

Union Calendar No. 401

111TH CONGRESS
2^D SESSION

H. R. 3655

[Report No. 111-672]

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

DECEMBER 7, 2010

Additional sponsors: Ms. SCHAKOWSKY, Mr. JACKSON of Illinois, Mr. PETERS, Mr. DAVIS of Illinois, Mr. COHEN, Mr. GRIJALVA, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. BARROW, Mr. BUTTERFIELD, Mr. MOLLOHAN, Mr. QUIGLEY, Mr. WILSON of Ohio, Mr. HARE, Mr. ADLER of New Jersey, and Mr. PAYNE

DECEMBER 7, 2010

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on September 25, 2009]

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 2010”.*

6 **SEC. 2. FINDINGS.**

7 *Congress finds that—*

8 *(1) there have been shocking consumer abuses in*
9 *the funeral industry, including scandals at Burr Oak*
10 *Cemetery in Alsip, Illinois, Menorah Gardens Ceme-*
11 *tery in Palm Beach, Florida, and the Tri State Cre-*
12 *matory in Noble, Georgia;*

13 *(2) funeral arrangements are a major expense for*
14 *most American households and families;*

15 *(3) some consumers seek to ease the burdens on*
16 *their families by arranging and paying for pre-need*
17 *funeral and cemetery arrangements;*

18 *(4) most funerals are planned by grieving family*
19 *members at a time when they are especially vulner-*
20 *able and unlikely to focus on cost comparison;*

21 *(5) the Federal Trade Commission’s Funeral In-*
22 *dustry Practices Trade Regulation Rule (known as*
23 *the Funeral Rule) dictates consumer protections in*
24 *the funeral home, but does not cover the practices of*

1 *purchaser for each of the specific funeral goods or fu-*
2 *neral services provided or offered for sale.*

3 *(2) A prohibition on misrepresentations by such*
4 *providers, including misrepresentations of the require-*
5 *ments of Federal, State, or local law.*

6 *(3) A prohibition on conditioning the provision*
7 *of any funeral good or funeral service upon the pur-*
8 *chase of any other funeral good or funeral service*
9 *from that provider, except as required by law.*

10 *(4) A requirement that any presale disclosures*
11 *and contracts for funeral services or funeral goods be*
12 *written clearly, stating the merchandise and services*
13 *that purchasers are buying and their prices.*

14 *(5) In the case of contracts for funeral services*
15 *or funeral goods that are pre-paid in whole or in*
16 *part, a requirement for clear and conspicuous presale*
17 *and contractual disclosure regarding any penalties*
18 *incurred if the consumer decides to cancel or transfer*
19 *the contract to another provider of funeral services or*
20 *funeral goods.*

21 *(6) A requirement that contracts for funeral serv-*
22 *ices or funeral goods disclose clearly and conspicu-*
23 *ously all fees and costs to be incurred in the future*
24 *or at the time that the funeral services or funeral*
25 *goods are provided.*

1 (7) *A requirement that cemeteries provide to con-*
2 *sumers, in a timely manner, all written rules and*
3 *regulations of the cemetery, and a clear explanation*
4 *in writing of the interment, inurnment, or entomb-*
5 *ment right that has been purchased, and any material*
6 *terms and conditions of that purchase, including any*
7 *repurchase option by the cemetery or resale rights*
8 *available to the consumer.*

9 (8) *A requirement that cemeteries—*

10 (A) *retain all records in existence on the*
11 *date of enactment of this Act, including maps or*
12 *other systems indicating the location and date of*
13 *each interment, inurnment, or entombment;*

14 (B) *accurately record and retain records of*
15 *all interments, inurnments, or entombments oc-*
16 *curring, as well as any internment, inurnment,*
17 *or entombment rights sold, after the effective date*
18 *of the regulations issued under this subsection, in*
19 *such manner and form as the Commission may*
20 *prescribe in such regulations; and*

21 (C) *make such records available to Federal,*
22 *State, and local governments, as appropriate.*

23 (b) *RULEMAKING.—The Commission shall prescribe*
24 *the rules under subsection (a) within 1 year after the date*
25 *of enactment of this Act. Such rules, and any future rules*

1 *or revision of rules prescribed by the Commission prohib-*
2 *iting unfair or deceptive acts or practices in the provision*
3 *of funeral goods or services, shall be prescribed in accord-*
4 *ance with section 553 of title 5, United States Code.*

5 *(c) APPLICATION OF RULES TO TAX EXEMPT ORGANI-*
6 *ZATIONS AND STATES.—Notwithstanding the definition of*
7 *corporation in section 4 of the Federal Trade Commission*
8 *Act (15 U.S.C. 44), the rules prescribed under subsection*
9 *(a), and any future rules or revision of rules prescribed by*
10 *the Commission prohibiting unfair or deceptive acts or*
11 *practices in the provision of funeral goods or funeral serv-*
12 *ices, shall also apply to cemeteries organized or operated*
13 *by—*

