

114TH CONGRESS
2D SESSION

H. R. 5212

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

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2016

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 goods or 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 2016”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) there have been shocking consumer abuses
9 in the funeral industry, including scandals at Burr

1 Oak Cemetery in Alsip, Illinois, Menorah Gardens
2 Cemetery in Palm Beach, Florida, and the Tri State
3 Crematory in Noble, Georgia;

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

6 (3) some consumers seek to ease the burdens on
7 their families by arranging and paying for preneed
8 funeral and cemetery arrangements;

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

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

18 (6) State laws are inconsistent and frequently
19 too weak to provide adequate consumer protections,
20 creating a need for minimum Federal standards in
21 this area;

22 (7) consumers have the right to receive clear
23 and accurate information about all funeral goods
24 and funeral services offered for sale;

1 (8) consumers need effective protection from
2 fraud and abusive practices by all providers of fu-
3 neral goods and funeral services and at all stages of
4 the funeral planning process; and

5 (9) a new Federal law that provides adequate
6 protections to grieving families is warranted.

7 **SEC. 3. FTC RULEMAKING RELATING TO UNFAIR OR DE-**
8 **CEPTIVE ACTS OR PRACTICES IN THE PROVI-**
9 **SION OF FUNERAL GOODS OR FUNERAL**
10 **SERVICES.**

11 (a) IN GENERAL.—The Federal Trade Commission
12 shall prescribe rules prohibiting unfair or deceptive acts
13 or practices in the provision of funeral goods or funeral
14 services. Such rules shall include the following:

15 (1) A requirement that providers of funeral
16 goods or funeral services furnish accurate price in-
17 formation disclosing clearly and conspicuously the
18 cost to the purchaser for each of the specific funeral
19 goods or funeral services provided or offered for sale.

20 (2) A prohibition on misrepresentations by such
21 providers, including misrepresentations of the re-
22 quirements of Federal, State, or local law.

23 (3) A prohibition on conditioning the provision
24 of any funeral good or funeral service upon the pur-

1 chase of any other funeral good or funeral service
2 from that provider, except as required by law.

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

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

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

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

1 any repurchase option by the cemetery or resale
2 rights available to the consumer.

3 (8) A requirement that cemeteries—

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

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

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

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

1 in accordance with section 553 of title 5, United States
2 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, ex-
15 cept for cemeteries organized, operated, managed,
16 and owned by a religious denomination, middle judi-
17 catory, house of worship, or similar religious organi-
18 zation, and that are not organized, operated, man-
19 aged, or owned by contract or affiliation with a for-
20 profit provider of funeral goods or funeral services
21 that offers those goods or services for sale to the
22 public; or

23 (2) States or any political subdivision of a
24 State.

1 (d) ENFORCEMENT.—Any violation of any rule pre-
2 scribed under this section shall be treated as a violation
3 of a regulation prescribed under section 18(a)(1)(B) of the
4 Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B))
5 regarding unfair or deceptive acts or practices. The Fed-
6 eral Trade Commission shall enforce this Act in the same
7 manner, by the same means, and with the same jurisdic-
8 tion as though all applicable terms and provisions of the
9 Federal Trade Commission Act were incorporated into and
10 made a part of this Act. Any person who violates the regu-
11 lations prescribed under this Act shall be subject to the
12 penalties and entitled to the privileges and immunities
13 provided in that Act.

14 **SEC. 4. ENFORCEMENT BY STATES.**

15 (a) IN GENERAL.—Whenever an attorney general of
16 any State has reason to believe that the interests of the
17 residents of that State have been or are being threatened
18 or adversely affected because any person has engaged or
19 is engaging in an act or practice which violates any rule
20 of the Commission issued under section 3 of this Act or
21 the Trade Regulation Rule on Funeral Industry Practices
22 (16 C.F.R. 453.1 et seq.), the State, as *parens patriae*,
23 may bring a civil action on behalf of its residents in an
24 appropriate district court of the United States to enjoin
25 such violative act or practice, to enforce compliance with

1 such rule of the Commission, to obtain damages, restitu-
2 tion, or other compensation on behalf of residents of such
3 State, or to obtain such further and other relief as the
4 court may determine appropriate.

