?

Lee Moeglein: Only that the establishment that they own be placed under regulations so that if there were violations of the ethical practices which led directly to the ownership of the establishment that the permit could be evoked.

Representative Sullivan: And so then it would just require that they abide by the ethics of the business. Not have any particular expertise other than that.

Senator Willis: Okay. Thank you very much Mr. Moeglein. Okay, would you in turn go?

Richard Rome: I'm Richard Rome. I'm a licensed embalmer in the State of Alaska, holding license number 117. I'm a graduate of the University of Minnesota, College of Mortuary Science, class of 1955. I received a license to practice mortuary science in the State of Minnesota in 1956 after serving a year of internship in that state. I currently hold a license to practice in Minnesota and in Alaska. I have been actively involved on a full time basis in the funeral profession in Alaska since March of 1959.

I wish to speak to section 3 of the Alaska Statute 455471, paragraph 22 of House Bill 509 as it relates to pre-need and pre-financed funerals. This section of House Bill 509 was a redraft of legislation that was proposed to me by the legislature. It comes from statutes currently in use in the State of Minnesota and is very similar to that in use in several other states throughout the country. Forty-three of our fifty-one (which includes the District of Columbia) states have seen the need to place control of some type on the sale of pre-need and pre-financed funerals. That alone says something about its need to be controlled. In December of 1974 at a general meeting of the Alaska Funeral Director's Association we were advised by the Consumer Protection Department of the Attorney General's Office that the state has concerns in this area and that they would be drafting legislation concerning pre-need funeral contracts. The State of Alaska is in boom times as you are all well aware. Many promoters of various and sundry schemes are in Alaska to try to glean some of the pipeline money. The uncontrolled sale of pre-need and pre-financed funerals is fraught with the possibilities of fraud by unethical promoters. Even those trying to provide a legitimate service could find that through mismanagement due to inexperience or for whatever reason, when they have the use of substantial sums of money over a period of several years with no requirements for entrusting that money, could find themselves unable to perform, and the public thereby the loser. Another reason for enactment of this type of legislation is economical also. It is only reasonable that any contract sold by a salesman on a commission basis would add to the cost of

providing the merchandise and services. The salesperson injects just another middle man into the traditional funeral director - client relationship. Any argument referencing restraint of trade by the enactment of this type of legislation is unfounded. The sale of pre-financed funerals cannot increase the number of funeral sales. As is obvious, funerals are directly controlled by the mortality rates, something no one has any control over. It is only a matter of when the public will pay for the funeral, no new business is available to be restrained.

Section 3 of this House Bill, the same section I am speaking of, is inadequate as written for the following reasons in my estimation. Number one: there is no clear specification as to what percentage of the money that must be entrusted. Secondly, there is no specification as to who receives the benefit of the accrued interest on that entrusted money. Thirdly, there is no specification on the availability of funds to the buyer wishing to terminate the plan, or as to what amount of the payments made and interest accrued may be returned to the buyer or retained by the seller. My fourth point is that nowhere does this section come under the suspension and revocation of licenses as set out in section 84290 of H.B. 509. If convicted under A.S. 455471 for breaking the law it is not a felony, so those in the funeral profession would not jeopardize their license by participating in any illegal acts covered by A.S. 455471. Revocation or suspension of a license to practice mortuary science must be jeopardized by the breaking of the law regarding pre-need and pre-financed funerals in my estimation. I will read the law as I feel it should be enacted with the admonition that it somehow fall under the jurisdiction of Chapter 42 Morticians. I'll title this "Pre-need Funeral Plans", and it reads as follows: "When prior to the death of any person, he or someone in his behalf makes or enters into a contract with any other person relating to the disposition of his body upon death whereby certain personal property will be furnished or the professional services of a mortician will be furnished, the person receiving money under such contract shall deposit all of such money within fifteen days after its receipt in a banking institution, the deposits of which are insured by an agency of the United States of America, as a separate trust account in the name of the person depositing such money as trustee for the person who will receive the benefit of the personal property and services upon his death. Such money and any interest accrued thereon shall be held in trust until such contract is performed according to its terms, or until such money is refunded to the person who will receive the benefit of the personal property and services upon his demand, and any portion of such money not used in the performance of such contract shall be paid to and become part of his estate." I'd like to give you a copy of that Senator. At this point I would be willing to answer any questions or clarify any statements made regarding my position on this. And I should indicate too that this is not only my own personal desire to see this law enacted, but it is that of about seven or eight funeral directors in the state who have read it and agree with it.

Senator Willis: I understand that Alaska is one of the few states that doesn't have a law governing this pre-need.....

Richard Rome: That is correct. I think one of seven states. Is that the correct figure? It is one of seven states in the United States that has no law with reference to pre-need control.

Joseph Ireton: Wouldn't the Securities and Exchange Commission have something to do with this?

Richard Rome: I don't believe that the Securities and Exchange Commission would be involved. I can't give you a positive answer on that.

Representative Sullivan: I'm sort of one step behind on some things I think, but when you were talking about there's always a finite amount of funerals, I'll agree with that, but in quantity you'd be finite, but in quality it might not. If a person had the foresight to purchase pre-need funeral services they might be able to afford more than the....

Richard Rome: Susan, I think that might be a fallacy in thinking. I don't know how anyone in the funeral business could pay a salesman a 15 or 20 or 30% commission, whatever it may be, out of the money that is paid for a funeral at a lesser rate than a funeral home that does not have to pay that 15 or 20 or 30% commission.

Representative Sullivan: I wasn't proposing that they might be able to get it cheaper, but just that there's obviously a great variety in the kinds of funerals that you can have. You can have a simple one or a quite elaborate one. If you had some foresight you might be able to afford an elaborate one.

Richard Rome: I think this would clarify that for you. This law does not eliminate or does not get rid of the possibilities of families pre-arranging or pre-financing funerals. We have in our files at our mortuary many pre-arranged funerals. Families who have come in and told us this is what they want, this is how they want it done. Some have given us money. That money is in trust in their names in local banking institutions. When they want to back out of that, if they move and go to the south 48 states, they come to us and say "We want to go." We say "Fine, let's go down to the bank and get your money and interest," and you go. They have paid for absolutely no service. I have provided no service for them other than sitting down for maybe thirty to forty-five minutes with them and talking about the funeral. And I think any funeral home or funeral director in the United States would be more than willing to spend an hour of his time with any family at no obligation to them to discuss future funeral needs. This does not eliminate that at all. Minnesota has a law almost exactly the same as this one is written. Pre-need or pre-arranged funerals are very common in that state. Most every funeral director in that state has a file of many pre-arranged funerals. So it does not eliminate the person who

wants to pre-arrange a funeral from going into a funeral home, sitting down and pre-arrangeing that funeral, saying "This is what I want."

Representative Sullivan: (Inaudible) incentives to a funeral home in offering this service.

Richard Rome: Well I think it's a matter of the funeral director is in a, I don't know how to exactly word this, but you're there serving people and the only thing that you have to offer those people is service. If you are willing to take time and talk to people and arrange funerals, pre-need or otherwise, the hope is of course that anyone who would pre-arrange a funeral with you would sometime at a later date, at the time of need, come in and make their funeral arrangements with you. Thereby you would have a funeral for which you could make a profit. Now I don't think there is anyone in this room that would say that pre-need sales or the funeral industry as such is not a profit making business, nor is it a business that's not -- that the incentive is profit, a portion of the incentive. That has really nothing to do with that law.

