

Approved: 3-31-93
Date sk ✓

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chairperson Joann Flower at 1:30 p.m. on March 17, 1993 in Room 423-S of the Capitol.

All members were present except: Rep. Bishop, excused

Committee staff present: Emalene Correll, Legislative Research Department
William Wolff, Legislative Research Department
Norman Furse, Revisor of Statutes
Sue Hill, Committee Secretary

Conferees appearing before the committee:

Rep. Sader
Chip Wheelen, Director of Public Affairs, Kansas Medical Society
Harold Riehm, Executive Director, Kansas Association of Osteopathic Medicine
Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association, Inc.
Mack Smith, Executive Secretary, State Board of Mortuary Arts
David Newcomer IV, Legislative Chair, Kansas Cemetery Association

Others attending: See attached list

Chair called the meeting to order, drawing attention to the Agenda. Hearings are scheduled today on SB 19 and SB 313.

Staff gave a comprehensive briefing on SB 19, upon the request of Chair Flower.

CHAIR OPENED HEARINGS ON SB 19.

Rep. Sader offered hand out, (Attachment No. 1) She stated, SB 19 has been drafted on the recommendation of the Joint Committee on Health Care Decisions for the 90's, and is the result of data and analysis presented to that Committee on the effects of physician self-referrals on the utilization and escalating costs of health care. SB 19 does not ban self referral, it merely requires the physician to inform the patient of his or her significant investment interest and of the fact that such services are also available elsewhere. "Significant ownership interest" is defined in SB 19, as at least 10% of the value of the health care entity to which the referral is made. SB 19 is not intended to prevent physicians from investing in health care facilities. SB 19 does require patient notification in self-referral situations, and is intended only to thwart the potential for excessive profits and over-utilization which recent studies suggest exist along with the practice of self-referral. It was noted self-referring physicians referred patients for clinical lab tests at a 45% higher rate than non-investing physicians; that physicians' utilization of physical therapy/rehabilitation was higher when physicians are owners; physicians with a financial interest in a facility, refer patients four to 4.5 times that of non-investing physicians. She noted SB 19 merely requires a doctor to inform a patient of his or her investment interest in the health care entity to which the referral is made. She urged support.

Chip Wheelen, Kansas Medical Society, (Attachment No. 2), drew attention to similar legislation to SB 19 that has been discussed in earlier years. SB 19 differs from earlier legislation, he noted, in that a 29th definition of "unprofessional conduct" would be added to statutes. He noted current definitions of things that can get licensees into trouble, and the Board of Healing Arts has the authority to enforce penalties, i.e., limitation, suspension, or revocation of the license to practice. He noted differences in the practice of physicians in Kansas, versus perhaps California. In Kansas there are many physicians that have as many patients as they can handle, so they are not making referrals to facilities just to acquire more patient files. He noted, the mere fact that a physician has invested in a health care facility so that services will be available to patients in the area, does not automatically imply the physician will order unnecessary tests or procedures. He noted support of SB 19 because it is a reasonable measure designed to prevent a potential problem.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 423-S
Statehouse, at 1:30 p.m. on March 17, 1993.

Mr. Wheelen continued on SB 19. He views the language as having been drafted tightly, sending the message that a patient needs to proceed with caution, think twice about whether or not the services they've been directed to have performed are needed, and if the alternatives presented are convenient or inconvenient to them. He noted rural areas do not always have access to treatment facilities. The notification clause in SB 19 informs the patient of the physician's ownership in a health care facility, and informs the patient they have the option of going elsewhere for those medical services, if they choose to do so. He noted also, many communities would not enjoy the benefits of a health care facility if it were not for local physicians who have provided that facility for their communities.

Harold Riehm, Executive Director, Kansas Association of Osteopathic Medicine offered hand out, (Attachment No.3). He spoke in support of SB 19. It is the belief of the Kansas Association of Osteopathic Medicine the practice of self-referral as one falling under the general code of practice of ethics for doctors of Osteopathy. He did suggest that new data collections in other legislation discussed this week, by this Committee, will provide a mechanism to measure incidents of self-referral and the impact it has on utilization of these medical services in Kansas.

Chair opened the meeting for questions of conferees.

