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Maryland and Tennessee At Odds Over How to Create a Preneed Protection Fund

A bill recently introduced to the Maryland House (HB 1090) would establish a Family Security Trust Fund to protect citizens against theft of preneed money by Maryland licensees. If passed into law as written, the fund aims to reach and maintain a balance of \$1 million and would be paid for by assessments to each funeral establishment of \$375 annually.

In contrast, a bill in committees of both Tennessee’s House and Senate would also create a consumer bailout fund for the event of preneed misdeeds, but this one aims for a corpus of \$2.5 million and would be funded by permitting FDs to withhold ten percent of the money received from preneed trust customers, send an unspecified portion of that to the state for the fund, and keep the rest. Once the bailout slush fund reaches its goal of \$2.5 million, FDs would be able to keep the entire ten percent. FDs must currently trust 100 percent of the monies paid and in light of the explosion of reported preneed misdeeds, Tennessee is poised to become the first state to *decrease* its trusting requirements.

Critics say both states’ actions are ill-considered knee jerks to the seriously damaging shenanigans of **Paul Stella** in Baltimore (\$900,000-plus spent on gambling debts, painkillers, and high living), who was just sentenced to more than four years in federal prison and ordered to pay \$757,000 in restitution; and **Clayton Smart’s** raid of tens of millions in Memphis (spent, presumably, to build his empire in Tennessee, Michigan, and possibly Indiana with no money of his own).

“The \$375 annual fee from funeral homes in Maryland is just too much money,” says **Joshua Slocum**, executive director of the **Funeral Consumers Alliance**. “In the end, it’ll

Also In This Issue...

- **OPPOSITION to SB 2750**.....3
- **Monitoring**4
- \$1.8 Million Missing in Washington**4
- Smith Barney Implicated in Indiana Scheme**..4
- Cemetery Treasurer Jailed**.....5
- North Carolina Off Tartget, Again**.....5
- Phoenix Diocese Charges Extra for Urn**5
- Review Guestbooks for Appropriate Content**... 6
- Cultural Differences**6
- High Flying Adored**6
- **Your Nose Knows**.....7
- **Too Little, Too Late**.....8

cost consumers more because FDs will be given an excuse to jack up their prices beyond what's necessary. If there has to be a fund, it should be the purchaser's responsibility, and paid for with an itemized tax of \$6 or \$10 or even \$20 for each preneed contract written."

And as far as Tennessee's proposed ten percent windfall for FDs, Slocum is even more outraged. "Smart created the single largest prepaid funeral scandal in history," he says. "How can Tennessee even *consider* a law that would legalize skimming money from a family's prepaid funeral account? It's unconscionable."

Funeral director associations in both states are behind the new legislation in a superficial effort to demonstrate how they're protecting the public. Right-thinking FDs who really care about the long-term health of their businesses and reputations may want to reconsider their support.

Missing the forest for the trees

"I'm all *for* restitution funds," says Slocum, "but there's got to be something wrong with the reporting and oversight systems when an industry admits it needs its own bailout fund because it's inevitable millions of dollars will go missing."

BINGO!

More years ago than I want to remember, I attempted to survey each state regarding the amounts of money set aside in preneed trust and insurance contracts. Talk about an exercise in

futility. After literally hundreds of calls to state departments of insurance, banking, corporations, finance, attorneys general, and secretaries of state, one thing became abundantly clear — few knew and fewer still *cared* about how much preneed money was squirreled away by the population they were charged with protecting.

One banking regulator said something to the effect that, "Sure, we know it's out there but we don't require our institutions to segregate it because it would be too much added work and expense for them. We will, however, give it a closer look in the event of any future problems." The chairman of a licensing board was proud to tell me his state demanded an annual accounting of all preneed sales but when I asked who was responsible for looking over the reports and verifying their deposits, he admitted the board's oversight ended with collecting the information from the funeral homes. The paperwork was then boxed up and stored without anyone double-checking its veracity.

In Maryland, the bill before the House would require complete repeal of Section 7—405(i) of state law, which says, "A seller shall annually file a report with the Board which includes:

- (1) Certification by a certified public accountant as to the seller's compliance with the provisions of this section; and
- (2) Any other information the Board deems necessary."

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“Maryland currently requires an annual report of preneed trust accounts,” says a source on the condition of anonymity. “It must be audited and attested to by a CPA — which costs each funeral home between \$500 and \$1,000 annually — but nobody looked at the reports. The quid pro quo of the bill is that it eliminates the annual audits and saves FDs money by their having to contribute \$375 to the Family Security Trust Fund annually instead of wasting more than that on the CPAs.

“In Paul Stella’s case,” he goes on, “he admitted everything on his annual report was a lie and the CPA who helped him file the false reports can’t go to jail because he died. There’s no way to catch embezzlers and thieves — at least in the early going. They’re clever, devious, and can hide their schemes for one to three years until they go broke. But they’ll always be around. I am absolutely convinced the Family Security Trust Fund is the way to go,” he concludes.

