



Mr. Chairman and members of the Subcommittee, thank you for the opportunity to present the views of the National Funeral Directors Association (NFDA) on H.R. 3655, a bill to require the Federal Trade Commission (FTC) to enact a rule to provide certain uniform federal protections and remedies for consumers who purchase funeral or burial goods or services from cemeteries, crematories and other third-party sellers, as well as certain practice requirements for those entities when selling to the public.

I am Randall L. Earl, a licensed funeral director from Decatur, Illinois and have been practicing my profession for 40 years. I own and operate the 125 year old Brintlinger & Earl Funeral Homes in Decatur and Cerro Gordo as well as B&E Crematory also in Decatur. We have 9 full-time employees and 7 part-time employees. We perform approximately 400 funerals a year. I am appearing here today in my capacity as an elected officer of the National Funeral Directors Association.

The National Funeral Directors Association (NFDA) represents more than 10,000 funeral homes and over 19,000 licensed funeral directors and embalmers in all 50 states. The overwhelming majority of NFDA-member firms are independently owned and operated businesses with fewer than 10 employees and have been in the same family for over three generations. NFDA is the leading funeral service organization in the United States and provides the national voice for the funeral service profession.

NFDA has a great interest in ensuring the trust and integrity of the funeral service profession remains high in the opinion of the families its members serve. In that regard, we strongly support H.R. 3655 and the intent with which it was proposed.

However, before I discuss the specific provisions of H.R. 3655, it would be helpful to your deliberations to provide some background on our experience with the FTC Funeral Rule, which currently applies only to those who provide funeral goods *and* services to the public... namely funeral homes.

## **IN THE BEGINNING**

In its role as the national representative of the funeral profession, NFDA has been actively involved in all facets of the FTC's development and implementation of the Funeral Rule. During the original rulemakings and the first review, NFDA voiced its opposition to the Funeral Rule. At that time, it was NFDA's position that regulation of the funeral profession should remain with at the state level and should not be exercised at the federal level.

Nevertheless, the Funeral Rule was promulgated in 1982, became effective in 1984 and has been in place for 26 years. Since then, members of the funeral service profession have incorporated the requirements of the Funeral Rule into their day-to-day operations. Consumers, when dealing with funeral directors, have been afforded the protections and informational benefits provided by the Funeral Rule.

## **TODAY**

NFDA and its members today strongly support retention of the FTC Funeral Rule as a uniform standard for funeral homes, as well as a rule that protects consumers served by funeral homes. However, when the FTC Funeral Rule was developed 26 years ago, funeral goods and services were primarily sold *only* by funeral directors and, therefore, the scope of the Funeral Rule was limited by the Commission to the sellers of funeral goods *and* services.

Since the Rule was enacted, however, the marketplace for funeral and burial goods or services has changed dramatically. In addition, subsequent amendments to the Funeral Rule, including banning casket

handling fees, have encouraged non-traditional sellers to enter the market. Most recently, for example, Wal-Mart and Amazon.com began selling caskets directly to consumers. When consumers deal with these non-traditional providers, however, they receive none of the protections afforded by the FTC Funeral Rule. It is therefore necessary, in our judgment, to either update the FTC Funeral Rule so it reflects the realities of the current marketplace versus the marketplace that existed 26 years ago, or to establish a separate rule that addresses all sellers of funeral goods *or* services, as contemplated by H.R. 3655. If the original intent of the Funeral Rule remains valid, consumers must be protected from any seller of funeral goods or services from whom they purchase such services or merchandise.

## **CONSUMER BENEFITS OF FUNERAL RULE**

NFDA has no empirical data with which to measure how the Rule has benefited consumers by protecting them against injurious misrepresentations, unauthorized embalming or forced purchases of unwanted items. It is not possible to determine the extent to which those subject to the Rule would have engaged in any of these practices had the Rule not been in effect. What can be determined, however, is the fact that the FTC Funeral Rule prohibits such practices and, in so doing, provides basic protections and safeguards to consumers. On that basis alone, it has benefitted consumers.

NFDA and its members strongly support retention and strengthening of the FTC Funeral Rule, or the establishment of a separate rule, as outlined in H.R. 3655, so that all funeral consumers may benefit from basic protections and safeguards regardless of where or from whom they purchase funeral or burial goods or services. While the Funeral Rule might not have provided all of the benefits that the Commission predicted in its 1982 Statement of Basis and Purpose, the Rule has provided consumers dealing with funeral homes the following:

- A guarantee that the consumer will receive written price lists showing the itemized prices of funeral goods and services.

- A guarantee that the consumer will receive the itemized price lists before selecting any goods or services.
- The general price list given to the consumer will be in a format that allows the consumer to easily compare the prices of the funeral provider with any other funeral provider.
- The price lists will contain mandatory disclosures that will provide helpful information to consumers regarding funeral goods and services they might wish to purchase or decline to purchase.
- The consumer will receive a written itemized statement of the funeral goods and services he or she purchased at the end of the arrangements.
- The consumer will be protected against misrepresentations that might mislead the consumer into purchasing unnecessary funeral goods or services.
- The consumer will not be compelled to purchase any unwanted funeral goods or services.
- The consumer will be provided the right to bring in third-party merchandise and have the funeral provider service that merchandise without any restrictions or fees.

