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HC

HB 403

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HB 509

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	<u>CORPORATION</u>	<u>PARTNERSHIP</u>	<u>LIMITED LIABILITY COMPANY</u>
COMMUNITY PROPERTY STATES	<p>Dividends from investments made from community property become community property.</p> <p><u>Electing "Small Business Corporation"</u>. Dividends from investments made from community property become community property.</p>	<p>Whether income is community or separate income depends upon the law of the state of domicile.</p>	<p>Same as partnership, with the results depending on the community property laws in the several states.</p>
DUAL MEMBERSHIPS	<p>Because it would be extending its credit, liability and the powers of the Board of Directors beyond legal scope, a corporation cannot be a direct member of a partnership in some states.</p> <p><u>Electing "Small Business Corporation"</u>. Stock may not be held by either a partnership or another corporation.</p>	<p>A partnership may own some or all of the stock of a corporation and so function in two capacities.</p>	<p>A Limited Liability Company enjoys flexibility in this area and may be owned by other entities or individuals and participate in other entities and business enterprises.</p>

(1) An electing "small business corporation" is a domestic corporation which does not have more than 10 shareholders and which otherwise comes within the requirements of Subchapter "S" of the Internal Revenue Code, and whose shareholders elect to include in their personal income the current taxable income of the corporation.

1. Sec. 10.50.030. (a) The word "Limited" ["limited"] or as abbreviated "Ltd." shall be the last word of the name of every limited liability company formed under the provisions of this chapter and, in addition, the limited liability company name may not

(1) contain a word or phrase which indicates or implies that it is organized for a purpose other than one or more of the purposes contained in its certificate of organization;

(2) be the same as, or deceptively similar to, the name of a limited liability company or corporation existing under the laws of this state or a foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided under the laws of this state.

(b) Omission of the word "Limited" ["limited"] in the use of the name of the limited liability company shall render any person who participates in the omission, or knowingly acquiesces in it, liable for indebtedness, damage or liability occasioned by the omission.

2. Sec 10.50.050. (a) (5) the total amount of cash and a description and agreed value of [or] property other than cash contributed;

3. Sec. 10.50.080. CONTRIBUTIONS TO CAPITAL. The contributions to capital by [of] a member to the limited liability

company may consist of cash or other property, but not services.

4. Sec. 10.50.110. LIMITED LIABILITY COMPANY PROPERTY.

Real and personal property owned or purchased by a limited liability company shall be held and owned, and conveyance made, in the limited liability company name, or in the name of any member or manager. Instruments and documents providing for the acquisition, mortgage or disposition of property of the limited liability company shall be valid and binding upon the limited liability company having a manager or managers or one or more members of a limited liability company in which management has been retained by [in] the members.

5. Sec. 10.50.140. DIVISION OF PROFITS: IMPAIRMENT OF

CAPITAL. The limited liability company may, from time to time, divide the profits of its business and distribute the same to the members of the limited liability company upon the basis stipulated in the operating agreement; provided however[, ] that, after distribution is made, the assets of the limited liability company are in excess of all liabilities of the limited liability company except liabilities to members on account of their contributions.

6. Sec. 10.50.150. (d) A member of a limited liability company may have the limited liability company dissolved and its affairs wound up when

(1) the member rightfully but unsuccessfully [unseccessfully] has demanded the return of his or its contribution, or

(2) the other liabilities of the limited liability company have not been paid, or the limited liability company property is insufficient for their payment and the member would otherwise be entitled to the return of his or its contribution.

7. Sec. 10.50.160(a) A member is liable to the limited liability company

(1) for the difference between his or its contributions to capital as actually made and his or its contributions to capital as [that] stated in the certificate of organization as having been made, and

(2) for any unpaid contribution to capital which he or it agreed [in the certificate of organization] to make in the future at the time and on the conditions stated in the certificate of organization.

8. Sec. 10.50.170. INTEREST IN LIMITED LIABILITY COMPANY; TRANSFERABILITY OF INTEREST. [(a)] The interest of all members in a limited liability company constitutes the personal estate of the member, and may be transferred or assigned as provided in the operating agreement; however, if all of the other members of the limited liability company other than the member proposing to dispose of his or its

interest do not approve of the proposed transfer or assignment by unanimous written consent, the transferee [transfer] of the member's interest shall have no right to participate in the management of the business and affairs of the limited liability company, or to become a member, but shall only be entitled to receive the share of profits or other compensation by way of income, and the return of contributions, to which that member would otherwise be entitled.

9. Sec. 10.50.180. DISSOLUTION. (a) A limited liability company organized under this chapter shall be dissolved upon the occurrence of any of the following events

(1) when the period fixed for the duration of the limited liability company shall expire;

(2) by the unanimous written agreement of all members; or

(3) upon the death, retirement, resignation, expulsion, bankruptcy, dissolution of a member or occurrence of any other event which terminates the continued membership of a member in the limited liability company, unless the business of the limited liability company is reconstituted [continued] by the consent of all the remaining members under a right to do so stated in the certificate of organization of the limited liability company.

10. Sec. 10.50.200(c) The form for evidencing an amendment to the certificate of organization of a limited liability

company shall be promulgated by the commissioner and shall contain terms and provisions, consistent with this chapter, which the commissioner determines. [The amendment shall be signed and sworn to by all members, and an amendment adding a new member shall be signed also by the member to be added, and thereafter duplicate] Duplicate originals of the amendment shall be forwarded to the commissioner for filing, accompanied by the requisite filing fee.

11. Sec. 10.50.230. FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES. The commissioner shall charge and collect for:

(1) filing the original certificate of organization, if the capital of the limited liability company is:

<u>Capital</u>	<u>Filing Fee</u>
<u>Not in excess of \$100,000:</u>	\$ <u>100</u>
<u>In excess of \$100,000 but</u> <u>not in excess of \$250,000;</u>	\$ <u>250</u>
<u>In excess of \$250,000 but</u> <u>not in excess of \$500,000:</u>	\$ <u>500</u>
<u>In excess of \$500,000 but</u> <u>not in excess of \$1,000,000:</u>	\$ <u>750</u>
<u>In excess of \$1,000,000:</u>	<u>\$1,000</u>

<u>Capital</u>	<u>Filing Fee</u>
Not in excess of \$100,000	\$ 100
\$100,000 and not exceeding \$250,000	\$ 250
Exceeding \$250,000 but not in excess of \$500,000	\$ 500
\$500,000 to \$1,000,000	\$ 750
In excess of \$1,000,000	\$1,000

(2) for amending the certificate of organization, a filing fee of \$25, together with the appropriate fee set out in (1) of this section if the amendment is to increase the amount of capital;

(3) for dissolution, \$25;

(4) an annual tax of \$100, due and payable January 2 of each year; this tax is delinquent if not paid by February 1 and an addition to the tax shall then be due of \$50.

12. Sec. 10.50.250. REGISTERED AGENT. A limited liability company is required at all times to have a registered agent whose residence is in the state. The commissioner shall be notified upon any change in the name or address of the registered agent.

13. Sec. 10.50.260. APPLICATION TO FOREIGN AND INTERSTATE COMMERCE. The provisions of this chapter shall apply to commerce with foreign nations and among the several states only as permitted by law.

14. Sec. 10.50.270. APPLICABILITY OF THIS CHAPTER. This chapter takes precedence in the event of a conflict with the provisions of the Alaska Business Corporation Act or other laws. This chapter does not affect a right accrued or established, or any liability or penalty incurred, prior to the effective date of this Act.

15. Sec. 10.50.280. DEFINITIONS. In this chapter, unless the context otherwise requires

(1) "Bankrupt" means bankrupt under the Federal Bankruptcy Act;

(2) "commissioner" means the commissioner of commerce;

(3) "court" includes every court and judge having jurisdiction in the case;

(4) "limited liability company" means a limited liability company organized and existing under this chapter;

(5) "person" includes individuals, general partnerships, limited partnerships, limited liability companies, corporations, trusts, business trusts, real estate investment trusts, estates and other associations;

(6) "real property" includes land, any interest, leasehold or estate in land and any improvements on it.

16. Sec. 10.50.290. SHORT TITLE. This Act shall be known and may be cited as the Alaska Limited Liability Company Act.

April 29, 1975

Mr. Lawrence Gibbs  
Assistant Commissioner (Technical)  
Internal Revenue Service  
Washington, D.C.

Dear Mr. Gibbs:

Enclosed is a copy of House Bill 403 which was introduced in the Alaska House of Representatives by Representative Richard K. Urion on April 9, 1975.

On April 24, 1975, the House Commerce Committee heard testimony on the proposed legislation by Mr. Miles S. Schlosberg, Director of Banking, Securities, Small Loans, and Corporations, Department of Commerce of the State of Alaska and Bernard J. Dougherty, Attorney with Cole, Hartig, Rhodes, Norman, Mahoney & Goltz, of Anchorage, Alaska.

Before acting on this proposed legislation we ask that you and your staff review it and issue to us an information letter in accordance with Treasury Regulations Section 601.201.(a)(5).

As the testimony was presented and as we understand the legislation and its interrelation with Treasury Regulations Section 301.7701 et. seq., the Limited Liability Company Act as proposed before the Alaska Legislature should be classified as a partnership for Federal Tax purposes because it lacks the corporate characteristics of continuity of life, free transferability of interest, and if the Certificate of Organization is drafted so that management is retained by the members, the Company will lack the characteristic of centralization of management. For these reasons, the testimony was, that the Limited Liability Company should be classified as a partnership for Federal Tax purposes.

We would appreciate it if you would have your staff review the enclosed legislation and give us your views on the matter in an information letter.

Kindest regards.

Very truly yours,

HB

468

"An Act relating to fire extinguishing systems; and providing for an effective date."

# COMMITTEE REPORT

HOUSE

2/10/76

Mr. Speaker:

Date 3/3/78

The Committee on COMMERCE has had SSHB 468

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 \_\_\_\_\_ AND THAT  
CS FOR \_\_\_\_\_ DO PASS
- ( ) "and" recommends it BE REFERRED TO THE \_\_\_\_\_  
COMMITTEE
- ( ) reports it back WITHOUT RECOMMENDATION
- ( ) "other"

Members signing the Majority report:

<u>[Signature]</u>	_____	<u>[Signature]</u>	_____
<u>[Signature]</u>	_____	<u>[Signature]</u>	_____
<u>[Signature]</u>	_____		_____
_____	_____		_____

Members NOT concurring in the Majority report:

<u>[Signature]</u>	_____	recommends: <u>no rec</u>
_____	_____	recommends:
_____	_____	recommends:
_____	_____	recommends:
_____	_____	recommends: <u>[Signature]</u>

[Signature] Chairman



JUNEAU ALASKA

# Alaska State Legislature

## House

February 18, 1976

### MEMORANDUM

TO: Representative Bob Bradley,  
Chairman, House Commerce Committee

FROM: Terry Berman, Administrative Assistant

SUBJECT: SSHB 468, HB 316

SSHB 468 is a response to requests from firefighters in the state for adequate safeguards against human injury during fires. It provides for the installation of sprinkler systems in buildings seven or more stories high. It was pointed out to Representative Sullivan by fire officials that sprinkler systems have always proved effective when installed throughout buildings. Building owners are given seven years to comply and until automatic systems are installed, they must have emergency escape devices.

