

TESTIMONY OF
DANIEL G. APPLGATE
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 Dan Applegate. I am the President of both The Arlington Memorial Gardens Association and The Arlington Memorial Gardens Funeral Home located in Cincinnati. I have worked in the Ohio cemetery industry for forty years. Additionally, I served on the Ohio Cemetery Dispute Resolution Commission for a three-year term and was a member on the Ohio Cemetery Law Task Force. Finally, I am a member of the Ohio Cemetery Association and a long-time member of its Legislative Committee and a past president of the Association. The OCA's members include not-for-profit associations, for profit cemeteries, township and municipal cemeteries and religious cemeteries. Like Kirk Roberts, I offer my testimony today on behalf of the OCA.

While the OCA has no concern with most of Senate Bill 224, we must voice our concern and opposition to the following provisions, which we will refer to as the "Rulemaking Issue" and the "Preneed Contract Issue", respectively:

(1) lines 311 through 314 of the Bill, which would create a new 15th category of Chapter 119 rule-making authority for the Board of Embalmers and Funeral Directors; and

(2) lines 1474 through 1479 of the Bill, which could make it impossible for not-for-profit cemeteries to sell funeral goods, such as caskets, on a preneed basis.

I'll address the Rulemaking Issue and Mr. Roberts will provide the necessary detail regarding the Preneed Contract Issue.

The Rulemaking Issue.

Regarding the proposed additional rule-making category, such expansion would grant the Board of Embalmers and Funeral Directors rule-making authority over "requirements for the sale of preneed funeral services and **preneed funeral goods**, the content and funding of preneed funeral contracts, and the payment and administration of preneed funeral funds". Such provision is overbroad and improper as it relates to the sale of "preneed funeral goods", such as caskets, by persons or entities other than funeral directors or funeral homes.

Funeral goods, unlike funeral services, may be sold by persons and entities that are not funeral directors. Additionally, when cemeteries sell any type of goods or services, including "funeral goods", on a preneed basis, they do so pursuant to Preneed Cemetery Merchandise and Services Contracts and Ohio Revised Code Section 1721.211 and report such contracts and the required deposits to their Preneed Cemetery Merchandise and Services Trust to the Department of Commerce, Division of Real Estate, Cemetery Section. As such, subsection (A) (15) to Ohio Revised Code 4717.04,

as currently proposed in Senate Bill 224, would allow for rule-making that is inconsistent with such underlying statutory scheme and should be removed from the Bill or appropriately modified.

The reasons for the OCA's position include:

1. Pursuant to Ohio Revised Code Section 4717.04 (C), The Board of Embalmers and Funeral Directors' (the "Board") jurisdiction over cemeteries is limited to matters involving crematories located at cemeteries;
2. For over twenty years, cemeteries have reported their sale of preneed funeral goods, along with all other preneed sales, to the Department of Commerce pursuant to Ohio Revised Code Section 1721.211. Rules that are inconsistent with such reporting requirement would at the very least create confusion;
3. Rules enacted by the Board regarding preneed sales of funeral goods would naturally be developed from the perspective of funeral homes and funeral directors and, therefore, such rules would likely make it more difficult or impractical for cemeteries to sell funeral goods on a preneed basis. Such a result would raise antitrust concerns like those addressed judicially involving industry dominated boards having passed rules for improper purposes. The North Carolina Dental Board case provides one such example.
4. Ohio Revised Code Section 1721.211(A) defines "preneed cemetery merchandise and services contracts" to include those pertaining to "other types of merchandise customarily sold by cemeteries". Such clause includes caskets. ***Caskets are "necessarily incident" to cemeteries' exempt burial purpose pursuant to IRC 501(C)(13). Also, caskets are considered cemetery goods in Ohio for Medicaid spenddown purposes.*** Many cemeteries sell caskets in Ohio. Usually only on a preneed basis and, if the cemetery is a not-for-profit, only to its customers.
5. As cemeteries comply with an entirely different regulatory scheme and report to different regulatory authorities, being forced to participate in and monitor the rulemaking process regarding the Board's statutes is overly burdensome and wrongful.

I would be pleased to address any questions regarding the Rulemaking Issue before Mr. Roberts walks the Committee through the Preneed Contract Issue.