

**TESTIMONY OF
KIRK ROBERTS
ON BEHALF OF THE
OHIO CEMETERY ASSOCIATION
REGARDING SENATE BILL 224
BEFORE THE
SENATE GENERAL GOVERNMENT BUDGET COMMITTEE
October 19, 2021**

Chairman Peterson, Vice Chairman Wilson, Ranking Member Craig and members of the Committee, my name is Kirk Roberts. I am the President of Sherwood Memorial Gardens, Roberts Funeral Homes and American Cemetery Services in Wooster. I have worked in the cemetery industry in Ohio for thirty-three years. I am currently the Chairman of the Ohio Cemetery Dispute Resolution Commission. I have been a licensed funeral director in Ohio since 1996. Finally, I am a Past President of the Ohio Cemetery Association and currently serve on the OCA's Legislative Committee. Like Mr. Applegate, I offer my testimony today on behalf of the OCA.

The Preneed Contract Issue.

Lines 1474 through 1479 of the Bill, as they are currently written, could make it impossible for not-for-profit cemeteries to sell funeral goods on a preneed basis and is wrongful for numerous reasons including the following:

1. The proposed language itself is disingenuous. The OCA knows of no cemetery that sells any funeral goods, on a preneed basis, pursuant to a "preneed funeral contract". As stated above, they do so pursuant to preneed cemetery merchandise and services contract. Please note that the offending provision would apply to "a cemetery company or association *that* sells funeral goods, including caskets, pursuant to a preneed funeral contract". We believe that the offending language is simply part of continuing effort to avoid plain language that may violate antitrust laws and, instead, create a misapprehension that cemeteries cannot sell preneed funeral goods, including most notably, caskets, along with preneed cemetery goods and services pursuant to preneed cemetery merchandise and services contracts;
2. The inclusion of the statement that "funeral goods includes caskets" as ORC 4717.01(T) had no legal consequence and simply promoted such a misapprehension and, thereby, decreased competition;
3. Not-for-profit cemeteries cannot comply with ORC sections 4717.31 through 4717.38 as they cannot sell insurance without losing their tax exemption under Internal Revenue Code 501(C)(13). Instead, they maintain preneed cemetery merchandise and services trusts. Such Trusts are subject to laws that have been refined over more than the last two decades (for instance to allow the adoption of the Ohio Uniform Prudent Investors Act) and are working well;
4. Each preneed funeral contract requires payment into the preneed funeral recovery fund. Such fund only applies to and benefits defunct funeral homes and not cemeteries;

5. Pursuant to Ohio Revised Code Section 4717.04 (C), The Board of Embalmers and Funeral Directors' jurisdiction over cemeteries is limited to matters involving crematories located at cemeteries; and

6. Increased competition is good for consumers. As stated herein, however, these offending provisions would decrease competition.

Additionally, I'd like to use some of my allotted time, to address certain falsehoods that the OFDA's representatives promoted during our interested party meeting with the Bill's Sponsor and, that we presume, they have or will likewise promote to this Committee.

First, the OFDA claims that it reached an agreement with the OCA's constituent entities (the OAC and OACS&O), some 22 years ago, that cemeteries would either not sell caskets or, if they were to do so on a preneed basis, it would only be upon compliance with the laws applicable to funeral homes and funeral directors.

This is patently false. I was the President of the OAC at the time that both of the OCA's constituent entities were working on expanding Ohio Revised Code 1721.211 to require "vesting" for all preneed sales of merchandise and services. The only concession made was that the OFDA would not oppose the cemetery industry's proposed vesting percentages (greater of 30% of retail and 110% of wholesale for merchandise and 70% for services) and that the revised code would be revised to specify that caskets would be defined as funeral goods *under the funeral code*. The parties at that time clarified that the definitions of "preneed funeral contracts" and "preneed cemetery merchandise and services contracts" would exclude one and the other. Everyone understood at that time that the definitions were somewhat circular and they remain so today. Mr. Applegate was involved with the legislative effort regarding 1721.211 on behalf of the OACS&O in the late 1990's and can also confirm, if necessary, that the claimed "agreement" is a falsehood.

Second, those the OFDA's representatives state that the offending provisions are simply a "clarification of existing laws".

Again, this makes no sense at all given the circular definitions of preneed contracts and the Revised Code. Specifically, the Legislature and the Legislative Services Commission know how to place precise requirements on industry participants.

Third, the OFDA is circulating the falsehood that the cemetery industry is experiencing numerous defaults under Preneed Cemetery Merchandise and Services Contracts and that the Ohio Cemetery Dispute Resolution Commission is not adequately addressing such defaults.

Nothing could be further from the truth. The OCDRC has always achieved great results and, with newly enhanced subpoena and audit powers, is working better than ever today. We will send each of your offices the last five years of OCDRC Annual Reports so that you'll be able to see that: (a) there is virtually no issues with defaults under preneed cemetery merchandise and services contracts; and (b) in the rare instances of any issues regarding the same, the OCDRC resolves the issues or makes an appropriate referral to the prosecutor.

Finally, I would like to emphasize to this Committee that the offending provisions in Senate Bill 224 are just the latest example of the funeral industry's wrongful attempts to legislate away fair competition. Amazingly, prior to the 1970's, due to pressure from the funeral industry, no manufacturer would sell burial vaults to cemeteries in Ohio. Today, some casket or vault manufacturers still refuse to sell certain product lines to Ohio cemeteries. Also, prior to 1986 and until the Attorney General rectified the situation, it was illegal to own an interest in both a cemetery and funeral home in Ohio. Lately, the funeral industry has focused on more indirect, but equally wrongful, means of limiting competition. The offending provisions in Senate Bill 224 represent their latest attempt.

This deliberative body should not acquiesce to the Ohio funeral industries' latest efforts to impermissibly limit competition and hurt consumers.

I would be pleased to address any questions. In that regard, Tim Long, the OCA's counsel and lobbyist, is also here today too and can assist, as needed, with any legal questions.