

107TH CONGRESS
2^D SESSION

H. R. 5743

To improve funeral home, cemetery, and crematory inspection systems, to establish consumer protections relating to funeral service contracts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 14, 2002

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

A BILL

To improve funeral home, cemetery, and crematory inspection systems, to establish consumer protections relating to funeral service contracts, and for other purposes.

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 “Federal Death Care
5 Inspection and Disclosure Act”.

1 **TITLE I—FEDERAL ASSISTANCE**
2 **FOR LOCAL PROGRAMS**

3 **SEC. 101. FEDERAL COORDINATOR OF FUNERAL, BURIAL,**
4 **AND DISPOSITION OVERSIGHT.**

5 (a) ESTABLISHMENT.—There is established within
6 the Department of Health and Human Services the posi-
7 tion of Coordinator of Funeral, Burial, and Disposition
8 Services (referred to in this title as the “Coordinator”).
9 The Coordinator shall be appointed by the Secretary of
10 Health and Human Services.

11 (b) DUTIES.—The Coordinator shall ensure the con-
12 duct of the following:

13 (1) A survey of existing State laws that pertain
14 to the death care industry.

15 (2) The formulation of standards specifying the
16 elements of an effective system for registering, in-
17 specting, and monitoring the handling and disposi-
18 tion of human remains by funeral homes, cemeteries,
19 crematories, and other death care providers.

20 (c) REPORT.—

21 (1) IN GENERAL.—Not later than 8 months
22 after the date of enactment of this Act, the Coordi-
23 nator shall submit a report to the President and the
24 appropriate committees of Congress concerning the
25 activities of the Coordinator.

1 (2) CONTENTS.—The report under paragraph
2 (1) shall contain—

3 (A) a comparative analysis of existing and
4 proposed systems for registering, inspecting,
5 and monitoring death care services in the var-
6 ious States;

7 (B) a comparative analysis of State laws
8 and regulations requiring consumer disclosures
9 in prepaid funeral, cemetery, and crematory
10 contracts; and

11 (C) such standards as may be formulated
12 by the Coordinator pursuant to this Act to-
13 gether with such commentary and recommenda-
14 tions as Coordinator considers appropriate.

15 **SEC. 102. FEDERAL ASSISTANCE GRANTS.**

16 (a) IN GENERAL.—The Coordinator shall award
17 grants to State agencies responsible for the registration,
18 inspection, and monitoring of death care providers, to en-
19 able such agencies—

20 (1) to establish registration or licensing systems
21 to properly account for all funeral homes, ceme-
22 teries, crematories, and other death care providers
23 operating in the State;

24 (2) to hire funeral home, crematory, and ceme-
25 tery inspectors;

1 (3) to train funeral home, crematory, and ceme-
2 tery inspectors;

3 (4) to hire or train consumer advocates to re-
4 solve disputes between consumers and death care
5 providers;

6 (5) to implement a new system or enhance an
7 existing system for receiving, investigating, medi-
8 ating, or otherwise resolving consumer complaints
9 against funeral homes, cemeteries, crematories, and
10 other death care providers; or

11 (6) to implement a new system or enhance an
12 existing system for enforcing State regulations gov-
13 erning the operation and practices of funeral homes,
14 cemeteries, crematories, and other death care pro-
15 viders.

16 (b) ELIGIBILITY.—

17 (1) IN GENERAL.—To be eligible to receive a
18 grant under this section a State agency described in
19 subsection (a) shall—

20 (A) submit an application for such grant
21 to the Coordinator for approval;

22 (B) certify to the Coordinator that such
23 agency is a unit of State government respon-
24 sible for registering, inspecting, and monitoring

1 funeral homes, cemeteries, crematories, or other
2 death care providers within the State; and

3 (C) maintain compliance with the stand-
4 ards and requirements established under section
5 103.

6 (2) APPLICATION.—An application for a grant
7 under this section shall be submitted at such time,
8 in such form, and containing such information as
9 the Coordinator may, by regulation or guideline, pre-
10 scribe. Such application shall include a long-term
11 strategy for the use of grant funds and a detailed
12 implementation program that reflects—

13 (A) consultation with—

14 (i) representatives from the death care
15 industry; and

16 (ii) consumers of death care services
17 in the State; and

18 (B) a consideration of a statewide strategy
19 for protecting the interest of such consumers.