14 *(1) organizations described in section 501(c) of*
15 *the Internal Revenue Code of 1986 that are exempt*
16 *from taxation under section 501(a) of such Code, ex-*
17 *cept for cemeteries organized, operated, managed, and*
18 *owned by a religious denomination, middle judica-*
19 *tory, house of worship, or similar religious organiza-*
20 *tion, and that are not organized, operated, managed,*
21 *or owned by contract or affiliation with a for-profit*
22 *provider of funeral goods or services that offers those*
23 *goods and services for sale to the public; and*

24 *(2) States or any political subdivision of a 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 Federal
6 Trade Commission shall enforce this Act in the same man-
7 ner, by the same means, and with the same jurisdiction as
8 though all applicable terms and provisions of the Federal
9 Trade Commission Act were incorporated into and made
10 a part of this Act. Any person who violates the regulations
11 prescribed under this Act shall be subject to the penalties
12 and entitled to the privileges and immunities provided in
13 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 resi-
17 dents of that State have been or are being threatened or
18 adversely affected because any person has engaged or is en-
19 gaging in an act or practice which violates any rule of the
20 Commission issued under section 3 of this Act or the Trade
21 Regulation Rule on Funeral Industry Practices (16 C.F.R.
22 453.1 et seq.), the State, as *parens patriae*, may bring a
23 civil action on behalf of its residents in an appropriate dis-
24 trict court of the United States to enjoin such violative act
25 or practice, to enforce compliance with such rule of the

1 *Commission, to obtain damages, restitution, or other com-*
2 *pensation on behalf of residents of such State, or to obtain*
3 *such further and other relief as the court may determine*
4 *appropriate.*

5 (b) *NOTICE.*—*The State shall provide prior written*
6 *notice of any civil action under subsection (a) or (f)(2) to*
7 *the Commission and provide the Commission with a copy*
8 *of its complaint, except that if it is not feasible for the State*
9 *to provide such prior notice, the State shall provide such*
10 *notice immediately upon instituting such action. Upon re-*
11 *ceiving a notice respecting a civil action, the Commission*
12 *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 con-*
22 *ferred on the attorney general by the laws of such State*
23 *to conduct investigations or to administer oaths or affirma-*
24 *tions or to compel the attendance of witnesses or the produc-*
25 *tion 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 in-
5 stituted by or on behalf of the Commission, institute a civil
6 action under subsection (a) or (f)(2) of this section against
7 any defendant named in the complaint in such action for
8 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 defendant
16 is an inhabitant or in which the defendant may be found.

17 (f) *ACTIONS BY OTHER STATE OFFICIALS.*—

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

23 (2) *OTHER STATE ACTIONS.*—In addition to ac-
24 tions brought by an attorney general of a State under
25 subsection (a) of this section, such an action may be

1 *brought by officers of such State who are authorized*
2 *by the State to bring actions in such State on behalf*
3 *of its residents.*

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

5 *Nothing in this Act or the rules prescribed under this*
6 *Act shall be construed to preempt any provision of any law*
7 *of a State or political subdivision of that State that pro-*
8 *vides protections to consumers of funeral services or funeral*
9 *goods, except to the extent that the provision of law is incon-*
10 *sistent with any provision of this Act or a rule prescribed*
11 *under this Act, and then only to the extent of the inconsis-*
12 *ency.*

13 **SEC. 6. DEFINITIONS.**

14 *In this Act—*

15 (1) *the term “cemetery” means any organization,*
16 *association or other business that offers for sale the*
17 *interment, inurnment, or entombment of human re-*
18 *mains, but does not include any cemetery that—*

19 (A) *performs fewer than 25 interments,*
20 *inurnments, and entombments during any cal-*
21 *endar year; or*

22 (B) *sells fewer than 25 interment,*
23 *inurnment, or entombment rights during any*
24 *calendar year;*

1 (2) *the term “funeral goods” are the goods which*
2 *are sold or offered for sale directly to the public for*
3 *use in connection with funeral services; and*

4 (3) *the term “funeral services” means—*

5 (A) *any services which are sold or offered*
6 *for sale to the public in order to—*

7 (i) *care for and prepare deceased*
8 *human bodies for burial, cremation, or*
9 *other final disposition; or*

10 (ii) *arrange, supervise, or conduct the*
11 *funeral ceremony or the final disposition of*
12 *deceased human bodies; or*

13 (B) *services provided by funeral directors,*
14 *morticians, ceterians, cremationists, and re-*
15 *tailers of caskets, urns, monuments, and mark-*
16 *ers.*

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