

SB

7/6 AM

"An Act relating to funerals and the practice of mortuary science; and providing for an effective date."

COMMITTEE REPORT

4/20/76

HOUSE

Rules

Mr. Speaker:

Date May 21, 1976

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had SB 716 am

under consideration. A Majority of the members of the Committee

- recommends it DO PASS
- recommends it DO NOT PASS
- recommends it DO PASS WITH ATTACHED AMENDMENT(S)
- recommends it BE REPLACED WITH CS FOR SB 716 am AND THAT CS FOR SB 716 am DO PASS

"and" recommends it BE REFERRED TO THE _____ COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends: _____

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

James Sullivan Chairman



JUNEAU ALASKA

Alaska State Legislature

House

HOUSE HESS COMMITTEE MEETING

MAY 24, 1976

Present: Hackney Sullivan Beirne
Davis Kosky

Testifying: Dick Block, Div. of Ins.
Billy Berrier, Legis. Affairs

SB 716am Mortuary and Funerals

Dick Block and Bill Berrier went over the proposed amendments for the committee substitute. Several differences arose regarding proper wording and the definition of insurance.

Eventually a consensus by the committee was reached and they voted to pass the bill out as a committee substitute.

Bill Berrier will have it drafted and ready to read across tomorrow morning.



Alaska State Legislature

House

JUNEAU ALASKA

HOUSE HESS COMMITTEE MEETING

MAY 23, 1976

Present: Sullivan Beirne Hackney
Ostrosky Davis

SB 716am Mortuary and Funderal

Discussion by committee members regarding the amount of education needed to be a funeral home director. Many felt they need alot of training in the human behavior, with courses in psy. counseling, etc.

Testimony from Lee, Evergreen Memorial Home, regarding the background he has had and the educational requirements.

Amendment to include "30 semester credit hours" of related subject matter to be a funeral home director. Motion adopted

Bill Berrier came down, some problems with the Language thqt Dick Block set up regarding the fund for pre-need sales. Bill will draft a committee substitute and have for the committee soon.

HCR 147 - Relating to Uof A and A.M.U.

Very little committee discussion, bill moved out of committee



Alaska State Legislature

House

JUNEAU ALASKA

HOUSE HESS COMMITTEE MEETING

MAY 13, 1976

Present: Beirne Ostrosky Sullivan
 Davis Hackney

HCR 143 - Study of Housing for Aged & Disabled

Ostrosky amendment to change the title of this study
amendment adopted

bill passed out of committee

SB 628 - Driving while under the influence - Ziegler

Dennis Robertson testified about how this bill affects things, also
proposes an amendment which was worked up by the task force group
he sits on

Amendments proposed were adopted, he will give me the detailed
information on amendments tomorrow.

Bill moved out as amended.

SB 716am - Funderal and Mortuary Science

Sharon Andrews , licensing, has dept's amendments, quite extensive
each committee member recieved a copy.

Lisa Rudd testimony about the whole pre-need issue, also related to
the committee the testimony received by the commerce committee. Handed
out statistical information regarding pre-need and what other states
have done. Over 1/2 states have 100% refund on pre need.

Helen will get legality of the bill from Bill Berrier.
Bill is looking at the 17 page amendment to see if it can be incorporated
in regulations rather than as an amendment.

Sharon Andrews also doing research with Dick Block, Ins. regarding
the suirty bonding issue.

Helen would like to include a higher educational standard in this
bill, as the original S.B. stated.

Also would like to have the following people testifyon this bill
if heard again soon. Mr. Peters, Mr. Block, ask Helen for more names.



JUNEAU ALASKA

Alaska State Legislature

House

HOUSE HESS COMMITTEE MEETING

MAY 12, 1976

Present: Ostrosky Sullivan Hackney
Parr

Testifying: Gary Sheridan, Div. of Soc. Services
Lee Moelein, Evergreen Memorial Chapel
Marjorie Gorsuch, League of Women Voters
Robert Lapotnick

HCR 143 - Legislative Affairs Agency Study on aged Housing

Kathryn presented background reasons for her introducing this resolution. Louise Crane and Gregg Erickson, Legisl. Affairs there to answer questions.

Committee does not see why a new study has to be done, Gleen thinks the information is already been studied and just has to be compiled. Also questioning the travel \$\$ and why two people needed to travel.

Amendment, p 1, line 25, after agency, add "in consultation with the Department of Health and Social Service".

amendment passed.

Letter of Intent -to be written to indicate that information should be pulled together from various agencies, office of agin, dept, etc. Envision utilizing personnel in other legislative affairs agencies in the state and legislators to accumulate and investigate.

Resolution adopted.

Erickson wants to know if this means reduced or 0 budget from now on regarding this resolution. Committee asks that Gregg redo fiscal note taking all possible economies and report back to committee.

SB 371 am Child protection

Amendment that was adopted last committee meeting regarding the definition of mental was deleted. Bill has one amendment that relates to guardian ad litem.

Motion to move bill - passed

SB 629 - Interstate Compact on Children - Chance

Gary Sheridan explains the need for this and why the Dept. would like to see it passed.

Genie Chance explains how other states have participated and passed around some info collected by other states.

Page 2
May 12

Gary has some proposed amendments, but the committee asks that he present those to the judiciary committee since this bill has another referral.

Motion to move bill out, passes

SB 653 - ~~Child Protection~~ Dept. Philo. on Children

Very little discussion, good bill
Motion to move bill out - do pass

SB 716 am Funeral and Mortuary Science

Lee Moelein, makes some proposed amendments
p 7, delete (3) problems with this by adding the cremation clause.
doesn't feel it is needed.