20 (c) TECHNICAL ASSISTANCE.—The Coordinator may
21 provide technical assistance and training to a grantee
22 under this section to assist and measure the effectiveness
23 and performance of programs funded under this section.

1 (d) GRANT PERIOD.—A grant under this section shall
2 be made for a period not to exceed 3 years, but may be
3 renewed on such terms as the Coordinator may require.

4 (e) NONSUPPLANTING REQUIREMENT.—Amounts
5 made available under a grant under this section shall be
6 used to supplement, and may not be used to supplant,
7 State or local funds used to carry out activities of the type
8 provided for under this section.

9 (f) FEDERAL SHARE.—The Federal share of a grant
10 made under this section shall not exceed—

11 (1) for the first fiscal year for which a grantee
12 receives assistance under the grant, 75 percent of
13 the total costs of carrying out the program under
14 the grant; and

15 (2) for the second and subsequent fiscal years
16 for which a grantee receives assistance under the
17 grant, 50 percent of the total costs of carrying out
18 such program.

19 (g) ADMINISTRATIVE COSTS.—A grantee may use not
20 to exceed 10 percent of the amounts received under a
21 grant under this section for administrative expenses, in-
22 cluding expenses incurred in preparing reports.

23 (h) REPORTS.—

24 (1) STATE REPORTS.—A State agency or orga-
25 nization that receives a grant under this section

1 shall submit to the Coordinator, at such times and
2 in such format as the Coordinator may require, a re-
3 port that contains—

4 (A) a summary of the activities carried out
5 under the grant;

6 (B) an assessment of the effectiveness of
7 such activities in achieving ongoing compliance
8 with the standards formulated pursuant to sec-
9 tion 103; and

10 (C) such other information as the Coordi-
11 nator may require.

12 (2) REPORT TO CONGRESS.—Not later than 90
13 days after the end of each fiscal year for which
14 grants are made under this section, the Coordinator
15 shall submit to the appropriate committees of Con-
16 gress a report that includes—

17 (A) a list of the aggregate amount of
18 grants made under this section to each State
19 agency or organization for such fiscal year; and

20 (B) an independent evaluation of the effec-
21 tiveness of the programs that received funding
22 under this section in achieving ongoing compli-
23 ance with the standards formulated pursuant to
24 section 103.

1 (i) REGULATIONS, ETC.—The Secretary of Health
2 and Human Services shall issue such rules, regulations,
3 guidelines, and instructions, as may be necessary to carry
4 out this section.

5 **SEC. 103. STANDARDS FOR STATE REGULATION OF DEATH**
6 **CARE PROVIDERS.**

7 (a) ESTABLISHMENT.—Not later than 180 days after
8 the date of enactment of this Act, the Coordinator shall
9 establish minimum standards and requirements with re-
10 spect to the State registration, inspection, and monitoring
11 of funeral homes, cemeteries, crematories, and other death
12 care providers, including—

13 (1) the registration or licensing of each funeral
14 home, cemetery, crematory, or other death care pro-
15 vider with the unit of State government charged
16 with the inspection and monitoring of such provider;

17 (2) the physical inspection, on at least an an-
18 nual basis, of the places of operation of each funeral
19 home, cemetery, crematory, or other death care pro-
20 vider which handles human remains in the State, by
21 a State inspector to determine compliance with State
22 regulations;

23 (3) recordkeeping procedures and annual re-
24 porting by each funeral home, cemetery, crematory,
25 or other death care provider to the unit of State gov-

1 ernment charged with the inspection and monitoring
2 of such provider;

3 (4) the licensing of death care facilities;

4 (5) the inspection of death care facilities;

5 (6) the receipt, investigation, mediation, or
6 other resolution of consumer complaints directed at
7 funeral homes, cemeteries, crematories, or other
8 death care providers operating in the State;

9 (7) witnessing of cremation;

10 (8) the enforcement of State regulations gov-
11 erning the operation and practices of funeral homes,
12 cemeteries, crematories, or other death care pro-
13 viders in the State; and

14 (9) other matters determined appropriate by
15 the Coordinator.