HB 316 permits utilities to require deposits under regulations issued by the APUC. Additionally it provides that interest will be paid on deposits held for more than one year. Present APUC regulations provide that deposits cannot be held longer than two years if the customer has not been delinquent in payment more than once in twelve consecutive months nor had his service discontinued for reasons of delinquency. However, such deposits do not bear interest for the consumer. Utility companies are free to invest the funds as they see fit. There is a hidden cost to the consumer in that he receives no interest on the money and after two years, the sum he had on deposit is worth less than when it was initially paid to the utility company.



PHONE 586-5451  
586-2946

*file under  
HE 468*

**GORDON E. BRUNTON**  
REGIONAL FIRE MARSHAL  
SOUTHEASTERN DISTRICT

STATE OF ALASKA  
DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF FIRE PREVENTION

450 WHITTIER STREET  
POUCH N  
JUNEAU, ALASKA 99801

HB

509

LAW OFFICES

## LAPIN, PANICHI &amp; LEVINE, LTD.

SUITE 1200-100 NORTH LA SALLE STREET

CHICAGO 60602

HARVEY I. LAPIN  
RICHARD M. PANICHI  
AARON LEVINE  
LAWRENCE A. ROBINS  
LAWRENCE M. GRITTON

March 8, 1976

The Honorable Representative R.E. Bradley  
Chairman, Joint Commerce Committee  
Alaska State Legislature  
Pouch V, State Capitol  
Juneau, Alaska 99801

Dear Representative Bradley:

Thank you for sending me a copy of the revised House Bill No. 509. I noted with some interest the changes that were made apparently as a result of the hearing before the Commerce Committee during February in Juneau. It is apparent from the revision that the Committee did recognize the points made at the hearing to the effect that:

1. The licensing provision should not prohibit the offering to the public of the opportunity to purchase funeral merchandise and services on a pre-arranged basis; and
2. The trust provision related to pre-need sales should not be designed to affect the cemetery industry.

Unfortunately, the changes made in the revised draft did not clear all of the problems which were brought out in my prior letter to you - a copy of which is attached hereto for reference - and at the hearing by the various participants. In this regard I wish to draw your attention to specifically the following matters:

First, while the revision of subsection (7) of section 08.42.090 grounds for refusal to issue or renew licenses and suspension or revocations of licenses, (at pages 5 - 6 of the revised House Bill) is sufficient to allow pre-need sales, subsection (8), (9), and (10) still could be interpreted so as to limit the pre-need market. Please refer to my discussion of these particular subsections in the enclosed letter.

The Honorable Representative  
R.E. Bradley

-2-

March 8, 1976

Second, the definition of mortuary science under section 08.42.10 subsection (3) is still broad and could be interpreted as including the interment in the cemetery. Perhaps it would be best to exclude from the definition cemetery operation.

Finally, the amendment to section 45.50.471(b) subsection (23) will still have the effect of eliminating the pre-arranged market for the reasons indicated in my letter and also in the testimony of several witnesses at the hearing. We noted the exemption for cemetery lots and markers, but even this is not sufficient since there are other items which are sold by cemeteries which would be included, as example, the exclusion does not cover mausoleum crypts or lawn crypts, both of which are currently being sold by cemeteries.

Attached hereto for your review is a copy of a proposed pre-need merchandise and service trust fund bill which adequately covers this area in a manner by which it can be controlled by the State and still allow for the consumer to have the opportunity to purchase these items on a pre-need basis. There are similar laws to the proposed bill in the States of Nevada and Hawaii. We, of course, are hopeful that the Committee will review this proposed legislation and perhaps adopt it instead of the present trust section which unfortunately does not cover many of the areas which will be confronted by the State in the operation of such a trusting provision. We, of course, would hope that your Committee would recommend the adoption of such a law for the State of Alaska but in any event the present trust provision must be amended to exclude from its provisions cemetery merchandise including lots, markers, mausoleum crypts, lawn crypts and any other item normally sold by a cemetery, as well as those items connected with a funeral service which are readily deliverable and not subject to being performed in the future.

I want to personally thank you for the courtesy extended to me at the hearing in Juneau and it was a great pleasure having the opportunity to not only meet you and the other members of the Committee, but to have the opportunity to testify. If there are to be any further hearings on this matter, I would appreciate your letting me know as soon as possible.

Cordially,

LAPIN, PANICHI & LEVINE, LTD.



Harvey I. Lapin

HIL:cb

cc: All members of the Joint Commerce Committee  
Ms. Sharon Andrew

LAW OFFICES

## LAPIN, PANICHI &amp; LEVINE, LTD.

SUITE 1200-100 NORTH LA SALLE STREET

CHICAGO 60602

HARVEY I. LAPIN  
RICHARD M. PANICHI  
AARON LEVINE  
LAWRENCE A. ROBINS  
LAWRENCE M. GRITTON

January 29, 1976

The Honorable Senator Willis  
Chairman of the Senate Commerce Committee  
State of Alaska  
Pouch V, State Capitol  
Juneau, Alaska 99801

Re: House Bill 509

Dear Senator Willis:

Pursuant to our telephone conversation on January 28, 1976 I would like to expand on the comments which I made regarding House Bill 509. This Bill, as you know, is very specialized legislation dealing with a complicated subject of which many people are not extensively informed. Since I suspect that the proponents of this legislation have no doubt indicated that it is required in order to protect the consumers of the State of Alaska my comments will be structured in response.

While a great deal of beneficial legislation has been enacted in recent years for that purpose of protecting the consumer, in some instances legislation to protect the need of special interests has unfortunately been enacted under the same auspices. House Bill 509 probably falls within that latter category. I further suspect that in all probability no consumers have been consulted about the need for the protection that they are about to receive. It might therefore be interesting to examine this law from the point of view of the consumer.

On the basis of my briefly outlined background, you no doubt are aware that my interests are primarily involved in advising clients in the cemetery industry though I do represent several clients throughout the country who are also in the funeral business. Attached hereto for your reference is a copy of my current biography solely for the purpose of giving you some idea of my background.

The Honorable Senator Willis -2-

January 29, 1976

The first section of proposed House Bill 509, section 08.42.020, deals with the licensing provisions for morticians. I certainly am in agreement with the concept that individuals who deal with the public and claim a certain expertise in specialized areas should be licensed. However, I am concerned about establishing classifications which may tend to mislead the public. I therefore notice with some interest the creation by statute of a new science, namely the practice of "mortuary science." It is quite evident from the FTC Staff Report on funeral industry practices that the industry has promoted and encouraged the concept of professionalism throughout the country. Query! whether this new classification may be giving substance to this concept in a manner which may be used in the future to mislead a consumer as to the credentials of the practitioner. Secondly in the licensing area, if these requirements have merit then they must have equal merit for those who are presently practicing in the state. Since a new licensee and even someone coming from another state are required to meet these qualifications and take an examination, it seems questionable as to how the consumer is protected by not imposing the same requirement on those presently engaging in this occupation in the state.

The next area of the statute on which I would like to comment is section 08.42.090 dealing with the grounds for refusal to issue or renew licenses. Many of these grounds for terminating a license are well founded and just reasons for acting. However, some of these are designed to appear to be basis for revoking a license, but in fact are designed to restrict or prevent competition in the marketplace and to assure that no sales of funeral merchandise or services will be made in advance of the time immediately subsequent to death when a consumer is least able to properly consider the various alternatives available. This concept can be easily illustrated by reviewing some of the grounds for revocation of a license. The primary grounds of concern are as follows:

Subsection (8) which provides "Solicitation of a dead human body by the licensee, his agents, servants or employees, whether solicitation occurs before or after death; but this does not prohibit general advertising;" This section obviously is intended to prevent the despicable practice of "body snatching". However, the language used is broad enough to not only cover that practice but to also prevent any licensee from soliciting the consumer to make funeral arrangements on a pre-need basis. Is the consumer protected by being prevented from considering the availability of various types of funeral arrangements in advance of need? Obviously, if the proponents only are

The Honorable S. Stor Willis -3-

January 29, 1976

concerned with the body snatching problem the language of subsection (8) could be revised to accomplish that problem without limiting the pre-arrangement market, i.e. "solicitation of a dead human body by the licensee, his agents, servants or employees, whether solicitation occurred immediately before an impending death or after death; but this does not prohibit general advertising or sales made on a pre-arranged basis.

Subsection (9) "Employment by the licensee of any person for the purposes of calling upon individuals or institutions to influence them to turn over a dead human body to a particular mortician;" This subsection also is intended to deal with the body snatching problem by preventing the use of non-licensed individuals to accomplish the same purpose. This particular language has been used as the basis in other states from preventing licensees or their agents from discussing pre-arrangement plans on a low cost basis with nursing homes, welfare hospitals and other organizations interested in making these types of arrangements. Clearly this section should be adjusted to allow that type of contact.

Subsection (10) "The direct or indirect payment or offer of payment for the purpose of securing business." The obvious intent of this section is to prohibit kickbacks or bribes to individuals who would be steering business to a particular funeral home. However, the manner in which the section is stated is broad enough to also prevent a funeral director from employing salesmen who might be contacting members of the public to discuss pre-arrangement plans. This provision should be restated to eliminate the phrase "securing business" and inserting after "obtaining a dead body by the licensee, his agents, servants or employees immediately before an impending death or after death." The intended purpose would still be accomplished without affecting the pre-arranged market.

Subsection (11) "Solicitation or acceptance by a licensee of any payment for recommending or causing a dead human body to be disposed of in a specific crematory, mausoleum or cemetery." This section was intended to prevent licensees from accepting kickbacks for recommending to someone that they use a specific crematory, mausoleum or cemetery. Again, we do not object to the prohibition in this manner of a practice which might be harmful to consumers. The language as it presently is however could also have the effect of preventing a licensee who also owns a crematory, mausoleum or cemetery from recommending his own property, or entering into a pre-arranged funeral and burial sales package with a crematory, mausoleum or cemetery in which they have a financial interest. There is a

The Honorable Senator Willis -4-

January 29, 1976

trend in the funeral and cemetery industry to establish combination funeral homes and cemeteries. The reasons for this trend are the obvious cost savings connected with the elimination of substantial equipment such as limousines and labor saving through the dual use of personnel, since funeral home personnel are often only occupied at the time of a funeral and often have free time. It is our understanding that this trend has also been followed in Alaska. If subsection (11) is not limited in its scope it could prevent a consumer from obtaining the benefits of these cost savings. In order to avoid this unintended result, I would suggest the following changes. After the word "body" I would insert the phrase "immediately before an impending death or after death" and at the end of the phrase after "cemetery" I would insert the following "provided however that nothin herein shall prevent the recommendation or solicitation for sales of space and merchandise in a specific crematory, mausoleum or cemetery if said licensee has an ownership interest in said specific crematory, mausoleum or cemetery and such ownership interest is disclosed at the time of the solicitation, recommendation or sale."