Numerous questions were asked. Camie Tiede, Administrative Assistant, and Deborah Billingsley, General Counsel for the Board of Healing Arts both were available for questions. It was determined that penalties for non-compliance are handled on a case-to-case basis. If there are existing problems of this type existing, but they are not reported to the Board, the Board of Healing Arts would have no knowledge that a code of ethics being violated.

CHAIR CLOSED THE HEARINGS ON SB 19.

Chair drew attention to SB 313, requesting staff for a briefing. Mr. Furse detailed SB 313, noting a policy change on page 1, line 40, i.e., moneys provided for start up costs go into a Corporate trustee fund and all interest goes to the purchaser, however, the new law proposed would allow the seller of the contract to be compensated for the work and expenses incurred in administering the account.

CHAIR OPENED HEARINGS ON SB 313.

Pam Scott, Executive Director of Kansas Funeral Directors, offered hand out (Attachment No. 4). She detailed rationale for the request of SB 313; noted that administrative expenses would be paid to the seller from interest accrued from the trust that had been set up for this account. The principal of the trust would not be touched. The trust would continue to be 100% funded which means all funds collected by the seller of a pre-arranged funeral plan must be placed in a financial institution. She noted this is unlike many other states. It was noted, the bank, as trustee, can be reimbursed for their expenses to managing that trust. She detailed expenses that might be incurred in administering the accounts. She detailed co-mingled trusts; noted 1% of the fair market value of the trust is a reasonable cap to be placed on such reimbursement.

Mack Smith, Executive Secretary, State Board of Mortuary Arts offered hand out. (see Attachment No.5). He testified in favor of SB 313, noting the concern of the Board is keeping the 100% trust in force to protect the consumer's money as much as possible. He noted the 1% annual compensation rate described in line 40-42 would come off the interest earned on the trust. He noted unless an irrevocable trust is purchased, the buyer may withdraw funds anytime they wish prior to need.

David Newcomer IV, Legislative Chair for Kansas Cemetery Association spoke in support of SB 313. He noted current law prohibits reimbursement to the seller for expenses, so the new proposed legislation in SB 313 would allow for such reimbursement to be paid from the interest on the contract trust. He noted an annual report is required to be filed with the Secretary of State on the contracts in place. He noted the 1% of asset value cap proposed in this legislation does not actually cover costs at his own firm, but is better than the zero reimbursement that is currently allowed. It is important for the state to encourage firms to offer pre-arrangement, especially in light of the legislative attempts to reduce welfare payments for cemetery and funeral expenses. He urged support. (See attachment 6)

Chair opened the meeting for questions by members of conferees. Numerous questions were asked, i.e., currently there is no penalty for the consumer if they decide to withdraw the trust and place it under contract with another company; balance of the money left in the trust, after all expenses are paid, is to be returned to the estate of the deceased. Expenses incurred by the seller of the pre-arranged funeral arrangements were detailed.

CHAIR CLOSED HEARINGS ON SB 313.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 423-S
Statehouse, at 1:30 p.m. on March 17, 1993.

Chair asked if there were any objections to committee action being taken on SB 19. There were none

CHAIR DREW ATTENTION TO SB 19 FOR COMMITTEE ACTION.

Mr. Furse directed attention to the title of SB 19, which had inadvertently been titled incorrectly, i.e., "unprofessional conduct" are the correct words that need to be returned in the language of the title. Ms. Correll noted also the same language appears in the supplemental note, which would need also to be changed to read "unprofessional conduct". (So noted by Committee members.).

Rep. Wagle proposed an amendment on SB 19, to address emergency situations by adding language on page 3, line 25, "upon initial consultation or referral". Motion seconded by Rep. Mayans.

Rep. Wagle detailed rationale, i.e., the physician would need only to make notification to the patient one time, at the initial consultation or referral. Discussion followed, i.e., some members viewed Rep. Wagle's amendment as confusing to the issue; there is no paperwork requirement in the language of SB 19. There was lengthy discussion on alternative language in regard to when the referral is to be made by the physician.

Rep. Neufeld made a substitute motion to report SB 19 adversely, seconded by Rep. Scott.