16 (b) NONCOMPLIANCE.—The Coordinator shall not
17 award a grant under section 102 to a State agency that
18 fails to comply with the standards and requirements pro-
19 mulgated by the Secretary under subsection (a).

20 **TITLE II—DISCLOSURE RULES** 21 **FOR FUNERAL INDUSTRY**

22 **SEC. 201. DEFINITIONS.**

23 In this title:

24 (1) ALTERNATIVE CONTAINER.—The term
25 “alternative container” means an unfinished wooden

1 box or other nonmetal receptacle or enclosure, with-
2 out ornamentation or a fixed interior lining, which
3 is designed for the encasement of human remains
4 and which is made of fiberboard, pressed-wood, com-
5 position materials (with or without an outside cov-
6 ering), or similar materials.

7 (2) ARRANGEMENT SERVICES FEE.—The term
8 “arrangement services fee” means a reasonable fee
9 that—

10 (A) is charged to cover professional and
11 overhead costs, including staff time dedicated to
12 conducting arrangement conferences, imple-
13 menting arrangement instructions, obtaining
14 permits or other authorizations, preparing no-
15 tices for newspapers, coordinating with clergy
16 and monument dealers, and similar activities;
17 and

18 (B) is—

19 (i) calculated at an hourly rate; or
20 (ii) a series of flat-rate fees for spe-
21 cific arrangements made by a funeral serv-
22 ice provider.

23 (3) CASH ADVANCE ITEM.—The term “cash ad-
24 vance item” means any item of service or merchan-
25 dise described to a purchaser as a cash advance, ac-

1 commodation, cash disbursement, or similar term. A
2 cash advance item includes any item obtained from
3 a third party and paid for by the funeral provider
4 on the purchaser's behalf. Cash advance items in-
5 clude cemetery or crematory services, pallbearers,
6 public transportation, clergy honoraria, flowers, mu-
7 sicians, singers, nurses, permit fees, obituary no-
8 tices, gratuities, and death certificates.

9 (4) CASKET.—The term “casket” means a rigid
10 container which is designed for the encasement of
11 human remains and which is usually constructed of
12 wood, metal, fiberglass, plastic, or like material, and
13 ornamented and lined with fabric.

14 (5) COMMISSION.—The term “Commission”
15 means the Federal Trade Commission.

16 (6) CREMATION.—The term “cremation” means
17 a heating process which incinerates human remains.

18 (7) CREMATORY.—The term “crematory”
19 means any person, partnership, or corporation that
20 performs cremation.

21 (8) DECEPTIVE PRACTICE.—The term
22 “deceptive practice” means an unfair or deceptive
23 act or practice in or affecting commerce that violates
24 section 5(a) of the Federal Trade Commission Act
25 (15 U.S.C. 45(a)).

1 (9) DIRECT CREMATION.—The term “direct
2 cremation” means a disposition of human remains
3 by cremation without formal viewing, visitation, or
4 ceremony with the body present.

5 (10) FUNERAL CEREMONY.—The term “funeral
6 ceremony” means a service commemorating a de-
7 ceased person that occurs with the deceased’s body
8 present.

9 (11) FUNERAL GOODS.—The term “funeral
10 goods” means goods which are sold or offered for
11 sale directly to the public for use in connection with
12 funeral services.

13 (12) FUNERAL PROVIDER.—The term “funeral
14 provider” means any person, partnership, or cor-
15 poration that sells or offers to sell funeral goods or
16 funeral services to the public.

17 (13) FUNERAL SERVICES.—The term “funeral
18 services” means—

19 (A) any services which may be used to—

20 (i) care for and prepare deceased
21 human bodies for burial, cremation, or
22 other final disposition; and

23 (ii) arrange, supervise, or conduct the
24 funeral ceremony or the final disposition of
25 deceased human bodies; and

1 (B) services provided by funeral directors,
2 morticians, cemeterians, cremationists, and me-
3 morial retailers.