The next section of the Act of which I have some difficulty is the definition section 08.42.10. The definition number (3) "mortuary science" is broad enough to cover the operation of a cemetery, crematory and mausoleum in that the phrase "preparing dead human bodies for burial by means other than embalming, disposing of dead human bodies, or operating a place for the care or disposition of dead human bodies" could certainly be construed to cover the activities of cremating and interment in a cemetery or entombment in a mausoleum. Cremation, interment and entombment are normally understood in both industries to be within the area of disposition of dead human bodies. I would suggest that this definition be amended so as to specifically exclude these areas. The following might be appropriate: "but shall not include those services normally performed by a cemetery, crematory or mausoleum."

The next area for consideration is the disclosure of cost provision, section 45.45.120. This provision is an attempt in part to conform the laws of the State of Alaska with some of the findings of the proposed Trade Regulation Rule of the FTC. However, it is not as extensive as the requirements of the proposed Rule. In this regard I would suggest that you take a look at section 453.5 of the proposed Rule at page 15 of the Staff Report. In particular subsection (e) at page 16 which requires itemization of all items involved in the funeral service. The proposed Alaska Bill does not provide for an itemization of the various items in the basic service, so the consumer does not have the opportunity to determine as to whether they want or need all of these basic services.

The Honorable Senator Willis -5-

January 29, 1976

Finally, we get to the amendment to section 45.50.471 subsection (22) at page 8 which requires that all of the proceeds from "...contracts relating to the disposition of a body upon death whereby certain personal property will be furnished or the professional services of a funeral director or embalmer will be furnished..." to be deposited into a trust. This section is probably the most obvious section designed with the intention of preventing any pre-arranged sales, thereby limiting the market to the at-need time when the consumer is most apt to be subject without control to the sales techniques of the funeral director. In this regard I draw your attention to the proposed Trade Regulation Rule section 453.4 merchandise and service selection starting at the bottom of page 13 of the Staff Report, which indicates some of the methods used to maximize sales at this time. I also draw your attention to the statement at page 2 of the Report as follows:

"Each year millions of families are forced by the death of a relative to make one of the largest consumer purchases under severe handicaps of time pressure, emotional distress and lack of information, or experience. As an FTC hearing examiner noted long ago there are few if any industries where the ultimate consumer is so disadvantaged or where his normal bargaining power is so deluded in a situation of such immediate need."

It is also of note at page 4 of the Report that the Commission has recognized the general marketing strategy of the industry as follows:

"It is enough to say that the general marketing strategy of much of the industry seems to follow the following precepts: (1) eliminate low cost alternatives to the standard funeral through control of laws, regulations and codes of ethics, (2) use of any means possible - laws and regulations, propaganda, refusal to deal - to stunt the development of memorial societies or pre-need societies which can bargain on behalf of the consumer in a non-emotional concept."

The last section of House Bill 509 was intended and will have the effect of eliminating any businessman in the State of Alaska from engaging in pre-need sales. The reasons are very obvious. No seller would make a binding commitment to perform in a situation where 100% of the proceeds to be derived were required to be placed into a trust fund with the accrued interest being retained in the trust and the purchaser having the unlimited right to demand a refund at any time up to and including the time immediately before the services and merchandise are to be used and delivered. This is

The Honorable Senator Willis -6-

January 29, 1976

particularly true since it would be necessary for such a seller to fund promotional sales costs and commissions to salesmen who would be making such sales. It is our understanding that there is an active pre-arranged funeral and burial market in the State of Alaska. If this section is enacted in its present form it will no doubt prevent any future sale by those sellers presently engaged in this market. Query! does it protect the consumer to eliminate the availability of an alternative to the recognized harmful bad practice of requiring consumers to make these necessary purchases only at the time when they are least able to properly handle these arrangements.

This does not mean that I am opposed to any type of legislation in this area. There are recognized problems involved with pre-need sales and the consumer is entitled to some protection. However, protection does not mean elimination. Further, only in the funeral industry has the 100% trust concept been used to the obvious advantage of those trying to maximize their market strategy by eliminating opposing marketing forces. If this concept was followed in other industries, as example the insurance industry where the obligation is to provide funds at the time of death, there would be no insurance industry.

As I indicated to you other states have dealt with this problem. Unfortunately, many of them have blindly followed the 100% concept and as a result there is no pre-arrangement market in those states. Some states have dealt with the subject on a realistic basis and have made provisions which have not stifled the market but have protected the consumer. While we are not recommending to you the adoption of any specific legislation from another state on this subject, we would point out that the section as presently proposed does not cover a lot of areas which should be covered in any legislation of this type. Some of these areas are as follows:

1. There should be some definitions of the type of merchandise to be covered, as example what does "certain personal property" mean? Does this phrase include the various types of personal property normally sold by cemeteries and other related industries on a pre-need basis, such as markers, memorials, monuments, etc.?
2. Many of the states have licensing requirements to make sure that sellers will meet certain specifications and not be "fly by night" operators. It seems relatively clear that the proponents of this Bill were not concerned with any of these aspects since the intention is not to promote this type of selling but to eliminate it.

## 3. Other unanswered questions are:

- (a) what happens if someone does not put the money into trust?
- (b) how are the trust funds to be invested?
- (c) can they be commingled by the bank for investment purposes? If not, you have just set up a requirement whereby every bank must keep separate accounts for each individual.
- (d) has anyone consulted the banks as to whether they would be willing to undertake this obligation and if so is the bank allowed a fee on this money?
- (e) if the merchandise is delivered or deliverable, why should a seller not be entitled to withdraw the funds?
- (f) why should the seller be bound for the total time of the trust to deliver the merchandise and services when the consumer has no obligation?

This section is really not for the purpose of giving the consumer the unlimited right of refund to protect their interest. Its intention is to allow the funeral director at the time of need to convince anyone who may have made such arrangements that they have better merchandise available which could be acquired with the funds set aside in the account rather than that merchandise previously bought on a pre-arranged basis. It further allows the funeral director to upgrade a consumer at the time of death because they have already funded a portion of the costs and an additional amount may not be a problem at that time.

If the intended effect were to merely protect the public other means could have been utilized to provide the same type of protection to the consumer and still allow sellers to engage in the marketing of pre-arranged funeral and burial merchandise. Analogous types of sales where delivery is deferred, protection such as performance bonds, insurance, actuarial computed holdbacks and funded guarantee programs have been used to successfully protect the consumers. Only in the area of pre-need selling of funeral and burial merchandise have laws been used under the guise of protecting the public to prevent competition from entering the marketplace. It is our position that a law which requires the funding of an unrealistic percentage of sales proceeds with the unrestricted right of refund was intended to restrict the marketplace and not to protect the rights of consumer.

We are attaching as exhibits copies of laws enacted in the States of Florida, Louisiana and Virginia dealing with the problem of pre-need sales of merchandise and services on a more realistic basis. In all cases the amounts required to be deposited are less than 100% of the proceeds. Certainly the proponents of this Bill should not

The Honorable Senator Willis -8-

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object to this type of treatment, if they in fact are only concerned with consumers' interests and not merely protecting their interest in the market. In this regard we must point out that the details of an interment service are not dissimilar to that of the funeral service.

As I advised you, the Federal Trade Commission is presently dealing with this subject in connection with the proposed Federal Trade Regulation Rule. It is our understanding that hearings on this subject will be on or about April 15 of this year. I am sure that you will be able to obtain further information on these matters by contacting the hearing examiner who is to conduct these hearings throughout the country, Mr. Jack Kahn, whose number in Washington is 202 724 1152. You might also be interested in discussing the area with the staff of the FTC who conducted these investigations. Arthur Angel, Esq. is the primary staff attorney on this project, his number is 202 523 3871. If he is not available, you might also talk to William Golden who participated extensively in the project (202 523 3171).

We are hopeful that we have been able to demonstrate that it is possible that the interest of the consumers may not be protected by the proposed House Bill 509. I would also hope that we have brought to your attention the fact that this area is being extensively covered in connection with the FTC hearings, the results of which may be very helpful to you in evolving legislation in this area. It would be our recommendation that perhaps it would be worthwhile for your Committee to table this proposed House Bill until such time as it could obtain the benefits of the results of this investigation and the proposals which no doubt will be forthcoming as a result. Alaska might then be in the forefront of enacting legislation which in fact would be in the best interests of the consumer in one of the most important areas of our day to day life, rather than enacting legislation which is probably intended to restrict the marketplace rather than to benefit the consumer.

I enjoyed our conversation the other day and would be extremely willing to provide you with any further information or comments you may desire. Please feel free to contact us at any time.

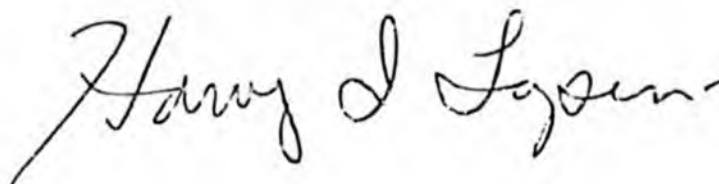
The Honorable Senator Willis -9-

January 29, 1976

In the event I should not be available, my associate Lawrence Robins is extremely conversant with these areas and could no doubt be helpful.

Very truly yours,

LAPIN, PANICHI & LEVINE, LTD.

A handwritten signature in cursive script, reading "Harvey I. Lapin". The signature is written in dark ink and is positioned below the typed name of the firm.

Harvey I. Lapin

HIL:cb

encs

cc: The Honorable Representative Robert Bradly

PRE-NEED MERCHANDISE AND SERVICES TRUST FUND

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 re-  
quired 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 paid.

(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.

THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

FEDERAL TRADE COMMISSION

Seattle Regional Office  
28th Floor Federal Building  
915 Second Avenue  
Seattle, Washington 98174  
(206) 442-4655

February 11, 1976

Representative Bob Bradley   
Chairman, House Commerce Committee  
Pouch V  
Juneau, Alaska 99811

Dear Representative Bradley:

In connection with the hearing on substitute bill 509 to be held on Friday, February 13, this office would like to respectfully submit some comments, in regard to both the overall philosophy of this legislation and on specific provisions of the proposed bill. We are sorry we are unable to be in Juneau in person so as to facilitate a dialogue, but we want you to have our thoughts nonetheless.

Need for Licensing

Since the bill sets up a new licensing provision for funeral directors, a basic inquiry is, should such licensing be instituted at all, in view of its increased cost to the tax payer and basic restrictiveness in denying access to the profession to some people. This letter is not addressed to embalmer licensing.

It could be strongly argued that funeral directors (as opposed to embalmers) are not so unique and specialized with regard to their required skills that licensing of the funeral direction function is necessary in the public interest. A good funeral director is basically a good administrator who has knowledge of his business and how to operate it the same as the operator of other business establishments selling goods and services.

