

Remarks of Guy N Saxton PA House Consumer Affairs Committee September 18, 2014

Good Afternoon Mr. Chairman and Members of the Committee and their staff. My name is Guy N Saxton, and I started working at a cemetery on the grounds in my teens. I've held every position and have done every job there is to do at a cemetery. I now operate and manage several cemeteries in the state of Pennsylvania.

I am testifying here to in opposition of House Bill 2458.

Cemeteries in Pennsylvania have been selling cemetery goods and services to their customers since long before the Future Interment Act existed. Cemetery operators supported and helped pass this act to ensure delivery of those items. The current law has served Pennsylvania cemeteries and consumers well. With some 100,000 deaths in the state of Pennsylvania per year, it would be a surprise if there was not some issue somewhere with some cemetery or funeral home; however, the problems are rare and anecdotal. If there are problems, the current law clearly covers what to do in the event of a consumer issue.

Cemeteries and Funeral Homes are competitors. Cemeteries sell interment rights, graves, markers, vaults, and even some caskets. Funeral Directors sell interment services, embalming, caskets, vaults, and even some markers. Cemeteries do not sell funeral services, and Funeral Homes do not sell interment rights; however, they both sell those other items to the same customers. The PFDA is also a competitor of sorts – in that they administer and promote a program called UniChoice. I believe this is their pre-planning arm that offers life insurance and trusting of pre-planned funerals.

Overwhelmingly, most of the items cemeteries sell are purchased ahead of time for future use. In this transaction, a customer would purchase, for instance, graves, vaults, and markers to be used in the future. They lock in the price and the cemetery is responsible for delivering those items, at no additional cost. This is similar to and a slightly different alternative to a life insurance benefit. This has the added benefit of eliminating the need to purchase those items at the time of the death of a loved one. It is widely believed that consumers are vulnerable to pressure and emotional overspending at the time of death, arguably one of the worst days of their life. The Federal Trade Commission has investigated and passed regulations restricting certain practices at funeral homes.

The attempt to change the Act is not driven by any compelling consumer interest. It is conceived of and put forth by the PFDA and Southeast PA Funeral Directors who fear a competitor in the form of an active Arch Diocese that will start offering some of the items that Funeral Directors sell to the families of the 7000 members of their church that they bury each year in their cemeteries. However, this is just the latest manifestation in a war that has waged between the cemetery operators and the funeral directors since the inception of the Future Interment Act.

It's noteworthy that the PFDA is pushing for a bill that doesn't regulate any of their members – it only regulates us. Whether intended or not, the few words changed in the original act would stop the long-standing practice of cemeteries offering these choices to their customers before they are needed. The changes are designed to make for us the selling of these items to our customers unpalatable, untenable,

and render us unable to do it. This would have the effect of funneling all consumers' purchases through a funeral home; I have a hard time believing that is not the intended consequence.

Raising the trusting requirement from 70% to 100% deprives us of the ability to pay our employees and fund operations. 70% is and has been a more than adequate reserve to ensure the future delivery of the death benefits that we sell. No life insurance company can or does reserve 100% of the premium that they collect. They reserve enough to adequately ensure that the death benefit can be paid, and the rest is used for wages and operations. The raise to 100% is not meant to help consumers – it is meant to deter us from continuing our operation, and it does. I am sure that any life insurance sold by the PFDA plan (UniChoice), does not reserve 100% of the premiums collected.

Whether intentional or not, the changes that require ALL interest to be retained and not providing for paying the expenses of operating the trust out of income: trustees fees, accounting fees, legal fees, and income taxes would make it impossible to find a trustee willing to set-up such a trust.

Full refund-ability with interest at any time makes entering into a contract or what could be called a non-contract with our customers untenable and has negative consequences for consumers. With a 20-30% cost to set-up a customer, and a 1-2% annual cost for trustee fees, accounting, legal, and income tax; cemeteries will be financially unable to offer these choices. They would be faced with paying these expenses at the beginning and over the years and then paying back 100% of the purchase price with interest to the consumer.

Not offering this choice is not the only detriment to the consumer. This also keeps a customer "in play" and would create a situation where consumers could be pressured to change at the vulnerable time of the loss of a loved one.

In aggregate, by removing cemeteries as competition – this would give consumers no choice but to buy from the funeral home, whether at need or in advance of need. This type of monopolistic scheme would eliminate choices for consumers and ultimately raise the price that they pay at the time of death.

But, perhaps the most insidious, transparent attempt to keep customers "in play" and not finalize their choices before they die is the prohibition on delivering the items that people purchase and they want before they die. Nothing in the Future Interment Act protects a consumer more than giving them the items they purchased. It eliminates all questions and ensures that they get what they want and the funds are used for the right purpose. It protects them against price increases. It protects against all of the questions about trusting and funding. Many consumers want to see their marker ahead of time – many are comforted by knowing that an item they purchase is actually there on the lot that they own. Why would you not want a consumer to get what they want, when they want it? The only reason to prohibit people from having what they want, when they want it – combined with the cancellation piece is there can be no finality to a contract, and at any time before or at the time of death, a funeral director can step in and attempt to change a customer's mind. Under PA Funeral Law, PA Funeral directors can enter into a contract with consumers they sell to that is not 100% refundable.

On a regular basis, we see funeral directors sell items to customers that the customers have already purchased. And that is without the refund-ability and the prohibition against giving people what they want before they die.

This is not the right thing to do to consumers in the state of Pennsylvania. Consumers in Pennsylvania should not have to worry that on the worst day of their life, they may be subjected to that kind of tactic from some in our industry.

All of the items we are talking about end up at the cemetery. The cemetery has a relationship with the family and the extended family of our lot owners and their loved ones buried on the properties that we manage, FOREVER. The cemetery that I manage was incorporated and has been in operation since 1928, my mother and father are there. We have acres and acres of grass to maintain, several miles of roadway to maintain, as well as other landscape functions. The cost of properly maintaining any cemetery is challenging and difficult, at best. That challenge is provided for in several ways in the state of Pennsylvania. Up until now, we have been discussing the trust set up under the Future Interment Act – cemeteries have another trust set up by statute, it is called the Endowment Care Trust. Fifteen percent of every interment right sale goes into the Endowment Care Trust. That trust is similar to a retirement account for an individual in that the money builds throughout the life of the cemetery and when the cemetery is full and no longer has revenue coming in from operations – the income earned from that trust will be used to maintain the property. Much of the cost of maintaining a cemetery is derived from the income generated by operations including the sale of vaults and markers to their lot owners. Pennsylvania cemeteries have used the income they derive under the current Future Interment Act for the past 50 plus years. It has become a necessary and important source to meet our needs. A change such as the one contemplated here would have catastrophic effects on the operations of any cemetery that has come to rely on the source of that income. Many cemeteries in Pennsylvania NEED the income derived under the Future Interment Act to maintain their cemeteries. This may not be a concern to any PFDA member but this is of great concern to our lot owners. And as a matter of public policy, I would ask you not to throttle a vital source of funds cemeteries need for the benefit of a special interest group and their members.