

SENATE COMMITTEE ON COMMERCEMINUTES - PUBLIC HEARINGS.B. Nos. 97, 144, 145, 229

Date: Tuesday, March 4, 1969 (Room 52, State Capitol Building)

Committee Members:	Senator White, Chairman	Present
	Senator Swobe	"
	Senator Lamb	"
	Senator Titlow	"
	Senator Hecht	Absent

Others Present: Mr. Hugo Quilici, Director Department of Commerce  
 Mr. John Porter, Deputy Attorney General  
 Mr. Douglas Erickson, Chief Deputy Insurance Commissioner  
 Mr. Berkeley Bunker, Bunker Bros. Mortuary, Las Vegas  
 Mr. R. E. Burton, Palm Mortuary, Las Vegas  
 Mr. Burns, Burns Mortuary, Elko  
 Mr. Knauss, Palm Mortuary, Las Vegas  
 Mr. James C. Wenzel, Paradise Memorial Gardens, Las Vegas  
 Mr. Preston E. Tidvall, Superintendent, Division of Banking

Chairman White called the meeting to order at 1:00 P.M. and introduced the committee members to others attending the meeting. He then said he would like to have S.B. Nos. 97 and 145 (the funeral and burial contract bills) discussed first and then consider S.B. Nos. 144 and 229, the cemetery bills.

He then called on Mr. Erickson to explain his department's position on S.B. No. 97. Mr. Erickson distributed to the committee various pieces of published material, which his department had gathered, having to do with the subject under discussion; he said he felt the contents were pertinent and would prove informative to the committee.

Mr. Erickson continued by saying he would like to explain what the Insurance Department's knowledge of pre-need funeral and burial contracts was and the reason for proposing S. B. No. 97.

Generally speaking, pre-need means pre-financing of funeral and burial merchandise and services. Contracts generally cover the mortuary services, cost of casket, use of chapel, graveside services, etc. The department is not concerned with the sale of plots or property; however, they do consider opening and closing of the grave, the vault, the headmarker as "pre-need", because they are delivered at a future date. The department also has interest in the sale of crypts, because they have discovered cases of pre-need contracts having been sold on crypts in mausoleums not in existence.

The present law covering "pre-need" consists of one page and was adopted a number of years ago. It came into existence perhaps because of mutual assessment companies. The present law states that laws governing life insurance shall govern pre-need contracts. But these are not insurance and Mr. Erickson said he doesn't know how we can apply insurance laws to

installment sales contracts. Requirements for insurance are entirely different and he believes the existing law covering pre-need contracts is not good and should be changed in this session.

In substantiating the need for some pre-need control as proposed in S.B. No. 97, Mr. Erickson cited a case taken from the police records of Sparks (No. 68-1209), wherein a couple in 1963 purchased a contract for two adjoining plots, concrete vaults, copper urns, markers at a cost of approximately \$1,200. In 1968, the man went to look at the place for burial and could find no cemetery. Mr. Erickson felt there were certainly pre-need aspects in this case and, as such, it should come under the jurisdiction of the Insurance Department as proposed in S.B. No. 97.

(Incidentally, the case cited had not been reported to the Insurance Department because it was not recognized that this should have been considered a pre-need contract coming under the jurisdiction of the Insurance Department.)

Mr. Erickson also cited a case where he had issued a "cease and desist" order to a mausoleum, not yet constructed but selling crypts at \$575 each. There was no money in trust, yet 32 spaces had been sold. (This case was in Las Vegas.)

Mr. Erickson added that pre-need contracts generally take a percentage "off the top" - in many instances, 25% on mortuary contracts and perhaps more on cemetery contracts. The remaining 75% is deposited in trust, to be used at time of need - some unknown time which might be 30 years from now. Generally speaking, the trust consists of savings and loan deposits or securities handled by the trust departments of the banks. The earnings of the trust revert, in many cases, to the seller and no earnings are distributed to the purchaser. These earnings could run from \$800 to \$1,200.

Senator White commented that he thought there was no disagreement between the Insurance Department and the industry as to the need for control - the disagreement rested in the "vehicle" used for instituting control.