An important point in connection with the question of whether there is a need for licensing is whether other, less restrictive methods, will not be equally as effective. The answer

is that it appears that the only substantive inhibitory provisions of the bill which are either (1) not already covered by existing state law (such as false or misleading advertising -- see Alaska's "Little FTC Act" administered by the Attorney General and local officials) or (2) not related to the obtaining of a license, are certain provisions in 8.42.090. If the problem lies in the need to prohibit some of these activities (a few of which will be commented upon later in further detail), a law could be passed prohibiting funeral directors from engaging in these practices and rendering them subject to a civil suit by the Attorney General and/or local officials to enjoin them from engaging in any such practices.

We note that there is a grandfather clause in the legislation. This, of course, raises a question as to whether there are currently practices being engaged in which call for licensing legislation. If such is the case, all those engaging in such practices will nevertheless automatically receive licenses. If practices which would be violative of the bill are not being engaged in, a question is raised as to whether there is a need for the bill.

#### Permits to Operate Funeral Home

Perhaps it is also appropriate to raise the question as to why a separate funeral home permit is necessary in addition to a licensing provision. This seems to be "dual licensing" and unduly restrictive.

#### Advertising and Solicitation

Subsections 8, 9 and 10 of 8.42.090 are all directed at the payment of money and personal solicitation in order to obtain funeral business. Whether these provisions are contained in a licensing statute, or set up separately as outlined above, we feel that they should be amended to make clear that their purpose does not pertain to any type of advertising. For instance, if personal solicitation by a licensee or his employe is meant, the statute should be written to encompass only personal solicitation by direct or telephone contact. In connection with subsection 8, is the phrase "general advertising" to be interpreted as an opposite of "specific" advertising, such as price advertising or other specific references? If so, it should be amended to make clear that all advertising is permitted.

February 11, 1976

Subsection 10 is written so broadly as to be easily interpreted as an advertising prohibition. If it is intended to prohibit payments for "leads" or referrals, it should be more narrowly drafted to reflect that intent.

#### Price Disclosure

As you know, the Federal Trade Commission has proposed a trade regulation rule on funeral industry practices, a copy of which is enclosed. It may serve as a guide to you in considering provisions of your proposed legislation, where applicable, and may suggest other areas where state legislation would be appropriate.

In reference to Article 4, FUNERALS, Section 45.45.120 Disclosure of Costs, we suggest consideration of the itemized components of a funeral listed in Section 453.5(e) and (f) of the proposed FTC rule. Subsection (e) requires price information to be itemized for people who inquire about arrangements and prices prior to any agreement, and subsection (f) requires itemization of the invoice after services have been performed by a funeral home. The specific itemization of services and merchandise in the proposed rule will give consumers meaningful price information without burdening them or funeral homes with too many categories.

The purpose of itemization is not only to give useful information to consumers but to remedy several interrelated price abuses that have been identified in the course of investigation by FTC staff. One abuse is the tying of the purchase of the casket to other services. The standard adult funeral is often sold as a "package", and the price is determined by the choice of the casket. The services and merchandise provided are the same from one standard adult funeral to another. Many consumers believe that by purchasing a more elaborate (and expensive) casket, they will receive increased services from the funeral home staff and increased use of the funeral home's facilities for the "package" price. FTC staff has found that this is usually not the case. Our conclusion is that the price of the casket should specifically be itemized separately from other merchandise and services.

Itemized price disclosures will serve to give consumers the prices of the components of a funeral and will be more useful to consumers as a shopping tool if cost disclosures can be received prior to signing a contract. Itemized price

February 11, 1976

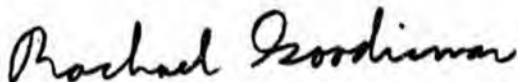
disclosures can be more economical to consumers if services and merchandise not selected can be declined. We would support a provision in the proposed bill which would allow unwanted services and merchandise to be declined for which consumers could then receive a commensurate discount. Such itemized information will allow prospective customers to make price/value considerations for the services and merchandise they choose, if coupled with the right to decline unwanted components.

We believe that the category divisions described in subsection 45.45.120 of proposed bill 509 are too broad to prevent tying arrangements as described above and will not be nearly as helpful to consumers as more complete price disclosures. "Consumers" includes those who want to comparison shop "before need" as well as to understand what they bought "at need."

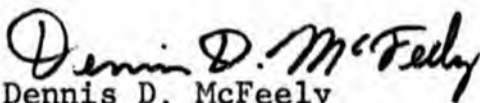
While it is commendatory for the state of Alaska to pass consumer protection legislation, this office feels that each request for new licensing should be very closely examined to determine whether it, on balance, really serves the public interest in comparison with other less restrictive ways for achieving the same, or substantially the same, purpose. No profession or group has a right to be licensed by the state in order to enhance its dignity or prestige. Since licensing is, as stated, inherently restrictive in nature and tends to reduce competition, an element fundamental to the American marketplace, the hard questions should be asked in each instance when licensing is proposed.

The foregoing expresses the views of the Seattle Regional Office and not necessarily those of the Federal Trade Commission itself.

Sincerely yours,



Rachel Goodisman  
Consumer Protection Specialist



Dennis D. McFeely  
Attorney

Enclosure

**FEDERAL TRADE COMMISSION**

[ 16 CFR Part 453 ]

**FUNERAL INDUSTRY PRACTICES**

**Trade Regulation Proceeding**

Notice of Proceeding, Proposed Trade Regulation Rule, Statement of Reason for Proposed Rule, Invitation to Propose Issues of Fact for Consideration in Public Hearings, and Invitation to Comment on Proposed Rule.

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended 15 U.S.C. 41, et seq., the provisions of Part I, Subpart B of the Commission's procedures and rules of practice, 16 CFR 1.7, et seq., and 553 of Subchapter II, Chapter 5, Title 5 of the U.S. Code (Administrative Procedure), has initiated a proceeding for the promulgation of a Trade Regulation Rule concerning Funeral Industry Practices.

Accordingly, the Commission proposes the following Trade Regulation Rule and to amend subchapter D, Trade Regulation Rules, Chapter 1 of 16 CFR by adding a new Part 453 as follows:

**PART 453—FUNERAL INDUSTRY PRACTICES**

- Sec.
- 453.1 Definitions.
- 453.2 Exploitative practices.
- 453.3 Misrepresentations.
- 453.4 Merchandise and service selection.
- 453.5 Price disclosures.
- 453.6 Interference with the market.
- 453.7 Retention of documents.

**AUTHORITY:** The provision of this Part 453 are issued under 38 Stat. 717, as amended (15 U.S.C. 41, et seq.).

**§ 453.1 Definitions.**

For the purpose of this part, the following terms and definitions shall apply:

(a) *Funeral service industry member.* A "funeral service industry member" is any person, partnership or corporation, or any employee or agent thereof,

engaged in the business of selling or offering for sale, directly to the public, funeral services and merchandise; of preparing deceased human bodies for burial, cremation or other final disposition; or of conducting or arranging funerals.

(b) *Funeral services.* "Funeral services" consist of services performed incident to: (1) the care and preparation of deceased human bodies for burial, cremation or other final disposition; (2) the arrangement, supervision or conducting of the funeral ceremony and the final disposition of the deceased including, but not limited to, transporting the remains, securing necessary permits, embalming, arranging for death notices and other funeral-related items.

(c) *Funeral merchandise.* "Funeral merchandise" consists of articles and supplies sold or offered for sale, directly to the public, or used by funeral directors incident to: (1) the care and preparation of deceased human bodies for burial, cremation or other final disposition; (2) the arrangement, supervision or conducting of the funeral ceremony.

(d) *Person, partnership or corporation.* The term "person, partnership or corporation" refers to any party, other than a state, over which the Federal Trade Commission has jurisdiction, and may include in appropriate circumstances, but is not limited to, individuals, groups, organizations, trade associations, and professional societies.

(e) *Customer.* A "customer" is any person, association, or other entity who purchases, attempts to purchase or seeks information regarding possible future purchase of funeral services and/or merchandise, without intention of resale.

(f) *Immediate cremation.* An "immediate cremation" is a disposition of human remains which includes reduction of the remains by a heating process and which does not involve formal viewing or a prior funeral ceremony with the body present.

(g) *Outer interment receptacle.* An "outer interment receptacle" is any container or enclosure which is placed in the grave around the casket to protect the casket and/or to prevent the collapse of the grave including, but not limited to, receptacles commonly known as burial vaults, grave boxes or grave liners.

(h) *Casket.* A "casket" is a rigid container which is designed for the encasement and burial of human remains and which is usually constructed of wood or metal, ornamented, and lined with fabric.

(i) *Suitable container.* A "suitable container" is any receptacle or enclosure other than a casket which is of sufficient strength to be used to hold and transport human remains including, but not limited to, cardboard, pressed-wood or composition containers and canvas or opaque polyethylene pouches.

(j) *Crematory.* "Crematory" refers to an establishment which reduces human remains by a heating process.

(k) *Defacing.* "Defacing" consists of deliberate efforts to make merchandise

commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice for any funeral service industry member:

(a) *Display of least expensive caskets.* Whose establishment contains one or more casket selection rooms, to fail to display therein the three least expensive caskets offered for sale for use in adult funeral services, in the same general manner as other caskets are displayed. *Provided*, That if fewer than twelve (12) caskets are displayed, only one of the three least expensive caskets must be displayed.

(b) *Availability of other colored caskets.* To fail to inform customers, by means of a prominently displayed written notice, that displayed caskets can be obtained in other colors, or to fail to provide caskets in other colors to customers who so request, *provided*, That such caskets in other colors can be obtained from regular commercial suppliers upon twelve (12) hours notice.

(c) *Interference with customer's selection of offered items.* (1) to represent, directly or indirectly, orally, visually, or in writing, that any funeral merchandise or service is offered for sale when such is not a bona fide offer to sell said product or service;

(2) To make representations, directly or indirectly, orally, visually, or in writing, purporting to offer any funeral merchandise or service for sale when the purpose of the representation is not to sell the offered merchandise or service but to obtain leads or prospects for the sale of other funeral merchandise and/or services at higher prices;

(3) To discourage the purchase, by customers, of any funeral merchandise or service which is advertised or offered for sale by:

(i) Disparaging the quality, appearance or tastefulness of any such merchandise or service which is advertised or offered for sale;

(ii) Suggesting that such merchandise or service is not readily available or can only be obtained after an appreciable delay, when such is not the case;

(iii) Defacing any merchandise carried for sale; or

(4) To use any policy, sales plan, or method of compensation for salespersons which has the effect, in any manner, or discouraging salespersons from selling, or has the effect of penalizing salespersons for selling, any funeral merchandise or service which is advertised or offered for sale.

(d) *Disparagement of concern for price.* To suggest, directly or by implication, to any customer in any manner that the customer's expressed concern about prices, inexpensive services or merchandise or an expressed desire to save money by the customer is improper, inappropriate or indicative of a lack of respect or affection for the deceased.

§ 453.5 Price disclosures.