The Legislature of the State of Alaska
 FISCAL NOTE
 Second Session - Ninth Legislature

I. REQUEST

Bill Identification: SB 716
 Title: An Act relating to funerals and the practice of mortuary science
 Requested by: House H&SS Date: April 21, 1976
 Return Date Requested: _____
 Agency: Commerce Program: Licensing Professions

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Regulating and Licensing of Professions
 A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES		19.0	38.0			
200 TRAVEL		1.5	3.0			
300 CONTRACTUAL		2.0	4.0			
400 COMMODITIES		.5	1.0			
500 EQUIPMENT		3.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		26.0	46.0			

B. FUNDING: (Thousands of dollars)

GENERAL FUND		26.0	46.0			
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	2 /	2 /	/	/	/
MAN MONTHS (P./T.)	/	12 /	24 /	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Division cannot absorb additional licensing/enforcement functions with existing staff services. We have assumed responsibility for five additional boards in the last three years without increasing staff.

IV. ATTACHMENTS

V. DATE: April 21, 1976 PREPARED BY: Sharon Andrew, Director
 REVIEWED BY: _____

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

POSITION PAPER
ON
SENATE BILL NO. 716

An Act relating to funerals and the practice of mortuary science.

This bill establishes qualifications for, and the licensing of, embalmers and funeral directors, transfers licensing responsibility of embalmers from the Department of Health & Social Services to the Department of Commerce and Economic Development, covers reciprocity in licensing and sets grounds for suspension and revocation of licenses. The bill also requires permits to operate a funeral establishment, requires disclosure of funeral costs and covers the establishment of trust funds for prepaid funeral plans.

This bill will transfer licensing responsibility of embalmers from the Department of Health & Social Services to the Department of Commerce and Economic Development. Responsibility for environmental health sanitation inspections of funeral establishments will remain with the Department of Health and Social Services. Past Departmental experience, in licensing approximately 65 embalmers with related administrative responsibilities, has shown to require roughly two-man months of clerical time and one-man month of professional staff time per year.

Senate Bill 716 will have no fiscal ramifications for the Department of Health & Social Services. Responsibility for sanitation inspections will continue. Time presently spent in licensing can be more effectively used in handling administrative aspects of other environmental health and sanitation programs.

The following general comments are provided with respect to this bill:

1. No reference is made to license fees for embalmers, funeral directors or the funeral establishment permit. We recommend that license fees be established by statute. For example; embalmer \$25.00, funeral director \$35.00 and funeral establishment permit \$50.00.
2. Page 2, Section 08.42.030. It is recommended that the word "shall" be deleted with substitution of the word "may". The department should have flexibility in deciding whether or not to hold an examination. Our experience has been that the need for an examination to be held in Alaska with its reciprocity provision is seldom, if ever.
3. Page 6, Section 08.42.100. FUNERAL ESTABLISHMENT PERMIT. We recommend that the Department of Commerce and Economic Development be required to obtain the approval of the Department of Health & Social Services for sanitary aspects of an establishment before issuing a permit under this Section. Also, serious violation of the sanitation provisions of the Department of Health & Social Services should be considered sufficient cause for suspension or revocation of the funeral establishment permit.

4. Page 7, Section 08.42.110(1). "department" means the Department of Commerce and Economic Development.

The Department of Health & Social Services supports Senate Bill 716 with the changes recommended above. We strongly support the transfer of licensing responsibility to the Department of Commerce and Economic Development as well as the dual licensing concept for embalmers and funeral directors.

Recommended By: Frank P. Pauls, M.P.H. 4/30/76
Acting Director Date
Division of Public Health

Approved By: D. G. [Signature] 4/30/76
Actg Commissioner Date



Bruce Funeral Home

P.O. Box 2351
Anchorage, Alaska 99510

April 21, 1976

Representative Susan Sullivan
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

ATTN: Susan Sullivan or Doug Schoenberg

Dear Susan and Doug:

Thank you for giving a copy of SB 716 am to Jim Parsons to bring to me. It was considerably different from what I had even with the partial senate amendments.

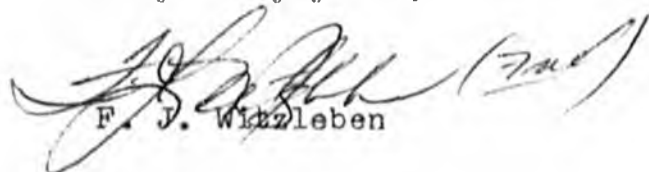
Attached are line item changes that we find that need to be changed. Some of the amendments that were placed in the bill created a monopoly that we did not want to see, i.e. the areas mentioned about cremation. We realize that Mr. Barrier is going to fight the increasing of definitions but that is going to be vital to the future of the bill and the elimination of later interpretation in the courts.

We were very surprised to see that the college requirements were totally taken out. This is something we did not want to see. We are hoping to upgrade the standards, not to maintain the present ones we have, but only placed in statute rather than administrative code.

Please advise us on how this bill is going. We know that you know how we feel and what we would like to see. Again, if you think I could help by coming to Juneau, I will be glad to fly down.

Thanks for your help.

Very truly yours,


F. J. Witzleben

TO: ALASKA STATE SENATE
ATTN: CHANCY CROFT - PRESIDENT
CAPITAL BUILDING
JUNEAU, ALASKA

IN VIEW OF THE FACT THAT FUNERAL SERVICE PERSONNEL THROUGHOUT THE STATE HAVE SPEND MANY LONG HOURS TESTIFYING AND WORKING WITH LEGISLATORS TO DEVELOP COMPREHENSIVE FUNERAL SERVICE LEGISLATION, WE FEEL IT UNFORTUNATE AND IN EXTREMELY POOR TASTE FOR SEN. TILLION TO MAKE THE UNJUSTIFIED AND SWEEPINGLY DEROGATORY STATEMENTS HE DID ABOUT THE FUNERAL PROFESSION. TO SAY THAT IT'S "LESS HONORABLE AND MORE COSTLY THAN PROSTITUTION" IS SUPREMELY IRRESPONSIBLE AND TOTALLY UNBECOMING AN ELECTED REPRESENTATIVE OF THE PEOPLE. WE STRONGLY FEEL THAT A PUBLIC APOLOGY IS IN ORDER.

