

Pre-Need Family Services
Administrative Offices
1119 East King Street
P.O. Box 10391 Lancaster, PA 17605-0391

2627

(717) 394-2326

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INDEPENDENT REGULATORY
REVIEW COMMISSION

16 October 2009

John H. Jewett, Analysis
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: Opposition to State Board of Funeral Directors proposed regulation 16A-4815

Dear Mr. Jewett,

Thank you for this opportunity to voice my concern regarding proposed regulation 16A-4815.

I have been involved as a member of the free enterprise system within this industry for over 24 years. Beginning as a consultant to funeral homes and cemeteries, I moved on to develop businesses that sell funeral and cemetery merchandise directly to the public through irrevocable contracts. Currently, I am the President of the Pennsylvania Cemetery, Cremation & Funeral Association (PCCFA).

In my capacity as current president of PCCFA, I have had the opportunity to review drafts put forth by our counsel, James J. Kutz, regarding this proposed regulation. In that light, as Mr. Kutz's is often extraordinarily thorough, I will try to offer my comments in general form and without total duplication of previously submitted and anticipated PCCFA's concern and observations.

In the Commonwealth of Pennsylvania, industry participants offer a large variety of pre-need contract choices to Pennsylvania consumers. Some of the contract choices include revocable contracts and irrevocable contracts; price guaranteed contracts and nonprice guaranteed contracts; payment plans invested in trusts, bank accounts, Certificates of Deposit, and insurance policies or no prepayment at all. Any of these options offer differing degrees of flexibility, peace of mind, tax benefits or consequences, financial considerations and obligations, Social Security and Medicaid ramifications and overall satisfaction to the consumer and their families. These many pre-need contract choices, to the best of my observations and experience, have worked quite well and to the overall satisfaction of Pennsylvania consumers. This regulation, however, wants to throw a monkey wrench into the mix by eliminating the ability of funeral directors to offer consumer irrevocable contracts. I ask, "For what reason?!"

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The Funeral Board has already conceded that there are no federal or state laws that urge the passing of regulation nor does the Board present any data, studies or references to support the need for this regulation. In fact, the Board has only put forth a mystifying hyperbole suggesting that the absence of an irrevocable contract will result in a funeral director's reduced motivation to make risky investments of pre-need funds. I would ask, "Based upon what theory?"

Since the Funeral Board has offered **no support** to back up their supposed concern, we can only speculate what they might be thinking. It seems to me that any prudent funeral director investing pre-need funds, whether they're connected to an irrevocable contract or a revocable contract, will take advice and recommendation from skilled financial advisors while considering good investment and business models. And, as an antithesis, the gambling funeral director will pick up his dice and roll regardless of what type of contract is involved. My point being, the Funeral Board's desire to destroy the consumer option of purchasing an irrevocable contract from a funeral director does not eliminate the Funeral Board's concern that their licensees could make risky pre-need fund investments.

Currently, there is no data whatsoever to suggest that irrevocable contracts are having an adverse influence over pre-need fund investment decisions. Nor is there any evidence that Pennsylvania consumers are unhappy with their selection of irrevocable contracts. This regulation certainly does not meet criteria set forth by the Regulatory Review Act and I request that this regulation be rejected by the IRRC.

Most sincerely,

PRE-NEED FAMILY SERVICES

/s/ David A. Heisterkamp

David A. Heisterkamp
President

c: Thomas A. Blackburn, Esq.
State Board of Funeral Directors
PO Box 2649
Harrisburg, PA 17105

/DH