Discussion continued. It was noted SB 19 had been proposed in the present form to facilitate its passage, not its demise; a statement is being made that abuses of this nature must be discontinued; rationale was given for the desire to report SB 19 adversely. Some members viewed as important, and if not the best, could be amended, not killed. Discussion continued. Alternative language was proposed in regard to compensation, i.e., "for any physician to receive any profit, referral fee, dividend, lease payment, rent, or other form of compensation from a health care entity in which the physician has a significant investment interest, unless that compensation covers only the actual cost incurred by the physician regarding the physicians ownership in the entity". Some members viewed this language as giving more strength to SB 19, others did not. Some viewed this language alternative not as a solution to the problems being discussed.

Rep. Neufeld withdrew his substitute motion to report SB 19 unfavorably. Rep. Mayans refused to withdraw the second.

Chair called for a vote. Vote taken. Motion failed.

Chair drew attention to the original motion on the table to amend SB 19, made by Rep. Wagle. Chair requested Rep. Wagle restate her motion.

Rep. Wagle did so, repeating her motion, i.e., to amend SB 19 on page 3, line 25, after the word "patient", to insert the words, "upon initial consultation or upon a referral", and to amend the technical change in the title to delete "professional incompetency", and add "unprofessional conduct".

A lengthy discussion continued.

At this point, Rep. Sader made a substitute motion to amend SB 19 by changing the title to read "unprofessional conduct", and to pass the bill out favorably as amended. Motion seconded by Rep. Swall.

Discussion continued. Mr. Furse was consulted in regard to whether or not the motion to amend and to pass out all in one motion is appropriate. Mr. Furse stated, it is whatever the Chair determines and rules is appropriate. The Chair ruled to motion to amend and pass out favorably in one motion is appropriate at this time.

Chair called for a vote. Vote taken. Motion carried.

Chair Flower adjourned the meeting at 3:15 p.m.

The next meeting is scheduled for March 18, 1993.

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

[illegible]

CAROL H. SADER
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TOPEKA

HOUSE OF
REPRESENTATIVES

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POLICY CHAIR OF DEMOCRATIC CAUCUS
RANKING MINORITY MEMBER: PUBLIC HEALTH
AND WELFARE
ECONOMIC DEVELOPMENT
JOINT COMMITTEE ON HEALTH CARE
DECISIONS FOR THE 90'S

TESTIMONY BY REPRESENTATIVE CAROL SADER ON SB 19

HOUSE PUBLIC HEALTH & WELFARE COMMITTEE

MARCH 17, 1993

Chairperson Flower and Members of the Committee:

Senate Bill 19 is before you on the recommendation of the Joint Committee on Health Care Decisions for the 90's, on which I serve and which I had the privilege of chairing in 1992. It is the result of data and analysis presented to the Committee on the effects of physician self-referrals on the utilization and escalating costs of health care.

SB 19 follows recommendations made by the AMA's own Council on Ethical and Judicial Affairs which concluded that when physicians refer patients to facilities in which the physician has an ownership interest, a potential conflict of interest exists. Therefore, in general, physicians should not refer patients to a health care facility outside their principle office practice, at which they do not directly provide care or services, when they have an investment interest in the facility. This bill does not ban self-referral, it merely requires the physician to inform the patient of his or her significant investment interest and of the fact that such services are also available elsewhere. "Significant ownership interest" is defined in the bill as at least 10% of the value of the health care entity to which the referral is made.

This bill is in no way intended to prevent physicians from investing in health care facilities as entrepreneurs for many such investments advance new medical technologies and, on balance, can be very positive for patients and our health care system.

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3-15-93
atlm #1.

This bill requiring patient notification in self-referral situations, is intended only to thwart the potential for excessive profits and over-utilization which recent studies strongly suggest exist along with the practice of self-referral. For example, it was pointed out to the Committee from recent studies that self-referring physicians referred patients for clinical laboratory testing at a 45% higher rate than non-investing physicians; that physicians' utilization of physical therapy/rehabilitation was significantly higher when physicians are owners, and that physicians with a financial interest in diagnostic imaging centers referred patients at a rate of 4 to 4.5 times that of non-investing physicians.

