



Funeral Consumers Alliance of Maryland and Environs

Protecting a consumer's right to a meaningful, dignified, and affordable funeral.

Testimony on SB 245 and SB 352 Before the Senate Committee on Finance of the Maryland General Assembly

February 17, 2011

Submitted by Brian E. Ditzler, Vice President,
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Honorable Senators:

Just one year ago this month, The Washington Post and other area newspapers carried the story of Calvert County cemetery owner Larry Deffenbaugh who had been convicted of bilking his cemetery customers out of more than \$1 million and then had supposedly drowned in a boating accident on the Chesapeake Bay. Mr. Deffenbaugh owned Southern Memorial Gardens in Dunkirk and had pocketed money from 551 people who prepaid for coffins, headstones and grave markers that were never provided. U.S. Marshalls found him very much alive - in Texas, and brought him back to Maryland.

Incidents like this, where prepaid funeral or burial services are stolen from consumers, unfortunately happen far more than we would like. At least one third of the complaints received by the national Funeral Consumers Alliance have to do with prepaid funerals and burial services, which are also referred to as "preneed" contracts.

The Funeral Consumers Alliance is a federation of nearly 100 volunteer-run, non-profit chapters coast to coast dedicated to consumer education and to protecting the public from fraud and abuse in the funeral transaction. I am vice president of the local chapter, the Funeral Consumers Alliance of Maryland and Environs. Our chapter has more than 300 members across this state, plus many more in DC and Delaware.

During the 1970's and 1980's, the Funeral Consumers Alliance helped push for the successful passage of the Federal Trade Commission's Funeral Rule, which set minimum standards for funeral homes in their interactions with the consumer.

Unfortunately, the federal government so far has turned a blind eye to regulating graveyards, which makes state rules regarding cemeteries and their practices all the more important.

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Two of the Senate bills you are considering here today, SB 245 and SB 352, are aimed at loosening existing law in our state intended to protect consumers from inappropriate practices by cemeteries.

Let me first acknowledge that the vast majority of cemeteries in our state surely are managed in a responsible and ethical manner while performing a useful service to the public. This testimony is not intended to impugn the integrity of all those responsible businesses or their owners but instead to remind us that rules and regulations are created by governments to protect the public from those who are less responsible and don't always act in the consumer's best interest.

Between 25 percent and one-third of all funerals and burials performed in this country are prepaid. According to Congressional testimony in 2009, more than \$1 billion dollars of Americans' hard-earned money was stolen or misused in the preceding three years by burial companies offering prepaid goods and services.

In Maryland, my organization considered the subject of planning one's after-death care and understanding the problems of preneed contracts to be important enough that we devoted most of our Winter 2011 newsletter to the subject. Copies of that newsletter, plus previous editions and a wealth of information relating to funerals, burials and related topics can be found on our website.

Senate Bill 245 is the most problematic of the cemetery-related bills being considered here today. SB 245 would do away with any restrictions on finance charges and would allow cemeteries to charge interest on all prepaid goods and services. Maryland law already permits the legal fiction called "constructive delivery". This allows the seller to collect prepayment and then assert that goods such as a cement vault or casket have been delivered because title for such goods has been transferred to the buyer and the goods allegedly are being stored until needed.

This is absurd. Are cemetery goods and services really delivered when the grave is not dug, the casket is empty and not buried, the cement vault is not poured or installed, and the grave marker or headstone is not carved or in place? Why should a business be able to charge interest or impose a finance charge on a consumer when that consumer has paid in advance for goods and services that will not be needed or used for some time to come?

To use an analogy: Is a landlord who is given an advance payment (security deposit) by a renter allowed to charge that renter interest or impose a finance charge on the advance payment received? Of course not. In fact, the opposite is true in Maryland. Landlords are obligated to pay 3% interest annually to the consumer on the advance payment received since they have use of such funds in the interim. Such an approach should be required of cemeteries that receive preneed funds – not the opposite as SB 245 would permit.

The testimony of experts in the national office of the Funeral Consumers Alliance regarding SB 245 (and SB 352) also is being entered into the record here today, and provides a more complete analysis of the problems with this legislation.

In summary, SB 245 should be reported unfavorably by this committee because it is clearly anti-consumer and would weaken or remove existing protections contained in current Maryland law.

Senate Bill 352 also should be rejected for similar reasons.

SB 352 would loosen the obligation of cemeteries to ensure that prepaid trust funds are being handled properly.

Currently, cemeteries must submit to the Director of Cemetery Oversight a statement by a certified public accountant regarding the assets, liabilities and financial stability of the business, in addition to a copy of the balance sheet from the last federal tax return. SB 352 would repeal the requirement for the CPA review, thereby eliminating any objective scrutiny of the trust funds and the business' other finances.

The case of Larry Deffenbaugh in Calvert County that was mentioned at the beginning of this testimony is but one of many cases of fraud and abuse by cemetery owners that has occurred in this state and across the country. The \$1 million that Mr. Deffenbaugh bilked from 551 people who prepaid for undelivered cemetery goods has not been recovered.

The need for cemeteries to properly account for all prepaid funds and prove their continuing viability has not lessened over time. Loosening such requirements would only increase the likelihood of consumers being victimized by unscrupulous cemetery owners in the future.

In summary, the Funeral Consumers Alliance of Maryland & Environs strongly urges this committee not to approve SB 245 or SB 352 as they would weaken or remove existing consumer protections.