

**COMMISSION AUTHORIZED**

PREPARED STATEMENT<sup>1</sup>

OF

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BEFORE THE  
COMMITTEE ON COMMERCE  
OF THE  
MICHIGAN STATE HOUSE OF REPRESENTATIVES

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<sup>1</sup> This testimony represents the views of the Cleveland Regional Office and the Bureau of Competition of the Federal Trade Commission, and does not necessarily represent the views of the Commission or any individual Commissioner.

Mr. Chairman and Members of the Committee: I am pleased to appear before you today to discuss proposed legislation that would amend the Michigan statutes regulating the licensing and operation of funeral establishments and cemeteries in Michigan. Permitting joint ownership or operation of a funeral establishment and a cemetery could make possible new business formats and improvements in efficiency and could encourage entry of new competitors, which could in turn lead to lower prices and improved service to consumers. This testimony represents the views of the Cleveland Regional Office and the Bureau of Competition of the Federal Trade Commission. They are not necessarily the views of the Commission or any individual Commissioner.

**I. Interest and experience of the Federal Trade Commission.**

The Federal Trade Commission is empowered to prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.<sup>2</sup> Pursuant to this statutory mandate, the staff of the FTC works to identify restrictions that hinder competition and increase costs without providing countervailing benefits to consumers.

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<sup>2</sup> 15 U.S.C. § 41 et seq.

The Commission and its staff have become familiar with the funeral industry through the promulgation and enforcement of a trade regulation rule that is intended to promote increased competition and consumer choice in the funeral industry by facilitating informed purchase decisions.<sup>3</sup> In addition, the Commission has taken law enforcement actions against anticompetitive acquisitions in the funeral industry.<sup>4</sup> The staff submitted comments to Senator Pridnia three years ago on legislation substantially similar to the legislation being considered by this committee now.<sup>5</sup> The staff has also commented on other states' proposed legislation involving the funeral industry.<sup>6</sup>

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<sup>3</sup> The FTC rule governing Funeral Industry Practices, 16 C.F.R. § 453, became effective April 30, 1984. Among other things, the rule requires funeral providers to disclose to consumers detailed information about prices. The Commission has recently approved amendments to this rule, effective July 19, 1994, as part of a mandatory review procedure. 59 Fed. Reg. 1592 (January 11, 1994).

<sup>4</sup> See Service Corp. Int'l, DKts. C-3372 (consent order, February 25, 1992), C-3440 (consent order, June 15, 1993), File No. 951-0012 (consent order published for comment, Feb. 28, 1995).

<sup>5</sup> See comments from Cleveland Regional Office to Senator John D. Pridnia (December 16, 1991, commenting on Senate Bill Nos. 301 and 302).

<sup>6</sup> See comments to Wisconsin, September 13, 1990, Pennsylvania, March 24, 1994, and August 29, 1989; Virginia, February 9, 1989; Oregon, April 6, 1987; Illinois, May 9, 1986; Kansas, February 14, 1986; and Alabama, January 16, 1986. Commission staff has also testified generally on regulatory issues in the funeral industry. See Statement to California Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development, October 17, 1991.

## **II. Description of Michigan's Current Law and the Proposed Amendments.**

Michigan law now states that a cemetery owner or operator "shall not" own or maintain a funeral establishment.<sup>7</sup> In addition, the law prevents a funeral establishment from locating on cemetery property.<sup>8</sup> The proposed Occupational Code amendments, H.B. 4456, would reverse both of these prohibitions. They would change the words "shall not" to "may" and would repeal the location prohibition.<sup>9</sup>

## **III. Effects of Prohibiting Jointly Owned or Operated Facilities.**

In other licensed and regulated businesses, such as health care, laws and regulations limiting "commercial practice" have been promoted based on the argument that they are necessary to maintain quality of service and protect the professional's independent judgment. Among other restrictions, these laws commonly prevent licensed professionals from entering into

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<sup>7</sup> Mich. Comp. Laws § 339.1812(1).