The gentleman there, did you have a question?

Bill Berrier: One of the points you raised Mr. Rome I think creates a definite technical problem with the bill. Let me point out that this section is put in 455471 because this is a consumer protection statute. The title 0842 would effect only persons who are licensed. It would appear that there's a possibility that such plans could be sold by persons other than licensed morticians if this were only in a mortician's licensing statute. And it would also appear that if you'll look at page five, line twenty-one, Violation of the state law, regulation or municipal ordinance or regulation effecting the disposition of dead bodies. A violation of 455471 would be grounds for revocation of a license. Do you feel that it's safe to have this pre-need thing apply only to morticians or should it be under consumer protection so that you could apply it against other people?

Richard Rome: Bill I think that this needs to apply outside of the funeral profession, but I am concerned that it apply also inside the funeral profession to say, to those of us who are in the funeral business, the funeral industry, the funeral profession. That if we are going to violate that statute, we are not only going to get a 90 day jail sentence and a \$5,000.00 fine, we are going to lose our license to practice, and that's what I want.

Bill Berrier: This is the case as the law is written. Look at 084209012. It is grounds for revocation of a license.

Richard Rome: Bill would that, that says, the concluding five or six words is "effecting the disposition of dead bodies" does

that relate on a pre-need basis?

Bill Berrier: I would read it as relating -- I can draft that that section stronger. But the basic point is, you had suggested moving it entirely back, and I feel that you might be losing a great gap if you did.

Richard Rome: My real concern, maybe I was not correct in the way I worded it, but my concern was that those in the funeral industry if they violate that statute A.S. 455471, are not only going to get the consumer protection sentence, so to speak, but they are also placing their license to practice in jeopardy. And that's what I'm concerned about, that it be somehow connected.

Senator Willis: Does anyone else have questions for Mr. Rome so we can...? Thank you very much. Okay, would you care to testify sir?

Tom Gregoire: My name is Tom Gregoire, and I was licensed in the State of California after attending California College of Mortuary Science in 1971. Since that time I've returned to Alaska which is my home state. I was born and raised here and I have currently an Alaska State License. I am in partnership with another gentleman in this city and we operate Gregoire-Neill Funeral Home. And at this time I'll reserve any further comment until a later time as we have many...

Senator Willis: All right sir, thank you very much. Yes?

Fred Witzleben: I'm Fred Witzleben, graduate of the Indiana College of Mortuary Science. Licensed in the State of Indiana, and associated with the funeral business since 1962. Today I'm going to be speaking as president of the Division of Funeral Directors, the Alaska Allied Funeral Services Association. The chairman of our association, Mr. Fred Kehl, is out of town and unable to attend today, and he asked me to bring this letter to Senator Willis.

Senator Willis: Thank you.

Fred Witzleben: It has been discussed and rediscussed many times with the members of our association regarding H.B.509 as it presently is written. Now we would like to make a statement to the effect that none of the members of our association, of which several are former members of the Alaska Funeral Director's Association were given the opportunity to review any proposed legislation which was submitted by Mr. Rome, which does affect every funeral director or embalmer in this state, or ultimately might. It is for this reason that the majority of all of our members, with the exception of Mr. Kehl, have come from great distances, from Juneau and Fairbanks, to be present today for this hearing. Our primary objection to H.B. 509 is the term "mortuary science". We feel that mortuary science suggests that one must be scientific, example: have a clinical background to function in funeral service. You do

not have to have a license to be a pharmacist to own or run a pharmacy, or to talk to the people. The skills required to be an embalmer and a funeral director vary greatly. And there are many embalmers who are excellent embalmers only, have no personality or capability of talking to a family and making arrangements. The same is true with funeral directors who are very capable of making arrangements and functioning in an administrative capacity but are lousy embalmers, and could care less if they ever embalmed. If this bill is enacted the way it is presently written, the cost to the consumer will be prohibitive if only school trained licensed embalmers from an accredited college of mortuary science will be allowed to practice in this field. At the present time, with the exception of one or two firms, we all find great difficulty in obtaining help in Alaska. We agree that the requirements need to be updated. There need to be some improvements, but we don't need to put ourselves out of the employment market by requiring what is presently written in H.B. 509. That primarily is in section 084220.

Also in going through H.B. 509 in section 40, where it's the applicant for license to practice mortuary science, in line 9 it had "by at least two reputable residents", at this particular point it is asking for a judgment by the legislature or by the department who is going to be administering this.

In section 50 where it goes on for qualifications to practice mortuary science, the legal age in Alaska was lowered to 19 years several years ago. If somebody has the educational background, and has completed the prescribed courses to meet the requirements by age 19 we feel they should be entitled to be licensed or to take the examination.

Also under section 50, subsection 6. This says "have completed at least one year apprenticeship as a resident trainee under a mortician licensed to practice mortuary science in this state." This is the only place in this bill that it brings out the word "apprenticeship". There is no place else in there setting up any requirements for apprenticeship, training agency for apprenticeship requirements, or anything having to do with apprenticeship, whether it be through embalming or a funeral director. This would be like walking on eggs, and there'd be nothing underneath you.

Under section 70 in here, reciprocity, it goes on to list the requirements for reciprocity. Subsection 2 "to prove satisfactorily to the department that he is over 21 years of age, of good moral character, and that he is licensed in another state, and that he has practiced mortuary science in another state for one year preceding the date of application." This again is going to restrict the funeral homes in this state from receiving help. If somebody has taken it upon themselves to take a leave of absence from practicing in the business and they hold a license in another state, or if they come up here to work on the pipeline as an example and they decide from the previous twelve months they have not worked in the state they can not be license under a reciprocal agreement. I don't know of any state that has an agreement like this, unless it would be Minnesota.

On section 90 "Grounds for refusal to issue or renew licenses and suspend or revoke revocation of licenses". It says "When the department has reason to believe that an applicant or licensee has

has been guilty of any of the following acts or omissions is filed with the department." This is leaving too much to the department to take it upon themselves at the complaint of one firm who might have sour grapes to close somebody down without the process of trying to hear what the complaint might be or to defend yourself. Additionally, in the same section you go to item number 8 where it says "solicitation of the dead human body by the licensee, his agents, servants, or employees when a solicitation occurs before or after death." There needs to be a more defined definition of "before death" than what there is here. Before death is any time. We're all before death at the present time.

The funeral establishment permit. It's our opinion, and the consensus of our group, that the funeral establishment permit is going to be another fee to increase the cost to the consumer. We would like to see this dropped because you do have a permit, you do have regulations covering grounds for revocation and suspension of a license.

We feel that under subsection 110 the definitions which they have are only four. We find this quite deficient in defining what presently might be. There is no definition of what a casket is. There is no definition of embalmer, embalming, funeral director, funeral directing, solicitation, or any other number of items which do need to be defined by a state to be able to appropriately enforce any regulations that would be adopted.

