

PREPARED STATEMENT

OF

COMMISSION AUTHORIZED

GERALD WRIGHT

ATTORNEY, SAN FRANCISCO REGIONAL OFFICE
FEDERAL TRADE COMMISSION

BEFORE THE

ASSEMBLY COMMITTEE ON
CONSUMER PROTECTION, GOVERNMENTAL EFFICIENCY
AND ECONOMIC DEVELOPMENT
CALIFORNIA LEGISLATURE

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Madam Chairman and members of the Committee: I am pleased to appear before you today to discuss the Federal Trade Commission's role and experience in the regulation of the funeral industry. My name is Gerald Wright. I am an attorney with the San Francisco Regional Office of the Federal Trade Commission, and am primarily responsible for the FTC's work relating to the its Funeral Rule in this region. The views expressed are not necessarily those of the Commission or any individual Commissioner.

The FTC is an independent regulatory agency that reports to Congress on its actions. The Commission is headed by five Commissioners, nominated by the President and confirmed by the United States Senate.

The FTC enforces a variety of federal antitrust and consumer protection laws. The Commission seeks to ensure that the nation's markets function competitively and are free of undue restrictions. The Commission also works to enhance the smooth operation of the marketplace by eliminating acts or practices that are unfair or deceptive. In general, the Commission's efforts in fulfilling its mission to prevent unfairness and deception are directed to stopping actions that threaten consumers' opportunities to exercise informed choice. The Commission carries out its responsibilities primarily through law enforcement, rulemaking, consumer education, and coordination with state and local law enforcement agencies.

The FTC has a staff of over 900 persons, located in Washington, D.C., and in 10 regional offices. In California, the Commission maintains regional offices in both San Francisco and Los Angeles.

In your invitation to me to testify today, you asked that I address the question of "the degree to which consumers needing funeral services are subjected to unfair business practices." The FTC's experience in this field derives primarily from the adoption, enforcement and evaluation of the FTC's Funeral Rule. This regulation, among other things, requires funeral homes to give consumers usable information about prices in person or over the telephone, to "unbundle" goods and services offered, and to give consumers written disclosures designed to counteract common misunderstandings and misrepresentations about funeral purchases.

In promulgating the Funeral Rule, the Commission observed that:

While the arrangement of a funeral is clearly an important financial transaction for consumers, it is a unique transaction, one whose characteristics reduce the ability of consumers to make careful, informed purchase decisions....

Under any circumstances, giving careful consideration to financial matters while arranging a funeral would be difficult. This difficulty is exacerbated, however, by several practices used by funeral providers which limit the consumer's ability to make informed, independent choices. (47 Fed. Reg. p. 42260, September 24, 1982)

The Rule absolutely prohibits several past industry practices that the Commission identified as making funeral purchases difficult for consumers. These are:

- 1) failing to furnish itemized price information to funeral consumers;
- 2) requiring consumers to purchase items they do not desire to buy; and
- 3) embalming deceased human remains for a fee without prior authorization.

With respect to other practices, the Rule prohibits misrepresentations. The Rule provides that it is a deceptive practice for funeral providers to misrepresent:

- 1) requirements for embalming, cremations, and grave vaults or grave liners;
- 2) legal and cemetery requirements;
- 3) preservation and protection capabilities of funeral goods and services; and

- 4) cash advance charges for items arranged for by the funeral provider on the consumer's behalf.

To prevent the above practices, and to correct consumers' misimpressions, the Rule requires funeral homes to take the following affirmative steps:

- 1) affirmatively disclose to telephone callers who inquire about funeral "terms, prices or conditions" that price information is available over the telephone, and disclose specific price information over the telephone to persons who call and request it;
- 2) disclose written price information by means of a general price list ("GPL"), casket price list ("CPL"), and an outer burial container price list ("OBCPL") to persons who inquire in person about funeral arrangements or the prices of funeral goods and services;
- 3) give purchasers a written statement, after they have selected funeral goods and services, containing the price for each of the items selected, the total price for the funeral arrangements selected, price estimates or actual costs, if known, for cash advance items, and any legal, cemetery or crematory requirements that compel the purchase of any items or services for the particular funeral;
- 4) make truthful representations about legal and other requirements that compel the purchase of particular items or services;
- 5) allow consumers to select and purchase only those goods and services they desire (instead of offering goods and services only in predetermined packages);
- 6) seek express approval before embalming the deceased for a fee;
- 7) make only truthful representations about the preservative and protective value of funeral goods and services;
- 8) disclose that they charge a fee for obtaining cash advance items, if that is the case; and
- 9) make unfinished wood boxes or alternative containers available for direct cremation, if the provider offers direct cremation.