<sup>8</sup> Mich. Comp. Laws § 339.1812(2).

<sup>9</sup> H.B. No. 4456, to amend Occupational Code, § 1812, Mich. Comp. Laws § 339.1812. Unlike the bills on which we commented three years ago, the legislation under consideration now does not include provisions to regulate prices and dealing with affiliated entities.

commercial relationships, including employment, with non-licensed persons or firms. But our experience with such restrictions, principally in licensed businesses and professions other than the funeral and cemetery industries, suggests that their effect is usually to reduce competition and increase prices. That effect should be weighed carefully against effects, if any, on quality of care or service that the restrictions are intended to promote.<sup>10</sup>

Restrictions on the business practices of professionals can reduce competition by preventing the introduction and development of innovative forms of professional practices that may be more efficient, provide comparable quality, and offer competitive alternatives to traditional providers. For example, in a case challenging various ethical code provisions that the American Medical Association (AMA) enforced, the Commission found that AMA rules prohibiting physicians from working on a salaried basis for

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<sup>10</sup> See C. Cox and S. Foster, The Costs and Benefits of Occupational Regulation, October 1990 (FTC Bureau of Economics Staff Report). This report, a review of economic studies of licensing, finds that licensing frequently increases prices and imposes substantial costs, but that many licensing restrictions do not appear to increase the quality of service. The report recommends careful weighing of likely costs against prospective benefits Id. at v. Where consumers are in a relatively poor position to evaluate the product or service, regulation of some kind can provide benefit to consumers. The Commission's Funeral Rule addresses the consumer's relative lack of knowledge, and potentially vulnerable state of mind when purchase decisions are often made, by requiring disclosures, rather than by regulating the service directly or controlling who can practice. See Funeral Industry Practices, 16 C.F.R. § 453.

hospitals or other lay institutions and from entering into partnerships or similar business relationships with non-physicians unreasonably restrained competition, and, as a result, violated federal antitrust laws.<sup>11</sup> The Commission concluded that the AMA's prohibitions kept physicians from adopting potentially efficient business formats and precluded competition from organizations not directly and completely under the control of physicians. The Commission also found that there were no countervailing procompetitive justifications for these restrictions.<sup>12</sup>

This reasoning might well apply to the funeral and cemetery businesses. Prohibiting jointly owned or operated facilities could prevent some efficient combinations of business practices of the two operations that might result in lower prices to consumers. For example, cemeteries and funeral homes might be able to realize reductions in administrative and overhead costs

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<sup>11</sup> See American Medical Ass'n, 94 F.T.C. 701 (1979), aff'd, 638 F.2d 443 (2d Cir. 1980), aff'd mem. by an equally divided court, 455 U.S. 676 (1982).

<sup>12</sup> See also comment of the staff of the Federal Trade Commission on the American Bar Association's Model Rules of Professional Conduct, March 26, 1991, addressing issues raised by proposals to allow firms to provide ancillary, non-legal services. In that comment, the staff pointed out that law firm diversification could benefit consumers by allowing firms to provide an efficient mix of services that consumers seek, and that rules restricting such services could harm consumers by restricting consumer choice. The comment also analyzed how different proposals would meet concerns about professional standards and ethical obligations.

through joint facilities. Further savings may be possible in transportation and transaction costs. Buyers could make decisions about the burial and funeral services in one location, saving time and expense and perhaps easing personal concerns during a particularly stressful period. Admitting into the funeral and cemetery industries new business formats that Michigan's law now prohibits could have a positive effect on competition. These innovations might afford consumers a wider selection of services and costs.

#### **IV. Conclusion.**

The proposed legislation to permit cross-ownership would tend to increase competition in the funeral and cemetery industries. Allowing joint ownership or operation would remove barriers to new business formats and may promote efficiencies that ultimately could result in lower prices to consumers.