

Chairman Grassley and Members of the Committee:

My name is Robert Shreve and I served as the Chairman of the Board of AARP from 1994-96. On behalf of AARP, thank you for inviting us here this afternoon to discuss consumer concerns with existing practices in both the funeral and burial industries. AARP's constituency of over 34 million consumers age 50 and above has a substantial interest in this issue, and is more directly affected by funeral industry practices than younger consumers. AARP recognizes that for consumers, the preneed or at-need purchase of a funeral or burial is not just a financial transaction, but a major life transition that conjures up deep psychological and spiritual emotions. Confronting death and dealing with grief is difficult and consumers should not have to bear the additional worry over whether he or she is being taken advantage of.

Our testimony today will focus on some of the problems encountered by consumers when preplanning, arranging and conducting funeral and burial activities. We will not be dwelling on individual stories, but rather on improper industry practices that we believe to be prevalent. We have conducted survey research related specifically to the funeral and cemetery industries that serves to highlight the basis for our concerns. We have attached copies of our research materials for the record including a recently concluded survey regarding the lack of public awareness of the Funeral Rule.

### **A Changing Industry**

Over the past decade significant change has taken place in the funeral and burial industries. Changes include: consolidation of funeral homes and cemeteries; cemeterians providing funeral goods and services and funeral directors providing burial goods and services; an increase in third-party providers, Internet shopping and the proliferation of preneed contracts.

These changes provide consumers with a mixed bag of results, some good, some not-so good. The Funeral Rule, implemented by the Federal Trade Commission (FTC) in 1984 was designed to ensure that "consumers have access to sufficient information . . . ." In addition, it banned the bundling of goods and services, thereby enabling consumers to pick and choose only those items they want, and prohibited misrepresentations "used to influence consumers' decisions on which goods and services to purchase." The Rule, however, could not have anticipated the changes the industry has undergone and in the interest of both consumers and industry, AARP has recommended that the Rule be expanded to include all providers of funeral and burial goods and services.

Expansion of the Funeral Rule by the FTC would better protect consumers and provide a "level playing field" to all participants in the funeral and burial goods and services marketplace. Even expansion of the Rule, however, would not alleviate some of the problems that AARP has identified in the funeral and burial industry. In our testimony this afternoon, we will provide examples of problems consumers face in dealing with funeral directors as well as cemeterians. We will highlight concerns we have with cremations, offers from third party providers, Internet sales and industry consolidation. Finally, we will outline some of the problems associated with the sale of preneed contracts.

### **Funeral Practices**

AARP recognizes that the majority of funeral directors are reputable, caring, well-respected businesspersons who represent their industry well in the communities that they serve. Our concern lies with those funeral directors who don't comply with the Funeral Rule, who misrepresent fact or law and who in many cases, do irreparable harm either to a consumer directly or to the family of a deceased person. In this regard, AARP has received a variety of "horror stories" from its members. We believe

that the number of complaints we have received from our members does not even begin to measure the actual problem cases that exist. Recognition that more than just anecdotal information would be of use to this Committee and other legislative and regulatory bodies, AARP contracted with Market Facts, Inc. to conduct a survey of individuals who arranged or prearranged a funeral or burial in the 18 months preceding the interview. While the focus of the survey was compliance with the FTC's Funeral Rule, the findings illustrate broader problems that consumers face when engaging in the funeral goods and services marketplace. Some of the more interesting findings regarding compliance include:

Of those funeral arrangers who viewed caskets on display for purchase or rental, one-third were not given written casket price lists before they began looking at the merchandise.

- One-fourth of the 1999 funeral arrangers indicated they were not asked for their permission before the body was embalmed.
- One-third of arrangers in the 1999 study did not receive price information before talking about specific funeral goods and services.

In addition to these findings of non-compliance, the survey shows that funeral directors are engaging in misrepresentations. One area where misrepresentations are a major concern involves claims regarding the preservative value of caskets. According to the Funeral and Burial Providers survey conducted in July 1999, 34% of the persons who had arranged a funeral within the past 18 months reported being told by the funeral director that protective features of a casket would help preserve the body indefinitely.