Going to the cost disclosure section. We find this totally lacking because it does not disclose anything to the consuming public. Additionally, it says "Every person performing services or providing merchandise relating to the disposition of a dead human body shall give to the arranging for the disposition at the time the arrangements are completed and before the time of rendering the service or providing the merchandise a written statement showing the extent then reasonably ascertainable the price of the services and what is included, the price of each supplemental item, the amount for each item, etc." The area here "at the time the arrangements are completed and before rendering service" -- the minute we answer our telephone we are rendering a service. Under this law it would make it illegal for us to even go out and make a removal of remains before we had a complete funeral arrangement for the family. It says "the price of the service and what is included" -- this is totally left up to the funeral home they are dealing with. It can be a unit price, it can be a bi-unit price, it can be a function or an itemized pricing system, there's no criteria set out. The only thing that's set out is supplemental items that would be done. Any cash advancements would be listed, and the method of payment. The association has tried to work to establish, and to write new sections if we could, to help bill 509 as it presently exists. We found the changes to be in such a multitude that we have drafted a proposed substitute to H.B. 509 which we would like to give to the chairman.

Senator Willis: Thank you.

Fred Witzleben: We feel that at the present time to avoid putting alaskan funeral homes out of the employment market for

outside help, where we all have to look for our resources for employment at the present time, we feel that dual licensing system in this state is a necessity. To license embalmers and to license funeral directors.

Additionally in our bill we have set up along the guidelines of H.B. 509 as it is presently written, requirements for practicing mortuary science and for practicing embalming, the educational requirements to apply for an apprenticeship program or practicum training in either funeral directing or embalment, the scope and examination of the licenses, and the exam or the test that would be given.

Reciprocity to be expanded and not to discriminate on a twelve month not working before the fact basis.

We have set up proposals for an apprenticeship training agency, for licensing permits, that will follow along the lines of the refusal to issue or renew licenses or permits.

We've adopted quite a few of the sections of the present administrative code to cover the requirements of the funeral establishment, the care of the remains, transportation of the dead, the requirements for the funeral establishment and what it must have. We went into quite length of defining definitions as to what there would be. To try to avoid any conflict or use of semantics. To spell it out as entirely as we could. There are a few areas in the proposed bills that there have been amendments and additions made this morning that we did not have time to totally incorporate into the body of the bill. And there is a section of the amendments listed on the back and it's notated where they would be. We have also put on a suggested amendment to the cost disclosure which would make it mandatory that there be some form of itemization breaking it down to three or four areas. One -- the professional services, second -- the use of the mortuary facilities and equipment, third -- the casket manufacturer's description, and the retail price listing all supplemental items, listing all cash advancements that you know at the present time, and the terms and methods of payment, and requirements for the contract which would be signed by the purchaser and the person providing the services, and for the amount of time that this would be retained in a file for state inspection.

If you have any questions I'll be glad to try to answer them.

Senator Willis: Bill do you have any questions from the legal or..

Bill Berrier: Yes, if I might. A couple questions, these are procedural. You realize I've just gotten this and I haven't had a chance to examine them. The one thing that I wondered, I noticed that in certain areas, I was thinking specifically of your 0842130 transportation of the dead...Would you feel, and this goes from time to time, would you feel that this should be statutory law or regulation? The difficulty that I'm thinking with putting these kind of details in the statutes is that you have great practical difficulty keeping up with the state of (inaudible) advances. So I'm not sure really if it doesn't, really I don't follow the idea of course, I just skimmed them,

but is this a matter of property, should this be in the statutes, a permanent law that you actually have to amend the statutes rather than just have the department issue regulations changing...

Fred Witzleben: These are pretty much standard, and they have been standard for quite a number of years.

Bill Berrier: This is not the kind of thing that's going to change drastically as the state of (inaudible) changes?

Fred Witzleben: No, it's not.

Not Identified: For those of us who are laymen, what procedures now involve a person to be able to practice mortuary science, if maybe that's a misnomer but to be an embalmer or...

Fred Witzleben: To be an embalmer you have to be a graduate of an accredited college of mortuary science and be licensed by the State of Alaska or practices (inaudible).

Representative Sullivan: And to be a funeral director?

Fred Witzleben: There are no requirements set forth at the present time for funeral directors.

Representative Sullivan: Do you feel that there should be?

Fred Witzleben: Yes I do.

Representative Sullivan: And they should be different from that of an embalmer?

Fred Witzleben: Correct they are two entirely different skills.

Representative Sullivan: Are embalmers bonded or anything like that?

Fred Witzleben: No they're not.

Representative Sullivan: Do you think funeral directors should be?

Fred Witzleben: Not if they're licensed. They'd be working for an establishment, they wouldn't necessarily be free lance.

Representative Sullivan: The establishments are bonded are they?

Fred Witzleben: They carry their professional liability insurance which would cover them for any wrong doing or omissions.

Senator Willis: Okay, Mr. Rome.

Richard Rome: I have a few comments on what has been said. A lot of what he's said is, we are in complete agreement with as far as I'm concerned. Some of it I think needs some clarification. I think when we look at H.B. 509 I have to say that this is not

the bill that we submitted to Helen Beirne to be drafted and to be placed into the legislature. I have a copy of the bill right here that we submitted. Now many of the things that are in the bill that we submitted to Helen Beirne were removed from H.B. 509 when it was rewritten, or were watered down or taken apart in one way or another, reworded so that our intent, original intent, was altered somewhat.

Speaking first to the statement that the funeral directors in the state did not have a chance to review this, I can only say that that's very true, they did not. But there were several reasons for that. We had decided at the Alaska Funeral Director's Association meeting that we wanted to do something on the licensing laws and we were told at that time by Consumer Protection that the Attorney General's Office will prepare a new licensing law which will incorporate many of the things that we've discussed here today, and that it would be forthcoming to the legislature. After two or three or four months, I've forgotten just the time schedule now, nothing had come from Juneau. I made several telephone calls to Theresa O'Connell, who was working for the Attorney General, who is a member of the Attorney General's staff, trying to find out the progress on the bill. She kept telling me "It's ready to come out, it's ready to come out, any day now, we're going to have it together and it's going to be there." "Well what's in it?" "Well we can't tell you anything, you can't see the bill until the bill's written." So as you know, Alaska's a large state. We stretch from funeral directors as far south as Wrangell and Petersburg to Fairbanks. It's great expense for these people to travel back and forth, to try to get together, to sit down, to put a bill together, the magnitude of which this bill is would have entailed I'm sure seven, eight, ten meetings before we could get down and say "Hey, this is what we finally want, this is what we want to put through." I went to Juneau to talk to Theresa O'Connell, could get no answers whatsoever. I talked to several legislators in Juneau, and the thing that I kept hearing from the legislators was "Look if you want a bill to get into this session, to get it out for the committee, do it yourself or it isn't going to get done." So I came back to Anchorage and I wrestled with this thought of trying to get everybody together and knowing procedures on bills of this magnitude they aren't something that you're going to railroad through the legislature. You're not going to put it in and say "Here it is -- it's in this committee today, tomorrow it's law." It just doesn't happen that way. So after talking with Lee and Dave Frank a little bit about it we decided that we would go to an attorney here in Anchorage at our own expense. We would tell him that these are the things that we feel should be in the law, and these are the things that are presently in the law that we feel are good, these are the things that the consumer protection people have told us we should have in a law if we're going to put out a new law, and we left it to him to draft. Now he took, as I mentioned before, Minnesota statutes, Oregon statutes, Alaska statutes, and the N.F.D.A. (that's the National Funeral Director's Association) model legislation on licensing. He tried to put them altogether into a package that would be a good package.

