



Bureau of Competition
Bureau of Consumer Protection
Bureau of Economics
Office of Policy Planning

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

April 2, 2004

The Honorable Joanne C. Benson
Health and Government Operations Committee
Maryland House of Delegates
Annapolis, Maryland 21401-1991

Re: Maryland House Bill 795, Health Occupations–Morticians–Licensing

Dear Ms. Benson:

The staffs of the Federal Trade Commission's Bureau of Competition, Bureau of Consumer Protection, Bureau of Economics, and Office of Policy Planning are pleased to respond to your request for comment regarding Maryland House Bill 795, which would amend current Maryland law to permit corporate ownership of funeral homes. This letter will discuss the proposed law's potential benefits to consumers of funeral home services.¹

The FTC is charged by statute with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.² Under this statutory mandate, Commission staff often have assessed the competitive impact of regulations and business practices that impede competition or increase costs without offering countervailing benefits to consumers.³ Commission staff have become familiar with the funeral industry through promulgation of regulations,⁴ workshops that discuss various aspects of the industry,⁵ and

¹ This letter expresses the views of the Bureau of Competition, Bureau of Consumer Protection, Bureau of Economics, and Office of Policy Planning of the Federal Trade Commission. The letter does not necessarily represent the views of the Commission or of any individual Commissioner. The Commission has, however, voted to authorize us to submit these comments.

² Federal Trade Commission Act, 15 U.S.C. § 45.

³ Lists of recent FTC advocacy filings and economic reports are available at <http://www.ftc.gov/be/advofile.htm> and <http://www.ftc.gov/be/econrpt.htm>.

⁴ See 16 C.F.R. Part 453 (2003) (Rule governing Funeral Industry Practices).

⁵ See <http://www.ftc.gov/opp/e-commerce/anticompetitive> (agenda for Workshop: Possible Anticompetitive Efforts to Restrict Competition on the Internet).

investigations of anticompetitive acquisitions within the industry.⁶

We understand that current Maryland law generally restricts the ownership and operation of funeral homes to licensed funeral directors.⁷ Corporations are barred from owning and operating funeral homes, except for 59 corporations holding licenses to operate that were issued before 1945.⁸ Maryland House Bill 795 would remove the restriction on corporate ownership and operation by permitting corporations, as well as limited liability companies (“LLCs”), to own and operate funeral homes.

Economic theory and evidence suggest that consumers would likely benefit from having increased competition in the market for funeral home services. Competition is the best mechanism for achieving the optimal mix of products and services in terms of price, quality, and consumer choice.⁹ Generally, competition is most keen when entry into a market is relatively easy. Furthermore, competition from new entrants can encourage producers to become more efficient and responsive to the marketplace.¹⁰ We therefore believe that eliminating the entry barrier for corporations will likely benefit Maryland consumers.

Despite the consumer benefits from easier entry, current Maryland law restricts entry into the funeral homes market by limiting ownership and operation of funeral homes to individuals, while barring corporations (other than those “grandfathered” pursuant to statute). The corporate form is widely recognized as an efficient way of acquiring the sizable amounts of capital for the

⁶ See, e.g., the consent orders in *Service Corp. Int’l*, 127 F.T.C. 545 (1999), *Service Corp. Int’l*, 116 F.T.C. 507 (1993), and *Service Corp. Int’l*, 115 F.T.C. 153 (1992).

⁷ The spouse of a deceased, licensed funeral director may also assume ownership of a funeral home. MD. CODE HEALTH OCC. § 7-310(c)(2).

⁸ See *id.* § 7-309(a)-(b).

⁹ See Council of Economic Advisers, Economic Report of the President, Ch. 3, at 99 (2002) (“[C]ompetition keeps prices low. Competition in its various forms discourages any one firm from raising prices above what others would charge for similar goods or services. Second, competition ensures that only those firms that can meet consumer demands at the lowest possible costs will remain viable. Finally, competition encourages innovation in products and services, as well as in production and distribution methods, among other things.”).