## **NEED FOR ADDITIONAL CONSUMER PROTECTIONS**

Unfortunately, while every consumer who buys funeral goods or services from a funeral home is entitled to the protections afforded by the FTC Funeral Rule, no such safeguards are given to consumers who purchase funeral goods and/or services from non-traditional, third-party sellers not subject to the Rule. Ironically, a new segment of sellers has entered the funeral marketplace since the FTC Funeral Rule was enacted, yet consumers who deal with these new providers are not provided any of the protections of the FTC Funeral Rule.

Therefore, in order to ensure that every consumer of funeral goods and services enjoys these benefits and protections, it is necessary to modify the definitions of “funeral provider” and “funeral services.” Today, tens of thousands of consumers purchase funeral goods and/or services from sellers who are not subject to the

Rule because they do not sell funeral “goods *and* services.” Likewise, many consumers buy from sellers who escape coverage of the Rule because they do not offer both funeral ceremonies and the care of the body, as required to be selling “funeral services.” We believe that H.R. 3655 adequately addresses this problem.

Strengthening the Rule to cover all sellers of funeral goods *or* funeral services, or the establishment of a separate rule to cover all sellers, will not only benefit consumers who purchase goods and services from non-traditional sellers, but will also benefit consumers who deal with funeral directors. The Commission and the FTC Staff have often stated their belief that the pro-competitive and informational benefits of the Rule will increase as more consumers become aware of the Rule and their rights under the Rule. By expanding the protections and benefits of the Rule to all consumers, and by prohibiting restrictions and handling charges imposed by all sellers, the FTC would increase the benefits of the Rule to all purchasers. In the alternative, H.R. 3655 would require the FTC to extend these safeguards to all sellers of funeral goods or services under a separate rule. We strongly support that approach, as well.

Regarding the issue of the cost that might be imposed on non-traditional sellers if the Rule is strengthened, the FTC Staff has always found that compliance costs with the Rule are minimal and do not significantly raise business costs for funeral providers. Therefore, NFDA sees no reason the same will not prove true for non-traditional providers and strengthening the Rule, or establishing a separate rule for these sellers to cover all transactions involving funeral goods or funeral services, will impose little cost for sellers.

### **FUNERAL RULE HAS BENEFITED FUNERAL HOMES, AS WELL**

On the issue of whether the Funeral Rule has benefited funeral providers, many NFDA members have reported that the Rule has made them better businessmen and women by helping them explain to consumers the cost of all of the different components of a funeral, thereby giving families a greater understanding of the costs involved. In addition, despite the cost of compliance, the Funeral Rule also benefits funeral homes by

emphasizing the need for continuous staff training and education. Efforts to maintain compliance levels reinforce the professionalism of the funeral home staff by reminding them of the right of funeral consumers to the timely receipt of detailed and itemized price information.

## **INCONSISTANCIES OF THE FUNERAL RULE**

NFDA believes the restrictive definitions found in the current Funeral Rule arbitrarily provide some consumers with Funeral Rule protection while depriving others of that protection. For example, assume a cemetery operates a crematory that accepts dead bodies directly from the public. Since the cemetery is presumably selling funeral services when it accepts the body and prepares it for cremation, it should be subject to the FTC Funeral Rule. If that cemetery required a consumer to purchase an urn, vault, casket or other merchandise only from the cemetery in order to have the cremated remains interred in the cemetery, it would violate the handling fee ban imposed by the Funeral Rule.

However, if the cemetery elected not to accept bodies directly from the public for cremation, it would not be subject to the Funeral Rule since it would not be selling funeral services. Therefore, when it required a consumer to purchase an urn, vault, casket or other merchandise only from the cemetery as a condition of interring the cremated remains, the cemetery would *not* be in violation of the Funeral Rule.

What could possibly be the rationale for allowing some cemeteries to impose handling fees and tying arrangements while prohibiting others from imposing handling fees and tying arrangements based solely upon whether they prepare bodies for cremation? The definitions that the FTC developed 26 years ago when the death care industry was fairly compartmentalized simply do not serve the interests of consumers today as segments of the death care industry blend and cross-over. The definitions employed by the FTC in the Funeral Rule must be updated to fit the market as it now exists, not as it existed a generation ago. We believe that H.R. 3655 adequately addresses this problem.

## **COMPLIANCE RATE WITH THE FUNERAL RULE**

From every indication, it appears that compliance with the requirements of the Funeral Rule by funeral providers is very high. The Funeral Rule undercover shopper campaigns conducted by the FTC and state authorities have found a high aggregate compliance level with the cornerstone of the Rule – the distribution of the General Price List to consumers. While these compliance rates vary from city to city and year to year, we believe the FTC has been encouraged by the findings of the sweeps as compliance levels have remained relatively high.