After working with him for some two or three weeks on this bill we finally came up with this draft of which I believe you have a copy Senator and I believe you also Mr. Berrier do you not? And we took it to Juneau and Helen Beirne. If you've been to Juneau you know what a mad house it is to try to get somebody to sit down and go through an eight or ten or twelve page bill with you step by step and piece by piece it's -- you don't do it, that's all. So I had to leave it to Helen to say, would you, you know, submit this bill for me? I did not say "Submit this bill for the Alaska Funeral Director's Association" I said "Will you submit this bill for me? A funeral director in the State of Alaska." She did that and I believe it was given to Mr. Berrier, if I am not mistaken, and he drafted it into the wording that the State of Alaska uses in drafting their legislation. In that translation, to my estimation, some things were left out and some things were improved. But that's the story on how the bill got to Juneau. So this is how H.B. 509 is not the house bill that I submitted to Juneau. That's number one.

Secondly, I have a couple of things that I would like to comment on. As far as section 40---applicant having two reputable persons sign the license, or sign for you. This is currently in the administrative code, in the State of Alaska it's fairly common practice throughout the United States to have two reputable people stand up and say "Hey, this guy is morally all right, I've known him, he's not a bad guy, and I think that he's well qualified." I would not be terribly upset if that were removed from the law. It's just something that we felt we felt was there and had some good points to it, so let's leave it in.

As far as the legal age is concerned I have drafted a letter to Billy Berrier some time ago in which I mentioned that the legal age had been changed in Alaska, and that as far as we were concerned if people could meet those qualifications set out in the licensing statutes by the time that they have reached the age of 18 or 19, whichever the legal age is, I'm not sure now, fine -- Give them a license. So I have no qualms about that whatsoever.

Resident training is a portion of the law in which translating it from what we submitted to what Billy Berrier finally wrote was completely left out. We had an entire section there as far as resident trainee which simply was an apprenticeship program that could be served following your schooling, come to Alaska right out of school, serve a year internship, get your license. And it was left that those rules and regulations concerning that license be promulgated by the Department of Health and Social Services or in this basically what we're concerned, what we've changed our tune to, is that it be done by the Department of Commerce, the Division of Occupational Licensing which has the staff, the attorneys, the investigators, the people to handle that type of thing.

Reciprocity -- Section 70, subsection 2 -- one year of work. The thinking on that was basically that rather than having a man come directly out of, no this I'm sorry, reciprocity was a licensed man. I have no qualms about having them come to work for funeral homes in Alaska if they hold a license in another state. I, to be very honest with you, I don't recall what our thinking was at

the time we put that into the law along with talking to our attorney.

Suspension and revocation, some comments made on that.... In Alaska we have no one except the State of Alaska, right now the Department of Health and Social Services, that can control in any way, shape or form, the people in the funeral industry. We felt that the state was too small to go to Juneau and ask that we have a board for morticians, funeral directors and embalmers who would establish and take under advisement certain problems within the funeral profession and make decisions on it. We're just too small a group to do that. We felt it would be best to leave it in the hands of the state who do not, you know, who can look at it objectively without saying "Hey, if I get this guy, there goes my competition." So we said "No, let's do it away from a board, let's leave it in the hands of the licensing people, who have investigators to look into things and take care of the problems that come about."

As far as solicitation before or after death from N.F.D.A., that particular item came from model legislation from the National Funeral Director's Association. I agree with Mr. Witzleben 100% --it should be defined, and that was one of the things in the translation again that was on definitions. There are just not enough definitions within the current H.B. 509 to keep us honest. And I think that there is a lot of room for definitions, and in my letter to Bill Berrier I said "Let's not worry about wasting a little paper defining things. Let's get the definitions down, let's get it down in black and white, and make sure that we know what we're doing."

The cost disclosure law, that's another ball of wax. As you all know, we're under great scrutiny by the Federal Trade Commission, a lot of it unjust, some of it just. I think for the most part funeral directors throughout the United States are honest and concerned people who are there to serve the public and take care of the needs that are required by them. I don't think we're there to get the last dollar that we can for the funeral, sell the big bronze casket in the corner, get the last buck, whatever way we can. And I doubt if there's anybody in this room that's a high pressure salesman, who would back a family into a corner and try to move them into something better. I just don't believe it. The cost disclosure law that is in this, again was given to us by the General Council of the National Funeral Director's Association recommending to us that this was a good itemization law---it leaves it open to the funeral director, leaves it open to the point that he can use some discretion in itemization.

Now itemization can be a real headache, not only for the funeral director, but for the person you're serving. And when you have to sit down and go through sixty-five items, one by one, and say "Do you want it? Don't you want it? Do you want it? Don't you want it? Do you want it? Don't you want it?" You're going to find that after about thirty minutes that person is going to go right through the roof. The people are in the minority who are extremely concerned. When they walk through the door that they say "How much for that? How much for that? How much for that?" Most people that come in want to know what the casket costs, how much are your services, and what are the casket outlays, and how do

I have to pay for it, and, you know, put it down on paper. We believe that that disclosure law does that. And it doesn't tie us down to itemizing each and every, you know, I used four flower racks rather than three, so that's fifty cents off, you know. It's just-- that's a bit far out, and I'm sorry for taking your time saying things like that, but that's the type of thing that itemization can lead to, and another thing itemization leads to is higher cost. Funeral directors have to cover their overhead costs one way or another. So if you're finding an item that isn't being used, you're going to have to charge much more for an item that is being used. Thereby those people who most generally use that item are going to pay more for it. I think that's all the comments I have. Thank you.

Senator Willis: Mr. Witzleben, would you care to...?

Fred Witzleben: Yes. I'd like to go back to the section 90 again, which covers the grounds for refusal to issue. The area there was leading up to the department of reason to believe, we believe is a violation of our due process. Before it goes to the administration to the (inaudible) procedures act and back to the cost disclosure bill, I have to disagree with Mr. Rome that it's going to cause higher prices. Possibly it might cause higher prices to an extent that what you're not using. But why should that family be charged for what they're not receiving under an itemization cost disclosure type of bill. If a family does not want to use a family car, they should not be charged for a family car. If they want to come to pick the remains up in their own station wagon or pickup truck, they should be entitled to do that, and not be charged for the use of a first call car or service car. The same way with chapel service, and number of things. Granted we have to meet our overhead, but if we have to hide our costs in meeting them then that's why we do need legislation to disclose the costs, to prevent families from being over charged.

Richard Rome: A point of information there, the law still reads that it has to go through the administrative procedures acts on the refusal to (inaudible), it's just that...

(Unidentified Person): Okay Mr. Witzleben did you have any...?

Fred Witzleben: Yes, again on that, on the administrative procedures act, that's correct it does utilize it. It's only after that the department can put a complaint by just anybody without having to prove that there has been some act, or gone through the due process to go into the administrative procedures act.

Representative Sullivan: What was your alternative to that?

Fred Witzleben: We deleted the area on the 0842090 where it says "plan the department has" to line 19 where it says "department column". We just deleted that section. And started out "It is the duty of the department to conduct an investigation."

Bill Berrier: I have a technical question. I looked at these because I was interested in the distinction you're making, and I think the distinction you're making -- I also think it's important drafting -- you have no precondition on the duty. It would seem that the problem which you are directing to is the language starting on lines 17, page four, starting with "or" and ending with a comma. Your sentence doesn't have an effect, a conditioning clause and it appears that the deletion of that is what you're, is the part where you're directing your remarks to, the deletion of that qualification, did I understand you correctly?