F. J. WITZLEBEN, PRESIDENT
DIVISION OF FUNERAL DIRECTORS
ALASKA ALLIED FUNERAL SERVICES ASSOCIATION, INC.

*Telegram Sent to
Croft 4/20/74*

SUGGESTED CHANGES BY ALASKA ALLIED FUNERAL SERVICE ASSOCIATION TO
SB 716 am:

Page 1, Line 19

The word "restore" needs to be defined, so as not to preclude some-one who is a hair dresser from working on a deceased individual.

Page 2, Line 1

Subparagraph (c) has lost it meaning and also gives monopoly to licensed individuals (embalmers and/or funeral directors) to control cremation and crematories. The old meaning in no way gave a monopoly to funeral establishments, but only gave the department control over those unlicensed individuals (i.e. village chiefs, health aids) who might wish to care for the dead in areas not served by licensed funeral service personnel the right to do so and be compensated. It additionally in no way said that a funeral establishment HAS to be contacted when a death occurs and still gives the family the right to do-it-yourself, if they so desire, in either the bush areas or municipalities. The original subparagraph (c) was taken directly from what has been in the Alaska Administrative Code for years. Reference 7AAC35.010(d).

Recommend the following change: Page 2, Line 2. After the word "cremation," insert "in areas of the state not served by a person licensed to practice mortuary science," (This might be an amendment that Sen. Tillion might accept.)

Page 2, Line 12

Delete period at end of sentence and add ", or as the need arises." (Frequently there is no need to give an examination and therefore would be costly to the state to have to advertise the examination as is required by law.)

Page 2, Line 29

Add new subparagraph (6) as follows: "(6) have satisfactorily completed at least one year at an accredited college or university (30 semester credit hours)."

(We have requested that our standards be raised, but objected to the two year college requirement. If we are to bring our standards up to minimum requirements of the other states, we need to include one year of college, other than mortuary college. This will give the future licensee an opportunity to broaden his field of knowledge in other areas, i.e. Business Administration, Accounting, Management, etc.) (The one year educational requirement for college will also make the Alaska License requirements equal with other states and allow the Alaska Licensee to meet reciprocal requirements of other states if he so desires.)

Page 3, Line 10

Add new subparagraph (5) as follows: "(5) have satisfactorily completed at least one year at an accredited college or university (30 semester credit hours)."

(The same justification is used for this addition as in the above justification for the embalmers license.)

Page 3, Line 25

Delete the word "use" and insert the word "recognize"
(The change of the two words will allow the state to recognize as well as use the national conference examination, which is given upon completion of mortuary science college. It would additionally reduce future expenses to both the licensee and the state for the administration of the examination thus reducing duplication.) (In utilization of the conference examination the state will not have to draft its own examination, thur further reducing the cost of administration of this portion of the statute.)

Page 4, Line 9

Add a new subparagraph (e) as follows: "(e) If the applicant has successfully passed the Conference of Funeral Service Examining Boards of the United States, Inc. examination, he will be exempted from subjects other than state laws."

(This addition would further reduce the time and money spent by both the licensee and the state in the administration of examinations, in as much as the conference examination is given at all colleges of mortuary science upon completion of the schooling requirements. Additionally costs could be reduced.)

Page 4, Line 17

After the word "except" delete "for the apprenticeship and"
(If a license is going to be recognized from another state and that person is duly licensed, there is no reason that he should be required to serve an apprenticeship. This is just one way to obtain cheap help at the expense of an already qualified person and would make it more difficult to attract labor to this state.)

Page 4, Line 19

After the word "practiced" delete "mortuary science" and insert "under said license". After the word "year" insert a semi-colon " ;)"
(The term must be changed to be consistent with the existing wording in the above section when it refers to embalmer and funeral director. There are too many different terms being used and will only create confusion.)

Page 4, Line 20

Delete "in a state where he is licensed"
(This wording is just being redundant about the license. Additionally many people work under said license in various states without being licensed in that state, for short periods of time, combined totaling a year before settling down. This area is going to further restrict the reciprocity of a license when someone is duly licensed in another state, and reduce the availability of labor to local business.)

Page 5.

Before Sec. 08.42.090 an entire new section on Apprenticeship should be included. (See Attached recommendation.) (ALL subsequent sections will have to be re-numbered.)

Page 5, Line 22

Delete the words "while death is" and insert "immediately before an" and after the word "impending" add the word "death"
(This change brings the other amendments that were made in to total consistence. Subparagraphs (8), (9), (10) were changed in the Senate before the bill was passed, but this subparagraph was overlooked.)

Page 6, Line 18

Add before the word "After" the markings for a subparagraph "(a)"
(To keep consistence with the adding of a new subparagraph (b) which follows.)

Page 7, Line 2

Add a new subparagraph "(b)" as follows: "(b) This permit shall be issued with credit applied to the business license, with the permit fee not to exceed \$25.00."

(This provision was included because members of the association, felt that this was just going to create additional expenses, over and above the cost of two licenses. Presently payment of the embalmers license fee is credited against the business license. These professional licenses can be personally deducted from income tax, but an establishment permit cannot be other than through the business. Presently like all businesses we pay large amounts of taxes even before income tax is computed.)

Page 7, Line 9

This subparagraph (3) should be deleted entirely and definitions for "Embalming", "Embalmer", "Funeral Directing", and "Funeral Director".
(The present definition is trying to be all inclusive when in fact it cannot. Additionally, we see that it has been amended to include cremation of dead human bodies, when infact cremation has nothing to do with the practice of mortuary science, but in fact is a method of final disposition, such as burial, entombment, etc. This provision again would be giving a monopoly to funeral establishments to operate a crematory.) (See Attached definitions for substitution.)