Although these studies were not done in Kansas and we were not shown actual proof of excessive profits and over-utilization here, the Joint Committee concluded that in view of the widespread public perception that abuses are occurring and that doctors are referring patients for unneeded tests to make an extra buck, to the extent possible, state policy should discourage physicians from being in the business of profiting purely from their ability to refer patients to outside facilities which they own. Whether or not there is evidence of abuse, this practice is presumptively inconsistent with a physician's fiduciary duty to a patient when adequate alternative facilities exist. As stated by the AMA's Council on Ethical and Judicial Affairs, "physicians are not simply business people with high standards---they are engaged in the special calling of healing, and in that calling, they are fiduciaries of their patients and have different and higher duties than even the most ethical businessperson."

Given all of the above, I repeat, SB 19 does not prohibit physician self-referrals. It merely would require a doctor to inform a patient of his or her investment interest in the health care entity to which a referral is made. This bill harms no one, it does not mean doctors cannot have outside investments and activities or that they should not invest in health care facilities. It simply discourages abuses and encourages cost containment in the delivery of health care services in our state. For these reasons, the Joint Committee recommends SB 19 for your favorable consideration.

Respectively submitted,

Carol H. Adair

*Fixed
3-15-93
Attn #1.
P9282*



KANSAS MEDICAL SOCIETY

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WATS 800-332-0156 FAX 913-235-5114

March 17, 1993

TO: House Public Health and Welfare Committee

FROM: Chip Wheelen
Director of Public Affairs

SUBJECT: SB 19; Concerning "Self-Referral" by Licensees of the Healing Arts Board

The Kansas Medical Society appreciates the opportunity to comment on SB 19 which was introduced by the Joint Committee on Health Care Decisions for the 1990s. This bill would make it "unprofessional conduct" for a licensee of the Healing Arts Board (doctors of medicine, osteopathy and chiropractors) to "self-refer" without first disclosing an ownership interest in the facility to which the patient is being referred.

This issue has gained quite a bit of attention nationally in recent months. Some states, and Congress to a limited extent, have acted to restrict a physician's ability to refer patients to facilities in which he or she has an ownership interest. There have been studies in other states which have raised questions about the appropriateness of health care providers referring patients to laboratories or other diagnostic facilities they have an ownership in, because such referrals ultimately can benefit the referring health care provider. While there is nothing illegal about such referrals, to many the potential for such a conflict of interest has the appearance of impropriety.

Senate Bill 19 can be described as a "patient right to know" law that requires the treating physician or chiropractor to inform the patient that: 1) the physician or chiropractor owns all or part of the health care entity to which the patient is being referred; and 2) that the patient may obtain the same services elsewhere. If a patient is not so notified, he or she may file a complaint with the Board of Healing Arts, which in turn would trigger an investigation of the appropriateness of tests or services which were ordered by the physician or chiropractor. In this context, it is important to note that current law already includes a definition of unprofessional conduct (Item 21) that allows the Board to discipline a licensee for "performing unnecessary tests, examinations or services which have no legitimate medical purpose." The Board has the power to limit, suspend or revoke a license to practice, which from a physician or chiropractor's perspective is a substantial inducement to comply with the letter of the law.

There may be those who suggest that this change in law does not go far enough. For example, last year the Legislature considered a bill which would have placed criminal penalties on physicians if they failed to inform a patient of an ownership interest in a health care facility to which the patient was being referred. That concept was rejected by the Legislature as being too harsh and overreaching. Additionally, in many instances, especially in rural areas, if it were not for physicians, either themselves or in the form of joint ventures with hospitals or other health care facilities, many needed diagnostic services and equipment may not be as readily available. That is why we would oppose an outright ban on physician ownership of such

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AHM#2

Testimony to House Public Health and Welfare Committee
Senate Bill 19
March 17, 1993
Page Two

facilities. The mere fact that a physician has invested in a health care facility so that such services will be available to his or her patients does not automatically imply that the physician will order unnecessary tests or procedures.

Thank you for considering our remarks. We support SB 19 as passed by the Senate because it is a reasonable measure designed to prevent a potential problem.