Fred Witzleben: Okay, that's right, I see your position on that.

Senator Willis: Okay, the gentleman on the end?

(Unidentified Person): I have a question to direct at Mr. Rome. You stated that after you had drawn your proposed bill you took it to someone in Consumer Protection who told you this was the type of law Alaska needed. Who was that person?

Richard Rome: Jim I don't think I said that I took my law after I drafted it to the consumer protection people, no, I did not take my proposed bill to the Attorney General's office, I did not. What I said was that at our meeting with the Attorney General's office the consumer protection people told us that a pre-need type of legislation is needed in Alaska. Not necessarily the one that I proposed, but this is the one that I did propose, and I did not take it to the consumer protection people, no.

Lee Moeglein: I have a question to ask Mr. Witzleben. Do you have any statistics which indicate that increased educational standards lead to increased cost in the funeral service? You made the statement earlier that it would lead to higher cost, do you have any statistics which would indicate that?

Fred Witzleben: That's one of the common sense factions Mr. Moeglein, in the fact that the more education you have, the more you're going to end up having to pay somebody.

Lee Moeglein: I don't think that's necessarily true, and I think that if that were researched I think that maybe the opposite would be found to be true, because there are other things that go into pricing and cost besides how much education you have. There are (inaudible) morality and ethics, and that sort of thing.

Senator Willis: Okay, are there...? The gentleman...

Ken Burton: My name is Ken Burton and I'm associated with the Bruce Funeral Home, and I'd like to direct a question to Mr. Rome. You mentioned that the bill that has been presented

here today is not exactly the one that you submitted.

Richard Rome: That is correct.

Ken Burton: Would I be right in assuming that you are in favor of the bill the way it is now? How it has been presented?

Richard Rome: You are not entirely correct. There are portions of that bill which we do not see eye to eye with as it is written, that we would not want written that way, and I think that from what Mr. Witzleben has brought out that on the majority of things that he has indicated, that we are very susceptible to working out something that's agreeable to all.

Senator Willis: Okay, are there any other questions?

Fred Witzleben: I have one. I would like to reiterate the fact that our proposed substitute, this does have the unanimous support of everybody involved in the Division of Funeral Directors and the Division of Memorial Parks of the Alaska Allied Funeral Services Association. Thank you.

Amos Neill: I would like to ask a question of Mr. Rome. You mentioned the seven or eight funeral directors agreed to this proposed legislation, could we have the names...

Richard Rome: Yes, you can. Myself, that's one, Dave Franke, Dale Rosenberg, Lee Moeglein, Bob Britt, Greg Jerrick, and Art Moll from Ketchikan. Is that at least seven? I'm in.

Amos Neill: This represents three funeral homes.

Richard Rome: Yes, it's very much like the Alaska Allied Funeral Services you know. There are what, one, two, three, four, four or five, maybe six or seven totally in the Alaska Allied -- it's kind of a toss up.

Amos Neill: That's seven firms.

Richard Rome: That's one, two, three, four, five.

Amos Neill: No, there are seven. There are two that are not represented.

Richard Rome: Okay. I stand corrected.

Senator Willis: Okay, are there no further questions? Sir, would you like to..?

Art Richmond: Art Richmond is my name, I'm the manager of the Valley Memory Gardens. The people who (inaudible) this particular bill is pre-need funeral sales and primarily cemetery. I've been in this business since approximately 1955. Throughout the country pre-need funeral or pre-need cemetery sales have been recognized since about 1908 starting with Forest Lawn in California.

Many people have benefited considerably by virtue of being able to purchase before need without being under the duress or shall I say the emotion of time. And the National Cemetary Association, of which we are members, and also the pre-arranging (inaudible), of which we also have members, very readily subscribe to what we refer to as the total pre-need concept. (Inaudible) the years when we first started out we sold cemetary lots. People appreciated the fact that they could do this without being under emotional strain, that they could take care of the things before the time to leave. Then there were other things that were necessary also. It was primarily required at the cemetary that some type of container, a vault or a liner or possibly even a (inaudible). We reached the point where we found in our pre-need sales -- now I'd like to exemplify the fact that this is something that has been done nation wide for many many years -- we reached the point where we felt that we, and speaking from the standpoint of our industry, we felt the necessity to provide the family with what I referred to earlier the total pre-need concept. And people appreciated it. As a matter of fact I used to be a salesman in the field, and in selling cemetary lots a lot of people would ask me "My that would be fine if we could take care of the cemetary lots, but what about the outer containment, what about the markers, what about even the funeral service? It would sure be nice if we could sit down today and get the whole thing taken care of, and save ourselves the emotion of going through this thing and exposing ourselves to possible exploitation at the time of emotional stress." Well as a result of that certain associations throughout the company and throughout the country developed the total pre-need concept which includes the sale of pre-need funerals. Now it is true, like Mr. Rome says, certain states have rules by means of certain influence in their state legislatures, a 100% law. Because this 100% law almost precludes the feasibility of selling funeral services before need. Now notwithstanding the comment that was made earlier that we have commissions to pay, we can sell at considerably less amount, and also pay the commissions. That is the person that we present this to. Not only that, but also to satisfy the family that the entire thing is being taken care of before the time of need which we find is one of the greatest desires.

Now our thought is this, and I'm speaking not only from our particular standpoint but from, let me put it this way, the standpoint of the Cemetary Association and the Funeral Association. The Cemetary Association are primarily dedicated to before arranged planning. Because we can provide the facilities when a person is not under emotional stress and we can provide it at a price considerably less, and also if you will, adequately funded. As a matter of fact it was suggested in the State of Hawaii when I worked for the legislature to show whereby a certain proper funding for funeral services even exceed that which is protected by the insurance funds. So we feel that as far as protecting the family is concerned that really is not the issue. I'd like to bring another point out. In 1966 (like I said, I have been in the cemetary business since '55) in 1966 I was approached by a gentleman from Denver who asked me "Look, will you give consideration to possibly approaching some of the local funeral homes and offering them a program whereby they will service pre-need funerals?"

The benefit to the thing would be it would put the funeral home on the map by means of pre-need funerals. Because it is very difficult to compete against pre-need salesmen or pre-need door-to-door salesmen." And so it becomes very obvious that it is very difficult for someone to compete. So therefore it would seem that if we could eliminate that type of competition, why we could save our position. So if we were to come up with say a 100% law to eliminate pre-arranged funeral sales, so that it is impractical for them to sell it, impractical for them to give it to the people, we would still be able to maintain our coveted position, if I may put it that way, so that at the time of death when people come to us we would be able to offer them the services we have available to them at the time of stress. Our associations are very strong on this and I am very strong on it. As a matter of fact I have in my file letters from persons who have written us that were very very satisfied. Since we've started selling pre-arranged funeral sales, I believe it was in about 1967, the families that we've serviced seem to be very happy with it. No one was ever cheated at anything, there has been adequate amounts of money funded. Not only that, but the amounts of money funded has by far exceeded the requirements to the point where it is not the issue. The point I'd like to bring to you gentlemen is this thought, is that what we're really looking at now, the question that we're looking at now is, is this really a matter of protecting the public, or is this really a matter of competition? Now I'd like to bring a point to bear. There was a court case in Milwaukee whereby there were certain funeral establishments that would price advertise. The Funeral Directors Association in that particular state and also the National Funeral Director's Association felt that they didn't think that it was proper for them to do so. That they professed to be a profession and not an industry. That an industry should by proper means compete with those who may be in competition with them. Well the court ruled, and also the Federal Court ruled, in favor that it was proper for them to advertise, that they were not a profession, but rather that they were an industry. And the fact that they were an industry that they should properly advertise their prices. We come to that point, that respecting the Federal Court decision on this matter we would come to the conclusion that it should be proper, let's say for the individual families to decide for themselves whether they decide before the time of need or whether they decide after after the time of need. The question is, what is the motive? For certain ones attempting the 100% law obviously it's to protect their individual interests. And I would like to say this, it's a case many times in our industry we have found to be the case. We find many times families come to us and they say "Well my goodness -- your prices at the cemetery, my goodness, it was only \$500.00 but we paid \$3,000.00 down at the funeral home, and we only had three days." And so, and yet we obligate ourselves to take care of them for a funeral on out by virtue of (inaudible). It is one of those things where we find ourselves engaged in shall we say possibly a conflict between the certain interests. And so the Allied Association has drawn ourselves together for the purpose of seeing if we can sit down like gentlemen and properly find out what we need to do in order to