Page 7, Line 13

This subparagraph (4) should be deleted entirely and a definition for "Apprenticeship" be included. "(4) Apprenticeship means a person engaged in learning the practice of embalming and/or funeral directing under the direct supervision of an individual licensed to practice embalming and/or funeral directing under the laws of this state. An Apprentice must be registered with the department in order to receive credit for time served."

Page 7, Line 20

Add a definition for "Restore"

"Restore means those areas of reconstructive surgery (plastic surgery and demi-surgery) applied to a dead human body. This does not include Cosmetology or Hairdressing (Barber/Beautician).

Page 8, Line 4

After the word "of" delete "rendering the service or"
(continued)

This is an area that has been debated since the bill was introduced as HB509 over a year ago. The words "rendering service" are ambiguous - does it mean rendering any type of service or funeral services meaning the ceremony. We contend that this confusion will lead to future court problems. From the time we first answer the telephone and are informed of a death, we as funeral service personnel are rendering service. We strongly agree that before the time of the funeral ceremony and before the time of providing merchandise that a written contract must be completed, but this cannot be accomplished before we render any services. If completed arrangements are to be made before any services (of any type) are provided, then the State of Alaska and the Hospitals will have to provide removal services of remains to a state or hospital morgue, pending completed arrangements with a funeral establishment, thus increasing costs to the state of having to have personnel and facilities staffed and available when a death occurs.

PRE-NEED MERCHANDISE AND SERVICES TRUST FUND

58 916 Am

Section 1. Definitions.

As used in this Act:

(a) "Agent" means an individual authorized by a seller to offer, or sell or solicit the purchase of a pre-need contract on behalf of the seller.

(b) "Beneficiary" means the person for whose benefit funeral and/or cemetery merchandise or services are furnished or performed pursuant to a pre-need contract, whether it be the buyer of such a contract or someone else designated by the buyer.

(c) "Buyer" means the purchaser of a pre-need contract.

(d) "Cemetery Company" means any individual, partnership, corporation or association, owning or controlling cemetery lands or property and engaged in the operation of cemetery business in this state.

(e) "Cemetery merchandise" means those items normally supplied by a cemetery company under a pre-need contract, including urns, vases, grave liners, burial vaults, crypts, memorial bases, and other similar merchandise, but does not include the sale of interment, entombment or inurnment space.

(f) "Cemetery services" means those services normally performed by a cemetery company under a pre-need contract for the opening and closing of graves, crypts and niches, foundation installation, and other services in relation thereto.

(g) "Department" means the Department of Commerce.

(h) "Funeral establishment" means any individual partnership, corporation or association owning or controlling a properly licensed funeral home engaged in operation in this state.

(i) "Funeral merchandise" means those items normally supplied by a funeral establishment under a pre-need contract, including caskets, burial vaults, clothing and other similar merchandise.

(j) "Funeral services" means those services normally performed by a funeral establishment under a pre-need contract, for funeral services.

(k) "Person" includes natural persons, partnerships, firms, associations, and corporations residing in or doing business in this State.

(l) "Pre-need contract" means a contract for the purchase of funeral and/or cemetery merchandise or services to be furnished or performed at a future date for a specific consideration which is paid in advance by one or more payments in one sum or by installment payments.

(m) "Seller" means any person selling a pre-need contract.

(n) "Trust fund" means funds deposited with a trustee by a seller pursuant to a pre-need contract.

(o) "Trustee" means any state or national bank, trust company, or federally insured savings and loan association authorized to transact such business in the State of Alaska, and designated as trustee of the trust fund in a pre-need contract.

Section 2. Application.

Except as hereinafter provided, no person or other legal entity shall, directly or indirectly, solicit or enter into a pre-need contract for the sale of funeral and/or cemetery merchandise or services which may be used in connection with the final disposition, burial or commemoration of the memory of a deceased human

being if delivery of the funeral and/or cemetery merchandise or services thereunder is to be made at an uncertain future date, such as at death, or more than one hundred and twenty (120) days after receipt of the final payment under such pre-need contract.

Section 3. Seller's Certificate of Authority:

Application Contents; Supporting Documents; Fee.

(a) No person shall sell pre-need contracts without first obtaining a certificate of authority from the Department as hereinafter provided.

(b) The proposed seller or appropriate corporate officer of the seller shall make application in writing to the Department for a seller's certificate of authority, showing:

- (1) The proposed seller's name and address and his occupation during the preceding five (5) years;
- (2) The name and address of the proposed trustee;
- (3) The names and addresses of the proposed performers, specifying what particular services, supplies and equipment each performer is to furnish under the proposed pre-need contract; and
- (4) Such other pertinent information as the Department may reasonably require.

(c) The application shall be accompanied by:

- (1) The applicant's fingerprints on a form furnished by the Department;
- (2) A copy of the proposed trust agreement and a written statement signed by an authorized officer of the proposed trustee to the effect that the proposed trustee understands the nature of the proposed trust fund account and accepts it;

(3) A copy of each contract or understanding, existing or proposed, between the seller and performers relating to the proposed pre-need contract or items to be supplied under it;

(4) A copy of each document relating to the proposed seller, trustee, trust, or pre-need contract, as may be required by the Department; and

(5) A fee of twenty-five (\$25.00) dollars, no part of which is refundable.

Section 4. Seller's Certificate of Authority:

Issuance; denial.

(a) If the Department finds that the application is complete, that the seller is in compliance with all requirements therefor, that the applicant otherwise qualifies under the provisions of this chapter, and upon satisfactory evidence that a funeral and/or cemetery merchandise and service trust fund has been established, he shall issue a seller's certificate of authority to the applicant.

(b) The Department shall refuse to issue a seller's certificate of authority to any applicant who does not comply with or otherwise meet the requirements of this chapter. Upon such refusal, the Department shall give written notice thereof to the applicant setting forth the reasons for such refusal.

Section 5. Seller's Certificate of Authority:

Expiration; Renewal; Renewal Fee.

(a) Each seller's certificate of authority issued pursuant to this chapter shall expire at midnight on April 30 next following its date of issuance.

