

COMMITTEE PRINT

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ON COMMERCE, TRADE AND CONSUMER PROTECTION

March, 24, 2010

111TH CONGRESS
1ST SESSION

H. R. 3655

To direct the Federal Trade Commission to establish rules to prohibit unfair or deceptive acts or practices related to the provision of funeral services.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2009

Mr. RUSH introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To direct the Federal Trade Commission to establish rules to prohibit unfair or deceptive acts or practices related to the provision of funeral services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Bereaved Consumer’s
5 Bill of Rights Act of 2009”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) there have been shocking consumer abuses
4 in the funeral industry, including scandals at Burr
5 Oak Cemetery in Alsip, Illinois, Menorah Gardens
6 Cemetery in Palm Beach, Florida, and the Tri State
7 Crematory in Noble, Georgia;

8 (2) funeral arrangements are a major expense
9 for most American households and families;

10 (3) some consumers seek to ease the burdens on
11 their families by arranging and paying for pre-need
12 funeral and cemetery arrangements;

13 (4) most funerals are planned by grieving fam-
14 ily members at a time when they are especially vul-
15 nerable and unlikely to focus on cost comparison;

16 (5) the Federal Trade Commission's Funeral
17 Industry Practices Trade Regulation Rule (known as
18 the Funeral Rule) dictates consumer protections in
19 the funeral home, but does not cover the practices
20 of cemeteries, crematoria, or sellers of monuments,
21 urns, or caskets;

22 (6) State laws are inconsistent and frequently
23 too weak to provide adequate consumer protections,
24 creating a need for minimum federal standards in
25 this area;

1 (3) A prohibition on conditioning the provision
2 of any funeral good or funeral service upon the pur-
3 chase of any other funeral good or funeral service
4 from that provider, except as required by law.

5 (4) A requirement that any presale disclosures
6 and contracts for funeral services or funeral goods
7 be written clearly, stating the merchandise and serv-
8 ices that purchasers are buying and their prices.

9 (5) In the case of contracts for funeral services
10 or funeral goods that are pre-paid in whole or in
11 part, a requirement for clear and conspicuous
12 presale and contractual disclosure regarding any
13 penalties incurred if the consumer decides to cancel
14 or transfer the contract to another provider of fu-
15 neral services or funeral goods.

16 (6) A requirement that contracts for funeral
17 services or funeral goods disclose clearly and con-
18 spicuously all fees and costs to be incurred in the fu-
19 ture or at the time that the funeral services or fu-
20 neral goods are provided.

21 (7) A requirement that cemeteries provide to
22 consumers, in a timely manner, all written rules and
23 regulations of the cemetery, and a clear explanation
24 in writing of the interment, inurnment, or entomb-
25 ment right that has been purchased, and any mate-

1 rial terms and conditions of that purchase, including
2 any repurchase option by the cemetery or resale
3 rights available to the consumer.

4 (8) A requirement that cemeteries—

5 (A) retain all records in existence on the
6 date of enactment of this Act, including maps
7 or other systems indicating the location and
8 date of each interment, inurnment, or entomb-
9 ment;

10 (B) accurately record and retain records of
11 all interments, inurnments, or entombments oc-
12 curring, as well as any internment, inurnment,
13 or entombment rights sold, after the effective
14 date of the regulations issued under this sub-
15 section, in such manner and form as the Com-
16 mission may prescribe in such regulations; and

17 (C) make such records available to Fed-
18 eral, State, and local governments, as appro-
19 priate.

20 (b) RULEMAKING.—The Commission shall prescribe
21 the rules under subsection (a) within 1 year after the date
22 of enactment of this Act. Such rules, and any future rules
23 or revision of rules prescribed by the Commission prohib-
24 iting unfair or deceptive acts or practices in the provision

1 of funeral goods or services, shall be prescribed in accord-
2 ance with section 553 of title 5, United States Code.

3 (c) APPLICATION OF RULES TO TAX EXEMPT ORGA-
4 NIZATIONS AND STATES.—Notwithstanding the definition
5 of corporation in section 4 of the Federal Trade Commis-
6 sion Act (15 U.S.C. 44), the rules prescribed under sub-
7 section (a), and any future rules or revision of rules pre-
8 scribed by the Commission prohibiting unfair or deceptive
9 acts or practices in the provision of funeral goods or fu-
10 neral services, shall also apply to cemeteries organized or
11 operated by—

12 (1) organizations described in section 501(c) of
13 the Internal Revenue Code of 1986 that are exempt
14 from taxation under section 501(a) of such Code;

15 (2) religious organizations; and

16 (3) States or any political subdivision of a
17 State.

18 (d) ENFORCEMENT.—Any violation of any rule pre-
19 scribed under this section shall be treated as a violation
20 of a regulation prescribed under section 18(a)(1)(B) of the
21 Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B))
22 regarding unfair or deceptive acts or practices. The Fed-
23 eral Trade Commission shall enforce this Act in the same
24 manner, by the same means, and with the same jurisdic-
25 tion as though all applicable terms and provisions of the

1 Federal Trade Commission Act were incorporated into and
2 made a part of this Act. Any person who violates the regu-
3 lations prescribed under this Act shall be subject to the
4 penalties and entitled to the privileges and immunities
5 provided in that Act.