provide the ultimate for all things involved, whether they want a pre-need, whether the cemetery's involved, the funeral home is involved, whatever it is, that these families are properly served without serving any particular interest group or without serving any particular competition. That's my comments.

Senator Willis: Mr. Richmond, so I'll understand. You represent the Valley Memorial Gardens. Is that just the cemetery part of it, or do you have a mortuary that goes with it?

Art Richmond: I have a mortuary. We are primarily a cemetery.

Senator Willis: Primarily a cemetery. Okay, Billy do you have any questions?

Bill Berrier: I don't have any questions.

Bob Britt: I have the Walsh Mortuary in Kenai and the Walsh Mortuary in Seward. In front of me I've got a pamphlet and it's printed by the N.F.D.A. In this pamphlet it has the basic data on the pre-need requirements of each state in the United States. Alaska isn't on here, we haven't gotten anything. This pamphlet I'd be glad to give to Mr. Berrier to take with him. It mentions in conclusion, it goes into explaining about pre-financed funerals etc. etc. But it says "If there are no such laws in the state where the pre-arrangement is made it is recommended that the pre-paid funeral payment or agreement including provision for a trust fund with the person making the payment maintain control of the account. The fund should include all monies paid in advance of need for services and merchandise including burial vaults. The agreement should also entitle the person in control of the trust to the interest earned with the option of applying it to the principle to offset any increase or inflationary cost. Such person making the payment should retain the right to terminate the contract at any time without forfeitures of any of the monies or interest paid on this account." All the states on the back here, and Senator they're all listed, have a control agency either banking or treasury department insurance in the state, or board of embalming, funeral directing, or none. Either permits required the amount of monies put in the trust, either 100% and the amount of monies, the income on the trust, all these monies in every one of these states are refunded in full to the families that make the arrangements. There's no sales commissions to the salesmen. There's no cemetery or funeral home that makes the pre-arrangements. They don't keep any funds for their paper work, this is something that they do, and the monies entirely go back to the family. They are not used to go out and be used as a working capital for some project or other than that they are intended for.

Senator Willis: Thank you. Mr. Richmond?

Art Richmond: In the states that have the 100% payments put in trust, are you saying that that eliminates your type of activity altogether?

Bob Britt: Yes.

Art Richmond: From the documents that I have seen, and apparently where the possibly six or seven states, this is the case.

Bob Britt: The few states that are not on there, such as New Hampshire, their associations have prohibited it. In Louisiana and Rhode Island participation in financing funeral programs in advance, it's a possible grounds for revocation of a license, on most of the other states around here.

Art Richmond: How about an 85% law state such as Colorado? How...what would happen? Suppose we had laws that allowed that? What position would it leave?

Bob Britt: Colorado and a couple of the other states that have that, the majority of the states all give the family back 100% of their monies, and I feel that's the way it should be.

Representative Sullivan: To get it back under what circumstances...

Bob Britt: Any time the family wants to withdraw those funds, whether they want to move out of the state, or they want to go to another funeral director, they've changed their mind, that money's the families. That's who it belongs to.

Representative Sullivan: And this is...

Bob Britt: And all the interest that's recorded on that and everything 100% to the family.

Representative Sullivan: And this is also true in the 85% states?

Bob Britt: And here's the documentation for you and the data for the states which I will give you to take with you.

Representative Sullivan: Now what is 85%...

Bob Britt: That is one state, Colorado, they say 85% of the moneys put into this account are refunded to the family, the other 15% are kept for making the arrangements, and so forth. But the majority of the states as you'll see on that when you look at the statistics, 100% of the monies are refunded to the family at any time the family requests. It's the family's money and it should be refunded to them.

Senator Willis: Mr. Richmond.

Art Richmond: You know you wonder if the motive...The thing that keeps coming back to me is the motive.

Bob Britt: The interests of the family are...

Art Richmond: Yeah, but if that's really the case, do you really have the family's interests at heart, you know? At the time of need, when they come in here emotionally upset, is it really not

the case that you try to sell them the most expensive service and put them in as cheap a cemetery as you can find? You know, it's not the protection of the family that is the reality. What we're speaking about here is really about economics. And it has been proven in the states that have like you say, and it's not just in that particular state 85%-15% law, but there's states, the state of Hawaii has a 25%-75% law (inaudible) a certain amount funded. No one to my knowledge in my industry has ever been defrauded on anything. The question always comes back to me is what constitutes the motive? If it has not been proven that the families have been defrauded, then what constitutes the motive? If it has not been a matter of competition.

Senator Willis: Okay. Dave Franke would like to respond to that.

Dave Franke: I would like to answer what constitutes the motive. (Inaudible) for the states, and the high percentage of the states as we see here, in all three columns that represent the 100% law, that if they did not see the need for it the law wouldn't be there. Evidently in the wisdom of an awful lot of people, legislatures in other states, also funeral associations, there perhaps have been abuse to create this. Now this isn't a new single idea that we have dreamed up by nine (inaudible). We speak with enough material behind us to support our stand, and the motives I would say would be that there has been evidence of both misuse in some areas, enough to create the laws. Now these laws generally were not created by funeral directors or funeral homes or necessary lobbying groups. The laws are enacted by people in government serving the people and the legislature. And no special group I don't believe can effect that many states to adopt the 100% law. Now if there's anything really intelligent that you can say about giving back any person his total amount of money so as not to lose money in any transaction, I don't know what you could say wrong against it.

Senator Willis: Yes?

(Unidentified Person): Along this line I'd like to make a few comments. I'll withhold them until tomorrow on the table here on the topic we're now on. However one thing I think that it's important to know right now, I have with me today a tape recording of the actual news release of the recent Federal Trade Program as it pertains to funeral practice. And I'll leave it here to be played as it was recorded at the time it was made. Although it has been pointed out, many states have laws that have been illustrated here today, by far the majority of the primary concerns of the recent Federal Trade probe was to prevent efforts to restrict memorial societies or to discourage the making of pre-need arrangements. Both of these techniques allow customers to save a substantial amount of money. The staff found a number of industry efforts within the funeral and some (inaudible) to prevent the use of these methods simply because they don't create that much profit for the industry. And I'd like to comment more

on that and the recording from the Federal Trade Bureau that (inaudible). One additional comment, they are going to extend this Federal Trade probe to (inaudible) override the various state laws that in any way would prohibit or prevent the (inaudible) to discourage making pre-need arrangements.

