

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”.

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
10 Oak Cemetery in Alsip, Illinois, Menorah Gardens

1 Cemetery in Palm Beach, Florida, and the Tri State
2 Crematory in Noble, Georgia;

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

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

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

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

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

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

24 (8) consumers need effective protection from
25 fraud and abusive practices by all providers of fu-

1 neral goods and services and at all stages of the fu-
2 neral planning process; and

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

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

8 (a) IN GENERAL.—The Federal Trade Commission
9 shall prescribe rules prohibiting unfair or deceptive acts
10 or practices in the provision of funeral goods or services.

11 Such rules shall include the following:

12 (1) A requirement that providers of funeral
13 goods or funeral services furnish accurate price in-
14 formation disclosing the cost to the purchaser for
15 each of the specific funeral goods or funeral services
16 provided or offered for sale.

17 (2) A prohibition on misrepresentations by such
18 providers, including misrepresentations of the re-
19 quirements of Federal, State, or local law.

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

24 (4) A requirement that contracts for funeral
25 services or funeral goods be written clearly, stating

1 the merchandise and services that purchasers are
2 buying and their prices.

3 (5) In the case of contracts for funeral services
4 or funeral goods that are pre-paid in whole or in
5 part, required disclosures in the contract regarding
6 any penalties incurred if the consumer decides to
7 cancel or transfer the contract to another provider
8 of funeral services or funeral goods.

9 (6) A requirement that contracts for funeral
10 services or funeral goods disclose all fees and costs
11 to be incurred in the future or at the time that the
12 funeral services or funeral goods are provided.

13 (7) A requirement that cemeteries provide to
14 consumers, in a timely manner, all written rules and
15 regulations of the cemetery, and a clear explanation
16 in writing of the interment, inurnment, or entomb-
17 ment right that has been purchased, and any mate-
18 rial terms and conditions of that purchase, including
19 any repurchase option by the cemetery or resale
20 rights available to the consumer.

21 (8) A requirement that cemeteries—

22 (A) retain all records in existence on the
23 date of enactment of this Act, including maps
24 or other systems indicating the location and

1 date of each interment, inurnment, or entomb-
2 ment;

3 (B) accurately record and retain records of
4 all interment, inurnment, or entombment rights
5 sold after the effective date of the regulations
6 issued under this subsection, in such manner
7 and form as the Commission may prescribe in
8 such regulations; and

9 (C) make such records available to Fed-
10 eral, State, and local governments, as appro-
11 priate.

12 (b) RULEMAKING.—

13 (1) IN GENERAL.—The Commission shall pre-
14 scribe the rules under subsection (a) within 1 year
15 after the date of enactment of this Act. Such rules,
16 and any future rules or revision of rules prescribed
17 by the Commission prohibiting unfair or deceptive
18 acts or practices in the provision of funeral goods or
19 services, shall be prescribed in accordance with sec-
20 tion 553 of title 5, United States Code.

21 (2) RELATIONSHIP TO FUNERAL RULE.—No
22 rule prescribed pursuant to this Act shall be less
23 protective of consumers than the Trade Regulation
24 Rule on Funeral Industry Practices (16 C.F.R. part
25 453).

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

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

13 (2) religious organizations (notwithstanding any
14 contrary provisions of law set forth in the Religious
15 Freedom Restoration Act, 42 U.S.C. 2000bb—
16 2000bb-4); and

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

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

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

7 **SEC. 4. ENFORCEMENT BY STATES.**

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

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

1 vide such notice immediately upon instituting such action.

2 Upon receiving a notice respecting a civil action, the Com-

3 mission shall have the right—

4 (1) to intervene in such action;

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

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

9 (4) to file petitions for appeal.

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

17 (d) ACTIONS BY COMMISSION.—Whenever a civil ac-
18 tion has been instituted by or on behalf of the Commission
19 for violation of any rule prescribed under section 3 of this
20 Act, no State may, during the pendency of such action
21 instituted by or on behalf of the Commission, institute a
22 civil action under subsection (a) or (f)(2) of this section
23 against any defendant named in the complaint in such ac-
24 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, cemeterians, cremationists, and re-
9 tailers of caskets, urns, monuments, and mark-
10 ers.

○