(b) The Department may renew from the seller, accompanied by a renewal fee of twenty-five (\$25.00) dollars, if he finds that the seller is, at that time, in compliance with all applicable provisions of this chapter.

Section 6. Seller's Certificate of Authority:
Revocation; Suspension.

(a) After giving written notice of charges to the to the seller, not less than thirty (30) days in advance of hearing, the Department may, after hearing, revoke the seller's certificate of authority if the seller:

(1) Obtained his certificate of authority through misrepresentation or concealment of a material fact;

(2) Is no longer qualified for such certificate of authority; or

(3) Violates any provision of this chapter or any lawful order or rule or regulation of the Department.

(b) If a seller is found guilty under paragraph (3) of subsection (a), the Department may, in lieu of revocation, suspend his seller's certificate of authority for a period not to exceed ninety (90) days.

Section 7. Surety Bond.

(a) Prior to the issuance of a certificate of authority to a seller, the seller shall post with the Department and thereafter maintain in force a bond in the principal sum of fifty thousand (\$50,000.00) dollars issued by an authorized corporate surety in favor of the State of Alaska, or a deposit made up of cash or negotiable securities. If a deposit is made in lieu of a bond, the deposit shall at all times have a market value of not less than the amount of the bond required by the Department.

(b) In lieu of posting the entire amount of the bond or deposit required under subsection (a), the Department may approve the posting of a bond or deposit in the amount of five thousand (\$5,000.00) dollars or

multiple thereof, not to exceed fifty thousand (\$50,000.00) dollars, if he finds that the circumstances and status of the applicant's business do not immediately warrant the posting of a bond or the full amount of the bond or deposit for the purposes provided in subsection (c). If less than the amount of the bond or deposit is posted by the applicant, the Department may require him to post an additional bond or deposit of five thousand (\$5,000.00) dollars or multiple thereof each following year until the required maximum of fifty thousand (\$50,000.00) dollars is met. The Department may require a quarterly report if no bond is required.

(c) The bond or deposit shall be held for the benefit of buyers of pre-need contracts and other persons as their interests may appear, who may be damaged by misuse or diversion of moneys by the seller or his agents, or to satisfy any judgments against the seller for failure to perform a pre-need contract. The aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the sum of such bond. The surety on the bond shall have the right to cancel such bond upon giving sixty (60) days' notice to the superintendent and thereafter shall be relieved of liability for any breach of condition occurring after the effect date of such cancellation.

(d) The Department:

(1) Shall release the bond or deposit after the seller has ceased doing business as such and the Department is satisfied of the nonexistence of any obligation or liability of the seller which the the bond or deposit was held; or

(2) May reduce the bond or deposit in five thousand (\$5,000.00) dollar increments if he finds that the circumstances and status of the applicant's business warrant such reduction.

Section 8. Agent's License: Requirement; Exception.

(a) It is unlawful for any person to solicit the sale of pre-need funeral and/or cemetery merchandise and service contracts in this State on behalf of a seller unless he holds a valid Agent's license issued by the Department.

(b) This section does not apply to a seller who is an individual holding a valid seller's certificate of authority.

Section 9. Agent's License: Application; Fee.

(a) To qualify for an agent's license, the applicant shall execute and file a written application with the Department on forms furnished by the Department.

(b) The application shall:

(1) Require information concerning the applicant's identity, address, personal background and business, professional or work history;

(2) Contain such other pertinent information as the Department may require.

(3) Be accompanied by a filing and license fee of five (\$5.00) dollars, no part of which is refundable.

Section 10. Agent's License: Issuance; Temporary Permits.

(a) If the Department finds that the application is complete after all investigation not to exceed thirty (30) days, it shall issue at the request of the holder of a valid seller's certificate of authority an agent's license to the applicant.

(b) An applicant for an agent's license may receive a temporary agent's permit, for a period of not to exceed thirty (30) days, at the request of a holder of a valid seller's certificate of authority, provided that each sales agreement sold by a temporary agent shall be cosigned by a licensed agent of a valid seller's certificate of authority.

Section 11. Agent's License: Expiration; Renewal; Renewal Fee; Voiding.

(a) Each agent's license issued pursuant to this chapter shall expire at midnight April 30 next following its date of issuance.

(b) An agent's license may be renewed at the request of the holder of a valid seller's certificate of authority upon filing a written request for renewal accompanied by a five (\$5.00) dollar renewal fee.

(c) An agent's license becomes void unless he is employed by a holder of a valid seller's certificate of authority.

Section 12. Pre-Need Contracts: Content; Entire Agreement; Rescission.

(a) All pre-need contract forms offered or sold in this State shall contain:

(1) The names and addresses of the seller, buyer, beneficiary, and trustee;

(2) A clear and unambiguous statement of the services and merchandise to be supplied and by whom;

(3) The purchase price of each item of supply or service and how payable;

(4) The date and place of execution;

(5) The full percentage of sales commission to be retained by the seller;

(6) The seller's or his agent's signature on the original contract and his identification by name and title on any duplicate copy of such contract given to the buyer;

(7) A provision in 10-point boldface type or larger, stating in substance that the buyer shall be permitted to return the contract within ten (10) days of its delivery to the buyer and to have the full purchase price or amount paid thereon refunded if the buyer is not satisfied with it for any reason;

(8) In print on its face sheet, in 10-point boldface type or larger, a notice stating, "This is not an insurance contract."; and

(9) Other reasonable and appropriate provisions.

(b) The written contract, when signed, shall constitute the entire agreement between the parties relative to its subject matter. All obligations of both parties shall be fixed, and enforceable by the other parties to the contract.

(c) Any provision in a written contract that allows the seller to escalate the purchase price due to inflation or rising costs or otherwise shall be void, and of no force and effect unless the buyer is furnished at least six months prior to performance of a pre-need contract with written notice by the seller of his intention to escalate and the amount of the escalation does not exceed an amount sufficient to cover extraordinary cost increases in excess of the normal cost of living increases experienced by the seller. Such notice of escalation shall be effective five (5) days

after receipt thereof by the buyer.

