

Regular Session, 2010

HOUSE BILL NO. 451

BY REPRESENTATIVE RITCHIE

FUNERALS & FUNERAL HOMES: Provides for changes to the regulation of solicitation by funeral homes

1 AN ACT

2 To amend and reenact R.S. 37:831(11), (40), and (72) and 846(A)(introductory paragraph),
3 (2), and (3), relative to solicitation by funeral homes; to define "capper", "steerer",
4 or "runner"; to define "funeral goods and services"; to define "solicitation"; to
5 authorize the imposition of sanctions or fines; to prohibit solicitation by funeral
6 home directors; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 37:831(11), (40), and (72) and 846(A)(introductory paragraph), (2),
9 and (3) are hereby amended and reenacted to read as follows:

10 §831. Definitions

11 For purposes of this Chapter and implementation thereof, the following terms
12 shall have the meaning as defined herein, unless the context clearly indicates
13 otherwise:

14 * * *

15 (11) "Capper", ~~or "steerer", "or runner"~~ means ~~any business agent or other~~
16 a person who, for monetary benefits or other considerations, procures or attempts to
17 deceive, delude, procure business at the direction of, request of, or in cooperation
18 with a licensee by means of deceit, trick, cheat, swindle, defraud, or mislead fraud,
19 or misleading statements.

20 * * *

1 (40) "Funeral goods and services" means any one or more of the following
2 goods or services:

3 (a) ~~goods~~ Goods which are sold or offered for sale directly to the public for
4 use in connection with funeral services.

5 (b) ~~and any~~ Any services which may be used to care for ~~and~~ or prepare
6 deceased human remains for burial, cremation, or other final disposition.

7 (c) ~~and to arrange, supervise or conduct~~ The arranging, supervising, or
8 conducting of the funeral ceremony or the final disposition of deceased human
9 ~~bodies, including, but not limited to,~~ bodies.

10 (d) ~~funeral~~ Funeral merchandise.

11 * * *

12 (72) "Solicitation" means the act or practice of any licensee, or any agent,
13 employee, or person acting on his behalf, approaching ~~someone with~~ a person or a
14 group of persons to make a request or plea, or to urge someone toward a particular
15 cause as it may pertain to the care, custody, or disposition of a dead human body.

16 * * *

17 §846. Refusal to grant or renew licenses; revocation or suspension; grounds;
18 hearings

19 A. The board may refuse to grant, refuse to renew, or may suspend or
20 revoke; any license, or impose a sanction or fine in keeping with the penalty
21 provision of this Part, when the applicant or licensee is found guilty of any of the
22 following acts or omissions:

23 * * *

24 (2) Paying, giving or offering, directly or indirectly, orally or in writing, any
25 money, credit, discount, gratuity or other thing of value to a third party as an
26 inducement for the business of a prospective customer, provided that this prohibition
27 shall not be ~~in any way construed as prohibiting~~ to prohibit any of the following:

1 (a) ~~the~~ The execution or servicing by the parties thereto of any funeral service
2 contract ~~of the type or preneed funeral contract~~ recognized ~~or required~~ by any
3 provisions of ~~R.S. Title~~ Titles 22 and 37 of the Louisiana Revised Statutes of 1950.

4 (b) A licensee's providing promotional pricing that is disclosed on its general
5 price list, including the dollar amount or method of determining the dollar amount
6 of any discount, directly to a consumer.

7 (c) A licensee's providing discounted or free funeral goods and services for
8 infants or a member of an indigent family.

9 (3)(a) ~~Solicitation of business, either in person or through agents commonly~~
10 ~~known as "cappers" or "steerers."~~ which is intimidating, overreaching, fraudulent,
11 or misleading, that uses undue influence, or that takes advantage of a person's lack
12 of knowledge or emotional vulnerability, or engaging in any of the following:

13 (i) At-need solicitation of sales of funeral goods and services or funeral or
14 disposition arrangements.

15 (ii) Soliciting, accepting, or paying consideration for recommending a
16 provider of funeral goods and services or disposition arrangements or using the
17 services of cappers, steerers, or runners.