In connection with the sale or offering for sale of funeral services and/or merchandise to the public, in or affecting

commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice for any funeral service industry member:

(a) *Price information over telephone.* To fail to provide by telephone, upon customer request, accurate information regarding the funeral service industry member's retail prices of funeral products and services, including caskets, vaults, basic services and cremation services, if offered.

(b) *Casket price list.* (1) To fail to furnish to each customer, before discussion about caskets offered for sale or the customer's selection of a casket, a printed or typewritten document which lists, in ascending order of price, the prices of all caskets available for purchase without requiring special ordering by the customer, together with sufficient information about each casket to enable the customer to locate and identify a casket among the others on display. The document shall also bear an effective date for prices listed thereon.

(2) To fail to include, on the printed or written list required by paragraph (b) (1) of this section in clearly legible type, the following heading:

CASKET PRICE LIST FOR (NAME OF FUNERAL HOME)

Listed below, in order, are the prices of the caskets offered by this funeral home together with information to help you locate and identify particular caskets which are displayed. If you are interested in any of the caskets which are included on this list but are not on display, please inquire.

(3) To represent to a customer that a casket on the list is not available, when such is not the case.

(c) *Display of casket prices.* (1) to fail to display prominently in or on the caskets on display the price of such caskets by card, sign or other means.

(2) To fail to display prominently prices on any casket photographs shown to customers and on any caskets shown to customers in display rooms maintained by casket manufacturers or wholesalers.

(d) *Vault disclosure and price list.* (1) to fail to furnish to customers, at the time they are shown or informed as to the availability of outer interment receptacles, before such a customer has made his or her selection, the following printed or typewritten notice:

Some cemeteries require that an outer enclosure be placed around the casket in the grave, while others do not. Where such a requirement exists, it can usually be satisfied by either a burial vault or a grave liner, which is usually less expensive than a burial vault. Outer interment receptacles are often sold by cemeteries as well as by funeral homes. Before selecting any other enclosure you may want to determine any applicable cemetery requirements as well as the offerings of your cemetery and funeral home.

(2) To fail to include on the printed statement required by paragraph (d) (1) of this section, in clearly legible type, the price for each outer interment receptacle available from the funeral home for purchase by the customer, together with a brief description of each enclosure, and

an effective date for the prices specified.

(e) *Price list.* (1) To fail to furnish to each customer who inquires in person about the arrangement, purchase, and/or prices of funeral goods or services, prior to any agreement on such arrangement or selection by the customer or to any customer who by telephone or letter requests written price information, a printed or typewritten price list, which the customer may retain, containing the prices (either the retail charge or the price per hour, mile or other unit of computation) for at least each of the following items:

(i) Transfer of remains to funeral home.

(ii) Embalming.

(iii) Use of facilities for viewing.

(iv) Use of facilities for funeral service.

(v) Casket (a notation that a separate casket price list will be provided before any sales presentation for caskets is made).

(vi) Hearse.

(vii) Limousine.

(viii) Services of funeral director and staff.

(ix) Outer interment receptacles (if outer interment receptacles are sold, a notation that a separate outer interment receptacle price list will be provided before any sales presentation for such items is made).

*Provided, however*, that the list may include total or package prices for any standard adult funeral service package under \$..... The items covered by any such single quoted price shall be specified, but need not be separately priced. However, if a customer wishes to decline one or more items, the price shall be reduced by at least the amount of savings accruing to the funeral home from the declination.

(2) To fail to include, on the printed price list specified in paragraph (e) (1) of this section, directly above the price listings, in clearly legible type, the following:

(i) The name, address, and telephone number of the funeral home;

(ii) An effective date for the prices listed thereon;

(iii) The statement "You are free to select only those items of service and merchandise you desire. You will be charged for only those items you select. In some instances, depending on the circumstances of death and/or the type of service you select, some additional services or merchandise may become necessary. If you are required to pay for certain services or merchandise you have not selected, because they are required by other factors, an explanation shall be provided in writing by the funeral director on the memorandum of funeral services selected which you will receive."

(d) Memorandum of funeral service selected. (1) To fail to furnish to each customer making funeral arrangements, on a written memorandum of the funeral service selected, a list, in at least the following categories, of the services and merchandise selected by the customer together with a price for each item:

Misrepresenting the preservative capabilities of embalming, caskets, or outer interment receptacles.

Failing to display inexpensive caskets.

Displaying inexpensive caskets in a manner which is calculated to discourage their selection by customers.

Pressuring customers into purchasing high-priced merchandise and services.

Disparagement of inexpensive merchandise.

Sales plans or commission schemes which penalize salespersons for selling inexpensive funerals while rewarding them for high-priced sales.

Disparaging a consumer's interest in price considerations.

Refusing to provide price information over the telephone.

Arranging the casket selection room so as to confuse customers and lead them to purchase more expensive caskets.

Displaying caskets without prices.

Misleading customers about the necessity for burial vaults and failing to disclose the availability of less expensive grave liners.

Tying together funeral products and services and refusing to quote separate prices on component items or give discounts for defined items.

Restricting the availability of low-cost funerals, pre-need plans, alternative methods of disposition, and memorial society programs.

Limiting the availability of price information through restrictions on price advertising.

The Commission particularly desires analysis and comment based on specific data and experience.

2. Is it necessary for the Commission to specify a maximum price or formula for the cremation container required by § 453.2(c), to prevent funeral directors from charging excessive prices for such alternative containers?

3. To what extent do existing state and local laws permitting the practices otherwise declared unfair or deceptive by § 453.2(a) and § 453.2(b) of the proposed rule (i.e., embalming without permission, obtaining custody of remains without authorization, refusing to release remains to the deceased's family) protect the public health, safety or welfare or serve other legitimate state interests? Should any of these requirements of state or local law be preempted?

4. Does § 453.3(d) abridge constitutionally protected speech? If so, by what

means can the protective purposes of the provision be attained constitutionally?

5. Are the funeral price disclosure requirements of § 453.5 necessitated by inadequate availability to consumers of price information? If so, is this inadequate availability the result of funeral directors' withholding of price information? Would the price disclosures required by § 453.5 help consumers make better-informed purchase decisions?

6. Will mandatory itemization of prices of funeral merchandise and services, as required by § 453.5(e) of the proposed rule, benefit consumers in their selection of funeral merchandise and services? Will the itemized memorandum of funeral merchandise and services selected, as required by § 453.5(f) of the proposed rule, benefit consumers? Please be specific. Are the categories of items which must be enumerated by § 453.5 (e) and (f) useful and appropriate? If not, what changes should be made?

7. Should the offering of low-cost package funerals be encouraged? Would itemization preclude the offering of low-cost funerals? Would exempting the least expensive funerals from the itemization requirements of § 453.5 (e) and (f) prevent such a result? If so, what is a reasonable dollar cut-off point for exempting such funerals from the itemization requirements of § 453.5 (e) and (f)?

8. Are there additional funeral industry practices which should be addressed by this rule?

9. Should the coverage of this rule be expanded to include unfair or deceptive practices used by funeral merchandise manufacturers, cemeteries or other allied industries? What specific practices should be addressed, and in what way are they unfair or deceptive?

10. What will be the impact of the rule on consumers?

11. What costs, economic or otherwise, to funeral homes, especially those which are small businesses, would result from implementation of the proposed rule, and how could such costs be minimized?

12. To what extent do the circumstances of the funeral transaction place the consumer in a more vulnerable posi-

tion than in other consumer transactions?

#### INVITATION TO PROPOSE ISSUES OF FACT FOR CONSIDERATION IN PUBLIC HEARINGS

All interested persons are hereby given notice of opportunity to propose any disputed issues of fact. The Commission or its duly authorized presiding official, shall, after reviewing submissions hereunder, identify any such issues in a Notice which will be published in the Federal Register. Such issues shall be considered in accordance with Section 18(c) of the Federal Trade Commission Act as amended by Public Law 93-637, and rules promulgated thereunder. Proposals shall be accepted until October 28, 1975, by the Special Assistant Director for Rulemaking, Federal Trade Commission, Washington, D.C. 20580. A proposal should be identified as a "Proposal Identifying Issues of Fact—Funeral Industry Practices Rule", and furnished, when feasible and not burdensome, in five copies. The times and places of public hearings will be set forth in a later Notice which will be published in the FEDERAL REGISTER.

#### INVITATION TO COMMENT ON THE PROPOSED RULES

All interested persons are hereby notified that they may also submit to the Special Assistant Director for Rulemaking, Federal Trade Commission, Washington, D.C. 20580, data, views or arguments on any issue of fact, law, or policy which may have some bearing upon the proposed rule. Written comments, other than proposed issues of fact, will be accepted until forty-five days before commencement of public hearings, but at least until October 28, 1975. To assure prompt consideration of a comment, it should be identified as a "Funeral Industry Practices Rule Comment", and furnished, when feasible and not burdensome, in five copies.

Issued: August 20, 1975

By direction of the Commission,

VIRGINIA M. HARDING,  
Acting Secretary.

[FR Doc. 75-22902 Filed 8-20-75; 8-15 am]

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

JOINT COMMERCE COMMITTEE  
HEARING AGENDA FOR FEBRUARY 6, 1976

AND

SUMMARY REPORT OF THE INTERIM COMMITTEE  
ON MORTUARY SCIENCE

SENATOR ED WILLIS  
CHAIRMAN INTERIM COMMITTEE

REPRESENTATIVE BOB BRADLEY  
CHAIRMAN JOINT COMMERCE COMMITTEE

AGENDA

JOINT COMMERCE COMMITTEE'S  
HEARING ON MORTUARY SCIENCE  
FEBRUARY 6, 1976

- 8:00 a.m. - Introduction and opening by Representative  
Bob Bradley
- 8:10 a.m. - Summary of pending legislation by  
Bill Perrier
- 8:30 a.m. - Testimony from the public in the following  
order:
1. Individuals from out-of-town,  
as called by the Chair
  2. All remaining individuals, as  
called by the Chair

(All questions of persons giving testimony will come  
from the Joint Committees.  
Any questions from the floor will be in writing and  
will be submitted to the Joint Committee Chairman  
for response)

STATE OF ALASKA  
THE LEGISLATURE

POUCH V, STATE CAPITOL  
JUNEAU, ALASKA 99811  
465-3800

LEGISLATIVE AFFAIRS AGENCY

January 16, 1976

Senator Genie Chance  
Capital Building  
Pouch V  
Juneau, AK 99801

Re: Final Report of the Interim Committee on Mortuary  
Science

Dear Senator Chance:

The assignment of the Interim Committee on Mortuary Science was to refine the occupational licensing bill (HB 509) and after consideration if the need for an occupational licensing statute appeared, to prepare a committee substitute. The committee met on September 27, December 2, and December 19. Prior to these meetings a suggested revision was prepared and distributed to all the persons currently licensed to practice embalming in this state and to other interested groups. Notices of the workshop meetings were sent to each of these groups. There was substantial attendance from the profession at each of the first two meetings.

As a result of these, a proposed committee substitute for HB 509 has been prepared and a copy of the bill is attached.