(d) If the buyer, pursuant to the provision required by paragraph (7) of subsection (a), returns the contract to the seller at its branch or home office or to the agent through whom it was purchased, the contract shall be void from the beginning and the parties shall be returned to the same position they occupied before the contract was entered into.

Section 13. Pre-Need Contracts: Approval; Disapproval of Forms.

(a) A seller shall not offer, sell or deliver in this State any pre-need cemetery contract unless the form of such contract has been filed with and approved in writing by the Department.

(b) The Department shall disapprove any such form of contract which he finds:

(1) Printed or reproduced in such a manner as to be substantially illegible in whole or in part;

(2) Contains ambiguous or misleading provisions, clauses or titles.

(3) Does not comply or is inconsistent with any applicable requirement of this chapter; or

(4) For other good cause shown.

(c) No amendment or modification of any such form shall be made unless the amendment or modification has been filed with and approved in writing by the Department.

(d) Each filing is subject to a waiting period of up to thirty (30) days before it becomes effective.

(e) A filing shall be deemed to meet the requirements of this chapter unless disapproved by the Department within the waiting period or any extension thereof.

Section 14. Pre-Need Contracts: Credit Life Insurance.

The seller may make available to buyers, under deferred payment, pre-need contracts for credit life insurance on a form and terms filed with and approved by the Department. The buyer must be provided with a certificate of such credit insurance as otherwise required by the Department.

Section 15. Funeral and/or cemetery merchandise and service trust fund: Payments to trust; amounts required; administration; duty of care.

(a) Any cemetery company, funeral establishment or other seller entering into a pre-need contract wherein the delivery of the funeral and/or cemetery merchandise or services is to be made at an uncertain future date, such as death, or more than one hundred twenty (120) days after receipt of the final payment under such contract shall deposit into a trust fund established for that purpose fifty percent (50%) of the gross receipts, less sales taxes, for the sales of such funeral and/or cemetery merchandise or services. Upon proper certification of costs to the Department, any cemetery company, funeral establishment or other seller with the written approval of the Department may deposit into the trust fund an amount comprising one hundred and ten percent (110%) of such cost in lieu of the fifty percent (50%) requirement.

(b) Each deposit herein required shall be paid into the trust fund so established within twenty (20) days after the close of the month of receipt from the buyer by the cemetery company, funeral establishment or other seller, except that the entire amount required to be deposited based upon the sales price, less sales taxes, shall be so deposited in trust within seven (7) years from the date of the original sale, regardless of whether or not all amounts due therefor shall have actually been

(c) The trust fund shall be administered by a trustee in accordance with a written trust instrument.

(d) The trustee shall, with respect to such trust funds, exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering

the probable income as well as the probable safety of their capital; provided however that the cemetery company, funeral establishment or other seller may appoint an individual or committee of two or more individuals to act in an advisory capacity with the trustee in the investment of the trust fund and that the cemetery company, funeral establishment, or other seller with the consent of the Department, may change the trustee of the trust fund. Within the limitations of such standards, and subject to any express provision or limitation contained in any particular trust instrument, a trustee is only authorized to acquire and retain fixed investments specifically including, but not limited to, certificates of deposits, bonds, debentures and other corporate obligations, which men of prudence, discretion and intelligence acquire or retain for their own account.

(e) Each deposit into any such trust fund shall be identified by the cemetery company, funeral establishment or other seller by furnishing the trustee and the buyer with the name of the buyer, the amount of the retail sales price, and the amount of money required to be deposited, together with a copy of the contract of sale. The cemetery company, funeral establishment or other seller shall allocate to each separate account its share of the total income earned in each calendar year, based upon the proportion that the principal balance in each said account bears to the total principal balances in all such accounts. For this purpose each deposit made before June thirtieth of each year shall be considered as having been made on the first day of the year, but deposits made after June thirtieth shall not participate in the distribution of income earned during that calendar year. The trustee may commingle the deposits in such trust fund for purposes of the management thereof and the invest-

ment of funds therein. Annually, the trustee shall advise the cemetery company, funeral establishment or other seller of the amount of income received by the whole fund for that calendar year. The cemetery company, funeral establishment or other seller shall keep detailed records of the amount of money deposited from time to time.

(f) In the administration of the trust fund, the trustee shall be liable only for bad faith and wanton negligence, and shall be entitled to rely upon advice of independent counsel; and upon doing so in good faith, such trustee shall have no liability for such acts or actions.

Section 16. Funeral and/or cemetery merchandise and service trust fund: Withdrawals from trust; inability of seller to perform; default of buyer.

(a) The funds shall be held in trust both as to principal and income earned thereon, and shall remain intact, except that the costs of operation of the trust may be deducted from the income earned thereon, until delivery of the merchandise is made or the services are performed by the cemetery company, funeral establishment or other seller or until the death of the beneficiary. Upon delivery of said merchandise or performance of the services, the cemetery company, funeral establishment or other seller shall certify such delivery or performance to the trustee and the amount of money plus income on deposit with trustee to the credit of that particular contract. Upon such certification, or in case of death prior to such certification, and upon submission of a certified copy of a death certificate, the amount of money on deposit to the credit of each particular contract, including principal and income earned thereon shall be forthwith paid to the cemetery company, funeral establishment or other seller. The trustee may rely upon all such certifications herein required to be made and shall not be liable to anyone for such reliance.