¹⁰ See Department of Justice and Federal Trade Commission, 1992 Horizontal Merger Guidelines § 3.0, at <<http://www.ftc.gov/bc/docs/horizmer.htm>> (discussing the ability of new entry to ameliorate concerns about mergers that may otherwise enhance or create market power); Council of Economic Advisers, Economic Report of the President, Ch. 4, at 137 (2003) (“Regulatory reform in the airline, railroad, and trucking industries and the lifting of geographical restrictions on bank expansion are all cases [where] . . . [t]he resulting increase in competition . . . has caused prices to fall, innovation to increase, and resources to be more efficiently allocated.”).

operation of a business.¹¹ Furthermore, the Commission has recognized that limitations on the business format employed in a line of commerce can hamper both efficiency and competition.¹² By barring corporate ownership, Maryland limits participation to those individuals who have, or are personally able to obtain, sufficient capital to purchase or build a funeral home. In general, such limitations on entry can harm consumer welfare by stifling innovation and allowing existing firms to charge higher prices.¹³ We believe that by permitting corporations and LLCs to own funeral homes, Maryland will make entry into the funeral home industry easier, which should ultimately benefit consumers both in price and quality.

Maryland's interest in ensuring that each funeral home is operated by a trained and licensed mortician will still be served under the proposed amended law. The bill would not alter the requirement that each funeral establishment be owned or operated by a licensed mortician, and would make no change to those licensing requirements.¹⁴ These requirements should continue to ensure that each funeral home has a trained and licensed professional operating the facility.¹⁵ Indeed, as your letter notes, Maryland is unique among states in banning corporate ownership; yet we are not aware that any other states have experienced problems with funeral homes resulting from allowing market participants to determine the form of business organization best suited to their circumstances.¹⁶ As a result, we do not expect the bill to undermine Maryland's efforts to ensure that consumers are served by capable and professionally run funeral homes.

¹¹ See, e.g., ROBERT CHARLES CLARK, CORPORATE LAW § 1.1, at 2 (1986) (corporate form "facilitat[es] the efficient aggregation of very large amounts of capital from numerous investors"). Corporate organization provides other benefits as well. See STEPHAN A. ROSS & RANDOLPH W. WESTERFIED, CORPORATE FINANCE 11-13 (1988) (corporate form provides ease of ownership transfer, perpetual succession, and limited liability).

¹² See, e.g., *American Medical Ass'n*, 94 F.T.C. 701 (1979) (holding American Medical Association restrictions on partnerships between doctors and non-doctors restrained competition), *aff'd sub nom. American Medical Ass'n v. FTC*, 638 F.2d 443 (2d Cir. 1980), *aff'd by an equally divided Court*, 455 U.S. 676 (1982).

¹³ See Timothy J. Muris, FTC Chairman, *State Intervention / State Action – A U.S. Perspective*, speech before the Fordham Annual Conference on Int'l Law & Policy (Oct. 24, 2003), at <<http://www.ftc.gov/speeches/muris/fordham031024.pdf>>.

¹⁴ See House Bill 795, *amending* MD. CODE HEALTH OCC. §§ 7-309(d) & 7-310(c).

¹⁵ Although these licensing requirements would not be changed by the proposed amendment, substantial research demonstrates that, on balance, even this type of licensing requirement may impose costs that outweigh the benefits. See, e.g., Carolyn Cox & Susan Foster, Bureau of Economics, Federal Trade Commission, *The Costs and Benefits of Occupational Regulation* (1990).

¹⁶ The variety of ownership forms in use within other states underscores the concern that prohibiting any particular form of business organization is likely to be inefficient.

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In conclusion, the FTC's Bureau of Competition, Bureau of Consumer Protection, Bureau of Economics, and Office of Policy Planning believe that Maryland House Bill 795 will permit easier entry into the funeral home business, thereby benefitting consumers.

Respectfully submitted,

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