18 (iii) Contacting persons receiving care in hospitals, rest homes, nursing
19 homes, hospices, or similar institutions for the purpose of soliciting preneed funeral
20 contracts or the sale of funeral goods and services or making funeral or disposition
21 arrangements without first having been specifically requested by that person.

22 (iv) Contacting a person suffering ill health or the relatives, caregivers,
23 acquaintances, health care providers, or persons having the right to control the
24 disposition of the remains of an individual whose death is impending or whose death
25 has recently occurred for the purposes of soliciting preneed funeral contracts or the
26 sale of funeral goods and services or making funeral or disposition arrangements for
27 that individual without first having been specifically requested by that person
28 seeking information about funeral goods or services.

Present law defines "solicitation" as the act or practice of approaching someone with a request or plea, or to urge someone toward a particular cause as it may pertain to the care, custody, or disposition of a dead human body.

Proposed law defines "solicitation" as the act or practice of any licensee or any agent, employee, or person acting on their behalf, of approaching a person or a group of persons making a request or plea, or to urge someone toward a particular cause as it may pertain to the care, custody, or disposition of a dead human body.

Present law authorizes the La. State Board of Embalmers and Funeral Directors to refuse to grant, refuse to renew, or to suspend or revoke any license when the applicant or licensee is found guilty of certain prohibited acts or omissions.

Proposed law authorizes the board to also impose a sanction or fine when the applicant or licensee is found guilty of certain prohibited acts or omissions.

Present law prohibits paying, giving, or offering, directly or indirectly, orally or in writing, any money, credit, discount, gratuity, or other thing of value as an inducement for the business of a prospective customer; provided that the prohibition shall not be in any way construed as prohibiting the execution or servicing by the parties thereto of any funeral service contract of the type recognized or required by any provisions of present law.

Proposed law prohibits paying, giving, or offering, directly or indirectly, orally or in writing, any money, credit, discount, gratuity, or other thing of value to a third party as an inducement for the business of a prospective customer, provided that this prohibition shall not be construed to prohibit any of the following:

- (1) The execution or servicing by the parties thereto of any funeral service contract or preneed funeral contract recognized by any provisions of present law.
- (2) A licensee from providing promotional pricing that is disclosed on its general price list, including the dollar amount or method of determining the dollar amount of any discount, directly to a consumer.
- (3) A licensee from providing discounted or free funeral goods and services for infants or a member of an indigent family.

Present law prohibits solicitation of business, either in person or through agents commonly known as "cappers" or "steerers".

Proposed law prohibits solicitation which is intimidating, overreaching, fraudulent, or misleading, that uses undue influence, or that takes advantage of a person's lack of knowledge or emotional vulnerability, or is engaging any of the following:

- (1) At-need solicitation of sales of funeral goods and services or funeral or disposition arrangements.
- (2) Soliciting, accepting, or paying consideration for recommending a provider of funeral goods and services or disposition arrangements or using the services of cappers, steerers, or runners.
- (3) Contacting persons receiving care in hospitals, rest homes, nursing homes, hospices, or similar institutions for the purpose of soliciting preneed funeral contracts or the sale of funeral goods and services or making funeral or disposition arrangements without first having been specifically requested by that person.
- (4) Contacting a person suffering ill health or the relatives, caregivers, acquaintances, health care providers, or persons having the right to control the disposition of the

remains of an individual whose death is impending or whose death has recently occurred for the purposes of soliciting preneed funeral contracts or the sale of funeral goods and services or making funeral or disposition arrangements for that individual without first having been specifically requested by that person seeking information about funeral goods or services.

Proposed law shall not apply to communications between persons related by blood, adoption, or marriage.

Proposed law shall not be construed to restrict the rights of a person to advertise or use direct mail or other communications in a manner directed to members of groups, associations, organizations, or the general public, or to contact persons responding to such communications or who initiate discussion of the funeral goods and services being offered.

(Amends R.S. 37:831(11), (40), and (72) and 846(A)(intro. para.), (2), and (3))