Essentially the bill adopts a dual licensing system; that is, licenses are issued separately for the practice of funeral directing and for the practice of embalming. The administration of the occupational licensing was put in the Department of Commerce. The committee's feelings were that an occupational licensing board would not be a good solution and that the Department of Commerce was a logical alternative.

The proposed substitute also sets substantial educational qualifications as a prerequisite to licensing. Under existing law, no qualifications exist. For this reason a "grandfather" provision was inserted which allows persons who are currently licensed as an embalmer to obtain a license as an embalmer under the new act and a person who has actively practiced as a funeral director to obtain a license as a funeral director under the new act without requiring that the newly imposed qualifications be met.

A substantial area covered in the act was a regulation of pre-need sales. The primary thing this regulation does is require that funds received from pre-need sales be deposited in an account in the name of the purchaser and that both the principal and interest in this account remain the property of the purchaser until time of need.

Since pre-need sales are made by other than professionals, and since an enforcement mechanism is essential, this section was made part of the consumer protection statute.

In addition, the bill contains a disclosure of cost section which requires that in broad categories the cost of the services be disclosed to the purchaser. The bill was prepared as a proposed committee substitute for Commerce Committee since the bill was currently lodged in Commerce Committee. The committee strongly recommends that both House and Senate Commerce Committees, preferably jointly, hold other hearings on this bill. During the hearing the committee indicated to the interested parties that if such a hearing were held, notice would be given to these parties.

Very truly yours,

Edward C. Willis  
Chairman

ECW:bh

Attachment

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 or restore a dead human  
20 body, take charge of the remains of a person dead of a communicable  
21 disease or prepare for transportation by common carrier a human body  
22 dead of a communicable disease.

23 (b) A person who has actively practiced embalming in the state for  
24 at least one year and holds a valid embalmer's license issued in this  
25 state (before the effective date of this chapter) shall be granted a  
26 license to practice embalming and may renew the license annually. A per-  
27 son who has actively practiced in the state as a funeral director for a  
28 period of at least one year shall be granted a license to practice as a  
29 funeral director and may renew his license annually.

*Not grandfathered in to Am. Dir.?*

1 (c) In areas of the state not served by a person licensed to prac-  
2 tice mortuary science, the department may issue a permit to an unlicensed  
3 person, on an annual basis, for the care and disposition of dead human  
4 bodies for compensation. This person must have taken and passed an  
5 examination conducted by the department in the subjects set out in sec.  
6 60(a)(9) and (10) of this chapter. This permit otherwise in no way  
7 licenses the holder to practice mortuary science.

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

14 Sec. 08.42.040. APPLICATION FOR LICENSE TO PRACTICE MORTUARY  
15 SCIENCE. The applicant for an examination for a license to practice as  
16 an embalmer or as a funeral director shall make application to the  
17 department in writing on a form provided by the department.

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

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

22 (2) have not been convicted of a felony involving moral tur-  
23 pitude;

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

28 (4) have graduated from an accredited school or college of  
29 mortuary science;

? Could unduly restrict entry?  
"natural law of competition"

1 (5) have taken and passed the examination for a license to  
2 practice embalming conducted by the department;

3 (6) have completed at least one year of apprenticeship as a  
4 resident trainee under an embalmer licensed to practice embalming in this  
5 state.

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

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

9 (2) have not been convicted of a felony involving moral  
10 turpitude;

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

15 (4) have taken and passed the examination for a license to  
16 practice funeral directing conducted by the department.

17 (5) have completed at least one year of apprenticeship as a  
18 trainee under a person licensed to practice funeral directing in this  
19 state.

20 Sec. 08.42.060. SCOPE AND CONDUCT OF EXAMINATION FOR A LICENSE TO  
21 PRACTICE MORTUARY SCIENCE. (a) The department shall examine applicants  
22 for an embalmer's license on the following subjects: (1) theory and  
23 practice of embalming, (2) anatomy, (3) pathology, (4) bacteriology,  
24 (5) hygiene (including sanitation and public health), (6) chemistry  
25 (including toxicology), (7) restorative arts (including plastic surgery  
26 and demi-surgery), (8) funeral service arts and sciences, and funeral  
27 service administration (including accounting, funeral law, psychology,  
28 funeral principles, directing and management), (9) Alaska vital statis-  
29 tics law, (10) the provisions of this chapter, and the regulations pro-

1 mulgated by the department under this chapter. The department shall  
2 examine applicants for a funeral director's license on the subjects in-  
3 cluded in (8), (9) and (10) of this subsection. The department may use  
4 the examination provided by the Conference of Funeral Service Examining  
5 Boards of the United States, Inc. where it is applicable to the subjects  
6 in this section.

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

10 (c) If an applicant receives an average grade of at least 75 per  
11 cent, but receives a grade of less than 70 per cent in three or fewer  
12 individual subjects, he may be reexamined only in those subjects. He is  
13 entitled to reexamination on individual subjects only once. A grade  
14 of at least 70 per cent in each of the subjects in which the applicant  
15 is reexamined is sufficient to constitute a passing grade.

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

18 Sec. 08.42.070. RECIPROcity. (a) The department may recognize  
19 the license issued to an embalmer or funeral director from another state  
20 if the applicant for recognition of his license

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

24 (2) furnishes proof satisfactory to the department that he is  
25 over 18 years of age, has not been convicted of a felony involving moral  
26 turpitude, that he is licensed in another state, and that he has practiced  
27 mortuary science in another state for at least one year prior to the  
28 date of application;

29 (3) takes and passes the examination provided for in (b) of

1 this section.

2 (b) The department shall examine each applicant under this section  
3 on the following subjects: Alaska vital statistics law, the provisions  
4 of this chapter, and the regulations promulgated by the department under  
5 this chapter.

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

9 Sec. 08.42.090. GROUNDS FOR REFUSAL TO ISSUE OR RENEW LICENSES  
10 AND SUSPENSION OR REVOCATION OF LICENSES. When the department has  
11 reason to believe that an applicant or licensee has been guilty of any  
12 of the following acts or omissions, it is the duty of the department to  
13 conduct an investigation, and the department may, after proper hearing  
14 and notice in accordance with the Administrative Procedure Act (AS 44.-  
15 62), refuse to issue, refuse to renew, or may suspend or revoke, a  
16 license upon a finding by the department of any of the following acts or  
17 omissions:

- 18 (1) fraud or misrepresentation in obtaining a license;  
19 (2) misrepresentation or fraud in the practice of mortuary  
20 science;  
21 (3) false or misleading advertising;  
22 (4) aiding or abetting an unlicensed person to practice  
23 mortuary science;  
24 (5) using a casket or part of a casket which has previously  
25 been used as a receptacle for the burial or other final disposition of  
26 another dead human body;  
27 (6) refusing to promptly surrender the custody of a dead  
28 human body upon the order of the person lawfully entitled to custody;  
29 (7) using profane, indecent or obscene language within the

? (7) using profane, indecent or obscene language within the  
*Why grounds for medical action?*

1 immediate hearing of relatives of a deceased whose body has not yet  
2 been interred or otherwise disposed of;

3 (8) solicitation of a dead human body by the licensee, his  
4 agents, servants or employees, whether solicitation occurs after death,  
5 or while death is impending but this does not prohibit general adver-  
6 tising;

7 *✓ (9) <sup>paid/replanned?</sup> employment by the licensee of any person for the purpose*  
8 of calling upon individuals or institutions to influence them to turn  
9 over a dead human body to a particular licensee;

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

12 (11) solicitation or acceptance by a licensee of any payment  
13 for recommending or causing a dead human body to be disposed of in a  
14 specific crematory, mausoleum or cemetery;

15 (12) violation of a state law or regulation or municipal  
16 ordinance or regulation affecting the disposition of a dead human body,  
17 or contracts relating to the disposition of a dead human body;

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

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

20 — Sec. 08.42.100. FUNERAL ESTABLISHMENT PERMIT. After the effec-  
21 tive date of this chapter, no person may conduct, maintain, manage, or  
22 operate a funeral establishment unless a permit for each establishment  
23 has been issued by the department and is conspicuously displayed in the  
24 funeral establishment. Each permit shall be valid only for one speci-  
25 fic location, and separate permits shall be required of two or more  
26 firms operating from the same funeral establishment. A permit to oper-  
27 ate a funeral establishment shall be issued by the department upon  
28 application for the permit on a form provided by the department. All  
29 permits shall expire on the 31st day of December of each year and may

1 be renewed for successive one-year terms. Violation of a provision of  
2 sec. 90 of this chapter by a person operating a funeral establishment  
3 or with his knowledge or consent by an employee shall be considered  
4 sufficient cause for suspension or revocation of the funeral establish-  
5 ment permit.

6 Sec. 08.42.110. DEFINITIONS. In this chapter

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

8 (2) "funeral establishment" means every place devoted to or  
9 used in the care and preparation for disposition of dead human bodies,  
10 or as the office or place for carrying on the profession of mortuary  
11 science, or for any combination of these;

12 (3) "mortuary science" means embalming dead human bodies,  
13 taking charge of the remains of those dead of a communicable disease,  
14 or preparing dead human bodies for shipment, directing or supervising  
15 funerals, preparing dead human bodies for burial by means other than  
16 embalming, disposing of dead human bodies, or operating a place for the  
17 care or disposition of dead human bodies.

18 (4) "resident trainee" means a person who has met the quali-  
19 fications set out in sec. 50(a)(1) - (5) of this chapter and is engaged  
20 in learning the practice of embalming under the direction and control  
21 of a person properly licensed to practice embalming, or a person who  
22 has met the qualifications set out in sec. 50(b)(1) - (4) of this  
23 chapter and is engaged in learning the practice of funeral directing  
24 under the direction and control of a person properly licensed to prac-  
25 tice funeral directing.

26 Sec. 08.42.120. VIOLATIONS; PENALTIES. A person who violates or  
27 aids a person in a violation of this chapter is guilty of a misdemeanor  
28 and upon conviction is punishable by imprisonment for not more than one  
29 year or by a fine of not more than \$5,000.

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

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

5                           ARTICLE 4. FUNERALS.

6           Sec. 45.45.120. DISCLOSURE OF COSTS. Every person performing  
7 services or providing merchandise relating to the disposition of a dead  
8 human body shall give to the person arranging for the disposition at the  
9 time the arrangements are completed and before the time of rendering the  
10 service or providing the merchandise a written statement showing, to  
11 the extent then reasonably ascertainable,

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

13                   (2) the price of each supplemental item of service or  
14 merchandise;

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

18                   (4) the method of payment.

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

20                   (22) making or entering into a contract relating to the  
21 disposition of a body upon death whereby certain personal property will  
22 be furnished or the professional services of a funeral director or  
23 embalmer will be furnished, unless the person receiving money under the  
24 contract deposits the money, within 15 days of its receipt, in a trust  
25 account in a financial institution whose deposits are insured by an  
26 instrumentality of the federal government as a separate account in the  
27 name of the person benefited with a provision that should the money  
28 deposited and any accrued interest not be used for the purposes intended  
29 on the death of the person for whose benefit the contract was made all

1 money in the account shall become part of his estate. Upon demand by  
2 the person for whose benefit the contract was made, all money in the  
3 trust account, including accrued interest, shall be paid to him and the  
4 contract shall be canceled.