There is no question that consumers are being injured because cemeteries and other sellers of funeral goods or services are not subject to the Funeral Rule or any other uniform federal standards. In addition, the informational and pro-competitive benefits that the Rule provides are being limited by the fact that the Rule does not protect consumers who purchase funeral goods or services from non-funeral providers. For example:

- (a) While funeral consumers may be reluctant to switch funeral homes, for most cemetery consumers, a switch is impossible. If a decedent has already purchased a plot in a cemetery, his survivors have no alternatives but to deal with that cemetery. Even if a consumer has not yet purchased a plot, he or she could still be irrevocably tied to a cemetery if the consumer's spouse or other family members are interred there. The consumer in that case would have a very limited choice; deal with the cemetery or disinter the remains of the consumer's family. The superior bargaining position this gives a cemetery is far greater than that held by a funeral home. It is quite apparent that the cemetery consumer is in a uniquely vulnerable position when negotiating with the cemetery. Clearly, the protections afforded consumers by the Funeral Rule should be afforded consumers dealing with the cemetery, either through the Funeral Rule or by establishing a separate rule, as contemplated by H.R. 3655.

(b) By expanding the coverage of the Funeral Rule to all funeral consumers, or by establishing a separate rule, as contemplated by H.R. 3655, the Commission would greatly increase informed consumer choice. Every funeral consumer would receive a price list prior to purchasing funeral or burial goods or services. Moreover, because the Funeral Rule does impose a degree of uniformity in price lists that could be adopted in the rule covering all sellers, consumers could easily compare prices between traditional funeral providers and non-traditional sellers.

(c) One of the principal benefits of the Funeral Rule identified by the Commission is that it protects consumers from the economic injury they sustained when they purchase unnecessary products because of misrepresentations or lack of information. Unless the Commission finds that consumers who deal with non-traditional sellers are more knowledgeable about laws, regulations and the practical necessities of funeral goods and services than consumers dealing with traditional funeral providers, the informational benefits of the Funeral Rule must be extended to all funeral consumers. We believe that H.R. 3655 will accomplish that goal.

(d) During the review of the Funeral Rule, the FTC Staff stated that the “foundation of consumer choice under the Rule is the right to purchase only those items the consumer wants or needs, and to decline other items.” The unbundling requirements of the Rule are violated whenever a consumer is compelled to purchase funeral or burial goods or services that he or she did not want or need. Moreover, in the review of the Funeral Rule, the Commission further held that imposing a handling fee of any type upon a consumer who elects to purchase funeral goods and services elsewhere is also a violation of the Rule’s unbundling requirements. Therefore, whenever a funeral consumer is forced to purchase an unwanted item or is charged a handling fee for using an item purchased elsewhere, the Funeral Rule’s unbundling requirements are

violated. We believe the provisions of H.R. 3655 dealing with this issue are very good, although we would like to see stronger and more-specific language requiring cemeteries and other sellers of funeral or burial goods or services to accept third-party items purchased by the consumer from another vendor.

## **COMMENTS ON H.R. 3655**

With that as a background, I would now like to address H.R. 3655. NFDA strongly supports H.R. 3655, which requires the FTC to establish a federal rule that applies the same or similar standards of practice to cemeteries, crematories and all sellers of funeral or burial goods *or* services to the public. Most importantly, such a federal rule responds to the 21st-century death care marketplace and offers added protections for consumers who deal directly with all sellers of funeral goods or services.

We are particularly supportive of the inclusion of all 501(c) (3) and religious organizations, as well as state and local political subdivisions. We strongly believe that consumers should enjoy the same protections *regardless* of where or from whom they purchase funeral or burial goods or services.

In addition, we are glad to see that the rule would not preempt state laws in this area and even provides an incentive for states to improve their existing laws. NFDA has long encouraged our state funeral service associations to improve their laws and regulations as it relates funeral homes, cemeteries and all other third-party sellers. While some might argue that, without preemption, this rule is redundant. We believe it provides a minimum, uniform standard that would apply in states that have few or no laws or regulations governing cemeteries, crematories or other third-party sellers.

In addition, H.R. 3655 gives state Attorneys General the authority to bring actions in federal court under the rule. NFDA also supports the requirement that enforcement would be under existing unfair and deceptive practices laws and regulations rather than establishing any new ones.

## CONCLUSION

In conclusion, Mr. Chairman and members of the Subcommittee, NFDA believes this bill outlines for the FTC a rule that NFDA has long argued was necessary given the dramatically changed marketplace and the rise of new and non-traditional sellers, who now offer consumers many of the same funeral or burial goods or services provided by funeral homes – but *without* the protections afforded by the FTC Funeral Rule. While H.R. 3655 does impose some modest requirements on funeral homes, we believe them to be appropriate and consistent with our policy.

Finally, while we understand that this rule might not have prevented the egregious, widely reported scandals that occurred at Burr Oak Cemetery, Menorah Garden Cemetery or the Tri-State Crematory, NFDA believes H.R. 3655 will raise the bar for everyone and correct many of the existing problems that lead to those situations. As we know after 26 years under the FTC Funeral Rule, we are better funeral directors for the experience and have a much greater awareness that good consumer practices are good business practices, as well.

Thank you for the opportunity to present the views of the National Funeral Directors Association on this very important legislation. I will be happy to answer any questions you or the other Subcommittee members might have.