6 **SEC. 4. ENFORCEMENT BY STATES.**

7 (a) IN GENERAL.—Whenever an attorney general of
8 any State has reason to believe that the interests of the
9 residents of that State have been or are being threatened
10 or adversely affected because any person has engaged or
11 is engaging in an act or practice which violates any rule
12 of the Commission issued under section 3 of this Act or
13 the Trade Regulation Rule on Funeral Industry Practices
14 (16 C.F.R. 453.1 et seq.), the State, as *parens patriae*,
15 may bring a civil action on behalf of its residents in an
16 appropriate district court of the United States to enjoin
17 such violative act or practice, to enforce compliance with
18 such rule of the Commission, to obtain damages, restitu-
19 tion, or other compensation on behalf of residents of such
20 State, or to obtain such further and other relief as the
21 court may determine appropriate.

22 (b) NOTICE.—The State shall provide prior written
23 notice of any civil action under subsection (a) or (f)(2)
24 to the Commission and provide the Commission with a
25 copy of its complaint, except that if it is not feasible for

1 the State to provide such prior notice, the State shall pro-
2 vide such notice immediately upon instituting such action.

3 Upon receiving a notice respecting a civil action, the Com-
4 mission shall have the right—

5 (1) to intervene in such action;

6 (2) upon so intervening, to be heard on all mat-
7 ters arising therein;

8 (3) to remove the action to the appropriate
9 United States district court; and

10 (4) to file petitions for appeal.

11 (c) CONSTRUCTION.—For purposes of bringing any
12 civil action under subsection (a), nothing in this Act shall
13 prevent an attorney general from exercising the powers
14 conferred on the attorney general by the laws of such
15 State to conduct investigations or to administer oaths or
16 affirmations or to compel the attendance of witnesses or
17 the production of documentary and other evidence.

18 (d) ACTIONS BY COMMISSION.—Whenever a civil ac-
19 tion has been instituted by or on behalf of the Commission
20 for violation of any rule prescribed under section 3 of this
21 Act, no State may, during the pendency of such action
22 instituted by or on behalf of the Commission, institute a
23 civil action under subsection (a) or (f)(2) of this section
24 against any defendant named in the complaint in such ac-
25 tion for violation of any rule as alleged in such complaint.

1 (e) VENUE; SERVICE OF PROCESS.—Any civil action
2 brought under subsection (a) of this section in a district
3 court of the United States may be brought in the district
4 in which the defendant is found, is an inhabitant, or trans-
5 acts business or wherever venue is proper under section
6 1391 of title 28, United States Code. Process in such an
7 action may be served in any district in which the defend-
8 ant is an inhabitant or in which the defendant may be
9 found.

10 (f) ACTIONS BY OTHER STATE OFFICIALS.—

11 (1) CONSTRUCTION.—Nothing contained in this
12 section shall prohibit an authorized State official
13 from proceeding in State court on the basis of an al-
14 leged violation of any civil or criminal statute of
15 such State.

16 (2) OTHER STATE ACTIONS.—In addition to ac-
17 tions brought by an attorney general of a State
18 under subsection (a) of this section, such an action
19 may be brought by officers of such State who are
20 authorized by the State to bring actions in such
21 State on behalf of its residents.

22 **SEC. 5. EFFECT ON OTHER LAW.**

23 (a) NO PREEMPTION.—Nothing in this Act or the
24 rules prescribed under this Act shall be construed to pre-
25 empt any provision of any law of a State or political sub-

1 division of that State that provides protections to con-
2 sumers of funeral services or funeral goods, except to the
3 extent that the provision of law is inconsistent with any
4 provision of this Act or a rule prescribed under this Act,
5 and then only to the extent of the inconsistency.

6 **SEC. 6. DEFINITIONS.**

7 In this Act—

8 (1) the term “cemetery” means any organiza-
9 tion, association or other business that offers for
10 sale the interment, inurnment, or entombment of
11 human remains, but does not include any cemetery
12 that—

13 (A) performs fewer than 25 interments,
14 inurnments, and entombments during any cal-
15 endar year; or

16 (B) sells fewer than 25 interment,
17 inurnment, or entombment rights during any
18 calendar year;

19 (2) the term “funeral goods” are the goods
20 which are sold or offered for sale directly to the pub-
21 lic for use in connection with funeral services; and

22 (3) the term “funeral services” means—

23 (A) any services which are sold or offered
24 for sale to the public in order to—

1 (i) care for and prepare deceased
2 human bodies for burial, cremation, or
3 other final disposition; or

4 (ii) arrange, supervise, or conduct the
5 funeral ceremony or the final disposition of
6 deceased human bodies; or

7 (B) services provided by funeral directors,
8 morticians, ceterians, cremationists, and re-
9 tailers of caskets, urns, monuments, and mark-
10 ers.