Representative Sullivan: Mr. Richmond could you tell me, you know down to the nitty gritty, how it is that the 100% law would not allow you to (inaudible) continue successfully in business, but I presume some alteration of that would be successful. Can you tell me how it handicaps you?

Art Richmond: We have salesmen in the field approaching families with the total pre-need concept that they (inaudible). They take care of the cemetery lots, the vaults, the markers, the funerals, the whole thing. And if we had to fund 100% of that money it would be impossible for us to pay sales commissions for one thing, or to let's say to maintain, or we should be entitled to a certain amount of overhead, to pay an office girl and to operate. But the 100% law is primarily designed to put the pre-need funeral sales out of business.

Representative Sullivan: So you would be able to continue in your at-need services, but not if...

Art Richmond: If we were to depend upon our at-need business we would have to wait considerably to say, paying our overhead and maintaining everything that we have to maintain until someone comes to us at the time of need. Because obviously we have found over a number of years we do not receive the type of support that we might expect from certain funeral establishments because naturally our prices are a little more expensive than let's say putting them in the city graveyard. We have a memorial park, we maintain it, we have a lot of money in it. So naturally it would be cheaper to let's say find an easier place, or let's say a more convenient place or less expensive place for the disposition of the remains.

Representative Sullivan: Mr. Richmond when you sell the cemetery services at pre-need do you also contract at that time for the other parts of the funeral services?

Art Richmond: Yes, if it is the families desire to do so.

Representative Sullivan: You make those arrangements too? And through any local...?

Art Richmond: Like I explained earlier, when we first started out in this, I mean our, and I'm speaking from an association standpoint, way back in 1918 we started selling cemetery lots, Forest Lawn started selling cemetery lots, we reached the point, okay we found it was necessary also that there had to be some kind of outer containment in order to keep the remains from crushing in the casket. Then also a memorial. The families thought "Well that would be nice if we could take care of the entire cemetery part of it." Then we finally reached the point where we said "My it would be nice if we could take care of the entire thing. It could all be taken care of." And so then a plan has been designed

and devised whereby it's possible by means of this trust fund. Some states have other means of which has not been brought out, I don't think I want to get on to that at this particular point. I might also bring out now, however, that these states that do require 100% trust have other provisions to provide pre-arranged funeral services.

Representative Sullivan: How is it you provide the funeral services aspect? Do you contract with funeral directors?

Art Richmond: Yes we contract with the funeral homes to service the funerals for a set amount.

Representative Sullivan: Selling pre-need?

Art Richmond: Yes. And so it leaves us a certain amount of leeway to cover overhead and expense, and also to pay sales commissions for the salesman to sell it. Now what it does in reality, it really supports a funeral home. Like I explained a little earlier I was approached here by a firm in 1966 which represents I think several hundred funeral homes in various parts of the west that has succeeded in doing....

End of tape.

Original sponsor: H. Beirne by request

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 509

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to funerals and the practice of
7 mortuary science; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 08 is amended by adding a new chapter to read:

10 CHAPTER 42. MORTICIANS.

11 Sec. 08.42.010. AUTHORITY OF DEPARTMENT. The department has
12 jurisdiction over the practice of mortuary science under this chapter.
13 The department may adopt and enforce regulations relating to the
14 practice of mortuary science.

15 Sec. 08.42.020. LICENSE REQUIRED FOR THE PRACTICE OF MORTUARY
16 SCIENCE. (a) No person may engage in the practice of mortuary science
17 or hold himself out as engaging in the practice unless licensed as an
18 embalmer or funeral director by the department. A person holding a
19 license as a funeral director may not embalm a dead human body, take
20 charge of the remains of a person dead of a communicable disease or
21 prepare for transportation by common carrier a human body dead of a
22 contagious disease.

23 (b) A person holding a valid embalmer's license issued in this
24 state before the effective date of this chapter shall be granted a
25 license to practice mortuary science and may renew the license annually.

26 (c) In areas of the state not served by a licensed mortician, the
27 Department of Commerce may issue a permit to an unlicensed person, on
28 an annual basis, for the care and disposition of dead human bodies for
29 compensation. This permit otherwise in no way licenses the holder to

1 practice mortuary science.

2 Sec. 08.42.030. EXAMINATION OF APPLICANTS FOR LICENSE TO PRACTICE
3 MORTUARY SCIENCE. The department is granted authority to examine all
4 applicants for a license to practice mortuary science and to determine
5 whether an applicant possesses the necessary qualifications. The depart-
6 ment shall hold an examination at least once each year at the place and
7 time the department may determine.

8 Sec. 08.42.040. APPLICATION FOR LICENSE TO PRACTICE MORTUARY
9 SCIENCE. The applicant for an examination for a license to practice as
10 an embalmer or as a funeral director shall make application to the
11 department in writing on a form provided by the department. The appli-
12 cation shall be supported by affidavits from at least two residents of
13 the judicial district in which the applicant resides or proposes to
14 carry on the practice of mortuary science certifying that the applicant
15 is of good moral character.

16 Sec. 08.42.050. QUALIFICATIONS FOR LICENSE TO PRACTICE MORTUARY
17 SCIENCE. (a) In order to qualify for a license to practice embalming,
18 the applicant shall

19 (1) be at least 18 years of age;

20 (2) be of good moral character;

21 (3) have satisfactorily completed at least two years at an
22 accredited college or university in such subjects as the department may
23 prescribe by regulation as suitable and desirable preparation for
24 the study of mortuary science;

25 (4) have graduated from an accredited school or college of
26 mortuary science;

27 (5) have taken and passed the examination for a license to
28 practice mortuary science conducted by the department;

29 (6) have completed at least one year of apprenticeship as a

1 resident trainee under a mortician licensed to practice mortuary science
2 in this state.

3 (b) In order to qualify for a license to practice funeral direct-
4 ing the applicant shall:

5 (1) be at least 18 years of age;

6 (2) be of good moral character;

7 (3) have successfully completed at least 30 semester credit
8 hours at an accredited college or university.

9 Sec. 08.42.060. SCOPE AND CONDUCT OF EXAMINATION FOR A LICENSE TO
10 PRACTICE MORTUARY SCIENCE. (a) The department shall examine applicants
11 for an embalmer's license on the following subjects: (1) theory and
12 practice of embalming, (2) anatomy, (3) pathology, (4) bacteriology,
13 (5) hygiene (including sanitation and public health), (6) chemistry
14 (including toxicology), (7) restorative arts (including plastic surgery
15 and demi-surgery), (8) funeral service arts and sciences, and funeral
16 service administration (including accounting, funeral law, psychology,
17 funeral principles, directing and management), (9) Alaska vital statis-
18 tics law, (10) the provisions of this chapter, and the regulations pro-
19 mulgated by the department under this chapter. The department shall
20 examine applicants for a funeral director's license on the subjects in-
21 cluded in (8), (9) and (10) of this subsection. The department may use
22 the examination provided by the Conference of Funeral Service Examining
23 Boards of the United States, Inc. where it is applicable to the subjects
24 in this section.

25 (b) A passing grade in the examination is an average grade of at
26 least 75 per cent with no individual subject grade of less than 70 per
27 cent.