4 (14) IMMEDIATE BURIAL.—The term
5 “immediate burial” means a disposition of human
6 remains by burial, without formal viewing, visitation,
7 or ceremony with the body present, except for a
8 graveside service.

9 (15) MEMORIAL SERVICE.—The term
10 “memorial service” means a ceremony commemo-
11 rating the deceased without the body present.

12 (16) MEMORIAL RETAILER.—The term
13 “memorial retailer” means a person who sells or of-
14 fers to sell to the public any memorial intended to
15 mark the location of the internment of human re-
16 mains.

17 (17) OUTER BURIAL CONTAINER.—The term
18 “outer burial container” means any container which
19 is designed for placement in the grave around the
20 casket including, but not limited to, containers com-
21 monly known as burial vaults, grave boxes, and
22 grave liners.

23 (18) PRENEED CONTRACT.—The term “preneed
24 contract” means a funeral contract arranged for and
25 paid, in part or in full, prior to an anticipated death.

1 (19) PURCHASER OF FUNERAL GOODS OR FU-
2 NERAL SERVICES.—The terms “purchaser of funeral
3 goods or funeral services” and “purchaser” mean
4 any person who—

5 (A) purchases funeral goods or funeral
6 services from a funeral provider; or

7 (B) contacts a funeral provider, in any
8 manner, including in person, by telephone, by
9 mail, or electronically, to obtain information re-
10 lated to purchasing funeral goods or funeral
11 services.

12 (20) REQUEST FOR INFORMATION RELATED TO
13 FUNERAL GOODS OR FUNERAL SERVICES.—The term
14 “request for information related to funeral goods or
15 funeral services” means any inquiry made by a per-
16 son to a funeral provider for information related to
17 such goods or services. Such request may be made
18 in person, in writing, by telephone, or electronically.

19 **SEC. 202. PRICE DISCLOSURES.**

20 (a) DECEPTIVE PRACTICES.—It shall be a deceptive
21 trade practice under section 5(a) of the Federal Trade
22 Commission Act (15 U.S.C. 45(a)) for a funeral provider
23 to fail to provide, in a timely manner—

24 (1) in response to a request for information re-
25 lated to funeral goods or funeral services—

1 (A) accurate, printed information regard-
2 ing the price of the funeral goods and funeral
3 services described in subsection (b); and

4 (B) the disclosures described in subsection
5 (c); or

6 (2) in response to a specific request for the
7 prices of caskets, alternative containers, or outer
8 burial containers, a list of the prices of each model
9 of casket, alternative container, or outer burial con-
10 tainer that the person offers for sale.

11 (b) FUNERAL GOODS AND FUNERAL SERVICES.—

12 The price of funeral goods and funeral services referred
13 to in subsection (a)(1)(A) means the retail price, ex-
14 pressed as a flat fee or a price per hour, mile, or other
15 unit, of all funeral goods and services offered by a funeral
16 provider, including the following:

17 (1) Embalming.

18 (2) Transportation of remains.

19 (3) The use of facilities.

20 (4) Staff attendance at meetings, gatherings, or
21 services.

22 (5) Equipment usage or rental.

23 (6) Casket and alternative containers.

24 (7) Outer burial container.

25 (8) Immediate burials.

1 (9) Direct cremations.

2 (10) Crematory services.

3 (11) Viewing, without embalming.

4 (12) Insurance or benefit processing fee.

5 (13) Internment rights.

6 (14) Opening and closing charges.

7 (15) Monuments, markers, or memorials.

8 (c) DISCLOSURES.—The disclosures referred to in
9 subsection (a)(1)(B) are the following disclosures:

10 (1) The name, address, and telephone number
11 of the funeral provider’s place of business.

12 (2) The effective date of any prices provided.

13 (3) The following statement: “For information
14 on the purchase of funerals and consumer rights or
15 to file a complaint, you may contact
16 _____.”, with the blank space being filled
17 with the name, address, phone number, and other
18 relevant information for contacting the State agency
19 or agencies responsible for handling consumer in-
20 quires and complaints pertaining to death care serv-
21 ice providers.

22 (4) Contact information, including a toll-free
23 number, for an agency that provides information re-
24 lated to veteran’s benefits.