Mr. Erickson said S.B. No. 97 had been proposed to give much stricter control over pre-need contracts and it was up to the committee to decide whether or not this would operate to the public's interest. He also said he felt that if 100% of the money were put in trust and earnings on that money were returned to the purchaser, there would be no need for the pre-need contract.

Mr. Erickson went on to describe other areas of abuse in the sale of pre-need contracts. He said there were cases where no contingency reserve had been set up; other cases where there had been over-charges on credit insurance. There have been cases, also, where the sellers have not kept adequate records for audit; cases where there could have been misrepresentation as to what happens if the buyer of the contract moves from the state.

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On the chairman's request to give the highlights of what was to be accomplished by S. B. No. 97, Mr. Erickson presented to the chairman a written statement prepared by the Insurance Department. He added that the Insurance Department was proposing an amendment to S. B. No. 97: Page 7, Line 45 - insert "and including capital gains" after "investments,". He also called attention to the typographical error in Line 50. Chairman White said he felt there was no problem in the amendment.

The chairman then recognized Mr. Berkeley Bunker, of Bunker Bros. Mortuary in Las Vegas.

Mr. Bunker said the funeral directors and cemeterians in the State of Nevada were in accord that guidance was needed and, in that recognition, had worked with the Insurance Department in an effort to draft appropriate legislation. He cited three joint meetings that had been held - two formal and one informal. He said that the industry's main bone of contention with the legislation as drafted is that the industry wants two bills - a funeral bill and a cemetery bill. He said there are two segments in the industry and they are not compatible so far as sales are concerned - one sells services; the other, merchandise. Therefore the industry has introduced S.B. Nos. 144 and 145. Again he said there was no question but what the legislation was needed and the bills they have introduced would stop the "foolishness" that has been experienced in southern Nevada. He added that contracting for pre-need funeral services was not a new concept as far as the public is concerned and it is desirable.

He went on to say that the legislation as offered by the Insurance Department is not fair to the public, and the industry has offered bills of its own which he feels are more just. He said he was talking mainly about S.B. No. 145 and added that, as representatives of the industry, those present at the meeting were in attendance to support S.B. No. 145 and categorically oppose S.B. No. 97, because the latter is restrictive and does not separate the two segments of the industry. He feels it should be more liberal.

Mr. R. E. Burton, of Palm Mortuary, Las Vegas, was then recognized. He took exception to some of the statements that had been made to the committee, saying they were only partially correct, and referred to correspondence with Mr. Mastos. He produced copies of Mr. Mastos' letter of December 13, 1968, to substantiate his point. He said that S.B. No. 145, as prepared by the industry, represents the agreement arrived at at the meeting in Las Vegas, not S.B. No. 97 as prepared by the Insurance Department.

Mr. Swobe asked Mr. Burton what he specifically objected to in S.B. No. 97. Mr. Burton replied that the two segments of his industry are as distinct and different as, say, insurance and almost any other industry. He added that his main reason for rejecting S.B. No. 97 was that if they have to comply with S.B. No. 97, they cannot give the general public what is best for them - for example, under S.B. No. 97 there could be no cemetery-exchange provision. He said the two bills offered by the industry would better serve the public and added that unless the industry protects itself and protects the public, "we will be out of business."

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Mr. Burton continued by saying he would like to give some clarification to Mr. Erickson's statements relative to the 25-75% figures. He added that the truth was that when a trust is set up, it is guaranteed that this is the most the purchaser will ever have to pay and this is specified under their new bill. He also said that if people move, they receive 100% value of the trust.

Discussion then moved to S.B. No. 229. Mr. Porter said that so far as this bill is concerned, the Insurance Department ties it into S.B. No. 97, since pre-need services, no matter by whom performed, are regarded as pre-need and thus subject to law. S.B. No. 229 has been tied into S.B. No. 97 so that the same standards are set for all pre-need services. He said that the industry apparently sees essential differences in the area of performance, but it is felt that when services fall into the category of "pre-need", the same standards and requirements apply, irrespective of who performs the services.