5 \* Sec. 4. AS 08.44.010 is repealed.

6 \* Sec. 5. This Act takes effect January 1, 1977.

**SUCCESSFUL  
FUNERAL  
SERVICE  
PRACTICE**

Edited by **HOWARD C. RAETHER**

*Executive Secretary*

*National Funeral Directors Association*

PRENTICE-HALL, INC.

Englewood Cliffs, N. J.



#### ABOUT THE EDITOR

Howard C. Raether holds a Ph.B. and J.D. from Marquette University in Milwaukee, Wisconsin. He has been involved in funeral service for thirty years and Executive Secretary of the National Funeral Directors Association since 1948. He was consultant to the United States Government Department of Transportation, National Highway Safety Bureau, and is on a committee serving the Department of Health, Education and Welfare. He was given the highest honor the U.S. Army makes to a civilian—the Distinguished Civilian Service Award. He also is a member of the National Council on Tissue Transplantation and Utilization. He is editor of the NFDA monthly journal, *The Director*, and creator of the *Reference Manual* for funeral directors. In addition his recent writings include, as co-author, *A Compendium of Basic Information on Funeral Establishments and Funeral Establishment Employees and The Fair Labor Standards Act, as Amended* (1968); *Organ and Tissue Transplantation and Body Donation* (1970); and *Personnel Guidance Manual for Funeral Service Practice* (1970).

## THE PREARRANGING AND PREFINANCING OF FUNERALS

*Thomas H. Clark  
and  
Howard C. Raether*

### A Brief Background

In the chapter "The Law and a Funeral Service Practice" reference is made to changes in the law to permit an individual during his lifetime to take steps to get the kind of funeral he desires and to determine the method and place of final disposition of his body.

There have been developments toward this new concept for many years, but it has been only since the end of World War II that a significant impact of the move was felt. It was not until 1952 that the National Funeral Directors Association felt the situation warranted a policy statement which concluded with the recommendation which has led to laws controlling and regulating prefinanced funeral contracts being enacted in a large majority of the states.

### *The Sociology of Life and Death*

The funerals for most people are selected at the time of death. Unless one knows when, where and under what circumstances he is going to die, it is difficult for him to prearrange his own funeral, either alone or with a member of his family, and feel that it will be as planned.

There are few people who are sure things won't change sufficiently to upset prearranged plans. And in cases when they are changed and are different, problems are often created instead of being solved.

A national study showed that in 1967 less than 1% of all funerals conducted, except in the Pacific and Mountain regions, were prearranged. It also revealed that from 25% to 33% (depending on the region) of the funerals conducted in 1967 that were prearranged were changed by the survivors. However, about 50% of funeral directors said at that time that prearrangements were on the increase.

Why?

There are those who feel, as is pointed out elsewhere herein, that our society is changing from a family culture to a generation culture. Families are being separated by age, by distance, by knowledge and by philosophy.

Sometimes an elder member, especially if living alone, wants to make sure he or she gets the kind of funeral he desires. Often a surviving spouse will make arrangements for the same kind of funeral that was just conducted for the husband or wife.

Sometimes differences in a family are such that segments thereof feel they have to protect themselves against each other as to funeral arrangements and costs.

Sometimes cost is the primary reason for the prearrangement and prefinancing. There are those who want a moderate to expensive service and who want to be sure they get it. Often prearranging is done in an attempt to keep costs down, to indicate to the family or other survivors that they should not go "overboard" in the prearranger's opinion.

Finally, there are those who prearrange and prefinance their own funeral because they want a specific type of service involving a particular church and/or clergyman and/or funeral director and/or any one of many other reasons trivial to some but important to the person doing the prearranging.

Prearrangements are a part of just about every funeral director's files and practice. They must be recognized as an aspect of present-day funeral service, and important facets of the overall picture must be understood.

#### *Psychological Aspects*

Some who have studied death, grief and bereavement say that following death there is a therapy in doing things and in having responsibilities. When most of the details of a funeral have been worked out and perhaps paid for by the deceased, this could leave the survivors with little to do in the actual at-need planning and decision making.

Equally important, survivors and the community may want to do some last thing or things in honor and/or respect and/or in recognition of the deceased. There may be the feeling this shouldn't or can't be done when the person has made his own arrangements. Or, there may be some things that the deceased has arranged which might affect the sensibilities of a survivor, or survivors, and bother them for years, but they won't suggest a change lest they "offend" the departed and his memory.

#### *The Promotions of the Fifties*

The idea of the prearranged or prefinanced funeral was not first conceived in the early fifties, but it was then that it became the basis for promotions to sell the idea of prearranging and prefinancing funerals.

Some of these promotions were built around package deals covering the funeral

service, funeral merchandise, flowers, burial vault, cemetery lot, opening and closing of the grave, and the grave marker.

Sales crews were trained and often blanketed an area pushing door bells and at times offering an item of merchandise free to get into the door to make their presentation.

In this presentation the alleged high cost of dying, peace of mind, and a special purchase price of the prearranged service and merchandise were usually stressed.

These developments led to two separate actions which although not related complemented each other.

The Association of Better Business Bureaus, now the Council of Better Business Bureaus, came out with three publications on the subject in seven years. In the same period many states enacted laws to control the prearranging and prefinancing of funerals.

The ABBBI publications are:

1. *Facts Every Family Should Know About Funerals and Interments.* Some paragraphs were devoted to package deals therein.
2. *Questions You Should Ask About Cemetery Lot Promotions.* Since many promotions—pre-need and otherwise—were cemetery initiated, this leaflet was prepared.
3. *Facts You Should Know. . . Questions You Should Ask. . . The Prearrangement and Prefinancing of Funerals.*

All three of these publications are kept current and their widespread distribution continues.

Because the last-mentioned booklet is pertinent to this chapter, the following excerpts from it are quoted:

In recent years a growing number of individuals, firms and groups have sought to stimulate public interest in prearranged, prefinanced funeral plans. Among them have been sales organizations and promoters outside the funeral profession who seek to interpose themselves as third parties in the traditional personal and confidential relationship between the funeral director and the survivors of the deceased. Grievous disappointments and severe financial losses have resulted from some unsound promotional schemes foisted on a credulous public by armies of high-pressure salesmen.

\* \* \*

Sometimes, belief that a funeral has been fully prearranged and paid for can create a false sense of security for survivors.

\* \* \*

The simplest way to prearrange a funeral is to leave written instructions for those who will make the arrangements. If advance payments are involved under a contract which does not permit the individual to alter the prearrangements to meet changing circumstances, the possibilities. . . can lead to serious problems. What assurance do you have that the funds deposited will be intact when the time for their disbursement arrives or that they will be available to you if you want them? Who will receive the interest on your money during the many years which may intervene between the date of deposit and the date of death? Will such interest revert to you? Will you be better off by depositing the money in your own bank where you will get the benefit of all interest earned? You also are free to withdraw your funds in an emergency.

\* \* \*

Savir claims and promises of "bargain" rates are stressed in selling many of these promotional plans. Weigh carefully any representation that a "plan" will give you adequate services for less than you can obtain them from other funeral directors against the fact that the sales commissions and costs must be added to the cost of the funeral under the plan.

The material in these excerpts pinpoints the problem for many of the public.

### The State Pre-Need Trust Laws

The questions which the Association of Better Business Bureaus was asking in its booklet on prefinanced funerals were often asked across the country during the fifties and sixties as many states considered legislation to regulate and control the contracts as to such funerals. The chart which is Appendix X gives the names of all the states within the continental limits of the United States. It shows the majority of them with a statute which in some way regulates these contracts. It also gives the basics of each state's statute.

The breakdown of state laws and/or opinions shows, as the Better Business Bureaus point out, that most of these statutes require that all money, or a major share of all monies, paid in advance for funeral merchandise or services, and accruing interest thereon, must be deposited in trust with an approved financial institution until the need for disbursement arises. In most of these states monies paid in advance for burial vaults must also be entrusted and there have been opinions of attorney generals and of state supreme courts upholding this requirement. In some states amounts paid for markers and mausoleum space sold in advance of death must also be placed in trust.

A West Virginia statute was held to be unconstitutional and a new law passed since. The constitutionality of the Arkansas, Idaho, Iowa, Illinois, Kansas, Utah and Texas statutes has been upheld by the supreme courts of those states.

Some promoting prefinanced funerals object to putting in trust or reserve 100% of monies paid in advance for funeral merchandise and services. In the Illinois case one of the suggestions made was that a lesser amount be deposited. The supreme court of the state in its decision points out that the plaintiff cemetery entered the "prearrangement business by choice" and that its procedures invite "regulation of a stringent nature." The matter was appealed to the Supreme Court of the United States which refused to consider the case.

### Some Present-day Thoughts About Prearranged and Prefinanced Funerals

In the previously referred to Illinois decision the supreme court of that state said:

In the long interval between full receipt of the purchase price and contract performance the opportunities for fraud are great and risk of insolvency, with consequent inability to perform, apparent.

It is doubtful whether anyone has or will doubt the validity of this statement. And in many areas there has been a slackening of pre-need promotion activity. The economics of the situation has much to do with this for reasons funeral directors know.

#### *The Plan with the Special Price*

ABBBI queries a \$795 funeral being sold in advance for \$595. In its brochure an arrangement is cited "between one sales organization and 'participating' funeral homes (in which) the latter are required to represent that a designated funeral, available to customers of the 'plan' at the 'reduced price' of \$595, is 'regularly' priced at \$795. The actual price to the company selling the plan is only \$420."

The BBB asks, "Do you believe that a funeral home can afford to sell services and merchandise honestly priced at \$795 for little more than half that amount and still make a profit?"

Supposing that there was no sales organization, could a funeral home with a plan of providing a \$795 service for \$595 come out ahead with that amount?

If this is in a state where the interest on the monies paid in advance cannot accrue to the benefit of the funeral firm, the amount paid will not increase. Even in those states where the interest can accrue, as earned, to the benefit of the funeral firm, unless the entire amount, or a sizable portion of it, is held for a long period of time, the increment is not large enough to close the gap between the "before-need" and "at-need" figures if both are realistic.

Another factor of importance is the annual increased cost of providing the service. This is especially true if the components of the funeral and a particular casket are spelled out. Few things have gone down in price or remained stable in a number of years. Therefore every cost increase decreases the actual amount available for the funeral.

Finally, if the pre-need contract was solicited by a salesman, it is estimated that 15 to 30% of the total contract price will be used to absorb sales and administration costs.

#### *Income for Federal Tax Purposes*

When a funeral is prefinanced, if the firm to whom that money is paid has constructive, permissive or actual use of the money, the money is taxable as income by the federal government for the year in which the money was received. This is true whether the amount is a partial payment or the entire prepaid price of the service.