1 (5) In immediate conjunction with the price of
2 embalming, the following statements:

3 (A) “Except in certain special cases, em-
4 balming is not required by law. Embalming may
5 be necessary, however, if you select certain fu-
6 neral arrangements, such as a funeral with
7 viewing. If you do not want embalming, you
8 usually have the right to choose an arrange-
9 ment that does not require you to pay for it,
10 such as direct cremation, immediate burial, or
11 other timely disposition.”. The phrase “except
12 in certain special cases” shall not be included in
13 the disclosure if State or local law in the area
14 where the provider does business does not re-
15 quire embalming under any circumstances.

16 (B) “If you selected a funeral that may re-
17 quire embalming, such as a funeral with view-
18 ing, you may have to pay for embalming. You
19 do not have to pay for embalming you did not
20 approve if you selected arrangements such as a
21 direct cremation or immediate burial. If we
22 charged for embalming, we will explain why
23 below.”.

24 (6) In immediate conjunction with the price of
25 direct cremations, the following disclosure: “If you

1 want to arrange a direct cremation, you can use an
2 alternative container. Alternative containers encase
3 the body and can be made of materials like fiber-
4 board or composition materials (with or without an
5 outside covering). The containers we provide are
6 _____.”, with the blank space being filled
7 with a description of the container and its construc-
8 tion.

9 (7) In immediate conjunction with the price of
10 any outer burial container, the following disclosure:
11 “In most areas of the country, State or local law
12 does not require that you buy a container to sur-
13 round the casket in the grave. However, many ceme-
14 teries require that you have such a container so that
15 the grave will not sink or settle. Either a grave liner
16 or a burial vault will satisfy these requirements.”.
17 The phrase “in most areas of the country” shall not
18 be included in this disclosure if State or local law in
19 the area where the provider does business does not
20 require a container to surround the casket in the
21 grave.

22 (8) In immediate conjunction with the price of
23 any casket or sealer casket, the following disclosure:
24 “There is no scientific or other evidence that any

1 casket with a sealing device will preserve human re-
2 mains.”

3 (d) **TIMELY MANNER.**—For the purposes of sub-
4 section (a), information is provided in a timely manner
5 if it is provided to the purchaser of funeral goods or fu-
6 neral services at the first opportunity, which may not be
7 late than the first selling, showing, or making any rep-
8 resentation about any funeral goods or funeral services.

9 (e) **SPECIFIC APPLICATION.**—The requirements of
10 subsection (a) apply to every communication between a fu-
11 neral provider and a purchaser of funeral goods or funeral
12 services, except an in-person request made by a funeral
13 provider for authorization to embalm at the time a de-
14 ceased human body is removed for transportation.

15 **SEC. 203. STATEMENT OF FUNERAL GOODS AND SERVICES**

16 **SELECTED.**

17 (a) **IN GENERAL.**—It shall be a deceptive trade prac-
18 tice under section 5(a) of the Federal Trade Commission
19 Act (15 U.S.C. 45(a)) for a funeral provider to fail to give
20 an itemized written statement for retention to a purchaser
21 of funeral goods or funeral services at the conclusion of
22 the discussion related to such goods and services and prior
23 to providing any services beyond taking possession of a
24 deceased human body for authorized embalming. The
25 statement shall include the following information:

1 (1) The funeral goods and funeral services se-
2 lected by the purchaser and the prices to be paid for
3 each good or service.

4 (2) A specific itemization of cash advance items
5 to the extent then known or reasonably ascertain-
6 able. If the prices are not known or reasonably as-
7 certainable, a good faith estimate shall be given and
8 a written statement that the actual charges shall be
9 provided before the final bill is paid.

10 (3) The total cost of the goods and services se-
11 lected.

12 (4) If a sealer casket is selected by the pur-
13 chaser, the following disclosure: “This product is not
14 designed or intended to preserve human remains,
15 and may under certain circumstances accelerate the
16 decomposition of the body.”

17 (b) **PLACEMENT OF INFORMATION.**—The information
18 required by subsection (a) shall be included on any con-
19 tract, statement, or other document which the funeral pro-
20 vider would otherwise provide at the conclusion of a dis-
21 cussion related to funeral goods or funeral services.