28 (c) If an applicant receives an average grade of at least 75 per
29 cent, but receives a grade of less than 70 per cent in three or fewer

1 individual subjects, he may be reexamined only in those subjects. He is
2 entitled to reexamination on individual subjects only once. A grade
3 of at least 70 per cent in each of the subjects in which the applicant
4 is reexamined is sufficient to constitute a passing grade.

5 (d) Except as provided in (b) of this section, an applicant shall
6 be reexamined in all subjects if he reapplies for examination.

7 Sec. 08.42.070. RECIPROCITY. (a) The department may recognize
8 the license issued to an embalmer or funeral director from another state
9 if the applicant for recognition of his license

10 (1) furnishes proof satisfactory to the department that he
11 has complied, in the state in which he is licensed, with requirements
12 substantially equal to the requirements of this chapter;

13 (2) furnishes proof satisfactory to the department that he
14 is over 18 years of age, of good moral character, that he is licensed
15 in another state, and that he has practiced mortuary science in another
16 state for at least one year prior to the date of application; ?

17 (3) takes and passes the examination provided for in (b) of
18 this section.

19 (b) The department shall examine each applicant under this section
20 on the following subjects: Alaska vital statistics law, the provisions
21 of this chapter, and the regulations promulgated by the department under
22 this chapter.

23 Sec. 08.42.080. LICENSE. A license issued under the provisions
24 of this chapter is effective for the calendar year and may be renewed
25 for successive one-year periods.

26 Sec. 08.42.090. GROUNDS FOR REFUSAL TO ISSUE OR RENEW LICENSES
27 AND SUSPENSION OR REVOCATION OF LICENSES. When the department has
28 reason to believe that an applicant or licensee has been guilty of any
29 of the following acts or omissions, it is the duty of the department to

1 conduct an investigation, and the department may, after proper hearing
2 and notice in accordance with the Administrative Procedure Act (AS 44.-
3 62), refuse to issue, refuse to renew, or may suspend or revoke, a
4 license upon a finding by the department of any of the following acts or
5 omissions:

6 (1) fraud or misrepresentation in obtaining a license;

7 (2) misrepresentation or fraud in the practice of mortuary
8 science;

9 (3) false or misleading advertising;

10 (4) aiding or abetting an unlicensed person to practice
11 mortuary science;

12 (5) using a casket or part of a casket which has previously
13 been used as a receptacle for, or in connection with, the burial or
14 other disposition of a dead human body;

15 (6) refusing to promptly surrender the custody of a dead
16 human body upon the order of the person lawfully entitled to custody;

17 (7) using profane, indecent or obscene language within the
18 immediate hearing of relatives of a deceased whose body has not yet
19 been interred or otherwise disposed of;

20 (8) solicitation of a dead human body by the licensee, his
21 agents, servants or employees, whether solicitation occurs before or
22 after death; but this does not prohibit general advertising;

23 (9) employment by the licensee of any person for the purpose
24 of calling upon individuals or institutions to influence them to turn
25 over a dead human body to a particular mortician;

26 (10) the direct or indirect payment or offer of payment for
27 the purpose of securing business;

28 (11) solicitation or acceptance by a licensee of any payment
29 for recommending or causing a dead human body to be disposed of in a

1 specific crematory, mausoleum or cemetery;

2 (12) violation of a state law or regulation or municipal
3 ordinance or regulation affecting the disposition of a dead human body,
4 or contracts relating to the disposition of a dead human body;

5 (13) violation of any of the provisions of this chapter;

6 (14) conviction of a felony involving moral turpitude.

7 Sec. 08.42.100. FUNERAL ESTABLISHMENT PERMIT. After the effec-
8 tive date of this chapter, no person may conduct, maintain, manage, or
9 operate a funeral establishment unless a permit for each establishment
10 has been issued by the department and is conspicuously displayed in the
11 funeral establishment. Each permit shall be valid only for one speci-
12 fic location, and separate permits shall be required of two or more
13 firms operating from the same funeral establishment. A permit to oper-
14 ate a funeral establishment shall be issued by the department upon
15 application for the permit on a form provided by the department. All
16 permits shall expire on the 31st day of December of each year and may
17 be renewed for successive one-year terms. Violation of a provision of
18 sec. 90 of this chapter by a person operating a funeral establishment
19 or with his knowledge or consent by an employee shall be considered
20 sufficient cause for suspension or revocation of the funeral establish-
21 ment permit.

22 Sec. 08.42.110. DEFINITIONS. In this chapter

23 (1) "department" means the Department of Commerce;

24 (2) "funeral establishment" means every place devoted to or
25 used in the care and preparation for the funeral and burial of dead
26 human bodies, or as the office or place for carrying on the profession
27 of mortuary science, or for any combination of these;

28 (3) "mortuary science" means embalming dead human bodies,
29 taking charge of the remains of those dead of a communicable disease,

1 or preparing dead human bodies for shipment, directing or supervising
2 funerals, preparing dead human bodies for burial by means other than
3 embalming, disposing of dead human bodies, or operating a place for the
4 care or disposition of dead human bodies.

5 (4) "resident trainee" means a person who has met the quali-
6 fications set out in sec. 50(a)(1) - (5) of this chapter and is engaged
7 in learning the practice of embalming under the direction and control
8 of a person properly licensed to practice embalming.

9 Sec. 08.42.120. VIOLATIONS; PENALTIES. A person who violates or
10 aids a person in a violation of this chapter is guilty of a misdemeanor
11 and upon conviction is punishable by imprisonment for not more than one
12 year or by a fine of not more than \$500.

13 Sec. 08.42.130. ENFORCEMENT BY ATTORNEY GENERAL. The attorney
14 general may bring an action in the superior court to enjoin a person
15 from violating the provisions of this chapter.

16 * Sec. 2. AS 45.45 is amended by adding a new section to read:

17 ARTICLE 4. FUNERALS.

18 Sec. 45.45.120. DISCLOSURE OF COSTS. Every person performing
19 services or providing merchandise relating to the disposition of a dead
20 human body shall give to the person arranging for the disposition at the
21 time the arrangements are completed and before the time of rendering the
22 service or providing the merchandise a written statement showing, to
23 the extent then reasonably ascertainable,

24 (1) the price of the service and what is included;

25 (2) the price of each supplemental item of service or
26 merchandise;

27 (3) the amount involved for each of the items for which
28 money will be advanced; an item for which money is advanced shall be
29 charged in the same amount as the cost to the person making the advance;

1 (4) the method of payment.

2 * Sec. 3. AS 45.50.471 is amended by adding a new paragraph to read:

3 (22) making or entering into a contract relating to the
4 disposition of a body upon death whereby certain personal property will
5 be furnished or the professional services of a funeral director or
6 embalmer will be furnished, unless the person receiving money under the
7 contract deposits the money, within 15 days of its receipt, in a trust
8 account in a financial institution whose deposits are insured by an
9 instrumentality of the federal government as a separate account in the
10 name of the person benefited with a provision that should the money
11 deposited and any accrued interest not be used for the purposes intended
12 on the death of the person for whose benefit the contract was made all
13 money in the account shall become part of his estate. Upon demand by
14 the person for whose benefit the contract was made, all money in the
15 trust account, including accrued interest, shall be paid to him and the
16 contract shall be canceled.

17 * Sec. 4. AS 08.44.010 is repealed.
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