Insofar as other differences are concerned, and referring to the letter from Mr. Mastos, Mr. Porter pointed out that there is the problem of divided jurisdiction. Pre-need contracts come under the jurisdiction of the Insurance Department; deposited funds are under the jurisdiction of the State Board of Finance. It was the original intent, when discussion meetings were held, to work on a law which would be all embracing and provide for one jurisdiction.

Mr. Bunker expressed his dissatisfaction, maintaining that the Insurance Department, in drawing the new bills, had gone too far to the right, rather than assuming a middle course.

Again Chairman White pointed out that S.B. Nos. 97 and 229 represented the Insurance Department's concept as to how pre-need contracts and cemeteries should be regulated; S.B. Nos. 144 and 145 represented the industry's concept. He asked for a delineation of the differences between S.B. No. 97 and S.B. No. 145 specifically.

Mr. Burns, of Burns Mortuary, Elko, called attention to Section 19 of S.B. No. 97, requiring the posting of a \$50,000. bond; Section 19 of S.B. No. 145 allows for the posting of a bond for as little as \$5,000., which permits the smaller operator to engage in pre-need business. As his trust fund increases, his bond requirement escalates. He feels that the \$50,000. bond requirement of S.B. No. 97 discriminates against the small operator and reminded the committee that, after all, there are 15 small counties in the state and the businessmen there should be considered.

Mr. Knauss, of Palm Mortuary, Las Vegas, said he believed the two factions were fairly well agreed on the two funeral bills, but there was disagreement in the legislation covering cemeteries. He, too, stressed that the two segments of the industry - funeral and cemetery - could not be treated alike. He said that to stay in business the cemeterians could not operate on the 25%-75% allotment, that the cost of his sales ran from 35% to 40%. He called attention to Maryland's law, which provides a 60%-40% split.

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Mr. Porter then said he had prepared a resume of the differences in the bills and presented a copy of the resume to Chairman White. In summary, Mr. Porter said he would register an objection unless the same requirements applied to both funerals and cemeteries.

Mr. Bunker then pointed out a difference in the legislation as proposed by the State and that proposed by industry - specifically in the application of funds. The industry's mortuary bill proposes 75%-25%; their cemetery bill, 60%-40%. The Insurance Department wants 75%-25% for both.

Mr. Burton then spoke in support of the differences in fund applications. He reminded the committee that the morticians were selling services primarily and the 75%-25% split was adequate. On the other hand, the cemeterians were selling "merchandise" and their need for pre-reimbursement was greater; hence the 60%-40% split was justified.

The discussion reverted to the need for the posting of a \$50,000. bond. Mr. Erickson said this stipulation was aimed at the "fly by nights" and the "promoters". He cited one instance where a seller of pre-need contracts had sold, in 1968, contracts with a face value of \$1,729,869.; total collections for 1968 amounted to \$365,700.+; amount deposited in trust was \$108,000.+ - \$250,000.+ apparently "went into someone's pocket".

Mr. Burton referred to Subsection 2, Section 19, S.B. No. 145, and said he thought this offered sufficient protection. Mr. Erickson said he was speaking for the commissioner in stating that he would much prefer that the amount of the bond be stipulated by law and the \$50,000. would serve as a deterrent. Mr. Knauss here said that as far as "fly by nights" were concerned, there were other regulatory provisions in the industry bills which offered sufficient protection.

Mr. James C. Wenzel, President of Paradise Memorial Gardens, Las Vegas, was next recognized. He said that inasmuch as he was not in the funeral business, the funeral bill was of no concern to him. But he, as a cemetery operator, registered objection to the 75%-25% bill, saying he could not live with it and stay in business.

Because of the wide and decided differences of opinion and areas of disagreement, the chairman requested that the members of both factions - Insurance Department and industry - retire from the meeting for another discussion among themselves, in an effort to arrive at a common ground on the issues involved. When, and if, their differences are resolved, he asked that they return and make their mutual recommendations to the committee.

Chairman adjourned the meeting at 2:05 P.M.

Approved:

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Marvin L. White