CW:ns


PHW
3-17-93
Attm #2
Pg. 2 of 2

Kansas Association of Osteopathic Medicine

Harold E. Riehm, Executive Director

1260 S.W. Topeka Blvd.
Topeka, Kansas 66612
(913) 234-5563
(913) 234-5564 Fax

March 17, 1993

To: Chairperson Flower and Members, House Public Health Committee
From:  Harold Riehm, Executive Director, Kansas Association of Osteopathic Medicine
Subject: Testimony on S.B. 19

Thank you for this opportunity to express our view on S.B. 19. We appear today in support of the Bill.

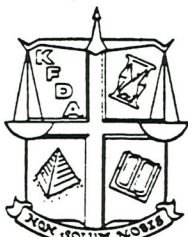
While we think the extent of the abuse this Bill is designed to regulate is less than some suggest in Kansas, we also view provisions of S.B. 19 as a means of indicating willingness to eliminate any disservice to patients or lack of propriety within the health care system, from the physician perspective.

The Osteopathic profession has always considered the practice of self-referral as one falling under the general code of practice ethics for D.O.s. In turn, KAOM has always recommended to our members that they adopt some procedures by which they inform patients whom they refer to "entities" in which physicians have a financial interest. This now makes that practice a matter of law.

Self-referral to entities in which physicians have an interest is often noted to be a major cause of over utilization of health care services or facilities. It may well be one, though we think there are others that contribute also. We would suggest as one the emphasis physicians place on tests for defensive medicine purposes, regardless of who owns the facilities to which one refers. Perhaps the new data gathering and analysis function addressed in a Bill this Committee heard earlier this week will provide a mechanism to measure both incidence of self-referral and the impact it has on utilization of these facilities or services in Kansas. We hope it does.

I will be pleased to respond to questions regarding our stand on S.B. 19.

P #4W
3-17-93
Attn #3.



AFFILIATED WITH N.F.D.A.

THE KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

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Testimony Presented to

House Public Health and Welfare Committee

by the

Kansas Funeral Directors and Embalmers Association

on

Senate Bill No. 313

Madam Chairman and members of the committee, I am Pam Scott, Executive Director of the Kansas Funeral Directors and Embalmers Association (KFDA) and I am here to testify in support of Senate Bill No. 313. The Kansas Funeral Directors Association is a statewide professional association representing over 250 funeral homes and their members statewide.

Senate Bill No. 313 was introduced at the request of the KFDA. The bill proposes to amend K.S.A. 16-308 to allow the seller of a commingled pre-arranged funeral trust, and those affiliated or connected with the seller, to be reimbursed for expenses they incur in administering the trust for the corporate trustee (usually a bank) in an amount not to exceed 1% of the fair market value of the trust annually. The seller would have to justify its expenses to the corporate trustee who has a fiduciary responsibility to assure that such reimbursement is reasonable.

The administrative expenses would be paid from interest from the trust. The principal of the trust would not be touched. The trust would continue to be 100% funded which means that all funds collected by the seller of a pre-arranged funeral plan must be placed in a financial institution. This is unlike most other states which require only a percentage of the payment made to be placed in trust. States surrounding Kansas require the following percentage of funds collected to be placed in trust: Colorado - 85%, Missouri - 80%, Nebraska - 85%, Oklahoma - 90%, and Iowa - 80%. In those states, the money not placed in trust can be used to cover the costs of establishing and administering the trust. Pre-arranged funeral trusts sold

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3-17-93
Athm #4

pursuant to K.S.A. 16-308 are also unlike pre-arranged funeral plans funded by insurance policies. In those cases the seller receives a commission which will cover his expenses.

A seller of a pre-arranged funeral plan may incur many expenses in administering a pre-arranged funeral trust. Typical expenses include the cost of preparing and printing the trust agreement, legal expenses in establishing the trust, the cost of collecting funds, the cost of communicating trust information to participants, preparation and mailing of tax notices, salaries of staff administering the trust, and telephone expenses responding to questions raised by participants and potential participants. This list is not exhaustive and will vary among sellers based on the functions the seller performs versus what services are performed by the corporate trustee. I believe it is important to note that the bank, as corporate trustee, can currently be reimbursed by the trust for performing these services or can contract with a party other than the seller to perform these services and pay them compensation for their services. We believe it only makes sense that the trustee be able to pay the seller for performing these services. The seller will be more responsive to the consumer and will likely be better able to answer questions.