(b) If for any reason a cemetery company, funeral establishment or other seller that has entered into a contract for the sale of funeral and/or cemetery merchandise or services and has made the deposit into the trust fund as herein required to be made cannot or does not provide the funeral and/or cemetery merchandise

or perform the services called for by the contract within a reasonable time after request in writing to do so, the buyer or his heirs or assigns or duly authorized representative shall have the right to provide such funeral and/or cemetery merchandise or services, and, having done so, shall be entitled to receive the deposit to the credit of that particular contract. Written instructions to the trustee by the cemetery company, funeral establishment or other seller directing the trustee to refund the amount of money on deposit, or an affidavit by either the buyer or one of his heirs or assigns or duly authorized representative, stating that the funeral and/or cemetery merchandise or services were not provided, shall be sufficient authority for the trustee to make refund of the funds on deposit to the person submitting the affidavit. The trustee shall not be held responsible for any such refunds made on account of the cemetery company's, funeral establishment's, or other seller's written direction or an affidavit submitted in accord with this section. However, nothing herein contained shall relieve the cemetery company, funeral establishment or other seller from any liability for non-performance of the contract terms.

(c) If the cemetery authority or other seller cannot deliver the funeral and/or cemetery merchandise sold because of a national emergency, the provisions of subsection (b) shall be suspended for the duration of said emergency and for fifteen days following the termination thereof.

(d) If the buyer defaults in making payments, the cemetery company, funeral establishment or other seller shall have the right to cancel the contract and to withdraw from the trust fund the entire balance to the credit of the defaulting buyer's account as liquidating damages. In such event, the trustee shall deliver said balance to

the cemetery company, funeral establishment or other seller upon its certification, and upon receiving said certification the trustee may rely thereon and shall not be liable to anyone for such reliance.

Section 17. Funeral and/or cemetery merchandise and service trust fund: Payments to purchaser; change of domicile.

If after final payment a buyer moves his domicile to a point that makes delivery of the funeral and/or cemetery merchandise or services impossible or impractical, the trustee shall refund to the buyer the principal amount of money on deposit to the credit of that particular contract, including the income earned thereon. In the event that the amount refunded hereunder is less than seventy-five (75%) percent of the principal amount paid by buyer under the terms of the pre-need contract then seller shall pay to buyer the difference between the amount refunded and seventy-five (75%) percent.

Section 18. Trust funds exempt from attachment, other process.

In the absence of fraud, all trust funds held or invested in accordance with the provisions of this chapter are not liable to attachment, garnishment or other process, or to be seized, taken, appropriated or applied to pay any debt or liability of the seller, buyer or beneficiary by any legal or equitable process or by operation of law.

Section 19. Records and reports of sellers, trustees.

(a) Every seller shall keep accurate accounts, books and records of all transactions, copies of all agreements, dates and amounts of payments made and accepted, the names and addresses of the contracting parties, the persons for whose benefit such funds are accepted and the names of the depositories in which such funds are deposited. Every trustee handling trust funds under the provisions of this chapter shall

file with the Department quarterly, a financial statement for each trust account required to be maintained by the seller, on forms prescribed and adopted by the Department. Every annual report shall be accompanied by a fee of \$10. If such statement is not received by the Department as required he may, after giving 10 days' notice, revoke the seller's certificate of authority.

(b) The seller shall keep within this state, at the address shown upon the certificate of authority, complete records of all transactions under his certificate of authority. Such records and the affairs of the seller shall be subject to audit and examination by the Department at any reasonable time.

(c) The seller shall keep such records for a period of not less than 5 years after the completion of all transactions to which they relate.

Section 20. Nonwaiver of provisions; retroactive effect; penalties.

(a) Any provision of any contract for the sale of personal property or the performance of services herein contemplated which waives any of the provisions of this chapter shall be void.

(b) Anything herein to the contrary notwithstanding, the provisions of this chapter shall apply only to contracts that are entered into subsequent to July 31, 1974.

(c) Any cemetery company, funeral establishment or other entity, as defined in this chapter, failing to make the required deposits to the trust fund or otherwise violating the provisions of this chapter shall be guilty of a misdemeanor, punishable by fine of not less than two hundred dollars or more than one thousand dollars, or by imprisonment of not less than thirty days nor more than one year, or both, and each violation of this chapter shall constitute a separate offense.

Arthur 5-19

A M E N D M E N T

TO: SB 716 am

Page 9, line 29 - page 10, line 2: delete all matter and insert:

(d) The department shall issue or deny, renew, revoke, or suspend certificates of authority as it determines necessary to safeguard the health and welfare of the public.

(e) Before the issuance of a certificate of authority the applicant shall post and thereafter maintain in force with the department a surety bond or deposit in the form, on the conditions and in the amount established by regulation but not to exceed \$50,000. The bond or deposit shall be held for the benefit of buyers of pre-need contracts and other persons as their interests may appear.

(f) No person other than a person who is the individual holder of a certificate of authority issued under this section may solicit sale of pre-need funeral contracts without a license issued by the department.

(g) All pre-need funeral contracts shall be in the form and upon the terms prescribed by the department by regulation. A seller may not offer, sell, or deliver a pre-need funeral contract unless the terms and form of the contract and credit life insurance sold together with the contract has been filed with and approved in writing by the department. A contract that has not been approved as required is voidable at the option of the buyer or beneficiary.

(h) A seller entering into a pre-need funeral contract shall deposit into a trust account in a financial institution whose deposits are insured by an instrumentality of the federal government 50 per cent of the gross receipts from each contract or, with the written approval

of the department, 110 per cent of the cost of furnishing all services required under the contract. Trust funds deposited or held under the provisions of this section are not liable to attachment or other process and may not be seized, taken, or appropriated or applied to pay any debt or liability of the seller, buyer, or beneficiary. The seller, buyer, and trustee shall conform to standards and procedures for the refund and withdrawal of trust funds that the department determines necessary to safeguard the public health and welfare.

(i) The seller and trustee shall maintain the records and make the reports the department determines necessary to safeguard the public health and welfare.

(j) A provision of a pre-need funeral contract which violates any of the provisions of this chapter or regulations adopted under this chapter is void.

(k) The department shall adopt and enforce regulations necessary for the performance of its functions under this section.