Problems exist with regard to embalming as well. AARP's survey research found that 25% of survey participants were not asked for permission prior to embalming the body in clear violation of the law. Further, there are still cases when a provider misrepresents the law regarding the necessity of embalming a body. Because of inconsistent state statutes and the ignorance of the public on this issue, most consumers are unaware that the provider has misrepresented the law.

### **Cemetery Practices**

Withholding price information and misrepresenting the facts are practices that can also be found in the sales of burial goods and services. Even though consumers find price information to be helpful, AARP's survey research indicates that 36% of those purchasing a burial plot did not receive a price list and one in five of those purchasing other goods and services received no price list. AARP's 1997-98 cemetery "mystery shop" report also indicates that many of those provided "price lists" did not receive pre-printed lists, but fill-in-the-blank forms, hand scribbled notes or simply an adding machine tape. Unfortunately, consumers do not even have the limited protections of the Funeral Rule when dealing with cemeteries.

Apparently, large numbers of cemeteries also misrepresent the preservative and protective value of their goods. The 1999 AARP survey asked those burial arrangers who purchased a burial plot or other burial goods and services, "Did anyone you spoke with about purchasing burial goods or services tell you that the protective features of a grave liner or burial vault would help preserve the body indefinitely?" More than one-fourth (29%) of the respondents answered yes.

The Cemetery Mystery Shop conducted in 1997-98 and cited above, examined the sales and marketing practices employed by for-profit cemetery salespersons and the types of preneed arrangements offered to older consumers. A total of 170 visits were made of 106 cemeteries. The mystery shop reports present a snapshot of the for-profit cemetery marketplace as experienced by older consumers. It is not quantitative research, but rather qualitative research. The findings represent evidence of problems faced by the older

consumer when shopping for cemetery products and services.

As the 1997/98 Cemetery Mystery Shop report demonstrated, consumers cannot compare products, services and prices without a standardized form of price disclosure, and without being permitted to take such written forms home with them. Too often, the so-called "written price list" is no more than fill-in-the-blanks, handwritten notes or adding machine tapes. Handwritten and fill-in-the-blanks price disclosures provide the cemetery salesperson with the opportunity to alter the prices with each consumer. The documents from the mystery shop show that different prices are given for the same item. The potential for consumer abuse is great.

In addition to problems with cemeteries failing to provide printed price lists, the 1997/98 Cemetery Mystery Shop describes other questionable sales tactics regarding the marketing of vaults and mausoleums. Some of these include the failure to provide financial information; incorrectly telling shoppers that state law requires a vault or liner, and the marketing of extras like insurance to transport the body. In 28% of the visits, cemetery salespersons presented shoppers with various written documents other than price information. These documents included brochures, booklets, certificates and other marketing materials. Upon review, some of the documents appear to provide valuable information, while others are of questionable legitimacy. Examples of these documents are included in the Cemetery Mystery Shop study we submitted.

### **Cremations**

The use of cremation for final disposition is becoming more popular for a variety of reasons including the fact that it can be a less costly alternative. Unfortunately, over the years, the findings of various media investigations and court cases reveal cremation practices that are shocking and intolerable, such as:

- multiple cremations;
- harvesting of body parts or items of value without specific written authorization;
- returning more or less remains than were actually removed from the cremation chamber;
- misrepresenting the identity of remains, and
- failure to scatter remains as promised.

In addition to these horrific instances, consumers must be aware of practices within the funeral and burial goods and services industry to misrepresent "direct cremations" by tacking on additional cost items that are not provided to the consumer in advance. To protect consumers against such practices, AARP has recommended that the Funeral Rule be amended to include within its scope unfair and deceptive practices by crematories.

