

**TESTIMONY OF
TIMOTHY C. LONG
ON BEHALF OF THE
OHIO CEMETERY ASSOCIATION
REGARDING SENATE BILL 224
BEFORE THE
SENATE GENERAL GOVERNMENT BUDGET COMMITTEE
November 30, 2021**

Chairman Peterson, Vice Chairman Wilson, Ranking Member Craig and members of the Committee, my name is Tim Long. I serve as counsel and lobbyist for the Ohio Cemetery Association. The OCA's members include not-for-profit cemetery associations, for profit cemeteries, township and municipal cemeteries and religious cemeteries. I offer my testimony today on behalf of the OCA.

As Dan Applegate and Kirk Roberts previously testified on behalf of the OCA, the OCA has no concern with most of Senate Bill 224. However, as we are uncertain as to which amendments the Committee will consider and adopt and have not even received a response to our proposed compromise, the OCA must reiterate its continuing objection to the following provisions in the Bill:

(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.

With regard to the lines 311 through 314, at a minimum, such provision must be revised to clarify that the Board of Embalmers and Funeral Directors rulemaking regarding the sale of preneed funeral goods would not apply to cemeteries. As Mr. Applegate testified on October 19th before this Committee, which was operating as a Subcommittee, there are several reasons that such clarification is proper and required. While we understand that his written testimony has been provided to you and will not encroach on this Committee's time commitments by repeating such testimony in its entirety, we wish to amplify an aspect of such earlier testimony:

Quoting Mr. Applegate: "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."

As such, passing Senate Bill 224 out of this Committee with the rulemaking provision in its current form will at best cause confusion and, at worst, dual regulation of cemeteries by both the Department of Commerce and the Board of Embalmers and Funeral Directors.

Naturally, the OCA would find any amendment which simply removes lines 311 through 314 to be an acceptable resolution to the "rulemaking issue". Further, such an amendment would resolve the present impasse, from the OCA's perspective, so long as it is coupled with either (a) the removal of lines 1474 through 1479 in their entirety; or (b) clarifications to lines 1474 through 1479 which specify that such provisions do not somehow indirectly require cemeteries to sell preneed funeral goods only pursuant to preneed funeral contracts. Presently, when Ohio cemeteries sell preneed funeral goods,

they universally do so pursuant to preneed cemetery merchandise and services contracts under Ohio Revised Code Section 1721.211.

As of the deadline to submit our written testimony, we were uncertain as to the precise language of the amendments which may be considered by the Committee today. Of course, there are naturally many possible language combinations which would accomplish the requested substantive clarification. On Exhibit “A” we have provided this Committee with the draft amendment offered by the OCA many weeks ago and which was circulated to the Bills proponents by the Sponsor’s office.

The OCA’s draft amendment would allow, most notably, for profit cemeteries the option to sell preneed funeral goods via preneed funeral contracts and fund such contracts by selling an associated policy of insurance. Of course, other language that accomplishes the same clarification would naturally be acceptable to the OCA. As previously stated, the Bill’s proponents did not respond to such comprise language.

Regardless, we must stress that lines 1474 through 1479, as introduced, are poorly drafted.

Quoting Mr. Roberts from his October 19, 2021 testimony: “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 contracts. 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.”

Let’s take a closer look at lines 1474 through 1479:

With the exception of the submission of an annual preneed funeral contract report under this division, a cemetery company or cemetery association **that** sells funeral goods, including caskets, pursuant to a preneed funeral contract, is subject to all of the requirements of sections 4717.31 to 4717.38 of the Revised Code that apply to such sales.

The use of the word “**that**” in the sentence creates confusion. Does it mean that cemeteries must sell their preneed funeral goods pursuant to preneed funeral contracts? If so, the sentence is convoluted at best. To no surprise, we can’t find other examples of such inverted requirements in the Revised Code. As stated before, we believe that such inarticulate language was drafted in a manner to skirt the edges of prevailing antitrust law and is intended to create at least some mistaken belief that cemeteries may no longer sell preneed funeral goods pursuant to Preneed Cemetery Merchandise and Services Contracts.

Thank you for your time and consideration. I would be pleased to address any questions.

EXHIBIT "A"

Proposed Revisions to SB 224 Beginning at Line 1474.

With the exception of the submission of an annual preneed funeral contract report under this division, a cemetery company or cemetery association that chooses to sell funeral goods, including caskets, pursuant to a preneed funeral contract, instead of pursuant to a preneed cemetery merchandise and services contract, is subject to all of the requirements of sections 4717.31 to 4717.38 of the Revised Code that apply to such sales. Notwithstanding the foregoing, no term or condition of this section shall be interpreted as requiring a cemetery company or cemetery association which sells funeral goods on a preneed basis to do so pursuant to a preneed funeral contract.