(l) A person who violates or aids a person in violation of this section or of regulations under this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$1,000, or by both.

(m) In this section

(1) "department" means the Department of Commerce and Economic Development;

(2) "pre-need contract" means a contract for the purchase of funeral or cemetery merchandise or services to be furnished or performed at a future date for a specific consideration which is paid in advance by one or more payments in one sum or by installment payments.

MEMORANDUM

State of Alaska

TO: The File

DATE: May 11, 1976

FILE NO:

TELEPHONE NO:

FROM: Sharon Andrew
Director

SUBJECT: SB 716 am

Page 1, line 12

after the word "science" insert "and sales of funeral merchandise and services"

Page 1, line 14

after the word "science" delete the period and insert "and sales of funeral merchandise and services."

Page 6, line 26

after the word "department" delete the period and insert "and upon a showing of compliance with applicable law."

Page 6, line 28

after the numeral "90", insert "or 140"

Page 7, line 28 & 29

delete all material and renumber accordingly

Page 8, line 1

change section number from "45.~~42~~.120" to "08.42.140"

Page 8, line 29

delete all material and renumber accordingly

Page 9, line 1

change section number from "45.45.125" to "08.42.150"

Page 9, line 4

after the word "department" delete "as herein after provided" and insert "in accordance with this chapter and regulations adopted by the department. All certificates of authority expire on December 31 of each year and may be renewed for successive one-year terms."

Page 9, line 27 & 28

delete all material

Page 9, line 29

delete paragraph (d) and insert new paragraphs

(d) Pre-need contract means a contract for the purchase of funeral and/or cemetery merchandise or services to be furnished or performed at a future date for a specific consideration which is paid in advance by one or more payments.

(e) The department may establish by regulation such other requirements as may be necessary to reasonably assure that the interests of a purchaser under a pre-need contract are adequately safeguarded.

5 states
either forbid or
almost forbid -

24 states

28 states
100%

23 states
100%

APPENDIX X

Basic Data on State Pre-Need Trust Laws

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
1. ALABAMA	no law					
2. ALASKA	no law					
3. ARIZONA	yes	yes	no	100%	100%	100%
4. ARKANSAS	yes	yes	yes	100%	100%	none
5. CALIFORNIA	Funeral directors only	yes	no	100%	Used to pay expenses and forfeitures	100% of payments
6. COLORADO	yes	yes	yes	85%	Up to 15% of contract	Amount of payments & interest accrued.
7. CONNECTICUT	Insurance law governs	yes	yes			
8. DELAWARE	Participation in such activities considered grounds for suspension of revocation of license					
9. DISTRICT OF COLUMBIA	no law					
10. FLORIDA	yes	yes	yes (only licenses can arrange)	100%	100%	100%
11. GEORGIA	yes	yes	yes	100%	100%	100%
12. HAWAII	no law					
13. IDAHO	yes	no	no	100%	100%	100% less cost of operating trust
14. ILLINOIS	yes	yes	yes	95%	95%	Amount in trust account less 25% or \$35.00 whichever is greater.
15. INDIANA	yes	yes	yes	100% less trustee's expense	100% less trustee's expense	Amount in trust account less 10% or \$35.00 whichever is greater
16. IOWA	yes	no	no	80%	100%	Amount in trust account on mutual consent

↓
9 states
from 70-90%

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
17. KANSAS	yes	no	no	100%	100%	100%
18. KENTUCKY	yes	yes	yes	100%	100%	100%
19. LOUISIANA	Participation in such activities possible grounds for revocation of license.					
20. MAINE	yes	no	no	100%	100%	100%
21. MARYLAND	yes	no	Licensed funeral director and embalmer only	100%	100%	100%
22. MASSACHUSETTS	no law					
23. MICHIGAN	yes	no	no	100%	100%	100%
24. MINNESOTA	yes	no	no	100%	100%	100%
25. MISSISSIPPI	Pre-need contracts limited severely and controlled by Insurance Commissioner					
26. MISSOURI	yes	yes	no	80%	none	73%
27. MONTANA	yes	yes	no	100%	100%	100% on mutual consent
28. NEBRASKA	yes	yes	no	100%	100%	100%
29. NEVADA	Life insurance law governs					
30. NEW HAMPSHIRE	no law	Burial associations prohibited				
31. NEW JERSEY	yes	no	no	100%	100%	100%
32. NEW MEXICO	Life insurance law governs					
33. NEW YORK	yes	yes	no	100%	100%	100%
34. NORTH CAROLINA	yes	yes	yes	100%	100%	100%

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
35. NORTH DAKOTA	yes	yes	Can be engaged in only by operators of licensed funeral establishments	100%	100%	100%
36. OHIO	yes	no	no	100%	100%	100%
37. OKLAHOMA	yes	yes	yes	90%	100%	100% of amount paid into trust fund
38. OREGON	yes	no	no	100%	100%	100%
39. PENNSYLVANIA	yes	yes	no	last 70%	100% on deposit	last 70% of payments
40. RHODE ISLAND	no law - Pre-need arrangements may be grounds for suspension or revocation of license					
41. SOUTH CAROLINA	no law - funeral directors may not collaborate with life insurance companies in this area					
42. SOUTH DAKOTA	yes	no	no	100%	100%	100%
43. TENNESSEE	yes	yes	no	100%	100%	100%
44. TEXAS	yes	yes	yes	90%	100% less trust expenses	All of payments held in trust - no interest
45. UTAH	yes	yes	yes	at least 75%	100% of trust	90% of the amount placed in trust
46. VERMONT	no law					
47. VIRGINIA	yes	no	no	100%	100%	Mutual consent
48. WASHINGTON	Insurance law governs					
49. WEST VIRGINIA	yes	yes	no	95%	95%	Amount in trust less 25% or \$35.00 whichever is greater

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
SO. WISCONSIN	yes	no	no	100%	100%	100%
SI. WYOMING	Commissioner of Insurance sets out rules and regulations					