### **Third Party Providers and Internet Sales**

Retail casket sellers and electronic commerce vendors have recently emerged as non-traditional providers of funeral and burial goods and services. Approximately 300 casket stores are now in existence according to a National Casket Retailers Association publication. Additionally, traditional providers such as cemeteries and monument dealers have begun selling goods and services outside of their traditional product lines.

While the entry into the market place of alternative providers is welcome, AARP is concerned about consumer harm. Already, cases of misrepresentation and product alteration by independent casket retailers have been cited and we are not convinced that the situation will improve unless these providers

are included under the umbrella of the Funeral Rule.

Electronic commerce vendors present a different set of problems. The Internet has unleashed an avalanche of website marketing by funeral, burial and cremation businesses. Caskets are now routinely ordered over the Internet and shipped overnight across state lines. Many such Internet businesses offer lower prices. Some, however, do not provide prices for their on-line product offerings, disclosing instead a phone number to call to inquire about prices. Others give only a brief description of the product without providing enough details for a consumer to comparison shop.

Some of these online businesses offer preneed contracts online. No face-to-face interaction with a salesperson is necessary. They require only that one fill out a vital statistics form online and place an online credit card order. While they all collect personal information from the consumer, few of the sites have a posted privacy policy. Some of the online businesses sell only one product, like cremation urns. Others are traditional full service funeral homes or cemeteries. Either way, the number of businesses is staggering. If one were to type in "cremation" and conduct a websearch, over 6,000 documents would become available. Typing in "caskets" would yield 2,500 sites.

### **Industry Consolidation**

In the past few years' mergers and funeral industry consolidations have mounted rapidly, causing growing concern to AARP. As the number of chain-owned funeral homes continues to grow, consumers are being misled into believing that the local funeral homes with which they are familiar are still owned and operated by a local businessperson. In an effort to draw attention to these non-disclosures, AARP has urged states to require that advertising for funeral and burial services disclose the ownership of the entity offering the service.

The merging of smaller funeral homes with larger chains also raises the issue of market power. The largest of these chains, SCI, is now involved in 1 out of every 9 funerals in this country, and the top five consolidators account for almost 1 out of 5 funerals, prompting concern that the competition that is just beginning to develop in the industry will be quashed. Traditionally, such a movement toward market consolidation leads to higher prices for consumers -- a development that would defeat one of the primary goals of the FTC's Funeral Rule.

Funeral service consolidation presents other problems as well. As cemeteries, monument dealers and third-party businesses begin to offer funeral services, the fact that they are not subject to the provisions of the Rule creates problems for consumers. Without federal jurisdiction, consumers must rely on the states to provide a consumer protection framework. Unfortunately, state laws are very inconsistent and in many cases, laws that govern funeral directors do not govern cemeteries or others. This affects consumers in at least two ways. First, if a dispute arises, it becomes more difficult for a consumer to reconcile it. For instance, a person moving to Florida may deal with the same company, but be subjected to completely different rules. Second, inconsistent state laws permit unscrupulous funeral and/or burial providers to mislead or deceive consumers.

AARP asks that this Committee, or if need be, the Judiciary Committee, continue to pay close attention to the trend toward consolidation, so that consumer harm can be avoided.

### **Preneed Contracts**

AARP is quite concerned over business practices occurring with respect to pre-arrangement of and pre-payment for funeral and burial goods and services by consumers. We have articulated the need for

minimum contract standards to the Federal Trade Commission over the years. We hope that upon conclusion of their current review of the Funeral Rule, that action will be taken to address our concerns.

In a recent nationwide AARP survey on preneed funeral and burial arrangements, 43% of the population age 50 and older -- in excess of 28 million people -- report being solicited about the purchase of preneed funeral arrangements. 36% report having paid in advance for either funeral or burial arrangements. These high participation percentages translate to an estimated \$40 billion currently sitting in preneed fund accounts. While size alone does not mean that abuse exists and we do not assume that large portions of these funds are being treated unscrupulously, we are saying that the sheer number of transactions occurring in states with widely different regulatory approaches highlights the need for uniform federal standards in this area.

