



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

January 19, 1996

Representative Lucien A. DiMeo
One Hundred and Third District
531 Wintergreen Avenue
Hamden, CT 06514

Dear Representative DiMeo:

Thank you for your letter dated January 5, 1996, concerning your proposed legislation on pre-need insurance in the upcoming session of the Connecticut General Assembly, to better protect the consumer. In your letter, you proposed an escrow agreement made between the funeral home and the escrow agent; expanding the language in the statement of funeral goods and services selected, required by the Commission's Funeral Rule, 16 C.F.R. Part 453; and a trust document between the funeral home and the consumer. You requested my opinion as to the two proposed documents, which you enclosed. You also requested my opinion as to whether there can be changes made to the statement of goods and services, and if I feel this is the best way to protect the consumer.

The Commission is charged with enforcement of the Federal Trade Commission Act, 15 U.S.C. § 41 et seq. ("FTC Act"), which prohibits unfair and deceptive acts and practices, as well as with enforcement of trade regulation rules enacted pursuant thereto, such as the Funeral Rule. As to the two documents you enclosed, I can express no opinion on them, since they concern the business of insurance, and the Funeral Rule expressly states that "this Rule shall not apply to the business of insurance or to acts in the conduct thereof." 16 C.F.R. § 453.8 (c). Furthermore, under the McCarran-Ferguson Act, 15 U.S.C. § 1011, the FTC Act does not apply to the business of insurance or to acts in the conduct thereof. 15 U.S.C. § 1013(3)(a).

As to your suggestion about expanding the language or making other changes in the statement of funeral goods and services selected, it is unlikely that the Commission would make any such changes soon. The Funeral Rule underwent a comprehensive review beginning in 1988, and culminating in a revised version of the Rule which became effective July 19, 1994. This time frame suggests the cumbersome nature of rulemaking and rule review procedures which we must follow.

However, additions to the statement of funeral goods and services selected could be made voluntarily by funeral providers, or by state requirement, without violating the Funeral Rule. The Rule allows funeral providers to give persons any other price information, in any format, in addition to that required by the casket, outer burial container, and general price lists, "so long as the statement required [of funeral goods and services selected] . . . is given when required by the rule." 16 C.F.R. § 453.2(b)(6). In addition, the procedure for state exemptions from the Funeral

Rule implies that a state could enact any requirement which applies to any transaction to which the Funeral Rule applies, that "affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule." 16 C.F.R. § 453.9(b). I have enclosed a copy of our compliance guidelines, including the Rule and sample forms, for your review.

Please be advised that the views expressed in this letter are those of the FTC staff. They have not been reviewed, approved or adopted by the Commission, and they are not binding upon the Commission. However, they do reflect the opinions of those staff members charged with enforcement of the Funeral Rule. I hope that this information is helpful to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas A. Cohn". The signature is written in a cursive style with a prominent initial "T" and "C".

Thomas A. Cohn
Funeral Rule Enforcement Staff

Enclosure: 8/95 Funeral Rule Guide