22 **SEC. 204. MISREPRESENTATIONS.**

23 It shall be a deceptive trade practice under section
24 5(a) of the Federal Trade Commission Act (15 U.S.C.
25 45(a)) for a funeral provider—

1 (1) to inaccurately represent that Federal,
2 State, or local law or industry custom requires the
3 purchase of any funeral goods or funeral services,
4 including to inaccurately represent that—

5 (A) State or local law requires that a de-
6 ceased person be embalmed;

7 (B) State or local law requires a casket for
8 direct cremation; or

9 (C) a particular cemetery requires outer
10 burial containers;

11 (2) to fail to identify and briefly describe in
12 writing on the statement of funeral goods and fu-
13 neral services selected any legal requirement which
14 the funeral provider represents to a person as com-
15 pelling the purchase of funeral goods or funeral serv-
16 ices for the funeral which that person is arranging;
17 or

18 (3) to fail to disclose that embalming is not re-
19 quired for—

20 (A) direct cremation;

21 (B) immediate burial; or

22 (C) a closed casket funeral without viewing
23 or visitation when refrigeration is available and
24 when State or local law does not require em-
25 balming; or

1 (C) an arrangement services fee that—

2 (i) is disclosed as being either an
3 hourly rate fee described in clause (i) of
4 section 201(2)(B) or a flat fee described in
5 clause (ii) of such section; and

6 (ii) is elected by the purchaser;

7 (3) fail to place—

8 (A) immediately above the prices disclosed
9 as described in section 202(a), the following
10 disclosure: “The goods and services shown
11 below are those we can provide to our cus-
12 tomers. You may choose the items you desire.
13 If legal or other requirements mean you must
14 buy any item that you do not specifically re-
15 quest, we will explain the reason in writing on
16 the statement we provide describing the funeral
17 goods and services you selected.”; or

18 (B) in the statement of funeral goods and
19 services selected, as described in section
20 203(a)(1), the following disclosure: “Charges
21 are only for those items that you selected or
22 that are required. If we are required by law or
23 by a cemetery or crematory to use any items,
24 we will explain the reasons in writing below.”.

1 (b) DISCLOSURE REQUIRED.—In seeking the ap-
2 proval required by subsection (a)(2), the funeral provider
3 shall disclose that a fee will be charged if the family or
4 other authorized person selects a funeral which requires
5 embalming, such as a funeral with a public or private
6 viewing, and that no fee will be charged if the family or
7 other authorized person selects a service which does not
8 require embalming, such as direct cremation or immediate
9 burial.

10 **SEC. 207. RETENTION OF DOCUMENTS.**

11 A funeral provider shall retain and make available for
12 inspection by the Commission true and accurate copies
13 of—

14 (1) the price lists required by section 202(a) for
15 at least 1 year after the date of the last distribution
16 of such lists to customers; and

17 (2) each statement of funeral goods and serv-
18 ices selected, as required by section 203, for at least
19 1 year from the date of arranging a funeral or me-
20 morial services.

21 **SEC. 208. COMPREHENSION OF DISCLOSURES.**

22 A funeral provider shall make the disclosures re-
23 quired by this title in a clear and conspicuous manner
24 using type that is not smaller than 12 points in size. A
25 funeral provider shall not include in any price list, a state-

1 ment or information that alters or contradicts the infor-
2 mation required by this title to be included in those lists.

3 **SEC. 209. PROHIBITED SALES PRACTICES.**

4 (a) IN GENERAL.—Each of the following sales prac-
5 tices shall be a deceptive trade practice under section 5(a)
6 of the Federal Trade Commission Act (15 U.S.C. 45(a)):

7 (1) Unsolicited telephone offers to sell funeral
8 goods, funeral services, crematory services, inter-
9 ment rights, or other cemetery and memorialization
10 goods and services.

11 (2) Door-to-door direct offers to sell funeral
12 goods, funeral services, crematory services, inter-
13 ment rights, or other cemetery and memorialization
14 goods and services.