Currently, to our knowledge, there are only a handful of commingled trusts established in the state of Kansas. The largest is the KFDA Master Trust. Over 150 funeral directors utilize the KFDA Master Trust. The KFDA Master Trust is the primary reason why this legislation was requested. An issue arose late last year as to whether a corporation owned by the KFDA, KFDA Services, Inc., could be reimbursed for its expenses in administering the KFDA Master Trust. The question was raised because K.S.A. 16-308 prohibits those affiliated or connected with the seller of the trust from being reimbursed for services rendered in administering the trust. There are differing opinions as to whether KFDA Services, Inc. is affiliated or connected with the seller. This amendment was proposed to clarify this gray area.

In conclusion, the KFDA, by asking you to support Senate Bill No. 313, is only asking you to support the ability of the seller of commingled pre-arranged funeral trust to

PHW
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Attn #4
Pg 273

recover its actual costs of administering the trust. We believe that one percent of the fair market value of the trust is a reasonable cap to be placed on such reimbursement.

Thank you for giving us the opportunity to appear before you today.

PHW
3-17-93
Attn #4
Pg 373

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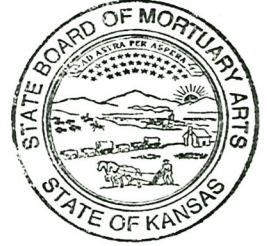
State Board of Mortuary Arts

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700 S.W. JACKSON ST., SUITE 904

TOPEKA, KANSAS 66603-3758

(913) 296-3980



March 17, 1993

Representative Joann Flower, Chairperson
House Public Health and Welfare Committee
State Capitol, Room 423-S
Topeka, Kansas 66612

Madam Chair and Members of the Committee:

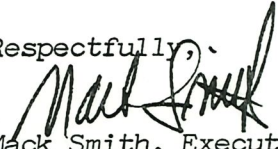
My name is Mack Smith, and I am the executive secretary to the Kansas State Board of Mortuary Arts. I am here to testify in favor of Senate Bill 313.

The Mortuary Arts Board's main concern is keeping the 100% trust in force to protect consumer's money as much as possible.

The maximum 1% annual compensation rate described in lines 40-42 on page one would come off the interest earned on the trust. Families are able to look for the best available interest rate and funeral plan that fits their needs. Unless they purchase an irrevocable trust, they may withdraw funds anytime prior to need.

I'll be glad to answer any questions of the committee. Thank you for the opportunity to testify today.

Respectfully,


Mack Smith, Executive Secretary
Kansas State Board of Mortuary Arts

MS:tab

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3-17-93
Hm #5*

KANSAS CEMETERY ASSOCIATION

David W. Newcomer IV, Legislative Chairman

Testimony In Support of SB 313
before House Public Health and Welfare Committee
March 17, 1993

The Kansas Cemetery Association ("KCA") **supports** the adoption of Senate Bill 313.

This bill permits the bank trustee of a prearranged funeral trust to reimburse the seller of those plans a limited amount for expenses incurred by the seller on behalf of the trustee. Present law prohibits any such reimbursement.

KCA members are governed by the preneed funeral law if they accept funds for prepaid interment fees, cremation charges, and for those members who have funeral homes on their grounds, for funerals and caskets.

Most sellers of prepaid contracts bill and collect the funds, handle customer service work (changes of address, welfare requests, comments and questions, etc.) prepare claim forms, and in the case of our own firm, do the computer work to calculate the earnings applied to each contract, and prepare and mail the tax notices. All are required to prepare an annual report which is filed with the Secretary of State.

DW
3-17-93
atlm #6

Speaking for my own firm, the 1% of asset value cap permitted by this bill for this expense reimbursement does not actually cover our costs, but it is certainly much better than zero reimbursement we are faced with now.

It is important for the state to encourage firms to offer prearrangement, especially in light of the legislative attempts to reduce welfare payments for cemetery and funeral expenses.

There are cemeterians who have not chosen to offer this service because the current law forces them to incur real current expenses with no current means to reimburse them for those expenses.

KCA hopes the committee will send this bill to the House with a "Do Pass" recommendation.

*Px/KW
3-17-93
attm #6
09232*