#### **What to Do**

This chapter shows that many states have enacted laws controlling and/or regulating the contracts made in advance of need for funeral services and/or merchandise. This coupled with significant variations in the pre-need laws and the divergent opinions which exist among funeral directors warrants the following recommendations:

1. Pre-need contracts and their solicitation *are* fraught with the danger of fraud and funeral directors should avoid any contract or plan which could harm their clientele or their service or place in the community.

2. Those who wish to prearrange their own funeral or one for someone for whom they have responsibility should be able to do so.
3. When a funeral is prearranged and monies are paid in advance of need for funeral services and/or merchandise including burial vaults, *all* such monies should be deposited in a trust fund with the person or persons prearranging having the control thereof to be entitled to the earnings therefrom. Furthermore such prearranger shall have the right to terminate the contract at any time without forfeiture of any of the funds which have been paid or earnings accrued.
4. Where a contract is entered into it should be in accordance with the laws of the state in which the prearrangement is made. Some state funeral directors associations have prepared contract forms. If there is no pre-need law and/or if no form is available—the suggested wording for one is at the conclusion of this chapter. In all such contracts the funeral director should bind himself only to the kind of funeral and merchandise which will be available at the time of need for the face amount of the contract.
5. Funeral directors should carefully consider the potential negative effects and cost of allowing a third party to step between themselves and their firm and the family through the representations of a third party soliciting a pre-need program or plan which will be serviced by the funeral home when the person for whom the service was prearranged dies.
6. No funeral business should be purchased which has the liability of providing funerals which have been prefinanced in whole or in part until the purchaser of the business is sure the monies paid in advance are on hand for the funerals which will have to be provided.

It is not the intent of the writers of this chapter to discourage individuals and families from discussing funerals and perhaps making tentative plans for a funeral or funerals. This is encouraged especially when there is a family or close friends and they share in the discussion. Death is not as commonplace as it once was. Millions of people in the country today have never experienced a death and funeral of someone close to them. They don't know what is involved and they should.

There is a big difference between tentative arrangements considering survivors and formal agreements which might disregard and adversely affect the sensibilities of those who will mourn.

Where there is no family or its members are disinterested or feel specific prearrangement is good, a formal agreement in line with the following contract suggestion will not only be proper but may also be helpful.

\* \* \*

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, by and between \_\_\_\_\_, party of the first part, hereinafter sometimes referred to as "Funeral Director," and \_\_\_\_\_, party of the second part, sometimes hereinafter referred to as "Buyer."

WITNESSETH:

WHEREAS, party of the second part desires and hereby requests to enter into a contract to pro-

vide for payment for funeral merchandise and/or services in advance of death, which merchandise and/or services are to be delivered and performed subsequent to the death of \_\_\_\_\_, hereinafter referred to as Beneficiary as follows:

Professional services and casket

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, in consideration of the mutual promises, it is hereby agreed as follows:

1. Funeral Director will supply to Beneficiary out of the funds deposited by Buyer the services and/or merchandise as set forth above for the sum of \$\_\_\_\_\_, payable as follows:

\_\_\_\_\_  
\_\_\_\_\_

2. Said funds as aforesaid shall be placed with \_\_\_\_\_ hereinafter sometimes referred to as "Trustee" within ten days after receipt thereof. In the event, upon the death of Beneficiary, said funds are inadequate to provide for the services above described, then the funds shall be used by the Funeral Director to provide professional services and/or merchandise of a type as nearly similar as may be purchased with said funds at the time of Beneficiary's death.

3. Upon the death of Beneficiary, the said funds shall be released by the Trustee forthwith to the Funeral Director upon receipt of a certified copy of certificate of death or other evidence of death satisfactory to said Trustee and where required by State Law, an affidavit by the Funeral Director that the funeral services and/or merchandise which has been contracted for have been so provided and that the cost was not less than the amount on deposit. Any amount on deposit not required to pay for funeral services and/or funeral merchandise shall be returned on request to the Buyer if living, or if not living to the estate of the beneficiary.

4. Said funds shall remain on deposit with the Trustee and shall remain intact as a fund until the death of the Beneficiary, or until withdrawal by Buyer as hereinafter provided; and said funds may be withdrawn only for the full amount thereof and not in part, and said withdrawals must comply with the rules and regulations of said Trustee; provided, however, that the Buyer may, at any time upon complying with the rules and regulations of the Trustee, withdraw the funds deposited to date with the Trustee pursuant to this contract. In the event of withdrawal the Buyer shall notify the Funeral Director within twenty-four hours prior to such withdrawal, and in the event the withdrawal is completed, the Funeral Director shall be relieved from any of the obligations contained in this agreement.

5. It is mutually agreed that the said Trustee is only the repository of said funds and is not liable for the fulfillment of the contract by the Funeral Director, and upon payment over to said Funeral Director of the said funds, or repayment to Buyer, the Trustee's liability shall terminate.

6. Interest earnings which may accrue on said funeral fund shall be added to and become part of said fund.

7. Upon the death of Buyer, in the event the said funds shall exceed the amount required to provide services set forth above, any surplus shall be paid over to Beneficiary's estate (or) to \_\_\_\_\_, by the Funeral Director.

8. This Agreement shall be binding upon the heirs, administrators, executors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first above written.

## THE WHOLE-MAN TOTAL-FUNERAL CONCEPT

*Howard C. Raether  
and  
Robert C. Slater*

*Example:* John J. Jones dies of a disfiguring malignancy. He is survived by his widow, one son, two daughters, one daughter-in-law, one son-in-law and two grandchildren. At the time of his death his married daughter is less than a month from having her first child. His unmarried daughter is engaged. Her fiance is in the army on duty within the country.

During the first contact with the son who is handling arrangements tentatively awaiting final plans for the funeral, four areas of concern of the family become apparent. They are:

1. Will restoration of the father's face be such that viewing will be possible?
2. The pregnant daughter was her father's favorite. How will she hold up? To what extent should she participate in the arrangements and during the various periods of the funeral.
3. What about the son-in-law to be? Might he get an emergency leave to be at the funeral? He could be a real comfort to his future bride.
4. The two grandchildren are ages 7 years and 10 months. The boy, 7, the first grandchild of the deceased, loved his "Bompa" very much. Should he be allowed at the funeral home? Should he see the casketed body of his grandfather? Should he go to the service?

This hypothetical situation could well be a real one. It could be more complex or consist of only one or two "concern areas." It is spelled out not to present some problems and the solutions to them. Rather it is outlined to introduce what happens

daily in funeral homes and two ways of considering what the funeral home owner(s) and other licensees should know and do in this situation.

### Two Schools of Thought

There are two basic schools of thought regarding the serving of families and the role of funeral service licensees and the education necessary for them to fulfill their tasks. One is known as the whole-man-total-funeral concept. The other is the owner-manager-technician concept. A statement on how two funeral homes, one using the whole-man concept and the other the owner-manager-technician concept, might serve this family is essential to any present-day appraisal of funeral service practices.

Before spelling out this appraisal it should be made clear that this is not a discussion of the philosophies of funeral homes with a sizable number of funerals annually and those with a small volume. There are large firms with the whole-man-total-funeral concept. There are small firms with the owner-manager-technician philosophy, firms which use service companies to do some of the things involving personal contact even when the funeral-director-owner or an associate is available.

#### *The Whole-Man-Total-Funeral Concept*

In a funeral home where the whole-man-total-funeral concept prevails, after the receipt of the call on the death of John Jones the funeral-director-owner and/or manager or one of his staff would have the responsibility to follow through with the family. This licensee would provide the person-to-person professional service outlined in another chapter. He would tell of the advantages of viewing the deceased and if he did not do the restorative work to make the viewing possible, he would check on it periodically.

The person "waiting on" this family would alert the others on the staff to the condition of the pregnant daughter. Throughout the arrangements and period of the funeral he would watch for signs that would indicate the mother-to-be ought to be momentarily removed from the central scene. If need be, he might suggest calling her doctor.

This funeral director also could suggest contacting the Red Cross, or he might do it himself if the fiance asks for emergency leave and can't get it. He might also talk to the clergyman to see if he feels it important enough to call the chaplain for the fiance's army unit about the leave.

He undoubtedly would counsel with the family about the grandson's viewing the body and his part in the funeral, if any. There again he would talk to the clergyman and if the youngster knows the cleric well, he might be one of the two or three with the boy as he goes to see his "Bompa."

The whole-man-total-funeral concept makes one person licensed to practice funeral service responsible to a family to try to meet all their needs in relation to the total funeral. While there undoubtedly will be some delegation of duty and authority, the person "waiting on" the family is responsible for the funeral of the one they loved. And if the funeral home owner is not the one, he will at some time or times check with the licensee responsible and the family to see how things are coming.

### *The Owner-Manager-Technician Concept*

When the original death call is received by a funeral home administered under the owner-manager-technician concept there are variations in what might happen depending on the size and practices of the firm. But unlike the previously described concept, the same licensee will not be involved in all facets of the funeral. Rather there will be one or more persons with specialized knowledges or skills who will perform their tasks and having done so their responsibility for that "service" ends. For instance, at the time of the removal a family may ask about several matters pertaining to funeral arrangements which the specialized technician may not be able to answer, necessitating a referral to another staff person.

In some funeral homes with this concept there are persons who do the arranging, there are others who are with the family for the casket selection, there are those who only embalm, and there might be some who just direct the actual funeral service.

Most times these individual functionaries report to a central office or person. Sometimes that person is not a funeral service licensee. What complicates the situation is that anyone of these individuals will find he must act alone sometimes without support from anyone else.

Following the death of John Jones the areas of concern might become apparent to those associated with the funeral home with the owner-manager-technician concept. But those who argue for the whole-man concept—as the authors of this chapter do—say that the chances are less that they will for two reasons. First, the departmentalized or specialized services of the funeral home bring no single staff member in constant communication with the family so as to allow them a total picture of what is happening and what is needed. Second, because the family sees and makes various arrangements with two or three people, they are less likely to get sufficiently close to one of them to make some requests they might have, or to "unload" some of their feelings.

Rabbi Dr. Earl A. Grollman, who is a well-known pastoral psychologist, paraphrased an article for clergymen in the following manner: "The word *care* has its root in a word that originally meant *care*. The funeral director is someone who cares about, who takes care, and who takes care of. He is called upon to cure, to encourage as well as to console, to overcome soul-wounds. His is part of a meaningful care-taking profession."

This definition fits most funeral service licensees. But its ultimate more often than not is found in those practicing with the whole-man-total-funeral concept.

### Licensing—Education—Recruitment

It is estimated that approximately 75% of all persons licensed in funeral service hold a funeral director's and an embalmer's license, or a combination of both. There are seven states which do not license funeral directors as such. There are eleven states where there is a single license law covering both funeral directors and embalmers, or where the requirements for funeral directors include embalmer prerequisites.

The whole-man-total-funeral idea is best served when the licensee is educated *and* licensed to do all that is done or might have to be done in a funeral service practice.

The reasoning for this is valid when looking outside of funeral service and when