15 (b) IDENTIFICATION OF AFFILIATION.—A person
16 who is an operator, funeral provider, funeral director, em-
17 balmer, or memorial dealer shall—

18 (1) state the person's affiliation with any pub-
19 licly traded company in all contracts and on all busi-
20 ness letterhead, advertising, and marketing mate-
21 rials; and

22 (2) state the person's licensed business location
23 in all directories, advertising, and marketing mate-
24 rials in which offsite telephone numbers are used.

1 **SEC. 210. CASH ADVANCE PROVISIONS.**

2 It shall be a deceptive trade practice under section
3 5(a) of the Federal Trade Commission Act (15 U.S.C.
4 45(a)) for a funeral provider to—

5 (1) represent that the price charged for a cash
6 advance item is the same as the cost to the funeral
7 provider for the item when such is not the case; or

8 (2) fail to disclose to a person arranging a fu-
9 neral that the price being charged for a cash ad-
10 vance item is not the same as the cost to the funeral
11 provider for the item when such is the case.

12 (3) fail to place in the itemized statement of fu-
13 neral goods and funeral services selected, in imme-
14 diate conjunction with the list of itemized cash ad-
15 vance items required by section 203(a)(2), the fol-
16 lowing statements:

17 (A) “We charge for our services in obtain-
18 ing _____.”; with the blank space being
19 filled with a list of cash advance items, if the
20 funeral provider marks up the price for or re-
21 ceives and retains a rebate, commission, or
22 trade or volume discount on a cash advance
23 item.

24 (B) “You have the right to arrange for the
25 purchase of these items on your own behalf.”.

1 **SEC. 211. CONSUMER PROTECTIONS IN PRENEED AND PRE-**
2 **PAID FUNERAL SERVICE TRANSACTIONS.**

3 It shall be a deceptive trade practice under section
4 5(a) of the Federal Trade Commission Act (15 U.S.C.
5 45(a)) for a funeral provider to fail to comply with the
6 following prepaid contract requirements:

7 (1) Prepaid contracts shall conform to all appli-
8 cable Federal and State statutes and regulations.

9 (2) Prepaid contracts shall be written in plain
10 English, and clearly state the merchandise and serv-
11 ices that purchasers are buying and their prices. Use
12 of legal or industry-specific jargon shall be avoided
13 to the extent possible.

14 (3) Charges for funeral goods or funeral serv-
15 ices shall be itemized. The itemization shall be in
16 greater detail than a recitation of prices and shall
17 include a complete description of the services to be
18 rendered and an unambiguous description of the
19 merchandise to be delivered.

20 (4) When prices of merchandise or services to
21 be delivered in the future are not guaranteed, or an
22 additional payment may be required in the future, a
23 statement to that effect shall be included in the pre-
24 pared contract and initialed by the purchaser.

25 (5) The contract must clearly state what hap-
26 pens if merchandise is not available at delivery time

1 and substitution is necessary. The description of the
2 merchandise shall be sufficiently complete for the
3 person authorized to make funeral arrangements to
4 make a decision, based on objective criteria, about
5 the comparability of a needed substitution.

6 (6) No substitution shall be made without the
7 consent of the purchaser, or upon the purchaser's
8 death, the person authorized to make funeral ar-
9 rangements. A prepaid contract must contain a pro-
10 vision, which is initialed by the purchaser, either
11 prohibiting any changes, or, alternatively, specifying
12 what instructions may be modified and by whom.

13 (7) There shall be an explanation of how the
14 purchaser's funds will be protected to assure the
15 seller's performance in compliance with the pre-
16 vailing prepaid contract law. The name of the insti-
17 tution where funds will be deposited in escrow must
18 be disclosed. The buyer must receive an annual re-
19 port from the escrow agent. An administrative fee,
20 not to exceed 1 percent of the contract, may be with-
21 drawn annually by the escrow agent.

22 (8) The prepaid contract shall provide for can-
23 cellation and refund or transfer of the contract with
24 no loss of benefits paid by the purchaser along with
25 accrued interest.

1 (9) A prepaid contract may be made irrevocable
2 only when the beneficiary will be applying for med-
3 icaid or other social benefits within the next 6
4 months. The irrevocability of the prepaid contract
5 shall not affect the right of the purchaser to change
6 the provider.