5 (b) NOTICE.—The State shall provide prior written
6 notice of any civil action under subsection (a) or (f)(2)
7 to the Commission and provide the Commission with a
8 copy of its complaint, except that if it is not feasible for
9 the State to provide such prior notice, the State shall pro-
10 vide such notice immediately upon instituting such action.
11 Upon receiving a notice respecting a civil action, the Com-
12 mission shall have the right—

13 (1) to intervene in such action;

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

16 (3) to remove the action to the appropriate
17 United States district court; and

18 (4) to file petitions for appeal.

19 (c) CONSTRUCTION.—For purposes of bringing any
20 civil action under subsection (a), nothing in this Act shall
21 prevent an attorney general from exercising the powers
22 conferred on the attorney general by the laws of such
23 State to conduct investigations or to administer oaths or
24 affirmations or to compel the attendance of witnesses or
25 the production of documentary and other evidence.

1 (d) ACTIONS BY COMMISSION.—Whenever a civil ac-
2 tion has been instituted by or on behalf of the Commission
3 for violation of any rule prescribed under section 3 of this
4 Act, no State may, during the pendency of such action
5 instituted by or on behalf of the Commission, institute a
6 civil action under subsection (a) or (f)(2) of this section
7 against any defendant named in the complaint in such ac-
8 tion for violation of any rule as alleged in such complaint.

9 (e) VENUE; SERVICE OF PROCESS.—Any civil action
10 brought under subsection (a) of this section in a district
11 court of the United States may be brought in the district
12 in which the defendant is found, is an inhabitant, or trans-
13 acts business or wherever venue is proper under section
14 1391 of title 28, United States Code. Process in such an
15 action may be served in any district in which the defend-
16 ant is an inhabitant or in which the defendant may be
17 found.

18 (f) ACTIONS BY OTHER STATE OFFICIALS.—

19 (1) CONSTRUCTION.—Nothing contained in this
20 section shall prohibit an authorized State official
21 from proceeding in State court on the basis of an al-
22 leged violation of any civil or criminal statute of
23 such State.

24 (2) OTHER STATE ACTIONS.—In addition to ac-
25 tions brought by an attorney general of a State

1 under subsection (a) of this section, such an action
2 may be brought by officers of such State who are
3 authorized by the State to bring actions in such
4 State on behalf of its residents.

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

6 Nothing in this Act or the rules prescribed under this
7 Act shall be construed to preempt any provision of any
8 law of a State or political subdivision of that State that
9 provides protections to consumers of funeral services or
10 funeral goods, except to the extent that the provision of
11 law is inconsistent with any provision of this Act or a rule
12 prescribed under this Act, and then only to the extent of
13 the inconsistency.

14 **SEC. 6. DEFINITIONS.**

15 In this Act—

16 (1) the term “cemetery” means any organiza-
17 tion, association, or other business that offers for
18 sale the interment, inurnment, or entombment of
19 human remains, but does not include any cemetery
20 that—

21 (A) performs fewer than a total of 25 in-
22 terments, inurnments, and entombments during
23 any calendar year; or

1 (B) sells fewer than a total of 25 inter-
2 ment rights, inurnment rights, and entombment
3 rights during any calendar year;

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

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

8 (A) any services which are sold or offered
9 for sale directly to the public in order to—

10 (i) care for and prepare deceased
11 human bodies for burial, cremation, or
12 other final disposition; or

13 (ii) arrange, supervise, or conduct the
14 funeral ceremony or the final disposition of
15 deceased human bodies; or

16 (B) services provided by funeral directors,
17 morticians, cemeterians, cremationists, and re-
18 tailers of caskets, urns, monuments, and mark-
19 ers.

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