Your first witness today is not the only scam artist who has stolen money from funeral directors and/or cemeterians. The problem is that we don't know if anyone is really watching these funds. After a major preneed scandal in Pennsylvania, the state legislative audit agency reported that "state regulation of preneed sales in Pennsylvania is seriously deficient." In March of this year, four years after the audit, the U.S. Attorney in Harrisburg charged four individuals with mail fraud, conspiracy, and money laundering in the swindle of \$7.3 million of preneed funds.

An AARP Public Policy Institute survey of state laws regulating preneed funeral and burial contracts shows that discrepancies exist in the manner in which states regulate this growing component of the funeral industry. State laws governing preneed contracts (funded through trust funds, insurance policies, and other investment vehicles) vary greatly in their provisions regarding how much of the funds must be placed in trust, what information must be included in the contract, and whether the purchaser can obtain a refund on cancellation.

The AARP Public Policy Institute has also produced a Chart on Preneed Funeral and Burial Laws, which further illustrates the wide variation among these laws. While every state except Alabama has a law regulating some aspect of funeral and burial preneed arrangements, there are a number of states that do not address preneed burial contracts. Goods covered by one state's preneed funeral law may or may not be included in another's burial statute and only ten states have consumer protection recovery funds. Depending on the state, preneed contracts will be subject to the jurisdiction of a state insurance department, state funeral or cemetery board, Department of Health, or the Attorney General. Many state laws allow preneed sellers to put a smaller percentage of funds than actuarial standards would dictate into trust, raising concerns about the security of the consumer's purchase. Other states prohibit sellers from withdrawing earned income until the contract has been fulfilled. To sidestep this requirement and to avoid some of the taxes associated with revocable trusts, preneed sellers have moved aggressively into insurance-based products, with commissions based on the value of the funeral and the age of the applicant.

As noted above, we have urged the FTC to incorporate minimum standards for preneed funeral and burial contracts to fill a gap that remains glaringly open. The very nature of the purchase of funeral and burial goods and services argues for covering preneed arrangements. Upon the death of a family member or loved one

the emotional trauma and stress and the myriad of other matters that must be attended to, make it more difficult to comparison shop among providers of services. If the Rule is to truly promote competition then it must enable consumers to better plan in advance of the incidence of death.

Moreover, for those who wish to personally plan for their funeral or burial arrangements, including the

choice of cremation versus a cemetery burial, it is obviously essential that they have such information in advance. We envision that the standards, which we advocate for, would neither preempt nor conflict with existing state or local law.

Another concern that AARP has with the sale of preneed contracts is the fact that consumers do not know where their money is being held. Findings from a five-state telephone survey on the preneed and burial arrangements of older Americans are revealing. According to the report, "considerable proportions of individuals reported that their prepaid funeral and burial funds are either not invested, or they do not know what happens to their funds." The states with the largest percentage of those who were unaware of where their funds were placed were California (60%) and Alabama (56%). The AARP 1997/98 Cemetery Mystery Shop provides similar anecdotal evidence that shoppers were not provided information about where their prepaid funds would be invested. Similarly, only 13% of cemetery mystery shoppers received information on cancellations or refunds in that investigation.

As preneed sales continue to increase, it is anticipated that these problems will become more common. Because of uneven state regulation, and lack of adequate supervision of these accounts, uniform minimum standards for preneed contracts should be incorporated into the Funeral Rule or a set of Model Rules should be established. Consumers have a right to receive the same level of protection in this area; regardless of the state they live in, who sells the preneed agreement, and what goods and services are included in the contract.

## **CONCLUSION**

Mr. Chairman, AARP thanks you for providing us with the opportunity to provide a snapshot of the wide range of issues involving the funeral and burial industry.

AARP hopes that the information and attendant recommendations we have offered will be of use to this Committee as it grapples with this critical issue that impacts so many Americans - particularly older Americans.

I look forward to responding to your questions.