The FTC Commissioners are presently considering final staff recommendations, based upon a formal review of the Rule begun in 1987. The Rule itself calls for this review. Interim staff recommendations published in June, 1990,¹ were that the Rule be retained, with a number of modifications. The proposed modifications include:

- 1) a prohibition on casket-handling fees;² and
- 2) repeal of the mandatory telephone affirmative disclosure that "price information is available over the phone."

The Funeral Rule presently applies to funeral home operators, but generally not to cemeteries or crematories. This is because retailers that market only cemetery plots, cremation, grave markers, or caskets do not fall within the definitional ambit of the Rule.³ However, if such retailers choose to offer funeral goods and services, they are required to comply with the Rule.

Expansion of the Rule to cover cemeteries and crematories generally is being considered as part of the current Funeral Rule review proceeding. However, the staff recommendation to the Commission is that coverage of the Rule not be so expanded. The staff report states that "the evidence does not establish that cemeteries and crematories that do not sell funeral goods are engaged in the type of abuses addressed by the Rule (lack of price disclosure, forced bundling of goods and services, and misrepresentations of funeral goods and services)." (see Staff Report supra, p. 119-120).

¹ See "Final Staff Report to the Federal Trade Commission With Proposed Amended Trade Regulation Rule," June, 1990.

² Casket-handling fees are charges (averaging \$300-\$500) that may be imposed on a consumer by the funeral home handling the arrangements, when the consumer has purchased the casket from a seller other than the funeral home. The anti-tying provision of the Rule currently prohibits funeral homes from refusing service because consumers purchase caskets from third-party sellers, but the Rule currently does not prohibit a "handling fee."

³ The Rule's definitions of funeral goods and funeral services do not encompass goods or services typically sold by cemeteries (see 16 C.F.R. §§453.1(i) and (k)). Furthermore, to be a "funeral provider" within the definition of the Rule, a firm must sell both funeral goods and services to the public (see 16 C.F.R. §453.1(j)).

Apart from the Funeral Rule, the Commission's authority does extend to cemeteries and crematories, if they meet the Commission's interstate jurisdictional requirements. FTC activity relating to these industries has been limited, however. This is in keeping with the FTC's general policy of deferring to state and local regulation of firms whose economic impact is primarily intrastate.

The best available evidence on the level of industry compliance with the Rule comes from consumer surveys conducted in 1987-88, one of them sponsored by the FTC. According to these surveys, most consumers reported receiving an itemized final statement and the price information that consumers requested over the telephone. By comparison, compliance with the general price list requirement was considerably lower. Most disturbingly, the surveys indicated that simultaneous compliance by funeral providers with four of the Rule's most important provisions, including the general price list requirement, was only 31 percent.

Since the dates of these surveys, the Commission has obtained civil penalties from 21 funeral providers for violations of the Rule. Civil penalties have ranged from \$10,000 to \$100,000. A wide range of Funeral Rule violations is alleged in these matters. Most frequently, the complaints allege failure to give or show consumers price lists complying with the Rule and failure to give consumers statements containing the required itemizations and disclosures regarding goods and services provided. A few cases have included allegations of fraud going beyond violations of the Rule; in such cases, the funeral homes allegedly charged consumers for goods or services that were not actually provided. In several cases, the funeral homes have been required to make redress to consumers.

The FTC also uses consumer education to reduce consumer injury. Shortly after the Rule was issued, the FTC prepared a public service announcement about it. In addition, the FTC has prepared an informational brochure for consumers and has worked with such organizations as the American Association of Retired Persons to inform consumers better about the protections that the Rule provides.

In summary, the FTC has concentrated its efforts in the funeral industry on preventing the unfair and deceptive practices it has identified through its Funeral Rule. The experience we have acquired through enforcing the Rule and through the recently-completed hearings on the Rule indicates that deceptive and unfair practices continue to occur in the industry. We do not have empirical data on the current level of abuse, however. We anticipate that as industry compliance with the Rule increases and as consumers become increasingly knowledgeable about the use of price information and about

purchase options available from providers, consumer injury will continue to abate.

Our experiences in working with the California Board of Funeral Directors and Embalmers, and the California Cemetery Board, have been limited to the occasional sharing of information. Our impression is that these boards have the same basic consumer protection objectives as the FTC. It is the Commission's general policy to work together with state enforcement agencies wherever possible in working toward common goals.

I thank you for the opportunity to appear before you today. I would be happy to answer any questions you may have.