7 (10) Copies of the prepaid contract and supple-
8 mental material, such as information on credit life
9 insurance and transfer or exchange plans, shall be
10 provided to the purchaser at the time of the preneed
11 sale.

12 (11) Copies of the prepaid contract and at-need
13 documentation shall be provided to the person au-
14 thorized to make the final funeral arrangements at
15 the time of death to ensure that the merchandise
16 and services match those specified in the prepaid
17 contract. A list of items substituted shall be in writ-
18 ing and included in the at-need documentation.

19 (12) Copies of all prepaid contracts and at-need
20 documentation shall be retained by the seller for a
21 period of 1 year after performance of the contract.

22 **SEC. 212. CONSUMER DISCLOSURES IN PREPAID CON-**
23 **TRACTS.**

24 Not later than 1 year after the date of enactment
25 of this Act, the Commission shall establish minimum

1 standards and requirements with respect to State man-
2 dated consumer disclosures in prepaid contracts for the
3 purchase of funeral, cemetery, or crematory goods or serv-
4 ices, including—

5 (1) basic information identifying the seller, the
6 purchaser, the entity that will provide the goods and
7 services (if different from the seller), the prices of
8 the goods and services being purchased on an
9 itemized basis, and the total price of the purchase;

10 (2) funding information disclosing where, how,
11 and with whom the prepaid funds will be deposited
12 and invested, and what portion of the prepaid funds,
13 if any, will be paid to the seller prior to the perform-
14 ance of the contract;

15 (3) price and payment disclosures regarding to
16 what extent the prices of the goods and services are
17 guaranteed or not guaranteed, who is responsible for
18 any payment shortfalls, and who is entitled to re-
19 ceive excess funds; and

20 (4) cancellation and transfer information dis-
21 closing whether the consumer may cancel or transfer
22 the prepaid contract, the method for exercising such
23 rights, the amount of revocation or transfer fees, if
24 any, retained by the seller, and safeguards for the

1 consumer if the seller is unable to provide the goods
2 and services in the contract.

3 **SEC. 213. PRIVATE RIGHT OF ACTION.**

4 In addition to the remedies identified in the Federal
5 Trade Commission Act (15 U.S.C. 41 et seq.), a person
6 who is injured by a violation of this title may commence
7 a civil action against the funeral provider. Such person
8 shall be entitled to recover the greater of actual damages
9 or \$5,000 for each violation proved by a preponderance
10 of the evidence.

11 **SEC. 214. ENFORCEMENT BY THE COMMISSION.**

12 The Commission shall enforce the provisions of this
13 title in the manner provided in the Federal Trade Com-
14 mission Act for deceptive practices declared unlawful
15 under section 5(a) of such Act (15 U.S.C. 45(a)).

16 **SEC. 215. ADMINISTRATION AND RULEMAKING.**

17 (a) ADMINISTRATION.—The provisions of this title
18 shall be administered by the Commission.

19 (b) RULEMAKING.—Notwithstanding any other provi-
20 sion of law, the Commission may prescribe rules in accord-
21 ance with section 553 of title 5, United States Code
22 (commonly known as the “Administrative Procedure Act”)
23 to carry out the provisions of this title.

1 **SEC. 216. STATE EXEMPTIONS.**

2 A provision of this title, or a regulation issued by the
3 Commission pursuant to this title, shall not be in effect
4 in a State if—

5 (1) the appropriate State agency requests such
6 provision or regulation not be in effect in the State;

7 (2) there is a State requirement in effect that
8 applies to a transaction to which the provision or
9 regulation applies;

10 (3) the State requirement affords an overall
11 level of protection to consumers that is equal to, or
12 exceeds, the level of protection afforded by the provi-
13 sion or regulation; and

14 (4) the Commission determines that the State
15 is administering and enforcing the State require-
16 ment in a manner that affords a level of protection
17 to consumers that is equal to or exceeds the level of
18 protection afforded by the Commission's enforce-
19 ment of such provisions or regulations.

20 **SEC. 217. DECLARATION OF INTENT.**

21 This title does not apply to the business, or acts in
22 the conduct of the business, of insurance.

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