Band-Aid on a broken leg

If the Paul Stellas, Clayton Smarts, Neva Nolans, and Robert Nelmses of the world are, indeed, a sad fact of life, does it make any sense to give them a ten percent bonus (as in Tennessee)

or eliminate reporting requirements (as in Maryland)? Absolutely not.

And is it logical to aid and abet their nefarious ways by setting up a guarantee fund instead of strengthening oversight and accountability? I suspect a consumer protection fund could conceivably *encourage* preneed abuse because the so-called “sacred trust” between seller and buyer would not be violated when the FD steals with a clearer conscience, knowing what the purchasers had planned and paid for would be provided by a benevolent fund spread out over hundreds if not thousands of contributors.

The drumbeat of preneed thievery is getting louder each week and if the states cannot muster the time, effort, and money necessary to write and enforce consumer-protecting laws (rather than patching a shattered limb with a band-aid), the industry is virtually begging for federal oversight. When everyone from AARP to the Consumers Union to the Funeral Consumers Alliance rails against the dangers and risks of paying for funerals in advance of need, it is beyond comprehension that the profession and its regulators continue, undaunted, as though nothing is wrong.

Without strict laws and enforced accountability, preneed protection funds are superficial and immediate balms for an underlying and serious disease.

OPPOSITION to SB 2705

Joshua Slocum writes to Tennessee’s Senate Commerce, Labor, and Agriculture Committee:

On behalf of the **Funeral Consumers Alliance** (FCA), a national nonprofit consumer protection charity of 400,000 members, and on behalf of the FCAs of Chattanooga, East Tennessee, and the Mid-South, I urge you to reject Senate Bill 2705. The bill would roll back important legal protections for consumers of prepaid funerals. Current Tennessee law requires funeral homes to deposit in trust 100 percent of a customer’s money that is prepaid toward a funeral. SB 2705 — which we suspect is backed by industry

trade groups — would allow funeral directors to skim 10 percent of a customer’s money from the prepaid trust. This is unconscionable. When consumers prepay for their funerals, that money belongs to them, not the funeral home, until it provides the goods and services at the time of death. Consumers who have to cancel or transfer their prepaid funeral plans — perhaps because of having to move to another town or state — would lose ten percent of their investment, even though **the funeral home has provided no goods or**

services. In addition, the consumer would lose the interest that would have accrued on the ten percent that the funeral home would be allowed to pocket.

We are astonished that any lawmaker would propose such a move when more than 13,500 Tennessee families are reeling from the **Forest Hill** scandal. **Clayton Smart**, owner of the Memphis cemetery, is accused of stealing more than \$22 million in consumers' prepaid funds, leaving their eventual funerals and burials in serious jeopardy. Tennessee regulators are now burdened with this mess, forced into taking over the liabilities of this criminally vandalized business. The Clayton Smart scandal stretches to at least three other states, and may involve more than \$100 million stolen from consumers. It is the single largest prepaid funeral scandal in history. How can Tennessee even *consider* a law that would legalize skimming money from a family's prepaid funeral account? Tennessee consumers need **more protection, not less.**

- **No state has ever loosened the trusting and refund requirements for prepaid funerals.** Tennessee should not be the first to turn back the clock on prepaid funeral consumer protection.

- **Do not be fooled by SB 2705's provision to deposit into a "preneed restitution fund" some of the 10 percent "administrative fee" funeral directors would be allowed to skim.** This is merely window-dressing to make legalized robbery seem palatable by directing some of the misbegotten money into a restitution fund. Such a fund is a worthy idea, but it should not be topped off with dollars stolen from consumers. Indeed, SB 2705 doesn't even specify what percentage of the 10-percent skim would be placed in the restitution fund; the "public protection" portion of this bill is transparently an afterthought.

The Legislature passed, and the Governor signed into law, important new protections for prepaid funeral consumers last year with SB 2264. We urge you to continue to strengthen the standards of conduct in the funeral transaction, not weaken them. We hope to be able to congratulate the Tennessee Legislature again this year for taking further steps to protect one of the most vulnerable consumer groups — seniors planning their final arrangements. We are prepared, however, to object loudly and publicly if the Legislature allows industry greed to override the public welfare.

Monitoring.....

\$1.8 Million Missing in Washington

Never underestimate the spite of an ex-wife. In Lacey, WA, **Joseph Burgman**, 38, manager and vice president of his parents' **Woodlawn-Forest FHs and Cemeteries**, confessed to taking \$1.8 million from prearranged funeral and cemetery trust funds since 2001, and losing it in failed get-rich-quick schemes. Burgman faces numerous charges of first- and second-degree theft, unlawful use of criminal proceeds, and creating fictitious bank statements. His ex-wife tipped off the professional licensing department last August, which subsequently called in the state patrol.

Smith Barney Implicated in Nelms' Indiana Scheme

An Indianapolis law firm filed a class action in January seeking \$20 million against financial services firms New York-based Smith Barney and a Noblesville, IN, bank formerly known as Community Trust & Investment. The case is the latest fallout from a massive fraud investigators say was perpetrated by **Robert Nelms**, 39, and **Debora Johnson**, 48 (his estranged "wife," though I use that word loosely because they may have never been legally married).

In January, Nelms and Johnson were charged with plundering more than \$23 million